

# **IMPROVING LONG TERM CARE QUALITY THROUGH ENHANCED SURVEILLANCE**

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# Resident Rights: General

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- **Dignity, respect and a comfortable living environment**
- **Quality of care and treatment without discrimination**
- **Freedom of choice to make independent decisions**
- **The safeguard property and money**
- **Safeguards in admission transfer and discharge**
- **Privacy in communications**
- **Participate in organizations and activities of your choice**
- **An easy to use and responsive complaint procedure**
- **Exercise all of your rights without fear of reprisals.**

# RESIDENT RIGHTS: SPECIFIC

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- **The right to have and meet in a Resident Council**
  - ensure that members of the governing body make themselves available to hold meetings with representatives of the resident council at least three times a year to discuss matters contained in a jointly developed agenda.
- **The right to voice grievances without discrimination or reprisal**
  - prompt resolution of your grievances including those with respect to the behavior of other residents;
  - recommend changes in policies and services to facility staff and/or outside representatives, free of interference, coercion, discrimination, restraint or reprisal from the facility.

# RESIDENT RIGHTS: SPECIFIC

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- **inform resident upon your admission about the complaint and recommendation procedure;**
- **ensure that a method is in place to respond within 21 days to complaints or grievances and recommendations.**

# FACILITY LIFE

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**Residents have the right to:**

- **be free from verbal, sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints except those restraints authorized in accordance with nursing home minimum standards;**
- **share a room with spouse, relative or partner when the spouse, relative or partner lives in the same facility and both consent to the arrangement;**
- **be assured of privacy for visits when a spouse, relative or partner resides outside the facility;**

# FACILITY LIFE

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## Other Rights

- when a family council exists, inform families of the existence of the council upon admission and at least quarterly.
- promptly notify the resident when there is:
  - a change in room assignment (This requires prior notice unless resident requested or agreed to the change, the medical condition requires a more immediate change, an emergency situation develops or there is a need to alter treatment significantly. Then, resident must be immediately informed, your doctor consulted and your designated representative or an interested family member notified);
  - a change in roommate assignment (This must be acceptable, where possible, to all affected residents);

# MONITORING THESE RIGHTS

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- **The NYS DOH has the role of monitoring that these rights are honored and to hold facilities accountable for not complying with them.**
- **The Ombudsman Program protects and promotes these rights.**

# NYSDOH

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- **Inadequate monitoring and Enforcement**
  - Often do not find deficiencies found by ombudsmen and families.
    - Ombudsman presence was associated with a 0.2 increase in the number of deficiencies and 2.2-point increase in deficiency score in terms of their severity.
  - When found, a majority of the deficiencies are listed as no harm which means there will be few sanctions, even for repeat violation.
  - Poor enforcement of non-compliance with rules and regulations
    - If fined, low fines – cost of doing business.
    - Allowed to correct before any sanctions.

# PANDEMIC RAISED AWARENESS OF SYSTEMIC PROBLEMS

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- **Infection Control: US General Accountability Office (GAO)**
  - Eighty-two percent of all nursing homes had an infection prevention and control deficiency cited in one or more years from 2013-2017.
  - Forty-eight percent had such a deficiency cited in multiple years.
  - The GAO said deficiencies in nursing homes included inadequate hand hygiene among staff, or the lack of preventative measures during disease outbreaks such as isolating sick residents and using personal protective equipment.

# PANDEMIC RAISED AWARENESS OF SYSTEMIC PROBLEMS

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- **One New York nursing home, where a respiratory infection sickened 38 residents, did not maintain a complete and accurate list of those infected, did not isolate residents with symptoms or staff members helping infected patients, and continued allowing residents to eat in the common dining room, according to the report.**
- **States often determined residents were not harmed by the deficiencies and typically did not pursue enforcement measures.**

# PANDEMIC RAISED AWARENESS OF SYSTEMIC PROBLEMS

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- **22.2 % of the surveyed New York nursing homes had an infection prevention and control deficiency. Out of 637 nursing homes surveyed, 24% were cited in multiple consecutive years.**
- **“Nursing homes owned by for-profit organizations, which comprised about 68 percent of all surveyed nursing homes, accounted for about 72 percent of nursing homes that had infection prevention and control deficiencies.”**

# PANDEMIC RAISED AWARENESS OF SYSTEMIC PROBLEMS

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- Since 2016, CMS has required nursing homes to establish an emergency preparedness plan, including preparing for disease and virus. Providers across the country strongly objected but the requirement went into effect. However, many homes have not complied. The requirements mandate an emergency plan, based on a risk assessment that utilizes an all hazards approach, policies and procedures, a communication plan, and a training program.

# PANDEMIC RAISED AWARENESS OF SYSTEMIC PROBLEMS

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- Low staffing
  - Almost 50 percent of our nursing homes are for profit. Many studies have shown that the for-profit facilities have the lowest staff and the most deficiencies cited. Are they putting profits above care?
  - Even some not-for-profit homes had low staffing, just not as low as for-profit.
    - Many people do not want to work in nursing homes. Why?

# WHAT CAN YOU DO?

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- **Ombudsmen**
  - Ask to see the Ombudsman in your relative's facility if there is one
  - **Find the Ombudsman** (<https://aging.ny.gov/long-term-care-ombudsman-program>) in your geographical area for help
- Call StateWide hotline 1-800-333-4374 before calling DOH
- **Complaints to the DOH**
  - Submit your complaint on the **Nursing Home Complaint** (<https://apps.health.ny.gov/surveyd8/nursing-home-complaint-form>) form online.
  - Contact the hotline (1-888-201-4563) 8:30 to 4:45 Monday through Friday.
- **Class Action law suits**

# CLASS ACTION SUITS

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- **Class actions are a powerful tool to make systemic change. Court orders can require unsafe nursing homes to make significant changes to improve the lives of patients.**
  - *Farruggio v. 918 James Receiver et al.*, 00383/2017 (N.Y. Sup. Ct.): Court ordered the defendant to spend millions of dollars hiring additional staff so that the home is now much better staffed and ordered the home to meet quality performance benchmarks.

# CLASS ACTION SUITS

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- **Court orders can also hold homes financially accountable for mistreating residents, which incentivizes safer homes.**
- **Class action litigation is appropriate when a nursing home is systematically failing to provide adequate and safe care to its residents.**
  - **CMS Data showing problems**
  - **Obviously understaffing and/or disgusting physical conditions**
  - **Numerous complaints from residents and their families, and/or from employees**

# CLASS ACTION SUITS

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- **Individual litigation may be appropriate when an individual has been harmed by a (relatively) unusual occurrence of significant magnitude, such as when the nursing home or its employees were negligent and caused a patient severe harm or death.**

# CLASS ACTION SUITS: FINDING A LAWYER

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- **Ask any lawyer you know for recommendations**
- **Call friends**
- **Contact your state bar association**

# CLASS ACTION SUITS

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- Look at Martindale Hubble
  - Look up areas of practice: class action
  - Look up geographical areas
- Check <https://www.classaction.org/>
- Check the background of the lawyer
  - Google the lawyer and her/his firm
  - Go on firm's website: where studied; what cases they have done; check bios; check references.
- I have worked with [Jeremiah Frei-Pearson](https://4classaction.com/about-us/team/jeremiah-frei-pearson/) (<https://4classaction.com/about-us/team/jeremiah-frei-pearson/>) of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP.

# WORK WITH STATEWIDE AND OTHER ADVOCACY GROUPS

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- **New Jersey passed a new law: additional \$3 an hour for nurse aides and a requirement that most of reimbursement must go to direct care.**
- **StateWide is working with NYS Legislature**