

CHAPTER 31

PATIENT RIGHTS AND RESPONSIBILITIES

I. INTRODUCTION

Patients and nursing home residents have a number of rights in relation to their health care treatment. But they also have a number of responsibilities. In Florida, more so than in most other states, there are many defined rights granted to patients and residents by law. The nurse and the nurse supervisor must be aware of patients' rights; they must also know what responsibilities patients have, in order to protect themselves, protect their facility or employer, and to protect other patients.

In addition to the statements of rights and responsibilities set forth in Florida's laws and in Federal laws and regulations, most professional associations (including the Florida Hospital Association, American Hospital Association, American Nursing Association, Florida Nursing Association, American Medical Association, and the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"), all have codes on statements of rights for patients.

II. ASPIRATIONAL OR ENFORCEABLE?

One must always analyze any particular code or statement of patient rights to determine whether they are merely aspirational in nature or enforceable. Even when patient rights are set out in statutes or regulations, they may not be enforceable in civil proceedings. Often, statutory statements of patient rights will specify whether the law gives the patient a cause of action based on a violation of the rights contained in the statement or not.

Regardless, a statement of rights adopted by a professional organization may be considered to be evidence of a professional duty by that profession similar to professional standards or codes.

Following are summaries of some of the most common statements of rights with which nurses should be familiar.

III. FLORIDA PATIENT'S BILL OF RIGHTS AND RESPONSIBILITIES

Florida has enacted by statute a statement of patient rights and responsibilities. It is aspirational in nature, for the most part. It applies to all patients in a hospital or health facility licensed pursuant to Chapter 395, Florida Statutes (hospitals, ambulatory surgical centers). Section 381.026, Florida Statutes contains a detailed list of patient rights, along with detailed descriptions, and the same for patient responsibilities. This section of Florida Statutes also contains a summary of these as follows:

A patient has the right to be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.

A patient has the right to a prompt and reasonable response to questions and requests.

A patient has the right to know who is providing medical services and who is responsible for his or her care.

A patient has the right to know what patient support services are available, including whether an interpreter is available if he or she does not speak English.

A patient has the right to know what rules and regulations apply to his or her conduct.

A patient has the right to be given by the health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.

A patient has the right to refuse any treatment, except as otherwise provided by law.

A patient has the right to be given, upon request, full information and necessary counseling on the availability of known financial resources for his or her care.

A patient who is eligible for Medicare has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts Medicare assignment rate.

A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.

A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap or source of payment.

A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide treatment.

A patient has the right to know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.

A patient has the right to express grievances regarding any violation of his or her rights, as stated in Florida law, through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.

A patient is responsible for providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matter relating to his or her health.

A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.

A patient is responsible for reporting to the health care provider whether he or she comprehends

a contemplated course of action and what is expected of him or her.

A patient is responsible for following the treatment plan recommended by the health care provider.

A patient is responsible for keeping appointment and, when he or she is unable to do so for any reason, for notifying the health care provider or health care facility.

A patient is responsible for his or her actions if he or she refuses treatment or does not follow the health care provider's instructions.

A patient is responsible for assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.

A patient is responsible for following health care facility rules and regulations affecting patient care and conduct.

IV. AMERICAN HOSPITAL ASSOCIATION STATEMENT OF PATIENT RIGHTS AND RESPONSIBILITIES

The American Hospital Association (AHA) first adopted a patient bill of rights in 1973. It has since been amended and revised several times, this is the latest revision as approved by the AHA Board of Trustees in 1992

A PATIENT'S BILL OF RIGHTS¹

Introduction

Effective health care requires collaboration between patients and physicians and other health care professionals. Open and honest communication, respect for personal and professional values, and sensitivity to differences are integral to optimal patient care. As the setting for the provision of health services, hospitals must provide a foundation for understanding and respecting the rights and responsibilities of patients, their families, physicians, and other caregivers. Hospitals must ensure a health care ethic that respects the role of patients in decision making about treatment choices and other aspects of their care. Hospitals must be sensitive to cultural, racial, linguistic, religious, age, gender, and other differences as well as the needs of persons with disabilities.

The American Hospital Association presents A Patient's Bill of Rights with the

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expectation that it will contribute to more effective patient care and be supported by the hospital on behalf of the institution, its medical staff, employees, and patients. The American Hospital Association encourages health care institutions to tailor this bill of rights to their patient community by translating and/or simplifying the language of this bill of rights as may be necessary to ensure that patients and their families understand their rights and responsibilities.

Bill of Rights

These rights can be exercised on the patient's behalf by a designated surrogate or proxy decision maker if the patient lacks decision-making capacity, is legally incompetent, or is a minor.

The patient has the right to considerate and respectful care.

The patient has the right to and is encouraged to obtain from physicians and other direct caregivers relevant, current, and understandable information concerning diagnosis, treatment, and prognosis.

Except in emergencies when the patient lacks decision-making capacity and the need for treatment is urgent, the patient is entitled to the opportunity to discuss and request information related to the specific procedures and/or treatments, the risks involved, the possible length of recuperation, and the medically reasonable alternatives and their accompanying risks and benefits.

Patients have the right to know the identity of physicians, nurses, and others involved in their care, as well as when those involved are students, residents, or other trainees. The patient also has the right to know the immediate and long-term financial implications of treatment choices, insofar as they are known.

The patient has the right to make decisions about the plan of care prior to and during the course of treatment and to refuse a recommended treatment or plan of care to the extent permitted by law and hospital policy and to be informed of the medical consequences of this action. In case of such refusal, the patient is entitled to other appropriate care and services that the hospital provides or transfer to another hospital. The hospital should notify patients of any policy that might affect patient choice within the institution.

The patient has the right to have an advance directive (such as a living will, health care proxy, or durable power of attorney for health

care) concerning treatment or designating a surrogate decision maker with the expectation that the hospital will honor the intent of that directive to the extent permitted by law and hospital policy.

Health care institutions must advise patients of their rights under state law and hospital policy to make informed medical choices, ask if the patient has an advance directive, and include that information in patient records. The patient has the right to timely information about hospital policy that may limit its ability to implement fully a legally valid advance directive.

The patient has the right to every consideration of privacy. Case discussion, consultation, examination, and treatment should be conducted so as to protect each patient's privacy.

The patient has the right to expect that all communications and records pertaining to his/her care will be treated as confidential by the hospital, except in cases such as suspected abuse and public health hazards when reporting is permitted or required by law. The patient has the right to expect that the hospital will emphasize the confidentiality of this information when it releases it to any other parties entitled to review information in these records.

The patient has the right to review the records pertaining to his/her medical care and to have the information explained or interpreted as necessary, except when restricted by law.

The patient has the right to expect that, within its capacity and policies, a hospital will make reasonable response to the request of a patient for appropriate and medically indicated care and services. The hospital must provide evaluation, service, and/or referral as indicated by the urgency of the case. When medically appropriate and legally permissible, or when a patient has so requested, a patient may be transferred to another facility. The institution to which the patient is to be transferred must first have accepted the patient for transfer. The patient must also have the benefit of complete information and explanation concerning the need for, risks, benefits, and alternatives to such a transfer.

The patient has the right to ask and be informed of the existence of business relationships among the hospital, educational institutions, other health care providers, or payers that may influence the patient's treatment and care.

The patient has the right to consent to or decline to participate in proposed research studies or human experimentation affecting care and treatment or requiring direct patient involvement, and to have those studies fully explained prior to consent. A patient who

declines to participate in research or experimentation is entitled to the most effective care that the hospital can otherwise provide.

The patient has the right to expect reasonable continuity of care when appropriate and to be informed by physicians and other caregivers of available and realistic patient care options when hospital care is no longer appropriate.

The patient has the right to be informed of hospital policies and practices that relate to patient care, treatment, and responsibilities. The patient has the right to be informed of available resources for resolving disputes, grievances, and conflicts, such as ethics committees, patient representatives, or other mechanisms available in the institution. The patient has the right to be informed of the hospital's charges for services and available payment methods.

The collaborative nature of health care requires that patients, or their families/surrogates, participate in their care. The effectiveness of care and patient satisfaction with the course of treatment depend, in part, on the patient fulfilling certain responsibilities. Patients are responsible for providing information about past illnesses, hospitalizations, medications, and other matters related to health status. To participate effectively in decision making, patients must be encouraged to take responsibility for requesting additional information or clarification about their health status or treatment when they do not fully understand information and instructions. Patients are also responsible for ensuring that the health care institution has a copy of their written advance directive if they have one. Patients are responsible for informing their physicians and other caregivers if they anticipate problems in following prescribed treatment.

Patients should also be aware of the hospital's obligation to be reasonably efficient and equitable in providing care to other patients and the community. The hospital's rules and regulations are designed to help the hospital meet this obligation. Patients and their families are responsible for making reasonable accommodations to the needs of the hospital, other patients, medical staff, and hospital employees. Patients are responsible for providing necessary information for insurance claims and for working with the hospital to make payment arrangements, when necessary.

A person's health depends on much more than health care services. Patients are responsible for recognizing the impact of their lifestyle on their personal health.

Conclusion

Hospitals have many functions to perform, including the

enhancement of health status, health promotion, and the prevention and treatment of injury and disease; the immediate and ongoing care and rehabilitation of patients; the education of health professionals, patients, and the community; and research. All these activities must be conducted with an overriding concern for the values and dignity of patients.

V. PATIENT'S BILL OF RIGHTS FOR MEDICARE AND MEDICAID

Patients who are beneficiaries of the Medicare or Medicaid Programs are given certain specific rights by federal law.

A. OVERVIEW AND HISTORY OF MEDICARE AND MEDICAID PATIENT'S RIGHTS

On March 26, 1997, President Clinton created the Advisory Commission on Consumer Protection and Quality in the Health Care Industry and charged it with recommend[ing] such measures as may be necessary to promote and assure health care quality and value and protect consumers and workers in the health care system. "As part of that charge, the President asked the Commission to develop a Patients' Bill of Rights" in health care.

In February 1998, President Clinton directed the Department of Health and Human Services (HHS), along with the departments of Labor, Defense, and Veterans' Affairs and the Office of Personnel Management, to use their regulatory and administrative authority to bring their health programs into compliance with the Bill of Rights and Responsibilities.

HHS' Health Care Financing Administration (NCFA) has begun the work to establish new requirements for managed care plans participating in the Medicare program. It is also working to strengthen protections for beneficiaries enrolled in Medicaid managed care. In November 1998, HHS issued a report to the Vice President showing that it is moving aggressively to strengthen existing patient protections under Medicare and Medicaid.

When the regulations are fully implemented, Medicare and Medicaid will have among the strongest patients' protections in the country. The proposed regulations give HHS a variety of monitoring and enforcement tools, including suspension of payments, civil monetary penalties, and termination from the Medicare and Medicaid programs.

B. BACKGROUND: THE PRESIDENT'S ADVISORY COMMISSION ON CONSUMER PROTECTION AND QUALITY IN THE HEALTH CARE INDUSTRY AND THE PATIENTS' BILL OF RIGHTS

In November 1997, President Clinton's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, in an Interim Report, issued the Patients' Bill of Rights and Responsibilities. The Commission's Final Report, "Quality First: Better Health Care for All Americans," was issued in March 1998.

Co-Chaired by Secretary of Health and Human Services Donna E. Shalala and Secretary of Labor Alexis M. Herman, the Commission had 34 members, including broad-based representation from consumers, businesses, labor, health care providers, health plans, and health care quality and financing experts.

The Patients' Bill of Rights and Responsibilities has three goals: to strengthen consumer confidence that the health care system is fair and responsive to consumer needs; to reaffirm the importance of a strong relationship between patients and their health care providers; and to reaffirm the critical role consumers play in safeguarding their own health. The Commission articulated seven sets of rights and one set of responsibilities:

- **The Right to Information.** Patients have the right to receive accurate, easily understood information to assist them in making informed decisions about their health plans, facilities and professionals.

- **The Right to Choose.** Patients have the right to a choice of health care providers that is sufficient to assure access to appropriate high-quality health care including giving women access to qualified specialists such as obstetrician-gynecologists and giving patients with serious medical conditions and chronic illness access to specialists.

- **Access to Emergency Services.** Patients have the right to access emergency health services when and where the need arises. Health plans should provide payment when a patient presents himself/herself to any emergency department with acute symptoms of sufficient severity "including severe pain" that a "prudent layperson" could reasonably expect the absence of medical attention to result in placing that consumer's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

- **Being a Full Partner in Health Care Decisions.** Patients have the right to fully participate in all decisions related to their health care. Consumers who are unable to fully participate in treatment decisions have the right to be represented by parents, guardians, family members, or other conservators. Additionally, provider contracts should not contain any so-called "gag clauses" that restrict health professionals' ability to discuss and advise patients on medically necessary treatment options.

- **Care Without Discrimination.** Patients have the right to considerate, respectful care for all members of the health care industry at all times and under all circumstances. Patients must not be discriminated against in the marketing or enrollment or in the provision of health care services, consistent with the benefits covered in their policy and/or as required by law, based on race, ethnicity, national origin,

religion, sex, current or anticipated mental or physical disability, sexual orientation, genetic information, or source of payment.

- **The Right to Privacy.** Patients have the right to communicate with health care providers in confidence and to have the confidentiality of their individually-identifiable health care information protected. Patients also have the right to review and copy their own medical records and request amendments to their records.

- **The Right to Speedy Complaint Resolution.** Patients have the right to a fair and efficient process for resolving differences with their health plans, health care providers, and the institutions that serve them, including a rigorous system of internal review and an independent system of external review.

- **Taking on New Responsibilities.** In a health care system that affords patients rights and protections patients must also take greater responsibility for maintaining good health.

C. MEDICARE AND MEDICAID COMPLIANCE WITH PATIENT'S BILL OF RIGHTS

While many of the protections articulated in the Bill of Rights are most relevant to individuals in managed care, such as those related to choice of providers and access to specialists, other protections such as complaints and appeals apply to beneficiaries not enrolled in managed care.

Medicare covers nearly 40 million individuals, of whom approximately 6.5 million, or 17 percent are currently enrolled in managed care arrangements. Medicaid covers an estimated 40 million people, of whom about half are in a managed care arrangement for some or all of their health care at some point during a year.

HHS has moved aggressively to strengthen existing patient protections under Medicare and Medicaid. On June 26, 1998, the Health Care Financing Administration (HCFA) published an Interim Final rule establishing new requirements for managed care arrangements participating in Medicare. On September 29, 1998, HCFA published a Notice of Proposed Rulemaking (NPRM) strengthening protections for Medicaid beneficiaries enrolled in managed care arrangements. Generally, the Medicare protections became effective on or before January 1, 1999, and will be fully implemented by no later than December 31, 1999. States will be required to implement all new protections within one year from the effective date of the final regulation for Medicaid, which is expected to be issued by mid-1999.

When these regulations are fully implemented, Medicare and Medicaid will have among the strongest patients' protections in the country. Specifically, HHS has been able to come into compliance for managed care enrollees with critical patient protections such as information disclosure, access to emergency services, patient participation in treatment decisions, and complaints and appeals. These regulations also expand patients' ability to choose their health care providers and to have ready access to specialists.

In a few areas, however, both Medicare and Medicaid currently lack the statutory authority to achieve full compliance with the Patients' Bill of Rights. For example, current legislative authority also does not permit full implementation of the right to medical record confidentiality. HHS has, however,

separately submitted a report to the Congress laying out the parameters for federal legislation to protect the confidentiality of health records. Additionally, while Medicare and Medicaid managed care enrollees are currently protected to the full extent of the Patients' Bill of Rights with regard to respect and non-discrimination, the rules that prohibit discrimination under fee-for-service address some, but not all, categories of protection and providers included in the right as recommended by the Commission.

The proposed regulations give HHS a variety of monitoring and enforcement tools including suspension of payments, civil money penalties, and termination from the Medicare and Medicaid programs. HHS will take all necessary actions to enforce the protections included in the Medicare and Medicaid regulations.

D. SPECIFIC RIGHTS OF MEDICARE AND MEDICAID PATIENTS

Medicaid and Medicare patients have the following specific rights.

Information Disclosure. Under proposed regulations, Medicare and Medicaid will require plans to provide critical information to consumers, both annually and upon request, that will enable them to make more informed choices about their health plans. Medicare's web site, www.medicare.gov, offers the "Medicare Compare" database to help beneficiaries evaluate different plans and decide which options are best, including comparative information about the quality of care provided to patients and about the level of satisfaction among patients with the care that they receive.

Choice of Providers and Plans. The Interim Final rule for Medicare and the proposed Medicaid managed care regulations assure provider network adequacy, by requiring that medically necessary services be available 24 hours a day, seven days a week to enrollees. The Interim Final rule and the proposed rule also reflect the recommendations of the Commission by requiring that participating plans offer women access to qualified women's health specialists for routine preventive care, and provide consumers with complex or serious medical conditions an adequate number of direct access visits to specialists under a plan of treatment. As has been the case since the start of these programs, Medicare and Medicaid beneficiaries who obtain their care on a fee-for-service basis can choose any provider who agrees to participate in these programs.

Access to Emergency Services. The Interim Final Rule for Medicare and the proposed regulations for Medicaid guarantee that emergency services will be covered when and where the need arises, in exact compliance with the Patients' Bill of Rights. Plans would not be permitted to require preauthorization in order for an enrollee to obtain emergency services. In addition, the regulations articulate a standard for post-stabilization services that is applicable to both Medicare and Medicaid managed care enrollees. This policy identifies the obligation of the plan to pay for care provided after an emergency situation is stabilized, particularly when the plan fails to authorize such care on a timely basis.

Participation in Treatment Decisions. The Interim Final rule for Medicare and the NPRM for Medicaid reflect existing and new policies that are consistent with this right, including information about treatment options and advance directives, physicians' financial disclosure and prohibition against "gag rules." Health plans will be required to provide patients with easily understood information and the opportunity to decide among all treatment options—including no treatment—consistent with the informed consent process. Managed care organizations and providers are required to discuss the use of advance directives, or "living wills" with patients and their families and to abide by the wishes as expressed in an advanced directive, except where state law permits a provider to conscientiously object. Physicians are required to disclose to Medicare and Medicaid any financial arrangements that create incentives for limiting care. Plans are prohibited from penalizing or otherwise restricting the ability of health care providers to communicate with and advise Medicare and Medicaid patients about medically-necessary treatment options.

Respect and Nondiscrimination. Under the Interim Final rule for Medicare and the proposed regulations for Medicaid, managed care enrollees are protected to the full extent of this right as articulated in the Bill of Rights, with regard to services, marketing and enrollment. Under fee-for-service, however, Medicare and Medicaid protections against discrimination are largely a function of federal anti-discrimination rules that apply to recipients of federal funds. These rules address some, but not all, categories of protection and providers included in the Bill of Rights. As a result, the fee-for-service aspects of Medicare and Medicaid are in only partial compliance with this right.

Confidentiality of Health Information. The Interim Final regulations for Medicare and the proposed regulations for Medicaid require Medicare+Choice and Medicaid health plans to safeguard the privacy of any information that identifies a particular enrollee by ensuring that information from the plan (or copies of records) be released only to authorized individuals, that unauthorized individuals cannot gain access to or alter patient records, and that original medical records must be released only in accordance with federal or state law, court orders or subpoenas. In Medicaid, plans are required to establish procedures to address the confidentiality and privacy of minors, subject to applicable federal and state law.

While current federal laws and related regulations protect certain written records from disclosure outside of Medicare and Medicaid, such protections do not extend to all written records, nor to verbal communications between enrollees and providers. Protection of communication between patients and providers is a matter of state law, many of which do not afford the protections included in this right. Moreover, not all providers under Medicare and Medicaid are subject to federal laws on privacy. The Secretary's Privacy Recommendations to Congress (September 1997), if enacted, would bring all beneficiary information obtained by Medicare and Medicaid providers and plans, as well as the programs and their contractors, into compliance with this right as articulated in the Bill of Rights.

Complaints and Appeals. The Interim Final rule for Medicare and the proposed regulations for Medicaid managed care require establishment of meaningful processes for resolution of complaints and appeals. Similar processes already exist for resolution of disputes arising in fee-for-service settings.

Internal Appeals. Both the Interim Final rule for Medicare and the NPRM for Medicaid define rigorous standards for the establishment of internal (plan-level) appeal processes, with explicit time frames for both prior authorizations and resolution of appeals at the plan level. Both the Medicare and Medicaid regulations establish a process for expedited review of prior authorizations and resolution of appeals by plans in emergency or urgent care situations. Extensions for both the standard and expedited time frames

are possible only under limited circumstances.

External Appeals. The Bill of Rights proposes that an appeal process include an independent system of external review, in order to ensure its fairness and accuracy. Medicare has long had this protection which includes a provision for expedited decisions in time-sensitive areas. Individuals who are dissatisfied with the determination of the independent external review entity have the right to pursue their claim for Medicare benefits further through an administrative review, including review by the Departmental Appeals Board and, ultimately, federal court.

The appeals process for Medicaid, as articulated in the NPRM, differs from the Bill of Rights in two significant ways. The Bill of Rights calls for the establishment of a sequential process of internal (plan-level) and external review. Under the proposed rule, however, states would be permitted to design their appeals systems so that individuals would appeal either sequentially or simultaneously to the state's fair hearing process, which otherwise serves as the independent external review entity. Second, the state fair hearing process, which serves a docket of programs and issues much broader than Medicaid managed care, currently has time frames that are not consistent with the time frames established by the NPRM for internal review by Medicaid managed care plans; in addition, there is no provision for expedited review.

VI. FLORIDA NURSING HOME RESIDENT'S RIGHTS

In Florida, nursing home residents are given a series of enforceable rights. Section 400.022, Florida Statutes, sets forth the following rights of nursing home residents:

Pursuant to Section 400.022(1), Florida Statutes, a nursing home is required to provide a statement of these rights to each nursing home resident. The statement shall assure each resident the following:

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ombudsman council; and the resident's individual physician.
2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.

4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal

representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in Sect. 400.162(6).

5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

(i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

(j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of Sect. 119.07(1).

(n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the

licensee, including those required to be offered on an as-needed basis.

(o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing

is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.

Section 400.022(2), Florida Statutes, then states:

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline where complaints may be lodged.

According to Section 400.022(3), Florida Statutes:

Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of Sect. 400.102, Sect. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and

consultation with the ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located.

Then, Section 400.022(4), Florida Statutes, goes on to state:

(4) Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

The significant fact about these rights for nursing home residents is that they are enforceable by law by the resident. Section 400.023, Florida Statutes, provides for civil enforcement of the nursing home resident's rights, stating:

(1) Any resident whose rights as specified in this part are violated shall have a cause of action. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall be required to elect either survival damages pursuant to Sect. 46.021 or wrongful death damages pursuant to Sect. 768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any violation of the rights of a resident or for negligence. Any resident who prevails in seeking injunctive relief or a claim for an administrative remedy is entitled to recover the costs of the action, and a reasonable attorney's fee assessed against the defendant not to exceed \$25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought together with a request for an injunction or administrative relief or as a separate action, except as provided under Sect. 768.79 or the Florida Rules of Civil Procedure. Sections 400.023-400.0238 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in Sect. 400.022. This section does not preclude theories of recovery not arising out of negligence or Sect. 400.022 which are available to a resident or to the agency. The provisions of chapter 766 do not apply to any cause of action brought under ss. 400.023-400.0238.

(2) In any claim brought pursuant to this part alleging a violation of resident's rights or negligence causing injury to or the death of a resident, the claimant shall have the burden of proving, by a preponderance of the evidence, that:

- (a) The defendant owed a duty to the resident;
- (b) The defendant breached the duty to the resident;
- (c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident;
and
- (d) The resident sustained loss, injury, death, or damage as a result of the breach.

Nothing in this part shall be interpreted to create strict liability. A violation of the rights set forth in Sect. 400.022 or in any other standard or guidelines specified in this part or in any applicable administrative standard or guidelines of this state or a federal regulatory agency shall be evidence of negligence but shall not be considered negligence per se.

(3) In any claim brought pursuant to this section, a licensee, person, or entity shall have a duty to exercise reasonable care. Reasonable care is that degree of care which a reasonably careful licensee, person, or entity would use under like circumstances.

(4) In any claim for resident's rights violation or negligence by a nurse licensed under part I of chapter 464, such nurse shall have the duty to exercise care consistent with the prevailing professional standard of care for a nurse. The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.

(5) A licensee shall not be liable for the medical negligence of any physician rendering care or treatment to the resident except for the administrative services of a medical director as required in this part. Nothing in this subsection shall be construed to protect a licensee, person, or entity from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

(6) The resident or the resident's legal representative shall serve a copy of any complaint alleging in whole or in part a violation of any rights specified in this part to the Agency for Health Care Administration at the time of filing the initial complaint with the clerk of the court for the county in which the action is pursued. The requirement of providing a copy of the complaint to the agency does not impair the resident's legal rights or ability to seek relief for his or her claim.

(7) An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and the provisions of Sect. 768.21(8) do not apply to a claim alleging death of the resident.

V. FLORIDA MENTAL HEALTH PATIENTS' RIGHTS

The Florida Mental Health Act, Chapter 394, Florida Statutes, provides certain rights to mental health patients. Section 394.459, Florida Statutes, describes these as follows:

394.459 Rights of patients.--

(1) **RIGHT TO INDIVIDUAL DIGNITY.--**It is the policy of this state that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, held, or transported. Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with persons who have a mental illness, except for the protection of the patient or others. Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness shall not be deprived of any constitutional rights. However, if such a person is adjudicated incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.

(2) **RIGHT TO TREATMENT.--**

(a) A person shall not be denied treatment for mental illness and services shall not be delayed at a receiving or treatment facility because of inability to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing mental health services to persons able to pay for services, including insurance or third-party payments, shall be made by facilities providing services pursuant to this part.

(b) It is further the policy of the state that the least restrictive appropriate available treatment be utilized based on the individual needs and best interests of the patient and consistent with optimum improvement of the patient's condition.

(c) Each person who remains at a receiving or treatment facility for more than 12 hours shall be given a physical examination by a health practitioner authorized by law to give such examinations, within 24 hours after arrival at such facility.

(d) Every patient in a facility shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments, as determined by the facility.

(e) Not more than 5 days after admission to a facility, each patient shall have and receive an individualized treatment plan in writing which the patient has had an opportunity to assist in preparing and to review prior to its implementation. The plan shall include a space for the patient's comments.

(3) **RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--**

(a)1. Each patient entering treatment shall be asked to give express and

informed consent for admission or treatment. If the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent to treatment shall be sought instead from the patient's guardian or guardian advocate. If the patient is a minor, express and informed consent for admission or treatment shall also be requested from the patient's guardian. Express and informed consent for admission or treatment of a patient under 18 years of age shall be required from the patient's guardian, unless the minor is seeking outpatient crisis intervention services under Sect. 394.4784. Express and informed consent for admission or treatment given by a patient who is under 18 years of age shall not be a condition of admission when the patient's guardian gives express and informed consent for the patient's admission pursuant to Sect. 394.463 or Sect. 394.467.

2. Before giving express and informed consent, the following information shall be provided and explained in plain language to the patient, or to the patient's guardian if the patient is 18 years of age or older and has been adjudicated incapacitated, or to the patient's guardian advocate if the patient has been found to be incompetent to consent to treatment, or to both the patient and the guardian if the patient is a minor: the reason for admission or treatment; the proposed treatment; the purpose of the treatment to be provided; the common risks, benefits, and side effects thereof; the specific dosage range for the medication, when applicable; alternative treatment modalities; the approximate length of care; the potential effects of stopping treatment; how treatment will be monitored; and that any consent given for treatment may be revoked orally or in writing before or during the treatment period by the patient or by a person who is legally authorized to make health care decisions on behalf of the patient.

(b) In the case of medical procedures requiring the use of a general anesthetic or electroconvulsive treatment, and prior to performing the procedure, express and informed consent shall be obtained from the patient if the patient is legally competent, from the guardian of a minor patient, from the guardian of a patient who has been adjudicated incapacitated, or from the guardian advocate of the patient if the guardian advocate has been given express court authority to consent to medical procedures or electroconvulsive treatment as provided under Sect. 394.4598.

(c) When the department is the legal guardian of a patient, or is the custodian of a patient whose physician is unwilling to perform a medical procedure, including an electroconvulsive treatment, based solely on the patient's consent and whose guardian or guardian advocate is unknown or unlocatable, the court shall hold a hearing to determine the medical necessity of the medical procedure. The patient shall be physically present, unless the patient's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the medical necessity of such procedure. In such proceedings, the

burden of proof by clear and convincing evidence shall be on the party alleging the medical necessity of the procedure.

(d) The administrator of a receiving or treatment facility may, upon the recommendation of the patient's attending physician, authorize emergency medical treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient, and permission of the patient or the patient's guardian or guardian advocate cannot be obtained.

(4) QUALITY OF TREATMENT.--

(a) Each patient shall receive services, including, for a patient placed under Sect. 394.4655, those services included in the court order which are suited to his or her needs, and which shall be administered skillfully, safely, and humanely with full respect for the patient's dignity and personal integrity. Each patient shall receive such medical, vocational, social, educational, and rehabilitative services as his or her condition requires in order to live successfully in the community. In order to achieve this goal, the department is directed to coordinate its mental health programs with all other programs of the department and other state agencies.

(b) Facilities shall develop and maintain, in a form accessible to and readily understandable by patients and consistent with rules adopted by the department, the following:

1. Criteria, procedures, and required staff training for any use of close or elevated levels of supervision, of restraint, seclusion, or isolation, or of emergency treatment orders, and for the use of bodily control and physical management techniques.

2. Procedures for documenting, monitoring, and requiring clinical review of all uses of the procedures described in subparagraph 1. and for documenting and requiring review of any incidents resulting in injury to patients.

3. A system for investigating, tracking, managing, and responding to complaints by persons receiving services or individuals acting on their behalf.

(c) A facility may not use seclusion or restraint for punishment, to compensate for inadequate staffing, or for the convenience of staff. Facilities shall ensure that all staff are made aware of these restrictions on the use of seclusion and restraint and shall make and maintain records which demonstrate that this information has been conveyed to individual staff members.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

(a) Each person receiving services in a facility providing mental health services under this

part has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the person or others. Each facility shall make available as soon as reasonably possible to persons receiving services a telephone that allows for free local calls and access to a long-distance service. A facility is not required to pay the costs of a patient's long-distance calls. The telephone shall be readily accessible to the patient and shall be placed so that the patient may use it to communicate privately and confidentially. The facility may establish reasonable rules for the use of this telephone, provided that the rules do not interfere with a patient's access to a telephone to report abuse pursuant to paragraph (e).

(b) Each patient admitted to a facility under the provisions of this part shall be allowed to receive, send, and mail sealed, unopened correspondence; and no patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the patient or others, in which case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) Each facility must permit immediate access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient. If a patient's right to communicate or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative; and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every 7 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (d).

(d) Each facility shall establish reasonable rules governing visitors, visiting hours, and the use of telephones by patients in the least restrictive possible manner. Patients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(e) Each patient receiving mental health treatment in any facility shall have ready access to a telephone in order to report an alleged abuse. The facility staff shall orally and in writing inform each patient of the procedure for reporting abuse and shall make every reasonable effort to present the information in a language the patient understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, shall be posted in plain view.

(f) The department shall adopt rules providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the requirements and procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS.--A patient's right to the possession of his or her clothing and personal effects shall be respected. The facility may take temporary custody of such effects when required for medical and safety reasons. A patient's clothing and personal effects shall be inventoried upon their removal into temporary custody. Copies of this inventory shall be given to the patient and to the patient's guardian, guardian advocate, or representative and shall be recorded in the patient's clinical record. This inventory may be amended upon the request of the patient or the patient's guardian, guardian advocate, or representative. The inventory and any amendments to it must be witnessed by two members of the facility staff and by the patient, if able. All of a patient's clothing and personal effects held by the facility shall be returned to the patient immediately upon the discharge or transfer of the patient from the facility, unless such return would be detrimental to the patient. If personal effects are not returned to the patient, the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the patient's guardian, guardian advocate, or representative. As soon as practicable after an emergency transfer of a patient, the patient's clothing and personal effects shall be transferred to the patient's new location, together with a copy of the inventory and any amendments, unless an alternate plan is approved by the patient, if able, and by the patient's guardian, guardian advocate, or representative.

(7) VOTING IN PUBLIC ELECTIONS.--A patient who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) HABEAS CORPUS.--

(a) At any time, and without notice, a person held in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the court order a return to the writ in accordance with chapter 79. Each patient held in a facility shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) At any time, and without notice, a person who is a patient in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may file a petition in the circuit court in the county where the patient is being held alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue any order needed to correct an abuse of the provisions of this part.

(c) The administrator of any receiving or treatment facility receiving a petition under this subsection shall file the petition with the clerk of the court on the next court working day.

(d) No fee shall be charged for the filing of a petition under this subsection.

(9) VIOLATIONS.--The department shall report to the Agency for Health Care Administration any violation of the rights or privileges of patients, or of any procedures provided under this part, by any facility or professional licensed or regulated by the agency. The agency is authorized to impose any sanction authorized for violation of this part, based solely on the investigation and findings of the department.

(10) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of patients provided by this part is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from liability if such person commits negligence.

(11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE PLANNING.--The patient shall have the opportunity to participate in treatment and discharge planning and shall be notified in writing of his or her right, upon discharge from the facility, to seek treatment from the professional or agency of the patient's choice.

(12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each facility shall post a notice listing and describing, in the language and terminology that the persons to whom the notice is addressed can understand, the rights provided in this section. This notice shall include a statement that provisions of the federal Americans with Disabilities Act apply and the name and telephone number of a person to contact for further information. This notice shall be posted in a place readily accessible to patients and in a format easily seen by patients. This notice shall include the telephone numbers of the Florida local advocacy council and Advocacy Center for Persons with Disabilities, Inc.

VII. FEDERAL PATIENT BILL OF RIGHTS (1998)

Below is a summary of a Bill of Rights that was adopted by the U.S. Advisory Commission on Consumer Protection and Quality in the Health Care Industry in 1998. This Bill of Rights now applies to the insurance plans offered to federal employees. Many other health plans and facilities have also adopted these values. Even Medicare and Medicaid stand by many of them.

Information Disclosure: You have the right to accurate and easily-understood information about your health plan, health care professionals, and health care facilities. If you speak another language, have a physical or mental disability, or just don't understand something, help should be provided so you can make informed health care decisions.

Choice of Providers and Plans: You have the right to a choice of health care providers who can give you high-quality health care when you need it.

Access to Emergency Services: If you have severe pain, an injury, or sudden illness that makes you believe that your health is in serious danger, you have the right to be screened and stabilized using

emergency services. These services should be provided whenever and wherever you need them, without the need to wait for authorization and without any financial penalty.

Participation in Treatment Decisions: You have the right to know your treatment options and to take part in decisions about your care. Parents, guardians, family members, or others that you select can represent you if you cannot make your own decisions.

Respect and Non-discrimination: You have a right to considerate, respectful care from your doctors, health plan representatives, and other health care providers that does not discriminate against you.

Confidentiality of Health Information: You have the right to talk privately with health care providers and to have your health care information protected. You also have the right to read and copy your own medical record. You have the right to ask that your doctor change your record if it is not accurate, relevant, or complete.

Complaints and Appeals: You have the right to a fair, fast, and objective review of any complaint you have against your health plan, doctors, hospitals or other health care personnel. This includes complaints about waiting times, operating hours, the actions of health care personnel, and the adequacy of health care facilities.

In addition to this bill of rights that is focused on hospitals and insurance plans, there are many other versions. There are special kinds, like the mental health bill of rights, hospice patient's bill of rights, and bills of rights for patients in certain states. Insurance plans sometimes have lists of rights for subscribers. Many of these documents tell you where to go or whom to talk with if you have a problem with your care. The American Hospital Association has a list of rights along with patient responsibilities that can help a person be a more active partner in his or her health care.

VIII. MISCELLANEOUS

Section 381.026(u)(e), Florida Statutes, provides rights for subjects of experimental research. In addition to the provisions of Sect. 766.103, a patient has the right to know if medical treatment is for purposes of experimental research and to consent prior to participation in such experimental research. For any patient, regardless of ability to pay or source of payment for his or her care, participation must be a voluntary matter; and a patient has the right to refuse to participate. The patient's consent or refusal must be documented in the patient's care record. However, this Florida law specifically avoids the possibility that it can be legally enforced in a civil action or in an administrative hearing (for example, in a complaint against a hospital's license of a physician's or nurse's license) for a violation. Section 381.026(3), Florida Statutes states: "This section shall not be used for any purpose in any civil or administrative action and neither expands nor limits any rights or remedies provided under any other law."

IX. CONCLUSION

There are many sources for patient rights and responsibilities. You should know the ones that apply to your profession, your facility and your employer. You should also always be able to distinguish between

ones that are enforceable and ones that are only aspirational in nature.

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