

- o At least 60 days prior to implementation of changes made to charges for other items and services that the facility offers; **or**
- Refund the applicable funds to the resident, resident representative, or estate when a resident died, or was hospitalized, or was transferred and did not return to the facility; **or**
- Refund any and all funds due the resident:
 - o Within 30 days from the date of discharge; **or**
 - o To the resident or resident representative; **or**
- Included terms in the admission contract that conflicted with the requirements of these regulations.

F583

(Rev. 225; Issued: 08-08-24; Effective: 08-08-24; Implementation: 08-08-24)

§483.10(h) Privacy and Confidentiality.

The resident has a right to personal privacy and confidentiality of his or her personal and medical records.

§483.10(h)(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.

§483.10(h)(2) The facility must respect the residents right to personal privacy, including the right to privacy in his or her oral (that is, spoken), written, and electronic communications, including the right to send and promptly receive unopened mail and other letters, packages and other materials delivered to the facility for the resident, including those delivered through a means other than a postal service.

§483.10(h)(3) The resident has a right to secure and confidential personal and medical records.

- (i) The resident has the right to refuse the release of personal and medical records except as provided at §483.70(h)(2) or other applicable federal or state laws.**
- (ii) The facility must allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident's medical, social, and administrative records in accordance with State law.**

DEFINITIONS §483.10(h)

“Confidentiality” is defined as safeguarding the content of information including video, audio, or other computer stored information from unauthorized disclosure without the consent of the resident and/or the individual’s surrogate or representative. If there is information considered too confidential to place in the record used by all staff, such as the family’s financial assets or sensitive medical data, it may be retained in a secure place in the facility, such as a locked cabinet in the administrator’s office. The record must show the location of this confidential information.

“Promptly” means delivery of mail or other materials to the resident within 24 hours of delivery by the postal service (including a post office box) and delivery of outgoing mail to the postal service within 24 hours, except when there is no regularly scheduled postal delivery and pick-up service.

“Right to personal privacy” includes the resident’s right to meet or communicate with whomever they want without being watched or overheard. Private space may be created flexibly and need not be dedicated solely for visitation purposes.

GUIDANCE §483.10(h)

Each resident has the right to privacy and confidentiality for all aspects of care and services. A nursing home resident has the right to personal privacy of not only his or her own physical body, but of his or her personal space, including accommodations and personal care.

Residents in nursing homes have varying degrees of physical/psychosocial needs, intellectual disabilities, and/or cognitive impairments. A resident may be dependent on nursing home staff for some or all aspects of care, such as assistance with eating, ambulating, bathing, daily personal hygiene, dressing, and bathroom needs. Only authorized staff directly involved in providing care and services for the resident may be present when care is provided, unless the resident consents to other individuals being present during the delivery of care. During the delivery of personal care and services, staff must remove residents from public view, pull privacy curtains or close doors, and provide clothing or draping to prevent exposure of body parts.

Photographs or recordings of a resident and/or his or her private space without the resident’s, or designated representative’s written consent, is a violation of the resident’s right to privacy and confidentiality. Examples include, but are not limited to, staff taking unauthorized photographs of a resident’s room or furnishings (which may or may not include the resident), or a resident eating in the dining room, or a resident participating in an activity in the common area. Taking unauthorized photographs or recordings of residents in any state of dress or undress using any type of equipment (for example, cameras, smart phones, and other electronic devices) and/or keeping or distributing them through multimedia messages or on social media networks is a violation of a resident’s right to privacy and confidentiality.

Personal and medical records include all types of records the facility might keep on a resident, whether they are medical, social, fund accounts, automated, electronic, or other. Care must be taken to protect the privacy of personal information on all residents, including gender identity and sexual orientation.

Posting signs in residents’ rooms or in areas visible to others that include clinical or personal information could be considered a violation of a resident’s privacy. It is allowable to post signs with this type of information in more private locations not visible to the public. An exception can be made in an individual case if a resident or his or her representative requests the posting of information at the bedside (such as instructions to not take blood pressure in right arm). This

does not prohibit the display of resident names on their doors nor does it prohibit display of resident memorabilia and/or biographical information in or outside their rooms with their consent or the consent of his or her representative. (This does not include isolation precaution information for public health protection, as long as the sign does not reveal the type of infection).

Personal resident information must be communicated in a way that protects the confidentiality of the information and the dignity of residents. This includes both verbal and written communications such as the presence of lists of residents with certain conditions such as incontinence and pressure ulcers at nursing stations in view or in hearing of residents and visitors. This does not include clinical information written in a resident's record.

Privacy for visitation or meetings might be arranged by using a dining area between meals, a vacant chapel, office or room; or an activities area when activities are not in progress. Arrangements for private space could be accomplished through cooperation between the facility's administration and resident or family groups so that private space is provided for those requesting it without infringement on the rights of other residents.

All residents have the right to privacy in their communications, including justice involved residents. Additional guidance on mail, telephone, electronic communications and visitation rights are addressed in §483.10(g)(6)-(9), F576 and §483.10(f)(4)(i)(A)-(G), F562. See §483.90(e)(1)(iv), F914, for full visual privacy around beds.

With the exception of the explicit requirement for privacy curtains in all initially certified facilities (see §483.90(e)(1)(v), F914), the facility is free to innovate to provide privacy for its residents. This may, but need not, be through the provision of a private room.

PROCEDURES §483.10(h)

- Observe for situations where facility staff may not be honoring the resident's privacy, including during visits, treatment, or leaving medical records out for public view.
- During interviews with residents, their representatives, visitors or families determine if their privacy has been honored by facility staff.
- Interview the representative of the Office of the State Long-Term Care Ombudsman who serves residents of the facility, to determine if the facility allows him/her to examine the resident's records with the permission of the resident or resident representative or as otherwise authorized by State law.
- Are there signs regarding care information posted in view in residents' rooms? If these are observed, determine if such signs are there by resident or resident representative direction. If so, these signs are allowable.
- Is personal resident information communicated in a way that protects the confidentiality of the information and the dignity of residents?
- If concerns are found, interview staff regarding facility policy or procedures regarding protecting resident privacy and confidentiality.