



Nursing Home Care in Louisiana

An easy-to-use reference for residents of nursing homes and their families.



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RESIDENT RIGHTS

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident.

EXERCISE OF RIGHTS

The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

In the case of a resident adjudged incompetent under the laws of a state by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under state law to act on the resident's behalf.

CIVIL RIGHTS ACT OF 1964 (TITLE VI)

Title VI of the Civil Rights Act of 1964 states "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance."

Nursing facilities shall meet the following criteria in regard to the above-mentioned Act:

Compliance

Facilities shall be in compliance with Title VI of the Civil Rights Act of 1964 and shall not discriminate, separate, or make any distinction in housing, services, or activities based on race, color, or national origin.

Written Policies

Facilities shall have written policies and procedures that notify the community that admission to the facility, resident care services, and other activities are provided without regard to race, color or national origin.

Community Notification

Facilities shall notify the community that admission to the facility, resident care services, and other activities are provided without regard to race, color, or national origin. Notice to the community may be given by letters to and meeting with physicians, local health and welfare agencies, paramedical personnel, and public and private organizations having interest in equal opportunity.

SECTION 504 OF THE REHABILITATION ACT OF 1973

Facilities shall comply with section 504 of the Rehabilitation Act of 1973 which states the following: "No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance."

AGE DISCRIMINATION ACT OF 1975

This Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. All facilities must be in compliance with this Act.

NOTICE OF RIGHTS AND SERVICES

All residents, judicially appointed curators, or individuals to whom medical power of attorney has been given, shall sign a statement that they have been fully informed verbally and in writing in a language that the resident understands of the following information prior to or at the time of admission and when changes occur during their stay in the facility:

- A. The facility's rules and regulations
- B. Their rights
- C. Their responsibilities to obey all reasonable rules and regulations and respect the personal rights and private property of other residents
- D. Rules for conduct at the time of their admission and subsequent changes during their stay in the facility.

Changes in resident rights policies shall be conveyed both verbally and in writing to each resident at the time of or prior to the change. This shall be acknowledged in writing.

The resident or his or her legal representative has the right:

- A. Upon an oral or written request to access all records pertaining to himself or herself, including clinical records, within 24 hours.
- B. After receipt of his or her records for inspection to purchase at a cost comparable to community standards photocopies of the records or any portions of them upon request with two working days advance notice to the facility. The resident has the right to be fully informed in a language that he or she can understand of his or her total health status including, but not limited to, his or her medical condition.

The resident has the right to:

- A. Refuse medication and medical treatment. The facility must have documentation demonstrating that it has determined the reason(s) for the resident's refusal of the medication/treatment, the facility's attempts to work with the resident to make the medication/treatment acceptable, the alternative medication/treatment modifications offered by the facility, evidence that the resident has received and understands the consequences of refusing the medication/treatment, and that the facility will provide all other services to the resident.
- B. Refuse to participate in experimental research.

The facility must:

- A. Inform each resident who is entitled to Medicaid benefits in writing at the time of admission to the nursing facility or when the resident becomes eligible for Medicaid of:
 - 1. The items and services that are included in nursing facility services under the State Plan and for which the resident may not be charged by providing a copy of the DHH Blue Book. Unavailability of the Blue Book in no way excuses the facility from providing the required notification in another manner.
 - 2. Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services.
- B. Inform each resident when changes are made to these items and services.
- C. Inform each resident before or at the time of admission and periodically during the resident's stay of services available in the facility and of

charges for those services, including any charges for services not covered under Medicare/Medicaid or by the facility's per diem rate.

D. Furnish a written description of legal rights which includes:

1. A description of the manner of protecting personal funds as outlined in the DHH Blue Book.
2. A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels.
3. A posting of names, addresses, and telephone numbers of all pertinent state recipient advocacy groups, such as the Medicaid and HSS, the State Ombudsman Program, the Protection and Advocacy Network, and the Medicaid Fraud Control Unit.
4. A statement that the resident may file a complaint with the BHSF/HSS concerning resident abuse, neglect, and misappropriation of resident property in the facility.

E. Inform each resident of the name, specialty, and method for contacting the physician responsible for his or her care.

F. Prominently display in the facility written information about how to apply for and use Medicare and Medicaid benefits and how to receive refunds for previous payments covered by such benefits and provide such information orally and in writing to residents and applicants on admission.

G. Inform residents, potential residents, and their sponsors of their right to be provided a copy of the most recent Department of Health and Hospitals licensing/recertification survey results by the nursing home. All nursing homes shall, during the admission process, provide notification to the applicant that the applicant may receive a copy of the survey report as well as the telephone number to report complaints, and the applicant shall sign stating that they have been so notified.

Notification of Changes

A facility must timely inform the resident, consult with the resident's physician if known, and notify the resident's legal representative or interested family member when there is:

- A. An accident involving the resident which results in injury and has the potential for requiring physician intervention.
- B. A significant change in the resident's physical, mental or psychosocial status (i.e., deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).
- C. A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment).
- D. A decision to transfer or discharge the resident from the facility.

The facility must also notify the resident and resident's legal representative or sponsor when there is:

- A. A change in room or roommate assignment. Notification must be given at least 24 hours before the change and a reason for the move shall be given to all parties. Documentation of this shall be entered in the medical record.

- B. A change in resident rights under state law or regulations.

Involuntary Admittance

Residents shall not be forced to enter or remain in a nursing facility against their will unless they have been judicially interdicted.

DELEGATION OF RIGHTS

Resident rights and responsibilities are passed on to a guardian, next of kin, sponsor, responsible party, or sponsoring agency in the following instances:

- A. When a competent individual chooses to allow another to act for him/her, such as through a power of attorney.
- B. When the resident is adjudicated incompetent in accordance with state law.

The physician and the facility must be aware of, address, and document specific information concerning the incapability of the resident to understand and exercise their rights, even if the resident has been adjudicated incompetent.

The following administrative documentation is required:

- A. The relation of the resident to the person assuming his rights and responsibilities.
- B. That the responsible person can act for the resident.
- C. The extent of a guardianship or durable power of attorney.

MANAGEMENT OF RESIDENT FINANCES

Funds for Personal Care Needs

Funds for personal care needs are allocated from an SSI payment or from a portion allocated from other income, such as Social Security or VA benefits. The amount is intended to assist the patient to pay for items not covered by Medicaid payments or provided as part of nursing home care.

Residents shall have the right to the following options regarding their personal financial affairs:

- A. They shall be allowed to manage their personal financial affairs or to designate someone to assume this responsibility for them. They shall be permitted to spend their personal funds as they desire unless interdicted and/or under a curatorship. There shall be no limitations on the use of personal funds so long as the funds are not used to pay for anything covered by the Medicaid program.
- B. There is no obligation for a resident to deposit funds with the facility. However, the facility is obliged to hold, safeguard, and account for personal funds upon written request by the resident or his or her legal representative. This delegation may be only to the extent of the funds held in trust by the facility. The facility **does not** have the option of refusing to hold, safeguard, or manage resident funds. The facility must comply with the wishes of the resident once written authorization is received.
- C. The resident or his or her legal representative shall have access to financial records through quarterly statements and on request if the facility has been delegated the responsibility for handling their financial affairs. Upon request, the facility shall provide a list or statement regarding personal funds to the parish/regional office of BHSF with the resident's written consent. A copy shall be retained in the resident's record.

The nursing facility may not require the resident to deposit his or her personal funds with the facility.

Once the facility receives the written authorization from the resident, it must safeguard and account for such personal funds under a system established and maintained by the facility. The facility shall have written policies and procedures to protect resident funds. Current facility records shall reflect if residents handle their own funds or the names of parties designated to handle their personal funds.

The facility may make arrangements with a federal or state insured financial institution to provide banking services, but the responsibility for the disbursements, quality, and accuracy of required records remains with the facility.

Note: Any charge for this service is included in the facility's basic rate.

Upon receipt of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

- A. **Deposit** – If a resident deposits more than \$50.00 with the facility, the facility must deposit that money in an interest-bearing account or accounts separate from any of the facility's operating accounts and credit all interest earned by the resident's personal funds to their account. If the resident has less than \$50.00 in personal funds deposited with the facility, the facility may maintain resident's personal funds in a non-interest-bearing account, interest-bearing account, or petty cash fund.
- B. **Accounting and Records** - The facility shall assure a full, complete, and separate accounting of each such resident's personal funds; maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility; and afford the resident or the legal representative of the resident reasonable access to this record.
- C. **Notice of Certain Balances** - Under Medicaid program state plan, the facility must notify each resident receiving medical assistance when the amount in the resident's account reaches \$200.00 less than the dollar amount of resources allowed under SSI policy and of the fact that, if the amount in the account (in addition to the value of the resident's other non-exempt resources) exceeds the SSI resource limit, the resident may lose eligibility for such medical assistance or for benefits under title XVI (SSI) and Medicaid.

Collective Bank Account(s)

Collective bank account(s) shall:

- A. Be for the resident's money.
- B. Be separate and distinct from all nursing facility accounts.
- C. Consist of resident's money and shall not be commingled with the facility's operating account.
- D. Be regular checking account(s) or interest-bearing account(s). Interest shall be computed to each resident on the basis of actual earnings or end-of-quarter balance.

There shall be a monthly reconciliation between the collective or individual bank accounts and the individual resident account(s).

The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.

Resident Fund Accounting System

The facility shall maintain current and written individual records of all financial transactions involving the personal funds that the facility is holding and safeguarding and for which it is accounting. The facility shall keep these records in accordance with requirements of law for a trustee in a fiduciary relationship that exists for these financial transactions. The facility shall ensure the soundness and accuracy of the resident fund account system.

The facility shall develop the following procedures to ensure a sound and workable fund accounting system:

- A. A file shall exist for each participating resident. Each file or record shall contain all transactions pertinent to the account, including the following information:
 - 1. Money received
 - a. Source
 - b. Amount
 - c. Date
 - 2. Money expended
 - a. Purpose
 - b. Amount
 - c. Date of all disbursements to or in behalf of the resident
- B. All monies, either spent on behalf of the resident or withdrawn by the resident or his or her legal representative, are supported by a receipt and canceled check or signed voucher on file.

Note: It is recommended that the functions of actual cash receipt disbursements and recording of cash disbursement be separate.
- C. Receipt for disbursements shall include the following information:
 - 1. The date of the disbursement.
 - 2. The amount of the disbursement.
 - 3. The signature of the resident or responsible party
 - 4. Purpose and payee of disbursement

Note: A running list of disbursements and receipts may be kept for posting on ledger sheets or individual vouchers. The resident's individual ledger sheet shall constitute the necessary receipt in situations where no check has been drawn if the ledger sheet is dated, shows the amount, contains the resident's signature, and has the person responsible for the resident's fund's signature. Canceled checks are sufficient receipt for disbursements if coupled with information regarding the purpose of the expenditure. When a resident is unable to sign the ledger, it should be signed by the custodian of the fund and one witness.

- D. The file shall be available to the resident or his or her legal representative upon request during the normal administrative work day.

Cash on Hand

The facility shall have a minimum of cash on hand to meet resident's spending needs. Cash on hand shall be maintained on the imprested petty cash system.

Ownership of Accounts

The account shall be in a form which clearly indicates that a facility does not have an ownership interest in funds.

Insured Accounts

The account shall be insured under federal and state law.

Distribution of Interest

The interest earned in any pooled interest-bearing account shall be distributed in one of the following manners:

- A. Prorated to each resident on an actual interest-earned basis.
- B. Prorated to each resident on the basis of his end-of-quarter balance.

Surety Bond

The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the secretary of the Louisiana Department of Health to assure the security of all personal funds of residents deposited with the facility.

Closing a Discharged Resident's Fund Account

Nursing facilities shall refund the balance of the resident's personal funds when a resident is discharged. The amount shall be refunded by the end of the month following the discharge. Date, check number, and "to close account" should be noted on the ledger sheet.

Conveyance Upon Death

Legally, the funds should be turned over to the executor of the estate. The legal representative or sponsor should notify the facility as to whom the executor is within three months. The executor must then open succession. Within 30 days of this notification, the facility must convey the balance of the resident's personal funds account and the unused portion of any advance room and board payments and a final accounting of those funds to the legal representative or sponsor or the person administering the resident's estate. In lieu of a lengthy legal process, a facility can obtain an "affidavit of small succession" from the Unclaimed Property Section at the Louisiana Department of Revenue and Taxation for estates involving less than \$50,000 and where no real estate is involved. This will allow for transfer of assets to the heirs without a waiting period.

The following shall apply in regard to a deceased resident's unclaimed personal funds:

- A. If the facility fails to receive notification of the appointment or other designation of a responsible party (legal guardian, administrator of the estate, or person placed in possession by court judgment) within three months after the date of death, the facility shall retain the funds and notify the Secretary of the Department of Revenue and Taxation, Unclaimed Property Section. The notice shall provide detailed information about the decedent, his next of kin, and the amount of funds.
- B. The facility shall continue to retain the funds until a court order specifies that the funds are to be turned over to the Secretary of the Department of Revenue and Taxation.
- C. If neither order nor judgment is forthcoming, the facility shall retain the funds for five years after date of death.

- D. Thereafter, the facility is responsible for delivering the unclaimed funds to the Secretary of Revenue and Taxation.
- E. A termination date of the account and the reason for termination shall be recorded on the resident's participation file. A notation shall read, "to close account." The endorsed canceled check with check number noted on the ledger sheet shall serve as sufficient receipt and documentation.

Nursing Facility Resident's Burial Insurance Policy

"With the resident's permission, the nursing facility administrator or designee may assist the resident in acquiring a burial policy, provided that the administrator, designee, or affiliated persons derive no financial or other benefit from the resident's acquisition of the policy."

SPECIFIC RIGHTS

Free Choice

The resident has the right to:

- A. Choose a personal attending physician
- B. Obtain pharmaceutical supplies and services from a pharmacy of choice, either at their own expense or through Medicaid, provided the drugs are timely delivered to the facility and packaged in a fashion compatible with the facility's medication administration system.
- C. Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being.
- D. Participate in planning care and treatment or changes in care and treatment unless adjudicated incompetent or otherwise found to be incapacitated under the laws of the state.
- E. Withhold payment for a physician's visit if the physician did not perform an examination.

Privacy and Confidentiality

The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility to provide a private a room for each resident.

Privacy shall include:

- A. Having closed room doors.
- B. Having facility personnel knock on a closed door before entering their room except in an emergency situation or unless medically contraindicated.
- C. Having privacy during toileting, bathing, and other activities of personal hygiene except as needed for safety reasons or assistance.
- D. Having privacy screens or curtains in use during treatment, bathing, toileting, or other activities of personal hygiene.

Except as provided in the next paragraph, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

The resident's right to refuse release of personal and clinical records does not apply when:

- A. The resident is transferred to another health care institution.
- B. Record release is required by law.
- C. Requested by staff from the Department of Health.

Grievances - A resident has the right to:

- A. Voice grievances without discrimination or reprisal. Such grievances include those regarding treatment that has been furnished as well as that which has not been furnished.
- B. Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

Examination of Survey Results - A resident has the right to:

- A. Examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The results must be made available for examination by the facility in a place **readily** accessible. The resident shall also be afforded privacy in reviewing the documents if they so choose.
- B. Receive information from agencies acting as recipient advocates and be afforded the opportunity to contact these agencies.

Work

The resident has the right to:

- A. Refuse to perform services for the facility.
- B. Perform services for the facility if he or she chooses when
 1. The facility has documented the need or desire for work in the plan of care.
 2. The plan specifies the nature of the services performed and whether the services are voluntary or paid.
 3. Compensation for paid services is at or above the prevailing rates.
 4. The resident agrees to the work assignment described in the plan of care.

Mail

The resident has the right to privacy in written communications including the right to:

- A. Send and promptly receive mail that is unopened.
- B. Have access to stationery, postage, and writing implements at the resident's own expense.

Access and Visitation Rights

The facility must accommodate a resident's rights to immediately access and to be immediately accessed by:

- A. Any representative of the Secretary of DHH.
- B. Any representative of the State.
- C. The resident's individual physician.
- D. The State Long Term Care Ombudsman (established under section 307(a) (12) of the Older Americans Act of 1965).

- E. The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act).
- F. The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act).
- G. Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident.
- H. Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.
- I. Visiting overnight outside the facility with family and friends in accordance with the facility policies, physician's order, and Title XVIII (Medicare) and Title XIX (Medicaid) regulations without the loss of their bed. Home visit policies and procedures for arranging home visits shall be fully explained.

The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, other services to the resident subject to the resident's right to deny or withdraw consent at any time.

The facility must allow certified representatives of office of the State Ombudsman to examine a resident's clinical records as provided by state and federal law.

Reasonable restrictions are those imposed by the facility that protect the security of all of the facility's residents. The facility may change the location of visits to assist care giving or protect the privacy of other residents.

Telephone

The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

Personal Property

Unless to do so would infringe upon the rights or health and safety of other residents, the resident has the right to retain and use personal possessions, including some furnishings and appropriate clothing, as space permits.

Married Couples

The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent of the arrangement.

Self-Administration of Drugs

An individual resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

Choice of Roommate

Residents shall have the right to have their wish respected regarding choice(s) of roommate(s), insofar as possible and/or reasonable.

Smoking

Residents shall have the right to use tobacco at their own expense under the facility's safety rules and applicable state and federal laws and rules unless the use of tobacco is

medically contraindicated as documented in the medical record by the attending physician.

Alcoholic Beverages

Residents shall have the right to consume a reasonable amount of alcoholic beverages at their own expense unless the following conditions are present:

- A. It is medically contraindicated as documented in the medical record by the attending physician.
- B. It is expressly prohibited by the published rules and regulations of a facility owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as part of its religious beliefs.

Retiring and Rising

Residents shall have the right to retire and rise in accordance with the resident's personal preference.

Participation in Resident and Family Groups

- A. A resident has the right to organize and participate in resident groups in the facility.
- B. A resident's family has the right to meet in the facility with the families of other residents in the facility.
- C. The facility must provide a resident or family group, if one exists, with private space.
- D. Staff or visitors may attend meetings at the group's invitation.
- E. The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.
- F. When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

Representative Payee

Residents receiving Social Security benefits shall have the right to make an application with the Social Security Administration to designate a representative payee.

If residents receiving Social Security benefits are incapable of managing their personal funds and have no legal representative, the facility may notify the Social Security Administration and request that a representative payee be appointed.

VIOLATION OF RIGHTS

Any person who submits or reports a complaint concerning a suspected violation of resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability unless that person has acted in bad faith with malicious purpose or if the court finds that there was an absence of a justifiable issue of either law or fact raised by the complaining party.

BILL OF RIGHTS

A resident's bill of rights shall be prominently displayed in accessible areas at a proper height and in print of appropriate size for elderly individuals with impaired vision. In addition to the above-mentioned rights, the bill of rights shall include the assurances listed below. All facilities shall adopt and make public a statement of the rights and responsibilities of residents residing in the facility and shall treat all individuals in accordance with the provisions of the statement.

Each nursing facility shall provide a copy of the statement required by R.S. 40:2010 8(A) to each resident and the resident's legal representative or sponsor upon or before admission to the facility as well as to each staff member. The statement shall also advise the resident or their legal representative or sponsor that the nursing facility is not responsible for the actions or inactions of other persons or entities not employed by the facility, such as the treating physician, pharmacist, sitter, or other such persons or entities employed or selected by the resident or their legal representative or sponsor. Each facility shall prepare a written plan and provide appropriate staff training to implement the provisions of R.S. 40:2010.6 et seq. The plan and training should include at a minimum an explanation of the following:

- A. The rights of residents and the staff's responsibilities in the implementation of those rights.
- B. The staff's obligation to provide all residents who have similar needs with comparable services, as required by state licensure standards.

Any violation of the resident's rights in R.S. 40:2010.6 et seq. shall constitute grounds for appropriate action by the Department of Health and Hospitals. **Residents shall have a private right of action to enforce these rights as set forth in R.S.40:2010.9.** The state courts shall have jurisdiction to enjoin a violation of residents' rights **and assess fines for violations not to exceed \$100.00 per individual violation.**

CIVIL AND RELIGIOUS LIBERTIES

Residents shall have the right to civil and religious liberties, including, but not limited to, the following:

- A. Knowledge of available choices.
- B. The right to independent personal decisions.
- C. The right to encourage and assistance from facility staff in exercising these rights to the fullest extent possible.
- D. The right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.
- E. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

FREEDOM FROM RESTRAINTS AND ABUSE

Residents shall have the right to be free from verbal, sexual, physical or mental abuse; corporal punishment, involuntary seclusion; and any physical and chemical restraints imposed for the purpose of discipline or convenience and not required to treat the resident's medical symptoms.

HOUSING

All residents shall be housed without regard to race, color, or national origin. Bi-racial occupancy of rooms and wards on a non-discriminatory basis shall be required.

Residents shall not be asked if they are willing to share a room with a person of another race, color, or national origin.

Resident transfers shall not be used to evade compliance with Title VI of the Civil Rights Act of 1964.

Open Admission Policy

An open admission policy and desegregation of facilities shall be required, particularly when the facility previously excluded or primarily served residents of a particular race, color, or national origin. Facilities which exclusively serve residents of one race have the responsibility for taking corrective action unless documentation is provided that this pattern has not resulted from discriminatory practices.

Restricted Occupancy

A facility owned or operated by a private organization may restrict occupancy to members of the organization without violating Civil Rights compliance, provided membership in the organization and admission to the facility is not denied on the basis of race, color, or national origin.

RESIDENT SERVICES

All residents shall be provided medical, non-medical, and volunteer services without regard to race, color, or national origin. All administrative, medical and non-medical services are covered by this requirement.

FACILITY PERSONNEL

Attending physicians shall be permitted to provide resident services without regard to race, color, or national origin.

Other medical, paramedical, or non-medical persons, whether engaged in contractual or consultative capacities, shall be selected and employed in a non-discriminatory manner. Opportunity shall not be denied to qualified persons on the basis of race, color, or national origin.

Dismissal from employment shall not be based upon race, color, or national origin.

ADVANCE DIRECTIVES

Each resident shall be:

- A. Afforded the opportunity to participate in the planning of his or her medical treatment.
- B. Encouraged and assisted throughout his or her period of stay to exercise his or her rights as a resident and as a citizen.
- C. Treated with consideration, respect, and full recognition of his or her dignity and individuality.

Nursing facilities must:

- A. Provide all adult individuals with written information about their rights

under state law to make health care decisions, including the right to accept or refuse treatment and the right to execute advance directives.

- B. Document in the resident's medical record whether or not he or she has signed an advance directive.
- C. Not discriminate against an individual based on whether he or she has executed an advance directive.
- D. Provide the facility's staff, residents, and broader community with education on advance directives.

Note: If an Advance Directive has been executed, a copy shall be kept in the medical record.

Definitions

Attending physician - The physician who has primary responsibility for the treatment and care of the resident.

Declaration - A witnessed document, statement, or expression voluntarily made by the declarant authorizing the withholding or withdrawal of life-sustaining procedures in accordance with requirements of Louisiana law. A declaration may be made in writing, orally, or by other means of nonverbal communication.

Life-sustaining procedure - Any medical procedure or intervention which, within reasonable medical judgment, would serve only to prolong the dying process for a person diagnosed as having a terminal irreversible condition. A "life-sustaining procedure" shall not include any measure deemed necessary to provide comfort care.

Physician - A physician or surgeon licensed by the Louisiana State Board of Medical Examiners.

Qualified Resident - A resident diagnosed and certified in writing as having a terminal and irreversible condition by two physicians, one of whom shall be the attending physician, who have personally examined the resident.

Terminal and irreversible condition - A condition caused by injury, disease, or illness which, within reasonable medical judgment, would produce death and for which the application of life-sustaining procedures would serve only to postpone the moment of death.

Written Policy

All facilities shall have an appropriate, written policy and procedure regarding the decision to have life-sustaining procedures withheld or withdrawn in instances where such residents are diagnosed as having a terminal and irreversible condition.

If the policies of a nursing facility preclude compliance with the declaration of a resident or preclude compliance with provisions pertaining to a representative acting on behalf of a qualified resident, the nursing facility shall take all reasonable steps to effect the transfer of the resident to a facility in which the provisions of his or her declaration can be carried out.

Facility Responsibility

Physician orders shall:

- A. Be based on the medical examination of the resident's immediate and long-term needs.
- B. Document that the condition is terminal and irreversible.

Note: Two physicians must document that the resident has a terminal and irreversible condition (See: “Qualified Resident” above).

- C. Prescribe a planned regimen of total care for the resident, which shall include special exceptions to the treatment regimen.

The plan of care shall:

- A. Include a statement indicating that a valid declaration has been made.
- B. Include measures to ensure the comfort care of the resident during the dying process.

Nursing Notes

Charting shall be done as often as necessary but at least every eight hours during the time that life-sustaining procedures are withheld or withdrawn.

Declaration

The declaration may be executed at any time by the individual or his or her legal representative. The declaration is not activated until two physicians determine that the resident has a terminal of irreversible condition. The document should be very specific to include exactly what the resident does and does not want.

Do Not Resuscitate (DNR) Order

If the responsible physician finds that resuscitation would be medically inappropriate, a do not resuscitate order becomes effective only upon the informed choice of a competent resident or by agreement of the family members as a class if the resident is incompetent and determined to a “qualified resident.” A DNR decision may be included as part of an advance directive or it may stand alone. The DNR is not a decision that can be made by a physician or facility committee acting alone.

PAYMENT FOR NURSING HOME CARE

Payment Options

Medicare

Medicare is a health insurance program administered by the Social Security Administration. There are two parts to Medicare. Part A is hospital insurance; Part B is medical insurance. Persons who receive Social Security benefits are automatically entitled to Part A if they are over 65 or if they have received disability payments for 24 consecutive months. To be covered by part B, a person must pay a monthly premium, which is either deducted from his or her Social Security check or paid quarterly.

A person covered by Medicare in a skilled nursing facility is not eligible for Medicaid benefits during the first 20 days. After 20 days of Medicare coverage, the Department of Health and Hospitals will pay the difference between the facility fee and the Medicare payment if the patient becomes eligible for Medicaid coverage.

Personal Resources

Paying for care by using the nursing home resident’s personal funds is also an option. After the resident has exhausted his savings and needs to remain in the nursing home, he may choose to apply for Medicaid.

Managed Care Plans

If the nursing home has a contract with the plan, the plan can pay the nursing home costs.

Medicare Supplemental Insurance

Medicare Supplemental Insurance is private insurance that helps pay the Medicare deductibles and coinsurance.

Long Term Care Insurance

Long Term Care insurance is private insurance that pays for nursing home care.

Medicaid

Medicaid is a State-administered medical program. Medicaid is funded by both federal and state monies.

MEDICAID ELIGIBILITY

Payments are made by the Department of Health and Hospitals to certified nursing homes for the care of Medicaid-eligible Louisiana residents who are elderly, visually impaired, or have a disability.

Who Is Eligible

Recipients of certain forms of public assistance qualify for Medicaid benefits. These categories are Supplemental Security Income (SSI), which is administered by the Social Security Administration; Low Income Families with Children (LIFC) benefits; foster care benefits; and refugee assistance benefits. Persons eligible for Medicaid benefits under one of the above programs are eligible for payments by the state for nursing care. These persons currently have a Medicaid Eligibility Card from the Bureau of Health Services Financing. Other persons should contact the local Medicaid office to file an application.

Eligibility Requirements

A person must be both financially and medically eligible to qualify for nursing home payments. Financial eligibility is based on income and resources. A Medicaid application must be completed to determine financial eligibility. The local Medicaid office should be contacted to inquire about filing an application. The financial evaluation is completed by the local Medicaid office.

To become medically eligible, Medical and social evaluations must be completed. The attending physician completes the Medicaid evaluation giving specific medical information indicating the need for nursing home placement.

How Payments are Determined

Once eligibility has been established, the applicant will receive a medical eligibility card which identifies him as eligible for Medicaid services. The state of Louisiana will pay the nursing home facility the difference between the patient's gross monthly income (less a standard allowance for personal needs, medical/health insurance premiums, and spouse/dependents maintenance needs) and the facility fee. The fee the facility receives is determined by the medically certified level of care. Periodic reviews of medical and financial eligibility are made. The Medicaid office provides the recipient with a contract showing how much the recipient is responsible to pay toward their care and the effective date of the contract. The Department of Health and

Hospitals pays the entire fee if the recipient's income does not exceed the amount allowed for personal needs. In addition, the recipient will receive the full range of Medicaid services.

Medicaid will not pay for the month of admission until the individual has been institutionalized for 30 consecutive days or unless a person was eligible for Medicaid outside the nursing home (excluding the Medically Needy Medicaid Program).

Facility Responsibility

The nursing home is responsible for the reporting of any change in a patient's status to the Medicaid office within 24 hours. Examples of changes in status include patient discharge, transfer, hospitalization, or death. Should the patient's leave days exceed the amount allowed, the Medicaid office should be notified.

Leave days are charged in 24-hour increments. If a patient is absent from the facility for less than 24 hours, a leave day is not charged. Patients are allowed seven hospital leave days per occurrence and 15 home leave days per calendar year. If leave days are exhausted, then the facility has the option of holding the bed or discharging the patient. If the bed is held, then the facility with either absorb the costs or bill the patient, as Medicaid will make no payment.

Medicaid Office Responsibility

The Medicaid office is responsible for taking prompt and appropriate action on any status change reported to them. Examples of changes in status include changes in the patient's medical or financial situation and changes in the amount of payment to the facility.

Recipient Responsibility

The recipient or his or her responsible party must promptly report any changes in income or other changes affecting eligibility to the Medicaid office. If the recipient is unable to manage his or her own affairs, the responsibility can be delegated in full or in part to a family member, a friend, guardian, or anyone designated as the responsible party. This person can act on behalf of the recipient in managing his or her business and personal affairs, paying his or her portion of the facility fee, or handling his or her personal allowance.

How to Identify Persons Eligible for Medicaid

Recipients of Medicaid receive a medical eligibility card. The card identifies to providers (physicians, pharmacists, hospitals, nursing homes, medical appliance companies, clinics, laboratories, etc.) those eligible for Medicaid.

Estate Recovery

When a Medicaid long-term care recipient dies, estate recovery provisions require the Department of Health and Hospitals to take steps to recover the cost of certain Medicaid payments from his or her estate. These costs include the total amount of payments for facility services, hospital care, and prescription drugs the person received at age 55 or older.

Safeguarded Information

Applications for assistance and information contained in case records of clients of the Department of Health and Hospitals and Medicaid are confidential and must be safeguarded. It is unlawful for any person to solicit, disclose, or make use of the information contained in the case record for any purpose not directly connected with the administration of the program.

IF YOU ARE NOT ELIGIBLE FOR MEDICAID

It is advisable for persons who are not eligible for Medicaid assistance and who plan to enter a nursing home on a private-pay basis to contact the nursing home being considered to learn of admission procedures and requirements since these vary from home to home. Policies with regard to physician services, medical tests necessary to enter the home, requirements relating to the designation of guardians or conservators, room rates, and payment mechanisms for the cost of care are of particular importance. Visits to homes that are being considered are strongly advised. Policies relative to cost and billing procedures and to patient care are established by the contract effected between the nursing home and the resident and or responsible person.

SERVICES AND SUPPLIES PROVIDED BY THE NURSING HOME

IMPORTANT: The following is based on policies which are subject to change. The local Medicaid office can also be consulted regarding any questions about nursing home responsibility.

The nursing home is responsible for providing certain services, supplies, or equipment covered under the Medicaid program payment to the nursing home.

WHO PAYS THE OTHER MEDICAL BILLS

If the recipient is covered by Medicare and/or Medicaid, ask the doctor or medical services provider if they “will accept Medicare-Medicaid as assignment.” If they accept the assignment, it is their responsibility to bill Medicare and Medicaid, and the recipient should not be billed. They accept as payment in-full the amount Medicare approves as the “reasonable charge.” Medicare pays 80 percent of the approved amount for those Medicaid eligible, and Medicaid pays the remaining 20 percent.

If the Medical services provider does not accept assignment, his or her office should assist in billing Medicare. Usually full payment will be expected from the patient who can then be reimbursed 80% of the “reasonable charge” allowed by Medicare.

Services and Supplies Included:

- A. Room, board, and therapeutic diets
- B. **Food supplements or food replacement** (including, but not limited to, Sustagen, nutriment, or dextrose when used as a food supplement)
Note: Does not include enteral/parenteral nutrients, accessories and/or supplies.
- C. Professional nursing services
- D. An activities program with daily supervision of such activities
- E. Medically-related social services
- F. **Other services provided by required staff in accordance with the plan of care**

Personal Care Needs

The facility shall provide personal hygiene items and services when needed by residents including:

- A. Hair hygiene supplies, combs, brushes, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razors, shaving cream, toothbrushes, toothpaste, denture

adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, hair and nail hygiene services, bathing, basic personal laundry, incontinence care.

B. Haircuts and beauty work performed by facility employees.

Note: *special haircuts, permanent waves, and other such services provided by a licensed barber or beautician at the request of the resident shall be paid directly by residents from their personal funds or by their legal representatives or sponsors, unless provided as a free service by the facility.*

A facility is not required to provide clothing except in emergency situations. If provided, it shall be of reasonable fit.

Medical Apparatus

The facility shall provide the following medical apparatus:

- A. All types of syringes and needles
- B. I-V set-ups
- C. Tubing and bags of all kinds, except as cited under Pads/diapers and Catheters
- D. Gauze
- E. Bandages
- F. Tape
- G. Thin film dressings (Telfa pads, Tegradem, Duroderm or like products)

Incontinent Care and Supplies

The facility must provide incontinent supplies as needed to meet the needs of residents. The cost shall not be passed on to the resident or resident's legal representative or sponsor as it is included in the reimbursement rate. Neither shall such items be billed to other payment sources when reimbursement is being made by Medicaid through the rate as this constitutes a duplication of billing. If the family or resident elects to purchase supplies other than what is provided by the facility, the facility is not obligated to pay for such supplies.

Catheters

The facility shall provide all supplies needed to perform intermittent catheterization.

Exception: Facilities are not required to provide supplies used for inserting indwelling catheters. These indwelling catheters and catheter trays may be purchased through the Medicaid pharmacy program or through Medicare if the resident is eligible for Medicare part B.

Colostomy Care

Colostomy bags and colostomy equipment may be purchased with prior authorization from the Department of Health.

Laundry (including personal laundry)

Exception: Dry cleaning and/or laundering of hand-washable garments is not a provision of this service.

Oxygen

The Facility shall provide oxygen for use on a temporary or emergency basis. The facility shall also be responsible for arranging for oxygen required on a long-term basis. With prior approval and when the resident's condition requires it based on specific criteria of blood gases at room air the Medicaid program will purchase or rent an Oxygen concentrator.

Drugs

Over-the-counter drugs are part of pharmaceutical services that the nursing facility is responsible for providing when it is specified in the resident's plan of care. If the prescribing physician does not specify a particular brand in the written order, a generic equivalent is acceptable. If the physician specifies a particular brand, the nursing facility would have to incur the cost of providing that drug. If the physician does not specify a particular brand, but the resident insists on receiving a particular brand, the nursing facility is not required to provide the requested drug. However, if the facility honors the resident's request, it may, after giving appropriate notice, make a charge to the resident's funds for the difference between the cost of the requested item and the cost for the generic.

Prescription drugs prescribed by the attending physician shall be filled. Reimbursement shall be made as follows:

- A. The pharmacy shall submit claims to the State Medicaid Program for drugs covered under the Program.
- B. The resident is financially responsible for prescription drugs not covered under the Medicaid Program. A legal representative or sponsor cannot legally be held personally liable for the resident's debts from the resident's funds. The limit of the liability is from the resident's resources. Prior to charging a resident for a medication, the prescribing physician should be notified that it is not covered by the Medicaid Program and asked if an equivalent alternative that is covered can be prescribed. A resident should not be denied a needed medication simply because of inability to pay.

Special Equipment

Facilities shall provide the following equipment:

- A. **Wheelchairs** - Standard wheelchairs shall be provided in adequate numbers to meet the temporary mobility needs of applicants/recipients.

The facility will arrange for the provision of customized wheelchairs through family or community resources or through the Medicaid Durable Equipment (DME) Program, if applicable.

B. Other Equipment

The facility shall also provide an adequate number of the following items:

1. Standard, adjustable walkers
2. Crutches
3. Over-bed tables
4. Bedside commodes
5. Lifts
6. Restraints
7. Sheepskins or similar decubitus prevention and treatment devices
8. Mechanical supports, such as Posey vests
9. Suction machines for general use (the DME Program will purchase,

with prior approval, suction machines and other related equipment for those residents meeting the DME Program need requirements)

10. Glucometers and diabetic supplies
11. Blood pressure cuffs
12. Stethoscopes
13. Other such items that are generally a part of nursing facility treatment

SERVICES ARRANGED BY THE NURSING HOME

The service provider may bill the family for the following services arranged in cooperation with the family by the nursing home and not covered under Medicaid:

Private Rooms

A facility's general accommodations are rooms shared by two or more recipients. Private rooms are not included in the vendor payments.

Non-Emergency Transportation for Medical Appointments

It is the responsibility of the nursing facility to arrange for or provide transportation to all necessary medical appointments. This includes wheelchair bound residents and those residents going to therapies and hemodialysis. Transportation shall be provided to the nearest available qualified provider of routine or specialty care within reasonable proximity to the facility. Residents can be encouraged to utilize medical providers of their choice in the community in which the facility is located when they are in need of transportation services. It is also acceptable if the family or legal representative/sponsor chooses to transport the resident. In cases where residents are bedbound and cannot be transported other than by stretcher and the nursing facility is unable to provide such, an ambulance may be used. The ambulance provider will be reimbursed at the non-emergency transportation rate.

Attendants during Travel

The facility is required, when medically appropriate, to provide an attendant if the resident or the responsible party cannot arrange for an attendant while the resident is travelling. Under no circumstances shall the facility require the resident or responsible party to pay for an attendant. However, if a resident is being admitted to a hospital and transportation is via ambulance, then an attendant is not necessary.

Physical Therapy

The facility shall be responsible for arranging or providing physical therapy recommended by the attending physician.

Dental Services

The nursing facility shall have satisfactory arrangements for assisting residents in obtaining routine and emergency dental care.

Note: While the nursing home is responsible for arranging for many services, such as therapy and dental work, the nursing home is not required to assume financial responsibility for these services. A bill received from the nursing home, pharmacy or other provider of services should be examined carefully before payment is made. Occasionally the family is unintentionally billed for services provided by the nursing home or paid under Medicaid. A bill should

list the item, date of purchase, and its cost. The nursing home administrator or the local Office of Eligibility Determination should be contacted if the family is billed for items covered by the nursing home or by Medicaid.

PAYMENT LIMITATIONS

The nursing home may not solicit or accept funds on behalf of a resident from relatives, friends, or charitable groups for payment in excess of the maximum rate established by the Department of Health.

WHILE IN THE NURSING HOME

Following admission to a nursing home, an **individual plan of care is developed**. The plan includes medical care, social needs, recreational activities, dietary needs, and rehabilitation services. Periodically the plan of care is reviewed by staff of the facility, as well as, staff from the Bureau of Health Services Financing to determine if the resident is receiving adequate care and services to meet his or her needs.

The resident can choose a physician and a pharmacy. Periodic visits by the physician are required. The physician is to certify the continuing need for nursing home care at least every 60 days. If the resident's condition changes and he or she no longer needs the same level of care, he or she may require transfer to another type of care facility, such as a skilled nursing facility, or he or she may be ready for discharge to another living arrangement, such as his or her home, a boarding home, or other residential space.

The family or responsible person is to be notified if the resident's condition improves to the extent that he or she is able to leave the nursing home. The facility's social service worker will assist in arranging for services to help the person into an apartment, family's home, or own home. Examples of such services include meal delivery and homemaker services.

MORE SERVICES AVAILABLE THROUGH LOUISIANA'S MEDICAID PROGRAM

- ▶ **Ambulance transportation for emergencies**
- ▶ Inpatient hospital services
- ▶ **Surgery** - Surgical procedures must be determined as being medically necessary by the treating physician.
- ▶ **Physician Services** - These services include office visits, home visits, inpatient hospital visits, and visits to a nursing home. The recipient has free choice of a physician. The only requirement is that the physician must be licensed to practice in Louisiana.
- ▶ **Family Planning Services and Supplies**
- ▶ **Chemotherapy and Radiation Therapy for Malignant Disease**
- ▶ **Hospital Outpatient Services** - Payment is made for diagnostic and therapeutic services for those eligible for Medicaid (Title XIX). When a recipient is enrolled in Medicare (Title XVIII-B), the Department of Health and Hospitals pays toward the deductible for the diagnostic and therapeutic services. After the deductible is met, the Department of Health pays the 20 percent coinsurance for therapeutic and diagnostic services.
- ▶ **Certain Prescribed Drugs**
- ▶ **X-Ray and Laboratory Services Outside The Hospital** - For payment, the service must be deemed medically necessary by the treating physician.

- ▶ **Wheelchairs, Walkers, and Other Medical Appliances and Equipment** - The Department of Health and Hospitals may approve the purchase of customized wheelchairs and walkers for a nursing home resident who cannot use a regular wheelchair or walker.
- ▶ **One Pair of Permanent Cataract Eye Glasses or Cataract Lenses Following Cataract Surgery Only**
- ▶ **Rehabilitation Center Services on a Limited Basis** - For payment, the services must be indicated by the treating physician as being medically necessary and authorized by the Department of Health.
- ▶ **Inpatient Mental Hospital Services for Eligible Persons Under Age 21 in a Mental Hospital Participating in the Medicaid Program**
- ▶ **Inpatient Mental and Tuberculosis Hospital Services for Eligible Persons Aged 65 and Older**
- ▶ **Home Health Care Services** - The Louisiana Department of Health makes payment to home health agencies for skilled nursing care and for home health aide service based on a treatment plan ordered and approved by a licensed physician.
- ▶ **Treatment in Mental Health and Alcoholism Outpatient Clinics**
- ▶ **Adult Dentures** - The Louisiana Department of Health makes payment to dental providers for complete dentures for the adult recipient. A recipient is eligible for new dentures once every seven years if they are needed.
- ▶ **Ventilator Equipment** - The Louisiana Medicaid Program will cover ventilator equipment required by dually eligible Medicare and Medicaid recipients in long-term Care facilities as this is not a covered service under Medicare. Medicaid cannot provide this equipment to individuals in a skilled nursing facility until after twenty days have elapsed from the nursing home admit date.
- ▶ **Hemodialysis in a Hospital or Center**
- ▶ **Oxygen Concentrator** - The facility may request authorization for payment from the Durable Medical Equipment Program.
- ▶ The medical criteria used to determine need follows the same requirements established by Medicare.
- ▶ The medical criteria used is available in written form from the Health Standards Section upon request.

IMPORTANT: The above-mentioned items are subject to limitations and policy changes dependent on the availability of funds. Notices regarding limitations and policy changes are sent to recipients along with their medical eligibility cards.

CHOICES IN LONG-TERM CARE

The Louisiana Department of Health and Hospitals (DHH), in its continued commitment to foster informed choice and to provide choices in long-term care, offers home- and community-based services (HCBSs) to eligible individuals. Medicaid Home- and Community-Based Services are administered by the Louisiana Department of Health (LDH), Office of Aging and Adult Services (OAAS).

Home- and community-based services offer choices in long-term care by providing supplemental supports and services to eligible older persons and/or adults with disabilities in a home- and community-based setting. HCBSs allow people the choice of living in the

community near family, friends, and the things they enjoy while fostering independence and enhancing quality of care. These services supplement natural supports, such as family, friends, and community resources, by providing assistance with the everyday activities of daily living, such as bathing, dressing, grooming, eating, and toileting, and other services to eligible persons who would otherwise require a nursing home level of care.

Individuals interested in participating in these programs must meet age or disability, nursing facility level of care, and institutional indicator criteria as well as Medicaid financial eligibility requirements. **If you would like more information to see if HCBSs are right for you or would like to request HCBSs, please call the *Louisiana Options in Long-Term Care Help Line* at (877) 456-1146 or visit ldh.la.gov/oaas.**

The OAAS statewide toll-free help line is (866) 758-5635.

NURSING HOME COMPLAINT PROCEDURE

Purpose and Scope

Under the Provisions of Louisiana R.S. 40:2009.2 through 2009.20 and State Operations Manual as published by the Centers for Medicare and Medicaid Services (CMS), the following procedures are established for receiving, evaluating, investigating, and correcting grievances pertaining to resident care in licensed and certified nursing facilities. The following procedures also provide mandatory reporting of abuse and neglect in nursing facilities.

Applicability

Any person having knowledge of the alleged abuse or neglect of a resident or knowledge of a resident being denied care and treatment may submit a complaint by personal visit, written statement, or telephone.

Any person may submit a complaint if he or she has knowledge that a state law, standard, rule, regulation, correction order, or certification rule issued by the Department of Health and Hospitals or CMS has been violated.

Duty to Make Complaints

Any of the following persons who have actual knowledge of a facility's abuse or neglect of a resident shall submit a complaint within 24 hours:

- A. Physicians or other allied health professionals
- B. Social Services personnel
- C. Facility administration
- D. Psychological or psychiatric treatment personnel
- E. Registered nurses
- F. Licensed practical nurses
- G. Nurse's aides

Penalties for Failure to Make Complaints

Any person who knowingly and willfully fails to report an abuse or neglect situation shall be fined not more than \$500.00, imprisoned not more than six months, or both.

The same sanctions shall apply to an individual who knowingly and willingly files a false report.

Where to Submit Complaints

Complaints must be filed in one of the following ways:

- A. It may be submitted in writing to the DHH Health Standards Section at P.O. Box 3767, Baton Rouge, LA 70821-3767.
- B. It may be relayed by calling the Health Standards Section at (888) 810-1819.
- C. It may be submitted to any local law enforcement agency.

DHH's Referral of Complaints for Investigation

Complaints involving residents of all ages in nursing facilities shall be referred to the Health Standards Section of DHH.

If it has been determined that complaints involving alleged violations of any criminal law pertaining to a nursing facility are valid, the investigating office of DHH shall furnish copies of the complaints for further investigation to the Medicaid Fraud Control Unit of the Louisiana Department of Justice and/or the local office of the District Attorney.

Investigation Procedure

- A. If the complaint involves resident abuse and/or neglect, the investigation shall include the nature, extent, and cause of the abuse and neglect; the identity of the person(s) responsible for the abuse and neglect, if known; and an interview with the resident, if possible. A copy of the investigation report shall be sent to the Medicaid Fraud Control Unit as appropriate.
- B. If grounds for an investigation do exist, the Department shall initiate an investigation of such complaint and make a report to the complainant on its findings as per established protocol.
- C. The substance of the complaint will be given to the nursing home no earlier than at the start of the investigation of the complaint.
- D. In order to protect the confidentiality of complainants, the complainant or resident will not be identified to the nursing home unless he or she consents to the disclosure. If disclosure becomes essential to the investigation the complainant shall be given the opportunity to withdraw the complaint.
- E. If the complaint is found to be valid, the Louisiana Department of Health and Hospitals will require the facility to submit a plan of corrective action. If a situation which presents a threat to the health and safety of the nursing home resident is found to exist, the nursing home will be required to take corrective action within five days. In cases of abuse and/or neglect, referral is made to the Medicaid Fraud Control unit of the Office of the Louisiana Attorney General.
- F. Where violations continue to exist after the corrective date, the Department of Health and Hospitals may take appropriate action against the nursing home to include decertification or revocation of license.

Fair Hearing

Complainants who are dissatisfied with any action taken by LDH in response to their complaints may request an informal reconsideration. A request for reconsideration shall be submitted, in writing, to the Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821-0629.

The Right to a Fair Hearing Regarding Medicaid

If an applicant or recipient thinks a decision made by Medicaid is unfair, incorrect or is made too late, they may ask for a fair hearing by calling or writing to the local Medicaid office and/or writing directly to the Louisiana Department of Health and Hospitals, Bureau of Appeals, P.O. Box 4183, Baton Rouge, La. 70821-4183.

- A. Anyone who disagrees with any decision about the right to receive Medicaid may request a fair hearing.
- B. A fair hearing is an informal procedure conducted by a hearing officer not involved in the original decision. During the hearing, the complainant is given the opportunity to explain why he or she thinks the agency action was unfair. The local Medicaid office analyst will explain why the action was taken. The secretary of the Department of Health and Hospitals will make the final decision in the case based on the evidence presented at hearing.

Retaliation by Nursing Facility

Facilities are prohibited from taking retaliatory action against complainants. Persons aware of retaliatory action or threats in this regard should contact DHH, Health Standards Section at (888) 810-1819 or (225) 342-0082.

Notification of the Complaint Procedure

The complaint procedure shall be posted in each nursing facility in a conspicuous place where residents gather. This book, *Nursing Home Care in Louisiana*, was developed for the public by DHH. This booklet is available online at www.dhh.la.gov/BlueBook. All licensed nursing facilities shall distribute this publication to all residents and/or their legal representatives or sponsors and to all new residents and/or their legal representatives or sponsors on the date of their admission.

Alternative Resolution Process

The Governor's Office of Elderly Affairs operates the Long-Term Care Ombudsman Program, the purpose of which is to investigate and resolve complaints of residents in nursing homes. The program operates through local ombudsmen who routinely visit residents in the nursing home. The Ombudsmen may be contacted through the local/district area agency on aging or by contacting the state ombudsman by telephone at (225) 342-7100; by fax at (225) 342-7133; or by writing the Governor's Office of Elderly Affairs, P.O. Box 80374, Baton Rouge, Louisiana 70898.

Louisiana Department of Health

628 North 4th Street, Baton Rouge, Louisiana 70802
(225) 342-9500