

# RESIDENT RIGHTS IN NURSING HOMES

A large number of nursing home residents require nursing and nursing aid care throughout the United States. These patients are dependent on assigned care aids for the majority of the time relative to their activities of daily living. Worldwide, the older aged population is predicted to grow and the nursing home staff that will be providing direct patient care will be certified nursing assistants. The nursing home setting where certified nursing assistants deliver direct personal care for patients who are convalescing or who require long-term care, such as the elderly, as well as the funding or insuring agencies supporting services, are discussed.

## Learning Goals:

1. Identify the basic rights of nursing home residents.
2. Identify several practical methods for protecting the rights of nursing home residents.
3. Identify two types of elder abuse.
4. Identify how elder abuse should be reported.

## **Introduction**

Residents of nursing homes are among the most vulnerable members of our society. They are people who rely on others for their comfort and safety and, at times, for preserving their health, safety and life. Many of them need care and assistance with basic activities of daily living such as dressing, eating, and toileting. They depend on their caregivers and this is a situation that has the potential for much harm. Residents of nursing homes may not be able to advocate for themselves when they do not receive the care they need. They may well have significant physical and/or intellectual restrictions. Because of this potential harm, nursing home residents have basic rights and protections that help ensure they get the care and services they need. These protections are intended to keep them safe and unharmed, enable them to live without fear, and allow them to manage their day-to-day affairs. The definitions of the rights of nursing home residents and each of these rights will be discussed in detail in the following sections, including specific ways certified nursing assistants can make sure these rights are not violated. Elder abuse is highlighted later on as well as basic information covering the condition of nursing homes in the United States.

## **Nursing Homes in The United States**

Protecting the rights of residents of nursing homes is a serious matter that has been increasingly recognized in the health literature and public news articles. Federal and state laws have provided clear definitions of the rights of nursing residents and a legal framework to protect these rights. Certified Nursing Assistants (CNAs) provide much of the direct care that nursing home residents require. The CNA is a primary part of the health team and essential to protecting the rights of nursing home residents.

There are many terms that are used to describe nursing homes, such as convalescent homes, long-term care facilities, nursing homes, and skilled nursing facilities. Medicare, the U.S., government agency that administers health insurance for people over age 65 or for people with disabilities, defines a nursing home in this way.

*Nursing home is a term that includes both skilled nursing facilities and nursing facilities. Nursing homes primarily engage in providing residents skilled nursing care and related services for residents who require medical or nursing care, and rehabilitation services for the rehabilitation of injured, disabled, or sick persons.*

The National Nursing Home Survey is a periodic survey of nursing homes in the U.S. The last one with available statistics was in 2004, which is available at [https://www.cdc.gov/nchs/nnhs/nnhs\\_products.htm](https://www.cdc.gov/nchs/nnhs/nnhs_products.htm). The data from the 2004 survey showed:

- There were 16,100 nursing homes.
- The average nursing home had 108 beds.
- There were 1.65 million nursing home residents
- The majority of nursing home residents had been in the nursing home for slightly over two years.
- Most nursing home residents had a private source of income.
- The majority of nursing home residents received assistance in all of the five ADLs: bathing, dressing, eating, toileting, and transferring.
- Most nursing home residents were either totally dependent or required extensive assistance with their ADLs.
- Only 1.6% of nursing home residents did not need any assistance with their ADLs.

- Many nursing home residents had either bladder or bowel incontinence.
- Almost 40% of all nursing home residents had suffered at least one fall in the 180 days prior to the survey.
- Mental disorders were the second leading, primary diagnosis among residents at admission.

Clearly, there are a large number of nursing home residents, many of these residents had been there for an extended period of time, and the majority of them needed a significant amount of assistance with their ADLs. The U.S., population is expected to get older in the next few decades, so the number of nursing home residents will probably increase. The 2004 National Nursing Home Survey also noted that almost 65% of the nursing home staff providing direct patient care were CNAs. The survey showed that CNAs are providing the majority of assistance to nursing home residents for their activities of daily living.

### **Rights of Nursing Home Residents**

Nursing home residents need protection and U.S., government agencies and state and local agencies work to make sure that these vulnerable people are safe. The rights of nursing home residents are no different than those of anyone else. But because of the special needs of this population, their rights need to be more broadly defined and must include basic issues that tend to be taken for granted.

The U.S., Centers for Medicare and Medicaid have specifically outlined the rights of nursing home residents. These rights include, but are not limited to those listed below.

1. The right to be treated with dignity and respect.
2. The right to be free from emotional, physical, psychological, and sexual abuse.
3. The right to be informed in writing about services and fees before you enter the nursing home.
4. The right to manage your own money or to choose someone else whom you trust to do this for you.
5. The right to privacy, and to keep and use your personal belongings and property as long as it does not interfere with the rights, health, or safety of others.
6. The right to be informed about your medical condition, medications, and to see your own doctor. You also have the right to refuse medications and treatments.
7. Freedom from restraints.
8. The right to have a choice over your schedule (for example, when you get up and go to sleep), your activities, and other preferences that are important to you.
9. The right to an environment that is like a home, one that maximizes your comfort and provides you with assistance to be as independent as possible.
10. Freedom from discrimination and unnecessary transfers

Most of these rights will be discussed in the following section.

### **Dignity And Respect**

Dignity is our sense of value or sense of self-esteem as a person. It derives, for the most part, from who a person is and what a person does. However,

part of a person's sense of dignity also comes from the respect received from other people.

Nursing home residents often lose their ability to live independently and to provide self-care so they depend on others for a large part of their dignity and self-esteem. Their dignity and self-esteem is dependent on health team members, and also on CNAs as caregivers.

The CNA can help residents of a nursing home maintain their dignity and self-esteem by treating them with respect and this is best done by helping them maintain normal activities of daily life as much as possible. Whenever interacting with an elderly resident, the caregiver should consider how they would want to be treated. Practical suggestions for helping clients maintain their dignity are reviewed here.

### **Respecting Personal Space**

Control of personal space is important to us all, and treating a resident with respect for his/her personal space is not complicated. Firstly, when approaching a resident at a nursing home facility the staff should *knock and ask permission* before entering the resident's room. The CNA may often have to touch someone for reasons of care or safety. However, touching someone is always an intrusion on personal space, even if it is necessary or welcomed, so it should be done respectfully. Maintain a respectful distance when speaking to an elderly resident.

### **Respecting Privacy**

Everyone wants some degree of privacy and everyone likes to determine who they see and when. Residents in nursing homes have a right to privacy. In order to respect a resident's privacy, the CNA should make sure that interactions are welcomed. If the situation were reversed, the CNA would not intrude on a friend or a family member if it were clear the attention was not

wanted, so the same consideration should be shown to an elderly resident. Privacy needs to be afforded when they are dressing, using the bathroom, and performing personal care. Respecting privacy also means that nursing home residents are allowed access to their mail, use of the telephone, and freedom from interference when they are having visitors.

### **Respecting Independence**

Someone who can no longer perform normal ADLs or needs assistance to do so can lose a sense of independence, and this can seriously affect a person's dignity. Encourage and respect a resident's need for independence. Allow a resident to control his/her daily schedule, within the resident's capabilities. Healthcare workers should not force an agenda on someone. Providing direct care for several residents can be very time-consuming and requires considerable organization. Because of this it can be tempting to schedule residents' activities such as dressing and eating in a way that makes a caretaker's job simpler. Try and avoid this practice, and reflect on whether work organization during the course of any given day is for the caregiver's convenience or for the comfort and dignity of the residents.

### **Respecting Appearance**

The CNA should make sure that a resident being cared for is clean, well-groomed, and dressed appropriately. Whenever possible, residents should be allowed to determine their own grooming. Make sure the residents are properly covered and modesty respected at all times.

### **Respecting Intelligence**

Healthcare workers should always respect someone's intelligence, especially during conversations. With the elderly resident, do not *talk down* or act condescending and always address them in a tone of voice and manner that

conveys respect. It should not be assumed that because someone is unable to manage self-care that he/she has limited intellect and cannot understand others.

### **Freedom From Emotional, Physical, And Sexual Abuse**

Emotional, physical, and sexual abuse are illegal, immoral and wrong. The weakest members of society are often victims of abuse and unfortunately these violations do occur in nursing homes. There are two specific aspects of abuse with nursing home residents that are highlighted in this section.

First, the great majority of nursing home residents are elderly. Because elder abuse can take very specific forms that make it quite different from other types of abuse it will be discussed separately. Practical suggestions for protecting residents against elder abuse are also discussed.

Second, most people think of abuse as physical violence, sexual abuse or situations in which someone is clearly harmed. Physical, sexual and overt abuse certainly happen; however, abuse can be subtle and it is often hidden, and it is this type of hidden abuse that needs to be raised. This abuse is the abuse of *neglect* and it can appear as:

- Neglecting to cover a person who is cold.
- Harsh words used when no one but the caretaker and the resident can hear.
- Indifference or emotional distance.
- Neglecting to dress or groom someone properly.
- An attitude of impatience and lack of caring.
- Keeping someone isolated, not allowing him or her to socialize
- Consistently being late with meals or medications, or completely failing to provide meals or medications.



- Ignoring a resident's complaints or failing to act on his or her complaints.
- Putting your needs ahead of the needs of the residents.

Previously, practical suggestions for protecting the rights of nursing home residents were given but neglect can only be prevented by having the proper attitude and by performing care in a caring way. Prevention of neglect is as much a function of who someone is, as it is what they do.

Caring cannot be taught, it must come from within. Nevertheless, in order to make sure nursing home residents cared for do not suffer from neglect, the following points are important to note.

- Residents should be treated as you or a family member would want to be treated.
- The most important responsibilities you have is to make sure the residents are comfortable and safe and they *feel* comfortable and safe.

Test you attitude by asking three simple questions:

- What is my attitude conveying to the residents?
- What effect is my behavior having on the residents?
- When caring for a resident, how would my behaviors appear to an onlooker?

### **The Free Use Of Belongings**

The right of free use of belongings simply refers to a resident's right to have and control personal property. Books, clothes, electronic devices, and other personal items must not be withheld from a resident or their use restricted unless there is an issue of safety.

## Medical Information, Care, and Refusing Treatment

Everyone has the right to accurate and honest information about their own medical condition. Residents who ask about their medical condition or the treatments and medications they are receiving should receive honest answers in language they can understand. Certified Nursing Assistants may not be allowed to answer a resident's questions about these issues: If a resident wants to know something specific such as, "*Why do I have high blood pressure,*" or "*Why was I started on this new medication?*" It is best to refer these questions to a nursing supervisor or to instruct the resident to ask the physician, nurse practitioner, or whoever directs his/her medical care. Of course, if a patient asks a basic question, such as, "*Do I have high blood pressure?*" then the CNA should answer honestly.

Nursing home residents also have the right to see a physician and they have the right to have their concerns about their medical condition conveyed to a medical clinician, medical doctor or advanced practice nurse. If a resident asks to see a medical clinician or wants to send a message to the clinician managing care, the CNA should notify the facility supervisor. This is a very important right and must not be neglected.

Refusing treatment or medications is a complicated issue. A person may refuse medical care if: 1) the risks of refusing the treatment have been clearly explained, and 2) the patient is able to understand the risks. The second part means that a patient can refuse medication or treatment if he/she has the intellectual ability to understand the risk of refusing; a patient cannot refuse treatment if the patient is mentally impaired due to a condition such as a disease, illness, or intoxication.

Patients refusing medications or treatments is not uncommon. It is a situation that healthcare workers will encounter. It can be very disturbing for

caregivers when someone refuses to take medications or will not cooperate with a planned therapy. People who choose healthcare as a career do so to help others, and a refusal to accept help by a patient especially when it is clearly needed can feel very upsetting.

It is beyond the scope of practice of a CNA to address a situation of someone refusing treatment. If someone under the care of a CNA refuses treatment, there are three things that must be known: 1) Never force the patient to do something, 2) Notify a supervisor of the situation, and 3) Document the situation and that it was reported.

There are other rights of nursing home residents involving medical care. Nursing home residents are allowed full access to their medical records. Residents have the right to choose who cares for them, and they can refuse to be treated by a particular CNA, RN, or MD. They have the right to file a complaint about care they have received. Residents should be involved as much as is possible in decisions about their care; this is closely related to the right of being informed and the right to refuse treatment.

### **Freedom From Restraints**

The use of restraints is a complicated and controversial topic. However, the following points can be applied regardless of where a CNA may work.

- Physical restraints or chemical restraints such as sedating drugs cannot be used for the convenience of caretakers or to discipline a nursing home resident.
- Physical or chemical restraints have the potential to cause significant harm.

- Restraints can only be used as a last resort and when every other means of ensuring a resident's health and safety have been tried and have failed.
- Restraints can only be applied if a physician or another healthcare professional that is authorized to do so has ordered their use.
- Each nursing home should have a written policy that provides clear guidelines for when restraints may be used and how they are used.

### **Planning A Daily Schedule**

Nursing home residents have the right to plan their daily schedule. This can be easy to forget if a resident is unable to provide self-care because the resident's ADLs are performed by CNAs or other caretakers. It takes more time to involve the residents in planning the daily schedule but doing so is a very effective way of showing respect and helping them maintain their dignity.

### **Comfortable Home-Like Environment**

Because of physical limitations or chronic illnesses nursing home residents cannot live independently and a nursing home, although it can be clean and comfortable, is not home. Leaving home and giving up independent living is very upsetting for most people. In many cases the situation is permanent. Nursing home residents have the right to an environment that is as close to a home environment as possible, and one that allows for as much independence as possible.

There are limitations that prevent a nursing home from being identical to someone's place of residence but a nursing home can be made to feel home-

like. Medicare and other agencies make specific recommendations about the environment and living condition of nursing homes. For example, Medicare notes that these facilities should:

- Be free from overwhelming odors.
- Have good lighting.
- Be free from smoking or second-hand smoke.
- Have noise levels that are acceptable.
- Have an outdoor recreation area.
- Offer residents should have a choice of foods at mealtimes.
- Have *quiet areas* available for people who desire privacy.
- Allow residents to have friend and family member visit them.

There are requirements and Medicare has several publications discussing this topic, *i.e.*, Medicare Coverage of Skilled Nursing Facility Care, available online at [www.medicare.gov/publications/pubs/pdf/10153.pdf](http://www.medicare.gov/publications/pubs/pdf/10153.pdf). A CNA has responsibility to help maintain the residents' rights in this area. Simple interventions that can be done include:

- Keep the environment clean and comfortable.
- Respect the residents' privacy.
- As much as is practical allow the residents to determine their daily activities and schedule.
- Allow the residents the opportunity to socialize when and with whom they like.
- Make sure residents receive proper grooming and personal hygiene.
- Provide proper nutrition.
- Make sure that the residents receive the medical attention they need in order to remain healthy. Remember, a mentally competent adult has the last word about what medical care and/or medications she/he receives.

## **Freedom From Discrimination And Unnecessary Transfers Or Discharges**

Federal, state, and local laws regarding discrimination apply to nursing homes. Admission to a nursing home cannot be based on age, gender, national origin, race, or sexual identity or on the basis of a handicap. These same protections also apply to the care of someone who is in a nursing home; residents must not be discriminated against on the basis of age, gender, national origin, race, or sexual identity, or on the basis of a handicap.

Nursing home residents cannot be transferred or discharged against their will. A transfer or discharge from a nursing home can only be done if 1) it is necessary for the safety and health of the client, 2) it is necessary for the safety and health of other clients, 3) the nursing home can no longer provide the care the client needs, or 4) the client no longer needs the services the nursing home provides.

### **Protecting The Rights Of Nursing Home Residents**

The first line of protection for the rights of nursing home residents are the caretakers and the nursing home staff. Certified Nursing Assistants, Vocational Nurses, Registered Nurses, and other healthcare professionals must understand and respect the rights of nursing home residents and actively work to protect them.

The second line of protection would be the federal, state, and local agencies that are responsible for monitoring nursing homes. These agencies

periodically inspect nursing homes to ensure that nursing home residents are being properly treated. They also have the power to establish standards of care and enforce these standards. For example, the *Code of Federal Regulations* (CFR) are rules that the Federal Government has set for a wide variety of activities and industries that it oversees, such as finance, health care, etc. Some of the Federal Rules for nursing homes are:

- Sufficient nursing staff.
- Conduct initially a comprehensive and accurate assessment of each resident's functional capacity.
- Develop a comprehensive care plan for each resident.
- Prevent the deterioration of a resident's ability to bathe, dress, groom, transfer and ambulate, toilet, eat, and to communicate.
- Provide, if a resident is unable to carry out activities of daily living, the necessary services to maintain good nutrition, grooming, and personal oral hygiene.
- Ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities.
- Ensure that residents do not develop pressure sores and, if a resident has pressure sores, provide the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.
- Provide appropriate treatment and services to incontinent residents to restore as much normal bladder functioning as possible.

Certified Nursing Assistants are not expected to be familiar with all of the agencies that oversee and regulate nursing homes. The important point to remember is that if it is known that proper care is not being delivered, there are agencies that can step in to correct the situation. The first option would be to contact a supervisor or the administration of the nursing home. If there is a problem and the CNA knows or suspects that the administration is

not acting to correct it, the appropriate state or local authorities should be contacted.

Residents can also make complaints and they should be allowed access to the same resources. One agency that can intervene if there is a dispute between the resident and the facility is the local long-term care ombudsman. A long-term care ombudsman is a public advocate who can help residents of nursing homes, and ombudsman programs handle hundreds of thousands of complaints about nursing home problems every year. There are approximately 600 regional ombudsman programs. They can be located in any area by calling the National Long-Term Care Ombudsman Resource Center at 202-332-2275. The telephone numbers of the state ombudsman programs can also be found in the Medicare publication, "Medicare Coverage of Skilled Nursing Facility Care," which is available online at [www.medicare.gov/publications/pubs/pdf/10153.pdf](http://www.medicare.gov/publications/pubs/pdf/10153.pdf).

### **Elder Abuse: A Growing Problem**

The number of people who are 65 years and older is growing every year. Unfortunately, elder abuse has also been increasing, as well. The exact number of people suffering from elder abuse is not known but The National Center on Elder Abuse, Bureau of Justice reported that in 2010 there were almost 6 million cases of elder abuse, and that 9.5% of the elderly population had been abused at least once.

The U.S., National Academy of Sciences defines elder abuse as follows:  
*Intentional actions that cause harm or create a serious risk of harm (whether or not harm is intended), to a vulnerable elder by a caregiver or other person who stands in a trusted relationship to the elder, or failure by a caregiver to satisfy the elder's basic needs or to protect the elder from harm.* Elder abuse can take many different forms, as outlined below.



## **Sexual Abuse**

Sexual abuse can involve sexual contact but it also includes being forced to undress, watch pornography, listen to sexually explicit or suggestive language, or be subjected to unwanted sexual situations.

## **Emotional Abuse**

Emotional abuse is behavior that causes psychological pain and trauma but not physical injury. This can include threats, ridicule, insults, intimidating or manipulative behavior, embarrassment, non-verbal threats, deliberately withholding attention, or forced isolation.

## **Financial Abuse**

Financial abuse pertains to stealing money or valuables, forging signatures, or improperly accessing personal financial records.

## **Physical Abuse**

Physical contact and injuries, forcing an elderly person to take extra doses of medication or to take illicit drugs or alcohol, deprivation of medications or medical care, ignoring or neglecting health problems can all constitute physical abuse.

Emotional trauma can often be the only sign of elder abuse. A resident who is depressed, fearful, or withdrawn may be so for many reasons but the possibility of elder abuse should be considered. Also, if a nursing home resident appears is noticed to be nervous or fearful when certain people are close by this can also be an indication of elder abuse.

Sexual injuries are an obvious sign of elder abuse. If a resident who is not sexually active has evidence of sexual trauma or has a sexually transmitted

disease, elder abuse is likely occurring. Other signs of elder abuse of a sexual nature would be injuries to the genital areas or torn or bloodstained underclothing.

Financial abuse or exploitation would be difficult to know about unless there was access to someone's financial information.

### **Abandonment and Physical Neglect**

Abandonment involves deserting an elderly person who needs care. Detecting elder abuse can be difficult, but there are some clues that can indicate that elder abuse is happening. One of the most common is *unexplained injuries*. Does a resident have burns, bruises, scars, or welts that cannot be explained? And if the resident does have an injury, is he or she reluctant to talk about it?

Another typical indication of elder abuse is *physical neglect*. Neglect occurs when someone deliberately fails to provide for the basic emotional, comfort, safety, health care, or nutritional needs of the victim. If a nursing home resident is dehydrated, dirty, poorly or inadequately dressed, living in unclean or unsafe conditions, or is obviously malnourished, they may be victims of elder abuse. This is especially true if that resident had previously been well cared for. Signs of physical neglect may also include the worsening of a chronic health problem such as diabetes or hypertension because the resident's medications are not being administered adequately or at all. Overmedication can also indicate physical neglect.

### **Reporting Elder Abuse**

If the situation of elder abuse is life-threatening, the healthcare worker should call 911. The immediate supervisor should be notified, as well. If the

situation is not emergent or life-threatening, the supervisor should still be notified. The CNA should also consider calling Adult Protective Services (APS) in a case of elder abuse. Adult Protective Services include local and state agencies that investigate complaints involving elderly people who have been abused, exploited, or neglected. In most states, Adult Protective Services are the primary contact for these situations. If an APS agency is needed in an area, the Eldercare Locator should be called at 1-800-677-1116, Monday through Friday, 9 a.m., to 8 p.m., Eastern Time.

Another source for locating help and/or the local APS in an area is through the National Adult Protective Services Association (NAPSA) website: <http://www.napsa-now.org/>. The NAPSA can also be reached at 217-523-4431. Also, The National Center on Elder Abuse (NCEA) has a website that is an excellent source of information about elder abuse. The website has state by state listings of the names and telephone numbers of the appropriate agencies that can help prevent, treat, and report elder abuse. The website address is: [www.ncea.aoa.gov](http://www.ncea.aoa.gov), and the telephone number is 1-855-500-3537. Another source of information is the blue pages of any local telephone directory.

As valuable health team members, CNAs have a responsibility to report elder abuse. Reporting it is not optional, it is *mandatory* and this responsibility is shared by everyone, including the general public. Elder abuse does not have to be witnessed to be reported. If there is a reasonable suspicion that elder abuse is occurring that is sufficient cause to make a report. Also, if a report about elder abuse is made in a reasonable manner and in good faith, a health employee cannot be disciplined or terminated, even if no abuse had been found to have occurred. The key words here are *reasonable* and *good faith*; a report of elder abuse must be based on a reasonable level of

evidence and suspicion and the report made in good faith with the belief that the report is true.

### **Summary**

The rights of nursing home residents are no different than the rights of any other person. The difference between the elderly or nursing home population and the general public is that nursing home residents have less ability to satisfy and protect their rights. Age, illness, diminished mental capacity, or a combination of all three does prevent many nursing home residents from being independent. As a result, others are charged with protecting their rights, and seeing that their interests are not infringed upon.

Most people seldom think about their basic rights of privacy, independence, and safety because they have the capacity to protect them without help, and can make sure their rights are not deprived. People who reside in a nursing home depend on their caregivers for protection of their basic human rights. Often, the responsibility of ensuring patient rights of the elderly falls upon health team members working near patients on a daily basis, such as the Certified Nursing Assistant.