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## NURSING RESIDENT RIGHTS AND FAMILY RESPONSIBILITIES

By Dana E. Bookbinder, Esquire

The decision to place a loved one in a nursing facility is often fraught with apprehension and guilt. Families may feel as if they are abandoning their loved one, and their fears may be intensified by stories of neglect in such facilities from our past generation. Fortunately, in 1987, Congress passed the Nursing Home Reform Act as part of the Omnibus Budget Reconciliation Act of 1987, which sets standards for the dispensation of care and services to nursing home residents. The law applies to nursing homes (or portions of such homes) that participate in Medicare or Medicaid.

The Nursing Home Reform Act establishes three basic categories of facility responsibilities: 1) quality of life; 2) quality of care; and 3) record keeping. The Act mandates that nursing homes treat each resident “in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life for each resident.” Moreover, the facilities must make reasonable accommodations to meet their residents’ individual needs and preferences. Specifically, the Act requires that facilities must not allow their residents’ abilities to conduct the activities of daily living (eating, bathing, dressing, toileting, dressing, and ambulating) to decline. Residents must be able to attain or maintain their highest practicable level of physical, mental, or psychosocial well being, and they should not develop pressure sores or new disabilities unless such conditions are unavoidable.

Nursing facilities are required by the Act to periodically assess each resident’s needs. This includes a comprehensive assessment prepared within two weeks of admission and a long-range interdisciplinary care plan. The statute also requires the facility to maintain extensive records on the residents’ condition.

The Act specifies that each resident be given the right to:

- 1 -- Be free from interference, coercion, discrimination, and reprisal for exercising rights
- 2 – Access records
- 3 – Be fully informed in an understandable manner of his or her health status
- 4 – Be notified of these rights
- 5 – If Medicaid eligible, be informed in writing of the items and services included in the Medicaid State plan for which the resident may not be charged
- 6 – Protection of his or her personal funds
- 7 – Free choice in selecting a physician
- 8 – Privacy in accommodations, medical treatment, communications, personal care, and visits

Certainly, nursing home residents have the right to be free from any physical or chemical restraints that are not necessary to treat the resident's medical symptoms. They may only be used to ensure the resident's physical safety or the safety of other residents and only upon a physician's written order that specifies the duration and circumstances under which they may be used.

Residents may not be involuntarily transferred or discharged from their nursing facility unless

- 1 – the facility cannot meet the resident's needs
- 2—the resident no longer needs the facility's services
- 3 – the health or safety of the resident or other residents is jeopardized
- 4 – the resident refuses to pay for the facility
- 5 – the facility is shutting down

In cases of an involuntary transfer, the facility generally must give thirty days notice in writing documenting the reason for the transfer, notice of the opportunity to appeal the transfer; and contact information for the state long term care ombudsman for the institutionalized elderly. Facilities may not discharge a resident because he or she is waiting for a Medicaid application to be processed.

These safeguards have certainly brought nursing facilities a long way from the abusive conditions of the past; yet, merely relying on the current statutes to protect a relative's dignity and care is not enough. Families must still remain proactive in participating in their relative's care plan and in monitoring their relative's well being. Even though a nursing home resident is entitled to his medical records, under the Health Insurance Portability and Accountability Act of 1996, his relatives may not. Therefore, it is necessary to explicitly authorize relatives to access medical records. This authority is usually granted in a Health Care Power of Attorney, which can be part of a living will. Although residents are entitled to their financial independence, if a resident is incompetent, he must have a power of attorney naming another individual to access his accounts and pay bills. Remember, once an individual loses the mental capacity to such these basic estate-planning documents, a guardianship is the only option. Planning early and remaining vigilant still proves to be the most effective means to achieving positive results when a loved one enters a facility.



Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

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