

# Advocating for Justice: Understanding the Legal Rights of Nursing Home Residents

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## Ways to Identify Abuse and/or Neglect:

### Look -

- Is resident well cared for?
- Has resident lost weight?
- Does resident have bruises or bed sores?

### Listen –

- What is the resident saying? Complaints?
- Do you hear staff engaging in verbal abuse?
- Is the resident no longer interested in pursuing activities he/she used to participate in?

### Smell -

- Is there a urine odor in the resident's room?
- Are there foul smells in the resident's room?



## Statutes and Regulations Protecting Nursing Home Residents:

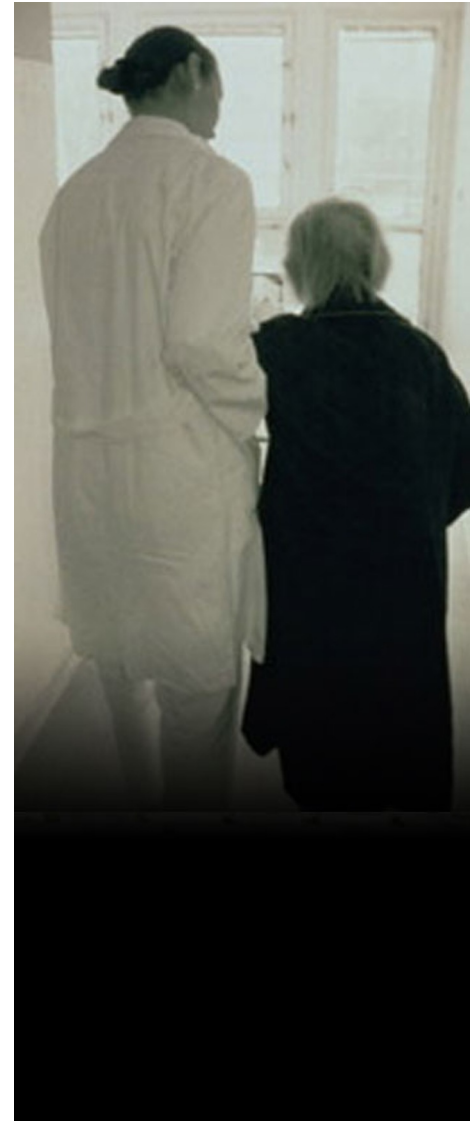
- Federal Law – **The Nursing Home Reform Act (OBRA 1987)** – (42 USC§1395i-3, 1396 r) – The basic objective is to ensure that residents of nursing homes receive quality care that will result in their achieving or maintaining their “highest practicable” physical, mental and psychosocial well-being. Established a survey/certification process with enforcement. (Updated 2016)
- Federal Regulations – **Department of Health and Human Services – 42 CFR Part 483** – Established specific standards and regulations governing nursing home care.

## Analysis:

- The standard of good and accepted nursing home care under Federal regulations involves a repetitive analysis:
  - Did the nursing home fulfill its duty to properly **assess** the resident and the resident's risks for certain injuries?
  - After assessment, was a proper **plan of care** (or care plan) designed?
  - Did the "care plan" call for appropriate **interventions** to avoid or lessen the specific risk of injury?
  - Was the "care plan" **actually implemented**?
  - Was the "care plan" appropriately **updated and kept current**?
    - After a passage of time; or
    - Due to intervening changes of condition; or
    - Due to incidents or injuries to the resident.

## Pressure Ulcers: What do we often hear?

- “We just found out that mom developed these terrible bed sores at the nursing home.”
- “We never saw the bed sores even though we visited often.”
- “The nurse at the hospital just told us about them.”
- Common misconception: “Pressure ulcers will develop because residents are in bed or sitting all day”.
- Nursing homes often claim: “Pressure ulcers are unavoidable and develop due to co-morbidities”, without addressing the care that was or wasn’t provided to the resident.



## Federal Regulations

### Treatment/Services to Prevent/Heal Pressure Ulcers [42 CFR 483.25(b)(1), F-686]

*Based on the comprehensive assessment of a resident, the facility must ensure that—*

- *A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and*
- *A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.*

## **Possible Pressure Ulcer Interventions\*:**

- *Pressure reducing/relieving devices such as special mattresses, chair cushions, heel booties, and elbow pads;*
- *Proper incontinence care;*
- *Proper nutrition and hydration;*
- *Turning and positioning every two (2) hours in bed and every one (1) hour in chair;*
- *Limiting time out of bed if resident has pressure ulcer(s);*
- *Avoid positioning on existing pressure ulcers;*
- *Proper treatments to heal wounds.*

*\*Each resident's particular condition/needs will determine which interventions are appropriate.*

## Falls: What do we often hear?

- “Dad fell multiple times at the nursing home and this latest fall resulted in a fracture to his hip.”
- “They called us three times in the past month about dad falling and they kept reminding him to use the call bell.”
- “Dad had unexplained bruises on his legs or face.”
- Common misconception: “Residents will fall because they are frail and have unsteady gait and nothing can be done to prevent falls”.





## Federal Regulations

Free of Accidents Hazards/Supervision/Devices [42  
CFR 483.25(d), F-689]

Accidents. *The facility must ensure that—*

*(1) The resident environment remains as free of accident hazards as is possible; and*

*(2) Each resident receives adequate supervision and assistance devices to prevent accidents.*

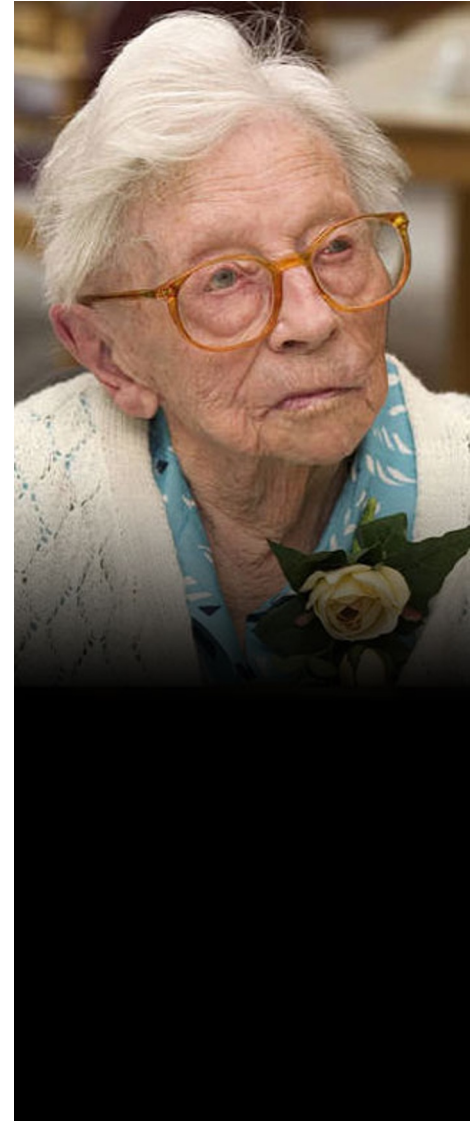
## **Possible Fall Interventions\*:**

- *Low Bed;*
- *Mats on the floor if resident non-ambulatory;*
- *Bed alarm/Chair alarm;*
- *Toileting schedule;*
- *Not leaving awake resident with cognitive issues in bed unattended;*
- *Non-skid socks;*
- *Moving resident's room closer to nurse's station.*

*\*Each resident's particular condition/needs will determine which interventions are appropriate.*

## Malnutrition/Dehydration: What do we hear?

- “My aunt lost 20 pounds and her weight loss is not being investigated.”
- “When I visit, I see my parent’s food try out of their reach and untouched.”
- “Staff is removing food tray and only half of the food has been eaten.”



## Federal Regulations

Maintain Nutrition Status Unless Unavoidable [42  
CFR 483.25(g), F-692]

*Based on a resident's comprehensive assessment, the facility must ensure that a resident—*

- (1) Maintains acceptable parameters of nutritional status, such as usual body weight or desirable body weight range and electrolyte balance, unless the resident's clinical condition demonstrates that this is not possible or resident preferences indicate otherwise;*
- (2) Is offered sufficient fluid intake to maintain proper hydration and health; and*
- (3) Is offered a therapeutic diet when there is a nutritional problem and the health care provider orders a therapeutic diet.*

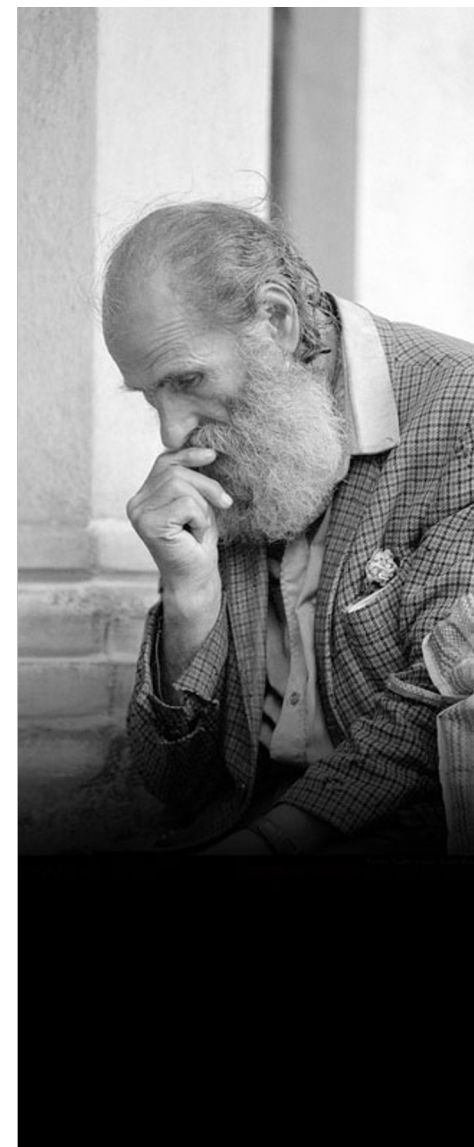
## **Possible Nutritional Interventions\*:**

- *Speech/Swallow Evaluation if resident not eating sufficient amount;*
- *Providing residents with foods based upon their preferences (likes/dislikes);*
- *Taking appropriate amount of time to feed resident if resident needs assistance;*
- *Performing three (3) day calorie count to determine resident's actual caloric and protein intake;*
- *Supplements if resident not receiving enough calories or protein;*
- *Psychological evaluation to determine if depression is cause;*
- *Artificial nutrition or hydration.*

*\*Each resident's particular condition/needs will determine which interventions are appropriate.*

## Ways to prevent Abuse and Neglect:

- Be involved in the resident's care; ask questions.
- Don't leave the room when the resident is being changed.
- Find out about the resident's diet, activities and medications.
- Ask to see the MARS (Medication Administration Records).
- Attend Care Plan Meetings if possible.
- Ask for meetings with the Director of Nursing if you don't feel the resident is being properly cared for.
- Ombudsman Program is a resource.
- Review <https://www.medicare.gov/care-compare/?redirect=true&providerType=NursingHome> and <https://nursinghome411.org/> to find out the history of complaints/inspections involving a facility and staffing indicators.



## How to Interpret Data on Medicare.gov Website:

- Staffing star rating is based on the hours worked by different types of staff that are reported by nursing homes, and are used to calculate a ratio of staffing hours per resident per day and the staffing turnover rate. **\*\*Adequate staffing is one of the most important factors for proper care.**
- The Health Inspection star rating is based on each nursing home's current health inspection and 2 prior inspections, as well as findings from the most recent 3 years of complaint inspections and 3 years of infection control inspections.
- Strive for a facility with five (5) stars in Staffing and Health Inspections.
- Quality star ratings are predominantly **self-reported** by facilities.
- The Overall rating is based on a nursing home's performance on 3 sources: Health Inspections, Staffing, and Quality Measures.

## **Additional Tips on Selecting a Nursing Home:**

- Go and see the facility, preferably unannounced.
- Ask to see the unit/floor where the resident's room will actually be, not just the common areas.
- When on the unit/floor observe how responsive the staff is to resident needs.
- Observe the cleanliness of the facility.



## For further information:

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Thank you for your time and attention!