

Patient Rights and Responsibilities (For Home Health Aides and Home Attendants)

**Live Satellite Conference and Webcast
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Produced by the Alabama Department of Public Health
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Faculty

**Samarria Munnerlyn
Assistant General Counsel
Alabama Department of Public Health**

**John R. Wible
General Counsel
Alabama Department of Public Health**

**John Hankins, RN, MBA
Director, Nursing Division
Alabama Department of Public Health**

Objectives

- Define patient rights
- Explain how patient rights apply to Home Health Aides and Home Attendants
- Define patient responsibilities
- Define three kinds of abuse in the home care setting

Objectives

- Define intentional tort as it applies to home health
- Define Health Insurance Portability and Accountability Act (HIPAA)

How Do Patient Rights Apply to Home Health Aides and Home Attendants?

1. Have services provided without regard to race, color, national origin, age, sex or handicap

Patient Profiling

2. Have a relationship with our staff that is based on honesty and ethical standards of conduct
3. Be notified about the care that is to be furnished, the types of caregivers who will furnish your care and the frequency of the visits that are proposed to be furnished
4. Participate in the planning of your care and any changes in the care

5. Receive a copy of your plan of care upon request
6. Be advised of any change in the plan of care before the change is made
7. Have self and property treated with respect, dignity, courtesy and fairness whatever your age, sex, race, religion, nationality or ethnic origin

Patient Abuse

- Three Types
 - Physical abuse
 - Verbal abuse
 - Misappropriation of property

Scenario One: Physical Abuse

You have a rather unpleasant patient that you must visit twice per week. The patient's name is Ms. Smith and she has a reputation among your colleagues as being very combative. She has been known to yell, kick and hit at several of your co-workers. Now that you have been assigned to Ms. Smith, you want to make sure that she knows that this behavior is not acceptable to you.

Scenario One: Physical Abuse

During your first visit with Ms. Smith, as you are providing personal care, she reaches up and pinches you. To show her how it feels, you decide to pinch her back.

Is that a correct response or is there anything else that could be done to deal with Ms. Smith's behavior?

Scenario Two: Verbal Abuse

During your second visit with Ms. Smith, as you are providing personal care, she reaches up and pinches you. Instead of retaliating against her physically, you let Ms. Smith have it by telling her, "If you ever pinch me again, I am going to knock the hell out of you."

Was this appropriate? If not, what would have been appropriate?

**Scenario Three:
Misappropriation of Property**

You have a very pleasant gentleman that you provide care for named Mr. Johnson. Mr. Johnson is well provided for by his family and neighbors and is very pleasant to provide personal care for. You notice that Mr. Johnson keeps a bowl near his front door that he keeps his keys in, along with spare change that he empties from his pockets as he comes in the door.

**Scenario Three:
Misappropriation of Property**

You need some change to buy a snack on the way back to your base and don't feel that Mr. Johnson will miss the change. You know that your co-worker that cared for Mr. Johnson previously would take some change from the bowl to buy a soda on her way home without asking and there was never an issue about it.

**Scenario Three:
Misappropriation of Property**

You decide that since you think Mr. Johnson won't miss it, that you'll grab some change for your afternoon snack. After all, it's only change.

Would this be appropriate?

Abuse

- Civil consequences
- Criminal consequences

Abuse Reporting

- Reporting abuse
 - Who should you report to?
 - What should be included in the report?
 - Time frame for reporting?
 - Consequences of not reporting?

Statutory Law: Reporting Statutes

- Child Abuse Prevention and Treatment Act and Reporting Statutes
 - Mandate reporting specific health problems and suspected or confirmed abuse

Statutory Law: Reporting Statutes

- Health professionals must report under penalty of fine or imprisonment for failing to do so:
 - Infant and child abuse
- Dependent elder abuse

Intentional Torts

- Definition
 - Direct violation of a person’s legal rights
 - Proof that the aide breached a special duty or was negligent is not required
 - Consequences include fines & punitive damages or may rise to the level of criminal acts

Intentional Torts

- Assault and battery
 - Assault is causing a person to fear he or she will be touched without consent
 - Battery is unauthorized touching
 - Ask the patient’s permission before initiating any procedure, & document permission granted

Intentional Torts

- Defamation of character
 - Libel is defamation by written word
 - Slander is defamation by spoken word
- False imprisonment
 - Unlawful restraint or detention of another person against his or her wishes

Intentional Torts

- Nurse has no authority to detain a patient, even if there is likelihood of harm or injury
- Invasion of privacy
 - Person’s private affairs (including health status) are made public without consent

8. Expect that all home care personnel, within the limits set by the plan of care, will respond in good faith to your requests for assistance in your home.
9. Be informed in writing of your rights under state law to make decisions concerning medical care, including your right to accept or refuse treatment and your right to formulate Advance Directives.

10. Be fully informed of the consequences of all aspects of care, unless medically contraindicated, including the possible results of refusal of medical treatment, counseling or other services.

11. Refuse services or to establish an Advance Directive without fear or reprisal or discrimination. However, should you refuse to comply with the plan of care and your refusal threatens to compromise our commitment to quality care, then we or your physician may be forced to refer you to another source of care.

12. Confidentiality of your medical records as well as information about your health, social and financial circumstances and about what takes place in your home unless permission to release is given or mandated by law or policy.

13. Receive home health care from personnel who are qualified and supervised.

14. Request a change in caregiver.

15. Participate in discharge planning.

16. Be informed of items and services provided by the agency, including any charges that are billed for you to Medicare, Medicaid or your insurance company.

17. Be notified within 30 calendar days of the date the home care provider becomes aware of any changes in charges for which you become liable.

18. Be informed that your homecare agency maintains liability insurance coverage.

19. Contact the supervisor, name _____, phone #:____, without fear of discrimination/reprisal to voice any complaint or grievance concerning care or treatment by the agency. You have the right to expect the supervisor to respond to your complaint within 24 hours unless there are extenuating circumstances.

20. Contact the home health manager, ____, at ____ if the supervisor is unable to resolve your complaint/grievance to your satisfaction.

21. Report any complaint/grievance concerning care, treatment or implementation of advance directives without fear of is crimination/reprisal.

22. Receive the services of a translator, if needed.

Patient's Responsibilities

You Have the Responsibility To:

1. Notify us of changes in your condition such as hospitalization, changes in symptoms, etc.
2. Follow the plan of care and accept responsibility for any refusal of treatment.
3. Notify us of schedule changes that may need to be made prior to the scheduled visit.

Patient's Responsibilities

4. Inform us of the existence of, and any changes made prior to the scheduled visit.
5. Advise us of any problems or dissatisfaction with the services provided.
6. Provide a safe environment for care to be provided.
7. Carry out mutually agreed responsibilities.

What Happens If The Patient Does Not Adhere To Their Responsibilities?

How Does Compliance or Non-Compliance with Patient Responsibilities Effect Your Role?

Health Insurance Portability & Accountability Act - HIPAA

- Cited at P.L. 104-191(1996)
- Federal law that creates national standards for
 - privacy of protected health information
 - security of protected health information
 - automating the business process of claims administration

What Objectives do the Privacy Regulations Accomplish for Patients?

- Give patients more control over their health information
- Set boundaries on the use and disclosure of health records
- Hold violators accountable through civil and criminal penalties

Right to File a Complaint

- The patient has the right to file a complaint if he or she believes privacy rights were violated*
 - Individual within the organization
 - The Secretary of the Department of Health and Human Services

Potential Consequences of HIPAA Violations

- Both criminal and civil penalties for:
 - Failure to comply with HIPAA requirements
 - Knowingly or wrongfully disclosing or receiving individually identifiable health information

Potential Consequences of HIPAA Violations

- Obtaining information with intent to:
 - Sell or transfer it
 - Use it for commercial advantage
 - Use it for personal gain
 - Use it for malicious harm

Resisting the Need to Share PHI - Honoring the Patient's Right to Privacy

SCENARIO 1

Johnny, an active 4 year old, breaks his arm after falling from a climbing form at his daycare. As home health aide caring for him after the casting, you know that he is HIV positive.

Resisting the Need to Share PHI - Honoring the Patient's Right to Privacy

SCENARIO 1

Your daughter attends the same daycare. You alert some of the other moms at that center.

**What's wrong with this scenario?
Who in this setting has a 'need to know' the HIV status of this child?**

What Should You Do??

- Sharing this information with the other parents is a violation of the HIPAA statute - ensuring the child's/family's right to privacy and confidentiality
- The other parents did not 'need to know' this information
- Really, nobody has the 'need to know'

What Should You Do??

- Look into the day care's first aid policies and help them develop policies that observe universal precautions in the care of all children and staff

Found PHI

SCENARIO 2

While working a 3-11 shift in the city/county health clinic, you see some patient data in the trash can.

What should you do?

What Should You Do?

- Remove it and take it to the document shredder
- Report it to your supervisor

Your Best Friend

Scenario 3

You work for an unnamed Home Health agency. You were able to convince your best friend to move to Alabama and work with you. In the cafeteria, she begins telling you about this handsome guy that had just begun to train in a waiver program. She continues to tell you some of the details including aspects of his medical history.

What should you do?

What Should You Do?

- Remind her of HIPPA and tell her that you shouldn't discuss this type of information
- Help her recall her responsibilities to the patient's right to confidentiality and privacy

Patient Request

Scenario 4

While assisting Mrs. Johnson with her bath, she tells you that she would like to remove her name from the patient data that they have reception desk.

**Is this a reasonable request?
What would you do with this request?**

What Should You Do?

- Recall that HIPAA gives patients/clients the right to control the use and disclosure of their PHI
- It is within her rights to have her name removed from the list
- Furthermore, most agencies have special forms for this

Consulting Physician Calls

Scenario 5

You are the nursing student caring for Mr. Sanchez. His physician has called in several consultants to assist with his care. One of the physicians, Dr. Han, a neurologist, calls to get some information about Mr. Sanchez.

Can you release information to her?

What Should You Do?

- It is not a violation of HIPAA if you institute reasonable assurances to protect the security of the patient information and then disclose to another person who has a 'need to know'
- Recall that PHI can be shared with other caregivers for TPO (treatment, payment, & agency operation) without getting additional approval from the patient

Patient's Spouse Wants to Read the Chart

Scenario 6

Your patient, Ms. Johnson, has confided in you that she and her husband have been having marital problems. One day while she is preparing for a bath, her husband asks to see the chart. You think that she might not want him to see it, but you're not exactly sure how to handle the situation.

What would you as the nursing student do?

What Should You Do?

- It is always the best policy for you refer questions or requests of that nature to your supervisor

Upcoming Programs

Environmental Strike Teams
Thursday, November 15, 2007
12:00-1:30 p.m. (Central Time)

Cultural Diversity, Health Disparities
and Public Health
Wednesday, November 28, 2007
12:00-1:30 p.m. (Central Time)

Upcoming Programs

OSHA Update
Thursday November 29, 2007
9:00-11:00 a.m. (Central Time)

**Two Years Later: Continued
Psychological Difficulties of First
Responders and the Affected
General Population Post Katrina**
Friday, November 30, 2007
12:00-1:30 p.m. (Central Time)