

410 IAC 16.2-5-1.2 Residents' rights

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 4-21.5; IC 12-10-5.5; IC 12-10-15-9; IC 16-28-5-1

Sec. 1.2. (a) Residents have the right to have their rights recognized by the licensee. The licensee shall establish written policies regarding residents' rights and responsibilities in accordance with this article and shall be responsible, through the administrator, for their implementation. These policies and any adopted additions or changes thereto shall be made available to the resident, staff, legal representative, and general public. Each resident shall be advised of residents' rights prior to admission and shall signify, in writing, upon admission and thereafter if the residents' rights are updated or changed. There shall be documentation that each resident is in receipt of the described residents' rights and responsibilities. A copy of the residents' rights must be available in a publicly accessible area. The copy must be in at least 12-point type and a language the resident understands.

(b) Residents have the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Residents have the right to exercise their rights as a resident of the facility and as a citizen or resident of the United States.

(c) Residents have the right to exercise any or all of the enumerated rights without:

- (1) restraint;
- (2) interference;
- (3) coercion;
- (4) discrimination; or
- (5) threat of reprisal;

by the facility. These rights shall not be abrogated or changed in any instance, except that, when the resident has been adjudicated incompetent, the rights devolve to the resident's legal representative. When a resident is found by his or her physician to be medically incapable of understanding or exercising his or her rights, the rights may be exercised by the resident's legal representative.

(d) Residents have the right to be treated with consideration, respect, and recognition of their dignity and individuality.

(e) Residents have the right to be provided, at the time of admission to the facility, the following:

- (1) A copy of his or her admission agreement.
- (2) A written notice of the facility's basic daily or monthly rates.
- (3) A written statement of all facility services (including those offered on an as needed basis).
- (4) Information on related charges, admission, readmission, and discharge policies of the facility.

(5) The facility's policy on voluntary termination of the admission agreement by the resident, including the disposition of any entrance fees or deposits paid on admission. The admission agreement shall include at least those items provided for in IC 12-10-15-9.

(6) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(f) Residents have the right to be informed of any facility policy regarding overnight guests. This policy shall be clearly stated in the admission agreement.

(g) Residents have the right to be informed by the facility, in writing at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(h) The facility must furnish on admission the following:

- (1) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.
- (2) The most recently known addresses and telephone numbers of the following:
 - (A) The department.
 - (B) The office of the secretary of family and social services.
 - (C) The ombudsman designated by the division of disability, aging, and rehabilitation services.
 - (D) The area agency on aging.
 - (E) The local mental health center.
 - (F) Adult protective services.

The addresses and telephone numbers in this subdivision shall be posted in an area accessible to residents and updated as appropriate.

(i) The facility will distribute to each resident upon admission the state developed written description of law concerning

advance directives.

(j) Residents have the right to the following:

(1) Participate in the development of his or her service plan and in any updates of that service plan.

(2) Choose the attending physician and other providers of services, including arranging for on-site health care services unless contrary to facility policy. Any limitation on the resident's right to choose the attending physician or service provider, or both, shall be clearly stated in the admission agreement. Other providers of services, within the content of this subsection, may include home health care agencies, hospice care services, or hired individuals.

(3) Have a pet of his or her choice, so long as the pet does not pose a health or safety risk to residents, staff, or visitors or a risk to property unless prohibited by facility policy. Any limitation on the resident's right to have a pet of his or her choice shall be clearly stated in the admission agreement.

(4) Refuse any treatment or service, including medication.

(5) Be informed of the medical consequences of a refusal under subdivision (4) and have such data recorded in his or her clinical record if treatment or medication is administered by the facility.

(6) Be afforded confidentiality of treatment.

(7) Participate or refuse to participate in experimental research. There must be written acknowledgement of informed consent prior to participation in research activities.

(k) The facility must immediately consult the resident's physician and the resident's legal representative when the facility has noticed:

(1) a significant decline in the resident's physical, mental, or psychosocial status; or

(2) a need to alter treatment significantly, that is, a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment.

(l) If the facility participates in the Medicaid waiver or residential care assistance programs, or both, the facility must provide to residents written information about how to apply for Medicaid benefits and room and board assistance.

(m) The facility must promptly notify the resident and, if known, the resident's legal representative when there is a change in roommate assignment.

(n) Residents may, throughout the period of their stay, voice grievances to the facility staff or to an outside representative of their choice, recommend changes in policy and procedure, and receive reasonable responses to their requests without fear of reprisal or interference.

(o) Residents have the right to form and participate in a resident council, and families of residents have the right to form a family council, to discuss alleged grievances, facility operation, residents' rights, or other problems and to participate in the resolution of these matters as follows:

(1) Participation is voluntary.

(2) During resident or family council meetings, privacy shall be afforded to the extent practicable unless a member of the staff is invited by the resident council to be present.

(3) The licensee shall provide space within the facility for meetings and assistance to residents or families who desire to attend meetings.

(4) The facility shall develop and implement policies for investigating and responding to complaints when made known and grievances made by:

(A) an individual resident;

(B) a resident council or family council, or both;

(C) a family member;

(D) family groups; or

(E) other individuals.

(p) Residents have the right to the examination of the results of the most recent annual survey of the facility conducted by the state surveyors, any plan of correction in effect with respect to the facility, and any subsequent surveys.

(q) Residents have the right to appropriate housing assignments as follows:

(1) When both husband and wife are residents in the facility, they have the right to live as a family in a suitable room or quarters and may occupy a double bed unless contraindicated for medical reasons by the attending physician.

(2) Written facility policy and procedures shall address the circumstances in which persons of the opposite sex, other than husband and wife, will be allowed to occupy a bedroom, if such an arrangement is agreeable to the residents or the residents' legal representatives.

- (r) The transfer and discharge rights of residents of a facility are as follows:
- (1) As used in this section, "interfacility transfer and discharge" means the movement of a resident to a bed outside of the licensed facility.
 - (2) As used in this section, "intrafacility transfer" means the movement of a resident to a bed within the same licensed facility.
 - (3) When a transfer or discharge of a resident is proposed, whether intrafacility or interfacility, provision for continuity of care shall be provided by the facility.
 - (4) Health facilities must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:
 - (A) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - (B) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
 - (C) the safety of individuals in the facility is endangered;
 - (D) the health of individuals in the facility would otherwise be endangered;
 - (E) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or
 - (F) the facility ceases to operate.
 - (5) When the facility proposes to transfer or discharge a resident under any of the circumstances specified in subdivision (4)(A), (4)(B), (4)(C), (4)(D), or (4)(E), the resident's clinical records must be documented. The documentation must be made by the following:
 - (A) The resident's physician when transfer or discharge is necessary under subdivision (4)(A) or (4)(B).
 - (B) Any physician when transfer or discharge is necessary under subdivision (4)(D).
 - (6) Before an interfacility transfer or discharge occurs, the facility must, on a form prescribed by the department, do the following:
 - (A) Notify the resident of the transfer or discharge and the reasons for the move, in writing, and in a language and manner that the resident understands. The health facility must place a copy of the notice in the resident's clinical record and transmit a copy to the following:
 - (i) The resident.
 - (ii) A family member of the resident if known.
 - (iii) The resident's legal representative if known.
 - (iv) The local long term care ombudsman program (for involuntary relocations or discharges only).
 - (v) The person or agency responsible for the resident's placement, maintenance, and care in the facility.
 - (vi) In situations where the resident is developmentally disabled, the regional office of the division of disability, aging, and rehabilitative services, who may assist with placement decisions.
 - (vii) The resident's physician when the transfer or discharge is necessary under subdivision (4)(C), (4)(D), (4)(E), or (4)(F).
 - (B) Record the reasons in the resident's clinical record.
 - (C) Include in the notice the items described in subdivision (9).
 - (7) Except when specified in subdivision (8), the notice of transfer or discharge required under subdivision (6) must be made by the facility at least thirty (30) days before the resident is transferred or discharged.
 - (8) Notice may be made as soon as practicable before transfer or discharge when:
 - (A) the safety of individuals in the facility would be endangered;
 - (B) the health of individuals in the facility would be endangered;
 - (C) the resident's health improves sufficiently to allow a more immediate transfer or discharge;
 - (D) an immediate transfer or discharge is required by the resident's urgent medical needs; or
 - (E) a resident has not resided in the facility for thirty (30) days.
 - (9) For health facilities, the written notice specified in subdivision (7) must include the following:
 - (A) The reason for transfer or discharge.
 - (B) The effective date of transfer or discharge.
 - (C) The location to which the resident is transferred or discharged.
 - (D) A statement in not smaller than 12-point bold type that reads, "You have the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Indiana state department of health postmarked within ten (10) days after you receive this notice. If you

- request a hearing, it will be held within twenty-three (23) days after you receive this notice, and you will not be transferred from the facility earlier than thirty-four (34) days after you receive this notice of transfer or discharge unless the facility is authorized to transfer you under subdivision (8). If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Indiana state department of health at the number listed below."
- (E) The name of the director and the address, telephone number, and hours of operation of the division.
 - (F) A hearing request form prescribed by the department.
 - (G) The name, address, and telephone number of the state and local long term care ombudsman.
 - (H) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.
- (10) If the resident appeals the transfer or discharge, the health facility may not transfer or discharge the resident within thirty-four (34) days after the resident receives the initial transfer or discharge notice unless an emergency exists as provided under subdivision (8).
- (11) If nonpayment is the basis of a transfer or discharge, the resident shall have the right to pay the balance owed to the facility up to the date of the transfer or discharge and then is entitled to remain in the facility.
- (12) The department shall provide a resident who wishes to appeal the transfer or discharge from a facility the opportunity to file a request for a hearing postmarked within ten (10) days following the resident's receipt of the written notice of the transfer or discharge from the facility.
- (13) If a health facility resident requests a hearing, the department shall hold an informal hearing at the health facility within twenty-three (23) days from the date the resident receives the notice of transfer or discharge. The department shall attempt to give at least five (5) days' written notice to all parties prior to the informal hearing. The department shall issue a decision within thirty (30) days from the date the resident receives the notice. The health facility must convince the department by a preponderance of the evidence that the transfer or discharge is authorized under subdivision (4). If the department determines that the transfer is appropriate, the resident must not be required to leave the health facility within the thirty-four (34) days after the resident's receipt of the initial transfer or discharge notice unless an emergency exists under subdivision (8). Both the resident and the health facility have the right to administrative or judicial review under IC 4-21.5 of any decision or action by the department arising under this section. All hearings held de novo shall be held in the facility where the resident resides.
- (14) An intrafacility transfer can be made only if the transfer is necessary for:
- (A) medical reasons as judged by the attending physician; or
 - (B) the welfare of the resident or other persons.
- (15) If an intrafacility transfer is required, the resident must be given notice at least two (2) days before relocation, except when:
- (A) the safety of individuals in the facility would be endangered;
 - (B) the health of individuals in the facility would be endangered;
 - (C) the resident's health improves sufficiently to allow a more immediate transfer; or
 - (D) an immediate transfer is required by the resident's urgent medical needs.
- (16) The written notice of an intrafacility transfer must include the following:
- (A) Reasons for transfer.
 - (B) Effective date of transfer.
 - (C) Location to which the resident is to be transferred.
 - (D) Name, address, and telephone number of the local and state long term care ombudsman.
 - (E) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.
- (17) The resident has the right to relocate prior to the expiration of the two (2) days' notice.
- (18) Prior to any interfacility or involuntary intrafacility relocation, the facility shall prepare a relocation plan to prepare the resident for relocation and to provide continuity of care. In nonemergency relocations, the planning process shall include a relocation planning conference to which the resident, his or her legal representative, family members, and physician shall be invited. The planning conference may be waived by the resident.
- (19) At the planning conference the resident's medical, psychosocial, and social needs with respect to the relocation shall be considered and a plan devised to meet these needs.
- (20) The facility shall provide reasonable assistance to the resident to carry out the relocation plan.

(21) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(22) If the relocation plan is disputed, a meeting shall be held prior to the relocation with the administrator or his or her designee, the resident, and the resident's legal representative. An interested family member, if known, shall be invited. The purpose of the meeting shall be to discuss possible alternatives to the proposed relocation plan.

(23) A written report of the content of the discussion at the meeting and the results of the meeting shall be reviewed by:

- (A) the administrator or his or her designee;
- (B) the resident;
- (C) the resident's legal representative; and
- (D) an interested family member, if known;

each of whom may make written comments on the report.

(24) The written report of the meeting shall be included in the resident's permanent record.

(s) Residents have the right to have reasonable access to the use of the telephone for local or toll free calls for emergency and personal use where calls can be made without being overheard.

(t) Residents have the right to manage their personal affairs and funds. When the facility manages these services, a resident may, by written request, allow the facility to execute all or part of their financial affairs. Management does not include the safekeeping of personal items. If the facility agrees to manage the resident's funds, the facility must:

- (1) provide the resident with a quarterly accounting of all financial affairs handled by the facility;
- (2) provide the resident, upon the resident's request, with reasonable access, during normal business hours, to the written records of all financial transactions involving the individual resident's funds;
- (3) provide for a separation of resident and facility funds;
- (4) return to the resident, upon written request and within no later than fifteen (15) calendar days, all or any part of the resident's funds given the facility for safekeeping;
- (5) deposit, unless otherwise required by federal law, any resident's personal funds in excess of one hundred dollars (\$100) in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and that credits all interest earned on the resident's funds to his or her account (in pooled accounts, there must be a separate accounting for each resident's share);
- (6) maintain resident's personal funds that do not exceed one hundred dollars (\$100) in a noninterest-bearing account, interest-bearing account, or petty cash fund;
- (7) establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf;
- (8) provide the resident or the resident's legal representative with reasonable access during normal business hours to the funds in the resident's account;
- (9) provide the resident or the resident's legal representative upon request with reasonable access during normal business hours to the written records of all financial transactions involving the individual resident's funds;
- (10) provide to the resident or his or her legal representative a quarterly statement of the individual financial record and provide to the resident or his or her legal representative a statement of the individual financial record upon the request of the resident or the resident's legal representative; and
- (11) convey, within thirty (30) days of the death of a resident who has personal funds deposited with the facility, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

(u) Residents have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(v) Residents have the right to be free from:

- (1) sexual abuse;
- (2) physical abuse;
- (3) mental abuse;
- (4) corporal punishment;
- (5) neglect; and
- (6) involuntary seclusion.

(w) Residents have the right to be free from verbal abuse.

(x) Residents have the right to confidentiality of all personal and clinical records. Information from these sources shall not

be released without the resident's consent, except when the resident is transferred to another health facility, when required by law, or under a third party payment contract. The resident's records shall be made immediately available to the resident for inspection, and the resident may receive a copy within five (5) working days, at the resident's expense.

(y) Residents have the right to be treated as individuals with consideration and respect for their privacy. Privacy shall be afforded for at least the following:

- (1) Bathing.
- (2) Personal care.
- (3) Physical examinations and treatments.
- (4) Visitations.

(z) Residents have the right to:

- (1) refuse to perform services for the facility;
- (2) perform services for the facility, if he or she chooses, when:
 - (A) the facility has documented the need or desire for work in the service plan;
 - (B) the service plan specifies the nature of the duties performed and whether the duties are voluntary or paid;
 - (C) compensation for paid duties is at or above the prevailing rates; and
 - (D) the resident agrees to the work arrangement described in the service plan.

(aa) Residents have the right to privacy in written communications, including the right to:

- (1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident; and
- (2) have access to stationery, postage, and writing implements at the resident's own expense.

(bb) Residents have the right and the facility must provide immediate access to any resident by:

- (1) individuals representing state or federal agencies;
- (2) any authorized representative of the state;
- (3) the resident's individual physician;
- (4) the state and area long term care ombudsman;
- (5) the agency responsible for the protection and advocacy system for developmentally disabled individuals;
- (6) the agency responsible for the protection and advocacy system for mentally ill individuals;
- (7) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
- (8) the resident's legal representative or spiritual advisor subject to the resident's right to deny or withdraw consent at any time; and
- (9) others who are visiting with the consent of the resident subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(cc) Residents have the right to choose with whom they associate. The facility shall provide reasonable visiting hours, which should include at least twelve (12) hours a day, and the hours shall be made available to each resident. Policies shall also provide for emergency visitation at other hours. The facility shall not restrict visits from the resident's legal representative or spiritual advisor, except at the request of the resident.

(dd) The facility shall provide reasonable access to any resident, consistent with facility policy, by any entity or individual that provides health, social, legal, and other services to any resident, subject to the resident's right to deny or withdraw consent at any time.

(ee) The facility shall allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(ff) Residents have the right to participate in social, religious, community services, and other activities of their choice that do not interfere with the rights of other residents at the facility.

(gg) Residents have the right to individual expression through retention of personal clothing and belongings as space permits unless to do so would infringe upon the rights of others or would create a health or safety hazard.

(hh) The facility shall exercise reasonable care for the protection of residents' property from loss and theft. The administrator or his or her designee is responsible for investigating reports of lost or stolen resident property and that the results of the investigation are reported to the resident.

(ii) If the resident's personal laundry is laundered by the facility, the facility shall identify these items in a suitable manner at the resident's request.

(jj) Residents may use facility equipment, such as washing machines, if permitted by the facility.

(kk) For purposes of IC 16-28-5-1, a breach of:

- (1) subsection (u) or (v) is an offense;
- (2) subsection (b), (c), (d), (j), (k), (n), (o)(4), (r), (w), (x), (y), (z), (aa), (bb), or (dd) is a deficiency;
- (3) subsection (a), (e), (f), (g), (h), (i), (l), (o)(1), (o)(2), (o)(3), (p), (q), (s), (t), (cc), (ee), (ff), (gg), (hh), or (ii) is a noncompliance; and
- (4) subsection (m) or (jj) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.2; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1562, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1914, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3997; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)

410 IAC 16.2-5-1.3 Administration and management

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1-5

Sec. 1.3. (a) The licensee:

- (1) is responsible for compliance with all applicable laws; and
- (2) has full authority and responsibility for the:
 - (A) organization;
 - (B) management;
 - (C) operation; and
 - (D) control;

of the licensed facility.

The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including the following:

- (1) Initial orientation of all employees.
- (2) A continuing in-service education and training program for all employees.
- (3) Provision of supervision for all employees.
- (c) The licensee shall:
 - (1) appoint an administrator with either a:
 - (A) comprehensive care facility administrator license as required by IC 25-19-1-5(c); or
 - (B) residential care facility administrator license as required by IC 25-19-1-5(d); and
 - (2) delegate to that administrator the authority to organize and implement the day-to-day operations of the facility.
 - (d) The licensee shall notify the director:
 - (1) within three (3) working days of a vacancy in the administrator's position; and
 - (2) of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1):

- (1) health facility; or
- (2) hospital-based long-term care unit;

at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility. The responsibilities of the administrator shall include, but are not limited to, the following:

- (1) Informing the division within twenty-four (24) hours of becoming aware of an unusual occurrence that directly threatens the welfare, safety, or health of a resident. Notice of unusual occurrence may be made by telephone, followed by a written report, or by a written report only that is faxed or sent by electronic mail to the division within the twenty-four (24) hour time period. Unusual occurrences include, but are not limited to:
 - (A) epidemic outbreaks;
 - (B) poisonings;