

# Residents' Rights for Kentucky's Long-Term Care Residents

Nursing Home Ombudsman Agency of the Bluegrass, Inc.

1530 Nicholasville Road, Lexington, Kentucky 40503 1-859-277-9215 [www.ombuddy.org](http://www.ombuddy.org)



A United Way Agency



*This document combines both Federal and Kentucky statutes as well as information from the National Citizens' Coalition for Nursing Home Reform at [www.nccnhr.com](http://www.nccnhr.com)*

## Who do I contact if I have a problem?

There are several ways to address concerns that you have about your care. It is often best to try and resolve the problem within the facility. You can go directly to the nursing home staff about any of your problems. If possible, it is a good idea to document any concerns in writing that arise with a date, time, name, and the specific problem. *Voice your concern to those directly involved. Raise your concern with the staff supervisors. Work with the Resident Council or Family Council to help with the problem.*

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

Your nursing home ombudsman is an advocate for nursing home residents and has the power, based on federal law, to intervene on your behalf. Complaints are treated confidentially, and you will control the complaint process. Ombudsmen will *not* act without consulting you. Your ombudsman can also refer you to other agencies in the state that can also assist with your complaints.

An ombudsman first investigates complaints to verify and document reports. The findings of investigations are shared with the complaining party. Ombudsmen explain options for resolving concerns to residents and families and help find solutions. Ombudsmen will only take action that has been authorized by the resident and their family. Ombudsmen follow up on resolved problems to ensure agreements remain in effect and that no additional problems arise.

Ombudsmen do not disclose the identity of residents or family members reporting complaints without consent (unless ordered to do so by court). When an ombudsman is unable to resolve a complaint without revealing the identity of the complaining party, the person making the complaint decides whether the ombudsman proceeds in efforts to resolve a complaint.

Your ombudsman is: \_\_\_\_\_



Phone: \_\_\_\_\_

The mission of the Nursing Home Ombudsman Agency of the Bluegrass, Inc. (NHOA) is to improve the quality of care for residents living in long-term care facilities.

NHOA's award-winning Ombudsman Program relies on ombudsmen from each community who advocate for residents in their home communities. Ombudsmen establish trusted relationships with residents and families. Those relationships allow residents to feel loved and protected. Residents know they have an advocate on their side at all times, supporting them 24 hours a day, seven days a week, whatever the need may be.

## What does a Nursing Home Ombudsman Do?

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

The Kentucky Long-Term Care Ombudsman advocates for residents of nursing homes, personal care homes, and family care homes. Ombudsmen work to resolve problems of individual residents and to bring about improvements in care through changes at the local, state, and national levels.

- ❖ First launched in 1972 as a demonstration program, the Ombudsman Program today operates in all states as a provision of the Older Americans Act administered by the federal Administration on Aging.
- ❖ Since 1978, the Kentucky Long-Term Care Ombudsman program has served residents of long-term care facilities in all 120 Kentucky counties. Services of the State Long-Term Care Ombudsman program are coordinated through the Cabinet for Health and Family Services Office of the Ombudsman. The program also has oversight for 15 district programs affiliated with Area Agencies on Aging and Independent Living. The program receives federal, state, and local funding and *does not charge for services*.

As part of the Kentucky Long-Term Care Ombudsman Program, NHOA proudly serves 17 counties of central Kentucky: Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Lincoln, Madison, Mercer, Nicholas, Powell, Scott, and Woodford.

- ❖ While most residents receive good care in long-term care facilities, far too many are neglected and suffer psychological, physical, and other types of abuse. NHOA has 35 trained ombudsmen who regularly visit long-term care facilities, monitor conditions and care, and provide a voice for those unable to speak for themselves.



## What can I expect from the facility in the first few weeks of moving in?

- The facility must complete a *comprehensive assessment* within 14 days of your admission to the facility. The 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*. At this conference, an individualized care plan is developed for you by a team including a nurse, nurse aide, activities director, dietary staff, and the social worker. 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.
- The care plan outlines how the staff will assist you on a daily basis to ensure that you maintain the highest physical, mental, and social functioning as possible.

## Who will be taking care of me?

- *Certified nursing assistants (CNA)* provide most of the hands-on care in nursing homes. They will take care of your day-to-day needs such as dressing, toileting, and bathing.
- *Registered nurses (RN)* and/or *Licensed Practical Nurses (LPN)* manage the care of the residents on each unit 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.
- *Director of social services* provides medically related social services and assists residents in maintaining or improving their ability to manage their everyday physical, mental, and psychosocial needs.
- *Director of dietary services* oversees your dietary needs.
- *Administrator* oversees the operations of the entire facility.



# RESIDENT COUNCILS IN NURSING HOMES

## What is a nursing home resident council?

A resident council is an independent, organized group of persons living in a nursing home who meet on a regular basis to discuss concerns, develop suggestions, and plan activities. If the nursing home does not already have a resident council, it must try to establish one. Sizes and structures of councils vary widely.

Some resident councils function well with up to 30 residents at meetings. Others are effective with only a few active members. Leadership styles vary as does the amount of participation. In small homes, resident councils are frequently operated as open meetings for all interested residents. Larger homes often have councils made up of representatives either elected or recruited from different sections of the facility. Council representatives are responsible for seeking the concerns and suggestions of residents in their area and for bringing this information to the meetings.

State and federal laws give residents the right to meet as a council. The facility must provide space for meetings and give assistance to residents who need the home's staff, relatives, friends, or members of community organizations to participate in the meetings. The home must designate a staff person to serve as liaison to the council, to attend council meetings as requested, and to provide needed support services and assistance such as typing minutes and correspondence.

## Why participate in a resident council?

Many nursing home residents are not content to give up control over their lives. They want an active part in life and the chance to influence decisions which affect them. A resident council gives them that chance.

### Effective resident councils:

- ❖ Improve communications within their homes
  - resident councils are known as places to get the facts and help dispel rumors
- ❖ Help identify problems early when it is easier to do something about them
  - resident councils are an important part of the grievance process and help avoid the necessity of discussing problems with outside sources
- ❖ Serve as a sounding board for new ideas
  - resident councils allow participants to review and comment on proposed facility policies and operational decisions which affect resident life and care
- ❖ Help individuals speak out about what is bothering them and help overcome the fear of retaliation
  - When people are dependent on others for their needs, there is a fear that they may make others so angry that care will be withheld
- ❖ Improve the atmosphere of the homes where they are active
  - Staff appreciates having residents share in some of the responsibilities of planning activities and events
- ❖ Promote friendship
  - By working in small groups which meet regularly, residents have a chance to get to know each other well

# RESIDENT COUNCILS IN NURSING HOMES

## A model resident council:

- Residents run the council
- The council receives support – but not interference – from facility staff
- Residents feel comfortable speaking freely and raising issues
- Residents are treated in a dignified manner, and their issues are taken seriously
- Concerns and problems are promptly addressed by the appropriate departments
- Residents have access to information as needed and requested by the council
- Different committees address the issues raised and then follow up at the next meeting
- The council is a vehicle to bring about positive changes for all residents in the facility

## Tips for resident councils:

- The facility must provide space, privacy, and staff support
- Normally, only a staff liaison person is present at the meetings – any others come at the invitation of the council
- The ombudsman should be present and may serve as a facilitator
- Councils do not have to have officers – but may choose to organize in such a way
- The facility must provide assistance to residents in putting requests in writing from the group; they must respond to such requests; requests may be in the minutes
- The facility must listen to council views and act upon their recommendations and grievances concerning “proposed policy and operational decisions affecting resident care and life”
- Council meetings do not have to be held monthly; residents decide the frequency

## Tasks of the group:

- ✓ Offer suggestions about facility policies and procedures which affect resident care, treatment, and quality of life
- ✓ Plan resident activities
- ✓ Participate in educational activities
- ✓ Any others they choose



# FAMILY COUNCILS IN NURSING HOMES

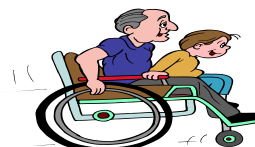
## What is a family council?

A family council is an organized group of relatives and friends of nursing home's residents who meet on a regular basis to discuss issues and concerns regarding the home. Kentucky law gives family members of nursing home residents the right to present concerns without retaliation. Medicare- and Medicaid-certified nursing homes must allow family councils to operate and must provide a meeting space in the facility for their activities.

## What is the purpose of a family council?

The main purposes of most family councils are to protect and improve the quality of life in the home and to give families a voice in decisions that affect them and their loved ones in the facility. Specific purposes vary greatly from council to council. Some examples include:

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



## What are the benefits of a family council?

Effective family councils give each other the support, encouragement, and information they need. Council involvement helps provide family members an opportunity to express their ideas and concerns and a way to work for positive change. Residents of the home also benefit from the family council. Family involvement helps make a nursing home more homelike. Residents also benefit from council efforts to improve the quality of life in the 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.

Some family councils are started by interested families or friends or by nursing home volunteers or community leaders. Other councils are initially started by nursing home staff – often at the administrator's request. Although the organizational structures of family councils vary greatly, there are some common features of most councils. Family councils are run by friends and relatives of the home's residents, choose their own topics, have elected leadership, meet on a regular basis and have some method for exchanging information with nursing home staff.

A family council is not "family night." Family night is a name used in many nursing homes for occasional educational or social functions planned and hosted by the nursing home staff for families and friends of the home's residents. While these programs are beneficial, they are different from a family council which is run by the relatives and friends themselves.

# CARE PLANS

## What is a plan of care?

A plan of care is a strategy for how the staff will help a resident. It says what each staff person will do and when it will happen. For example: the nurse aide will help you walk to each meal to build your strength. Care plans must be reviewed regularly to make sure they work, and they must be revised as needed. For care plans to work, you must feel the plan meets your needs, and you must be comfortable with the plan. Care plans can address any medical or non-medical problem. For instance: medications are a medical concern; incompatibility with a roommate is a non-medical concern.

## What is a care planning conference?

A care planning conference is a meeting where staff and residents and/or families talk about life in the facility – meals, activities, therapies, personal schedules, medical and nursing care, and emotional needs. You can bring up problems, ask questions, or offer information to help staff provide your care. Each staff member who works with you should be involved. This includes nursing assistants, nurses, physicians, social worker, activities staff, dietician, occupational and physical therapists.

## When are care planning conferences held?

Care planning meetings 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. The care plan must be done within seven days after an assessment. Assessments must be done within fourteen days of admission and at least once a year with reviews every three months and also when a resident's condition changes.

## What should you talk about at the meeting?

Talk about what you need and how you feel. Ask questions about care and daily routine, about food, activities, interests, staff, personal care, medications, and how well you get around. Staff must talk to you about treatment decisions – such as medications and restraints – and can only do what you agree to do. You may have to be persistent about your concerns and choices. For help with problems, contact your ombudsman. 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.

Be sure you understand and agree with the care plan and feel that it meets your needs. Ask for a copy of your care plan. Ask for the name of the person you can speak to if you need the care plan changed.

## A good care plan should:

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



## **QUESTIONS ABOUT MY CARE**

**It often helps to have an agenda when you attend a care plan meeting. It is sometimes difficult to remember to ask all the questions and discuss all your concerns if they are not in writing. If the care planning staff sees that you have specific questions about your care, they will be more likely to give you time to address those concerns. You can use the space below to list questions and concerns you might have about your care in the facility.**

# YOUR RIGHTS AS A RESIDENT IN A NURSING FACILITY

As in all facilities, there are rules and procedures to keep things running smoothly; however, you do have specific legal rights as a resident of a nursing facility. This booklet is a summary of your rights taken from Kentucky and Federal law and regulations. Please read this booklet carefully and keep it for future reference. If you have questions about your rights, please ask that they be explained to you.

## Resident's 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:

- 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.
- 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.
- 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.**
- **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, 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.**
- **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 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 choose your personal attending physician.**
- **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 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.**
- **You have the right to voice grievances without discrimination or reprisal, and the facility must make prompt efforts to resolve your grievances.**
- **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.**
- **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.**
- **You have the right to privacy in written communications, including the right to send and promptly receive mail that is unopened.**
- **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.**
- **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.**
- **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 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.**

- **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 self-administer drugs if it has been determined that this practice is safe.**
- **You must be permitted to remain in the facility and not be transferred or discharged from the facility unless**
  - **necessary for your welfare or**
  - **because your needs cannot be met in the facility**
  - **or because the safety or health of other individuals would be endangered**
  - **or for non-payment**

**Notice of your transfer or discharge must be given to you at least 30 days in advance (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, 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 contact Legal Aide of the Bluegrass to obtain legal representation for you. 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 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 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 participate in social, religious, and community activities that do not interfere with the rights of other residents.**
- **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 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 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.**
- **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 must be assured of at least visual privacy in multi-bed rooms and in tub, shower, and toilet rooms.**
- **You have the right to be suitably dressed at all times and given assistance when needed in maintaining body cleanliness and good grooming.**
- **You have the right to have private meetings with the nursing facility inspectors from the Cabinet for Health Services.**

- **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.**
- **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.**

**This book was revised July 2009 by The Nursing Home Ombudsman Agency of the Bluegrass, Inc.**

**IF YOU HAVE QUESTIONS OR CONCERNS, PLEASE CONTACT:**

**The Nursing Home Ombudsman Agency of the Bluegrass  
1530 Nicholasville Road  
Lexington, Kentucky 40503  
1-859-277-9215  
1-877-787-0077 (toll free)  
[www.ombuddy.org](http://www.ombuddy.org)**

**OR**

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

**OR**

**Division of Health Care  
Office of Inspector General  
275 East Main Street, 5E-A  
Frankfort, Kentucky 40621  
1-502-564-7963**