



Kansas Advocates
for
Better Care

CONSUMER'S GUIDE TO KANSAS ADULT CARE HOMES



**A PUBLICATION OF
KANSAS ADVOCATES FOR BETTER CARE**
FOUNDED IN 1975 AS KANSANS FOR THE IMPROVEMENT OF NURSING HOMES

ABOUT KABC

Founded in 1975 as Kansans for Improvement of Nursing Homes (KINH), Kansas Advocates for Better Care is the only statewide, non-profit organization working to improve the quality of long-term care in Kansas. This 501(c)3 organization is supported entirely by membership dues, contributions, sales from consumer information products, and grants for special projects. The volunteer Board of Directors includes consumers, health care providers, and business leaders.

- KABC provides consumer information about all Kansas nursing homes, including such information as state enforcement actions (fines, bans on admissions, etc.), occupancy rates, staffing ratios, cost of care, and more. This information is available by County Summary Reports of facilities and in more detail by specific facility name.
- KABC sends newsletters to members five times per year, concerning such topics as: trends in long term care, reform through court or legislative action, and consumer information on facilities.
- KABC provides legislative advocacy for consumers and has worked to improve laws on: reporting abuse; issuing fines for poor care; training aides; licensing assisted living and board and care homes.
- KABC provides caregiver information and training on such topics as: prevention of abuse and neglect; prevention of malnourishment; resident rights.
- KABC is accessible through the Internet at www.kabc.org, toll-free by phone, (800) 525-1782, (or 785-842-3088 in Lawrence) and by fax (785) 749-0029. To order consumer information visit our website, or call (800) 525-1782.

ABOUT THE COVER

Elizabeth Layton, a nationally recognized artist from Wellsville, Kansas, donated original drawings to many of her favorite causes, including Kansans for Improvement of Nursing Homes (currently known as KABC). Mrs. Layton began drawing at the age of 68. This self-portrait of Mrs. Layton and her husband Glen is one of more than 1,000 drawings the artist produced from 1977 until her death in 1993. Much of her work deals with women, the aging process, and other social concerns.

ACKNOWLEDGEMENTS

The *Consumer's Guide to Kansas Adult Care Homes* is the updated version of the 1994 publication *Consumer's Guide to Kansas Nursing Homes*. The 1994 *Guide* was published with the cooperation and support of the Kansas Department on Aging and Western Resources. Neither of these publications nor the organization would exist without the support and encouragement of the late Petey Cerf, founder of the organization.

Deanne Bacco
Executive Director

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INTRODUCTION

The *Consumer's Guide to Kansas Adult Care Homes* is a source book and guide to adult care homes in Kansas. The Guide is an updated version of the 1994 publication *Consumer's Guide to Kansas Nursing Homes*. The Guide is most useful to consumers of adult care home services, their families and friends, to people considering or planning for such care, and to the social and legal service providers who assist all of the above.

Adult care home choices are more varied than ever. State licensure classifications are: nursing facility, assisted living facility, residential health care facility, intermediate mental retardation facility, nursing facility for mental health, home plus, boarding care home, and adult day care. Regulations vary a great deal for each classification. The most regulated classification is the nursing facility. Persons needing around-the-clock nursing care live at nursing facilities.

Kansas law requires that everyone who enters a nursing home be evaluated as to the need for nursing home care and be advised about available care choices. Alternatives to nursing home care are not possible for everyone, however. That is why this Guide was written. When acute or chronic illness becomes truly disabling, and when community support is insufficient, around-the-clock care in a nursing home may be necessary. Sometimes nursing home care is only temporary during recovery from an accident or an illness, such as a stroke. Sometimes it is a permanent home.

USING THIS CONSUMER'S GUIDE

If you are considering a nursing home, the Guide will suggest alternatives to nursing home care and then provide information about selecting a care home to best fit your needs. If you are already in a nursing home, the Guide will help you understand the care and treatment you have a right to expect, and will suggest how you might exercise the rights to which you are entitled.

Most of the information in the Guide is directed to residents of nursing homes. In reality, many residents are represented by family or friends or a legally appointed representative. As you read the Guide, assume whichever reference is appropriate in your case.

When the Guide states that a nursing home must do something in particular, that generally means a federal or state law requires it. For example, federal and state law require that nursing homes honor residents' rights. A complete set of state regulations for nursing homes is available from the Kansas Department on Aging (telephone 800-432-3535).

The *Consumer's Guide to Kansas Adult Care Homes* is a companion piece to *The KDOA Legal Guide*, which offers information and assistance with some of the special legal problems of the elderly, and *A Caregiver's Guide for Alzheimer's and Related Disorders*, which provides practical information about the many complex issues that caregivers face on a daily basis. All three are available from KDOA by calling 1-800-432-3535, and from all Area Agencies on Aging.

BEFORE YOU DECIDE...THE REQUIRED CARE ASSESSMENT

CARE ASSESSMENT

CARE is an assessment program started by the 1994 Kansas Legislature. The name CARE stands for Client Assessment Referral and Evaluation. All persons seeking nursing facility care must be assessed by a CARE assessor before they can enter a nursing facility. The Kansas Department on Aging publishes "Explore Your Options - a Kansas Guide to Services and Long Term Care Choices." It provides a concise description of a CARE assessment. This summary was taken from that publication.

The Area Agencies on Aging provide CARE assessments. "The purpose of this free assessment is to help people find appropriate long term care services, whether the services be community based or in a nursing facility. The assessment also collects information about services you might need, but which are not available. Visiting with a CARE assessor will give you a chance to review the services that are available in your community. If you decide to stay in your home, the assessor will be able (with your permission) to make referrals for the services you need."

"The CARE assessment takes about one hour and is designed to evaluate your health and ability to do normal daily activities such as shopping, dressing, laundry, etc. There are also a few questions about mental illness and mental retardation in the assessment. These questions are required by federal law (Pre-Admission Screening and Annual Resident Review). The purpose of these questions is to ensure that anyone with these conditions can find the special services they may need."

"The CARE assessor will ask only about financial sources of payment you might use to pay for nursing facility care or for community services in the home. Detailed financial information is not required. If you can't afford to hire or to partially pay for in-home services, you might want to let the assessor know so that he may help identify volunteer and/or free services which may be available in your area."

"If you are living at home or in an apartment, someone from the Area Agency on Aging will conduct the

CARE assessment in your home. If you are in a hospital and plan to go to a nursing home, the hospital personnel (probably a nurse or social worker) will do the assessment before you leave the hospital. Your family and/or significant other, such as a legal representative or friend, are encouraged to be present during your interview if you wish. There is no charge for a CARE assessment."

"Once the CARE assessment is completed, you will be given a Certificate which shows that you have been assessed. If you decide to enter a nursing facility, you should take a copy of the Certificate with you. If you lose your Certificate of Assessment, you or the nursing facility may contact the Area Agency on Aging for another copy."

"If you run out of money and convert to Medicaid, Medicaid will not pay for your nursing facility care if your CARE assessment (if it is less than one year old) or your current nursing facility data system report does not indicate that you need 24 hour nursing facility care at the time of the assessment. The exception to this rule is when your condition has changed so significantly since the CARE Assessment or your most recent nursing facility assessment that you now need 24 hour care."

"If your condition has not changed and you cannot pay, you might have to leave the nursing facility."

For more information on how to obtain a CARE assessment, call your local Area Agency on Aging at the telephone number listed in Appendix B.

SCREENING FOR MENTAL ILLNESS OR MENTAL RETARDATION

In the past, many people have been inappropriately placed in nursing homes when their main needs were related to mental illness or mental retardation. A federal law says that nursing homes may not admit anyone who is mentally ill or mentally retarded unless that person needs 24 hour nursing home care.

This law is to make sure that people with mental illness or mental retardation receive the right care for their special needs. The evaluation for mental illness or mental retardation is called Pre-Admission Screening and Annual Resident Review (PASARR).

After the PASARR screening, a person with mental illness or mental retardation may still be admitted to the nursing home if there is also need for nursing home assistance. In that case, the law requires that the nursing home arrange or provide for specialized services for mental illness or mental retardation.

STAYING AT HOME: SOME OPTIONS

Several state programs are available that may help you stay in your own home.

HOME AND COMMUNITY BASED SERVICES

Medicaid can pay for some home care and other services for Medicaid-eligible persons. This program is called Home and Community Based Services (HCBS). To receive HCBS you must qualify financially for Medicaid and you must be eligible for nursing home care. This means SRS must determine that you qualify for nursing home care, but with the right assistance you could stay at home.

The following services can be provided in the HCBS program:

- Adult day care
- Non-medical attendant
- Homemaker
- Adult family home
- Respite care
- Medical alert system (a telephone emergency response system)
- Night support
- Wellness monitoring
- Medical attendant
- Case management

Not all of these services are available statewide. Where the services are in place, Medicaid will pay the cost if it is less than the cost of nursing home care.

IS THIS THE NURSING HOME TO CHOOSE?

Choosing a nursing home is an important and often emotional decision. The following checklist provides an objective way to compare nursing homes. Each person has a different situation; not all of these are applicable. However, ask or think about some of these things, to provide clarity for decision-making.

ASK ABOUT BASIC SERVICES

REHABILITATION

- Are special therapies available?
 - Physical therapy
 - Speech therapy
 - Occupational therapy
 - Mental health services
 - Respiratory therapy
- Do licensed professionals provide these services?
How frequently do they visit?

NURSING CARE

- Does the nursing home have programs for special problems such as bed sores and incontinence?
- Is there a focus on helping residents maintain independence?
- Does the nursing home have hospice services?
How do they manage pain control?
- Are nurses who specialize in wound care and ostomy care available?

ACTIVITIES

- What activities are offered?
- Is the nursing home conveniently located so that family and friends can visit?
- Does the nursing home have the support of community volunteers?
- Does the nursing home offer field trips?

LIFESTYLE

- Does the nursing home accommodate “early birds” and “night owls”?
- Will the nursing home meet your food preferences within your prescribed diet?
- What meal alternatives are offered?

OBSERVE THE ENVIRONMENT

THE BUILDING

- Are walls, floors, bedside tables, wheelchairs, and other equipment and furniture clean?
- Is the air fresh and without an odor?
- Are the halls well-lighted and spacious?
- Do rooms have enough windows?
- Do rooms have adequate space for clothing, personal belongings and visitors?
- Are residents' light switches and call bells easy to reach?
- Is the dining room large enough to allow easy movement for walkers and wheelchairs?
- Is there enough space for a variety of resident activities and therapy?
- Is there a room where residents and visitors can have privacy?
- Are bathrooms easy to get to and are they equipped with safety devices?

THE QUALITY OF CARE AND QUALITY OF LIFE

- Is the staff pleasant and responsive?
- Are residents treated with dignity and respect?
- Are residents well groomed and neatly dressed?
- Are call bells promptly answered?
- Are residents out of their rooms and engaged in conversation or other activities, if able?
- Is the activities room in use?
- Do you see very few physical restraints?
- Are meals attractively served?
- Are residents who need help with eating given prompt and courteous assistance?

You can learn much by observing how staff and residents interact. If you have time, you should visit at various times of the day and on weekends to see if there is any difference.

Ask to stay for a meal, if possible. Is the food appetizing? Are residents who need help given assistance in an unhurried manner?

If possible, arrange a meeting with other family members away from the facility. Are they satisfied with the quality of care in general?

TALK WITH RESIDENTS

SOME QUESTIONS TO ASK:

- Does someone come to help you soon after you ring your call bell?
- Do you feel that your personal property is safe?
- Can you request your favorite foods? In general, do you enjoy your meals? Can you choose with whom you eat? Does the staff help you if you need it?
- Does the nursing home involve you in decisions about your care?
- Do you have privacy when you want it?
- Do you have a choice about when you get up in the morning and go to bed at night?
- Are there interesting activities scheduled?
- Who is the Director of Nursing (DON)? How often do you see the DON?
- Who is the Administrator? How often do you visit with the Administrator?
- Is there a Residents' Council? What does it do? Does the nursing home respond to its concerns?
- Are there interesting activities scheduled?

TALK WITH RESIDENTS' FAMILIES AND FRIENDS

Families and friends of residents are often a very good source of information about the quality of care and services. Some questions to ask:

- Are you satisfied in general with the quality of care your relative or friend is receiving?
- What do you like or dislike about the facility?
- Whom do you go to with problems or complaints? What happens? Do you feel comfortable about expressing your concerns?
- Is there a Family Council? Is it active? What do they do? Does the nursing home respond to their concerns?
- What changes would you make if you could?
- Are you notified promptly of any accidents or

any changes in your family member's condition?

- Does the nursing home involve you in decisions about care?

TALK WITH THE ADMINISTRATOR

- Depending upon your needs, either physical or financial, you may qualify for Medicare or Medicaid.
- Is the facility certified for Medicare? Medicaid?
- Does the home currently have an opening? If not, do they keep a first-come, first-served waiting list?
- Ask the Administrator to review and explain the admission contract in detail.
- How will you use my Living Will or Medical Power of Attorney? How will you involve my agent in the decision-making process if I cannot make my own decisions? (It is a good idea to show these signed documents, if you have them, to the administrator and ask if any items in those documents would conflict with nursing home policy.)
- If I refuse a treatment or if I refuse to eat, will you comply with my decision?
- How long will you hold a resident's bed during a hospital stay? If the resident is private pay, what is the payment rate for holding the bed?
- How are residents taken to the doctor or dentist?
- Is there a charge for that service? (Note: For Medicaid residents there should be no extra charge.)
- How do you resolve problems or complaints?
- How are roommates selected? If roommates prove to be incompatible, can they be changed? How quickly?
- How long have you been the administrator?
- How many of your current nursing staff have been with you for 2 to 5 years?
- Do you have a full time licensed Social Worker?

- Do you have a full time Activities Director?
- What supplies and services are included in the basic daily rate? What supplies or services are charged above the daily rate?
- Request a written schedule of charges.
- What is your refund policy if the resident leaves or is discharged during the middle of the month?
- What procedures do you follow when a resident's property is lost or stolen?
- What procedures do you follow to prevent theft?
- How do you account for property when a resident dies?

TALK WITH THE DIRECTOR OF NURSING: ABOUT CARE

- If a resident has special care needs, such as bed sores or incontinence, ask the Director of Nursing to tell you specifically how the staff deals with them.
- Are residents and their families invited to care plan meetings? Do most of them participate?
- Do you ever recommend that a resident be physically restrained? If so, under what circumstances? How many residents in this facility receive psychoactive drugs to control their behavior?
- Are rehabilitation therapists active in care planning? Are aides trained to carry out daily rehabilitation programs?
- Do nurse aides participate in care plan meetings?

ABOUT STAFFING

- Is the nursing home staffed with at least one RN or LPN on every shift?
- Are your aides fully trained before you hire them?
- How many nurses are on duty today? How many this evening? And tonight? For how many residents?

ABOUT COMPLAINTS

- How would you deal with a complaint about an abusive staff member? An incompetent aide? A resident who bothers other residents?
- Can you give me an example of how you handled a recent complaint?

- When was the last time you had a request from the family council or resident council to fix a problem? How did you respond? Were they satisfied?
- What is your policy for notifying the family when a resident's condition changes?
- What are your procedures in the event of death?

LOOK AT THE INSPECTION REPORTS

The inspection report shows the state's findings of "deficiencies" when it surveyed the home. Deficiencies are violations of nursing home regulations. They can be anything from minor lapses to life-threatening problems.

The inspection report also contains the nursing home's plan to correct violations that were found. A few nursing homes each year come through the survey with no deficiencies at all. When that happens, the survey report will say so, and that is, of course, a good sign.

When you are visiting nursing homes, you can take a look at the most recent inspection report. It must be readily available to the general public, without the need to ask for help from a staff member. A nursing home cannot keep it, for example, in the administrator's office or the nursing station.

If you can't find this report, look for a notice in the public areas of the nursing home that will tell you exactly where it may be found. Nursing homes are required to post such a notice. You may also get your own copy of the inspection report from the nursing home for a reasonable copying charge.

Another source from which to request inspection reports is the Kansas Department on Aging, (800) 432-3535. (There is a charge for copying), or by going online to the Centers for

Medicare & Medicaid Services (CMS) website, www.medicare.gov/nhcompare/home.asp.

You may want to look at the nursing home's history over a period of several years if you are concerned about a history of problems in the home. KDOA can also supply inspection reports for past years for the cost of copying.

The following are some of the problems you might read about in the survey if a home is not meeting standards. Some items are more serious than others.

Some examples of serious problems in a survey include:

- improper use of physical restraints; for example, vest or wrist restraints
- overuse of psychotropic drugs; for example, Haldol, Thorazine or Mellaril
- inadequate skin care causing bed sores
- poor care of incontinent residents
- unexplained weight loss
- unusual decrease in activity levels.

One page of a sample survey is included at the end of the chapter. There are three general types of surveys:

A regular survey. This is the yearly survey all that nursing homes must have. It consists of two basic sections, the generalist (GEN) part and the sanitation (SAN) part. The generalist part evaluates general nursing care and services; the sanitation part looks at upkeep and cleanliness of the building.

A re-survey (revisit) or a follow-up survey. This means that the surveyors looked at the home once, found problems, and had to come back to make sure the problems were corrected.

A complaint (abbreviated) survey. This is a survey in response to a specific complaint. Results of specific complaint surveys are not currently released to the public by KDOA. You may, however, obtain any substantiated complaint reports by writing to:

Medicare/Medicaid Complaints
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 242
Kansas City, MO 64106

Ask for the OSCAR Report No. 40, which is the facility's complaint history, and ask for the Statement of Deficiencies for the complaint survey. Make your request for the documents under the Freedom of Information Act. You may be charged for this information.

LOOK AT OTHER REPORTS AND SPECIAL AWARDS

KABC provides information on individual Kansas nursing homes.

The County Comparison report provides summary information on all nursing homes in a county. The detailed Consumer Information Report (CIR) includes such information as: the home's size, staffing ratios, records of fines and penalties, occupancy rates, special services and more. You may order reports for any Kansas county, and any licensed nursing home from:

KABC
913 Tennessee St., Suite 2
Lawrence, KS 66044
(785) 842-3088 or (800) 525-1782
or via email: info@kabc.org

EXEMPLARY CARE AWARDS

KDOA gives an award for exemplary care to a nursing home that has an exceptionally good survey and also has a creative program above the basic standard. The award program started in 1991. Ask the administrator if the nursing home has received the award. KABC also keeps a listing of the exemplary nursing homes.

A WORD ABOUT SPECIAL CARE UNITS

Many nursing homes offer special care units, for persons with Alzheimer's and related disorders; others are for persons with head injuries, or other disorders.

These special care units and special services are often more expensive than the nursing home's basic rate. You should evaluate these services carefully as you think about the resident's special care needs.

Make sure that the home's assurances of specialized care are solid. Ask the nursing home about specialized training for staff. Are there higher than usual staffing ratios? How well is the staff supervised? Are there specialized activity programs? Are care plans tailored to the special needs of the residents? How does care differ from the "regular" part of the nursing home?

Nursing homes that have special care units may not discriminate against Medicaid residents by excluding them from the unit. It is also illegal to charge Medicaid residents or their families for care in a special care unit above and beyond the Medicaid rate.

In Kansas, the regulations specific to special care units are very broad. Kansas law does require that the staff be specially trained to those being served. There must be direct care staff on special care units at all times.

An excellent Kansas publication, *How to Select a Special Care Unit*, helps in evaluating special Alzheimer's care units. It was prepared by KDOA and KDHE. You may also request the current listing of nursing homes with special care units from KDOA. To order call or write:

Kansas Department on Aging (KDOA)
Alzheimer's Helpline
503 S. Kansas Avenue
Topeka, KS 66603-3404
1-800-432-3535

Another helpful publication is *The Family Guide for Alzheimer's Care in Residential Settings*. It is published by the national Alzheimer's Association and may be obtained at the following address and phone number:

Alzheimer's Association
919 North Michigan Avenue
Suite 1000
Chicago, Illinois 60611-1676
1-800-272-3900

A WORD ABOUT RETIREMENT COMMUNITIES THAT OFFER CONTINUING CARE

A continuing care retirement community offers housing with a full range of health care and other services, including nursing home beds. Housing can be in apartments, assisted living units, or cottages. Continuing care includes everything in one package, and is sometimes called life care.

What are the advantages?

A Continuing Care Retirement Center offers various levels of living arrangements and care as part of the same facility. Residents may select the level of care that fits their needs, and then graduate to another level of care as their needs change. The range of options may include total independence, housekeeping assistance, meal service, transportation, home health care, and more.

A person usually moves into a retirement community because they need minimal daily assistance. Generally, the person is seeking the security of knowing that if the need arises, they will receive the services that they need even if it is nursing home care.

How can I get into a retirement community?

Both non-profit and for-profit housing corporations offer these services. Procedures vary, but you may pay a large lump-sum entrance fee as well as monthly fees. Sometimes this entrance fee

is refundable; sometimes it is not.

The fees usually cover some kind of prepaid health care. A few offer full health care benefits at no additional charge. Others require payments after a certain number of days or they charge by the service, in addition to your monthly fee. Ask all questions about the full costs and payments before you make a commitment. Compare the costs of similar services offered in the community.

How can I be sure this option is financially wise for me?

These types of facilities are still evolving, and there can be financial risk. It is important to be especially careful with your lifetime investments in your later years. You should thoroughly investigate any such facility and consult with your attorney or a financial adviser.

A WORD ABOUT OTHER ADULT CARE HOMES

Assisted Living Facilities (ALFs) are licensed to care for six or more people in apartment-type units (studio or larger). ALFs may be free-standing or may be part of a larger complex that offers nursing facility care and other living arrangements. In most cases ALFs must provide:

- lockable doors,
- a kitchen area with sink, refrigerator, and microwave or stove,
- a toilet room with bath or shower, and
- sleeping, living, and closet areas.

Services provided by ALFs usually include:

- maintenance of building and grounds,
- daily meal service in a community dining room,
- 24 hour security and staff availability,
- housekeeping services,
- laundry,
- transportation, and
- personal care and health care services such as medication management, if needed.

Residential Health Care Facilities (RHCs) are licensed to care for six or more people in “individual living units” (usually a room or studio). The services provided are the same as those in ALFs. The main difference is that RHCs are not required to provide kitchens in the living units.

Boarding Care Homes (BCHs) are licensed to care for one to ten people who need supervision but who are able to move about and are capable of managing their own care and affairs. Boarding care homes usually provide:

- room (often shared with others),
- meals,
- housekeeping services, and
- supervision.

Home Plus (HP) residences are licensed to care for one to eight people. These homes are usually private residences and usually provide:

- a private or shared room,
- meals,
- 24-hour supervision, and
- personal care (help with the activities of daily living).

WHO CAN BE ADMITTED

Kansas law requires adult care homes to admit only those people whose needs can be met by the home. ALFs and RHCs are not allowed to admit residents with the following conditions, unless hospice or family support services are available 24 hours a day:

- incontinence, where the resident does not participate in management of the problem;
- immobility, where the resident needs total assistance to exit the building;
- any ongoing condition requiring a two-person transfer;
- any ongoing skilled nursing intervention needed 24 hours a day for an extended period of time;
- any behavioral symptom that exceeds manageability.

In addition, ALFs, RHCs, HPs, and BCHs may not admit residents whose condition requires the use of physical restraints. Kansas law requires ALFs and RHCs to specify the services they provide in an individualized “Negotiated Service Agreement” for each resident. (For more information, refer to the KABC booklet, *Assisted Living and Adult Care Homes: Negotiating for*

CHECKLIST FOR REVIEWING NURSING HOME ADMISSION CONTRACTS

Use this checklist to help spot potential problem areas of a nursing home admission contracts and the documents that accompany it. The preferred answer is listed first. If the clause does not meet the preferred answer, the chart indicates when to seek clarification from the facility staff. OR, where the law clearly addresses the issue, the chart indicates when the provision is unenforceable and illegal and the contract should be referred to KDOA. This checklist was adapted by the Center for Public Representation, Inc. of Wisconsin, from *The Consumers' Legal/Financial Guide to Nursing Home and Residential Care Facilities* (AARP Legal Counsel for the Elderly.)

	Contract you are reviewing	Preferred answer	If not preferred answer, ask nursing home staff	If not preferred answer, provision is unenforceable and illegal
SERVICES & FINANCIAL LIABILITY				
1. Does the admission have an itemized list of services included in the basic daily rate...				
a. For private-pay residents?	_____	YES		X
b. For Medicaid residents?	_____	YES		X
2. Does it include an itemized list of extra services and charges...				
a. For private-pay residents?	_____	YES		X
b. For Medicaid residents?	_____	YES		X
3. Does the home require someone other than the prospective resident (or resident's agent or attorney-in-fact under a power of attorney, or legal guardian, if there is one) to sign the admission agreement?	_____	NO		X
4. Does the home require a "responsible party," "co-signer" or "guarantor" to assume personal financial responsibility for the cost of the resident's care?	_____	NO		X
5. If the facility is Medicaid certified, does the admission contract state the home must pre-approve conversion to Medicaid or discharge residents who convert to Medicaid any time after admission?	_____	NO		X

- | | | | |
|--|-------|-----|---|
| 6. Does the home require the resident to pay as a private-pay resident for some period of time before converting to Medicaid? | _____ | NO | X |
| 7. Does the contract require that the home assume control over any of the resident's income or assets? | _____ | NO | X |
| 8. Does the home (in writing or orally) request, suggest or even hint that "voluntary" contributions to the home must be made by the resident or family? | _____ | NO | X |
| 9. Does the contract provide for advance notice of any increase in the home's fees or charges? | _____ | YES | X |

RESIDENTS' RIGHTS

- | | | | |
|--|-------|-----|---|
| 10. Does the admission information include a readable statement of residents' rights? | _____ | YES | X |
| 11. Do any provisions in the contract appear to contradict or limit rights enumerated in the statement of residents' rights? | _____ | NO | X |
| 12. Does the agreement contain a clear explanation of the resident's right to complain, the procedures for complaining, (including the facility's grievance procedure) and the name, address and authorities responding to complaints? | _____ | YES | X |
| 13. Does the contract or any accompanying form seek a blanket consent for medical treatment over and above: general nursing care provided in the home; medications | | | |

already used or prescribed for the resident; or specifically identified treatments already known to be needed by the resident?

NO

X

14. Does the contract require the resident to accept and comply with all doctors' orders or nursing care decisions of the home?

NO

X

WAIVERS

15. Do any contract provisions waive the facility's liability for lost or damaged personal property?

NO

X

16. Do any contract provisions waive the facility's liability for injury to the resident while in the care or custody of the facility?

NO

X

17. Do any contract provisions place a time limit on instituting a legal action against the facility?

NO

X

18. Does the contract require arbitration for the settlement of any claim against the facility?

NO

X

TRANSFER AND DISCHARGE

19. Does the contract require that the resident may be discharged for reasons other than those listed later in the Guide?

NO

X

20. Does the contract provide for at least 30 days' advance notice to any non-emergency discharge or transfer initiated by the facility?

YES

X

21. Does the contract explain how many days a Medicaid resident's bed can be held and paid for under the Medicaid program if the resident needs hospitalization or makes overnight visits to family or friends?

YES

X

ENTERING A NURSING HOME

A personal physician prescribes and directs the medical care and treatment that a nursing home resident receives. On admission, the home will want the specific orders for medications, treatments, diet and whatever else is recommended for care. In some cases, the doctor will call the orders to the nursing home. Ask for an explanation of the orders.

ADMISSION PAPERWORK

On or before the day of admittance, the nursing home will require completion of paperwork. The stack will include some of the following:

ADMISSION CONTRACT

The most important paper to sign is the admission contract—it is a legal document. The admission contract sets out the rights and responsibilities of both the resident and the nursing home. Do not sign the admission contract without taking time to look at it carefully and fully understand it.

Look at the contract before the day of admission if that is possible. Take the contract home if necessary. Consider consulting a private or Legal Services attorney to review the contract.

The nursing home may not be required to accept you and will probably require you to sign the contract, but you need to understand what you are signing.

Some admission contracts have provisions that are not legal. As such, they cannot be enforced by the nursing home. For instance, if a contract says that the home is not responsible for any damage, losses or theft, that clause is unenforceable. Nursing homes must take reasonable precautions to ensure safety and to prevent theft and accidents. The home is responsible for any loss due to staff negligence, and they may not disown the responsibility.

A contract cannot require you to sign away any of the rights provided by state or federal law. This includes any of your rights as outlined in the residents rights on page 23, or your rights under Medicare, Medicaid or other federal and state laws.

For instance, the admission agreement cannot require you to agree to remain as a private pay resident (and not apply for Medicaid) for a given period of time. The contract cannot require a relative (other than a spouse) or friend to assume financial responsibility for your care.

See the Checklist for Reviewing Nursing Home Admission Contracts on page 16.

NOTICE OF RATES AND SERVICES

Rates and extra charges for services must be clear and in writing at the time of admission. Services covered and services not covered should be clearly spelled out in the admission contract. The facility must inform every resident in writing 30 days in advance of any changes in rates or services. Until proper notice is given, the changes cannot be made.

Medicaid residents may not be charged extra for most routine services. State regulations require that most necessary medical equipment, supplies, and services needed must be supplied routinely as a part of the Medicaid daily rate without additional cost to the resident.

NOTICE OF RESIDENTS' RIGHTS

Regulations require that the nursing home inform residents orally and in writing about their rights under federal and state law. The nursing home must protect and promote those rights. The home will probably ask you to sign a paper stating that you have been informed of your rights.

They must also inform you about the home's policies; these policies cannot be contrary to any of your legal rights as a resident. See the examples above concerning admission agreements.

HEALTH CARE DIRECTIVES

Upon admittance, the nursing home must inform residents about the state's laws concerning living wills and medical powers of attorney. For more on this, see the next chapter. Although health care directives are not required, you should be aware of what they are. You can then decide if you wish to have one.

Do not make this decision too quickly or while under stress. However, health care directives, particularly a medical durable power of attorney, can be of great help to a nursing home resident. Read about them, talk with family and close friends and then make a decision.

For more on this, see the section on decision-making on page 21.

PERSONAL PROPERTY

The home will provide a written inventory of your personal possessions on the day of admittance. It is important to review the inventory, make any necessary corrections, and sign it. The nursing home must update this inventory every year. However, ask them to update it for any new items.

When depositing any possessions with the home for safekeeping, get a receipt to avoid confusion later.

The nursing home should give you copies of all the papers you have signed, for your own records and for future references.

RESIDENT ASSESSMENT

Within 14 days after your admission, the nursing home must complete a full assessment of your condition and care needs. This assessment will be the basis on which the nurses evaluate your condition and plan for your care. It is also the basic information that surveyors can use to monitor the quality of your care. For more about this, see the section on care planning on page 26.

DELEGATING AUTHORITY FOR HEALTH CARE DECISIONS

Sometimes people become too ill or too incapacitated to make decisions. Preferences about medical care cannot be communicated. One can make preferences known in advance through such legal tools as the living will and the medical durable power of attorney.

The nursing home will also explain its policies concerning living wills and medical durable powers of attorney. You are not required to have either one.

However, it is important that, should you delegate your authority to make health care decisions to an agent, that agent be fully informed as to your preferences, be available to consult with health care professionals regarding your care, and be willing to actively and, if necessary, forcefully assert your prerogatives.

THE LIVING WILL

The Living Will states your wishes concerning how you will be cared for if you become terminally ill. A physician who refuses to comply with the provisions of your Living Will must transfer your care to another qualified physician who will do so.

It is a good idea to have a living will, although many have found that a living will is rarely used because it only applies when a doctor certifies that you are terminally ill. A medical power of attorney applies much more broadly and is not limited to terminal illness.

MEDICAL POWER OF ATTORNEY (DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS)

The DPOA document gives certain rights to an individual (called the “agent”) whom the resident names to make medical or other health care decisions if the resident cannot. It may give the agent the right to make life and death decisions, or it may explicitly withhold that right, according to the wishes of the resident.

A clear advantage of the medical durable power of attorney is that it allows you to appoint, in advance, someone you trust to handle your health care decisions if you cannot. This person would have the same access to medical records that you would. Your nurses and doctors would be able to discuss your care freely with your agent so that informed decisions can be made.

If the resident also has a Living Will, the agent may not make decisions counter to those expressed in the Living Will.

Who is responsible for decision-making when the resident is not competent?

When an incompetent resident does not have a Living Will or a medical power of attorney, the law is not clear as to who may make decisions on the resident’s behalf. In some cases it may be necessary to have a guardian appointed. The nursing home employees or owners may not be your agent under the power of attorney unless they are related to you.

Federal law requires, in several instances, that “the resident’s legal representative or interested family member” be notified in certain

situations. For example, the nursing home must call the family when there is a significant change in the resident's medical condition. But the law does not provide that the family member can make decisions about medical care that may follow. Consider having a medical DPOA before a crisis occurs.

DO NOT RESUSCITATE (DNR) ORDERS AND DIRECTIVES

If it has been decided that a person should not receive cardiopulmonary resuscitation (CPR), an order stating this must be entered in the resident's clinical record by the doctor. The order should state the medical reason for it. The record should contain the resident's (or legal representative's) consent for the order.

You may wish to make a written statement that you have chosen to limit your emergency medical care if your heart or breathing stops. This is called a DNR directive. It says that you do not want CPR. The directive must be written in a certain form, signed by you or someone you direct to sign it in your presence, dated and witnessed. You can revoke such a directive at any time. The nursing home or your local hospital should have these forms available.

FINANCIAL DECISION MAKING: GENERAL POWER OF ATTORNEY

You may also want to designate a person to handle your financial affairs through a general power of attorney. For both the medical and general power of attorney, the powers granted may be narrowly limited to only a few duties, or they may be very broad. Consult with your private or Legal Services attorney. The power of attorney document will contain your specific grant of authority.

GUARDIANSHIP/ CONSERVATORSHIP

If a person becomes incompetent to handle finances or their personal or health care affairs, a judge can declare the person "under a disability" and appoint a conservator (to handle finances) or guardian (to handle personal and medical affairs, or both). This court proceeding can be both time consuming and costly, but it can be avoided through the use of the medical and general powers of attorney.

The guardian is limited in what decisions can be made without asking the court for authority. For example, a guardian may not give consent for withholding or withdrawing life-sustaining treatment without the judge's permission. Even admission to the nursing home requires the judge's approval.

If you are the guardian for a nursing home resident, your powers are contained in the document called the "letters of guardianship." It is helpful to have a copy of the letters of guardianship on file in the resident's record so the staff will know what your authority is.

RESOURCES FOR LIVING WILLS AND MEDICAL POWERS OF ATTORNEY (LEGAL FORMS FOR THESE TOOLS ARE INCLUDED)

Resource Guide for Seniors
Kansas Department on Aging
503 S. Kansas Avenue
Topeka, KS 66603-3404
(800)-432-3535

Making Health Care Decisions for Your Future: Advance Directives, available from:
Midwest Bioethics Center
1021-1025 Jefferson St.
Kansas City, MO 64105
(816) 221-1100

YOUR RIGHTS AS AN ADULT CARE HOME RESIDENT

When entering an adult care home, you retain all of the constitutional and civil rights that any other citizen has. Adult care homes include: nursing homes, assisted living, residential health care, home plus, boarding care homes and adult day care. Adult care home residents are protected even further by the state and federal laws and regulations created specifically for them. Resident rights (as identified in Kansas Administrative Regulations 28-39-147 to 28-39-153) are outlined in this section.

Family members have certain rights:

- the right to visit the resident any time
- the right to organize family councils
- the right to be involved in care plan meetings for their resident
- the right to be notified immediately if there is a change in the resident's condition or if the resident falls or is injured
- the right to be notified if the resident is being discharged or hospitalized.

Some of these rights are listed in this chapter. Others are discussed more fully elsewhere in this publication under specific topics, such as family councils.

Residents' rights are not limited to those listed in this chapter. For example, there are legal contract rights of an admission agreement. There are legal rights under the rules that govern Medicare and Medicaid. For a detailed explanation of rights, call the Ombudsman at 1-877-662-8362 or the Elder Law Hotline at 1-888-353-5337.

A person who is the legally appointed representative for a resident who is no longer competent to make the resident's decisions may assert these rights on the resident's behalf.

YOUR RIGHT TO EXERCISE RIGHTS

- You must be allowed to exercise your rights without interference, coercion, reprisal, or discrimination.
- You have the right to designate in advance a person of your choice who will assert your rights on your behalf if you become physically or mentally unable to do so. You may appoint this person through a Durable Power of Attorney for Health Care Decisions.
- The rights of a resident found to be incompetent by the courts are exercised by a court-appointed guardian, with some limitations.

YOUR RIGHT TO BE NOTIFIED OF RIGHTS

- Before being admitted to a facility you must be informed of your rights, facility rules, facility rates, and services.
- Before the facility can effect a change in charges or services, you must be informed, in writing, at least 30 days before the change takes place.

YOUR RIGHTS CONCERNING FINANCIAL MATTERS AND YOUR PROPERTY

- You have the right to manage your financial affairs. The nursing home cannot require you to deposit personal funds with it.
- If you choose to deposit your funds with the nursing home, they must manage and account for your funds properly. You have the right to a quarterly written account of any transactions on your account and your balance.
- If you deposit more than \$50 with the home, the facility must place your funds in an

interest-bearing account in a Kansas financial institution.

- Any resident funds must be transferred to the executor of the resident's estate or to the probate court handling the estate within 30 days of the death of the resident.
- The nursing home must have a policy about protecting residents' possessions. If your property (for example, dentures, glasses or jewelry) is missing and the nursing home is responsible for its loss, you may have a claim against the nursing home to replace the item. Check with an attorney.

YOUR RIGHT TO INFORMATION ABOUT YOUR CARE

- You have the right to see your nursing home records (clinical records, trust fund ledgers, contracts and incident reports).
- You may purchase copies of your records at a reasonable cost within two working days of a written request. The nursing home must make the copies available to any person you designate in writing to receive them.
- You have the right to be fully informed, in clear and simple language, about your health status.

YOUR RIGHT TO PARTICIPATE IN DECISIONS ABOUT YOUR LIFE AND CARE

- You have the right to be treated with respect, consideration, and full recognition of your individuality.
- You have the right to choose your physician or to change your physician.
- You have the right to choose your own pharmacist; but if the home uses a unit dose system to dispense medicines, the pharmacist you choose must also use that type of system.
- You have the right to participate in planning for your care and treatment and to be informed in advance if changes in your care are required or proposed.
- You have the right to refuse any treatment,

including medication, unless it is court-ordered.

- You have the right to be free from physical, mental, verbal, or sexual abuse, or exploitation.
- You have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience that are not required to treat your medical symptoms. (Physical restraints are clothing or appliances which restrict your ability to move about freely. Chemical restraints are drugs that control your behavior.)
- You have the right to choose your activities, schedules, services, and health care, within these limits: the nursing home must reasonably accommodate your needs and preferences as long as your choices do not interfere with the health or safety of other residents.
- You have the right to self-administer medications unless the care planning team determines it may be unsafe.
- You have the right to be notified before your room or roommate is changed.
- You cannot be required to perform services for the facility.
- Unless you are under a court order, you have the right to check yourself out of the nursing home if you wish to leave. You do not need a doctor's order to leave the nursing home.

YOUR RIGHT TO PRIVACY, DIGNITY AND CONSIDERATION

- You have the right to personal privacy, to privacy in your personal care, and to the confidentiality of your personal and clinical records.
- You have the right to visit and communicate with persons of your choice in privacy and at any reasonable hour. Immediate access must be given to family members, your physician, and certain state officials, such as the Ombudsman or a surveyor from KDOA.
- You have the right to deny or withdraw consent for visitation with any person at a time.
- You have the right to participate in religious

and social activities, to meet with community groups, and to organize and participate in resident groups in the facility.

- You have the right to have access to a telephone where calls can be made in privacy.
- You have the right to retain and use your personal clothing to the extent practicable within limited space.
- You have the right to share a room with your spouse if both spouses consent and if there is a room available.
- You have the right to send and receive unopened mail promptly. You also have a right to have access to stationary, postage, and writing implements at your expense.

YOUR RIGHTS WHEN TRANSFERRED OR DISCHARGED

- You have the right to refuse to be discharged or transferred to another facility unless:
 - 1) the discharge is necessary for your welfare **and** your needs cannot be met in the home, as documented in writing by your personal physician, or
 - 2) your condition has improved so much that you no longer need nursing home care, or
 - 3) your continued presence would endanger the health (as documented by a physician) or safety (as documented by the nursing home) of other persons in the facility, or
 - 4) you have failed to pay appropriate charges. This **does not mean** when you go from a private pay to Medicaid (unless the home is not a Medicaid facility), or
 - 5) the nursing home is closing.
- Except when the nursing home is closing, one of these reasons must be documented in your record **before** you are discharged or transferred against your wishes.
- You have the right to have notice of the transfer and the reasons for it in writing 30 days in advance of the transfer, unless for medical or safety reasons an earlier transfer is necessary.
- If you object to your discharge or transfer, you

have the right to appeal that decision; you may appeal even if the reason given by the nursing home is one of the lawful reasons listed above.

Administrative Hearings
Kansas Department of Administration
610 SW 10th Ave.
Floor 2
Topeka, KS 66612

- Before you are transferred to a hospital, you have the right to be informed in writing how long the home will hold your bed and how much it will cost to hold it until your return.
- If your stay in the hospital exceeds the length of time the nursing home has agreed to hold your bed, you have a right to be readmitted to the first bed available in the nursing home if you still need nursing home services.

YOUR RIGHT TO ADDRESS GRIEVANCES AND CONCERNS

- You have the right to voice grievances without fear of discrimination or reprisal, and you have the right to expect the facility to make a prompt effort to resolve any problems.
- You have the right to contact the Long-Term Care Ombudsman for assistance with concerns related to your stay in the nursing home. That toll-free number is 1-877-662-8362.
- You have the right to file a complaint about your nursing home with the Kansas Department on Aging (KDOA). That toll-free number is 1-800-842-0078.
- You have the right to report stolen property or other crimes to the local police.
- You have the right to petition your state district court or, when a federal law is at issue, the Federal Court for the District of Kansas for redress of a legal grievance.

CARE CONFERENCES IN NURSING HOMES

From daily routines and meals to medications and activities, nursing home residents who can participate have the right to be involved in making decisions about their care. These meetings are called care conferences. If you are the designated family member, you must be invited to the care conference, unless the competent resident objects.

WHAT IS A CARE PLAN?

Care plans are resident-specific written instructions and guidelines for health care. A typical care plan will list any problems or care needs you have, goals for helping you live with them, and specific plans of action for staff. The care plan should clearly tell staff how to work with you in the areas you need their help.

When you first move into a nursing home, staff will assess your physical, emotional, social and mental needs. This resident assessment must be completed within 14 days after you move in. Staff must then review it each time your care needs change, update it quarterly and redo it once a year. The form used by nursing homes to record their assessment is known as the Minimum Data Set.

A staff person from each department (dietary, activities, nursing, physical therapy, etc.) will help assess you. They may ask you questions about your likes and dislikes, or your personality. They may want to see how you interact with other residents, what kinds of activities you like, what type of help you need, and how they can make you feel “at home.” After looking at all these areas, the staff will write your care plan.

WHAT IS A CARE CONFERENCE?

A care conference is a regularly scheduled meeting to review your care plan, discuss your progress and options, and revise your goals. Usually a staff person from each discipline attends to report

their observations or concerns. You can also state your suggestions, wishes, or concerns, and ask questions.

WHEN IS THE CARE PLAN CONFERENCE?

The home is required to schedule a conference at least once every three months. Most last about 15 minutes, but can take longer. Staff should schedule a meeting sooner if they notice a change in your condition. You, your family, or your representative can ask the social worker or the director of nursing for a special meeting between care conferences when you have concerns that need to be addressed more immediately.

The facility must give you advance notice of your care conference. The notice should allow you enough time to prepare for the meeting. The home may remind you on the day of the conference, and help you get to the conference room on time. A notice of your conference date must also be sent to a family member or friend who would help represent you. Conferences are normally scheduled during the day. However, if another time would work better for you or your guests, the home should try to accommodate your request.

WHO CAN ATTEND?

A staff person from each discipline involved in your care should attend. You, your family or your representative have the right to attend, but are not required to. You can also invite anyone you choose: a trusted aide, another resident in the home, a friend from the community, or an advocate such as an ombudsman. If you choose not to participate, staff must still involve you in planning your care and discuss your care plan with you.

QUESTIONS TO CONSIDER FOR YOUR CARE CONFERENCE

Bathing/Bathroom. What days and times do you prefer to bathe? Do you receive enough help when bathing? Are staff helping you to the bathroom in adequate time? Is your privacy respected?

Dressing/Grooming. Are you able to dress yourself? Wash? Shave? Clean your teeth? Fix your hair? What do you need the most help with? Are your teeth, hearing aids, clothing, bedding kept clean?

Walking/Transferring. Do you receive the help you need with walking? Do you walk as often as you wish? Are you repositioned frequently?

Safety/Rights. Do you feel safe when staff transfer you or help you bathe? Are you allowed to make choices about what to wear, when to get up or go to bed, what to eat, when to bathe, who to spend time with? Does staff listen to you when you have a question or concern?

Meals. Are you satisfied with the amount of food you receive? Is the food generally good? Eye appealing? Hot or cold enough? Which foods do you most like? Most dislike? Do you get enough snacks?

Activities. Are there any places you would like to go or things you would like to do that you are not doing now? Which activities do you most enjoy? Least enjoy?

Staff. Are staff friendly? Available when you need them? Competent? Helpful? Kind? Are there any staff with whom you feel uncomfortable?

Medications/Treatments. Do you know which medications you take and why? Do any of your medications cause problems? Have you consulted with your physician? If you receive other kinds of therapy, do you have questions about those? What would you like to know about your medications or treatment plans?

Room situation. Do you get along with your roommate? Are you comfortable in your room?

WHAT HAPPENS AFTER THE CARE CONFERENCE?

Afterward, staff will review and update your care plan. They should use the information you share with them to design your care the way you want it. It may be helpful to meet again with a staff person soon after your conference to discuss the changes in your care plan, to ask any other questions, or make suggestions. Your care plan should be updated when your needs change.

HOW DO I KNOW WHAT'S BEEN WRITTEN ABOUT ME?

You can ask to see your records anytime. The nursing home must show them to you within 24 hours of your request. If you want copies of your records, the home must give you copies within two working days of your request. If you are having difficulty getting your records or getting involved in your care planning, call the Ombudsman's office at 1-877-662-8362.

EVALUATING HEALTH PROBLEMS

Nursing staff use a series of topics to evaluate each residents' health status. It is called a Resident Assessment Protocol (RAP). Certain conditions identified in the assessment will alert the nursing staff to watch for or try to decrease the risk in particular areas of health.

There are RAPS in the following areas and some will be triggered if a resident has or is at risk for any of these conditions:

- Urinary incontinence/catheter care
- Pressure ulcers
- Delirium

- Falls
- Functional/rehabilitation potential
- Visual function
- Psychosocial well-being
- Cognitive loss/dementia
- Behavior problems
- Feeding tubes
- Dental Care
- Psychotropic drug use
- Nutritional status
- Communication
- Mood state
- Activities
- Dehydration/fluid maintenance
- Physical restraints

Remember that assessments and care plan meetings are intended to focus on the needs of the resident, not the needs of the staff or the family. This may help you prepare for the care plan meetings and it may help you to voice more effectively your goals for your care.

GOOD CARE: WHOSE RESPONSIBILITY IS IT?

CORPORATE RESPONSIBILITY

Owners and operators of nursing homes are fully accountable for the quality of care the home provides. They hold the licenses to operate the nursing home. When the home is a small, locally owned corporation, it is easy to know whom to talk to when you are dissatisfied. It is more complicated when a home is owned by a corporation which owns several homes.

Many Kansas nursing homes are part of a chain; most chains have central offices outside the state. Homes that are not a part of a chain are often locally owned and operated. About 2/3 of Kansas nursing homes operate for profit. The rest are mostly church-affiliated or operated by city or county governments.

Information about who owns or manages a particular nursing home should be available from the nursing home itself. This information may also be obtained from either the Kansas Department on Aging, or KABC. You can get basic information about specific corporations that own nursing homes from the Secretary of State's office.

THE STATE'S RESPONSIBILITY

The Kansas Department on Aging (KDOA) is responsible for nursing home licensing and inspections. The State Fire Marshall's office inspects every home for fire safety.

State boards license professionals, such as nurses and social workers, who work in nursing homes. The boards can discipline professionals who do not act according to professional standards.

THE ROLE OF THE KANSAS DEPARTMENT ON AGING (KDOA)

KDOA writes and enforces minimum regulations for quality of care and life, building construction, equipment and safety. Nursing home owners and operators receive their licenses from KDOA. The Department inspects all Kansas nursing homes and investigates complaints of abuse, neglect, or exploitation and regulatory violations. KDOA also has the power to penalize nursing homes which do not comply with the law.

Homes participating in the Medicaid and Medicare programs must be both certified by the federal government and licensed by the state government. Being certified means that a nursing home complies with most federal regulations; a license means that the nursing home meets most state requirements.

In addition, KDOA supports the Board of Adult Care Home Administrators and the Nurse Aide Registry.

KDOA
Bureau of Adult and Child Care
503 S. Kansas Avenue
Topeka, KS 66603-3404
(785) 296-1240

THE ROLE OF THE BOARD OF ADULT CARE HOME ADMINISTRATORS (BACHA)

BACHA licenses and regulates nursing home administrators in Kansas. Members of BACHA are appointed by the Secretary of KDOA. BACHA has seven members who are health care professionals, nursing home administrators and consumers.

BACHA develops the educational and training standards for administrators and conducts their licensure exams. BACHA investigates complaints about administrators and disciplines those who:

- do not comply with nursing home standards and regulations;
- habitually abuse drugs and alcohol; or
- have been convicted of certain crimes.

Complaints about specific administrators are usually referred to BACHA from KDOA inspectors, but individuals may also complain to BACHA.

Some examples of complaints which have resulted in disciplinary actions include: failing to report abuse of residents; failing to correct air conditioning problems during the summer months; and stealing resident funds and jewelry.

Just like other professional boards, BACHA has the power to reprimand or censure an administrator or to revoke or suspend his or her license.

BACHA (Board of Adult Care Home Administrators)
Health Occupations Credentialing Unit
(785) 296-1240

THE ROLE OF THE NURSE AIDE REGISTRY

KDHE sets the standards for training and testing nurse aides. It also approves training programs for social services designees and activity directors. KDHE maintains a computerized registry of all certified nurse aides (CNAs) and certified medication aides (CMAs) in the state.

The registry contains a file of nurse aides found guilty of abuse, neglect, or exploitation. Nursing homes may not hire such persons, and nursing homes must contact the registry before hiring new aides so that they will know the aides' history.

Nurse Aide Registry
KDHE
Health Occupations Credentialing Unit
1000 SW Jackson, Suite 330
Topeka, KS 66612-1365
(785) 296-1240

THE ROLE OF THE KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (SRS) AND THE KANSAS DEPARTMENT ON AGING (KDOA)

SRS and the federal government help pay for nursing home care for Medicaid residents. SRS oversees the Medicaid program for the federal government and KDOA administers the program for SRS. Local offices of SRS handle applications for Medicaid assistance. SRS and KDOA set the criteria for Medicaid eligibility and set the daily rates which Medicaid pays for nursing home care.

PAYING FOR CARE

In Kansas, each nursing home has its own Medicaid daily rate. The Medicaid rates are based on the actual cost experience of the home. Cost reports for individual homes are public information and are available through SRS or KDOA. KABC also keeps Medicaid Reimbursement & Private Pay rates for nursing homes.

The system for paying nursing homes under the Medicaid program changed in 1994. The new system is called Case Mix Reimbursement. In addition to a home's costs, case mix will pay according to the care needs of the residents.

The idea behind Case Mix is to pay a higher daily rate if a nursing home has many residents with complex or time-consuming needs.

A nursing home with many residents with relatively simple care requirements usually receives a lower rate.

Each Medicaid nursing home has a case mix number that shows how the care needs of their patients compare with other Kansas nursing homes.

Each nursing home must complete an assessment form, called a Minimum Data Set on every new nursing home resident. Each form is sent to the state KDOA office. These forms help the state set a case mix number for each nursing home. The state averages the case mix number for each nursing home by figuring the care needs of all residents as shown on the MDS forms.

KDOA also runs the Pre-Admission Assessment Program (see page 6).

THE ROLE OF THE STATE OMBUDSMAN

The Long-Term Care Ombudsman is part of the Kansas Department of Administration. The Ombudsman works on behalf of people who live in adult care homes. You can call the Ombudsman if you have a question or complaint about your care in any adult care home.

Ombudsmen investigate consumer complaints and work with the home to resolve them. Ombudsmen can also provide educational programs for residents and staff.

The Long-Term Care Ombudsman has access to KDOA's complaint investigation records. Ombudsmen cannot enforce laws, but can often help resolve problems through mediation, consultation, or their investigations, and they can provide information about many issues related to nursing home care, such as admission and discharge policies, resident rights, Medicaid problems and other issues.

During the state inspections, KDOA

surveyors must contact Ombudsmen's offices to ask if they have received complaints about the nursing home being inspected. Ombudsmen should also be invited to attend the exit conferences at the end of the surveys.

The Ombudsmen can advise and assist resident and family councils and can act as the voice of residents unable to speak for themselves. Ombudsmen can intervene with the facility, public agency or the appeals process on behalf of residents.

A new feature of the Ombudsman program is Volunteer facility Ombudsman. These volunteers, working in individual facilities, can provide many services of the program. Ask your facility about their participation in the program.

The Ombudsmen may recommend policy changes within a specific facility, may suggest changes in regulations to state regulatory agencies, or may advocate legislative changes to the Governor and the Kansas Legislature.

OMBUDSMEN REGIONAL PHONE NUMBERS

Statewide: 1 (877) 662-8362 (toll-free)

Topeka: (785) 296-3017

Wichita: (316) 337-7379

Olathe: (913) 768-3474

THE ROLE OF KANSAS PROFESSIONAL BOARDS

Several licensed health care professionals work in nursing homes: registered nurses (RNs), licensed practical nurses (LPNs), social workers (SWs), physicians, physical therapists, speech therapists, occupational therapists, respiratory

therapists, and others. These individuals hold licenses issued by their respective professional boards.

KDOA may report concerns about professional practice of individual workers to the appropriate state licensing board. The general public may do so also at the following addresses:

RNs, LPNs, Licensed Mental Health Technicians

Kansas State Board of Nursing
Room 551-S
Landon State Office Building
900 SW Jackson
Topeka, KS 66612
(785) 296-4929

Physicians

Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603
(785) 296-7413

Social Workers

Behavioral Sciences Regulatory Board
Room 885
Landon State Office Building
900 SW Jackson
Topeka, KS 66612
(785) 296-3240

THE ROLE OF THE DEPARTMENT OF VETERANS' AFFAIRS (VA)

Three nursing homes in Kansas are owned and operated by the VA. As such, they are not subject to state licensure requirements but must comply with the VA requirements for nursing home care. All of the Kansas VA-owned nursing homes are with a VA hospital.

Several nursing homes in Kansas have a contract with the VA to care for eligible veterans. A medical team from the VA will visit the home before it is certified to receive eligible veterans to make sure

that the home meets the VA standards. Before the contract with the VA is renewed, the VA medical team will reinspect the home. Nursing homes can lose their VA contract if the inspection team is not assured of the quality of care.

ANNUAL INSPECTIONS AND ENFORCING THE REGULATIONS IN NURSING HOMES

The Department on Aging (KDOA) monitors the quality of care in nursing homes through yearly on-site inspections. If a nursing home is not complying with the regulations, there are a number of steps that KDOA can take to enforce the law.

INSPECTIONS

Each nursing home is inspected every 9 to 15 months or more often if necessary. The inspection is also known as the survey. KDOA inspects nursing homes with a good record less often than those with a questionable record. Even the best homes must be inspected once every 15 months.

The inspection focuses on quality of care and quality of life. Before surveyors go to the home, they check the KDOA record of complaints against the home. When they arrive at the home, they will also contact the state Ombudsman's office to check their records of complaints.

QUALITY INDICATORS

Because the state receives a regular report on health status of every nursing home resident, the surveyors can check those records before they even enter the home. This will help them determine general quality of care trends in the home. For instance, the surveyors can learn whether the home has an unexplainably high number of residents with decubitus ulcers, dehydration, or incontinence.

Staffing patterns, staff training, infection control, housekeeping, and building maintenance are just a few of the items reviewed during the inspection. The surveyors look at the physical facility, observe patient care, review patient records, examine and interview a few residents, and meet with a few family members.

The inspection team consists of two Registered Nurse surveyors and a sanitarian. Other professionals, such as social workers, are occasionally members of the survey team. The survey usually lasts about 2 to 4 days.

UNANNOUNCED INSPECTIONS

To get a true picture of how well a nursing home is doing, the inspection **must** be unannounced. It is against federal law for anyone to warn a nursing home in advance when an inspection is going to occur. Anyone who does so may be fined up to \$2,000.

You, as a resident or family member, have a right to discuss your concerns with the surveyor at the time of the survey. The nursing home is required to post a notice that the survey is in progress and that you may make an appointment with the surveyor if you wish.

ENFORCING THE REGULATIONS

Once the inspection is done and any violations (generally called "deficiencies") are identified, it is KDOA's responsibility to see that the nursing home corrects the deficiencies.

If there are deficiencies cited, the home must provide the survey agency with a plan of correction. This plan lays out how the home will correct the practices that led to the deficiencies. KDOA will then conduct a follow-up survey to determine whether the deficiencies have been corrected.

KDHE has several ways of enforcing the law: correction orders, fines, ban on admissions, license revocations, and receiverships.

CORRECTION ORDERS AND FINES

If deficiencies are cited which seriously affect residents' health and well-being, KDOA will issue an order for the home to immediately correct the problem. The home will have 14 days to fix the deficiency. If the corrections have not been made, a fine can be imposed by the Centers for Medicare & Medicaid Services (CMS), ranging from \$100 to \$5,000.

There is no fine in most cases when the nursing home quickly corrects the deficiency. But when the violations are so serious that residents are at risk of serious physical harm or are actually harmed, (immediate jeopardy) KDOA can recommend that CMS fine the home. The fine can be as high as \$10,000, and, of course, the deficient practices must be corrected.

BAN ON ADMISSIONS

If residents' health, safety, nutrition or sanitary conditions are in question, the agency may prohibit the home from taking any new residents until the problems have been corrected.

Nursing homes with a ban on admissions must tell persons who call to inquire about openings that they are not able to accept any new residents until the ban is lifted. Generally, residents of the home who are in the hospital may still return during a ban.

LICENSE REVOCATION

KDOA often begins legal proceedings to revoke the license of a nursing home when it has serious or several violations. However, most of these proceedings have not resulted in actual closure of the nursing home, because the home will make great efforts to correct the problems to avoid losing its license.

If the license is revoked, most of the time the home will remain open, correct the problems, perhaps rearrange management and reapply for a new license. Only in very few situations does the home actually close.

RECEIVERSHIP

Kansas also has a provision for taking the home into receivership. Receivership may be invoked only when there is an imminent threat to the health, safety and welfare of the residents, or when the home has become insolvent.

During receivership the management and operation of the home are taken over by a new group or person which the state appoints. If the problems are resolved, the state can turn the home back to the owners and operators. This enforcement is rarely used in Kansas.

IF YOU SUSPECT ABUSE OR NEGLECT...

Abuse, neglect and exploitation of adult care home residents obviously violates the law. These terms are legally defined as follows:

Abuse: means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:

- 1) infliction of physical or mental injury
- 2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the adult is incapable of resisting or declining consent to the sexual act due to mental deficiency, disease, or due to fear, retribution, or hardship
- 3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm an adult
- 4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the adult
- 5) a threat or menacing conduct directed toward an adult that results or might reasonably be expected to result in fear or emotional or mental distress to an adult
- 6) fiduciary abuse
- 7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness

Neglect: means the failure or omission by one's self, caretaker, or another person, to provide goods or services which are reasonably necessary to ensure safety and wellbeing, and to avoid physical or mental harm or illness.

Exploitation: means misappropriating an adult's property, or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense by a caretaker or another person.

Fiduciary Abuse: means a situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust.

If you have a reasonable suspicion of abuse, neglect or exploitation of a nursing home resident, you should report it **immediately** to KDOA at 1-800-842-0078. This toll-free hotline is in operation from 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., Monday through Friday. At all other times, call your local police or sheriff's department. If you know of a situation or you even suspect a vulnerable adult is at risk of harm, you can get help for them by calling 1-800-922-5330, 24 hours a day, 7 days a week.

MAKING AN ABUSE REPORT

When you report abuse, you will be asked to give:

- the name of the adult care home
- your name (however, you may call anonymously)
- the name of the person abused or neglected
- the next of kin (if known), and
- details about what has happened, with as many dates and times as possible

It is not absolutely necessary to give your name or the name of the abused, but KDOA

strongly advises that you do so to speed the investigation. Also, that information will allow the investigator to check back with you for more information if needed. (For more on filing a complaint, see page 38)

If you have provided your name and address, KDOA will report back to you after their investigation is complete. They will tell you whether they confirmed the abuse or neglect and whether they cited the nursing home for deficiencies.

KDHE is required to keep identifying information confidential. The investigators are trained to maintain the confidentiality of both the person reporting the abuse and the victim.

WHAT HAPPENS WHEN YOU REPORT ABUSE?

The state will investigate your report. If the state confirms abuse, neglect, or exploitation, the process should be set in motion to remove the abuser from the nursing home setting.

If the management of the nursing home is also a problem, the report should trigger immediate efforts by the state and the operator to prevent further abuse or neglect in the home.

When the state confirms abuse, neglect or exploitation by licensed professionals (RNs, LPNs, Social Workers) the report is sent to the appropriate licensing board. That body will decide whether and how to discipline the professional.

You may have legal remedies such as a lawsuit for money damages against the people who abused you or the organization employing them. Generally you must retain a private lawyer to pursue these remedies.

In the worst case, criminal charges could be brought against the abuser. However, a criminal charge is extremely rare because these crimes have been a low priority for most prosecutors.

WHAT ABOUT RETALIATION?

Often nursing home residents and their families are reluctant to complain of abuse or neglect because they fear retaliation. The number of confirmed cases of retaliation is actually quite low.

On the other hand, sometimes following complaints, families have reported that nursing home staff have encouraged them to move the resident if they are “not happy with the care.” Because a resident has a right to stay in the nursing home and receive adequate care, such a suggestion amounts to retaliation for complaining.

Some employees have stated they were asked to leave their positions after they reported abuse.

There is no guarantee that retaliation will not occur, but there is a law against it. If you suspect that retaliation is being threatened or has occurred, you should report it **immediately** to the KDOA abuse hotline, 1-800-842-0078.

If abuse is suspected but no one reports it, the problem could remain hidden. It may continue or worsen, if not for you, perhaps for someone else. The laws that require abuse reporting aim to correct a very serious problem. Correction can begin only when those who can do something about it are aware of its presence.

WHO ARE THE ABUSERS?

The abuser can be anyone - a staff member, another resident, a family member, or an intruder. Nurse aides provide almost all of the direct care that nursing home residents receive. Consequently, aides have the highest reported incidence of abuse.

The nurse aide’s job is physically and emotionally stressful. Many have observed that

aides are often overworked, poorly trained, underpaid and inadequately supervised. Placing aides in such situations can, and sometimes does, result in the predictable problem of abuse or neglect.

THE NURSE AIDE REGISTRY

KDHE keeps records in its aide registry of all aides found to have been abusive. Before a nursing home hires an aide, they must first check with the state to see whether the aide is listed on the registry. If the aide has committed abuse, the nursing home may not hire him. For more on KDHE's Nurse Aide registry, visit their website: www.kdhe.state.ks.us/hoc/cna.html.

SIGNS OF ABUSE

This list provides some signs and symptoms that can alert you to the possibility of abuse or neglect. Possible signs and symptoms of abuse and neglect are listed after the particular type of mistreatment.

Physical Abuse

- fractures, welts, cuts, punctures, burns, or bruises

Sexual Abuse

- torn, stained, or bloody underclothing
- difficulty in walking or sitting
- pain, itching, bruising, or bleeding in genital area

Mental Abuse

- confusion
- excessive fears
- insomnia, excessive sleep
- change in appetite
- unusual weight gain or loss
- loss of interest in self, activities or environment
- withdrawal
- agitation

Exploitation

- inaccurate, confused, or no knowledge of finances
- unexplained or sudden inability to pay bills or purchase personal care items
- unprecedented transfer of assets from a resident to others
- extraordinary interest by another in resident's assets

Neglect

- unexplained weight loss
- dehydration
- malnutrition
- hypo or hyperthermia
- excessive dirt or odor
- inadequate or inappropriate clothing
- absence of eyeglasses, hearing aids, dentures, or prostheses
- unexplained deterioration of health
- decubitus ulcers ("bedsores")
- signs of excessive drugging (for example, decreased alertness or repetitive, involuntary movement of the head and tongue)

The "signs of abuse" are from the Pennsylvania Department on Aging publication on abuse, which was from *Strategies for Helping Victims of Elder Mistreatment*, by Risa Brackman and Ron Adelman.

Any injuries should be taken seriously, recorded in the resident's medical record, and thoroughly investigated by the nursing staff.

Elderly persons sometimes bruise easily and fragile skin can tear readily. You should make a report if injuries are explained away, or if you are given conflicting or unreasonable accounts of injuries, declining health, or accidents.

KEEP A RECORD WHEN YOU SUSPECT ABUSE

You do not have to actually witness the abuse to report it. Anytime you have a reasonable suspicion of abuse, neglect or exploitation you should make a report. You do not have to conduct your own investigation before you make a report.

However, when you have not actually seen the abuse or neglect, your suspicions may come to you more gradually. Following are some guidelines on how you might proceed if you are beginning to question whether a resident is being abused, neglected or exploited.

- 1) If you notice any of the signs that may indicate abuse, neglect or exploitation, keep a record with dates, times and the names of anyone else who might be able to verify the information.
- 2) If the resident is able and willing to tell how it happened, make notes of the incident, using the resident's own words whenever possible.
- 3) If a significant physical injury occurred, ask if the physician was notified. Ask the staff whether the incident was noted in the resident's medical record.
- 4) With the permission of the resident, and taking care to preserve the resident's dignity, take a color photograph of the injury, if possible. Record the date, time and by whom the photograph was taken.
- 5) Verbal abuse and intimidation are more difficult to document. Talk to others who may have seen or heard the abuse or who have had similar experiences in the facility. Note any responses such as fearfulness, anger or depression.
- 6) Discuss the problem with the Administrator or the Director of Nursing.
- 7) Notify KDOA, fully describing the situation.

WHO MUST REPORT ABUSE?

Kansas law requires a wide variety of trained and professional persons to report any instance in which there is reason to believe that abuse, neglect or exploitation has occurred:

Kansas law requires persons in specific professions to report suspected neglect, exploitation, or abuse **IMMEDIATELY**.

“Mandated reporters” include the following:

- **Any person** licensed to practice any branch of the healing arts
- A licensed psychologist
- A licensed master level psychologist
- A chief administrative officer of a medical care facility
- An adult care home administrator
- A licensed social worker
- A licensed professional nurse
- A licensed practical nurse
- A licensed dentist
- A law enforcement officer
- A teacher
- A case manager, guardian or conservator
- A bank trust officer
- A rehabilitation counselor
- A holder of a power of attorney
- An owner or operator of a residential care facility
- An independent living counselor
- A chief administrative officer (CAO) of a licensed home health agency
- A CAO of an adult family home
- A CAO or a provider of community services and affiliates thereof operated or funded by the Department of Social and Rehabilitation Services, or licensed under K.S.A. 7503307b and amendments thereto.

If these persons fail to report abuse, they can be subject to a criminal conviction and a maximum penalty of \$15,000 and 6 months in prison. Any other person may and should report suspected abuse and neglect. When you make a report in good faith, you are immune from civil or criminal liability.

PROBLEM-SOLVING IN THE NURSING HOME

Long-term care means potentially long-term relationships with the people who provide that care. Working relationships with the nursing home staff begin to develop from the day of admission. Being able to work comfortably with the staff can make the resident's stay more pleasant.

Don't wait until there is a problem to learn how the system works. Learn the names of staff members and know what they do. Deal with staff in a courteous, but not a deferential way.

Know what to expect from the nursing home care - get familiar with the basic regulations. You can order a copy from KDOA by calling 800-432-3535. Have confidence about your position as a consumer, or as a family representative when you problem solve with staff.

Residents can be active in decision-making through care plans and residents' councils. Some nursing homes have developed committees that include family members and residents to review the home's policies and practices. One example is an ethics committee.

In addition to regular visits with the resident, families will have other opportunities to work with the staff and management of the nursing home. Family members can help plan the resident's care in a care plan meeting. Family members may also wish to organize or be active in a family council.

WHEN THINGS AREN'T GOING RIGHT - THE FIRST STEP

Complaints can cover anything from a broken wheelchair, to stale food, to poor care. Problems should be resolved at the least formal level possible, unless they involve abuse, neglect or exploitation, which should always be reported to KDOA.

Here is an example of a problem - a nurse aide handles the resident in too hurried a manner or seems insensitive to the resident's needs. First try to discuss the problem directly with the aide. Explain tactfully what you think the problem is and what you believe will fix it. Preface your suggestions with such comments as "Would it be possible to...", "Perhaps you could...". This invites the aide to work with you to find methods of care that can actually make the job easier if the resident is no longer fearful or combative.

That approach will not always work. Not all care problems are within the authority of nurse aides. For example, aides do not have the authority to change policies, medications, staffing levels or diets.

Each home will have a different procedure for dealing with problems in various departments. Generally, if a complaint involves a particular service of the home, you should talk with the department head that provides that service. For instance, if the problem is with the menu or meal preparation, speak with the dietary services director. If clothing is not coming back from the laundry, talk with the head of the laundry services department. Ask if there is a policy and procedure to handle the problem. If so, ask to see it.

WHEN THINGS AREN'T GOING RIGHT - THE SECOND STEP

If these first efforts do not result in any improvement, it is time to step to a higher authority within the nursing home. Two staff positions carry the overall responsibility for the quality of care and quality of life in the nursing home - the Administrator and the Director of Nursing. If the problem is a matter of medical care, discuss it with the attending physician.

When talking with the Administrator or Director of Nursing, be very clear about what the complaint is. If there are several issues, try to narrow them down to the most important few. Be prepared with as much of the following information as possible:

- What happened? When and how often? Who was involved? Who else might have observed it? Be specific about dates and times. It may help to put the complaint in writing.
- If you have an idea about correcting the problem, suggest it tactfully (don't feel that you have to be a nursing care expert).
- Ask the Administrator or Director of Nursing to respond to the complaint; set a time for a meeting.

THE NEXT STEP - THE KANSAS DEPARTMENT ON AGING

If the problem remains unsolved and it does not appear that the home is making every reasonable attempt to resolve it, make a formal complaint to the Kansas Department on Aging by calling the toll-free number for the Complaint Program: 1-800-842-0078 (the same number for reporting abuse, neglect and exploitation). Written complaints may be addressed to:

Adult Care Home Complaints Program
Kansas Department on Aging
503 S. Kansas Ave.
Topeka, KS 66603-3404

Before you call, write down your complaint so that you won't forget important pieces of information.

Residents rarely make official complaints themselves. If you are not the resident, tell them who you are - a family member, a guardian, the person holding a durable power of attorney for health care, or other interested person.

Provide your name, the name of the nursing home and the name of the resident affected, if there is

a specific resident. (Some problems, such as cleanliness, may affect the facility as a whole.) You can make a complaint without revealing your name or the name of the resident. However, it is usually much more difficult to conduct a timely, thorough investigation without these two names. You may know the most about the problem, and if you do not identify yourself you will certainly be left out of the complaint resolution process.

Identify the most important problems and provide specific information about what, why, when and who. This should be the same information that was given to the Administrator or Director of Nursing.

Ask to be called by the surveyor who will handle the complaint. Provide your daytime and evening phone numbers.

If there are other residents or family members who experienced similar problems or who would support the complaint, provide their names, but *only* with their permission. Ask that they also be contacted by the surveyor, or encourage them to call the complaint number. Tell the complaint staff you wish to be informed about the final outcome of the investigation and what the outcome will be; ask for the number assigned to the complaint; it will help with follow-up questions.

KDOA may not see the problem as you see it. Be prepared to listen to other views of the problem, but continue to insist on quality care.

THE COMPLAINT INVESTIGATION PROCESS

The Complaint Program staff will make a record of the complaint. The case will be given to an investigator who will attempt to verify the information in a variety of ways.

The investigation should include:

- 1) Confidential interviews with the caller(s), the resident, the family, and with other residents or employees who might have first-hand knowledge of the case;
- 2) A review of the nursing home's policies and procedures;
- 3) A review of appropriate facility records;
- 4) Any other necessary means, which could include examining the resident, speaking with the resident's physician, or the local hospital staff (if the resident has been moved to the hospital).

KDOA assigns each complaint a priority number based on the seriousness of the complaint and the potential for harm to the resident.

- **Priority 1** requires immediate investigation the day the report is received; investigation should be complete within 10 days.
- **Priority 2** requires the investigation be started the day following the complaint and should be complete within 10 days.
- **Priority 3** requires the investigation be complete within 90 days.

KDOA's policies require that the identities of the caller(s) and any person named in the complaint report be kept confidential. It must be noted, however, that the facility may already know that there is a problem and may be able to determine who has complained.

MONITORING THE COMPLAINT INVESTIGATION

You will receive a letter from KDOA stating that the complaint is being investigated. When calling KDOA to check about your complaint, use the case number. When the investigation is completed, you will be notified by mail about the outcome of the investigation.

While waiting for the results of the investigation, continue to keep a record of the quality of care. If there are any changes in the resident's condition or behavior which might suggest the care problem is improving, make a note of the changes. If the problems are not being resolved, are worsening, or if there is retaliation, notify KDOA again.

Continue trying to resolve the problems with the nursing home, if at all possible. Make your concerns known to the medical director, the pharmacist, or the quality assurance committee. You should continue attending the care planning meetings, if possible. Share your experience with the family council, and enlist their support.

Work toward a positive working relationship with the staff while the problem is being resolved and afterward. One difficulty in many nursing homes is a high rate of turnover among the staff. Sometimes, just when a problem is solved, a key person leaves. This is one reason it is important to keep a written record of concerns.

TAKING AN ACTIVE ROLE IN THE NURSING HOME COMMUNITY

RESIDENT AND FAMILY COUNCILS

These are separate, organized groups of individuals: residents in one case, family and friends of residents in the other. They meet regularly in the home to address concerns, seek mutual support, communicate with nursing home staff, and engage in educational and other activities. Not every nursing home has an active family or resident council.

The main purposes of these councils are:

- 1) to protect and improve the quality of care and life in nursing homes, and
- 2) to give residents and families a voice in decisions that affect them.

Nursing homes must assure the right of residents and their families to organize family and resident councils. The home must provide **private** meeting space for them, and consider and respond to their recommendations and grievances.

ORGANIZING A COUNCIL

If there is not already such an organization in the home, start one. A well-organized council can improve communication with nursing home staff and provide information, mutual support and problem solving.

The nursing home can help announce a family council meeting by including a notice in monthly billings or by putting a note in the home's newsletter or on bulletin boards.

Don't give up if your first meetings have a low attendance. Residents may be too ill to participate. Family members may be too busy. There is no magic number for a successful council -

a lot can be done with a group of even three members.

As the council develops, members may choose to become more formal about how the council operates. For instance, by-laws can be developed to provide some guidelines concerning who can be officers, how to handle grievances, how to conduct meetings, what the purpose of the council is, and so on.

The group process can be difficult, especially when a new group is forming. Different people may want different things from a council. Some may be seeking mutual support for the common experience of living in a nursing home or having a family member in a home. Some may want to bolster community support for the nursing home.

There is no single correct purpose for family and resident councils. All concerns should be allowed expression. It is helpful at the start of each meeting to set an agenda and a time for ending the meeting.

HANDLING CONCERNS

If the council members have specific grievances or suggestions, they should be communicated in writing to the staff of the home.

The nursing home staff do not have to fix *every* problem or take up every suggestion brought by the council, but they do need to respond to concerns in a meaningful way. It is important to be clear in expressing concerns and suggestions and to ask the staff to fully explain their response.

Some concerns may take further research. Some may need to be put on hold and revisited

later. In any case, it will be helpful for the council to meet and discuss the nursing home's response and decide on any further action that might be needed.

COUNCIL MEETING PROGRAM IDEAS

- Ask the pharmacist to visit and explain his role at the nursing home.
- Ask the Ombudsman in your area to talk with the council about mediating complaints in nursing homes.
- Hold an orientation meeting for new residents or new family members.
- Invite the administrator to talk about the nursing home's policies on any area of interest.
- Ask the nursing staff to talk about care plan meetings.
- Ask the medical director to talk about his duties at the nursing home.

Staff members may be invited to council meetings. In many nursing homes where residents and families are not as active, staff members perform many of the organizational tasks for the councils such as coordinating a speaker for your meeting or having certain policies reviewed by staff. Because these groups are intended to serve the purposes of the residents and families, it is probably best to try to rely less on staff members to organize them.

ETHICS COMMITTEES

Ethical dilemmas are everywhere, and they have not missed the nursing home setting. Some nursing homes are developing ethics committees to review and set policies concerning particular ethical issues.

Often there will be a position on the committee for a resident and a family member. Find out if your home has an ethics committee. If so, check to see the home's policy on membership of the committee. You may want to urge the management to organize one. A good resource for this relatively new idea is:

Ethics Committees: Allies in Long-term Care. Video and Booklet by the American Association of Homes for the Aging and the American Association of Retired Persons (AARP).

Also, Midwest Bioethics has developed some training materials for nursing homes that want to form ethics committees. For more information contact:

Midwest Bioethics
1021-1025 Jefferson St.
Kansas City, MO 64105
(816) 221-1100

The State Long-Term Care Ombudsman's office has a video library for use by persons interested in long term care. Tapes on ethics/ethics committees are available. Call 1-877-662-8362.

VISITING SOMEONE IN A HOME

Good nursing homes will openly encourage visitors and welcome the social call as part of a normal community life. Here are some tips to make routine visits to the nursing home more comfortable:

- Learn the names of staff and greet them when entering the home.
- If staff members are finishing a personal care task when you arrive, ask them to let the resident know you are there, and wait for them to finish.
- Arrange, *in advance*, to have a meal with the resident. Many homes offer meals at reasonable rates for families who visit during meal time. You may also be able to share the meal in a private family room.
- Expect periods of silence when visiting a resident. The person you are visiting may not have a lot of energy for talking.
- Bring children on the visit. Most nursing homes welcome children's visits, and many people who live in nursing homes are quite fond of a visit from children.

APPENDIX A

WHO'S WHO IN KANSAS NURSING HOMES

The role of nursing home staff may vary among nursing homes, but these generally are the duties they perform. Training and staffing requirements are based on state regulations.

Activities Director - must be at minimum a certified nurse aide with basic training in resident activities; must consult with a qualified activities professional; coordinates group and individual activities for residents and works directly with residents; must be a full time position in nursing homes with 60 beds or more.

Administrator - must hold a Bachelor's degree, complete a 480-hour (12 week) field training program, and pass a state and federal exam; is responsible for all aspects of management and operation of the nursing home; must be employed full-time (at least 35 hours per week).

Aides - perform about 90% of the "hands on", or personal care for residents; are not required to be trained before employment, but must complete 40 hours of training before providing care to residents. (There are two types of aides, certified nurse aides (CNAs) and certified medication aides (CMAs).)

CNAs must complete a 90-hour training program and pass a skills and knowledge test within four months of being employed as an aide. They are trained in basic caregiving skills but cannot give medications.

CMAs must complete basic CNA training, plus 60 more hours about medications, and pass a skills and knowledge test. They can give medications, but they may not give shots, and they may not handle IVs.

Attending Physician - is responsible for the management of the residents' medical care and for medical orders (residents have the right to choose their own doctor); is part of the interdisciplinary team that prepares the comprehensive care plan for a resident within 21 days of admission.

Charge Nurse - is an RN or LPN who acts as the supervisory nurse on a particular unit or shift.

Dietetic Services Supervisor - must have at least a certificate in dietary management or the equivalent, with supervision from a licensed dietitian; is responsible for menus, food preparation and service.

Director of Nursing (DON) - is the RN responsible for management of all nursing care in the home; works closely with the Administrator, and has authority for decisions which affect nurse staffing and the quality of patient care; must be employed full time.

LMHT (Licensed Mental Health Technician) - holds a license from the Board of Nursing; works in NFMHs (nursing facilities for mental health); helps set up the residents plan of care and carry it out; can give medications, including injections.

LPN (Licensed Practical Nurse) - has limited nursing care training; can administer medications, monitor IVs, take doctors orders, and carry out the care plan; acts in a supervisory role in the absence of an RN. (If an LPN is the only licensed nurse on duty an RN must be on call.)

Medical Director - is the doctor who establishes policies and consults with staff about medical care. (The medical director also acts as the attending physician for residents who do not have a doctor.)

Pharmacist - develops, coordinates, and supervises all pharmacy services; must review pharmacy services on a monthly basis and make a written report; must review the drug regimen for each resident on a monthly basis.

Rehabilitation Therapists - are professionals such as audiologists, physical therapists, occupational therapists, and speech pathologists; are not usually employees of the nursing home but work on contract; follow doctor's orders to see residents a specified number of times per week. (Some of their services can be paid by Medicare or Medicaid.)

RN (Registered Nurse) - has full nursing care training and responsibilities; is often the supervisory or charge nurse.

Social Services Designee - in nursing homes with 120 or more beds, must have at least a Bachelor's degree in human services; in smaller homes, must be at minimum a certified nurse aide with social services training and receive supervision from a social worker; responsible for helping residents with their social service needs such as Medicaid, transportation, and grief and loss support. (This person often handles some public relations for the nursing home and helps admit new residents.)

