

HealthCap RMS Seminar Updates

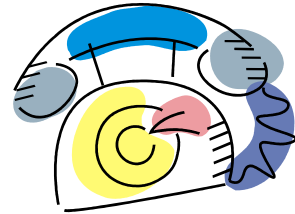
“Conducting the Investigation - Beginning to End”

Federal and state regulations require that accidents and incidents be thoroughly investigated to eliminate the possibility of abuse/neglect. The investigation process may be considered protected under a Quality Improvement/Assurance program. Many facilities inadvertently waive this protection as they are unaware of the steps required to maintain the privilege. This session will walk through the investigation of an incident from beginning to end and identify where issues are commonly identified in the process.

For questions, or to arrange attendance, contact:

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HealthCap RMS

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Okemos, Michigan - March 4, 2009

Massachusetts - April 23, 2009
(Location TBD)

Illinois - May 2009 (TBD)

Winston-Salem, North Carolina - June 11, 2009

California - September 30 – October 1, 2009
(Location TBD)

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Motorized Mobility Aides in the Long Term Care Residence *Policy Considerations*



John Paul Hessburg Margaret Chamberlain Andrea M. Szumlinski

The use of motorized “scooters” or mobility aides (MMAs) in the long term care setting has been a challenging issue for all involved. Policy considerations regarding the use of MMAs are complex and require an artful balance of a resident's rights with the rights of the facility and the rights of other residents. These “rights” are defined not only in the Federal Regulations that govern nursing facilities but in independent Federal and State statutes. An understanding of the relevant law is necessary in order to develop a sound MMA policy. The following overview is intended to provide a basic understanding of the relevant law, as well as some tips for practical application in the development of your own MMA policy.

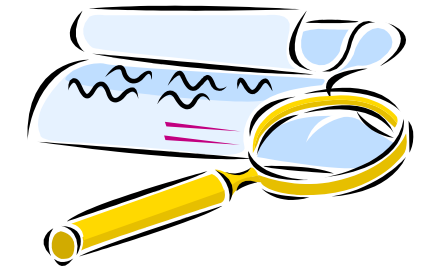
Relevant Law

Federal Law

Omnibus Budget Reconciliation Act -OBRA - (a/k/a The Nursing Home Reform Act)
The Americans with Disabilities Act - ADA
The Fair Housing Act - FHA
Federal Certification and Licensure Requirements.

State Law

State specific ADA statutes
State specific FHA statutes
State Specific Licensure Requirements



Policy

Unfortunately, the old axiom, “one size fits all” does not apply to this issue. As you develop your own facility specific policy regarding the use of MMAs, the following pages contain some basic “dos” and “don'ts” for the unlicensed setting and for the licensed setting. Additional background information can be found on our MMA Resource Page and actual cases involving LTC providers can be found on our Case Review Page.

Policy Review

*This information is intended for consideration by a facility as it develops a policy on the use of MMAs. It is **NOT** intended to be legal advice, nor is it a complete review of all applicable law(s) or regulations. Please have your MMA policy reviewed by your own legal counsel prior to implementation to ensure compliance with all applicable laws and regulations. For additional information, contact HealthCap Risk Management Services at (734) 996-2700.*



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Do's UNLICENSED Facilities & Motorized Mobility Aides

- Treat individuals with motorized mobility aides the same as all others. In other words, don't impose rules, implement policies, or impose requirements that apply only to individuals with motorized mobility aides.
- When considering a restriction on individuals with motorized mobility aides, balance **legitimate** safety concerns with the individual's right to utilize those mobility aides. Property damage is not enough. Consider the likelihood and seriousness of injury and the number of people at risk.
- Provide reasonable accommodations within the community's rules, practices, services and policies in order for individuals with mobility impairments to enjoy the same amenities as other residents.
- Be creative with reasonable accommodations.
- Use your facility lease and/or resident handbook to prohibit property damage by **any** resident (not just by those who use a mobility aide).
- Restrict admission inquiries to those permissible inquiries that apply to **all** applicants.
- Accept that an applicant's judgment about their ability to reside in the community is correct ---do **not** impose your own judgment.
- Utilize the least invasive means to verify an applicant's qualifications.

Considerations

- Consider placing speed limit signs throughout the facility or in certain areas.
- Consider offering (not mandating) motorized mobility aide training.
- Consider examining rules and policies to make sure they do not unintentionally discriminate.
- Consider inquiring only as to every applicant's ability to meet the requirements for tenancy (i.e. ability to pay the rent on time).
- Consider making inquiries of an existing resident (not an applicant) if a "nexus" relationship exists between "the fact of the individual's tenancy and [an] asserted direct threat" to the health and safety of other individuals. HUD v. Williams, No. 02-89-0459-1 (1991). For example, if a complaint alleges that a resident is intentionally running into other residents with his/her motorized mobility aide, consider asking questions of the resident regarding his/her ability to utilize the motorized mobility aide.
- Consider placing mirrors at corridor turns and/or angles.

Do Not's

- **Do not** prohibit motorized mobility aides.
- **Do not** refuse to charge the batteries on a motorized mobility aide for a resident.
- **Do not** require liability insurance for individuals using motorized mobility aides.
- **Do not** require individuals with motorized mobility aides enter into indemnity agreements with the facility or community.
- **Do not** charge a rental premium or additional fee for use of the motorized mobility aide.
- **Do not** discourage individuals with a motorized mobility aide from residing at the facility; or encourage an individual with a motorized mobility aide to consider a facility that is, for example, "better suited to their needs". In other words, do not debate the applicant's judgment about their ability to live in the community merely because they use a motorized mobility aide.
- **Do not** inquire as to whether the resident needs the motorized mobility aide or has a disability or handicap.
- **Do not** require motorized mobility aide training and/or testing.
- **Do not** put a limit on the number of motorized mobility aides usable in the facility.
- **Do not** put limits on the size or weight of motorized mobility aides.
- **Do not** assume individuals with motorized mobility aides are dangerous.
- **Do not** require that individual applicants be able to live "independently".
- **Do not** inquire into the nature and/or extent of the disability or handicap.
- **Do not** require individuals with motorized mobility aides to undergo a medical assessment as a condition of tenancy.
- **Do not** request medical records as a means to conduct a medical assessment.
- **Do not** conduct medical or therapy screening.

Do's LICENSED Facilities & Motorized Mobility Aides Do Not's

- Treat residents with motorized mobility aides the same as all other residents. In other words, don't impose rules, implement policies, or impose requirements that apply only to individuals with motorized mobility aides.
- When considering a restriction on individuals with motorized mobility aides, balance **legitimate** safety concerns with the individual's rights to utilize those mobility aides. Property injury is not enough. Consider the likelihood and seriousness of injury and the number of people at risk.
- Provide reasonable accommodations within the facility's rules, practices, services and policies in order for individuals with mobility impairments to enjoy the same amenities as other residents.
- Be creative with reasonable accommodations.
- Use your facility admission agreement, lease, and/or resident handbook to prohibit property damage by **any** resident (not just by those who use a mobility aide).
- Restrict admission inquiries and assessments regarding the use of motorized mobility aides to those required for compliance with Federal and/or State rules and regulations.
- Know and apply the Federal and/or State rules and regulations applicable to your specific facility licensure related to resident rights and responsibilities, personal property, prevention of accidents, use of assistive devices, and environmental hazards.
- Know and apply any state specific licensing policies on the issue of motorized mobility aides.

Considerations

- Consider placing speed limit signs throughout the facility or in certain areas.
- Consider offering (not mandating) motorized mobility aide training to residents.
- Consider examining rules and policies to make sure they do not unintentionally discriminate.
- Consider careful and individualized care planning for each resident regarding the use of motorized mobility aides, including reasonable accommodations made, for each resident.
- If applicable, consider having the facility's Interdisciplinary Team assess each resident with a mobility aide (motorized or not) in compliance with standard of practice and 42 Code of Federal Regulations § 483.

- **Do not** prohibit motorized mobility aides.
- **Do not** refuse to charge the batteries on a motorized mobility aide for a resident.
- **Do not** require liability insurance for residents who use motorized mobility aides.
- **Do not** require residents with motorized mobility aides enter into indemnity agreements with the facility or community.
- **Do not** charge a rental premium or additional fee for use of the motorized mobility aide.
- **Do not** discourage individuals with a motorized mobility aide from residing at the facility; **do not** encourage an individual with a motorized mobility aide to consider a facility that is, for example, "better suited to their needs". In other words, do not debate the applicant's judgment about their ability to live in the community merely because they use a motorized mobility aide.
- **Do not** inquire as to whether the resident needs the motorized mobility aide or has a disability or handicap.
- **Do not** require motorized mobility aide training and/or testing.
- **Do not** put a limit on the number of motorized mobility aides usable in the facility.
- **Do not** put limits on the size or weight of motorized mobility aides.
- **Do not** assume individuals with motorized mobility aides are dangerous.

