

Module 2: Legal and Ethical Aspects of Health

Objectives

- Explain patient’s and resident’s rights.
- Describe Advance Directives.
- Specify how patient’s and resident’s right can be violated.
- Define confidentiality, including HIPPA.
- Discuss the consequences of improper use of social media.
- List and describe forms of abuse.
- Describe the risk factors and potential perpetrators of abuse.
- Explain Elder abuse.
- Explain mandatory reporting.
- Explain boundaries.
- Specify guidelines for behavior relating to ethics.
- Explain your responsibilities and rights.
- Define documentation.

Key Terms

- Living Will
- DNR
- Abuse
- Neglect
- Exploitation
- Confidentiality
- Elder Abuse
- Mandatory Reporting
- Boundaries
- HIPPA

Content

REFERENCE TEXTBOOK: UNIT 1: CHAPTER 4 – LEGAL AND ETHICAL ISSUES	
TEXTBOOK SECTION	NOTES
What Will You Learn?*	
Patient’s Rights*	
Resident’s Rights*	
SUPPLEMENTAL INFORMATION	
Protecting Consumers	Several State agencies are involved in protecting the rights of Consumers. You should become familiar with these agencies. Some consumers may be served by several different agencies. Some agencies are designed to protect all adults from abuse, endangerment, and exploitation. They investigate complaints and may take punitive actions if indicated. Other agencies are designed to protect and advocate for people with disabilities. There are state agencies that investigate and may bring legal actions in support of persons who have had their rights violated.

	<p>The State must be notified of any rights violations as well as when abuse, neglect, or exploitation is suspected. This is discussed later in the section on Mandatory Reporting.</p>
Prohibitions from Employment	<p>Prior to being hired, your employer will perform a background check which includes a criminal history check as well as a sex offender check. They are currently working on adding additional checks. For further information reference the Maine Background Check Center online. (https://backgroundcheck.maine.gov/DHHS/MBC/)</p> <p>Furthermore, they must check with the Division of Licensing and Certification to verify that you have completed PSS training and that you have not been the subject of an annotation by a State Survey Agency for a substantiated complaint or conviction of abuse, neglect, or misappropriation of funds in a health care setting.</p>
Advance Directives	<p>When you need medical care, you have the right to make choices about that care. But there may come a time when you are too ill to make those choices known. You can protect your right to choose by making decisions ahead of time about the medical care you want in the future. This is called making an Advance Directive.</p> <p>All adults should be encouraged to make an Advance Directive, especially upon entry to a healthcare facility or starting home care services. This protects the person's wishes should such authorization be needed at a later time when they may be unable to communicate their wishes.</p> <p>An Advance Directive not only protects a person's right to make medical decisions that affect his/her life but also helps the family and physician by providing guidelines for the person's care. All health care facilities should have a Health Care Advance Directive Form that is easy to obtain and fill out to enable a person to express their wishes. A copy of the <i>Maine Health Care Advance Directive Form</i> is in Appendix A. It is divided into seven Parts and may also be referred to as a Living Will. It is called a Living Will because can take effect while the Consumer is still alive but has become unable to communicate their wishes.</p>
<ul style="list-style-type: none"> Part 1 - Power of Attorney for Health Care 	<p>Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i>, Part 1.</p>

• Part 2 – Special Instructions	Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i> , Part 2.
• Part 3 – Primary Physician	Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i> , Part 3
• Part 4 – Donation of Body, Organ or Tissues at Death	Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i> , Part 4
• Part 5 – Instructions About Funeral and Burial Arrangements	Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i> , Part 5
• Part 6- Signing the Form	Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i> , Part 6
• Part 7 – Instructions to Emergency Medical Services (ambulance crews) about what to do if you heart or breathing stops	<ul style="list-style-type: none"> • Also referred to as the Do Not Resuscitate (DNR) Orders. • Refer to Appendix A: <i>Maine Health Care Advance Directive Form</i>, Part 7
Abuse, Neglect, and Exploitation	<p>Abuse, neglect, and exploitation happen to thousands of adults in Maine every year. Many people are uncomfortable talking about these problems, especially if the abuser is a family member or friend. As a PSS, you may encounter or witness some unlawful and uncomfortable situations. However, there are some very important items to keep in mind as you begin your PSS career:</p> <ul style="list-style-type: none"> • As a PSS, you are a Mandatory Reporter (discussed in detail later in this section). • As a PSS, you must be familiar with the laws that pertain to your job including those concerning abuse, neglect, and exploitation. • As a PSS, you are liable (legally responsible) for your own action. Claiming that you are unaware of a law will not be accepted as an excuse. You may still face sanctions and prosecution. <p style="text-align: center;"><u>"Ignorance of the law is no excuse."</u></p> <p>NOTE: Always remember all Consumers have the right to be free from abuse, neglect, and exploitation.</p>
Mandatory Reporting	<p>Maine Statute 22 MRS §3477 <i>Persons mandated to report suspected abuse, neglect or exploitation</i> states “the following persons immediately shall report to the department when the person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is likely to be abused, neglected or exploited:</p>

	<p>A. While acting in a professional capacity:</p> <ul style="list-style-type: none">(1) An allopathic or osteopathic physician;(2) A medical resident or intern;(3) A medical examiner;(4) A physician's assistant;(5) A dentist, dental hygienist or dental assistant;(6) A chiropractor;(7) A podiatrist;(8) A registered or licensed practical nurse;(9) A certified nursing assistant;(10) A social worker;(11) A psychologist;(12) A pharmacist;(13) A physical therapist;(14) A speech therapist;(15) An occupational therapist;(16) A mental health professional;(17) A law enforcement official, corrections officer or other person holding a certification from the Maine Criminal Justice Academy;(18) Emergency room personnel;(19) An ambulance attendant;(20) An emergency medical technician or other licensed medical service provider;<u>(21) Unlicensed assistive personnel;</u>(22) A humane agent employed by the Department of Agriculture, Conservation and Forestry;(23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;(24) A sexual assault counselor;(25) A family or domestic violence victim advocate;(26) A naturopathic doctor;(27) A respiratory therapist;(28) A court-appointed guardian or conservator; <p>or</p>
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	<p>(29) A chair of a professional licensing board that has jurisdiction over mandated reporters</p> <p>B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation;</p> <p>C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation; or</p> <p>D. Any person providing transportation services as a volunteer or employee of an agency, business or other entity, whether or not the services are provided for compensation.</p> <p>The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate reporting consistent with this chapter and to ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are consistent with this chapter.”</p>
<p>• Making a Mandatory Report</p>	<p>Maine Statute 22 MRS §3477 <i>Persons mandated to report suspected abuse, neglect or exploitation</i> states “Reports regarding abuse, neglect or exploitation must be made immediately by telephone to the department and must be followed by a written report within 48 hours if requested by the department. The reports must contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; that person's occupation; and where that person can be contacted. The report may contain any other information that the reporter believes may be helpful.”</p> <p>Your facility should have policies and procedures on mandatory reporting. make sure you know these</p>

	policies and procedures and always keep in mind you are a mandatory reporter under state law.
• Good Faith Immunity	When reports are made in good faith, employees who comply with the mandatory reporting law are protected from discharge, threats, or discrimination regarding their conditions of employment by their employers under Maine law. This is sometimes referred to as the "Whistleblower's Protection Act" (26 MRSA §833). Your employer is required by law to have the "Whistleblower's Protection Act" poster posted in your workspace. (26 MRSA §839). A copy of the poster can be found in Appendix B.

REFERENCE TEXTBOOK: UNIT 1: CHAPTER 4 – LEGAL AND ETHICAL ISSUES

TEXTBOOK SECTION	NOTES
Laws: A Way of Preserving Patients' and Residents' Rights* (Including HIPPA)	
• Violations of Civil Law*	
• Defamation*	
• Assault*	
• Battery*	
• Fraud*	
• False Imprisonment*	
• Invasion of Privacy* (Including HIPPA)	<p>Confidentiality <u>ALL PERSONAL AND MEDICAL RECORDS ARE CONFIDENTIAL.</u> The person receiving support services has the expectation that his/her privacy about care and other matters will not be shared with anyone. It is the job of each staff member to see that this right of privacy is upheld. The only people who are allowed to read a Consumer's record are the Consumer or his Guardian, staff members <u>in the performance of their job</u>, and State inspectors on official business. For anyone else to read the record, the Consumer or Guardian's permission must be obtained in writing. Family members, friends, visitors, or others do not have the right to access these documents unless written permission has been granted. Always follow your facility's policies and procedures on these issues.</p> <p>Social Media Read and discuss the National Council of State Boards of Nursing (NCSBN) brochure, <u>A Nurse's Guide to the Use of Social Media</u>, https://www.ncsbn.org/3739.htm</p>

<ul style="list-style-type: none"> • Larceny* 	
<ul style="list-style-type: none"> • Violations of Criminal Law— Abuse* 	<p>"Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; financial exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. (22 MRSA §3472). Abuse may occur in a variety of ways:</p> <ul style="list-style-type: none"> • Consumers may abuse one another, staff may abuse Consumers, or Consumers may be abusive toward staff. • Abuse may be an act of violence such as physical or sexual assault, or it may be verbal abuse, medication errors, or failure to provide proper assistance resulting in injuries. • Consumers may be neglected by staff or family members. <p>Consumers may be exploited by staff, family members, or other Consumers.</p>
<ul style="list-style-type: none"> • Forms of Abuse* 	<p>Include:</p> <ul style="list-style-type: none"> • Table 4-1 Types of Abuse* <p>NOTE: Abuse can happen at any age from birth on. Your facility will instruct you on how to respond to abusive situations you might encounter while providing care. Always follow your facility's policies and procedures and remember you are a Mandatory Reporter.</p>
<p><i>The following are the bullet points under Forms of Abuse* in the textbook:</i></p>	
<ul style="list-style-type: none"> • Physical Abuse* 	
<ul style="list-style-type: none"> • Neglect* 	<p>"Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these (22 MRS §3472).</p> <p>As a PSS, you are Negligent if you cause a Consumer harm by:</p> <ul style="list-style-type: none"> • Disregarding a supervisor's instructions or performing a task that is not part of the service plan; • Ignoring a Consumer's needs; • Leaving a Consumer alone without adequate Supervision;

	<ul style="list-style-type: none"> • Performing a task incorrectly or unsafely; • Performing a task without proper training; • Performing a task that is not in your job description, even if you are told to do it by a nurse or other professional. <p>Additional examples of Neglect:</p> <ul style="list-style-type: none"> • A group of assaultive Consumers have been left alone and unsupervised. • An aide has fallen asleep or is high or intoxicated while on duty. • A Consumer has bleeding gums and some loose teeth, indicating that a visit to the dentist is long overdue. • A Consumer is continually fearful about leaving her room or home and seems almost panicky when it's time to leave for an outing. Staff "leave her be" rather than attempting to determine the cause of her fear. <p>A Consumer fell several days ago. Her ankle is swollen and bruised, and she complains of pain when walking. The Consumer's doctor or family was not notified of the fall immediately. X-rays taken several days after the fact reveal a fracture.</p>
<ul style="list-style-type: none"> • Abandonment* 	
<ul style="list-style-type: none"> • Psychological (emotional) abuse* 	
<ul style="list-style-type: none"> • Sexual Abuse* 	<p>"Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent (22 MRS §3472).</p> <p>Potential Indicators of Sexual Abuse:</p> <ul style="list-style-type: none"> • A family member offers affectionate gestures to a Consumer that are too lingering and seductive or become centered on the sex organs, anus, or breasts. • Injury to a Consumer's genitals, anus, breast, or mouth. • A young Consumer tells you that her father manipulates her genitals, buttocks, and breasts during his visits. <p>Venereal disease, torn, stained or bloody underwear, difficulty walking or sitting, and pain or itching in genital area.</p>

• Financial Abuse*	NOTE: This is also referred to as “misappropriation of funds.”
SUPPLEMENTAL INFORMATION	
• Exploitation	<p>"Exploitation" means the illegal or improper use of an incapacitated adult or his resources for another's profit or advantage. (22 MRS §3472)</p> <p>Indicators of Exploitation:</p> <ul style="list-style-type: none"> • A Consumer's relative, who is the representative payee, fails to pay nursing, boarding, or foster home bills and provide personal needs money. • The facility administrator, who is a Consumer's representative payee, purchases furniture or clothing not intended for the Consumer. • A Consumer is manipulated into giving away money or personal property such as a TV, jewelry, or furniture. <p>Disappearance of personal property; transfer of property, savings, insurance; unexplained change in cash flow; change in will, representative payee, or power of attorney; or depleted bank accounts.</p>
• Undue influence	"Undue influence" means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is a dependent adult or an incapacitated adult (22 MRS §3472)
REFERENCE TEXTBOOK: UNIT 1: CHAPTER 4 – LEGAL AND ETHICAL ISSUES	
TEXTBOOK SECTION	NOTES
Perpetrators of Abuse*	<p>Consumer is more at risk for Abuse, Neglect, and Exploitation if they exhibit the following behavior:</p> <ul style="list-style-type: none"> • Argumentative • Assaultive • Demanding • Hostile • Incompetent • Incontinent • Intrusive • Manipulative • Mute • Passive/passive aggressive • Verbally abusive • Substance abuse • Sexual acting out behavior

	<ul style="list-style-type: none"> • Dementia, Traumatic Brain Injury, Alzheimer’s • Have multiple incidents
	<p>NOTE: Report all adult abuse, neglect, or exploitation to the Office of Aging and Disability Services (OADS). Report all child abuse, neglect, or exploitation to the Office of Child and Family Services (OCFS). Report all facility violations to DLC.</p>
	REMEMBER PSSs ARE MANDATORY REPORTERS.
Elder Abuse*	
Role of the Nursing Assistant in Reporting Abuse*	<p>Include:</p> <ul style="list-style-type: none"> • Box 4-1: Reporting Abuse* <p style="text-align: center;">REMEMBER PSSs ARE MANDATORY REPORTERS.</p>
REFERENCE TEXTBOOK: UNIT 8: CHAPTER 45 – CARING FOR PEDIATRIC PATIENTS	
TEXTBOOK SECTION	NOTES
Risk Factors for Child Abuse*	
Role of the Nursing Assistant in Reporting Abuse*	<p>Scenarios and reporting applies to all age groups.</p> <p>Include:</p> <ul style="list-style-type: none"> • Box 45-1: Signs of Child Abuse* <p style="text-align: center;">REMEMBER PSSs ARE MANDATORY REPORTERS.</p>
REFERENCE TEXTBOOK: UNIT 9: CHAPTER 46 – INTRODUCTION TO HOME HEALTH CARE	
TEXTBOOK SECTION	NOTES
Ability to Set Professional Boundaries*	<p>There should be nothing that you would do for one Consumer that you would not do for another. Otherwise, you may seem to be showing favoritism, partiality, or lack of objectivity when important decisions or actions are being made. Staff members who forget to maintain a proper working distance may unrealistically raise the expectations of Consumers, or appear to other Consumers to be unfairly generous with their time for a "favored" Consumer friend. Such appearances seriously complicate interactions between Consumers and all staff. Examples of improper working boundaries are:</p> <ul style="list-style-type: none"> • taking the Consumer to your house for the weekend, • buying gifts for the Consumer, • helping the Consumer write a will, and • taking money from the Consumer.

	NOTE: PSS should follow their facility's policies and procedures about relationships with Consumers such as accepting gifts from families.
REFERENCE TEXTBOOK: UNIT 1: CHAPTER 4 – LEGAL AND ETHICAL ISSUES	
TEXTBOOK SECTION	NOTES
Ethics: Guidelines for Behavior*	Include: <ul style="list-style-type: none"> • Box 4-2: Code of Ethics for Nursing Assistants*
• Professional Ethics*	
<i>The following are the bullet points under Professional Ethics* in the textbook:</i>	
• Beneficence*	
• Nonmaleficence*	
• Justice*	
• Fidelity*	
• Autonomy*	
• Confidentiality*	
• Personal Ethics*	There may be times when your personal ethics or beliefs conflict with a federal or state regulation. In these circumstances, it is best to consult with your supervisor for guidance about how you should handle the situation.
• Ethical Dilemmas*	Reference earlier sections on <i>Guardianship and Conservatorship</i> in regard to surrogacy laws.
• Protecting Yourself from Legal and Ethical Difficulties*	
What Did You Learn?*	Questions 1-11 only
Matching*	All matching
Stop and Think*	
REFERENCE TEXTBOOK: UNIT 1: CHAPTER 2 – THE NURSING ASSISTANT	
TEXTBOOK SECTION	NOTES
Delegation*	Start at Paragraph 5 “You should never refuse an assignment” to end of chapter... Include: <ul style="list-style-type: none"> • Box 2-2: Tasks That Are Generally Beyond the Nursing Assistant’s Scope of Training* • Guidelines Box 2-1: Guidelines for Accepting or Declining an Assignment*
	NOTE The bullet point “The nurse is not available to supervise your efforts.” is not applicable to PSSs.
SUPPLEMENTAL INFORMATION	

<p>Your Rights</p>	<p>Rights are privileges or powers that we are entitled to as employees. Similarly, your rights cannot be protected unless you learn what they are. The Maine Labor Laws and <i>Maine Employee Rights Guide</i> can be found on the maine.gov website Take time to become familiar with these responsibilities and rights. Your responsibilities do not go away simply because you did not take the time to learn them. As the old saying goes:</p> <p style="text-align: center;"><u>"Ignorance of the law is no excuse."</u></p> <p>Similarly, your rights cannot be protected unless you learn about and know what they are.</p>
<p>Documentation</p>	<p>Documenting, also known as charting or recording, of services and events in the consumer’s care settings is a very important function. A Consumer’s chart or record is a legal document which may be used in a court of law. It may contain a range of documents pertaining to the Consumer such as assessments, service plans, health care notes, behavioral charts, lab work, medications, and reports from other providers. It is crucial that you document promptly, accurately, clearly, and correctly. The amount and type of documentation varies depending upon the program in which you are working.</p> <p>Important things to keep in mind about documenting:</p> <ul style="list-style-type: none"> • Document only the care <u>you</u> provided to the person or that <u>you</u> participated in. • <u>Never</u> make entries for another staff member, even if asked to do so. • <u>Never</u> enter or refer to a Consumer’s name in another person’s file. This is a violation of confidentiality. Use terms like roommate or “another Consumer” instead. • If you are describing what someone told you, put their statement in quotation marks to indicate that it is the person’s words you are recording and not your own observation. Example: The Consumer stated: “John called me a bad name”. • If a Consumer refuses some form of regular treatment, care, or medication, consult with your supervisor. They may ask you to complete a refusal of care or treatment form for the Consumer and instruct you on how to proceed.

	<p>Documentation is usually recorded in a 24-hour or “military” time format.</p> <p>Include:</p> <ul style="list-style-type: none"> • Figure 5-17*, Unit, Chapter 5: Communication Skills • Guidelines Box 5-1: Guidelines for Recording* <p>NOTE: It is important to become familiar with the record keeping and documentation methods used in whatever setting you are working. You should always report to supervisors any changes from accepted practice that come to your attention. Follow your facility’s policies and procedures for documentation.</p>
<ul style="list-style-type: none"> ♦ How to Handle Errors in Documentation 	<p>Follow your facility’s policies for handling documentation errors.</p>
<ul style="list-style-type: none"> ♦ Late Entries 	<p>Late entries are entries added on another day or another shift other than the one on which it happened. Follow your facility’s policies on how to document late entries.</p>