

Your Rights as a Resident

We Can Help

toll – free: 1-800-442-5640

or (603) 271-4375

Fax 271-5574

email: oltco@dhhs.state.nh.us

A Long-Term Care Ombudsman Is:

- ❖ an advocate
- ❖ a problem-solver
- ❖ an educator
- ❖ a consultant
- ❖ a facilitator

All communication with the Office of Long-Term Care Ombudsman is confidential.

The Office Long-Term Care Ombudsman is funded by the State of New Hampshire and the Older Americans Act.

Foreword

The Residents' Bill of Rights*, also known as the Patients' Bill of Rights, was first enacted into law as part of the Older Americans' Act of 1965. RSA 151.21 adopts the Federal statute as law in the State of New Hampshire.

The Residents' Bill of Rights came into being in response to the discovery in the 1950's and 60's of the then widespread and serious disregard for the needs and welfare of America's elders living in what were then called institutional settings.

Today, there are standards established for care provided in our long-term care facilities. State licensing bureaus and federal surveyors inspect facilities regularly to ensure that minimum standards are met. In New Hampshire, the Long-Term Care Ombudsman Office staff and certified volunteers are available also to consult with facility staff, residents and family members, investigate reports of problems, and work with facilities in their initiatives to improve upon the care and services they provide.

The Residents' Bill of Rights serves as a reminder of, and vehicle for, the reinforcement of the principles that people who live in long-term care settings are individuals; that they each are entitled to receive the highest possible quality of care; that each individual has a right to make their own decisions in matters affecting their own body and life; and that residents must be treated with dignity and respect to which everyone is entitled.

RSA 151:21 is entitled "Patients' Bill of Rights" and applies to all individuals in hospitals, residential care facilities, nursing homes and all other health care locations licensed under the provisions of RSA 151:2.

Note: The word "resident" has been substituted for the word "patient" in this publication in order to emphasize that individuals living in long-term care settings are **residents** of those facilities, not short-term acute care patients, and that long-term care facilities are **home** to their residents.

1. You Have The Right to be Treated With Dignity and Respect.

The resident shall be treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and personal care, and including being informed of the name, licensure status, and staff position of all those with whom the resident has contact, pursuant to RSA 151:3-b. **RSA 151:21 I.**

2. You Have The Right to be Informed, Verbally and in Writing, of Your Rights and of the Rules and Policies of the Facility.

The resident shall be fully informed of Residents' Rights and responsibilities and of all procedures governing resident conduct and responsibilities. This information must be provided orally and in writing before or at admission, except for emergency admissions. Receipt of this information must be acknowledged by the resident in writing. When a resident lacks the capacity to make informed judgments, the signing must be by the person legally responsible for the resident. **RSA 151:21 II.**

3. You Have The Right to be Told About Services and Charges.

The resident shall be fully informed in writing in language that he can understand, before or at the time of admission and as necessary during his stay, of the facility's basic per diem rate and of those services included and not included in the basic per diem rate. A statement of services that are not normally covered by Medicare or Medicaid shall also be included in this disclosure. **RSA 151:21 III.**

4. A. You Have The Right To Know About Your Medical Condition.

B. You Have The Right To Participate in Planning Your Care and Medical Treatment.

C. You Have The Right To Refuse Treatment.

The resident shall be fully informed by a health care provider of his or her medical condition, health care needs and diagnostic test results, including the manner by which such results will be provided and the expected time interval between testing and receiving results, unless medically inadvisable and so documented in the medical record, and shall be given the opportunity to participate in the planning of his or her total care and medical treatment, to refuse treatment, and to be involved in experimental research upon the patient's written consent only. **RSA 151:21 IV.**

5. You Have The Right Not To Be Transferred Or Discharged Except for Medical Reasons, your own welfare or that of Other Residents, Non-Payment or if the Facility Ceases to Operate.

The resident shall be transferred or discharged after appropriate discharge planning only, for medical reasons, for his welfare or that of other residents, if the facility ceases to operate, or for non-payment for the resident's stay, except as prohibited by Title XVIII or

XIX of the Social Security Act.

No resident shall be involuntarily discharged from a facility because the resident becomes eligible for Medicaid as a source of payment. **RSA 151:21 V.**

6. A. You Have The Right to Exercise Your Rights As a Resident and Citizen.

B. You Have a Right to Voice Grievances Without Fear of Reprisal.

The resident shall be encouraged and assisted throughout his stay to exercise his rights as a resident and citizen. The resident may voice grievances and recommend changes in policies and services to facility staff or outside representatives free from restraint, interference, coercion, discrimination, or reprisal. **RSA 151:21 VI.**

7. You Have the Right to Manage Your Own Personal Finances.

The resident shall be permitted to manage his personal financial affairs. If the resident authorizes the facility in writing to assist in this management and the facility so consents, the assistance shall be carried out in accordance with the resident's rights under this subdivision and in conformance with state laws and rules. **RSA 151:21 VII.**

**8. You Have A Right to be Free From Emotional, Physical and Sexual Abuse, Exploitation, Neglect, Corporal Punishment and Involuntary Seclusion.
RSA 151:21 VIII.**

9. You have A Right to be Free From Chemical and Physical Restraints.

The resident shall be free from chemical and physical restraints except when they are authorized in writing by a physician for a specific and limited time necessary to protect the resident or others from injury.

In an emergency, restraints may be authorized by the designated professional staff member in order to protect the resident or others from injury. The staff member must promptly report such action to the physician and document same in the medical records. **RSA 151:21 IX.**

10. You Have a Right to have Your Personal and Medical Records Treated As Confidential.

The resident shall be ensured confidential treatment of all information contained in his personal and clinical record, including that stored in an automatic data bank, and his written consent shall be required for the release of information to anyone not otherwise authorized by law to receive it. Medical information contained in the medical records at any facility licensed under this chapter shall be deemed to be the property of the resident. The charge for the copying of a patient's medical records shall not exceed \$15 for the first 30 pages or \$.50 per page, whichever is greater; provided that copies of filmed records such as radiograms, x-rays, and sonograms shall be copied at a reasonable cost.
RSA 151:21 X.

11. You Have A Right Not To Perform Services For The Facility.

The resident shall not be required to perform services for the facility. Where appropriate for therapeutic or diversional purposes, and agreed to by the resident, such services may be included in his plan of care and treatment. **RSA 151:21 XI.**

12. A. You Have A Right to Receive Visitors of Your Choice.

B. You Have A Right to Receive Unopened Personal Mail.

C. You Have A Right to Regular Access and Unmonitored Use of a Telephone.

The resident shall be free to communicate with, associate with, and meet privately with anyone, including family and resident groups, unless to do so would infringe upon the rights of other residents. The resident may send and receive unopened personal mail. The resident has the right to have regular access to the unmonitored use of a telephone.
RSA 151:21 XII.

13. You Have The Right to Participate in Social, Religious and Community Activities of Your Choice.

The resident shall be free to participate in activities of any social, religious, and community groups, unless to do so would infringe upon the rights of other residents.
RSA 151:21 XIII.

14. You Have The Right to Retain and Use Your Own Personal Clothing and Possessions as Space Permits.

The resident shall be free to retain and use his personal clothing and possessions as space permits, providing it does not infringe upon the rights of other residents.

RSA 151:21 XIV.

15. A. You Have The Right to Privacy for Visits.

B. You Have A Right to Receive Services with Reasonable Accommodation of Your Individual Needs and Preferences.

C. You Have a Right to Receive Advance Notice of Room or Roommate Changes.

The resident shall be entitled to privacy for visits and, if married, to share a room with his or her spouse if both are residents of the same facility and where both residents consent, unless it is medically contraindicated and so documented by a physician.

The resident has a right to reside and receive services in the facility with reasonable accommodation of individual needs and preferences, including choice of room and roommate, except when the health and safety of the individual or other residents would be endangered.

RSA 151:21 XV.

16. You Have The Right to be Free From Discrimination.

The resident shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment.

RSA 151:21 XVI.

17. You Have A right to Receive Treatment By The Physician Of Your Choice.

The resident shall be entitled to be treated by the physician of his choice subject to reasonable rules and regulations of the facility regarding the facility's credentialing process.

RSA 151:21 XVII.

18. You Have The Right to Receive Visitors Without Restrictions If You are Terminally Ill.

The resident shall be entitled to have his parents, if a minor, or his spouse, or next of kin, or his personal representative, if an adult, visit the facility, without restriction, if the

resident is considered terminally ill by the physician responsible for his care.
RSA 151:21 XIX.

19. You Have The Right to Receive Representatives of Approved Organizations.

The resident shall be entitled to receive representatives of approved organizations as provided in RSA 151:28. **RSA 151:21 XIX.**

**20. The resident shall not be denied admission to the facility based on Medicaid as a source of payment when there is an available space in the facility.
RSA 151:21 XX.**

Some Related Laws

RSA 151:22 Resident's Personal Representative

The resident's personal representative may assist the resident in the exercise of any rights under this subdivision.

RSA 151:23 Retaliation Prohibited

An owner, administrator, employee or representative of a facility shall not discharge, harass, retaliate or discriminate against a resident because the resident has exercised a right protected under this subdivision.

RSA 151:25 Temporary Absence

I. When a patient leaves a facility for emergency medical treatment the facility shall hold the bed open for the patient for 10 calendar days, if there is a reasonable expectation that the patient will return within 10 days and if the facility receives payment for the period of absence, provided that no town, city, county, or state funds shall be used for such payment. Temporary absences for therapeutic reasons shall be limited to 10 days a year.

II. When a patient's absence is longer than 10 days, or the facility has not received payment for the period of absence, the patient shall have the option to return to the facility for the next available bed.

RSA 151:26 Transfer or Discharge of Patients

I. A facility shall not transfer or discharge a patient except for those reasons listed under RSA 151:21, V.

II. (a) Transfer or discharge of a patient shall in all instances be preceded by written notice which shall contain the following:

- (1) The reason for the proposed transfer or discharge;
- (2) The effective date of the proposed transfer or discharge;
- (3) The location to which the patient is transferred or discharged;
- (4) The name, address and telephone number of the long-term care ombudsman, established under RSA 161-F:10, and the name, address, and telephone number of the designated agency responsible for the protection and advocacy system for a developmentally disabled or mentally ill individual;
- (5) A statement which shall read: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file an appeal in superior or probate court." If the patient is in a skilled nursing facility or nursing facility certified under Title XVIII or Title XIX of the Social Security Act, the statement shall inform the patient of his or her right to request an administrative hearing before the department of health and human services.

Except as specified in paragraph II(b) of this section, written notice of transfer or discharge shall be given at least 30 days before the resident is transferred or discharged. A copy of the notice shall be placed in the patient's clinical record and a copy shall be transmitted to the patient, the patient's next of kin, the patient's personal representative, legal guardian, the long-term ombudsman in the office of the ombudsman established under RSA 161-F:10, the designated agency responsible for the protection and advocacy system for a developmentally disabled or mentally ill individual, and the person or agency responsible for the patient's placement, maintenance, and care in the facility.

II. (b) Written notice as specified in subparagraph II(a) shall be given as soon as practicable before transfer or discharge in the following circumstances:

- (1) If an emergency transfer or discharge is mandated by the patient's health care needs and is in accord with the written orders and medical justification of the patient's physician or advanced registered nurse practitioner (ARNP);
- (2) If the transfer or discharge is mandated by the health or safety of other individuals in the facility, as documented in the patient's clinical record upon consultation with the patient's physician or advanced registered nurse practitioner (ARNP);
- (3) If the patient's health has improved sufficiently so the patient no longer needs the services provided by the facility, as documented in the patient's clinical record by the patient's physician or advanced registered nurse practitioner (ARNP); or
- (4) If the patient has resided in the facility for less than 30 days.

II. (c) The basis for the transfer or discharge shall be documented in the patient's clinical record. The facility shall consult with the patient's physician or advanced registered nurse practitioner prior to transferring or discharging the patient for medical reasons or for the patient's welfare or that of other patients. The documentation of the basis for the transfer or discharge shall be made by:

- (1) The patient's physician or advanced registered nurse practitioner (ARNP) if the transfer or discharge is necessary because the patient's needs cannot be met in the facility;
- (2) The patient's physician or advanced registered nurse practitioner (ARNP) if the transfer or discharge is necessary because the patient's needs cannot be met in the facility;
- (3) A physician or advanced registered nurse practitioner (ARNP) if the health of individuals in the facility would be endangered.

III. Transfer or discharge of a patient of skilled nursing facility or nursing facility certified under Title XVIII or Title XIX of the Social Security Act shall take into account any additional rights and safeguards prescribed by the commissioner of the department of health and human services and the secretary of the United States Department of Health and Human Services.

IV. Upon notice, a patient may petition the superior or probate court to enjoin the facility's decision to transfer or discharge. This petition shall stay any transfer or discharge pending a decision.

Nursing Facility Services Rule (He-E 802.16) also requires certified nursing facilities to develop a comprehensive discharge plan that requires certified facilities to provide sufficient preparation and assistance to residents in order to ensure their safe and orderly transfer or discharge from the facility.

No resident shall be transferred or discharged unless there is a written transfer or discharge plan, which includes:

- (1) The circumstances surrounding the discharge or transfer;
- (2) All efforts that were made to locate the resident to the setting of his or her choice, and if the resident's wishes could not be accommodated, the reasons why;
- (3) The location of the new setting and, if a facility, confirmation that the facility has accepted the resident.
- (4) A comprehensive description of the medical, social, and rehabilitative needs of the resident and how the resident's needs will be met in the new setting;
- (5) Documentation of consultation with the resident, family or other interested parties, if and to the extent that this has been reasonably possible; and
- (6) The medical opinion of the resident's personal physician regarding the transfer or discharge, including the possible effects on the physical and emotional well-being of the resident.

The Office of the Long-Term Care Ombudsman shall, investigate any act, practice, policy or procedure of any facility or government agency that does or may adversely affect the health, safety, welfare, or rights of long-term care residents. (see RSA 161-F:13)

If you have questions about your rights, or concerns about the rights or well-being of any individual who lives in a long-term care facility, please contact:

**Office of Long-Term Care Ombudsman
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-6505**

**Telephone: 1-800-442-5640 (toll free in state)
or
(603) 271-4375**