

2018 Policy Research

Report



# A Study of Human Rights-Based Improvements for the Long-Term Care Service System:

The Right to Self-Determination in Admission to and Discharge from Nursing Home Facilities



2018 Policy Research Report

# A Study of Human Rights-Based Improvements for the Long-Term Care Service System: The Right to Self-Determination in Admission to and Discharge from Nursing Home Facilities

**AGAC** ASEM Global Ageing Center

This work was supported by the National Human Rights Commission of Korea (NHRCK) and conducted by ASEM Global Ageing Center, and the view of its work may differ from the one of the NHRCK.

## Summary

### I. Introduction

- Despite growing interest in better quality of life in old age, and community care has shown potential for expanding home care services, the reality of long-term care in Korea is that older persons rely on facility benefits for the most part. Although there is growing interest in the life of older persons in nursing home facilities and their right to self-determination in admission to and discharge from such facilities, few studies have been conducted on this matter.
- The present study aims to identify how the right to self-determination for those who are using nursing home facilities is guaranteed when they are admitted to and discharged from these facilities from the perspective of human rights, and to suggest practical and policy implications on how to improve the long-term care service system.

### II. Method

- The right to self-determination in admission to and discharge from nursing home facilities, which the present study intends to examine, is approached in multiple methods: (i) a survey on older persons living in the facilities and other older persons, (ii) a focus group interview (FGI) with employees in nursing home facilities, and (iii) an international case study.
- The questionnaire survey was conducted from November 1 to December 10, 2018 on 800 older persons living in nursing home facilities and 300 people not living in the facilities across the country in a one-on-one interview method. The questionnaire consisted of items on (i) admission to and discharge from nursing home facilities, (ii) life in the facilities, (iii) physical health, (iv) mental health, and (v) demographic information. Based on data acquired from the questionnaire, the present study

conducted descriptives, a chi-squared test, and mean comparison.

- The FGI with employees in nursing home facilities was conducted using purposive sampling, and the interviewees included executive director-level experts, who are in charge of the admission process of older persons wanting to enter the facilities.
- The international case study focuses on care facilities for older persons and elder policy research institutes in Japan, which has a more developed long-term care system than Korea. These facilities and institutes were selected by the research team or from recommendations by other institutions. The facilities and institutes in Tokyo, Kyoto, and Osaka were examined from December 3 to 7, 2018.

### III. Results

- Issues for the right to self-determination in admission to and discharge from nursing home facilities are (i) the lack of laws for the right to self-determination in admission to and discharge from the facilities, (ii) absence of the right to self-determination in evaluation items for nursing home facilities, (iii) absence of the right to self-determination in the standard terms and conditions for the use of long-term care benefits, and (iv) ambiguity in the definition and role of nursing home facilities. Further, applicable laws on these facilities lack in guaranteeing older persons' right to self-determination compared with residential facilities for people with disabilities and care facilities in other countries for older persons.
- The questionnaire survey on older persons reveals that 60% of the older persons living in nursing home facilities were admitted to the facilities against their will. The most frequent reason they were admitted against their will was "My family cannot afford to take care of me" (59.4%), which indicates that many of them were admitted to the facilities involuntarily because of the situation of their family or guardian, not because they wanted to have better care services in the facilities.

- By contrast, the questionnaire survey showed that older persons living outside the facilities considered facility expenses (52.0%) and service accessibility and quality (18.0%) as important influences in their decision (7.7%) for admission to nursing home facilities. Thus, it is necessary to raise awareness and promote the importance of older persons' rights in their admission to and discharge from facilities.
- Among older persons living in nursing home facilities, those who responded being admitted to the facilities by their own decision showed a statistically significant difference in depression (guaranteed: 16.29, non-guaranteed: 17.47,  $p < .01$ ) and life satisfaction (guaranteed: 22.34, non-guaranteed: 20.27,  $p < .001$ ) compared with those who were not. Thus, the right to self-determination in admission to and discharge from the facilities is the important influencing factor in the older person's life in the facilities and their mental health.
- In the FGI with employees in nursing home facilities, the participants suggested the difficulties to guaranteeing the right to self-determination for older persons in the facilities, efforts to improve negative views about the facilities, and changes necessary for the system. As a way to guarantee the right to self-determination for older persons in the facilities, they suggested strengthening patients' communication with people outside the facilities, including their children.
- The international case study reveals the potential of shifting the role of nursing home facilities toward helping older persons recover their function and return to the local community based on "rehabilitation," as a way to overcome the facilities' negative image. This move would require expanding long-term home care services while recovering older persons' function. In addition, the present study discusses improving the quality of services by providing better working conditions to employees in nursing home facilities, addressing older persons' deteriorating physical and mental functions, and guaranteeing their rights.

## IV. Conclusion

- Based on the above results, the present study suggests political and practical implications to guarantee the right to self-determination in admission to and discharge from nursing home facilities for those in the facilities and to increase the quality of life in the facilities.
- To improve the system related to the right to self-determination for older persons living in nursing home facilities, this study suggests guaranteeing this right in admission to and discharge from these facilities by updating provisions for nursing home facilities in the Welfare of Older Persons Act and the Enforcement Rules thereof. It would be possible to reference provisions related to residential facilities for people with disabilities or elder-related laws in other countries. In addition, to improve the evaluation system of nursing home facilities, this study suggests including a provision for the right to self-determination in admission and discharge in the Long-Term Care Facility Benefits Evaluation Manual and revising the standard terms and conditions for the use of long-term care benefits provided by the Fair Trade Commission.
- As regards systematic and practical improvements for enhancing the quality of life of older persons in the facilities, this study suggests encouraging nursing home facilities to improve their environment, and at the same time, clarifying the role of these residential facilities and long-term care hospitals. The present study suggests fully staffing such facilities to fulfill their role as a place where older persons live a healthy life, as well as shifting the perception about these facilities into places that help them return to their local community, instead of where they prepare for their last moments in life.
- As demonstrated above, the present study holds significance because it seeks to approach the life and right of older persons living in nursing home facilities, which have not been previously known very well, and confirms the correlation between right

to self-determination and life in the facilities. The present study could serve as a reference in enhancing the quality of life of those living in facilities and preparing policy improvements.

# Contents

Conclusions and Suggestions .....	1
Section 1 Summary .....	2
1. Summary of questionnaire survey results .....	2
2. Summary of FGI results .....	6
3. Summary of international case study results .....	10
Section 2 Systemic and Practical Improvements for the Right to Self-Determination in Admission to and Discharge from Facilities .....	14
1. Amending laws applicable to nursing home facilities .....	14
2. Adding the right to self-determination in evaluation items for nursing home facilities .....	17
3. Revising standard terms and conditions of the facility admission contract .....	19
Section 3 Systemic and Practical Improvements for Life in Facilities for Older Persons .....	21
1. Improving the environment of nursing home facilities and distinguishing them from other facilities .....	21
2. Clarifying the role of nursing home facilities .....	23
Section 4 Study Significance and Limitations .....	25

## Conclusions and Suggestions

The present study aims to identify how the right to self-determination for those who are using nursing home facilities is guaranteed when they are admitted to and discharged from the facilities from the perspective of human rights and to suggest practical and policy implications on how to improve the long-term care service system.

To guarantee the right to self-determination for older persons living in nursing home facilities, the present study uses three approaches. First, to determine the level of the right to self-determination perceived by those living in nursing home facilities and the effect of such right on their life in the facilities and their physical and mental health, this study conducted a questionnaire survey on older persons living in the facilities and other older persons living outside the facilities. Second, to view the right to self-determination in admission to and discharge from nursing home facilities from the perspective of facility employees, the present study conducted an FGI with facility employees. Finally, to guarantee the right to self-determination for older persons living in nursing home facilities and improve the long-term care insurance system, this study conducted a case study on Japan's care facilities and policy research institutes for older persons.

Based on the above results, this study suggests policy, systemic, facility, and practical improvements for the right to self-determination and better living for those residing in nursing home facilities.

## Section 1 Summary

### 1. Summary of questionnaire survey results

The present questionnaire survey identifies the guarantee level of older persons' right to self-determination in their admission to and discharge from nursing home facilities, analyzes the effect of this guaranteed right on their life in the facilities, and compares them with other older persons. The questionnaire survey was conducted on 800 older persons living in nursing home facilities and 300 ordinary people across the country,

#### a. Lack of adaptation stage in nursing home facilities

With regard to whether they had used another facility before their current one, many older persons living in nursing home facilities were admitted to the facilities without previous experience in another facility. Only 256 (32.0%) of those living in the facilities had previously used another facility, and as for the type of their previous facility, most of them had used another nursing home facility. This finding shows that most of them were at home without receiving support from the public care system before they were admitted to their current facility. In addition, the fact that the type of welfare facilities for older persons they had used previously was mostly nursing home facilities suggests that many older persons are admitted to their current facility (transfer) owing to their difficulty in adapting to another previous facility, and most of them were admitted to the facilities without having benefited from services for older persons. The average number of years spent in the facilities was not very different between the current facility only (3.40 years) and all facilities used (4.09 years), which also shows that many older persons were admitted to the facilities without basic knowledge and prior experience related to nursing home facilities and the public care system. Of course, although the cognitive condition of those living in nursing home facilities should be considered when accepting the present study's results, these results

suggest the necessity to check the current long-term care system and expand home care services.

Experts have recommended the most ideal type of use of welfare facility for older persons: gradual use, including of senior centers, as older persons grow older, and use of hospitals in the case of acute diseases (Yoon and Choi, 2016<sup>1)</sup>). Further, when older persons find it difficult to live on their own owing to age-related deterioration in physical and cognitive functions, the most ideal type of care is living while gradually receiving home care services, choosing to enter long-term care facilities only when living independently becomes difficult. As indicated in the present study's results, however, the situation where many older persons are admitted to nursing home facilities without any adaptation period through long-term home care services, when it becomes difficult for their family to take care of them at home, is likely to deliver negative outcomes to older individuals, their family, and the facilities.

#### b. Paradoxical situation for older persons in admission to and discharge from nursing home facilities

The results show that the percentage of those who voluntarily decided admission to and discharge from nursing home facilities was significantly low (40.1%). This finding seems to reflect the situation where older persons should accept admission to the facilities not by their own choice from their physical and cognitive difficulties but because of the circumstances of their guardian or family. As such, involuntary admission to facilities is combined with traditional views about elder care in Korea (filial piety is to take care of one's parents until the end; going to facilities equals being abandoned by one's children), resulting in a negative prejudice on their life in the facilities.

---

1) Yoon, J. and Choi, S. (2016). "Elderly Rehabilitation and Treatment Should be Established in the Order of Home → Long-Term Care Facility → Long-Term Care Hospital → General Hospital"  
<http://www.kookje.co.kr/news2011/asp/newsbody.asp?code=0300&key=20160127.22003193341>

Nonetheless, older persons living in facilities reported understanding their family's choice to put them in the facilities and considering it something about which cannot be chosen. Many of the participants said the reason they were admitted regardless of their will was their family could not afford to take care of them. Even half of those admitted voluntarily to nursing home facilities said they "did not want to place a burden on their family to take care of them." These results show the problems that many older persons' admission to facilities is decided by their family's difficulties, not necessarily theirs, and that they do not make their own choice although their nursing home facility is a new place for them to live in. In particular, the results suggest that older persons could be trapped in a situation where it is difficult to decide what life in the facilities they want to have on their own, and they would almost give up to the extent that they would have no choice but to follow their family's situation, instead of their own needs.

For most of the questionnaire items on the guarantee of an individual's rights, which should be presented in admission to and discharge from the facilities, more than half of the respondents said they were notified of such rights in a counseling session, which was provided right after their admission. Thus, efforts are being made to guarantee human rights at the facility level. However, the fact that there is a deviation between such rights indicated that different facilities guarantee human rights at different levels in their admission. Thus, it is necessary to establish guidelines in admission to and discharge from facilities.

By contrast, as regards their choice of facility and admission decision, older persons not living in the nursing home facilities considered service expenses and quality over the right to self-determination. Regarding the questionnaire items on the principle of care services, more ordinary older persons responded that they thought service expenses and quality were more important than the right to self-determination. This result indicates that awareness about human rights has not been spread widely when it comes to the use of long-term care facility services. Further, the importance of the right to self-determination scored an average of 6 out of 10 points on the Likert

scale. Awareness should be raised further among older persons, especially highlighting the importance of the right to self-determination in later life.

The right to self-determination in nursing home facilities is a basic right for older persons based on Article 19 of the Universal Declaration of Human Rights (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”) and the Republic of Korea’s Constitution (United Nations, 2018<sup>2)</sup>). However, it is necessary to pay attention when this right is ignored or rejected by someone else’s circumstances. Of course, older persons’ individual needs and their guardians’ financial and caregiving situation should be considered altogether for admission to the facilities, but it is equally important to provide practical and systematic support so that older persons can independently determine their situation and make their own choice. Even in a situation where older persons’ cognitive function has deteriorated, the maximum scope of older persons’ right to self-determination needs to be set, and the system supplemented, so that older persons can exercise their basic right to the maximum.

### c. Effect of the right to self-determination in nursing home facilities on older persons

The study shows that the guarantee of the right to self-determination in admission to and discharge from nursing home facilities had an effect on the life and mental health of those living in the facilities. A factor that made a significant difference in older persons’ depression, life satisfaction, and satisfaction with life in the facilities was whether their right to self-determination had been guaranteed in admission to and discharge from the facilities. Those who said their right to self-determination was guaranteed showed a lower level of depression, a higher level of life satisfaction, and a higher level of satisfaction with life in the facilities compared with those

---

2) United Nations. (2018). Universal Declaration of Human Rights, Retrieved from <http://www.un.org/en/universal-declaration-human-rights/index.html>

who said their right was not guaranteed, thereby confirming the importance of the guarantee of the right to self-determination in nursing home facilities.

These results hold significance not only because guaranteeing older persons' right to self-determination is important in terms of human rights but also because the right to self-determination serves as a factor that determines the quality of life in the facilities. Life in the facilities begins not after admission but at the moment when they decide admission or discharge; thus, it is important for the facilities or their family to reflect older persons' willingness in an admission decision. Further, it is necessary to establish a practical way of improving awareness of the importance of the right to self-determination among older persons and their family who are planning admission to nursing home facilities.

According to the questionnaire results, the factor that had the most significant effect on life in the facilities and mental health was the older persons' relationship with their children. Compared with other factors, relationship with children had a statistically significant effect on depression, life satisfaction, satisfaction with life in the facilities, and abuse experience in the facilities, indicating that strengthening the bond between parents and children, which is arguably the most basic relationship, can become a factor that brings positive changes in these care facilities. Practical interventions are needed for the facilities and residents' families to reinforce the relationship with older persons.

## 2. Summary of FGI results

The present study's FGI was conducted to study the admission and discharge process from the perspective of employees in nursing home facilities and the guarantee of the right to self-determination. The FGI involved executive director-level experts, who were in charge of organizing the admission process and providing counseling to older persons, and explored the ways to guarantee the right to self-determination from the facilities' point of view.

### a. Difficulties to guaranteeing the right to self-determination for older persons

The common comment from facility employees in the FGI was that the reason it was difficult to guarantee the right to self-determination in admission to and discharge from the facilities was older persons' lack of cognitive function. Under the long-term care insurance system, older persons who want to be admitted to nursing home facilities should belong to Level 1<sup>3)</sup> or 2<sup>4)</sup>, and the facility employees said that senile disease tended to have already progressed for such older persons and it was difficult for them to make a decision for themselves. Nonetheless, 30% to 40% of the respondents in the questionnaire survey said they were admitted to the facilities by their own decision, and if they were admitted to the facilities against their will, they were highly likely to experience difficulty with life in the facilities.

In addition to older persons' cognitive function, their family's various circumstances had an effect on difficulty in guaranteeing the right to self-determination. As families' financial burden for elder care was the biggest reason in establishing the public care system from the long-term care insurance system, financial reasons accounted for most in selecting care facilities for older persons. Further, considering the reality in Korea where double-income families are fairly common, it is possible to conjecture that families' difficult circumstances to take care of older persons entirely would have a huge effect on their admission to the facilities.

According to facility employees, there were cases where older persons' right to self-determination was guaranteed, and it could show a positive effect in older persons' life in the facilities when the right to self-determination was guaranteed. These results were consistent with the quantitative results of the questionnaire

---

3) Level 1: A person who needs another person's help entirely in daily life, and has a Long-Term Care Eligibility Score of 95 or higher.  
 4) Level 2: A person who needs another person's help for a significant part in daily life, and has a Long-Term Care Eligibility Score of 75 to 94.

survey on older persons, suggesting the importance of guaranteeing older people's right to self-determination in admission to and discharge from the facilities. However, no law in Korea clearly defines this right, and the National Health Insurance Service's facility evaluation standards do not define the right to self-determination, which makes it all the more difficult to guarantee the right during admission and discharge in practice.

#### b. Clarifying the perception and role of nursing home facilities

Many older persons and their family, who were waiting for admission to nursing home facilities, regarded admission to such facilities as the last resort or inevitable choice and viewed it negatively. Although many changes have been made, care from the family is the most familiar to the current generation of older persons. Although circumstances in families have changed, the use of the public care system has increased, and its image has changed positively, thanks to government-level promotion, it is still necessary to shift the image of nursing home facilities. Negative views like "abandoned by family" or "prison camp" do not help make qualitative progress in nursing home facilities.

While many efforts are being made to shift the perception about facilities, and older persons and their family are also aware of such efforts, there remains room for improvement. Making sure that older persons who have to adapt to an unfamiliar environment do not forget about their family and house where they used to live is important to help these people not only better adapt to the facilities but also maintain their cognitive function. In this regard, the facilities may allow older persons to bring in belongings or objects that they used to use or remind them of their family, and thus minimize problems they might experience in adapting to the facilities. In addition, most facilities have allowed older persons to go out when accompanied by their family or guardian as long as their cognitive function has not deteriorated to an extreme degree. These facilities have also listened to older persons living in the facilities and their guardian regularly through gatherings, which suggests the facilities are making efforts to overcome

their negative image.

The FGI results showed that facility employees' ideas about how to improve the quality of life for older persons living in nursing home facilities included clarifying the role of the facilities. According to the Welfare of Older Persons Act, a nursing home facility refers to the facility where older persons aged 65 years or older who need care services owing to senility and other diseases are admitted and provided with meals, long-term care services, and other conveniences necessary for their daily life. However, differences between residential facilities, long-term care hospitals, and residential facilities in between are not clear, and those who are not well-informed about such differences tend to choose the facility that brings the least financial burden. For this reason, further expanding public support should be discussed as a prerequisite in establishing the care system. Of course, one of the reasons for this confusion might be the lack of counseling with experts on the long-term care system. In Korea, the National Health Insurance Service is solely in charge of the applications for and implementation of the long-term care insurance system, but it is not easy in practice to receive help on the use of residential and facility benefits from experts who have professional knowledge. As most families are not familiar with using public services, and the number of facilities from which they can receive help is also limited, it is not easy to choose the facility that accommodates their needs based on enough knowledge and data. Therefore, it is necessary to amend the system in this regard.

Further, from the viewpoint of nursing home facilities, facility employees have difficulty in providing services and operating the facilities only with service fees as well as copayments imposed on older persons. This should be considered carefully as it relates to a recent quantitative and qualitative deterioration of caregivers for older persons and may ultimately lead to a lower quality of elder care services.

### c. How to guarantee the right to self-determination

Broadly speaking, there are two ways through which employees in nursing home

facilities can guarantee the right to self-determination: guaranteeing their economic power and strengthening their communication with people outside the facilities, including their children. As in the case of families' financial circumstances being considered most when older persons decide admission to and discharge from facilities, older persons' individual economic power was found important when it came to life in the facilities and right to self-determination. Many older persons, owing to limited cognitive function, tend to have lost their economic power, entrusting their income or assets to their family and receiving an allowance when necessary. In this process, however, older persons could not have as much financial resources as they want, and they could not use their money when they want. While older persons may not manage all facility expenses, a system that helps older persons to freely use basic pensions and other basic expenses eligible for them needs to be put in place.

In addition, to guarantee the right to self-determination for older persons living in nursing home facilities, it is necessary to strengthen communication with people outside the facilities, including their family. From the perspective of family, older persons' needs or voices may not be reflected properly in checking with life in the facilities if their family mostly hears explanations from facility employees. As suggested by the quantitative results of the questionnaire survey on older persons, a better relationship with children and a high level of frequent contact with children have a positive effect on life in the facilities. Thus, it is necessary to put efforts to facilitate communication between older persons and their family using cell phones and other various devices. On top of these efforts, it is necessary to establish strong parent-child relationships even with the older persons living in the facilities. The local community can also intervene even before admission to the facilities in this regard.

### 3. Summary of international case study results

The international case study was performed on long-term care facilities and policy institutes in Japan, which has a developed long-term care insurance system

for older persons, to explore better ways to promote nursing home facilities in Korea and guarantee the right to self-determination

a. Shift in perception and role of nursing home facilities

In Korea and Japan, older persons and employees in care facilities for older persons hold different views of the facilities. In Korea, older persons perceive admission to these facilities as preparing for the last moment in their life spent apart from their family. Meanwhile, care facilities for older persons in Japan, which was visited for this case study, are based on rehabilitation and aim to help older persons become self-reliant and return to society. In particular, they aim to improve senile disease's symptoms through four basic care services (hydration, meals, defecation, and exercise) and make it possible for older persons to return to their local community through intensive care on a three-month basis. Japan's case may serve as a solution for Korea to overcome the negative image of nursing home facilities. In particular, unlike the conventional image as “a place that no one can leave once entered,” perception about nursing home facilities may shift if older persons have hope that they can restore their physical and cognitive functions, become self-reliant, and return to their local community with intensive care in such facilities.

Further, the “diaper-free care” provided in Japan's care facilities should be recognized as not only restoring the physical function but also ensuring human rights in the facilities. Considering that diapers are introduced for the convenience of family and caregiving personnel, diaper care may constitute a violation of an older person's needs and basic rights. If it can be overcome by regular exercise and balanced meals, then this type of care may alleviate the potential negative image of care facilities.

It is also worth considering moving beyond the image of nursing home facilities as isolated to that as serving as a hub in the local community. All facilities in the case study had considered how to closely relate to the local community to overcome the negative image of care facilities for older persons. These facilities

had strategized how to integrate different generations from even when they chose their location, and were actively involved in events in the local community using their own resources. This approach could help overcome the negative image of the facilities and have a positive effect on the cognitive function and quality of life of older persons living in the facilities. Ultimately, it can contribute to improving the facilities' image among the public.

#### b. Maintaining service quality in nursing home facilities

From the FGI with employees in nursing home facilities, this study finds that employees in these facilities are themselves aging. Although Korea recognizes this reality, it is not easy to ensure that measures put in place are effective. Meanwhile, Japan's care facilities for older persons have maintained the average age of caregivers at their 30s. What underpinned this difference were expanded support, provision of qualitative training for caregivers, and maintenance of service quality by developing the manual continuously. Japan provides subsidies at the government level for caregivers' compensation, to supplement the low service fees, and puts their wage on a similar level to that of other occupations. Further, producing prepared caregivers based on education in junior college has led to pride among caregivers as people with not simply the financial means but as those providing care services for older persons. Finally, local associations and care facilities for older persons have developed and managed their manual to maintain service quality, and it may be worth considering introducing such efforts in Korea, taking into account Korea's short years of service among caregivers. To maintain service quality, however, what should be done first and foremost is to provide support to nursing home facilities, which are maintained in poor conditions, and thereby make service quality consistent. To provide such support to the facilities, it should be considered to increase long-term care insurance's current premium rate, which now stands at a mere 8.51% of the health insurance premium. Of course, the insurance premium has been on the rise, and some resistance is expected from those who pay the increased insurance premium, but it seems an

inevitable choice at a time when Korea is becoming a super-aged country. Public consensus as well as policy instruments in the system, which people feel are necessary, should be established before increasing the insurance premium.

However, these measures should be implemented considering the characteristics and differences of care facilities for older persons between Korea and Japan. In Japan, because the long-term caregiver certificate consists mostly of practice, it needs to be updated by continuously revising the manual, and the concept of senile disease perceived by Japanese employees is also different. Hence, introducing and following Japan's system unconditionally may not necessarily be ideal.

Nevertheless, this study confirmed that the issue of the right to self-determination in admission to and discharge from nursing home facilities could have an effect on older persons' life in the facilities, and the right to self-determination should be improved based on the fact that it is an element many facility employees also overlook. Further, as Japan does not have a human rights committee at the national level, unlike Korea, it should be considered that the concept of human rights perceived in Japan may be different from that in Korea.

## Section 2 Systemic and Practical Improvements for the Right to Self-Determination in Admission to and Discharge from Facilities

Based on the above results, this study suggests the following systemic and practical improvements to guarantee the right to self-determination in admission to and discharge from nursing home facilities and enhance the quality of life in the facilities:

### 1. Amending laws applicable to nursing home facilities

Currently, in Korea, the Welfare of Older Persons Act and its Enforcement Rules set forth the definition of nursing home facilities, those eligible for admission, the admission procedure, and the expenses (Article 34 of the Welfare of Older Persons Act and Articles 18 and 19 of the Enforcement Rules thereof). The following relates to the right to self-determination in the admission procedure:

Those admitted to nursing home facilities operated by receiving all expenses from long-term care benefit recipients and older persons in the facilities: based on the contract between parties; provided, however, that in the event that the Mayor or Provincial Governor acknowledges an older individual eligible for admission has an inevitable reason to not enter into the contract by himself or herself, the one with the duty of support for the individual may become a contract party on his or her behalf. (Article 19 of the Enforcement Rules of the Welfare of Older Persons Act)

Although the above provision specifies the contract between parties, the concept of parties is unclear, and the representative who can represent an older individual when he or she cannot sign the contract himself or herself is only limited to the one with duty of support. As older persons can potentially have some problem in admission if they do not contact their family frequently, this provision may need to be amended and updated. Further, there is no provision on the admission,

discharge, and transfer for older persons already in the facilities, and it poses a problem that older persons cannot make a decision themselves for their own residential environment.

Meanwhile, residential facilities for people with disabilities have a more detailed admission procedure in law. The law specifies that the admission contract should be signed by the individual himself or herself, which sets forth an individual's rights more clearly compared with the case of nursing home facilities based on the contract between parties. In addition, when it comes to the contract representative, nursing home facilities only limit the representative to the one with the duty of care, whereas residential facilities for people with disabilities expand the representative's eligibility to include guardians and any individual recommended by the local government, thus guaranteeing the rights of an individual with disability more. Regarding admission and discharge, the law for residential facilities for people with disabilities states that the discontinuation procedure begins when the individual announces his or her decision to discontinue the use of a facility before the period set forth by the Ordinance of the Ministry of Health and Welfare (20 days), and the law bans any disadvantage related to such discontinuation. Laws applicable to residential facilities for older persons in other countries also have provisions regarding admission to and discharge from facilities. In particular, Germany is making efforts to guarantee fully the older persons' right to self-determination with a provision for individuals' independent decision.

As such, provisions in the Welfare of Older Persons Act and its Enforcement Rules related to admission to and discharge from nursing home facilities are lacking compared with those for residential facilities for people with disabilities, and it is not easy to guarantee the older person's right to self-determination with these provisions. To begin with, the provision on entering into the admission contract should be updated. Instead of the phrase "contract between parties," a provision should be added specifying the older person's own decision and clarifying who can sign the contract on their behalf when it is difficult for them

to conclude the admission contract themselves owing to poor cognitive function and other reasons. In this regard, it may be possible to use the adult guardian system, which was introduced in 2013 but has not been actively used for older persons and facility admission.

Further, like residential facilities for people with disabilities, it is necessary to create a procedure that allows for admission, discharge, or transfer by older persons' decision and introduce a provision that bans any disadvantage or discrimination related to the discontinued use. As in the admission process, a measure should be introduced for older persons who cannot clearly express what they want. It should be specified that information is provided about other services that older persons or their guardian can use after the end of facility services. Table 5-1 gives the present study's proposed amendment to the Welfare of Older Persons Act based on the above results.

Table 1. Comparison of the Enforcement Rules of the Welfare of Older Persons Act and a proposed amendment thereto.

	Current	Proposed amendment
Enforcement Rules of the Welfare of Older Persons Act	<p>Article 19 (Admission Procedure for Nursing home facilities)</p> <p>⑤ The admission of those subject to Articles 18.1.1.a to 18.1.1.d to facilities shall be based on the contract between parties (except for the parcel contract).</p> <p>⑨ There is no rule for admission to and discharge from the facilities.</p>	<p>Article 19 (Admission Procedure for Nursing home facilities)</p> <p>⑤ The admission of those subject to Articles 18.1.1.a to 18.1.1.d to facilities shall be based on the direct contract between an older individual himself or herself and the facility (except for the parcel contract). Only in the event that it is rendered difficult for the older individual to enter into the contract himself or herself owing to poor cognitive function or other reasons can the contract be concluded by the guardian, individual with the duty of support, or individual designated by the head of the local government under the Civil Act.</p>

	Current	Proposed amendment
		⑨ In the event that an older individual in a facility wants to discontinue the use of the facility, he or she shall notify the facility operator of his or her decision to discontinue the use of the facility before the period set forth by the Ordinance of the Ministry of Health and Welfare (20 days). In such an event, the facility operator shall take the necessary action related to the discontinued use and shall not give any unfair disadvantage to or discriminate against such an individual who wants to discontinue the use of the facility.

## 2. Adding the right to self-determination in evaluation items for nursing home facilities

Currently, nursing home facilities' evaluation and services are based on the Long-Term Care Facility Benefits Evaluation Manual provided by National Health Insurance Service. The manual is drawn up based on Article 54 (Control and Evaluation of Long-Term Care Benefits), Article 38 (Claim, Reimbursement, etc. for Expenses for Home care or Institutional Care Benefits), Articles 60.3 and 60.5 (Submission, etc. of Data), and Article 69.1.7 (Administrative Fines) of the Long-term Care Insurance Act, and on Article 38 (Long-Term care Facility Evaluation Method and Others) and Article 31-2 (Standards to Add or Reduce Long-Term Care Benefit Expenses) of the Enforcement Rules thereof. The evaluation and services are designed to suggest different requirements that long-term care facilities must comply with and the appropriate direction to improve the level of long-term care benefits and to ensure a fair and objective evaluation by presenting evaluation standards. Employees in nursing home facilities, who participated in the FGI, also determine the scope of life in the

facilities and services to provide based on this evaluation manual.

In the evaluation manual, there are four evaluation items in relation to guaranteeing the rights of the recipient (older persons living in the facilities): “the recipient’s right to know,” “the recipient’s (guardian) greater participation,” “dignity and privacy,” and “protection of elder human rights.” However, there is no item for the right to self-determination in admission to and discharge from facilities for older persons. It is highly likely that the facilities may not recognize the guarantee of the older person’s right to self-determination in admission and discharge.

Therefore, if the item “to guarantee the right to self-determination in the admission and discharge process” is added in preparing the evaluation manual, and the manual is revised based on evaluation items related to the admission and discharge process, then the right to self-determination may be guaranteed for older persons living in nursing home facilities. In particular, provisions proposed for the Welfare of Older Persons Act (ensuring the older individual signs the contract himself or herself, checking whether the older individual is admitted voluntarily, and going through the admission and discharge procedure by the older individual’s decision) should be included in suggesting evaluation standards. Another option could be to assign more points to the item for the recipient’s (guardian) greater participation and prepare evaluation standards that can reflect older persons’ opinions in admission to and discharge from the facilities.

However, such evaluation items should be carefully considered, given not only the importance of the older person’s right to self-determination but also the possible effects on the family protecting older persons. Instead of introducing them immediately, it may be better to set the roadmap and take some time after fully discussing the right to self-determination. Further, as indicated in the questionnaire survey’s results, admission to nursing home facilities is often related to family’s circumstances. As older persons’ rejection to admission may cause difficulty to their family, sufficient information and education on nursing home facilities should be provided to older persons and their family before improving the system.

### 3. Revising standard terms and conditions of the facility admission contract

The document that takes effect first in the admission process to nursing home facilities is the admission contract between the user (older person) and service provider (facility). It is currently adapted and used by each facility based on standard terms and conditions for the use of long-term care benefits provided by the Fair Trade Commission. However, the current standard terms and conditions fail to reflect fully the right to self-determination in older persons.

As suggested by the findings of previous studies and the FGI with facility employees, it should be explicitly stated that standard terms and conditions should be drawn up in person by the older individual scheduled for admission. In many cases, the admission contract is drawn up not by the older persons but their family or guardian, in order to expedite the contract process especially when the older person lacks the skill to write the contract. However, the role of the guardian is not to make an admission decision for older persons but to help them make a decision on their own. Further, when it is difficult for older persons to sign the contract directly owing to their poor cognitive function, standard terms and conditions should specify the representative's designation and signature pursuant to the due process.

Further, to help older persons write the admission contract in person and guarantee their right to self-determination, it is worth referencing a provision in the Act on Decision on Life-Sustaining Treatment for Patients in Hospice and Palliative Care or at the End of Life(Life-Sustaining Treatment Decision Act), which has been in effect since 2017. Currently, the following are suggested in preparing the advance health care directive. By referencing this provision, it is possible to supplement the rules that require nursing home facilities to provide sufficient information pursuant to the admission contract and thus ensure self-determination in admission:

An advance statement on life-sustaining treatment is invalid in any of the

following cases: (i) where it is not prepared in person by the principal; (ii) where it is not prepared according to the principal's voluntary intention; (iii) where no explanation is provided on each matter prescribed in subparagraphs of paragraph (2) or where no confirmation is obtained from the preparer; (iv) where further advance statement on life-sustaining treatment is prepared after preparing and registering an advance statement on life-sustaining treatment. In addition, the care manager system needs to be introduced, which can establish individual older persons' decision and right to self-determination from the early stage of long-term care services. Care managers, such as in Japan, Germany, and other countries implementing long-term care insurance, can be defined as those who provide information, contact or coordinate with the service provider at the user's request, and offer assistance necessary for their independent life so that the insured can properly use services depending on the physical and mental condition he or she is facing. From care managers, older persons can receive information on long-term care services from an early stage, fully consider, and then decide the most appropriate service.

In addition, standard terms and conditions should include the guarantee of the right in admission and discharge for older persons already living in nursing home facilities. In particular, Article 4, which states each party's obligations, should include "older persons' freedom to decision-making" in the service provider's obligations, and thereby clarify each contract party's obligations and allow older persons to fully express their opinion in terms of individual rights.

## Section 3 Systemic and Practical Improvements for Life in Facilities for Older Persons

### 1. Improving the environment of nursing home facilities and distinguishing them from other facilities

Facility employees in the FGI suggest improving the poor conditions of nursing home facilities to guarantee fully human rights and a better quality of life. Despite their smaller number of health care professionals compared with long-term care hospitals, nursing home facilities have a larger number of older persons with senile disease. Hence, the facilities focus on preventing diseases from deteriorating further, instead of improving their conditions. . In this regard, sufficient information on each facility should be provided so that older persons can make an informed decision on the facility they want to enter.

To solve this problem, health care personnel criteria applied to nursing home facilities should be considered together. Table 5-2 shows the current personnel requirements for nursing home facilities set forth in the Welfare of Older Persons Act.

Table 2. Personnel criteria for nursing home facilities.

(%)

The number of older persons	Facility president	Executive director	Social worker	Doctor and part-time doctor	Nurse or nursing assistant	Physical or occupational therapist
30 or more older persons	1	1 (only for 50 or more older persons)	1 (1 added every time the number of older persons exceeds 100)	1 or more	1 for every 25 older persons	1 (1 added every time the number of older persons exceeds 100)
10 to 30 older persons	1	1	1	1	-	-

	Caregiver	Office worker	Dietitian	Cooking staff	Hygiene staff	Manager
30 or more older persons	1 for every 2.5 older persons (Dementia department: 1 for 2 older persons)	1 (only for 50 or more older persons)	1 (only when 1 meal session is provided to 50 or more older persons)	1 for every 25 older persons	1 (1 added every time the number of older persons exceeds 100)	1 (only for 50 or more older persons)
10 to 30 older persons	1 for every 2.5 older persons	–	–	1	–	–

Given the above requirements, it is not easy to expect improvements in physical and cognitive functions for older persons with senile disease in nursing home facilities. Further, as such facilities have fewer health care professionals compared with general and long-term care hospitals, they have no choice but to provide care services focusing on preventing diseases from deteriorating, instead of improving their conditions. Therefore, despite the lower number of health care professionals in nursing home facilities compared with long-term care hospitals, older persons with more severe cognitive impairment use such facilities. Clearly distinguishing each facility's characteristics and providing accurate information to older persons on using care and medical services may be one of the solutions for the problems that nursing home facilities are currently experiencing. By doing so, it may be possible to overcome the negative image of nursing home facilities and establish an effective care system for older persons. As mentioned above, the care manager system, which can provide sufficient time and information in terms of older persons' admission to facilities, would also help clarify the role of nursing home facilities.

## 2. Clarifying the role of nursing home facilities

The results of the questionnaire survey on older persons in nursing home facilities and other ordinary older persons and the FGI with facility employees showed that many older persons held a prejudiced view of admission to facilities and even referred to these as “prison camps.” This negative perception was observed among not only the older persons but also their guardians, which suggests that efforts to get rid of this view are necessary for the voluntary admission by older persons. In addition, recipients with Level 1 or 2 under long-term care insurance are eligible for admission to nursing home facilities through facility benefits; it was pointed out as a problem that older persons with more severe physical and cognitive impairment than those in general and long-term care hospitals were admitted to the facilities.

As a way to shift the negative perception of nursing home facilities, it is necessary to move beyond the image of these facilities as “places to prepare for the last moment in life” toward the perception of “where they are getting themselves ready to return to the place they used to live.” Establishing the rehabilitation-oriented role, which is pursued by Japan’s care facilities for older persons, may play an important role in this shift in perception. Japan’s special nursing facilities provide intensive care during the admission period as they aim for the rehabilitation of older persons in the facilities. These facilities focus on developing older persons’ physical function to the extent that they can receive home care services and live in their local community. In the end, while living in care facilities, older persons can have hope that they could someday return to the house where they used to live, and restore their physical and cognitive function. If older persons can make their functional recovery to the point where they can live independently with home care services in their local community, the stress that their family undergoes from providing caregiving can be alleviated. Ultimately, it can help older persons overcome their unreasonable anxiety over being admitted to facilities and ease the sense of guilt for their family that they sent their parents to facilities, while also alleviating the burden of caregiving on

the family. Such a shift in perception could make it possible to operate nursing home facilities in two ways, as facilities for those trying to return to their local community and for those at the last moment of their life. These changes can have a positive effect on how the facilities are operated.

In addition, to tackle the negative image of nursing home facilities and other facilities, it is necessary to put in place a system that allows older persons to experience fully any such facility before their admission. The percentage of home care services, currently provided under long-term care insurance, should be raised so that older persons can easily choose home care services. It is also necessary to adjust as well the hours for the use of services by level, which is determined under long-term care insurance. The government has introduced the national responsibility system for dementia, expanded home care services, established dementia centers in local areas, and provided services to older persons in local communities. For allowing older persons to use public care services even before their admission, a community-level approach is needed to reduce their fear of the use of care services and facilities. Further, it is necessary to rationalize the standards for the use of services by level as well as expand home care services. As of 2018, the number of days per month that can be used for residential benefits was 26 for Level 3, and only up to three hours can be used per day. This means that although older persons use home care services, there are not enough hours for them to use the services fully. It is necessary to adjust service hours while recruiting more personnel for home care services.

## Section 4 Study Significance and Limitations

The present study aims to identify how the right to self-determination for those using nursing home facilities is guaranteed when they are admitted to and discharged from the facilities from the perspective of human rights, and to suggest practical and policy implications for improving the long-term care service system.

However, difficulty in accurately extracting a sample from all older persons in nursing home facilities when conducting the quantitative survey can be seen as one of the present study's limitations. It was difficult for this research to approach in person all older persons in nursing home facilities; the questionnaire survey had to be conducted with the support of related associations. Further, as the quantitative survey was conducted on only those in nursing home facilities whose cognitive function was at a level sufficient to fill out the questionnaire, it may be difficult to generalize the present study's results for all older persons in nursing home facilities. In addition, the results of the FGI and international case study cannot be generalized for all facility employees and care facilities. A significant amount of time and effort would be needed to achieve the implications proposed by the present study.

Nonetheless, the present study is significant for the following reasons. First, it approaches the life of older persons living in nursing home facilities, which has been difficult to access, through the quantitative survey on them. In particular, the present study is able to identify the degree to which the right to self-determination is guaranteed, which has not been known well, and the correlation between the right to self-determination and the quality of life in the facilities.

Second, considering the beginning and most important point in older persons' life in the facilities is the admission and discharge process, the present study can be used as a basic reference to improve the quality of life for older persons in facilities. Third, the policy, systemic, and practical suggestions, which are proposed as the results of the present study, can be used as reference for actual policy improvements or practices in facilities. Finally, the present study put a

positive direction forward for the life of older persons in facilities and their family.

Life in nursing home facilities is not to treat senile disease or move away from the family's care but an important moment where older persons transition from one place of living to another. Hence, an older individual's basic rights should be respected, as is the case when people normally move to or live in another place. From this respect, facility admission should be considered based on the right to move under Article 14 of the Constitution, and older persons should be able to choose of their own free will whether to use the facilities. The present report holds significance for examining the guarantee of the right to self-determination in admission to and discharge from nursing home facilities and its subsequent effect, and for proving the importance of the right to self-determination in older persons.

2018 Policy Research Report

---

**A Study of Human Rights-Based  
Improvements for the Long-Term  
Care Service System:  
The Right to Self-Determination in Admission  
to and Discharge from Nursing Home  
Facilities**

---

| 인 쇄 | 2019년 9월

| 발 행 | 2019년 9월

| 발행인 | **임흥재**(아셈노인인권정책센터 원장)

| 발행처 | **아셈노인인권정책센터**

| 주 소 | 서울특별시 종로구 종로 38 서울글로벌센터 13층

| 전 화 | (02) 6263-9807 | F A X | (02) 6263-9808

| Homepage | [www.asemgac.org](http://www.asemgac.org)

| 인쇄처 | **(주)두루행복한세상**

| 전 화 | 1644-0728 | F A X | (070) 8270-5278

---

ISBN 979-11-966829-0-3

사전승인 없이 본 내용의 무단복제를 금함



This work was supported by the National Human Rights Commission of Korea (NHRCK) and conducted by ASEM Global Ageing Center, and the view of its work may differ from the one of the NHRCK.