

# TEXAS RIGHTS OF THE ELDERLY

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## TEXAS HUMAN RESOURCES CODE

### SEC. 102.003. RIGHTS OF THE ELDERLY

In Texas, the law provides for specific rights if you are 60 years of age or older, these rights are:

- (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.
- (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 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.
- (d) A mentally retarded elderly individual with a court-appointed guardian of the person may participate in a behavior modification program involving use of restraints or adverse stimuli only with the informed consent of the guardian.
- (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 the service shall promptly respond to resolve the complaint. The person providing services may not discriminate or take other punitive action against an elderly individual who makes a complaint.
- (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.
- (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.
- (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 consent, except 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.

- (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 about 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 psychosocial needs and how the needs will be met.
- (n) An elderly individual may refuse medical treatment after the elderly individual:
  - (1) Is advised by the person providing the services of the possible consequences of refusing treatment; and
  - (2) Acknowledges that the individual clearly understands the consequences of refusing 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 or 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 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.
- (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.

**Sec. 102.004. LIST OF RIGHTS.**

- (a) A person providing services shall provide each elderly individual with a written list of the individual's rights and responsibilities, including each provision of Section 102.003, before providing services or as soon after providing services as possible, and shall post the list in a conspicuous location.
- (b) A person providing services must inform an elderly individual of changes or revisions in the list.

**Sec. 102.005. RIGHTS CUMULATIVE.**

The rights described in this chapter are cumulative of other rights or remedies to which an elderly individual may be entitled under law.

### **The Client Has the Responsibility:**

1. To provide, to the best of his/her knowledge, accurate, and complete information about:
  - a. Past and present medical histories.
  - b. Unexpected changes in his/her condition.
  - c. Whether he/she understands a course of action selected.
2. To follow the treatment recommended by the particular handling of the case.
3. For his/her actions, if he/she refused treatment or does not follow the Physician, PA, or ARNP's orders.
4. For ensuring that the financial obligations of his/her health care are fulfilled, as promptly as possible.
5. To respect the rights of all staff providing service.
6. To promptly notify the Agency, in advance, of an appointment or visit you must cancel.
7. To become independent in care to the extent possible, utilizing self, family, and other sources.
8. To pay for care or services not covered by 3<sup>rd</sup> party payers.
9. To comply with the rules and regulations established by the Agency and any changes subsequent to the rules.