

TRAIN FOR SUCCESS INC.  
RESIDENT RIGHTS  
3 Contact Hours

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**PURPOSE**

The purpose of this course is to educate and reinforce the knowledge of nurses; ARNP, RN, LPN, CNA, other professionals who are working within the health care environment; as well as other students/ individuals regarding residents' rights. This course will review various aspects of the basic rights of residents and measures that can help to ensure that those rights are understood and honored. This course is available online as well as within the classroom setting.

**Objectives**

At the conclusion of this course, the student will be able to:

1. Identify basic resident rights
2. Describe how the resident rights may impact nursing practice
3. Apply principles of resident rights to nursing practice
4. Describe measures to protect the resident's rights
5. Define Health Insurance Portability and Accountability Act (HIPAA)
6. Describe measures to respect the resident's rights
7. Discuss the importance of confidentiality and privacy of residents' information
8. Identify ways to promote the residents' rights

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**INTRODUCTION**

Rights are often defined as legal, ethical or social principles of entitlement or freedom; which involves normative rules about what is allowed of people or what is owed to people or a legal or moral entitlement to obtain or have something or to act in a certain way.

Within the nursing home setting, residents' rights are the moral and legal rights of the residents of a nursing home. There are legislations that exist in various jurisdictions to help to protect such rights. In 1980 the Florida statute was enacted to protect such rights; Florida statute 400.022, commonly known as the Residents' Rights Act.

All individuals who work with residents must be aware of the rights of the resident, so that they can adhere to the legal /ethical principles, respect the residents' rights and also follow the standards of practice.

**FLORIDA STATUTES 400.022 RESIDENTS' RIGHTS — NURSING HOMES AND RELATED HEALTH CARE FACILITIES** states that:

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be

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flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; any representative of the State Long-Term Care Ombudsman Program; and the resident's individual physician.
2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Program to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

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(e) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.

4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in s. 400.162(6).

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5.The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

(i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

(j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing

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and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of s. 119.07(1).

(n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to

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disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically



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determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under 42 C.F.R. s. 483.12.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or state or local ombudsman council. The statement must be in boldfaced type and include the telephone number and e-mail address of the State Long-Term Care Ombudsman Program<sup>1</sup> and the numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families.

(3) Any violation of the resident's rights set forth in this section constitutes grounds for action by the agency under s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility must include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards and consultation with the State Long-Term Care Ombudsman Program.

(4) Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

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**Florida Statutes 429.28**

Florida Statutes 429.28; Resident bill of rights declares that:

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

- (a) Live in a safe and decent living environment, free from abuse and neglect.
- (b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.
- (c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.
- (d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.
- (e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.
- (f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27.
- (g) Share a room with his or her spouse if both are residents of the facility.
- (h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.
- (i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.
- (j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

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(k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

(l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. The notice must include the statewide toll-free telephone number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone number of the local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families, and, if applicable, Disability Rights Florida, where complaints may be lodged.

The notice must state that a complaint made to the Office of State Long-Term Care Ombudsman or a local long-term care ombudsman council, the names and identities of the residents involved in the complaint, and the identity of complainants are kept confidential pursuant to s. 400.0077 and that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right. The facility must ensure a resident's access to a telephone to call the State Long-Term Care Ombudsman Program or local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families, and Disability Rights Florida.

(3)(a) The agency shall conduct a survey to determine general compliance with facility standards and compliance with residents' rights as a prerequisite to initial licensure or

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licensure renewal. The agency shall adopt rules for uniform standards and criteria that will be used to determine compliance with facility standards and compliance with residents' rights.

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the district in which the facility is located to discuss residents' experiences within the facility.

(c) During any calendar year in which no survey is conducted, the agency shall conduct at least one monitoring visit of each facility cited in the previous year for a class I or class II violation, or more than three uncorrected class III violations.

(d) The agency may conduct periodic follow up inspections as necessary to monitor the compliance of facilities with a history of any class I, class II, or class III violations that threaten the health, safety, or security of residents.

(e) The agency may conduct complaint investigations as warranted to investigate any allegations of noncompliance with requirements required under this part or rules adopted under this part.

(4) The facility shall not hamper or prevent residents from exercising their rights as specified in this section.

(5) A facility or employee of a facility may not serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing, inside or outside the facility.

(c) Files a civil action alleging a violation of the provisions of this part or notifies a state attorney or the Attorney General of a possible violation of such provisions.

(6) A facility that terminates the residency of an individual who participated in activities specified in subsection (5) must show good cause in a court of competent jurisdiction. If good cause is not shown, the agency shall impose a fine of \$2,500 in addition to any other penalty assessed against the facility.

(7) Any person who submits or reports a complaint concerning a suspected violation of the provisions of this part or concerning services and conditions in facilities, or who testifies in any administrative or judicial proceeding arising from such a complaint, shall have immunity from any civil or criminal liability thereof, unless such person has acted in

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bad faith or with malicious purpose or the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

## **CONFIDENTIALITY**

Confidentiality is defined as a set of rules or a promise that limits access or place restrictions on certain types of information. Within the health care setting, confidentiality is a major issue in patient/resident care. Nurses, social workers, Therapist, Physicians, Certified nursing assistants as well as everyone else who works with the patient has to maintain confidentiality of patient information. For example: you cannot talk about the patient with others who are not working with the patient and you cannot leave patient's chart at the bedside for unauthorized personnel to view. Legally, you can be fined or imprisoned; if you talk about the patient or share patient information. HIPAA laws must be followed and maintained.

## **Health Insurance Portability and Accountability Act (HIPAA)**

Confidentiality of patients' information

HIPAA violations involves both civil and criminal penalties which include fines and imprisonment. The fines can range from \$100 for each violation of the law to a limit of \$25,000 per year for multiple violations. For misusing or disclosing any of the patient's information, criminal sanctions carry fines of 50,000 to 250,000 and one to ten years imprisonment.

Always maintain confidentiality of patients' information. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Security and Breach Notification Rules:

The Office for Civil Rights enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which protects the privacy of individually identifiable health information; the HIPAA Security Rule, which sets national standards for the security of electronic protected health information; the HIPAA Breach Notification Rule, which requires covered entities and business associates to provide notification following a breach of unsecured protected health information; and the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety.

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The HIPAA Privacy Rule provides Federal protections for individually identifiable health information held by covered entities and their business associates and give the patient an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it allows the disclosure of health information needed for patient care and other important purposes.

#### **Protected Health Information (PHI)**

The HIPAA Privacy Rule protects most “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form; electronic, on paper, or oral. The Privacy Rule calls this information protected health information (PHI). Protected health information is information, including demographic information, which relates to:

- the person’s present, past, or future physical, mental health or condition,
- the provision of health care to the individual, or
- the present, past, or future payment for the provision of health care to the individual, and that identifies the person or for which can be used to identify the individual.

Protected health information includes many common identifiers such as name, address, Social Security Number, date of birth when they can be associated with the health information.

A medical record, hospital bill or laboratory report, would be Protected health information because each document would contain a patient’s name and the other identifying information associated with the health data content.

According to an article from the American Nurses Association, the issue of health care reform brings ethical issues of justice to the forefront, as communities, individuals and the legislature struggle with how to provide quality health care to several individuals without sacrificing the basic rights of the few. The June 2012 Supreme Court decision that upheld the constitutionality of the Patient Protection and Affordable Care Act (PPACA), first enacted in 2010, provides some guidance to employers, states, consumers and insurers about what they were required to do by 2014 (OJIN 2012).

Provisions in the Patient Protection and Affordable Care Act are designed to expand insurance coverage, control costs, target prevention; with one of the primary target

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being adults aged 19-64, because their use and access to health care / health services deteriorated between 2000 and 2010, especially among those individuals who were not insured.

The Patient Protection and Affordable Care Act include but not limited to reforms such as:

- Expanding Medicaid eligibility,
- Subsidizing premiums for insurance
- Allowing incentives for various businesses to provide health care benefits
- Prohibiting insurance companies from denying coverage for pre-existing condition etc.

It is very important for nurses and other health workers/ professionals to consider how the implementation of the Patient Protection and Affordable Care Act (PPACA) relates to their role in understanding and trying to rectify conditions of injustice in health care. Through our education, practice and interactions with various segments of society, we are able to gain a unique perspective of what constitutes injustice in health care and which groups and individuals are especially disadvantaged. "Through understanding how certain human contexts and conditions erect and maintain barriers to the improvement of well-being, nurses and other health professionals can make important differences in helping to provide the human good of health to both individuals and societies" (OJIN 2012).

### **PATIENTS' RIGHT OF ACCESS**

Patients have a right to have access to any records made or received in the course of business by a health care facility or health care provider relating to any adverse medical incident. In providing access to these records, the health care facility or health care provider may not disclose the identity of patients involved in the incidents and shall maintain any privacy restrictions imposed by federal law.

### **Wrong-Site, Wrong-Procedure, and Wrong-Patient Surgery**

Few medical errors are as vivid and terrifying as those that involve patients who have undergone surgery on the wrong body part, undergone the incorrect procedure, or had a procedure intended for another patient. These "wrong-site, wrong-procedure, wrong-



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patient errors" (WSPEs) are rightly termed never events; errors that should never occur and indicate serious underlying safety problems.

Wrong-site surgery may involve operating on the wrong side, as in the case of a patient who had the right side of his intestines removed when the cancerous lesion was on the left, or the incorrect body site. One example of surgery on the incorrect site is operating on the wrong level of the spine, a surprisingly common issue for neurosurgeons. A classic case of wrong-patient surgery involved a patient who underwent a cardiac procedure intended for another patient with a similar last name.

While much publicity has been given to these high-profile cases of WSPEs, these errors are in fact relatively rare. A seminal study estimated that such errors occur in approximately 1 of 112,000 surgical procedures, infrequent enough that an individual hospital would only experience one such error every 5-10 years. However, this estimate only included procedures performed in the operating room; if procedures performed in other settings (for example, ambulatory surgery or interventional radiology) are included, the rate of such errors may be significantly higher. One study using Veterans Affairs data found that fully half of WSPEs occurred during procedures outside of the operating room.

### **Preventing Wrong-Site, Wrong-Procedure, and Wrong-Patient Surgery (WSPEs)**

Early efforts to prevent WSPEs focused on developing redundant mechanisms for identifying the correct site, procedure, and patient, such as "sign your site" initiatives, that instructed surgeons to mark the operative site in an unambiguous fashion. However, it soon became clear that even this seemingly simple intervention was problematic. An analysis of the United Kingdom's efforts to prevent WSPEs found that, although dissemination of a site-marking protocol did increase use of preoperative site marking, implementation and adherence to the protocol differed significantly across surgical specialties and hospitals, and many clinicians voiced concerns about unintended consequences of the protocol. In some cases, there was even confusion over whether the marked site indicates the area to be operated on, or the area to be avoided. Site marking remains a core component of The Joint Commission's universal Protocol to prevent WSPEs.

Root cause analyses of WSPEs consistently reveal communication issues as a prominent underlying factor. The concept of the surgical timeout ; a planned pause before beginning the procedure in order to review important aspects of the procedure



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with all involved personnel, was developed to improve communication in the operating room and prevent WSPEs. The Universal Protocol also specifies use of a timeout prior to all procedures. Although initially designed for operating room procedures, timeouts are now required before any invasive procedure. Comprehensive efforts to improve surgical safety have incorporated timeout principles into surgical safety checklists; while these checklists have been proven to improve surgical and postoperative safety, the low baseline incidence of WSPEs makes it difficult to establish that a single intervention can reduce or eliminate WSPEs.

It is worth noting, however, that many cases of WSPEs would still occur despite full adherence to the Universal Protocol. Errors may happen well before the patient reaches the operating room, a timeout may be rushed or otherwise ineffective, and production pressures may contribute to errors during the procedure itself. Ultimately, preventing WSPEs depends on the combination of system solutions, strong teamwork and safety culture, and individual vigilance.

Wrong-patient, wrong-site, and wrong-procedure errors are all considered never events by the National Quality Forum, and are considered sentinel events by The Joint Commission. In February 2009, the Centers for Medicare and Medicaid Services (CMS) announced that hospitals will not be reimbursed for any costs associated with WSPEs. (CMS has not reimbursed hospitals for additional costs associated with many preventable errors since 2007.)

### **Right to REFUSE**

By Florida's law, a patient has the right to refuse a medication. A patient should not be forced to take a medication. Also, you cannot hide the medication in the patient's food and / or drink.

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**429.28 Assisted Living Facility Resident bill of rights. (The 2013 Florida Statutes).  
428.85 Adult Family Care Home Residents' bill of rights. (The 2013 Florida Statutes)**

No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

- Live in a safe and decent living environment, free from abuse and neglect.
- Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.
- Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.
- Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.
- Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.
- Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27.

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- Share a room with his or her spouse if both are residents of the facility.
- Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.
- Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.
- Access to adequate and appropriate health care consistent with established and recognized standards within the community.
- Thirty (30) days' notice to AFCH residents and forty-five (45) day notice to ALF residents of relocation or termination of residency except in cases of emergency.
- Present grievances and recommend changes in policies, procedures, and services to the staff of the facility without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.
- (ALF) Be free from physical and chemical restraints other than those prescribed by the resident's physician. The use of physical restraints shall be limited to half-bedrails and only upon the written order of the resident's physician and the consent of the resident or the resident's legal representative. [S. 429.41(1)(k)].
- (AFCH) Be free from chemical and physical restraints. [S. 429.85(1)(k)].

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**Note for ALF residents:** Every assisted living facility resident shall have the right to at least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a non-emergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

**Note for AFCH residents:** Every adult family care home resident shall have the right to at least 30 days' notice of relocation or termination of residency from the home unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. If a resident has been adjudicated mentally incompetent, the resident's guardian must be given at least 30 days' notice, except in an emergency, of the relocation of a resident or the termination of a residency. The reasons for relocating a resident must be set forth in writing.

## **381.026 Florida Patient's Bill of Rights and Responsibilities**

Definitions included:

- (a) "Department" means the Department of Health.
- (b) "Health care facility" means a facility licensed under chapter 395.
- (c) "Health care provider" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, or a podiatric physician licensed under chapter 461.
- (d) "Primary care provider" means a health care provider licensed under chapter 458, chapter 459, or chapter 464 who provides medical services to patients which are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.
- (e) "Responsible provider" means a health care provider who is primarily responsible for patient care in a health care facility or provider's office.

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(3) Purpose: It is the purpose of this section to promote the interests and well-being of the patients of health care providers and health care facilities and to promote better communication between the patient and the health care provider. It is the intent of the Legislature that health care providers understand their responsibility to give their patients a general understanding of the procedures to be performed on them and to provide information pertaining to their health care so that they may make decisions in an informed manner after considering the information relating to their condition, the available treatment alternatives, and substantial risks and hazards inherent in the treatments. It is the intent of the Legislature that patients have a general understanding of their responsibilities toward health care providers and health care facilities. It is the intent of the Legislature that the provisions of such information to a patient eliminate potential misunderstandings between patients and health care providers. It is a public policy of the state that the interests of patients be recognized in a patient's bill of rights and responsibilities and that a health care facility or health care provider may not require a patient to waive his or her rights as a condition of treatment. This section shall not be used for any purpose in any civil or administrative action and neither expands nor limits any rights or remedies provided under any other law.(381.026)

The Florida Patient's Bill of Rights and Responsibilities (381.026) declares:

(4) RIGHTS OF PATIENTS: Each health care facility or provider shall observe the following standards:

(a) Individual dignity.

1. The individual dignity of a patient must be respected at all times and upon all occasions.
2. Every patient who is provided health care services retains certain rights to privacy, which must be respected without regard to the patient's economic status or source of payment for his or her care. The patient's rights to privacy must be respected to the extent consistent with providing adequate medical care to the patient and with the efficient administration of the health care facility or provider's office. However, this subparagraph does not preclude necessary and discreet discussion of a patient's case or examination by appropriate medical personnel.

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3. A patient has the right to a prompt and reasonable response to a question or request. A health care facility shall respond in a reasonable manner to the request of a patient's health care provider for medical services to the patient. The health care facility shall also respond in a reasonable manner to the patient's request for other services customarily rendered by the health care facility to the extent such services do not require the approval of the patient's health care provider or are not inconsistent with the patient's treatment.

4. A patient in a health care facility has the right to retain and use personal clothing or possessions as space permits, unless for him or her to do so would infringe upon the right of another patient or is medically or programmatically contraindicated for documented medical, safety, or programmatic reasons.

(b) Information.

1. A patient has the right to know the name, function, and qualifications of each health care provider who is providing medical services to the patient. A patient may request such information from his or her responsible provider or the health care facility in which he or she is receiving medical services.

2. A patient in a health care facility has the right to know what patient support services are available in the facility.

3. A patient has the right to be given by his or her health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis, unless it is medically inadvisable or impossible to give this information to the patient, in which case the information must be given to the patient's guardian or a person designated as the patient's representative. A patient has the right to refuse this information.

4. A patient has the right to refuse any treatment based on information required by this paragraph, except as otherwise provided by law. The responsible provider shall document any such refusal.

5. A patient in a health care facility has the right to know what facility rules and regulations apply to patient conduct.

6. A patient has the right to express grievances to a health care provider, a health care facility, or the appropriate state licensing agency regarding alleged violations of patients' rights. A patient has the right to know the health care provider's or health care facility's procedures for expressing a grievance.

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7. A patient in a health care facility who does not speak English has the right to be provided an interpreter when receiving medical services if the facility has a person readily available who can interpret on behalf of the patient.
8. A health care provider or health care facility shall respect a patient's right to privacy and should refrain from making a written inquiry or asking questions concerning the ownership of a firearm or ammunition by the patient or by a family member of the patient, or the presence of a firearm in a private home or other domicile of the patient or a family member of the patient. Notwithstanding this provision, a health care provider or health care facility that in good faith believes that this information is relevant to the patient's medical care or safety, or safety of others, may make such a verbal or written inquiry.
9. A patient may decline to answer or provide any information regarding ownership of a firearm by the patient or a family member of the patient, or the presence of a firearm in the domicile of the patient or a family member of the patient. A patient's decision not to answer a question relating to the presence or ownership of a firearm does not alter existing law regarding a physician's authorization to choose his or her patients.
10. A health care provider or health care facility may not discriminate against a patient based solely upon the patient's exercise of the constitutional right to own and possess firearms or ammunition.
11. A health care provider or health care facility shall respect a patient's legal right to own or possess a firearm and should refrain from unnecessarily harassing a patient about firearm ownership during an examination.

(c) Financial information and disclosure.

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.
2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

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3. A primary care provider may publish a schedule of charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.
4. If a primary care provider publishes a schedule of charges pursuant to subparagraph 3., he or she must continually post it at all times for the duration of active licensure in this state when primary care services are provided to patients. If a primary care provider fails to post the schedule of charges in accordance with this subparagraph, the provider shall be required to pay any license fee and comply with any continuing education requirements for which an exemption was received.
5. A health care provider or a health care facility shall, upon request, furnish a person, before the provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall provide an uninsured person, before the provision of a planned nonemergency medical service, a reasonable estimate of charges for such service and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. Such estimates by a primary care provider must be consistent with the schedule posted under subparagraph 3. Estimates shall, to the extent possible, be written in language comprehensible to an ordinary layperson. Such reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.
6. Each licensed facility not operated by the state shall make available to the public on its Internet website or by other electronic means a description of and a link to the performance outcome and financial data that is published by the agency pursuant to s. 408.05(3)(k). The facility shall place a notice in the reception area that such



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information is available electronically and the website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.

7. A patient has the right to receive a copy of an itemized bill upon request. A patient has a right to be given an explanation of charges upon request.

(d) Access to health care.

1. A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.

2. A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide such treatment.

3. A patient has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of s. 456.41.

(e) Experimental research. In addition to the provisions of s. 766.103, a patient has the right to know if medical treatment is for purposes of experimental research and to consent prior to participation in such experimental research. For any patient, regardless of ability to pay or source of payment for his or her care, participation must be a voluntary matter; and a patient has the right to refuse to participate. The patient's consent or refusal must be documented in the patient's care record.

(f) Patient's knowledge of rights and responsibilities. In receiving health care, patients have the right to know what their rights and responsibilities are.

(5) RESPONSIBILITIES OF PATIENTS.

Each patient of a health care provider or health care facility shall respect the health care provider's and health care facility's right to expect behavior on the part of patients which, considering the nature of their illness, is reasonable and responsible. Each patient shall observe the responsibilities described in the following summary.

(6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.

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Any health care provider who treats a patient in an office or any health care facility licensed under chapter 395 that provides emergency services and care or outpatient services and care to a patient, or admits and treats a patient, shall adopt and make available to the patient, in writing, a statement of the rights and responsibilities of patients, including the following:

SUMMARY OF THE FLORIDA PATIENT'S BILL  
OF RIGHTS AND RESPONSIBILITIES

Florida law requires that your health care provider or health care facility recognize your rights while you are receiving medical care and that you respect the health care provider's or health care facility's right to expect certain behavior on the part of patients. You may request a copy of the full text of this law from your health care provider or health care facility. A summary of your rights and responsibilities follows:

- A patient has the right to be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.
- A patient has the right to a prompt and reasonable response to questions and requests.
- A patient has the right to know who is providing medical services and who is responsible for his or her care.
- A patient has the right to know what patient support services are available, including whether an interpreter is available if he or she does not speak English.
- A patient has the right to know what rules and regulations apply to his or her conduct.
- A patient has the right to be given by the health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.
- A patient has the right to refuse any treatment, except as otherwise provided by law.
- A patient has the right to be given, upon request, full information and necessary counseling on the availability of known financial resources for his or her care.

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- A patient who is eligible for Medicare has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts the Medicare assignment rate.
- A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.
- A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.
- A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.
- A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide treatment.
- A patient has the right to know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.
- A patient has the right to express grievances regarding any violation of his or her rights, as stated in Florida law, through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.
- A patient is responsible for providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.
- A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.
- A patient is responsible for reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.
- A patient is responsible for following the treatment plan recommended by the health care provider.
- A patient is responsible for keeping appointments and, when he or she is unable to do so for any reason, for notifying the health care provider or health care facility.

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- A patient is responsible for his or her actions if he or she refuses treatment or does not follow the health care provider's instructions.
- A patient is responsible for assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.
- A patient is responsible for following health care facility rules and regulations affecting patient care and conduct.

As mentioned earlier the Health Insurance Portability and Accountability Act (HIPAA) was enacted into law in 1996 and this law has had very significant impact on the health care environment/ industry including:

- The need for numerous changes in the way that we communicate with our patients
- The need for changes in the way that we communicate with their families and
- The need for changes in the way that we communicate with each other.

The HIPAA law provides rights to the patients and has safeguards for the healthcare workers /employees. The law affects everyone in a health care setting. Within the healthcare environment it is important to stress the importance of confidentiality regarding all patient matters and information. The Code of Ethics for Nurses is very clear regarding the nurse's role in always advocating and promoting for the patient's rights related to confidentiality and privacy.

### **Privacy and confidentiality**

All health care workers / professionals have to continually remind themselves of the importance of keeping patient information private. Safeguarding the rights of the residents' personal health information is a legal and ethical obligation as healthcare workers / providers.

Every certified nursing assistant, nurse and others of the health care team need to understand and respect the need for patient confidentiality. Advanced technology, new

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demands in the health care industry, and developments throughout the world, has made it more difficult to keep this privacy and confidentiality as we should.

**How can you protect patient confidentiality?**

As healthcare workers, we work with and hear confidential information every day. Sometime we forget how important it is to keep information private. Spend some time and review the Privacy Section of the Health Insurance Portability and Accountability Act (HIPAA). Use the information that was reviewed or learned to identify opportunities to better protect the resident/ patient confidentiality.

**KEEP THE RESIDENT SAFE**

Follow the policy, procedures and guidelines that are in place within your facility to ensure that the residents' rights are being honored. Take the extra special precautions while working with the residents. Simple steps such as follow the Rights of medication administration (see below).

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#### **Rights of medication administration**

When assisting a person with their medications, you must make sure that you are following the **Rights of medication administration**. Medication safety is the responsibility of everyone who handles medications. The original five rights of medication administration (Right patient, medication, dosage, time, and route) have increased to the nine rights of medication administration within the ALF, adding the right documentation, right to refuse, right reason, and right response which we will review in this course study. Other resources have also added the Right drug preparation, Right assessment and the Right approach. Follow your facility's policy and procedures.

According to the Elder affairs 2012, medication errors alone, occurring either in or out of the hospital, are estimated to account for 7,000 deaths annually. Adverse drug events cause more than 770,000 injuries and deaths each year and cost up to \$5.6 million per hospital.

#### **1. The Right Patient**

ALWAYS check to make sure that you have the Right patient.  
Two patients may have the same name, and the same birthday  
Patients may be moved to a different room  
Patients may switch beds within the same room

#### **Identification Procedure**

ALWAYS verify the name of the patient by getting:

Two verbal identifiers:

Ask the patient to state their full name,  
and their *Date of Birth (DOB)*.

Check the ID bracelet very carefully

Check the identity of the patient before you help him/her with their medication.

It is mandatory for you to use *at least two (2)* identifiers- Use 2 methods to identify the patient. If you assist the wrong patient this may cause a fatal error.

You **cannot** use a bed or room number as identifiers. A patient may accidentally enter a room and even go to bed in the wrong room.

Some identifiers include the patient's:

- First, middle and last name,
- DOB – Date of Birth (month, day and year),
- Photograph,
- a medical record number/ code number given to that patient

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- social security number.

Do NOT help with any medication if you cannot identify the patient. Tell your supervisor. It is an error when a patient takes another patient's medication. All medication errors have to be reported.

## **2. The Right Medication**

The medication may belong to someone else in the household, so ALWAYS verify the medication label.

Do NOT use any medication that has a label that you cannot read.

Do NOT use any medication unless it has a complete label.

Read and check the label against the medication record at least three times and tell the person the name of the medicine before you help them.

If the person says they do not take this medicine, STOP. Report this to your supervisor. It is an error if a patient takes the wrong medication. This must also be reported.

## **3. The Right Dosage**

The patient needs to take the right dosage that is ordered by the Physician or the Health care Practitioner, to achieve the desired effect of the medication. Taking too much of the medication can lead to an overdose. Take steps to reduce overdose errors. Follow the systems in place – for triple checking dosages. Make sure the medication is recorded, so that a second dose is not accidentally given. Giving a half of the ordered dose of medication is also not the correct dosage. Not giving the right amount of the drug is also a medication error and has to be reported.

## **4. The Right Time**

Timing is also very important when assisting with self-administration of medication.

Some medications need to reach a consistent level in the bloodstream to work effectively. This means that the medications need to be taken at the right times to keep that level of medication in the system. Usually, the liver or kidneys will remove the medication from the blood and high levels of the medication can build up in the system which can lead to toxicity if that dose is taken too soon. Also, if the patient miss a dose or wait too long between the doses, there might not be enough of the medication in the body to work effectively.

The standard acceptable time is within one hour before or after the scheduled administration time or it is considered a medication error.

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### **5. The Right Route**

Check the medication label to find out the right route. If the medication label states by mouth and the medication is placed in the ear. It is an error and must also be reported.

### **6. The Right Documentation**

The right documentation involves properly recording /documenting each dose offered on the patient's record. Document only AFTER you have assisted with the ordered medication. Never document that you assist with a medication before you have actually helped the patient. You may be called to another task and another individual takes over; your documentation ahead of the task will stop that other employee from assisting, because the documentation reflects that the patient has already received the medication when he/she did not. Document the time, route, and any other specific information, including refusal of medication. If the patient does not want to take the medication, notify the supervisor. Patient has a right to refuse; the supervisor will make sure that follow up is done with the patient and the physician as needed.

### **7. Right to REFUSE**

By Florida's law, a resident/patient has the right to refuse a medication. A patient should not be forced to take a medication. Also, you cannot hide the medication in the patient's food and / or drink.

### **8. Right Reason**

Confirm the rationale for the ordered medication. Is the patient taking the Tylenol for the headache or for fever? If you are not sure of the reason for a medication, ALWAYS ask. Ask the doctor, pharmacist or the nurse. Knowing the reason for the medication will help you to check the patient for the desired effect.

### **9. Right Response**

Assisting with self administration of medication is not just helping the patient to take the medication; It also involves observation of what happens afterward. Professionals are trained to know how medications move through the body, what the effect of the medication is, and what adverse effects may occur. Adverse effects may include allergic reactions to the drug, overdose of the drug, and drug interactions between multiple drugs.



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Make sure that the medication had the desired effect. If a Tylenol was taken for a headache, check the patient and find out if the headache was relieved. If the headache was not resolved the Physician / health care practitioner needs to be notified. Document the patient's report and your observation and that the supervisor / physician was notified.

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