

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 792

Representatives Clites, Fraizer

Cosponsors: Representatives Lipps, Patterson, Galonski, Perales, Ginter

A BILL

To amend sections 3721.13, 3721.16, 3721.161, and 1
3721.162 of the Revised Code regarding the 2
transfer and discharge of persons residing in 3
long-term care facilities. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3721.13, 3721.16, 3721.161, and 5
3721.162 of the Revised Code be amended to read as follows: 6

Sec. 3721.13. (A) The rights of residents of a home shall 7
include, but are not limited to, the following: 8

(1) The right to a safe and clean living environment 9
pursuant to the medicare and medicaid programs and applicable 10
state laws and rules adopted by the director of health; 11

(2) The right to be free from physical, verbal, mental, 12
and emotional abuse and to be treated at all times with 13
courtesy, respect, and full recognition of dignity and 14
individuality; 15

(3) Upon admission and thereafter, the right to adequate 16
and appropriate medical treatment and nursing care and to other 17

ancillary services that comprise necessary and appropriate care 18
consistent with the program for which the resident contracted. 19
This care shall be provided without regard to considerations 20
such as race, color, religion, national origin, age, or source 21
of payment for care. 22

(4) The right to have all reasonable requests and 23
inquiries responded to promptly; 24

(5) The right to have clothes and bed sheets changed as 25
the need arises, to ensure the resident's comfort or sanitation; 26

(6) The right to obtain from the home, upon request, the 27
name and any specialty of any physician or other person 28
responsible for the resident's care or for the coordination of 29
care; 30

(7) The right, upon request, to be assigned, within the 31
capacity of the home to make the assignment, to the staff 32
physician of the resident's choice, and the right, in accordance 33
with the rules and written policies and procedures of the home, 34
to select as the attending physician a physician who is not on 35
the staff of the home. If the cost of a physician's services is 36
to be met under a federally supported program, the physician 37
shall meet the federal laws and regulations governing such 38
services. 39

(8) The right to participate in decisions that affect the 40
resident's life, including the right to communicate with the 41
physician and employees of the home in planning the resident's 42
treatment or care and to obtain from the attending physician 43
complete and current information concerning medical condition, 44
prognosis, and treatment plan, in terms the resident can 45
reasonably be expected to understand; the right of access to all 46

information in the resident's medical record; and the right to 47
give or withhold informed consent for treatment after the 48
consequences of that choice have been carefully explained. When 49
the attending physician finds that it is not medically advisable 50
to give the information to the resident, the information shall 51
be made available to the resident's sponsor on the resident's 52
behalf, if the sponsor has a legal interest or is authorized by 53
the resident to receive the information. The home is not liable 54
for a violation of this division if the violation is found to be 55
the result of an act or omission on the part of a physician 56
selected by the resident who is not otherwise affiliated with 57
the home. 58

(9) The right to withhold payment for physician visitation 59
if the physician did not visit the resident; 60

(10) The right to confidential treatment of personal and 61
medical records, and the right to approve or refuse the release 62
of these records to any individual outside the home, except in 63
case of transfer to another home, hospital, or health care 64
system, as required by law or rule, or as required by a third- 65
party payment contract; 66

(11) The right to privacy during medical examination or 67
treatment and in the care of personal or bodily needs; 68

(12) The right to refuse, without jeopardizing access to 69
appropriate medical care, to serve as a medical research 70
subject; 71

(13) The right to be free from physical or chemical 72
restraints or prolonged isolation except to the minimum extent 73
necessary to protect the resident from injury to self, others, 74
or to property and except as authorized in writing by the 75

attending physician for a specified and limited period of time 76
and documented in the resident's medical record. Prior to 77
authorizing the use of a physical or chemical restraint on any 78
resident, the attending physician shall make a personal 79
examination of the resident and an individualized determination 80
of the need to use the restraint on that resident. 81

Physical or chemical restraints or isolation may be used 82
in an emergency situation without authorization of the attending 83
physician only to protect the resident from injury to self or 84
others. Use of the physical or chemical restraints or isolation 85
shall not be continued for more than twelve hours after the 86
onset of the emergency without personal examination and 87
authorization by the attending physician. The attending 88
physician or a staff physician may authorize continued use of 89
physical or chemical restraints for a period not to exceed 90
thirty days, and at the end of this period and any subsequent 91
period may extend the authorization for an additional period of 92
not more than thirty days. The use of physical or chemical 93
restraints shall not be continued without a personal examination 94
of the resident and the written authorization of the attending 95
physician stating the reasons for continuing the restraint. 96

If physical or chemical restraints are used under this 97
division, the home shall ensure that the restrained resident 98
receives a proper diet. In no event shall physical or chemical 99
restraints or isolation be used for punishment, incentive, or 100
convenience. 101

(14) The right to the pharmacist of the resident's choice 102
and the right to receive pharmaceutical supplies and services at 103
reasonable prices not exceeding applicable and normally accepted 104
prices for comparably packaged pharmaceutical supplies and 105

services within the community;	106
(15) The right to exercise all civil rights, unless the	107
resident has been adjudicated incompetent pursuant to Chapter	108
2111. of the Revised Code and has not been restored to legal	109
capacity, as well as the right to the cooperation of the home's	110
administrator in making arrangements for the exercise of the	111
right to vote;	112
(16) The right of access to opportunities that enable the	113
resident, at the resident's own expense or at the expense of a	114
third-party payer, to achieve the resident's fullest potential,	115
including educational, vocational, social, recreational, and	116
habilitation programs;	117
(17) The right to consume a reasonable amount of alcoholic	118
beverages at the resident's own expense, unless not medically	119
advisable as documented in the resident's medical record by the	120
attending physician or unless contradictory to written admission	121
policies;	122
(18) The right to use tobacco at the resident's own	123
expense under the home's safety rules and under applicable laws	124
and rules of the state, unless not medically advisable as	125
documented in the resident's medical record by the attending	126
physician or unless contradictory to written admission policies;	127
(19) The right to retire and rise in accordance with the	128
resident's reasonable requests, if the resident does not disturb	129
others or the posted meal schedules and upon the home's request	130
remains in a supervised area, unless not medically advisable as	131
documented by the attending physician;	132
(20) The right to observe religious obligations and	133
participate in religious activities; the right to maintain	134

individual and cultural identity; and the right to meet with and 135
participate in activities of social and community groups at the 136
resident's or the group's initiative; 137

(21) The right upon reasonable request to private and 138
unrestricted communications with the resident's family, social 139
worker, and any other person, unless not medically advisable as 140
documented in the resident's medical record by the attending 141
physician, except that communications with public officials or 142
with the resident's attorney or physician shall not be 143
restricted. Private and unrestricted communications shall 144
include, but are not limited to, the right to: 145

(a) Receive, send, and mail sealed, unopened 146
correspondence; 147

(b) Reasonable access to a telephone for private 148
communications; 149

(c) Private visits at any reasonable hour. 150

(22) The right to assured privacy for visits by the 151
spouse, or if both are residents of the same home, the right to 152
share a room within the capacity of the home, unless not 153
medically advisable as documented in the resident's medical 154
record by the attending physician; 155

(23) The right upon reasonable request to have room doors 156
closed and to have them not opened without knocking, except in 157
the case of an emergency or unless not medically advisable as 158
documented in the resident's medical record by the attending 159
physician; 160

(24) The right to retain and use personal clothing and a 161
reasonable amount of possessions, in a reasonably secure manner, 162
unless to do so would infringe on the rights of other residents 163

or would not be medically advisable as documented in the 164
resident's medical record by the attending physician; 165

(25) The right to be fully informed, prior to or at the 166
time of admission and during the resident's stay, in writing, of 167
the basic rate charged by the home, of services available in the 168
home, and of any additional charges related to such services, 169
including charges for services not covered under the medicare or 170
medicaid program. The basic rate shall not be changed unless 171
thirty days' notice is given to the resident or, if the resident 172
is unable to understand this information, to the resident's 173
sponsor. 174

(26) The right of the resident and person paying for the 175
care to examine and receive a bill at least monthly for the 176
resident's care from the home that itemizes charges not included 177
in the basic rates; 178

(27) (a) The right to be free from financial exploitation; 179

(b) The right to manage the resident's own personal 180
financial affairs, or, if the resident has delegated this 181
responsibility in writing to the home, to receive upon written 182
request at least a quarterly accounting statement of financial 183
transactions made on the resident's behalf. The statement shall 184
include: 185

(i) A complete record of all funds, personal property, or 186
possessions of a resident from any source whatsoever, that have 187
been deposited for safekeeping with the home for use by the 188
resident or the resident's sponsor; 189

(ii) A listing of all deposits and withdrawals transacted, 190
which shall be substantiated by receipts which shall be 191
available for inspection and copying by the resident or sponsor. 192

(28) 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;	193 194 195 196 197
(29) The right to receive reasonable notice before the resident's room or roommate is changed, including an explanation of the reason for either change.	198 199 200
(30) The right not to be transferred or discharged from the home unless the transfer is necessary because of one of the following:	201 202 203
(a) The welfare and needs of the resident cannot be met in the home.	204 205
(b) The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home.	206 207 208
(c) The safety of individuals in the home is endangered.	209
(d) The health of individuals in the home would otherwise be endangered.	210 211
(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:	212 213 214 215 216 217
(i) The resident's application, or a substantially similar previous application, has been denied.	218 219
(ii) If the resident appealed the denial, the denial was	220

upheld.	221
(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.	222 223 224 225
(g) The resident is a recipient of medicaid, and the home's participation in the medicaid program is involuntarily terminated or denied.	226 227 228
(h) The resident is a beneficiary under the medicare program, and the home's participation in the medicare program is involuntarily terminated or denied.	229 230 231
(31) <u>The right not to be transferred or discharged from the home to a location that is incapable of meeting the resident's health care and safety needs.</u>	232 233 234
(32) <u>The right not to be transferred or discharged from the home without adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, including proper arrangements for medication, equipment, health care services, and other necessary services.</u>	235 236 237 238 239
(33) <u>All rights provided under 42 C.F.R. 483.15 and 483.21 and any other transfer or discharge rights provided under federal law.</u>	240 241 242
(34) <u>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</u>	243 244 245 246 247 248 249

to associate with persons who are active in organizations of 250
relatives and friends of nursing home residents and other 251
organizations engaged in assisting residents. 252

~~(32)~~ (35) The right to have any significant change in the 253
resident's health status reported to the resident's sponsor. As 254
soon as such a change is known to the home's staff, the home 255
shall make a reasonable effort to notify the sponsor within 256
twelve hours. 257

~~(33)~~ (36) The right, if the resident has requested the 258
care and services of a hospice care program, to choose a hospice 259
care program licensed under Chapter 3712. of the Revised Code 260
that best meets the resident's needs. 261

(B) A sponsor may act on a resident's behalf to assure 262
that the home does not deny the residents' rights under sections 263
3721.10 to 3721.17 of the Revised Code. 264

(C) Any attempted waiver of the rights listed in division 265
(A) of this section is void. 266

Sec. 3721.16. For each resident of a home, ~~notice of all~~ 267
of the following apply with respect to a proposed transfer or 268
discharge shall be in accordance with this section. from the 269
home: 270

(A) (1) The administrator of a home shall notify a resident 271
in writing, and the resident's sponsor in writing by certified 272
mail, return receipt requested, in advance of any proposed 273
transfer or discharge from the home. The administrator shall 274
send a copy of the notice to the state department of health. The 275
notice shall be provided at least thirty days in advance of the 276
proposed transfer or discharge, unless any of the following 277
applies: 278

(a) The resident's health has improved sufficiently to	279
allow a more immediate discharge or transfer to a less skilled	280
level of care;	281
(b) The resident has resided in the home less than thirty	282
days;	283
(c) An emergency arises in which the safety of individuals	284
in the home is endangered;	285
(d) An emergency arises in which the health of individuals	286
in the home would otherwise be endangered;	287
(e) An emergency arises in which the resident's urgent	288
medical needs necessitate a more immediate transfer or	289
discharge.	290
In any of the circumstances described in divisions (A)(1)	291
(a) to (e) of this section, the notice shall be provided as many	292
days in advance of the proposed transfer or discharge as is	293
practicable.	294
(2) The notice required under division (A)(1) of this	295
section shall include all of the following:	296
(a) The reasons for the proposed transfer or discharge;	297
(b) The proposed date the resident is to be transferred or	298
discharged;	299
(c) Subject to division (A)(3) of this section, a proposed	300
location to which the resident may relocate and a notice that	301
the resident and resident's sponsor may choose another location	302
to which the resident will relocate;	303
(d) Notice of the right of the resident and the resident's	304
sponsor to an impartial hearing at the home on the proposed	305

transfer or discharge, and of the manner in which and the time 306
within which the resident or sponsor may request a hearing 307
pursuant to section 3721.161 of the Revised Code; 308

(e) A statement that the resident will not be transferred 309
or discharged before the date specified in the notice unless the 310
home and the resident or, if the resident is not competent to 311
make a decision, the home and the resident's sponsor, agree to 312
an earlier date; 313

(f) The address of the legal services office of the 314
department of health; 315

(g) The name, address, and telephone number of a 316
representative of the state long-term care ombudsman program 317
and, if the resident or patient has a developmental disability 318
or mental illness, the name, address, and telephone number of 319
the Ohio protection and advocacy system. 320

(3) The proposed location to which a resident may relocate 321
as specified pursuant to division (A) (2) (c) of this section in 322
the proposed transfer or discharge notice shall be capable of 323
meeting the resident's health-care and safety needs. The 324
proposed location for relocation need not have accepted the 325
resident at the time the notice is issued to the resident and 326
resident's sponsor. 327

(B) No home shall transfer or discharge a resident before 328
the date specified in the notice required by division (A) of 329
this section unless the home and the resident or, if the 330
resident is not competent to make a decision, the home and the 331
resident's sponsor, agree to an earlier date. 332

(C) Transfer or discharge actions shall be documented in 333
the resident's medical record by the home if there is a medical 334

basis for the action. 335

(D) A resident or resident's sponsor may challenge a 336
transfer or discharge by requesting an impartial hearing 337
pursuant to section 3721.161 of the Revised Code, unless the 338
transfer or discharge is required because of one of the 339
following reasons: 340

(1) The home's license has been revoked under this 341
chapter; 342

(2) The home is being closed pursuant to section 3721.08, 343
sections 5165.60 to 5165.89, or section 5155.31 of the Revised 344
Code; 345

(3) The resident is a recipient of medicaid and the home's 346
participation in the medicaid program has been involuntarily 347
terminated or denied by the federal government; 348

(4) The resident is a beneficiary under the medicare 349
program and the home's certification under the medicare program 350
has been involuntarily terminated or denied by the federal 351
government. 352

(E) If a resident is to be transferred or discharged 353
pursuant to this section, the home ~~from which the resident is~~ 354
~~being transferred~~ proposing the transfer or discharged discharge 355
shall provide the resident with adequate preparation prior to 356
the transfer or discharge to ensure a safe and orderly transfer 357
or discharge from the home, and the home or alternative setting 358
to which the resident is to be transferred or discharged shall 359
have accepted the resident for transfer or discharge. 360

(F) At the time of a transfer or discharge of a resident 361
who is a recipient of medicaid from a home to a hospital or for 362
therapeutic leave, the home shall provide notice in writing to 363

the resident and in writing by certified mail, return receipt 364
requested, to the resident's sponsor, specifying the number of 365
days, if any, during which the resident will be permitted under 366
the medicaid program to return and resume residence in the home 367
and specifying the medicaid program's coverage of the days 368
during which the resident is absent from the home. An individual 369
who is absent from a home for more than the number of days 370
specified in the notice and continues to require the services 371
provided by the facility shall be given priority for the first 372
available bed in a semi-private room. 373

Sec. 3721.161. (A) Not later than thirty days after the 374
date a resident or the resident's sponsor receives under section 375
3721.16 of the Revised Code a notice of a proposed transfer or 376
discharge, whichever date of receiving the notice is later, the 377
resident or resident's sponsor may challenge the proposed 378
transfer or discharge by submitting a written request for a 379
hearing to the state department of health. On receiving the 380
request, the department shall conduct a hearing in accordance 381
with section 3721.162 of the Revised Code to determine whether 382
the proposed transfer or discharge complies with ~~division~~ 383
divisions (A) (30) to (33) of section 3721.13 and section 3721.16 384
of the Revised Code. 385

(B) Except in the circumstances described in divisions (A) 386
(1) (a) to (e) of section 3721.16 of the Revised Code, if a 387
resident or the resident's sponsor submits a written hearing 388
request not later than ten days after the date the resident or 389
~~the~~ resident's sponsor received notice of the proposed transfer 390
or discharge, whichever date of receiving the notice is later, 391
the home shall not transfer or discharge the resident unless the 392
department determines after the hearing that the transfer or 393
discharge complies with ~~division~~ divisions (A) (30) to (33) of 394

section 3721.13 and section 3721.16 of the Revised Code or the 395
department's determination to the contrary is reversed on 396
appeal. 397

(C) If a resident or the resident's sponsor does not 398
request a hearing pursuant to division (A) of this section, the 399
home may transfer or discharge the resident on the date 400
specified in the notice required by division (A) of section 401
3721.16 of the Revised Code or thereafter, unless the home and 402
the resident or, if the resident is not competent to make a 403
decision, the home and the resident's sponsor, agree to an 404
earlier date. 405

(D) If ~~the a~~ resident or the resident's sponsor requests a 406
hearing in writing pursuant to division (A) of this section and 407
the home transfers or discharges the resident before the 408
department issues a hearing decision, the home shall readmit the 409
resident in the first available bed if the department determines 410
after the hearing that the transfer or discharge does not comply 411
with ~~division~~ divisions (A) (30) to (33) of section 3721.13 and 412
section 3721.16 of the Revised Code or the department's 413
determination to the contrary is reversed on appeal. 414

Sec. 3721.162. (A) On receiving a request pursuant to 415
section 3721.161 of the Revised Code, the department of health 416
shall conduct hearings under this section in accordance with 42
C.F.R. 431, subpart E, to determine whether the proposed 418
transfer or discharge of the resident from the home complies 419
with ~~division~~ divisions (A) (30) to (33) of section 3721.13 and 420
section 3721.16 of the Revised Code. 421

(B) The department shall employ or contract with an 422
attorney to serve as hearing officer. The hearing officer shall 423
conduct a hearing in the home not later than ten days after the 424

date the department receives a request pursuant to section 425
3721.161 of the Revised Code, unless the resident and the home 426
or, if the resident is not competent to make a decision, the 427
resident's sponsor and the home, agree otherwise. The hearing 428
shall be recorded on audiotape, but neither the recording nor a 429
transcript of the recording shall be part of the official record 430
of the hearing. A hearing conducted under this section is not 431
subject to section 121.22 of the Revised Code. 432

(C) Unless the parties otherwise agree, the hearing 433
officer shall issue a decision within five days of the date the 434
hearing concludes. In all cases, a decision shall be issued not 435
later than thirty days after the department receives a request 436
pursuant to section 3721.161 of the Revised Code. The hearing 437
officer's decision shall be served on the resident or resident's 438
sponsor and the home by certified mail. The hearing officer's 439
decision shall be considered the final decision of the 440
department. 441

(D) A resident, resident's sponsor, or home may appeal the 442
decision of the department to the court of common pleas pursuant 443
to section 119.12 of the Revised Code. The appeal shall be 444
governed by section 119.12 of the Revised Code, except for all 445
of the following: 446

(1) The resident, resident's sponsor, or home shall file 447
the appeal in the court of common pleas of the county in which 448
the home is located. 449

(2) The resident or resident's sponsor may apply to the 450
court for designation as an indigent and, if the court grants 451
the application, the resident or resident's sponsor shall not be 452
required to furnish the costs of the appeal. 453

(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.

Section 2. That existing sections 3721.13, 3721.16, 3721.161, and 3721.162 of the Revised Code are hereby repealed.