

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

CONSUMER FACT SHEET: IMMEDIATE ACCESS TO RESIDENTS

Informed and empowered families and ombudsman can become powerful voices in supporting a nursing home resident's quality of care and quality of life. Given the weak enforcement of the nursing home standards of care, it is vital for all members of a resident's support team to be knowledgeable about care standards, resident rights, and how these standards and rights can be realized.

Following are several standards and guidelines that we have identified as important for families ombudsman. The descriptions were taken directly from the federal regulations (as indicated by text in italics) and guidelines. For additional information, please see our **Family & Ombudsman Resource Center**, available at <https://nursinghome411.org/families-ombudsmen/>.

THE LAW

I. Representatives, Physicians, and Advocates [42 C.F.R. § 483.10(f)(4)(i), F-562].

The facility must provide immediate access to any resident by:

- *Any representative of the Secretary [Centers for Medicare & Medicaid Services (CMS)],*
- *Any representative of the State,*
- *Any representative of the Office of the State long term care ombudsman,*
- *The resident's individual physician,*
- *Any representative of the protection and advocacy systems, as designated by the state...,*
- *Any representative of the agency responsible for the protection and advocacy system for individuals with mental disorder..., and*
- *The resident representative.*

Additional Guidance

State nursing home surveyors (inspectors) are considered "representatives of the Secretary and/or the State." Thus...

- Residents and their families and representatives have a right to speak with surveyors;
- Nursing home cannot stop or inhibit surveyors from speaking to residents, their representatives, or family members; and
- Surveyors are now required to speak with residents and families when a facility is surveyed.

II. Family Members and Other Visitors [42 C.F.R. § 483.10(f)(4), F-563].

The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.

- *The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;*
- *The facility must provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;*
- *The facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and*
- *The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation.*

Additional Guidance

Immediate Family. Every resident has the right to define his or her own family. If the resident is unable to “express or communicate” who they consider to be a family member, the nursing home should have a discussion about the resident’s family with the resident’s representative. Nursing homes cannot limit an “immediate family” member’s access to the resident, unless the restriction was imposed by the resident.

Non-Relative Visitors. The nursing home must provide 24-hour access to non-relative visitors, subject to certain “reasonable clinical and safety restrictions.” According to CMS’s Interpretative Guidance, restrictions may be reasonable under the following conditions:

- When there is a need to prevent the spread of infections of disease;
- When locking and securing the nursing home at night (so long as a system is in place to allow resident-approved visitors to enter);
- When a visitor is suspected of abusing, exploiting, or coercing a resident;
- When a visitor has been found to have committed criminal acts; and
- When a visitor is disruptive or inebriated.