

PRINCIPLES OF CAREGIVING: FUNDAMENTALS

CHAPTER 2 – LEGAL AND ETHICAL ISSUES

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OBJECTIVES

1. Describe and explain legal and ethical issues.
2. Describe guidelines for avoiding legal action and list methods for protecting consumer rights.
3. Identify, describe, and differentiate cases of abuse, neglect, and exploitation; describe preventive measures; state the reporting requirements and identify legal penalties.
4. Describe techniques for incorporating and promoting consumer rights, dignity, independence, self-determination, privacy and choice.
5. Describe and explain ethical behavior in caregiving.
6. Describe advance directives and the significance of the “orange form.”

KEY TERMS

Note: Also see the legal terms on the next page.

Advance directives	Law
Abuse	Legal action
Confidentiality	Living will
Do not resuscitate order (DNR)	Need to know
Durable power of attorney	Neglect
Ethics	Orange form
Exploitation	Privacy
Health Insurance Portability and Accountability Act (HIPAA)	Support plan (care plan)

A. LEGAL TERMS AND DEFINITIONS

- **Abandonment** is when a family or agency leaves an individual without care or support.
- **Assault** takes place when an individual intentionally attempts or threatens to touch another individual in a harmful or offensive manner without their consent.
- **Battery** takes place when an individual harmfully or offensively touches another individual without their consent.
- **False imprisonment** takes place when you intentionally restrict an individual's freedom to leave a space.
- **Fraud** means that a person intentionally gives false information in order to make money or gain an advantage.
- **Invasion of privacy** is revealing personal or private information without an individual's consent.
- **Liability** refers to the degree to which you or your employer will be held financially responsible for damages resulting from your negligence.
- **Malpractice** is a failure to use reasonable judgment when applying your professional knowledge.
- **Negligence** is when a personal injury or property damage is caused by your act or your failure to act when you have a duty to act.



B. DISTINCTION BETWEEN LAW AND ETHICS

- **Law:** rules written by the legislature or a government agency.
- **Ethics:** a system of moral values; a set of principles of conscientious conduct.

Some laws are also ethical (for example, abuse laws), some are not (speeding). But not all ethical principles are laws (for example, being honest).

C. AVOIDING LEGAL ACTION

- **Keep personal information confidential.** Do not discuss confidential information with others except your supervisor or other colleagues who are directly involved with the client’s care. Confidential information may include medical, financial, or family issues.
- **Only perform work assigned.** If you perform a task that was not assigned by your supervisor, you become liable for those actions. A plan is developed for each client that describes exactly what services should be provided. This is called a care plan or support plan. It lists the tasks you should do for this individual.
- **Do not do less work than assigned.** When you fail or forget to do all the tasks assigned, you may put your client at risk. As a result of your failure to act, you might be found negligent. Again, it is important that you understand the care or support plan for the client. You must do all the tasks assigned to you as described in the plan—not more and not less.
- **Avoid doing careless or low-quality work.** Performing tasks carelessly might make you liable for the damages or injuries that result.
- **Report abuse** and make sure your actions are not considered abusive.



Your primary legal responsibility is to avoid legal action for you and the company you work for.

D. ETHICAL PRINCIPLES

- **Honesty:** Do not be afraid to politely say “no” to a task you are not assigned to do. Also, do not be afraid to admit that you do not know an answer to a question or how to do a task. Never steal, take a client’s possessions, or falsify documents or reports.
- **Respect:** An individual’s religious or personal beliefs and values may differ from yours. You should respect those differences.
- **Reliability:** Arrive for assignments on time. Always finish your shift, even if a client is being difficult or the workload is difficult. You can address those problems with the supervisor after you have finished your shift.
- You should not take gifts or tips.
- Follow the client’s service plan unless you consult with your supervisor.
- Take pride in doing your job well.

E. CLIENT RIGHTS

Clients have the right to:

- Considerate and respectful treatment and care.
- Not be abused emotionally, sexually, financially, or physically.
- Design their treatment or service plan, decide how their services will be provided, and who will deliver those services (including requesting a change of caregiver).
- Receipts or statements for their fee-based service.
- Refuse treatment.
- Privacy.
- File a complaint with the agency.
- Confidential handling of their personal information.

These client rights are based on principles of *self-determination* and *client choice*. Clients choose which services they want to receive. They may also choose how services are provided. For example, each person chooses what clothes to wear and what foods to eat. Having choices improves well-being and makes the person more independent.

The DCW should respect the client's choices. When a person is not allowed to make decisions about services, that takes away from his/her rights. As a DCW, if you are concerned about a choice, explain why you are concerned, discuss an alternative, contact your supervisor for instructions, and document what you did.

F. DIRECT CARE WORKER RIGHTS

DCWs have the right to:

- File a complaint without the fear of retaliation.
- Not be abused emotionally, sexually, financially, or physically.
- Work in a safe environment.
- Provide input for changes to a client's service plan.
- Be informed when a client files a complaint against him or her.
- A confidential investigation, a fair hearing, and be told the outcome when addressing complaints against him or her.
- Receive timely payment for services including salary and mileage, where appropriate.

G. CONFIDENTIALITY (HIPAA)

What is HIPAA?

HIPAA, the Health Insurance Portability and Accountability Act of 1996, is a law that keeps the identifiable health information about our clients confidential. It includes what must be done to maintain this privacy and punishments for anyone caught violating client privacy. The Office of Civil Rights of the U.S. Department of Health and Human Services is the agency authorized to enforce HIPAA's privacy regulations. The regulations took effect on April 14, 2003.

What is confidential?

All information about our clients is considered private or *confidential*, whether written on paper, saved on a computer, or spoken aloud. This includes their name, address, age, Social Security number, and any other personal information. It also includes the reason the client is sick, the treatments and medications he/she receives, caregiver information, any information about past health conditions, future health plans, and why the client is open to services.

Spoken communication runs the gamut from conducting client interviews, paging clients, whispering in corridors, to talking on telephones. Written communication includes the hard copy of the medical record, letters, forms, or any paper exchange of information. Electronic communication includes computerized medical records, electronic billing and e-mail.

If you reveal any of this information to someone who does not *need to know*, you have violated a client's confidentiality, and you have broken the law.

What are the consequences of breaking the law?

The consequences will vary, based on the severity of the violation, whether the violation was intentional or unintentional, or whether the violation indicated a pattern or practice of improper use or disclosure of identifiable health information. Depending on the violation agencies may be fined by the government if they are found to be in non-compliance with HIPAA regulations. Agencies and their employees can receive civil penalties up to \$25,000 for the violation. Agencies and their employees can also receive criminal penalties up to a \$250,000 fine and/or 10 years in prison for using information for commercial or personal gain or malicious harm.

Why are privacy and confidentiality important?

Our clients need to trust us before they will feel comfortable enough to share any personal information with us. In order for us to provide quality care, we must have this information. They must know that whatever they tell us will be kept private and limited to those who need the information for treatment, payment, and health care operations.

What is the *need to know* rule?

This rule is really common sense. If you need to see client information to perform your job, you are allowed to do so. But, you may not need to see all the information about

every client. You should only have access to what you need to in order to perform your job. There may also be occasions when you will have access to confidential information that you don't need for your work. For example, you may see information on whiteboards or sign-in sheets. You must keep this information confidential. There's no doubt that you will overhear private health information as you do your day-to-day work. As long as you keep it to yourself, you have nothing to worry about. In the course of doing your job, you may also find that clients speak to you about their condition. Although there's nothing wrong with this, you must remember that they trust you to keep what they tell you confidential. Do not pass it on unless it involves information the professional staff needs to know to do their jobs. Tell the client that you will be sharing it with the professional staff or encourage them to tell the information themselves.

What are the client's HIPAA rights?

Each client has certain rights under the HIPAA regulations. Unless the information is needed for treatment, payment, and health care operations, we cannot release any information without a written authorization from the client. The client must also give you verbal/written permission to discuss information with family members. This permission should be documented in the client's chart. The client also has the following rights:

- To inspect and copy his/her medical record.
- To amend the medical record if he/she feels it is incorrect.
- To an accounting of all disclosures that were made, and to whom, except those necessary for treatment, payment, or health care operations.
- To restrict or limit use or access to medical information by others.
- To confidential communications in the manner he/she requests.
- To receive a copy of the agency's Notice of Privacy Practices.

If the client feels the agency or its staff has not followed the HIPAA regulations, the client can make a formal, written complaint to the agency's Privacy Officer or to the Department of Health and Human Services, Washington, DC.

Adapted from the HIPAA training at the Foundation for Senior Living

What are ways to protect confidentiality?

a. Spoken communications

- **Watch what you say, where you say it, and to whom.**
- Speak in a quiet voice when you share information.
- Close doors when discussing private information.
- Do not talk about health information matters in front of others.
- If someone asks you a question involving personal information, make sure that person has a *need to know* before answering.



b. Telephone communications

- Never leave personal health information on an answering machine regarding a consumer's conditions, test results, etc.
- If you are leaving a message on an answering machine/voice mail, only leave the name of the person calling and the agency's telephone number with your contact phone number, and request a call back.
- Do not leave messages with anyone other than the client or a responsible party.

c. Medical records

- Make sure medical records are viewed only by those who need to see them.
- Store them in an area not easily accessible to non-essential staff and others.
- Do not leave medical records lying around unattended or in an area where others can see them. Don't leave files on car seats; lock them in the trunk.
- Return the medical record to its appropriate location when you are finished viewing it.



d. Trash

- Shred all papers containing personal health information.
- Put trash cans and shredders as close as possible to fax machines and desks where personal health information is used.
- If you see un-shredded paper discarded in a trash can, remove it and bring it to your supervisor.

e. Fax transmissions

- Fax machines should be in a secure area.
- Do not leave papers containing private health information on the fax machine unattended.
- Pre-program frequently faxed numbers into the fax machine to reduce dialing errors.

- Periodically check on the pre-programmed numbers to make sure they are still correct.
- If possible, notify the receiver when you are sending a fax.
- Have a fax cover sheet with a statement that the fax contains protected health information, re-disclosure is prohibited, and what to do if the wrong person gets it.

f. Computers

- Develop a personal password which is not a guessable name and change it as instructed.
- Never share your password or write down your password.
- Position your monitor so it is not facing where someone could view identifiable health information.
- Never leave a computer unattended without logging off.
- All e-mails sent, which contain identifiable health information, should be encrypted and the sender/receiver should be authenticated.
- Double-check the address before sending any e-mail.
- Never remove or discard computer equipment, disks, or software without your supervisor's permission.



If you notice a breach of confidentiality, inform your supervisor or privacy officer.

H. ADULT AND CHILD ABUSE

1. Definition

Adult and child abuse refers to any form of maltreatment of a person by a caregiver, family member, spouse, or friend. Categories of abuse include:

a. Abuse

Intentional infliction of physical harm or unreasonable confinement.

b. Sexual abuse or sexual assault

Sexual contact with any person incapable of giving consent or through force or coercion, which means by force or threatening.

c. Neglect

Failing to provide a person food, water, clothing, medicine, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health. Shelter refers to housing but also the environment. Leaving a person in unsafe or hazardous environments can be neglect. For children this also applies to parents leaving a child with no one to care for him/her or leaving a child with a caretaker and not returning or making other arrangements for his/her care. When a person does not care for his/her own well-being or safety, this is called self-neglect.

d. Financial exploitation

The improper or unauthorized use of a person's funds, property, or assets. This includes forgery, stealing money or possessions, or tricking a person into signing documents that transfer funds, property, or assets. For children this also includes using a child for material gain, including forcing a child to panhandle, steal or perform other illegal or involuntary activities.

e. Emotional abuse

Psychological abuse such as name-calling, insults, threats, and intimidation.

2. Risk Factors

a. Adult abuse

- Previous incidents of domestic violence by spouse.
- Financial dependency on the adult by the abuser.
- Mental illness of abuser.
- Adult children living with older parent.
- Abuser isolates adult to prevent the abuse from being discovered.

b. Child abuse

- Child living in area with high poverty, unemployment or crime rates.
- Child has physical and/or mental disability.
- Abuser has history of physical or sexual abuse as a child.
- Abuser has low self-esteem, abuses drugs or alcohol, or suffers from depression or mental illness.

3. Signs

a. Adult abuse

- **Physical:** bruises, broken bones, cuts or other untreated injuries in various stages of healing.
- **Sexual:** bruises around breast or genital area; signs of sexually transmitted diseases (STDs).
- **Emotional:** adult is upset or agitated, withdrawn, non-communicative, or paranoid.
- **Neglect (including self-neglect):** dehydration, malnutrition, pressure ulcers, poor personal hygiene, and unsafe or unsanitary living conditions.
- **Financial:** unusual banking activity, missing financial statements or other personal items such as jewelry; signatures on checks that do not match adult's signature.

b. Child abuse

- **Physical:** bruises, broken bones, cuts or other untreated injuries in various stages of healing.
- **Sexual:** bruises around breast or genital area, signs of sexually transmitted diseases (STDs), pregnancy.
- **Emotional:** eating disorders, speech disorders, developmental delay, cruel behavior, behavioral extremes.
- **Neglect:** poor hygiene; absenteeism; hunger; tiredness, begging for or collecting leftovers; assuming adult responsibilities; reporting no caretaker at home.



APS Made a Difference with My Client

I have been a caregiver for eight years. I love providing care to the elderly. It feels so good when I come home from work knowing that I made a difference. I will never forget Marion who lived alone in her own little modest mobile home. Marion was quite independent. She had no family who lived close to her. Her family lived out of state. I provided care to Marion for a little over a year. In the last six months of providing care I started to see changes happen.

Marion loved to listen to the radio, but now she would tell me that these people lived in the box “radio” and she would need to put some plates out for them to eat dinner. In the beginning it was just little things, but then I noticed more serious events start to happen. I would arrive and the burner on the stove was left on. I reported this to my supervisor and after some calls it was suggested that the knobs be taken off the range so this would prevent Marion from possibly starting a fire by leaving the burner on. Using the microwave was the way to go. All went okay for a short time but more changes were happening. I remember one time when I arrived at work, the neighbor came and talked to me and told me that Marion was sitting on the front stairs of the front porch at 11 pm the night before. She could not figure out how to get inside. The neighbor said this had happened several times before. The neighbor stated she had called Marion’s family that was out of state, and the family’s response would be: “We have talked to Marion, and yes, she might be a little confused at times, but this is where she wants to live”. I called my supervisor about this concern and she told me to call Adult Protective Services. It took several calls to address the concerns about Marion living by herself, but in time it did pay off. Today, Marion is living in an assisted living apartment. It is a win/win situation. Marion is still independent, but she has people looking out for her and assisting her when she needs assistance. I have to say I was a little scared when I called Adult Protective Services, but that call made a big difference in Marion’s safety. The family realized that Marion had more than a little confusion going on, so with the intervention of Adult Protective Services, this experience had a happy ending.

Marie P, caregiver



4. Prevention

- Community awareness.
- Public and professional education.
- Caregiver support groups.
- Stress management training.
- Respite care or in-home services.
- *The Parent Assistance Program* is a service designed to help parents or guardians. This program, operating through the Administrative Office of the Courts, provides a 24-hour toll-free hotline to assist parents with their questions and concerns about Child Protective Services (CPS). Through the hotline, parents may obtain information about legal assistance, the juvenile court system and their legal rights and responsibilities. Trained hotline staff may also provide crisis counseling and referrals to appropriate agencies or individuals.

**To contact the Parent Assistance Program call
602-542-9580 (Phoenix) or 1-800-732-8193 (Statewide toll-free)**

5. Reporting Requirements

- All persons responsible for the care of an incapacitated or vulnerable adult or child **have a duty to report** suspected abuse and neglect. This is called *mandatory reporting*.
- Reports must be made immediately (by phone or in person) to Adult Protective Services or Child Protective Services (depending on the person's age) or to the police. **Failure to report is a misdemeanor.**
 - If the individual is in immediate danger, call 911.
 - If the abuse is not life-threatening, report it to your Supervisor who will assist you in making the report to either of the 24-hour statewide reporting lines:
 - Adult Protective Services: 1-877-SOS-ADULT (1-877-767-2385)
 - Child Protective Services: 1-888-SOS-CHILD (1-888-767-2445)
- **Immunity**
All persons reporting are immune from any civil or criminal liability if the report does not involve any malicious misrepresentation, according to Arizona statutes (ARS § 46-453).

6. Legal penalties

Any person who has been employed to provide care to an incapacitated or vulnerable adult or child and who causes or permits the person's life to be endangered or his/her health to be injured or endangered by neglect can be found guilty of a felony.



An individual who is found guilty of a felony will not only face jail time. A felony conviction also limits the type of jobs the individual can hold in the future. For example, convicted felons are unable to work in most healthcare or educational systems.



7. Reporting Activity

Read the following scenarios and discuss what you would do in these situations.

- You are assigned to provide personal care services for Mabel including a shower. Mabel is living in a poorly maintained home. She has a son who pays her bills and stops by a few times a week. When you arrive at Mabel's home, Mabel is complaining of being cold. The thermostat for the heater registers 60 degrees. You talk to Mabel's son who tells you that the furnace is broken but, "it is okay because I have just given Mom some blankets. She doesn't need it any warmer."

What would you do?

- You are assigned to provide respite care for Jimmy, a 10-year-old boy with autism. When you arrive at Jimmy's home, Jimmy is outside wandering in the street. No one is at home except Jimmy's 10-year-old brother, who is watching TV.

What would you do?

I. ADVANCE DIRECTIVES

Advance directives are documents specifying the type of treatment individuals want or do not want under serious medical conditions. The documents are used when a person is unable to communicate his or her wishes. They provide written proof of the expressed wishes of the individual, rather than making the family guess what is desired. Making one's wishes known in advance helps everyone. It keeps family members from making such choices at what is likely one of the most stressful times in their lives. It also means that the physician knows whose direction is to be followed in the event the family disagrees as to what medical treatment the individual desires.

Generally, two forms are involved with advance directives:

- **Living will:** Legal document that outlines the medical care an individual wants or does not want if he or she becomes unable to make decisions. An example would be the use of a feeding tube.
- **Durable medical power of attorney:** Legal document that designates another person to act as an *agent* or a *surrogate* in making medical decisions if the individual becomes unable to do so.

Advance directives can be completed by an individual. The writing does not need to be done by an attorney, but it must be done while the person is still competent. In Arizona the forms do not have to be notarized. If the individual moves to another state that requires notarization, the forms would be invalid.

J. DO NOT RESUSCITATE ORDER (DNR), THE ORANGE FORM

The *Pre-Hospital Medical Care Directive*, also known as the “orange form” or a DNR, is a special advance directive. This form says that if the heart stops beating or breathing stops, the individual **does not want to receive cardiopulmonary resuscitation (CPR) under any circumstances**. This special form, which is bright orange in color, notifies the paramedics and emergency medical services people that this choice has been made.

1. Agency-Specific Policies and Procedures

The policies and procedures for honoring an orange form vary from agency to agency. Some agencies have policies that mandate that the DCW would provide CPR measures (if certified) whether the individual has an orange form or not. Other agencies have a procedure to follow if the individual you are caring for has a valid orange form.

When the DCW notes that the consumer has an orange form, the DCW should contact his/her supervisor to determine the policies and procedures related to CPR for the consumer.

It is also important to **remember that the orange form only covers cardiac and respiratory arrest**. If the consumer has another type of medical emergency, the DCW should provide first aid measures, including calling 911 as indicated.

2. Display of the Orange Form

Because the paramedics respond quickly to an emergency medical situation, the *Pre-Hospital Medical Care Directive* must be immediately available for them to see. It should be displayed someplace where the paramedics will be able to see it should the individual have a cardiac and/or respiratory arrest. Such places would be the refrigerator or behind the front door or living room door.

Did you know?

1. Liability means:
 - a. You cannot share personal information.
 - b. You are responsible for damages is something goes wrong.
 - c. You must decide what to do in an emergency.

2. Mr. Jones does not want to bathe or eat.
 - a. You tell him he must bathe and eat because it is on the schedule.
 - b. He has the right to refuse.

3. When you suspect abuse or neglect of an older adult, you:
 - a. Call your supervisor and then call APS.
 - b. You make a note in your report to check back next week.

4. You can share personal information about a client with:
 - a. Everyone in the office at your agency.
 - b. Visiting family members.
 - c. People who call from the doctor’s office.
 - d. The neighbors.
 - e. Your own family.
 - f. None of the above.
 - g. All of the above.

5. Mrs. Cline has a DNR (orange form). What are her wishes?

a. She breaks her arm. She should get medical help.....	True	False
b. She has a heart attack. She should get CPR.....	True	False
c. She has a hard time breathing. She should get oxygen.....	True	False
d. She has a lot of pain. She should get pain medicine.	True	False

K. RESOURCES

- Advance directives information for individuals residing in Arizona can be obtained from:
 - Health Care Decisions: www.hcdecisions.org
 - Arizona Attorney General's Website: www.azag.gov/life_care/index.html
- Adult Protective Services: 1-877-SOS-ADULT (1-877-767-2385)
Website: www.azdes.gov/aaa/programs/aps/
- Child Protective Services: 1-888-SOS-CHILD (1-888-767-2445)
Website: www.azdes.gov/dcyf/cps/reporting.asp
- Parent Assistance Program: 602-542-9580 (Phoenix), 1-800-732-8193 (Statewide toll-free)
- Pamphlet on Child Abuse, Child Protective Services, Arizona Department of Economic Security
- Pamphlet on Elder Abuse, Area Agency on Aging Region One