



KEN PAXTON
ATTORNEY GENERAL *of* TEXAS

SENIOR TEXANS

Rights of the Elderly Under Texas Law

In addition to the protections enjoyed by all Texans, state law provides special rights and protections for elderly individuals, including anyone 60 and over. Section 102.003 of the Texas Human Resources Code explains these rights.

Right to be Free to Exercise Civil Rights Under the Law

The elderly have the same civil rights as other adults under U.S. and Texas laws, except where lawfully restricted. They also have the right to use those civil rights free of interference, coercion, discrimination, and reprisal.

Right to Dignity and Respect

An elderly person has the right to be treated with dignity and respect, without regard to race, religion, nationality, sex, age, disability, marital status, or source of payment. This means that the elderly person has the right to:

- Make his or her own choices about personal affairs, care, benefits, and services, and
- Be free from abuse, neglect, and exploitation.

Right to Designate a Guardian or Representative

If protection for an elderly person is required, he or she has the right to designate a guardian or representative to ensure quality care over his or her affairs.

Right to be Free from Physical and Mental Abuse

The elderly have the right to be free of both physical and mental abuse. Physical abuse includes corporal punishment, as well as physical or chemical restraints used to "discipline" a person, or used for the convenience of a person providing services. Restraints are only permitted in very specific circumstances, such as when authorized by a doctor, in case of emergency, or in certain circumstances when the court-appointed guardian of a person with an intellectual disability has given informed consent.

Physical and mental abuse exists in many different forms. If you believe you or someone you know is suffering physical or mental abuse and in immediate danger, please call 9-1-1 or your local law enforcement agency.

If the victim is in a nursing home or assisted living facility, or is in his or her home and relies on a home health provider, call the [Texas Department of State Health Services](#) at (800) 458-9858.

If the victim is a resident of a long-term care facility that receives Medicaid funding, report the criminal abuse, neglect or exploitation to the [Attorney General's Medicaid Fraud Control Unit](#) at (800) 252-8011.

Abuse of a senior who is not in a health care facility can be reported to [Adult Protective Services](#) at (800) 252-5400.

Right to Communicate and Complain Regarding Treatment, Care or Services

An elderly person may not be prohibited from communicating in his or her native language with others or employees for the purpose of acquiring or providing any type of treatment, care, or services.

In addition, he or she may complain about care or treatment, both anonymously or through a designated person. The service provider shall promptly respond to resolve the complaint and may not discriminate or punish the elderly person who makes a complaint.

This right is sometimes violated by nursing homes. A nursing home must have an effective procedure for receiving complaints from elderly people and for responding to those complaints. If a person complains about poor care, or if a family member speaks up about poor conditions at a facility, it is a violation of this law for the nursing home, or any of its employees, to intimidate or retaliate in any way against the resident or the family.

When it appears that retaliation or reprisal is occurring because of complaints or reporting of problems, call the [Texas Department of Aging and Disability Services](#) or [this office](#).

Right to Privacy

An elderly person is entitled to privacy while attending to personal needs and a private place for receiving visitors or associating with other people, unless providing privacy would infringe on the rights of other people.

This right applies to:

- medical treatment,
- written communications,
- telephone conversations,
- meeting with family,
- access to resident councils, and
- mail delivery and privacy.

In addition, if an elderly individual is married and the spouse is receiving similar services, the couple may share a room.

No one has the right to restrict visits to an elderly person, nor force an elderly person to receive a visitor he or she does not wish to see.

Sometimes a nursing home or other residential provider will try to exclude visitors who advocate on behalf of the elderly person or who might otherwise challenge the facility's control. While other residents' rights must also be considered (loud, boisterous visitors might be asked to leave, for example), a nursing home or other facility cannot use this as a pretext for excluding visitors the resident wishes to meet with.

Right to Participation in Activities

An elderly person may participate in activities of social, religious, or community groups unless the participation interferes with the rights of other people.

Right to Manage Financial Affairs

An elderly person may manage his or her own personal financial affairs, or may authorize another person to do so in writing. The elderly individual may choose the manner in which his or her money is managed by another person, and may choose the least restrictive of methods, such as:

- a money management program,
- a representative payee program,
- a financial power of attorney, or
- a trust or similar method.

A person designated to manage an elderly individual's money must comply with all applicable policies, laws and rules. On request, the designated person shall make available the related financial records and provide an accounting of the money. Designating a person to manage their money *does not* affect an elderly person's ability to exercise other rights. However, if an elderly person has a guardian designated by a court, the guardian shall manage the person's money in accordance with the Probate Code and other applicable laws.

Elderly people may want help with their finances, but unless they hand control over to another, they have the same right as anyone else to receive, spend, invest, save, or give away their money. In situations where a nursing home, family member or guardian has been granted permission to manage a person's money, that person still has the right to decide how his or her money will be managed, and to receive a full financial accounting.

Sometimes a family member, "friend," or nursing home takes control of an elderly person's money without that person's permission—often for his or her "own good." This may be a violation of the person's rights, and should prompt a call to The Department of Family and Protective Services or a reputable attorney for advice.

Right to Access and Confidentiality of Records

An elderly person is entitled to access his or her own personal and clinical records. These records are confidential and may not be released without permission, except to another person providing services at the time the elderly individual is transferred; or if required by another law.

Right to Information and Choice Regarding Medical Conditions and Care

Elderly individuals have the right to understand and participate in their treatment plans, by:

- Being fully informed by their service provider, in understandable language, of his or her total medical condition and any significant changes.
- Choosing and retaining a personal physician, and being fully informed in advance about treatment or care that may affect his or her well-being.
- Participating in an individual plan of care that describes the person's medical, nursing and psychological needs and how the needs will be met.
- Refusing medical treatment after the service provider advises of the possible consequences of refusing and the elderly person acknowledges that he or she clearly understands the consequences of refusing treatment.

Right to Keep Possessions

An elderly person may keep and use his or her personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other people.

Right to Refuse to Perform Services

An elderly individual may refuse to perform services for their service provider.

Right to Information About Benefits

By 30 days from when the elderly person is admitted for service, a service provider shall inform the person:

- whether her or she is entitled to benefits under Medicare or Medicaid; and
- which items and services are covered by these benefits, including items and services for which the person may not be charged.

Right to Remain with Chosen Service Provider

A service provider may not transfer or discharge an elderly person unless:

- the transfer is for the person's welfare, and the person's needs cannot be met by the service provider;
- the person's health is improved sufficiently so that services are no longer needed;
- the person's health and safety or the health and safety of others would be endangered if the transfer or discharge was not made;
- the service provider ceases to operate or to participate in the program that reimburses the service provider for the person's treatment or care; or
- the person fails, after reasonable and appropriate notices, to pay for services.

Except in an emergency, a service provider may not transfer or discharge an elderly person from a residential facility until 30 days after the service provider gives written notice to the person, the person's legal representative, or a member of the person's family stating:

- that the service provider intends to transfer or to discharge the person;
- the reason for the transfer or discharge (listed above)
- the effective date of the transfer or discharge;
- if the person is to be transferred, the location where the person will be transferred; and
- the person's right to appeal the action and to whom the appeal should be directed.

If the elderly person is in a Medicaid-certified nursing home, the Texas Department of Aging and Disability Services provides a hearing process for anyone wishing to object to being discharged. Residents do not have to have a lawyer for these hearings—they are informal and aimed at achieving a fair result.

In an emergency, (for example, when the health or safety of other residents is jeopardized by the elderly person's continued presence), a resident could be transferred to a hospital or another appropriate place for treatment without notice or a hearing.

If you know of any elderly person who is threatened with discharge from a nursing home, and none of these legal reasons apply, call the [Texas Department of Aging and Disability Services](#) or [this office](#).

Rights to Make Other Legal Decisions and Documents

An elderly person may:

- make a living will by executing a directive under the Advance Directives Act ([Subchapter B, Chapter 166, Health and Safety Code](#));
- execute a medical power of attorney under the Advance Directives Act ([Subchapter B, Chapter 166, Health and Safety Code](#));
- designate a guardian in advance of need to make decisions regarding the person's health care should the person become incapacitated.

PO Box 12548
Austin, TX 78711-2548

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