



Kansas Advocates
for
Better Care

Legal Rights of Nursing Home Residents

and Residents of Assisted Living and other licensed care homes



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Introduction

When entering an adult care home, you retain all of the constitutional and civil rights that any other citizen has. Adult care homes include: nursing homes, assisted living, residential health care, home plus, boarding care homes and adult day care. Adult care home residents are protected even further by the state laws and regulations created specifically for them. This booklet provides the state regulations pertaining to your rights while living in an adult care home, and federal guidelines to better understand the intent of state regulations (in the nursing home setting.)

Legal Rights of Adult Care Home Residents

Each resident of an adult care home has the 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) for nursing homes**, the home must protect and promote these rights. (Expanded explanations of federal guidelines are indicated by **bold print** in this document). Regulations require that licensed care homes inform residents orally and in writing about their rights under state law. The home will likely ask you to sign a paper stating that you have been informed of your rights. The home must also inform you about their facility's policies - these policies cannot be contrary to any of your legal rights as a resident.

For additional information or questions about your rights, contact Kansas Advocates for Better Care toll-free at 800-525-1782, or one of the following agencies:

- **Kansas Abuse Hotline: 800-842-0078**
- **State Long-Term Care Ombudsman:**
877-662-8362
- **The Kansas Department on Aging:**
800-432-3535
- **Kansas Elder Law Hotline: 888-353-5337**



Resident 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.

Extended explanation - Examples of facility practices that may limit autonomy or choice in exercising rights include:

- **reducing the group activity time of a resident trying to organize a residents' group;**
- **requiring residents to seek prior approval to distribute information about the facility;**
- **discouraging a resident from hanging a religious ornament above his or her bed;**
- **singling out residents for prejudicial treatment such as isolating residents in activities;**
- **or purposefully assigning inexperienced aides to a resident with heavy care needs because the resident and/or his/her representative exercised his/her rights.**

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 in a language that the resident understands, 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.

Extended explanation -

- **The facility may not require a third person to accept personal responsibility for paying the facility bill out of his or her own funds.**
- **Facilities may not charge for any service that is required to be provided as part of the Medicaid daily rate.**
- **Facilities may not accept additional payment from residents or their families as a prerequisite to admission or to continued stay in the facility.**

State Interpretation -

- **A thirty day written notice must be provided when the facility decides to change the charges for levels of care. A thirty day notice is not required each time facility staff determine that the resident is in need of a higher level of care or a lower level of care based on the criteria provided to the resident and/or their legal representative.**



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.

Extended explanation - The facility may not impose a charge against the personal funds of a resident for any item or services for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts).

Services included in Medicaid or Medicare payment:

- nursing services;
- dietary services;
- an activities program;
- room/bed maintenance services;

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RIGHTS CONCERNING FINANCES & PROPERTY

- routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleaning agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry.

Items and services that may be charged to residents' funds:

- telephone;
- television/radio for personal use;
- personal comfort items, including smoking materials, notions, and novelties and confections;
- cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare;
- personal clothing;
- personal reading matter;
- gifts purchased on behalf of a resident;
- flowers and plants;
- social events and entertainment offered outside the scope of the activities program;
- non-covered special care services such as privately hired nurses or aides;
- private rooms, except when therapeutically required;
- specially prepared or alternative food requested instead of food generally prepared by the facility.

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 to the home (excluding holidays and weekends). *An oral request is sufficient.*

RIGHT TO MAKE CARE DECISIONS

The Resident has a right of free choice to:

- Choose an attending physician, unless adjudged incompetent or otherwise found to be incapacitated; participate in developing an individual care plan or negotiated service agreement
- Refuse treatment
- Refuse to participate in experimental research
- 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.

RIGHT TO MAKE CARE DECISIONS

(continued)

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.

Extended explanation - 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.

BE FREE FROM ABUSE, NEGLECT & EXPLOITATION

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

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.

BE FREE FROM ABUSE, NEGLECT & EXPLOITATION (*continued*)

(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.

State Interpretation:

- Adult care home administrators and other health care professionals who have reasonable cause to believe that a resident is being or had been abused, neglected or exploited shall report immediately the information the state.
- The adult care home administrator is responsible for assuring that a thorough investigation has been conducted and appropriate action has been taken to protect residents.
- It is incumbent upon facilities to develop personnel policies, procedures and staff training which ensure the prevention of abuse, neglect and exploitation and when ANE occurs, that prompt action is taken to prevent further ANE.

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:

(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.

BE FREE FROM ABUSE, NEGLECT & EXPLOITATION (*continued*)

(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 regulations 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.

RIGHT TO PRIVACY, CONFIDENTIALITY AND DIGNITY

The Resident has the right to personal privacy, and confidentiality of his/her personal and clinical records.

Extended explanation - “Right to privacy” means that the resident has the right to privacy with whomever the resident wishes to be private, and that this privacy should include full visual, and to the extent desired, for visits or other activities, auditory privacy. Private space may be created flexibly and need not be dedicated solely for visitation purposes.

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 the right to reasonable accommodation of individual needs and preferences, except where the health or safety of the Resident or other Residents would be endangered.

Extended explanation - A resident may refuse food usually prepared and food substitutions of similar nutritive value because of personal, religious, cultural or ethnic preference.

The facility may charge the resident's account, with prior notification. The facility may not charge the resident's account for specially prepared foods that are required by the physician's order of a therapeutic diet.

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.

Extended explanation - The facility must make the results available for examination in a place readily accessible to residents and must post a notice of their availability. "Place readily accessible to residents" is a place (such as a lobby or other area frequented by most residents) where individuals wishing to examine survey results do not have to ask to see them.

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 the State. The Resident retains the right to deny or withdraw consent at any time.

Extended explanation - The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's 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 fear of 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.

Extended explanation - “prompt efforts...to resolve” include facility acknowledgement of complaint/grievances and actively working toward resolution of that complaint/grievance.

The Resident has a right to file a complaint with the state regulatory entity concerning Resident abuse, neglect and misappropriation of Resident property in the home. Residents may file a complaint by calling 1-800-842-0078.

The Resident has the right to contact the Long-Term Care Ombudsman toll-free at 1-877-662-8362 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.

Extended explanation - The facility may not transfer or discharge the resident unless:

- (1) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility, and the resident's physician must provide the documentation;**
- (2) the transfer or discharge is appropriate because the resident's health has improved and they no longer need the services of the facility, and the resident's physician must provide the documentation;**
- (3) the safety of individuals in the facility is endangered, as documented in the Resident's clinical record;**
- (4) the health of individuals in the facility would otherwise be endangered, as documented by any physician;**
- (5) the resident has failed to pay, as documented in the Resident's clinical record;**
- (6) the facility ceases to operate.**

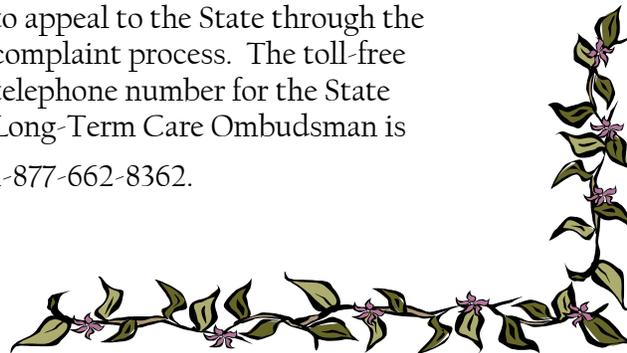
RIGHTS WHEN TRANSFERRED OR DISCHARGED

(continued)

The law requires that the facility notify the resident and, if known, the family member, surrogate, or representative of the transfer, and record the reasons in the clinical record. Generally, this notice must be provided at least 30 days prior to the transfer.

If the facility appears to be sending residents to hospitals at the time (or shortly before) their payment source changes from private pay or Medicare to Medicaid, call the hospitals and ask their discharge planners if they have detected any pattern of dumping. Also, ask the discharge planners if the facility readmits Medicaid recipients who are ready to return to the facility.

The Resident has the right to an appeal process. The Resident has the right to appeal to the State through the complaint process. The toll-free telephone number for the State Long-Term Care Ombudsman is 1-877-662-8362.



About Kansas Advocates for Better Care

Founded in 1975 as *Kansans for Improvement of Nursing Homes*, KABC is a statewide, 501 (c) (3) non-profit organization, dedicated to the mission of advocating for quality long-term care. KABC maintains consumer information about every licensed adult care home in Kansas.

Please visit our website:

www.kabc.org

or call toll-free:

800-525-1782

*Information contained within this document was taken from the Kansas Nursing Facility Regulations, provided by the Kansas Department on Aging - dated February 1997, and the *Surveyor's Guide to OBRA Regulations, Interpretive Guidelines and the LTC Survey Process (condensed version, State Operations Manual July 1999), and assumed to be accurate.*

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