**Chapter 6: Residents’ Rights in Long-Term Care Facilities: The Role of the Certified Nursing Assistant**

2 Contact Hours

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### Learning objectives

- Explain and give examples of practices that support resident rights for dignity, respect, privacy and a quality living environment.
- Define resident rights, facility policies and staff responsibilities to safeguard money and property.
- List and explain resident rights and staff responsibilities associated with quality of care, discrimination, privacy, participation, transfer and discharge.
- Describe resident rights and procedures for grievances, complaints, and appeal processes.
- Explain staff responsibilities that promote the residents’ rights for freedom of choice to make independent decisions.
- Apply the resident rights set forth by the state of Florida and by federal law to enhance the CNA's practice.

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### Overview

This course is based on the state of Florida’s statutes that establish resident rights in long-term care facilities, as well as the regulations that govern practices in order to ensure that these rights are met for all residents. It will explain the federal laws that set precedents for state laws, including Medicare and Medicaid protections that are related to the role of the certified nursing assistant. This course will require CNAs to review their daily practices in order to identify how their practices support these rights, as well as how they can further enhance their practices to achieve the protection of a resident’s individual rights, as identified in the statutes.

### Introduction

State and federal regulations require nursing homes and all long-term care facilities to have written policies that cover the rights of residents\(^1\). The CNA must ensure that his or her practices align with these policies, to assist residents according to resident rights. All residents are entitled to quality care, courtesy, and treatment that supports civil and legal rights. This course defines residents’ rights and the responsibilities of facility staff to ensure those rights.

The basic rights of dignity and respect are the foundations for all resident rights. Florida statutes include laws established by the Florida Department of Health that govern long-term care facilities and staffing, as well as patient ratios.

Florida is committed to ensuring that all residents’ rights are protected and supported. Florida also encourages residents – and the residents’ representatives – to communicate regularly with nursing home staff to ensure a meaningful, respectful and helpful environment\(^1\). CNAs have an important role in ensuring that patients’ rights are met through their daily practices and communication with residents. In addition, CNAs have an obligation to treat all patients according to these rights and to follow their facility’s policies to uphold patient rights. This includes reporting any activity that violates resident rights to their supervisor.

Residents and facilities receiving Medicare and Medicaid are covered under federal guidelines that protect resident rights, in addition to state guidelines.

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### Florida resident rights in long-term care

When admitted to a long-term care facility, an individual maintains his or her rights as a citizen. The individual also gains a special set of rights that are mandated by federal and state law. These rights cover residents in nursing homes, assisted-living facilities and adult-family care homes\(^1\).

Resident rights are enacted as laws through the State of Florida Statutes, Chapter 400, and apply to facilities where CNAs deliver direct services. The state law includes the Survey Inspection process: The Survey Inspection process is used to evaluate nursing homes and informs the policies, procedures and services offered to residents. CNAs will gain a deeper understanding of their role as caregivers if they understand resident rights, which are the foundations of best practice.

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### THE 2016 FLORIDA STATE STATUTES

**Title XXIX Public Health: Chapter 400: Nursing Homes and Related Health Care Facilities**\(^2\)

### 400.022 – Residents’ rights.

1. All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:
   a. The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.
   b. The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident’s choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act.
Security Act regulations, without the resident’s losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

c. Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; any representative of the State Long-Term Care Ombudsman Program; and the resident’s individual physician.

2. Subject to the resident’s right to deny or withdraw consent, immediate family or other relatives of the resident. The facility must allow representatives of the State Long-Term Care Ombudsman Program to examine a resident’s clinical records with the permission of the resident or the resident’s legal representative and consistent with state law.

d. The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

e. The right to organize and participate in resident groups in the facility and the right to have the resident’s family meet in the facility with the families of other residents.

f. The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

Nursing consideration #1:
- What part of the CNA’s role could support the resident’s rights covered in (f) above? List two practices from your last work week that relate to these rights. If there were none, how could you have enhanced your practice to support them?
- Think about the residents in your care. What are their goals in these areas?

The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

h. The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident’s personal funds entrusted to the facility on the resident’s behalf.

2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.

4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident’s funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident’s estate, or, if a personal representative has not been appointed within 30 days, to the resident’s spouse or adult next of kin named in the beneficiary designation form provided for in s. 400.162(6).

5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

i. The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

j. The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident’s well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident’s physician; and to know the consequences of such actions.

Nursing consideration #2: Look at section (b) above and think of a resident in your care. What forms of communication work best with this resident? Within the scope of your role as a CNA, have you assisted this patient in understanding his or her condition or care? Has the resident ever refused daily living skills or medication in your role as this individual’s CNA? What strategies did you use in these situations? How did you document and report this information? How could you enhance your practice in these areas?

k. The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing facility must notify the resident or the resident’s legal representative of the consequences of such decision and must
document the resident’s decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident’s care plan.

l. The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

m. The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident’s body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents’ personal and medical records shall be confidential and exempt from the provisions of s. 119.07(1).

Nursing consideration #4: Privacy is one of the most important resident rights. Review section (m) and list five strategies that you use in your daily practice which protects the privacy rights of your residents.

Nursing consideration #5: Review (i) and (j) above. Identify five examples of your practices that involve freedom of choice given to residents in which you have assisted these residents in making choices. What five strategies can you use to encourage residents to make more independent choices?

do. The right of a resident to have copies of the rules and regulations of the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents. If the licensee provides clothing to the resident, it shall be of reasonable fit.

Nursing consideration #5: Review (i) and (j) above. Identify five examples of your practices that involve freedom of choice given to residents in which you have assisted these residents in making choices. What five strategies can you use to encourage residents to make more independent choices?

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p. The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home facility in which the resident resides; and in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days’ advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident’s rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

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q. The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident’s choice, at the resident’s own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident’s medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

do. The right to receive notice before the room of the resident in the facility is changed.

r. The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident’s medical record by a physician. If the licensee provides clothing to the resident, it shall be of reasonable fit.
For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under 42 C.F.R. s. 483.12.

2. The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or state or local ombudsman council. The statement must be in boldfaced type and include the telephone number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families.

4. Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability therefore, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justifiable issue of either law or fact raised by the losing party.

The Florida Telehealth Advisory Council

This is a new regulation that requires all healthcare practitioners to complete a telehealth survey to provide documentation that may be used as a statistical base to gather information about long-term care facilities. The CNA should check with their supervisor to follow the facility guidelines about the collection of this data.

According to the State of Florida:

Governor Rick Scott signed House Bill 7087 into law April 14, 2016 creating the Telehealth Advisory Council[^2a]. House Bill 7087 also requires the Agency, the Department of Health, and the Office of Insurance Regulation to survey health care facilities, practitioners, and health insurers on the status and scope of telehealth activities in the state. The Agency is required to compile and submit a report of the survey findings to the Governor, the President of the Senate, and the Speaker of the House by December 31, 2016[^2a].

[^2a]: Florida Statutes, respectively, against a health care facility, a health maintenance organization, health care practitioner, and health insurer for failure to complete the 121 surveys required under this section.

Federal laws to protect the rights of long-term care residents[^3]

To address neglect and abuse in long-term care facilities, Congress enacted legislation in 1987 facilities participating in Medicare and Medicaid[^4] to meet the standards and requirements of quality of care. The Nursing Home Reform Act states that facilities, “must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care.” These rules are revised periodically, which informs changes in state statutes.

The subsections of the federal law below are not consecutively numbered because they are the regulations directly related to the role of the CNA[^3].

§ 483.15 Quality of life

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

a. Dignity. 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 his or her individuality.

**Nursing consideration #6:** Provide five examples in your residents’ environment and care that enhances their dignity and recognizes their individuality. This may include facility policy and activities. Provide five examples in your own practice as a CNA that enhances dignity and respect for your residents, as well as encourages their individuality.

b. Self-determination and participation. The resident has the right to:

1. Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

2. Interact with members of the community both inside and outside the facility; and

3. Make choices about aspects of his or her life in the facility that is significant to the resident.
   - Conduct initially a comprehensive and accurate assessment of each resident’s functional capacity (42 CFR §483.20).
   - Develop a comprehensive care plan for each resident (42 CFR §483.20).
   - Prevent the deterioration of a resident’s ability to bathe, dress, groom, transfer and ambulate, toilet, eat, and to communicate (42 CFR §483.25).

This section is directly related to the CNA's role to assist residents in daily living skills. The law is summarized below. Other sections of this regulation cover specific details for each area of quality care and should be reviewed in their entirety.

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§ 483.25 Quality of care

Each resident must receive (and the facility must provide) the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

a. Activities of daily living. Based on the comprehensive assessment of a resident, the facility must ensure that:
   1. A resident’s abilities in activities of daily living do not diminish unless circumstances of the individual’s clinical condition demonstrate that diminution was unavoidable. This includes the resident’s ability to:
      ■ Bathe, dress, and groom.
      ■ Transfer and ambulate.
      ■ Toilet.
      ■ Eat.
      ■ Use speech, language, or other functional communication systems.

Nursing consideration #7: Think about residents with cognitive impairments or dementia that you have assisted with the daily living skills that are listed above. Give three examples of strategies you have used to keep their skills from diminishing, as well as skills encouraged to build their independent functioning. Now, think of a case where the resident’s loss of his or her independent daily living skills was unavoidable.

§ 483.30 Nursing services

The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

a. Sufficient staff:
   1. The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:
      ■ Except when waived under paragraph (c) of this section, licensed nurses; and
      ■ Other nursing personnel.

e. Nurse staffing information:
   1. Data requirements. The facility must post the following information on a daily basis:
      i. Facility name.
      ii. The current date.

§ 483.75 Administration

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

Staffing issues

The law states that “A nursing facility must have sufficient nursing staff to provide nursing and related services to ‘attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care’.”

Note: Nursing services are needed to support and carry out other professional services. Direct-care workers and certified nursing assistants are also critically needed to provide this support. The law states that CNAs are put on a state registry that must be checked before hiring; regular in-service training is also required. The regulations provide a general outline of what is required for training; however, each state develops its own training program, according to the outline.

Compare and contrast these two residents. Describe your practices with these residents as their skills changed. How did you document and report these changes in their skills? How did you evaluate the skill level of these residents? What did you learn about assisting these residents that enhanced your own practice?

2. A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (1) (a) of this section.

3. A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.
   ○ 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 (42 CFR §483.25).
   ○ Provide appropriate treatment and services to incontinent residents to restore as much normal bladder functioning as possible (42 CFR §483.25).
   ○ Maintain acceptable parameters of nutritional status (42 CFR §483.25).
   ○ Provide each resident with sufficient fluid intake to maintain proper hydration and health (42 CFR §483.25).
   ○ Ensure that residents are free of any significant medication errors (42 CFR §483.25).
   ○ Have sufficient nursing staff (42 CFR §483.30).

iii. The total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift:
   A. Registered nurses.
   B. Licensed practical nurses or licensed vocational nurses (as defined under state law).
   C. Certified nurse assistants.
      □ Ensure that the resident has the right to choose activities, schedules, and health care (42 CFR §483.40).
      □ Provide pharmaceutical services to meet the needs of each resident (42 CFR §483.60).
      □ Be administered in a manner that enables it [the nursing home] to use its resources effectively and efficiently (42 CFR §483.75).
      □ Maintain accurate, complete, and easily accessible clinical records on each resident (42 CFR §483.75).

Nursing considerations #8: What information does the CNA register with the state and what information has to be updated and when? Hint: Check with the Florida Board of Nursing for this and other important information for CNAs at the website below:


b. Compliance with federal, state, and local laws and professional standards

The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.
1. Direct-care staff: Direct-care staff are individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. CNAs are direct-care staff, according to the State of Florida.

Nursing considerations #9: Explain examples of your direct care that allowed residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. What evidence could you use to document that the direct care in these examples was effective?

Additional rights under Medicare[4]

Residents receiving federal Medicare or Medicaid program benefits have additional protections that cover their privacy of medical information and what may be shared for the payment of services. Other protections detailed in the Medicare laws apply directly to the CNAs' roles with patients; those protections are included here. At a minimum, federal Medicare law specifies that nursing homes must protect and promote the following rights of each resident with additional details to the rights listed above[4].

These laws overlap the Florida Statutes, but provide additional details in some areas.

- **Free from discrimination.** Nursing homes are not required to accept all applicants; however, they must comply with Civil Rights laws and cannot discriminate based on race, color, national origin, disability, age, or religion. The Department of Health and Human Services, Office for Civil Rights has more information. Visit [http://www.hhs.gov/ocr](http://www.hhs.gov/ocr).
- **Free from abuse and neglect.** If a resident feels that he or she has been mistreated or abused, or that the nursing home is not meeting his or her needs by neglect, these feelings should be reported to the nursing home administrator. The nursing home must investigate and report all suspected violations and any injuries of unknown origin to the proper state authorities within five (5) working days of the incident. The Long-Term Care Ombudsman can also help as an advocate to resolve concerns.

2. Submission requirements. The facility must electronically submit complete and accurate direct care staffing information to the Centers for Medicaid and Medicare Services (CMS), including the following:

- **Proper medical care.** Residents have the right “To be fully informed about their total health status in a language they understand,” and “To refuse participation in experimental medical treatment.”

Nursing consideration #10: In your daily practice, what strategies for communication could you use with a patient who has a speech, language or a hearing problem? Hint: What nonverbal methods could you use?

To participate in decisions that affect medical care, including developing the care plan: By law, nursing homes must develop a care plan for each resident. Residents have the right to take part in this process. The facility staff will review health information to prepare the care plan. Residents (if able), family (with the resident’s permission), or an individual acting on the patient’s behalf has the right to take part in care planning with the staff.

Access to records

Residents must be able access all records and reports promptly on weekdays, including clinical records, medical records and reports.

- What types of equipment or supplies are required (such as a wheelchair or feeding tube).
- What kind of diet is required, including the resident’s food preferences.
- The resident’s health and personal goals.
- How interventions and rationale are implemented to assist residents to reach their goals.
- Information about whether the plan includes returning to the community and, if so, a plan to assist residents in meeting his or her goals.

Nursing consideration #11: Review the parts of the care plan above. How many of them are part of your current role as a CNA? Choose five areas of the plan that are a part of your direct service. Give an example of each.

Social services

The nursing home must provide residents with any needed social services, including the following:

- Counseling.
- Help solving problems with other residents.
- Help in contacting legal and financial professionals.
- Discharge planning.
- Leaving the nursing home:
  - Leaving (for visits):

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Caution: If nursing home care is covered by certain health insurance plans, residents may not be able to leave for visits without losing coverage.

- Moving out: Living in a nursing home is the resident’s choice.

Have protection against unfair transfers or discharges[6]

Residents cannot be sent to another nursing home, or made to leave the nursing home, unless any of the following are true:

- It is necessary for the welfare, health, or safety of the resident or others.
- The patient’s health has improved to the point that nursing home care is no longer necessary.
- The nursing home has not been paid for services.
- The nursing home closes.
- The nursing home cannot make a resident leave if they are waiting for Medicaid benefits.

The nursing home must notify the resident’s doctor and, if known, the legal representative or an interested family member when:

- The patient is injured in an accident and/or needs to see a doctor.
- A patient’s physical, mental, or psychosocial status deteriorates.
- A life threatening condition develops.

The nursing home must notify the resident of appeals hearings, 1317 Winewood Boulevard, Building 5, Room 203, Tallahassee, FL 32399-0700 (Telephone: 1-850-488-1429)[4].

Residents can file a complaint if they have a concern about the quality of care or other services received from a Medicare provider. How to file a complaint depends on what the complaint is about.

Residents can file a complaint about:

- A doctor, hospital, or provider.
- The health or drug plan.
- Quality of their care.
- Dialysis or kidney transplant care.
- Durable medical equipment.

What’s the difference between a complaint and an appeal?
A complaint is about the quality of care. If residents have an issue with a plan’s refusal to cover a service, supply, or a prescription, they should file an appeal[4].

A nursing home must give residents 30 days written notice prior to discharge or transfer. A resident who believes that his or her rights have been violated must request a hearing in writing within 90 days, by sending the form provided to them by the facility to the office listed above.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

An important privacy right of residents involves the protection of their health information, as directed by the Federal HIPAA Privacy Rule. CNAs must receive HIPAA training because they work in health care with residents and hear and document confidential, private, individual personal health information (PHI) protected by HIPAA. Of course, the CNA must never disclose information to anyone except other medical personnel as required for the resident’s care, or as directed by their supervisor. This does not mean that PHI can be shared in the break room or in the hall with staff that are not involved with the resident’s care. Personal health information should never be shared outside of the facility. Any time that the CNA is in doubt, he or she should check with the supervisor about the facility’s policy – including providing information to family, guardians or visitors.

According to the CDC[6]:

- The HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information) is the national standard for protecting the privacy of health information. The Privacy Rule regulates how agencies, called covered entities, can disclose individually identifiable health information, called protected health information (PHI). Covered entities include health plans, health-care clearinghouses, and health-care providers that transmit health information in electronic form in connection with certain transactions[6]. Long term care facilities are covered entities so all HIPAA rules apply.

- PHI is individually identifiable health information. It is any information that would identify the resident. PHI is also individually identifiable health information that may be transmitted or maintained in any form or medium such as electronic, paper, or oral; therefore, individual health information shared verbally or documented is covered under HIPAA.

Residents can choose to move to another place, but the nursing home may have a policy that requires notification before they plan to leave. If not, they may have to pay an extra fee.

Among other provisions, the HIPAA Privacy Rule:

- Gives patients more control over their health information;
- Sets boundaries on the use and release of health records;
- Establishes appropriate safeguards that the majority of health-care providers and others must achieve to protect the privacy of health information;
- Holds violators accountable with civil and criminal penalties that can be imposed if they violate patients’ privacy rights;
- Strikes a balance when public health responsibilities support disclosure of certain forms of data;
- Enables patients to make informed choices based on how individual health information may be used;
- Enables patients to find out how their information may be used and what disclosures of their information have been made;
- Generally limits release of information to the minimum reasonably needed for the purpose of the disclosure;
- Gives patients the right to obtain a copy of their own health records and request corrections; and
- Empowers individuals to control certain uses and disclosures of their health information.

The Department of Health and Human Services, the Office for Civil Rights (OCR), has oversight and enforcement responsibilities for the Privacy Rule. Comprehensive guidance and OCR answers to hundreds of questions are available at http://www.hhs.gov/ocr/hipaa[6].

According to the HIPAA Privacy rule, the “minimum necessary” rule must be followed at all times when information is disclosed. This rule states that only the least amount of information needed to answer the question at hand for a resident’s care can be disclosed. HIPAA protections of the individual’s personal health information are an important legal right for all residents. Normally, an individual must...
give written consent before information can be disclosed. Living in a group setting, like a long term care facility in close proximity to others, raises a number of concerns regarding HIPAA.

Health care facilities are required to follow HIPAA regulations that protect resident’s private health information when disclosing information with hospitals, insurance companies, dental offices, therapists, social workers, counselors, mental health agencies and other agencies and professionals involved in resident care.

Another important aspect of long-term care facilities is the need to manage risk exposure to disease and infection that can run rampant through the facility. This is especially dangerous with elderly residents who have medical issues, or residents with compromised immune systems.

The dilemma is how to share information protected by HIPAA for safety related purposes when the information is personal health information.

It is important to understand HIPAA terminology when answering questions like this one. According to the CDC[6]:

The term “patient” is also used here to encompass persons residing in nursing homes or other facilities, where they are often referred to as “residents.” The term, “source facility” or “source provider” refers to the health care facility or individual provider that first cared for the patient. Protected health information includes information that can be used to identify, a patient. “Treatment” is defined to include the provision, coordination, or management of “health care” and related services (45 CFR 164.501). “Health care” is defined to include preventive care (45 CFR 160.103). Treatment refers to activities undertaken on behalf of individual patients.

**Conclusion**

The CNA has a very important role as a direct-care provider for long term care residents.

One of the most important roles is to practice every day in a manner which best supports the rights of the resident. These rights cover every aspect of the CNA’s role. Beyond assisting with daily living skills, the CNA’s greater responsibility is enhancing and maintaining the resident’s skills for independence. In addition, the CNA must assist the resident in a manner that preserves the resident’s dignity and protects his or her privacy. The Florida Statutes and Federal Nursing Home Reform Act are the foundations of quality care delivered to the resident by the CNA[6]. The CNA should continue to attend training to enhance his or her skills, review facility policy, and study laws that detail resident rights. CNAs should conduct regular self- evaluations and reflect on methods that will enhance their practice to promote an environment that safeguards the rights of all residents.

**References**


If a patient is in a hospital with a communicable disease, the hospital will want to notify the long term care facility where the patient had been a resident. The hospital will want to learn more about the patient’s medical history in order to disclose important information for the safety of others. In some cases, the patient may be unwilling or unable to give consent to disclose their PHI. Consent is required under HIPAA.

The HIPPA Privacy Rule permits a covered health care provider to use or to disclose PHI for treatment purposes – without the authorization of the patient (45 CFR 164.506(c) and 164.508(a)(2)). If in this case, the HIPPA Privacy Rule permits the disclosure of the hospital patient’s PHI because the information is vital to treat or to prevent illness for the other residents in the nursing home or long-term care facility[6].

If a resident is discharged, transferred, or hospitalized later in another area, it is possible that the illness was not present while at the long-term care facility; therefore, staff may be unaware of the potential for transmission of the medical condition to other residents. Also, the HIPAA requirement to disclose only the “minimum necessary” information would not apply in the above scenario because PHI being disclosed is for the purpose of treatment, which is allowed under the HIPAA Privacy Rule[6].

This is only a small example of the complex – but important – HIPAA Privacy Rule.

The HIPPA Privacy Rule is a complex and lengthy document that requires separate, additional training to protect the resident’s right of privacy, as well as protects the CNA from committing a serious HIPAA violation.