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**Elder Law, Asset and
Estate Protection Planning,
Medicare and Medicaid Assistance,
Veteran Benefit Assistance Lawyers**

A Consumer's Guide To Understanding And Protecting Nursing Home Residents' Rights



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Fredrick P. Niemann, Esq.

**Is the Diagnosis Alzheimer's,
Stroke, Parkinson's, Dementia
or other life altering condition?
Protect your assets and income
today before it's too late.**

Message from Fredrick P. Niemann, Esq.

The decision to move a family member or a loved one into a nursing home is one of the most difficult decisions you can make.

Perhaps the move is being made because the family member can no longer care for him or herself...or perhaps the person has a progressive disease like Alzheimer's...or has had a stroke or other life altering condition.

No matter the reason, those involved are almost always under great stress. At times like these, it's important that you pause, take a deep breath and understand **there are things you can do**. Good information is available and you can make the right choices for you and your loved one.

I have prepared an information booklet filled with lots of advice, helpful information and answers to the most frequently asked questions that I deal with on a daily basis, as an Elder Law Attorney.

Your inquiries are always welcome at Hanlon Niemann, a client friendly office with kind, patient and compassionate professionals. Let our experience guide and protect you.

Don't wait until your situation becomes overwhelming. We are here for all of your elder law planning needs.

Call me personally,

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A Consumer's Guide to Understanding and Protecting Nursing Home Rights

Residents of nursing homes enjoy the same constitutional and civil rights they had when they were living in their own homes. In fact, residents are protected by state and federal laws which recognize their vulnerability. Residents and family members should become familiar with these laws to make certain their rights are protected.

The **Nursing Home Reform Law** was enacted to ensure that nursing home residents “attain or maintain the highest practicable physical, mental and psychosocial well-being.” In addition to this federal act, most states have specifically enacted their own set of regulations governing nursing home residents’ right. These legal protections are often referred to as the residents’ “Bill of Rights”. New Jersey has such laws to protect residents of nursing homes and separate laws for assisted living residences.

Resident's Rights

It makes no difference if the costs of your care are paid for by Medicaid or privately; the following rights apply to all residents of nursing homes:

The Right to Make Your Own Decisions

Nursing home residents have the right to exercise their rights as a citizen without interference from the nursing home. Nursing home residents have the right to make their own financial and medical decisions – including the right to check out of the nursing home unless the resident has chosen, in advance, who will assert their rights if they are no longer able to do so (financial and/or health care power of attorney) or the court has appointed someone to make those decisions (guardianship/conservatorship).

The Right to be Fully Informed

Upon admission, residents are entitled to information about their rights as a resident of

the facility. The resident must be informed orally and in writing of his/her rights. Residents have the right to be informed of the services offered and charges for those services (including those not covered by the facility's daily rate); residents are entitled to know the facility's regulations, the results of state inspections, the procedures for transfer, and the names and addresses of every owner of the home.

Residents have the right to be informed of their medical condition and treatment plan. Residents have the right to receive notice of changes concerning their treatment, including but not limited to, altering medications, a change in physical or mental status, room or roommate changes and a transfer or discharge from the nursing home. In addition, if a nursing home changes their charges or service, they are required to notify the resident, in writing, at least 30 days before the change goes into effect.

The Right to Participate in Health Care Planning

Residents have the right to fully participate in their health care planning - including the right to refuse services and the right to refuse medical treatment. Residents have the right to participate in their own care plan meetings (and invite anyone they wish to attend those meetings, as well). Residents must be able to choose their own doctor and choose a pharmacy (so long as the pharmacy's unit dose system is the same as the nursing home). Unless the attending physician or interdisciplinary team has determined it unsafe, each resident has the right to self-administer their medications.

Residents have the right to inspect their charts and may, upon written request, obtain copies of all of their own records. Residents have the right to information regarding how to examine those records, as well.

The Right to be Treated With Dignity

One of the most fundamental rights, and also one of the most overlooked, is the legal right residents have to be treated with dignity and respect. So long as it is not adverse to their care plan, residents have the right to make their own schedule and choose which activities they attend. In making their own schedule, residents have the right to decide what time they wake up in the morning, what time they eat their meals and what time they go to bed at night.

The Right to Confidentiality and Privacy

All information regarding personal, financial and medical and social affairs is privileged and is to be kept confidential. The nursing home may not show the resident's chart to other people or agencies without permission, nor may they discuss treatment options with others unless they have permission.

While living in the nursing home, residents have the right to privacy in all aspects of life. They have the right to meet privately with any visitors (family, friends, physician, ombudsman, legal representative or anyone else), to send and receive private and unopened mail, and to make private telephone calls. They also have the right to perform all bodily functions (bathing, toileting, etc.) in private. If assistance is required, only those staff members needed to help may be present.

The Right to Voice Grievances

Every nursing home must have a system to address concerns relating to residents' treatment or care. This includes grievances residents have concerning the behavior of other residents. Residents have the right to prompt efforts for resolution by the nursing home. The staff and administration are prohibited by law from retaliation for complaints.

The nursing home must also post information relating to pertinent government and advocacy organizations (such as the number and address for the Long Term Care Ombudsman). Residents, of course, maintain the right to report crimes to the local police and/or district attorney.

The Right to Manage Finances

Residents have the right to manage their own financial affairs. Residents cannot be required to deposit personal funds with the nursing home. If the resident chooses to deposit their funds with the nursing home, the facility must manage the resident's funds properly. Residents have the right to quarterly written transactions for their account.

The Right to Keep Personal Property and Have it Secured

All nursing homes are required to have a written policy concerning protection of residents' personal property. If a resident's property is

lost, and the nursing home is responsible for the loss, the resident may have a claim against the nursing home to replace the property.

The Right to be Free From Abuse and Neglect

Residents have the right to be free from physical, sexual, verbal punishment and involuntary seclusion. Residents have the right to be free from neglect. Any failure by the nursing home to provide the resident with necessary services, including those identified in the resident's care plan constitutes neglect and is a violation of residents' rights.

The Right to be Free From Physical and Chemical Restraints

Residents have the right to be free from unnecessary physical restraints (vest restraints, hand mitts, four point restraints and any and all other physical restraints) and unnecessary chemical restraints (antipsychotic

drugs, sedatives and any and all other chemical restraints).

Restraints are to be used ONLY as treatment for medical symptoms and MUST be prescribed by a physician. Chemical or physical restraints are NOT to be used for disciplinary measures, nor may they be used for staff convenience.

The Right Against Unlawful Discharge or Transfer and the Right to Re-Admission

Due to the seriousness of discharging a resident, (the transfer trauma suffered by the resident, the stress undergone by the family members locating a new facility, etc.), the regulations concerning unlawful discharge are very specific and must be followed precisely. A nursing facility may only discharge a resident for the following reasons:

1. They can no longer meet the resident's medical needs as documented in writing by the resident's own physician;

2. Non-payment after reasonable notice;
or
3. The resident is a danger to self or others, as documented by the physician (if relating to a health issues) or as documented by the nursing home (if relating to patients' safety).

Unless it is an emergency situation, there must be written notice 30 days prior to the date of discharge. The "discharge notice" must state the reason for the discharge and the location to which the resident is to be transferred or discharged. The notice must also provide information regarding the right to appeal the discharge.

If a resident is transferred or discharged, the nursing home must develop a discharge plan which provides comprehensive information allowing for continuing of care in the resident's new home.

If a resident requires intermittent hospitalization or therapy outside of the nursing home, for

whatever reason, the nursing home must provide the resident, in writing, of their bed hold policy. Specifically, the nursing home must inform the resident how long it will hold their bed and how much the bed hold will cost.

Recognizing Abuse and/or Rights Violations

There are several different types of abuse, some of which are more obvious than others. The following are the types of abuse or violation of rights that often occur. We've also included the signs to look for:

Physical Abuse. This type of abuse is perhaps the most obvious and usually easier to detect than other forms of abuse:

- Assault – hitting, shaking, pushing, shoving
- Physically confining/restraining – forcibly confining or restraining into a room, a chair, a bed
- Forcibly feeding
- Forcibly medicating

- Over medicating
- Sexually molesting
- Prolonged intervals between the injury and the treatment
- Frequent changes in doctors

What to look for:

- Cuts, scrapes, burns, puncture wounds, marks indicating use of restraints
- Bruises, discoloration, swelling
- Difficulty moving around/stiffness (trouble walking or sitting) – the resident may have been injured internally or suffered broken bones with no external signs
- Genital infections or pain in the groin area
- ASK THE ELDER what happened – do they have an explanation for the injury? Is it believable or do the injuries lead you to a different conclusion?

Psychological Abuse. There are varying

degrees of emotional and psychological abuse. Often times this type of abuse is difficult to detect, particularly if you do not witness interactions between the abuser and the elder:

- Threatening an elder (threatening to physically harm the elder, threatening to take away their rights, threatening to sell their property, threatening to place them in a confinement, threatening to take the elder's power to make choices, etc.,)
- Humiliating them or treating them like a child
- Verbally abusing them - insults/name calling

What to look for...warning signs:

- Helplessness
- Hesitation to talk openly
- Agitated, trouble sleeping
- Withdrawn, depressed
- Implausible stories
- Elder show fear in the presence of

caregiver

- Elder always deferring to caregiver – waiting for caregiver to answer a question which was posed to the elder
- Caregiver makes decisions for the elder without deferring or consulting with the elder
- Elder not accepting/allowing visitors

Neglect. Whether intentional or unintentional, any time an elder is left in an unsafe environment or they are not receiving proper care, they are being neglected:

- Withholding treatment (failing to administer medications, failing to provide physical therapy when needed, not taking to doctor's appointments, etc.)
- Failing to provide assistance with Activities of Daily Living (e.g. toileting, bathing, transferring, eating, etc.) when necessary
- Withholding food/failing to ensure proper diet

- Abandoning the elder
- Failing to provide basic needs – food, clothing, shelter, medicine, medical aids

What to look for:

- Malnourished, dehydrated, weight loss
- Not receiving proper medical care (under or over medicated, missing doctor's appointments, etc.)
- Lacking necessary medical aids (walker, wheelchair, hearing aid, dentures, etc.)
- Poor hygiene
- Poor skin condition
- Soiled bedding, unclean and/or unkempt clothing
- Living in run down conditions

Financial Abuse. Financial abuse is common among elders and takes on many different forms. Often caregivers coerce elders into selling their property, gifting or loan them money. Caregivers may obtain the same

results through fraud or forgery:

- Withholding money belonging to the elder
- Forcing an elder to sell/giver property away
- Stealing money from an elder
- Coercing an elder to give you money
- Borrowing money from an elder and failing to repay the loan

What to look for:

- The elder cannot explain the disappearance of funds in bank account
- Elder's personal property is missing and he/she has no explanation
- Elder suddenly spending a great deal of money – withdrawing money from accounts
- Elder unable to pay his or her bills

What signs should I be looking for showing that the caregiver may be abusing the Resident?

- The caregiver does not give the elder an opportunity to speak for him or herself
- Caregiver is defensive
- Caregiver gives conflicting accounts of incidents reported by the others (i.e. incidents reported by the elder, family members, friends, neighbors, other health care professionals)
- Caregiver has drug or alcohol problems
- Caregiver has history of past abuse
- Caregiver's affection is inappropriate (flirtations, coyness, or other indications that their may be an inappropriate sexual relationship)

How do I Protect the Resident?

Often an elder is not aware they are being abused (maybe they have been going through it for so long as they don't consider it abuse...or perhaps they suffer a mental illness which would render them incapable of recognizing abuse. Therefore, it is extremely important to be aware of their situation and

note any changes which occur.

Stay Informed. The resident's health may change, the staffing and administration may change, policies may change, etc. Talk regularly with the resident and establish a relationship with them which allows them to trust you. Don't ever dismiss what the resident tells you simply because they have Dementia or some other mental illness which in your mind renders them "incompetent".

Educate and Empower Both Yourself and the Resident. Utilize your resources. Resident and Family Councils, for example, are great sources of information inside the nursing home. Outside the nursing home, The Long Term Care Ombudsman is a great resource for advocates. State agencies like adult protective services, for example, are not only reactive – but at times are a preventive and supporting agency with substantial information. Your local area agency on aging is another example of a state agency which provides helpful

information, as do outside organizations like the American Association of Retired Persons (AARP) and support groups sponsored by such groups as the Alzheimer's Association, And, of course, the internet is a wonderful link to all kinds of educational information relating to the rights of the elderly.

Be sure to share information with the resident. Keeping in mind that the more control an elder has over his or her life, the fewer opportunities abusers have to take advantage of them.

Establish Relationships with the nursing home staff and with the other residents and their family members.

The nursing home staff is with your loved one 24 hours a day. Get to know them. They can be your "eyes and ears" and alert you to possible abuse. Establish a relationship that is both professional and friendly. Remember also, do not just speak with them when you are expressing concern or dissatisfaction, let

them know what you are pleased with, as well.

Other residents and their family members can be both a great support system as well as a great source of information. All nursing homes are required to facilitate resident/family councils. These monthly meetings of residents and family members are a way to help one another address shared concerns.

Take an active role in the resident's care planning. Attend the monthly care plan meetings if possible, encourage the resident to attend, as well). If the resident has special needs that you are aware of, be sure to let the interdisciplinary team know. Suggest a few ways the resident's needs can be met. Don't be afraid to ask questions. Make sure you understand and agree with the care plan. Obtain a copy of the plan and be sure to follow up with the staff to ensure the care plan is being met.

If you have permission from the resident, periodically review the resident's charts. The

first few times you review the chart, ask a staff member to review the chart with you and explain those sections which are confusing to you. Periodically review the resident's financial records, as well (again, only if the resident has given you permission.) Make a list of their personal belongings and periodically check to make sure they are all still accounted for. Many residents also label their belongings for easy identification.

Document your concerns. When you visit the resident, keep a journal. Record your observations and keep track of patterns. Note statements made by witnesses. Be sure you record date and times. Take photographs.

When reporting incidents, it helps to have clearly-defined symptoms and conditions. Accuracy is important. If you should ever need to file a complaint, detailed records enable outside parties to have an accurate description of events.

If you suspect abuse....

If you suspect a nursing home resident is being abused and the situation requires immediate action, you should speak with the director of nursing or the administrator of the nursing home. You should also report the incident to the elder abuse hotline. Every state has an Elder abuse hotline that takes calls from concerned persons that suspect abuse of elders (both domestic and institutional). **In New Jersey, the Elder Abuse Hotline is 800-792-8820.**

Problems which are not emergencies are best resolved at the least formal level. If it is a non-emergency, you should first speak with the staff person whose job is related to your concerns. When you are discussing the problem, cite specific examples. If you are not satisfied with the staff person's response, contact the supervisor, the director of nursing or the administrator of the nursing home. Don't automatically defer to the nursing home

employees and assume they are acting within the confines of the law. When a facility tells you “that’s the law”, demand a citation.

Each facility has a rights advisor whose job it is to field complaints. Put your concern in writing. The rights advisor is required to provide a written response within 30 days of receiving the complaint. If you are not satisfied with the response you are getting, then your next step is to speak with a Long Term Care Ombudsman.

The Long Term Care Ombudsman Program, established in all states under the Older Americans Act, is authorized to investigate and resolve complaints on behalf of nursing home residents. Ombudsmen advocate on behalf of residents and work to bring about changes on local, state and national levels to ensure quality care.

If you are not satisfied with the results you have received, or if the abuse is of such a grave nature that you feel the nursing home

has violated the law, please contact us. We are here for you and your loved one. As attorneys, we can advise you whether there is potential legal action or other violation of the law has occurred. You may call or e-mail me personally. It's my privilege to be of service.

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