

JUSTICE FOR ALL

NURSING HOME LAW – ONCE BORN, TWICE IN DIAPERS (CHAPTER 2 – THE NURSING HOME RESIDENTS’ BILL OF RIGHTS)

Nursing home law covers a broad array of topics. The last issue of *Justice for All* focused on how to select a nursing home and the different resources that are available to help you make this important decision. This issue of *Justice for All* assumes that you or a loved one has been (or is about to be) admitted to a nursing home. One key question that is not asked often enough is “what are my rights as a resident?” The following should help provide an answer.

THE “BILL OF RIGHTS”

To protect the elderly, or others who have entrusted their care with a nursing home, both federal and state laws have been enacted for that specific purpose. Commonly referred to as the “Nursing Home Residents’ Bill of Rights” or “Resident Rights,” these laws include the following:

The Right to Be Fully Informed. First and foremost, residents have the right to be *fully* informed of the policies of the nursing home and their personal rights as residents. Upon being admitted to the nursing home, residents *must* be informed, both orally and in writing, of these policies and their rights, in terms that they understand.

The Right to Be Informed of the Facility’s Services and Charges. Every resident has the right to be fully informed of the services provided by the nursing home and the charges for

those services. This includes charges for services *not* covered by the facility’s basic rate or under Medicare or Medicaid.

The Right to Physician Contact Information. Residents have the right to the name, specialty, and contact information of the physician responsible for their care. This information must be provided by the facility, even if it is not requested by the resident.

The Right to Choose a Physician. All residents have the right to choose their own physician and pharmacy. They do *not* have to use the nursing home’s physician or pharmacy.

The Right to Know about Medical Conditions. Residents have the right to be fully informed of all of their medical conditions, to include any changes in their care and treatment, unless their physician states, in writing, that it is not in the patient’s best interest to be told.

The Right to Participate in the Plan of Care. Every resident has the right to participate in the planning of their medical treatment. This includes the right to refuse treatment.

The Right to Examine Survey Results. All residents have the right to examine the results of the most recent review (survey) of the nursing home conducted by any state or federal governmental entity. The nursing home is required to provide a copy of the survey to any

resident who requests one. Nursing homes must undergo such an inspection approximately once a year.

The Right to Access Records. Residents have the right to access all their records. The facility must make all such documents available within 24 business hours for review (48 business hours if copies are requested) after receiving a request.

The Right to See Visitors. All residents have the following rights regarding visitation:

- Residents may receive any visitor of their choosing, refuse a visitor permission to enter their room, or end a visit at any time;
- Residents have the right to immediate access by family members and reasonable access to others;
- The facility's hours must be posted in a public place;
- Members of community organizations and legal services may enter any nursing home during visiting hours;
- Communications between residents and visitors are confidential;
- Visitors may talk to all residents and offer them personal, social, and legal services; and
- Visitors may help residents claim their rights and benefits through individual assistance, counseling, organizational activity, legal action, or other forms of representation.

The Right to Be Free from Abuse and Restraints. Residents have the right to be free from mental and physical abuse, and free from chemical and physical restraints, except as authorized, in writing, by a physician for a specified period of time, or when there is a threat of injury to the resident or to others.

The Right to Privacy, Dignity, and Respect. All residents have the right to be treated

with consideration, respect, and with full recognition of their dignity and individuality, including privacy in treatment and in the care for their personal needs.

The Right to Manage Personal Finances. Residents have the right to either manage their own funds or to authorize someone else to manage them. If residents authorize the nursing home to handle their funds, they have the right to:

- Know where their funds are and the account number;
- Receive a written accounting statement every 3 months;
- Receive a receipt for any funds spent; and
- Access their funds within 7 banking days.

The Right to Privacy and Confidentiality. All residents have the right to personal privacy and confidentiality of their personal and medical records. Except under limited circumstances, a resident may approve or refuse the release of such information to anyone outside of the facility.

The Right to Voice Grievances Without Retaliation. Residents have the right to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of their choice without fear of coercion, discrimination, or reprisal. The facility has a duty to encourage and assist residents in exercising this right.

The Right to Use Own Clothing and Possessions. Residents may keep and use their personal clothing and possessions, as space permits, unless to do so would infringe upon the rights of other patients, or constitute a hazard to safety.

The Right to Send and Receive Mail. All residents have the right to private written communications, to include sending and receiving mail that is unopened.

The Right to a Telephone. Residents have the right to have access to and use of a telephone on which calls can be made without being overheard.

The Right to Share a Room. Married residents have the right to share a room in the same facility.

The Right to Organize and Participate in Groups. All residents have the right to organize and participate in resident groups in the nursing home. Residents' families also have the right to meet and gather in the facility with the families of other residents.

The Right to Participate in Activities. Residents have the right to participate in social, religious, and community activities, so long as they do not interfere with the rights of other residents in the nursing home.

The Right to Remain in the Nursing Home. A resident may only be discharged or transferred for medical reasons, or for their own welfare or the welfare of other residents. Any resident must be provided with 30-days advance written notice of their transfer or discharge.

Additional Rights. The above are merely some of the rights that are guaranteed under federal and state law to residents of nursing homes. Depending upon the individual circumstances, residents likely have various other rights. Any resident of a nursing home is guaranteed these rights – they cannot be waived by merely signing a document or reaching some agreement to the contrary with the facility.

REMEDIES

It is the responsibility of any nursing home (without exception) to ensure that all residents are made aware of these rights *and* that none of these rights are violated. The failure to do either of these is quite often the first “red flag” that the facility is failing to provide proper care for its

residents. Based on my experience, a nursing home that does not comply with all of these basic, fundamental resident rights is significantly more likely to neglect those residents entrusted in its care.

If you believe that the rights of a family member or loved one are being denied or ignored by a nursing home, I would recommend that you take one or more of the following steps:

Talk to the Nursing Home Staff. The quickest way to try to resolve any problem may be to simply speak with the Administrator / Executive Director of the facility and make him/her aware of the problem. As noted above, it is the facility's responsibility to ensure that no resident's rights are violated.

Call the Long-Term Care Ombudsman. As addressed in the last issue of *Justice for All*, these individuals are employed by the Top of Alabama Regional Council of Governments (TARCOG) – a program established through the joint efforts of various city and county governments located within north Alabama. Contact 256-830-0818 or access their website at www.alarc.org/tarcog. This may result in an investigation being conducted by the Alabama Department of Public Health. You should ask to speak with either Reid Webster or Bettye Dixie.

File a Complaint with the Alabama Department of Public Health. The Alabama Department of Public Health is the state agency responsible for ensuring that nursing homes located in our state operate in compliance with all applicable federal and state laws. They can be reached at 1-800-356-9596 or by e-mail at complaintunit@adph.state.al.us.

Contact an Attorney. An experienced attorney who is familiar with nursing home law should be able to provide you with assistance and answer your questions regarding resident rights and the appropriate course of action to take. If you believe that any of these rights have been (or

may be) violated, do not hesitate to contact us for guidance.

CONCLUSION

The rights of those who are residents in a nursing home are governed by both federal and state law. Any licensed nursing home operating in Alabama *must* take all reasonable measures to ensure that residents are made aware of these rights and that they are not violated. A nursing home that fails to comply with these obligations is much more likely to cause harm, or even death, to those who they are responsible for protecting and providing the necessary care.

PRIOR ISSUES OF JUSTICE FOR ALL

Our first issue of *Justice for All* was sent out in August 2008. Some of you who are receiving this issue were not on our mailing list almost 2 years ago. Previous topics include:

- Arbitration,
- Liquor Liability,
- Car Insurance, and
- Selecting a Nursing Home.

If you would like a copy of any prior issues of *Justice for All*, please feel free to contact Marlene Koch at mlk@ryderlaw.com or 881-3881.

We currently are in the process of having our website redesigned. Once it is completed, all prior issues of *Justice for All* should be available by accessing our website at www.ryderlaw.com.

IN MEMORIUM

On October 27th of last year, Don Spurrier, one of the oldest practicing attorneys in Huntsville, passed away. Don (most people referred to him as “Spurrier”) was one of the finest trial attorneys ever to set foot in a courtroom in Alabama. I had various cases against Don and am not alone when I say that he was a professional in every respect. Both a mentor and a friend, Don was always generous in sharing his time and advice. Our profession would be much more highly thought of if we each had a little more “Spurrier” in us. God bless him. He is, and will continue to be, missed.

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