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A NURSING HOME RESIDENT'S RIGHTS

Ensuring You Get the Care You Deserve



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Mackay Dressler Law has been providing quality estate planning for our clients since 2005. Bridget Mackay opened her original practice in 2005 and Miranda Dressler joined the practice in 2017. Bridget and Miranda are both members of the Sonoma County Bar Association, Marin County Bar Association, and our firm is the only American Academy of Estate Planning Attorneys firm in the Sonoma-Marin area. Together, they have over 30 years of legal experience. Our firm exclusively practices in Estate Planning, Trust, and Probate Administration.



Everyone deserves to be understood, to feel comfort and find peace of mind. Caring about you and your family is at the heart of everything we do. We believe your family deserves our singular attention to their needs by providing legal services with the highest integrity and quality that address your unique wealth and succession strategies. Life is a series of transitions, some we plan for and some we don't. Our clients are prepared for all of life's transitions and are never alone when dealing with the toughest times life has to offer. We believe every family deserves a smooth, supported transition, whatever form it takes.

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A NURSING HOME RESIDENT'S RIGHTS: ENSURING YOU GET THE CARE YOU DESERVE

The transition to life in a nursing home can be a difficult one, both for the nursing home resident and for his or her family members. It means leaving behind the familiar comforts of home and adjusting to life in a new and unfamiliar environment. It requires a level of involvement and communication with medical professionals and nursing home staff members and administrators that may seem daunting, at least initially.

It is hard to know what to expect, and many residents – not to mention their loved ones – are concerned about the level of care they will receive in a nursing home.

What you might not realize is that entering a nursing home does not mean leaving behind the constitutional and civil rights you enjoyed when you lived independently. In fact, nursing home residents have additional, clearly defined rights.

Congress recognized the vulnerability experienced by nursing home residents when it passed the federal Nursing Home Reform Act. This law grants specific rights to nursing home residents and imposes certain obligations on the facilities in which they reside.

The purpose of the Nursing Home Reform Act is to ensure that nursing home residents receive care that helps them “attain or maintain the highest practicable physical, mental, and psychosocial well-being.” In addition to these federal protections, most states have enacted their own laws and regulations designed to safeguard the rights of nursing home residents.

The result is nursing home residents are protected by a “Nursing Home Resident’s Bill of Rights.” Under the federal Nursing Home Reform Act, you are entitled to the protections discussed below.

THE RIGHT TO BE INFORMED

When you are admitted to a nursing home, the facility is responsible for informing you, both orally and in writing, of your legal rights. It is also responsible for making sure you are informed about a number of other things, including:

- The services offered by the nursing home, covering two categories: those included in the nursing home’s daily rate and those that can be purchased for an additional fee. The fees for all such services must be specified. The facility must keep you informed of changes in the services it offers, as well as changes in the fees for those services, throughout your stay.
- The address and telephone number of your state’s Ombudsman service, as well as your state’s survey agency.

- The nursing home must also give you access to the facility's state inspection reports, as well as any plan of correction the facility is following.
- A summary of the rules and regulations of the facility, as well as a summary of the facility's transfer procedures.
- The name and address of each of the facility's owners.
- A summary of state laws concerning advance directives (including living Wills and durable powers of attorney for health care) and a description of the facility's policy for following residents' directives.

During your stay, the nursing home must inform you as well as your doctor, legal representative or other interested family member any time a physician wants to make a change to your treatment plan, as well as any time you experience a deterioration in health. The facility is also required to give you advance notice if your roommate is to be changed, or if you are to be moved to a different room.

THE RIGHT TO PARTICIPATE IN YOUR OWN CARE

Entering a nursing home does not take away your right to make basic decisions about your medical treatment or your daily care. Like any other adult, you have the right to choose a personal physician and to be fully informed in advance about your care and treatment. When your doctor, nursing home staff members, and family members hold care plan meetings, you have the right to be present and participate. If any changes are to be made to your care or treatment that may affect your well-being, you have the right to be informed of these changes in advance.

Just as you did before you entered the nursing home, you have the right to refuse medication and treatment and to refuse chemical and physical restraints.

If you have executed a Durable Power of Attorney for Healthcare and you are unable to make decisions, then your agent has the right to make these decisions on your behalf. In the case of a resident who has been determined incompetent, then the resident's court-appointed guardian steps into the resident's shoes for purposes of exercising the resident's right to free choice, as well as the resident's other legal rights.

THE RIGHT TO MANAGE YOUR OWN MONEY

You have the right to manage your own money, and as a nursing home resident, you have options for doing so.

You may keep financial accounts outside the facility, and the nursing home must allow you to access those accounts.

You may also choose to allow the nursing home to hold your personal funds. If you make this choice, the nursing home must get your written permission to hold the money and it is obligated

to safeguard your money. This means that your money must be kept in an account where it is segregated from other residents' funds, you have the right to request an accounting of your funds from the facility, and the facility must follow a number of other legal requirements with regard to your money.

Under no circumstances is a nursing home allowed to require you to deposit your personal funds with the facility.

THE RIGHT TO BE FREE FROM RESTRAINTS

A nursing home cannot use physical restraints (like side rails, vests, or seat belts) or chemical restraints (like sedatives or antipsychotic drugs) to discipline you or to make staff members' jobs more convenient.

Such restraints are not allowed, unless your physician authorizes them in writing. Even then, they are only permissible if they are to ensure the physical safety or the safety of another resident (or in the case of certain drugs, to treat specific medical symptoms) and if they are to be used for a limited, specified period of time.

THE RIGHT TO PRIVACY

You are entitled to privacy in all aspects of your care. This means that when you have a visitor of any kind — including a family member, a friend, a doctor, a lawyer, a patient advocate, or any other person — you have the right to meet with that visitor in private.

The nursing home cannot control who does and does not visit you. Only you have the right to remove permission for someone to visit you. If you are in a shared room, your visit may need to take place in a separate meeting room provided by the facility so that you and your guests do not disturb your roommate.

You also have the right to make telephone calls in private and to send and receive mail without interference from nursing home staff. All your mail should arrive in your hands unopened by nursing home staff.

The right to privacy extends to spouses who both reside in the same nursing home. When your spouse is also a nursing home resident, you have the right to share a room.

If it is physically possible, you have the right to bathe, dress, use the toilet, and perform all other necessary functions in private. If you need help with some or all of these tasks, then the only people who may be present are those staff members necessary to assist you.

THE RIGHT TO CONFIDENTIALITY

A nursing home is to keep all of its residents' information – including medical, financial, personal, and social – in strictest confidence. Unless you give your permission, this information should not be shared or discussed with other individuals, organizations, or agencies.

You also have the right to access and copy your records. The facility must give you access to your records within one business day of making a request, and must provide copies at a reasonable cost. In addition, the nursing home is responsible for explaining how to read the records or how to grant the authority to request the records to someone else.

THE RIGHT TO DIGNITY

You are an adult, and all employees of the nursing home should treat you like an adult. You have the right to dignity, and should expect to be treated with respect, courtesy and professionalism.

PERSONAL PROPERTY RIGHTS

You are entitled to bring your personal possessions to the facility, and the nursing home is required to have a policy in place for safeguarding its residents' belongings. If your belongings are lost or destroyed due to the nursing home's actions, the facility may be responsible for replacing your property.

THE RIGHT TO HAVE YOUR NEEDS ACCOMMODATED

Nursing home residents are individuals, and each individual has his or her own needs and preferences. The facility must respect and accommodate your reasonable needs and preferences, unless doing so would endanger your health or safety, or that of another resident of the nursing home.

This means that you are to be permitted to wake up and go to bed when you choose, decide what clothes you will wear, when you will use the bathroom, what activities you will participate in, and how you will spend any free time during the day. It also means that the nursing home must offer a choice of foods at mealtimes and allow you access to a variety of snacks outside of scheduled mealtimes.

In short, it is your needs and preferences, rather than the convenience of nursing home staff that should be the determining factor in the rhythm and quality of your life.

THE RIGHT TO VOICE GRIEVANCES

You have the right to voice complaints about the level of care and treatment furnished by the facility. You also have the right to voice complaints about the behavior of other nursing home residents.

The nursing home is responsible for having a system in place to ensure that these grievances are addressed promptly, and that steps are taken to resolve complaints. The nursing home is also

responsible for making sure that you do not face discrimination or retaliation for making a complaint.

THE RIGHT TO PARTICIPATE IN RESIDENT AND FAMILY GROUPS

Residents have the right to form their own groups within the nursing homes, and residents' families have the right to meet together in the facility. These meetings are covered by the residents' right to privacy, so residents are entitled to hold meetings without staff present.

These groups can be an effective way for family members to keep tabs on the day-to-day standard of care in the nursing home, and to identify and resolve potential problems before they become harmful to residents.

Not only do you have the right to participate in resident groups, you also have the right to participate in social, religious, and community activities, as long as these activities do not interfere with the rights of other residents in the facility.

THE RIGHT TO LEAVE

Nursing home residents are not prisoners. As long as you are medically able to do so, you have the right to leave the nursing home to attend church, civic, or social functions or to engage in other outings. You should check the terms of any insurance or benefits policy covering the cost of your nursing home stay. While the law protects your right to leave a nursing home, doing so may interrupt your benefits.

RIGHTS DURING TRANSFER AND DISCHARGE

Under most circumstances, you have the right to remain in the nursing home. A nursing home can only discharge you or transfer you to a different facility for certain, specific reasons.

A nursing home must not transfer or discharge you unless:

- The transfer or discharge is necessary for your welfare *and* the facility is not capable of meeting your needs;
- Your health has improved to the point that you no longer need the nursing home's services, making the transfer or discharge appropriate;
- Allowing you to remain in the nursing home would endanger the health or safety of other individuals in the facility;
- You have been given reasonable notice but have failed to pay for your stay at the nursing home; or
- The nursing home closes down.

If the nursing home discharges or transfers you under one of these circumstances, it must document the reason in your clinical file. If you are being discharged or transferred for health reasons, this must be documented by your doctor.

With the exception of certain emergency situations, you are generally entitled to 30 days' advance notice before a nursing home discharges or transfers you. The facility is also required to explain the reason for the transfer and explain that you have the right to appeal the nursing home's decision.

THE RIGHT TO FREEDOM FROM ABUSE AND NEGLECT

You have the right to be free from physical, sexual, verbal, and mental abuse. This includes corporal punishment, involuntary seclusion, and all forms of neglect. The failure of a nursing home to provide you with necessary services, including services specified in your care plan, is neglect and is a violation of your rights under federal law.

ENFORCING YOUR RIGHTS

Now that you understand your rights as a nursing home resident, how do you make sure these rights are protected and enforced? If you are the family member of a nursing home resident, how can you help protect your loved one during their nursing home stay?

There are a number of steps you can take, starting with your search for the right nursing home:

DO YOUR HOMEWORK

If you have not yet chosen a nursing home, be sure to carefully investigate each facility you are considering.

Look at the state inspection reports for the nursing home, and read any incident reports on file for the facility.

Talk to the nursing home administrator as well as members of the facility's staff. Find out what the staff-to-resident ratio is, and ask what types of training staff members have.

Visit the facility, preferably more than once and at different times of the day. Try to make at least one of your visits later in the day. Nursing homes tend to be better staffed earlier in the day, so visiting at dinnertime or later in the evening may give you a more realistic idea of the staff-to-resident ratio.

During your visit, look beyond the surface. It is unlikely that you'll see noticeable signs of trouble, such as unsanitary conditions or residents who are obviously being mistreated (if you do see these trouble signs, cross the facility off your list and move on to your next option). Instead, pay

attention to how the staff members interact with the residents. Are they generally patient, kind, and courteous or do they seem overwhelmed, hurried, and frustrated?

Pay attention to the residents, too. Do they seem generally happy, well cared for, and content? Or do they appear anxious, gloomy, or uneasy?

Arrange to talk to the family members of several residents. Ask them about their experiences, and about the experiences of other residents they know. Family members can be a valuable source of information about how a facility truly functions.

As you visit the nursing home, take in as much as you can. Rely on all your senses, and trust your instincts to let you know whether the facility seems like a pleasant place to live, or whether you should continue your search.

BE PREPARED

After your loved one moves into a nursing home, there are a number of steps you can take to help protect him or her.

Stay Informed

Maintain a close relationship with your loved one. Visit often, and encourage family members and friends to do the same. Encourage your loved one to talk about his or her experiences in the nursing home, whether good or bad. Make sure he or she knows you are available to listen and that you won't dismiss his or her complaints or concerns. This is especially important if your loved one has a mental illness. Nursing home residents with dementia, other forms of mental illness, or who are otherwise seen as incompetent can be particularly vulnerable to abuse and neglect.

Work to establish a positive, professional relationship with the nursing home staff. These are the people who provide hands-on, around-the-clock care for your loved one. They can be an excellent source of information about your loved one's medical, physical, social, and emotional condition. They can also be a valuable source of information about problems within the nursing home, and about potential abuse.

Stay in touch with other residents and their family members. Attend meetings of the facility's Resident and Family Council. Becoming part of a network of residents and family members links you to a support system of people who are encountering similar life changes and challenges. It can provide you early warnings of potential problems, as well as a support system for addressing those problems.

Stay Involved

Be an active participant in your loved one's care planning. You and your loved one have the right to attend monthly care planning meetings, and you should do so. At the meetings, speak up about any concerns or special needs. Ask many questions and don't be afraid to volunteer any ideas

you have for meeting your loved one's needs. Make sure you understand the care plan to be put in place, and that you agree with it. Get a copy of the plan and follow up to make sure it is being implemented.

If your loved one has given you permission to do so, take the time to periodically review his or her clinical charts as well as his or her financial records. The first few times you look at a clinical chart, you might need help interpreting it. Don't be afraid to ask for help and to ask specific questions about language or notations you don't understand.

Maintaining an active, visible presence in your loved one's life lets nursing home staff know that your loved one has family members who are concerned and who are aware of what is happening at the facility.

Know What Resources are Available

You will want to take steps to educate yourself about the support and advocacy resources available to you and your loved one. As mentioned above, the Resident and Family Council is an excellent resource within the nursing home.

Outside the nursing home, familiarize yourself with the services provided by the Long Term Care Ombudsman. Each state has an ombudsman's office, and it can be a wealth of information and support for nursing home residents and their families. If you ever have a nursing home complaint, your state ombudsman can be the key to reaching a resolution.

Do not neglect the internet as a wealth of information and support. For example, the AARP maintains a webpage and forums at <http://www.aarp.org/caregiving/> devoted to providing information and support for caregivers.

As you learn about the resources available to you, share this information with your loved one. Knowledge is power. The more informed your loved one is about his or her rights, resources, and options, the less likely he or she is to be taken advantage of.

KNOW THE SIGNS OF ABUSE AND NEGLECT

Another aspect of protecting your loved one is to learn the signs of elder abuse and neglect, and be prepared to advocate for your loved one if the need arises.

Signs of Physical Abuse

The signs of physical abuse are often obvious and, therefore, this tends to be the easiest type of abuse to identify.

When you visit your loved one, watch for bruising, cuts, scrapes or other wounds – including marks that indicate the use of physical restraints. Also pay attention to how your loved one moves. Does he or she have new and unexplained stiffness or trouble moving around, standing,

or sitting? If so, investigate further. This can be a sign of a broken bone or of internal injuries caused by abuse.

Don't forget to talk to your loved one and ask how he or she is being treated. Some nursing home residents are hesitant to report abuse, either because of embarrassment or because they've been intimidated into silence. However, keeping the lines of communication open can help you to identify and resolve a harmful situation.

Signs of Neglect

Nursing homes are businesses, and one way that some facilities attempt to maximize profits is to cut back on staff members. The result can be a nursing home staffed with nurse aides who work long shifts for low pay, and who are expected to care for an unreasonably high number of residents. This scenario can lead to neglect of nursing home residents.

The signs of neglect are often more subtle than the signs of abuse, making neglect harder to detect. They can include:

- A lack of hygiene because the resident does not have help bathing, using the toilet, changing soiled clothes, or performing the other activities of daily living.
- Falls because staff members have failed to guard and assist a resident who is frail or has difficulty walking independently.
- Bedsores resulting from staff members failing to turn a bedridden resident frequently enough.
- Weight loss or dehydration because a resident does not receive adequate food or water.
- Depression or emotional withdrawal resulting from isolation or lack of attention to a resident's needs.

If You Suspect a Problem

In an Emergency

The first thing you should do if you believe your loved one is being abused in any way is to take steps to protect him or her. Talk to the director of nursing or the administrator of the facility, have new staff members assigned to your loved one, or make sure any other required actions are taken. If necessary, get outside medical attention.

In addition to taking immediate steps to protect your loved one, you should also report the abuse to the Elder Abuse Hotline at **1-833-401-0832**.

In a Less Urgent Situation

Problems that do not rise to the level of an emergency are often best resolved by trying the least formal approach first. Here are some tips for resolving these kinds of concerns:

Keep Good Records

If you have any concerns about your loved one's care or treatment, document them. Keep a journal, and write down your observations about your loved one, about the nursing home and its policies, and about the day-to-day operations of the facility.

If anyone at the facility makes a statement you think is important, make a note of it, including the date and the time the statement was made. Take photographs and make detailed notes about any patterns you notice.

Keeping good records allows you to support and document any incident report or claim you might need to file.

Have a Talk

Approach the staff member who seems to be the source of the problem, and calmly explain your specific concerns.

If you are not satisfied with the response you receive, talk to the staff member's supervisor, the director of nursing, or the nursing home administrator. Again, calmly explain your specific concerns and attempt to reach a resolution. If staff members or administrators tell you your concerns are not valid, or that your loved one does not have the right to have the complaint resolved, don't assume they're correct. Nursing home administrators are not lawyers. If they tell you the law is on the nursing home's side, demand documentation, and then do your own research.

File a Complaint

If your concerns cannot be resolved through speaking with staff members or administrators, take the next step and file a complaint with the nursing home's rights advisor. He or she is required to respond to your complaint within 30 days after you file it.

Talk to a Long-Term Care Ombudsman

If you are not satisfied with your response from the nursing home's rights advisor, seek outside help. Each state has a Long-Term Care Ombudsman's office, which investigates nursing home residents' complaints and helps to resolve them. Contact your state's office, file a complaint, and allow the ombudsman's office to advocate on behalf of your loved one.

Speak with an Attorney

If the Long-Term Care Ombudsman is unable to help you reach a resolution, or if you believe the nursing home has violated the law in its treatment of your loved one, talk to an estate planning

and elder law attorney. He or she can investigate your loved one's case and advise you as to whether you have a potential legal claim against the nursing home.

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We

recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.



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