

**SOUTH CAROLINA**

**LONG TERM CARE**

**OMBUDSMAN**

**PROGRAM**

(2001 Annual Report)

***CARING FOR OUR SENIORS***

***SOUTH CAROLINA***

***DEPARTMENT OF HEALTH AND HUMAN SERVICES***

***BUREAU OF SENIOR SERVICES***

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The mission of the South Carolina Department of Health and Human Services is to provide statewide leadership to most effectively utilize resources to promote the health and well-being of all South Carolinians.

The Department of Health and Human Services (DHHS) contracts with more than 40,000 public and non-profit organizations, medical professionals, and private businesses to provide Medicaid, child care, and aging services.

Thousands of elderly South Carolinians look to their local councils on aging for nutritional and social programs funded by the Older Americans Act, while more than 210,000 adults receive doctors' care, hospital services, prescriptions, and long term care services through Medicaid.

DHHS cares about the well-being of all residents in long term care facilities. The following pages explain residents' rights, the Long Term Care Ombudsman Program, Advance Health Care Directives, other services and agencies concerned with long term care, and useful consumer information. Telephone numbers of service providers and relevant organizations are also included.

## **1** *ADVOCACY*

The Long Term Care Ombudsman seeks to improve the quality of life and quality of care of all residents in long-term care facilities in South Carolina by advocating on their behalf.

Residents in long term care facilities are often physically and emotionally vulnerable, facing daily challenges in pursuing a meaningful quality of life. Whenever problems arise, residents or families can call upon an ombudsman for help. Ombudsmen receive complaints about long-term care services and then voice the residents' concerns to nursing homes, residential care facilities, and other providers of long-term care.

Experience has shown that when residents and families understand the long-term care system, they are able to effectively act on their own behalf when problems occur. By educating residents, families and facility staff, the Ombudsman Program fosters an understanding and knowledge of the long-term care system.

While the Ombudsman Program does not "police" long-term care facilities, they work with the facility staff and residents or the resident's family to resolve problems and concerns about the quality of services residents receive.

The Ombudsman Program is governed by the federal Older Americans Act and by South Carolina Law. The Department of Health and Human Services administers the statewide program through nine regional offices located throughout the state. These programs are located within Area Agencies on Aging and funded with federal, as well as state and local dollars. There is no charge for services provided by the Ombudsman Program.

The Long Term Care Ombudsman is an impartial fact-finder who is responsible for assuring that individuals receive quality care and fair treatment. Ombudsmen act as the eyes and ears for residents and encourage access to advocacy by letting residents know what kind of care to expect, by providing a mechanism to file a complaint, and by guiding residents through the process of advocating on their own behalf. Following are the services provided by ombudsmen:

Investigates and resolves complaints made by or on behalf of residents. (Note: Complaints of abuse, neglect, mistreatment, and financial exploitation that occur in the community are referred to the Department of Social Services, Adult Protective Services);

Informs residents about services provided by long-term care providers, public agencies, health and social service agencies or other services to assist in protecting their health, safety, welfare, and rights;

Provides regular and timely access to ombudsman services for residents and timely responses to complaints;

Analyzes, comments on, and monitors the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions pertaining to the health, safety, welfare and rights of residents;

Advocates for public policy initiatives affecting long-term care;

Provides support for the development of resident and family councils in facilities to protect the well-being and rights of residents; and

Prohibits inappropriate disclosure of the identity of any complainant or resident with respect to Long Term Care Ombudsman files or records.

## **2 OMBUDSMAN COMPLAINTS AND TRENDS**

In 2000-2001, the ombudsmen completed 4,791 complaint investigations in long term care facilities. In South Carolina, the ombudsman program is also responsible for investigating complaints in psychiatric hospitals and facilities operated or contracted for operation by the State Department of Mental Health and the Department of Disabilities and Special Needs. Of the 4,791 complaints, 3,323 were from nursing homes, 1,018 were from residential care facilities, and 450 were from other facilities .

Often a single complaint affects more than one resident. For example complaints regarding lack of staff to assist with meals could affect a single resident or the entire facility depending on the circumstances.

### ***Who Lodges Complaints?***

Complaints are received from many sources, although most complaints (50 percent) are called in by the facility. This figure is particularly high in South Carolina because under the S.C. Omnibus Adult Protection Act, facilities are required to report all suspected cases of abuse, neglect, and exploitation to the Long Term Care Ombudsman, while in most other states, these complaints are reported to the regulatory agency.

Residents account for approximately ten (10) percent of the complaints called in to the ombudsman's office, and families account for approximately twenty-two (22) percent of the complaints. Even though complaints are confidential as required by federal and state law, about three (3) percent of the complainants prefer to remain anonymous, citing fear of retaliation as the most common cause. The ombudsman program continues to educate callers regarding their protection from retaliation as specified in state law.

### ***Most Frequent Complaints***

The table below illustrates the five most frequent complaints of the 133 categories possible made by or on behalf of long term care facility residents.

As indicated, the most frequent complaints received statewide are physical, sexual and verbal abuse. The Ombudsman Program is very concerned and encourages legislation and the nursing home industry to address this issue.

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#### Top Five Most Frequent Complaints

Specific Complaint	Major Category	Number of Complaints
Physical, sexual and verbal abuse	Residents' Rights	885
Improper handling, accidents	Resident Care	650
Improper transfers and discharge	Residents' Rights	224
Dignity, Respect, Staff Attitudes	Autonomy, Choice, Exercise of Rights	182
Neglect, poor care	Resident's Rights	171

### ***Complaints Received by Category***

As stated previously, 4,791 complaints were received regarding long term care facility residents in 2001. When a complaint is received, it is coded using one of 133 federally required codes that are classified into five major categories. These category and number of complaints received are as follows:

Residents' Rights – 49 percent (e.g. abuse, neglect, exploitation, access to records, discharge/eviction, choice of personal physician. etc.);

Resident Care – 35 percent (e.g. accidents, call lights, dental services, physical restraints, etc.)

Quality of Life – 6 percent (e.g. activities, community interaction, menu choice, cleanliness of environment, etc.)

Administration – 6 percent (inadequate record keeping, shortage of staff, inappropriate level of care, etc.) and

Not Against the Facility – 4 percent (bed shortage, physician not available, guardians, etc.)

### **3** *LONG TERM CARE FACILITY INFORMATION*

The following statistics illustrate the number of persons living in long-term-care facilities in South Carolina. Many individuals live in long-term care facilities due to the lack of publicly-funded home care that would allow them the opportunity to live at home with additional assistance.

FY 2002	Number of Facilities	Number of Beds
Nursing Homes	200	18,896
ICF/MR (<15 Beds)	123	994
ICF/MR (>15 Beds)	11	1,356
Residential Care Facilities	545	17,759
Total Facilities	879	39,005

Throughout the healthcare field in the United States, organizations are facing an acute shortage of nursing staff. Nowhere is that more evident than in nursing homes. However, nursing homes in South Carolina are required to maintain a minimum number of staff.

### ***Nursing Home Staff***

The required minimum number of licensed nurses for any nursing station which serves at least one resident is one per station per shift. If a nursing station serves more than forty-four (44) residents, then that station is required to have two licensed nurses on all shifts.

### ***Nursing Aides***

The required number of nursing aides and other non-licensed nursing personnel is determined by the number of residents assigned to beds at each nursing station. Non-licensed nursing staff must be provided to meet at least the following schedule:

Shift	Ratio of Aides to Residents
1	1:9
2	1:13
3	1:22

For the purposes of this section:

“Shift 1” means a work shift that occurs primarily during the daytime hours including, but not limited to: a 7:00 a.m. to 3:00 p.m. shift;

“Shift 2” means a work shift that generally includes both daytime and evening hours including, but not limited to, a 3:00 p.m. to 11:00 p.m. shift;

“Shift 3” means a work shift that occurs primarily during the nighttime hours including, but not limited to, an 11:00 p.m. to 7:00 a.m. shift.

**Note: This staff must be dedicated strictly to direct resident care, e.g., no cooking, housekeeping or administrative duties. A nursing home with 8 residents would require a minimum of 3 staff persons on the day shift, i.e., one administrator, one DON who must be an RN and one aide.**

### ***Residential Care Facility Staff***

The required minimum number of residential care facility staff is 1 staff to 8 residents during peak hours (7:00 a.m. to 7:00 p.m. or defined by facility). One staff to 30 residents is required during non-peak hours. If the building houses more than 8 residents, a staff member must be awake and dressed during non-peak hours. The Department of Health Licensing may require additional personnel if client needs require.

**Note: Dietary, housekeeping and administrative staffs are counted in staffing ratio. A community residential care facility with 8 residents would require a minimum of one staff person on the day shift.**

### ***Health Regulations***

While nursing homes are expected to keep residents safe from harm, there are a variety of federal, state, and local agencies—including law enforcement entities—that typically play a part. The recently renamed Centers for Medicare and Medicaid Services (CMS), within the Department of Health and Human Services, is responsible for establishing standards that nursing homes must meet to participate in the Medicare and Medicaid programs. CMS contracts with the S.C. Department of Health and Environmental Control to conduct annual inspections, called surveys, of nursing homes to certify that they are eligible for Medicare and Medicaid payments.

### ***Bureau of Certification***

The Bureau of Certification is responsible for ensuring that all residents, patients and clients of the long term care providers that receive Medicare and Medicaid payments are afforded the quality of care which will attain or maintain the highest practicable level of physical, mental, and psychosocial well-being.

### ***Division of Certification***

The Division of Certification surveys health facilities that participate in the Medicare and Medicaid programs, including nursing homes and facilities for the mentally retarded. These facilities are surveyed with unannounced site visits. The survey includes medical record review, facility file review, observation, and resident and staff interviews. Survey teams include nurses, pharmacists, social workers, dieticians and qualified mental retardation professionals.

The Division is divided into four areas, each concerned with respective Medicare/Medicaid Standards and Conditions of Participation. These Standards and Conditions are expressed as Federal regulations, and are available from *National Technical Information Service*.

### ***Division of Health Licensing***

The purpose of the Division of Health Licensing is to ensure that individuals receiving care and services from long term care facilities licensed by the Department of Health and Environmental Control are provided appropriate care and services in a manner and in an environment that promotes their health, safety, and well-being.

These responsibilities include:

1. Promulgating standards regarding the establishing and maintaining of activities;
2. Evaluating licensed and proposed activities through inspection and investigation based upon established standards;
3. Requiring activities to meet the established standards.

The Division offers assistance to facilities in meeting the standards through consultation or, when necessary, takes enforcement actions when facilities are unable or unwilling to meet the standards.

***You may contact DHEC at 803-545-4205 for the Bureau of Certification or 803-545-4370 for the Division of Health Licensing or [www.scdhec.net](http://www.scdhec.net).***

## **4 PROTECTION AND THE LAW**

### ***South Carolina Omnibus Adult Protection Act***

Abuse, neglect, or exploitation of nursing home residents is a crime which the law treats very seriously. South Carolina has very strong laws and penalties for crimes committed against a vulnerable adult. A vulnerable adult means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. A resident of a facility is a vulnerable adult.

### ***Abuse, Neglect, and Exploitation***

There are many causes for elder abuse in long-term care facilities. These residents are particularly vulnerable because of their frail and dependent position. The Ombudsman Program views elder abuse as a priority, and works to stop any and all elder abuse.

*“Physical abuse”* means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement.

*“Psychological abuse”* means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

*“Neglect”* means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which results in serious physical or psychological harm or substantial risk of death.

*“Exploitation”* means an improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person. Exploitation can also mean causing or requiring a vulnerable adult to engage in activity or labor which is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult.

### ***Signs of Abuse***

Many nursing home residents are totally dependent on caregivers. When a resident is abused or neglected by a caregiver, that resident may be afraid to complain for fear of reprisal. It is especially important that others watch for warning signs, such as:

- Frequent unexplained injuries or complaints of pain without obvious injury
- Bruises or burns suggesting the use of instruments, cigarettes, etc.
- Cuts, scratches, skin tears, swelling
- Passive, withdrawn and emotionless behavior
- Lack of reaction to pain
- Fear of being alone with caregivers
- Injuries that appear after the person has not been seen for several days

### ***Signs of Neglect***

- Obvious malnutrition, dehydration
- Lack of personal cleanliness
- Begs for food, loss of weight, withdrawn
- Untreated bedsores, unexplained rashes
- Odorous, lying in urine, feces or old food

### ***Signs of Exploitation***

- Sudden inability to buy personal care items
- A sudden transfer of funds or property
- Excessive activity in the bank accounts or credit cards
- Sudden changes in wills, powers of attorney or guardianship

### ***Penalties***

A person who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and willfully fails to report the incident is guilty of a misdemeanor and, upon conviction must be fined not more than \$2,500 or imprisoned not more than one year.

A person who knowingly and willfully abuses a vulnerable adult is guilty of a felony and, upon conviction, may be imprisoned not more than five years.

A person who knowingly and willfully neglects a vulnerable adult is guilty of a felony and, upon conviction, may be imprisoned not more than five years.

A person who knowingly and willfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than \$5,000 or imprisoned not more than five years, or both, and may be required to make restitution.

A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, may be imprisoned not more than fifteen years.

A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, may be imprisoned not more than thirty years.

A person who threatens, intimidates, or attempts to intimidate a vulnerable adult, a witness, or any other person cooperating with an investigation, is guilty of a misdemeanor and, upon conviction, must be fined not more than \$5,000 or imprisoned for not more than three years.

A person who willfully and knowingly obstructs or in any way impedes an investigation, upon conviction, is guilty of a misdemeanor and must be fined not more than \$5,000 or imprisoned for not more than three years.

### ***Reporting Abuse, Neglect and Exploitation***

Nursing home employees are required by law to report suspected abuse, neglect, and exploitation.

Incidents must be reported within twenty-four hours or the next business day. The report must be made in writing or orally by telephone to the Long Term Care Ombudsman Program for incidents occurring in facilities and to the Adult Protective Services Program for incidents occurring in all other settings.

A person required to report or to investigate cases, and who has probable cause to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of the death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to law enforcement and the circuit solicitor in the appropriate jurisdiction. The Long Term Care Ombudsman Program and the Attorney General's Office work in conjunction to communicate effectively and avoid duplication of effort to investigate complaints of resident abuse, neglect, mistreatment, and financial exploitation in nursing homes and residential care facilities.

### ***The Attorney General's Office***

The Attorney General's Office has a specialized unit that investigates and prosecutes abuse, neglect, mistreatment, and financial exploitation of nursing home residents. The Medicaid Fraud Control Unit (MFCU) handles not only health care fraud but also has a statewide team of investigators and prosecutors that pursue charges against abusers. These cases include:

- Assaults, thefts and sexual abuse of nursing home residents by their caregivers
- Emotional abuse or harassment, even without any physical contact against the resident, and
- Criminal neglect, for recklessly failing to provide care for the health or safety of a resident.

### ***Reporting Medicaid Fraud***

According to research data, billions of dollars are lost due to fraud, waste, and abuse. The vast majority of health care providers are honest. However, one out of every seven dollars is lost to fraud and abuse.

***If you suspect that fraud is occurring, contact the South Carolina Medicaid Fraud Control and Patient Abuse Unit at 1-888-NO-CHEAT (1-888-662-4328) or in Columbia, 1-803-734-3660.***

### ***Patient Abuse Convictions***

Convictions by the Attorney General's Office, Medicaid Fraud Control Unit, for patient related offences continue to increase. There are many reasons for successful convictions, but the level of cooperation between the Medicaid Fraud Control Unit and the Long Term Care Ombudsman Program is a major factor. Following are a few of those cases:

A female nursing aide was convicted for hitting a 67 year old Alzheimer's patient confined in a wheelchair, with her elbow three times to the head and once with her fist in the resident's thigh because the resident would not open her mouth to eat.

A female nursing aide was convicted for slapping a 78 year old female resident with her open hand on the resident's cheek and bending back (fracturing) her fingers because the resident complained that her restraints were too tight.

Two elderly residents of a small nursing home were sexually assaulted by a male nursing aide. The nursing aide was employed at the facility even though he had a criminal record.

A male nursing aide was convicted for reacting to a slap from a mentally ill resident by slapping the resident back in the face and then pushing the resident up against a wall causing a laceration to the resident's face.

A nursing aide was convicted for accepting personal checks as gifts from a resident and then forging and increasing the amounts of the checks.

### ***How to Stop Abuse***

Many nursing homes provide quality care. However, even one case of abuse is too many. Everyone's assistance is needed to help spot abuse and report it. Professionals and concerned citizens must be alert to protect the elderly who are at risk. If you or anyone you know thinks you may have seen signs of abuse of a vulnerable adult, take action to help stop it. Call the Ombudsman Program if it occurred in a facility, the Department of Social Services, Adult Protective Services, if it occurred in the community, or your local law enforcement agency.

### ***Preventing and Resolving Complaints***

Facilities should be able to resolve many types of complaints before an unsatisfied person contacts the ombudsman's office. These are complaints that involve respect and dignity, personal possessions, food, communication with staff, personal privacy, etc. Most of these complaints are avoidable and are usually caused by poor communication between facilities and residents and family. Nursing homes and residential care facilities could prevent most complaints by:

- Treating all residents with respect and dignity.
- Having a procedure in place for reporting, investigating, and handling complaints.
- Building a relationship of trust and goodwill with the family.
- Always being prompt and thorough in researching and responding to resident concerns.
- Training all staff on customer service skills.
- Appointing a person in the facility to handle all complaints and provide assistance to the residents or family members in a timely manner.
- Maintaining a resident-friendly attitude, listen, and avoid being defensive.

## **5** *GETTING GOOD CARE*

Nationally, approximately 1.5 million individuals reside in the country's almost 17,000 nursing homes. Although these statistics indicate that nursing homes are common, the general public knows very little about nursing homes and how they operate. Most people avoid thinking about nursing homes until a family member is recovering from hospitalization, and is told that nursing home care will be required.

The lack of knowledge about nursing homes hurts residents and their family members in many ways. At the time of admission, a lack of knowledge leads individuals to pick the "wrong" nursing home, particularly those homes that focus on interior design rather than the provision of care. After admission, a lack of knowledge can cause a resident to not receive needed therapy services, to unnecessarily exhaust his or her savings due to ignorance of Medicaid eligibility rules, or to submit to an illegal transfer or discharge. Knowledge about nursing homes, and in particular nursing homes in your area, is the most important step you can take.

Before the search begins for a nursing home, talk with people you trust and who can help you make a good choice. This group could include health professionals like doctors, social workers and hospital discharge planners, or your local ombudsman.

If you are helping someone who is about to go into a nursing home, get them involved as much as possible. His or her wishes need to be respected. People who are involved from the beginning are better prepared when they move in a nursing home and adjust more rapidly.

If you have time to plan ahead, visit several nursing homes in your area, and make good financial plans. Planning ahead gives you more control over the selection process, eases the stress of choosing a nursing home, and helps you make a good choice.

If you have access to a computer, go to the web site [www.medicare.gov](http://www.medicare.gov), and check out the Nursing Home Compare site. It contains information about the Medicare and Medicaid programs, provides a guide on choosing a nursing home and provides detailed information about the performance of every Medicare and Medicaid certified nursing home in the country. It also has other resources, including a Nursing Home Checklist to help you with your nursing home choice. If you don't have access to a computer, go to your local library and ask for assistance.

## **6** *PAYING FOR CARE*

For most people, financing long-term care is a major concern. There are several ways in which long-term care costs may be financed: Personal Resources, Medicare, Medicaid, and Optional State Supplementation.

### *Personal Resources*

Many nursing facility residents pay for costs out of their own income and savings, but because of the high cost they use up their resources to the point where they become eligible for Medicaid.

### *Medicare*

Medicare is a federal health insurance program for people aged 65 and over, qualified disabled persons, and persons with chronic kidney disease.

To qualify for Medicare coverage for skilled nursing home care, one must have been in a hospital for at least three consecutive days before entering the nursing home. You must be admitted to the facility for a condition for which you were treated in the hospital and the admission generally must be within 30 days of your discharge from the hospital. A medical professional must certify that you need to receive skilled nursing or skilled rehabilitation services on a daily basis.

Medicare can pay for up to 100 days of skilled care in a skilled nursing facility during a “benefit period”. All covered services for the first 20 days of care are fully paid by Medicare. Medicare only covers a small portion of your nursing home stay for the next 80 days. You are also responsible for a co-pay. If you require more than 100 days of care in a benefit period, you are responsible for all charges beginning with the 101<sup>st</sup> day. Many nursing homes have both Medicare and non-Medicare areas. In order for Medicare to pay, the resident must be placed in the section of the nursing home that is Medicare certified.

### ***Medicaid***

The South Carolina Department of Health and Human Services administers the Medicaid Program. This is a federal/state insurance program which covers specified medical expenses for the low income aged, blind and disabled. There are distinct eligibility criteria for participation in the program. Each state has a separate Medicaid program with rules and services, so you may be eligible in South Carolina but not eligible in Georgia or North Carolina.

Medicaid pays nursing home expenses for individuals who meet income and resource eligibility requirements. When preparing for nursing home care, you should understand that some restrictions may apply which could affect your eligibility for Medicaid. If either spouse transfers resources, such as real estate or bank accounts, to someone else for less than fair market value within 36 months before a spouse goes into a nursing home, it could affect the extent to which Medicaid will pay for the spouse’s nursing home care. The Medicaid Program provides some protection for income and resources for a spouse still living in the community. Ask Medicaid about “Spousal Impoverishment” rules and how they may apply to your situation.

### ***Optional State Supplementation Program (OSS)***

The OSS Program provides a monthly payment to aged, blind or disabled individuals who need help in paying for Community Residential Care Facility Services. Information about this program and

the procedures for filing an application may be obtained from your local County Department of Social Services.

### ***Community Long Term Care***

Community Long Term Care provides special services to help people remain in the community instead of going to a nursing home. Services vary depending on the individual's needs. Community Long Term Care is a cost-effective alternative for persons who are financially and medically eligible for Medicaid nursing home care. The goal of the program is to safely maintain individuals in their own community. This program also provides an opportunity for individuals to exercise the right of self-determination in the development of the plan of care, choice of provider, and as an alternative to nursing home placement.

## **7 RESIDENT RIGHTS §44-81-10**

In South Carolina, residents of long term care facilities have legal rights to preserve their dignity and personal integrity and safeguard against encroachments upon each resident's need for self-determination. These rights are called the "Bill of Rights for Residents of Long Term Care Facilities".

### ***The Right to be Fully Informed***

Each resident or the resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions as explained in this brochure before or at the time of admission to a long-term care facility. The resident or resident's representative's written acknowledgment of receipt of these explanations must be made a part of the resident's file.

### ***Refund Policy***

The facility must have a written policy on giving refunds to residents. The policy must be based on the actual number of days a resident is in the facility and any reasonable number of bed-hold days. Residents must

be given a written copy of this policy and must be notified in writing of any change in services, charges, or the refund policy.

### ***Medical Treatment***

*As a resident of a facility, the resident or their guardian has the right to:*

- Choose a personal physician;
- Receive from their physician a complete and current description of their medical conditions in terms they can understand;
- Participate in the planning of their care and treatment;
- Be fully informed in advance of any changes to care/treatment that may affect the resident's well-being;
- Refuse to participate in any type of experimental tests or research;
- Have privacy during treatment;
- Have their medical records treated with confidentiality;
- Approve or refuse release of their medical records to anyone outside the facility, **unless** they are transferred to another facility, or it is required by law or other third party contracts.

### ***Personal Possessions***

*The resident of a facility has the right to:*

- Have security in storing their personal possessions;
- Approve or refuse release of their personal records to anyone outside the facility, except as provided by law;
- Keep and use personal clothing and possessions as long as they do not affect other resident's rights;
- Manage their personal finances.

### ***Personal Treatment***

*The resident of a facility has the right to:*

- Be treated with respect and dignity;
- Be free from mental or physical abuse;
- Be free from chemical or physical restraints unless ordered by a physician;
- Be free from working or performing services for a facility unless they are part of the plan of care;

- Be discharged/transferred to another facility against his/her wishes for: his/her welfare; the welfare of other residents; medical reasons; non-payment. If the resident is discharged or transferred, he/she must be given a written notice at least 30 days in advance, unless the discharge or transfer is for the resident's welfare or welfare of other residents.

### ***Communication***

*The resident of a facility has the right to:*

- Have family members, a legal guardian or other relatives visit;
- Refuse to see family members, legal guardian, or other relatives;
- Associate and communicate privately with persons of their choice;
- Meet with family members, their legal guardian, or other resident's family members to discuss the facility;
- Meet with and participate in social, religious, and community group activities, unless prohibited by a written medical order.

### ***Personal Privacy***

*The resident of a facility has the right to:*

- Privacy when receiving personal care;
- Have privacy for conjugal visits;
- Share a room with their spouse, unless the doctor states otherwise in the medical record;
- Have their personal records treated confidentially;
- Employ a sitter from outside the facility, unless there is a written agreement not to hire a private sitter. The sitter must be approved by the facility. The sitter must abide by the policies and procedures of the facility. You must also agree not to hold the facility liable for any matter involving the private sitter.

## **8** *ADVANCE HEALTH CARE DIRECTIVES*

Each individual has the right to make all decisions that affect his or her health care and to name someone else to make health care decisions for them. Advance directives are legally binding documents that you can sign to specify the kind of treatment you want or do not want to be given in the event that you become unable to express your wishes at the time of treatment. The living will and the health care power of attorney are two types of advance directives in South Carolina.

### ***What is a living will?***

A living will is a document that allows you to tell your doctor what to do if you are permanently unconscious or if you are terminally ill and close to death. A living will allows you to declare your desire to die a natural death, instead of having your life prolonged indefinitely by artificial or extraordinary means.

### ***What is a health care power of attorney?***

A health care power of attorney is another document that allows you to give instructions for your future health care. With a health care power of attorney, you name someone to be your “agent” in the event that you become unable to make your own health care decisions. Under such circumstances, your agent has the right to make all decisions about your health care that need to be made. You can guide the decisions of your agent by including specific rules or limitations in your health care power of attorney.

### ***What are the advantages of a health care power of attorney?***

The health care power of attorney is actually a more flexible document than the living will. With a living will, you can only say what you *don't* want, but a health care power of attorney allows you to say what kind of treatment you *do* want as well. If you choose to, you may sign both a living will and a health care power of attorney. *If you change your*

*mind, these documents can be revoked at any time by you or someone authorized by you.*

***What will happen if I don't have an Advance Health Care Directive?***

Completing an Advance Health Care Directive form is strictly voluntary. If you have not given advance instructions for your health care or have not named an agent and you become unable to make your own health care decisions, a surrogate will be asked to make those decisions for you. In most cases, a surrogate will be a member of your family beginning with the spouse, then an adult child, a parent, brother or sister, adult grandchild, the guardian, etc.

If you wish to request a form for a living will or a health care power of attorney, ask your doctor or lawyer, or contact your public library, your local council on aging, your area agency on aging, or the Department of Health and Human Services, Bureau of Senior Services.

***Adult Health Care Consent Act (§ 44-66-10)***

The Adult Health Care Consent Act allows specified persons to make certain health care decisions on behalf of an incapacitated adult, and provides a hierarchy of persons allowed to act. Health care may be provided to a patient who is unable to consent if no person authorized to make health care decisions for the patient is available and willing to make the decisions, and in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the health care is necessary for the relief of suffering or to preserve the life, health, or bodily integrity of the patient. ***The Act also stipulates that a person who in good faith makes a health care decision is not subject to civil or criminal liability and is not liable for the cost of the care to be provided. Also, the health care provider is not subject to civil or criminal liability or disciplinary penalty on account of the provision of care.*** However, the Act does not affect a health care provider's liability arising from provision of care in a negligent manner.

**For State and Regional Ombudsman Offices Call:**

**The State Long Term Care Ombudsman  
SC Department of Health and Human Services, Bureau of Senior Services  
Phone: 1-800-868-9095/803-898-2850.**

**Region 1: Appalachian Council of Governments  
Phone: 864-242-9733  
Serves: Anderson, Cherokee, Greenville, Oconee, Pickens and Spartanburg**

**Region 2: Upper Savannah Council of Governments  
Phone: 1-800-922-7729 or 864-941-8070  
Serves: Abbeville, Edgefield, Greenwood, Laurens, McCormick and Saluda**

**Region 3: Catawba Area Agency on Aging  
Phone: 1-800-662-8330 or 803-329-9670  
Serves: Chester, Lancaster, York and Union**

**Region 4: Central Midlands Council of Governments  
Phone: 1-800-391-1185 or 803-376-5389  
Serves: Fairfield, Lexington, Newberry and Richland**

**Region 5: Lower Savannah Council of Governments  
Phone: 803-649-7981  
Serves: Aiken, Allendale, Bamberg, Barnwell, Calhoun and Orangeburg**

**Region 6: Santee-Lynches Regional Council of Governments  
Phone: 1-800-948-1042 or 803-775-7381  
Serves: Clarendon, Kershaw, Lee and Sumter**

**Region 7: Vantage Point  
Phone: 843-383-8632, ext. 306  
Serves: Chesterfield, Darlington, Dillon, Florence, Marion and Marlboro**

**Region 9: ElderLink, Inc.  
Phone: 1-800-864-6446 or 843-745-1706  
Serves: Berkeley, Charleston, Dorchester, Georgetown, Horry and Williamsburg**

**Region 10: Lowcountry Council of Governments  
Phone: 843-726-5536  
Serves: Beaufort, Colleton, Hampton and Jasper**