

# Understanding and Promoting Residents' and Clients' Rights

(2 credits)

After completing this section you should be able to:

1. Explain the Omnibus Budget Reconciliation Act (OBRA)
2. Describe Residents' Rights
3. Describe the Clients' Bill of Rights
4. List ways you can promote residents'/clients' rights
5. Define types of abuse and list signs and symptoms of abuse and neglect
6. Describe the process of reporting abuse
7. Explain the role of an ombudsman

## 1. Explain the Omnibus Budget Reconciliation Act (OBRA)

Due to reports of poor care and abuse in nursing homes, the U.S. government passed the **Omnibus Budget Reconciliation Act (OBRA)** in 1987. It has been updated several times.

OBRA established the minimum standards of care that must be maintained by long-term care facilities. This includes standardized nursing assistant training. NAs must complete at least 75 hours of training. NAs must also pass a competency evaluation (testing program) before they can be employed. They must attend regular in-service education to keep skills updated. OBRA also requires that states keep a current list of nursing assistants in a state registry.

This law also identifies numerous rights for the people—residents—in long-term care facilities or nursing homes.

## 2. Describe Residents' Rights

Residents' Rights relate to how residents must be treated while living in a facility. They are an ethical code of conduct for healthcare workers. You need to become very familiar with Residents' Rights. When providing care, you always need to respect these rights.

### *Overview of Residents' Rights*

#### **Quality of Life**

Residents have the right to the best care available. Dignity, choice, and independence are important parts of quality of life.

#### **Providing Services and Activities**

Residents must have the correct care. Their care should keep them as healthy as possible every day. A resident's health should not decline as a direct result of the facility's care.

Residents are also granted these specific rights:

**The Right to Be Fully Informed about Rights and Services, including:**

- The right to be informed of all services available, as well as the charge for each service;
- The right to have a copy of all rules and regulations in a language they can understand, including a written copy of their rights;
- The right to have the address/telephone number of the State Ombudsman and other advocacy groups;
- The right to see State survey reports;
- The right to be notified in advance of any change of room and roommate;
- The right to daily communication in their language;
- The right to assistance with a sensory impairment.



**The Right to Participate in Their Own Care, including:**

- The right to receive adequate or appropriate care;
- The right to be informed of changes in their medical condition;
- The right to participate in planning their treatment, care, and discharge;
- The right to refuse any medication and treatment;
- The right to refuse chemical and physical restraints;
- The right to review their medical record.

**The Right to Make Independent Choices, including:**

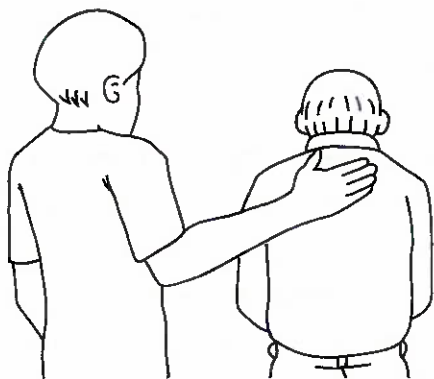
- The right to make independent personal decisions, such as what to wear and how to spend free time;
- The right to reasonable accommodation of their needs and preferences by the nursing home;
- The right to choose their own physician and make choices about their care and treatments;
- The right to participate in community activities, both inside and outside the nursing home;
- The right to organize and participate in a Residents' Council.

**The Right to Privacy and Confidentiality, including:**

- The right to private and unrestricted communication with any person of their choice;
- The right to privacy in treatment and in the care of their personal needs;
- The right to confidentiality regarding their medical, personal, or financial affairs.

**The Right to Dignity, Respect, and Freedom, including:**

- The right to be treated with the fullest measure of consideration, respect, and dignity;
- The right to be free from abuse of any kind, including mental and physical abuse, corporal punishment, involuntary seclusion, and physical and chemical restraints;
- The right to self-determination.



**The Right to Security of Possessions, including:**

- The right to have their personal possessions remain safe at all times, and not to have them taken or used by anyone without permission;
- The right to manage their own financial affairs;
- The right to file a complaint with the state survey and certification agency for abuse, neglect, or misappropriation of their property if the nursing home is handling their financial affairs;
- The right to be free from charge for services covered by Medicaid or Medicare.

**Rights During Transfers and Discharges, including:**

- The right to remain in the nursing facility unless a transfer or discharge:
  - is necessary to meet the resident's welfare;
  - is appropriate because the resident's health has improved and the resident no longer requires nursing home care;
  - is needed to protect the health and safety of other residents or staff; or
  - is required because the resident has failed, after reasonable notice, to pay the facility charge for an item or service provided at the resident's request

- The right to receive notice of transfer or discharge. A thirty-day notice is required. The notice must include the reason for transfer or discharge, the effective date, the location to which the resident is transferred or discharged, a statement of the right to appeal, and the name, address, and telephone number of the state long-term care ombudsman.
- The right to a safe transfer or discharge through sufficient preparation by the nursing home.

**The Right to Complain, including:**

- The right to present grievances to the staff of the nursing home, or to any other person, without fear of reprisal;
- The right to prompt efforts by the nursing home to resolve grievances.

**The Right to Visits, including:**

- The right to immediate access by a resident's personal physician and representatives from the health department and ombudsman programs;
- The right to immediate access by their relatives and for others subject to reasonable restriction with the resident's permission;



- The right to reasonable visits by organizations or individuals providing health, social, legal, or other services.

### 3. Describe the Clients' Bill of Rights

Home care clients have a Bill of Rights, which, like Residents' Rights, inform clients of their rights and provide an ethical code of conduct for healthcare workers to follow. These rights are similar to the rights of the residents in long-term care facilities. Home health agencies will give clients a list of these rights and review the rights with them. If you work in home care, you need to become familiar with the Clients' Bill of Rights.

#### *Clients' Bill of Rights*

#### **Clients and Providers Have a Right to Dignity and Respect**

Home care clients and their formal caregivers have a right to not be discriminated against based on race, color, religion, national origin, age, gender, sexual orientation, or disability. Furthermore, clients and caregivers have a right to mutual respect and dignity, including respect for property. Caregivers are prohibited from accepting personal gifts and borrowing from clients.

#### **Clients have the right:**

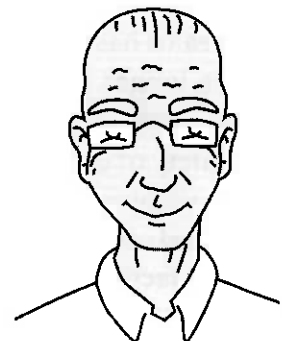
- to have relationships with home care providers that are based on honesty and ethical standards of conduct;
- to be informed of the procedure they can follow to lodge complaints with the home care provider about the care that is, or fails to be, furnished and about a lack of respect for property;
- to know about the disposition of such complaints;

- to voice their grievances without fear of discrimination or reprisal for having done so; and
- to be advised of the telephone number and hours of operation of the state's home care hotline, which receives questions and complaints about local home care agencies, including complaints about implementation of advance directive requirements.

#### **Decision making**

#### **Clients have the right:**

- to be notified in advance about the care that is to be furnished, the types (disciplines) of the caregivers who will furnish the care, and the frequency of the visits that are proposed to be furnished;
- to be advised of any change in the plan of care before the change is made;
- to participate in the planning of the care and in planning changes in the care, and to be advised that they have the right to do so;
- to be informed in writing of rights under state law to make decisions concerning medical care, including the right to accept or refuse treatment and the right to formulate advance directives;
- to be notified of the expected outcomes of care and any obstacles or barriers to treatment;
- to be informed in writing of policies and procedures for implementing advance directives,



including any limitations if the provider cannot implement an advance directive on the basis of conscience;

- to have health care providers comply with advance directives in accordance with state law requirements;
- to receive care without condition on, or discrimination based on, the execution of advance directives; and
- to refuse services without fear of reprisal or discrimination.

The home care provider or the client's physician may be forced to refer the client to another source of care if the client's refusal to comply with the plan of care threatens to compromise the provider's commitment to quality care.

### **Privacy**

#### **Clients have the right:**

- to confidentiality of the medical record as well as information about their health, social, and financial circumstances and about what takes place in the home; and
- to expect the home care provider to release information only as required by law or authorized by the client and to be informed of procedures for disclosure.

### **Financial Information**

#### **Clients have the right:**

- to be informed of the extent to which payment may be expected from Medicare, Medicaid, or any other payor known to the home care provider;
- to be informed of the charges that will not be covered by Medicare;
- to be informed of the charges for which the client may be liable;

- to receive this information, orally and in writing, before care is initiated and within 30 calendar days of the date the home care provider becomes aware of any changes; and
- to have access, upon request, to all bills for service the client has received regardless of whether the bills are paid out-of-pocket or by another party.

### **Quality of Care**

#### **Clients have the right:**

- to receive care of the highest quality;
- in general, to be admitted by a home care provider only if it has the resources needed to provide the care safely and at the required level of intensity, as determined by a professional assessment; a provider with less than optimal resources may nevertheless admit the client if a more appropriate provider is not available, but only after fully informing the client of the provider's limitations and the lack of suitable alternative arrangements; and
- to be told what to do in the case of an emergency.

#### **The home care provider shall assure that:**

- all medically related home care is provided in accordance with physicians' orders and that a plan of care specifies the services and their frequency and duration;
- all medically related personal care is provided by an appropriately trained home care aide who is supervised by a nurse or other qualified home care professional.

#### **Clients have the responsibility:**

- to notify the provider of changes in their

condition (e.g., hospitalization, changes in the plan of care, symptoms to be reported);

- to follow the plan of care;
- to notify the provider if the visit schedule needs to be changed;
- to inform providers of the existence of any changes made to advance directives;
- to advise the provider of any problems or dissatisfaction with the work provided;
- to provide a safe environment for care to be provided; and
- to carry out mutually-agreed-upon responsibilities

To satisfy the Medicare certification requirements, the Centers for Medicare and Medicaid Services (CMS) require that agencies:

1. Give a copy of the Bill of the Rights to each client in the course of the admission process.
2. Explain the Bill of Rights to the client and document that this has been done. Agencies may have clients sign a copy of the client's Bill of Rights to acknowledge receipt.

#### **4. List ways you can promote residents'/clients' rights**

You can help to promote the rights of your residents and clients in the following ways.

**Never abuse a resident/client physically, psychologically, verbally, or sexually. Watch for and report signs of abuse or neglect.**

Example: You report to the charge-nurse three small, cigarette-sized burns on the left shoulder of a male resident.

#### **Involve clients in your planning.**

Example: Ask the client when she would prefer to eat or have a bath.

#### **Follow all infection control procedures when providing care.**

Example: Wash hands before performing any care on a resident/client.

#### **Communicate with resident/clients about the care you will be providing.**

Example: Let the resident/client know you will be helping him bathe and change his clothes in 15 minutes.



#### **Follow all safety measures when providing care.**

Example: Do not forget to lock the wheels of a bed or a chair before performing a transfer.

#### **Provide privacy to the resident/client during care.**

Example: When providing perineal care, keep the resident's privacy curtain pulled; in the home, keep the client's door closed.

### **Make sure the resident/client can call for help.**

Example: Place the call signal within easy reach of a bedridden resident/client. Promptly respond to all call lights.

Other ways to promote rights include the following:

- Never gossip about a resident or client.
- Respect a resident/client's refusal of care, and report the refusal to your supervisor.
- Tell your supervisor if a client has questions about the goals of care or the care plan.
- Be truthful when documenting care.
- Knock and ask permission before entering a room.
- Do not open a resident's or client's mail or look through his or her belongings.
- Do not accept gifts or money from a resident/client.
- Respect resident/client's property.
- Report observations regarding a change in a resident's or client's condition.

### **5. Define types of abuse and list signs and symptoms of abuse and neglect**

**Abuse** is purposely causing physical, mental, or emotional pain or injury to someone in your care.

**Neglect** is harming the person in your care physically, mentally, or emotionally by failing to give needed care. For example, a nursing assistant leaves the side rail down on a resident's bed. The resident has a doctor's order for side rails. The resident falls out of bed and breaks her hip.

To put it more simply: abuse is something you DO; neglect is something you DO NOT DO.

There are different types of abuse, including:

- Physical abuse
- Psychological abuse
- Sexual abuse
- Financial abuse
- Domestic violence
- Workplace violence
- Involuntary seclusion
- Sexual harassment
- Substance abuse

**Physical abuse** is any treatment, intentional or not, that causes harm to a person's body. This includes slapping, bruising, cutting, burning, physically restraining, pushing, shoving, or even rough handling. Example: A caregiver pushes a client when she does not move fast enough down the hallway.

**Psychological or mental abuse** is emotionally harming a person by threatening, scaring, humiliating, intimidating, isolating, insulting, or treating him or her as a child. It includes verbal abuse. Verbal abuse is oral or written words, pictures, or gestures that threaten, embarrass, or insult a resident/client. Example: A caregiver loudly announces that a resident wet his bed last night in front of other residents.

**Sexual abuse** is forcing a person to perform or participate in sexual acts against his or her will. Example: A caregiver rubs against a resident inappropriately while giving personal care.

**Financial abuse** is stealing, taking advantage of, or improperly using the money, property, or other assets of another. Example: A caregiver offers a client "extra special" care if the client will give the caregiver money.

**Domestic violence** is abuse by spouses, intimate partners, or family members. It can be physical, sexual, or emotional. The victim can be a woman, man, elderly person or a child. Example: A female client is hit by her husband when she requests help ambulating.

**Workplace violence** is abuse of staff by residents or other staff members. It can be verbal, physical, or sexual. This includes improper touching and discussion about sexual subjects. Example: A resident hits a nursing assistant when the nursing assistant is giving care.

**Involuntary seclusion** is confining or separating a person in a certain area away from others; done without consent or against one's will. Example: A resident is made to stay in her room with the door closed during the dinner hour.

**Sexual harassment** is any unwelcome sexual advance or behavior that creates an intimidating, hostile or offensive working environment. Requests for sexual favors, unwanted touching, and other acts of a sexual nature are examples of sexual harassment.

**Substance abuse** is the use of legal or illegal drugs, cigarettes, or alcohol in a way that harms oneself or others. Example: A client takes cough syrup every night in order to be able to fall asleep.

Some signs of abuse to observe and report include:

#### **Physical**

- Unexplained broken bones or dislocation
- Injuries that occur over and over
- Burns of defined or unusual shapes and in unusual locations

- Bite marks
- Old and new bruises, contusions and welts
- Scars
- Scalp tenderness and patches of missing hair
- Scratches and puncture wounds
- Swelling in the face, broken teeth, nasal discharge
- Bruises, bleeding, or discharge from the vaginal area
- Sexually transmitted infections
- Blood in underwear
- Constant pain
- Weight loss, poor appetite
- Dehydration

#### **Emotional**

- Mood swings
- Fear and anxiety
- Lack of appetite
- Flinching around a certain person
- Withdrawal or apathy
- Low self-esteem
- Vigilance, apprehension, fear of being alone
- Confusion, disorientation

#### **Other signs**

- Missed medical appointments
- Changing doctors
- Wearing make-up or sunglasses to hide injuries
- Family concern or reports of questionable care
- Not taking medications
- Living conditions that are unsafe, unclean, or inadequate
- Private conversations are not allowed, or the family member/caregiver is present during all conversations



## 6. Describe the process of reporting abuse

Remember, if you suspect that elder abuse is happening, you are legally required to report it!

When reporting suspected abuse, follow the chain of command at your facility or agency.

1. Document any complaints of abuse told to you by residents or by other staff. Also, document any abuse that you have witnessed.
2. Report the situation to your supervisor.
3. If action is not taken, continue reporting up the chain of command at the facility or agency until action is taken.
4. If no appropriate action is taken at the facility/agency level, contact a state agency or state abuse hotline. This is usually an anonymous telephone call.

Facility or agency management should work to correct the problem. In the case that they do not solve the problem, report directly to the ombudsman or other advocate. The problem will be handled in a way that protects you.

Remember that you must assist a resident/client who wishes to make a complaint in every possible way. Let resident/clients know about the process of reporting abuse and help them to contact the ombudsman or state appointed agency.

## 7. Explain the role of an ombudsman

An **ombudsman** is assigned by law as the legal advocate for residents. The ombudsman visits and listens to residents and

decides what action to take if there is a problem. An ombudsman can help resolve conflicts and settle disputes. Ideally, they provide an ongoing presence in nursing homes. They monitor care and conditions.



An ombudsman typically:

- advocates for Residents' Rights and quality care
- educates consumers and care providers
- investigates and resolves complaints
- appears in court and/or in legal hearings
- works with investigators from the police, adult protective services, and health departments to resolve complaints
- gives information to the public

In some states, a group of specially-selected people on a watchdog committee may investigate all reports of abuse that occur in healthcare facilities. Citizens who are interested in quality care of the elderly may be put on this committee. For more information see [www.ltombudsman.org](http://www.ltombudsman.org), which has a complete listing of state ombudsmen's offices, or contact the department in your state that handles elder care or your legal aid society.

