

20 Common Nursing Home Problems and How to Resolve Them

At the September 10th meeting Darren O'Quinn, of the Law Offices of Darren O'Quinn, reviewed the problems that he addressed at his first presentation some months ago, and continued his presentation on how to resolve common problems encountered in nursing homes. His best advice: be a squeaky wheel and demand solutions to problems.

#1. Discrimination against Medicaid-Eligible Residents. One may be told that "Medicaid does not pay for the service that you want." The fact is that a nursing home cannot discriminate against residents based on who pays their bill. A Medicaid-eligible resident is entitled to the same level of service provided to any other resident.

#2. Care Planning. The resident and resident's family have the right and **should** participate in deciding what care the resident will receive and the resident's needs and wants need to be taken into consideration.

#3. Honoring Resident Preferences. A nursing home must make reasonable adjustments to honor resident needs and preferences. The wants and need of the residents take priority over the convenience of the staff. The resident should insist on staff adjusting to his/her schedule, not vice versa.

#4. Providing Necessary Services. A nursing home is required by law to provide the care necessary to meet residents' physical and social needs. Not having enough staff is no excuse, not even on a short-term basis.

#5. Use of Physical Restraints. The law also states that restraints cannot be used for the nursing home's convenience or as a form of discipline. This means that they are required to have enough staff to prevent harm from falls or wandering.

#6. Inappropriate Use of Behavior-Modifying Medication. Medications should never be given simply to make residents more manageable. Psychotropic medications are to be used only to treat a diagnosed illness, i.e., such as depression or mental illness.

#7. Use of Feeding Tubes. There are times when feeding tubes are appropriate but they should be a last resort, not for the convenience of the staff.

#8. Visitors. Family and friends of residents have the right visit at any time of the day or night unless the resident objects.

#9. "Responsible Party" Provisions in Admission Agreements. You cannot be told that you must agree to be financially liable for the resident's cost of care unless you are the appointed legal agent for them. A nursing home cannot require anyone but the resident to be financially responsible for their nursing home expenses.

10. Arbitration agreements. This has become a staple within the admission agreement and requires the resident or resident's representative to agree to submit all future disputes to a private arbitrator. **This effectively takes away the right to sue in court.** Arbitration is often more expensive than a lawsuit and the arbitrator may be more familiar with and sympathetic to the nursing home than to you. **Facilities cannot refuse admission if you refuse to sign an arbitration agreement.** You have every right to circle that portion of the admission papers and state that you do not agree with that provision.

#11. Determining Eligibility for Medicare Payment. The nursing home cannot decide whether a care procedure is covered by Medicare or not. -- that is determination that is made only by Medicare. A service that is disputed should be submitted to Medicare and the doctor or therapist should be enlisted to certify the need.

#12. Continuation of Therapy When Resident is Not Making Progress. Therapy may be appropriate to prevent further deterioration or to slow the decline in the resident's condition even if there seems to be no improvement. Remember the nursing home is required to meet the needs of the resident.

#13. Continuation of Therapy After Medicare Payment Has Ended. Therapy should be provided whenever medically appropriate, regardless of the resident's source of payment. The most important person to convince is the doctor, since the nursing home and the therapist are required to comply with a doctor's orders. The focus should be the resident's need for therapy, rather than on payment.

#14. **Continued Stay in Medicare-Certified Bed Even After End of Medicare Payment.** Medicare certification does not apply to any certain bed. Therefore any bed can be occupied by a residents whose care is paid through Medicare and likewise that bed can continue to be occupied by the resident after his Medicare days are ended if he continues to need care.

#15. **Medicaid Certification.** When residents become eligible for Medicaid after privately paying for a time, they sometimes are told that the facility does not have available Medicaid-certified beds. This is a situation that should be dealt with in advance, giving the facility time to obtain additional certification.

#16. **Readmission from Hospital.** When a nursing home resident is hospitalized, the facility is required by state law to hold the bed for 10 days. If the resident is Medicaid-eligible, even if the 10 days is exceeded, a nursing home must readmit them to the next available Medicaid-certified bed, no matter how long the hospitalization has lasted.

#17. **Extra Charges.** Charges for extra supplies such as catheter supplies, diapers, etc. are covered by Medicare and Medicaid and those residents may not be charged extra for them. Private pay residents are liable only as authorized in the admission agreement.

#18. **Resident and Family Councils.** A nursing home must provide private meeting space for a resident council or family council. The facility must seriously consider, and respond to, all complaints or recommendations made by such councils. Resident and family councils can be a powerful mechanism for making positive changes in a nursing home.

#19. **Eviction Threatened for Being "Difficult".** Eviction of a resident is allowed only for the following six reasons:

1. The resident has failed to pay.
2. The resident no longer needs nursing home care.
3. The resident's needs cannot be met in a nursing home.
4. The resident's presence in the nursing home endangers others' safety.
5. The resident's presence in the nursing home endangers others' health.
6. The nursing home is going out of business.

To evict a resident, the nursing home must give 30 days written notice giving the reason for the eviction. The notice must also give instructions on how to appeal the eviction.

#20. **Eviction Threatened for Refusing Medical Treatment.** This is not one of the six reasons allowed for eviction.

These 20 problems are unfortunately common. But it doesn't have to be that way. These problems are reduced significantly when residents and family members are knowledgeable about the Nursing Home Reform Law's protections, and more willing to be the squeaky wheels that get the grease. So speak up! You may feel embarrassed or awkward at first, but don't let that stop you. It is the nursing home that should be embarrassed when it is violating the law.

Nursing home residents deserve high-quality care. For this high-quality care to become reality, residents and family members must demand it.

*** Additional information on the 20 Common Problems is available in a booklet available from AANHR or the National Senior Citizens Law Center. (www.nsclc.org) or call 202-289-6976 ext 201.*