

E L D E R A B U S E



STOP ABUSE NOW

Identification | Prevention | Intervention



D O L A N L A W F I R M

SAN FRANCISCO | OAKLAND | SACRAMENTO

DolanLawFirm.com | 415.421.2800 | 1438 Market, San Francisco, CA 94102

INTRODUCTION

The elderly, infirm and dependent are among the most vulnerable members of our communities. Elder abuse and neglect, including financial, emotional, and physical abuse, is on the rise. Where there is a profit motive, facilities cut expenses and services to improve their bottom line.

As we as a society age, and are living longer, the need for support services grows, and so does the elder-care industry. Individuals 85 years and older, the oldest of the old, are one of the fastest-growing segments of the population. In 2005, there were an estimated 5 million people 85 and older in the United States. This figure is expected to increase to 20 million by 2050.

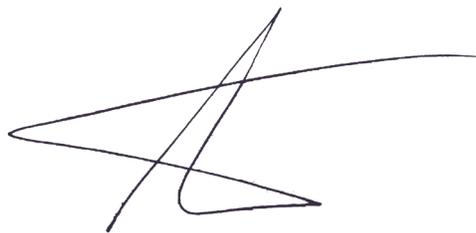
Some statistics predict a huge increase in the elderly who will be suffering significant memory impairment. By 2050, the number of people age 85 or over with moderate to severe memory impairment is expected to jump from 1.6 million to 6.2 million.

In California, more than 100,000 people live in skilled-nursing facilities. The majority are women over the age of 75. One industry research analyst states that revenues for the elder care services industry in the U.S. will grow 5.2 percent per year through 2016 to \$319.5 billion. Skilled-nursing facilities will remain the largest segment of this industry, while home health care services and assisted living facilities will see the most rapid growth.

This book is designed to help explain what the rights of the elderly and dependent are; to provide information on what conditions meet the legal definition of elder/dependent abuse, and to serve as a resource to know your rights and empower you to take corrective action. I hope it helps.

If you need more information you can contact my office,
The Dolan Law Firm at 415-421-2800 or info@dolanlawfirm.com.

Christopher B. Dolan Esq.



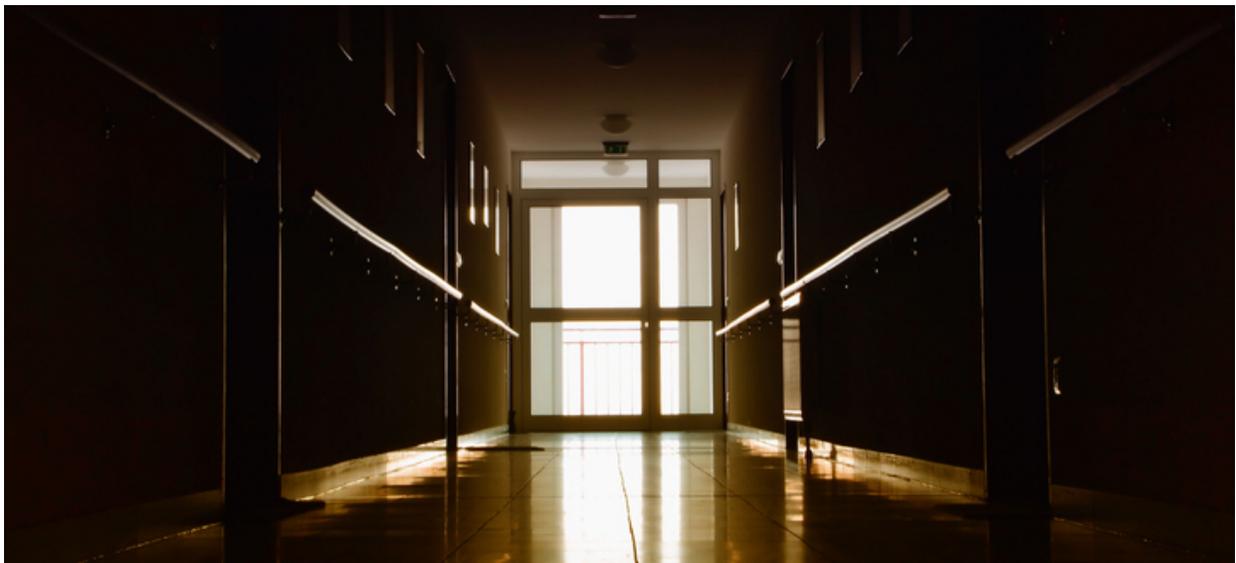
WHO IS PROTECTED UNDER CALIFORNIA LAW FROM ABUSE AND NEGLECT?

Elders and dependent adults are too often subjected to abuse, neglect, or abandonment. California recognizes that it has a responsibility to protect these groups. To do so, it enacted California Welfare and Institutions Code Section 15600 which protects elders and dependent adults from many types of abuse and neglect, including both physical and financial abuse.

AN “ELDER” is anyone within the State who is 65 years of age or older.

A “DEPENDENT ADULT” is any person between the ages of 18 and 64 years who resides in this State and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age. “Dependent Adult” also includes any person who is admitted as an inpatient to a 24-hour health care facility. This includes the elderly, those suffering dementia, the developmentally disabled, the brain injured, psychiatric patients and, in some instances, those in rehabilitation facilities.

“DEVELOPMENTALLY DISABLED PERSON” means a person with a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. This includes intellectual disability, cerebral palsy, epilepsy, and autism. This term also includes disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but does not include other handicapping conditions that are solely physical in nature.



PHYSICAL ABUSE AND/OR NEGLECT

“ABUSE OF AN ELDER OR A DEPENDENT ADULT” means either of the following:

- A. Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment that causes physical harm or pain or mental suffering.
- B. The deprivation by a Care Custodian of goods or services that are necessary to avoid physical harm or mental suffering.
(Welfare and Institutions Code Section 15610.07).

“PHYSICAL ABUSE” includes: assault, battery, unreasonable physical constraint, prolonged deprivation of food and/or water, sexual assault, battery, rape and the use of physical or chemical restraints for punishment or for a period beyond that ordered by a physician.

“NEGLECT” means either of the following:

- A. The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
- B. The failure to assist in personal hygiene, or in the provision of food, clothing, or shelter; failure to provide medical care for physical and mental health needs; or failure to protect from health and safety hazards, malnutrition or dehydration.

“ABANDONMENT”: The desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

“ABDUCTION”: The removal from this State and/or the restraint from returning to this State of an Elderly or Dependent Adult.

“ISOLATION”: Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls; telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor, where the statement is false and contrary to their express wishes for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.



SIGNS OF PHYSICAL ABUSE AND NEGLECT

Unwashed, uncombed or matted hair	Poor skin condition, untrimmed nails, and poor hygiene
Unkept appearance or unwashed clothes	Missing hair or bleeding scalp
Untreated medical conditions	Sores or ulcers of the buttocks, back, heels and arms
Malnourished or dehydrated	Foul smelling, unchanged diapers and/or bed sheets
Bruises, scratches, blisters, and pinch marks	Burns caused by ropes, restraints and scalding water
Unsupervised falls	Overuse of medications to “chemically restrain”
Injuries that have an outline: hands, belts	Repeated injuries inconsistent with explanations

CARE CUSTODIANS

Care Custodians Are the People Responsible for Providing Goods and Services Necessary to Avoid Physical Harm or Suffering

A “CARE CUSTODIAN” is an administrator or an employee of any public or private facility or agency, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff of such facilities/agencies.

The following is a non-exhaustive list of Care Custodians:

a) Twenty-four-hour health facilities, (b) clinics, (c) home health agencies, (d) agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services, (e) adult day health care centers and adult day care, (f) secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders, (g) independent living centers; (h) health care providers (doctors, nurses, therapists, psychiatrists, social workers, etc.), (i) Alzheimer’s Disease day care resource centers, (j) community care facilities, and residential care facilities for the elderly, (k) respite care facilities, (l) foster homes, (m) vocational rehabilitation facilities and work activity centers; (n) regional centers for persons with developmental disabilities, (o) county welfare departments, (p) offices of patients’ rights advocates and clients’ rights advocates, including attorneys, (q) offices of public conservators, public guardians, and court investigators; (r) police and fire departments, (s) offices of environmental health and building code enforcement, (t) any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults. (For more information see Welfare and Institutions Code Section 15610.17.)

“FINANCIAL ABUSE” of an elder or dependent adult occurs when a person or entity does any of the following:

Takes, or uses undue influence to take, secret, appropriate, obtain, or retain real (land) or personal (money, stocks, jewels, cars, etc.) property of an elder or dependent adult for a wrongful use or with intent to defraud, or both, and the person or entity knew, or should have known, that their conduct is likely to be harmful to the elder or dependent adult.

This unlawful conduct often occurs when an elder or dependent adult is deprived of a property right, including by means of an agreement, donation, or bequest in a will, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

“Undue Influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

- (1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to: incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency.
- (2) The influencer’s apparent authority, including, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.
- (3) The actions or tactics used by the influencer, including, but not limited to, the following: controlling necessities of life, medication, the victim’s interactions with others, access to information or sleep; use of affection; intimidation or coercion.
- (4) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.
- (5) The fairness of the result including but not limited to, the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

WHO FREQUENTLY COMMITS ELDER FINANCIAL ABUSE?

- (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
- (2) Family members, especially those who have obtained power of attorney or authority to make transactions on behalf of the victim.
- (3) Caregivers, nurses, doctors, home health aides, neighbors and friends.
- (4) Conservators (appointed through the courts).
- (4) Religious leaders and charitable institutions.
- (5) Members of the financial industry including insurance sales people selling annuities, stock brokers, financial planners etc.
- (6) Reverse mortgage brokers.

Be suspicious of anyone who suddenly appears and begins a new close relationship with an elderly or disabled person especially if they offer to manage the person's finances.

EXAMPLES OF FINANCIAL ABUSE

Examples of Financial Abuse include, but are not limited to, making withdrawals from bank accounts, taking or selling art or jewelry, transferring all or part of ownership in real estate, use of credit cards, signing of checks or other documents when the elder cannot write or understand what they are signing, cashing of social security checks, change in purchasing patterns, unpaid bills when someone else has been designated to pay the bills, reverse mortgaging property, borrowing against life insurance, changing life insurance beneficiaries, causing a change to a will or trust, and/or selling insurance or annuities to the elderly who will derive no benefit therefrom.

RESTRICTIONS ON WILLS – restrictions against transfers to fiduciaries

Probate Code § 21350 prohibits certain transfers which make a gift to the person who drafted the document, and/or anyone related by blood, marriage, domestic partnership, or who cohabitates with or is the employee of the person who drafted the instrument. Likewise, care custodians, lawyers, accountants, conservators, trustees, investment advisors and others who have what is called a “fiduciary responsibility” to dependent adults cannot be the beneficiaries of such gifts. Exceptions are made when the documentation has been reviewed by an independent attorney who has determined it is legitimate and not the result of fraud or undue influence and then signs a “Certificate of Independent Review.” A violation of this Code can be used as a basis to void (cancel) the agreement and recover the property. With a will, a contest must be brought before entry of an order for final distribution of the estate. In other instances there is a 3-year statute of limitations from the date the person bringing the action discovers, or should have discovered, the inappropriate transfer.

NURSING HOME RESIDENTS' BILL OF RIGHTS

California Code of Regulations Title 22 Section 72527

Patients in Skilled Nursing Facilities and Intermediate Care Facilities have certain rights established by law. Facilities are required to establish and implement written policies and procedures and to provide a copy of them to a resident or their representative upon request.

PATIENTS SHALL HAVE THE RIGHT:

- 1) To be fully informed, as evidenced by the patient's written acknowledgement prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct.
- 2) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any Medicare and/or Social Security.
- 3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care.
- 4) To consent to or to refuse any treatment or procedure or participation in experimental research.
- 5) To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure including the disclosure of material information for administration of psychotherapeutic drugs or physical restraints.
- 6) To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients, or for nonpayment for his or her stay, and to be given reasonable advance notice to ensure an orderly transfer or discharge.
- 7) To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen and to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice free from restraint, interference, coercion, discrimination or reprisal.
- 8) To manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on the patient's behalf should the facility accept written delegation of this responsibility.
- 9) To be free from mental and physical abuse.
- 10) To be assured confidential treatment of financial and health records and to approve or refuse their release, except as authorized by law.

NURSING HOME RESIDENTS' BILL OF RIGHTS

PATIENTS RIGHTS CONTINUED:

- 11) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs.
- 12) Not to be required to perform services for the facility that are not included for therapeutic purposes in the patient's plan of care.
- 13) To associate and communicate privately with persons of the patient's choice, and to send and receive personal mail unopened.
- 14) To meet with others and participate in activities of social, religious and community groups.
- 15) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the patient or other patients.
- 16) If married, to be assured privacy for visits by the patient's spouse and if both are patients in the facility, to be permitted to share a room.
- 17) To have daily visiting hours established.
- 18) To have visits from members of the clergy at any time at the request of the patient or the patient's representative.
- 19) To have visits from persons of the patient's choosing at any time if the patient is critically ill, unless medically contraindicated.
- 20) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.
- 21) To have reasonable access to telephones and to make and receive confidential calls.
- 22) To be free from any requirement to purchase drugs or rent or purchase medical supplies or equipment from any particular source.
- 23) To be free from psychotherapeutic drugs and physical restraints used for the purpose of patient discipline or staff convenience and to be free from psychotherapeutic drugs used as a chemical restraint.
- 24) If a patient lacks the ability to understand these rights and the nature and consequences of proposed treatment, the patient's representative shall have the same rights.
- 25) Persons who may act as the patient's representative include a conservator, a person designated as attorney in fact in the patient's valid durable power of attorney for health care, patient's next of kin, other appropriate surrogate decision maker designated consistent with statutory and case law.

WRITTEN POLICIES; RIGHTS OF PATIENTS AND FACILITY OBLIGATIONS

(California Health & Safety Code Section 1599.)

Facilities are required to establish and make available to patients and their next of kin policies that ensure that each patient admitted to the facility has, and to notify the patient of the following rights:

- (a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.
- (b) Each patient shall show evidence of good personal hygiene, be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.
- (c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.
- (d) The facility shall provide an activity program staffed and equipped to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities. Patients shall be encouraged to participate in activities suited to their individual needs.
- (e) The facility shall be clean, sanitary, and in good repair at all times.
- (f) A nurses' call system shall be maintained in operating order in all nursing units and provide visible and audible signal communication between nursing personnel and patients. Call buttons shall be readily accessible to patients at all times.
- (g) If a facility has a significant beneficial interest in an ancillary health service provider or if a facility knows that an ancillary health service provider has a significant beneficial interest in the facility, the facility shall disclose that interest in writing to the patient, or his or her representative.
- (h) A resident of a long-term health care facility who has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions or readmission rights of either state or federal law has the right of readmission to the facility.

(Additional rights exist under Federal Law as set forth in 22 CFR 483 et. seq.)

ADMISSION RIGHTS

KEY FOR CODES

USC.....United States Code
CFR.....Code of Federal Regulations
CCR.....California Code of Regulations
H&S Code.....California Health and Safety Code
W&I Code.....California Welfare & Institutions Code

RIGHTS REGARDING ADMISSION CONTRACTS

Nursing homes must make reasonable efforts to communicate contents of contract to resident prior to admission.	H&S Code §1599.65
Contract shall not contain waivers of liability for health, safety or personal property of resident.	H&S Code §1599.62
Contract shall state clearly what services and supplies are covered by the facility's basic rate and identify charges for optional services and supplies.	H&S Code §1599.67(a)
Contract must contain a copy of the Patient's Bill of Rights.	H&S Code §1599.74(b)

ARBITRATION AGREEMENTS

Nursing homes cannot require applicants or residents to sign an arbitration agreement as a condition of admission or medical treatment.	H&S Code §1599.81(a)
An arbitration agreement must be on a form separate from the admission agreement and require separate signatures.	H&S Code §1599.81(b)

NOTICE OF RIGHTS

Nursing homes must give the resident written information about advance directives explaining: (1) the right to make health care decisions, (2) the right to accept or refuse medical treatment, (3) the right to prepare an advance health care directive, and (4) the facility's policies governing use of advance directives.	42 USC §1395cc(f); 1396a(w) 42 USC 1396r(c)(2)(E); 42 CFR §489.102; 42 CFR §483.10(b)(8)
---	--

RIGHTS WITHIN A NURSING HOME

RIGHTS RELATING TO DIGNITY, QUALITY OF CARE, QUALITY OF LIFE

Right to receive the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being.	42 USC §1396r(b)(2); 42 USC §1395i-3(b)(2); 42 CFR §483.25; 22 CCR §72315
Nursing home shall employ an adequate number of qualified personnel.	H&S Code §1599.1(a); 22 CCR §72501(e)
Right to be free from verbal, sexual, physical, and mental abuse, and corporal punishment.	42 USC §1395i-3(c)(1)(A)(ii); 42 USC §1396r (c)(1)(A)(ii); 42 CFR §483.13(b); 22 CCR §72315(b); 22 CCR §72527(a)(9)
Right to food of sufficient quality and quantity to meet the resident's needs.	H&S Code §1599.1(c)
<h2>RIGHT TO HOMELIKE ENVIRONMENT AND USE OF PERSONAL BELONGINGS</h2>	
Right to a safe, clean, comfortable and homelike environment.	42 CFR §483.15(h), H&S Code §1599.1(e)
Right to housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable environment.	42 CFR §483.15(h)(2)
Right to clean bed and bath linens that are in good condition.	42 CFR §483.15(h)(3)
Right to comfortable and safe temperature levels.	42 CFR §483.15(h)(6)

RIGHTS WITHIN A NURSING HOME

RIGHT TO BE FREE FROM RESTRAINT

Right to be free from chemical or physical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

42 USC §1395i-3(c)(1)(A)(ii);
42 USC §1396r(c)(1)(A)(i);
42 CFR §483.13(a);
22 CCR §72527(a)(23);
22 CCR §72319

Right to be free from unnecessary drugs.

42 CFR §483.25(l)

RIGHT TO AUTONOMY

Right to choose activities, schedules, and health care, and participate in resident and family groups and other social, religious and community activities.

42 USC §1395i-3(c)(1)(A)(vii),(viii)
42 USC §1396r(c)(1)(A)(vii), (viii);
42 CFR §§483.15(b)(1), 483.15(c), (d)

Right to examine the results of most recent survey of facility and any plan of correction.

42 USC §1395i-3(c)(1)(A)(ix);
42 USC §1396r(c)(1)(A)(ix);
42 CFR §483.10(g);
22 CCR §72503(a)(5)

RIGHT TO PRIVACY/CONFIDENTIALITY/COMMUNICATIONS/ACCESS/VISITORS

Right to personal privacy in accommodations, medical treatment, written and telephonic communications, personal care, visits and meetings with family and resident groups

42 USC §1395i-3(c)(1)(A)(iii);
42 USC §1396r(c)(1)(A)(iii);
42 CFR §483.10(e);
H&S Code §1418.3;
22 CCR §72527
(a)(10), (11), (13), (16), (20), (21))

Right to reasonable access to telephones and to make and receive confidential calls.

22 CCR §72527(a)(21);
42 CFR §483.10(k)

RIGHT TO READMISSION AFTER HOSPITALIZATION

Right to receive a written bed-hold notice when transferred to the hospital; a nursing home must offer its next available bed to the resident upon hospital discharge.

22 CCR §72520 & 42
CFR §483.12(b)(2)

Medi-Cal will pay to hold bed for up to 7 days for beneficiary who is hospitalized.

22 CCR 51535.1,
42 CFR §483.12(b)

Resident on Medi-Cal has the right to be readmitted to the first available bed in a semiprivate room if the hospital stay exceeds 7 days.

42 CFR §483.12(b)(3)

RIGHTS WITHIN A NURSING HOME

RIGHT TO MAKE HEALTH CARE DECISIONS, CHOOSE HEALTH CARE PROVIDERS, MEDICAL RECORDS

Right to choose personal attending physician.	42 U.S.C. 1395i-3(c)(1)(A)(i); 42 U.S.C. 1396r (c)(1)(A)(i); 42 C.F.R. 483.10(d)(1)
Right to be given information on the name, specialty, and way of contacting the physician responsible for the resident's care.	42 CFR §483.10(b)(9)
Right to participate in planning care and treatment and in changes in care and treatment.	42 USC §1395i-3(c)(1)(A)(i); 42 USC §1396r(c)(1)(A)(i); 42 CFR §483.10(d)(3)
Right to informed consent.	22 CCR §§72527(a)(3)&(5) & 72528; H&S Code §1418.9; 42 USC §1395i-3(c)(1)(A)(i); 42 USC §1396r(c)(1)(A)(i); 42 CFR §483.10(d)(2) & 483.12(b)(1)
Right to be fully informed in advance of medical care and treatment in language resident can understand.	42 USC §1395i-3(c)(1)(A)(i); 42 USC §1396r(c)(1)(A)(i); 42 CFR §483.10(b)(3), 483.10(d)(2); 22 CCR §72527(a)(3)
Right to refuse treatment.	42 CFR §483.10(b)(4); 22 CCR §§72527(a)(4), §72528(a)(6);
Right to prompt notification of resident, legal representative and family member of accident resulting in injury to resident, significant changes in resident's physical, mental or psychosocial status, or need to alter treatment significantly.	42 CFR §483.10(b)(10)(i); H&S Code §1795

RIGHTS WITHIN A NURSING HOME

RIGHT TO PRIVACY/CONFIDENTIALITY/COMMUNICATIONS/ ACCESS/VISITORS

Right to manage own financial affairs; facility may not require residents to deposit their personal funds with the facility.

42 USC §1395i-3(c)(6)(A)(i);
42 USC §1396r(c)(6)(A)(i);
42 CFR §483.10(c)(1);
22 CCR §72527(a)(8)

Nursing home must safeguard and account for residents funds deposited with the facility.

42 USC §1395i-3(c)(6)(A)(ii);
42 USC §1396r(c)(6)(A)(ii);
42 CFR §483.10(c)(2);
22 CCR §72527(a)(8);
22 CCR §72529

Nursing home shall reimburse resident for current value of stolen or lost property if it fails to make reasonable efforts to safeguard property.

H&S Code §1289.3

Nursing home must inventory resident's personal property on admission and upon death or discharge.

H&S Code §1289.4(d);
H&S Code §1418.7(a)(4), (5)

Nursing home must secure resident's personal property.

H&S Code §1289.4(j);
H&S Code §1418.7(a)(9)

Nursing home must mark resident's personal property.

H&S Code §1289.4(h);
H&S Code §1418.7(a)(7)

EXERCISE OF RIGHTS BY SURROGATES

A resident's representative may exercise rights on behalf of the resident.

22 CCR §72527(c);
42 CFR §483.10(a)(3)&(4)

Persons who may act as a resident's representative are a conservator, a person appointed by the resident through a durable power of attorney for healthcare or advance health care directive, a resident's next-of-kin, or other persons lawfully appointed by the resident or a court.

22 CCR §72527(d);
42 CFR §483.10(a)(3)&(4)

TRANSFER & DISCHARGE RIGHTS

PROHIBITIONS AGAINST TRANSFER OR EVICTION

Medi-Cal certified nursing home shall not transfer or seek to evict resident due to resident changing from private pay or Medicare to Medi-Cal. 42 CFR §483.12(c)(1); W&I Code §14124.7(a)

Nursing home shall not seek to expel resident in retaliation for filing of complaint; attempt to evict resident within 180 days of filing of complaint against facility is rebuttably presumed to be retaliatory. H&S Code §1432 (a), (b)

Medi-Cal certified nursing home shall not evict or transfer residents who have made a timely application for Medi-Cal and for whom an eligibility determination has not yet been made. W&I Code §14124.7

RIGHT TO NOTICE PRIOR TO TRANSFER OR DISCHARGE FROM FACILITY

Transfer or discharge must be ordered in writing by a physician. 42 USC §1395i-3(c)(2)(A); 42 USC §1396r(c)(2)(A); 42 CFR §483.12(a)(3); 22 CCR §72527(b)

Nursing home must give the resident, family member and legal representative advance notice of the transfer or discharge as soon as practicable. 42 USC §1395i-3(c)(2)(B) (i), (ii); 42 USC §1396r(c)(2)(B) (i),(ii); 42 CFR §483.10(b)(10) (i)(D), §483.12(a)(4), (5); 22 CCR §72527(a)(5)



REMEDIES FOR ABUSE

CIVIL REMEDIES

Civil remedies include monetary compensation for both economic loss and expenses as well as non economic harm *such as pain, suffering, emotional distress, humiliation, fear and/or anxiety*. In appropriate situations the court may issue protective restraining orders barring people from making contact with a victim. In cases where there is recklessness, oppression, fraud or malice, a victim may recover punitive damages.

DAMAGE CLAIMS SURVIVE THE DEATH OF THE VICTIM

Claims for damages in elder abuse may survive the death of the victim and can be brought by family members.

These cases are brought by private attorneys such as the Dolan Law Firm.

CRIMINAL PENALTIES

Perpetrators who know, or should know, that a person is an elder or dependent and who engage in, or permit, great bodily harm or death, or who willfully cause unjustifiable physical pain or mental suffering, may be charged with a crime.

The same is true for caretakers that willfully cause or permit injury or put a protected individual in a situation such that their health may be put in jeopardy. They may be punished by imprisonment in the county jail for up to one year or in state prison for up to four years. These cases are brought by the government at the discretion of the District Attorney.



POWER OF ATTORNEY

The law provides you the right to designate one or more individuals who can act on your behalf in making both legal and medical decisions. Such designations can be “durable” meaning the rights bestowed upon the designated power of attorney or health care decision-maker continue after you may become incapacitated.

You should choose your power of attorney and health care decision-maker carefully and make sure that they know your wishes. Put your wishes in writing. A power of attorney can be specific (i.e., allowing someone to sell a piece of property or pay your bills) or it can be general (in essence allowing them to “step in your shoes” and do everything you could do).

A health care decision-maker is allowed to make all of your healthcare decisions for you if you are unable to do so. You should have an advanced care directive spelling out how you want to be treated, as well as what measures you want should you become terminal or should you fall into a irreversible coma.

A sample durable healthcare power of attorney can be found here:
<http://www.bayareaseniorcare.com/files/DPOA.pdf>

A website offering free power of attorney forms can be found at:
<http://powerofattorney.com/california/durable-power-attorney-california-form-adobe-pdf/>

CONTINGENT FEE REPRESENTATION

The Dolan Law Firm handles elder and dependant abuse claims on a contingency fee basis. That means that there is no fee or cost associated with our services unless we achieve a financial result for our clients. Reimbursement for our out-of-pocket costs, and our compensation for our time comes from a percentage of what we recover - between 35%-40% of the gross recovery. If no financial compensation is recovered for the client, then the client owes us nothing. So, our payment is “contingent” on our being successful for our clients.

RESOURCES TO REPORT AND STOP ABUSE

EMERGENCY CONDITIONS

If you witness physical abuse or a life threatening condition call 911.

NON EMERGENCY CONDITIONS

Each county has an **Ombudsman Program** with trained ombudsmen to help with questions or problems about nursing homes and to assist you in exercising your rights. For information about the Ombudsman Program in your area, call or write the Office of the State Long-Term Care Ombudsman, 1300 National Drive, Suite 200, Sacramento, CA 95834, (800) 231-4024

TO REPORT SUBSTANDARD CONDITIONS AND TREATMENT AT A NURSING HOME
California's Department of Health Services' Licensing and Certification Program (L&C) licenses and regulates California's nursing homes on the basis of complaint investigations and annual inspections. Consumers may obtain copies of inspection and complaint investigation reports through their local L&C office. For the address and phone number of your district office, call the Licensing and Certification Headquarters at (800) 236-9747.

TO REPORT ABUSE IN A LONG-TERM HEALTH FACILITY

Call the State Department of Public Health or one of the local offices listed below.

BAKERSFIELD: (866) 222-1903

SAN BERNARDINO: (800) 344-2896

CHICO: (800) 554-0350

SAN DIEGO (NORTH): (800) 824-0613

EAST BAY: (866) 247-9100

SAN DIEGO (SOUTH): (866) 706-0759

FRESNO: (800) 554-0351

SAN FRANCISCO: (800) 554-0353

LOS ANGELES: (800) 228-1019

SAN JOSE: (800) 554-0348

ORANGE COUNTY: (800) 228-5234

SANTA ROSA: (866) 784-0703

RIVERSIDE: (888) 354-9203

VENTURA: (800) 547-8267

SACRAMENTO: (800) 554-0354

To report known or suspected abuse occurring in a residential care facility for the elderly or an adult day program call the State Department of Social Services Adult and Senior Care Regional Program Office in Sacramento at (916) 657-2592. The San Francisco Coastal Adult and Senior Care Regional Office can be reached at (650) 266-8800. The East Bay/Delta Regional Office at (510) 286-4210, and the San Jose Regional Office at (408) 324-2112.

FINANCIAL ABUSE

Report any concerns of financial abuse to your local district attorney and/or police.

If you believe that you or someone you know has been a victim of elder or dependent abuse contact us at The Dolan Law Firm (415)421-2800 or email HELP@DOLANLAWFIRM.COM

HELPING PEOPLE INJURED BY THE FAULT OF OTHERS FOR OVER 20 YEARS.
WE ARE THE BEST LAWYERS WE HOPE YOU'LL NEVER NEED.



D O L A N L A W F I R M

SAN FRANCISCO | OAKLAND | SACRAMENTO

DolanLawFirm.com | 415.421.2800 | 1438 Market, San Francisco, CA 94102