

NURSING HOME RESIDENTS HAVE RIGHTS

by Gary N. Stern

Skilled nursing facilities are among the most regulated of public enterprises. It is, however, one thing to have governmental regulations concerning administration and quality of care, but it is quite another matter to see those regulations enforced.

A knowledgeable and diligent resident and his or her family can make a real difference in the actual quality of care the resident receives.

Following are 5 key facts that all consumers of nursing home services should know to increase the chances that the nursing home experience will be a positive one:

Complaints will be heard. Skilled nursing facilities are licensed and regulated by the state Department of Health Services, Health Facilities Division, and the federal Health Care Financing Administration. There is a health services department in each county, listed in the white pages of the telephone book. They are required to receive and investigate written complaints within 10 days. A Statement of Deficiency may be issued and the facility then has a limited time within which to offer a plan of correction to the health services department. The government can issue a monetary citation, and often the facility contests the citation. What the consumer must do is stay in close touch with the Department - often this will lead to real changes at the facility which very well may benefit the resident whose family member complained. In each county, there is also an Ombudsman service, which exists to act as a type of mediation service to resolve disputes between a resident, the family, and the facility. If there are problems, always start by contacting the Director of Nursing or the facility administrator. Many facilities have family councils and often problems can be resolved at family council meetings. In all cases, problems should be documented. The moment a problem arises, start keeping a diary. Put all complaints in writing. If a problem results in significant injury or death, nursing home residents and their families can bring civil actions under the recently strengthened Elder Abuse and Dependent Adult Civil Protection Act.

The care a resident is entitled to is not determined by the facility, but by established standards. State and federal regulations include standards for quality care. Ultimately the quality of care will be determined by the available equipment, the diligence and caring of the staff and the commitment of the administration and supervisors. Residents and their families are entitled to demand compliance with state and federal laws and regulations. Do not automatically defer to the nursing home on questions of health care quality. Do not be put off by statements like "We know best.". When a resident or family member notes significant omissions in rendering care that was



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ordered, they should speak up loud and clear. Experience teaches that problems with quality of care have less to do with treatment decisions than they do with failures to perform assigned tasks. It is directly stated in the law that nursing home residents should not experience a general decline in condition unless the very nature of the condition makes decline inevitable. Every nursing home resident must be provided with a "Plan of Care", and the resident and the family must be given the opportunity to shape and develop the patient care plan! The resident and the family should refer to the established care plan often to insure that it is followed. Nursing homes are required to assist residents, as needed, with activities of daily living. They are also required to keep residents active and bedbound patients must be regularly turned. Any bedsores must be aggressively treated. Rehabilitation services must be provided as needed. Regular meals must be provided, which are sensitive to a resident's dietary needs. Every one of these areas is governed by minimum standards set by law!

Residents have a general right to be free of restraints wherever possible. The fact is that in the majority of instances where elderly residents are restrained it is done to promote the convenience of the staff. Federal and state laws do not tolerate such grounds for restraints, nor are they allowed for purposes of discipline. "Restraints" include physical devices such as leg and arm restraints, vests, wheelchair safety bars and geri-chairs. In addition, drugs which control mood, mental status or behavior can constitute "chemical restraints." If restraints are needed to ensure physical safety, they may only be used upon written order of the resident's doctor and must only be used as part of a plan to lead to their eventual elimination or reduction in use. Also, the patient or patient's family must expressly consent to the use of restraints and has the right, after receiving all the facts, to refuse to consent to such restraints.

Nursing homes are required to safeguard a resident's property. A nursing home may not require a resident to deposit his or her personal funds with the home. On the other hand, nursing homes must be prepared to hold and safeguard the personal funds or property of a resident, upon request. If funds are held for the resident, they must be maintained in interest bearing accounts separate from the facility's operating account and careful accounting records must be maintained and be available for inspection by the resident or the family. A program must be in place to reduce loss and theft of resident's property and careful inventories are required of resident property at the time of admission. If a resident requests, the facility must provide a lock for a drawer or cabinet and the nursing home must be willing to work with each resident and family member to mark and safeguard personal items, especially glasses and dentures.

Transfers and discharge must follow established procedures - nursing homes and doctors do not have the sole authority to decide when and how a resident must leave a nursing home. Changes in payment source, Medi-Cal denial of



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payment for nursing home care, resident's demand for help are improper grounds for immediate discharge. A resident may not be abruptly uprooted from their residence merely for the nursing home's convenience or based upon financial considerations! An involuntary transfer can take place, but only for very limited reasons and only after full due process and sufficient notice has been afforded the resident and the family. Justifiable grounds include inability to care for the resident, health improvement which no longer justifies nursing home care, continued presence of the resident endangers the health or safety of other residents, failure to pay despite proper notices.

The resident and his or her family must be constantly vigilant in asserting what generally is the basic human right to dignity and self respect. If a procedure or action proposed to be taken or actually taken seems unfair, it probably is unfair, unjust and a violation of federal or state law.

Gary N. Stern is an attorney with a focus on probate, conservatorship and elder law litigation. Among his many accomplishments, Mr. Stern helped to form the Southern California Society of Elder Law Attorneys.

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