

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Defending “Bad Behavior” Evictions in Nursing Facilities

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Diversity, Equity, and Inclusion

To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination
- Address the enduring negative effects of racism and differential treatment
- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

Nursing Home Reform Law

- Applies to every facility certified for Medicare and/or Medicaid.
- Applies regardless of resident's payment source.
 - Re: Transfer/Discharge, *see* 42 U.S.C. §§ 1395i-3(c)(2), 1396r(c)(2); 42 C.F.R. § 483.15(c).

Six Allowable Reasons for Transfer/Discharge

1. Necessary to meet resident's welfare.
2. Resident's health has improved; no longer needs facility services.
3. Safety of others endangered.
4. Health of others endangered.
5. Nonpayment after reasonable notice.
6. Facility ceases to operate.

Notice

- Notification of resident, resident's representative, and long-term care ombudsman program.
- Must be in writing in language that resident and representative will understand.

Contents of Notice

- Reason
- Date of proposed transfer/discharge
- Location to where resident is to be moved
- Right to appeal
- LTC Ombudsman program: name, address, & telephone #

Timing of Notice

- Generally 30 days in advance of proposed transfer/discharge.
- “Practicable” notice of less than 30 days allowed in certain circumstances.
 - No interpretation of “practicable” in law.
 - No transfer/discharge while appeal is pending.



LEGAL AID
— OF THE —
BLUEGRASS

Tips For Advocates Defending “Bad Behavior” Evictions in Nursing Facilities

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June 2, 2021

Common Types of Discharges Related to "Behaviors"

- ▶ Discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility
- ▶ The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident
- ▶ No beds available to readmit after hospital stay

Steps for Representation

- ▶ Try to get discharge summarily reversed due to notice deficiencies
- ▶ Request medical records
- ▶ Review records:
 - Look for proper documentation from the facility for the reason for the discharge
 - Look for alleged behavior incidents
 - Care Plans, MDS, PASRR
 - Doctor's orders
 - Medicine administration

Required Documentation

- ▶ Necessary for the resident's welfare and the resident's needs cannot be met in the facility
 - 42 C.F.R. § 483.15(c)(2)(i)(B) & (ii)(A) – require that the resident's physician list the specific needs that cannot be met, the attempts to meet those needs, and the services available at the receiving facility to meet those needs.
- ▶ The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident
 - 42 C.F.R. § 483.15(c)(2)(ii)(B) – requires documentation from a physician

Questions to Consider

- ▶ What was the resident's diagnosis when admitted and has it changed since admission?
- ▶ Did the facility complete required assessments and Care Plan at admission? *See* 42 C.F.R. § 483.20 and § 483.21
- ▶ Did the facility update the Care Plan when needed and did they follow it?
- ▶ Was medication given at the correct time/dosage? Was new medication added?
- ▶ Did the resident have a UTI?
- ▶ Are there triggers for the undesired behavior?
- ▶ What services are available at the receiving facility to meet the needs of the resident that are not available at the current facility?

NF Behavioral Discharge webinar with KY advocates

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Community Outreach Coordinator

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Common Barriers to Successfully Provide Good Dementia Care

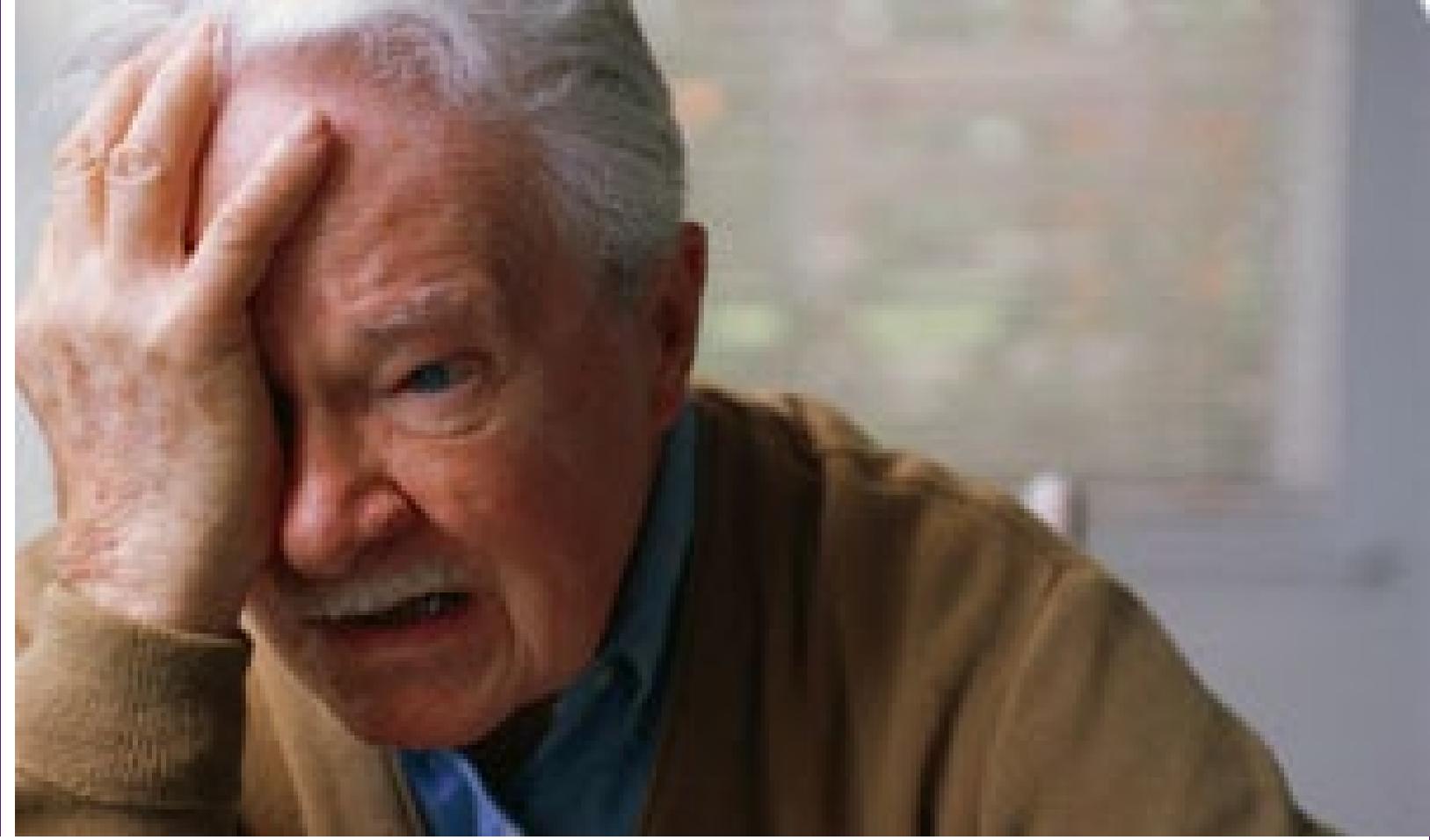
- Inadequate understanding of dementia, behaviors, and communication strategies
- Low staff/resident ratios
- Professional Caregiver Stress
- Being Reactive vs. Proactive

Behaviors = Communication

- Behaviors are a way residents communicate their needs.
- Verbal/Non-verbal

Common Behaviors- (Normal, What We Might Expect)

- Accusing Others of Wrongdoing
- Aggression
- Agitation
- Confusion
- Hallucinations/Delusions
- Hand-wringing, Pacing, Rocking
- Hoarding
- Lack of Initiative
- Loud Verbal Noises
- Mood Swings
- Paranoia
- Refusing Help
- Repetition
- Rummaging
- Shadowing
- Sleeplessness
- Sundowning
- Wandering
- Wanting to go home



What Triggers Behaviors?

Physical Triggers

- Need for medical evaluation
 - Are they sick? Are they in pain?
 - Sudden change in behavior? Possible urinary tract infection, broken bone, medication side effect?
- Influence of diet- hunger, thirst, constipation?
- Lack of exercise/movement
- Fatigue
- Need to burn energy
- Boredom

Environmental Triggers

- Noise
- Lighting
- Insecure space
- Sudden movements
- Distractions
- TV
- Room temperature and clothing
- Colors/Patterns
- Overstimulation
- Other residents and their behaviors

Additional Triggers

- Circumstances that Increase emotions (fear, anxiety, frustration, surprise, sadness, etc...)
 - Unpredictable situations
 - Being rushed
 - Complicated tasks
 - Unfamiliar surroundings (even if they are not different- misperceptions)
 - Forget who people are and the relationship they may have with that person
 - Difficulty expressing themselves- verbal communication declines
 - Misperceived threats
- May not have a filter anymore
- Change in routine
- Can't understand current reality

How Would You React If...

A stranger told you that you couldn't go outside for a walk?

A stranger came into your bedroom and tried to take off your clothes?

Someone was watching you take a shower?

Someone was asking you if you needed to use the toilet?

Importance of Knowing Your Residents' Life Stories

- Improve quality of life for the person with dementia
- Establish a successful personal care routine
- Using life stories to enhance interaction and reduce behaviors associated with dementia
- Help resident to feel connected to staff & the facility

Understanding & Addressing the Behavior

- Detect & Connect
- Address Physical & Environmental Needs First
- Address Emotional Needs
- Reassess and plan for next time



Detect & Connect

Join the person in his or her reality.

- What is the behavior?
- Is it a concern?
- What do we know about the person? What is the person's mood leading up to the behavior?
- What do we know about the behavior?
 - Does it happen at the same time everyday?
 - Does it happen at the same place everyday?
 - Is it new?

Understand the person's reality in context before intervening. Who? What? Where? When? How?

- Approach the person calmly and respectfully.

Address Physical Issues First, Then Environmental

- Look at medical issues, starting with pain.
- Address physical problems, such as hunger, thirst, need to use the bathroom, medication reactions, etc...
- Address environmental triggers for discomfort, such as restrictive clothing, room temperature, lighting, glare, or sounds.

Address Emotional Needs

- Think about how the situation feels to the person.
- Focus on the feelings, not facts. What emotional needs are behind what is happening?
- Reinforce that you are there to help.
- Use your knowledge of the person's preferences.
- Redirect the energy into a more soothing activity.

Reassess & Plan for Next Time

- Go back to detecting and connecting.
- What went well and what didn't?
- How can you make adjustments?
- Keep a log of behaviors and see if there is a pattern
- Create a plan for next time. Can the trigger(s) be avoided? How can we change the environment/our own response to the behavior for next time?

Medications are the Last Choice

- Use and misuse of antipsychotics
- Interaction of drugs commonly used by the elderly
- Adverse effects of psychotropic drugs in addressing behavior of persons living with dementia

Dementia Care Practice Recommendations



- Dementia Care Practice Recommendations (56) outline recommendations for quality care practices based on a comprehensive review of current evidence, best practice and expert opinion.
 - https://www.alz.org/professionals/professional-providers/dementia_care_practice_recommendations

Resources for You

- Alzheimer's Association
 - ✓ 24/7 Helpline 800-272-3900
 - ✓ <https://www.alz.org/professionals/professional-providers/dementia-care-training-certification>
 - ✓ ALZ.org

Questions?

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