

# Module 2 – Legal and Ethical Issues

## Introduction

The Home Care Aide has great responsibility in providing care to the individual in their home. The care provided is guided by ethical standards and laws. This module will explore the Home Care Aide Code of Ethics and your responsibilities as they relate to patient care.

## Objectives

At the end of the module, the nurse aide will be able to:

1. Differentiate between legal and ethical issues
2. Relate legal and ethical issues to the home care aide role
3. Discuss the Home Care Aide Code of Ethics
4. Explain patient rights and responsibilities
5. Recognize home care aide rights and responsibilities
6. Give examples of ethical and unethical behaviors

## Instructional Resource Materials

- PowerPoint for Module 2 – Legal and Ethical Issues
- Handouts

## Module 2 – Legal and Ethical Issues

Slides	Instructor's Script	Notes
<b>Slide 1</b> Title Slide	<b>Script</b> <ul style="list-style-type: none"> <li>• Legal and Ethical Issues</li> </ul>	
<b>Slide 2</b>	<b>Script</b> <b>Objectives</b> - At the end of the module, the nurse aide will be able to: <ol style="list-style-type: none"> <li>1. Differentiate between legal and ethical issues</li> <li>2. Relate legal and ethical issues to the home care aide role</li> <li>3. Discuss the Home Care Aide Code of Ethics</li> <li>4. Explain patient rights and responsibilities</li> <li>5. Recognize home care aide rights and responsibilities</li> <li>6. Give examples of ethical and unethical behaviors</li> </ol>	
<b>Slide 3</b>	<b>Script</b> <ul style="list-style-type: none"> <li>• Legal and ethical issues are especially important to the home care aide.</li> <li>• When working closely with any patient, the home care aide must have a clear understanding of these issues.</li> <li>• Home care aides, like other health care professionals, must follow all agencies' legal and ethical policies and/or protocol.</li> <li>• But what is the difference between a legal issue and an ethical issue?</li> <li>• Ethics deal with right and wrong. It is having a sense of duty and responsibility toward others and situations and guides us to do what we SHOULD do. An ethical person feels that they should always try to do the right thing.</li> <li>• Legal issues tell us what we MUST do. Laws are put in place based on ethics. Governments establish laws to ensure people's safety.</li> <li>• In health care, ethics and laws protect the patients who are receiving care, and the caregivers who are providing the care.</li> </ul>	
<b>Slide 4</b>	<b>Script</b> <ul style="list-style-type: none"> <li>• Many agencies establish their own set of guidelines for ethical behavior. Oftentimes the guidelines will be outlined in a policy. It is helpful for the home care aide to become familiar with their agency's mission or vision, as well as their code of ethics.</li> </ul>	

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	<ul style="list-style-type: none"> <li>• A code of ethics might include the areas where ethical behavior should be applied, such as marketing, patient admissions, transfers and discharges, patient rights, medical research, confidentiality, billing, competence, resources, etc., and outline how decisions surrounding these issues are made.</li> <li>• Of course, not all these areas will have to do with the home care aide; however, agencies will try to impress upon all their employees the importance of ethical behavior in every aspect of their organization.</li> </ul>	
<p><b>Slide 5</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Let’s discuss what constitutes ethical and legal behavior. Examples of ethical and legal behaviors are:             <ul style="list-style-type: none"> <li>○ Being honest at all times – this includes documentation and accurately reporting how long tasks took to perform</li> <li>○ Protecting patient’s confidentiality</li> <li>○ Abiding by the patient’s care plan and never performing a task outside of what you have been trained or found competent to perform</li> <li>○ Reporting patient observations to your supervisor, including suspected abuse or neglect</li> <li>○ Not accepting gifts or money from patients</li> </ul> </li> </ul>	
<p><b>Slide 6</b> Handout #1</p>	<p><b>Script</b> <b>Handout #1 – Code of Ethics for Home Care Aides</b></p> <ul style="list-style-type: none"> <li>• The Home Care Aide Association of America has established a “Code of Ethics for Home Care Aides.”</li> <li>• There are 5 basic principles.</li> </ul>	
<p><b>Slide 7</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Principle #1: The safety and well-being of the client is the main concern in all decisions and actions.</li> </ul>	
<p><b>Slide 8</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Principle #2: The highest level of honesty and integrity shall be maintained in all dealings with clients and the employer.</li> </ul>	

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<b>Slide 9</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Principle #3: Quality services shall be provided in a conscientious, competent, client-centered manner.</li> </ul>	
<b>Slide 10</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Principle #4: The person and property of the client shall be respected with confidentiality, security, kindness, and recognition of the client’s individuality.</li> </ul>	
<b>Slide 11</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Principle #5: All activities shall be carried out according to employer policies and any laws that apply with any actual or possible violation reported to the employer immediately.</li> </ul>	
<b>Slide 12</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• As well as being treated ethically and legally, patients should be informed of their rights prior to receiving services from a home care agency.</li> <li>• Each agency should have a written statement to be given to patients, outlining the patient’s rights.</li> <li>• This document will vary; however, it should include the following basic rights:</li> </ul>	
<b>Slide 13</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Patients have the right to be treated with dignity and respect. Patients should be treated the same regardless their gender, race, national origin, religion, beliefs, age, financial status, sexual preference, or diagnosis.</li> <li>• The home care aide has the same right. It is the expectation that the patient will treat the aide with dignity and respect.</li> <li>• The personal property of the patient should be respected as well.</li> </ul>	
<b>Slide 14</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Patients have the right to decision making. This includes knowing the members of their health care team, participating in their care plan development, being informed of changes</li> </ul>	

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	to their care plan, and refusing treatment without fear of repercussions.	
<b>Slide 15</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Patients have the right to privacy. Confidentiality cannot be stressed enough. Patient’s medical, family, financial, etc. information, as well as any other information that a home care aide might learn while working with the patient in their home, should be kept with the strictest of confidence.</li> </ul>	
<b>Slide 16</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Patients have the right to quality care. Patients should be able to expect that their home care aide has been trained and that the agency has the resources to provide the best care possible. Agencies should inform patients if there are limitations to services that are being requested.</li> <li>• Part of quality care is the expectation that patients should never be abused physically, emotionally, verbally, or sexually by care givers. Likewise, the home care aide should expect to perform quality care without being abused in any way by the patient or any family member of the patient.</li> </ul>	
<b>Slide 17</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Patients have the right to be informed of all financial information related to their care. If the patient asks you at any time about how their care is being paid for, contact your supervisor for the patient to get the appropriate information about payment for services.</li> </ul>	
<b>Slide 18</b>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Just as patients have rights, employees have rights.</li> <li>• These rights cover wage per hour issues, your right to work free from discrimination and harassment, to receive equal pay for equal work (meaning that all genders should be compensated the same based on job and experience), the right to time off for family medical leave, and a multitude of rights surrounding workplace health and safety.</li> </ul>	

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	<ul style="list-style-type: none"> <li>• <b>You have the right to be treated kindly by your patients, to be free from harassment from your patients/families and the agency you work for, and to feel safe in your job.</b></li> <li>• You are never expected to do any work that is not listed on a patient’s plan of care nor care for anyone other than the patient. For a comprehensive listing and explanation of employee rights, visit the U.S. Department of Labor website at: <b>www.dol.gov</b>.</li> </ul>	
<p><b>Slide 19</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Any services that are delivered to patients require a written consent from the patient and/or responsible party (for example, a parent if a minor, under the age of 18).</li> <li>• When the consent for care is signed, it authorizes the agency and its staff to deliver services that have been agreed upon by the agency and patient.</li> <li>• Remember, services are provided <b>for</b> the patient rather than delivered <b>to</b> the patient. The patient and/or responsible party remains in control of decision-making in the care.</li> <li>• Part of the consent allows the agency to make referrals or coordinate care on their behalf.</li> <li>• The patient has an active part in designing the plan of care for the home care aide to follow.</li> <li>• Remember, a patient should make their own decisions, even if they are not always the best ones. For example, if a patient who is alert, oriented, and competent and an insulin dependent diabetic, chooses to eat two slices of pie, then it is the patient’s right to make that decision. The home care aide cannot stop the patient from eating two slices of pie. The home care aide can only report it to their supervisor and encourage the patient to make good choices.</li> <li>• Another example would be if the bath is assigned Monday – Friday. If the patient refuses on Tuesday, the aide cannot force the patient to take a bath. The aide should call the office, report the refusal, and document the refusal on agency-approved forms. The aide should remain professional and courteous to</li> </ul>	

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	the patient, even if the aide does not agree with the decision.	
<b>Slide 20</b>	<p><b>Script</b></p> <ul style="list-style-type: none"><li>• Patients have many rights in home care; however, they also have responsibilities with regards to their care.</li><li>• Like patient rights, patients should also be given information regarding their responsibilities before receiving home care (often called the <i>Patient Rights and Responsibilities</i>).</li><li>• Examples of patient responsibilities are:<ul style="list-style-type: none"><li>○ Notifying the home care agency of any scheduling changes, personal or health information (this includes admissions to the hospital).</li><li>○ Following the care plan.</li><li>○ Treating the home care aide with respect and kindness.</li><li>○ Keeping the home environment safe for the home care aide.</li><li>○ Not abusing any staff in any way.</li><li>○ Keeping the agency informed of any problems or grievances with services.</li></ul></li></ul>	

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<b>Slide 21</b>	<b>Script</b> <ul style="list-style-type: none"><li>• The home care aide has a unique relationship with a patient while working in their home.</li><li>• Being with a patient frequently and working closely with both the patient and the patient’s family can be an intimate and emotional experience.</li><li>• It is especially important for the home care aide to maintain professional boundaries at all time.</li><li>• Professional boundaries are established for both the home care aide and for the patient.</li><li>• Boundaries protect the home care aide from being too involved with patients; likewise, they protect the patient by keeping the patient at a safe emotional distance.</li><li>• Health care professions, or any helping or caring profession, have more specific boundaries, many of which are ethical or even legal issues.</li><li>• Examples of these potential issues would include:<ul style="list-style-type: none"><li>○ Engaging in outside/personal relationships with patients. Never date or have any type of sexual relationship with a patient.</li><li>○ Inappropriate financial dealings with a patient.</li><li>○ Interfering in a patient’s personal relationships; always remain neutral.</li><li>○ Accepting gifts or money from patients.</li><li>○ Giving patients your personal cell phone/home numbers.</li><li>○ Visiting patients when not working or assigned to that patient.</li><li>○ Discussing one’s personal life with a patient.</li><li>○ Going places with a patient outside of work related activities/duties.</li><li>○ Engaging in intimate/sexual activities with patients.</li></ul></li><li>• Often it is a well-intentioned home care aide or patient who may cross an ethical line. A home care aide or patient is “just trying to be nice” or “not hurt anyone’s feelings” and does not realize what is happening.</li><li>• The home care aide cannot trust that a patient will know professional or ethical boundaries. A</li></ul>	
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	<p>home care aide must have the knowledge, training, and supervisory support to prevent or correct ethical issues.</p> <ul style="list-style-type: none"> <li>• Even though agencies have codes of ethics in place and have patient’s rights and responsibilities printed and distributed, ethical dilemmas may still arise.</li> <li>• An ethical dilemma is a situation in which you must choose between two or more alternatives, none of which are desirable. Ethical dilemmas can be any situation where you question if you are doing the right thing, if the family is doing the right thing, or if a patient can be in danger either from themselves or others.</li> <li>• If an ethical dilemma arises, contact your supervisor immediately and discuss the situation. Your supervisor can give you immediate guidance on how to handle the situation and then long-term guidance as necessary.</li> <li>• For example, your patient is an insulin dependent diabetic and a recovering alcoholic. You walk in and the patient is eating ice cream and having a mixed drink. It is the patient’s choice to do so; however, you must report it and allow your supervisor to guide you through. Your supervisor will ask you if you are safe, if the patient is safe, was there anything that provoked the situation, etc. If you feel like your concerns are not being addressed, use the chain of command, and contact the next person in charge. Some agencies, especially the larger ones, have an ethics committee where problem-solving about ethical dilemmas occurs.</li> </ul>	
<p><b>Slide 22</b> Handout 2</p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Review the case scenarios in <b>Handout #2 – Case Scenarios</b></li> <li>• Facilitate class discussion</li> </ul>	
<p><b>Slide 23</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• The home care aide should be able to recognize patient abuse and neglect. Because seniors are often more compromised due to poor health and little social support, the impact of abuse can be life-threatening.</li> </ul>	

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	<ul style="list-style-type: none"><li>• The home care aide should be aware of signs and symptoms of abuse and must report these to their supervisor immediately. The home care aide will have frequent and intimate contact with patients and will often be the first to observe abuse.</li><li>• It is noteworthy that older women (67%) are far more likely than older men (32%) to suffer from abuse and over half of the alleged perpetrators of elder abuse were female (53%). (National Center on Elder Abuse Study, 2004).</li><li>• Twenty percent of elder abuse involved caregiver neglect; 15% centered on emotional, psychological, or verbal abuse; 15% involved financial exploitation; 11% was physical abuse, and 1% was sexual abuse (Teaster, National Center on Elder Abuse, 2006).</li><li>• Signs of abuse could include but are not limited to:<ul style="list-style-type: none"><li>○ Physical: Unexplained bruising, dislocations, fractures, injuries to the face or head and burns.</li><li>○ Sexual: Genital or rectal tearing, STDs, pain, bruising or itching in the genital areas.</li><li>○ Psychological: withdrawn, poor self-esteem, frightened by a caregiver, depression, anxiety, or suicidal thoughts/verbalizations.</li><li>○ Financial: financial abuse or exploitation means taking money from the patient without their consent or if the patient feels forced into giving away money. This is something that the patient will usually “tell” you about. It is often difficult to “see” financial abuse or exploitation.</li><li>○ Neglect: if the patient is not being fed, changed, or is left alone away from socialization. An example would be if the home care aide changes a patient’s adult brief before leaving, and the patient is wearing the same adult brief when the home care aide returns the next day.</li></ul></li><li>• If you suspect any abuse, neglect, or exploitation, you must report it to your supervisor IMMEDIATELY.</li><li>• We have discussed abuse by the family or caregiver, but abuse can also happen by the</li></ul>	
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	<p>hands of the home care aide. PLEASE NOTE THAT ANY ABUSE, NEGLECT OR EXPLOITATION OF PATIENT IS STRICTLY PROHIBITED. Consequences can be extremely serious.</p>	
<p><b>Slide 24</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Most nurse aides who provide services in home care are capable and caring individuals. However, when certain allegations are suspected involving nurse aides or other unlicensed assistive personnel, health care employers are required to submit reports to the Health Care Personnel Registry Investigations Branch. In this case, the term “allegation” means one of the following:             <ul style="list-style-type: none"> <li>○ Abuse of a resident.</li> <li>○ Neglect of a resident.</li> <li>○ Diversion of drugs belonging to a resident.</li> <li>○ Diversion of drugs belonging to a health care facility.</li> <li>○ Fraud against a resident.</li> <li>○ Fraud against a health care facility.</li> <li>○ Misappropriation of the property of a health care facility.</li> <li>○ Misappropriation of resident property.</li> <li>○ Injury of unknown source.</li> </ul> </li> <li>• It’s important to know what these terms mean.             <ul style="list-style-type: none"> <li>○ “Abuse” means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish. Examples include slapping or hitting a patient, yelling at a patient, threatening a patient with a punishment or rough treatment while giving care.</li> <li>○ “Neglect” means a failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. An example would be not changing a patient’s soiled adult brief which leads to skin breakdown and an infection.</li> <li>○ “Negligence” means an <u>unintentional wrong</u> in which a person fails to act in a reasonable and prudent manner and thereby causes harm to another person or</li> </ul> </li> </ul>	

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	<p>the person's property. An example would be forgetting to lock the brakes on a wheelchair after which a patient falls and gets hurt while being transferred to the wheelchair.</p> <ul style="list-style-type: none"><li>○ "Misappropriation of resident property" means the deliberate misplacement, exploitation or wrongful temporary or permanent use of a patient's belongings or money without the patient's consent. Examples would be for the nurse aide to use the patient's lotion on his or her own skin or to keep the change from the patient's shopping money to buy his or her own lunch.</li><li>○ "Misappropriation of the property of a health care facility" means the deliberate misplacement, exploitation, or wrongful temporary or permanent use of a health care facility's property without the facility's consent. An example would be taking a blood pressure cuff and stethoscope for the nurse aide to use on family members or friends.</li><li>○ "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law. An example would be to take checks from the patient and write and cash them for use by the nurse aide.</li><li>○ "Diversion of drugs" means the unauthorized taking or use of any drug. An example would be the nurse aide taking medication from a patient's home or the agency and using for him or herself.</li><li>● Once the Investigations Branch receives a report of an allegation involving a nurse aide from a home care agency, the nurse aide and the nurse aide's actions are investigated by the branch. If the evidence shows that the allegation is true, the nurse aide's name and actions will be listed on the Health Care</li></ul>	
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Handout 3	<p>Personnel Registry. If a substantiated finding (proven allegation) is listed, it is permanent and remains listed on the registry. Individuals with certain neglect allegation findings may petition the Department to have his or her name removed from the registry. Otherwise, the listing remains on the registry permanently.</p> <ul style="list-style-type: none"><li>• This listing may cost you your job or future jobs. Many health care facilities cannot hire nurse aides listed on the Health Care Personnel Registry. Many types of health care facilities are required by law to check the Health Care Personnel Registry before they hire nurse aides or other unlicensed personnel. In fact, North Carolina Home Care Licensure Rules state that a home care agency shall not hire any individual either directly or by contract who has a substantiated finding (proven allegation) on the North Carolina Health Care Personnel Registry. If you have a proven allegation on the registry, you would not be hired by a home care agency in North Carolina.</li><li>• Another consequence of patient abuse, neglect, or exploitation is that a nurse aide and the nurse aide's actions can be reported to the police and investigated as a crime. The police investigation can lead to action by a court of law leading to the nurse aide being convicted of a crime. The nurse aide will have a criminal record and may not be able to work in certain types of health care facilities depending on the type of crime committed.</li><li>• The best way to avoid involvement in abuse, neglect or exploitation of a patient is to <b>think before you act</b>. Ask yourself if someone you admire, such as Abraham Lincoln or Martin Luther King, Jr., would do what you're getting ready to do. Or would you be embarrassed if your actions were the headline for tomorrow's newspaper or the 6 o'clock news? Thinking before you act will help you to continue to be the caring and capable nurse aide that you already are.</li><li>• The nurse aide will have no fear of crossing the line with patients or breaking laws if nurse aide:</li></ul>	
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	<ul style="list-style-type: none"> <li>○ performs only acts within scope of nurse aide.</li> <li>○ keeps skills and knowledge current.</li> <li>○ keeps patient’s safety and well-being in mind.</li> <li>○ understands directions for care.</li> <li>○ follows agency policy.</li> <li>○ does no harm to patients or their belongings.</li> </ul> <ul style="list-style-type: none"> <li>● <b>Handout #3 – Terms and Definitions, T/F Quiz.</b> Give students the handout with the definitions. Let the students complete the quiz at the bottom. Discuss the answers.</li> </ul>	
<p><b>Slide 25</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>● Home care aides may also be faced with legal or ethical issues at their place of employment. Many agencies will have an “anti-kickback” policy in place to protect both the employee and the agency from self-serving interests.</li> <li>● It is the responsibility of the home care aide to recognize a kickback when it’s offered and refuse to accept it. Just because your employer asks you to participate in a kickback scheme, it doesn’t mean that it’s okay to do so.</li> <li>● A kickback is a negotiated bribe paid a little at a time. It’s a payment for improper services received. The purpose of a kickback is usually to urge the other party to cooperate in a dishonest scheme.</li> <li>● A kickback is illegal and unethical. It’s illegal because federal law prohibits kickbacks that involve funds that come from the government. Home care agencies receive payment from Medicare and Medicaid, which are government health plans. A kickback is unethical because it interferes with a person’s ability to make unbiased, or fair-minded, decisions.</li> <li>● This means that aides are not able to bring patients with them from agency to agency, nor can they self-refer to benefit themselves or the agency.</li> <li>● For example, it is considered illegal for an agency to provide a monetary stipend (kickback) to an aide if the aide recruits new</li> </ul>	

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	<p>patients. There are federal, and typically state, laws that try to prevent things like this from happening.</p> <ul style="list-style-type: none"> <li>• When employees are approached and enticed with bonuses or commissions, they may be tempted to recruit patients who may not be completely appropriate for the home care services. This is both an ethical and a legal issue.</li> </ul>	
<p><b>Slide 26</b> Handout 4</p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• <b>Handout #4 – Role Play Activity</b></li> <li>• Instructor – Select 2 student volunteers willing to role play the script. This can be done in a simulated lab area, if available.             <ul style="list-style-type: none"> <li>○ Give only the top portion of Handout #4 to the role playing students.</li> <li>○ Stop after the lines are read and discuss a more ethical approach.</li> <li>○ Let the students role play the bottom portion of Handout #4, with the more ethical conversation.</li> </ul> </li> </ul>	
<p><b>Slide 27</b></p>	<p><b>Script</b></p> <ul style="list-style-type: none"> <li>• Conclusion: Now you are equipped to respond in an ethical and legal manner in your work as a home care aide.</li> </ul>	