

Nursing Home Residents Rights

When a senior citizen is placed in a nursing home, they have rights which are mandated by both Florida and Federal law. These rights allow seniors to control decisions made about their medical care, personal care and to help ensure their safety and best interests are being met by the facility in which they reside. The Nursing Home Reform Law (OBRA '87) created a national set of minimum standards of care which nursing homes must give to their residents and established residents' rights for those in federally certified nursing homes. It also established that facilities may not discriminate against a resident based upon his or her's payment source, and required identical policies and practices regarding the transfer and discharge of residents and the provision of services, regardless of payment source.

Florida Statute, Section 400.022 addresses the rights of residents who are in a nursing home. Many of these rights are the same as those which are provided for in federal law. Florida law states in pertinent part:

Nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents and shall treat such residents in accordance with the provisions of that statement. Each resident shall have the right to:

- Civil and religious liberties.
- Private and uncensored communication.
- Visitation by any individual providing health, social, legal, or other services and the right to deny or withdraw consent at any time.
- Present grievances and recommend changes in policies and services free from restraint, interference, coercion, discrimination, or reprisal. Includes the right to have access to the ombudsmen and other advocacy groups.
- Organize and participate in resident groups.
- Participate in social, religious, and community activities that do not interfere with the rights of others.
- Examine results of recent facility inspections by federal and state agencies including the plan of correction if applicable.
- Manage his/her own financial affairs. A quarterly accounting will be furnished to resident or legal representative.
- Be fully informed, in writing and orally, of services available at the facility and of related charges for such services.
- Refuse medication and treatment and to know the consequences.
- Receive adequate and appropriate health care, protective and support services within established and recognized standards.
- Privacy in treatment and in caring for personal needs.
- Be informed of medical condition and proposed treatment and be allowed participation in planning.
- Be treated courteously, fairly, and with the fullest measure of dignity.

- Be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints except those ordered by resident's physician.
- Be transferred or discharged only for medical reasons, the welfare of other residents or nonpayment of a bill.
- Receive a thirty (30) day written notice of discharge or relocation, and challenge such notice.
- Choose physician and pharmacy.
- Retain and use personal clothing and possessions.
- Have copies of rules and regulations of the facility.
- Notification prior to room change.
- Information concerning bed-hold policy for hospitalization.

Federal law addresses when a nursing home may discharge or transfer a resident. The reasons include:

- The resident's welfare cannot be met at the facility.
- The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
- The health or safety of individuals is endangered.
- The resident has failed, after reasonable and appropriate notice, to pay or have paid under Medicare or Medicaid for residence at the facility.
- The facility closes.

In order to discharge or transfer a resident, the facility must provide 30 days written notice. If a resident feels their rights are being violated, they can request a hearing (which must be done in writing) within 90 days of the written notice by the facility. If the resident requests the hearing within 10 days of receipt of the notice, this will stop the removal of the resident until the hearing process is completed.

With regards to assisted living facilities and adult family care homes, there are no federal laws or regulations that are specific to ALF's, and therefore, we must look to state law. Florida Statute, Sections 429.28 and 429.85 addresses resident rights. These are similar to nursing home rights, and include:

- No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident shall have the right to:
- Live in a safe and decent living environment, free from abuse and neglect.
- Be treated with consideration, respect and with due recognition of personal dignity, individuality, and the need for privacy.
- Retain and use his/her own clothes and other personal property.

- Unrestricted private communication including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum.
- Participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction with the community.
- Manage his/her own financial affairs unless the resident (or the resident's legal representative) authorizes the administrator of the facility to provide safekeeping for funds.
- Share a room with spouse if both are residents of the facility.
- Reasonable opportunity to exercise and to go outdoors at regular and frequent intervals.
- Adequate and appropriate health care consistent with established and recognized standards.
- Exercise civil and religious liberties including personal decisions. No religious beliefs, practices, nor attendance at religious services, shall be imposed on any resident.
- Thirty (30) days notice to AFCH residents and forty-five (45) day notice to ALF residents of relocation or termination of residency except in cases of emergency.
- Present grievances and recommend changes in policies, procedures, and services to the staff of the facility without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.
- (ALF) Be free from physical and chemical restraints other than those prescribed by the resident's physician. The use of physical restraints shall be limited to half-bedrails and only upon the written order of the resident's physician and the consent of the resident or the resident's legal representative. [S. 429.41(1)(k)].
- (AFCH) Be free from chemical and physical restraints. [S. 429.85(1)(k)].

Additionally, in order for an ALF to transfer or discharge a resident, the resident must be given 45 days' notice from the facility, unless there are medical reasons, in which case, a physician must certify that the resident needs a more skilled level of care or if the resident is engaging in conduct that is harmful or offensive to other residents.

If a resident feels their rights are being neglected, they can contact the Florida Long-Term Care Ombudsman Program and a specially trained individual will investigate the situation and attempt to come to a resolution for the resident. The Ombudsman's job is "to protect the legal rights of residents and assure that they receive appropriate treatment and quality care." To file a complaint with the local Ombudsman's office, you can call 888-831-0404.

One can also complain about nursing home violations with the Agency for Health Care Administration which handles licensing and regulation of Florida nursing homes. They can be reached at 888-419-3456. You can also complain online by clicking here - <https://apps.ahca.myflorida.com/hcfc/>.

If you feel an elderly individual is being abused or mistreated, you can report this to the Florida Abuse Hotline at 1-800-962-2873. Press 1 to report suspected abuse, neglect or exploitation of the elderly or vulnerable adult. You can also report online by clicking here - <https://reportabuse.dcf.state.fl.us/>.