

Nursing Home Residents Have Specific Rights

It is important to know that residents of nursing homes have specific rights provided by federal legislation passed over a quarter century ago. In fact, residents in a nursing home have the same rights as those who live in the larger community around them. The Nursing Home Reform Act ("NHRA") was written to specifically provide federal statutory protection to nursing home residents. It was passed in 1987 with bipartisan effort and signed into law by President Reagan, becoming effective the Fall of 1990.

The general philosophy of the NHRA is to "promote and protect the rights of each resident" of a facility. The law was established to ensure that nursing home residents receive the "highest practicable" mental, physical and psychosocial wellbeing possible. If facilities participate in Medicare and Medicaid programs, they must meet the federal requirements of the NHRA.

The Nursing Home Reform Act is very comprehensive and provides a number of very specific rights extended to nursing home residents. It requires each nursing home to care for its residents in a manner that enhances the quality of life of each resident, ensuring dignity, choice and self-determination. A resident should not decline in health or well-being as a result of the way a nursing home provides care.

Additionally, the NHRA puts into place basic rights to protect the resident from harm and provide the right to participate in decision-making and advocacy. A few of the most important basic rights are:

The right to freedom from abuse, mistreatment, and neglect;

The right to freedom from physical restraints;

The right to privacy;

The right to accommodation of medical, physical, psychological, and social needs;

The right to participate in the review of one's care plan, and to be fully informed in advance about any changes in care, treatment, or change of status in the facility; and

The right to voice grievances without discrimination or reprisal.

Section 483.10 of 42 C.F.R. provides the full list of residents' rights. The NHRA encourages a standard for quality of care and the provision of certain services to nursing home residents to also facilitate a quality of life.

The NHRA addresses more personal preference issues as well, including allowing residents to live in a homelike environment. Residents in nursing homes have the right to retain personal possessions and make their room as homelike as possible. While the size and configuration of the room as well as the potential health and safety of other residents may need to be considered and could result in limitations regarding their personal possessions, facilities cannot ban the placement of personal property in a resident's room. Additionally, nursing homes are not allowed to restrict visitors to specific visiting hours. In fact, residents are allowed to receive family visitors at any time.

Some nursing homes are still out of compliance with the regulations put into place by the NHRA even though it has been the law of the land for many years. Better nursing homes incorporate culture and processes that uphold the requirements of the law and encourage both quality of care and quality of life. Awareness of the rights of residents is key in effectuating change.

Long-term care ombudsmen are also a source for advocating for the enforcement of nursing home residents' rights. Each nursing home has an ombudsman who has been specially trained to listen to residents and help address their concerns. There are several ways to find out who the ombudsman is at your loved one's facility. You can ask a staff member at the facility or call 1-800-252-2412. You can also check out the LTC Ombudsman poster that is required to be hanging in each facility with the ombudsman's name and contact information.

You may email your questions to education@wrightabshire.com or visit our website at www.wrightabshire.com. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case, but should be considered general information.