RESIDENT RIGHTS IN NURSING HOMES

INTRODUCTION

Nursing home residents have the same basic rights that all of us do. They have the right to be safe, the right to remain unharmed and to live without fear, and they have the right to manage the day-to-day affairs of their lives.

However, residents of nursing homes are some of the most vulnerable members of our society. Many of them need assistance with basic activities of daily living (ADL) such as dressing, eating, and toileting. They may well have significant physical and/or intellectual restrictions. So although nursing home residents have rights, physical and intellectual limitations mean that they often cannot exercise or protect their rights as we can. They depend on their caretakers to ensure that their rights are not infringed on, and this is a situation that has the potential for much harm. People who cannot advocate for themselves rely on others for their comfort and safety and at times, for preserving their health and life.

Protecting the rights of residents of nursing homes is a serious matter that has been given a lot of attention, not only by investigating abuses that violate basic rights but also by clearly defining the rights of nursing residents and providing legal protection for these rights.

Certified Nursing Assistants (CNAs) provide much of the direct care that nursing home residents require. The CNA is “in the frontline” for protecting the rights of nursing home residents and this module will provide you the information you need to do so.
GOALS AND OBJECTIVES

This module will provide CNAs with the definitions of the rights of nursing home residents and each of these rights will be discussed in detail. The module will also outline specific ways CNAs can make sure these rights are not violated. Finally, elder abuse will be discussed and some basic information on the state of nursing homes in the United States will be presented.

After completing this module the learner will be able to:

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.

NURSING HOMES IN THE UNITED STATES

There are many terms that are used to describe nursing homes: convalescent homes, long-term care facilities, nursing homes, and skilled nursing facilities. Medicare, the US government agency that administers health insurance for people over 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 national survey of nursing homes that is done periodically. The last one for which statistics is available is from 2004 and the data from that 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 activities ADL: bathing, dressing, eating, toileting, and transferring.
- Most nursing home residents were either totally dependent or required extensive assistance with their ADL.
- Only 1.6% of nursing home residents did not need any assistance with their ADL.
- 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 diagnoses 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 ADL. The American population is expected to get older in the next few decades, as well, 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 that provided direct patient care was CNAs. The inference from that last statistic is clear: CNAs are providing the majority of assistance to nursing home residents for their ADL.

**THE RIGHTS OF NURSING HOME RESIDENTS**

Nursing home residents need protection and US 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 we take for granted.

The US office of Medicare and Medicaid has specifically outlined the rights of nursing home residents. These rights include, *but are not limited to*:

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 doesn't 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 will be discussed in the next section of the module. Number 3 - the right to be informed in writing about services and fees before you enter the nursing home - will not be discussed nor will other financial or legal aspects of nursing homes such as payments, covered services, or length of stay.

Dignity and Respect

Dignity is our sense of value as a person, our self-esteem. It derives, for the most part, from who we are and what we do. But some of our sense of dignity also comes from the respect we receive from other people.

Nursing home residents have often lost their ability to live independently and provide self-care. Because of that they depend on those around them for a large part of their dignity and self-esteem. Their dignity and self-esteem is dependent on us.

You 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 as much as possible, normal activities of daily life. Whenever you are interacting with a resident, ask yourself; how would I like to be treated?

Practical suggestions for helping you clients maintain their dignity include:
1. Respecting personal space: Control of personal space is important to us all, and treating a resident with respect for her/his personal space is not complicated. Knock and ask permission before entering her/his room. As a CNA you 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 you speak to someone.

2. Respecting privacy: Everyone wants some degree of privacy and everyone likes to determine who they see and when. In order to respect a resident's privacy, make sure that your interactions are welcomed. You wouldn’t intrude on a friend or a family member if it was clear they didn’t want your attention, so use the same consideration with a resident. Give them privacy 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.

3. Respecting independence: Someone who can no longer perform normal ADL or needs assistance to do so can lose a lot of her/his sense of independence, and this can seriously affect a person’s dignity. Encourage and respect a resident’s need for independence. Within his/her capabilities allow the client to control the daily schedule. Don’t force an agenda on someone. Providing direct care for several clients can be very time-consuming and requires considerable organization. Because of this it can all too easy to schedule residents’ activities such as dressing and eating in a way that makes a caretaker’s job simpler. Try
and avoid this, and ask yourself; am I arranging the day for my convenience or for the comfort and dignity of the residents?

4. Respecting appearance: Make sure that someone in your care is clean, well groomed, and dressed appropriately. Whenever possible allow the resident to determine how he/she is groomed. Make sure that they are properly covered at all times.

5. Respecting intelligence: Always respect someone’s intelligence, especially during conversations. Don’t “talk down” to people and always address them in a tone of voice and manner that conveys respect. Don’t assume that because someone is unable to care for himself/herself that he/she has limited intellect and can’t understand you.

### Freedom from Emotional, Physical, and Sexual Abuse

Emotional, physical, and sexual abuse are obviously immoral and wrong and they are illegal, as well. The weakest members of our society are often the first victims and unfortunately these violations do occur in nursing homes. There are two specific aspects of abuse and nursing home residents that should be discussed.

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 in a separate section of the module. Practical suggestions for protecting residents against elder abuse will be also be discussed.

Second, most people think of abuse as physical violence, sexual abuse or as very obvious and dramatic situations in which someone is clearly being harmed. Physical
and sexual abuse and certainly happen and overt situations of harm do, too. These are clearly wrong and there is no need for this module to educate CNAs on that point.

However, abuse can be subtle and it is often hidden, and it is this type of “minor” abuse that will be discussed here. This abuse is the abuse of neglect and it can take such simple forms as:

- Deliberately forgetting to cover someone when she/he 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/her to socialize
- Consistently being late with meals or medications, or missing meals or medications completely.
- Ignoring a resident’s complaints or failing to act on his/her complaints.
- Putting your needs ahead of the needs of the residents.

In the previous section practical suggestions for protecting the rights of nursing home residents were given. But the type of abuse that was listed above, abuse that would be considered to be neglect, can only be prevented by having the proper attitude and by performing care in the proper 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. Nonetheless, in order to make sure the nursing home residents you are not subject to neglect remember these points.
• Residents should be treated as you would yourself or a family member.
• The most important responsibility you have is to make sure the residents are comfortable and safe and to help them feel safe.
• 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 Right to Privacy and the Free Use of Belongings

The right to privacy was previously discussed. The right of free use of belongings simply refers to a resident’s right to have and control her/his 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, Seeing a Doctor, and Refusing Treatment

• Everyone has the right to accurate and honest information about his/her medical conditions. Residents who ask about their medical conditions or the treatments/medications they are receiving should receive honest answers in language they can understand. Certified Nursing Assistants would seldom be in a position to answer a resident’s questions about these issues. If a resident does want 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 your supervisor or to instruct the resident to ask the physician, nurse practitioner, or whoever directs his/her care. Of course, if a patient asks a basic
question, e.g., “Do I have high blood pressure?” then you 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 physician. If a resident asks to see his/her doctor or wants to send the doctor a message, notify the supervisor. This is a very important right and must not be neglected.

- Refusing treatment or medications is a complicated issue. Someone is allowed to 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 the patient can refuse medication or a treatment if he/she has the intellectual ability to understand the risk of refusing: the patient cannot be mentally impaired by disease, illness, or intoxication and refuse treatment. Clients refusing medications and/or treatments is not uncommon. It is a situation you will encounter in your career as a CNA and when someone refuses to take her/his medications or will not cooperate with a planned therapy this can be very disturbing. People who choose healthcare as a career do so to help, and a refusal to accept help – especially when it is clearly needed – is upsetting to us. Evaluating the ability of someone to make these decisions is beyond the scope of practice of a CNA. If someone in your care refuses treatment, there are three things you must know:
  1) **Never** force the client to do something.
  2) Notify your supervisor of the situation.
3) Document the situation and document your reporting of it.

There are other rights of nursing home residents involving medical care. Residents have the right to choose who cares from 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. A resident should be involved as much as is possible in the decisions about their care; this is closely related to the right of being informed and the right to refuse treatment. And nursing home residents are allowed full access to their medical records.

**Freedom from Restraints**

The use of restraints is a complicated topic and will not be discussed in full here. However, the following points can be applied regardless of where you work.

1. Physical restraints or chemical restraints such as sedating drugs cannot be used for the convenience of caretakers or to discipline a nursing home resident.
2. Physical or chemical restraints have the potential to cause significant harm.
3. 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.
4. Restraints can only be applied if a physician or another healthcare professional that is authorized to do so has ordered their use.
5. Each nursing home should have a written policy that provides clear guidelines for when restraints may be used and how they are used.

**The Right to Arrange the Daily Schedule**
Nursing home residents have the right to arrange their daily schedule. This can be easy to forget if a resident is unable to provide self-care because all of the ADL are performed by the CNAs or the 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.

**The Right to a Comfortable Home-Like Environment**

Because of physical limitations or chronic illnesses nursing home residents cannot live independently and although a nursing home can be clean and comfortable, it is not really home. Leaving home and giving up independent living is very upsetting for most people. In many cases the situation is permanent. But nursing home residents have the right to an environment that is as close to a home 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.
- Should have good lighting.
- Smoking should be allowed, or restricted to certain areas.
- Should have noise levels that are acceptable.
- Should have an outdoor recreation area.
- Should offer residents should have a choice of foods at mealtimes.
• Should have “quiet areas” available for people who desire privacy.

• Should allow residents to have friend and family member visit them.

There are many more requirements and Medicare has several publications that discuss this topic such as “Medicare Coverage of Skilled Nursing Facility Care,” which is available online at www.medicare.gov/publications/pubs/pdf/10153.pdf.

As a CNA you have responsibility to help maintain the residents’ rights in this area. Simple interventions you can do 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: 1) if it is necessary for the safety and health of the client; 2) if it is necessary for the safety and health of other clients; 3) if 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

WHO PROTECTS THE RIGHTS OF NURSING HOME RESIDENTS?

The first line of protection for the rights of nursing home residents are the caretakers themselves, the nursing home staff. Certified Nursing Assistants, LPNs, RNs, 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:

- Have 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 you know or suspect that the proper care is not being delivered, there are agencies that can step in to correct the situation.

The first option would be to contact your supervisor or the administration of the nursing home. If there is a problem and you know or suspect that the administration is not acting to correct it, the appropriate state or local authorities should be contacted. This issue will be discussed further in the next section, Elder Abuse.

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 these agencies handle hundreds of thousands of complaints about nursing home problems every year. There are approximately 600 regional ombudsman programs. You can locate the one that serves you 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.

ELDER ABUSE

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 US 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.
- **Sexual abuse:** This can be 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.

- **Neglect:** Neglect occurs when someone deliberately fails to provide for the basic emotional, comfort, safety, health care, or nutritional needs of the victim.

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

- **Financial abuse:** 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 his/her medication or take illicit drugs or alcohol; deprivation of medications or medical care; ignoring or neglecting health problems.

- **Abandonment:** 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 can’t be explained? And if the resident does have an injury, is he/she reluctant to talk about it?

Another typical indication of elder abuse is **physical neglect.** 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 given properly or not given at all. Overmedication can also indicate physical neglect.

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 you notice that a nursing home resident appears 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 that is not sexually active has evidence of sexual trauma or has a sexually transmitted disease, elder abuse is 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.

**How is Elder Abuse Reported?**

- If the situation is life-threatening, call 911. Notify your supervisor, as well.
- If the situation is not emergent or life-threatening, notify your supervisor.
- Consider calling Adult Protective Services. Adult Protective Services are the 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 you need to find the Adult
Protective Services agency in your area, call the Eldercare Locator: 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 Adult Protective Services in your 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.

- 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, and the telephone number is 1-855-500-3537. Another source of information is the blue pages of your local telephone directory.

As a healthcare professional you have a responsibility to report elder abuse. Reporting it 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 you have a reasonable suspicion that elder abuse is occurring that is sufficient cause to make a report. Also, if you do make a report about elder abuse and you do so in a reasonable manner and with good faith, you cannot be disciplined or terminated, even if no abuse is found to have occurred. The key words here are reasonable and good faith. Your report of elder abuse must be based on a reasonable level of evidence and suspicion and you must be making the report with the belief - the good faith - that what you are reporting is true.
SUMMARY

The rights of nursing home residents are no different than the rights of anyone. The difference between this 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 prevents many nursing home residents to remain independent, protect their rights, and see that their interests are not infringed upon.

We seldom think about our basic rights of privacy, independence, and safety because we can satisfy these ourselves. We can protect ourselves and make sure we are not deprived of our rights, but nursing home residents often cannot. Consequently people who reside in a nursing home depend on their caretakers for protection of these basic rights. Many times this responsibility falls upon the CNA. The CNA must actively work to:

- Protect resident’s dignity.
- Treat the residents with respect.
- Provide the resident’s with an environment that is clean, comfortable, and safe.
- Protect the residents from emotional, physical, and sexual abuse.
- Protect the residents from neglect.
- Report known or suspected elder abuse.
- Report violations of standards of care, whether by an individual or by a facility.