



Nursing
Home
Ombudsman
Agency
of the Bluegrass, Inc.

A GUIDE TO YOUR RIGHTS

Rights for Kentucky Long-Term Care Residents

From Admission to Care

What you need to know about rights

Advancing the
rights of all
residents in the
17 county
Bluegrass area.

Anderson
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Nursing Home Ombudsman Agency (NHOA)
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877-787-0077 (Toll Free)
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www.ombuddy.org



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Bluegrass Area Agency on Aging & Independent Living and JustFundKY.

Dear Friends,

The Nursing Home Ombudsman Agency (NHOA) prepared this guide to help you and your loved ones become aware of your specific legal rights. This booklet is a summary of your rights as a resident of a facility and as a citizen of the Commonwealth of Kentucky and the United States of America. The information was gathered from both state and federal laws/regulations/educational materials, the National Consumer Voice for Quality Long-term Care www.theconsumervoice.org and National Ombudsman Resource Center libraries, and the resource collection at NHOA www.ombuddy.org

Residents' Rights place a strong emphasis on individual dignity and self-determination. It is easier to exercise your rights for a better long-term care experience if you are knowledgeable and empowered.

In long-term care, there are many factors that affect your own sense of empowerment. The experience of being sick and living with extreme illness can dampen your sense of self and your capabilities. Sudden changes in health, independence, and living arrangements may cause a sense of powerlessness. New residents (both those planning to stay short-term and those staying long-term) find themselves thrust into a new environment with new rules and social codes. It is not uncommon to have questions about what you are allowed to do and what your rights are. We are here to provide you needed information, support, and encouragement as you exercise your rights.

It is important to know your rights because they are the same rights that your fellow residents have. It is our hope that every resident will feel comfortable to be themselves, freely participate in a community of people, and deal with the problems of everyday life. It is equally important that residents respect each other's differences.

Ombudsmen also understand that you don't want to upset your caregivers, and sometimes you may not have the energy to figure out how to get help. Your ombudsman is here to provide you with information and help you resolve any concerns you may have. Your facility ombudsman will regularly visit you. It is our hope that you will enjoy these visits and feel completely free to ask questions, discuss what is on your mind, or let us help you with any complaints or concerns you may have. We are on YOUR side!

Please read this booklet carefully and keep it for future reference. Your facility ombudsman gave you this booklet to help you understand and exercise your rights. If you have any questions about your rights just ask your ombudsman to explain them to you.

Sincerely,

Sherry Culp, CSW
Executive Director

What is the Nursing Home Ombudsman Agency?

The mission of the Nursing Home Ombudsman Agency of the Bluegrass, Inc. (NHOA) is to improve the quality of care for all residents living in long-term care facilities regardless of age, race, color, religion, gender, sexual orientation, gender identity, national origin, and disability.

NHOA's award-winning Ombudsman Program employs ombudsmen to advocate for residents by developing relationships with residents and families. Residents know they have an advocate on their side at all times.

Who do I contact if I have a problem?

If possible, it is a good idea to write down concerns including a date, time, name, and the problem, and speak with the nursing home staff. You can take your concern to the staff supervisors as well. Many concerns impact other residents, so it may be a good idea to work with the Resident Council or Family Council to help with the problem.

What does a Nursing Home Ombudsman do?

- Protects the rights of all residents
- Identifies, investigates, and works to solve problems
- Provides regular friendly visits to all residents
- Provides services to all residents
- Provides information and assistance to the community
- Monitors government actions affecting residents
- Educates facilities and providers

What happens if my problems are not resolved by the facility staff?

Your nursing home ombudsman is an advocate for you and has the power, based on federal law, to intervene on your behalf. Concerns are treated confidentially, and Ombudsmen will *not* act without your consent.

Your ombudsman will investigate to verify the concern, identify the parties involved, and share with you their findings. Next, your ombudsman will explain options for resolving the concern and help identify solutions. After a solution has been discussed with the facility, your ombudsman follows up to ensure agreements remain in effect and that no additional problems arise.

If you have questions or concerns about your ombudsman please contact Sherry Culp, the Executive Director of the Nursing Home Ombudsman Agency of the Bluegrass, Inc. at 1-877-787-0077.

Who will be taking care of me?

- Certified nursing assistants (CNA) provide most of your day-to-day needs.
- Registered Nurses (RN) and/or Licensed Practical Nurses (LPN) manage your care and supervise the CNAs. The RN or LPN usually distributes your medications.
- Director of nursing (DON) is in charge of all the nursing services in the facility.
- Social services assist in maintaining or improving your ability to manage physical, mental, and psychosocial needs.
 - Director of dietary services oversees your dietary needs.
 - Administrator oversees the operations of the entire facility.

The facility must complete a *comprehensive assessment* within 14 days of your admission to the facility. The purpose of an assessment is to evaluate your physical and mental condition including your ability to perform activities of daily living (ADL) such as eating, dressing, walking, bathing, and communicating. Your personal preferences and habits should also be discussed.

Within 7 days of your assessment, the facility must hold a *care plan conference*. The care plan outlines how the staff will assist you on a daily basis to ensure that you maintain the highest levels of physical, mental, and social functioning.

It is very important that you attend and a loved one attend (if available) to participate in the meeting. You (or your family) can also ask your ombudsman to attend the care plan conference with you.

What is a care plan?

A care plan is an agreement between the resident and the facility about how both medical and non-medical care will be provided. For example a care plan may include how nurse aides will help you walk to each meal to build your strength, or can address issues with your roommate. The plans must be reviewed regularly, and revised as needed. Finally, you should feel confident and comfortable with how the plan meets your needs.

What is a care plan conference?

A care plan conference allows staff, residents and/or families to talk about life in the facility. The conference is an ideal time to discuss meals, activities, therapies, personal schedules, medical and nursing care, and emotional needs. You can bring up concerns about daily routines, ask questions, or offer information to help staff provide your care. Each staff member who works with you should be involved in the conference to talk with you about treatment decisions. Nursing homes should only give care that you have agreed to. Be sure you understand and agree with the care plan and feel that it meets your needs. You have a right to a complete and detailed copy of the care plan, and the name of the person you can speak with to change the care plan.

When are care plan conferences held?

Care plan conferences must occur every three months, *and* whenever there is a significant change in your physical or mental health that might require a change in care. If you want a family member, friend, or the ombudsman at the meeting, ask the staff to hold the meeting at a convenient time for them to attend.

A good care plan should:

- Be specific, individualized, and written in a common language that everyone can understand.
- Reflect your concerns and support your well-being, functioning, and rights. It should not label your choices or needs as “problem behaviors.”
- Use a multi-disciplinary team approach and use outside referrals as needed.
- Be re-evaluated and revised routinely.

RESIDENT & FAMILY COUNCILS IN NURSING HOMES

What are resident councils and family councils?

Kentucky law gives residents and family members the right to present concerns without retaliation. Medicare and Medicaid certified nursing homes must allow councils to operate and must provide a meeting space in the facility for their activities.

There are two types of councils in nursing homes: a resident council and a family council. A resident council is an organized group of residents who meet, free from facility interference, on a regular basis to discuss concerns regarding the nursing home. Likewise, a family council is an organized group of relatives and friends of nursing home's residents.

What is the purpose of a resident council and family council?

The main purposes of most councils are to protect and improve the quality of life in the nursing home. The nursing home also receives benefits. Councils allow the nursing home staff to deal directly with family concerns and ideas, to convey needed information to families, and to establish meaningful lines of communication. The nursing home administrative staff may be able to use the family council as a sounding board for new ideas. The facility staff and administration must act upon concerns or grievances that the family council brings to them.

Resident councils give residents an opportunity to talk about concerns with different departments in the nursing home including nursing staff, dietary, and activities. Some examples include:

- Planning activities
- Selecting menu items for meals
- Discussing concerns about staff

Family council gives families a voice in decisions that affect them and their loved ones in the facility.

Some examples include:

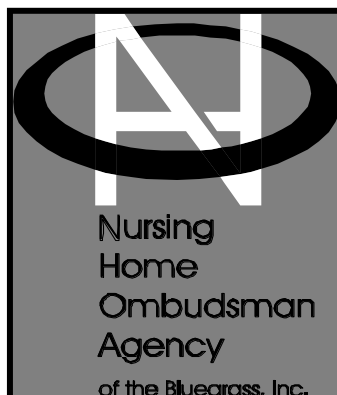
- Support for families
- Education and information
- Discussion and action on concerns
- Services and activities for residents
- Joint activities for families and residents

GOOD TO KNOW:

The nursing home ombudsman can help answer questions about resident or family councils.

If there is not an active family council in your facility the ombudsman can help you start one.

Ombudsmen are also available to help resident councils reorganize and grow.



RESIDENTS' RIGHTS

Residents' Rights were part of the Nursing Home Reform Law enacted in 1987 by the U.S. Congress. Residents' rights were also incorporated into Kentucky Regulatory Statutes (KRS 216.515). These laws require nursing homes and other long-term care health facilities to promote and protect the rights of each resident. These are their rights as residents of the facility, and as citizens of the United States and the Commonwealth of Kentucky. Resident rights place a strong emphasis on individual dignity and self-determination. Nursing homes must meet residents' rights requirements to participate in Medicare or Medicaid. *You have at least the following rights:*

The right to be fully informed, including:

- **If you are entitled to Medicaid benefits at the time you are admitted to the facility or when you do become eligible for Medicaid benefits, the facility must inform you in writing of the services for which you may not be charged and those for which you may be charged.**
- **Before, or at the time of your admission and periodically during your stay, the facility must inform you of services available in the facility and of charges for those services. You must acknowledge in writing receipt of this information, and the facility must keep the acknowledgement in your file.**
- **The facility must prominently display in the facility written information (and provide you with oral and 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.**
- **You and your legal representative or interested family member have the right to receive prompt notice before there is a change in your room or roommate assignment.**
- **You have the right to be fully informed in advance about your care and treatment, and of any changes in your care and treatment, and to participate in planning your care and treatment.**
- **You have the right to 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, as well as all inspection reports of the facility.**
- **The facility must not require residents or potential residents to waive their rights to Medicare or Medicaid.**
- **The facility must not require a third party guarantee of payment as a condition of admission or continued stay in the facility.**
- **The facility shall conspicuously post a listing of your rights and responsibilities under State law.**
- **The facility shall have written procedures for the submission and resolution of complaints and recommendations by you and your responsible party or your responsible family member or your guardian and shall conspicuously display these policies.**

The right to participate in their own care, including:

- **You, your physician, and your legal representative or an interested family member must be notified immediately of any serious accident, significant change in your health or mental status, or a decision to transfer or discharge you from the facility.**
- **Upon oral or written request, you or your legal representative have the right to access all your records within 24 hours (excluding weekends and holidays). You may purchase photocopies (with the first copy being free of cost to you) of your records upon request and with two working days advance notice to the facility.**
- **You have the right to be fully informed in a language you can understand of your total health status, including but not limited to, your medical condition.**
- **You have the right to refuse treatment, to refuse to participate in experimental research, and to make advance directives.**

The right to make independent choices:

- **Prior to or upon your admission to the facility and during your stay, you must be informed (both orally and in writing) in a language that you understand, of your rights and all rules and regulations governing your conduct and responsibilities. You must acknowledge in writing receipt of this information, and the facility must keep the acknowledgement in your file.**
- **You have the right to live in the facility with reasonable accommodation of your individual needs and preferences, except when the health or safety of you or other residents would be endangered.**
- **You have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents.**
- **You have the right to choose your personal attending physician.**
- **You have the right to self-administer drugs if it has been determined that this practice is safe.**

The right to privacy and confidentiality, including:

- **You have the right to personal privacy (including accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups) and confidentiality of your personal and clinical records...but the facility is not required to provide a private room for you.**
- **You may approve or refuse the release of your personal and clinical records to any individual outside the facility except when you are transferred to another health care institution or when release of your records is required by law.**

- **If you are married, privacy must be assured for your spouse's visits. If you and your spouse are both residents in the facility and both consent, you may share the same room.**
- **You have the right to have reasonable access to the use of a telephone where calls can be made without being overheard.**
- **You have the right to privacy in written communications, including the right to send and promptly receive mail that is unopened.**
- **You must be assured of at least visual privacy in multi-bed rooms and in tub, shower, and toilet rooms.**

The right to dignity, respect, and freedom, including:

- **The facility must not charge, solicit, accept, or receive any gift, money, donation, or other consideration as a precondition of admission or continued stay in the facility.**
- **You have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat your medical symptoms.**
- **You have the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.**
- **The facility must promote care for you in a manner and in an environment that maintains or enhances your dignity and respect in full recognition of your individuality, including privacy in treatment and in care for your personal needs.**
- **You have the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.**
- **You have the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising your rights.**
- **If you have been found mentally disabled under State law, your rights are exercised by your guardian.**
- **You have the right to have private meetings with the nursing facility inspectors from the Cabinet for Health Services.**
- **You have the right to be suitably dressed at all times and given assistance when needed in maintaining body cleanliness and good grooming.**
- **Unless you have been found mentally disabled under State law, you cannot be detained against your will. You must be given permission and encouragement to go outdoors and leave the premises as you wish unless a legitimate reason can be found and documented for refusing such activity.**
- **You have the right to refuse to perform services for the facility unless you choose, and the need or desire for work is documented in your plan of care.**

The right to security of possessions, including:

- **You have the right to manage your financial affairs, and the facility may not require you to deposit your personal funds with the facility.**
- **If the facility accepts responsibility for managing your funds, the facility must keep funds over \$50 in an interest-bearing account, separate from the facility's accounts...and...the facility must keep funds of less than \$50 in a separate account such as a petty cash fund.**
- **The facility must maintain a full and separate accounting of your funds held by the facility and must give a statement to you or your legal representative quarterly or upon request.**
- **If you are receiving Medicaid benefits, the facility must notify you when the amount in your account comes within \$200 of the Medicaid limit and of the effect of this on your eligibility.**
- **The facility must purchase a surety bond to assure the security of all your funds deposited with the facility.**
- **You have the right to retain and use personal possessions, including some furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.**
- **The facility must return your valuables, personal possessions, and any balance of money from your account to you at the time of your transfer or discharge from the facility. In case of your death, these items must be returned to your responsible party or family member, your guardian, or your executor.**

Rights during transfers and discharges, including:

- **You must be permitted to remain in the facility and not be transferred or discharged from the facility unless it is**
 - **necessary for your welfare (acute care at a hospital is needed) or**
 - **because your health has improved and you no longer need nursing home care or**
 - **because the safety or health of other individuals would be endangered or**
 - **for non-payment**
 - **because the facility closes**

Notice of your transfer or discharge must be given to you at least 30 days in advance, if you have resided in the facility for 30 days or more, or as soon as practicable if safety or medical reasons require immediate transfer. You may appeal a transfer or discharge.

To file an appeal, you must write or FAX a request for a hearing to Secretary, Cabinet for Health and Family Services, 275 East Main Street 5W-A, Frankfort, KY 40621. The FAX number is 502-564-7091. You must file this request within 15 days of receiving the involuntary discharge notice.

You are better off if you engage an attorney to help you. If you call the Nursing Home Ombudsman Agency of the Bluegrass (859-277-9215), we will file the

request for the appeal and help you connect with Legal Aide of the Bluegrass. We will also help your private attorney, if you prefer.

After you file the appeal, the Cabinet will schedule a hearing which is usually held in your nursing home. At the hearing, you can present information on why the transfer is inappropriate. The burden of proof rests on the nursing home to prove that the reasons for the transfer meet the conditions outlined above.

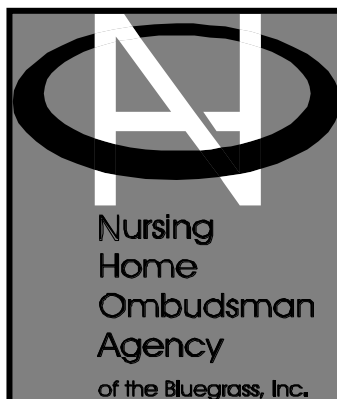
If the Hearing Office does not approve the discharge, you can remain in the nursing home. If the discharge is approved, you will have to leave the facility. The nursing home is required to help you find another appropriate facility and to provide counseling before the move to minimize the trauma of relocation.

The right to complain, including:

- **You have the right to voice grievances without discrimination or reprisal, and the facility must make prompt efforts to resolve your grievances.**
- **Representatives of the State Long-Term Care Ombudsman program must be allowed by the facility to examine your medical and social records if you or your legal representative grants permission.**
- **If any of your rights are denied you or infringed upon, you shall have the right to take legal action against the facility responsible for the violation. You may be entitled to recover actual and punitive damages, reasonable attorney's fees, costs of the action, and other relief as determined by the court.**
- **You shall be encouraged and helped to exercise your rights as a resident and a citizen. You may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of your choice free from restraint, interference, coercion, discrimination, and reprisal.**

The right to visits, including:

- **You must be permitted immediate visits by representatives from the Federal or State governments, your individual physician, representatives from the State Long-Term Care Ombudsman program, and subject to your consent, your immediate family or other relatives.**



ANNUAL NHOA AND LONG-TERM CARE STATISTICS

NHOA ombudsmen in the Bluegrass made over 6,700 site visits to long-term care facilities to monitor care and advocate for residents.

In the Bluegrass there are 80 long-term care facilities and 4,800 residents.

NHOA ombudsmen identified, investigated, and worked to resolve 1,875 complaints.

NHOA identified 40 complaints of abuse and neglect. Poor care, injuries, falls, failure to respond to call bells, failure to follow doctor orders, pressure ulcers, and failure to notice a change in resident's condition made up 31% of complaints. NHOA assisted with 94 Family Councils and 351 Resident Councils. In KY only 33% of facilities have Family Councils.

Nursing home residents are, on average, 86 years-old. In KY, 66% of these residents are recipients of Medicaid. Women comprise 70% of residents. Approximately 12% of KY nursing home residents are under the age of 65.

NHOA helped over 1,895 individuals and families with nursing facility placement, care planning, and questions about rights, abuse, Medicare and Medicaid.

Residents in Bluegrass area long-term nursing facilities are from all across Kentucky, other states, and other countries.

An alarming statistic reveals that 60% of these residents have no regular visitor except their NHOA ombudsman.

By 2020, 12 million older Americans will need long-term care.

FRIENDLY VISITORS

From time to time NHOA receives calls from people who are interested in visiting residents in long-term care. The Friendly Visitor program matches these volunteers with residents in long-term care settings to provide companionship and a connection to their community.

If you or someone you know is lonely ask your ombudsman if there might be a Friendly Visitor at your facility.

IF YOU HAVE QUESTIONS OR CONCERNS, PLEASE CONTACT:

**Nursing Home Ombudsman Agency
1530 Nicholasville Road
Lexington, Kentucky 40503
859-277-9215
1-877-787-0077 (toll free)
www.ombuddy.org**

**Adult Protective Services
Abuse Hotline
1-800-752-6200 or 1-877-597-2331**

**Kentucky Long Term Care Ombudsman Program
Department for Aging and Independent Living
275 East Main Street, 3E-E
Frankfort, Kentucky 40621
1-800-372-2991**

**Division of Health Care
Office of Inspector General
275 East Main Street, 5E-A
Frankfort, Kentucky 40621
502-564-7963**