

Your Guide to

Resident Rights in Nursing Facilities



The Maine Long-Term Care
OMBUDSMAN
Program

1-800-499-0229

Table of Contents

| | |
|-------------------------------------------------------|----|
| The Ombudsman Advocate. | 3 |
| You Take Your Rights with You. | 4 |
| Federal Regulations Protect You. | 5 |
| Medical Assessment for Admission | 6 |
| Payment Sources for Care. | 7 |
| Contracts. | 8 |
| Freedom from Abuse, Neglect and Exploitation. | 10 |
| Food & Nutrition | 11 |
| Staffing & Privacy. | 12 |
| Mail, Telephone and Visitors. | 13 |
| More Rights | 14 |
| Your Medical Record | 15 |
| Transfer & Discharge | 16 |
| Physical & Chemical Restraints | 18 |
| Alzheimer's/Dementia Care Programs | 19 |
| State Inspections of Nursing Facilities | 20 |
| Problems, Complaints or Suggestions | 20 |
| Resident and Family Councils | 21 |
| Personal Belongings | 21 |
| Resident Funds. | 22 |
| Roommates | 22 |

The Ombudsman Advocates for the Rights of:

Residents of:

- Nursing Facilities
- Assisted Housing Facilities
- Adult Family Care Homes

and Consumers of:

- Home Care Services
- Adult Day Services

Turn to the Ombudsman Program for help. You are not alone.

- “Ombudsman” (pronounced om-budz-man) is a Swedish word for a specially trained advocate who is given authority under federal and Maine law to investigate and resolve complaints made by, or on behalf of, long-term care consumers throughout the State of Maine.
- Any person interested in improving the quality of care for consumers can ask for our assistance. You have the right to receive quality care. You have the right to voice complaints without fear of retaliation. Call us for help.

All communication is confidential.

Services are free of charge.

You Take Your Rights with You

All of us have the same rights no matter where we live. When you leave your home to live in a nursing facility you take your rights with you. This booklet will help you to know your rights and how to use them while you are living in a nursing facility.

Living in a place such as a nursing facility means that there will be times when everyone must give and take. You never have to give up your rights. However, when you use one of your rights, it should be with consideration of other people's rights.

This booklet contains a general overview of residents' rights and is not a complete discussion of all the details. If you have questions about how many of these rights apply to you or a family member, you may ask facility staff, or you may call the Long-Term Care Ombudsman Program at 1-800-499-0229.

Federal Regulations Protect You

Congress considered quality of care in long-term care facilities to be so important that in 1987 a public law was passed which changed the rules governing long-term care facilities.

These regulations hold long-term care facilities to a higher standard of care and protect your right to receive high quality care.

In general nursing facilities must:

- Provide care and services in a way which promotes and protects your dignity and your right to self determination
- Provide care in the least restrictive environment possible
- Provide care and services that will enable you to attain or maintain your highest level of independence
- Provide care and services so that your condition does not decline as a result of inadequate care
- Provide care in such a manner and in such an environment as to enhance your quality of life

Medical Assessment for Admission to a Nursing Facility

Care in a nursing home in Maine costs an average of \$3900 per month. Medicare may be available to pay for skilled level care, but only for a short period of time: 100 days at most. If you do not have enough income and assets to pay for your own care, you can apply for Maine Care (Medicaid) coverage of your stay. To qualify for MaineCare, you must submit medical and financial information.

All consumers seeking admission to a nursing facility will be assessed by a registered nurse (RN) before being admitted, regardless of whether an application is being made to MaineCare. The only exception is consumers who are admitted for short-term skilled services, including those services covered by Medicare.

The RN Assessor (from an agency contracted by the state) will inform you of whether you are medically in need of nursing home care. The RN Assessor will also inform you of available services that may meet your needs in your own home should you choose care at home instead of care in a nursing facility.

Payment Sources for Care

Medicare and Medicaid

If you have private insurance, including long-term care insurance, you should verify with your insurance agent the nursing facility's services that are covered under your policy.

The facility must provide you with information about how to apply for and use Medicare and MaineCare benefits.

The facility must also provide assistance when you apply for Medicare or MaineCare benefits.

Contracts

At the time of admission, the facility must enter into a contract with you or your legal representative (A “legal representative” is a guardian, conservator, or agent under a durable power of attorney). The contract must be signed by you or your legal representative. The contract must include:

- A complete list of all services that will be provided by the facility as part of the rates they charge, and a list of services for which the facility will charge extra fees.
- A statement that you may choose your own physician and your own pharmacy, as long as the physician and the pharmacy comply with laws, regulations and reasonable facility policies.
- You or your legal representative must identify who will be responsible for managing your personal funds. You can manage your own funds and can put the money in a bank of your choice, or you can authorize the facility to manage your money for you.
- The procedures to be followed in an emergency to provide immediate care for you.
- A statement that a 30 days notice will be given before there can be any changes in rates, services or items in the contract.

The contract may include other provisions as long as they do not violate state or federal laws or regulations. There are also certain things which **nursing homes are not allowed to include** in nursing home contracts:

- No contract can say that you can be discharged or transferred for any reason other than these:
 - A. The transfer or discharge is appropriate because your health and/or functional ability have improved sufficiently so that you no longer need the services provided by the unit or facility.
 - B. The safety and/or health of individuals in the facility are endangered.

C. You have failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or MaineCare) your stay at the facility. For a resident that becomes eligible for MaineCare after admission to a facility, the facility may charge resident only charges allowable under MaineCare.

D. The facility ceases to operate.

- No contract can take away your rights.
- No contract can hold the nursing facility to a lower standard of care or responsibility than the law and rules otherwise to require.
- No contract can say that the nursing facility will not accept any responsibility for the safe keeping of your personal possessions, although the nursing facility may ask that special precautions be taken for very valuable items.
- No contract can require that you sign a waiver of liability before you can leave the facility, even if you are leaving against medical advice.
- No contract can require that you allow the facility to manage or control your finances, although you may choose to have the facility to do so.
- No contract can stop you from applying for MaineCare or require that you pay privately for a while before applying for MaineCare.
- No contract can require that you make a security deposit or require any additional payment beyond the amount that you normally pay if MaineCare is helping to pay for your care.
- No contract can require that another person guarantee payment to the nursing facility if you are unable to pay for your care yourself.
- No contract can state that the nursing facility will not accept retroactive MaineCare benefits.
- No contract can require you to pay the nursing facility's attorneys' fees or any other cost of collecting payment from you.

Freedom from Abuse, Neglect and Exploitation

As a resident of a nursing facility, you have the right to be free from abuse, neglect and exploitation.

EXAMPLES of abuse, neglect, and exploitation

- Physical Abuse Pushing, hitting, yelling, hair pulling
- Verbal Abuse Name-calling, harassment
- Neglect Failure to provide food and drink;
 Failure to provide personal care or
 medical attention
- Exploitation Pressuring you to change a will or
 sign over control of your assets;
 Pressuring you to sell or give away
 your property, possessions or assets

If you think that any of these situations are happening to you, you may want to speak with someone in charge at your facility. If you are not comfortable approaching facility staff, you can call:

- Adult Protective Services 1-800-624-8404
- Licensing & Regulatory Services 1-800-383-2441
- Long-Term Care Ombudsman Program 1-800-499-0229

Food and Nutrition

You have the right to expect nourishing, well balanced meals that meet your daily nutritional needs.

Foods should be served hot or cold as appropriate. Meals should be appetizing and attractively served. There should be variety in the meals served. You should have choices on the menu at each meal.

If you need help eating, you should be able to eat at your own pace. No one should be fed quickly or forced to eat.

All residents seated at the same table should be served at the same time.

You should not lose weight while in the facility unless it is an unavoidable result of a medical condition.

Snacks must be offered between meals and before bed time.

The current menu must be posted. If you do not like what is on the menu, you must be offered an alternative that is similar.

A special medical diet must be provided for you if your doctor has ordered it.

Staffing

Facilities have an obligation to have enough trained staff available to meet your needs and other residents' needs. If there is not enough staff you may experience: long waits when you use your call bell, not getting adequate help at meal time, not receiving help to get to activities of your choice and delays in getting help to the bathroom.

Staff should be respectful and courteous when providing care to you.

Staff should take your concerns seriously.

Staff should address you in the manner that you prefer, such as: Mr., Mrs., etc.

Privacy

Staff should always give you privacy by: shutting bathroom doors, pulling privacy curtains, and discussing medical, financial and personal matters in private.

Staff should knock before entering your room.

Mail, Telephone & Visitors

You have the right to send and receive mail unopened. The facility must provide you with stationery, postage and writing implements at your expense.

If you need help reading, writing or sending letters, the facility must help you.

You have the right to make and receive phone calls in private.

You have the right to receive visitors of our choice at any reasonable hour and to refuse visitors if you wish.

If you are married and your spouse resides at the same facility and you both require the same level of care, you may share the same room (if both of you want this arrangement).

More Rights

You have a right to discuss your medical problems with your doctor. Your doctor must talk to you in a way you understand.

You have the right to be involved in the development of your care plan and to determine who else (other than staff) will participate in the care planning.

You have the right to choose whom the nursing facility will contact about your care, such as a spouse, family member or friend.

You have the right to choose your own physician, if that physician agrees to treat you in the facility.

You have the right to obtain medication from the pharmacy of your choice as long as the pharmacy complies with regulations and facility policies.

You have the right to refuse treatment and be informed of what will happen to your medical condition if you refuse.

You have the right to expect your plan of care to meet all of your needs, including medical, emotional and social needs.

You have the right to take your own medication if you wish and if it has been determined at your care plan meeting that it is safe for you to do so.

Your Medical Record

No one may look at your medical records without your written permission except your doctor, facility staff involved in your care, certain state agencies and your guardian or power of attorney.

You have the right to look at your medical records within 24 hours of asking to do so. You may purchase copies of your medical record and the facility must provide them within two working days of your request. The cost of the copies cannot be more than the amount usually charged for copies in the community.

You have the right to discuss your plan of care and medical problems with the nursing facility staff and to participate in decisions regarding your care.

Transfer & Discharge

- The nursing facility **CANNOT** ask you to leave the facility unless:
 1. The facility has made every effort to, but cannot, meet your needs,
 2. Your health or safety or that of others is endangered,
 3. Your condition has improved so that you no longer need nursing facility care,
 4. You have not paid your bill, after reasonable notice from the facility that payment is due,
 5. The facility closes.
- The facility **CANNOT** move you or make you leave solely because you have become eligible for MaineCare to pay for your care. The facility can only move you from a private to a semi-private room.
- If you are asked to leave the facility you must be given a notice. In some cases, it must be a 30-day notice. In other cases, the facility must notify you as many days in advance of the discharge as is practical. In either case the notice must be given to you and your legal representative in writing and must contain the following information:
 1. The reason(s) you are being transferred or discharged.
 2. The day you must leave the facility.
 3. The location to which you are being discharged.
 4. Your right to appeal the notice of the discharge or transfer and to have a hearing on your appeal.
 5. The address and phone number of the Long-Term Care Ombudsman Program or other appropriate advocacy agency.
 6. The fact that you have the right to have a lawyer or someone else represent you if you appeal the discharge notice.
- If you have been asked to leave and you do not want to leave, or if you want to leave but do not like where the facility is sending you, contact the Long-Term Care Ombudsman Program as soon as you receive the discharge

notice and ask about the appeal process. In some cases if you appeal the decision to discharge you within 10 days of receiving your discharge notice, the facility cannot transfer or discharge you until a hearing has been held on your appeal. In any event, you always have the right to a hearing on your appeal. If you want to challenge your discharge, it is important that you take action immediately.

- If you have to go to the hospital, under certain conditions your bed may be reserved for you until your return. The facility must give you or your legal representative a written notice explaining its policy on holding beds.
- In some situations you may have the right to refuse to move to another room within the facility. Facilities must inform you and your legal representative when they plan to change your room or your roommate. If you are having difficulties with your roommate you should discuss this with facility staff. If the nursing facility asks you to move to another room and you do not want to change rooms, contact the Long-Term Care Ombudsman Program to see what your rights are.
- If you are moving to an assisted housing facility from a nursing facility or returning to your own home, you have the right to receive assistance from the facility social worker. If moving to your home the social worker can help with discharge planning for services. If moving to an assisted housing facility the social worker will help assist with placement within a 30 mile radius. In either case, the facility must develop a safe discharge plan which meets your needs.

Physical and Chemical Restraints

Restraints must be used only as a last resort. You cannot be restrained unless you or your legal representative consents. You cannot be physically restrained or given drugs for the purpose of discipline or staff convenience.

A physical restraint limits an individual from moving freely. Examples of physical restraints are: belts or straps used to tie a person to a bed or chair, chairs with tray tables or cushions that prevent rising, or full bed rails to keep a person in bed. If your doctor has written an order for physical restraints, you must be provided toilet privileges at least every two hours or upon request. Restraints must be released for at least fifteen minutes every two hours and exercise provided. Prior to the use of physical restraints, the facility must attempt using less restrictive approaches, and they must document those attempts. The continued use of restraints must be reevaluated as needed, but at least quarterly. Some facilities have chosen to be restraint free.

A chemical restraint is a medication used for the purpose of controlling inappropriate or unsafe behavior. Examples of chemical restraints are psychoactive or mind altering drugs used to control a person's behavioral symptoms. Before you can be given a chemical restraint, there must be evidence that you or your legal representative have been informed of the potential side effects and agree with this treatment plan. There must be documentation that the facility has attempted alternative approaches prior to using chemical restraints. The use of chemical restraints must also be reevaluated as needed, but at least quarterly. In an effort to discontinue the use of drugs, gradual dose reductions and behavioral monitoring must be explored.

Alzheimer's/ Dementia Care Units

Some nursing facilities have special units for residents with Alzheimer's disease or other forms of dementia. Any nursing facility that offers an Alzheimer's/dementia unit or provides special care for residents with dementia must follow special rules.

The unit must be in a separate area of the facility that can be locked or secured for the safety of the residents on that unit. The interior of the unit must be a homelike environment specially designed and lighted to enhance the quality of life for residents. There must be outdoor space that is secured so that residents can be outside, but cannot wander away from the facility. Staff on this unit must receive special training in meeting the needs of residents with dementia.

An individualized care plan must be developed and implemented to enhance residents' quality of life, promote their independence and reduce agitation and problem behaviors. The unit must provide a variety of activities on a weekly basis which are designed to enhance socialization, improve eating and sleeping patterns, lessen restlessness and anxiety and improve behavior management.

A nursing facility with an Alzheimer's/dementia unit must have a written policy dealing with pre-admission screening and admission and discharge procedures. The policy must include criteria for moving residents into and out of the unit. When moving a resident the facility must always take into account the resident's welfare. A nursing facility that provides special care for residents with dementia must provide a disclosure statement to anyone seeking placement in the unit. The statement must outline the process and criteria for admission, staff training practices, care plan development and implementation, types of activities, environmental and design features, the availability of family support, a list of costs and fees and a description of security measures.

You should always ask to see this disclosure statement. If you are already in a special unit like this, you should have someone review this disclosure statement to be sure that you are getting all of the specialized services that are required.

State Inspections of the Nursing Facility

The Department of Health & Human Services, Division of Licensing & Regulatory Services sends surveyors into the facility every nine to fifteen months to determine if the facility in which you reside is meeting all federal and state regulations. You have the right to speak to the surveyors in private. Survey results are public information and must be made readily available for your review. In fact, many facilities post these results in their lobbies.

Problems, Complaints or Suggestions

You have the right to tell the people in charge of the facility in which you reside about any problem, complaint or suggestion you may have and to have a prompt response to your complaint.

You cannot be punished or treated badly for making a complaint to anyone.

The Long-Term Care Ombudsman Program will provide free and confidential help to you if you have problems or complaints that you cannot resolve on your own. You may call us at 1-800-499-0229 or write to us at P.O. Box 128 Augusta, ME 04332.

Resident and Family Councils

You and other residents have the right to form a Resident Council. A Resident Council is a group established by and for residents.

These groups can have many purposes including suggesting changes in facility policies, sharing concerns about problems observed and organizing social events. It is up to you and the other residents to determine the function of your Resident Council.

The facility must provide a staff person of your choice to assist with keeping records and organizing meetings. Residents decide who, other than residents, may attend the council meetings. The facility also must listen to the views and recommendations and report back to the group on any changes made.

Family and friends of residents can also start their own Family Council with many of the same purposes as the Resident Council. The facility must allow the Family Council to have access to private space for a meeting and provide a staff person to report on any recommendations made by the council.

Personal Belongings

You have the right to keep and use your own personal belongings, such as furniture and clothing, as space permits. The facility has the responsibility to provide for the safekeeping of your belongings, although you may be asked to take special precautions for very valuable items.

Resident Funds

You have the right to take care of your own money and sign your own checks. In order for the facility to manage your funds, you or your legal representative must give written permission.

Facility staff may not act as your guardian, trustee or conservator.

If you have given the facility permission to manage your funds, you must be given a written statement at least every three months to show how your money has been spent and how much you have left.

The facility may not use your personal funds to pay for any item or services which could be paid for by MaineCare or Medicare.

If the facility maintains an account for you in an amount exceeding \$50.00, this must be kept in an interest bearing account. In addition, your personal funds must be kept separate from the facility's funds.

Roommates and Room Changes

Facilities must inform you and your legal representative when they plan to change your room or your roommate. If you are having difficulties with your roommate, you should discuss this with facility staff. If you are concerned about a room change, you may call the Long-Term Care Ombudsman Program.



The Maine Long-Term Care
OMBUDSMAN
Program

61 Winthrop Street
Augusta, Maine 04330

207-621-1079

1-800-499-0229

Fax 207-621-0509

MLTCOP@MaineOmbudsman.org

www.maineombudsman.org