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Last week I illustrated a few of the rights held by patients of nursing homes. I would like to continue of that theme this week.

The Residents' Bill of Rights states that *[t]he quality of a particular service or treatment must be the same to all residents without regard to the source of payment for such service or treatment.* DHR Regs. § 290-5-39-.07(a). Several years ago I had a case where a woman with Multiple Sclerosis was transitioning from private insurance to Medicaid. The nursing home threatened to remove her air mattress and respiratory therapy the very day that her payment source was due to change. After citing the aforesaid regulation and demanding a statement from the treating physician that she no longer needed these items, the nursing home backed down.

The Bill of Rights also provides guidelines for the use of restraints, both physical and chemical. They may only be used to the minimum extent necessary to protect the resident from immediate injury to himself or another person. DHR Regs. § 290-5-39-.09. Except in an emergency situation, restraints may only be used when ordered by the attending physician. The order may not extend beyond 35 days in a skilled nursing home. DHR Regs. § 290-5-39-.09(b)(2). And, a restrained resident must be monitored by staff at least every hour and must be released and allowed to exercise at least every two hours. These actions must be documented in the resident's record. DHR Regs. § 290-5-39-.09(e). Many facilities over use restraints and largely ignore these rules. Besides filing a complaint with the Office of Regulatory Services of DHR, these violations could be used against the facility in a malpractice action should damages to the resident result.

The Bill of rights also states that no resident or resident's family should be coerced into contributing to the facility or any member of its staff. It is not unusual for non-profit nursing homes to suggest that the waiting list for admission will be shorter if a contribution is made to the home's foundation.

As you can see, the nursing homes often assume that the resident's are ignorant about their rights and capitalize on that naïveté. As a patient advocate, it is essential to be up to speed on the Bill of Rights and to let the nursing home know that you are.

Member of the National Academy of Elder Law Attorneys