

Resident Rights in the Long-Term Care Setting

A Primer for CNAs

1.0 In-Service Hour

**NOTE: This course is not accredited for RNs, LPNs, LVNs, or APNs.
This course is approved for 1 contact hour (1 in-service hour) for Certified Nursing
Assistants.**

Presented by:

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Resident Rights in the Long-Term Care Setting: *A Primer for CNAs*

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Objectives:

Upon completing this course, the learner will be able to:

1. Explain the basic rights of residents of long-term care facilities.
2. Describe the right of a resident to be involved in decisions regarding their medical care.
3. Explain a resident's right to be free from abuse, neglect and undue restraint.
4. Explain a resident's rights regarding discharges and transfers.
5. Explain a resident's right to make complaints about their care without retaliation.

INTRODUCTION

Every resident of a nursing home has the same rights and protections as all United States citizens. In addition to those rights, nursing home residents have certain specific rights and protections under the law. These legal rights and protections can vary by State. Nursing homes are required to provide residents with a written description of their legal rights.

The Nursing Home Reform Amendments of OBRA 1987 require that nursing facilities "promote and protect the rights of each resident." The resident's rights must be displayed in the nursing facility along with a contact number for the state's Long Term Care Ombudsman (a third-party resident advocate). Residents are encouraged to keep the information received about their rights, admission policies, transfer policies and any other information provided by the nursing home in an accessible place in case they need to look at it later.

Dignity and Respect

Residents of nursing homes are vulnerable to abuse and neglect due to their age and health problems. Residents need the protection of federal and state laws to assure a proper level of care and overall treatment. The accomplishment of these goals starts with the basic rights of *dignity* and *respect*.

Federal law provides that all residents of nursing homes have the right to be treated with dignity and respect. As long as it fits the care plan of a resident, the resident has the right to make their own schedule, including when they go to bed, rise in the morning, and eat their meals. Residents have the right to choose the activities they desire to participate in.

Abuse and Neglect

Nursing homes residents have the right to be free from verbal, sexual, physical, and mental abuse, and involuntary seclusion by anyone. This includes, but isn't limited to nursing home staff, other residents, consultants, volunteers, staff from other agencies, family members or legal guardians, friends, or other individuals. When nursing home residents feel they have been abused or neglected, including feeling that their needs have not been met in some way, residents are encouraged to report concerns about their treatment to the nursing home, their family, their local Long-Term Care Ombudsman, or their State Survey Agency. It may be appropriate to report the incident of abuse to local law enforcement or the Medicaid Fraud Control Unit. Nursing homes should have phone numbers for these organizations posted for the residents to refer to.

Freedom from Discrimination

It is not required by law that nursing homes accept all resident applicants. However, nursing homes must comply with the applicable Civil Rights laws that forbid discrimination based on race, color, national origin, disability, age, or religion under certain conditions. Whenever a resident feels they have been discriminated against, they should be encouraged to call the Department of Health and Human Services, Office of Civil Rights at 1-800-368-1019. TTY users should call 1-800-587-7697.

RESIDENT RIGHTS AND PROTECTIONS

Federal and state laws provide for very specific rules and regulations that must be followed when housing and caring for nursing home residents. These laws are in place to assure that every resident is treated in a manner that is inline with the basic rights of citizens in general. Rights of nursing home residents include, at a minimum:

Freedom from Restraints

A physical restraint is any manual method or physical or mechanical device, material, or equipment used on or near a person's body preventing freedom of movement or normal access to one's own body. A chemical restraint is a drug, such as an anti-psychotic or psychotropic drug, used to limit freedom of movement and not needed to treat your medical symptoms. It is against the law for a nursing home to use physical or chemical

restraints, unless they are necessary to treat the resident's medical symptoms. Restraints may not be used for punishment, or for the convenience of the nursing home staff. Residents have the right to refuse restraint, except if the resident is at risk of harming his or herself or others.

Information on Fees and Services

All nursing home residents must be informed in writing about services and fees before moving into the nursing home. The nursing home can not require a minimum entrance fee as a condition of admission.

Finances

Residents have the right to manage their own money or to choose someone they trust to do this on their behalf. When the resident requests the nursing home to manage their personal funds, the resident must be informed of the authority they are giving the nursing home over their finances. The resident will be required to sign an authorization form giving the nursing home the authority to manage the funds.

Though the resident is giving the nursing home the authority to manage their personal funds, the resident retains the right to access their bank accounts, cash, and other financial records. The nursing home is required to place any money greater than \$50 in an interest-bearing account. The resident must be provided with quarterly statements. The nursing home must additionally protect resident funds from any loss by buying a bond or providing other similar protections.

Privacy, Property, and Living Arrangements

Nursing home residents have the right to privacy, and to keep and use their personal belongings and property as long as they don't interfere with the rights, health, or safety of others. Nursing home staff should never open the resident's mail unless specifically authorized to do so by the resident. Residents have the right to use a telephone and talk privately. The nursing home must protect the resident's property from theft. This may include a safe in the facility or cabinets with locked doors in resident rooms. If a resident lives in the same nursing home with a spouse, the couple is entitled to share a room (if both spouses agree to do so).

Medical Care

Residents have the right to be informed about their medical condition, medications, and to see their own doctor. They also have the right to refuse medications and treatments, though it may be harmful to their health. Residents have the right to take part in

developing their care plan. Residents also have the right to look at their medical records and reports at anytime they request.

Visitors

Nursing home residents have the right to spend private time with visitors at any reasonable hour. The nursing home must permit family to visit a resident at any time, as long as the resident wishes to see them. A resident does not have to see any visitor they request not to see. Any person who provides a resident assistance with their health or legal services may see the patient at any reasonable time. This includes the resident's doctor, representative from the health department, and their Long-Term Care Ombudsman, among others.

Social Services

The nursing home must provide residents with any needed social services, including counseling, help solving problems with other residents, help in contacting legal and financial professionals, and discharge planning.

Leaving the Nursing Home

Living in a nursing home is a resident's choice. They can choose to move to another place at anytime, for any reason. However, the nursing home may have a policy that requires the resident to notify them before planning to leave.

If the health of a resident allows and the resident's doctor agrees, the resident can spend time away from the nursing home visiting friends or family during the day or overnight. This is called a leave of absence. Nursing home staff should prepare medication and care instructions for the resident in these circumstances.

Protection Against Unfair Transfer or Discharge

Nursing home residents can not be sent to another nursing home, or made to leave the nursing home unless:

- It is necessary for the welfare, health, or safety of the resident or others,
- The resident's health has declined to the point that the nursing home can't meet their care needs,
- The resident's health has improved to the point that nursing home care is no longer necessary,
- The nursing home hasn't been paid for services received by the resident, or
- The nursing home closes due to bankruptcy, substandard care, etc.

Except in emergencies, nursing homes must give a 30–day written notice of their plan to discharge or transfer the resident. The resident has the right to appeal a transfer to another facility.

A nursing home can not make the resident leave if they are waiting to get Medicaid. The nursing home should work with other state agencies to get payment if a family member or other individual is holding the resident's money.

The Resident's Family and Friends

Family members and legal guardians of residents may meet with the families of other residents and may participate in family councils.

By law, nursing homes must develop a plan of care (care plan) for each resident. The resident has the right to take part in this process, and family members can also help with the care plan provided the resident gives permission to do so. If a resident's relative is their legal guardian, he or she has the right to look at all medical records about the resident and has the right to make important decisions on the resident's behalf. Family and friends can help make sure the resident gets good quality care. They can visit and get to know the staff and the nursing home's rules.

Quick Guide

Nursing Home Resident Rights and Protections

A nursing home resident has the following rights:

- The right to be fully informed of the policies and procedures regarding the protection of their rights.
- The same rights of all U.S. citizens.
- The right to know all services available to them as a resident.
- The right to be fully informed of their health condition.
- The right to choose the provider of their medical care.
- The right to make decisions about their care and medical treatment, including the right to refuse any treatment and medication.
- The right to be free from undue restraint and abuse.
- The right to be free from punishment and undue isolation.
- The right to not be discharged or transferred without due cause and advance notice. The resident has the right to appeal any such attempts.
- The right to be free from punishment or retaliation in response to making requests and complaints concerning their treatment.
- The right to meet with an ombudsman to address concerns on their behalf.
- The right to send and receive mail and to make and receive phone calls.
- The right to visit with anyone of the resident's choosing, in private as requested.
- The right to confidentiality of medical and personal records.
- The right to view all medical and personal records.
- The right to possess personal belongings.
- The right to keep their money separate from that of the facility, and the right to spend their money as they choose.
- The right to special accommodations for resident's with special needs.
- The right to leave the facility for the day or overnight.
- The right to skilled nursing and medical care.
- The right to be treated with courtesy, dignity and respect.

REFERENCES

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