

Psychosocial Well-being

Residents' Rights

Rights are things a person is entitled to. Residents are individuals who have the same rights as you. They have the right to be treated with respect and dignity, to pursue a meaningful life, and to be free from fear or threat. They also have the same legal rights as any other U.S. citizen, including the right to vote and not be discriminated against because of their age, sex, race, religion, ethnic or cultural background, or disability.

All residents have the right to high-quality care, regardless of the funding source. Residents whose care is paid for by Medicaid have the same right to quality care as those who pay for their own care. The facility and all staff must protect and promote each resident's rights. Violating a resident's rights is breaking the law and can be punished by being fired, fined, and/or sent to jail.

In 1987, the Nursing Home Reform Act was passed. This legislation was part of the Omnibus Budget Reconciliation Act, so it is commonly called OBRA 87. This law guarantees the rights of residents in long term care facilities. The law was needed because the rights of residents were not being protected in all care locations.

The Code of Federal Regulations specifies resident rights in 42 CFR Part 483, Subpart B, Requirements for Long Term Care Facilities. These regulations state:

- The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.
- The facility must protect and promote the rights of each resident and must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.
- The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect, in full recognition of their individuality.

Residents have many specific rights, listed in the Residents' Bill of Rights (Figure 1-2). Resident rights can be grouped into the following categories:

- Right to exercise one's rights
- Right to privacy and confidentiality

- Right to information
- Right to choose
- Right to notification of change
- Protection of residents' personal funds
- Grievance rights
- Admission, transfer, and discharge rights
- Right to be free from restraint and abuse



Figure 1-2 The Residents' Bill of Rights should be posted where all residents can see it.

Right to Exercise One's Rights

The facility must inform each resident about their rights both orally and in writing. Residents have the right to exercise the rights they have as a resident of the facility and as a citizen or resident of the United States. Each resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility when they exercise any of their rights. If a resident is judged incompetent under the laws of a state, the person appointed by the state to act on their behalf exercises their rights.

A person's legal rights do not change just because they enter a long term care facility. Residents may ask your permission to do something like use the phone. Always tell the resident that of course they can use the phone (Figure 1-3). Remind them that they can do the normal activities they did at home here in the facility. You should encourage residents to exercise their rights. Provide assistance and offer choices whenever possible. For example, you can help them vote using an absentee ballot if they cannot go to a polling location.



Figure 1-3 Residents should have access to a phone whenever they need it and privacy during calls.

Right to Privacy and Confidentiality

Residents have the right to confidentiality in regard to their personal and medical records. They may decide whether anyone outside the facility may see these records. An exception occurs when a resident transfers to another facility. Then, the law requires release of their records to the other facility.

There have been ongoing updates made to the Health Insurance Portability and Accountability Act (HIPAA) of 1996. These regulations determine how confidential health information should be handled and communicated. You need to be familiar with your facility's policies concerning compliance with this federal regulation.

Residents also have the right to privacy in their rooms. This includes privacy in written and telephone communications, during personal care and medical treatment, and when visiting with family members, friends, and other guests.

You can help protect residents' right to privacy by following these guidelines:

- Do not discuss residents' personal or medical information with anyone unless they have a legitimate need to know it and are legally entitled to the information.
- Do not share residents' personal information with other residents or staff members. This information should also not be shared with the resident's relatives, friends, visitors, or with the news media or your own friends. Other staff members should be told only the information they need to care for the resident, and you should share this information in private. Do not gossip.
- When you care for a resident, always provide privacy. Knock on their door and give them time to say, "Come in." Then introduce yourself and ask if this is a good time. When giving care, pull the curtain and close the door. For personal care, drape their body correctly. You may have to ask visitors or other residents to leave the room when you provide care.
- If asked, you may help a resident read or write letters. Never open their mail unless they ask you to. If there is not a private telephone in each room, allow residents to have private phone conversations in a designated area.
- Give residents time alone with visitors. Help them find a private place for visits, especially for visits with spouses or significant others. If needed, involve their roommate in some activity outside the room to give the resident privacy.

Right to Information

Residents have the right to see their personal and medical records within 24 hours after asking. If they request a written copy of their records, they must receive it within two working days. They have the right to be fully informed, in words they can understand, about their total health status.

Residents must be given a written description of their rights. This should include their eligibility status for Medicaid benefits. They also have a right to know the rules and regulations governing resident conduct and responsibilities during their stay in the facility. If needed, a translator or interpreter must be present when giving information.

Residents must be informed about services and fees and also services that they cannot be charged for. This information must be given before or at the time of admission and periodically during their stay. Residents must also be informed about any change in services. They have a right to see their financial records and to have everything explained to them.

The facility must post in an obvious place the names and addresses of resident advocacy groups and the ombudsman program. Residents have the right to read the facility's most recent survey report written by federal or state surveyors. They also have the right to read the facility's plan for correcting any problems noted in the surveyors' report.

You can help ensure that residents receive all appropriate information by following these guidelines:

- While residents' rights are explained during the admission process, you must know where to find this information in the event that a resident has questions after admission.
- The Residents' Bill of Rights and instructions for contacting the ombudsman and other advocacy groups must be posted where residents and their families will see them (usually in lounge or dining areas). Read the written residents' rights statement with them, or to them if needed. Go with them to read the posted information.
- A resident may see procedure manuals that contain the facility's policies if they wish. If a resident asks questions, help them find answers.
- If a resident asks to see their records, tell the charge nurse right away.
- If residents express concerns about their medical condition or treatment plan, ask the charge nurse or physician to talk with them.

Right to Choose

Residents have the right to choices regarding their living arrangements and medical care, as long as their choices do not interfere with other residents' rights. Each resident has the right to choose their personal physician and to help plan their own care. They must be informed in advance about changes in care or treatments that may affect their well-being. Residents have the right to take their medications by themselves if the health care team believes it is safe for them to do so. Residents have the right to refuse a specific treatment and to refuse to participate in research. Residents have the right to keep and use their own things as long as there is room and it is safe to do so. Married residents have the right to share a room with their spouse, if both live in the facility and both consent.

Residents have the right to choose their own activities, schedules, and health care based on their own interests and needs. Each resident has the right to do voluntary or

paid work in the facility. However, residents cannot be required to work.

Residents have the right to interact with members of the community, inside and outside the facility and the right to meet with others. The facility must provide space and support staff for such meetings. Each resident has the right to have the facility reasonably meet their individual needs and preferences. For example, if a resident wants to have an annual family gathering, if space allows, the facility could help host the event (Figure 1-4).



Figure 1-4 Residents have a right to hold special events like a birthday party in the facility.

You can help residents exercise their right to choose by following these guidelines:

- Make sure that residents are aware of their choices. Tell them about activities in the facility. Learn about their interests and help them keep doing things they enjoy.
- Some residents may want to help with tasks like watering plants and making their own beds. Some people feel more useful and have more self-worth if they do things for themselves and help others.
- If residents want to stay active in the community, encourage their involvement with activities that interest them. They can attend meetings and events if their health allows. Think of ways to enhance residents' independence. Encourage residents to set up their own routines as much as possible.
- A resident's choices may have to be limited if they interfere with other residents' rights. To prevent such problems, make sure you are familiar with facility rules that ensure the fair treatment of all residents.

Right to Notification of Change

Residents, family members, and physicians must be told of any change in a resident's physical, mental, or psychosocial status and any accident that causes an injury. If treatment must change because of the resident's condition or resources, the resident must be informed of this change. Residents must be told in advance of any planned change in their room or roommate and about any changes in residents' rights.

The facility must keep and update addresses and phone numbers of each resident's legal representative and family members.

Follow these guidelines when notifying residents and families of change:

- If you must change a resident's care, such as changing a treatment time, tell the resident in advance. When possible, give them a choice of times to schedule the treatment. Even with simple things like a meal delay, tell residents what time they will eat.
- Residents should be involved in decisions such as moving them to another room or assigning a different roommate. Help the resident become comfortable with the decision.
- If you see an accident in which a resident is injured, tell the charge nurse so that the physician and family are informed.
- If a family member gives you a new address or phone number, note it in the resident's record.

Protecting Residents' Personal Funds and Belongings

Residents have the right to keep and manage their own funds or have someone else do it for them. If a resident wants the facility to manage their funds, the facility must safeguard these funds. The facility must provide quarterly statements when the resident or legal representative asks. Funds over \$50 must be maintained in an interest-bearing account. Funds under \$50 can be maintained in a petty cash account.

If you know a resident has a lot of money or is not managing their money appropriately, immediately tell the charge nurse, family, or legal representative so that they can protect the resident's funds. All staff must help safeguard residents' belongings. The facility must make every effort to prevent theft or mismanagement of residents' belongings and money.

Grievance Rights

A **grievance** is a formal complaint of some type of wrong, injustice, or unfair treatment. Each resident has the right to make complaints without fear of retaliation or discrimination, and the facility must respond promptly to resident complaints.

Federal law requires each state to have an ombudsman program. The **ombudsman** investigates complaints from residents and family members. The ombudsman also acts as their advocate to resolve complaints (Figure 1-5). The facility must provide information to residents and their families about this program.



Figure 1-5 The ombudsman hears concerns voiced by residents and family members and works to investigate and resolve problems.

You can help residents exercise their grievance rights by following these guidelines:

- Encourage residents to join resident councils.
- Provide written information to residents about the procedure for filing a grievance.
- If a resident complains to you, tell the charge nurse as soon as you can. Never ignore a resident's complaint.
- If a resident or family member complains or claims that the facility has not resolved a problem, refer them to the charge nurse or social worker.

Admission, Transfer, and Discharge Rights

Transfer and discharge involve moving a resident to a different location. A resident must be told about a transfer or discharge at least 30 days in advance. A resident can be transferred or discharged against their will only with proper advance notice, when another suitable place can be found, and only in one of these situations:

- The situation threatens their life or that of others.
- The resident no longer needs the services of the facility.
- The resident has failed to pay for services after reasonable notice.
- The facility ceases to operate.

Enough advance notice must be given to ensure that the transfer or discharge process is safe and orderly. If the resident plans to return to the same room, such as after hospitalization or therapeutic leave, the same bed may be held for the resident, depending on the facility's policy.

If a resident is unhappy or frightened about a move, listen to their concerns. Do not discount their feelings. Help them understand why the change is needed. Make sure they have time to adjust.

Right to Be Free from Restraint and Abuse

Residents have the right to be free from physical or chemical (medication) restraints, and free from verbal, sexual, physical, or mental abuse and from corporal punishment or involuntary seclusion. The facility must follow written policies to prevent mistreatment, neglect, or abuse of residents and their property.

If a resident or family member complains of a violation of these rights, this complaint must be reported to the administration and other officials as required by state law. The facility must fully investigate these complaints and report the findings.

The Centers for Medicare and Medicaid Services (CMS) requires every facility to have a seven-part abuse-prevention program that includes staff education (Box 1-1). You will learn about this program as part of your employee orientation. You are required to participate in your facility's program and follow its guidelines in your caregiving.

Elder Justice Act of 2010

In March 2010, the federal government passed guidelines regarding reporting requirements for any suspicion of a crime committed against an older adult. The guidelines state: If an individual such as a health care worker has a reasonable suspicion that a crime has occurred involving a resident or person receiving care at the facility, that individual has the responsibility to report the suspicion directly to both local law enforcement and the state survey agency without fear of retaliation. The Act also specifies serious bodily injuries that must be

BOX 1-1

SEVEN COMPONENTS OF ABUSE PROHIBITION PROGRAMS

Screening Policies for Potential Hires:

- Interview applicants, keeping in mind desirable employee behaviors.
- Do criminal background checks.
- Check references.
- Conduct a screening for drug use.
- Check licensing or certification boards to be sure employees are in good standing.
- Start all employees with a probationary period.
- Screen all employees for past and present alcohol and substance abuse.

Training of Employees That Includes:

- definitions of abuse
- how to handle a difficult resident
- stress and burnout

- residents' rights
- regulations and responsibilities
- missing items, theft

Facilities Must Have Prevention Policies and Procedures That:

- identify residents at risk
- define roles during the probationary period
- set up an ongoing education plan
- recommend staffing levels
- establish a plan for reporting incidents
- describe the investigation of missing items and theft

Procedures for Investigating Incidents and Allegations That Include:

- identifying when the suspected abuse may have occurred

- identifying all staff and residents who may have had access to the resident
- interviewing staff and residents in person
- obtaining written statements from both staff and residents about what happened, including:
 - the resident's behavior
 - staff members' response to the resident's behavior
- unusual occurrences
- observations
- communications
- everyone's immediate response to the situation

Procedures for Identifying Possible Incidents or Allegations That Include:

- what to do about complaints

- observations of what happened
- how to investigate injuries of unknown cause

Procedures for Protecting Residents During Investigation That Include:

- securing the environment
- assessing the resident for harm and threats
- reassuring the resident

Procedures for Responding and Reporting That Include:

- reports to required agencies
- corrective actions
- analysis of the problem and solutions

reported within two hours. Any other suspicion of abuse is required to be reported within 24 hours. It is important to know your facility's specific policies, guidelines, and definitions regarding elder abuse.

Defining Abuse and Neglect

Abuse is willfully injuring a resident, unreasonably confining a resident, intimidating or punishing a resident, or causing physical harm, pain, or mental anguish. There are various types of abuse:

- *Verbal abuse* includes using profanity, calling a resident names, yelling at a resident, making verbal or written threats, or teasing in an unkind manner.

- *Mental abuse* includes any action that makes a resident fearful, such as threatening them with harm or threatening to tell others something they do not want them to know. It includes actions that belittle or make fun of a resident.
- *Physical abuse* is any action that causes actual physical harm. This includes handling a resident too roughly, giving a wrong treatment, or hitting, pushing, pinching, or kicking a resident.
- *Sexual abuse* includes sexual acts between a resident and a staff member. It may also include touching residents in an intimate or suggestive manner, making sexual comments, or allowing another resident to engage in unwanted sexual acts with a resident.

- *Physical restraints* are any devices that limit a resident's movement or access to their body. Restraints may include bed rails, vest restraints that keep a resident in bed or in a chair, limb restraints that limit a resident's use of their arms or legs, tables that lock over a resident in a chair, or lap pillows that keep a resident from standing or walking. The resident must be able to remove any device or equipment used. Otherwise it is considered a restraint. *Chemical restraints* are medications used to sedate a resident, slow their muscle activity, or change their behavior.
- *Neglect* is failing to do something you should have done. Neglect includes not giving proper hygiene care, not turning a resident over in bed to improve their circulation, not giving food and water regularly, or not taking the resident to the bathroom when they ask. Neglect may also be considered physical abuse.
- *Negligence* is failing to act in the same way that a reasonable person with the same training would act in the same situation. Gross negligence is any action that shows no concern for the resident's well-being.
- *Corporal punishment* is physical punishment, such as spanking or slapping.
- *Involuntary seclusion* is the isolation of a resident against their will, such as locking them alone in a room.
- *Theft* of a resident's belongings is another form of abuse. You can help prevent theft by marking belongings with the resident's name and helping residents keep their possessions in a safe place. List all personal belongings on the inventory record. You may suggest that family members take home expensive items.

In addition to the direct forms of abuse noted above, abuse can be indirect, such as talking to another temporary nurse aide while ignoring a resident. Indirect abuse also includes saying negative things about a resident outside their room (whether or not the resident is likely to hear it) and ignoring a resident's call light when you are about to go on break.

Use of a Restraint

You will learn your facility's policy for the use of restraints during your orientation. A restraint may be used temporarily to help give a resident a medical treatment. For example, a resident may be placed in a limb restraint if they pull out tubes needed for medical treatment. The limb restraint is used to restrict the resident's ability to move their arm and pull out the tube. A restraint may

also be used in an emergency if needed for a life-saving treatment. For example, an infection can cause a resident to become confused or delirious, and if they are not treated, they could die. A resident who is uncooperative or combative cannot be evaluated properly, so there may be a need to restrain them so the nurse or physician can draw blood and do the proper assessment. The restraint would then be removed.

If a restraint is needed, the charge nurse will tell you which type of restraint to use and the proper procedure for using it. However, a physician's order is needed to use the restraint. The charge nurse must document the reasons for using the restraint according to the facility's policies.

When a resident is restrained, check that the restraint is used properly. Check the resident often to make sure the restraint does not cause a circulatory problem. Release the restraint frequently (without actually removing it), following your facility's policy.

A resident who is sleeping much of the time or is suddenly slurring their speech may be receiving too much medication. Tell the charge nurse about any situation like this. Make sure it is documented in the resident's chart. This situation may be considered a chemical restraint.

Your Role in Preventing Abuse

Sometimes on-the-job or personal stress leads to abuse. Recognize your own stress level and that of others around you. It may help to take breaks with coworkers and to join a stress management program offered by your facility or another health care resource.

Report any signs of abuse to the charge nurse and the administrator. If you know about abuse and do not report it, you are just as responsible as if you did it.

The law requires the facility to have procedures to protect residents, and it severely punishes anyone who abuses residents. This can include fines and imprisonment of anyone convicted of abuse. Staff can be charged with assault for threatening to harm a resident. Anyone who causes physical harm can be charged with battery. You must protect vulnerable residents from abuse by other residents or others outside the facility.

Whenever a resident or family alleges abuse, the facility must investigate and report its findings to state agencies. During the investigation, you may be asked about your actions. This does not mean that you have done anything wrong, but the facility must be able to document that it tried to protect its residents.

If a charge is brought against a staff member, that person has the right to a hearing and the right to hire a

lawyer. The person may not be at fault even if charged with an offense. The same rule applies to all U.S. residents: innocent until proven guilty.

A health care professional found guilty of resident abuse loses their job and is reported to the state registry. Facilities refer to the state registry when hiring because they are not allowed to hire anyone who has been found guilty of neglecting, abusing, or mistreating residents or stealing their property.

Ombudsman Program

The Long Term Care Ombudsman Program was established in 1972 under the authorization of the Older Americans Act to protect residents' rights. It was set up because of growing concern about poor care in nursing facilities. The facility must tell residents how to contact the local ombudsman program.

Each state has an Office of the State Long Term Care Ombudsman, directed by a full-time state ombudsman. There are also ombudsman programs at the local level operated by professional staff and community volunteers. Ombudsmen are charged with investigating complaints by residents or others about violations of rights. According to the U.S. Department of Health and Human Services, the ombudsman program has these responsibilities:

- Identify, investigate, and resolve complaints made by or on behalf of residents.
- Provide information to residents about long term care services.
- Represent the interests of residents before government agencies, and seek administrative, legal, and other remedies to protect residents.
- Analyze, comment on, and recommend changes in laws and regulations concerning the health, safety, welfare, and rights of residents.
- Educate and inform consumers and the general public about issues and concerns about long term care, and facilitate public comment on laws, regulations, policies, and actions.
- Promote the development of citizen organizations to participate in the program.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.
- Advocate for changes to improve residents' quality of life and care.

The state ombudsman has authority to solve problems for a resident. If the ombudsman cannot resolve the problem, they may represent a resident, negotiate a solution, or file a lawsuit.

Ombudsmen also monitor state regulations and help strengthen laws that protect residents' rights. Ombudsmen help educate the public and train volunteers to help residents and their families. Since 1995, the National Ombudsman Reporting System (NORS) has collected information about complaints that are investigated. This information is helping families, facilities, and government agencies improve the quality of long term care.

Facilities are required to post information about all relevant state client advocacy groups, including:

- The state's survey and certification agency
- The state's licensure office
- The state's ombudsman program
- The protection and advocacy network
- The Medicaid fraud control unit

DISCLAIMER: AHCA/NCAL has created this course to assist providers to recruit and train temporary staff during the national emergency caused by the coronavirus pandemic. Federal and/or state requirements may need to be waived to permit individuals under this training program in your location. Employers should check with their state survey agencies and their state occupational licensing agencies where applicable to ensure individuals trained under this program are permitted to assist with care in your location.