



## Nursing Homes

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### Background

Nursing homes (also referred to as convalescent homes, homes for the aged, rest homes, etc.) generally refer to places of residence for retired or elderly persons who are unable to live independently. They include:

- **Skilled Nursing Facilities (SNF):** SNFs provide care which requires the skill of trained and licensed medical staff, including rehabilitative therapists. SNFs must have a medical director (licensed physician) and offer 24-hour nursing service by registered nurses (RNs). There must be a minimum of one RN on duty during the day shift, seven days a week (most states have higher minimum requirements, depending on size of facility and needs of patients). SNFs require a physician's medical orders for admittance, and the patient's/resident's physician must visit at least once a month for the first 90 days to update medical care orders. Both **MEDICAID** and **MEDICARE** programs authorize SNFs. Medicare contributes toward payment for the first 100 days if the patient has spent at least three days in a hospital and continued medical care is recommended by the physician. Medicaid may pick up the charges after 100 days for those who are eligible.
- **Intermediate Care Facilities (ICFs):** By far, the majority of nursing home residents constitute those who are not capable of living independently
- but who do not need medical or skilled nursing care either. Most residents have chronic conditions or impairments. ICFs offer basic nursing care, assistance with eating, dressing, walking, and personal care. RNs are not required on staff, but there must be at least one RN consultant. Licensed practical nurses (LPNs) must be on duty at all times. Physicians must visit at least every 60 days. Medicare does not assist with payments. Eligible Medicaid patients may receive some assistance.
- **Residential Care Facilities (RCFs):** Personal or custodial care facilities are available for persons whose physical and mental conditions are reasonably sound but who need assistance with daily tasks such as eating, dressing, walking, bathing, etc. RCFs offer medical monitoring but stress social and recreational needs more. Neither Medicare nor Medicaid assists with payment, but RCFs must be licensed by their states and meet certain minimum standards accordingly.

Many nursing homes divide their beds into wards or designated areas, so as to accommodate varying levels and needs of patients/residents. They may have a skilled care area, an intermediate care area, and an "assisted living" area all within the same facility. Generally, such an arrangement is mutually beneficial to facility and patient. It keeps [OCCUPANCY](#) rates high at the facility, and allows residents to move internally from one area of care to another without the need to move to another facility altogether.

All nursing homes, whether or not they receive federal funds, must be state licensed. This includes inspections of the buildings and facilities themselves, proper licensing and scheduling of staff, and monitoring of patient/resident care.

### **Federal Purview**

Nursing homes that receive federal funds must comply with federal laws establishing minimum requirements for facilities, staff, and care. These requirements are broadly contained in the massive Social Security Act. Special requirements attach for those facilities participating in Medicare and Medicaid programs.

Medicare and Medicaid were created in 1965, as part of the Older Americans Act of 1965 (42 USC 3001 et seq.). In 1967, Congress established the first set of standards applicable to nursing home facilities. It created classifications for SNFs and ICFs. The standards were updated in 1980 and 1987.

- The Nursing Home Reform Act is absorbed in a massive piece of legislation known as the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987). The Act imposes more than just minimum standards; it requires that a facility provide each patient with a level of care that enables him or her "to attain or maintain the highest practicable physical, mental and psychosocial wellbeing." Importantly, OBRA 87 makes each state responsible for establishing, monitoring, and enforcing state licensing and federal standards. Under the Act, states must fund, staff, and maintain investigatory and Ombudsman units as well.
- The Patient Self Determination Act of 1990 is absorbed in the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990). It is applicable to more than just nursing homes but essentially mandates that facilities provide written information to patients regarding their rights under state law to participate in decisions concerning their medical care. These include the right to execute advance directives and the right to accept or reject medical or surgical treatments. The facilities must also provide a written policy statement regarding implementation of these rights and must document in each patient's record whether or not an advance directive has been executed.

### **Inspection and Licensing of Facilities**

The federal Department of Health and Human Services (HHS) maintains component Centers for Medicare & Medicaid Services (CMS) to oversee those programs. CMS is empowered with enforcing federal minimum requirement laws regarding nursing homes, and is also charged with the responsibility to create regulations implementing and particularizing those laws.

In turn, CMS contracts with state agencies (typically part of a state's health department or department of human services) for onsite inspections for minimum compliance with Medicare and Medicaid requirements. Inspection teams include at least one registered nurse.

State inspection teams inspect and review several aspects of nursing home care, invoking approximately 150 regulatory standards. They inspect the building for safe construction, ingress and egress accessibility, fire safety, and safe storage facilities for medications and food products. The teams also review food preparation, resident care processes, staff-resident interaction, and the environment as a whole. Using established protocol, the team will interview a sample of residents and family members regarding care and needs.

Non-compliance with regulations may result in fines, denial of federal funds, installation of a temporary manager, or installation of a state monitor. Serious violations result in the loss of federal Medicaid/Medicare

certification and termination of CMS agreements with the nursing home. Residents covered by Medicare or Medicaid are transferred to other certified facilities.

## **Inspection and Licensing of Staff**

Federal law mandates the minimum staffing requirements of certified nursing homes. State law governs the licensing and/or certification of the staff. RNs must qualify for and be licensed in the state in which the nursing home is located. Many states have adopted "compact agreements" for the licensing of RNs that permit them to transfer their licenses to other states without taking nursing exams in all the states. Generally, compact agreements are regionally based and limited in application. Almost all states have special licensing requirements (evidencing minimum specialized training/experience) for nursing home administrators.

## **Resident Rights**

States are required to effect bills of rights for nursing home residents. Most parallel the federal ones, codified at 42 USC 1395i-3(a) to (h); and 1396r(a) to (h) (1988 supplement to the U.S.C.) as follows.

### ***Freedom of Self-Determination***

Under 42 U.S.C. 1395i-3(c)(1)(A)(i),(v); 1396r(c)(1)(A),(v); and 42 C.F.R. 483.10(d), a resident shall have the right:

- To choose his or her personal attending physician
- To receive advance information regarding care and treatment options
- To receive advance information about changes in care and treatment which could affect resident well-being
- To freely participate in changes in care and treatment or planning care and treatment
- To accept or refuse any medical treatment or surgery

### ***Equal Access to Quality Care***

Under 42 U.S.C. 1395i-3(c)(4)(A); 1396r(c)(4)(A); and 42 C.F.R. 483.12(c), a nursing home must establish and maintain identical policies and practices regarding transfer, discharge, and/or any service provided under the state plan for all individuals regardless of the source of payment.

### ***Accommodation of Needs***

Under 42 U.S.C. 1395i-3(c)(1)(A)(v)(1); 1396r(c)(1)(A)(v)(1); 42 C.F.R. 483.15; 483.20; 483.25, the resident is entitled to be reasonably accommodated in the receipt of services consistent with individual needs and preferences, except where granting such accommodation would endanger the health and safety of others.

### ***Admissions Policies***

In accordance with 42 U.S.C. 1395i-3(c)(5)(A)(i)(I)-(III), (A)(ii); 1396r(c)(5)(A)(i)(I)-(III),(A)(ii),(A)(iii); 42 C.F.R. 483.12(d), admission policies of nursing facilities must:

- Not require applicants or residents to waive their rights to benefits under the Medicare or Medicaid program

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- Not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under Medicare and Medicaid
- Prominently display in the facility written information, and provide oral and written information, about how to apply for and use such benefits as well as how to receive refunds for previous payments covered by such benefits
- Not require any third parties to guarantee payment to the facility as a condition of admission to, or expedited admission to, or continued stay in, the facility
- In cases involving Medicaid, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the state plan, any gift, money, donation, or other consideration as a precondition of admitting, or expediting the admission of, the individual to the facility or as a requirement for the individual's continued stay in the facility

### ***Right to Orientation***

In accordance with 42 U.S.C. 1395i-3(c)(2)(C), 1396r(c)(2)(C); 42 C.F.R. 483.12(a)(7), a facility must provide sufficient preparation for, and orientation to, its facility to ensure orderly admission, transfer, or discharge.

### ***Right to be Informed about Rights***

Under the provisions of 42 U.S.C. 1395i-3(c)(1)(B)(i),(ii); 1396r(c)(1)(B)(i),(ii); 42 C F R 483.10(b)(1), a nursing facility must:

- Inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during his or her stay at the facility
- Make available to each resident, upon reasonable request, a written statement of such rights, including a description of the requirements for protection of personal funds as well as a statement that residents may file a complaint with a state survey and certification agency concerning resident abuse and neglect or misappropriation of resident property in the facility. Written statements of rights must be updated when changes are made in rights provided by state or federal law

### ***Freedom from Abuse and Restraint***

Under 42 U.S.C. 1395i-3(c)(1)(A)(i),(ii); 42 U.S.C. 1396r(c)(1)(A)(ii); and 42 C.F.R. 483.13, residents are entitled to be free from physical or mental abuse, involuntary seclusion, and/or any physical or chemical restraints imposed for purposes of discipline or convenience and not necessary to treat a medical symptom. This means that vests, hand mitts, seat belts, sedatives, or antipsychotic drugs are prohibited unless expressly ordered by a physician, in writing, for an expressly limited period of time.

### ***Privacy***

Under 42 U.S.C. 1395i-3 (c)(1)(A)(iii); 1396r(c)(1)(A)(iii); 42 C.F.R. 483.10(e)(1), a resident is entitled to privacy regarding accommodations, medical treatment, mail or other written communications, telephone calls, visits, and meetings of family and resident groups.

### ***Confidentiality***

Under 42 U.S.C. 1395i-3(c)(1)(A)(iv), (c)(3)(E); 1396r(c)(1)(A)(iv),(c)(3)(E); 3027(a)(12); 42 C.F.R. 483.10(e)(2), a resident has a right to confidentiality regarding medical and personal records.

### ***Right to Grievances***

Under 42 U.S.C. 1395i-3(c)(1)(A)(vi); 1396r(c)(1)(A)(vi); 42 C.F.R. 483.10(f),

- The resident shall have the right to voice concerns and grievances about care or treatment which has been furnished or not furnished, without [DISCRIMINATION](#) or reprisal
- The resident shall have the right to prompt response by the facility to resolve grievances, including those about the behavior of other residents

### ***The Right to Participation in Resident and Family Groups***

Under 42 U.S.C. 1395i-3(c)(1)(A)(vii),(viii),(c)(3); 1396r(c)(1)(A)(vii),(viii),(c)(3); 483.15(c),(d), 42 C.F.R.

- The nursing home must promote and protect the right of residents to organize and participate in resident groups within the facility. The resident's family also has a right to meet in the facility with the families of other residents in the facility
- The resident has the right to freely participate in social, religious, and community activities that do not interfere with the rights of other residents

### ***Access and Visitation Rights***

Under 42 U.S.C. 1395i-3(c)(3)(A)-(E); 1396r(c)(3)(A)-(E); 42 C.F.R. 483.10a), a nursing home must:

- Allow immediate access to a resident by any representative of the Secretary, by any representative of the state, by an ombudsman or an advocate for the mentally or developmentally disabled, or by the resident's individual physician
- Allow immediate access to a resident (subject to the resident's right to deny or withdraw consent at any time) by immediate family or other relatives of the resident
- Allow reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident (subject to the resident's right to deny or withdraw consent at any time)
- Allow representatives of the state ombudsman (with the permission of the resident) or the resident's [LEGAL REPRESENTATIVE](#) under state law, to examine a resident's clinical record

### ***Rights of Incompetent Residents***

Provisions under 42 U.S.C. 1395i-3(c)(1)(C); 1396r(c)(1)(C); and in specific, 42 C.F.R. 483.10(a)(3) state that, in the case of a resident adjudged incompetent under the laws of a state, "the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf."

### ***Transfer and Discharge Rights***

Under 42 U.S.C. 1395i-3(c)(2), 1396r(c)(2); 42 C.F.R. 483.12(a)(2), a resident has the right to remain in a nursing home and must not be transferred or discharged unless:

- The transfer or discharge is necessary to meet the health, safety, or welfare needs of the resident that cannot be met in the existing facility
- The transfer or discharge is appropriate because the resident's health has improved enough such that the resident no longer requires the services provided by the nursing home
- The health and safety of other individuals in the nursing home are otherwise endangered
- The resident has failed to pay, after reasonable notice, an allowable charge imposed by the nursing home for an item or service which the resident requested and for which the resident may be charged

above the basic rate or

- The nursing home ceases to operate

### ***Right to Notice of Bed-Hold Period***

42 U.S.C. 1396r(c)(2)(D)(i),(ii), and specifically 42 C.F.R. 483.12(b)(1),(2) require that:

- Prior to transferring a resident for hospitalization or therapeutic leave, a nursing home must provide written information to the resident and a family member or legal representative about any policy affecting the nursing home's ability to hold a bed for the resident's anticipated return and how long a bed it will be held. The nursing home must advise not only of its own policies regarding this but also of any policy under a state plan.

### ***Right to Priority Readmission***

Under the provisions of 42 U.S.C. 1396r(c)(2)(D)(iii); 42 C.F.R. 483.12(b)(3), a nursing facility must establish and follow a written policy governing the terms by which a resident who is transferred from the nursing home for hospitalization or therapeutic leave may be readmitted to the nursing home. The readmission is to take effect immediately upon the first availability of a bed in a semi-private room in the facility if, at the time of readmission, the resident requires the services provided by the nursing home. This rule only applies if:

- The resident is eligible for medical assistance for nursing facility services under a state plan, and
- The resident's hospitalization or therapeutic leave exceeds a period paid for under the state plan for the holding of a bed for the resident..

### ***Relocation Within the Nursing Home***

Under 42 U.S.C. 1395i-3(c)(1)(A)(v)(II); 1396r(c)(1)(A)(v)(II); 42 C.F.R. 483.15(e)(2), a resident is entitled to receive notice before the room or roommate of the resident is changed in the facility.

### ***Right to be Informed of Payment Credits and Payment Obligations***

According to the provisions of 42 U.S.C. 1395i-3(c)(1)(B)iii); 1396r(c)(1)(B)(iii); 42 C.F.R. 483.10(b)(5), a nursing home must inform each resident who is entitled to medical assistance at the time of admission or at the time the resident later qualifies for such assistance:

- Of the items and services that are included for payment under the state plan and for which the resident may not be charged, and
- Of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and
- Of changes to the charges for such items and services or to charges imposed for items and services included in the state plan, and
- (In writing before or at the time of admission and periodically during the resident's stay) of optional services available and the charges for them, including any charge for services not covered under Title 18 or under the nursing home's basic per diem charge.

### ***Right to Review Survey Results***

Under 42 U.S.C. 1395i-3(c)(1)(A)(x); 1396r(c)(1)(A)(x); 42 C.F.R. 483.10(g), upon reasonable request, the facility must provide the results of the most recent survey of the facility conducted by the Secretary or a state with respect to the facility and any plan of correction in effect with respect to the facility. The facility must

also protect and promote this right to examine survey results.

### ***Personal Funds***

Under 42 U.S.C. 1395i-3(c)(6); 1396r(c)(6); 42 C.F.R. 483.10(c), a nursing home may not require residents to deposit their personal funds with the facility. If the nursing home receives written authorization from the resident for the safekeeping of a resident account, it must hold, safeguard, and account for such personal funds under a system established and maintained in accordance with the following:

- Any resident's funds in excess of \$50 must be deposited in an interest bearing account (or accounts separate from any of the nursing home's operating accounts and credits all interest earned to the account). With respect to other funds, the nursing home must maintain such funds in a noninterest-bearing account or petty cash fund.
- There must be a full and completely separate accounting of each resident's personal funds, including a written record of all financial transactions involving a resident's personal funds. A resident or his or her legal representative must have reasonable access to such records.
- The nursing home must notify each resident receiving Medicaid when the amount in the resident's account reaches \$200 less than the applicable resource limit. If the amount in the account (in addition to the resident's other resources) extends beyond the allowable resource limit, the resident may lose income eligibility for Medicaid or SSI.
- The nursing home must promptly convey the resident's personal funds, along with a full accounting, to the personal representative of the estate of any deceased resident.

## **State Licensing Provisions**

ALABAMA: See Ala. Code 22-21-20 et seq.

ALASKA: See Alaska Stat. 08.70 and 47, et seq.; also Reg. 12 AAC 46.

ARIZONA: Ariz. Rev. Stat. Ann. 36-401.

ARKANSAS: Ark. Code Ann. 20-10-101.

CALIFORNIA: Cal. Code of Reg, Title 22; CHSC 1569.316; also see Welfare and Institutions Code 15600.

COLORADO: See 25-27-101; also see Title 12, Art. 39 of the Colo. Rev. Stat. Ann.

DELAWARE: Del. Code Ann, Title 16, Sec.1101 et.seq.; also see Title 18.

DISTRICT OF COLUMBIA: D.C. Code Ann. 32-1301-1462.

FLORIDA: See Fla. Stat. Ann., Ch. 400 Part II and Ch. 468, Part II.

GEORGIA: See Ga. Code Ann. 31-7-1.

HAWAII: See Hawaii Rev. Stat. 321-15.1-62.

IDAHO: See Idaho Code 39-3501.

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ILLINOIS: 210 Ill. Comp. Stat. Ann. 45/1-101 to 1/3A-101.

INDIANA: See Ind. Code Ann.16-28-2-1.

IOWA: See Iowa Code Ann 231C.1.

KANSAS: Kan. Stat. Ann.39-923-95.

KENTUCKY: See KRS 216.510 et seq. and 216.610 et seq.

LOUISIANA: See La. Rev. Stat. Ann 2151-2175.

MAINE: See Me. Rev. Stat. Ann. Tit 22. Section 7801.

MARYLAND: See Md. Code Ann., Health-General,1-101 to 19-180.

MASSACHUSETTS: See Mass. Gen. Laws, Ch.19.

MICHIGAN: See MCL 333.21711 to 21799.

MINNESOTA: See Minn. Stat. Ann. 144 et seq. and 144A.

MISSISSIPPI: See Miss. Code Ann. 43-11-1-27.

MISSOURI: See Vernon's Ann. Mo. Stat. 198.003 to 198.186.

MONTANA: See Mont. Code Ann. 50-5-101-1107.

NEBRASKA: See Neb. Rev. Stat. 71-20 (re: assisted living).

NEVADA: See Nev. Rev. Stat. Ann. 449 et seq.

NEW HAMPSHIRE: See N.H. Rev. Stat. Ann. 151:1 et seq.; 151:C-4.

NEW JERSEY: See N.J. Stat. Ann. 30:11A-1- to 14.

NEW MEXICO: See N.M. Stat. Ann. 24-1-1-22.

NEW YORK: See N.Y. Service Laws 2,460-462.

NORTH CAROLINA: See N.C. Gen. Stat. 1310 et seq.; 1310-2-4.

NORTH DAKOTA: See N.D. Cent. Code 23-09.3-01 et seq.

OHIO: See ORC. 3721.01 et seq.

OKLAHOMA: See Okla. Stat. Ann. Title 63, 1-890.

OREGON: See Or. Rev. Stat. 443.400 et seq.

PENNSYLVANIA: See 62 Pa. Cons. Stat. Ann. 101-1053.

State Licensing Provisions

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RHODE ISLAND: See R.I. Gen. Laws 23-17.4-1 et seq.

SOUTH CAROLINA: See S.C. Code Ann. 44-7-110, 41-81-10.

SOUTH DAKOTA: See S.D. Codified Laws Ann. 34-12-1.

TENNESSEE: See Tenn. Code Ann. 68-11-201 to 253.

TEXAS: See Tex. Health and Safety Code, 274.001 et seq.

UTAH: See Utah Code Ann. 26-21-1 et seq.

VERMONT: See Vt. Stat. Ann., Tit. 33, Ch. 71, 7101 et seq.

VIRGINIA: See Va. Code Ann. 63.1-172 to 1-182.

WASHINGTON: See Wash. Rev. Code Ann. 70.129.000 et seq.

WEST VIRGINIA: See W. Va. Code 16-5D.

WISCONSIN: See Wis. Stat. Ann. 46.03.50.01 et seq.

WYOMING: See Wyo. Stat. Ann. 35-2-901 to 910.

### **Additional Resources**

"About Nursing Home Inspections." Available at <http://www.medicare.gov/Nursing/AboutInspections.asp>.

*Law for Dummies*. Ventura, John, IDG Books Worldwide, Inc., 1996.

*Legal Guide for Older Americans*. American Bar Association. Random House:,1998.

"Nursing Home Law Overview." Available at <http://www.elderlibrary.org/nursing%20home%20law%20overview...> .

"Nursing Home Resident Rights." Edson, Gail, 1996. Available at <http://www.keln.org/bibs/edson2.html>.

### **Organizations**

#### *American Association of Retired Persons*

601 E Street NW  
Washington, DC 20049 USA  
Phone: (800) 424-3410  
URL: [www.aarp.org](http://www.aarp.org)

*American Bar Association (Commission on Legal Problems of the Elderly)*

740 15th Street NW  
Washington, DC 20005 USA  
Phone: (202) 992-1000

*National Citizens' Coalition for Nursing Home Reform*

1424 I6th St NW, Suite 202  
Washington, DC 20036 USA  
Phone: (202) 332-2275

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