



# **Assisted Living**

*a guide to Kansas regulations, and  
the compliance inspection review*

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# Introduction to Choices in Long-Term Care

*Direct care staff and other front line staff in long-term care homes, as well as consumers, say that they do not have adequate training about or understanding of the inspection review process and State regulations. The regulations and inspection review lists provided in this document are taken from the Kansas Department on Aging (KDOA) Licensure, Certification, and Evaluation Commission. This is a highly condensed version of selected regulations that can most benefit long-term care consumers, as well as direct care staff.*

Today, many older Kansans are looking for supportive housing that will help them remain independent, happy, healthy and safe. When living independently becomes too difficult, there are several alternatives to nursing home care. "**Assisted Living**" and other types of supportive housing are available.

In 1995, the Kansas legislature authorized four additional types of adult care homes. Since July 1, 2003, these additional homes have been licensed and regulated by the Kansas Department on Aging (KDOA.)

- **Assisted Living Facilities (ALF)**
- **Residential Health Care Facilities (RHCF)**
- **Home Plus (HP)**
- **Boarding Care Homes (BCH)**

These adult care homes are designed to provide housing and a range of supportive services. They provide less intensive levels of care than the care provided in nursing facilities, such as help with the **Activities of Daily Living (ADL)** (dressing, eating, bathing, using the toilet, transferring, walking/mobility) or the **Instrumental Activities of Daily Living (IADL)** (cooking, laundry/housekeeping, shopping, money management, transportation, medication/medical treatment & management

Although it is unlawful to operate an adult care home without a license, there are a number of unlicensed facilities in the state offering housing and services which *have the appearance* of assisted living. An example of an unlicensed home is a senior apartment building. Services provided may include:

- maintenance of building and grounds
- some meal services in community dining room
- services coordinator
- some organized activities

For your protection, if you are seeking a licensed adult care home, ask to see a license issued by the Kansas Department on Aging (KDOA). If problems occur in a licensed adult care home, or if a home is operating without a license, you can report your concerns to the KDOA Adult Care Complaint Program toll-free: **800-842-0078**.

Costs vary from one facility to another. Accommodations range from basic to luxurious, and services provided can range from minimal to extensive. Most facilities charge month-to-month rates for room, board and services.

*(NOTE: In some instances, "assisted living" is used as a marketing term. Consumers should be aware that almost any building catering to the elderly can use this title, though their services may range from a room with a call button, to a full-service facility.)*

# **Assisted Living and Residential Health Care Facilities**

**Assisted Living Facilities (ALF)** are licensed to care for 6 or more people in apartment-type units (studio or larger) and provide or coordinate a range of services, including care or supervised nursing care available 24 hours, seven days a week. ALFs may be free-standing, or may be part of a larger complex offering 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
- 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
- medical, dental & social transportation
- personal care and health care services such as medication management, if needed
- activities

**Residential Health Care Facilities (RHCF)** are licensed to care for 6 or more people in "individual living units" (usually a room or a studio). The services provided are the same as those in ALFs. The main difference is that RHCFs are not required to provide kitchens in the living units. In addition, RHCFs converted from existing nursing facilities are only required to provide private bathing facilities in 20% of their individual units.

ALFs or RHCFs licensed as Intermediate Personal Care Homes before January 1995 are not required to have kitchens or bathrooms in their individual living units. Kansas regulation requires ALFs and RHCFs to specify the services provided in an individualized "Negotiated Service Agreement" for each resident.

# **Home Plus and Boarding Care Homes**

**Home Plus (HP)** residences are licensed to care for 8 or fewer people. These homes are usually private residences and usually provide:

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

Depending on the qualifications of the operator, a Home Plus residence may also provide supervised nursing care or skilled nursing care.

**Boarding Care Homes (BCH)** are licensed to care for 10 or fewer 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
- supervision

# Consumer Checklist

As one goes through the process of choosing the 'right' care home for a family member or friend, a lot of information is gathered, and many questions are asked and answered. It is a good idea to make a few unannounced visits at different times to each facility you are considering. Be sure that the potential resident is really a good candidate for assisted living arrangements. For those who dislike the idea of communal living, home care - combined with adult daycare programs - may work better. For gregarious people who are beginning to experience a decline in function, assisted living may be a good choice.

Take a realistic look at finances. Do some cost projections - look ahead three or four years to see if he/she can continue in assisted living. Consider the likely possibility of increasing frailty and associated expenses, and increased monthly charges. Will future income & assets cover those changes? Here are several questions to ask:

- ♥ Is the facility licensed by KDOA? (*NOTE: if the license is "provisional," the facility has not satisfied all requirements.*)
- ♥ Ask to see the most recent compliance (inspection) report and plan of correction from KDOA, if one has been completed. The facility is required to make a copy readily accessible in a public area. (*NOTE: if it is not accessible, or if the staff is hesitant to show it to you upon request, consider this a 'red flag'*).
- ♥ Ask for a copy of the admission agreement, a list of the facility's rates and services, and the papers you will have to sign when you move in. Are there additional charges for services? How much, and for which services? What specific housekeeping services are provided in the standard rate? Be sure you understand what the facility can and cannot do to accommodate increasing frailty. Will staff help make arrangements for needed care the facility cannot provide? Is the added cost affordable?
- ♥ Ask to see all policies and procedures related to the resident services. The facility is required to make them available to you.
- ♥ How many meals are provided per week? What choices are available? Are there extra charges for special dietary needs? Are snacks provided? Will you be charged for meals you do not eat or when you are out of town? You may want to arrange for a meal at the facility in order to assess the quality and quantity of the food. The facility may charge you for the meal. Try to combine the meal visit with participation in a group activity to have an opportunity to interact with other residents.
- ♥ What is the education and employment background of the Operator or Administrator? Does the administrator/operator appear to be competent and in full charge of the facility? It is important that you feel comfortable with the administrator and confident in his or her competency to run the home. This is

# Consumer Checklist, *continued*

the person you should go to if you have any problems with care or services. Insist on taking an extensive tour at different times of the day to be sure there is adequate staff. Observe whether the aides know the residents names, and ask how many residents each staff person is responsible for.

- ♥ Do CNAs and CMAs provide direct care?
- ♥ Is there an LPN or RN on staff to supervise aides and to provide nursing care? How often is a nurse in the facility? If an emergency occurs, how much time does it take for a nurse to get to the facility?
- ♥ How many staff are on duty day, evening and night shifts? What is the ratio of staff to residents? Are staff members readily available to meet scheduled and unscheduled needs of residents? Are staff friendly, helpful, respectful? Carefully observe the attitude about care given by the staff. Do the staff seem caring and concerned, or are they more interested in keeping apartments filled?
- ♥ How does the facility respond if two or more residents need help at the same time?
- ♥ If there was a fire or disaster, what would staff do to assist residents? How often does the facility conduct fire and disaster drills? How long does it take to get everyone to a safe place?
- ♥ Is smoking allowed in the living units? In common areas?
- ♥ Are residents allowed to have pets in their units? Who is responsible for their care?
- ♥ Is there evidence of an organized activities program, such as a posted schedule, or activities in progress? Does the facility provide residents with their preferred activities?
- ♥ Is there an active resident council?
- ♥ Is transportation available on fairly short notice?
- ♥ Are the building and grounds clean, well maintained, and free of obvious safety hazards?
- ♥ Are the dining room and other common areas comfortable and attractive?
- ♥ Is the individual living unit adequate to accommodate your belongings and your lifestyle? Look beyond a fancy interior. Is the space functional for residents with different canes, walkers, wheelchairs and abilities to navigate?
- ♥ Is there adequate parking for residents, staff and visitors?
- ♥ Is there a means to signal for staff assistance 24-hours a day?
- ♥ Do residents seem satisfied with the staff and the facility?

# Who Can Be Admitted?

**KAR 28-39-242** requires: “Each assisted living or residential health care facility shall develop and implement written admission, transfer and discharge policies which protect the rights of residents. In addition, the facility shall not admit or retain residents who have one or more of the following conditions unless the Negotiated Service Agreement includes hospice or family support services which are available 24 hours a day, or similar resources.”

- incontinence, where the resident cannot or will 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
- a clinical condition requiring the use of physical restraints

Every ALF & RHCF is required to complete a screening for each resident on or before admission. This usually consists of a few questions about how independent you are in the Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). There are also questions about memory and recall; ability to make decisions and to communicate; problems or risks you may have, including falls, problems seeing or hearing, or wandering or disruptive behaviors.

*(NOTE: Assisted living was never intended to provide care for frail and sickly seniors. (The typical resident stays only two years.) When residents get that way, as they inevitably do, many facilities will insist they leave. Even if a facility wants to keep your loved one, the state may require he/she be moved to a nursing home. Exceptions are made in terminal cases when hospice is brought in. Read the Negotiated Service Agreement very carefully, and have a lawyer look it over before you sign, to be prepared for an emergency situation.)*

**KAR 28-39-148.** Admission, transfer and discharge rights of residents in

# Who Can Be Admitted? *(continued)*

adult care homes. The adult care home shall permit each resident to remain in the adult care home, and shall not transfer or discharge the resident from the adult care home unless:

- The transfer or discharge is necessary for the resident's welfare and the resident's
- needs cannot be met in the current adult care home;
- The safety of other individuals in the adult care home is endangered;
- The health of other individuals in the adult care home is endangered;
- The resident has failed, after reasonable and appropriate notice, to pay the rates and charges imposed by the adult care home; or
- The adult care home ceases to operate.

Before the home transfers or discharges a resident involuntarily, it must:

- Notify the resident and if known, a family member or legal representative of the resident, of the transfer or discharge and the reasons;
- Document in the resident's clinical record the reason for the transfer or discharge under any of the circumstances specified by regulation.
- The documentation shall be made by: The resident's physician when transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the adult care home; the resident's physician when transfer or discharge is appropriate because the resident's health has improved sufficiently so that resident no longer needs the services provided by the adult care home; or any physician when transfer or discharge is necessary because the health or safety of other individuals in the adult care home is endangered.
- Provide notice of transfer or discharge in writing to the resident or legal representative 30 days before the resident is transferred or discharged involuntarily except in an emergency when the safety of other individuals in the adult care home would be endangered; or the resident's urgent medical needs require an immediate transfer to another health care facility.

# Functional Capacity Screen

The **Functional Capacity Screen (FCS)** is an accurate picture of your need for services. It is used to determine which services, and the level of care needed in your Negotiated Service Agreement. The screening results will directly affect the rate charged for services.

**KAR 28-39-343** requires the FCS to be updated at least once a year, or following a significant change in your physical, mental or psychosocial functioning. If you disagree with any finding in your FCS, ask for another opinion. You might also ask a trusted family physician or a registered nurse to review your FCS to be sure it is accurate, fair and complete. Remember that an improvement in your health or functioning is a significant change which could mean you need fewer services or less care, and could constitute a lower rate.

If the Functional Capacity Screen indicates a need for health care services, a Registered Nurse (RN) or a Licensed Practical Nurse (LPN) must develop a Health Care Service Plan with you. The nurse may be employed by the facility or a home health agency, or you may hire a nurse to complete your Health Care Service Plan. This plan must specify any health care services provided or coordinated by the facility. The facility may help you arrange health care services from an outside resource, such as a licensed home health agency. Your Health Care Service Plan becomes a part of your Negotiated Service Agreement (NSA.) Your Health Care Service Plan must specify how the facility will provide or coordinate the following services:

- **Medication Management\***
- **Personal Care**
- **Supervised nursing care**
- **Skilled nursing care**

*\*(NOTE: Pharmacies affiliated with assisted living facilities will often charge residents more for prescriptions than an independent druggist. When possible, residents should continue to use their own drugstore. Don't be surprised if your facility requires medications to come in a certain format, such as "bubble" dispensers, that may only be available through an affiliated pharmacy.)*



# Services

**KAR 28-39-245. Services.** The range of services may include the following:

- Daily meal service, based on the resident's needs and specified in the negotiated service agreement;
- Health care services based on an assessment by a licensed nurse and as specified in the negotiated service agreement;
- Housekeeping services essential for the health, comfort, and safety of residents as specified in the negotiated service agreement;
- Medical, dental, and social transportation as specified in the negotiated service agreement;
- Planned group and individual activities that meet the needs and interests of the resident as specified in the negotiated service agreement; and
- Other services necessary to support the health and safety of the resident as specified in the negotiated service agreement.

An assisted living or residential health care facility may choose to serve residents who have special needs in a special care section of the facility or the entire facility if the following conditions are met:

- The medical diagnosis, physician's progress notes, or both shall justify admission to the facility or special care section of the facility.
- A written physician's order is required for admission.
- Direct care staff are present in the facility or section at all times.
- The facility informs the resident or resident's legal representative, in writing, of the services and programs available that are specific to the needs of the specific group of residents to be served.
- The facility provides a training program for each staff member before assignment to the facility or unit related to the specific needs of the residents to be served.
- The facility develops and implements policies and procedures for the operation of the special care facility or section.
- The facility provides living, dining, activity, and recreational areas within the special care unit.
- The functional capacity screen indicates that the resident would benefit from the program offered by the facility or special care section.
- The control of exits is the least restrictive possible for the residents in the section.

# Health Care Services

## KAR 28-39-246. Health Care Services

Health care services provided by or coordinated by the facility may include the following:

- Personal care provided by the facility's direct care staff, a home health agency, or gratuitously by friends or family members; or
- Supervised nursing care provided by a licensed nurse employed by the facility, a home health agency, or the resident.
- The negotiated service agreement shall contain a description of the health care services to be provided
- The facility shall be responsible for assuring that a licensed nurse is available on site or by phone to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs. The licensed nurse may be an employee of the facility or a licensed nurse employed by a home health agency.

# Medication Management

## KAR 28-39-247. Medication Management

A pharmacist shall conduct a drug regimen review at least quarterly for all residents who self-administer their medications with assistance and for those residents whose medications are managed by the facility. A drug regimen review shall identify any potential or current drug-related problem, including the following:

- Lack of clinical indication for use of drug;
- Subtherapeutic dose of any drug;
- Failure of the resident to receive an ordered drug;
- Drugs administered in excessive dosage, including duplicate therapy;
- Adverse drug reactions;
- Drug interactions; and
- Lack of adequate monitoring.

# Resident Records

## KAR 28-39-250. Resident Records

The assisted living and residential health care facility shall maintain a record for each resident in accordance with accepted professional standards and practices.

The resident record shall contain at least the following:

- The resident's name;
- The dates of admission and discharge;
- The admission agreement and any amendments;
- The functional capacity screens;
- The negotiated service agreement and any amendments;
- The name, address and telephone number of the physician and dentist to be notified in an emergency;
- The name and address of the legal representative or individual of the resident's choice to be notified in the event of a significant change in condition;
- The physician's orders if the facility is managing the resident's medications and medical treatments;
- The records of drugs, biologicals and treatments administered; and
- The documentation of all incidents, symptoms and other indications of illness or injury including the date, the time of occurrence, the action taken and the results of action.

# Dietary Services

## KAR 28-39-252. Dietary Services

- Menus shall be planned in advance and shall be based on dietary guidelines for Americans.
- Menu plans shall be available to residents on at least a weekly basis.
- A method shall be established to incorporate input by residents in the selection of food to be served and the scheduling of meal service.

# Infection Control

## KAR 28-39-253. Infection Control

The facility shall develop and implement policies and procedures to prevent and control the spread of infections. These policies and procedures shall include the following:

- Universal precautions to prevent the spread of blood-borne pathogens;
- Handwashing;
- Laundry and proper handling of soiled and clean linens;
- Food service sanitation;
- Prohibiting employees with a communicable disease or infected skin lesions from coming in direct contact with residents, residents' food, or resident care equipment until the condition is resolved;
- Orientation of new employees and periodic employee in-service education on control of infections in a health care setting;
- Tuberculosis skin testing of each new resident and employee as soon as residency or employment begins
- Transfer of a resident with an infectious disease to an appropriate health care facility when the assisted living or residential health care facility is unable to provide the isolation precautions required to treat the infectious disease.

# Resident Rights

## KAR. 28-39-147. Resident Rights

Rights of residents in adult care homes licensed as nursing facilities, assisted living facilities, residential health care facilities, home plus, boarding care homes and adult day care facilities. Each resident shall have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the adult care home. Each adult care home shall protect and promote the rights of each resident as set forth in this regulation.

### (a) Exercise of rights.

(1) The adult care home shall afford each resident the right to exercise his or her rights as a resident of the adult care home and as a citizen.

(2) The adult care home shall afford each resident the right to be free from interference, coercion, discrimination, or reprisal from the adult care home in exercising the resident's rights.

(3) If a resident is adjudged incompetent under the laws of the state of Kansas, the legal representative of the resident shall have the power to exercise rights on behalf of the resident.

(4) In the case of a resident who has executed a durable power of attorney for health care decisions, the agent may exercise the rights of the resident to the extent provided by K.S.A. 58-625 through 632.

### (b) Notice of rights and services.

(1) Before admission, the adult care home shall inform each resident or resident's legal representative, both orally and in writing, in a language the resident understands, of the following:

(A) The rights of residents;

(B) the rules governing resident conduct and responsibility; and

(C) the rates and services.

(2) Each resident shall be notified in writing of any changes in charges or services which occur after admission and at least 30 days before the effective date of the change. The changes shall not take place until notice is given.

(c) Inspection of records. The adult care home shall afford each resident or resident's legal representative the right to inspect records pertaining to the resident. The adult care home shall provide photocopies of the resident's record to each resident or resident's legal representative who submits a written request. The adult care home shall provide the photocopies within two working days of the request. The adult care home may charge a fee for the copies which shall not exceed community standards.

(d) The adult care home shall afford the resident the right to be fully informed of the resident's total health status including the resident's medical condition.

## **Resident Rights, *continued***

(e) Free choice. The adult care home shall afford each resident the right to:

- (1) Choose a personal attending physician;
- (2) participate in the development of an individual care plan or negotiated service agreement;
- (3) refuse treatment;
- (4) refuse to participate in experimental research; and
- (5) choose the pharmacy where prescribed medications are purchased. When the adult care home uses a unit dose or similar medication distribution system, the resident shall have the right to choose among pharmacies that offer or are willing to offer the same or a compatible system.

(f) Management of financial affairs. The adult care home shall afford each resident the right to manage personal financial affairs and the adult care home shall not require any resident to deposit personal funds with the adult care home.

(g) Notification of changes.

- (1) An adult care home shall immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or designated family member when there is:
  - (A) An accident involving the resident which results in injury and has the potential for requiring a physician's intervention;
  - (B) a significant change in the resident's physical, mental, or psychosocial status;
  - (C) a need to alter treatment significantly; or
  - (D) a decision to transfer or discharge the resident from the adult care home.
- (2) The adult care home shall promptly notify the resident, the resident's legal representative, or designated family member when there is a change in room or roommate assignment.

(h) Privacy and confidentiality. Each resident shall have the right to personal privacy and confidentiality of personal and clinical records.

- (1) The adult care home shall provide privacy during medical and nursing treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.
- (2) The adult care home shall ensure that personal and clinical records of the resident are maintained in a confidential manner.
- (3) The adult care home shall obtain a release signed by the resident or the resident's legal representative before the release of records to anyone outside the adult care home, except in the case of transfer to another health care institution or as required by law.

(i) Grievances. The adult care home shall afford each resident the right to:

- (1) Voice grievances with respect to treatment or care that was or was not furnished;

## **Resident Rights, *continued***

(2) be free from discrimination or reprisal for voicing the grievances; and  
(3) receive prompt efforts by the adult care home to resolve grievances the resident may have, including any grievance with respect to the behavior of other residents.

(j) Work.

(1) The adult care home shall afford each resident the right to refuse to perform services for the adult care home.

(2) A resident may perform services for the adult care home, if the resident wishes, when:

(A) The adult care home has documented the need or desire for work in the plan of care or negotiated service agreement;

(B) the plan or agreement specifies the nature of the services performed and whether the services are voluntary or paid; and

(C) the resident or legal representative of the resident has signed a written agreement assenting to the work arrangement described in the plan of care or negotiated service agreement.

(k) Mail. The adult care home shall afford the resident the right to privacy in written communications, including the right to:

(1) Send and receive unopened mail promptly;

(2) have access to stationery, postage and writing implements at the resident's own expense;

(3) have outgoing mail mailed promptly.

(l) Access and visitation rights.

(1) The adult care home shall provide immediate access to any resident by:

(A) Any representative of the secretary of the Kansas Department on Aging;

(B) the resident's individual physician;

(C) the state long-term care ombudsman;

(D) any representative of the secretary of the Kansas department of social and rehabilitation services;

(E) immediate family or other relatives of the resident; and

(F) others who are visiting with the consent of the resident subject to reasonable restrictions.

(2) The adult care home shall afford each resident the right to deny or withdraw consent for visitation by any person at anytime.

(m) Telephone. The adult care home shall afford each resident the right to reasonable access to a telephone in a place where calls can be made without being overheard.

## **Resident Rights, *continued***

(n) Personal property. The adult care home shall afford each resident the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless doing so would infringe upon the rights or health and safety of other residents.

(o) Married couples. The adult care home shall afford each resident the right to share a room with the resident's spouse when married residents live in the same adult care home and both spouses consent.

(p) Self-administration of drugs. The adult care home shall afford each resident the right to self-administer drugs in a nursing facility unless the resident's attending physician and the interdisciplinary team has determined that this practice is unsafe. In assisted living, residential health care, home plus and adult day care facilities, a resident may self-administer drugs unless a registered professional nurse or a physician has determined that this practice is unsafe.

**NOTE:** Some facilities have attempted to discharge residents who complain or dispute facility policies under the guise of a regulatory reason, usually claiming an inability to meet the resident's needs or asserting the resident is a threat to the health and safety of self or others. Although it is illegal for facilities to retaliate against residents for voicing grievances, some facilities respond to complaints by suggesting residents move "somewhere you'll be happier." Remember, it is the facility's duty to provide the services described in your Negotiated Service Agreement.

If a facility attempts to transfer or discharge you against your will, you should notify the State Long-Term Care Ombudsman (877-662-8362) and the KDOA Complaint Program (800-842-0078.) Both are toll-free numbers. You may also contact your attorney or the toll-free Elder Law Hotline (888-353-5337) for help.

*(Note: The guiding philosophy behind assisted living is to treat seniors with respect and help them maintain their dignity. Some facilities excel at this, while others fall short. Sometimes the breach has more to do with civility than health issues. If at all possible, avoid facilities that do not honor residents rights.)*

# Resident Rights, *continued*

## **KSA 39-1401: Abuse, neglect, exploitation statutes state:**

(f) "**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.

(g) "**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 well-being and to avoid physical or mental harm or illness.

(i) "**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.

(k) "**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.

## **KSA 39-1404 states:**

(a) The department on aging or the department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:

# Resident Rights, *continued*

- (1) When a criminal act has occurred or has appeared to have occurred, immediately notify, in writing, the appropriate law enforcement agency;
- (2) make a personal visit with the involved resident:
  - (A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved resident;
  - (B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger; or
  - (C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.
- (3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved resident and what action and services, if any, are required.

**All adult care homes are required to report any knowledge it has of actions by a court of law against any employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authority.**

*The following text is taken directly from State regulation KAR 28-39-150:*

**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 carehome 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;
- (7) take appropriate corrective action if the alleged violation is verified.

# Compliance Inspection Review

*According to **Kansas Statutes Annotated 39-935**, "Inspections shall be made and reported in writing by the authorized agents and representatives of the licensing agency and state fire marshal, and of the county, city-county and multi-county health departments as often and in the manner and form prescribed by the rules and regulations promulgated under the provisions of this act. Access shall be given to the premises of any adult care home at any time upon presenting adequate identification to carry out the requirements of this section and the provisions and purposes of this act, and failure to provide such access shall constitute grounds for denial or revocation of license. A copy of any inspection reports required by this section shall be furnished to the applicant, except that a copy of the preliminary inspection report signed jointly by a representative of the adult care home and the inspector shall be left with the applicant when an inspection under this section is completed. This preliminary inspection report shall constitute the final record of deficiencies assessed against the adult care home during the inspection, all deficiencies shall be specifically listed and no additional deficiencies based upon the data developed at that time shall be assessed at a later time. An exit interview shall be conducted in conjunction with the joint signing of the preliminary inspection report. The authorized agents and representatives of the licensing agency shall conduct at least one unannounced inspection of each adult care home within 15 months of any previous inspection for the purpose of determining whether the adult care home is complying with applicable statutes and rules and regulations relating to the health and safety of the residents of the adult care home. The statewide average interval between inspections shall not exceed 12 months."*

The Compliance Inspection Review consists of:

1. Entrance/tour checklist completion
2. Acquiring the Resident Roster
3. Personnel Record Review of at least five personnel (at least one of whom is a certified nurse aide, a certified medication aide, and a licensed nurse)
4. Acquiring list of Personnel Hired Since Last Compliance Review
5. Sampled Resident Review (for a minimum of three residents).

The Entrance/Tour Checklist includes such topics as:

- Criteria for residency
- Resident community governance system
- The Detailed Written Emergency Plan
- Assurance of Licensed Nurse Availability
- Functional Capacity Screen administrator
- Negotiated Service Agreement developer
- Health Services Plan developer
- Medication storage and administration
- Schedule of Emergency Drills
- Other regulated items.



# Addressing & Preventing Problems

Problems should be resolved at the least formal level possible, unless they involve suspected abuse, neglect or exploitation, which should *always* be reported to KDOA (800-842-0078), or local law enforcement when the KDOA office is closed.

## PREVENTING PROBLEMS

- Make sure you have carefully evaluated the home and its services before you move in.
- Be aware of your rights and the home's responsibilities.
- Be actively involved in developing your Negotiated Service Agreement before you move in. Understand what it says. Don't sign it unless you agree with all of its provisions.
- Get to know the staff. Work to establish a relationship that is friendly and professional.
- Express appreciation when things go well.
- Get to know the other residents and their family members.
- Participate in your resident/family council. ALFs and RHCFs are required to help develop councils to allow residents to express ideas and concerns. You may find that your concern or problem is shared by others, and you may be able to help each other address shared concerns.

## COMMUNICATING WITHIN THE HOME

- Talk to the staff person whose job is related to the area of your concern.
- Use specific examples, and try to avoid either understating or exaggerating the problem.
- If that is not effective, talk to that person's supervisor, or to the administrator or operator of the home. Contact the licensed nurse responsible for your Health Care Service Plan.
- Put your concern in writing. Provide copies of any documents related to your concern, but keep the originals. The administrator or operator is required to provide a written response within 30 days of receiving a written complaint.
- Review your Negotiated Service Agreement. The facility is required to carry out all the provisions of the agreement. If you are dissatisfied with some provisions, you may ask to renegotiate the written agreement.

## DOCUMENTING PROBLEMS

- If you are having problems, maintain a journal of daily events and conditions. Be specific about the date, the time, what occurred, and the names of any staff to whom you spoke.
- If you need to file a complaint, good written records can provide outside investigators an accurate description of events.

# Sources of Help Outside the Home

State regulations require the facility to help you contact outside resources to arrange services, to monitor the services received, and to "act as an advocate" if the services are not satisfactory.

- An experienced nurse or social worker who is a neutral third party can assess your needs and capabilities if you disagree with the findings of your Functional Capacity Screen.
- Your physician or other primary health care provider can give information on your health history and functional capabilities, and can evaluate your Functional Capacity Screen for accuracy.
- If Medicaid is paying for your services, you can ask your Case Manager from your Area Agency on Aging to intervene with the home. (See page 27 for the listing of toll-free numbers.)
- The State Long-Term Care Ombudsman Program is authorized to investigate and resolve complaints on behalf of any adult care home resident. **Toll-free: 877-662-8362**
- The Adult Care Complaint Program at KDOA is authorized to investigate complaints of abuse, neglect or regulatory violations in licensed adult care homes. **Toll-free: 800-842-0078.**
- An attorney can advise you on possible legal action if an injury, or a breach of contract, or a violation of the law has occurred.
- Your state representative or state senator may be able to intervene with a state agency or might wish to take legislative action in response to your concerns.
- Kansas Advocates for Better Care provides guidance about help with specific problems. **Toll-free 800-525-1782.**

# Who's Who on Staff?

**Administrator:** An ALF or RHCF with more than 60 residents must be managed by a licensed adult care home administrator who must have a college degree, complete a 12-week internship, pass an extensive examination, and meet continuing education requirements. An ALF or RHCF that is part of a nursing facility may be managed by the nursing facility's administrator.

**Operator:** HPs, and ALFs or RHCFs with fewer than 61 residents may be managed by an operator who has met these requirements: be 21 years old, have a high school diploma, complete a short training program and pass a short examination. The administrator or operator has overall responsibility for the facility, including supervising staff, meeting licensing requirements and seeing that residents receive appropriate care and services.

**Licensed Nurse:** If a resident needs personal care, supervised nursing care, or skilled nursing care, a licensed nurse must develop, implement and supervise the health care service plan.

**Registered Nurse (RN):** may provide all levels of nursing care, including skilled nursing (giving medicines or treatments prescribed by a doctor or dentist, and other nursing functions that require substantial nursing judgment and skill). An RN may also supervise and train LPNs, CNAs, CMAs and HHAs.

**Licensed Practical Nurse (LPN):** may provide personal care and supervised nursing care, administer medications, give injections, take doctors orders, and supervise CNAs, CMAs and HHAs.

**Certified Nurse Aide (CNA):** is allowed to provide direct personal care under the supervision of a licensed nurse, but cannot give medications. CNAs must complete a 90-hour training program (40 hours before providing care to residents) and pass an examination.

**Certified Medication Aide (CMA):** must complete basic CNA training *plus* 60 additional hours of coursework about medications, and must pass an examination. CMAs can provide direct personal care and can give medications, but they cannot give injections or administer IVs.

**Home Health Aide (HHA):** is employed by home health agencies to provide personal care services. HHAs must complete 90 hours of training and pass an examination.

*(KSA 39-970) Background checks are done on all employees to help assure those hired have not been convicted of a felony in the past 5 years.*

*(NOTE: Most assisted living facilities were never designed to accommodate frail seniors or people with major health problems. Even the best and most expensive complexes often man their facilities with many unskilled workers.)*

# Toll-free Numbers

## Area Agencies on Aging:

Central Plains (Wichita)	316-383-7298 or 800-367-7298
East Central (Ottawa)	785-242-7200 or 800-663-5621
Jayhawk (Topeka)	785-235-1366 or 800-798-1366
Johnson County (Olathe)	913-894-8811 or 888-214-4404
North Central Flint Hills (Manhattan)	785-776-9294 or 800-432-2703
Northeast (Hiawatha)	785-842-7152 or 800-883-2549
Northwest (Hays)	785-628-8204 or 800-432-7422
South Central (Arkansas City)	620-442-0268 or 800-362-0264
Southeast (Chanute)	620-431-2980 or 800-794-2440
Southwest (Dodge City)	620-225-8230
Wyandotte/Leavenworth (KCK)	913-328-4531 or 888-661-1444

## OTHER HELPFUL RESOURCES:

Alzheimer's Helpline	800-432-3535
Kansas Attorney General	800-432-2310
Kansas Department on Aging (KDOA) (to report Abuse, Neglect or Exploitation)	800-842-0078
Kansas Guardianship Program	800-672-0086
Home Health Complaints	800-842-0078
Hospice, Inc.	800-767-4965
Kansas Insurance Department	800-432-2484
Medicare	800-432-3531
Medicaid Fraud Hotline	800-876-3160
State Long-Term Care Ombudsman	877-662-8362



## About Kansas Advocates for Better Care

Founded in 1975 as *Kansans for Improvement of Nursing Homes*, the mission continues to be “promoting 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 problem, or to order consumer reports, call toll-free:

800-525-1782

913 Tennessee, Suite 2    Lawrence Kansas 66044  
www.kabc.org            info@kabc.org