

Foundational Investigative Skills Module 5, Lesson 2

CMS Foundational Investigative Skills
Module 5—Sexual Abuse in Long Term Care
Lesson 2—Sexual Relations and the Capacity to Consent

Resources Help Glossary

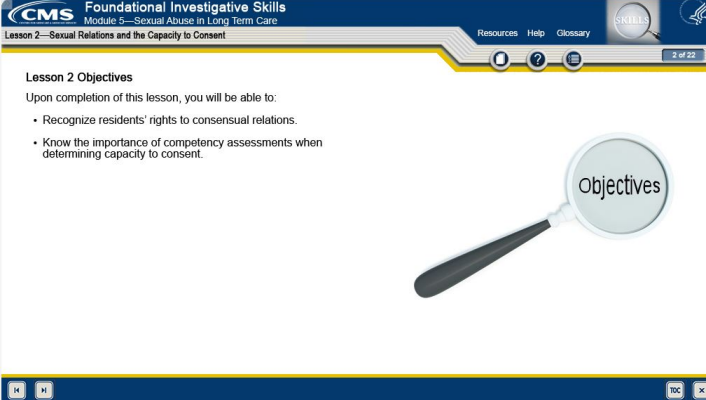
1 of 22

Sexual Relations and the Capacity to Consent

1 2

Sexual Relations and the Capacity to Consent

Foundational Investigative Skills Module 5, Lesson 2



The screenshot shows a web application interface for 'Foundational Investigative Skills'. The header includes the CMS logo, the title 'Foundational Investigative Skills', and the subtitle 'Module 5—Sexual Abuse in Long Term Care'. Below the header, the current page is identified as 'Lesson 2—Sexual Relations and the Capacity to Consent'. The main content area is titled 'Lesson 2 Objectives' and contains the following text: 'Upon completion of this lesson, you will be able to:' followed by two bullet points: '• Recognize residents' rights to consensual relations.' and '• Know the importance of competency assessments when determining capacity to consent.' To the right of the text is a magnifying glass icon with the word 'Objectives' written inside its lens. The interface also features a navigation bar with 'Resources', 'Help', and 'Glossary' links, and a status bar at the bottom right indicating '2 of 52'.

Lesson 2 Objectives

Upon completion of this lesson, you will be able to:

- Recognize residents' rights to consensual relations.
- Know the importance of competency assessments when determining capacity to consent.

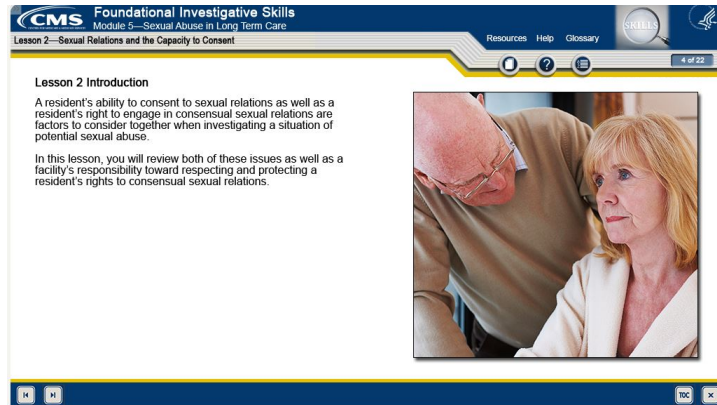
Foundational Investigative Skills Module 5, Lesson 2

The screenshot shows a web application interface. At the top, there is a blue header with the CMS logo and the text 'Foundational Investigative Skills' and 'Module 5—Sexual Abuse in Long Term Care'. Below this, it says 'Lesson 2—Sexual Relations and the Capacity to Consent'. On the right side of the header, there are links for 'Resources', 'Help', and 'Glossary', and a '3 of 22' indicator. Below the header, there is a 'Headline' section with the text: 'Consider this fictitious headline. How does one determine the right and ability to consent to sexual relations in cases such as this? Select the **Forward** button to continue.' Below this text is a simulated newspaper article. The headline of the article is 'Nursing Home Resident Charged With Rape'. The article includes a photograph of a nursing home building and a small portrait of an elderly woman. The text of the article is mostly illegible but appears to be placeholder text. At the bottom of the interface, there are navigation buttons for 'Home', 'Previous', 'Next', and 'Close'.

Headline

Consider this fictitious headline. How does one determine the right and ability to consent to sexual relations in cases such as this? Select the **Forward** button to continue.

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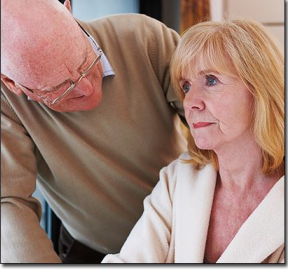
CMS Foundational Investigative Skills
Module 5—Sexual Abuse in Long Term Care
Lesson 2—Sexual Relations and the Capacity to Consent

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Lesson 2 Introduction

A resident's ability to consent to sexual relations as well as a resident's right to engage in consensual sexual relations are factors to consider together when investigating a situation of potential sexual abuse.

In this lesson, you will review both of these issues as well as a facility's responsibility toward respecting and protecting a resident's rights to consensual sexual relations.



Lesson 2 Introduction

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CMS Foundational Investigative Skills
Module 5—Sexual Abuse in Long Term Care
Lesson 2—Sexual Relations and the Capacity to Consent


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Facilities Must Respect Residents' Rights

Residents have the right to consensual sexual relations with other residents or visitors. This right is important and cannot be taken away. To this end, the cognitive abilities of residents to consent and engage in consensual sexual relations must be assessed.

The determination that a person has the capacity to choose such activities should be included in the care plan for any residents involved in an intimate relationship. The facility must also provide training to all staff who are responsible for their care.

Additionally, facilities must respect the privacy rights of persons who can freely consent to engage in intimacy. While the resident's family may not agree with the decision, facilities must abide by a resident's choice and offer privacy if the resident has the capacity to consent and chooses to engage in intimacy with an individual who also has the capacity to consent to the relationship.



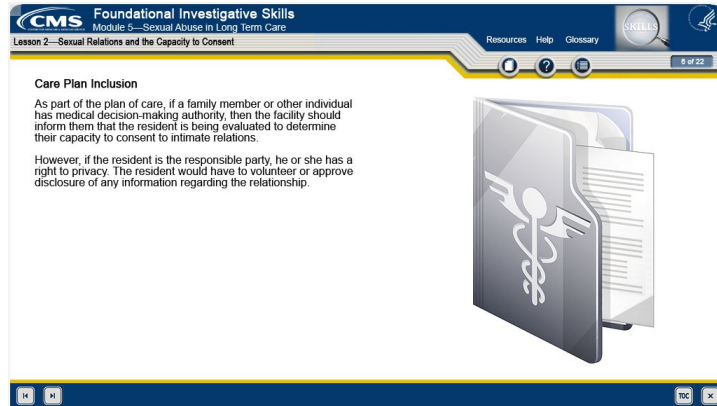
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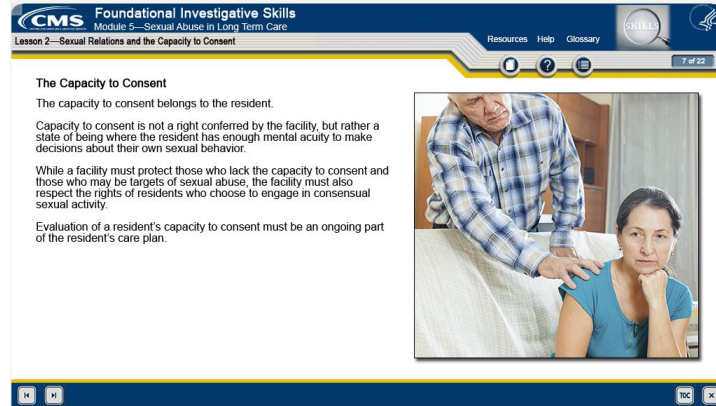
The screenshot shows a web-based training interface. At the top, the CMS logo is on the left, and the title 'Foundational Investigative Skills' is in the center. Below the title, it says 'Module 5—Sexual Abuse in Long Term Care' and 'Lesson 2—Sexual Relations and the Capacity to Consent'. On the right side of the header, there are links for 'Resources', 'Help', and 'Glossary', along with a search icon and a '6 of 22' indicator. The main content area on the left contains the text for 'Care Plan Inclusion'. To the right of the text is a 3D graphic of a folder with a medical symbol (Rod of Asclepius) on its cover and several documents inside. At the bottom of the interface, there are navigation icons for back, forward, and search.

Care Plan Inclusion

As part of the plan of care, if a family member or other individual has medical decision-making authority, then the facility should inform them that the resident is being evaluated to determine their capacity to consent to intimate relations.

However, if the resident is the responsible party, he or she has a right to privacy. The resident would have to volunteer or approve disclosure of any information regarding the relationship.

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The screenshot shows a web-based training module interface. At the top, it reads 'CMS Foundational Investigative Skills' and 'Module 5—Sexual Abuse in Long Term Care'. Below that, it says 'Lesson 2—Sexual Relations and the Capacity to Consent'. The main content area is titled 'The Capacity to Consent' and contains three paragraphs of text. To the right of the text is a photograph of a man in a plaid shirt standing over a woman in a blue shirt who is sitting at a table. The interface includes navigation buttons like 'Resources', 'Help', and 'Glossary' at the top right, and a '7 of 22' indicator. At the bottom, there are window control buttons (back, forward, refresh, close).

The Capacity to Consent

The capacity to consent belongs to the resident.

Capacity to consent is not a right conferred by the facility, but rather a state of being where the resident has enough mental acuity to make decisions about their own sexual behavior.

While a facility must protect those who lack the capacity to consent and those who may be targets of sexual abuse, the facility must also respect the rights of residents who choose to engage in consensual sexual activity.

Evaluation of a resident's capacity to consent must be an ongoing part of the resident's care plan.

The Capacity to Consent

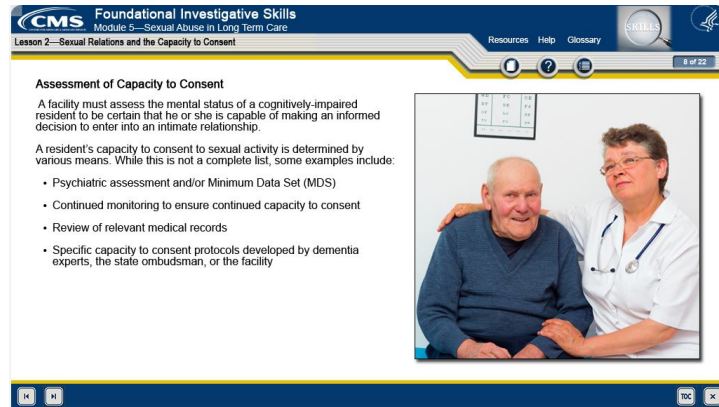
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Assessment of Capacity to Consent

A facility must assess the mental status of a cognitively-impaired resident to be certain that he or she is capable of making an informed decision to enter into an intimate relationship.

A resident's capacity to consent to sexual activity is determined by various means. While this is not a complete list, some examples include:

- Psychiatric assessment and/or Minimum Data Set (MDS)
- Continued monitoring to ensure continued capacity to consent
- Review of relevant medical records
- Specific capacity to consent protocols developed by dementia experts, the state ombudsman, or the facility

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Knowledge Check

The rights of persons who have the capacity to consent to intimate relationships with each other must be _____ by the facility.

- a. evaluated
- b. revoked
- c. challenged
- d. respected

Submit

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Knowledge Check

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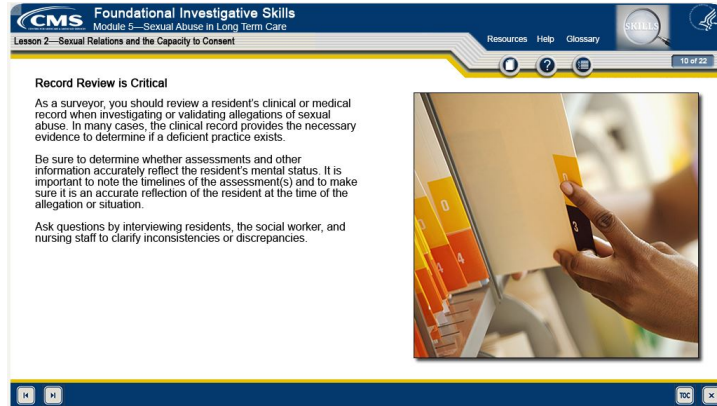
Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Correct. The rights of persons who can freely consent to have intimacy with each other must be respected by the facility.

Incorrect. The rights of persons to have intimacy with each other must be more than considered; they must be respected. The correct answer is respected.

Correct answer: d.

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The screenshot shows a slide from a CMS training module. The header includes the CMS logo, the title 'Foundational Investigative Skills', the subtitle 'Module 5—Sexual Abuse in Long Term Care', and the lesson title 'Lesson 2—Sexual Relations and the Capacity to Consent'. Navigation links for 'Resources', 'Help', and 'Glossary' are visible. The slide content is as follows:

Record Review is Critical

As a surveyor, you should review a resident's clinical or medical record when investigating or validating allegations of sexual abuse. In many cases, the clinical record provides the necessary evidence to determine if a deficient practice exists.

Be sure to determine whether assessments and other information accurately reflect the resident's mental status. It is important to note the timelines of the assessment(s) and to make sure it is an accurate reflection of the resident at the time of the allegation or situation.

Ask questions by interviewing residents, the social worker, and nursing staff to clarify inconsistencies or discrepancies.

The slide also features an image of a hand holding a yellow card next to a laptop screen.

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Foundational Investigative Skills Module 5, Lesson 2

Knowledge Check
Why must a facility determine a resident's capacity to consent to an intimate relationship?
Select all that apply.

- a. A facility must protect those who lack the capacity to consent to sexual activity.
- b. A facility must protect those who are targets of sexual abuse.
- c. The mental status of any resident who is cognitively impaired must be assessed before he or she enters into an intimate relationship.
- d. Residents do not have the right to engage in sexual relations without the expressed consent of family members.

Submit

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Knowledge Check

Why must a facility determine a resident's capacity to consent to an intimate relationship? Select all that apply.

- a. A facility must protect those who lack the capacity to consent to sexual activity.**
- b. A facility must protect those who are targets of sexual abuse.**
- c. The mental status of any resident who is cognitively impaired must be assessed before he or she enters into an intimate relationship.**
- d. Residents do not have the right to engage in sexual relations without the expressed consent of family members.

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Incorrect. The correct answers are a facility must protect those who lack the capacity to consent to sexual activity; a facility must protect those who are targets of sexual abuse, and the mental status of any resident who is cognitively impaired must be assessed before he or she enters into an intimate relationship.

Correct. The facility must determine the capacity to consent because a facility must protect those who are targets of sexual abuse. Further, the mental status of any resident who is cognitively impaired must be assessed before he or she enters into an intimate relationship.

Correct answer: a, b, and c.

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Carver Living Center Case Study

The following frames present an actual case study from Carver Living Center.

This depiction of real events illustrates a facility's responsibility for determining capacity to consent to sexual relations and the considerations you should make when investigating cases of possible sexual abuse.

This case study is presented in three parts.

The screenshot shows a software interface with a blue header containing the CMS logo and course information. The main content area has a white background with black text. To the right of the text is a stack of three overlapping document frames, each showing a table with columns and rows. The bottom of the interface has a blue bar with navigation icons.

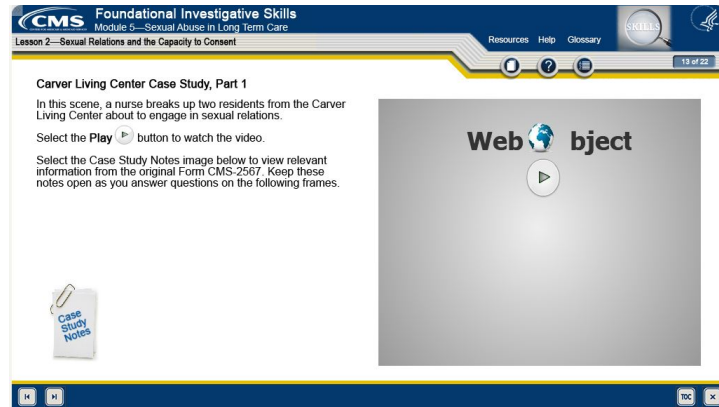
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Carver Living Center Case Study, Part 1

In this scene, a nurse breaks up two residents from the Carver Living Center about to engage in sexual relations.

Select the **Play** button to watch the video.

Select the Case Study Notes image below to view relevant information from the original Form CMS-2567. Keep these notes open as you answer questions on the following frames.

Web Object

Case Study Notes

Carver Living Center Case Study, Part 1

In this scene, a nurse breaks up two residents from the Carver Living Center about to engage in sexual relations.

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[Case Study Notes](#)

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Foundational Investigative Skills
Module 5—Sexual Abuse in Long Term Care
Lesson 2—Sexual Relations and the Capacity to Consent

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Exercise 1—Carver Living Center Case Study, Part 1

Did the nurse's aide act appropriately in breaking up the encounter and directing the residents to get dressed and return their own rooms? If you have not already opened them, select this link to review the [Case Study Notes](#) as you answer the question.

Yes No Don't Know

Incorrect. Based upon what we do know, since there is no evidence to support whether or not either resident is capable of giving consent, we do not know if the nurse's aide's action to separate the residents was proper. Residents who have the capacity to consent and have the ability to make informed decisions have the right to engage in sexual activity just as any other consenting adult. Those not capable to consent need to be protected until a determination is made by professionals as to their ability to fully comprehend and consent to sexual activity.

Exercise 1-Carver Living Center Case Study, Part 1

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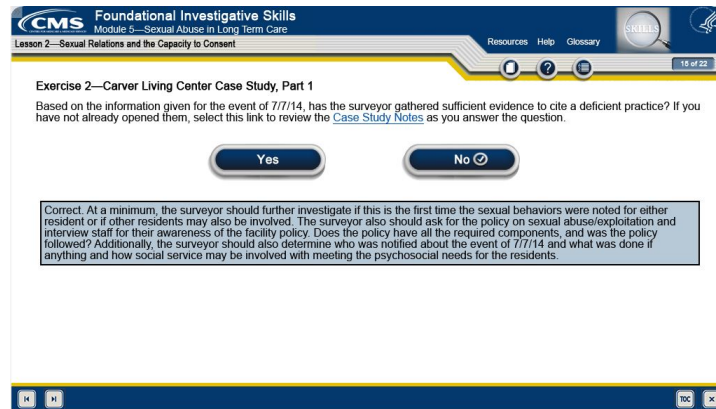
Don't know

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Exercise 2-Carver Living Center Case Study, Part 1

Based on the information given for the event of 7/7/14, has the surveyor gathered sufficient evidence to cite a deficient practice? If you have not already opened them, select this link to review the [Case Study Notes](#) as you answer the question.

No

Correct. At a minimum, the surveyor should further investigate if this is the first time the sexual behaviors were noted for either resident or if other residents may also be involved. The surveyor also should ask for the policy on sexual abuse/exploitation and interview staff for their awareness of the facility policy. Does the policy have all the required components, and was the policy followed? Additionally, the surveyor should also determine who was notified about the event of 7/7/14 and what was done if anything and how social service may be involved with meeting the psychosocial needs for the residents.

Yes

Incorrect. At a minimum, the surveyor should further investigate if this is the first time the sexual behaviors were noted for either resident or if other residents may also be involved. The surveyor also should ask for the policy on sexual abuse/exploitation and interview staff for their awareness of the facility policy. Does the policy have all the required components, and was the policy followed? Additionally, the surveyor should also determine who was notified about the event of 7/7/14 and what was done if anything and how social service may be involved with meeting the psychosocial needs for the residents.

Foundational Investigative Skills Module 5, Lesson 2

The screenshot shows a web interface for 'Foundational Investigative Skills' by CMS. The page title is 'Module 5—Sexual Abuse in Long Term Care' and the lesson is 'Lesson 2—Sexual Relations and the Capacity to Consent'. The main content area is titled 'Carver Living Center Case Study, Part 2'. It contains the following text:

In this scenario, the Certified Nurse's Aide (CNA) gives the residents privacy, and the administrator talks to the CNA about respecting residents' rights and the facility's decision.

At this point, the facility determined that the relationship was consensual and decided to offer privacy and respect the residents' rights. The facility notified both residents' families and involved the ombudsman.

Select the **Play** button to watch the video.

Select the Case Study Notes image below to view relevant information from the original Form CMS-2567. Keep these notes open as you answer questions on the following frames.

Below the text is a video player with a play button and the text 'Web bject'. To the left of the video player is an icon for 'Case Study Notes'.

Carver Living Center Case Study, Part 2

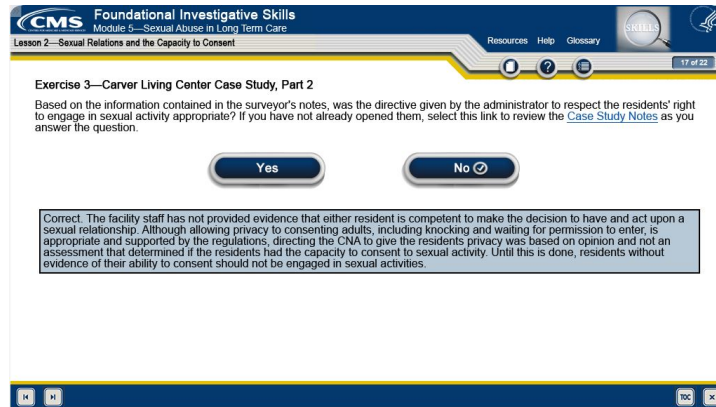
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Foundational Investigative Skills Module 5, Lesson 2



Exercise 3-Carver Living Center Case Study, Part 2

Based on the information contained in the surveyor's notes, was the directive given by the administrator to respect the residents' right to engage in sexual activity appropriate? If you have not already opened them, select this link to review the [Case Study Notes](#) as you answer the question.

Yes

Incorrect. The facility staff has not provided evidence that either resident is competent to make the decision to have and act upon a sexual relationship. Although allowing privacy to consenting adults, including knocking and waiting for permission to enter, is appropriate and supported by the regulations, directing the CNA to give the residents privacy was based on opinion and not an assessment that determined if the residents had the capacity to consent to sexual activity. Until this is done, residents without evidence of their ability to consent should not be engaged in sexual activities.

No

Correct. The facility staff has not provided evidence that either resident is competent to make the decision to have and act upon a sexual relationship. Although allowing privacy to consenting adults, including knocking and waiting for permission to enter, is appropriate and supported by the regulations, directing the CNA to give the residents privacy was based on opinion and not an assessment that determined if the residents had the capacity to consent to sexual activity. Until this is done, residents without evidence of their ability to consent should not be engaged in sexual activities.

Foundational Investigative Skills Module 5, Lesson 2

CMS Foundational Investigative Skills
Module 5—Sexual Abuse in Long Term Care
Lesson 2—Sexual Relations and the Capacity to Consent

Carver Living Center Case Study, Part 3 and Part 4
In Part 3 of this scenario, the female resident is observed in the hallway wearing a bath robe and trying to enter other residents' rooms. Later, in Part 4, the same female resident is seen in different sexual situations with different male residents.

Select the **Play** button to watch the video.

Select the Case Study Notes image below to view relevant information from the original Form CMS-2567. Keep these notes open as you answer questions on the following frames.

Web Object

Case Study Notes

Carver Living Center Case Study, Part 3 and Part 4

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[Case Study Notes](#)

Foundational Investigative Skills Module 5, Lesson 2

Exercise 4—Carver Living Center Case Study, Part 3 and Part 4

Based upon the video and the Case Study Notes, what is the best action that Carver Living Center can take to protect residents from inappropriate sexual behaviors? If you have not already opened them, select this link to review the [Case Study Notes](#) before you select one of the options below.

Option #1: Find a personal sitter for Residents #3 and #7 and use medication as needed to limit resident wandering.

Option #2: Transfer Resident #7 to a psychiatric facility because she is the aggressor.

Option #3: Ensure staff are educated on the need to effectively communicate resident behaviors in accordance with facility policy in order to provide appropriate treatment and direction.

Exercise 4-Carver Living Center Case Study, Part 3 and Part 4

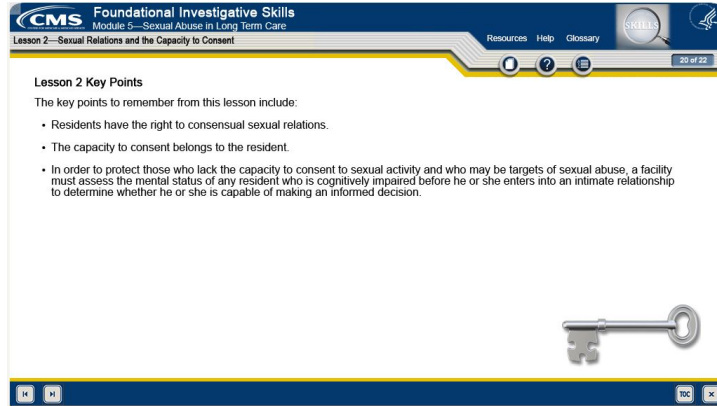
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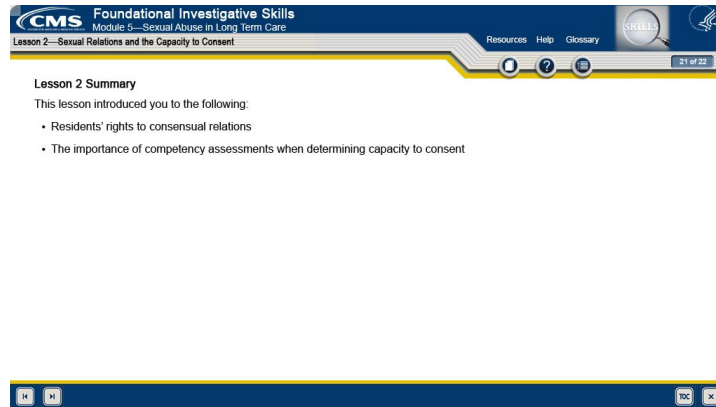


Lesson 2 Key Points

The key points to remember from this lesson include:

- Residents have the right to consensual sexual relations.
- The capacity to consent belongs to the resident.
- In order to protect those who lack the capacity to consent to sexual activity and who may be targets of sexual abuse, a facility must assess the mental status of any resident who is cognitively impaired before he or she enters into an intimate relationship to determine whether he or she is capable of making an informed decision.

Foundational Investigative Skills Module 5, Lesson 2

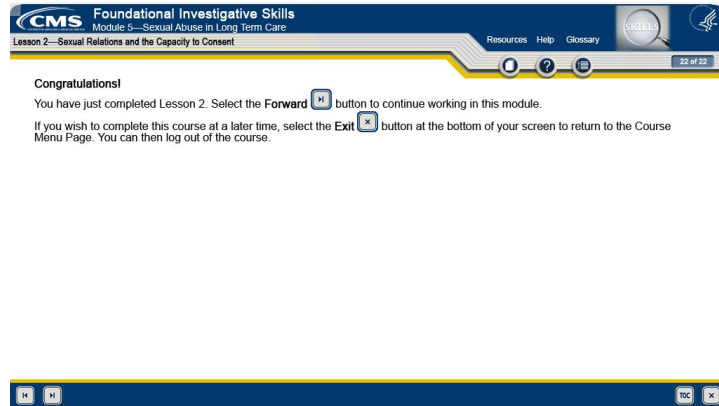


Lesson 2 Summary

This lesson introduced you to the following:

- Residents' rights to consensual relations
- The importance of competency assessments when determining capacity to consent

Foundational Investigative Skills Module 5, Lesson 2



Congratulations!

You have just completed Lesson 2. Select the **Forward** button to continue working in this module.

If you wish to complete this course at a later time, select the **Exit** button at the bottom of your screen to return to the Course Menu Page. You can then log out of the course.