

3333 West Pensacola Street
Suite 140
Tallahassee, FL 32303
www.faast.org



Voice (850) 487-3278
TDD (877) 506-2723
Toll-Free (888) 788-9216
Fax (850) 487-2805

Resource Guide for Individuals with Disabilities in Nursing Homes and Other Health Care Facilities

This resource guide created by FAAST, in partnership with the Florida Brain and Spinal Cord Injury Program, provides general resource and self-help information for family members, caregivers, guardians, advocates/representatives, and older individuals with disabilities and is not a substitute for legal advice

To find a subject that may be of most help to you, refer to the Table of Contents that provides topics/subject matter and page number references

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Resource Guide for Individuals with Disabilities in Nursing Homes and Other Health Care Facilities

This resource guide is designed to provide general information and is not a substitute for legal advice

Residents' Rights

When individuals enter long-term care facilities, they may keep their rights as citizens, and have “Residents’ Rights” granted by federal and state laws. Long-term care facilities must post a copy of these rights in an area easily accessible and visible to the residents. Additionally, they should provide a copy to each resident upon admission to the facility.

Residents’ rights include, but are not limited to:

- The right to make informed personal decisions;
- The right to choose one’s own physician; and
- The right to be treated with the fullest measure of respect and dignity.

For a complete listing of residents’ rights, go to:

<http://ombudsman.myflorida.com/rights.php>

Florida’s Department of Elder Affairs / Long Term Care Ombudsman Program

Florida's Long-Term Care Ombudsman Program (LTCOP) is a volunteer-based organization seeking to improve the quality of life for frail, vulnerable elders who live in long-term care settings including: nursing homes, assisted living facilities and adult family care homes. For more information on Ombudsman services, residents’ rights, to find an ombudsman council in your area, to become an ombudsman, and to review frequently asked questions go to: <http://ombudsman.myflorida.com>.

The LTCOP is administered by the Department of Elder Affairs. LTCOP takes complaints from or on behalf of residents of long term care facilities (such as nursing homes and assisted living facilities). LTCOP accepts complaints about a facility, its employees, providers of long-term care services, public or private agencies, guardians, representative payees, or other persons who are in a position to threaten or interfere with the rights, health, safety or welfare of the resident. Complaints can range from

emotional and/or physical abuse, inadequate services, to complete disregard of a resident's individual rights. To file a complaint you may wish to contact:

The Ombudsman Program
4040 Esplanade Way
Tallahassee, FL 32399-7000
1.888.831.0404
1.850.414.2323

For more information, you may choose to review Florida Statutes, Chapter 400.0060 - 400.0091 (Long-Term Care Facilities: Ombudsman Program) found at:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0400/titl0400.htm&StatuteYear=2004&Title=%2D%3E2004%2D%3EChapter%20400

To locate a Long-Term Care Ombudsman in your area, go to:

<http://ombudsman.myflorida.com/find/FindanOmbudsman.pdf>

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) accepts complaints regarding health care facilities, such as: hospitals, nursing homes, assisted living facilities, home health agencies or other types of health care facilities.

Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308
1-888-419-3456
www.fdhc.state.fl.us

DCF Adult Protective Services Responsible for Investigating Abuse and Neglect / Abuse Hotline

In addition to the Long Term Care Ombudsman Program, the Department of Children and Families' (DCF) Adult Protective Services Office serves as the lead agency for handling reports and investigations of abuse. You may choose to review Adult Protective Services criteria under Florida Statutes, Chapter 415.103 and 415.1034 outlining procedures for reporting and investigating instances of suspected abuse, neglect, or exploitation of disabled adults and the elderly. For more information go to: http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0415/titl0415.htm&StatuteYear=2004&Title=%2D%3E2004%2D%3EChapter%20415.

The Adult Protective Services Statewide Abuse Hotline number is 1-800-96ABUSE (1-800-962-2873); TDD 1-800-453-5145; and FAX FAX 1-800-914-0004.

For more information, go to: <http://www.dcf.state.fl.us/as/docs/guide4professionals.pdf>.

To report abuse, neglect or exploitation contact the Florida Abuse Hotline. Be prepared to provide:

1. Victim's name, address or location, approximate age, race and sex;
2. Physical, mental or behavioral indications that the person is infirm or disabled;
3. Signs or indications of harm or injury, including a physical description if possible;
4. Relationship of the alleged possible responsible person to the victim. If the relationship is unknown, a report will still be taken if other reporting criteria are met.

What is Abuse and Neglect?

Abuse is defined as "any willful act or threatened act by a caregiver that causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions."

Neglect is defined as "the failure or omission on the part of the caregiver to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death."

For more information, you may choose to review these definitions found at Florida Statutes, 415.102(1) and 415.102(15) at:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0415/SEC102.HTM&Title=->2004->Ch0415->Section%20102#0415.102

Nursing Homes and Related Health Care Facilities

Nursing homes are required to be licensed. For information on those requirements you may choose to go to Florida Statutes, Chapter 400 at:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0400/titl0400.htm&StatuteYear=2004&Title=%2D%3E2004%2D%3EChapter%20400.

400.011 Purpose.

The purpose is to provide for the development, establishment, and enforcement of basic standards for:

- (1) The health, care, and treatment of persons in nursing homes and related health care facilities; and
- (2) The maintenance and operation of such institutions that will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.

Nursing Home Residents' Rights and Responsibilities

You may choose to review these rights, which can be found at:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0400/SEC022.HTM&Title=->2004->Ch0400->Section%20022#0400.022

400.022 Residents' rights.--

“(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The

resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ombudsman council; and the resident's individual physician.
2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person

responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.
4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in s. [400.162](#)(6).
5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.
 - (i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.
 - (j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of s. [119.07\(1\)](#).

(n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations

which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.”

Resident Bill of Rights

To review the resident bill of rights, you may choose to go to:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0400/SEC428.HTM&Title=-%3e2004-%3eCh0400-%3eSection%20428#0400.428

“(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a

minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. [400.427](#).

(g) Share a room with his or her spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

(l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.”

Resident Grievance Procedures

For more information, you may choose to review Florida Statutes, Chapter 400.1183, found at:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0400/SEC1183.HTM&Title=->2004->Ch0400->Section%201183#0400.1183.

- 1) “Every nursing home must have a grievance procedure available to its residents and their families. The grievance procedure must include:
 - a) An explanation of how to pursue redress of a grievance.
 - b) The names, job titles, and telephone numbers of the employees responsible for implementing the facility’s grievance procedure. The list must include the address and the toll-free telephone numbers of the ombudsman and the [A]gency [for Health Care Administration].
 - c) A simple description of the process through which a resident may, at any time, contact the toll-free telephone hotline for the ombudsman or the agency to report the unresolved grievance.
 - d) A procedure for providing assistance to residents who cannot prepare a written grievance without help.
- 2) Each facility shall maintain records of all grievances and shall report annually to the [A]gency [for Health Care Administration] the total number of grievances handled, a categorization of the cases underlying the grievances, and the final disposition of the grievances.
- 3) Each facility must respond to the grievance within a reasonable time after its submission.
- 4) The [A]gency [for Health Care Administration] may investigate any grievance at any time.
- 5) The [A]gency [for Health Care Administration] may impose an administrative fine...”

Assisted Living Facilities

A resident in an assisted living facility has the right to “At least 45 days’ notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days’ notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.” (F.S. §400.428(k))

For more information on these rights, you may choose to go to:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0400/SEC428.HTM&Title=->2004->Ch0400->Section%20428#0400.428

Comprehensive Assessment Review and Evaluation Services (CARES)

CARES is a federally mandated nursing home pre-admission assessment program. Persons who are applying for Medicaid nursing home care are assessed by either a CARES nurse or social worker, with medical review by a physician prior to approval. Objectives of the CARES program include the following:

Prevention of unnecessary or premature admission to a nursing home; More effective coordination of an individual's medical, social and psychological needs and resulting level of care; Referral and assistance in obtaining in-home and community services to avoid nursing home care; and Education of the public, particularly health care providers, about less costly alternatives to long term care.

For more detailed information on CARES, you may choose to go to:

<http://elderaffairs.state.fl.us/english/cares/CARESPowerPointPresentation.pdf>.

Olmstead vs. L.C.

“On June 22, 1999, the United States Supreme Court held in *Olmstead v. L.C.* that the unnecessary segregation of individuals with disabilities in institutions may constitute discrimination based on disability. The court ruled that the Americans with Disabilities Act may require states to provide community-based services rather than institutional placements for individuals with disabilities.”

For more information on the background and additional information on the Olmstead Decision, you may choose to go to:

<http://www.bazelon.org/issues/disabilityrights/resources/olmstead/index.htm>.

- [The Supreme Court's Opinion](#)

Centers for Medicare & Medicaid Services

The Centers for Medicare & Medicaid Services (CMS) are a component of the U.S. Department of Health and Human Services (HHS) designed to oversee states' Medicare and Medicaid programs. CMS certifies nursing homes to accept Medicare/Medicaid beneficiaries. Congress has established the minimum standards for nursing homes, and in Florida the Long Term Care Services within the Agency for Health Care Administration oversees the licensing of nursing homes. In Florida the Agency for Health Care Administration is required to inspect nursing homes accepting individuals on Medicare or Medicaid. CMS has the authority to fine or revoke certification if a nursing home is performing poorly, found at <http://www.cms.hhs.gov>.

This resource guide is not a substitute for legal advice

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Authored by Mr. Steven L. Howells, FAAST, Inc. Executive Director