

Additional Recommendations for Requirements of Participation National Consumer Voice for Quality Long-Term Care

July 1, 2014

All language in **bold purple font** indicates recommendations previously submitted on July 16, 2012; **bold red font** indicates additional, new recommendations submitted July 2014.

GENERAL RECOMMENDATIONS

- Change “incompetent” to “**incapacitated.**”

Rationale: “Incompetent” is no longer widely used in legal circles and has a very negative connotation.

- Change: “Resident or his or her legal representative” to **resident or his or her legal representative, and any interested family member who has been granted written or oral permission by the resident.**

Rationale: Even when a resident has a legal representative, he or she may also wish one or more family members to be involved as well. Depending on the situation, a legal representative may prevent family from being engaged in the resident’s care and life. This provision allows residents to choose which family members, if any, they wish to be involved.

RECOMMENDATIONS RELATED TO SPECIFIC PROVISIONS

§483.10 Resident Rights

Revise as follows:

- The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. **This includes communication at all times with staff in a language the resident can understand.** A facility must protect and promote the rights of each resident, including each of the following rights:

Rationale: Residents who speak different languages, including sign language, or who have speech disabilities, are frequently isolated and unable to convey their needs. This can impact both their physical and psychosocial well-being. It is not sufficient to only communicate information about total health status in a language the resident understands. Furthermore, facilities often fail to have adequate communication methods in times of crisis or medical emergencies.

§483.10(b)(2) Resident Records

Revise as follows:

- The resident or his or her legal representative has the right--
 - (i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays). **The resident or his or her representative has the right to view these records in privacy without the presence of staff.**

Rationale: Both residents and family members report that staff may interfere in their review of records by asking why they are looking at certain parts of the record. This can intimidate residents and families and result in their not being able to freely access information to which they are entitled.

§483.10(b)(4) Right to Refuse Treatment

Revise as follows:

- The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (8) of this section. **A facility may not transfer or discharge a resident for refusing treatment unless the criteria for transfer/discharge are met.** **The resident has the right to refuse treatment and to formulate an advance directive as specified in paragraph (8) of this section. The resident has the right to refuse to participate in any experimental research or clinical investigation, subject to applicable federal and state laws related to legally effective informed consent, including the right to be told that participation is voluntary and that there will be no penalty or loss of benefits if he or she declines; of any potential risks from the research; its duration; and his or her right to discontinue participation. In the case of a resident who is unable to give informed consent, the resident's representative must give written consent, subject to the same conditions and federal and state laws as the resident; and**

Rationale: Far too often facilities transfer or discharge residents who refuse treatment, such as a medication. As a result the right to refuse treatment becomes meaningless. This language would better ensure that transfers/discharges only occur for permissible reasons.

§483.10(b)(7)(iii) Written Description of Legal Rights

Revise as follows:

- **This information must also be given to the resident in writing on admission, 10 days after admission and annually.**

Rationale: It is essential that residents receive this information at the time of admission so they know where to turn for help from the very beginning of their stay. However, admission is a very stressful time during which residents are given many documents all at once, and this information is easily misplaced or overlooked. Providing residents with a copy again 10 days later and annually helps ensure that residents are adequately informed about the agencies/groups/programs that can assist them with problems that may arise.

§483.10(b)(7)(iv) Filing a Complaints with State Survey and Certification Agency

Revise as follows:

- A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, **misappropriation of resident property in the facility, non-compliance with the advance directives requirements, and any issue related to rights, care, services and any aspect of his or her life in the facility.**

Rationale: Residents (and anyone) can file complaints with the State survey and certification agency regarding a range of issues, not just concerns related to abuse, neglect or misappropriation. Residents should be informed of that fact.

§483.10(b)(9) Information about Physician

Revise as follows:

- The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care and **provide contact information**.

Rationale: Many residents do not have the contact information for their physician - information that we have when we are living at home. Residents should have the right to the same information as someone in the community.

§483.10(b)(11)(i) -- Notification of changes.

Revise as follows:

- A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is--
(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;
(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);
(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or
(D) A decision to transfer or discharge the resident from the facility as specified in §483.12(a).
(E) Notification related to (C) and (D) must be made prior to any decision about altering treatment or transferring or discharging the resident.

Rationale: it is not enough to simply inform residents and their legal representative of the need to change treatment or transfer/discharge. Notification implies that all that the facility needs to do before changing a resident's treatment or transferring/discharging him or her is tell the resident or his/her legal representative about the need to take these actions. Medical decisions about treatment must be discussed with and agreed to by the resident or by the individual with the legal authority to consent to treatment before any change is made. Failure to do so would be a violation of the resident's right to participate in planning care and treatment or changes in care and treatment. Similarly, simply notifying the resident or his/her legal representative that a decision has been made to transfer/discharge the resident would violate the transfer /discharge requirements.

§483.10(b)(11)(ii) Notification of room or roommate assignment change

Revise as follows:

- The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member **prior to —**
(A) A change in room or roommate assignment as specified in §483.15(e)(2), **including the resident's right to refuse such a change."**

Rationale: Notification of these changes is not sufficient because it implies that the decision has already been made by the facility. This would violate the resident's right to make choices about aspects of their lives that are significant to them. Requiring the facility to give notification of a change in room or roommate before any changes are made gives residents the opportunity to express their wishes and preferences.

§483.10(c)(4) Accounting and Records

Revise as follows:

- The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
 - (i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
 - (ii) The individual financial record must be **provided** through quarterly statements and on request to the resident or his or her legal representative.
 - (iii) A facility must ensure that all resident fund accounts are audited yearly by an independent auditor and make the certified audit report available to surveyors, current and prospective residents and their families, and members of the public. Audits shall include but not be limited to checking that (a) residents are receiving account interest and statements; (b) deposits, withdrawals, and balances are properly reconciled; and (c) the accounts of deceased residents are properly closed; and**
 - (iv) A facility shall conduct a national background check on all employees who handle residents' funds.**

Rationale:

An investigation conducted by *USA Today* in 2013 found that thousands of nursing home residents had had their savings stolen while held in accounts managed by the facility. Because there is no requirement to audit these accounts, these crimes often go undetected for months and even years, and the thefts can reach hundreds of thousands of dollars.

The *USA Today* report also found that money was stolen by employees with a history of theft. Requiring a facility to conduct background checks on all facility personnel who manage resident funds would better protect residents' funds.

§483.10(c)(8) Limitation on Charges to Personal Funds

Revise as follows:

- The facility may not impose a charge against the personal funds of a resident for any item or services for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts).

The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with §489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See §447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

A facility may not make deductions from a resident's personal funds for any reason without written authorization from the resident or resident's legal representative, including after the resident has died or moved out of the facility.

(i) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:

(A) Nursing services as required at §483.30 of this subpart.

(B) Dietary services as required at §483.35 of this subpart.

(C) An activities program as required at §483.15(f) of this subpart.

(D) Room/bed maintenance services.

(E) Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry.

(F) Medically-related social services as required at §483.15(g) of this subpart.

(ii) Items and services that may be charged to residents' funds. Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(A) Telephone;

(B) Television/radio for personal use;

(C) Personal comfort items, including smoking materials, notions and novelties, and confections;

(D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare;

(E) Personal clothing;

(F) Personal reading matter;

(G) Gifts purchased on behalf of a resident;

(H) Flowers and plants; and

(I) Social events and entertainment offered outside the scope of the activities program, provided under §483.15(f) of this subpart.

(J) Non-covered special care services such as privately hired nurses or aides.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by §483.35 of this subpart.

(iii) Requests for items and services.

(A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.

(B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.

(C) The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be

(iv) Notification of increased costs

(A) The facility must inform residents of any increase in the facility's private pay rate or the cost of personal items obtained through the facility in writing at least 30 days in advance and the reason for the increase.

Rationale:

Facilities often charge residents for items the resident did not specifically request or want and the resident only finds out if he or she knows to request to look at his or her quarterly statement. The resident's personal funds are comparable to a person's bank account and charges and withdrawals should only be done with resident authorization.

The resident is essentially renting a room from the facility and should have the right as a tenant to advance notice of increases in the cost of the room/stay. In addition, residents need to know in advance if there is going to be any increase in the cost of such items as cokes, candy bars, etc. that are purchased in the facility because they may have to adjust their purchases depending on the increase.

§483.10(e) Privacy and Confidentiality

Revise as follows:

- The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.
 - (1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;
(i) The facility must provide residents with adequate visual and auditory privacy during times of visitation.
 - (2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;
 - (3) The resident's right to refuse release of personal and clinical records does not apply when--
 - (i) The resident is transferred to another health care institution; or
 - (ii) Record release is required by law

Rationale: Although the interpretive guidelines state that each resident has "the right to privacy with whomever the resident wishes to be private" and that this privacy should include full visual, and, to the extent desired, for visits or other activities, auditory privacy," many facilities remain unable (or, in some cases, unwilling) to provide residents and their loved ones full privacy during visitation. Family members and loved ones that we have spoken to commonly express frustration that residents are still unable to enjoy full privacy during visitation, which limits residents' abilities to maintain intimate and fulfilling relationships.

§483.10(f)(2) Prompt efforts to resolve grievances

Revise as follows:

- Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents **and staff. The facility must respond to a resident's grievances in writing within 10 days.**

Rationale: "Prompt" is very vague and subjective and should be defined. In addition, this language would better ensure that residents are informed what the facility has done regarding their concern, otherwise they may never find out.

§483.10(g)(1) Examination of Survey Results

Revise as follows:

- A resident has the right to--
Examine the results of the most recent survey of the facility conducted by Federal or State surveyors, **surveys from the past three years, including any abbreviated surveys**, and any plan of correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents **without the need for staff assistance**, and must post a notice of their availability in prominent, accessible areas of the facility. **The survey results and plan of correction must also be available to anyone who wishes to examine them. This information shall be made available immediately upon receipt by a facility. The facility may not wait until the conclusion of dispute resolution and/or legal challenges to release the information.**

Rationale:

Facilities frequently do not make abbreviated surveys available for resident review.

Since Nursing Home Compare provides three years of survey information, facilities should be held to the same standard.

We have noted instances where the “place” itself may be readily accessible to residents, such as a lobby, but residents need to ask staff for help because the survey can’t be reached (for instance it is on top of a tall piece of furniture). This effectively denies residents access to the survey unless staff helps them, and staff are often too busy to take the time to assist a resident in looking at a survey.

Since the survey is public information, any one should be able to review it.

Residents and others are often denied timely access to the information when facilities engage in months of legal maneuvering regarding the outcomes of the surveys.

§483.10(i) Mail

Revise as follows:

- The resident has the right to privacy in written **and electronic** communications, including the right to--

Rationale:

Electronic communications have become very prevalent since the Requirements of Participation were written. Since more and more residents use computers and other electronic devices, the right to privacy needs to be extended to e-communications.

§483.10(j)(1) - Access and Visitation Rights

Revise as follows:

- The resident has the right and the facility must provide immediate access to any resident by the following:
 - (i) Any representative of the Secretary;
 - (ii) Any representative of the State;
 - (iii) The resident’s individual physician;

(iv) The State long term care ombudsman (established under section 307 (a)(12) of the Older Americans Act of 1965);

(i) A facility may not refuse to allow residents to talk to ombudsmen, nor permit others, including family members, to limit a resident's access to an ombudsman.

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident

Rationale: We have heard from ombudsmen who struggle with facilities wrongly restricting residents' rights to interact with and receive assistance from these advocates. Restrictions can occur through the outright barring of an ombudsman to enter a facility, or through lesser extremes, such as facility staff making it difficult for an ombudsman to aid residents to the fullest extent possible by restricting the timing and privacy of visits. Also, it may not be the facility that is restricting a resident's right to interact with the ombudsman but rather a family member, guardian or other legal representative of a resident. Any type of interference to ombudsman access, however great or small, is in violation of federal law and can prevent residents from receiving support and advocacy services that they may need or want.

§483.10(j) Access and Visitation Rights

Add the following:

- **(4) If visitation is restricted as part of infection control protocol, a facility must not completely bar visitation until less restrictive measures have been tried. When visitation is restricted, the facility must enable adequate and ongoing communication with residents and families during this time.**

Rationale: In our conversations with family members, we have heard of several instances where facilities have barred all visitors from accessing their loved ones for a significant period of time due to the outbreak of certain infectious viruses among residents and/or facility staff. While the interpretive guidelines are currently open enough to allow for visitation restriction by facilities during infectious outbreaks, the guidelines also recognize the psychological harm social isolation can have on residents and urge the least restrictive actions to be taken by facilities to control infections.

§483.10(j) Access and Visitation Rights

Add the following:

- **(5) A facility must not display signage inside or outside the facility regarding visiting hours or hours of operation unless such signage clearly represent residents' rights to 24-hour visitation.**

Rationale: It continues to remain fairly common practice for nursing homes to place signs with operating or visiting hours near the entry of the facility. Use of such signage can be confusing to

visitors, who may conclude they only have the right to visit their loved one during the posted hours. For visitors that may not be aware of what the interpretive guidelines entail regarding residents' rights to 24-hour visitation, acknowledgement of these rights alongside any posting of operating hours is critical. Otherwise, facilities may be able to operate as if these rights do not exist, and residents or their loved ones may feel too intimidated to ask to visit during times earlier or later than the facility's posted hours.

§483.10(k) Telephone

Revise as follows:

- §483.10(k) Telephone **and Computer**

The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard **and to a computer with internet services.**

Rationale: Like the telephone, email is now used as a way to communicate with family and friends, and nursing residents are increasingly utilizing this form of communication. Since email has become as widespread as the telephone, residents need access to a computer just as they need access to a phone.

§483.10(l) Personal Property

Add the following:

- **(i)The facility shall provide each resident a private, individually locked drawer or box in his or her room to safeguard his or her personal possessions. The resident shall have sole control of the key, except that the administrator or designee shall hold a master key.**
- (ii)The facility shall exercise reasonable care for the protection of the resident's property from loss or theft.**
- (iii)The administrator or the administrator's designee is responsible for investigating reports of lost or stolen residents' property.**
- (iv)The facility will have written policies and procedures outlining the steps to be taken in the event an item is reported lost or stolen. The policies will include a mechanism to report the results of the investigation to the resident or his or her legal representative.**
- (v)In the event the lost or stolen item is not recovered, the facility shall be responsible for replacing the item if the facility failed to exercise reasonable care as required in (i).**

Rationale: Lost or stolen items continue to be a major problem faced by residents. These losses can be particularly traumatic for residents who have few of their own possessions after a move into a nursing home. They can also impact a resident's well-being when the lost item is a set of dentures or a hearing aid. Providing residents with a place to safeguard some of their belongings and requiring facilities to take reasonable efforts to safeguard resident's property, investigate loss or theft when it occurs, and replace items if they are not found, establishes some protections against potentially devastating or harmful losses.

§483.10(o) Refusal of Certain Transfers

We believe that distinct parts are harmful to residents and should be eliminated. See recommendations we submitted in July, 2012 related to distinct parts. Consequently, this section on refusal of certain transfers should be deleted, which would be in line with the end of distinct parts.

Should distinct parts not be eliminated, please refer to our recommendations submitted 7/16/12.

§483.12(a)(2) Transfer and Discharge Requirements

Revise as follows:

- The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--
 - (i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - (ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
 - (iii) The safety of individuals in the facility is endangered;
 - (iv) The health of individuals in the facility would otherwise be endangered;
 - (v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident only allowable charges under Medicaid. **A resident cannot be transferred for non-payment if he or she:**
 - A. Has submitted to a third party payer, including Medicaid and Medicare, all the paperwork necessary for the bill to be paid or is appealing a determination; or**
 - B. Is the victim of financial exploitation or financial mismanagement or the facility has failed to provide timely and appropriate assistance with Medicaid or Medicare related issues.**

Rationale: Residents should not be evicted when their bill is not paid for reasons over which they have no control, including but not limited to: 1) the facility not helping with a Medicaid application in a timely manner or not reporting suspected financial exploitation to Adult Protective Services; 2) the person responsible for handling the resident's money has failed to act or misappropriated the resident's money or 3) another individual has financially exploited the resident.

§483.12(a)(3) Documentation

Revise as follows:

- When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by--
 - (i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and
 - (ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section. **The physician must certify and affirm under penalties of perjury that his or her documentation is accurate.**
 - (iii) **Physician documentation or certification is not independently sufficient for the nursing home to comply with this section. The entire clinical record of the resident must support a decision to transfer or discharge a resident.**
 - (iv) **For discharges under paragraph (a)(2)(iii) and (a)(2)(iv), the facility must document the specific risk to health and safety of individuals in the facility and provide documentation of previous interventions in the resident's plan of care that have been attempted and determined ineffective at mitigating risk to the health and safety of individuals in the facility.**

Rationale: Frequently the physician who is asked to document the need for a transfer or discharge due to endangerment of the health and safety of others is the facility's Medical Director. However, the Medical Director has a contractual relationship with the facility and may be subject to pressure from the facility to support its desire to transfer or discharge a resident, particularly in cases where the health and safety of other individuals is allegedly at risk. Advocates in the field have informed us that facilities have argued in hearings that "just because there is a statement in the record doesn't mean it's true." Certification provides greater certainty that the documentation is accurate.

One entry by a physician in a resident's clinical record should not be enough to justify a transfer or discharge. In addition to the physician's documentation, there must be other evidence in the resident's record that supports a transfer or discharge and indicates that all possible interventions have been tried and failed.

§483.12(a)(6) Contents of the notice

- The written notice specified in paragraph (a)(4) of this section must include the following:
 - (i) The reason for transfer or discharge;
 - (ii) The effective date of transfer or discharge;
 - (iii) The location to which the resident is transferred or discharged. **The location must be a setting in which the resident will receive the care, services and support he or she needs. Transient, temporary and/or homeless shelters do not qualify as appropriate transfer or discharge locations.**
 - (iv) A statement that the resident has the right to appeal the action to the State **and upon request to receive copies of all records the facility possesses regarding the resident within 24 hours of the request. The facility must provide the resident with an appeal hearing request form as part of this notice. The notice should state that the resident can file for an appeal by completing the appeal hearing request form and submitting it to the state entity responsible for conducting appeal hearings. Upon resident request, nursing facility staff must assist the resident in filing and submitting the appeal hearing request.**
 - (v) The name, address and telephone number of the State long term care ombudsman;
 - (vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
 - (vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

Rationale:

For years the Consumer Voice has heard directly from ombudsmen, citizen advocates, residents and families about cases in which residents were "transferred" or "discharged" to homeless shelters, emergency rooms and even restaurants. Residents in these situations don't receive the care they need, including oxygen and medications. These actions place residents at risk of great harm and are under no circumstances safe, appropriate settings.

Residents who wish to appeal a facility's decision are at a great disadvantage because the facility has total access to the resident's records while the resident has little to no access. This makes it

difficult to present a strong case at the appeal hearing. In order to level the playing field, residents must be able to obtain all their records in enough time to sufficiently prepare for the hearing.

§483.12(b)(3) Permitting Resident to Return to Facility

Revise as follows:

- A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the **facility's** bed-hold period **or the bed-hold period** under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident--
 - (i) Requires the services provided by the facility; and
 - (ii) Is eligible for Medicaid nursing facility services **when applicable.**
 - (iii) **The facility must provide a resident and his or her representative with written information regarding the number of empty and occupied beds in the facility at the time the resident is seeking readmission.**

Rationale:

All residents should be able to return to the first available bed if the bed-hold period has been exceeded. Residents, regardless of payment source, should be permitted to go back to the nursing home where they have been living and which has become their home. Requiring residents to move against their will to another facility after hospitalization places them at risk of transfer trauma.

Advocates have noted that facilities may simply say they have no available beds if they do not want the resident to return. Residents have no way of knowing if this is true. Providing written information to residents would better ensure that the information is accurate.

§483.12(d)(1) Admissions Policy

Revise as follows:

- **The facility must--**
 - (i) **Not require residents or potential residents to waive their rights to Medicare or Medicaid or any resident right established under 42 CFR 483 Subpart B; and**
 - (ii) **Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits**

Rationale: we have noted many admission agreements that require residents to waive one or more of their residents' rights. This practice must be prohibited or residents lose rights to which they are legally entitled.

§483.13(a) Restraints

Add the following:

- **(1)Physical restraints:**
 - (i) **Limitations on use. The facility may only impose physical restraints to treat the resident's medical symptoms, which include but are not limited to physical, emotional, and behavioral problems, if the restraint is—**
 - (A) **Necessary to ensure the safety of the resident or of other residents;**

- (B) Imposed in accordance with a physician's written order **after determining that the benefits of restraint use outweigh the risks to the resident and** specifying the circumstances and duration under which the restraint is to be used; and
- (C) Not ordered on a standing, blanket, or "as needed" basis.
 - (iii) Non-emergency use. Restraints may not be ordered in non-emergency circumstances unless the restraints are applied so as to cause no physical injury and the least possible discomfort. Except when necessary to allow the conduct of a medical or surgical procedure, restraints may not be ordered in non-emergency circumstances unless the restraints—
 - (A) Enable the resident to reach his or her highest practicable physical, mental, and psychosocial well-being;
 - (B) Are used only as a last resort if the facility, after completing, implementing, and evaluating the resident's comprehensive assessment and plan of care determines that less restrictive means have failed; and
 - (C) Are used in accordance with the plan of care on the comprehensive assessment, which allows for their progressive removal or the progressive use of less restrictive means.
 - (iv) Emergency use.
 - (A) Restraints may not be ordered in emergency circumstances unless they are necessary to alleviate an unanticipated immediate and serious danger to the resident or other individuals in the facility.
 - (B) Emergency orders for restraints may not be in effect for longer than 12 hours and must be confirmed in writing as soon as possible.
 - (v) Notice for non-emergency use. If a restraint is used in a nonemergency
 - (A) Explain the use of the restraint to the resident, or, if the resident has been declared to be legally incompetent or cannot understand his or her rights, to the resident's legal representative, in accordance with § 483.10 (d) and State law;
 - (B) Explain the resident's right to refuse the restraint in accordance with §483.10(b)(4); and
 - (C) Obtain the written consent of the resident or the resident's legal representative.
 - (vi) Restraints may be applied only—
 - (A) By staff who are trained in their use; and
 - (B) If the facility **establishes a system for regular one-on-one monitoring of residents and** assures that the resident's condition will be closely monitored.
 - (vii) At a minimum, for a resident placed in a restraint, the facility must—
 - (A) Check the resident at least every 30 minutes;
 - (B) Assist the resident as often as is necessary for the resident's safety, comfort, exercises and elimination needs;
 - (C) Provide an opportunity for motion, exercise and elimination for not less than 10 minutes during each two hour period in which a restraint is employed;
 - (D) Release the resident from the restraint as quickly as possible; and
 - (E) Keep a record of restraint usage and checks.

Rationale: Since the use of physical restraints can result in both physical and emotional harm to residents, including death, they should never be used unless it is clearly established that their benefits will clearly outweigh their potential harm.

Since monitoring of residents is critical to ensure safety, the facility must have an established monitoring system in place. This will better ensure that monitoring actually occurs.

§483.13(a) Restraints

(2) Chemical restraints and psychopharmacologic drug use

The Consumer Voice strongly supports and signed onto the comments submitted by the California Advocates for Nursing Home Reform (CANHR) and other advocates. We urge you to adopt these recommendations that would amend 483.13 (in place of the recommendations we submitted on July 16, 2012).

§483.13(b) Abuse

Revise as follows:

- **The resident has the right to be free from verbal, sexual, physical, and mental abuse, neglect, financial exploitation, corporal punishment, and involuntary seclusion.**
(2) A facility is responsible for failing to take all reasonable measures to protect residents from abuse of any source.
(i) A facility is responsible for the abusive actions of its employees, contractors, and volunteers, even if the employees' actions conflict with the facility's policies and procedures on abuse.
(ii) A facility is responsible for protecting residents through proper assessment and care planning, appropriate interventions and individualized care from foreseeable threats of harm posed by other cognitively intact and cognitively impaired residents.

Rationale:

Failure to provide needed care can harm and even kill residents. Including neglect indicates the importance of ensuring that residents receive the care they need and to which they are entitled.

Foreseeable threats of harm stem from predictable patterns of behavior that facility staff should anticipate. The intent of (2)(ii) is to require facilities to identify, assess and intervene to avoid the potentially harmful behavior of residents and not to permit facilities to involuntarily discharge residents as a substitute for good care practices.

§483.13(c)(4) Results of investigations

Revise as follows:

- The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken. **If a resident, family member of a resident or a resident's legal representative reported the abuse, the facility must report the results of all investigations to that individual.**

(5) A facility shall report all cases of death to the appropriate coroner regardless of whether the facility believes the death to be from natural causes or the result of abuse, sexual abuse, negligence, or any other cause.

Rationale:

The person reporting the abuse should be informed about the investigation results. This lets the individual know that the abuse was in fact investigated and not ignored, and encourages more people to come forward when they know they will find out what happened. This also creates more nursing home accountability.

Reporting all deaths to the coroner, who then determines whether to proceed with an investigation, makes it more likely that abuse and neglect of nursing home residents will be detected. Required reporting could have a deterrent effect, which would in turn, improve quality of care.

§483.20(b)(1) Resident Assessment Instrument

- A facility must make a comprehensive assessment of a resident's needs, using the resident assessment instrument (RAI) specified by the State. The assessment must include at least the following:

(i) Identification and demographic information

(ii) The resident's personal and medical history.

(iii) Customary routine.

(iv) Cognitive patterns.

(v) Communication.

(vi) Vision.

(vii) Mood and behavior patterns.

(viii) Psychological well-being.

(ix) Physical functioning and structural problems.

(x) Continence.

(xi) Disease diagnosis and health conditions.

(xii) Dental and oral health care.

(xiii) Nutritional status.

(xiv) Skin Conditions.

(xv) Activity pursuit, including outings and overnight leaves of absence in the community.

(xvi) Medications.

(xvii) Special treatments and procedures.

(xviii) Discharge potential.

A facility must assess a resident's goal to return to the community using Section Q of the MDS to interview the resident in-depth, including asking the resident if he or she wants to talk to someone about the possibility of leaving the facility and returning to live and receive services in the community. If the resident answers "yes," the facility must refer the resident to the state's designated local contact agency.

(xix) Documentation of summary information regarding the additional assessment performed on the care areas triggered by the completion of the Minimum Data Set (MDS).

(xx) Risks of decline

(xxi) Documentation of participation in assessment.

The assessment process must include direct observation and communication with the resident; communication with licensed and non-licensed direct care staff members, including certified nursing assistants, on all shifts; and the participation of the resident and with resident consent, the resident's family members.

Rationale: Advocates report that facilities are not adequately discussing a resident's wishes to return to the community and/or not making the appropriate referral if the resident would like to speak to someone about this possibility.

§483.25 Quality of Care

Add the following:

- **When the resident has an appointment or visit related to his or her care that is outside the facility, the facility must accompany the resident during the appointment or visit if necessary or requested by the resident.**

Rationale: Advocates are aware of instances when residents have been dropped off in front of a medical or other health care-related office and left alone without assistance, often for long periods of time, because nursing home staff did not think they needed help.

§483.25(l) Unnecessary drugs

The Consumer Voice strongly supports and signed onto the comments submitted by the California Advocates for Nursing Home Reform (CANHR) and other advocates. We urge you to adopt these recommendations to amend 483.25(l) in place of the recommendations we submitted on July 16, 2012.

§483.60 Pharmacy Services

The Consumer Voice strongly supports and signed onto the comments submitted by the California Advocates for Nursing Home Reform (CANHR) and other advocates. With the exception of 483.60(a), we urge you to adopt these recommendations to amend 483.60 in place of the recommendations we submitted on July 16, 2012.

§483.70(d)(1) Resident Rooms

Revise as follows:

- Bedrooms must--
 - (i) Accommodate no more than **two** residents;

Rationale: Allowing bedrooms to accommodate four residents perpetuates the institutional nature of nursing homes and does not promote a home-like environment or the movement toward culture change. In addition, lack of privacy is a major concern for nursing home residents, and this problem is exacerbated when there are four residents in a room.

§483.70(e) Toilet Facilities

Revise as follows:

- (e) Toilet **and Bathing** Facilities
 - (i) Each resident room must be equipped with or located near toilet facilities.
 - (ii) There must be sufficient numbers of bathtubs to accommodate those residents who wish to take baths.**

Rationale: Because residents have the right to self-determination and to make choices about aspects of their life that are important to them, there must be enough bathtubs to permit all residents whose preference is to take a bath rather than a shower to do so.

§483.75(d) Governing Body

Revise as follows:

- (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and
 - (2) The governing body appoints the administrator who is--
 - (i) Licensed by the State where licensing is required; and
 - (ii) Responsible for the management of the facility.

- A. The administrator shall ensure that all staff receive annual in-service training on an area specific to the needs of residents, including residents' fear of retaliation from employees or others. Training on residents' fear of retaliation shall include discussion of (1) residents' rights to file complaints and voice grievances, (2) examples of what might constitute or be perceived as employee retaliation against residents, and (3) methods of preventing employee retaliation and alleviating residents' fear of such retaliation.**

Rationale: Nursing home residents' fear of retaliation is well documented in the work of the Long-Term Care Ombudsman Program and borne out in research conducted by the University of Connecticut. As individuals become more frail and dependent on their caregivers and the longer they reside in a long-term care facility, the more prevalent are their concerns and fears about retaliation when voicing grievances. There are times when staff do not recognize that their actions and behavior are perceived as retaliation by the resident. At the heart of residents' rights is the resident's ability to feel comfortable exercising his or her rights. Staff need better awareness and understanding of the resident perspective. Staff training on this subject would foster more open communication in the nursing home setting (Nancy Schaffer, Connecticut State Long-Term Care Ombudsman, Statement to CT Aging Committee in support of legislation requiring training on fear of retaliation in nursing homes. March 8, 2012).