

Theft and Loss

Anyone who has been a victim of theft knows how violating it feels. For a nursing home resident, that loss is magnified, as personal possessions are often the only symbol of independence remaining. Despite state and federal laws mandating protections for residents' personal property, theft and loss continues to be one of the most prevalent (and unreported) problems in California nursing homes. Problems such as missing clothing, rings pulled off residents' fingers, stolen radios, lost dentures, eyeglasses and hearing aids are still too common. Such losses not only undermine the psychological well-being of residents, but in some cases, such as lost dentures, also jeopardize a resident's life.

So few official complaints of theft and loss are filed in relation to the number of actual incidents that it appears theft & loss is an "accepted" consequence of one's stay in a nursing home. *BUT, it does not have to be!*

Theft & loss *can* be reduced by understanding the facility's responsibility and by using the protections and remedies afforded under the law. Facilities which fail to make reasonable efforts to safeguard resident property must reimburse a resident or replace stolen or lost property at its then current value. H&S Code §1289.3.

Responsibilities of Nursing Homes

The California Health & Safety Code (H&S Code) requires nursing homes to:

- Establish and post policies regarding theft and investigation procedures (H&S Code §1289.4(a))
- Orient employees about theft and loss policies within 90 days of employment (H&S Code §1289.4(b))
- Document at least twice a year efforts to control theft and loss (H&S Code §1289.4(g))
- Establish theft and loss record for items worth \$25 or more (H&S Code §1289.4(c))
- Give a written report to police within 36 hours of suspected theft of an item worth \$100 or more (H&S Code §1289.4(i))
- Establish and maintain written inventory of each resident's property, add to inventory upon request and provide copy to resident or resident's representative (H&S Code §1289.4(d))
- Mark all residents' property, including engraving of dentures and tagging prosthetic devices (H&S Code §1289.4(h))

California and federal laws prohibit nursing homes from requesting or requiring residents to waive facility liability or responsibility for lost or stolen property. H&S Code §1599.62(a) and §1289.5, 42 CFR §483.15(a)(2)(iii).

Additionally, federal regulations require nursing homes to:

- Exercise reasonable care for the protection of the resident's property from loss or theft (42 CFR §483.10(i)(1)(ii));
- Prevent misappropriation of resident property and report suspected crimes involving theft to law enforcement and other entities within 24 hours (42 CFR §483.12); and

- Refer residents with lost or damaged dentures for dental services within 3 days, arrange for necessary transportation to and from the dental services, and assist residents who are eligible and wish to participate to apply for reimbursement of dental services as an incurred medical expense. Facility policies must identify when the loss or damage of dentures is its responsibility and prohibit charging residents in these situations. (42 CFR §483.55)

What You Can Do About Theft & Loss

- Make sure old and new items are recorded in the inventory; keep a copy of the inventory and of any additions;
- Take pictures of valuables;
- Keep copies of all receipts for any items taken to the resident;
- Buy a lock for the resident's drawers and/or cabinets - only the resident or resident's representative and the administrator can have a key (H&S Code §1289.4(j));
- Report any loss or suspected theft immediately to the administrator, local ombudsman, police and licensing department;
- Write a demand letter to the nursing home for replacement or reimbursement;
- Sue in Small Claims Court for replacement value of article - up to \$10,000. Visit www.canhr.org to order the *Small Claims Guide for Nursing Home Residents*.