

# OHIO

## RESIDENT RIGHTS & FACILITY RESPONSIBILITIES

It is the facility's policy to abide by all resident rights, and to communicate these rights to residents and their designated representatives in a language that they can understand.

Nursing facility residents are granted specific rights under Ohio law pursuant to sections 3721.10 to 3721.17 of the Ohio Revised Code. We have duplicated and organized these laws on the pages that follow for your easy reference. We believe that these laws are written in an understandable manner. However, if you have any questions or concerns about these rights or our responsibilities, please let us know so that we can further assist your understanding.

If you have any questions, please contact the facility's administrator.



**FOUNDATIONS HEALTH SOLUTIONS, INC.**

## **Residents' rights; sponsor may protect rights. (§ 3721.13).**

(A) The rights of residents of a home shall include, but are not limited to, the following:

- (1) ...**Safe & Clean Living Environment.** The right to a safe and clean living environment pursuant to the Medicare and Medicaid programs and applicable state laws and rules adopted by the director of health;
- (2) ...**Abuse / Respect.** The right to be free from physical, verbal, mental, and emotional abuse and to be treated at all times with courtesy, respect, and full recognition of dignity and individuality;
- (3) ...**Appropriate Care & Treatment.** Upon admission and thereafter, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted. This care shall be provided without regard to considerations such as race, color, religion, national origin, age, or source of payment for care.
- (4) ...**Response to Requests.** The right to have all reasonable requests and inquiries responded to promptly;
- (5) ...**Clothes & Bed Sheet Changes.** The right to have clothes and bed sheets changed as the need arises, to ensure the resident's comfort or sanitation;
- (6) ...**Information About People Responsible for Care.** The right to obtain from the home, upon request, the name and any specialty of any physician or other person responsible for the resident's care or for the coordination of care;
- (7) ...**Physician Choice.** The right, upon request, to be assigned, within the capacity of the home to make the assignment, to the staff physician of the resident's choice, and the right, in accordance with the rules and written policies and procedures of the home, to select as the attending physician a physician who is not on the staff of the home. If the cost of a physician's services is to be met under a federally supported program, the physician shall meet the federal laws and regulations governing such services.
- (8) ...**Participation in Decisions.** The right to participate in decisions that affect the resident's life, including the right to communicate with the physician and employees of the home in planning the resident's treatment or care and to obtain from the attending physician complete and current information concerning medical condition, prognosis, and treatment plan, in terms the resident can reasonably be expected to understand; the right of access to all information in the resident's medical record; and the right to give or withhold informed consent for treatment after the consequences of that choice have been carefully explained. When the attending physician finds that it is not medically advisable to give the information to the resident, the information shall be made available to the resident's sponsor on the resident's behalf, if the sponsor has a legal interest or is authorized by the resident to receive the information. The home is not liable for a violation of this division if the violation is found to be the result of an act or omission on the part of a physician selected by the resident who is not otherwise affiliated with the home.

- (9) ...**Withholding Payment to Physician.** The right to withhold payment for physician visitation if the physician did not visit the resident;
- (10) **Medical Records.** The right to confidential treatment of personal and medical records, and the right to approve or refuse the release of these records to any individual outside the home, except in case of transfer to another home, hospital, or health care system, as required by law or rule, or as required by a third-party payment contract;
- (11) **Personal Privacy in Care / Treatment.** The right to privacy during medical examination or treatment and in the care of personal or bodily needs;
- (12) **Medical Research.** The right to refuse, without jeopardizing access to appropriate medical care, to serve as a medical research subject;
- (13) **Restraints.** The right to be free from physical or chemical restraints or prolonged isolation except to the minimum extent necessary to protect the resident from injury to self, others, or to property and except as authorized in writing by the attending physician for a specified and limited period of time and documented in the resident's medical record. Prior to authorizing the use of a physical or chemical restraint on any resident, the attending physician shall make a personal examination of the resident and an individualized determination of the need to use the restraint on that resident.

.....Physical or chemical restraints or isolation may be used in an emergency situation without authorization of the attending physician only to protect the resident from injury to self or others. Use of the physical or chemical restraints or isolation shall not be continued for more than twelve hours after the onset of the emergency without personal examination and authorization by the attending physician. The attending physician or a staff physician may authorize continued use of physical or chemical restraints for a period not to exceed thirty days, and at the end of this period and any subsequent period may extend the authorization for an additional period of not more than thirty days. The use of physical or chemical restraints shall not be continued without a personal examination of the resident and the written authorization of the attending physician stating the reasons for continuing the restraint.

If physical or chemical restraints are used under this division, the home shall ensure that the restrained resident receives a proper diet. In no event shall physical or chemical restraints or isolation be used for punishment, incentive, or convenience.

- (14) **Pharmacist Choice & Pharmacy Pricing.** The right to the pharmacist of the resident's choice and the right to receive pharmaceutical supplies and services at reasonable prices not exceeding applicable and normally accepted prices for comparably packaged pharmaceutical supplies and services within the community;
- (15) **Civil Rights.** The right to exercise all civil rights, unless the resident has been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code and has not been restored to legal capacity, as well as the right to the cooperation of the home's administrator in making arrangements for the exercise of the right to vote;

- (16) **.Access to Opportunities.** The right of access to opportunities that enable the resident, at the resident's own expense or at the expense of a third-party payer, to achieve the resident's fullest potential, including educational, vocational, social, recreational, and habilitation programs;
- (17) **.Alcohol.** The right to consume a reasonable amount of alcoholic beverages at the resident's own expense, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;
- (18) **.Tobacco.** The right to use tobacco at the resident's own expense under the home's safety rules and under applicable laws and rules of the state, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;
- (19) **.Retiring & Rising.** The right to retire and rise in accordance with the resident's reasonable requests, if the resident does not disturb others or the posted meal schedules and upon the home's request remains in a supervised area, unless not medically advisable as documented by the attending physician;
- (20) **.Religious Observation.** The right to observe religious obligations and participate in religious activities; the right to maintain individual and cultural identity; and the right to meet with and participate in activities of social and community groups at the resident's or the group's initiative;
- (21) **.Communications.** The right upon reasonable request to private and unrestricted communications with the resident's family, social worker, and any other person, unless not medically advisable as documented in the resident's medical record by the attending physician, except that communications with public officials or with the resident's attorney or physician shall not be restricted. Private and unrestricted communications shall include, but are not limited to, the right to:
  - (a) ...Receive, send, and mail sealed, unopened correspondence;
  - (b) ...Reasonable access to a telephone for private communications; and
  - (c) ...Private visits at any reasonable hour.
- (22) **.Spousal Rights.** The right to assured privacy for visits by the spouse, or if both are residents of the same home, the right to share a room within the capacity of the home, unless not medically advisable as documented in the resident's medical record by the attending physician;
- (23) **.Closed Room Door.** The right upon reasonable request to have room doors closed and to have them not opened without knocking, except in the case of an emergency or unless not medically advisable as documented in the resident's medical record by the attending physician;

- (24) **.Personal Possessions.** The right to retain and use personal clothing and a reasonable amount of possessions, in a reasonably secure manner, unless to do so would infringe on the rights of other residents or would not be medically advisable as documented in the resident's medical record by the attending physician;
- (25) **.Basic Rate.** The right to be fully informed, prior to or at the time of admission and during the resident's stay, in writing, of the basic rate charged by the home, of services available in the home, and of any additional charges related to such services, including charges for services not covered under the Medicare or Medicaid program. The basic rate shall not be changed unless thirty days\* notice is given to the resident or, if the resident is unable to understand this information, to the resident's sponsor.
- (26) **.Monthly Bill.** The right of the resident and person paying for the care to examine and receive a bill at least monthly for the resident's care from the home that itemizes charges not included in the basic rates;
- (27) **.Financial Issues.**
- (a) ...The right to be free from financial exploitation;
  - (b) ...The right to manage the resident's own personal financial affairs, or, if the resident has delegated this responsibility in writing to the home, to receive upon written request at least a quarterly accounting statement of financial transactions made on the resident's behalf. The statement shall include:
    - (i) A complete record of all funds, personal property, or possessions of a resident from any source whatsoever, that have been deposited for safekeeping with the home for use by the resident or the resident's sponsor; and
    - (ii) A listing of all deposits and withdrawals transacted, which shall be substantiated by receipts which shall be available for inspection and copying by the resident or sponsor.
- (28) **.Access to Property on Deposit.** The right of the resident to be allowed unrestricted access to the resident's property on deposit at reasonable hours, unless requests for access to property on deposit are so persistent, continuous, and unreasonable that they constitute a nuisance;
- (29) **.Room & Roommate Change.** The right to receive reasonable notice before the resident's room or roommate is changed, including an explanation of the reason for either change.
- (30) **.Transfer & Discharge.** The right not to be transferred or discharged from the home unless the transfer is necessary because of one of the following:
- (a) ...The welfare and needs of the resident cannot be met in the home.

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\* Note that because our facility is certified to provide Medicare and Medicaid services, we will provide sixty (60) days' notice in accordance with the Federal rights noted on the pages that follow.

- (b) ...The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home.
- (c) ...The safety of individuals in the home is endangered.
- (d) ...The health of individuals in the home would otherwise be endangered.
- (e) ...The resident has failed, after reasonable and appropriate notice, to pay or to have the Medicare or Medicaid program pay on the resident's behalf, for the care provided by the home. A resident shall not be considered to have failed to have the resident's care paid for if the resident has applied for Medicaid, unless both of the following are the case:
  - (i) ....The resident's application, or a substantially similar previous application, has been denied by the county department of job and family services.
  - (ii) ...If the resident appealed the denial pursuant to division (C) of section 5101.35 of the Revised Code, the director of job and family services has upheld the denial.
- (f) ....The home's license has been revoked, the home is being closed pursuant to section 3721.08, sections 5165.60 to 5165.89, or section 5155.31 of the Revised Code, or the home otherwise ceases to operate.
- (g) ...The resident is a recipient of Medicaid, and the home's participation in the Medicaid program is involuntarily terminated or denied.
- (h) ...The resident is a beneficiary under the Medicare program, and the home's participation in the Medicare program is involuntarily terminated or denied.

(31) **Grievances.** The right to voice grievances and recommend changes in policies and services to the home's staff, to employees of the department of health, or to other persons not associated with the operation of the home, of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to a residents' rights advocate, and the right to be a member of, to be active in, and to associate with persons who are active in organizations of relatives and friends of nursing home residents and other organizations engaged in assisting residents.

(32) **Reporting of Significant Health Status Changes.** The right to have any significant change in the resident's health status reported to the resident's sponsor. As soon as such a change is known to the home's staff, the home shall make a reasonable effort to notify the sponsor within twelve hours.

(B) ..A sponsor may act on a resident's behalf to assure that the home does not deny the residents' rights under sections 3721.10 to 3721.17 of the Revised Code.

(C) ..Any attempted waiver of the rights listed in division (A) of this section is void.

## **Authorization to handle residents' financial affairs. (§ 3721.15).**

- (A) ..Authorization from a resident or a sponsor with a power of attorney for a home to manage the resident's financial affairs shall be in writing and shall be attested to by a witness who is not connected in any manner whatsoever with the home or its administrator. The home shall maintain accounts pursuant to division (A)(27) of section 3721.13 of the Revised Code. Upon the resident's transfer, discharge, or death, the account shall be closed and a final accounting made. All remaining funds shall be returned to the resident or resident's sponsor, except in the case of death, when all remaining funds shall be transferred or used in accordance with section 5162.22 of the Revised Code.
- (B) ..A home that manages a resident's financial affairs shall deposit the resident's funds in excess of one thousand dollars, and may deposit the resident's funds that are one thousand dollars or less, in an interest-bearing account separate from any of the home's operating accounts. Interest earned on the resident's funds shall be credited to the resident's account. A resident's funds that are one thousand dollars or less and have not been deposited in an interest-bearing account may be deposited in a noninterest-bearing account or petty cash fund.
- (C) ..Each resident whose financial affairs are managed by a home shall be promptly notified by the home when the total of the amount of funds in the resident's accounts and the petty cash fund plus other nonexempt resources reaches two hundred dollars less than the maximum amount permitted a recipient of Medicaid. The notice shall include an explanation of the potential effect on the resident's eligibility for Medicaid if the amount in the resident's accounts and the petty cash fund, plus the value of other nonexempt resources, exceeds the maximum assets a Medicaid recipient may retain.
- (D) ..Each home that manages the financial affairs of residents shall purchase a surety bond or otherwise provide assurance satisfactory to the director of health, or, in the case of a home that participates in the Medicaid program, to the Medicaid director, to assure the security of all residents' funds managed by the home.

## **Residents' rights concerning transfer or discharge. (§ 3721.16).**

For each resident of a home, notice of a proposed transfer or discharge shall be in accordance with this section.

- (A)(1) .....The administrator of a home shall notify a resident in writing, and the resident's sponsor in writing by certified mail, return receipt requested, in advance of any proposed transfer or discharge from the home. The administrator shall send a copy of the notice to the state department of health. The notice shall be provided at least thirty days in advance of the proposed transfer or discharge, unless any of the following applies:
  - (a) ...The resident's health has improved sufficiently to allow a more immediate discharge or transfer to a less skilled level of care;
  - (b) ...The resident has resided in the home less than thirty days;
  - (c) ...An emergency arises in which the safety of individuals in the home is endangered;
  - (d) ...An emergency arises in which the health of individuals in the home would otherwise be endangered;

(e) ...An emergency arises in which the resident's urgent medical needs necessitate a more immediate transfer or discharge.

.....In any of the circumstances described in divisions (A)(1)(a) to (e) of this section, the notice shall be provided as many days in advance of the proposed transfer or discharge as is practicable.

(2) ...The notice required under division (A)(1) of this section shall include all of the following:

(a) ...The reasons for the proposed transfer or discharge;

(b) ...The proposed date the resident is to be transferred or discharged;

(c) ...Subject to division (A)(3) of this section, a proposed location to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location to which the resident will relocate;

(d) ...Notice of the right of the resident and the resident's sponsor to an impartial hearing at the home on the proposed transfer or discharge, and of the manner in which and the time within which the resident or sponsor may request a hearing pursuant to section 3721.161 of the Revised Code;

(e) ...A statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date;

(f) ...The address of the legal services office of the department of health;

(g) ...The name, address, and telephone number of a representative of the state long-term care ombudsperson program and, if the resident or patient has a developmental disability or mental illness, the name, address, and telephone number of the Ohio protection and advocacy system.

(3) The proposed location to which a resident may relocate as specified pursuant to division (A)(2)(c) of this section in the proposed transfer or discharge notice shall be capable of meeting the resident's health-care and safety needs. The proposed location for relocation need not have accepted the resident at the time the notice is issued to the resident and resident's sponsor.

(B) ...No home shall transfer or discharge a resident before the date specified in the notice required by division (A) of this section unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.

(C) ...Transfer or discharge actions shall be documented in the resident's medical record by the home if there is a medical basis for the action.

(D) ...A resident or resident's sponsor may challenge a transfer or discharge by requesting an impartial hearing pursuant to section 3721.161 of the Revised Code, unless the transfer or discharge is required because of one of the following reasons:

(1) ...The home's license has been revoked under this chapter;

(2) ...The home is being closed pursuant to section 3721.08, sections 5165.60 to 5165.89, or section 5155.31 of the Revised Code;

(3) ...The resident is a recipient of Medicaid and the home's participation in the Medicaid program has been involuntarily terminated or denied by the federal government;



- (4) ...The resident is a beneficiary under the Medicare program and the home's certification under the Medicare program has been involuntarily terminated or denied by the federal government.
- (E) ...If a resident is transferred or discharged pursuant to this section, the home from which the resident is being transferred or discharged shall provide the resident with adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, and the home or alternative setting to which the resident is to be transferred or discharged shall have accepted the resident for transfer or discharge.
- (F) ...At the time of a transfer or discharge of a resident who is a recipient of Medicaid from a home to a hospital or for therapeutic leave, the home shall provide notice in writing to the resident and in writing by certified mail, return receipt requested, to the resident's sponsor, specifying the number of days, if any, during which the resident will be permitted under the Medicaid program to return and resume residence in the home and specifying the Medicaid program's coverage of the days during which the resident is absent from the home. An individual who is absent from a home for more than the number of days specified in the notice and continues to require the services provided by the facility shall be given priority for the first available bed in a semi-private room.

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**Resident or sponsor may request hearing challenging proposed transfer or discharge. (§ 3721.161).**

- (A) ..Not later than thirty days after the date a resident or the resident's sponsor receives notice of a proposed transfer or discharge, whichever is later, the resident or resident's sponsor may challenge the proposed transfer or discharge by submitting a written request for a hearing to the state department of health. On receiving the request, the department shall conduct a hearing in accordance with section 3721.162 of the Revised Code to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code.
- (B) ..Except in the circumstances described in divisions (A)(1)(a) to (e) of section 3721.16 of the Revised Code, if a resident or resident's sponsor submits a written hearing request not later than ten days after the resident or the resident's sponsor received notice of the proposed transfer or discharge, whichever is later, the home shall not transfer or discharge the resident unless the department determines after the hearing that the transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.
- (C) ...If a resident or resident's sponsor does not request a hearing pursuant to division (A) of this section, the home may transfer or discharge the resident on the date specified in the notice required by division (A) of section 3721.16 of the Revised Code or thereafter, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.
- (D) ..If the resident or resident's sponsor requests a hearing in writing pursuant to division (A) of this section and the home transfers or discharges the resident before the department issues a hearing decision, the home shall readmit the resident in the first available bed if the department determines after the hearing that the transfer or discharge does not comply with division (A)(30)

of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.

### **Determining whether transfer or discharge complies. (§ 3721.162).**

- (A) ..On receiving a request pursuant to section 3721.161 of the Revised Code, the department of health shall conduct hearings under this section in accordance with 42 C.F.R. 431, subpart E, to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code.
- (B) ..The department shall employ or contract with an attorney to serve as hearing officer. The hearing officer shall conduct a hearing in the home not later than ten days after the date the department receives a request pursuant to section 3721.161 of the Revised Code, unless the resident and the home or, if the resident is not competent to make a decision, the resident's sponsor and the home, agree otherwise. The hearing shall be recorded on audiotape, but neither the recording nor a transcript of the recording shall be part of the official record of the hearing. A hearing conducted under this section is not subject to section 121.22 of the Revised Code.
- (C) ..Unless the parties otherwise agree, the hearing officer shall issue a decision within five days of the date the hearing concludes. In all cases, a decision shall be issued not later than thirty days after the department receives a request pursuant to section 3721.161 of the Revised Code. The hearing officer's decision shall be served on the resident or resident's sponsor and the home by certified mail. The hearing officer's decision shall be considered the final decision of the department.
- (D) ..A resident, resident's sponsor, or home may appeal the decision of the department to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code, except for all of the following:
  - (1) ...The resident, resident's sponsor, or home shall file the appeal in the court of common pleas of the county in which the home is located.
  - (2) ...The resident or resident's sponsor may apply to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor shall not be required to furnish the costs of the appeal.
  - (3) ...The appeal shall be filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party shall serve the opposing party a copy of the notice of appeal by hand-delivery or certified mail, return receipt requested. If the home is the appealing party, it shall provide a copy of the notice of appeal to both the resident and the resident's sponsor or attorney, if known.
  - (4) ...The department shall not file a transcript of the hearing with the court unless the court orders it to do so. The court shall issue such an order only if it finds that the parties are unable to stipulate to the facts of the case and that the transcript is essential to the determination of the appeal. If the court orders the department to file the transcript, the department shall do so not later than thirty days after the day the court issues the order.
- (E) ..The court shall not require an appellant to pay a bond as a condition of issuing a stay pending its decision.

(F) ...The resident, resident's sponsor, home, or department may commence a civil action in the court of common pleas of the county in which the home is located to enforce the decision of the department or the court. If the court finds that the resident or home has not complied with the decision, it shall enjoin the violation and order other appropriate relief, including attorney's fees.

**Grievance procedure. (§ 3721.17).**

(A) ..Any resident who believes that the resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may file a grievance under procedures adopted pursuant to division (A)(2) of section 3721.12 of the Revised Code.

.....When the grievance committee determines a violation of sections 3721.10 to 3721.17 of the Revised Code has occurred, it shall notify the administrator of the home. If the violation cannot be corrected within ten days, or if ten days have elapsed without correction of the violation, the grievance committee shall refer the matter to the department of health.

(B) ..Any person who believes that a resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may report or cause reports to be made of the information directly to the department of health. No person who files a report is liable for civil damages resulting from the report.

(C).... (1) Within thirty days of receiving a complaint under this section, the department of health shall investigate any complaint referred to it by a home's grievance committee and any complaint from any source that alleges that the home provided substantially less than adequate care or treatment, or substantially unsafe conditions, or, within seven days of receiving a complaint, refer it to the attorney general, if the attorney general agrees to investigate within thirty days.

(2) ...Within thirty days of receiving a complaint under this section, the department of health may investigate any alleged violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, not covered by division (C)(1) of this section, or it may, within seven days of receiving a complaint, refer the complaint to the grievance committee at the home where the alleged violation occurred, or to the attorney general if the attorney general agrees to investigate within thirty days.

(D) ..If, after an investigation, the department of health finds probable cause to believe that a violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, has occurred at a home that is certified under the Medicare or Medicaid program, it shall cite one or more findings or deficiencies under sections 5165.60 to 5165.89 of the Revised Code. If the home is not so certified, the department shall hold an adjudicative hearing within thirty days under Chapter 119. of the Revised Code.

(E) ..Upon a finding at an adjudicative hearing under division (D) of this section that a violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant thereto, has occurred, the department of health shall make an order for compliance, set a reasonable time for compliance, and assess a fine pursuant to division (F) of this section. The fine shall be paid to the general revenue fund only if compliance with the order is not shown to have been made within the reasonable time set in the order. The department of health may issue an order prohibiting the continuation of any violation of sections 3721.10 to 3721.17 of the Revised Code.

.....Findings at the hearings conducted under this section may be appealed pursuant to Chapter 119. of the Revised Code, except that an appeal may be made to the court of common pleas of the county in which the home is located.

.....The department of health shall initiate proceedings in court to collect any fine assessed under this section that is unpaid thirty days after the violator's final appeal is exhausted.

(F) ...Any home found, pursuant to an adjudication hearing under division (D) of this section, to have violated sections 3721.10 to 3721.17 of the Revised Code, or rules, policies, or procedures adopted pursuant to those sections may be fined not less than one hundred nor more than five hundred dollars for a first offense. For each subsequent offense, the home may be fined not less than two hundred nor more than one thousand dollars.

.....A violation of sections 3721.10 to 3721.17 of the Revised Code is a separate offense for each day of the violation and for each resident who claims the violation.

(G) ..No home or employee of a home shall retaliate against any person who:

- (1) ...Exercises any right set forth in sections 3721.10 to 3721.17 of the Revised Code, including, but not limited to, filing a complaint with the home's grievance committee or reporting an alleged violation to the department of health;
- (2) ...Appears as a witness in any hearing conducted under this section or section 3721.162 of the Revised Code;
- (3) ...Files a civil action alleging a violation of sections 3721.10 to 3721.17 of the Revised Code, or notifies a county prosecuting attorney or the attorney general of a possible violation of sections 3721.10 to 3721.17 of the Revised Code.

.....If, under the procedures outlined in this section, a home or its employee is found to have retaliated, the violator may be fined up to one thousand dollars.

(H) ..When legal action is indicated, any evidence of criminal activity found in an investigation under division (C) of this section shall be given to the prosecuting attorney in the county in which the home is located for investigation.

(I).....(1).....(a) A n y resident whose rights under sections 3721.10 to 3721.17 of the Revised Code are violated has a cause of action against any person or home committing the violation.

(b) ...An action under division (I)(1)(a) of this section may be commenced by the resident or by the resident's legal guardian or other legally authorized representative on behalf of the resident or the resident's estate. If the resident or the resident's legal guardian or other legally authorized representative is unable to commence an action under that division on behalf of the resident, the following persons in the following order of priority have the right to and may commence an action under that division on behalf of the resident or the resident's estate:

- (i) ....The resident's spouse;
- (ii) ...The resident's parent or adult child;
- (iii) ..The resident's guardian if the resident is a minor child;
- (iv) ..The resident's brother or sister;
- (v) ...The resident's niece, nephew, aunt, or uncle.

(c) ...Notwithstanding any law as to priority of persons entitled to commence an action, if more than one eligible person within the same level of priority seeks to commence

an action on behalf of a resident or the resident's estate, the court shall determine, in the best interest of the resident or the resident's estate, the individual to commence the action. A court's determination under this division as to the person to commence an action on behalf of a resident or the resident's estate shall bar another person from commencing the action on behalf of the resident or the resident's estate.

- (d) ...The result of an action commenced pursuant to division (I)(1)(a) of this section by a person authorized under division (I)(1)(b) of this section shall bind the resident or the resident's estate that is the subject of the action.
  - (e) ...A cause of action under division (I)(1)(a) of this section shall accrue, and the statute of limitations applicable to that cause of action shall begin to run, based upon the violation of a resident's rights under sections 3721.10 to 3721.17 of the Revised Code, regardless of the party commencing the action on behalf of the resident or the resident's estate as authorized under divisions (I)(1)(b) and (c) of this section.
- (2) (a) The plaintiff in an action filed under division (I)(1) of this section may obtain injunctive relief against the violation of the resident's rights. The plaintiff also may recover compensatory damages based upon a showing, by a preponderance of the evidence, that the violation of the resident's rights resulted from a negligent act or omission of the person or home and that the violation was the proximate cause of the resident's injury, death, or loss to person or property.
- (b) ...If compensatory damages are awarded for a violation of the resident's rights, section 2315.21 of the Revised Code shall apply to an award of punitive or exemplary damages for the violation.
- (c) ...The court, in a case in which only injunctive relief is granted, may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed.
- (3) ...Division (I)(2)(b) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action in which this section is relevant, whether the action is pending in court or commenced on or after July 9, 1998.
- (4) ...Within thirty days after the filing of a complaint in an action for damages brought against a home under division (I)(1)(a) of this section by or on behalf of a resident or former resident of the home, the plaintiff or plaintiff's counsel shall send written notice of the filing of the complaint to the department of medicaid if the department has a right of recovery under section 5160.37 of the Revised Code against the liability of the home for the cost of medicaid services arising out of injury, disease, or disability of the resident or former resident.

### **Duties of nursing home administrator concerning residents' rights. (§ 3721.12).**

(A) The administrator of a home shall:

- (1) ...With the advice of residents, their sponsors, or both, establish and review at least annually, written policies regarding the applicability and implementation of residents' rights under sections 3721.10 to 3721.17 of the Revised Code, the responsibilities of residents regarding the rights, and the home's grievance procedure established under

division (A)(2) of this section. The administrator is responsible for the development of, and adherence to, procedures implementing the policies.

- (2) ...Establish a grievance committee for review of complaints by residents. The grievance committee shall be comprised of the home's staff and residents, sponsors, or outside representatives in a ratio of not more than one staff member to every two residents, sponsors, or outside representatives.
  - (3) ...Furnish to each resident and sponsor prior to or at the time of admission, and to each member of the home's staff, at least one of each of the following:
    - (a) ...A copy of the rights established under sections 3721.10 to 3721.17 of the Revised Code;
    - (b) ...A written explanation of the provisions of sections 3721.16 to 3721.162 [3721.16.2] of the Revised Code;
    - (c) ...A copy of the home's policies and procedures established under this section;
    - (d) ...A copy of the home's rules;
    - (e) ...A copy of the addresses and telephone numbers of the board of health of the health district of the county in which the home is located, the county department of job and family services of the county in which the home is located, the state departments of health and Medicaid, the state and local offices of the department of aging, and any Ohio nursing home ombudsperson program.
- (B) .Written acknowledgment of the receipt of copies of the materials listed in this section shall be made part of the resident's record and the staff member's personnel record.
- (C) ..The administrator shall post all of the following prominently within the home:
- (1) ...A copy of the rights of residents as listed in division (A) of section 3721.13 of the Revised Code;
  - (2) ...A copy of the home's rules and its policies and procedures regarding the rights and responsibilities of residents;
  - (3) ...A notice that a copy of this chapter, rules of the department of health applicable to the home, and federal regulations adopted under the Medicare and Medicaid programs, and the materials required to be available in the home under section 3721.021 of the Revised Code, are available for inspection in the home at reasonable hours;
  - (4) ...A list of residents' rights advocates;
  - (5) ...A notice that the following are available in a place readily accessible to residents:
    - (a) ...If the home is licensed under section 3721.02 of the Revised Code, a copy of the most recent licensure inspection report prepared for the home under that section;
    - (b) ...If the home is a facility, a copy of the most recent statement of deficiencies issued to the home under section 5165.68 of the Revised Code.
- (D) ..The administrator of a home may, with the advice of residents, their sponsors, or both, establish written policies regarding the applicability and administration of any additional residents' rights beyond those set forth in sections 3721.10 to 3721.17 of the Revised Code, and the responsibilities of residents regarding the rights. Policies established under this division shall be reviewed, and procedures developed and adhered to as in division (A)(1) of this section.

## **Duties of home to implement rights. (§ 3721.14).**

To assist in the implementation of the rights granted in division (A) of section 3721.13 of the Revised Code, each home shall provide:

- (A) ...Appropriate staff training to implement each resident's rights under division (A) of section 3721.13 of the Revised Code, including, but not limited to, explaining:
  - (1) ...The resident's rights and the staff's responsibility in the implementation of the rights;
  - (2) ...The staff's obligation to provide all residents who have similar needs with comparable service.
- (B) ...Arrangements for a resident's needed ancillary services;
- (C) ...Protected areas outside the home for residents to enjoy outdoor activity, within the capacity of the facility, consistent with applicable laws and rules;
- (D) ...Adequate indoor space, which need not be dedicated to that purpose, for families of residents to meet privately with families of other residents;
- (E) ...Access to the following persons to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents:
  - (1) ...Employees of the department of health, department of mental health and addiction services, department of developmental disabilities, department of aging, department of job and family services, and county departments of job and family services;
  - (2) ...Prospective residents and their sponsors;
  - (3) ...A resident's sponsors;
  - (4) ...Residents' rights advocates;
  - (5) ...A resident's attorney;
  - (6) ...A minister, priest, rabbi, or other person ministering to a resident's religious needs.
- (F) ...In writing, a description of the home's grievance procedures.

## **Residents' Rights Definitions (§ 3721.10).**

- (A) ..."**Home**" means all of the following:
  - (1) ...A home as defined in section 3721.01 of the Revised Code;
  - (2) ...Any facility or part of a facility not defined as a home under section 3721.01 of the Revised Code that is a skilled nursing facility or nursing facility, both as defined in section 5165.01 of the Revised Code;
  - (3) ...A county home or district home operated pursuant to Chapter 5155. of the Revised Code.
- (B) ..."**Resident**" means a resident or a patient of a home.
- (C) ..."**Administrator**" means all of the following:
  - (1) ...With respect to a home as defined in section 3721.01 of the Revised Code, a nursing home administrator as defined in section 4751.01 of the Revised Code;
  - (2) ...With respect to a facility or part of a facility not defined as a home in section 3721.01 of the Revised Code that is authorized to provide skilled nursing facility or nursing facility services, the administrator of the facility or part of a facility;

- (3) ...With respect to a county home or district home, the superintendent or administrator appointed or selected under Chapter 5155. of the Revised Code.
- (D) ..."**Sponsor**" means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare.
- (E) ..."**Residents' rights advocate**" means:
  - (1) ...An employee or representative of any state or local government entity that has a responsibility regarding residents and that has registered with the department of health under division (B) of section 3701.07 of the Revised Code;
  - (2) ...An employee or representative of any private nonprofit corporation or association that qualifies for tax-exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and that has registered with the department of health under division (B) of section 3701.07 of the Revised Code and whose purposes include educating and counseling residents, assisting residents in resolving problems and complaints concerning their care and treatment, and assisting them in securing adequate services to meet their needs;
  - (3) ...A member of the general assembly.
- (F) ..."**Physical restraint**" means, but is not limited to, any article, device, or garment that interferes with the free movement of the resident and that the resident is unable to remove easily, a geriatric chair, or a locked room door.
- (G) ..."**Chemical restraint**" means any medication bearing the American hospital formulary service therapeutic class 4.00, 28:16:08, 28:24:08, or 28:24:92 that alters the functioning of the central nervous system in a manner that limits physical and cognitive functioning to the degree that the resident cannot attain the resident's highest practicable physical, mental, and psychosocial well-being.
- (H) ..."**Ancillary service**" means, but is not limited to, podiatry, dental, hearing, vision, physical therapy, occupational therapy, speech therapy, and psychological and social services.
- (I) ...."**Facility**" means a facility, or part of a facility, certified as a nursing facility or skilled nursing facility both as defined in section 5165.01 of the Revised Code. "Facility" does not include an intermediate care facility for individuals with intellectual disabilities, as defined in section 5124.01 of the Revised Code.

**Director to adopt rules. (§ 3721.11).**

- (A) ..The director of the department of health shall adopt rules under Chapter 119. of the Revised Code to govern procedures for the implementation of sections 3721.10 to 3721.17 of the Revised Code.
- (B) ..The director may adopt, amend, and repeal substantive rules under Chapter 119. of the Revised Code defining with reasonable specificity acts that violate division (A) of section 3721.13 of the Revised Code.



## **Criminal records check. (§ 3721.121).**

(A) As used in this section:

- (1) ..."**Adult day-care program**" means a program operated pursuant to rules adopted by the director of health under section 3721.04 of the Revised Code and provided by and on the same site as homes licensed under this chapter.
- (2) ..."**Applicant**" means a person who is under final consideration for employment with a home or adult day-care program in a full-time, part-time, or temporary position that involves providing direct care to an older adult. "Applicant" does not include a person who provides direct care as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.
- (3) ..."**Community-based long term care services provider**" means a provider as defined in section 173.39 of the Revised Code.
- (4).... "**Criminal records check**" has the same meaning as in section 109.572 of the Revised Code.
- (5) ..."**Home**" means a home as defined in section 3721.10 of the Revised Code.
- (6).... "**Older Adult**" means a person age sixty or older

(B).... (1) Except as provided in division (I) of this section, the chief administrator of a home or adult day-care program shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of each applicant. If an applicant for whom a criminal records check request is required under this division does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation in a criminal records check, the chief administrator shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the applicant. Even if an applicant for whom a criminal records check request is required under this division presents proof of having been a resident of this state for the five-year period, the chief administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

- (2) ...A person required by division (B)(1) of this section to request a criminal records check shall do both of the following:
  - (a) ...Provide to each applicant for whom a criminal records check request is required under that division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section, and obtain the completed form and impression sheet from the applicant;
  - (b) ...Forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation.
- (3) ...An applicant provided the form and fingerprint impression sheet under division (B)(2)(a) of this section who fails to complete the form or provide fingerprint impressions shall not be employed in any position for which a criminal records check is required by this section.

(C) (1) ..Except as provided in rules adopted by the director of health in accordance with division (F) of this section and subject to division (C)(2) of this section, no home or adult day-care

program shall employ a person in a position that involves providing direct care to an older adult if the person has been convicted of or pleaded guilty to any of the following:

- (a) ...A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code.
- (b) ...A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (C)(1)(a) of this section.

(2)(a) .....A home or an adult day-care program may employ conditionally an applicant for whom a criminal records check request is required under division (B) of this section prior to obtaining the results of a criminal records check regarding the individual, provided that the home or program shall request a criminal records check regarding the individual in accordance with division (B)(1) of this section not later than five business days after the individual begins conditional employment. In the circumstances described in division (I)(2) of this section, a home or adult day-care program may employ conditionally an applicant who has been referred to the home or adult day-care program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and for whom, pursuant to that division, a criminal records check is not required under division (B) of this section.

- (b) ...A home or adult day-care program that employs an individual conditionally under authority of division (C)(2)(a) of this section shall terminate the individual's employment if the results of the criminal records check requested under division (B) of this section or described in division (I)(2) of this section, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending thirty days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the offenses listed or described in division (C)(1) of this section, the home or program shall terminate the individual's employment unless the home or program chooses to employ the individual pursuant to division (F) of this section. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the individual makes any attempt to deceive the home or program about the individual's criminal record.

(D)....(1) Each home or adult day-care program shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under division (B) of this section.

- (2) ...A home or adult day-care program may charge an applicant a fee not exceeding the amount the home or program pays under division (D)(1) of this section. A home or program may collect a fee only if both of the following apply:
- (a) ...The home or program notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment;
  - (b) ...The Medicaid program does not reimburse the home or program the fee it pays under division (D)(1) of this section.
- (E) .The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:
- (1) ...The individual who is the subject of the criminal records check or the individual's representative;
  - (2) ...The chief administrator of the home or program requesting the criminal records check or the administrator's representative;
  - (3) ...The administrator of any other facility, agency, or program that provides direct care to older adults that is owned or operated by the same entity that owns or operates the home or program;
  - (4) ...A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant;
  - (5) ...Any person to whom the report is provided pursuant to, and in accordance with, division (I)(1) or (2) of this section;
  - (6) ...The board of nursing for purposes of accepting and processing an application for a medication aide certificate issued under Chapter 4723. of the Revised Code;
  - (7)...The director of aging or the director's designee if the criminal records check is requested by the chief administrator of a home that is also a community-based long term care services provider.
- (F) ...In accordance with section 3721.11 of the Revised Code, the director of health shall adopt rules to implement this section. The rules shall specify circumstances under which a home or adult day-care program may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section but meets personal character standards set by the director.
- (G) ..The chief administrator of a home or adult day-care program shall inform each individual, at the time of initial application for a position that involves providing direct care to an older adult, that the individual is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the individual comes under final consideration for employment.
- (H) ..In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an individual who a home or adult day-care program employs in a position that involves providing direct care to older adults, all of the following shall apply:
- (1) ...If the home or program employed the individual in good faith and reasonable reliance on the report of a criminal records check requested under this section, the home or program

shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate;

(2) ...If the home or program employed the individual in good faith on a conditional basis pursuant to division (C)(2) of this section, the home or program shall not be found negligent solely because it employed the individual prior to receiving the report of a criminal records check requested under this section;

(3) ...If the home or program in good faith employed the individual according to the personal character standards established in rules adopted under division (F) of this section, the home or program shall not be found negligent solely because the individual prior to being employed had been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section.

(I) (1) ..The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and both of the following apply:

(a) ...The chief administrator receives from the employment service or the applicant a report of the results of a criminal records check regarding the applicant that has been conducted by the superintendent within the one-year period immediately preceding the applicant's referral;

(b) ...The report of the criminal records check demonstrates that the person has not been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section, or the report demonstrates that the person has been convicted of or pleaded guilty to one or more of those offenses, but the home or adult day-care program chooses to employ the individual pursuant to division (F) of this section.

(2) .....The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant and may employ the applicant conditionally as described in this division, if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and if the chief administrator receives from the employment service or the applicant a letter from the employment service that is on the letterhead of the employment service, dated, and signed by a supervisor or another designated official of the employment service and that states that the employment service has requested the superintendent to conduct a criminal records check regarding the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of or pleaded guilty to any offense listed or described in division (C)(1) of this section, that, as of the date set forth on the letter, the employment service had not received the results of the criminal records check, and that, when the employment service receives the results of the criminal records check, it promptly will send a copy of the results to the home or adult day-care program. If a home or adult day-care program employs an applicant conditionally in accordance with this division, the employment service, upon its receipt of the results of the criminal records

check, promptly shall send a copy of the results to the home or adult day-care program, and division (C)(2)(b) of this section applies regarding the conditional employment.

