

42 CFR 483.10

This section is current through the March 20, 2014 issue of the Federal Register

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§ 483.10 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) Exercise of rights.

- (1)** The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
- (2)** The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.
- (3)** In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.
- (4)** In the case of a resident who has not been adjudged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) Notice of rights and services.

- (1)** The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;
- (2)** The resident or his or her legal representative has the right --
 - (i)** Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and
 - (ii)** After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.
- (3)** The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;
- (4)** The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (8) of

this section; and

- (5) The facility must --
- (i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of --
 - (A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;
 - (B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and
 - (ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i) (A) and (B) of this section.
- (6) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.
- (7) The facility must furnish a written description of legal rights that includes --
- (i) A description of the manner of protecting personal funds, under paragraph (c) of this section;
 - (ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;
 - (iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and
 - (iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.
- (8) The facility must comply with the requirements specified in subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. Facilities are permitted to contract with other entities to furnish this information but are still legally responsible

for ensuring that the requirements of this section are met. If an adult individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

- (9)** The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.
- (10)** The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.
- (11)** Notification of changes. (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is --
 - (A)** An accident involving the resident which results in injury and has the potential for requiring physician intervention;
 - (B)** A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);
 - (C)** A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or
 - (D)** A decision to transfer or discharge the resident from the facility as specified in § 483.12(a).
 - (ii)** The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is --
 - (A)** A change in room or roommate assignment as specified in § 483.15(e)(2); or
 - (B)** A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.
 - (iii)** The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.
- (12)** Admission to a composite distinct part. A facility that is a composite distinct part (as defined in § 483.5(c) of this subpart) must disclose in its admission agreement its physical configuration, including the various locations that comprise the

composite distinct part, and must specify the policies that apply to room changes between its different locations under § 483.12(a)(8).

(c) Protection of Resident Funds.

- (1)** The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.
- (2)** Management of personal funds. 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 specified in paragraphs (c)(3)-(8) of this section.
- (3) Deposit of funds.**
 - (i)** Funds in excess of \$ 50. The facility must deposit any residents' personal funds in excess of \$ 50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)
 - (ii)** Funds less than \$ 50. The facility must maintain a resident's personal funds that do not exceed \$ 50 in a non-interest bearing account, interest-bearing account, or petty cash fund.
- (4) Accounting and records.** The facility must establish and maintain a system that assures a full and 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.
 - (i)** The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
 - (ii)** The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.
- (5) Notice of certain balances.** The facility must notify each resident that receives Medicaid benefits --
 - (i)** When the amount in the resident's account reaches \$ 200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and
 - (ii)** That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.
- (6) Conveyance upon death.** Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.
- (7) Assurance of financial security.** The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

- (8) Limitation on charges to personal funds.** 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 Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with § 489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See § 447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)
- (i) Services included in Medicare or Medicaid payment.** During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:
- (A)** Nursing services as required at § 483.30 of this subpart.
 - (B)** Dietary services as required at § 483.35 of this subpart.
 - (C)** An activities program as required at § 483.15(f) of this subpart.
 - (D)** Room/bed maintenance services.
 - (E)** Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry.
 - (F)** Medically-related social services as required at § 483.15(g) of this subpart.
- (ii) Items and services that may be charged to residents' funds.** Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:
- (A)** Telephone.
 - (B)** Television/radio for personal use.
 - (C)** Personal comfort items, including smoking materials, notions and novelties, and confections.
 - (D)** Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.
 - (E)** Personal clothing.
 - (F)** Personal reading matter.

- (G) Gifts purchased on behalf of a resident.
 - (H) Flowers and plants.
 - (I) Social events and entertainment offered outside the scope of the activities program, provided under § 483.15(f) of this subpart.
 - (J) Noncovered special care services such as privately hired nurses or aides.
 - (K) Private room, except when therapeutically required (for example, isolation for infection control).
 - (L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by § 483.35 of this subpart.
- (iii) Requests for items and services. (A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.
- (B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.
 - (C) The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.
- (d) Free choice. The resident has the right to --
- (1) Choose a personal attending physician;
 - (2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and
 - (3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.
- (e) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.
- (1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;
 - (2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;
 - (3) The resident's right to refuse release of personal and clinical records does not apply when --
 - (i) The resident is transferred to another health care institution; or
 - (ii) Record release is required by law.
- (f) Grievances. A resident has the right to --
- (1) Voice grievances without discrimination or reprisal. Such grievances include those

with respect to treatment which has been furnished as well as that which has not been furnished; and

- (2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.
- (g) Examination of survey results. A resident has the right to --

 - (1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and
 - (2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.
- (h) Work. The resident has the right to --

 - (1) Refuse to perform services for the facility;
 - (2) Perform services for the facility, if he or she chooses, when --

 - (i) The facility has documented the need or desire for work in the plan of care;
 - (ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
 - (iii) Compensation for paid services is at or above prevailing rates; and
 - (iv) The resident agrees to the work arrangement described in the plan of care.
- (i) Mail. The resident has the right to privacy in written communications, including the right to --

 - (1) Send and promptly receive mail that is unopened; and
 - (2) Have access to stationery, postage, and writing implements at the resident's own expense.
- (j) Access and visitation rights. (1) The resident has the right and the facility must provide immediate access to any resident by the following:

 - (i) Any representative of the Secretary;
 - (ii) Any representative of the State:

 - (iii) The resident's individual physician;
 - (iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);
 - (v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);
 - (vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);
 - (vii) Subject to the resident's right to deny or withdraw consent at any time,

immediate family or other relatives of the resident; and

- (viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.
 - (2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.
 - (3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.
- (k) Telephone. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.
- (l) Personal property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.
- (m) Married couples. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.
- (n) Self-Administration of Drugs. An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 483.20(k)(2)(ii), has determined that this practice is safe.
- (o) Refusal of certain transfers. (1) An individual has the right to refuse a transfer to another room within the institution, if the purpose of the transfer is to relocate --
 - (i) A resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or
 - (ii) A resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.
 - (2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

Secs. 1102, 1128I and 1871 of the Social Security Act ([42 U.S.C. 1302](#), 1320a-7j, and 1395hh).

History

[56 FR 48867, Sept. 26, 1991, as amended at 57 FR 8202, Mar. 6, 1992; 57 FR 43924, Sept. 23, 1992; [57 FR 53587](#), Nov. 12, 1992; 60 FR 33293, June 27, 1995; [68 FR 46036, 46072](#), Aug. 4, 2003; [78 FR 38594, 38605](#), June 27, 2013]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[78 FR 38594, 38605](#), June 27, 2013, amended paragraph (n), effective Aug. 26, 2013.]

Case Notes

LexisNexis® Notes

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Public Health & Welfare Law : Social Security : Medicare : Providers : Types : Nursing Facilities

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Case Notes Applicable to Entire Part**[Part Note](#)****Administrative Law : Separation of Powers : Jurisdiction**

[Talbot v. Lucy Corr, 1996 U.S. Dist. LEXIS 8886](#) (ED Va Mar. 19, 1996).

Overview: *A patient could not pursue a claim under [42 U.S.C.S. § 1983](#) against a nursing home for alleged failure to comply with [42 U.S.C.S. 1395i\(3\)\(c\)](#) because she first was required to exhaust the administrative remedies established by Virginia, pursuant to [42 C.F.R. § 488 et seq.](#)*

- The Secretary of the Department of Health and Human Services has promulgated rules and regulations implementing the Nursing Home Reform Law. These regulations address, among other things: residents rights ([42 C.F.R § 483.10](#)); admission, transfer, and discharge rights ([42 C.F.R § 483.12](#)); resident behavior and facility practices ([42 C.F.R. § 483.13](#)); quality of life ([42 C.F.R. § 483.15](#)); and quality of care ([42 C.F.R. § 483.25](#)). To aid in implementing these requirements and procedures, the administrative scheme includes a state appeals process for transfers and discharges of patients. [42 C.F.R. § 431.205](#). The regulations provide that the state agency responsible for maintaining an appeals system must provide information regarding hearing procedures, notice to the beneficiary of the action that the skilled nursing facility intends to take, the reasons for the intended action, and the specific regulations that require that action. Moreover, a hearing is required for any resident who believes that a skilled nursing facility has transferred or discharged her in error. [42 C.F.R. § 431.220](#). *Go To Headnote*

Civil Procedure : Jurisdiction : Subject Matter Jurisdiction : Federal Questions : General Overview

[Schneller v. Crozer Chester Med. Ctr., 2010 U.S. App. LEXIS 14966](#) (3rd Cir July 20, 2010), writ of certiorari denied by [131 S. Ct. 1684, 179 L. Ed. 2d 617, 2011 U.S. LEXIS 2222, 79 U.S.L.W. 3538 \(U.S. 2011\)](#).

Overview: A district court's dismissal of an individual's case was affirmed since the district court lacked diversity jurisdiction and federal question jurisdiction; *inter alia*, the individual's § 1983 claim failed, he did not have a private right of action under the Assisted Suicide Funding Restriction Act of 1997 or the federal controlled substances laws.

- [42 C.F.R. §§ 483.10, 483.13, 483.15, and 483.25](#) do not provide a basis for jurisdiction pursuant to [28 U.S.C.S. § 1331](#) because they merely set forth the requirements that a facility must meet in order to qualify to participate in Medicare and Medicaid; they do not confer a private cause of action. *Go To Headnote*

[Lewis v. Arthur B. Hodges Ctr., Inc., 230 F. Supp. 2d 724, 2002 U.S. Dist. LEXIS 22007](#) (SD W Va Mar. 6, 2002).

Overview: Where visitor to nursing home sued after he was forcibly removed from facility for refusing to leave after visiting hours, there was no federal question; regulation providing for visitation rights applied to nursing home residents, not visitors.

- [42 C.F.R. § 483.10](#) clearly refers to the rights residents of long-term care facilities have, not visitors. The federal regulation clearly does not provide any rights for visitors to these facilities. *Go To Headnote*

Civil Procedure : Removal : Postremoval Remands : Jurisdictional Defects

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facilities. [Go To Headnote](#)

Civil Procedure : Discovery : Disclosures : Mandatory Disclosures

[Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 2004 Ala. LEXIS 28](#) (Ala Feb. 13, 2004).

Overview: Arbitration agreement was not unconscionable due to a failure to explain the agreement to a nursing home admittee where the agreement was signed by the admittee's guardian, and the details were not hidden from the guardian.

- [42 C.F.R. § 483.10\(b\)\(2\)\(i\)](#) provides that a resident of a health-care facility such as a nursing home has the right, upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours. [Go To Headnote](#)

Civil Procedure : Discovery : Methods : Requests for Production & Inspection

[Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 2004 Ala. LEXIS 28](#) (Ala Feb. 13, 2004).

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Civil Procedure : Alternative Dispute Resolution : Arbitrations : Federal Arbitration Act : Stays Pending Arbitration

[Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 2004 Ala. LEXIS 28](#) (Ala Feb. 13, 2004).

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- Notwithstanding C.F.R. § 483.10(b)(2)(i), when a trial court compels arbitration, that court is required by federal statute to stay all proceedings, [9 U.S.C.S. § 3](#), including discovery (with one exception) as to any claims that fall within the scope of an arbitration clause. [Go To Headnote](#)

Contracts Law : Contract Conditions & Provisions : Arbitration Clauses

[Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 2004 Ala. LEXIS 28](#) (Ala Feb. 13, 2004).

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- Notwithstanding C.F.R. § 483.10(b)(2)(i), when a trial court compels arbitration, that court is required by federal statute to stay all proceedings, [9 U.S.C.S. § 3](#), including discovery (with one exception) as to any claims that fall within the scope of an arbitration clause. [Go](#)

To Headnote**Governments : Legislation : Statutory Remedies & Rights**

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- [42 C.F.R. §§ 483.10, 483.13, 483.15](#), and [483.25](#) do not provide a basis for jurisdiction pursuant to [28 U.S.C.S. § 1331](#) because they merely set forth the requirements that a facility must meet in order to qualify to participate in Medicare and Medicaid; they do not confer a private cause of action. Go To Headnote

[Hubbs v. Alamao, 360 F. Supp. 2d 1073, 2005 U.S. Dist. LEXIS 8461](#) (CD Cal Feb. 10, 2005).

Overview: *Committee confined under California's Sexually Violent Predators Act failed to show that psychologists violated his privacy rights by assessing his medical records in evaluating whether he was a sexually violent predator (SVP) because of state's compelling interest in protecting public from SVPs and Act's provision for disclosure of such records.*

- [42 C.F.R. § 483.10\(e\)](#) applies only to nursing homes participating in Medicare programs, and was promulgated pursuant to [42 U.S.C.S. § 1320d-2](#) of the Health Insurance Portability and Accountability Act of 1996, [42 U.S.C.S. § 1320d-2](#), which creates no private right of action. Go To Headnote

Healthcare Law : Actions Against Facilities : Facility Liability : Nursing Facilities

[Life Care Ctr. Tullahoma v. Sec'y of the United States HHS, 2011 U.S. App. LEXIS 25030](#) (6th Cir Dec. 16, 2011) (Unpublished).

Overview: *Based on the notes of the nurse practitioners, the Departmental Appeals Board justifiably concluded that the nursing home breached [42 C.F.R. § 483.10\(b\)\(11\)](#) when its nurses failed to immediately consult a doctor about three residents' cardiovascular and diabetic episodes.*

- [42 C.F.R. § 483.10\(b\)\(11\)](#) requires nursing homes to consult with the resident's physician immediately after a resident suffers a significant change in physical, mental, or psychosocial status. A change is "significant" when there is a chance that physician intervention is needed. Go To Headnote
- In the context of [42 C.F.R. § 483.10\(b\)\(11\)](#), whether a change is significant depends on the evidence in the record. Go To Headnote

[Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 2004 Ala. LEXIS 28](#) (Ala Feb. 13, 2004).

Overview: *Arbitration agreement was not unconscionable due to a failure to explain the agreement to a nursing home admittee where the agreement was signed by the admittee's guardian, and the details were not hidden from the guardian.*

- [42 C.F.R. § 483.10\(b\)\(2\)\(i\)](#) provides that a resident of a health-care facility such as a nursing home has the right, upon an oral or written request, to access all records pertaining

to himself or herself including current clinical records within 24 hours. [Go To Headnote](#)

Healthcare Law : Business Administration & Organization : Licenses : General Overview

[Beverly Health & Rehab. Servs. v. Thompson, 223 F. Supp. 2d 73, 2002 U.S. Dist. LEXIS 17974](#) (DDC Sept. 18, 2002).

Overview: Nursing home operators unsuccessfully sought the invalidation of the standard survey protocol used by surveyors to monitor compliance with statutory and regulatory requirements for nursing home participation in the Medicare and Medicaid programs.

- Pursuant to [42 C.F.R. § 483.10\(b\)\(11\)](#), a "significant change" is a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications. [Go To Headnote](#)

Healthcare Law : Business Administration & Organization : Patient Confidentiality :

[Hubbs v. Alamao, 360 F. Supp. 2d 1073, 2005 U.S. Dist. LEXIS 8461](#) (CD Cal Feb. 10, 2005).

Overview: Committee confined under California's Sexually Violent Predators Act failed to show that psychologists violated his privacy rights by assessing his medical records in evaluating whether he was a sexually violent predator (SVP) because of state's compelling interest in protecting public from SVPs and Act's provision for disclosure of such records.

- [42 C.F.R. § 483.10\(e\)](#) applies only to nursing homes participating in Medicare programs, and was promulgated pursuant to [42 U.S.C.S. § 1320d-2](#) of the Health Insurance Portability and Accountability Act of 1996, [42 U.S.C.S. § 1320d-2](#), which creates no private right of action. [Go To Headnote](#)

Healthcare Law : Treatment : Incompetent, Minor & Mentally Disabled Patients : General Overview

[Rudow v. Commissioner of the Div. of Med. Assistance, 429 Mass. 218, 707 N.E.2d 339, 1999 Mass. LEXIS 138](#) (Mass Mar. 11, 1999).

Overview: Guardianship costs incurred in gaining Medicaid recipients access to long-term care facility were deductible as necessary medical and remedial care expenses for purposes of calculating each recipient's patient paid amount.

- Federal regulations implementing the Omnibus Budget Reconciliation Act of 1987 require that in the case of a resident adjudged incompetent under the laws of a state by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under state law to act on the resident's behalf. [42 C.F.R. § 483.10\(a\)\(3\)](#). [Go To Headnote](#)

International Trade Law : Dispute Resolution : Arbitration

[Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 2004 Ala. LEXIS 28](#) (Ala Feb. 13, 2004).

Overview: Arbitration agreement was not unconscionable due to a failure to explain the agreement to a nursing home admittee where the agreement was signed by the admittee's guardian, and the details were not hidden from the guardian.

- Notwithstanding C.F.R. § 483.10(b)(2)(i), when a trial court compels arbitration, that court is required by federal statute to stay all proceedings, [9 U.S.C.S. § 3](#), including discovery

(with one exception) as to any claims that fall within the scope of an arbitration clause. *Go To Headnote*

Public Health & Welfare Law : Healthcare : Services for Disabled & Elderly Persons : Care Facilities :

Lewis v. Arthur B. Hodges Ctr., Inc., 230 F. Supp. 2d 724, 2002 U.S. Dist. LEXIS 22007 (SD W Va Mar. 6, 2002).

Overview: *Where visitor to nursing home sued after he was forcibly removed from facility for refusing to leave after visiting hours, there was no federal question; regulation providing for visitation rights applied to nursing home residents, not visitors.*

- *42 C.F.R. § 483.10* clearly refers to the rights residents of long-term care facilities have, not visitors. The federal regulation clearly does not provide any rights for visitors to these facilities. *Go To Headnote*

Talbot v. Lucy Corr, 1996 U.S. Dist. LEXIS 8886 (ED Va Mar. 19, 1996).

Overview: *A patient could not pursue a claim under *42 U.S.C.S. § 1983* against a nursing home for alleged failure to comply with *42 U.S.C.S. 1395i(3)(c)* because she first was required to exhaust the administrative remedies established by Virginia, pursuant to *42 C.F.R. § 488 et seq.**

- The Secretary of the Department of Health and Human Services has promulgated rules and regulations implementing the Nursing Home Reform Law. These regulations address, among other things: residents rights (*42 C.F.R § 483.10*); admission, transfer, and discharge rights (*42 C.F.R § 483.12*); resident behavior and facility practices (*42 C.F.R. § 483.13*); quality of life (*42 C.F.R. § 483.15*); and quality of care (*42 C.F.R. § 483.25*). To aid in implementing these requirements and procedures, the administrative scheme includes a state appeals process for transfers and discharges of patients. *42 C.F.R. § 431.205*. The regulations provide that the state agency responsible for maintaining an appeals system must provide information regarding hearing procedures, notice to the beneficiary of the action that the skilled nursing facility intends to take, the reasons for the intended action, and the specific regulations that require that action. Moreover, a hearing is required for any resident who believes that a skilled nursing facility has transferred or discharged her in error. *42 C.F.R. § 431.220*. *Go To Headnote*

Public Health & Welfare Law : Healthcare : Services for Disabled & Elderly Persons : Care Facilities :

Windsor Place v. United States HHS, 649 F.3d 293, 2011 U.S. App. LEXIS 12391 (5th Cir June 17, 2011).

Overview: *Substantial evidence supported a finding that a nursing facility was not in compliance with *42 C.F.R. §§ 483.20(b)(2)(ii)* and *483.25(c)* based on a resident's development of pressure sores; there was a sufficient showing that the sores had an impact on more than one area of the resident's health and that the development of sores was not unavoidable.*

- Self-administration of drugs by a nursing facility resident without a previous determination by the facility that this practice was safe violates *42 C.F.R. § 483.10(n)*. *Go To Headnote*

Senior Rehab. & Skilled Nursing Ctr. v. HHS, 2010 U.S. App. LEXIS 25885 (5th Cir Dec. 20, 2010).

Overview: *Where an ALJ determined that a nursing home was not in substantial compliance*

with the physician consultation requirement in [42 C.F.R. § 483.10\(b\)\(11\)](#), a statement from the treating physician that the home kept him reasonably and timely informed was the doctor's individual opinion, not evidence of material facts under the governing regulation.

- [42 C.F.R. § 483.10\(b\)\(11\)](#) requires a nursing facility to immediately consult with a resident's physician following: a significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications); or a need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment). [42 C.F.R. § 483.10\(b\)\(11\)\(i\)\(B\)-\(C\)](#). A facility substantially complies with a participation requirement where any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. [42 C.F.R. § 488.301](#). [Go To Headnote](#)

Hubbs v. Alamao, 360 F. Supp. 2d 1073, 2005 U.S. Dist. LEXIS 8461 (CD Cal Feb. 10, 2005).

Overview: Committee confined under California's Sexually Violent Predators Act failed to show that psychologists violated his privacy rights by assessing his medical records in evaluating whether he was a sexually violent predator (SVP) because of state's compelling interest in protecting public from SVPs and Act's provision for disclosure of such records.

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Public Health & Welfare Law : Social Security : Medicaid : General Overview

[Schneller v. Crozer Chester Med. Ctr.](#), 2010 U.S. App. LEXIS 14966 (3rd Cir July 20, 2010), writ of certiorari denied by *131 S. Ct. 1684*, 179 L. Ed. 2d 617, 2011 U.S. LEXIS 2222, 79 U.S.L.W. 3538 (U.S. 2011).

Overview: A district court's dismissal of an individual's case was affirmed since the district court lacked diversity jurisdiction and federal question jurisdiction; *inter alia*, the individual's § 1983 claim failed, he did not have a private right of action under the Assisted Suicide Funding Restriction Act of 1997 or the federal controlled substances laws.

- [42 C.F.R. §§ 483.10](#), [483.13](#), [483.15](#), and [483.25](#) do not provide a basis for jurisdiction pursuant to [28 U.S.C.S. § 1331](#) because they merely set forth the requirements that a facility must meet in order to qualify to participate in Medicare and Medicaid; they do not confer a private cause of action. [Go To Headnote](#)

Public Health & Welfare Law : Social Security : Medicaid : Providers : Types : Nursing Facilities

[Windsor Place v. United States HHS](#), 649 F.3d 293, 2011 U.S. App. LEXIS 12391 (5th Cir June 17, 2011).

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- [42 C.F.R. § 483.10\(n\)](#) provides that a nursing facility patient is allowed to self-administer

drugs only if an interdisciplinary team has determined that this practice is safe. *Go To Headnote*

[Claiborne-Hughes Health Ctr. v. Sebelius](#), 609 F.3d 839, 2010 U.S. App. LEXIS 13126 (6th Cir June 25, 2010).

Overview: *Substantial evidence supported the imposition of sanctions against a nursing facility where it, inter alia, failed to notify a resident's family and doctor when there was a significant change in the resident's condition, and where its noncompliance with [42 C.F.R. § 483.10\(b\)\(11\)](#) put other residents in immediate jeopardy.*

- A skilled nursing facility must immediately inform a resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is a significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications). [42 C.F.R. § 483.10\(b\)\(11\)](#). This requirement is not limited to situations that are deemed life-threatening or an emergency. Instead, the regulation requires consultation with the physician whenever there is a chance that physician intervention is needed. Moreover, the regulation does not allow a nursing home to delay consulting the resident's physician once a significant change has occurred. *Go To Headnote*

[Beechwood Restorative Care Ctr. v. Thompson](#), 494 F. Supp. 2d 181, 2007 U.S. Dist. LEXIS 48732 (WD NY July 6, 2007).

Overview: *In an action brought under [42 U.S.C.S. § 405\(g\)](#), a nursing home's claim for a declaration that the imposition of penalties by Centers for Medicare and Medicaid Services was unlawful was moot because the nursing home had gone out of business and there was no indication that the nursing home could or would be reopened if it prevailed on its claim.*

- [42 C.F.R. § 483.10\(b\)\(11\)](#) requires a nursing facility to immediately notify a resident's family member when a resident has been transferred outside the facility, or has been involved in an accident that results in injury and a potential for requiring physical intervention. *Go To Headnote*

Public Health & Welfare Law : Social Security : Medicare : General Overview

[Schneller v. Crozer Chester Med. Ctr.](#), 2010 U.S. App. LEXIS 14966 (3rd Cir July 20, 2010), writ of certiorari denied by [131 S. Ct. 1684](#), 179 L. Ed. 2d 617, 2011 U.S. LEXIS 2222, 79 U.S.L.W. 3538 (U.S. 2011).

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Public Health & Welfare Law : Social Security : Medicare : Providers : Types : Nursing Facilities

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Public Health & Welfare Law : Social Services : Disabled & Elderly Persons : Agency Actions & Procedures :

[Life Care Ctr. Tullahoma v. Sec'y of the United States HHS, 2011 U.S. App. LEXIS 25030](#) (6th Cir Dec. 16, 2011) (Unpublished).

Overview: *Based on the notes of the nurse practitioners, the Departmental Appeals Board justifiably concluded that the nursing home breached [42 C.F.R. § 483.10\(b\)\(11\)](#) when its nurses failed to immediately consult a doctor about three residents' cardiovascular and diabetic episodes.*

- [42 C.F.R. § 483.10\(b\)\(11\)](#) requires nursing homes to consult with the resident's physician immediately after a resident suffers a significant change in physical, mental, or psychosocial status. A change is "significant" when there is a chance that physician intervention is needed. *Go To Headnote*
- In the context of [42 C.F.R. § 483.10\(b\)\(11\)](#), whether a change is significant depends on the evidence in the record. *Go To Headnote*

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter IV appear at 45 FR 53806, Aug. 13, 1980; 50 FR 12741, Mar. 29, 1985; 50 FR 33034, Aug. 16, 1985; 51 FR 41338, Nov. 14, 1986; 53 FR 6634, Mar. 2, 1988; 53 FR 47201, Nov. 22, 1988; 56 FR 8852, Mar. 1, 1991; 66 FR 39450, 39452, July 31, 2001; 67 FR 36539, 36540, May 24, 2002; 77 FR 29002, 29028, May 16, 2012.]

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