

The Resident Bill of Rights

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This document describes the rights of residents in Minnesota's community residential facilities which are licensed as health care facilities and certified as Intermediate Care Facilities for persons with Mental Retardation (ICF/MR). These rights are set forth in M.S. 144.651-2, and in Volume 42, Code of Federal Regulations, Sections 442.403 and 442.404.

• **Definitions: "Resident"** means a person who is admitted to a non-acute care facility including extended care facilities, nursing homes, and board and care homes for care required because of prolonged mental or physical illness or disability, recovery from injury or disease, or advancing age.

• **Public policy declaration:** It is declared to be the public policy of this state that the interests of each resident be protected by a declaration of a Residents' Bill of Rights which shall include but not be limited to the following:

It is the intent of the legislature and the purpose of the Residents' Bill of Rights to promote the interests and well-being of residents of community facilities. No community facility may require a resident to waive these rights as a condition of admission to the facility. Any guardian or conservator of a resident or, in the absence of a guardian or conservator, an interested person, may seek enforcement of these rights on behalf of a resident. An interested person may also seek enforcement of these rights on behalf of a resident who has a guardian or conservator through administrative agencies or in probate court or county court having jurisdiction over guardianships and conservatorships. Pending the outcome of an enforcement proceeding, the community facility may, in good faith, comply with the instructions of a guardian or conservator. It is the intent of this section that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist in the fullest possible exercise of these rights.

The resident is to be fully informed, as evidenced by written acknowledgement witnessed by a third party, prior to or at the time of admission and during the stay of these rights and of all rules and regulations governing resident conduct and responsibilities. A copy of the law is to be given to the resident. The interests of the resident and, where appropriate, guardians, next of kin, sponsoring agencies, representative payees or the public shall be protected by, but not limited to, the following policies and procedures:

• **THE RIGHT TO INFORMATION ABOUT RIGHTS:** Residents shall be told at admission that there are legal rights for their protection during their stay at the facility or throughout their course of treatment and maintenance in the community and that these are described in an accompanying written statement of the applicable rights and responsibilities set forth in this section. In the case of patients admitted to the residential programs as defined in MN Statutes 253C.01, the written document shall also describe the right of a person 16 years old or older to request release as provided in section 253B.04, subdivision 2, and shall list the names and telephone numbers of individuals and organizations that provide advocacy and legal services for patients in residential programs. Upon receipt of this statement and a full explanation, the resident must acknowledge the receipt in writing. Residents already in the facility must be provided with written amended statements if these provisions are changed. Reasonable accommodations shall be made for those with communication impairments and those who speak a language other than English. Current facility policies, inspection findings of state and local health authorities, and further explanation of the written statement of rights shall be available to residents, their guardians or their chosen representatives upon reasonable request to the administrator or other designated staff person, consistent with chapter 13, the data practices act, and section 626.557, relating to vulnerable adults.

• **THE RIGHT TO COURTEOUS TREATMENT:** Residents have the right to be treated with courtesy and respect for their individuality by employees of or persons providing service in a community residential facility.

• **THE RIGHT TO APPROPRIATE MEDICAL AND PERSONAL CARE:** Residents have the right to appropriate medical and personal care based on individual needs. Appropriate care for residents means care designed to enable residents to achieve their highest level of physical and mental functioning. This right is limited where the service is not reimbursable by public or private resources.

• **ISOLATION AND RESTRAINTS :** A minor who has been admitted to a residential program as defined in MN Statutes 253C.01 has the right to be free from physical restraint and isolation except in emergency situations involving a likelihood that the resident will physically harm self or others. These procedures may not be used for disciplinary purposes, to enforce program rules, or for the convenience of staff. Isolation or restraint may be used only upon prior authorization of a physician, psychiatrist, or licensed consulting psychologist, only when less restrictive measures are ineffective or not feasible and only for the shortest time necessary.

• **THE RIGHT TO KNOW WHO IS PROVIDING PHYSICIANS SERVICES:** Residents shall have or be given, in writing, the name, business address, telephone number, and specialty, if any, of the physician responsible for coordination of their care. In cases where it is medically inadvisable, as documented by the attending physician in a resident's care record, the information shall be given to the resident's guardian or other person designated by the resident as his or her representative.

• **THE RIGHT TO KNOW WHO IS PROVIDING SERVICES :** Residents who receive service from an outside provider are entitled, upon request, to be told the identity of the provider. Residents shall be informed, in writing, of any services which are provided to those residents by individuals, corporations, or organizations other than their facility. Information shall include the name of the outside provider, the address, and a description of the service which may be rendered. In cases where it is medically inadvisable, as documented by the attending physician in a resident's care record, the information shall be given to the resident's guardian or other person designated by the resident as his or her representative.

• **THE RIGHT TO INFORMATION ABOUT TREATMENT:** Residents shall be given by their physicians complete and current information concerning their diagnosis, treatment, alternatives, risks, and prognosis as required by the physician's legal duty to disclose. This information shall be in terms and language the resident can reasonably be expected to understand. Residents may be accompanied by a family member or other chosen representative, or both. This information shall include the likely medical or major psychological results of the treatment and its alternatives. In cases where it is medically inadvisable, as documented by the attending physician in a resident's medical record, the information shall be given to the resident's guardian or other person designated by the resident as his or her representative. Individuals have the right to refuse this information. Every resident suffering from any form of breast cancer shall be fully informed, prior to or at the time of admission and during her stay, of all alternative effective methods of treatment of which the treating physician is knowledgeable, including surgical, radiological, or chemotherapeutic or combination of treatments and the risks associated with each of these methods.

• **THE RIGHT TO PARTICIPATE IN PLANNING ONE'S OWN TREATMENT:** (a) Residents shall have the right to participate in the planning of their health care. This right includes the opportunity to discuss treatment and alternatives with individual caregivers, the opportunity to request and participate in formal care conferences, and the right to include a family member or other chosen representative, or both. In the event that the resident cannot be present, a family member or other representative chosen by the resident may be included in such conferences. A chosen representative may include a doula of the patient's choice. (b) If a patient or resident who enters a facility is unconscious or comatose or is unable to communicate, the facility shall make reasonable efforts as required under paragraph (c) to notify either a family member or a person designated in writing by the patient as the person to contact in an emergency that the patient or resident has been admitted to the facility. The facility shall allow the family member to participate in treatment planning, unless the facility knows or has reason to believe the patient or resident has an effective advance directive to the contrary or knows the patient or resident has specified in writing that they do not want a family member included in treatment planning. After notifying a family member but prior to allowing a family member to participate in treatment planning, the facility must make reasonable efforts, consistent with reasonable medical practice, to determine if the patient or resident has executed an advance directive relative to the patient or resident's health care decisions. For purposes of this paragraph, "reasonable efforts" include (1) examining the personal effects of the patient or resident; (2) examining the medical records of the patient or resident in the possession of the facility; (3) inquiring of any emergency contact or family member contacted under this section whether the patient or resident has executed an advance directive and whether the patient or resident has a physician to whom the patient or resident normally goes for care; and (4) inquiring of the physician to whom the patient or resident normally goes for care, if known, whether the patient or resident has executed an advance directive. If a facility notifies a family member or designated emergency contact or allows a family member to participate in treatment planning in accordance with this paragraph, the facility is not liable to the patient or resident for damages on the grounds that the notification of the family member or emergency contact or the participation of the family member was improper or violated the patient's privacy rights.

(c) in making reasonable efforts to notify a family member or designated emergency contact, the facility shall attempt to identify family members or a designated emergency contact by examining the personal effects of the patient or resident and the medical records of the patient or resident in the possession of the facility. If the facility is unable to notify a family member or designated emergency contact within 24 hours after the admission, the facility shall notify the county social service agency or local law enforcement agency that the patient or resident has been admitted and the facility has been unable to notify a family member or designated emergency contact. The county social service agency and local law enforcement agency shall assist the facility in identifying and notifying a family member or designated emergency contact. A county social service agency or local law enforcement agency that assists a facility in implementing this subdivision is not liable to the patient or resident for damages on the grounds that the notification of the family member or emergency contact or the participation of the family member was improper or violated the patient's privacy rights.

• **TREATMENT PLAN:** A minor who has been admitted to a residential program as defined in MN Statutes 253C.01 has the right to a written treatment plan that describes in behavioral terms the case problems, the precise goals of the plan, and the procedures that will be utilized to minimize the length of time that the minor requires treatment. The plan shall also state goals for release to a less restrictive facility and follow-up treatment measures and services, if appropriate. To the degree possible, the minor resident and his or her parents or guardians shall be involved in the development of the treatment and discharge plan.

• **THE RIGHT TO CONTINUITY OF CARE:** Residents shall have the right to be cared for with reasonable regularity and continuity of staff assignments as far as facility policy allows.

• **THE RIGHT TO REFUSE CARE:** Competent residents shall have the right to refuse treatment based on the information required above. Residents who refuse treatment, medication or dietary restrictions shall be informed of the likely medical or major psychological results of the refusal, with documentation in the individual record. In cases where a resident is incapable of understanding the circumstances but has not been adjudicated incompetent, or when legal requirements limit the right to refuse treatment, the conditions and circumstances shall be fully documented by the attending physician in the resident's medical record.

• **THE RIGHT TO REFUSE TO PARTICIPATE IN EXPERIMENTAL RESEARCH:** Written, informed consent must be obtained prior to a resident's participation in experimental research. Residents have the right to refuse participation. Both consent and refusal shall be documented in the individual care record.

• **THE RIGHT TO BE FREE FROM MALTREATMENT:** Residents shall be free from mal-

treatment as defined in the Vulnerable Adults Protection Act (Section 626.557). "Maltreatment" means conduct described in the Vulnerable Adults Act in section (626.5572, subdivision 15), or the intentional and non-therapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress. Every resident shall also be free from non-therapeutic chemical and physical restraints, except in fully documented emergencies, or as authorized in writing after examination by a resident's physician for a specified and limited period of time, and only when necessary to protect the resident from self-injury or injury to others.

• **THE RIGHT TO TREATMENT PRIVACY:** Residents shall have the right to respectfulness and privacy as it relates to their medical and personal care program. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Privacy shall be respected during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance.

• **THE RIGHT TO CONFIDENTIALITY OF RECORDS :** Residents shall be assured confidential treatment of their personal and medical records, and may approve or refuse their release to an individual outside the facility. Residents shall be notified when personal records are requested by any individual outside the facility and may select someone to accompany them when the records or information are the subject of a personal interview. Copies of records and written information from the records shall be made available in accordance with this subdivision and the Minnesota statutes governing access to health records (144.335). This right does not apply to complaint investigations and inspections by the Department of Health, where required by third party contracts, or where otherwise provided by law.

• **THE RIGHT TO KNOW ABOUT SERVICES AVAILABLE:** Residents shall be informed, prior to or at the time of admission and during their stay, of services which are included in the facility's basic per diem or daily room rate and that other services are available at additional charge. Facilities shall make every effort to assist residents in obtaining information regarding whether the Medicare or Medical Assistance program will pay for any or all of the aforementioned services.

• **THE RIGHT TO RESPONSIVE SERVICE:** Residents shall have the right to a prompt and reasonable response to their questions and requests.

• **THE RIGHT TO PERSONAL PRIVACY:** Residents shall have the right to every consideration of their privacy, individuality, and cultural identity as related to their social, religious, and psychological well-being. Facility staff shall respect the privacy of a resident's room by knocking on the door and seeking consent before entering, except in an emergency or where clearly inadvisable.

• **THE RIGHT TO HAVE GRIEVANCES HEARD:** Residents shall be encouraged and assisted, throughout their stay in a facility or their course of treatment, to understand and exercise their rights as residents and citizens. Residents may voice grievance and recommend changes in policies and services to facility staff and others of their choice, free from restraint, interference, coercion, discrimination, or reprisal, including threat of discharge. Notice of the grievance procedure of the facility or program, as well as address and telephone numbers for the Office of Health Facility Complaints and the area nursing home ombudsman pursuant to the Older Americans Act, section 307(a)(12) shall be posted in a conspicuous place. Every residential program as defined in MN Statutes 253C.01, and every facility employing more than two people that provides out-patient mental health services shall have a written internal grievance procedure that, at a minimum, sets forth the process to be followed; specifies time limits, including time limits for facility response, provides for the resident to have the assistance of an advocate; requires a written response to written grievances; and provides for a timely decision by an impartial decision maker if the grievance is not otherwise resolved. Compliance by residential programs as defined in MN Statutes 253C.01 with section 144.691 is deemed to be in compliance with the requirements for a written internal grievance procedure.

• **PROTECTION AND ADVOCACY SERVICES:** Residents shall have the right of reasonable access at reasonable times to any available rights protectionists services and advocacy services so that the resident may receive assistance in understanding, exercising, and protecting the rights described in this section and other law. This right shall include the opportunity for private communication between resident and a representative of the rights protection service or advocacy service.

• **THE RIGHT TO COMMUNICATE PRIVATELY:** Residents may associate and communicate privately with persons of their choice and enter and, except as provided by the Minnesota Commitment Act, leave the facility as they choose. Residents shall have access, at their expense, to writing instruments, stationery, and postage. Personal mail shall be sent without interference and received unopened unless medically or programmatically contraindicated and documented by the physician in the medical record. There shall be access to a telephone where residents can make and receive calls as well as speak privately. Facilities which are unable to provide a private area shall make reasonable arrangement to accommodate the privacy of resident's call. Upon admission to a facility where federal law prohibits unauthorized disclosure of the resident's presence in the facility to callers and visitors, the resident, or the legal guardian or conservator of the resident, shall be given the opportunity to authorize disclosure of the resident's presence in the facility, to callers or visitors who may seek to communicate with the resident. To the extent possible, the legal guardian or conservator of a resident shall consider the opinions of the resident regarding disclosure of the resident's presence in the facility. This right is limited where medically inadvisable, as documented by the attending physician in a resident's care record. Where programmatically limited by a facility abuse prevention plan pursuant to Section 626.557, subd. 14, paragraph (b), this right shall also be limited accordingly.

• **THE RIGHT TO HAVE AND USE PERSONAL PROPERTY:** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, and unless medically or programmatically contraindicated for documental medical, safety or programmatic reasons. The facility must either maintain a central locked depository or provide individual locked storage areas in which residents may store their valuables for safekeeping. The facility may, but is not required to, provide compensation for or replacement of lost or stolen items.

• **THE RIGHT NOT TO PERFORM SERVICES FOR THE FACILITY:** Residents shall not perform labor or services for the facility unless those activities are included for therapeutic purposes and appropriately goal-oriented in their individual medical record.

• **THE RIGHT TO MANAGE FINANCIAL AFFAIRS:** Competent residents may manage their personal financial affairs, or shall be given at least a quarterly accounting of financial transactions on their behalf if they delegate this responsibility in accordance with the laws of Minnesota to the facility for any period of time.

• **THE RIGHT TO ASSOCIATE:** (a) Residents may meet with and receive visitors and participate in activities of commercial, religious, political (as defined by the Minnesota statutes regarding voting while residing in a community residential facility, 203B.11) and community groups without interference at their discretion if the activities do not infringe on the right to privacy of other residents or are not programmatically contraindicated and documented in the resident's record. This includes (1) the right to join with other individuals within and outside the facility to work for improvements in long term care; (2) the right to visitation by an individual the patient has appointed as the patient's health care agent under chapter 145C; (3) the right to visitation and health care decision making by an individual designated by the patient under paragraph (c). (b) Upon admission to facility where federal law prohibits unauthorized disclosure of resident identifying information to callers and visitors, a resident, or the legal guardian or conservator of the resident, shall be given the opportunity to authorize the disclosure of the resident's presence in the facility to callers or visitors who may seek to communicate with the resident. To the extent possible, the legal guardian or conservator of a resident shall consider the opinions of the resident regarding disclosure of the resident's presence in the facility. (c) Upon admission to a facility, the patient or resident, or the legal guardian or conservator of the patient or resident, must be given the opportunity to designate a person who is not related who will have the status of the patient's next of kin with respect to visitation and making a health care decision. A designation must be included in the patient's health record. With respect to making a health care decision, a health care directive or appointment of a health care agent under chapter 145C prevails over a designation made under this paragraph. The unrelated person may also be identified as such by the patient or by the patient's family.

• **THE RIGHT TO AN ADVISORY COUNCIL:** Residents and their families shall have the right to organize, maintain, and participate in resident advisory and family councils. Each facility shall provide assistance and space for meetings. Council meetings shall be afforded privacy, with staff or visitors attending only upon the council's invitation. A staff person shall be designated the responsibility of providing this assistance and responding to written requests which result from council meetings. Resident and family councils shall be encouraged to make recommendations regarding facility policies.

• **THE RIGHTS OF MARRIED RESIDENTS :** Residents, if married, shall be assured privacy for visits by their spouses, and if both spouses are residents of the facility, they shall be permitted to share a room, unless medically contraindicated and documented by their physicians in the medical records.

• **THE RIGHTS OF TRANSFERS AND DISCHARGES:** Residents shall not be arbitrarily transferred or discharged. Residents must be notified, in writing, of the proposed discharge or transfer and its justification no later than 30 days before a discharge from the facility and seven days before transfer to another room within the facility. This notice shall include the resident's right to contest the proposed action, with the address and telephone number of the area nursing home ombudsman pursuant to the Older Americans Act (Section 307(a)(12)). The resident, informed of this right, may choose to relocate before the notice period ends. The notice period may be shortened in situations outside the facility's control, such as determination by utilization review, the accommodation of newly admitted residents, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment for stay unless prohibited by the public program or programs paying for the resident's care, as documented in the medical record. Facilities shall make a reasonable effort to accommodate new residents without disrupting room assignments.

• **THE RIGHT TO KNOW THE RULES :** Every resident shall be fully informed, prior to or at the time of admission and during the stay at a facility, of the rights and responsibilities set forth in this section of all rules governing resident conduct and responsibilities.

• Compliance with this Bill of Rights shall not be required whenever emergency conditions, and documented by the attending physician in a resident's care record, indicate that immediate medical treatment, including but not limited to surgical procedures, is necessary and it is impossible or impractical to comply because delay would endanger the resident's life, health or safety.

• A complaint regarding violations of any resident's right enumerated herein, or any statute or regulation, may be filed by contacting the Office of Health Facility Complaints. This office may be contacted at: Minnesota Department of Health, P.O. Box 64970, St. Paul, Minnesota 55164-0970; telephone (651) 201-4201 or toll free 1-800-369-7994.

• Inquiries by residents about medical care may be directed to the Minnesota Board of Medical Practice, 2829 University Avenue S.E., Suite 400, Mpls., MN 55414-3246; telephone (612) 617-2130 or 800/657-3709.

• Within the facility contact:

I hereby acknowledge receipt of a copy of this Residents' Bill of Rights and have been fully informed of such policies and rights.

Signature of Resident Date

Signature of Guardian or Conservator Date