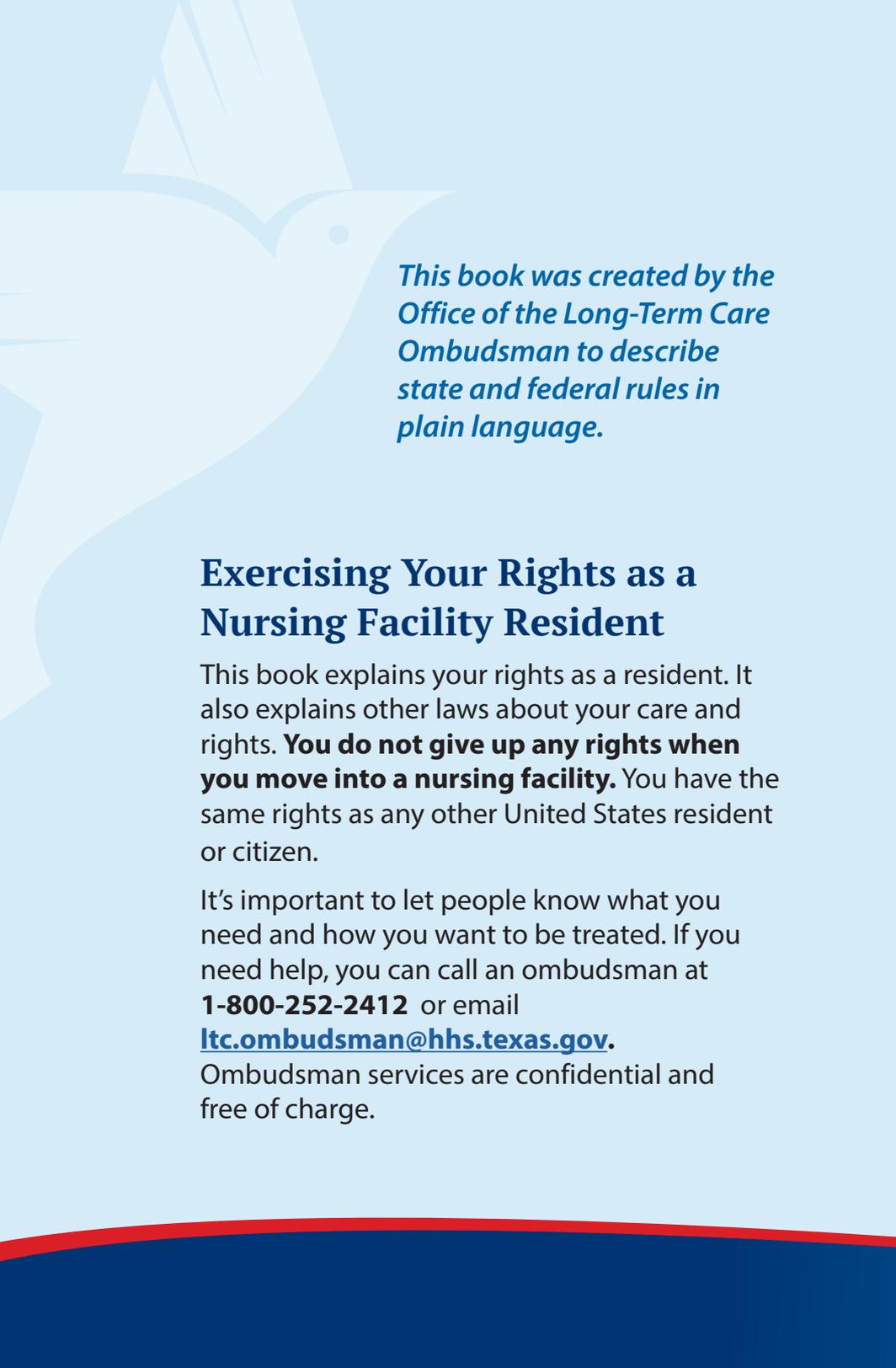




# Exercising Your Rights as a Nursing Facility Resident



State Long-Term Care  
Ombudsman Program



*This book was created by the Office of the Long-Term Care Ombudsman to describe state and federal rules in plain language.*

## **Exercising Your Rights as a Nursing Facility Resident**

This book explains your rights as a resident. It also explains other laws about your care and rights. **You do not give up any rights when you move into a nursing facility.** You have the same rights as any other United States resident or citizen.

It's important to let people know what you need and how you want to be treated. If you need help, you can call an ombudsman at **1-800-252-2412** or email [ltc.ombudsman@hhs.texas.gov](mailto:ltc.ombudsman@hhs.texas.gov).

Ombudsman services are confidential and free of charge.

## **Your Right to Freedom From Discrimination**

You have the right to be treated fairly and not be discriminated against based on your age, race, gender, nation of origin, or disability. The facility must not treat you differently based on your medical condition or how you pay for your care.

## **Your Right to Accommodations**

Your facility must provide full and equal access for people with disabilities.

You have a right to request a reasonable accommodation, which is a change in policy or practice, communication, or the physical space needed for a person with a disability to have equal opportunity to use their home. Examples include requests to add a ramp to a building, allowing you to use a service animal, and making information about your care easy to understand.

# Delegating Your Rights and Advance Care Planning

You have the right to delegate, or put your wishes in writing for others to follow, if you become unable to speak for yourself. You also have the right to choose someone to help you make decisions, either right away or if you become unable to speak for yourself.

## Power of Attorney

You can give a person power of attorney to help you make decisions. A power of attorney is a legal document that allows someone you choose (your agent) to make decisions or take actions for you. The document will say what your agent can do for you, such as make medical decisions or manage your money. Remember, your wishes always win over your agent's wishes. If you decide that you no longer wish to have a power of attorney, it is your right to revoke it.

## Advance Care Planning

Advance care planning means planning for how you want to be treated if you are very ill or near death. It can help family members and medical staff act for you. Advance care planning includes making decisions about the use of life-sustaining measures like CPR or using a feeding tube or ventilator.

You may use the forms found at [texashhs.org/advancecareplanning](https://www.texashhs.org/advancecareplanning):

- Directive to Physicians and Family or Surrogates
- Medical Power of Attorney
- Out-of-Hospital Do-Not-Resuscitate

## **How to Get Help**

Give your nursing facility a copy of any advance care planning and power of attorney documents. In most cases, the facility must not let someone make decisions against your wishes.

The Texas Legal Services Center offers free legal assistance with power of attorney and advance care planning to people who are 60 years and older or a Medicare beneficiary. You can contact the Texas Legal Services Center at **512-477-6000**.

# Your Right to Safety and Quality Care

## Freedom From Abuse, Neglect, and Exploitation

You have the right to be free of abuse, neglect, and exploitation. People inside or outside of the facility must not harm you physically or mentally or misuse your property or money. Your facility must:

- Protect you from abuse, neglect, and exploitation.
- Perform background checks on staff to make sure they have not been convicted of a crime related to injuring someone or stealing.
- Train all staff on how to prevent, identify, stop, and report abuse, neglect, and exploitation.

## Freedom From Restraints and Involuntary Seclusion

Facility staff can't use physical restraints to punish you or for staff convenience. A physical restraint is anything that keeps you from moving that you cannot easily remove yourself.

Facility staff can't give you medication to discipline you or for staff convenience. For example, a facility must not give you medication to make you sleepy if it is not needed to treat your medical condition.

Facility staff can't keep you separated from others, known as involuntary seclusion, unless your symptoms require isolation. An example of seclusion is being confined in your room against your will.

A facility can't keep you from leaving the facility unless you need to be in a locked area of the facility because of your medical condition.

## **Safe Surroundings**

You have the right to a safe, clean, and comfortable home environment. The facility must:

- Have enough housekeeping and maintenance staff to keep the building clean and safe.
- Clean your room daily.
- Follow fire protection and building safety laws.
- Have a pest control program.
- Have an emergency preparedness plan and enough staff to provide you with the care you need during an emergency.

## **Quality Care**

You have the right to receive all the care necessary for you to have the highest possible level of health. This includes medical care, mental health care, rehabilitative therapies, and supplies. The facility must have enough staff to provide you with care and respond to your needs. Facility staff must be qualified and trained to care for you.

## **Your Right To Be Treated With Dignity and Respect**

You have the right to be treated with dignity and respect. You have the right to courtesy and fair treatment from facility staff. Being treated with dignity and respect also means you have the right to make decisions about your life and care. Your facility must respect your choices and preferences. For example, you have the right to choose your own clothing and hairstyle.

## **Your Right to Make Choices About Your Life**

You have the right to make choices about your life.

### **Examples of Choices You Can Make**

In most cases, choices you have the right to make include:

- Leaving the facility.
- Voting, and who or what to vote for.
- Practicing your religious or spiritual beliefs.
- Choosing your roommate.
- When you wake up.
- When you take a shower.
- What you eat.
- Activities you choose to do.
- Who can visit you.

- Using and having personal items.
- Whether to use video and audio recording in your room.

## **Choices During a Public Health Emergency or Disaster Declaration**

You have a right to choose essential caregivers and a religious counselor who can visit you if there is a public health emergency or a disaster declaration where you live. Your essential caregiver and religious counselor must meet all requirements of the facility.

## **Your Right to Make Choices About Your Care**

You have the right to participate in your care and make choices about your care. This includes the right to:

- Choose your own health care providers, such as a physician, caregiver, hospice agency, and pharmacy.
- Be informed of your care and changes in your condition or treatment.
- Be informed about your care in a language and way you understand.
- Refuse any care or treatment.
- Take medicine without assistance if you can.
- Choose people to help you make decisions or make decisions for you when you are unable to.
- Ask for a meeting to talk about your care and choose to invite people to help you.

## **Your Care Plan**

Your care plan includes a description of your physical, social, and mental health needs. It includes a description of your vision and hearing; skin; help needed to use the bathroom; movement and exercise needs; therapies; what you eat and drink; how to communicate with you; and how to help you with bathing, dressing, grooming, and oral care.

Your care plan must consider your preferences and address any trauma you may have experienced. If you need it, the plan must include breathing treatments; pain management; dialysis; bedrails or other restraints used; care for a prosthesis; incontinence; and fall and accident prevention.

## **Your Right to Privacy and Confidentiality**

You have the right to keep your personal, medical, and financial affairs private. The facility must ensure your privacy in the following areas:

- Your room
- Medical treatment, including confidentiality of your medical records
- Personal care
- Visitation
- Meetings with family and resident groups
- Privacy for intimacy

## **Privacy in Communications**

A facility must not infringe on your right to communicate with people inside and outside the facility. You have the right to promptly receive and send unopened mail and packages.

A facility must respect your privacy during phone, email, text, and in-person conversations. You have the right to have reasonable access to a phone where calls can be made without being overheard.

## **Privacy With Visitors**

You have the right to private visits with any person you choose.

A facility must allow residents to speak with an ombudsman privately.

## **Your Right to Personal Property**

You have the right to keep and use your own property if the property is not harmful to others. Examples of your personal property include clothes, furniture, jewelry, radios, TVs, and medical equipment you paid for, like a walker or wheelchair. The facility must have policies to protect your personal property from loss, damage, theft, or misuse.

Your facility must keep a list of your property, sometimes called an inventory sheet. The facility staff should update your inventory sheet when you get new items of value and when any items are lost, stolen, or damaged.

## Your Financial Rights

Your nursing facility must allow you to:

- Manage your own money.
- Choose someone to manage your money.
- Spend your personal needs allowance any way you want.

Your nursing facility must not make you:

- Leave the facility anything in your will.
- Assign a life insurance policy to them.
- Transfer property.
- Make extra payments.

### Personal Needs Allowance (PNA)

If you get Medicaid, most of your monthly income is paid to the nursing facility for your care. In most cases, you get to keep \$75 from your income each month for personal needs not covered by Medicaid.

If you get a monthly \$30 Supplemental Security Income check, you'll get a \$45 check from the State of Texas for a total of \$75.

If your only income is a Veterans Affairs (VA) pension, you get to keep \$90. If you have income along with your VA pension, you can keep up to an extra \$75 for a total of up to \$165 monthly.

### Keeping Your Money With the Nursing Facility

If you choose to have the nursing facility manage your money in a trust fund, the nursing facility must:

- Keep records of your funds.
- Protect your funds from theft.
- Return the full balance of your funds within five days of moving out of the facility.
- Return funds with a final statement to the person or court handling your estate within 30 days after your death.
- Keep your PNA separate from other accounts.
- Give you a statement of your funds.

## **Representative Payee for Social Security Administration Payments**

A representative payee can manage your Social Security Administration payments, such as Social Security, Supplemental Security Income (SSI), or Social Security Disability Insurance (SSDI). You can choose your representative payee or they can apply on their own or be assigned by the Social Security Administration. If you disagree with the person chosen as your representative payee, you have the right to dispute it within 60 days.

## **Your Right to Make Complaints**

You have the right to complain about the nursing facility you live in. A grievance is a formal complaint made to the facility. This includes the right to:

- Complain about care or treatment to facility staff and management.
- Be informed how to make complaints and see the facility's grievance policy.

- Complain anonymously.
- Receive a prompt response from the facility to resolve complaints.
- Complain to outside agencies.
- Not be prohibited or discouraged by the facility to make a complaint.
- Not be moved out of the facility or retaliated against by the facility if you or someone else files a complaint on your behalf.

Your facility must:

- Notify residents of the right to file grievances verbally or in writing, the right to file anonymously; and the contact information for the facility's grievance official, including their name, address, email, and phone number.
- Give you the contact information for agencies that investigate complaints, such as Texas Health and Human Services and the State Long-Term Care Ombudsman Program.
- Take prompt action to respond to your complaint and protect residents' rights.
- Keep a record of all grievances made to the facility for three years, including grievance summaries, investigations, findings, and any corrective actions.

## How to Make a Complaint

Some ways you can make a complaint are:

- Talk to facility staff about your concern. Talk with the grievance official or someone else at the facility.
- Complain as part of a group or resident council.
- File a complaint with Texas Health and Human Services Complaint and Incident Intake by calling **800-458-9858, option 1.**
- Get help, find a resolution, or file a complaint with a long-term care ombudsman by calling **800-252-2412.**

## Your Right to Participate in a Resident Council

You have the right to be part of any group that brings residents' concerns to the facility.

Your facility must:

- Provide private spaces for groups to gather.
- Notify you of upcoming meetings.
- Only let staff attend if they're invited by the group.
- Consider the views of the group.
- Promptly respond to complaints.

Family members, friends, and guardians have the right to be part of a group called a family council. A facility has similar responsibilities to a family council as it does to a resident council.

# Your Rights Related to Room Changes and Transfer

## Moving to Another Room

You have the right to not be moved to another room unless the facility notifies you in writing at least five days before moving you. In an emergency, notice must be given as soon as possible. Notice of a room change must include:

- The reason for the move.
- When you will be moved.
- The location of your new room.

## Holding Your Room While You Are Temporarily Away

You have the right to leave the facility. For example, to go on an outing, run an errand, or spend a weekend with family.

If you pay for your care with Medicaid:

- The facility must provide you with written information about its bed-hold policy.
- You can be away from the facility for three days and your bed will be held for you.
- If you are gone longer than three days, you must be allowed to return to the next available bed.
- If the facility determines you are not able to return for any reason, then it must follow all discharge rules.

## Going to a Hospital

If you are transferred to a hospital for behavioral health or medical needs, the facility must allow you to return after you get treatment (with few exceptions).

## Your Rights Related to Discharge

You have the right to move out of the facility. Moving out of a nursing facility is called discharge.

Nursing facilities must follow rules before discharging you. If your facility asks you to move out, you have the right to appeal their decision. In most cases, you have the right to stay in the facility while you appeal the discharge decision.

A facility can only discharge you if:

- You ask to move.
- Your health has improved.
- Your needs cannot be met by the facility.
- You have not paid after receiving notice.
- It is necessary for your or others' health or safety.
- The facility is closing.

The facility must have evidence that one of these reasons applies to you and explain the reason to you.

## **Discharge Notice**

If the facility wants to discharge you, it must give you written notice. Unless it is an emergency, the notice must be sent at least 30 days in advance. The notice must include:

- The reason you are being discharged.
- The effective date of the discharge.
- The location where you will be discharged to.
- How to appeal the discharge.
- Contact information for people who can advocate for you, including your long-term care ombudsman.

## **Facts to Know if You Are Asked to Leave Your Facility**

- The facility must notify your ombudsman.
- The facility must help you plan a safe and orderly discharge.
- The facility can't discharge you for nonpayment if you applied for Medicaid and are waiting for approval.
- If you don't want to leave, you have the right to appeal the facility's discharge decision by asking for a state fair hearing. In most cases, the facility must allow you to stay in the facility until your appeal is decided.

## How to Contact an Ombudsman

**You can contact a long-term care ombudsman for help.**

A long-term care ombudsman helps residents of a nursing facility and residents of an assisted living facility resolve complaints. Help provided by an ombudsman is confidential and free of charge.

**800-252-2412**

**[ltc.ombudsman@hhs.texas.gov](mailto:ltc.ombudsman@hhs.texas.gov)**

**[texashhs.org/ltcombudsman](http://texashhs.org/ltcombudsman)**



## State Long-Term Care Ombudsman Program

*Long-term care ombudsmen advocate  
for residents and are separate from HHS.*