

3

Legal and Ethical Issues

1. Define the terms *ethics* and *laws* and list examples of legal and ethical behavior

Ethics and laws guide behavior. **Ethics** are the knowledge of right and wrong. An ethical person has a sense of duty and responsibility toward others. He always tries to do what is right.

If ethics tell people what they *should* do, **laws** tell them what they *must* do. Laws are usually based on ethics. Governments establish laws to help people live peacefully together and to ensure order and safety. When someone breaks the law, he may be punished by having to pay a fine or spend time in prison.

Ethics and laws are extremely important in health care. They protect people receiving care and guide people giving care. Home health aides and other healthcare providers should be guided by a code of ethics. They must know the laws that apply to their jobs.

Guidelines: Legal and Ethical Behavior

- G** Be honest at all times. Stealing or lying about what care you provided or how long it took are examples of dishonesty.
- G** Protect clients' privacy and confidentiality. Do not discuss their cases except with other members of the care team.
- G** Report abuse or suspected abuse of clients. Help clients report abuse if they wish to make a complaint of abuse.

- G** Follow the care plan and your assignments. Report any mistakes you make promptly.
- G** Do not perform any tasks outside your scope of practice.
- G** Report all client observations and incidents to your supervisor.
- G** Document accurately and on time.
- G** Follow rules for safety and infection prevention (Chapters 5 and 6).
- G** Do not accept gifts or tips.
- G** Do not get personally or sexually involved with clients or their family members or friends.
- G** Do not bring friends or family members with you to clients' homes.

Maintaining Boundaries

In professional relationships, boundaries must be set. Boundaries are the limits to or within relationships. Home health aides, like other professionals, are guided by ethics and laws that set limits for their relationships with clients. These boundaries help support healthy client-worker relationships. Working in clients' homes may make it more difficult to honor the boundaries of professional relationships. Clients may feel that HHAs are their friends because they are in their homes. If the worker and client become personally involved with each other, it makes it more difficult to enforce agency rules. For example, an HHA may want to give a client extra help or let her skip the exercise she dislikes. The client may expect the HHA to break the rules because she thinks they are friends. Emotional attachments to clients are unprofessional and may weaken an

HHA's judgment. HHAs should be friendly, warm, and caring with clients, but should behave professionally and stay within the limits of set boundaries. Agency rules and the care plan's instructions should be followed. They are in place for everyone's protection. An HHA can ask her supervisor for help if a client asks her to do things she is not allowed to do.

2. Explain clients' rights and discuss why they are important

Clients' rights relate to how clients must be treated. They provide an ethical code of conduct for healthcare workers. Home health agencies give clients a list of these rights in a language they can understand and review each right with them. A partial list of these legal rights is located at the end of this learning objective.

Clients have the right to receive considerate, dignified, and respectful care. This also means that clients have the right not to be neglected or abused by their caretakers. **Neglect** is the failure to provide needed care that results in physical, mental, or emotional harm to a person. Examples include leaving a bedridden client alone for a long time or denying the client food, dentures, or eyeglasses.

Negligence means actions, or the failure to act or provide the proper care for a client, resulting in unintended injury. An example of negligence is an HHA forgetting to lock a client's wheelchair before transferring her. The client then falls and is injured. **Malpractice** occurs when a person is injured due to professional misconduct through negligence, carelessness, or lack of skill.

Abuse is purposeful mistreatment that causes physical, mental, or emotional pain or injury to someone. There are many forms of abuse, including the following:

- **Physical abuse** is any treatment, intentional or unintentional, that causes harm to a person's body. This includes slapping, bruising, cutting, burning, physically restraining, pushing, shoving, or even rough handling.

- **Psychological abuse** is emotional harm caused by threatening, scaring, humiliating, intimidating, isolating, or insulting a person, or treating the person as a child.
- **Verbal abuse** is the use of spoken or written words, pictures, or gestures that threaten, embarrass, or insult a person.
- **Assault** is a threat to harm a person, resulting in the person feeling fearful that she will be harmed. Telling a client that she will be slapped if she does not stop yelling is an example of assault.
- **Battery** is the intentional touching of a person without her consent. An example is an HHA hitting or pushing a client, which is also considered physical abuse. Forcing a client to eat a meal is another example of battery.
- **Sexual abuse** is nonconsensual sexual contact of any type. For example, forcing a person to perform or participate in sexual acts against her will is considered sexual abuse. Unwanted touching, exposing oneself to a person, and sharing pornographic material are also considered sexual abuse.
- **Financial abuse** is the improper or illegal use of a person's money, possessions, property, or other assets.
- **Domestic violence** is abuse by spouses, intimate partners, or family members. It can be physical, sexual, or emotional. The victim can be a man or woman of any age or a child.
- **Workplace violence** is abuse of staff by other staff members or clients. It can be verbal, physical, or sexual. This includes improper touching and discussion about sexual subjects.
- **False imprisonment** is unlawful restraint that affects a person's freedom of movement. Both the threat of being physically restrained and actually being physically restrained are

types of false imprisonment. Not allowing the client to leave the house is also considered false imprisonment.

- **Involuntary seclusion** is the separation of a person from others against the person’s will. An example is an HHA confining a client to his room.
- **Sexual harassment** is any unwelcome sexual advance or behavior that creates an intimidating, hostile, or offensive working environment. Requests for sexual favors, unwanted touching, and other acts of a sexual nature are examples of sexual harassment.
- **Substance abuse** is the repeated use of legal or illegal drugs, cigarettes, or alcohol in a way that harms oneself or others. For the HHA, substance abuse can lead to unsafe practices that result in negligence, malpractice, neglect, and abuse. It can also lead to the loss of the HHA’s job. Chapter 18 contains more information about substance abuse.

Home health agencies are required to provide their clients with toll-free abuse hotline phone numbers.

Home health aides must never abuse clients in any way. They must also try to protect their clients from others who abuse them. If an HHA ever sees or suspects that another caregiver or a family member is abusing a client, she must report this immediately to her supervisor. **Reporting abuse or suspected abuse is not an option—it is the law.** Information on signs and symptoms of abuse are found in the next learning objective.

Two other basic clients’ rights are the right to be fully informed of the goals of care and of the care itself, and the right to participate in care planning. The employer should develop an agreement with each client about the goals of care before service is provided. The employer should also make every effort to involve clients and their families in care planning (Fig. 3-1). Each person knows how his body works best and what makes

him comfortable. People who feel in control of their bodies, lives, and health have greater self-esteem. They are more likely to continue a treatment plan and to cooperate with caregivers. Clients also have a right to know what the agency expects to happen as a result of their care. These expected outcomes are sometimes called the goals of the care plan. Clients and the case manager should be informed of barriers to clients’ care. For example, a client’s failure to eat enough healthy food can be an obstacle to getting well.



Fig. 3-1. Clients and their families should be involved in care planning.

Home Health Care Patient Bill of Rights

Home health clients and their formal caregivers have a right to not be discriminated against based on race, color, religion, national origin, age, gender, sexual orientation, gender identity, or disability. Furthermore, clients and caregivers have a right to mutual respect and dignity, including respect for property. Caregivers are prohibited from accepting personal gifts and borrowing from clients.

The following Home Health Care Patient Bill of Rights is courtesy of the National Association for Home Care & Hospice. Visit nahc.org to learn more.

Patients have the right to:

- Have their property and person treated with respect;
- Be free from verbal, mental, sexual, and physical abuse, including injuries of unknown source, neglect, and misappropriation of property.

Patients have the right to file complaints with the home health agency:

- Regarding their treatment and/or care that is provided;

- Regarding treatment and/or care that the agency fails to provide;
- Regarding the lack of respect for property and/or person by anyone who is providing services on behalf of the home health agency.

Patients have the right to:

- Participate in, be informed about, and consent to or refuse care in advance of and during treatment with respect to:
 - Completion of all assessments;
 - The care to be furnished, based on the comprehensive assessment;
 - Establishing and revising the plan of care;
 - The disciplines that will furnish the care;
 - The frequency of visits;
 - Expected outcomes of care, including patient-identified goals, and anticipated risks and benefits.

Patients have the right to:

- A confidential clinical record;
- Access to and the release of patient information and clinical records.

Patients will be advised of:

- The extent to which payment for home health services may be expected from Medicare, Medicaid, or any other federally-funded or federal aid program known to the home health agency;
- The charges for services that may not be covered by Medicare, Medicaid, or any other federally-funded or federal aid program known to the home health agency;
- The charges the individual may have to pay before care is initiated;
- Any changes in the information regarding payment for service as soon as possible, in advance of the next home visit.

Patients will be advised of:

- The state toll-free home health telephone hotline, its contact information, its hours of operation, and that its purpose is to receive complaints or questions about local HHAs.
- The names, addresses, and telephone numbers of the area:
 - Agency on Aging
 - Center for Independent Living

- Protection and Advocacy Agency
- Aging and Disability Resource Center
- Quality Improvement Organization

Patients have the right to:

- Be free from any discrimination or reprisal for exercising his or her rights or for voicing grievances to the home health agency or an outside entity;
- Be informed of the right to access auxiliary aids and language services and how to access these services;
- Be informed of and receive a copy of the home health agency's policy for transfer and discharge.

Patients have the responsibility to:

- Notify the provider of changes in their condition (e.g., hospitalization, changes in the plan of care, symptoms to report);
- Follow the plan of care;
- Ask questions about care or services;
- Notify the home health agency if the visit schedule needs to be changed;
- Inform the home health agency of changes made to advanced directives;
- Promptly advise the home health agency of any concerns with the services provided;
- Provide a safe environment for the home health agency staff;
- Carry out mutually agreed upon responsibilities;
- Accept the consequences for the outcomes if the patient does not follow the plan of care.

3. List ways to recognize and report elder abuse and neglect

The healthcare community has become aware of the growing problem of elder abuse and neglect. The National Council on Aging (ncoa.org) cites a study by the National Center on Elder Abuse (ncea.acl.gov) that estimates approximately one in 10 Americans aged 60 and older has experienced some form of elder abuse. In addition, NCOA estimates as many as five million elderly people are abused each year. As the elderly









population grows, this problem may become worse.





Elderly people may be abused intentionally or unintentionally, through ignorance, inexperience, or an inability to provide care. People who abuse elders may mistreat them physically, psychologically, sexually, verbally, financially, and/or materially. They may deprive them of their rights, or they may neglect them by failing to provide food, clothing, shelter, or medical care. Some older adults may also become self-abusive or neglect their own needs.

Home health aides are in an excellent position to observe and report abuse or neglect. HHAs have an ethical and legal responsibility to observe for signs of abuse and report suspected cases to a supervisor. HHAs are considered mandated reporters. **Mandated reporters** are people who are required to report suspected or observed abuse or neglect because they have regular contact with vulnerable populations, such as the elderly. If abuse is suspected or observed, the HHA must report to the supervisor immediately. Giving as much information as possible is important. This is a serious responsibility, and home health aides can help end the disturbing trend of elder abuse.







Observing and Reporting: Abuse and Neglect

The following injuries are considered suspicious and should be reported:

-  Poisoning or traumatic injury
-  Teeth marks
-  Belt buckle or strap marks
-  Bruises, contusions, or welts
-  Scars
-  Fractures or dislocation
-  Burns of unusual shape and in unusual locations, or cigarette burns
-  Scalding burns

-  Scratches or puncture wounds
-  Scalp tenderness or patches of missing hair
-  Swelling in the face, broken teeth, or nasal discharge
-  Bruises, bleeding, or discharge from the vaginal area

The following signs could indicate abuse:

-  Yelling obscenities
-  Fear, apprehension, or fear of being alone
-  Poor self-control
-  Constant pain
-  Threatening to hurt others
-  Withdrawal or apathy (Fig. 3-2)

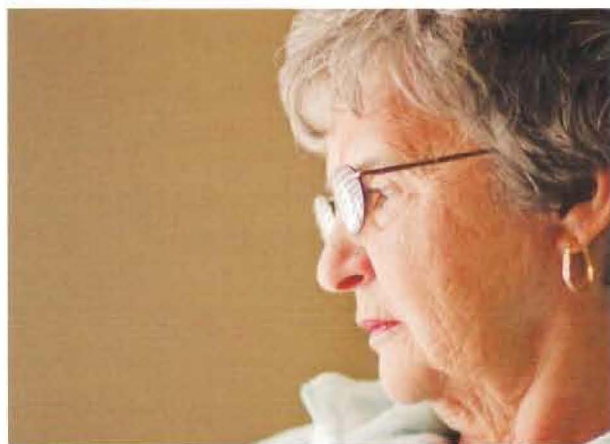


















Fig. 3-2. *Withdrawing from others is an important change to report.*

-  Alcohol or drug abuse
-  Agitation, anxiety, or signs of stress
-  Low self-esteem
-  Mood changes, confusion, or disorientation
-  Private conversations are not allowed, or the family member/caregiver is present during all conversations
-  Reports of questionable care by the client or his family

The following signs could indicate neglect:







-  Pressure injuries

-  Unclean body
-  Body lice
-  Soiled bedding or incontinence briefs not being changed
-  Poorly fitting clothing
-  Unmet needs relating to hearing aids, eye-glasses, etc.
-  Weight loss or poor appetite
-  Uneaten food
-  Dehydration
-  Living conditions that are unsafe, unclean, infested, or inadequate
-  Client reports of not receiving prescribed medication

4. List examples of behavior supporting and promoting clients' rights

Home health aides can help protect clients' rights by following these guidelines:

Guidelines: Protecting Clients' Rights

-  Never abuse a client physically, psychologically, verbally, or sexually. Watch for and report any signs of abuse or neglect to your supervisor.
-  Call the client by the name he or she prefers. Use pronouns the client prefers (he/him, she/her, or they/them).
-  Involve clients in planning. Allow clients to make as many choices as possible about when, where, and how care is performed.
-  Always explain a procedure to the client before performing it.
-  Do not unnecessarily expose a client while giving care.
-  Respect a client's refusal of care. Clients have a legal right to refuse treatment and care.

However, report the refusal to your supervisor immediately.










-  Tell your supervisor if a client has questions, concerns, or complaints about treatment or the goals of care.
-  Be truthful when documenting care.
-  Do not talk or gossip about clients. Keep all client information confidential.
-  Knock and ask permission before entering a client's room.
-  Do not open a client's mail or look through her belongings (Fig. 3-3).



Fig. 3-3. Do not look through a client's mail or belongings.

-  Do not accept gifts or money from clients.
-  Report any questionable financial practices to your supervisor.
-  Respect your clients' property. Handle personal possessions gently and carefully.
-  Report observations regarding a client's condition or care.

5. Explain HIPAA and list ways to protect clients' confidentiality

To respect **confidentiality** means to keep private things private. Home health aides will learn confidential (private) information about clients. They may learn about a client's state of health, finances, and personal relationships. Ethically

and legally, they must protect this information. This means that home health aides should not share information about clients with anyone other than the care team.

Congress passed HIPAA (Health Insurance Portability and Accountability Act, hhs.gov/hipaa) in 1996. It has been further defined and revised since then. One of the reasons this law was passed was to help keep health information private and secure. All healthcare organizations must take special steps to protect health information. They and their employees can be fined and/or imprisoned if they do not follow rules to protect patient privacy.

Under this law, a person's health information must be kept private. **Protected health information (PHI)** is information that can be used to identify a person and relates to the patient's condition, any health care that the person has had, and payment for that health care. Examples of PHI include a person's name, address, telephone number, social security number, email address, and medical record number. Only people who must have information to provide care or to process records should know a person's private health information. They must protect the information so it does not become known or used by anyone else. It must be kept confidential.

The Health Information Technology for Economic and Clinical Health (HITECH) Act became law at the end of 2009. It was enacted as a part of the American Recovery and Reinvestment Act of 2009. HITECH was created to expand the protection and security of consumers' electronic health records (EHR). HITECH increases civil and criminal penalties for sharing or accessing PHI and expands the ability to enforce these penalties. HITECH also offers incentives to providers and organizations to adopt the use of EHR.

HIPAA applies to all healthcare providers, including doctors, nurses, home health aides, and any other members of the care team. HHAs

cannot give any information about a client to anyone who is not directly involved in the client's care unless the client gives official consent or unless the law requires it. For example, if a neighbor asks an HHA how a client is doing, he should reply, "I'm sorry but I cannot share that information. It's confidential." That is the correct response to anyone who does not have a legal reason to know about the client. Other ways to protect clients' privacy include the following guidelines:

Guidelines: Protecting Privacy

- G** Do not leave information for a client in a voicemail message. Leave only your name and number when asking clients or family members to call you back.
- G** Make sure you are in a private area when you listen to or read your messages.
- G** Know with whom you are speaking on the phone. If you are not sure, get a name and number. Call back after you find out it is all right to share information with this person.
- G** Make or accept telephone calls about clients—even to or from the agency—in a private area.
- G** Do not use the client's phone, except to call your supervisor or any other agency-approved contacts. If you call anyone else, the client's number and name may be visible to the person whom you are calling.
- G** Do not talk about clients in public (Fig. 3-4). Public areas include elevators, grocery stores, lounges, waiting rooms, parking garages, schools, restaurants, etc.
- G** Use confidential rooms for giving reports to other care team members.
- G** If you see a client's family member or a former client in public, be careful with your greeting. The family member or former client

may not want others to know the person is or was a client.

- G** Do not bring family or friends to the client's home to meet the client. Do not leave family or friends in the car while you are working.
- G** Make sure nobody can see protected health or personal information on your computer screen while you are working. Log out and/or exit the web browser when finished with any computer work.
- G** Do not give confidential information in emails; you do not know who has access to your messages.
- G** Do not share client information, photos, or videos on any social networking site, such as Facebook, Instagram, Pinterest, or Twitter. Do not share client information via text messages.



Fig. 3-4. Do not discuss clients in public places, such as restaurants, stores, and waiting rooms.

- G** Make sure fax numbers are correct before faxing healthcare information. Use a cover sheet with a confidentiality statement.

- G** Do not leave documents where others may see them.
- G** Store, file, or shred documents according to your agency's policy. If you find documents with a client's information, give them to your supervisor.

All healthcare workers must comply with HIPAA regulations, no matter where they are or what they are doing. There are serious penalties for violating these regulations, including the following:

- Fines ranging from \$100 to \$1.5 million
- Prison sentences of up to 10 years

Maintaining confidentiality is a legal and ethical obligation. It is part of respecting clients and their rights. Discussing a client's care or personal affairs with anyone other than members of the care team violates the law.

6. Discuss and give examples of advance directives

Advance directives are legal documents that allow people to decide what kind of medical care they wish to have if they are unable to make those decisions themselves. Advance directives can also name someone else to make medical decisions for a person if that person becomes ill or disabled. Living wills and durable powers of attorney for health care are two examples of advance directives; however, because advance directives vary from state to state, these may not be available in all states.

A **living will** outlines the medical care a person wants, or does not want, in case the person becomes unable to make those decisions. It is called a living will because it takes effect while the person is still living. It may also be called a *directive to physicians*, *health care declaration*, or *medical directive*. A living will is not the same thing as a will. A will is a legal declaration of how a person wishes his possessions to be distributed after death.

A **durable power of attorney for health care** (sometimes called *health care proxy*) is a signed, dated, and witnessed legal document that appoints someone else to make medical decisions for a person in the event that he becomes unable to do so. It can include instructions about medical treatment that the person wants to avoid.

Another type of medical order for end-of-life planning is **Physician Orders for Life-Sustaining Treatment (POLST)**. This order specifies treatments to be used when a person is very ill. These treatments are what the person wants to receive, not what he wishes to avoid. Decisions made are based on conversations between the patient and his healthcare providers. The patient discusses his beliefs and goals and is informed of his diagnosis, prognosis, and options, along with the benefits and drawbacks of the treatment options. The decisions made are turned into actionable medical orders. The form is readily accessible to medical personnel and aims to honor preferences whenever possible within the healthcare system.

A **do not resuscitate (DNR)** order is another tool that helps medical providers honor wishes about care. A DNR order is a medical order that tells medical professionals not to perform cardiopulmonary resuscitation (CPR). CPR refers to medical procedures used when a person's heart and lungs have stopped working. A DNR order means that medical personnel will not attempt emergency CPR if breathing or the heartbeat stops.

A **do not intubate (DNI)** order means that no breathing tube will be placed in the person, even though some CPR measures and medications may be used. This order is different from a DNR order. A person can have difficulty breathing before the heart or lungs have stopped working.

A **do not hospitalize (DNH)** order means that the person does not want to be sent to the hospital for treatment. It does not mean the person does not want to be treated at all; it means that

he will be treated where he is residing, rather than sent to a hospital.

Clients must be given information about their rights relating to advance directives. These rights include the following:

- The right to participate in and direct health-care decisions
- The right to accept or refuse treatment
- The right to prepare an advance directive
- Information on policies that govern these rights

Information for Advance Directives

Laws related to advance directives vary from state to state. Here are a few resources for locating the proper forms for a particular state:

- The National Hospice and Palliative Care Organization (NHPCO) is a nonprofit organization that represents hospice and palliative care programs in the United States. NHPCO is involved with improving care for people who are dying and their loved ones. More information can be located on their website, caringinfo.org, or by calling 703-837-1500.
- The U.S. Advance Care Plan Registry is a privately held organization that electronically stores advance directives, organ donor information, and emergency contact information, and makes them available to healthcare providers across the country 24 hours a day. More information can be located at usacpr.net, or by calling 800-LIV-WILL (800-548-9455).

7. Identify community resources available to help the elderly

Government and private agencies exist in most areas to serve the needs of the elderly. These agencies may have counselors to work with victims of abuse or neglect and other programs to protect senior citizens' rights and contribute to their quality of life. These resources can be located online by searching for terms such as *community services*, *senior citizens*, *aging*, or *elder services*. Local religious organizations may also

have programs for seniors. In addition, a home health agency's medical social worker is a good source of community support information.

Here are a few of the many community resources available to help clients meet different needs:

- Eldercare Locator, a public service of the US Administration on Aging (eldercare.acl.gov, 800-677-1116)
- National Association of Area Agencies on Aging (n4a.org, 202-872-0888)
- National Resource Center on LGBT Aging (lgbtagingcenter.org, 212-741-2247)
- Alzheimer's Association (alz.org, 800-272-3900)
- American Cancer Society (cancer.org, 800-227-2345)
- AIDSinfo, a service of the US Department of Health and Human Services (aidsinfo.nih.gov, 800-448-0440)
- Meals on Wheels Association of America (mealsonwheelsamerica.org, 888-998-6325)
- American Association on Intellectual and Developmental Disabilities (aaidd.org, 202-387-1968)
- National Institute of Mental Health (nimh.nih.gov, 866-615-6464)

Chapter Review

1. What is the difference between ethics and laws?
2. What is the purpose of clients' rights?
3. If a home health aide sees or suspects that a client is being abused, what is her responsibility?
4. What are mandated reporters?
5. List five possible signs of abuse that should be reported by the HHA. List five possible signs of neglect that should be reported by the HHA.
6. Pick three of the examples of behavior promoting clients' rights in Learning Objective 4. Describe how this behavior supports or promotes specific rights found in the Home Health Care Patient Bill of Rights.
7. What are some examples of a person's protected health information (PHI)?
8. To whom is an HHA allowed to give information about a client?
9. To which members of the healthcare team does HIPAA apply?
10. What are advance directives?
11. What is one way an HHA can locate community resources for the elderly?