

CONTACT INFORMATION

BY US MAIL
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548

ON THE INTERNET
www.oag.state.tx.us

BY TELEPHONE
Main agency switchboard
(512) 463-2100

Consumer Protection Hotline
(800) 806-2092

Crime Victims' Compensation
(800) 621-0508

OTHER INFORMATION

**Reporting Medicaid Fraud or
Abuse of a Medicaid Recipient**
Medicaid Fraud Control Unit

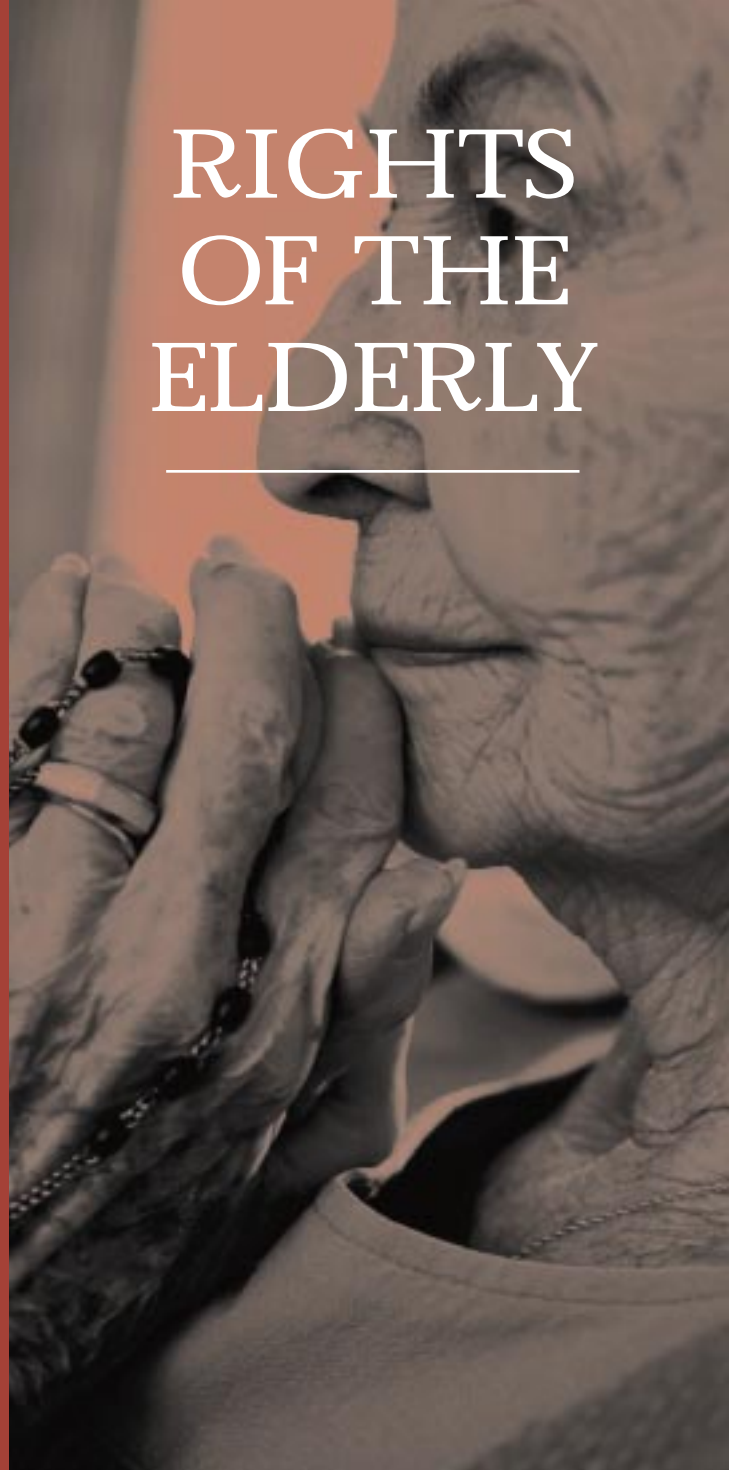
Phone (512) 463-2011 or Fax (512) 320-0974
E-mail: mfcu@oag.state.tx.us

**Reporting Suspicions of Neglect or
Abuse to a Disabled or Elderly Person**
911 or local law enforcement *if the person is
in immediate or severe danger*

Texas Department of Protective and
Regulatory Services
(800) 252-5400 *24-hour hotline*

Complaints About a Nursing Home
Texas Department of Human Services
(800) 458-9858 *long-term care*

RIGHTS OF THE ELDERLY



OFFICE OF THE ATTORNEY GENERAL
ELDER LAW & PUBLIC HEALTH DIVISION
JOHN CORNYN

“Texas law provides special rights for citizens age 55 and over. These rights are in addition to those enjoyed by all Texans.

However, many elder Texans and their families are not aware that such rights do exist. By providing this information, my office seeks to work with senior Texans and their families to ensure the health and safety of our most vulnerable citizens.”

— JOHN CORNYN
ATTORNEY GENERAL OF TEXAS

RIGHTS OF THE ELDERLY

§ 102.003 Texas Human Resources Code

- (a) An elderly individual has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The elderly individual has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.
- (b) An elderly individual has the right to be treated with dignity and respect for the personal integrity of the individual, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the elderly individual:
 - (1) *has the right to make the individual's own choices regarding the individual's personal affairs, care, benefits, and services;*
 - (2) *has the right to be free from abuse, neglect, and exploitation; and*
 - (3) *if protective measures are required,*

has the right to designate a guardian or representative to ensure the right to quality stewardship of the individual's affairs.

Elderly citizens still have all rights guaranteed to every person under state and federal law. The following additional rights belong to people 55 years or older.

Any person in a nursing home should, at all times, be dressed, well groomed and clean. He or she should be allowed to express preferences about food, sleeping and waking times. Any treatments or personal care should be given in private, not in front of an open door. Most important, a nursing home should not treat any resident with disrespect; each resident should be treated with dignity. It is often difficult and embarrassing for an elderly person to discuss degrading treatment received in a nursing home.

Abuse includes involuntary seclusion, intimidation, humiliation, harassment, threats of punishment, deprivation, hitting, slapping, pinching, kicking, any type of corporal punishment, any sexual contact without informed consent, sexual harassment, verbal abuse, or any oral, written, or gestured language that includes disparaging or derogatory terms, regardless of the person's ability to hear or comprehend.

Exploitation includes a caretaker's using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

If you suspect a problem, discuss the matter with the nursing home administrator. If you are aware of specific acts of abuse, neglect, or exploitation, you are required by law to report it. If the victim is in a nursing home, call the Texas Department of Human Services at 1-800-458-9858. Otherwise, call Adult Protective Services at 1-800-252-5400.

Many nursing homes provide better care for private-pay or Medicare residents than they do for Medicaid recipients, who are generally less profitable for the nursing home. While this is not prohibited, no facility may deny appropriate care to a Medicaid recipient. State and federal standards define the level of care that is appropriate for all nursing home residents. The right to appropriate care applies to all elderly people, whether they live in a nursing home or not.

It is a crime to defraud the Medicaid program. A facility that receives Medicaid funding may not abuse or neglect its residents. If you see any sign of these problems, contact the Attorney General's Medicaid Fraud Control Unit at (512) 463-2011. This division investigates and refers for prosecution allegations of criminal fraud, abuse, and neglect. The division also works closely with the Consumer Protection Division and the Elder Law and Public Health Division in matters that merit civil enforcement.

- (c) An elderly individual has the right to be free from physical and mental abuse, including corporal punishment or physical or chemical restraints that are administered for the purpose of discipline or convenience and are not required to treat the individual's medical symptoms. A person providing services may use physical or chemical restraints only if the use is authorized in writing by a physician or the use is necessary in an emergency to protect the elderly individual or others from injury. A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used. Except in an emergency, restraints may only be administered by qualified medical personnel.

In the past, elderly persons were sometimes tied to a chair or bed to prevent them from moving freely, or given sedative drugs to make them easier to "control." Today, unless there is a doctor's order or emergency safety reason for restraining a person with ties or with drugs, such actions are a violation of that person's rights. Convenience, irritation, and anger are not legal excuses for restraining a person.

- (d) A mentally retarded elderly individual with a court-appointed guardian of the individual may participate in a behavior modification program involving use of restraints or adverse stimuli only with the informed consent of the guardian.

Restraint or punishment can be used for teaching or training a mentally retarded person only after a court-appointed guardian is fully informed of the proposed program and its effect on the mentally retarded person, and gives consent to the program.

- (e) An elderly individual may not be prohibited from communicating in the individual's native language with other individuals or employees for the purpose of acquiring or providing any type of treatment, care, or services.
- (f) An elderly individual may complain about the individual's care or treatment. The complaint may be made anonymously or communicated by a person designated by the elderly individual. The person providing services shall promptly respond to resolve the complaint. The person providing services may not discriminate or take other punitive action against an elderly individual who made a complaint.

This fundamental right is sometimes violated by nursing homes. If a person complains about poor care, or if a family member speaks up about poor conditions at a facility, it is a violation of this law for the nursing home, or any of its employees, to intimidate or retaliate in any way against the resident or the family. A nursing home must have an effective procedure for receiving complaints from elderly people and for responding to those complaints.

In some cases, a family may receive a threatening letter stating that unless complaints cease, the resident will be discharged from the facility. One facility threatened to leave a wheelchair-bound resident “on the porch” because her family was an outspoken member of the family council. Sometimes a nurse or nurse aide will slap residents, handle them roughly, “forget” to help them go to the bathroom or feed them, or refuse small requests for assistance when the resident or a family member complains about mistreatment at the hands of a nurse or nurse aide. More often, the intimidation or punishment is subtle, and family members may suspect it but be unable to prove it. In this difficult situation, you should document specific instances of mistreatment.

Some facilities try to identify residents whose families are members of consumer or nursing home advocacy groups. Often, these family members are the most vocal and effective producers of improvements or changes in facilities’ practices and

policies. Unfortunately, these family members must sometimes consider that speaking up to fix a problem might jeopardize their loved ones in the nursing home. When it appears that retaliation or reprisal is occurring because of complaints or reporting of problems, call the Texas Department of Human Services or this office. Any retaliation on this basis is prohibited by the law.

- (g) An elderly individual is entitled to privacy while attending to personal needs and a private place for receiving visitors or associating with other individuals unless providing privacy would infringe on the rights of other individuals. This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils. An elderly person may send and receive unopened mail, and the person providing services shall ensure that the individual’s mail is sent and delivered promptly. If an elderly individual is married and the spouse is receiving similar services, the couple may share a room.

By law, elderly people have a right to privacy when conducting their affairs, unless this would infringe on the rights of others. No one has the right to restrict visits to an elderly person, nor force an

elderly person to receive a visitor he or she does not wish to see.

Sometimes a nursing home or other residential provider will try to exclude visitors who advocate on behalf of the elderly person or who might otherwise challenge the facility's control. While other residents' rights must also be considered (loud, boisterous visitors might be asked to leave, for example), a nursing home or other facility can not use this as a pretext for excluding visitors the resident wishes to meet with.

An elderly person has the right to send and receive unopened mail.

- (h) An elderly individual may participate in activities of social, religious, or community groups unless the participation interferes with the rights of other persons.
- (i) An elderly individual may manage the individual's personal financial affairs. The elderly individual may authorize in writing another person to manage the individual's money. The elderly individual may choose the manner in which the individual's money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the individual may

choose the least restrictive of these methods. A person designated to manage an elderly individual's money shall do so in accordance with each applicable program policy, law, or rule. On request of the elderly individual or the individual's representative, the person designated to manage the elderly individual's money shall make available the related financial records and provide an accounting of the money. An elderly individual's designation of another person to manage the individual's money does not affect the individual's ability to exercise another right described by this chapter. If an elderly individual is unable to designate another person to manage the individual's affairs and a guardian is designated by a court, the guardian shall manage the individual's money in accordance with the Probate Code and other applicable laws.

Elderly people may need help with their finances, but unless they hand control over to another, they have the same right as anyone else to receive, spend, invest, save, or give away their money. In situations where a nursing home, family member or guardian has been granted permission to

manage a resident's money, the individual still has the right to decide how his or her money will be managed, and to receive a full financial accounting.

Sometimes a family member, "friend," or nursing home takes control of an elderly person's money without that person's permission—often for his or her "own good." This may be a violation of the person's rights, and should prompt a call to Adult Protective Services or a reputable attorney for advice.

(j) An elderly individual is entitled to access to the individual's personal and clinical records. These records are confidential and may not be released without the elderly individual's permission, except that the records may be released:

(1) to another person providing services at the time the elderly individual is transferred; or

(2) if the release is required by another law.

A resident of a nursing home or other facility may review all of his or her records. This includes medical, nursing, financial, social, contractual, and legal records. These records may not be released without the individual's permission, except when required by law or when a resident is transferred to another facility.

(k) A person providing services shall fully inform an elderly individual, in language that the individual can understand, of the individual's total medical condition and shall notify the individual whenever there is a significant change in the person's medical condition.

(l) An elderly individual may choose and retain a personal physician and is entitled to be fully informed in advance of treatment or care that may affect the individual's well-being.

(m) An elderly individual may participate in an individual plan of care that describes the individual's medical, nursing and psychological needs and how the needs will be met.

(n) An elderly individual may refuse medical treatment after he or she:

(1) is advised by the person providing services of the possible consequences of refusing treatment; and

(2) acknowledges that the individual clearly understands the consequences of refusing treatment.

Hospitals and nursing homes are sometimes asked hard questions by elderly people who

have serious medical problems—“How bad is it?” “Will I be in pain?” “Is this treatment going to hurt?” “Is there any cure for this problem?” “Am I going to get better?” “Will I ever go home again?”

Under Sections (k) through (n), elderly people have a right to know their medical condition to the extent that it is known, to choose their own doctor, to have a say in their medical treatment, and to reject medical treatment.

- (o) An elderly individual may retain and use personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other individuals.
- (p) An elderly individual may refuse to perform services for the person providing services.
- (q) Not later than the 30th day after the date the elderly individual is admitted for service, a person providing services shall inform the individual:
 - (1) *whether the individual is entitled to benefits under Medicare or Medicaid; and*
 - (2) *which items and services are covered by these benefits, including*

items and services for which the elderly individual may not be charged.

- (r) A person providing services may not transfer or discharge an elderly individual unless:
 - (1) *the transfer is for the elderly individual's welfare, and the individual's needs cannot be met by the person providing services;*
 - (2) *the elderly individual's health is improved sufficiently so that services are no longer needed;*
 - (3) *the elderly individual's health and safety or the health and safety of another individual would be endangered if the transfer or discharge was not made;*
 - (4) *the person providing services ceases to operate or to participate in the program that reimburses the person providing services for the elderly individual's treatment or care; or*
 - (5) *the elderly individual fails, after reasonable and appropriate notices, to pay for services.*
- (s) Except in an emergency, a person providing services may not transfer or discharge an elderly individual from a residential facility until the

30th day after the date the person providing services provides written notice to the elderly individual, the individual's legal representative, or a member of the individual's family stating:

- (1) that the person providing services intends to transfer or discharge the elderly individual;*
- (2) the reason for the transfer or discharge listed in Subsection (r);*
- (3) the effective date of the transfer or discharge;*
- (4) if the individual is to be transferred, the location to which the individual will be transferred; and*
- (5) the individual's right to appeal the action and the person to whom the appeal should be directed.*

The rights listed in Sections (r) and (s) are very important. Many elderly people find moving traumatic, and families are sometimes faced with finding a new home for their loved ones following an involuntary discharge.

A nursing home may not discharge, or threaten to discharge, a resident in reprisal for complaints about poor care or in retaliation against an outspoken family

member. The five reasons listed in Section (r) are the only valid grounds for discharging a resident.

If no emergency exists, the facility must give thirty days' notice before discharging the resident. The notice must include the reason for the discharge and indicate how the discharge may be appealed. If the elderly person is in a Medicaid-certified nursing home, the Texas Department of Human Services provides a hearing process for anyone wishing to object to being discharged. Residents do not have to have a lawyer for these hearings—they are informal and aimed at achieving a fair result.

In an emergency, (for example, when the health or safety of other residents is jeopardized by the elderly person's continued presence), a resident could be transferred to a hospital or another appropriate place for treatment without notice or a hearing.

If you know of any elderly person who is threatened with discharge from a nursing home, and none of these legal reasons apply, call the Texas Department of Human Services or this office.

- (t) An elderly individual may:
- (1) *make a living will by executing a directive under the Natural Death Act (Chapter 672, Health and Safety Code);*
 - (2) *execute a durable power of attorney for health care under Chapter 135, Civil Practice and Remedies Code; or*
 - (3) *designate a guardian in advance of need to make decisions regarding the individual's health care should the individual become incapacitated.*