

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 897
HOUSE BILL 1015

AN ACT TO CREATE A NURSING HOME PATIENTS' BILL OF RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130 of the General Statutes is hereby amended by adding a new Article to read as follows:

"ARTICLE 30.

"Nursing Home Patients' Bill of Rights.

"§ 130-264. Legislative intent — It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and homes for the aged and infirm licensed pursuant to G.S. 130-9(e). It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights.

"§ 130-265. Definitions. — (1) 'Administrator' means an administrator of a facility.

- (2) 'Facility' means a nursing home and a home for the aged and infirm licensed pursuant to G.S. 130-9(e).
- (3) 'Patient' means a person who has been admitted to a facility.
- (4) 'Representative Payee' means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance.

"§ 130-266. Declaration of patients' rights. — All facilities shall treat their patients in accordance with the provisions of this Article. Every patient shall have the following rights:

- (1) to be treated with consideration, respect, and full recognition of his dignity and individuality;
- (2) to receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules;
- (3) to receive at the time of admission and during his stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving such statement, the patient shall sign a written receipt which must be retained by the facility in the patient's file;
- (4) to have on file in the patient's record a written or verbal order of the attending physician containing such information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision including signed acknowledgments by the patient, shall be retained by the facility in the patient's file;
- (5) to receive respect and privacy in his medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to

any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;

- (6) to be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;
- (7) to receive from the administrator or staff of the facility a reasonable response to his requests;
- (8) to associate and communicate privately and without restriction with persons and groups of his own choice on his own or their initiative at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read his or her own mail; to have access at any reasonable hour to a telephone where he may speak privately; and to have access to writing instruments, stationery, and postage;
- (9) to manage his own financial affairs unless such authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for such purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have available for inspection an accounting and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to such account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage his financial affairs at any time upon five days' notice;
- (10) to enjoy privacy in visits by his spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;
- (11) to enjoy privacy in his room;
- (12) to present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on behalf of himself or others to the facility's staff, the community advisory committee, the administrator, the Department of Human Resources, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;
- (13) to not be required to perform services for the facility without his consent and the written approval of the attending physician;
- (14) to retain, to secure storage for, and to use his personal clothing and possessions, where reasonable;
- (15) to not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to insure orderly transfer or discharge, unless the attending physician orders immediate transfer, and such actions, and the reasons therefor, shall be documented in his medical record.

"§ 130-267. Incompetence. — If the patient is adjudicated incompetent or designates another in writing the power to manage his financial affairs, then in such event, his attorney in fact, guardian of the person, general guardian, or such other person, no matter how designated, may

sign any documents required by the provisions of this Article, may otherwise do or perform any other act, and may receive or furnish any information required by this Article.

"§ 130-268. No waiver of rights. — No facility may require a patient to waive the rights specified in G.S. 130-266.

"§ 130-269. Notice to patient. — (a) A copy of this Article shall be posted conspicuously in a public place in all facilities. Copies of this Article shall be furnished to the patient upon admittance to the facility, to all patients currently residing in the facility, to the sponsoring agency, to a representative payee of the patient, or to any person designated in G.S. 130-267, and to the patient's next of kin, if requested. Receipts for the statement signed by these persons shall be retained in the facility's files.

(b) The address and telephone number of the section in the Department of Human Resources responsible for the enforcement of the provisions of this Article shall be posted and distributed with copies of the Article. The address and telephone number of the county social services department shall also be posted and distributed.

"§ 130-270. Responsibility of administrator. — Responsibility for implementing the provisions of this Article shall rest on the administrator of the facility.

"§ 130-271. Staff training. — Each facility shall provide appropriate staff training to implement each patient's right included in G.S. 130-266.

"§ 130-272. Civil action. — Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Article. The Department of Human Resources, a general guardian, or any person appointed as guardian ad litem pursuant to law, may institute an action pursuant to this section on behalf of the patient or patients. Any agency or person above named may enforce the rights of the patient specified in G.S. 130-266 which the patient himself is unable to enforce.

"§ 130-273. Enforcement and investigation; confidentiality. — (a) The Department of Human Resources shall be responsible for the enforcement of the provisions of this Article. The department shall investigate complaints made to it and reply within a reasonable time, not to exceed 60 days, upon receipt of a complaint.

(b) The department is authorized to inspect patients' medical records maintained at the facility when necessary to investigate any alleged violation of this Article.

(c) The department shall maintain the confidentiality of all persons who register complaints with the department and of all medical records inspected by the department.

"§ 130-274. Revocation of license. — The Department of Human Resources shall have the authority to revoke a license issued pursuant to G.S. 130-9(e) in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Human Resources requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Human Resources may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed.

"§ 130-275. Penalties; remedies. — (a) The department shall impose an administrative penalty in accordance with provisions of this Article on any facility

- (1) which substantially fails to comply with this Article, or
- (2) which refuses to allow an authorized representative of the Department of Human Resources to inspect the premises and records of the facility.

(b) Each day of a continued violation shall constitute a separate violation. The penalty for each violation shall be ten dollars (\$10.00) per day per patient affected by the violation.

(c) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act.

(d) The secretary may bring a civil action in the Superior Court of Wake County to recover the amount of the administrative penalty whenever a facility

- (1) which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) which has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150A-36.

"§ 130-276. Provisions inapplicable. — G.S. 130-203 and G.S. 130-205 shall be inapplicable to this Article."

Sec. 2. G.S. 130-9(e) is amended by adding a new subdivision to read as follows:

"(7) Community advisory committee.

- a. In order for a nursing home and home for the aged and infirm to be licensed under this subsection, the home shall be served by a community advisory committee which shall work with the home for the best interests of the persons residing in the home. Each committee shall consist of five persons. Three shall be appointed by the board of county commissioners of the county in which the home is located, one of whom shall be designated chairman; and two shall be appointed by the home. Each member appointed shall be a resident of the county in which the home is located. No person or immediate family member of a person with a financial interest in a home, or employee or immediate family member of an employee of a home, or immediate family member of a patient in a home may be a member of a committee. The members of the community advisory committee shall serve without compensation. The names of the committee members shall be filed with the Division of Aging, which shall supply a copy to the Division of Facilities Services.
- b. The duties of the community advisory committee shall be to:
 1. visit each home it serves at least quarterly, but as often as it deems necessary to carry out its duties;
 2. appraise itself of the general conditions under which the persons are residing in the homes; and
 3. work for the best interests of the persons in the homes. This may include representing persons who have grievances to the home and facilitating the resolution of grievances. Whenever possible, the committee shall attempt to facilitate the resolution of grievances at the local level.

The community advisory committee may, at any time it deems necessary, communicate, through its chairman, with the Department of Human Resources or any other agency in relation to the interests of any patient. The names of all complaining persons shall remain confidential, unless written permission is given for disclosure.

- c. Each home shall cooperate with its community advisory committee as it carries out the aforementioned duties. Any member of a community advisory committee shall have the right to enter into any facility he serves at any reasonable hour in order to carry out the aforementioned duties."

Sec. 3. Nothing in this act shall be construed to interfere with the practice of medicine or the physician-patient relationship.

Sec. 4. The provisions of this act shall become effective January 1, 1978, except Section 2 of this act which shall become effective on March 1, 1979.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.