

SECTION II

THE PATIENTS' BILL OF RIGHTS

GENERAL STATUTES OF NORTH CAROLINA

Chapter 131E. Health Care Facilities and Services

ARTICLE 6 Health Care Facility Licensure Act

Part B. Nursing Home Patients' Bill of Rights

G.S. 131E-115. Legislative intent.

It is the intent of the General Assembly to promote the interest and well-being of the patients in nursing homes and adult care homes licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of Chapter 131E of the General statutes. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights. (1977, c. 897, s. 1; 1983, c. 143, s.2; c. 775, s. 1; 1995, c. 509, s. 72; c. 535, s. 25.)

G.S. 131E-116. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Administrator" means an administrator of a facility.
- (1a) "Commission" means the North Carolina Medical Commission.
- (2) "Facility" means a nursing home and a home for the aged or disabled licensed pursuant to G.S. 131E-102, and also means a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E.
- (3) "Patient" means a person who has been admitted to a facility.
- (4) "Representative payee" means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance. (1977, c. 897, s. 1.; 1983, c. 143, s. 1.; c. 775, s. 1; 1993, c. 499, s. 1.)

G.S. 131E-117. Declaration of patients' rights.

All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

- (1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;
- (2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;
- (3) To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection;
- (4) To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written

- evidence of compliance with this subdivision, including signed acknowledgments by the patient, shall be retained by the facility in the patient's file;
- (5) To receive respect and privacy in the patient's medical care program. Case discussion consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;
 - (6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;
 - (7) To receive from the administrator or staff of the facility a reasonable response to all requests;
 - (8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage;
 - (9) To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days' notice.
 - (10) To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;
 - (11) To enjoy privacy in the patient's room;
 - (12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's personal behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;
 - (13) To not be required to perform services for the facility without personal consent and the written approval of the attending physician;
 - (14) To retain, to secure storage for, and to use personal clothing and possessions, where reasonable;
 - (15) To not be transferred or discharged from a facility except for medical reason, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record.

- (16) To be notified within 10 days after the facility has been issued a provisional license because of violation of licensure regulations or received notice of revocation of license by the North Carolina Department of Human Resources and the basis on which the provisional license or notice of revocation of license was issued. The patient's responsible family member or guardian shall also be notified. (1977, c. 897, s. 1; 1983, c. 775, s. 1; 1989, c. 75; 1997-443, s. 11A.118(a).)

G.S. 131E-118. Transfer of management responsibilities.

The patient's representative who has been given the power in writing by the patient to manage the patient's financial affairs or the patient's legal guardian as appointed by a court or the patient's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by the provisions of this Part, may perform any other act, and may receive or furnish any information required by this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

G.S. 131E-119. No waiver of rights.

No facility may require a patient to waive the rights specified in this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

G.S. 131E-120. Notice to patient.

(a) A copy of G.S. 131E-115 through G.S. 131E-127 shall be posted conspicuously in a public place in all facilities. Copies of G.S. 131E-115 through G.S. 131E-127 shall be furnished to the patient upon admittance to the facility, to all patients currently residing in the facility, to the sponsoring agency, to a representative payee of the patient, or to any person designated in G.S. 131E-118, and to the patient's next of kin, if requested. Receipts for the statement signed by these persons shall be retained in the facility's files.

(b) The address and telephone number of the section in the Department responsible for the enforcement of the provisions of this Part shall be posted and distributed with copies of the Part. The address and telephone number of the county social services department shall also be posted and distributed. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

G.S. 131E-121. Responsibility of administrator.

Responsibility for implementing the provisions of this Part shall rest on the administrator of the facility. (1977, c. 897, s. 1. 1983, c. 775, s. 1)

G.S. 131E-122. Staff training.

Each facility shall provide appropriate staff training to implement each patient's rights included in this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

G.S. 131E-123. Civil action.

Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Part. The Department, a general guardian, or any person appointed as guardian ad litem pursuant to law, may institute an action pursuant to this section on behalf of the patient or patients. Any agency or person named above may enforce the rights of the patient specified in this Part which the patient is unable to personally enforce. (1977, c. 897, s.1; 1983, c. 775, s. 1.)

G.S. 131E-124. Enforcement and investigation; confidentiality.

- (a) The Department shall be responsible for the enforcement of the provisions of this Part. The Department shall investigate complaints made to it and reply within a reasonable time, not to exceed 60 days, upon receipt of a complaint.
- (b) The Department is authorized to inspect patients' medical records maintained at the facility when necessary to investigate any alleged violation of this Part.
- (c) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

G.S. 131E-125. Revocation of a license.

- (a) The Department shall have the authority to revoke a license issued pursuant to G.S. 131E-102 in any case where it finds there has been a substantial failure to comply with the provisions of this Part or any failure that endangers the health, safety or welfare of patients.
A revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20 day period, files a petition for a contested case, in which case the notice shall be deemed to be suspended. At any time at or prior to the hearing, the Department may rescind the notice of revocation \ upon being satisfied that the reasons for the revocation have been or will be removed.
- (b) In the case of a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E, when the Department of Human Resources finds that there has been a substantial failure to comply with the provisions of this Part, it may issue an order preventing the continued operation of the home.
Such order shall be effected by mailing to the hospital by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such order shall become effective 20 days after the mailing of the notice, unless the hospital, within such 20-day period, files a petition for a contested case, in which case the order shall be deemed to be suspended. At any time at or prior to the hearing, the Department of Human Resources may rescind the order upon being satisfied that the reasons for the order have been or will be removed. (1977, c.897, s. 1; 1983, c. 143, s. 3; c. 775, s. 1; 1987, c. 827, s. 251.)

G.S. 131E-126. Repealed by Session Laws 1987 c. 600, s. 1.

G.S. 131E-127. No interference with practice of medicine or physician-patient relationship.
Nothing in this Part shall be construed to interfere with the practice of medicine or the physician-patient relationship. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

G.S. 131E-128. Nursing home advisory committees.

- (a) It is the purpose of the General Assembly that community advisory committees work to maintain the intent of this Part within the nursing homes in this State, including nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of the General Assembly that the committees promote

community involvement and cooperation with nursing homes and an integration of these homes into a system of care for the elderly.

- (b) (1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of three.
 - (2) In each county with four or more nursing homes, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.
 - 3) Each committee shall be appointed by the board of county commissioners. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county and of the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes. If the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, these appointments may be made by the board of county commissioners without nominations.
- (c) Each committee member shall serve an initial term of one year. Any person re-appointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, or who were appointed by the board of county commissioners when the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, failed to make nominations, may not be reappointed without the consent of a majority of the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes within the county. If the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. 131E, which operate nursing homes fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.

- (d) Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a person appointed when the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. 131E, which operate nursing homes, failed to make a nomination shall be selected from among persons nominated by the administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is not required. If nominations or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is required, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the 45-day period for action by the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes.
- (e) The committee shall elect from its members a chair, to serve a one-year term.
- (f) Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of a patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office as defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties.
The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, which shall supply a copy to the Division of Facility Services.
- (g) The Division of Aging, Department of Human Resources, shall develop training materials which shall be distributed to each committee member and nursing home. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under subsection (h) of this section. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

- (h) (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.
- (2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.
- (3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by the subcommittees to which the member has been appointed.
- (4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S. C. 3001 et seq.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time.
- (i) Any written communication made by a member of a nursing home advisory committee within the course and scope of the member's duties, as specified in G.S. 131E-128, shall be privileged to the extent provided in this subsection. The privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements or communications do not amount to intentional wrongdoing. To the extent that any nursing home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance. (1977, c. 897, s. 2; 1977, 2nd sess., c. 1192, s. 1; 1983, c. 143, ss. 4-9; c. 775, s. 1; 1987, c. 682, s.1; 1995, c. 254, s. 7; 1997-176, s. 1; 1997-443, s. 11A.118(a).)

G.S. 131E-129. Penalties.

- (a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violations as follows:

- (1) "Type A Violation" means a violation by a facility's licensee of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:
- a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them and set a date by which the violation must be corrected;
 - b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and
 - c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A Violation.

- (2) "Type B Violation" means a violation by a facility's licensee of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

- (b) Penalties for failure to correct violations within time specified.

- (1) Where a facility's licensee has failed to correct a Type A Violation, the Department shall assess the facility's licensee a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.
- (2) Where a facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility's licensee a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the time specified in the plan of corrections approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected..

- (3) The Department shall impose a civil penalty on a facility's licensee which is treble the amount assessed under subdivision (1) of subsection (a) when a facility under the management, ownership, or control of that same licensee has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which the facility's licensee has received a citation during the previous 12 months. The counting of the 12 month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.
- (c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:
 - (1) The gravity of the violation, including the fact that death or serious physical harm to a resident has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated.
 - (1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated.
 - (1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
 - (2) The reasonable diligence exercised by the licensee to comply with G.S.131E-256 and G. S. 131E-265 and other applicable State and federal laws and regulations;
 - (2a) Efforts by the licensee to correct violations;
 - (3) The number and type of previous violations committed by the licensee within the last 36 months;
 - (4) The amount of assessment necessary to insure immediate and continued compliance; and
 - (5) The number of patients put at risk by the violation.
- (c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make The written record available to all affected parties including:
 - (1) The penalty review committee;
 - (2) The local department of social services who is responsible for oversight of the facility involved;
 - (3) The licensee involved;
 - (4) The residents affected; and
 - (5) The family members or guardians of the residents affected.

- (c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation
- (d) The Department shall impose a civil penalty on any facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.
- (e) Any facility's licensee wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. At least the following specific issues shall be addressed at the administrative hearing:
- (1) The reasonableness of the amount of any civil penalty assessed, and
 - (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.
- If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.
- (f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility's licensee:
- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or
 - (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.
- (g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section.
- (g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:
- (1) The cost of training does not exceed one thousand dollars (\$1000);
 - (2) The penalty would be for the facility's only violation within a 12 month period preceding the current violation and while the facility is under the same management; and
 - (3) the training is:
 - a. Specific to the violation;
 - b. approved by the Department of Health and Human Services; and
 - c. Taught by someone approved by the Department and other than a provider.
- (h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations. (1987, c. 600, s. 2; 1989, c. 556, s.2; 1993, c.390, s. 2; 1995, c. 396, s. 1 1995(Reg. Sess., 1996), c. 602, s. 2; 1997-431, s. 2; 1997-443, s. 11A.122.)

G.S. 131E-130. First available bed priority for certain nursing home patients.

- (a) If a patient is temporarily absent, for no more than 15 days, from a nursing home to obtain medical treatment at a hospital other than State mental hospital, the nursing home; (i) shall provide the patient with the first bed available at or after the time the nursing home receives written notification of the specific date of discharge from the hospital; and (ii) shall grant the patient priority of admission over applicants for admission to the nursing home. The duration of the temporary absence shall be calculated from the day of the patient's admission to a hospital until the date the nursing home receives written notice of the specific date of discharge. This subsection shall not apply in instances in which the patient's treatment can no longer be provided by the nursing home upon re-admission.
- (b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars (\$50.00) a day, up to a maximum of one thousand five hundred dollars (\$1,500), against the nursing home, for each violation.
- (c) The provisions of Chapter 150B of the General Statutes that govern contested cases apply to appeals from Department action pursuant to this section. (1987 (Reg. sess., 1988) c. 1080, s. 1.)

INTERPRETATIONS PATIENT'S BILL OF RIGHTS

131E-117. Declaration of patient's rights.

All facilities shall treat their patients in accordance with the provision of this Part. Every patient shall have the following rights:

Interpretation

There is little doubt that each facility and its staff subscribe fully to the purpose expressed by the General Assembly and the sixteen rights outlined below. However, to more readily assure compliance, each facility must develop written policies to reflect how residents are to be treated and procedures for implementing and assuring such treatment.

RIGHT 1 - To be treated with consideration, respect, and full recognition of personal dignity and individuality.

Interpretation

1. It should be recognized that in an institutional setting each and every resident cannot have complete freedom to do as he wishes as he might in his own home. In general, the meaning of this particular Right would be for one to ask oneself, "How would I like to be treated in a similar situation"?
2. The staff of the facility should speak courteously to the residents at all times. Speaking with, caring for and talking with and about residents affords staff the opportunity to constantly affirm the individuality and dignity of the resident. Calling residents by name, and addressing residents informally; avoiding the use of endearments like "Sweetie" and "Honey"; avoiding talking "about" rather than "to" a resident in his presence; knocking before entering a bathroom or the resident's own room, in the case circumstances require it; and similar courtesies will all contribute to the resident's self-respect and should be no less than what we would allow other people whom we deal with in life.
3. Daily activities such as eating, bathing and other activities should allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Allowing the expression of individual residents preferences such as clothing, religious activities, friendship with staff and other residents, activity programs and entertainment will be a demonstration that the facility respects the resident's right to be an individual. When possible, resident's likes and dislikes will be honored.
4. The staff of the facility should ensure the privacy of the resident and that such privacy is maintained at all times, A closed door or drawn curtains will shield the residents from passersby during examination, treatment, or during personal hygiene. In cases where resident's safety is a consideration, assistance by other staff may require that they be present at such times.

5. Except for compelling medical reasons, residents are expected to be able to sleep until at least 6:00 a.m. daily unless it is their wish to arise earlier in accordance with previous life-time habits. Bathing is expected to be conducted during normal waking hours of the day. Bathing will be conducted at night only when dictated by special needs of the resident. The resident has a right to expect a full bath (including a bed bath) no less than twice a week.

RIGHT 2 - To receive care, treatment and services which are adequate, and in compliance with relevant federal and State statutes and rules.

Interpretation:

1. Essentially the facility must have the capability to provide the type of care which the resident needs according to what is prescribed by the attending physician.
2. The resident has the right to know that when a facility admits him, it is properly licensed, staffed, and equipped to provide the care for which the resident was admitted and, in fact, does deliver such care. For example, failure to meet this patient Right would be the admission of a resident requiring physical therapy services when the facility does not have the capability to deliver such services.
3. The staff of the facility are properly licensed, registered or otherwise qualified in accordance with state law to perform the care and treatment to the residents in the facility.
4. The facility itself complies with state and local laws governing sanitation, fire safety, and other relevant codes and regulations.
5. Failure to provide adequate and appropriate care as measured against contemporary standards of practice is a violation of this law. It is expected that a prudent administrator will, through effective management, monitor staff performance to reasonably assure that no resident's health, safety or welfare is endangered.

RIGHT 3 -To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection.

Interpretation

1. This particular Right requires little interpretation. It is important to note, however, that it does require a written receipt, signed by the resident acknowledging delivery of the required statement. The statement must be in writing and may be signed for by anyone qualified under G.S. 131E-118. The signed receipt may either be maintained in the medical record of the resident or in the business office file. In either case, the signed receipt must be filed individually and not in a single file for all patients.

When the provisions of G.S. 131E-118 are invoked, a copy of the signatory's authorization should be kept on file with the receipt. Should circumstances exist which prevent the facility from obtaining an authorized signature, a brief explanation should be entered into the file. When doubt exists as to the mental competence of the resident and G.S. 131E-118 signature authorization does not exist, it is recommended that a family member co-sign the receipt with the resident.

2. The statement should identify nursing care, professional services and supplies as well as recreation and personal care services and items (laundries, haircuts, cosmetics, and beautician services) which are provided.
3. Charges for services not included in the facility's basic per diem rate must be identified.
4. Items covered under Medicaid must be clearly indicated as well as all items that will be charged directly to the resident.
5. The statement should be explained to the resident, guardian, or representative and any question answered fully.
6. Residents must be informed in advance of any changes in the cost or the availability of services.

RIGHT 4 -To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision, including signed acknowledgments by the patient, shall be retained by the facility in the patient's file.

Interpretation

1. The Federal Patients Bills of Rights are most stringent in that they require the resident to be fully informed of his medical condition whereas the state statute requires such information to be on file only. In addition, the federal regulations specifically recognize the right of the resident to participate in resident care planning and to refuse treatment,
2. Paragraph 1 above applies only to facilities participating in the Medicare and/or Medicaid program.
3. As indicated by the Right, the meaning of this requirement is a function of the medical staff and particularly the attending physician for each resident. The administrator is responsible for ensuring the medical staff is aware of this law. Medical staff rules, policies or by-laws should be reviewed.

The medical director or advisory physician should be responsible for working with the attending physician(s) in the implementation of this patient Right.

4. If the attending physician decides that informing the resident is medically contraindicated, he should document such opinion in the resident's chart.
5. Obviously, no facility should undertake experimental research with any resident without receiving his prior consent. Experimental research is taken to mean that there is to be independent research on a resident or residents to the extent there is actual manipulation of the resident. In the event there are studies which do not disclose the names of residents or involve manipulation of residents, these would not be considered as experimental research. Informed consent and resident acknowledgment must be signed by the resident or in accordance with G.S. 131E-118.

RIGHT 5 - To receive respect and privacy in the patient's medical care program. Case discussion, consultation, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract.

Interpretation

1. Medicare/Medicaid Skilled Nursing Facility (SNF) and Intermediate Care Facility (ICF) Patients' Bill of Rights as well as the standard for skilled nursing facilities (405:1132) requires confidentiality of medical records and medical care. Generally, most facilities require a written consent for release of confidential information such as would be contained in the medical record.
2. Each facility should allow access to medical records on a "need to know" basis. The "need to know" is defined as being involved in the direct care of the resident such as provided by staff and the consultants.
3. The same policy should prevail in the matter of personal records (financial and social).
4. To protect the facility, it is recommended that it obtain written consent for the release of confidential information to any person whether related or not.
5. Should a resident be denied access to his own medical record, the reason for such denial must be documented in the resident's chart.

RIGHT 6 - To be free from mental and physical abuse and , except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need.

Interpretation

1. The federal certification requirements are practically identical to the State requirement in that neither forbids the use of chemical or physical restraints; rather, they allow the use, where appropriate, and forbid their use where inappropriate. Mental abuse includes such acts as humiliation, harassment, and threats of punishment or deprivation. A physical restraint is anything which prevents a resident from doing something he might voluntarily do or which limits his access to his own body parts. Physical restraint includes all devices such as restraining straps, mittens, etc., as well as denial of access to a wheelchair or other device which renders the patient immobile. Physical restraints do not include supportive devices used to achieve proper body position or balance. A chemical restraint is defined as the inappropriate prescribing, administering, or monitoring of pharmacological agents.
2. Chemical and physical restraints are not to be used:
 - a. to control or limit resident mobility for the convenience of staff;
 - b. as punishment;
 - c. for indefinite periods of time;
 - d. as a substitute for adequate resident supervision;
 - e. as a substitute for programs dealing with specific behaviors.
3. Restraints may be used when necessary to protect the resident from injury to himself and other, and such uses should be the exception and not regarded as the routine method of dealing with an ongoing problem.
4. Blanket standing orders for "restraints PRN" (to restrain as needed) are not permitted. PRN (as needed) orders should be specific and individualized according to resident need such as "may restrain PRN with mitten on right hand to prevent eye scratching (which would result in damage)"
5. A physician may write an order for restraints to be used in an emergency situation. However, such order must specify when and under what circumstances the restraints can be used and must clearly justify the reason(s) for the use of the restraints. When an "emergency" problem is reported, documentation should show the facility's efforts to deal with that problem in a less restrictive and more appropriate manner.
6. Any order for the use of a restraint(s) must be for a specified maximum period of time. Renewal of orders for emergency restraints must be in conjunction with a treatment procedure designed to modify the behavioral problems for which the resident is restrained or, as a last resort, after failure of attempted therapy.
7. Should a resident emergency occur for which there is no alternative to physical restraint, and the attending physician's orders reflect that the emergency had not been anticipated, minimum effective restraint measures may be applied in accordance with nursing judgment when it is not possible to contact the resident's physician to report the significant change in the resident's condition and obtain instructions from the physician. Should the emergency occur at night, it is

reasonable to assume that a physician can be contacted and telephone orders obtained prior to 10:00 the following morning.

RIGHT 7 - To receive from the administrator of the facility a reasonable response to all requests.

Interpretation

1. One question that would arise regarding this particular Right would be, "What is considered reasonable"? One definition of "reasonable" is fair or moderate and this definition would seem to be appropriate. Furthermore, each and every resident cannot and should not expect that his every request will be granted as it is obvious that this would be impractical or could be detrimental to the resident's health or safety.
2. There should be clear indications that the facility does not arbitrarily dismiss or ignore resident requests which are not excessive and which would improve the quality of the resident's life.
3. The facility should document the denial of a request if a particular resident becomes upset because of a denial.
4. The facility must in all cases of denial explain to the resident why the particular request cannot be granted, whether it be recorded or not.

RIGHT 8 - To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage.

Interpretation

1. In exercising this right the word "reasonable" is used and has been defined as being fair or moderate. Also, the words without restriction appear to indicate that the resident can do whatever he/she wishes to do. Of course, in this case, it should be emphasized that this would imply without restriction only if it did not interfere with the rights of other residents or the welfare of the particular resident.
2. The facility should make provisions where a resident may meet privately with a relative or friend. Obviously, if the resident has a private room this would suffice. In the case of semi-private rooms, provisions should be made to ensure that the resident could associate or communicate privately with anyone whom he/she desires.

3. The facility does have the right to restrict the visiting hours as long as such visiting hours permit the residents to have visitors each day of the week. The actual hours allowed for visiting can be established by the facility and may be tailored to the facility's work activities.
4. In the case of unusual circumstances, the facility must allow a visitor to see a resident at the resident's own request. This, of course, would be at the discretion of the facility but it would be unreasonable to prohibit visitation at other hours when such visitation would not interfere with the health and welfare of the resident or other residents.
5. For purposes of this patient Right, reasonable hours are considered to be the normal waking hours of the day. However, here again, the facility should use discretion should an emergency situation arise where the resident has a visitor, for example, coming from out of town or there is a need for the visitor to relay important information to the resident or vice versa.
6. The facility has the right to restrict a particular visitor or restrict the number who visit a single resident at any one time. The facility may refuse entry to a particular visitor when (a) the resident does not wish to see the visitor; (b) the attending physician documents in the medical records that visits would be harmful to the resident's health; (c) the visitor would be disruptive of the facility's proper function.
7. When a decision to prohibit a visitor is made, the administrator or other staff member should document such action in the resident's file.
8. It is believed that a telephone in the hall, lobby, activity room, or other area would afford all the privacy a resident needs in the majority of situations. However, in the cases where privacy is absolutely necessary, a resident should be allowed to use a telephone in a private office, such as the administrator's, director of nursing,
9. Staff should assist residents who require help in reading or sending mail when the residents so request.
9. Mail containing checks or negotiable instruments may not be opened or withheld by the facility without written authorization from the resident or his legally designated representative. (See G.S. 131E-118)

RIGHT 9 - To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days notice.

Interpretation

1. Management of one's own financial affairs means that an individual is in sole control of all his financial wealth and liabilities. He receives checks and currency by mail without restrictive control by the facility. Obviously, such election by the resident is fraught with risks such as theft or loss of money and checks. In many instances facilities provide the special financial services of taking custody of check bearing mail addressed to residents, a position of fiduciary trust. In many instances, and quite prudently, custody and control of the instruments never pass to the resident. In such instance of involvement, facility management of the resident's financial affairs is deemed to exist.
2. The extent of any involvement in any resident's financial affairs must be established in writing and authorized by the resident or pursuant to the provisions of G.S. 131E-118. This includes the authorization to manage or control a resident's check bearing mail.
3. Authorization for automatic billing or deduction posted against a resident's assets must be established in writing.
4. Each resident's account shall be maintained in accordance with accepted accounting principles clearly showing all debits, credits, and balance on hand. This applies equally to large management accounts for private residents as well as small petty cash or personal needs funds.
5. Each resident must be granted reasonable access to his account at reasonable hours. The interpretation of "reasonable access" would mean that during the hours that the business office is open, however, with a provision for the disbursement of funds in an emergency situation. Withdrawals must be paid on demand to the person authorized to make such withdrawals and in accordance with the financial agreement existing between the resident (or his representative) and the facility. The facility may not delay payment to an authorized recipient without reasonable and just cause (i.e.; the rationale for a large withdrawal may appear to be imprudent and payment may be delayed pending contact with an appropriate significant other.
6. Each resident or his legally designated representative shall receive a statement of the resident's account at least quarterly. The facility may choose to issue statements more frequently than the minimum period specified in the law. The statement must be sufficiently complete as to reflect all receipts, disbursements and on hand balances (cash savings accounts and other negotiable instruments). The statement must be prepared in such a fashion that a reasonable person would be able to recognize all checks signed and turned over to the facility, the amount of public assistance liability, the cost of other goods and services received, the amount of cash withdrawals and current extent of their wealth.

RIGHT 10 - To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room.

Interpretation

1. The basic intent of this Right is to assure that there is a method of arranging for privacy as may be necessary for visits between spouses. In the case of semi-private rooms or wards, other special arrangements may have to be made.
2. There should be provisions to assure conjugal visits and that complete privacy can be maintained at all times.
3. A husband and wife should be allowed to share a room unless in the judgment of the attending physician or physicians such sharing of the room would be adverse to the health of one or both residents.

RIGHT 11 - To enjoy privacy in the patient's room.

Interpretation

1. In semi-private rooms and wards it is not possible for a resident to have the privilege of complete privacy in conversations or from outside noise. This Right overlaps with certain other of the 15 patient rights outlined in the law and thus should be considered in the same light as are the others.
2. The resident should not have to expect to have his room used for ingress or egress to other resident rooms or areas.
3. The resident should expect the greatest degree of privacy that is possible under institutional circumstances and as his conditions allow. A partially closed door or drawn curtain allows privacy from the staff and visitors as they pass in the hallways.
4. Provisions should be made to allow residents to be alone at times when they wish to do so and when it does not interfere with other residents or proper medical care.
5. Privacy should be allowed for each resident's personal belongings as might be contained in their personal closets, dressers or bedside tables. This does not mean that they must be locked but it does mean that the staff has no right to search through a resident's personal items without reasonable justifiable cause. Where it is necessary for cleaning purposes, such cleaning should be done under controlled conditions preferable with the resident present.

RIGHT 12 - To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination.

Interpretation

1. The facility should have a procedure to assure that each resident has a means of making recommendations for changes which he/she feels are necessary or beneficial. It should be understood that the residents do not have the right to order a change in policies or procedures.
2. The facility should have a hearing procedure for resident grievances and take appropriate action as the case might dictate.
3. The facility should have a policy and procedure to assure that each and every resident has the privilege of contacting any agency, group or other persons without restraint or interference from the facility. If a resident is to be transferred and such resident had previously registered a complaint with the Department of Human Resources, or other regulatory agency, then it should be well documented in the file as to the reason(s) for such transfer.

RIGHT 13 - To not be required to perform services for the facility without personal consent and the written approval of the attending physician.

Interpretation

1. This requires very little comment as it is generally the practice to require written consent and approval of the attending physician if a resident wishes to perform services for the facility. It is obvious that under the present Fair Labor Standards Act no facility can require a resident to perform services for the facility.
2. In no case is a resident to perform services for the facility or be allowed to perform such services without specific written consent of his physician.
3. If the plan of care for a resident recommends work activities for therapeutic reasons, and the resident consents, the plan for these activities must be reviewed by a resident planning committee, and implemented as part of the plan. Such work assignments must also comply with the requirements of the Fair Labor Standards Act regarding "resident workers".

RIGHT 14 - To retain, to secure storage for, and to use personal clothing and possessions, where reasonable.

Interpretation

1. Prior to admission, the facility should clearly specify in writing any limitations on the amount and type of personal property or clothing which will be allowed; resident and facility responsibilities for maintenance of personal items and such as pictures, certain small decorative items, and possible a personal chair as long as such chair is small enough not to interfere with the other resident(s) in the room or interfere with proper care or cleaning of the room.
2. The word "reasonable" appears in the resident rights. It is felt that as long as the facility exercises judgment, that they can make the determination of what is or is not reasonable in the area of personal clothing and possessions.

The resident should be allowed to have his own personal clothing within the storage limits of the facility. It is only reasonable that the resident would have adequate clothing to be properly dressed at all times, even when other clothing is being cleaned or laundered.

3. Other personal furnishings or items should be allowed when they do not interfere with proper resident care and do not allow for excessive clutter, which could be unsanitary or a fire hazard.
4. It would not be reasonable to allow a resident to bring his own double bed for a semi-private room, for example, or a large color television or any other large furnishings that the facility does not have space to accommodate.

RIGHT 15 - To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patient's welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record. (1977, c. 897, s.1; 1983, c. 775, s.1.)

Interpretation

1. As a positive approach the following is a list of the reasons why a resident can be transferred or discharged:
 - (1) at his own request;
 - (2) for medical reasons;
 - (3) the resident's own welfare;
 - (4) other residents' welfare;
 - (5) nonpayment; and
 - (6) mandated under Title XVIII and XIX.

2. The term transfer applies to movement of a resident from one location to another within a facility as well as movement to another facility.

Although the law indicates that a five days' notice is required, a resident may be transferred within three days if this is a determination by the attending physician and utilization review committee.

In any case where a resident is transferred or discharged, it should be specifically indicated as to the reason(s) for the transfer or discharge so as to assure that the reason(s) for such action was not predicated upon the resident or resident's family complaining about the type of care and services provided by the facility. If the facility plans to discharge a resident from the nursing facility, the federal regulations pertaining to Transfer/Discharge of residents (OBRA) must be followed.

RIGHT 16 - To be notified within 10 days after the facility has been issued a provisional license because of violation of licensure regulations or received notice of revocation of license by the North Carolina Department of Human Resources and the basis on which the provisional license or notice of revocation of license was issued. The patient's responsible family member or guardian shall also be notified.

Interpretation

Self-Explanatory