



**Kansas Advocates
for
Better Care**

Preventing Abuse, Neglect & Financial Exploitation in Adult Care Homes

Grant Funded by The Kansas Department on Aging
Preventing Elder Abuse Neglect & Exploitation

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Effective July 1, 2012
Kansas Department on Aging will become
Kansas Department of Aging and Disability Services
&
Kansas Department of Social and Rehabilitation Services will become
Kansas Department for Children and Families

Facility Complaint Hotline at KS Department for Aging & Disability Services
Adult Protective Services Hotline at KS Department for Children & Families
Email addresses presumably will change; phone numbers may remain the same.

COMPASSIONATE CARE

Compassionate care for aging adults is simply defined by treating someone the way you hope to be treated, with gentleness, kindness, patience and respect. Residents of adult care homes live here because they must have 24-hour assistance, every day. Persons living in adult care homes often cannot perform many of the daily activities that others perform easily and without thinking. Persons with types of dementia may act in ways they would not, were it not for the disease.

Giving care is an honorable way to make a living and to pass on the care we receive in our lives. As you assist someone with the help s/he needs, honor them as person, always. It is important to look at the situation through the eyes of the person for whom you are caring - try to see the world as s/he sees it. You have chosen this vocation, and so you have assumed the responsibility to provide care and to respect each person.

Compassionate caregivers go about their work by:

- Focusing on alleviating the sources of pain or discomfort for persons in their care.
- Expressing thoughtfulness, graciousness, and respect to those facing hardships and crisis.
- Serving in difficult or unsightly circumstances and with good humor and compassion.
- Feeling good by serving others in practical and useful ways.
- Paying special attention to the needs of the lonely and alone.

Traits or characteristics of compassionate caregivers:

Sensitive
Kind

Willing
Helpful

Caring
Loyal

Responsive
Dependable

Cautions to compassionate caregivers:

- Guard against feeling “unappreciated” since some of the people you help will not show or express any appreciation.
- You may find it difficult to say “no” to requests for extended work hours.
- You need to be responsive first to the needs of persons in your care and to the priorities of supervisors, administrators, and regulatory requirements, putting these before your own needs.

Communication - one way to prevent Abuse, Neglect & Exploitation

The initiation of communication usually lies with the caregiver.

- Look at the individual; make eye contact and block out other distractions.
- Use a gentle touch to gain their attention.
- Express acceptance of the person and his/her thoughts. Praise them, even if he/she can't talk.
- Repeat back what the person has said to be sure you understand what they mean.
- Concentrate on the individual's needs, not on your own needs.
- Approach the individual in a slow, non-hurried manner and from the front.
- Allow the resident to touch you. Hold the resident's hand, if appropriate.
- Call the person by the name s/he requests.
- When assisting someone, offer two or three choices and state them simply, to avoid confusion.
- Avoid talking over/around a resident when talking with someone else.
- Respect each individual's property. It is what remains in their possession of what they hold dear.

SIGNS OF FINANCIAL EXPLOITATION & FIDUCIARY ABUSE

FINANCIAL EXPLOITATION means taking a resident's property without their knowing or approving. It means intentionally (on purpose) taking unfair advantage of an adult's physical or financial resources for your or another's personal or financial gain by the use of undue influence, coercion, harassment, duress, deception (misleading or lies), false representation or false pretense by a caretaker or another person.

Consent means the resident acts freely and voluntarily, not under threat, force, bullying or false promises. Consent means s/he must have the mental ability to understand; and must be legally competent to make an informed choice.

WATCH FOR SIGNS OF FINANCIAL EXPLOITATION, such as:

- Person gives money or checks to family members, friends or staff.
- Resident gives repeated "gifts" or "loans" of money to family, friends or staff.
- Person gives personal possessions to family, friends or staff.
- Family or Staff person asks resident for money or personal items.
- Family or Staff person takes individual's money or personal items without asking.
- Family or Staff person bargains with elder - "I'll do this for you if you'll give me that TV, or pen, or \$5."
- Family or Staff person uses the resident's credit card or debit card without permission, or to buy items not for the resident.
- Staff person "borrows" personal items, such as adult briefs, lotions, candy, without asking person or without replacing the item borrowed with the person's agreement.
- Staff uses individual resident's cell phone or land line to make long distance calls.
- Staff uses individual resident's computer.
- Person makes payments to "fake" charities, over the phone or through the mail.
- Telephone scams by persons outside the facility to the resident - "This is your grandson. I'm in Canada and my car has broken down. I need you to send me a check so I can get home."
- Collections notices in the mail - may be an indication of identity theft.
- Missing needed medications.

FIDUCIARY ABUSE

When a person who is the caretaker of, or stands in a position of trust to another and takes or hides the person's money, belongings or property for the caretaker's gain not the person's gain or needs.

WATCH FOR SIGNS OF FIDUCIARY ABUSE, such as:

- Lack of payment for housing or care by a family member in charge of the resident's money.
- Using resident funds for payment of bills or purchase of things for someone besides resident.
- Not purchasing items an individual needs or wants with the individual's funds set aside for her/his wants or needs.

WHY DOES IT HAPPEN & WHAT YOU SHOULD DO WHEN YOU SUSPECT

WHY DOES IT HAPPEN?

Family Members or Friend - rationale

- We will inherit it anyway
- Want to get it before someone else does
- Spend the money so mom/dad will qualify for Medicaid
- Lost job and gotten in to debt, mom/dad would want me to have it
- Think their loved one can't use it where they are living now in a facility
- When a person has no family, a friend may take valuable possessions/money believing the person would prefer it go to a friend not a stranger

Staff Caregivers

- Believe they have "earned" it by taking care of resident
- See it as "payment" for taking care of difficult resident
- Have a spouse who becomes unemployed
- Gets into debt and are struggling financially
- Drug addiction or abuse

WHAT YOU SHOULD DO WHEN YOU SUSPECT

> REPORT IT IMMEDIATELY, AS SOON AS YOU SUSPECT

In Your Facility, Report To: Your supervisor, the charge nurse & director of nursing, and the administrator.

AND Outside the Facility call toll-free and report to all of the following:

- The Kansas Department on Aging toll-free: 1(800) 842-0078 (M-F 8-4)
- The Kansas Attorney General's Abuse & Neglect Unit: 1 (888) 432-2310
- Local law enforcement - the Police or County Sheriff
- The Kansas Long-Term Care Ombudsman: 1(877) 662-8362 (M-F 8-4:30)

WHAT TO REPORT:

- Name of the victim, age if known
- Name of the facility and its location
- Name of any witnesses
- Date and time of incident(s)
- Description of what happened
- Name of who did it
- Name(s) of any witnesses and how to contact them

You cannot be fired or punished for reporting your concerns about abuse, neglect or exploitation of a resident in your adult care home. **You can be reprimanded if you do not report** suspected abuse, neglect or exploitation of a resident living in your adult care home.

SIGNS OF ABUSE – PHYSICAL , PSYCHOLOGICAL, & SEXUAL

ABUSE is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Or any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:

- Inflicting physical or mental injury
- Any sexual act with a resident without her/his consent, or when the other person should know that the resident is not capable of resisting or saying no to the sexual act because of mental lack or disease or out of fear of punishment
- Use of physical restraint, medications to chemically restrain, or isolation that harms or is likely to harm a resident and is without medical order
- Use of physical or chemical/medication restraint, or isolation as punishment or for convenience, in conflict with the doctor's order
- Threatening or bullying a resident causing her/him fear or emotional or mental distress
- Not providing a resident with goods or services which are necessary to avoid physical or mental harm or illness

WATCH FOR SIGNS OF PHYSICAL ABUSE, such as:

- Hitting, pinching, shoving, scratching, slapping, spitting, rough handling, or force-feeding
- Bruises, skin tears, swelling, limbs out of place
- Individual says s/he has been abused

WATCH FOR SIGNS OF PSYCHOLOGICAL, EMOTIONAL, OR VERBAL ABUSE, such as:

- Sudden changes in resident behavior, fear, suspicion, unwillingness to talk, new depression
- Loss of interest in things by resident, or change in activity level
- Staff or Family cursing, making fun of, ignoring, threatening, belittling or controlling resident

WATCH FOR SIGNS OF SEXUAL ABUSE, such as:

- Scratches, tears, irritation and swelling around breasts, mouth, and penis or vaginal area,
- Abnormal discharge, sexually transmitted disease, urinary tract infections
- Changes in walking or sitting ability
- Sudden changes in resident behavior, fear, suspicion, unwillingness to talk, depression
- Loss of interest in things by resident, or change in level of activity
- Resident fearful of a particular person
- Unexplained shame, fear or embarrassment by a resident
- Person says s/he has been abused
- Reports of abuse by roommate, even one with confusion or dementia

SIGNS OF NEGLECT

NEGLECT is a caretaker failing to provide goods or services that are needed to ensure the safety and well-being of a person and failing to provide goods or services needed that avoid physical or mental harm or illness of the resident.

WATCH FOR SIGNS OF NEGLECT, such as:

- Loss of weight due to lack of help with eating
- Not offering food the person can eat/swallow or enjoys eating
- Not responding immediately when a person asks for help to go to the bathroom and causing the person to lose bladder or bowel control, or sit in urine or feces
- Not immediately helping a person who asks for help to get-up and results in falls or distress
- Not changing disposable briefs causing person to sit in urine or feces and causing skin breakdown
- Smells of urine or feces, unpleasant body odor, bad breath resulting from lack of daily care
- Not meeting the person's needs for clean or appropriate clothing
- Dirt or feces under person's fingernails, matted hair
- Limb Contractures and Pressure/Bed Sores - not repositioning a person every two hours, not providing proper skin care, physically restraining or overmedicating the person
- Dehydration—not providing liquids, not placing liquids in containers a person can pick-up & hold, not placing the drink within easy reach
- Not providing regular and needed mental, medical or dental care
- Not reminding about or providing restorative care to person to maintain mobility
- Not providing assistance in walking/moving and that reduces person's mobility
- Ignoring call bells, ignoring cries for help
- Not using proper hand-washing or use of gloves, that leads to infection
- Not providing assistance to or encouraging a person to participate in activities that interest her/him
- Resident develops anxiety or depression, or withdraws
- Resident acting suspicious of others or fearful of staff, unwilling to talk
- Not giving medication as it is prescribed

Observe Behaviors - another way to prevent ANE

If you observe **new onset of behavior(s) or a change in behavior**, watch for underlying causes such as:

- drug toxicity
- eyes/ears, sensory impairment
- metabolic disturbance or endocrinopathy
- emotional disturbances, especially depression
- nutrition deficiency
- tumors, trauma to the head
- infection
- arteriosclerosis, including vascular disease.

WHY DOES ABUSE & NEGLECT HAPPEN

WHAT YOU SHOULD DO WHEN YOU SUSPECT

WHY DOES IT HAPPEN?

Staff Who Are Caregivers

- Have too many elders and adults to care for by too few staffpersons
- Temporary agency staff who may be unfamiliar with individual needs
- Staff putting personal needs before resident needs
- Poor coping skills for dealing with difficult resident behaviors
- Lack of training to deal with persons who have dementia
- Not enough staff to handle or training to deal with the physically aggressive behaviors of a person or a person who refuses care
- Not liking your work or liking to care for elders or disabled adults
- Viewing persons living in the facility as children in need of discipline or punishment
- Burnout - care giving is emotionally and physically demanding work
- Poor coping skills or lack of training to deal with frequent and intense conflict
- Lack of supervision - staff are more likely to commit abusive acts if they believe their work is not being monitored or if they believe their actions won't be reported
- Abusing drugs or alcohol
- Under stress in personal life
- Work too much overtime, not take rest break or meal break, take things "personally"

SITUATIONS THAT OUGHT TO BE REPORTED

Elder or disabled adult is in a harmful situation or is in danger of being harmed

Individual is unable to protect her/himself

You observe a specific incident(s) that suggests abuse, neglect or exploitation

The adult care home is not providing the needed services to avoid physical or mental harm or illness or to ensure safety & well-being.

WHAT YOU SHOULD DO WHEN YOU SUSPECT

> REPORT IT IMMEDIATELY, AS SOON AS YOU SUSPECT

In Your Facility To: Your supervisor, the director of nursing, and the administrator.

AND Outside the Facility call toll-free and report to all of the following:

The Kansas Department on Aging toll-free: 1(800) 842-0078

The Kansas Attorney General's Abuse & Neglect Unit: 1 (888) 428-8436

The Kansas Long-Term Care Ombudsman: 1 (877) 662-8362

Local law enforcement - the Police or County Sheriff

Call 911 if harm has occurred or danger is imminent

K.S.A. 39-1404/1433 Kansas Law states:

Criminal act has occurred or appears to have occurred, immediately notify law enforcement in writing.

WHAT YOU SHOULD DO WHEN YOU SUSPECT? PENALTY FOR NOT REPORTING

WHAT TO REPORT:

Name of the victim, age if known	Name of the facility and its location
Name of any witnesses	Date and time of incident(s)
Description of what happened	Name of who did it
Name(s) of any witnesses and how to contact them	

You cannot be fired or punished for reporting your honest concerns about abuse, neglect or exploitation of a resident in your adult care home. **You can be reprimanded and others will suffer, if you do not report** suspected abuse, neglect or exploitation of a resident living in your adult care home.

PENALTIES FOR NOT REPORTING:

- ◆ It is a **class B misdemeanor for a mandatory reporter** to knowingly fail to make a report if s/he **suspects** a vulnerable adult is being neglected, exploited or abused.
- ◆ The penalty for a class B misdemeanor is definite confinement in a county jail, fixed by the court which shall not exceed six months, in addition to or in lieu of a fine which can be up to, but not exceed \$15,000.

Remember that the burden of proof lies with the State, not the reporter. The employer is prohibited from imposing sanctions on an employee who makes a report. Therefore, call even if you only **suspect** an adult is being neglected, exploited or abused. This is true for mandatory **and** voluntary reporters. If a voluntary reporter (such as family member, direct care staff, visitor) reports suspected incidents to a mandatory reporter and has reason to believe that there was no follow up, the voluntary reporter should call 1 (800) 842-0078 to report to KDOA.

FACILITY INVESTIGATION REQUIREMENTS

A thorough investigation must be conducted by the facility. Facility reports should include: verified witness statements, facility policies and procedures, resident care records, employee counseling and disciplinary records, pictures of resident injuries, and other relevant facts. Injuries of an unknown source must be reported to the State if the facility's immediate investigation demonstrates reasonable cause to believe that abuse or neglect has occurred or is occurring. There must be written evidence of these investigations and the findings, and they must be made available to the State. Failure to report when reasonable cause exists that abuse, neglect or exploitation has occurred can result in the facility receiving a deficiency or an enforcement action. Health care professionals who fail to report when reasonable cause exists could be referred to the appropriate regulatory board.

Adult Mandatory Reporters KSA 39-1431 (restated)

Any person who is **licensed** to practice any branch of the healing arts, psychologist, psychotherapist, CEO of medical care facility, social worker, nurse, dentist, therapist or counselor, registered alcohol or drug abuse counselor, law enforcement officer, case manager, rehabilitation counselor, bank trust officer, officer of financial institution, legal representative, governmental assistance provider, owner or operator of residential care facility, and independent living counselor and CEO of a licensed home health agency, CEO of adult family home and CEO of provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services .

WHAT HAPPENS WHEN YOU REPORT TO KANSAS DEPARTMENT ON AGING?

“Once a report of ANE has been received by the Kansas Department on Aging’s Complaint Unit, it is triaged (prioritized for action, *editor’s note*) for investigation in accordance with the requirements in the State Operations Manual (SOM) and/or state statute. Surveyors will respond to allegations involving immediate jeopardy the same day or the next working day, depending on the nature of the allegation. Facility reported incidents of abuse, neglect, and exploitation may be assigned as facility investigations. The facility must provide the results of its investigation to the appropriate KDOA Regional Manager within 5 working days of the intake. KDOA reserves the right to conduct an onsite investigation at any time in response to the facility reported incident.

Complaints alleging actual harm are triaged for investigation within 10 working days in accordance with the requirements in the SOM. General care complaints not involving abuse, neglect, misappropriation or actual harm are triaged for investigation between 30 and 180 days.

“... healthcare practitioners and administrators are required to report evidence of ANE to KDOA... In almost all cases, facilities suspend alleged perpetrators pending investigation. Therefore, the alleged victim/resident is removed from immediate harm (such as fear, intimidation, retaliation, and further ANE) until the investigation can be completed.”

“Facility investigations contain a narrative report... Included with the narrative are verified witness statements, facility policies and procedures, resident care records, employee counseling and disciplinary records, pictures of resident injuries, and any other material deemed relevant to the factual and legal issues involved. The alleged victim must be interviewed within 24 hours where imminent danger is present, within three working days when abuse is alleged, or within five working days when neglect or exploitation is alleged. The investigation also must be completed within 30 days of receiving the complaint. Finally, any complaint which alleges that a possible criminal act has occurred or has appeared to have occurred requires immediate, written notification to a law enforcement agency.”

Any complaint which alleges that a reasonable suspicion of a crime has occurred must also be immediately reported to law enforcement. Section 1150B of the Social Security Act, as established by section 06703(b)(3) of the **Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) requires specific individuals to report any reasonable suspicion of crimes to law enforcement and the State survey agency.** This requirement applies to Medicare & Medicaid participating Nursing facilities (NF), Skilled nursing facilities (SNF), Hospices that provide services in LTC facilities, and Intermediate Care Facilities for the Mentally Retarded (ICF-MR). Facilities can make reports of events that constitute Reasonable Suspicion to the State Agency during the regular hotline hours of 8 am to 5 pm, Monday-Friday via phone, Email, or FAX. Events occurring after hours that constitute reasonable suspicion of a crime can be made at any time by sending an email to suspectedcrime@aging.ks.gov

Complaint Hotline Staff will follow up during the next working day to complete the report.

Specifics of this requirement can be found at:

http://www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf

In conclusion it is important to note "...at least three actions may result from an alleged ANE report. First of all a criminal action for battery, mistreatment of a confined person, mistreatment of a dependent adult, theft, criminal use of a financial card, or other crime may be filed by the county/district attorney. Secondly, an employment disciplinary action, often involving termination, may be taken by the facility. Finally, KDOA may attempt to have an annotation of ANE placed on the alleged perpetrator's entry in the Registry so that further employment in adult care homes is prohibited."

Source: *William C. Rein, KDOA Attorney, Governor's Conference Presentation 2006. Revised by KDOA 2012.*

REPORTING TO LOCAL LAW ENFORCEMENT - What Happens?

If your facility is in a town or city, the local police will investigate. If your facility is in the county, the county sheriff's department will investigate.

Law Enforcement will:

- Come to the adult care home to talk with the reporter of the abuse, the adult harmed if possible, any witnesses and the person accused of causing harm
- Take pictures of injuries or the scene of the incident

They may also:

- Remove or arrest the person accused of causing harm
- Charge the person accused of abuse or neglect with a criminal action and file it with the county prosecutor or district attorney
- The county prosecutor/district attorney will prosecute the case against the person accused and the action may result in a diversion, financial restitution, fine, or imprisonment

REPORTING TO THE LONG-TERM CARE OMBUDSMAN - What Happens?

The Long-term Care Ombudsman was created by federal law, the Older Americans Act. The Ombudsman's role is to advocate for persons residing in adult care homes and to assist her/him in resolving problems. Upon receiving a report the Ombudsman will come to the talk with the resident at the facility. The Ombudsman will hear the elder or adult's concerns and what she/he wants to have happen to correct the problem. The Ombudsman has the authority to intervene and prevent involuntary discharge when there is not a legitimate reason for discharge and to protect resident's rights.

2011 Reports to Ombudsman 2,284 Total Complaints

105 ANE	135 Financial Property	172 Activities and Social Services
15 A & E Financial against family or facility	361 Resident Care	122 Dietary
72 Resident access to info	93 Rehabilitation	95 Environment Policies & Procedures
261 Admission Transfer Discharge	1 Restraints	
382 Exercise of Rights, Autonomy		

KANSAS EXAMPLES OF ABUSE, NEGLECT & EXPLOITATION

- “An 83 year old woman moved into a nursing home 8 months ago. The woman has severe arthritis and needs help with dressing and bathing and getting in and out of bed, and she has some dementia. Her son is the durable power of attorney (DPOA) for financial and health care matters. The woman has recently signed over the family farm and a life insurance policy to her three adult children. The nursing home has received no payment, but the son (DPOA) has applied for Medicaid on her behalf. SRS is working to determine the woman’s eligibility for Medicaid, and has asked for an appraisal on the value of the farm land. The facility has requested payment, but has been told the woman has no funds beyond her \$300 monthly social security which the son is using to pay for her medications.

Is this ANE? What would you have done?

- “A 91 year old man is placed in a nursing home after being yelled at and hit about the head by his daughter who is 45. She is also his durable power of attorney. Three months prior the daughter had convinced her father to divorce his wife of 35 years (not her mother). The daughter said her father signed a form designating her as durable power of attorney (DPOA). With this authority she sold the home and acreage the man owned. Shortly after is when she was detained by the police for hitting the man. Then the man was placed in a nursing home. The woman said she was entitled to see her father because she was family and his DPOA. The man who suffered from significant dementia said he did not want to see her. The daughter also wrote checks on his bank account claiming as DPOA she had the right to do so. Some checks were for his care prior to being detained by police, some were for personal items for herself. The daughter was unable to provide you a copy of the DPOA form.

What kind of ANE is this? What should you do?

- A 25 year old grandson began visiting his grandmother at an assisted living facility about a year after she moved there. He is always very polite when he visits his grandmother, to her and the staff. One day the grandmother asked the dietary staff-person who had been working with her on foods that would not upset her stomach, who she ought to talk with at the facility to get transportation to her bank. The dietary staff knew that her son usually drove her when she had appointments or went out, so the staff-person asked if her son was alright? The woman said yes, but she didn’t want her son to be involved. The staff-person asked if there was something special the resident was needing to do? The resident told her that the grandson who had been visiting weekly, was in a bit of a bad spot and needed \$25,000, so she was going to the bank to cash out some investments and get the money for him. The resident seemed a little worried that it might mean she wouldn’t be able to do some of the things she had planned, but wanted to help out her grandson. In talking further the resident shared with the staff-person that she had already given her grandson \$10,000 in the past couple of months. When the staff-person asked if the resident had spoken with her son about the situation, she replied “No, my grandson doesn’t want him to know, because he will get mad.”

Is this ANE? What would be your next steps?

- “Two residents share a room - one is 82 and the other is 91. They both wear disposable briefs. The 82 year old resident has an ample supply of adult briefs, the other resident is waiting to see if she is eligible for Medicaid. She has no family or friends near who visit and attend to her needs, and has very little in the way of financial resources. The CNA staff assigned to both of them routinely uses the 82 year old woman’s supply of adult briefs for both of them. In order to make them last longer, she stretches out the length of time she leaves them on the resident’s even when they are wet.”

What kind of ANE is this? How should this kind of situation be handled?

KANSAS EXAMPLES OF ABUSE, NEGLECT & EXPLOITATION

- “Two elderly women share a room in a nursing facility. One has dementia, the other does not. The woman with dementia tells her daughter on a Saturday that her roommate was crying Help, Help! and there were loud noises on the other side of the curtain the night before. Since the roommate was out of the room at the time the daughter heard this story, the daughter went to talk with the nurse on duty. The nurse dismissed the woman’s report due to her dementia. The nurse did no further inquiry or investigation.
What kind of ANE is this? How should this situation be handled?

The roommate above was at the doctor’s being treated for bruising on her head, face and arms.

Is this ANE? How should this situation be handled?

- “A 45 year old woman with mental illness phoned Kansas Advocates requesting help because the insulin that a nurse had attempted to give her was beyond its due date by 30 days. She told the nurse not to use the insulin. The nurse told her the pharmacy hadn’t delivered new insulin yet and it was this or nothing. The woman still said she did not want the insulin. The woman said the nurse told her not to tell anyone, and that if she did, she (the woman) would be really sorry. The woman was afraid to talk to anyone in the facility about it, but she was now also fearful about receiving insulin injections from this nurse.

What kind of ANE is this? How would you handle this situation?

- “... a C.N.A. used a resident’s stolen credit card to purchase \$800 worth of merchandise from a grocery store... the same C.N.A. used the same resident’s credit card to purchase \$812.30 worth of merchandise from a clothing store... the same C.N.A. was apprehended by law enforcement officers when she tried to use the same resident’s credit card to make more purchases at another grocery store.... the C.N.A. had in her possession four credit cards belonging to the resident.”

Is this ANE is this? How can this be avoided?

ANE & Complaints to Kansas Department on Aging

In 2011 the Kansas Dept. on Aging received 7,085 complaints including abuse, neglect or exploitation. Approximately 5,668 of the 7,085 complaints were facility mandated reports.

In 2011, Kansas Department on Aging made 469 reports to law enforcement.

In 2011, there were 41 findings of ANE placed on the Kansas Nurse Aide Registry.

ADULTS IN CARE FACILITIES - RESIDENT RIGHTS

The Resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. **According to Kansas Administrative Regulations (KAR 28-39-147 to 153) and federal regulations (42CFR 483.10 to 483.15) the home must protect and promote these rights:**

RIGHT TO EXERCISE RIGHTS

- The Resident must be allowed to exercise his/her rights as a citizen and a resident of a care home without interference, coercion, discrimination, or reprisal from the home.
- The Resident has the right to designate in advance a person who will assert resident rights if he/she is unable to do so. (Appoint this person using a Durable Power of Attorney for Health Care Decisions.)
- A court appointed guardian exercises the resident's rights when the resident is adjudged incompetent.

RIGHT TO BE NOTIFIED OF RIGHTS

- Before being admitted to a home, the resident must be informed both orally and in writing of his/her rights, rules of the home, rates and services of the home, and rules concerning Medicaid eligibility.
- Before the home can effect a change in charges or services, the resident must be informed, in writing, at least 30 days before the change takes place.

RIGHTS CONCERNING FINANCES & PROPERTY

- The Resident has the right to manage his/her financial affairs.
- If the Resident deposits funds with the home, it must manage and account for funds properly, including a quarterly written account of transactions on the account and the balance. If more than \$50 is deposited with the home, the home must place the 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 a resident.
- The home must have a written policy about protecting residents' possessions. If property is missing and the home is responsible for its loss, the resident may have a claim against the home to replace the item. Check with an attorney.

RIGHT TO INFORMATION ABOUT CARE

- The Resident has a right to be fully informed about care and treatment and any changes in that care or treatment that may affect the Resident's well-being.
- The Resident has the right to inspect and purchase photocopies of all records pertaining to the Resident upon written request and two days notice (excluding holidays and weekends) to the home.

RESIDENT RIGHTS

RIGHT TO MAKE CARE DECISIONS

- The Resident has a right of free choice to (1) choose an attending physician; (2) participate in developing an individual care plan or negotiated service agreement; (3) refuse treatment; (4) refuse to participate in experimental research; (5) choose a pharmacy (but if the home uses a unit dose system to dispense medications, the pharmacy must also use that system.)
- The Resident has a right to check out of the home. (You do not need a doctor's order to leave the home.)
- The Resident has a right to receive notice of changes concerning: (1) physical, mental, or psychosocial status; (2) altering of treatment; (3) transfer or discharge; (4) room or roommate change.
- The Resident has a right to refuse to perform services for the home. The Resident has a right to agree to perform voluntary or paid services for the home if there is no medical reason to contradict that right.
- Each Resident has a right to self-administer drugs (unless the attending physician and the home interdisciplinary team has determined for a particular Resident that this practice is unsafe.)
- The Resident has a right to be free from any physical restraints imposed or psychoactive drugs administered for the purposes of discipline or convenience and not required to treat the Resident's medical symptoms.

Federal interpretation: When physical restraints are used, there shall be a written physician's order which includes the type of restraint to be applied, the duration of the application and the justification for the use of the restraint. The resident's surrogate or representative cannot give permission to use restraints for the sake of discipline or staff convenience, or when the restraint is not necessary to treat the resident's medical symptoms. "Physical restraints" include, but are not limited to, leg restraints, arm restraints, hand mitts, soft ties or vests, lap cushions and lap trays the resident cannot remove.

- **The Resident has the right to be free from verbal, sexual, physical, or mental abuse, corporal punishment and involuntary seclusion.**

RIGHT TO PRIVACY, CONFIDENTIALITY & DIGNITY

- The Resident has the right to personal privacy and confidentiality of his/her personal and clinical records.
- The Resident may approve or refuse the release of personal and clinical records to any individual outside the facility except when: the Resident is transferred to another health care institution, or record release is required by law or a third party payment contract.
- The Resident has the right to privacy in written communications, including the right to send and receive unopened mail promptly. The Resident has a right of access to stationery, postage and writing implements at the Resident's own expense.
- The Resident has a right to reasonable accommodation of individual needs and preferences except where the health or safety of the Resident or other Residents would be endangered.
- The Resident has a right to examine the results of the most recent survey of the home conducted by Federal or State surveyors and any plan of correction in effect for the home.

RESIDENT RIGHTS

- The Resident has the right to visit and communicate with persons of his/her choice in privacy and at any reasonable hour. Immediate access must be given to family members, attending physician, and certain state officials, such as the Ombudsman or a surveyor from KDOA. The Resident retains the right to deny or withdraw consent at any time.
- The Resident has a right to have regular access to the private use of a telephone.
- The Resident has a right to retain and use personal possessions, including some furnishings and appropriate clothing, as space permits, unless to do so would infringe on the rights or health and safety of other Residents.
- The Resident has the right to share a room with his/her spouse when married Residents live in the same home and both spouses consent to the arrangement.
- The Resident has a right to organize and participate in Resident groups in the home, and the Resident's family has the right to meet within the home with families of other Residents.
- The Resident has the right to participate in social, religious and community activities that do not interfere with the rights of other Residents.

RIGHT TO ADDRESS GRIEVANCES

- The Resident has a right to voice grievances with respect to treatment or care, without discrimination or reprisal for voicing grievances, and a right to prompt efforts by the home to resolve grievances, including those with respect to the behavior of other Residents. The facility must post contact information of pertinent government and advocacy organizations.
- The Resident has a right to file a complaint concerning Resident abuse, neglect and misappropriation of Resident property in the home.
- Residents may file a complaint by calling 800-842-0078 (Kansas Dept. on Aging). An additional resource for nursing home residents with developmental disabilities or with mental illness, is the Disability Rights Center at 877-776-1541.
- The Resident has the right to contact the Long-Term Care Ombudsman toll-free at 877-662-8362 for assistance with concerns related to the nursing home.

RIGHTS WHEN TRANSFERRED OR DISCHARGED

- The Resident has a right to receive advance notice of transfer or discharge. Residents required to receive this notice are: those whose health has improved and who no longer require the services of the home; those who endanger the safety of individuals in the home; those who fail to pay the home; and those whose needs cannot be met, as documented by their physician. The notice should include the reason and effective date of transfer or discharge (30-day notice and/or may waive) and the location to which the resident is to be transferred or discharged.
- The Resident has the right to an appeal process. The Resident has the right to appeal to the State through the complaint process at 800-432-3535 or TTY Number for hearing impaired is: 785-291-3167.
- The toll-free telephone number for the State Long-Term Care Ombudsman is 877-662-8362.

IT IS THE LAW IN KANSAS - ADULT CARE HOME RESIDENTS

REGULATIONS FOR NURSING FACILITIES ON ABUSE, NEGLECT & EXPLOITATION

The following text is taken directly from State regulations KAR 28-39-150 (c) and (d):

(c) **Abuse:** Each Resident shall have a right to be free from the following:

- (1) Verbal, sexual, physical and mental abuse;
- (2) corporal punishment; and
- (3) involuntary seclusion.

Facilities that are not compliant with this regulation receive an inspection deficiency labeled as F-223: “right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.”

(d) **Staff treatment of resident.** Each facility shall develop and implement written policies and procedures that prohibit abuse, neglect, and exploitation of residents. The facility shall:

- (1) not use verbal, mental, sexual or physical abuse, including corporal punishment or seclusion;
- (2) not employ any individual who has been identified on the state nurse aide registry as having abused, neglected or exploited residents in an adult care home in the past;
- (3) ensure that all allegations of abuse, neglect or exploitation are investigated and reported immediately to the administrator of the facility and to the Kansas Department on Aging;
- (4) have evidence that all alleged violations are thoroughly investigated, and shall take measures to prevent further potential abuse, neglect and exploitation while the investigation is in progress;
- (5) report the results of all facility investigations to the administrator or the designated representative;
- (6) maintain a written record of all investigations of reported abuse, neglect and exploitation; and
- (7) take appropriate corrective action if the alleged violation is verified.

Facilities that are not compliant with this regulation receive inspection deficiencies labeled as F-224: “mistreatment of resident property”; F-225: “facility is not to employ persons who have been found guilty of abusing, neglecting, or mistreating residents”; or F-226: “facility must develop and implement policies and procedures pertaining to abuse and neglect.”

LEGAL RIGHTS OF ADULT CARE HOME RESIDENTS

KANSAS STATUTES ABUSE, NEGLECT & EXPLOITATION

Kansas Statutes Annotated 39-1401

ABUSE means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

- (1) Infliction of physical or mental injury;
- (2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;
- (3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a resident;
- (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 resident or another resident;
- (5) a threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;
- (6) fiduciary abuse; or
- (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 with a duty to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

EXPLOITATION means misappropriation of resident 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, a resident, takes, secretes, or appropriates the resident's money or property, to any use or purpose not in the due and lawful execution of such person's trust.

HELPFUL RESOURCES

TO REPORT ABUSE, NEGLECT OR EXPLOITATION (ANE)	
Nursing Homes - KS Dept. on Aging Adult Complaint Unit Monday—Friday 8 a.m. - 5 p.m. Call 1-800-922-5330 at night or on weekends	1-800-842-0078
Community - Social & Rehab. Services, Adult Protective Services, 24 hours/7days per week	1-800-922-5330
Home Health Care Complaints - KS Dept. on Aging	1-800-842-0078
Local Law Enforcement - Police	911 if available or phone book
County Sheriff (county outside of city limits)	See local phone book
Kansas Attorney General - Abuse Neglect Unit M - F, 8 - 5	1-888-428-8436
FOR ANE & FOR RESIDENT ADVOCACY	
Kansas Long-Term Care Ombudsman - M - F, 8-4:30	1-877-662-8362
FOR ADVOCACY	
Kansas Advocates for Better Care - Monday -Friday, 8 - 5	1-800-525-1782
Kansas Guardianship Program - Monday - Friday, 8 - 5	1-800-672-0086
SILCK Statewide Independent Living Council of Kansas - Physical Disability	1-785 234-6990
National Alliance on Mental Illness - Mental Illness & Disability	1-800-539-2660
Disability Rights Center - Kansas - Legal and Case Management Advocacy for adults with disabilities regardless of age.	Voice: 1-877-776-1541 TDD: 1-877-335-3725
InterHab - Developmental or Intellectual Disability	1-785-235-5103
Elder Law Hotline	1-888-353-5337
Veterans Affairs	1-800-827-1000
Governor's Office	1-800-748-4408
TTY - communication access number for hearing impaired	1-800-767-1833
Medicaid Fraud	1-800-432-3913
Medicare Fraud	1-800-876-3160

Making Elder Care Better Since 1975

Kansas Advocates
for
Better Care



Founded in 1975 as *Kansans for Improvement of Nursing Homes* by concerned citizens like you.

Founded in 1975 as *Kansans for Improvement of Nursing Homes*, our mission continues to be “advocating for quality long-term care” for residents of licensed adult care homes.

KABC is a 501 (c) (3) non-profit organization, funded by members, contributors, and grants for special purposes.

For information on becoming a member of KABC, for guidance about a licensed care home issue, or to order consumer reports, call toll-free: **800-525-1782**

913 Tennessee, Suite 2
www.kabc.org

Lawrence Kansas 66044
info@kabc.org

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