

Nursing Home Care in California

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NURSING HOME CARE--CALIFORNIA STATUTORY SUMMARY

Overview

Most nursing home residents, their families and their friends know very little about nursing homes, what to expect and how to deal with having a loved one in a nursing home. Nursing homes are heavily regulated by California and federal statutes, regulations and court decisions. The materials that follow basically summarize some of the important statutes and regulations that have been enacted by the California Legislature to govern nursing home care.

Nursing home residents are a rapidly growing segment of the population that is significantly dependent on the help of others. Other elder care and housing options also are regulated, including residential care facilities, board and care, and continuing care facilities. Additionally, anyone providing care or other services, or upon whom an elder is dependent, typically has fiduciary and other duties of care and behavior that he or she must satisfy.

Providing care for nursing home residents can be difficult. In some circumstances staff employee turnover rates are high, and can on average approach almost 100% turnover each year. Some staff employees may not be highly educated or trained, and may have language difficulties that present communication barriers. Nevertheless, and regardless of the difficulties that caring for a nursing home resident may present, the nursing home must care for each resident to the greatest extent reasonably possible. As a general proposition, a nursing home resident does not have control over his or her limitations. Each nursing home resident is to some extent dependent upon the nursing home to provide for his or her care and safety, and, hopefully, to nurse that resident back to a level of health that allows the resident to leave the nursing home for a better living situation. If for physical or mental medical reasons it is reasonably anticipated that the resident will never be able to leave the nursing home, e.g., it is medically expected that the person will not improve, the nursing home must nevertheless provide care and services designed to maintain the resident's level of functioning and quality of life, and to prevent or delay deterioration in those areas.

Quality of Care & Treatment

- To the extent that a resident is dependent upon the nursing home for care, safety and quality of life, the nursing home is in fact or close to a fiduciary to the resident, and as such owes the resident one of the highest standards of treatment required by law in California. The nursing home must protect and promote the care and rights of each resident. There is a tendency to think of a nursing home as a "group" home--in fact, the California Legislature has made it clear that rights and entitlements are "individual" to each resident.
- Each resident must be treated with dignity and respect, and be free from physical, verbal, emotional, and mental mistreatment.
- The nursing home assists each resident to achieve the highest level of self-care and independence--when possible, the purpose of a nursing home is to nurse each resident back to health and independence.
- The nursing home provides care and services designed to attain or maintain the highest practical physical, mental and psychosocial well-being reasonably possible for the resident, and protect the resident from injury.
- The nursing home evaluates the condition and needs of each resident, and specifically designs and implements a care plan to meet those conditions and needs.
- The nursing home provides a specifically designed activity program for each resident to make life more meaningful, to stimulate and support physical and mental capabilities to the fullest extent, and to enable each resident to maintain the highest attainable social, physical and emotional functioning.
- The nursing home acts to eliminate language or communication barriers that its staff may have with residents.
- The nursing home needs to provide a sufficiently trained and adequately numbered staff of nurses and assistants, as required by the specific level of care needed by each individual resident.
- Residents and their families are free from retaliation, coercion, etc. of any kind, even if they complain or make suggestions about the conditions at the nursing home.
- Each resident is entitled to the least restrictive use of physical and medical restraints, and the use of restraints generally only may be allowed upon written order of a physician.
- The nursing home provides appropriate physician, medication, dental, and pharmaceutical assistance and services as required by the specific level of care needed by each resident.
- The nursing home provides dietetic (food) services of quality and quantity to meet each resident's individual needs.
- The nursing home will have appropriate sanitation and disinfectant procedures and practices.
- The nursing home will maintain for each resident timely and detailed resident care,

health, dietetic, fluid intake and outflow, medication, medical, and other records documentation.

-Copies of each resident's records are obtainable by appropriate people--in some circumstances the right to view the records is immediate, and in most other circumstances not greater than a 24-hour notice can be required.

-Medication are to be timely given, and documented.

-The nursing home will assist with the formulation and facilitation of confidential meetings of resident or family councils or groups, and notice of and facilities for those meetings will be provided.

-The nursing home will provide good personal hygiene to each resident, and keep each resident free from infections and offensive odors.

-The nursing home will provide care to prevent the occurrence of, and heal existing decubitus ulcers (bed or pressure sores), contractures and deformities, which should not occur unless the resident's clinical condition demonstrates that the occurrence was unavoidable.

-The nursing home will provide each resident with needed assistance when eating.

-The nursing home provides good nutrition and necessary fluids to each resident.

-The nursing home will provide each resident with an individual bowel and/or bladder management program.

-The nursing home provides each resident with privacy during treatments and personal care.

-The nursing home will inform each resident (and the resident's representative(s)) of the resident's health status, and allow the resident (and the resident's representative(s)) to participate in the design of the resident's individual plan of care, and to consent to or refuse any treatment, or procedure.

-Each resident is allowed to retain and use personal clothing, money, valuables, and other possessions, and the nursing home will safeguard those items.

-Each resident will be provided with reasonable access to a telephone and be able to make and receive confidential calls.

-A resident will not be provided with a catheter unless the resident's clinical condition demonstrates that the catheter is necessary. The nursing home will provide a resident who is incontinent of bladder with appropriate treatment to prevent urinary tract infections and to restore normal bladder functioning to the extent possible.

-A resident will not be provided with a naso-gastric tube unless the resident's clinical condition demonstrates that the use of such a tube is unavoidable. The nursing home will provide each resident who is fed by a naso-gastric or gastrostomy tube with treatment and services to prevent aspiration, pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers, and to restore normal eating skills and habits to the extent possible.

Access & Visitation

- A resident is allowed to associate privately with people of the resident's choice.
- In most circumstances the nursing home must allow immediate access to any resident by any representative of the State, the resident's physician, an ombudsman, the resident's immediate family or other relatives of the resident, and the resident's representative(s).
- In other circumstances the nursing home must allow immediate access to a resident, subject to reasonable restrictions.
- The nursing home will encourage and assist the resident to interact with other people and participate in activities to the extent that the resident is able to do so.

Resident Transfer & Discharge

- A resident can only be discharged for medical reasons, the resident's welfare or that of other residents, nonpayment for care, when the facility ceases to operate, or when the resident's health improves so that he or she no longer needs the nursing home's services.
- The resident's nursing home clinical records must document the reason for transfer or discharge. The nursing home will provide a written notice of the reasons for discharge or transfer, and an opportunity for the resident to appeal the discharge or transfer to the Department of Health Services.
- The nursing home will reserve a bed (bed hold) for a period of at least seven days when the resident is transferred to an acute care hospital, and the resident or the resident's representative exercises the bed hold option.

Suggestions Regarding How to Handle Nursing Home Issues & Problems

- You will notice that the below suggestions generally apply in most situations, not just with respect to nursing home care.
- Be polite, but strong in your dealings with the nursing home. You need to judge for yourself whether a situation is appropriate--you should trust your judgment and instincts. For example, you should feel comfortable questioning the nursing home if they say that they do not have the staff or the financial resources to do what is necessary to adequately care for the needs of a resident. As you know from the above discussion, a nursing home is there to provide for the needed level of care.
- Visit the nursing home as much as possible, unannounced, and at different times. Of course, this also is good for the resident who probably wants to see more of you anyway.
- Talk to the resident--spend time with him or her to see how things are going. If, for example, the resident has a complaint, request or suggestion, such as with respect to meals, socialization and activities, hygiene, room decoration, and other matters, see what the nursing home and you can do to accomplish the change.
- As in everyday life, make notes (at the home or immediately after when your memory is fresh), and document the events or things that you believe are important. Write letters, and take pictures if something is very important. Obviously, a nursing home may not like you taking pictures--if it is because of a problem or issue, I suggest that you do so only if

you believe it is a very important problem or issue. Of course you should take all the pictures that you might want for family and events and activities with your loved one. Note who (names), what, when, where, why, why not, and other important information. I suggest that you direct important issues to the senior management of the nursing home, such as the Administrator, Director of Nursing or Medical Director. Senior management, not staff, gets things done at nursing homes.

-When the nursing home proposes a (written) plan do deal with a health or care issue, or for the correction of a problem, document who will be responsible for monitoring and achieving the plan. It should be senior management. Follow-up to make sure the plan is achieved and that it is bringing about the desired results. Raise the subject again if the issue or problem remains.

-Seek assistance from the local county ombudsman. The ombudsman evaluates and attempts to resolve situations, disputes and grievances at nursing homes. The ombudsman is not legal counsel, and will not go to court. However, legal action is not necessary to resolve many nursing home problems.

-If a problem is serious, in addition to seeking private legal counsel, you can file a complaint with the Department of Health Services (nursing home licensing). The Department may be able to assist by investigating the nursing home, and may fine or penalize the nursing home for more serious violations. The Department will not go to court for the resident, and will not be the resident's legal advocate or representative. You can also contact the local district attorney. The district attorney may not be the resident's legal counsel, but may legally prosecute the nursing home on behalf of a resident. The district attorney generally will not recover monetary damages on behalf of a resident. In my experience, district attorney offices most often act when an issue of financial elder abuse is involved, and typically do not become involved in cases of suspected physical mistreatment or abuse in nursing homes. The district attorney can bring a criminal action against the nursing home. To convict, the district attorney must obtain a unanimous jury verdict, which can be difficult to obtain. Thus, the district attorney may be disinclined to take most nursing home cases.

I hope you found this discussion helpful.

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