



Missouri Department of Health and Senior Services

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Director

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Governor

TO: All Long-Term Care Facilities

FROM: Tracy Niekamp, Administrator
Section for Long-Term Care Regulation

DATE: November 6, 2024

RE: Resident Rights in Long-Term Care Facilities

The Missouri Department of Health and Senior Services (DHSS) is dedicated to protecting the health and safety of our citizens. This especially includes those Missourians that make their home in residential care facilities, assisted living facilities, intermediate care facilities, and skilled nursing facilities (collectively known as long-term care facilities).

Recently, the Centers for Medicare and Medicaid Services (CMS) issued a [letter](#) dated October 10, 2024, for the Department of Health and Senior Services to provide to long-term care facilities and interested parties regarding federal regulations pertaining to resident rights and protections provided to residents under Federal law. Unfortunately, this correspondence was necessary in order to support SNFs and NFs who were being asked to limit resident rights for individuals under the care of a guardian or conservator. They, however, are not alone and many of our state licensed facilities are often asked to do the same.

Each resident in a Residential Care Facility, Assisted Living Facility, Intermediate Care Facility and Skilled Nursing Facility is guaranteed specific rights by state law when they reside in a long-term care facility. (Section 198.088, RSMo). Section 198.088.2, RSMo, provides the roadwork each of us is tasked to follow in our efforts to support residents. It states, "Each facility and the department shall encourage and assist residents in the free exercise of the resident's rights to civil and religious liberties, including knowledge of available choices and the right to independent personal decision."

Facility policies and procedures contribute substantially to the culture and the quality of care in facilities, and should be consistent, with state and any applicable federal regulations depending on whether the facility is certified by CMS. The protection of resident rights and advocacy for residents to live their lives (regardless of age, diagnosis, guardianship status, or placement location) is the responsibility of each of us. Each day we have the ability and the responsibility to ensure the residents we support are provided opportunities to exercise their rights as a resident in a long-term care facility and are supported to lead a meaningful life where their overall mental, physical, and psychosocial well-being are forefront in the care provided.

Many residents living in long-term care facilities have been formally declared incompetent by a court, and have a representative appointed by the court (for example, a guardian or conservator). State law defines a guardian as a person appointed by a court to have the care and custody of the person of a minor or of an incapacitated person, Section 475.010(8), RSMo.

If the court finds an individual to be in some degree incapacitated or disabled, or both, the court, in determining the degree of supervision necessary, shall apply the least restrictive alternative principle as defined in Chapter 475, RSMo and shall not restrict the individual's personal liberty or freedom to manage their financial resources to any greater extent that is necessary to protect the individual's person and their financial resources. The limitations imposed upon the authority of the guardian or conservator as set forth in the findings of the court shall be stated in the letters of the

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guardian or conservator and shall be set forth in the notice of first publication of letters of conservatorship granted. Section 475.075.12, RSMo. Facilities should obtain documentation from the guardian showing what authority for decision-making has been determined by the court.

Section 475.075.14, RSMo requires the courts to make and recite in its order detailed findings of fact stating:

- (1) The extent of the incapacitated/disabled individual's physical, mental and cognitive incapacity to manage essential requirements for food, clothing, shelter, safety or other care;
- (2) The extent of the incapacitated/disabled individual's physical, mental, and cognitive incapacity to manage the their financial resources;
- (3) Whether the incapacitated/disabled individual's requires placement in a supervised living situation and, if so, the degree of supervision needed;
- (4) Whether the incapacitated/disabled individual's financial resources require supervision and, if so, the nature and extent of supervision needed;
- (5) Whether the incapacitated/disabled individual retains the right to vote;
- (6) Whether the incapacitated/disabled individual is permitted to drive a motor vehicle if the respondent can pass the required driving test; and
- (7) Whether the incapacitated/disabled individual retains the right to marry.

Resident representatives, including legal guardians, are a critical component to the interdisciplinary team that supports each resident living in a long-term care facility. They are critical to discussions and the exchange of opinions on how to best support the resident and to ensure that the resident's preferences are being upheld. Having a court-appointed resident representative does not alleviate the facility's responsibility to seek to understand the resident's goals, choices, and preferences and honor them to the extent legally possible.

A long-term care facility cannot violate state or federal regulations/law. If a facility is asked to provide care or services that are not in alignment with regulations/law pertaining to the operation of a long-term care facility (including resident rights) or that is a direct violation of facility policy, this may mean the facility is unable to meet the resident's needs.

Each resident and their legal guardian, if any, should be made aware, upon admission, of all policies and procedures established to safeguard resident rights, to ensure each is knowledgeable of facility policies and procedures prior to the resident's admission, and to ensure the facility can meet the resident's needs.

Questions related to this memo can be sent to: SLCR@health.mo.gov.

Resources:

State Operations Manual (CMS): <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes>

State Laws/Regulations: <https://health.mo.gov/seniors/nursinghomes/lawsregs.php>

National Consumer Voice/Long-Term Care Ombudsman: <https://ltombudsman.org/issues/residents-rights>

Missouri Protection and Advocacy: <https://www.moadvocacy.org/>