

Assisted Living Community Resident Rights



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<https://dhs.sd.gov/ltss/ombudsman.aspx>

Table of Contents

| | |
|---|---------|
| Application of resident's rights. | Page 1 |
| Facility to inform residents of their rights | Page 1 |
| Providing information on available services | Page 3 |
| Resident condition changes | Page 4 |
| Change in room assignment or rights | Page 5 |
| Right to manage financial affairs | Page 5 |
| Choice in care planning | Page 5 |
| Privacy and confidentiality | Page 6 |
| Quality of life | Page 7 |
| Grievances | Page 8 |
| Availability of survey results | Page 8 |
| Right to refuse to perform services | Page 8 |
| Self-administration of medication | Page 9 |
| Admission, transfer & discharge | Page 9 |
| Administrative Hearings | Page 10 |
| Division of Long Term Services and Supports Offices | Page 11 |

Introduction

The resident's rights outlined in this booklet have been taken from the South Dakota Department of Health's Administrative Rules Chapter 44:70:09 to help you and your family members better understand what your rights are during your time in an assisted living community.

Additionally, if the assisted living community is a Medicaid enrolled provider they must comply with the Home and Community Based Settings Final Rule.

Application of Resident's Rights

Assisted living communities must establish policies consistent with this chapter to protect and promote the rights of each individual living in the assisted living.

Facility to Inform Residents of Rights

Administrative rules require assisted living communities (referred to as community or ALC) to inform you (residents) of your rights both orally and in writing. The community must also explain the rules regarding your conduct and responsibilities while living there. Your rights and the rules of the community must be given to you prior to or at the time you are admitted and additionally during your stay if there are any changes. Proof that the information was given to you and any changes must be acknowledged in writing. These rights must be honored.



The information must contain the following:

1. You have all the rights given to you as a resident of the assisted living community and as a citizen of the US.
2. You have the right to be free of interference, coercion, discrimination and reprisal from the ALC when exercising your rights.
3. You have the right to have a person appointed to act on your behalf. The ALC must have the appointed person's address and phone number.
4. You have the right to your records. You may purchase photocopies of your records. The cost cannot exceed community standards for photocopying. The ALC must provide the photocopies within two working days of the request.
5. You have the right to be fully informed of your total health status, including functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health, psychosocial status, and sensory and physical impairments.
6. You have the right to refuse treatment and refuse to participate in experimental research. Your right to refuse treatment does not absolve the ALC from responsibility to provide for necessary medical services and treatment. If you refuse treatment you shall be informed of the potential results of that refusal and any alternatives that may be available.
7. You have the right to formulate a durable power of attorney for health care as provided in SDCL chapter 59-7 and a living will declaration as provided in SDCL chapter 34-12D.
8. You have the right to receive visitors at any time. Visiting hours and policies must permit and encourage visits from your friends and relatives. Visitors shall not cause a disruption to the care and services residents receive or infringe on other residents' rights or place an undue burden on the facility.

Providing Information on Available Services

The assisted living community must provide you with the following information in writing:

1. A list of services available in the community and the charges for such services. Specify which items and services are included in the base rate, for which you may not be charged, those other items and services that the community offers and for which you may be charged, and the amount of any such charges.
2. A description of how you can protect personal funds.
3. A list of names, addresses and telephone numbers of client advocates. Client advocates are agencies responsible for the protection and advocacy of patients and residents. The Long Term Care Ombudsman is one client advocate.
4. A description of how to file a complaint with the Department of Health concerning abuse, neglect, exploitation and/or the misappropriation of your property.
5. A description of how you can contact your physician, physician assistant, or nurse practitioner, including the name and specialty of the physician or provider.
6. A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the SD Department of Social Services and of the US Social Security Administration.
7. A description of the bed-hold policy that indicates the length of time the bed will be held for you, any policies regarding the held bed, and readmission rights.
8. A description explaining yours and your family member's responsibilities regarding self-administered medication.

A signed and dated admissions agreement between you or your legal representative and the assisted living community shall include subdivisions (1) through (8), inclusive, of this section.

You or your legal representative and the ALC shall complete the admission agreement before or at the time of admission and before you have made a commitment for payment for proposed or actual care.

The agreement may not include unclear or misleading information and may not be in conflict with this chapter. The agreement must be printed so you can read it. Any change in the information shall be given to you or your legal representative as a signed and dated addendum to the original agreement.



Resident Condition Changes

The assisted living community must inform you, consult with your medical provider and, if known, notify your legal representative or interested family member when any of the following occurs:

1. You were injured in an accident and may potentially require medical intervention by a physician, physician's assistant, or nurse practitioner.
2. Your physical, mental or psychosocial status changes significantly.
3. Your treatment needs altered significantly.
4. A decision to transfer or discharge you from the community has been made.

Change in Room Assignment or Rights

The ALC must promptly notify you and, if known, your legal representative or interested family member when there has been a change in your room or roommate assignment or your rights.

Right to Manage Financial Affairs

You have the right to manage your personal financial affairs. The ALC can not require you to deposit your personal funds with the ALC. If you choose to deposit funds within the ALC and give written authorization, the ALC must hold the funds in accordance with SDCL 34-12-15.1 to 34-12-15.10, inclusive.

Choice in Care Planning

You may choose a personal attending physician, physician assistant, or nurse practitioner. You have the right to be fully informed in advance about care and treatment and of any changes that may affect your well-being. You have the right to participate in planning care and treatment, or be notified of changes in care or treatment.

Cross-References:

✓Right to choose own physician unimpaired by public health programs – Misdemeanor – SDCL 34-1-20.

✓Rights of authorized person as incapacitated person – SDCL 34-12C-6.

✓Liability of health care provider – Liability of authorized decision maker – SDCL 34-12C-7.

Privacy & Confidentiality

You have the right to privacy and confidentiality. The ALC is not required to provide a private room for each individual residing in the community. They shall permit you to:

1. Send and receive unopened mail and to have access to stationery, postage, and writing implements at your expense.
2. Access and use a telephone without being overheard.
3. Visit a spouse or significant other or, if both are residing in the same building, within the capacity of the community, upon the consent of both individuals.
4. Close your door and require everyone to knock before entering, except in an emergency.
5. Have only authorized staff present during treatment or activities of personal hygiene.
6. Retire and rise when you wish, as long as these times do not disturb other individuals residing in the community.
7. Meet with people in a private setting within the community.
8. Participate in social, religious and local community activities (i.e. in the town you live in) that do not interfere with the rights of other residents.
9. Approve or refuse the release of your personal and care records to anyone outside the facility, except when you are transferred or when the release of your records are required by law. With your permission, the state ombudsman or a representative of the ombudsman are allowed access to your medical records.

Quality of Life

The ALC must provide care and an environment that contributes to your quality of life including:

1. A safe, clean, comfortable and homey environment
2. Maintenance or enhancement of your ability to preserve individuality, exercise self-determination and control every day physical needs
3. Freedom from physical or chemical restraints used for purposes of discipline or convenience
4. Freedom from theft of personal property; verbal, sexual, physical or mental abuse; and involuntary seclusion, neglect or exploitation imposed by anyone
5. The right to use your personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights, health and safety of other community members or interfere with health or fire safety codes.
6. Support and coordination to assure pain is recognized and addressed appropriately.



Grievances

You or your representative may voice grievances without discrimination or reprisal. The grievance may be provided verbally or in writing and may relate to treatment furnished, treatment not furnished, the behavior of other individuals living in the ALC or infringement of your rights.

The ALC must adopt a grievance process and make the process known to you and your representative. The grievance process must include the ALC's efforts to resolve the grievance, documentation of the grievance, names of the people involved, disposition of the matter and the date of disposition.

Availability of Survey Results

Department of Health survey results, along with any corresponding Plan of Correction shall be readily available at the ALC and be provided to individuals upon request.

Right to Refuse to Perform Services

You may refuse to perform services, unless you agreed to otherwise in your plan of care. You may perform services for the facility when the following conditions are met:

1. The plan of care includes documentation of the need or desire for work.
2. The nature of the services performed is specified, including whether the services are voluntary or paid.
3. Compensation for paid services is at or above prevailing rates.
4. You agree to the work arrangement.

Self-Administration of Medication

In an assisted living center, you may self-administer medication if the registered nurse (if applicable) and physician, physician assistant, or nurse practitioner have determined the practice to be safe. The determination shall state whether you or the nursing staff is responsible for storage of the medication and documentation of its administration in accordance with the provisions of chapter 44:70:07.

Admission, Transfer & Discharge Policies

The ALC must establish and maintain policies and practices for admission, discharge and transfer of residents which prohibit discrimination based upon payment source and which are made known to residents at or before the time of admission. The policies and practices must include:

1. You may remain in the facility and not be transferred or discharged unless: your needs and welfare cannot be met by the facility, you no longer need the services, you endanger the safety or health of others, you have failed to pay for allowable billed services as agreed to, or the facility ceases to operate.
2. The assisted living community must notify you and a family member or client advocate in writing at least 30 days before the transfer or discharge, unless a change in your health requires immediate transfer or discharge or you have not resided in the facility for 30 days. The notice must specify the reason for and effective date of the transfer or discharge and your new location.
3. Conditions under which you may request or refuse transfer within the facility.
4. A description of how you may appeal a decision by the facility to transfer or discharge you.

In South Dakota, a resident or legal representative may appeal a facility's decision to transfer the resident by contacting:

Office of Administrative Hearings
700 Governors Drive
Pierre, SD 57501
(605) 773-6851

<http://dss.sd.gov/adminhearings/index.asp>

A resident or legal representative may also receive assistance from the Ombudsman Program by contacting:

Division of Long Term Services and Supports
Long Term Care Ombudsman Program
3800 E. Hwy 34, c/o 500 E. Capitol Ave.
Pierre, SD 57501

(605) 773-3656 or 1-866-854-5465

<http://dhs.sd.gov/ltss/ombudsman.aspx>



Long Term Care Ombudsman Program
Local Long Term Care Ombudsman Staff:

Amber Longe 605-487-7213

Counties: Aurora, Beadle, Bennett, Buffalo, Brule, Charles Mix, Davison, Douglas, Gregory, Hand, Hanson, Hughes, Hutchinson, Jerauld, Jones, Lyman, Mellette, Sanborn, Todd, Tripp

Brad Mathison 605-367-4777 (9, then 5)

Counties: Lincoln, Minnehaha

Christian Ruml 605-882-5010 (2)

Counties: Brookings, Coddington, Grand, Hamlin, Kingsbury, Lake, Moody, Roberts

Dan Frieden 605-745-5014 (2)

Counties: Butte, Custer, Fall River, Haakon, Harding, Jackson, Lawrence, Meade, Oglala Lakota, Pennington, Perkins, Ziebach

Maria Poppe 605-668-3030 (209)

Counties: Bon Homme, Charles Mix, Clay, Lincoln, Yankton, McCook, Miner, Turner, Union

Nikala Fettig 605-626-3160 (213)

Counties: Brown, Campbell, Clark, Corson, Day, Dewey, Edmunds, Faulk, Hyde, Marshall, McPherson, Potter, Spink, Stanley, Sully, Walworth

State Long Term Care Ombudsman

Donna Fischer 866-854-5465



SOUTH DAKOTA STATE LONG-TERM CARE OMBUDSMAN PROGRAM

Your Life. Your Rights. Your Voice.

Contact an Ombudsman
1-866-854-5465
1-833-663-9673



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