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Nursing Home Residents' Rights: Questions Answered

Q: Can a nursing home treat everyone the same regardless of the individual resident's needs and preferences?

A: No. A resident has the right, under federal law, to receive services "with reasonable accommodation of individual needs and preferences except where the health or safety of the individual or other residents would be endangered." This includes the right to choose activities, schedules and health care which are in line with the resident's interests, assessments and plan of care.

Q: What does "reasonable accommodation of individual needs and preferences" mean?

A: It should mean, for example, that different residents should have different schedules for eating and bathing, based on the individual resident's preferences. A person who has always stayed up late at night and slept late in the morning should not suddenly be forced to get up at 6 a.m. to be bathed and dressed because that is the time convenient to staff. A resident who hates crafts but loves gardening should not be forced to go to a craft activity but should have the opportunity to garden.

The need to accommodate individual needs and preferences can be more complicated when the health or safety of other residents is affected. For example, how does a facility accommodate the needs of a smoker-resident without endangering the health and safety of other residents? Usually, the needs of both groups can be accommodated. For example, the resident may not be allowed to smoke in his room or in certain other parts of the building, but the facility may designate a smoking area for residents who wish to smoke.

Q: If a resident has repeated falls or starts wandering into other residents' rooms or even out the door of the facility, can the facility use physical or

chemical restraints to prevent the resident from falling or wandering?

A: Only if restraints are necessary to ensure the physical safety of the resident or other residents, and, except in an emergency, only with a written order of a physician which states the duration and circumstances under which restraints may be used. Physical restraints include a vest or belt that ties the resident to a wheelchair or bed or a bed rail. A chemical restraint is a behavior-modifying or psychoactive medication. Federal law states that the resident has the right to be free from chemical or physical restraints which are not necessary to treat the resident's medical symptoms. Restraints should never be used for the convenience of staff or to discipline the resident, but only to treat the resident's medical symptoms. Physical restraints have actually been shown to cause harm to residents- for example, there may be a greater risk of falls because the resident has become more unsteady or tries to climb over a bed rail; risk of asphyxiation from entanglement in the restraint; pressure sores from not moving around; or depression or agitation from being tied to a chair. Other alternatives are often safer and more effective than restraints. For example, scheduling an aide to walk with a resident a couple times each day may reduce wandering. A resident who is experiencing falls may need a walker or staff support when walking.

Q: Does a resident give up any rights to privacy when he or she moves into a nursing home?

A: No. Federal law protects a resident's right to privacy in written and telephone communications, accommodations, medical treatment, visits, meetings of family and resident groups, and to confidentiality of personal and clinical records. A resident does not have the right to a private room, but a married couple has the right to share a room if they reside in the same facility and both agree.

Q: Can a nursing home limit visiting hours for a resident's family members?

A: No, unless the resident does not want the immediate family or other relatives to visit. Otherwise, federal law allows immediate access to the resident by an immediate family member or other relatives. Of course, the family should be sensitive to the needs of the resident's roommate and other residents and may need to visit somewhere other than the resident's room if the roommate is sleeping.

Q: What rights does a resident have with regard to access or visitation by people other than family members?

A: The resident's physician and certain agencies (including a representative of the Secretary of Health and Human Services, any representative of the State, the State **Long Term Care Ombudsman**, or someone from the agency for the protection and advocacy for the developmentally disabled or mentally ill) must have immediate access to the resident without limitation. Otherwise, the facility must permit immediate access, "subject to reasonable restrictions," and subject to the resident's right to deny or withdraw consent to others visiting. Anyone who provides health, social, legal or other services to the resident must be given reasonable access. Except for the doctor and protection agencies, other visitation is subject to the resident's right to deny or withdraw consent at any time.

Q: Residents or family members often express fear that if they complain, the nursing home will retaliate against them. Is this fear justified?

A: The fear is reasonable since, unfortunately, this does sometimes occur. However, retaliation is forbidden by federal law. A resident has the right to voice grievances about his care or treatment (or the facility's failure to provide proper care or treatment) without discrimination or reprisal and has the right to expect the facility to act promptly to resolve his grievances.

In addition, a resident and resident's family have the right to organize and to participate in resident or family councils, to have those groups meet in the facility, and to expect the facility to listen to and act upon the grievances and recommendations made by the residents and families about policies and operational decisions affecting resident care and life in the facility.

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