

64-13-4 Residents' Rights

4.1.

Nursing Home Policies and Procedures. 4.1.1. The governing body of a nursing home shall establish written policies and procedures regarding the rights and responsibilities of residents. The policies adopted shall be consistent with the provisions of this rule. 4.1.2. Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing policies regarding the rights and responsibilities of residents. 4.1.3. A nursing home shall make its policies and procedures available upon request to: 4.1.3.a. Residents or potential residents; and 4.1.3.b. Legal representatives.

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4.2.

Duties of Staff. 4.2.1. All members of the nursing home staff shall ensure that every resident under their care is accorded all rights set forth in this rule. 4.2.2. The nursing home staff shall at least annually receive training in the proper implementation of residents' rights policies under the provisions of this rule. 4.2.3. When the nursing home staff limits or restricts the rights of a resident for medical reasons, the staff will document the specific reasons for the limitation or restriction in the resident's medical record, and the specific period of time the limitation or restriction will be in place. The resident or the resident's legal representative shall be notified of the limitation or restriction.

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All members of the nursing home staff shall ensure that every resident under their care is accorded all rights set forth in this rule.

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4.3.

Legal Representatives. 4.3.1. In the case of a resident who has been determined by a West Virginia court to meet the definition of a protected person in need of the assistance of a guardian, conservator or both under W. Va. § 44A-1-4, or by a court of competent jurisdiction in a similar proceeding under the laws of another state, the rights of the resident are exercised by the person appointed to act on the resident's behalf. 4.3.2. In the case of any other resident, any legal-surrogate designated in accordance with the State law may exercise the resident's rights to the extent provided by state law. 4.3.3. The nursing home shall make every reasonable effort to communicate the rights and obligations established under this rule directly to the resident. 4.3.4. If the rights of a resident have devolved to another person, the nursing home shall maintain documentation of the determination of incapacity to make health care decisions or incompetence, in the resident's medical record. 4.3.5. The nursing home shall maintain in the residents' medical record verification of the authority of the legal representative and shall provide the legal representative with a general description of the scope of the legal representative's decision-making authority, as developed and approved by the Department. 4.3.6. After a resident has been determined to lack capacity to make health care decisions a nursing home shall reevaluate the resident's capacity to make health care decisions at least annually. 4.3.7. If the resident regains his or her capacity to make health care decisions, the powers of the legal representative shall cease immediately. 4.3.8. An employee of a nursing home, or a person or his or her spouse having a financial interest in the nursing home, shall not serve as a resident's legal representative unless the employee or person is related to the resident within the degree of consanguinity of second cousin or unless the nursing home has been named temporary legal representative payee.

4.3.1.

In the case of a resident who has been determined by a West Virginia court to meet the definition of a protected person in need of the assistance of a guardian, conservator or both under W. Va. § 44A-1-4, or by a court of competent jurisdiction in a similar proceeding under the laws of another state, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

4.3.2.

In the case of any other resident, any legal-surrogate designated in accordance with the State law may exercise the resident's rights to the extent provided by state law.

4.3.3.

The nursing home shall make every reasonable effort to communicate the rights and obligations established under this rule directly to the resident.

4.3.4.

If the rights of a resident have devolved to another person, the nursing home shall maintain documentation of the determination of incapacity to make health care decisions or incompetence, in the resident's medical record.

4.3.5.

The nursing home shall maintain in the residents' medical record verification of the authority of the legal representative and shall provide the legal representative with a general description of the scope of the legal representative's decision-making authority, as developed and approved by the Department.

4.3.6.

After a resident has been determined to lack capacity to make health care decisions a nursing home shall reevaluate the resident's capacity to make health care decisions at least annually.

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If the resident regains his or her capacity to make health care decisions, the powers of the legal representative shall cease immediately.

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An employee of a nursing home, or a person or his or her spouse having a financial interest in the nursing home, shall not serve as a resident's legal representative unless the employee or person is related to the resident within the degree of consanguinity of second cousin or unless the nursing home has been named temporary legal representative payee.

4.4.

Confidentiality and Access to Records and Information. 4.4.1. Confidential Treatment. The nursing home shall assure confidential treatment of each resident's personal and medical records and may approve or refuse their release to any person outside the nursing home, except in the case of his or her transfer to another health care institution, as required by law, or for a third party payment contract. 4.4.2. Access to Records. Upon an oral or written request, the nursing home shall provide to each resident access to all of his or her records, including current clinical records, within 24 hours of the request. Records may only be available during normal business operating hours, excluding weekends and holidays. 4.4.3. The facility may charge a fee for labor, supplies, and postage for providing copies of the resident's medical record in accordance with W. Va. Code §§ 16-29-1, et seq. The nursing home will provide the photocopied materials to the resident within two working days of the request. 4.4.4. A nursing home shall make the results of surveys and inspections, as well as plans of correction, available for examination in a place readily accessible to residents or legal representatives and shall post a notice of their availability. A nursing home may charge an amount not to exceed 25 cents per page for copies of reports requested by any person. 4.4.5. A

nursing home shall adopt policies and procedures that will protect the confidentiality of the resident as it relates to use of the resident's name and photographs.

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A nursing home shall adopt policies and procedures that will protect the confidentiality

of the resident as it relates to use of the resident's name and photographs.

4.5.

Right for Information. A nursing home shall:

4.5.1. Inform a resident of his or her rights and responsibilities under this rule and all rules governing resident conduct, prior to or at the time of admission and within 30 days of any changes to the rules regarding residents' rights, and the resident shall acknowledge receipt of this information in writing.

4.5.2. Prominently display a copy of the residents' rights and responsibilities, the names, addresses, and telephone numbers of all associated State agencies including licensing agencies, and state and local ombudsmen programs.

4.5.3. Reasonably accommodate residents with special communication needs such as hearing impairments and a primary language other than English, to inform residents of their rights.

4.5.4. Inform a resident of the following:

4.5.4.a. The resident has the right to be informed of his or her medical condition. If a resident lacks capacity to make health care decisions, the appropriate legal representative shall also be informed.

4.5.4.b. The resident has the right to be informed of his or her care and treatment. If a resident lacks capacity to make health care decisions, the appropriate legal representative shall also be informed.

4.5.5. Resident Grievance. A resident has the right to voice grievances to the facility or other agency or entity that hears grievances without discrimination or reprisal and without fear of discrimination or reprisal.

4.5.6. Self-Administration of Drugs. A resident may self-administer drugs if the interdisciplinary team determines that self-administration is safe. The interdisciplinary team shall review the self-administration determination at least quarterly.

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4.6.

Refusal of Treatment and Experimental Research. 4.6.1. Refusal of Treatment. A resident has the right to refuse treatment and to refuse to participate in experimental research.4.6.1.a. As provided under state law, a resident who has the capacity to make a health care decision and who either withholds consent to treatment or makes an explicit refusal of treatment, either directly or through an advance directive, shall not be treated against his or her wishes.4.6.1.a.1. If the resident is unable to make a health care decision, a decision by the resident's legal representative to forego treatment is, subject to state law, equally binding on the nursing home. 4.6.1.a.2. When a refusal of treatment occurs, the nursing home shall assess the reasons for the resident's refusal, clarify and educate the resident, and in the case of incapacity to make health care decisions, the legal representative, as to the consequences of the refusal, and offer alternative treatments, and continue to provide all other services. 4.6.1.a.3. The nursing home shall maintain documentation in the resident's medical record of the resident's refusal and the actions taken. 4.6.1.b. Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research. The nursing home shall inform a resident being considered for participation in experimental research of the nature of the experiment and of the possible consequences for participation. 4.6.2. A nursing

home shall not transfer or discharge a resident for refusing treatment unless criteria for transfer or discharge are met under the provisions of this rule.

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Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research. The nursing home shall inform a resident being considered for participation in experimental research of the nature of the experiment and of the possible consequences for participation.

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4.6.1.a.3. The nursing home shall maintain documentation in the resident's medical record of the resident's refusal and the actions taken.

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If the resident is unable to make a health care decision, a decision by the resident's legal representative to forego treatment is, subject to state law, equally binding on the nursing home.

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When a refusal of treatment occurs, the nursing home shall assess the reasons for the resident's refusal, clarify and educate the resident, and in the case of incapacity to make health care decisions, the legal representative, as to the consequences of the refusal, and offer alternative treatments, and continue to provide all other services.

4.6.1.a.3.

The nursing home shall maintain documentation in the resident's medical record of the resident's refusal and the actions taken.

4.6.1.b.

Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research. The nursing home shall inform a resident being considered for participation in experimental research of the nature of the experiment and of the possible consequences for participation.

4.6.2.

A nursing home shall not transfer or discharge a resident for refusing treatment unless criteria for transfer or discharge are met under the provisions of this rule.

4.7.

Written Information. A nursing home shall provide to residents a written description of their legal rights which includes: 4.7.1. A description of the manner of protecting personal funds under the provisions of this rule; 4.7.2. A description of the financial obligation as explained to the resident prior to or at the time of admission, including charges for services available, charges not covered under the Medicaid Program, or charges not included in the nursing home's basic rate; 4.7.3. A description of the requirements and procedures for Medicaid eligibility including information about the availability of asset assessments upon request at the county Department office; 4.7.4. A list of names, addresses, and telephone numbers of the director, the Medicaid fraud control unit, and all related state client advocacy groups, such as the ombudsmen program and the protection and advocacy network; and 4.7.5. A statement that the resident may file a complaint with the director concerning resident abuse, neglect, and misappropriation of resident property in the nursing home.

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A description of the manner of protecting personal funds under the provisions of this rule;

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A description of the financial obligation as explained to the resident prior to or at the time of admission, including charges for services available, charges not covered under the Medicaid Program, or charges not included in the nursing home's basic rate;

4.7.3.

A description of the requirements and procedures for Medicaid eligibility including information about the availability of asset assessments upon request at the county Department office;

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A list of names, addresses, and telephone numbers of the director, the Medicaid fraud control unit, and all related state client advocacy groups, such as the ombudsmen program and the protection and advocacy network; and

4.7.5.

A statement that the resident may file a complaint with the director concerning resident abuse, neglect, and misappropriation of resident property in the nursing home.

4.8.

Advance Directives. 4.8.1. The resident has the right to execute an advance directive. 4.8.2. A nursing home shall maintain written policies and procedures regarding advance directives including:4.8.2.a. Provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, execute an advance directive; and 4.8.2.b. A written description of the nursing home's policies implementing advance directives. 4.8.3. A nursing home shall only admit residents for which it has the capacity to administer care in accordance with the resident's advance directives, but cannot require a resident to execute an advance directive as a condition of admission. The nursing home shall notify the resident or legal representative of its inability to honor a resident's advance directive executed after admission to the nursing home and assist in finding appropriate alternative placement if he or she desires.

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and, at the resident's option, execute an advance directive; and 4.8.2.b. A written description of the nursing home's policies implementing advance directives.

4.8.2.a.

Provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, execute an advance directive; and

4.8.2.b.

A written description of the nursing home's policies implementing advance directives.

4.8.3.

A nursing home shall only admit residents for which it has the capacity to administer care in accordance with the resident's advance directives, but cannot require a resident to execute an advance directive as a condition of admission. The nursing home shall notify the resident or legal representative of its inability to honor a resident's advance directive executed after admission to the nursing home and assist in finding appropriate alternative placement if he or she desires.

4.9.

Right to Choose a Personal Physician and Pharmacy. 4.9.1. Upon admission, the nursing home shall provide the resident with the names of the physicians who have attending privileges at the nursing home. The resident has the right to choose a personal physician. 4.9.2. The resident has the right to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exists or when the resident requests information concerning care or treatment alternatives. It is the resident's responsibility to select his or her attending physician and consulting physicians. The attending physician must have privileges at the nursing home. 4.9.3. The nursing home shall provide written notice to the resident of the name, address, telephone number, and

specialty of his or her attending physician at the time of admission and when any change in physician is made. 4.9.4. When a resident has no attending physician, it is appropriate for the facility to assist the resident in obtaining one in consultation with the resident and subject to the resident's right to choose. 4.9.5. The resident has a right to obtain prescription medications from sources other than the nursing home's contract pharmacy. The other pharmacy source must meet the prescription medication packaging requirements of the nursing home, at a cost that does not exceed that of the contracted pharmacy. Costs that exceed that of the contracted pharmacy shall be the responsibility of the resident.

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Upon admission, the nursing home shall provide the resident with the names of the physicians who have attending privileges at the nursing home. The resident has the right to choose a personal physician.

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The resident has the right to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exists or when the resident requests information concerning care or treatment alternatives. It is the resident's responsibility to select his or her attending physician and consulting physicians. The attending physician must have privileges at the nursing home.

4.9.3.

The nursing home shall provide written notice to the resident of the name, address, telephone number, and specialty of his or her attending physician at the time of admission and when any change in physician is made.

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When a resident has no attending physician, it is appropriate for the facility to assist the resident in obtaining one in consultation with the resident and subject to the resident's

right to choose.

4.9.5.

The resident has a right to obtain prescription medications from sources other than the nursing home's contract pharmacy. The other pharmacy source must meet the prescription medication packaging requirements of the nursing home, at a cost that does not exceed that of the contracted pharmacy. Costs that exceed that of the contracted pharmacy shall be the responsibility of the resident.

4.10.

Management of Residents' Personal Funds. 4.10.1. The resident has the right to manage his or her own financial affairs, and the nursing home shall not require residents to deposit their personal funds with the nursing home. 4.10.2. Upon written authorization of a resident, the nursing home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the nursing home under the provisions of this rule. 4.10.3. Deposit of funds. 4.10.3.a. Funds in excess of \$50. 4.10.3.a.1. A nursing home shall deposit any resident's personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the nursing home's operating accounts and that credits all interest earned on a resident's funds to that account. 4.10.3.a.2. In pooled accounts, there shall be a separate accounting for each resident's share. 4.10.3.b. Funds less than \$50. A nursing home shall maintain a resident's personal funds that do not exceed \$50 in a non-interest-bearing account, interest-bearing account, or petty cash fund. 4.10.4. Accounting and records: 4.10.4.a. A nursing home shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home. 4.10.4.b. The system shall preclude any co-mingling of a resident's funds with nursing home funds or with the funds of any

person other than another resident. 4.10.4.c. The individual financial record shall be provided through quarterly statements and on request to the resident or his or her legal representative. 4.10.4.c.1. For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt. 4.10.4.c.2. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative. 4.10.5. Notice of certain balances. A nursing home shall notify each resident who receives Medicaid benefits: 4.10.5.a. When the amount in the resident's account reaches \$200 less than the Supplemental Security Income (SSI) resource limit for one person; and 4.10.5.b. The amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, and that the resident may lose eligibility for Medicaid or SSI. 4.10.6. Conveyance upon death or discharge. 4.10.6.a. Upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of the resident. If after 30 days there has been no qualification over the decedent resident's estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, W. Va. Code §§ 36-8-1, et seq. 4.10.6.b. Upon discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within 30 days, the resident's funds and an accounting of those funds to the discharged resident or his or her legal representative. 4.10.7. Assurance of financial security. A nursing home shall purchase a bond or obtain and maintain commercial insurance with a company licensed in the state of West Virginia if the nursing home in any one month handles an amount greater than \$35 per resident, per month in the aggregate. 4.10.7.a. The sum of the bond or insurance shall be at least 1.25 times

the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year. Reference Table 64-13.B. of this rule. 4.10.7.b. The insurance policy shall specifically designate the resident as the primary beneficiary or payee for reimbursement of lost funds. 4.10.7.c. A nursing home shall reimburse the resident, within 30 days, for any losses and seek its reimbursement through the bond or insurance. 4.10.7.d. A nursing home is responsible for any insurance deductible. 4.10.7.e. The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances: 4.10.7.e.1. When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or 4.10.7.e.2. When the amount of the bond or insurance is impaired by recovery against it. 4.10.7.f. When a nursing home ceases to handle residents' funds in amounts that require a bond or insurance, the director shall allow the release of the bond or insurance upon the nursing home providing an accounting to the residents. 4.10.7.g. When a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship or conservatorship. Prior to initiating an involuntary transfer or discharge based on non-payment, the nursing home shall notify the resident's nearest next of kin, if known, to initiate guardianship or conservatorship. 4.10.7.h. If a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and that his or her financial representative is not using the resident's funds to pay for his or her stay, prior to initiating an involuntary transfer or discharge based on non-payment, a nursing home shall notify the appropriate authorities.

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The resident has the right to manage his or her own financial affairs, and the nursing home shall not require residents to deposit their personal funds with the nursing home.

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Upon written authorization of a resident, the nursing home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the nursing home under the provisions of this rule.

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Deposit of funds. 4.10.3.a. Funds in excess of \$50. 4.10.3.a.1. A nursing home shall deposit any resident's personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the nursing home's operating accounts and that credits all interest earned on a resident's funds to that account. 4.10.3.a.2. In pooled accounts, there shall be a separate accounting for each resident's share. 4.10.3.b. Funds less than \$50. A nursing home shall maintain a resident's personal funds that do not exceed \$50 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

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In pooled accounts, there shall be a separate accounting for each resident's share.

4.10.3.b.

Funds less than \$50. A nursing home shall maintain a resident's personal funds that do not exceed \$50 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

4.10.4.

Accounting and records: 4.10.4.a. A nursing home shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home.

4.10.4.b. The system shall preclude any co-mingling of a resident's funds with nursing home funds or with the funds of any person other than another resident. 4.10.4.c. The individual financial record shall be provided through quarterly statements and on request to the resident or his or her legal representative. 4.10.4.c.1. For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt. 4.10.4.c.2. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

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resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt. 4.10.4.c.2. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

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For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt.

4.10.4.c.2.

The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

4.10.5.

Notice of certain balances. A nursing home shall notify each resident who receives Medicaid benefits:4.10.5.a. When the amount in the resident's account reaches \$200 less than the Supplemental Security Income (SSI) resource limit for one person; and 4.10.5.b. The amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, and that the resident may lose eligibility for Medicaid or SSI.

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The amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, and that the resident may lose eligibility for Medicaid or SSI.

4.10.6.

Conveyance upon death or discharge. 4.10.6.a. Upon the death of a resident, any funds

remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of the resident. If after 30 days there has been no qualification over the decedent resident's estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, W. Va. Code §§ 36-8-1, et seq. 4.10.6.b. Upon discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within 30 days, the resident's funds and an accounting of those funds to the discharged resident or his or her legal representative.

4.10.6.a.

Upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of the resident. If after 30 days there has been no qualification over the decedent resident's estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, W. Va. Code §§ 36-8-1, et seq.

4.10.6.b.

Upon discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within 30 days, the resident's funds and an accounting of those funds to the discharged resident or his or her legal representative.

4.10.7.

Assurance of financial security. A nursing home shall purchase a bond or obtain and maintain commercial insurance with a company licensed in the state of West Virginia if the nursing home in any one month handles an amount greater than \$35 per resident, per month in the aggregate. 4.10.7.a. The sum of the bond or insurance shall be at least 1.25 times the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year. Reference Table 64-13.B. of this rule. 4.10.7.b. The insurance policy shall specifically designate the resident as the primary

beneficiary or payee for reimbursement of lost funds. 4.10.7.c. A nursing home shall reimburse the resident, within 30 days, for any losses and seek its reimbursement through the bond or insurance. 4.10.7.d. A nursing home is responsible for any insurance deductible. 4.10.7.e. The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances: 4.10.7.e.1. When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or 4.10.7.e.2. When the amount of the bond or insurance is impaired by recovery against it. 4.10.7.f. When a nursing home ceases to handle residents' funds in amounts that require a bond or insurance, the director shall allow the release of the bond or insurance upon the nursing home providing an accounting to the residents. 4.10.7.g. When a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship or conservatorship. Prior to initiating an involuntary transfer or discharge based on non-payment, the nursing home shall notify the resident's nearest next of kin, if known, to initiate guardianship or conservatorship. 4.10.7.h. If a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and that his or her financial representative is not using the resident's funds to pay for his or her stay, prior to initiating an involuntary transfer or discharge based on non-payment, a nursing home shall notify the appropriate authorities.

4.10.7.a.

The sum of the bond or insurance shall be at least 1.25 times the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year.

Reference Table 64-13.B. of this rule.

4.10.7.b.

The insurance policy shall specifically designate the resident as the primary beneficiary or payee for reimbursement of lost funds.

4.10.7.c.

A nursing home shall reimburse the resident, within 30 days, for any losses and seek its reimbursement through the bond or insurance.

4.10.7.d.

A nursing home is responsible for any insurance deductible.

4.10.7.e.

The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances: 4.10.7.e.1. When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or 4.10.7.e.2. When the amount of the bond or insurance is impaired by recovery against it.

4.10.7.e.1.

When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or

4.10.7.e.2.

When the amount of the bond or insurance is impaired by recovery against it.

4.10.7.f.

When a nursing home ceases to handle residents' funds in amounts that require a bond or insurance, the director shall allow the release of the bond or insurance upon the nursing home providing an accounting to the residents.

4.10.7.g.

When a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship or conservatorship. Prior to initiating an involuntary transfer or discharge based on

non-payment, the nursing home shall notify the resident's nearest next of kin, if known, to initiate guardianship or conservatorship.

4.10.7.h.

If a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and that his or her financial representative is not using the resident's funds to pay for his or her stay, prior to initiating an involuntary transfer or discharge based on non-payment, a nursing home shall notify the appropriate authorities.

4.11.

Resident Work. A resident has the right to refuse to perform services for the nursing home, and a resident has the right to perform services for the nursing home if he or she chooses, when: 4.11.1. The nursing home has documented the need or desire for work in the resident's plan of care; 4.11.2. The resident's plan of care specifies the nature of the services to be performed and whether the services are voluntary or paid; 4.11.3. Compensation for paid services is at or above prevailing rates for the services; and 4.11.4. The resident agrees to the work arrangement described in the resident's plan of care.

4.11.1.

The nursing home has documented the need or desire for work in the resident's plan of care;

4.11.2.

The resident's plan of care specifies the nature of the services to be performed and whether the services are voluntary or paid;

4.11.3.

Compensation for paid services is at or above prevailing rates for the services; and

4.11.4.

The resident agrees to the work arrangement described in the resident's plan of care.

4.12.

Bed-Hold and Readmission Rights.4.12.1. Upon payment of the nursing home's bed-hold rate or in the case of a Medicaid resident, in accordance with the policy and procedure currently prescribed by the State Plan, a resident has the right to retain the bed in the nursing home in which he or she is a resident. The nursing home shall notify a resident in writing at the time of admission and hospitalization or leave of absence, of the bed-hold policy. 4.12.2. After a hospitalization or a leave of absence for which there was no bed-hold, a former resident has the right to be re-admitted to the first available bed in a semi-private room in the nursing home from which he or she came, if the resident requires the services provided by the nursing home. 4.12.2.a. If a former resident wishes to return to the nursing home and meets the requirements for coverage under the Medicare program, the resident may be placed in a bed certified to participate in that program. 4.12.2.b. The nursing home shall accept the resident back from the hospital when the resident's medical condition has stabilized, provided that the resident continues to require the services that the nursing home provides and a bed is available. If the nursing home elects to not accept the resident back, the nursing home shall comply with the applicable provisions of this rule. 4.12.2.c. If the nursing home is not certified under the Medicare program and the resident chooses placement in a nursing home providing Medicare coverage, at the resident's request, the resident must be placed on a waiting list for readmission to the nursing home after Medicare coverage has ceased if the original nursing home can provide the necessary services to the former resident.

4.12.1.

Upon payment of the nursing home's bed-hold rate or in the case of a Medicaid resident, in accordance with the policy and procedure currently prescribed by the State Plan, a

resident has the right to retain the bed in the nursing home in which he or she is a resident. The nursing home shall notify a resident in writing at the time of admission and hospitalization or leave of absence, of the bed-hold policy.

4.12.2.

After a hospitalization or a leave of absence for which there was no bed-hold, a former resident has the right to be re-admitted to the first available bed in a semi-private room in the nursing home from which he or she came, if the resident requires the services provided by the nursing home. 4.12.2.a. If a former resident wishes to return to the nursing home and meets the requirements for coverage under the Medicare program, the resident may be placed in a bed certified to participate in that program. 4.12.2.b. The nursing home shall accept the resident back from the hospital when the resident's medical condition has stabilized, provided that the resident continues to require the services that the nursing home provides and a bed is available. If the nursing home elects to not accept the resident back, the nursing home shall comply with the applicable provisions of this rule. 4.12.2.c. If the nursing home is not certified under the Medicare program and the resident chooses placement in a nursing home providing Medicare coverage, at the resident's request, the resident must be placed on a waiting list for readmission to the nursing home after Medicare coverage has ceased if the original nursing home can provide the necessary services to the former resident.

4.12.2.a.

If a former resident wishes to return to the nursing home and meets the requirements for coverage under the Medicare program, the resident may be placed in a bed certified to participate in that program.

4.12.2.b.

The nursing home shall accept the resident back from the hospital when the resident's medical condition has stabilized, provided that the resident continues to require the services that the

nursing home provides and a bed is available. If the nursing home elects to not accept the resident back, the nursing home shall comply with the applicable provisions of this rule.

4.12.2.c.

If the nursing home is not certified under the Medicare program and the resident chooses placement in a nursing home providing Medicare coverage, at the resident's request, the resident must be placed on a waiting list for readmission to the nursing home after Medicare coverage has ceased if the original nursing home can provide the necessary services to the former resident.

4.13.

Admission, Transfer, and Discharge. 4.13.1. Refusal of Certain Transfers. A resident has the right to refuse a transfer to another room within the nursing home if the purpose of the transfer is to relocate: 4.13.1.a. A resident of a Medicare certified skilled nursing home (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF; or 4.13.1.b. A resident of a non-Medicare certified nursing home (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF. 4.13.2. Transfer and discharge requirements. The nursing home shall permit each resident to remain in the nursing home, unless: 4.13.2.a. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home; 4.13.2.b. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home; 4.13.2.c. The health or safety of persons in the nursing home is endangered; 4.13.2.d. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home; or 4.13.2.e. The nursing home ceases to operate. 4.13.3. Documentation. 4.13.3.a. When the reason for the transfer or discharge is consistent with paragraph 4.13.2.a., the documentation must include the specific

resident needs that cannot be met, the facility's attempt to meet the resident's needs, and the service available at the receiving facility to meet the resident's needs. 4.13.3.b. The documentation shall be made by the resident's physician when transfer or discharge is necessary under the provisions of this rule. 4.13.4. Notice before transfer or discharge. Before a nursing home transfers or discharges a resident, it shall provide written notice to the resident and his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include the following: 4.13.4.a. The reason for the proposed transfer or discharge; 4.13.4.b. The effective date of the proposed transfer or discharge; 4.13.4.c. The location or other nursing home to which the resident is being transferred or discharged; 4.13.4.d. A statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so; 4.13.4.e. The name, address, and telephone number of the State Long-Term Care Ombudsman; 4.13.4.f. For nursing home residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled persons; and 4.13.4.g. For nursing home residents with a mental health diagnosis, the mailing address and telephone number of the agency responsible for the protection and advocacy of persons or individuals with mental illness. 4.13.4.h. A copy of the notice of proposed transfer or discharge shall be sent to the State Long-Term Care Ombudsman. 4.13.5. Time of notice. The notice of transfer or discharge shall be made by the nursing home at least 30 days before the resident is discharged or transferred, except the notice shall be made as soon as practicable before a transfer or discharge when: 4.13.5.a. The safety of persons in the nursing home would be endangered; 4.13.5.b. The health of persons in the nursing home would be endangered; 4.13.5.c. The resident's health improves

sufficiently to allow a more immediate transfer or discharge; 4.13.5.d. An immediate transfer or discharge is required by the resident's urgent medical needs; or 4.13.5.e. A resident has not resided in the nursing home for 30 days. 4.13.6. Orientation for Transfer or Discharge.4.13.6.a. A nursing home shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing home. 4.13.6.b. Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident, legal representative, or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident, legal representative, or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation. 4.13.7. Discharge to a Community Setting.4.13.7.a. A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will. 4.13.7.b. A nursing home shall document that a resident who was voluntarily discharged to a community setting fully understood all options for care and helped develop a plan of care in anticipation of the resident's discharge. 4.13.7.c. Each resident shall be fully informed of the right to refuse a discharge. 4.13.7.d. A nursing home shall provide information about and referral to the appropriate social service agencies and community resources offering assistance in facilitating a resident's return to the community, as necessitated by the resident's individual needs. 4.13.8. Discharge Against Medical Advice. In the event that the resident, or the resident's legal representative on behalf of the resident who lacks the capacity to make health care decisions, chooses to discharge from the nursing home to a residence that does not provide the level of care or services required to maintain the resident's health, safety, or both, the nursing home shall: 4.13.8.a.

Immediately inform the resident's attending physician; 4.13.8.b. Educate the resident, and the resident's legal representative, if appropriate, regarding the possible consequences for discharging to an inappropriate placement; 4.13.8.c. Provide information about and referral to appropriate community resources, if requested by the resident. 4.13.8.d. Make a referral, as appropriate, to the adult protective services agency to promote resident safety; 4.13.8.e. Document the resident's reason for discharging against medical advice, if known; and 4.13.8.f. Document all actions taken and the responses by the resident, legal representative, or both, in the resident's medical record.

4.13.1.

Refusal of Certain Transfers. A resident has the right to refuse a transfer to another room within the nursing home if the purpose of the transfer is to relocate: 4.13.1.a. A resident of a Medicare certified skilled nursing home (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF; or 4.13.1.b. A resident of a non-Medicare certified nursing home (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

4.13.1.a.

A resident of a Medicare certified skilled nursing home (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF; or

4.13.1.b.

A resident of a non-Medicare certified nursing home (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

4.13.2.

Transfer and discharge requirements. The nursing home shall permit each resident to remain in the nursing home, unless: 4.13.2.a. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;

4.13.2.b. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home; 4.13.2.c. The health or safety of persons in the nursing home is endangered; 4.13.2.d. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home; or 4.13.2.e. The nursing home ceases to operate.

4.13.2.a.

The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;

4.13.2.b.

The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home;

4.13.2.c.

The health or safety of persons in the nursing home is endangered;

4.13.2.d.

The resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home; or

4.13.2.e.

The nursing home ceases to operate.

4.13.3.

Documentation. 4.13.3.a. When the reason for the transfer or discharge is consistent with paragraph 4.13.2.a., the documentation must include the specific resident needs that cannot be met, the facility's attempt to meet the resident's needs, and the service available at the receiving facility to meet the resident's needs. 4.13.3.b. The documentation shall be made by the resident's physician when transfer or discharge is necessary under the provisions of this rule.

4.13.3.a.

When the reason for the transfer or discharge is consistent with paragraph 4.13.2.a., the documentation must include the specific resident needs that cannot be met, the facility's attempt to meet the resident's needs, and the service available at the receiving facility to meet the resident's needs.

4.13.3.b.

The documentation shall be made by the resident's physician when transfer or discharge is necessary under the provisions of this rule.

4.13.4.

Notice before transfer or discharge. Before a nursing home transfers or discharges a resident, it shall provide written notice to the resident and his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include the following: 4.13.4.a. The reason for the proposed transfer or discharge; 4.13.4.b. The effective date of the proposed transfer or discharge; 4.13.4.c. The location or other nursing home to which the resident is being transferred or discharged; 4.13.4.d. A statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so; 4.13.4.e. The name, address, and telephone number of the State Long-Term Care Ombudsman; 4.13.4.f. For nursing home residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled persons; and 4.13.4.g. For nursing home residents with a mental health diagnosis, the mailing address and telephone number of the agency responsible for the protection and advocacy of persons or individuals with mental illness. 4.13.4.h. A copy of the notice of proposed transfer or discharge shall be sent to the State Long-Term Care Ombudsman.

4.13.4.a.

The reason for the proposed transfer or discharge;

4.13.4.b.

The effective date of the proposed transfer or discharge;

4.13.4.c.

The location or other nursing home to which the resident is being transferred or discharged;

4.13.4.d.

A statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so;

4.13.4.e.

The name, address, and telephone number of the State Long-Term Care Ombudsman;

4.13.4.f.

For nursing home residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled persons; and

4.13.4.g.

For nursing home residents with a mental health diagnosis, the mailing address and telephone number of the agency responsible for the protection and advocacy of persons or individuals with mental illness.

4.13.4.h.

A copy of the notice of proposed transfer or discharge shall be sent to the State Long-Term Care Ombudsman.

4.13.5.

Time of notice. The notice of transfer or discharge shall be made by the nursing home at least 30 days before the resident is discharged or transferred, except the notice shall be made as soon as practicable before a transfer or discharge when:

4.13.5.a. The safety of persons in the nursing home would be endangered;

4.13.5.b. The health of persons in the nursing home would be endangered;

4.13.5.c. The resident's health improves

sufficiently to allow a more immediate transfer or discharge; 4.13.5.d. An immediate transfer or discharge is required by the resident's urgent medical needs; or 4.13.5.e. A resident has not resided in the nursing home for 30 days.

4.13.5.a.

The safety of persons in the nursing home would be endangered;

4.13.5.b.

The health of persons in the nursing home would be endangered;

4.13.5.c.

The resident's health improves sufficiently to allow a more immediate transfer or discharge;

4.13.5.d.

An immediate transfer or discharge is required by the resident's urgent medical needs; or

4.13.5.e.

A resident has not resided in the nursing home for 30 days.

4.13.6.

Orientation for Transfer or Discharge. 4.13.6.a. A nursing home shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing home. 4.13.6.b. Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident, legal representative, or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident, legal representative, or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

4.13.6.a.

A nursing home shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing home.

4.13.6.b.

Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident, legal representative, or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident, legal representative, or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

4.13.7.

Discharge to a Community Setting.4.13.7.a. A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will. 4.13.7.b. A nursing home shall document that a resident who was voluntarily discharged to a community setting fully understood all options for care and helped develop a plan of care in anticipation of the resident's discharge. 4.13.7.c. Each resident shall be fully informed of the right to refuse a discharge. 4.13.7.d. A nursing home shall provide information about and referral to the appropriate social service agencies and community resources offering assistance in facilitating a resident's return to the community, as necessitated by the resident's individual needs.

4.13.7.a.

A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will.

4.13.7.b.

A nursing home shall document that a resident who was voluntarily discharged to a community setting fully understood all options for care and helped develop a plan of care in anticipation of the resident's discharge.

4.13.7.c.

Each resident shall be fully informed of the right to refuse a discharge.

4.13.7.d.

A nursing home shall provide information about and referral to the appropriate social service agencies and community resources offering assistance in facilitating a resident's return to the community, as necessitated by the resident's individual needs.

4.13.8.

Discharge Against Medical Advice. In the event that the resident, or the resident's legal representative on behalf of the resident who lacks the capacity to make health care decisions, chooses to discharge from the nursing home to a residence that does not provide the level of care or services required to maintain the resident's health, safety, or both, the nursing home shall: 4.13.8.a. Immediately inform the resident's attending physician; 4.13.8.b. Educate the resident, and the resident's legal representative, if appropriate, regarding the possible consequences for discharging to an inappropriate placement; 4.13.8.c. Provide information about and referral to appropriate community resources, if requested by the resident. 4.13.8.d. Make a referral, as appropriate, to the adult protective services agency to promote resident safety; 4.13.8.e. Document the resident's reason for discharging against medical advice, if known; and 4.13.8.f. Document all actions taken and the responses by the resident, legal representative, or both, in the resident's medical record.

4.13.8.a.

Immediately inform the resident's attending physician;

4.13.8.b.

Educate the resident, and the resident's legal representative, if appropriate, regarding the possible consequences for discharging to an inappropriate placement;

4.13.8.c.

Provide information about and referral to appropriate community resources, if requested by the resident.

4.13.8.d.

Make a referral, as appropriate, to the adult protective services agency to promote resident safety;

4.13.8.e.

Document the resident's reason for discharging against medical advice, if known; and

4.13.8.f.

Document all actions taken and the responses by the resident, legal representative, or both, in the resident's medical record.

4.14.

Equal Access to Quality Care. 4.14.1. Each resident or person requesting admission to a nursing home shall be free from discrimination by the nursing home, unless the discrimination: 4.14.1.a. Is the result of the nursing home not being able to provide adequate and appropriate care, and treatment and services to the resident or applicant due to the resident's or applicant's history of mental or physical disease or disability; and 4.14.1.b. Is not contrary to a federal or state law, regulation, or rule: 4.14.1.b.1. That prohibits the discrimination; or 4.14.1.b.2. That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the person. 4.14.2. For all persons, regardless of source of payment, a nursing home shall establish and maintain an identical set of policies and procedures regarding admission, transfer, discharge, and the provision of services. 4.14.3. Civil Rights. 4.14.3.a. A nursing home shall not segregate a resident, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provide any aid, care services, or other benefits that are different from or are provided in a different manner from those provided to others in the nursing home on the grounds of a resident's protected status based upon state and federal law.

4.14.3.b. A nursing home shall not deny admission to a prospective resident on the grounds of a resident's protected status based upon state and federal law.

4.14.1.

Each resident or person requesting admission to a nursing home shall be free from discrimination by the nursing home, unless the discrimination:

- 4.14.1.a. Is the result of the nursing home not being able to provide adequate and appropriate care, and treatment and services to the resident or applicant due to the resident's or applicant's history of mental or physical disease or disability; and
- 4.14.1.b. Is not contrary to a federal or state law, regulation, or rule:
 - 4.14.1.b.1. That prohibits the discrimination; or
 - 4.14.1.b.2. That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the person.

4.14.1.a.

Is the result of the nursing home not being able to provide adequate and appropriate care, and treatment and services to the resident or applicant due to the resident's or applicant's history of mental or physical disease or disability; and

4.14.1.b.

Is not contrary to a federal or state law, regulation, or rule:

- 4.14.1.b.1. That prohibits the discrimination; or
- 4.14.1.b.2. That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the person.

4.14.1.b.1.

That prohibits the discrimination; or

4.14.1.b.2.

That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the person.

4.14.2.

For all persons, regardless of source of payment, a nursing home shall establish and maintain an identical set of policies and procedures regarding admission, transfer, discharge, and the provision of services.

4.14.3.

Civil Rights.4.14.3.a. A nursing home shall not segregate a resident, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provide any aid, care services, or other benefits that are different from or are provided in a different manner from those provided to others in the nursing home on the grounds of a resident's protected status based upon state and federal law.

4.14.3.b. A nursing home shall not deny admission to a prospective resident on the grounds of a resident's protected status based upon state and federal law.

4.14.3.a.

A nursing home shall not segregate a resident, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provide any aid, care services, or other benefits that are different from or are provided in a different manner from those provided to others in the nursing home on the grounds of a resident's protected status based upon state and federal law.

4.14.3.b.

A nursing home shall not deny admission to a prospective resident on the grounds of a resident's protected status based upon state and federal law.

4.15.

Admissions and Payment Policy.4.15.1. A nursing home shall not require:4.15.1.a.

Residents or potential residents to waive their rights to Medicare or Medicaid; and

4.15.1.b. Oral or written assurance that residents or potential residents are not eligible for, or will not apply for. Medicare or Medicaid benefits. 4.15.2. Third Party

Guarantee. A nursing home shall not require a third party guarantee of payment to

the nursing home as a condition of admission or expedited admission or continued stay in the nursing home. A nursing home, however, may require for admission or for continued stay of the resident, that a person who has legal right and access to a resident's income or resources available to pay for care to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources. 4.15.3. A nursing home shall fully inform each resident prior to or at the time of admission and during his or her stay, of services available in the nursing home and of related charges, including any charge for services not covered under Medicare or Medicaid, or not covered by the nursing home's basic per diem rate, including the nursing home's policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items. 4.15.3.a. A nursing home may charge any amount for services furnished to non-Medicaid residents consistent with this paragraph. 4.15.3.b. Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate. 4.15.4. A nursing home shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits, a general description of the resource amount, and allowable uses of the resident's income for items and services not covered by Medicaid and Medicare. 4.15.5. In the case of a person eligible for Medicaid, a Medicaid/Medicare approved nursing home shall not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Medicaid Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission, or continued stay in the nursing home. 4.15.5.a. A nursing home may charge a resident who is eligible for Medicaid for items and services the resident has requested and

received, and that are not specified in the State Medicaid Plan as included in the term "nursing home services" if the nursing home gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for or receipt of such additional services. 4.15.5.b. A nursing home may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the nursing home for a Medicaid eligible resident. 4.15.6. A nursing home shall give the resident a 30 day notice when changes are made to items and services under the provisions of this rule.

4.15.1.

A nursing home shall not require: 4.15.1.a. Residents or potential residents to waive their rights to Medicare or Medicaid; and 4.15.1.b. Oral or written assurance that residents or potential residents are not eligible for, or will not apply for. Medicare or Medicaid benefits.

4.15.1.a.

Residents or potential residents to waive their rights to Medicare or Medicaid; and

4.15.1.b.

Oral or written assurance that residents or potential residents are not eligible for, or will not apply for. Medicare or Medicaid benefits.

4.15.2.

Third Party Guarantee. A nursing home shall not require a third party guarantee of payment to the nursing home as a condition of admission or expedited admission or continued stay in the nursing home. A nursing home, however, may require for admission or for continued stay of the resident, that a person who has legal right and

access to a resident's income or resources available to pay for care to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources.

4.15.3.

A nursing home shall fully inform each resident prior to or at the time of admission and during his or her stay, of services available in the nursing home and of related charges, including any charge for services not covered under Medicare or Medicaid, or not covered by the nursing home's basic per diem rate, including the nursing home's policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items. 4.15.3.a. A nursing home may charge any amount for services furnished to non-Medicaid residents consistent with this paragraph. 4.15.3.b. Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate.

4.15.3.a.

A nursing home may charge any amount for services furnished to non-Medicaid residents consistent with this paragraph.

4.15.3.b.

Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate.

4.15.4.

A nursing home shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits, a general description of the resource amount, and allowable uses of the resident's income for items and services not covered by Medicaid and Medicare.

4.15.5.

In the case of a person eligible for Medicaid, a Medicaid/Medicare approved nursing home shall not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Medicaid Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission, or continued stay in the nursing home. 4.15.5.a. A nursing home may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term "nursing home services" if the nursing home gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for or receipt of such additional services. 4.15.5.b. A nursing home may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the nursing home for a Medicaid eligible resident.

4.15.5.a.

A nursing home may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term "nursing home services" if the nursing home gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for or receipt of such additional services.

4.15.5.b.

A nursing home may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission,

expedited admission, or continued stay in the nursing home for a Medicaid eligible resident.

4.15.6.

A nursing home shall give the resident a 30 day notice when changes are made to items and services under the provisions of this rule.

4.16.

Freedom from Restraint and Abuse. 4.16.1. General. Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints and abuse except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances; and 4.16.1.a. The restraint is necessary to protect the resident from injury to himself or others; or 4.16.1.b. The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident's highest practicable physical, mental, or psychosocial wellbeing. 4.16.2. Restraints. 4.16.2.a. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes: 4.16.2.a.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity to make health care decisions, the resident's legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs; 4.16.2.a.2. Identifying the causal factors; 4.16.2.a.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and 4.16.2.a.4. The following, if alternatives to restraints are not found to be practicable: 4.16.2.a.4.A. A full explanation to the resident, and in the case of incapacity to make health care decisions, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity to

make health care decisions, the resident's legal representative; 4.16.2.a.4.B. Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and 4.16.2.a.4.C. An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs. 4.16.2.b. Physician's order. After a comprehensive restraint assessment indicates the need for a restraint and the resident's attending physician concurs, the resident's attending physician shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances, and duration of the restraint. 4.16.2.c. The resident's plan of care shall include, at a minimum: 4.16.2.c.1. The type and size of restraint that is to be used; 4.16.2.c.2. When the restraint is to be used; 4.16.2.c.3. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and 4.16.2.c.4. A systematic and gradual process to reduce the restraint, eliminate it, or both. 4.16.2.d. Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release. 4.16.2.e. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour. The resident shall be released from the restraint at least every two hours and provided exercise, toileting, and skin care. 4.16.2.f. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use. 4.16.2.g. Emergency. 4.16.2.g.1. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed 24 hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application. 4.16.2.g.2. Continued use is subject to the same evaluation process

described in this Subdivision and shall be ordered by the resident's attending physician. 4.16.2.h. Bed rails. The nursing home shall attempt to use appropriate alternatives prior to installing a side or bed rail. If a side or bed rail is used, the facility shall ensure correct installation, use, and maintenance of side or bed rails, including, but not limited to, the following elements: 4.16.2.h.1. Assess the resident for risk of entrapment from side or bed rails prior to installation; 4.16.2.h.2. Review the risks and benefits of side or bed rails with the resident or legal representative and obtain informed consent prior to installation; 4.16.2.h.3. Ensure that the bed's dimensions are appropriate for the resident's size and weight; and 4.16.2.h.4. Follow the manufacturer's recommendations and specifications for installing and maintaining side or bed rails.

4.16.3. Abuse. 4.16.3.a. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment, and involuntary seclusion. 4.16.3.b. Staff treatment of residents. The nursing home shall develop and implement written policies and procedures that prohibit neglect of residents, abuse of residents, and misappropriation of resident property. The policy and procedures shall address the screening, training, prevention, identification, investigation, protection, reporting, and response of allegations of resident neglect, abuse, and misappropriation of resident property. 4.16.3.c. A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including of unknown source, and misappropriation of resident property are reported in accordance with state law. 4.16.3.d. A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress. 4.16.3.e. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with state

law, including the director within five working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.

4.16.1.

General. Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints and abuse except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances; and 4.16.1.a. The restraint is necessary to protect the resident from injury to himself or others; or 4.16.1.b. The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident's highest practicable physical, mental, or psychosocial wellbeing.

4.16.1.a.

The restraint is necessary to protect the resident from injury to himself or others; or

4.16.1.b.

The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident's highest practicable physical, mental, or psychosocial wellbeing.

4.16.2.

Restraints. 4.16.2.a. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes: 4.16.2.a.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity to make health care decisions, the resident's legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs; 4.16.2.a.2. Identifying the causal factors; 4.16.2.a.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and 4.16.2.a.4. The following, if alternatives to restraints are not found to be practicable: 4.16.2.a.4.A. A full explanation

to the resident, and in the case of incapacity to make health care decisions, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity to make health care decisions, the resident's legal representative;

4.16.2.a.4.B. Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and 4.16.2.a.4.C. An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.2.b. Physician's order. After a comprehensive restraint assessment indicates the need for a restraint and the resident's attending physician concurs, the resident's attending physician shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances, and duration of the restraint.

4.16.2.c. The resident's plan of care shall include, at a minimum:

4.16.2.c.1. The type and size of restraint that is to be used; 4.16.2.c.2. When the restraint is to be used; 4.16.2.c.3. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and 4.16.2.c.4. A systematic and gradual process to reduce the restraint, eliminate it, or both.

4.16.2.d. Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.2.e. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour. The resident shall be released from the restraint at least every two hours and provided exercise, toileting, and skin care.

4.16.2.f. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.2.g. Emergency.

4.16.2.g.1. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed 24 hours until the resident's attending physician can be notified of the resident's

condition requiring the emergency application. 4.16.2.g.2. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician. 4.16.2.h. Bed rails. The nursing home shall attempt to use appropriate alternatives prior to installing a side or bed rail. If a side or bed rail is used, the facility shall ensure correct installation, use, and maintenance of side or bed rails, including, but not limited to, the following elements: 4.16.2.h.1. Assess the resident for risk of entrapment from side or bed rails prior to installation; 4.16.2.h.2. Review the risks and benefits of side or bed rails with the resident or legal representative and obtain informed consent prior to installation; 4.16.2.h.3. Ensure that the bed's dimensions are appropriate for the resident's size and weight; and 4.16.2.h.4. Follow the manufacturer's recommendations and specifications for installing and maintaining side or bed rails.

4.16.2.a.

Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes: 4.16.2.a.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity to make health care decisions, the resident's legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs; 4.16.2.a.2. Identifying the causal factors; 4.16.2.a.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and 4.16.2.a.4. The following, if alternatives to restraints are not found to be practicable: 4.16.2.a.4.A. A full explanation to the resident, and in the case of incapacity to make health care decisions, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity to make health care decisions, the resident's legal representative; 4.16.2.a.4.B. Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and 4.16.2.a.4.C. An

assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.2.a.1.

Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity to make health care decisions, the resident's legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs;

4.16.2.a.2.

Identifying the causal factors;

4.16.2.a.3.

Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and

4.16.2.a.4.

The following, if alternatives to restraints are not found to be practicable: 4.16.2.a.4.A. A full explanation to the resident, and in the case of incapacity to make health care decisions, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity to make health care decisions, the resident's legal representative; 4.16.2.a.4.B. Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and 4.16.2.a.4.C. An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.2.a.4.A.

A full explanation to the resident, and in the case of incapacity to make health care decisions, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity to make health care decisions, the resident's legal representative;

4.16.2.a.4.B.

Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and

4.16.2.a.4.C.

An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.2.b.

Physician's order. After a comprehensive restraint assessment indicates the need for a restraint and the resident's attending physician concurs, the resident's attending physician shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances, and duration of the restraint.

4.16.2.c.

The resident's plan of care shall include, at a minimum: 4.16.2.c.1. The type and size of restraint that is to be used; 4.16.2.c.2. When the restraint is to be used; 4.16.2.c.3. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and 4.16.2.c.4. A systematic and gradual process to reduce the restraint, eliminate it, or both.

4.16.2.c.1.

The type and size of restraint that is to be used;

4.16.2.c.2.

When the restraint is to be used;

4.16.2.c.3.

For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and

4.16.2.c.4.

A systematic and gradual process to reduce the restraint, eliminate it, or both.

4.16.2.d.

Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.2.e.

Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour. The resident shall be released from the restraint at least every two hours and provided exercise, toileting, and skin care.

4.16.2.f.

Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.2.g.

Emergency. 4.16.2.g.1. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed 24 hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application. 4.16.2.g.2. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician.

4.16.2.g.1.

In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed 24 hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application.

4.16.2.g.2.

Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician.

4.16.2.h.

Bed rails. The nursing home shall attempt to use appropriate alternatives prior to installing a side or bed rail. If a side or bed rail is used, the facility shall ensure correct installation, use, and maintenance of side or bed rails, including, but not limited to, the following elements: 4.16.2.h.1. Assess the resident for risk of entrapment from side or bed rails prior to installation; 4.16.2.h.2. Review the risks and benefits of side or bed rails with the resident or legal representative and obtain informed consent prior to installation; 4.16.2.h.3. Ensure that the bed's dimensions are appropriate for the resident's size and weight; and 4.16.2.h.4. Follow the manufacturer's recommendations and specifications for installing and maintaining side or bed rails.

4.16.2.h.1.

Assess the resident for risk of entrapment from side or bed rails prior to installation;

4.16.2.h.2.

Review the risks and benefits of side or bed rails with the resident or legal representative and obtain informed consent prior to installation;

4.16.2.h.3.

Ensure that the bed's dimensions are appropriate for the resident's size and weight; and

4.16.2.h.4.

Follow the manufacturer's recommendations and specifications for installing and maintaining side or bed rails.

4.16.3.

Abuse. 4.16.3.a. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment, and involuntary seclusion. 4.16.3.b. Staff treatment of residents. The nursing home shall develop and implement written policies and procedures that prohibit neglect of residents, abuse of residents, and misappropriation of resident property. The policy and procedures shall address the screening, training, prevention, identification,

investigation, protection, reporting, and response of allegations of resident neglect, abuse, and misappropriation of resident property. 4.16.3.c. A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including of unknown source, and misappropriation of resident property are reported in accordance with state law. 4.16.3.d. A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress. 4.16.3.e. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with state law, including the director within five working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.

4.16.3.a.

A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment, and involuntary seclusion.

4.16.3.b.

Staff treatment of residents. The nursing home shall develop and implement written policies and procedures that prohibit neglect of residents, abuse of residents, and misappropriation of resident property. The policy and procedures shall address the screening, training, prevention, identification, investigation, protection, reporting, and response of allegations of resident neglect, abuse, and misappropriation of resident property.

4.16.3.c.

A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including of unknown source, and misappropriation of resident property are reported in accordance with state law.

4.16.3.d.

A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress.

4.16.3.e.

The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with state law, including the director within five working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.

4.17.

Complaint Procedures.4.17.1. A nursing home shall develop and implement written procedures for registering and responding to complaints by residents, their legal representatives, and the public. 4.17.2. A nursing home shall designate an employee to be responsible for receiving complaints. 4.17.3. A nursing home shall establish a method to inform the administrator of all complaints. 4.17.4. A nursing home shall establish a process for investigation and assessment of the validity of all complaints. 4.17.5. A nursing home shall provide a mechanism to record all complaints received and any action taken on them and to communicate the findings or outcomes to the resident, or the resident's legal representative, making the complaint. 4.17.6. A nursing home shall assure that careful consideration is given to each complaint even when it has been made by a person who often makes complaints having no valid basis. 4.17.7. A nursing home shall establish a program to assure that its personnel are familiar with complaint policies and procedures. 4.17.8. A nursing home shall establish a program to educate residents and their legal representatives about the nursing home's complaint policies and procedures.

4.17.1.

A nursing home shall develop and implement written procedures for registering and

responding to complaints by residents, their legal representatives, and the public.

4.17.2.

A nursing home shall designate an employee to be responsible for receiving complaints.

4.17.3.

A nursing home shall establish a method to inform the administrator of all complaints.

4.17.4.

A nursing home shall establish a process for investigation and assessment of the validity of all complaints.

4.17.5.

A nursing home shall provide a mechanism to record all complaints received and any action taken on them and to communicate the findings or outcomes to the resident, or the resident's legal representative, making the complaint.

4.17.6.

A nursing home shall assure that careful consideration is given to each complaint even when it has been made by a person who often makes complaints having no valid basis.

4.17.7.

A nursing home shall establish a program to assure that its personnel are familiar with complaint policies and procedures.

4.17.8.

A nursing home shall establish a program to educate residents and their legal representatives about the nursing home's complaint policies and procedures.