CHAPTER 81

Bill of Rights for Residents of Long‑Term Care Facilities

CROSS REFERENCES

Rights and powers of ward and guardian, see Section 62‑5‑304A.

**SECTION 44‑81‑10.** Short title.

 This act may be cited as the “Bill of Rights for Residents of Long‑Term Care Facilities”.

HISTORY: 1985 Act No. 118, Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 88, Management.

**SECTION 44‑81‑20.** Legislative findings.

 The General Assembly finds that persons residing within long‑term care facilities are isolated from the community and often lack the means to assert their rights fully as individual citizens. The General Assembly recognizes the need for these persons to live within the least restrictive environment possible in order to retain their individuality and personal freedom. The General Assembly further finds that it is necessary to preserve the dignity and personal integrity of residents of long‑term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident’s need for self‑determination.

HISTORY: 1985 Act No. 118, Section 2.

**SECTION 44‑81‑30.** Definitions.

 As used in this chapter:

 (1) “Long‑term care facility” means an intermediate care facility, nursing care facility, or residential care facility subject to regulation and licensure by the State Department of Health and Environmental Control (department).

 (2) “Resident” means a person who is receiving treatment or care in a long‑term care facility.

 (3) “Representative” means a resident’s legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian.

HISTORY: 1985 Act No. 118, Section 3.

**SECTION 44‑81‑40.** Rights of residents; written and oral explanation required.

 (A) Each resident or the resident’s representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions of this chapter before or at the time of admission to a long‑term care facility. Written acknowledgment of the receipt of the explanation by the resident or the resident’s representative must be made a part of the resident’s file. Each facility must have posted written notices of the residents’ rights in conspicuous locations in the facility. The written notices must be approved by the department. The notices must be in a type and a format which is easily readable by residents and must describe residents’ rights, grievance procedures, and the enforcement provisions provided by this chapter.

 (B) Each resident and the resident’s representative must be informed in writing, before or at the time of admission, of:

 (1) available services and of related charges, including all charges not covered under federal or state programs, by other third party payers, or by the facility’s basic per diem rate;

 (2) the facility’s refund policy which must be adopted by each facility and which must be based upon the actual number of days a resident was in the facility and any reasonable number of bed‑hold days, except when the provisions of subsection (E) apply.

 Each resident and the resident’s representative must be informed in writing of any subsequent change in services, charges, or refund policy.

 (C) Each resident or the resident’s legal guardian has the right to:

 (1) choose a personal attending physician;

 (2) participate in planning care and treatment or changes in care and treatment;

 (3) be fully informed in advance about changes in care and treatment that may affect the resident’s well‑being;

 (4) receive from the resident’s physician a complete and current description of the resident’s diagnosis and prognosis in terms that the resident is able to understand;

 (5) refuse to participate in experimental research.

 (D) A resident may be transferred or discharged only for medical reasons, for the welfare of the resident or for the welfare of other residents of the facility, or for nonpayment and must be given written notice of not less than thirty days, except that when the health, safety, or welfare of other residents of the facility would be endangered by the thirty‑day notice requirement, the time for giving notice must be that which is practicable under the circumstances. Each resident must be given written notice before the resident’s room or roommate in the facility is changed.

 (E)(1) If a community residential care facility resident or a resident’s representative chooses to voluntarily relocate from the resident’s current facility, the resident or the resident’s representative must give the facility administrator written notice of this intent to relocate not less than fourteen days before the resident’s relocation becomes effective. Voluntary relocation does not occur when a resident of a community residential care facility seeks to be discharged because a higher level of care is required or because the resident’s health, safety, or welfare is endangered.

 (2) If a community residential care facility resident or a resident’s representative fails to give timely notice as required by this subsection, the facility administrator may charge the resident the equivalent of fourteen days occupancy from the earlier of the date of the relocation or the date the facility administrator received proper notice of the resident’s intent to relocate. However, if the facility is able to fill the bed vacated by the resident, the facility shall cease charging the resident regardless of the notice given. The facility shall notify the previous resident in writing as soon as it fills the bed with a new resident.

 (3) Residents participating in the Optional State Supplementation Program are excluded from the requirements of items (1) and (2).

 (F) Each resident or the resident’s representative may manage the resident’s personal finances unless the facility has been delegated in writing to carry out this responsibility, in which case the resident must be given a quarterly report of the resident’s account.

 (G) Each resident must be free from mental and physical abuse and free from chemical and physical restraints except those restraints ordered by a physician.

 (H) Each resident must be assured security in storing personal possessions and confidential treatment of the resident’s personal and medical records and may approve or refuse their release to any individual outside the facility, except in the case of a transfer to another health care institution or as required by law or a third party payment contract.

 (I) Each resident must be treated with respect and dignity and assured privacy during treatment and when receiving personal care.

 (J) Each resident must be assured that no resident will be required to perform services for the facility that are not for therapeutic purposes as identified in the plan of care for the resident.

 (K) The legal guardian, family members, and other relatives of each resident must be allowed immediate access to that resident, subject to the resident’s right to deny access or withdraw consent to access at any time. Each resident without unreasonable delay or restrictions must be allowed to associate and communicate privately with persons of the resident’s choice and must be assured freedom and privacy in sending and receiving mail. The legal guardian, family members, and other relatives of each resident must be allowed to meet in the facility with the legal guardian, family members, and other relatives of other residents to discuss matters related to the facility, so long as the meeting does not disrupt resident care or safety.

 (L) Each resident may meet with and participate in activities of social, religious, and community groups at the resident’s discretion unless medically contraindicated by written medical order.

 (M) Each resident must be able to keep and use personal clothing and possessions as space permits unless it infringes on another resident’s rights.

 (N) Each resident must be assured privacy for visits of a conjugal nature.

 (O) Married residents must be permitted to share a room unless medically contraindicated by the attending physician in the medical record.

 (P) A resident or a resident’s legal representative may contract with a person not associated with or employed by the facility to perform sitter services unless the services are prohibited from being performed by a private contractor by state or federal law or by the written contract between the facility and the resident. The person, being a private contractor, is required to abide by and follow the policies and procedures of the facility as they pertain to sitters and volunteers. The person must be selected from an approved list or agency and approved by the facility. All residents or residents’ legal representatives employing a private contractor must agree in writing to hold the facility harmless from any liability.

HISTORY: 1985 Act No. 118, Section 4; 1992 Act No. 474, Section 1; 1994 Act No. 438, Section 1; 2014 Act No. 170 (H.3098), Section 1, eff May 16, 2014.

Library References

Asylums and Assisted Living Facilities 18, 20.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Sections 4 to 6, 12 to 13.

**SECTION 44‑81‑50.** Discrimination.

 Each resident must be offered treatment without discrimination as to sex, race, color, religion, national origin, or source of payment.

HISTORY: 1985 Act No. 118, Section 5.

Federal Aspects

Discrimination against handicapped persons, see 29 U.S.C.A. Section 794.

Federal civil rights claims, see 42 U.S.C.A. Section 1983.

Discrimination in public accommodations, see 42 U.S.C.A. Section 2000a et seq.

Library References

Asylums and Assisted Living Facilities 21.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Section 11.

**SECTION 44‑81‑60.** Grievance procedures; review by department.

 Each facility shall establish grievance procedures to be exercised by or on behalf of the resident to enforce the rights provided by this act. The department shall review and approve these grievance procedures annually. This act is enforced by the department. The department may promulgate regulations to carry out the provisions of this act.

HISTORY: 1985 Act No. 118, Section 6.

Library References

Asylums and Assisted Living Facilities 27.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Section 10.

**SECTION 44‑81‑70.** Retaliation.

 No facility by or through its owner, administrator, or operator, or any person subject to the supervision, direction, or control of the owner, administrator, or operator shall retaliate against a resident after the resident or the resident’s legal representative has engaged in exercising rights under this act by increasing charges, decreasing services, rights, or privileges, or by taking any action to coerce or compel the resident to leave the facility or by abusing or embarrassing or threatening any resident in any manner.

HISTORY: 1985 Act No. 118, Section 7.

Library References

Asylums and Assisted Living Facilities 27.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Section 10.