

Legal: The Rights of Patients (COBRA/HIPAA)

Objectives

The healthcare professional will have a better understanding of the impact of illness and hospitalization on patients and their families. They will also comprehend three main categories into which patients' rights are divided and be able to identify two ways to promote the rights of a dying or terminally ill patient. The healthcare professional will be able to list and discuss at least five measures to protect and respect the basic patients rights.

The Rights of Patients

The goal of every health-care organization is to provide each patient with excellent care. However, that care can only be the best if delivered in a way that respects each patient's right to considerate and individualized care. This course will address a number of the basic rights of patients and nursing measures that may help ensure those rights are addressed and honored. Many facets of hospitalization may cause a patient to lose his/her sense of independence and individual freedom. Illness, isolation from family, an unfamiliar environment, hospital attire and the need to depend on others for basic human functions all contribute to a sense of dependence and loss of control over one's own life. In addition, hospitalization may have a stressful impact on the family, often leading to a shifting of roles. Healthcare workers see patients and families at the worst times in their lives, yet very often expect the very best behavior. Nurses must understand that the stresses of illness and hospitalization are often overwhelming and that their thinking and reasoning might be impaired. It is up to the nurse to ensure that patients' rights are honored and respected at all times. The nurse's role is especially important to the patient who may not even realize that he or she has rights. One of the nurse's primary responsibilities is to inform the patient of his/her rights. This can be accomplished in a number of ways. The absolute best way is for the nurse to provide explanations to the patient and family within the context of the nurse-patient relationship, because rights must be communicated in a way the patient understands. In addition the patient is given the written statement to "A Patient's Bill of Rights" upon admission or registration.

According to the Joint Commission Agency for Healthcare Organization, (JCAHO), "patients have a fundamental right to considerate care that safeguards the personal

dignity and respects their cultural, psychosocial and spiritual values". To be able to deliver such care, the nurse must:

- Be aware of the rights of patients.
- Examine his/her own value system
- Explore any prejudices or recognize feelings that may adversely affect the ability to deliver respectful care
- Recognize that it's not necessary to agree with or condone every patient's belief or behaviors, while still respecting those rights
- Acknowledge that the true professional is non-judgmental and views each patient as an individual.

Patients' rights are also protected by law. In December, 2000, acting under the authority of the Health Insurance Portability and Accountability Act of 1996 (HIPPA), the Department of Health and Human Services (DHHS) published the National Standards for Privacy of Personal Health Information. These national rules apply to all medical records and personal health information maintained by any provider, including hospitals and insurance companies. The rules define requirements for access to and release of patient information and apply to electronic, paper and verbal records. These rules state very clearly that information obtained must be used only for providing care and must be safeguarded from anyone else unless specifically authorized by the patient. Although confidentiality has long been the practice, it is now the law.

Although the categories frequently overlap, for ease of discussion, patients' rights are divided into three main categories: access; respect; and treatment.

Access

Patients have the right to impartial access to medical treatment or accommodations regardless national origin, religion, physical handicap or source of payment.

Patients have the right to treatment for any emergency medical condition that will deteriorate if immediate treatment is not provided. This means that patients who seek medical attention cannot be turned away, and may not be discharged until they've been evaluated by a licensed physician.

Transfers between institutions are governed by strict policy and law under the COBRA act. This prevents patients from being turned away for inability to pay or lack of insurance.

The patient must be seen by a physician prior to transfer and all emergency care must be provided before the patient is transferred. The patient and/or family must give consent to be transferred and the patient may only be transferred at his/her request or because the institution does not provide the care the patient requires like special units or procedures. The patient must be transferred appropriately by ambulance, ACLS or BLS but never by private car.

The patient must not be discharged from one facility and told to go directly to another and report must be called. There must be a physician who has agreed to receive the patient and assume care at the receiving facility.

Patients have the right to be given information regarding their bill, charges and financial resources. Every patient has the right to treatment regardless of financial status.

Respect

The concepts of privacy and confidentiality are integral components of providing respectful care. The term "privacy" means to keep one's personal information to oneself.

The "privacy zone" or number of family members and friends who share in that patient's private knowledge may vary according to individual nature and culture. Some patients feel free to share personal information with a large number of family and friends, while others may not even share such information with a spouse. It is crucial to respect each patient's wishes.

The term confidentiality involves access to private information that has been shared with another. A patient will often divulge private information to a caregiver when seeking medical care and trusts the caregiver to keep all information private. These concepts are especially important because patients who feel their confidentiality is threatened may not disclose private information that may be crucial in their care.

Patients have the right to personal privacy and confidentiality of information. Patients have the right to expect that information will not be released without their consent. Displaying a concern for a patient's privacy is one way of showing respect, and must be valued over the convenience of the staff. To prevent personal privacy the nursing staff must always draw curtains and close doors. Knocking on closed doors is a must and wait for a response before entering the patient's room. Try to space stretchers in open units to provide auditory privacy and interview patients out of hearing range of others. Always offer the patient the option of communications in a private area behind a closed door. Make certain that procedures for personal care like bathing and toileting are done privately. When transferring patients always cover them completely to avoid exposure.

To promote confidentiality the staff must always protect the patient identification with cover sheets on all charts, surgery schedules, bed assignments and ensure that the chart and all patient records are shared only with those who "need to know". Always lock computers so that others don't have access to the patient information and only share information with those as permitted by the patient or by law. Be careful with electronic records like information sent by email or fax as one incorrect button can send very private information to the wrong party.

Patients have the right to care that includes consideration of the psychosocial, spiritual and cultural variables that influence their perceptions of illness. The way one experiences illness is profoundly influenced by race, culture, religious background and socioeconomic status. When a patient and healthcare provider come from different cultural or religious backgrounds, dealing with the differences may become difficult. Providing respectful care means helping all patients cope. To address this patient right, the nursing staff should try to provide emotional support as an integral part of the nurse-patient relationship and if possible refer the patient to special support groups. The staff should always honor any special dietary restrictions and offer to provide spiritual support. The staff should recognize that spiritual import extends to and beyond any specific religious practices. The staff should help the patient obtain access to a member

of the clergy and support any individual and/or cultural reactions to illness, grief, or death.

Patients have the right to retain and use personal clothing or possessions as space permits unless it infringes on the rights of another or compromises safety. Personal possessions contribute to a sense of identity as a person rather than an ill patient. Always encourage personal items especially photographs and religious items. However, patients are to be discouraged from keeping valuables and family heirlooms at the bedside. To ensure that patients' personal items are protected, send valuables home with a trusted family member or place them in the hospital safe, and document the location and specific descriptions of the item(s).

Patients have the right to express grievances about their care, either to the employee, the employee's supervisor or to the Agency for Healthcare Administration. Healthcare providers need to understand that the stress of illness or injury is one of the greatest stressors a patient or family may ever face and that there are times when frustration or a sense of lack of control may lead to feelings of anger. If a patient has a grievance, it is best to always understand that the patient and/or family is probably not angry with you personally but at the situation. Attempt to remain calm and do not become angry or defensive. Attempt to acknowledge the feelings without defending others or the facility. Apologize sincerely and ask what you can do to ratify the situation. Encourage the patient and/or family to speak with whomever they wish like the supervisor or physician. Usually, just listening is the most important thing the nurse can do.

Treatment

Patients have the right to receive care in a safe environment. Security can refer to the measures taken to ensure privacy and confidentiality, but it also means that the physical buildings and units must be safe, and that the patient will receive care from competent practitioners.

To protect this right, the nursing staff must always follow all infection control measures and principles and ensure that the patient is secure in the physical environment by the use of side rails, night lights and restraints when required. While restraints may be used in certain situations, patients have the right to be free from restraints or seclusion that is imposed for discipline, convenience or retaliation. The use of restraints requires a knowledge assessment, appropriate monitoring and physician order. The staff needs to ensure that the patient feels safe from physical harm and that all who provide patient care are competent in their jobs.

The staff must provide emotional security and be certain that the patient's needs are met. Remember that neglect is a form of abuse. Patients have the right to expect prompt and reasonable responses to requests and needs for treatment or service. In order to safeguard this right nursing staff must see that call bells are answered promptly preferably in person within three minutes. If the intercom must be used be certain that the patient can communicate effectively and assure the patient that the proper caregiver will see him very shortly. Meals should be served promptly and requests should be met for medications and water in a timely manner. If there is a reason that the request cannot be addressed immediately communicate that to the patient. Relay the patient's message to the proper caregiver like the physician, social

worker or clinical resource manager. Most importantly attempt to build a relationship of trust with the patient. "Not knowing what's happening" and "being kept waiting" are two of the highest dissatisfactions, according to patient satisfaction surveys.

Patients have the right to obtain information necessary to enable them to make decisions about their care. Patients have the right to be informed of any human experimentation or other research and or educational projects affecting their care. Patients also have the right to refuse treatment and to be informed of the consequences of such refusal.

Patients have the right to know why they're here, what's planned in terms of medications, tests and treatments. They need to be informed of their health status and prognosis. Patients must have informed consent, meaning that the patient has been informed of what procedure is to be done including the risks, benefits, alternatives and complications of that procedure. Patients have the right to refuse any aspect of treatment without jeopardizing his/her care and have the right to sign out AMA (Against Medical Advice).

Patients have the right to formulate advanced directives and appoint a surrogate to make healthcare decisions on their behalf. The Patient Self-Determination Act of 1991 was posed to encourage the expression of patients' wishes by requiring that caregivers at health care facilities ask hospitalized patients if they have advanced directives and help them prepare such directives if they wish. This means that every patient must be offered information about advice directives and an opportunity to complete a living will and or designate a health care surrogate. The patient also has the right to refuse this information and may decline to complete either form with the understanding that any such information will be available at any time in the future.

Patients have the right to adequate relief of pain. When addressing this right it is crucial that the nurse conduct an unbiased assessment of the patient's pain. This requires a true commitment to the belief that "Pain is what the patient says it is". Cultural aspects and individual reactions to pain are to be respected. Measures that a nurse may use to alleviate a patient's pain may include a complete and thorough assessment that includes level of discomfort, severity, character, location and any aggravating or alleviating factors. The nurse may administrate the medication as ordered by the physician along with positioning, distraction measures like music or television, visits from family and psychological measures like guided imagery and relaxation techniques. An evaluation of all measures used and any necessary adjustments should be made to the plan of care.

For patients who cannot express pain caregivers can use assessment skills and intuition to identify the possible sources of pain by asking the questions "if I were this patient, what might make me uncomfortable?" It is also important to acknowledge that patients in pain may also display psychological signs of distress. Culture may play a big role in how a patient expresses pain.

Dying patients have the right to care that optimizes their comfort and dignity. It is important for it the patient and the family members to understand that "No Code" doesn't mean "No Care". Some family members may hesitate to make a "Do Not Resuscitate" (DNR) decision because they fear the patient will not receive supportive care. Patients and family members should also be offered the opportunity to consult with Hospice Care. Our culture open does not prepare health professionals for dealing with death. A hospice

or palliative care team may be well equipped to provide help in this area. Palliative care refers to comprehensive care provided by an interdisciplinary team for patients and families living with a life threatening or terminal illness. The care is focused on alleviating suffering and promoting quality of life.

Patients and/or families have the right to participate in ethical decisions and/or conflicting resolutions regarding care. Nursing practice is governed by ethical principles that guide everyday practice decisions that are based on "The right thing to do" most likely respect individual patient rights as well. Patients and their families must be informed that any specific ethical decisions may be brought to the attention of the ethics committee.

Summary

There is nothing magical about respecting a patient's right to considerate and respectful care. It involves trusting the nurse-patient relationship in which the nurse has the patient's best interests in mind, respects the patient's individual wishes and suspends judgment about the patient's personal beliefs and practices. It is sometimes difficult to respect the rights of a "difficult" patient, yet that patient is often truly the one who needs a nurse as an advocate.

References

Alfaro-LeFevre, R. (1999). Critical thinking in nursing: A practical approach, Philadelphia: W. B. Saunders.

American Hospital Association (1992). Patient's Bill of Rights

Code of ethics for nurses with interpretive statements. (2001). Washington, D.C.: American Nurses Publishing

Consolidated Omnibus Budget Reconciliation Act (COBRA), www.dol.gov/dol/topic/health-plans/cobra.htm accessed July, 2008

Comprehensive accreditation manual for hospitals: ie: Official handbook (2005). Oakbrook Terrace, IL: JCAHO Department of Publications.\

Gebbie, K. M. (2001). Privacy: The Patient's right. American Journal of Nursing 101 (6). pp. 69-73.

Fishman, E. R. (1998). The Art of Caring. California: Almark Company.
Nursing's Social Policy Statement (1995). Washington D.C.: American Nurses Publishing

HHS – Office for Civil Rights – HIPPA, www.hhs.gov/ocr/hippa accessed July, 2008

Health Insurance Portability and Accountability Act – Wikipedia, es.wikipedia.org/wiki/HIPAA access July, 2008

What's HIPPA – A Basic HIPAA Primer, www.hipaadvisory.com/REGS/HIPAAprimer.htm, Accessed July, 2008

Legal: HIPAA / Cobra and Patients Rights - 1.0 Contact Hour

1. Purposes for documentation include:

- A. Satisfying legal and practice standards.
- B. Ensuring reimbursement.
- C. Communicating among health professionals.
- D. All of the above.

2. The absolute best way is for the nurse to provide explanations to the patient and family within the context of the nurse-patient relationship, because rights must be communicated in a way the patient understands.

- A. True
- B. False

3. According to the Joint Commission Agency for Healthcare Organization, (JCAHO), "patients have a fundamental right to considerate care that safeguards the personal dignity and respects their cultural, psychosocial and spiritual values". To be able to deliver such care, the nurse must:

- A. Be aware of the rights of patients.
- B. Examine his/her own value system
- C. Explore any prejudices or recognize feelings that may adversely affect the ability to deliver respectful care
- D. Recognize that it's not necessary to agree with or condone every patient's belief or behaviors, while still respecting those rights
- E. All of the above.

4. A patient asks his neighbor to bring some clothes to the hospital for him. The nurse knows that:

- A. this poses a security risk and should not be tolerated
- B. The clothes should be placed in a secured place until the patient is discharged.
- C. This contributes to a sense of identity and should be encouraged.
- D. This will make the patient depressed.

5. Ensuring and respecting a patient's rights:
- A. Flows naturally from a therapeutic nurse patient relationship
 - B. Is the right thing to do
 - C. Is the law
 - D. All of the above
6. Patients do not need to be informed of research or educational projects affecting their care.
- A. True
 - B. False
7. Not every patient must be offered information about advance directives and an opportunity to complete a living will and or designate a health care surrogate.
- A. True
 - B. False
8. Healthcare workers have an obligation to respect the patient's culture even if they personally do not agree.
- A. True
 - B. False
9. Patients have the right to obtain information necessary to enable them to make decisions about their care.
- A. True
 - B. False
10. The patient doesn't have the right to know immediately if they are close to death.
- A. True
 - B. False