



**Kansas Advocates
for
Better Care**

Preventing Financial Harm, Abuse, Neglect, & Exploitation of Older Adults

Funded through a grant from
Kansas Department for Aging and Disability Services

Preventing Elder Abuse Neglect & Exploitation
2013

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Effective July 1, 2012

**Kansas Department on Aging became
Kansas Department of Aging and Disability Services
&
Kansas Department of Social and Rehabilitation Services (SRS) became
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**

****See Resources Page for Contact Information**

Abuse, Neglect & Exploitation of Older Adults

Basic Facts

- The fastest growing segment of the U.S. population is adults 85 years and over.
- As the older adult population increases, so too will the targeting of seniors for financial abuse and exploitation along with other forms of abuse and neglect. Women are abused at higher rates than are men.
- Providing for better prevention and intervention requires knowledge and awareness, and being able to identify and report when financial abuse & exploitation, physical abuse or neglect is suspected. Effective prevention and intervention requires coordinated action on the part of law enforcement, banking, social services and citizens.
- Often only the most extreme cases of abuse, neglect or exploitation come to light.
- Statistics on exploitation and abuse of older adults are not very accurate. There is no central point of data collection in KS or the U.S. Without accurate data it is impossible to determine the level of risk to older adults or to provide adequate response through prevention and intervention.
- 90% of perpetrators are known by the older adult harmed and is often a family member, often has a substance abuse problem, a history of prior abuse (financial or physical) and may be having financial “hard times”. 60% are male, ages 30-59.
- “It is in the best interest of banks across the country to take an active role in training their employees to spot and report elder financial abuse, it sends a positive message to seniors in the community that *our* bank is safe and is looking out for *your* best interests.” *Dr. Linda Eagle, Edcomm Group*

Solutions

- ◆ Choose wisely-it matters who you authorize to make your healthcare & financial decisions.
- ◆ Arm yourself with knowledge and information about how to better safeguard your financial resources and your physical well-being, then put it into practice.
- ◆ Do background checks on EVERY person who provides care to you in your home.
- ◆ If there is no one in your family that you fully trust to act on your stated wishes for healthcare and stewarding of your resources, then choose someone you do trust - a close friend, a banking trust officer, a lawyer.
- ◆ If your home is not a place where you can age successfully, think about what might make it possible, such as retro fitting your current home or pro-actively making a choice about when & where to move on your own terms, not when an illness or injury could result in others making choices for you.
- ◆ Speak up for yourself and speak out if you suspect a friend or loved one is being taken advantage of or harmed.
- ◆ Encourage a coordinated community approach to prevent and intervene on behalf of older adults who are harmed. A coordinated community approach includes law enforcement, social services, banking, and citizens concerned about the well-being of older adults.

FINANCIAL EXPLOITATION - Taking Advantage

FINANCIAL EXPLOITATION means taking an older adult'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 older adult 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:

- Sudden changes in bank accounts or banking practices
- Adding signatories to an account, or newly formed joint accounts between an older adult and another individual.
- Decline in personal grooming.
- New "best friends".
- Older adult gives repeated "gifts" or "loans" of money to family, friends or paid caregiver, especially if those gifts are "uncharacteristic" of prior giving patterns.
- Older adult gives personal possessions to family, friends or paid caregiver.
- Declining cognitive skills or confusion.
- Family or paid caregiver asks older adult for money or personal items.
- Family or paid caregiver takes individual's money, debit or credit cards or personal items without asking.
- Family or paid caregiver bargains with/bullies older adult - "I'll do this for you if you'll give me that TV, or pen, or \$5."
- Older adult appears nervous or offers far-fetched explanations for why s/he needs money. If accompanied by another person to make a withdrawal, does s/he appear bullied by him?
- Missing needed medications, complaints of stolen property.
- Older adults who appear puzzled by increases in incurred debt or credit card expenses.
- Caregiving staff uses individual's cell phone or land-line to make long distance calls.
- Person makes payments to "fake" charities or telemarketers, over the phone or by mail.
- Telephone scams by persons outside the home to the individual: "This is your grandson. I'm in Canada and my car has broken down. I need you to send me money so I can get home."
- Collections notices in the mail - may be an indication of identity theft.
- Older adult being isolated by person taking advantage of her/him.
- May be accompanied by physical abuse and/or neglect.

FIDUCIARY ABUSE - Stealing

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, utilities, or care by a family member or power of attorney in charge of the individual's money.
- "Borrowing" or using individual's funds for payment of bills or purchase of things for someone besides the older adult.
- Not purchasing items an older adult needs or wants with her/his funds that are set aside for her/his wants or needs.
- Possible forged signatures on financial documents that transfer assets or open new lines of credit.

FRAUD

Four Stages -Serial Predators (repeat offenders) are motivated by the "win." Beware of "free lunches" or "free dinners."

1. Front ~ Targeting of an older adult
2. Drive ~ Get them excited
3. Close ~ Make the "ask"
4. Load ~ Surprise!

Preventing Fraud

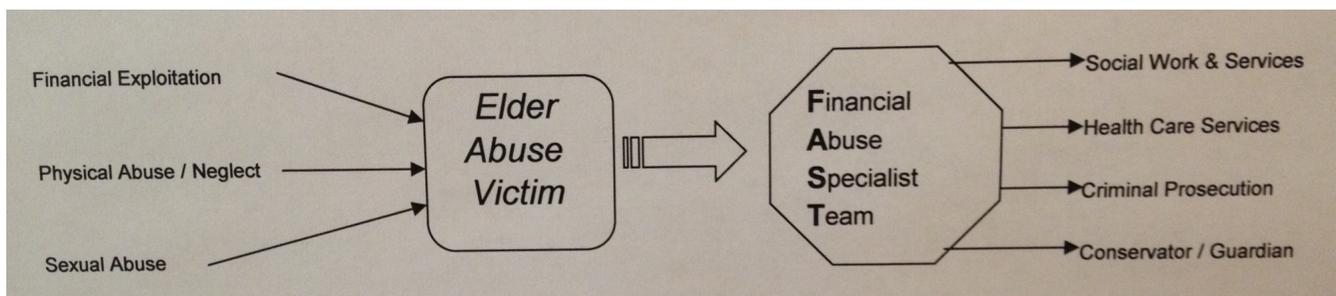
- ◆ Awareness of buyer/investor - don't get taken
- ◆ Don't believe - It won't happen to me. I'm not stupid enough to fall for a scam.
- ◆ Understand risk, we are all vulnerable
- ◆ Understand persuasion, we are all susceptible
- ◆ Understand prevention - Reduce exposure to sales pitches, Learn to identify persuasion, Check registration status of the seller or broker

Warning Signs

Phone rings off the hook
Cheap, new stuff around the house
Payments to unfamiliar people or companies
Secretive behavior
Financial troubles
Mood swings

Tactics

Fear/Bully
Anger
Greed - too good to be true
"I'm your friend"



WHY DOES FINANCIAL ABUSE HAPPEN & WHAT YOU SHOULD DO WHEN YOU SUSPECT

WHY DOES IT HAPPEN?

Income & wealth of older adults combined with declining health make them more vulnerable.

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 due to failing health

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

Paid Care Staff & Caregivers

Believe they have "earned" it by taking care of individual

See it as "payment" for taking care of difficult individual

Have a spouse who becomes unemployed, a child who falls ill

Gets into debt and are struggling financially

Drug addiction or abuse

WHY DON'T SENIORS REPORT ABUSE?

1) Don't recognize the abuse; 2) Feel at-fault, ashamed, embarrassed; 3) Fear retribution; 4) Dependent on abuser; 5) Fear of or threatened with being placed in a nursing facility; 6) Unable to ask for help.

WHAT YOU SHOULD DO WHEN YOU SUSPECT?

REPORT AS SOON AS YOU HAVE CONCERN

For Older Adults living at home in the community, report to all of the following:

Adult Protective Services: 1-800-922-5330 Local law enforcement: 911 (if available) or see your phone book

The Kansas Attorney General's Abuse & Neglect Unit: 1 (888) 432-2310 (M-F 8-4)

For Older Adults living within a Facility, report to all of the following:

Facility Director of Nursing, & Administrator/Operator

Kansas Department for Aging & Disability Services: 1(800) 842-0078 (M-F 8-5)

Local law enforcement - the Police or County Sheriff (if not able to help then, AG's office)

Kansas Attorney General's Abuse & Neglect Unit: 1 (888) 432-2310 (M-F 8-4)

The Kansas Long-Term Care Ombudsman: 1(877) 662-8362 (M-F 8-4:30) Advocate for residents in facilities

WHAT TO REPORT:

Name of the victim, age if known Address of victim - home, facility or hospital

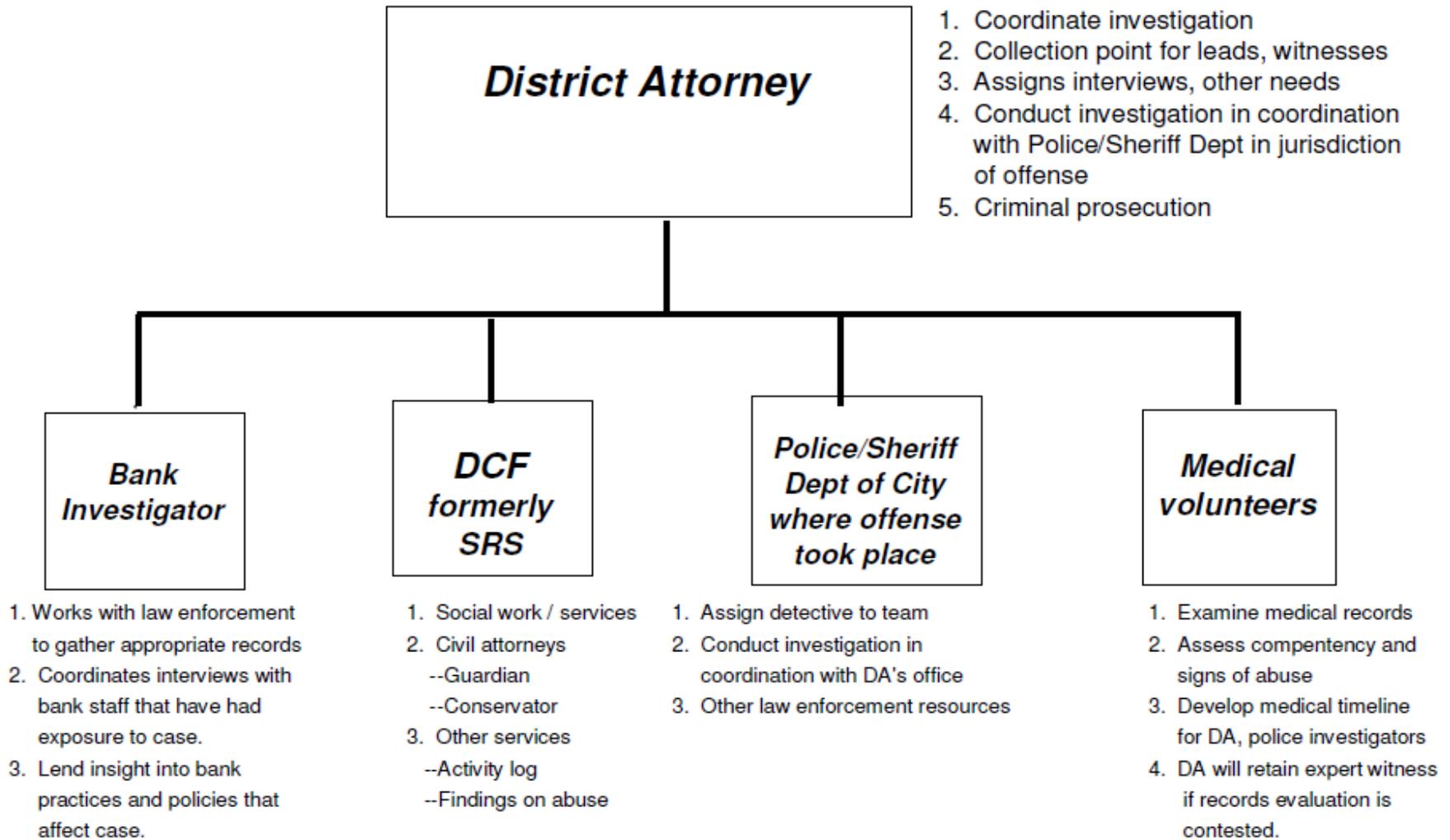
Name of any witnesses Date, time and location of incident(s)

Description of what happened Name of who did it Name(s) of any witnesses and how to contact

Paid caregivers cannot be fired or punished for reporting your concerns about abuse, neglect or exploitation of an older adult for whom you care in their home or in a facility. **You can be reprimanded if you do not report** suspected abuse, neglect or exploitation of an older adult for whom you are paid to provide care/assistance.

Coordinated Intervention Team Approach

Shared courtesy of District Attorney, Johnson Co. KS



ABUSE - PHYSICAL, PSYCHOLOGICAL, & SEXUAL

Doing Something Wrong to an Older Adult

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 individual without her/his consent, or when the other person should know that the individual 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 individual and is without medical order or is for convenience, in conflict with a doctor's order
- Threatening or bullying a individual causing her/him fear or emotional or mental distress
- Not providing a individual 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, black eyes, cuts, welts, rope marks, skin tears, swelling, limbs out of place, broken bones, absence of hair and/or hemorrhaging below the scalp
- Over-medicating to sedate an individual; chemical restraint of person
- Individual says s/he has been abused or caregiver refusing to allow visitors to see elder alone

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

- Sudden changes in behavior, fear, withdrawal, suspicion, unwillingness to talk, new depression, hesitant to talk openly, confusion
- Loss of interest in things by individual, or change in activity level
- Caregiver cursing, making fun of, ignoring, threatening, belittling or controlling individual
- Older adult reports verbal or emotional abuse

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 person's behavior, fear, suspicion, unwillingness to talk, depression
- Loss of interest in things by person, or change in level of activity
- Older adult responds/seems in a fearful manner to a particular person
- Unexplained shame, fear or embarrassment
- Person says s/he has been abused
- Reports of abuse by another/roommate, even one with confusion or dementia

NEGLECT - Not doing something you should

NEGLECT is a caregiver 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 individual. Older individuals sometimes “self-neglect.”

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 that 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 and 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 results in reduced mobility
- Ignoring cries/requests for help
- Not using proper hand-washing or not using gloves, and that leads to infection
- Not providing assistance to or encouraging a person to participate in activities that interest her/him
- Older individual develops anxiety or depression, or withdraws
- Person acts suspicious of others or fearful of caregiver/specific person, 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
- Seeing/hearing, sensory impairment
- Metabolic disturbance or endocrinopathy (hormonal deficit or excess)
- Emotional disturbances, especially depression and anxiety
- Nutritional 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?

Caregivers

- Have too many responsibilities to adequately provide care needed
- Paid or unpaid caregivers who may be unfamiliar with individual's needs
- Lack of support from family members for your caregiver role
- Too little caregiving assistance to meet older adult needs
- Trying to "make-do" rather than securing needed resources for adequate care
- Poor coping skills for difficult behaviors of persons with mental illness or dementia
- Lack of training/knowledge to deal with person's special physical or mental health needs
- Inadequate training to deal with the physically aggressive behaviors of a person, or a person who refuses care, or who has behaviors resulting from head injury or specific illness
- Providing task assistance but not wanting to be a caregiver for an older adult
- Viewing older adults 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/intense conflict
- Lack of supervision/isolation - caregivers are more likely to commit abusive acts if they believe their work is not being paid attention to, or that their actions won't be reported
- Care provider who abuses drugs or alcohol
- Under significant stress in personal life
- Work too much, doesn't take rest breaks or meal breaks, takes things "personally"

SITUATIONS THAT OUGHT TO BE REPORTED

Older adult is in a harmful situation or is in danger of being harmed

Person is unable to protect her/himself

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

The caregiver is not providing the needed services to avoid physical or mental harm or illness or to ensure the safety and well-being of an older adult

WHAT YOU SHOULD DO WHEN YOU SUSPECT

- ◆ REPORT IT IMMEDIATELY, AS SOON AS YOU SUSPECT
SEE PAGE 6 FOR REPORTING INFORMATION

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

Criminal act has occurred or appears to have occurred, immediately notify law enforcement (facilities must report verbally and also in writing).

WHAT YOU SHOULD DO WHEN YOU SUSPECT PENALTY FOR NOT REPORTING

WHAT TO REPORT:

Name of the older adult victim, age if known	Location of individual and of incident
Witnesses, name & contact information	Date and time of incident(s)
Description of what happened	Name of person who did it

You cannot be punished or be civilly liable for reporting, or if employed to provide care you cannot be fired from your job for reporting your honest concerns about abuse, neglect or exploitation of an older adult. Older Adults will suffer and you may suffer penalties/be reprimanded, if you do not report suspected abuse, neglect or exploitation.

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 \$1,000.

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. It is important to call in every instance/ incident when you **suspect** an adult is being neglected, exploited or abused. This applies to mandatory and voluntary reporters. If a voluntary reporter (such as family member, paid care provider, friend or 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 KDADS, and to the Attorney General, 1 (888) 432-2310.

Mandatory Reporters of Adult Abuse 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, an 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/children & families.

When ANE is Alleged in an Adult Care Facility they must investigate.

A thorough facility investigation and report to KDADS should include: verified witness statements, facility policies and procedures, resident care records, employee counseling and disciplinary records, pictures of individual 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/licensing board.

WHAT HAPPENS WHEN YOU REPORT TO KANSAS DEPARTMENT for AGING & DISABILITY SERVICES?

“Once a report of ANE has been received by the Kansas Department for Aging & Disability Services (KDADS) 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. KDADS 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 KDADS Regional Manager within five (5) working days of the intake. KDADS 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 KDADS... 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 suspectdcrime@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, KDADS may attempt to have an annotation of ANE placed on the alleged perpetrator's name 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.*

WHAT HAPPENS WHEN YOU REPORT TO ADULT PROTECTIVE SERVICES?

Reports of suspected abuse, neglect or exploitation can be phoned, faxed, emailed or submitted on the website to Adult Protective Services (APS) housed in the Kansas Department for Children and Families: <http://www.srs.ksgov/agency/cfs/Pages/KIPS/KIPSWebintake.aspx>

If there is immediate danger, call local law enforcement, who can intervene in a timely manner. APS will need names, addresses, phone numbers, witnesses, relationships of persons involved. The more information you can give them, the more effective their investigation may be. APS will contact the adult for a personal visit within 1-5 days depending on the risk of imminent danger to the individual. APS must make a finding within 30 working days, with a possible extension of 60 working days. APS findings: 1) Unsubstantiated - no clear & convincing evidence to meet the legal definition of abuse, neglect or exploitation (ANE). 2) Substantiated - facts and circumstances provide clear & convincing evidence of ANE.

APS will interview the person alleged to be the wrong-doer, if that person is known. APS will interview other persons when appropriate and who have contact with the older adult and who may have knowledge of the situation, including service providers, banker, relatives, neighbors, etc. APS will discuss with the older adult and/or guardian, conservator, caretaker, what actions are needed. **APS requires the older adult's consent** to develop a plan for intervention and service that includes recommendations to prevent further harm. APS might refer for services such as health, legal, financial, emergency assistance, food, clothing, transportation, housing, protection from maltreatment, and those services which protect the person in the least restrictive manner possible. APS can advocate to assure protection of an older adult's personal rights. APS can request that a guardian or conservator be appointed, but only if all other options have been pursued and the older adult is not able to provide due to diminished capacity for her/his well-being without such intervention. APS can offer a plan for corrective action to the alleged perpetrator/wrong-doer, if the worker believes that this is an appropriate option.

APS is required to maintain confidentiality regarding any information about an older adult. Persons who have reported suspected harm are often frustrated to be unable to determine what is being done on behalf of the older adult and to protect her/him. A Central Registry which identifies persons who have committed abuse, neglect, and/or financial exploitation/abuse of adults is maintained by KS Dept. for Children & Families. Older adult-serving organizations can request Central Registry information to use in screening candidates for employment.

REPORTING TO LOCAL LAW ENFORCEMENT

What Happens?

If the alleged ANE took place in a town or city, the local police will investigate. If it took place in the county, outside an incorporated town, or if there is no police department in the town, the sheriff's department will investigate.

Law Enforcement will:

- Come to the older adult's home, hospital or adult care home to talk with them. Take pictures of injuries or the scene of the incident. Conduct an investigation of the allegations.
- Talk with the reporter of ANE, any witnesses, and the person accused of causing harm.

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.
- Work with financial/banking professionals in instances of financial abuse or exploitation.
- The county prosecutor/district attorney/attorney general will prosecute the case against the person accused, and the action may result in a diversion, financial restitution, fine, or imprisonment.

LONG-TERM CARE OMBUDSMAN

What Happens When You Report?

The Long-Term Care Ombudsman was created by the U.S. 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 talk with the individual at the facility. The Ombudsman will hear the older adult's concerns, as well as what s/he proposes 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.

2012 Reports to Ombudsman re: Adults in Facilities.

2,010 Total Complaints

87 Abuse, Neglect, Exploitation	111 Financial Property	116 Activities and Social Services
40 A & E Financial against family or facility	352 Resident Care	113 Dietary
51 Resident access to info	56 Rehabilitation	98 Environment Policies & Procedures
221 Admission Transfer Discharge	11 Restraints	
370 Exercise of Rights, Autonomy		

KANSAS REGULATIONS - ADULT CARE FACILITIES

REGULATIONS FOR NURSING FACILITIES ON ABUSE, NEGLECT and 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.”

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

- Must be allowed to exercise his/her rights as a U.S. citizen and a resident of a care home without interference, coercion, discrimination, or reprisal from the home.
- Designate in advance a person who will assert resident rights if he/she is unable to do so. (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, 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 and be notified in writing 30 days prior to any changes in charges or services.

RIGHTS CONCERNING FINANCES & PROPERTY

- Manage his/her financial affairs.
- If funds are deposited with the facility, 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. 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.

RIGHT TO INFORMATION ABOUT CARE

- Be fully informed about care and treatment and any changes in that care or treatment that may affect the Resident's well-being; and can inspect and purchase photocopies of all records upon written request and two days notice to the home.

RIGHT TO MAKE CARE DECISIONS

- 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; 6) leave the home; 7) notice of changes in health status; 8) refuse to perform services for the facility; 9) administer own drugs; 10) restraints free/physical or chemical.
- **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

- Personal privacy and confidentiality of his/her personal and clinical records; may approve or refuse the release of personal and clinical records to any individual; privacy in written communications,

RESIDENT RIGHTS

including sending & receiving unopened mail promptly; access to stationery, postage and writing implements at the Resident's own expense.

- Reasonable accommodation of individual needs and preferences except where the health or safety of the Resident or other Residents would be endangered.
- 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.
- 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 KDADS. The Resident retains the right to deny or withdraw consent at any time.
- Regular access to the private use of a telephone.
- 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.
- Share a room with his/her spouse when married Residents live in the same home and both spouses consent to the arrangement.
- 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.
- Participate in social, religious and community activities that do not interfere with the rights of other Residents.

RIGHT TO ADDRESS GRIEVANCES

- Voice grievances with respect to treatment or care, without discrimination or reprisal for voicing grievances, and a right to prompt efforts by the facility 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.
- File a complaint concerning Resident abuse, neglect and misappropriation of Resident property in the home, and may voice a complaint by calling 800-842-0078 (KDADS). An additional resource for nursing home residents with developmental disabilities or with mental illness, is the Disability Rights Center at 877-776-1541.
- 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

- Receive advance notice of transfer or discharge. Facilities must present notice of transfer or discharge to residents 1) whose health has improved and no longer require services of the facility; 2) who endanger the safety of individuals in the home; 3) who fail to pay the home; and 4) 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.

For help from the State Long-Term Care Ombudsman call 877-662-8362.

COMMUNICATION

Communication - one way to prevent Abuse, Neglect & Exploitation of older adults

When initiating communication:

- Look at the individual; make eye contact and block out other distractions.
- Be mindful of hearing or sight challenges and limitations.
- Use a gentle touch to gain their attention.
- Express acceptance of the person and his/her thoughts. Engage them, even if s/he can't talk or easily verbalize.
- Repeat back what the person has said to be sure you understand what they mean.
- Concentrate on the individual's needs, not just on your task at hand.
- Approach the individual in a slow, non-hurried manner and from the front.
- Allow the older adult to touch you if s/he reaches out. Hold her/his 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 an older adult when talking with another who may be in the room.
- Respect each older adult individual's property. It may be irreplaceably dear to her/him.

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. Giving compassionate care is an honorable way to care for a loved one or to make a living for paid caregivers. As you assist someone with the help s/he needs, honor them as a 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. If you have chosen a vocation as a paid or family caregiver, you have assumed the responsibility to provide care and to respect each person and to help them do for her/himself what others are able to do easily and without thinking.

Older adults who require assistance to perform the activities of daily living may receive long-term care at home or in a facility. Be aware that persons with types of dementia, Parkinson's, Huntington's or head injuries may act in ways that they would not normally act, were it not for the disease or injury.

Compassionate caregivers go about their work by:

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

Traits or characteristics of compassionate caregivers:

Sensitive	Willing	Caring	Responsive
Kind	Helpful	Loyal	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.
- Be responsive first to the needs of persons in your care and secondarily to the priorities of supervisors and regulatory requirements, and putting these before your needs (unless emergency).

HELPFUL RESOURCES

TO REPORT ABUSE, NEGLECT OR EXPLOITATION (ANE)	
In Nursing Homes & Assisted Living Type Facilities KS Dept. for Aging & Disability Services - Complaint Unit Monday through Friday, 8 am to 5 pm Call 1-800-922-5330 at night or on weekends	1-800-842-0078
In the Community - Adult Protective Services, KS Dept. for Children & Families 24 hours/7days per week	1-800-922-5330
Home Health Care Complaints - KS Dept. for Aging & Disability Services Monday through Friday, 8 am to 5 pm	1-800-842-0078
Local Law Enforcement - Police	Call 911 or see phone book
Kansas Attorney General - Abuse Neglect Unit, M - F, 8 - 5	1-888-428-8436
FOR ANE & FACILITY RESIDENT ADVOCACY	
Kansas Long-Term Care Ombudsman M - F, 8am-4:30pm	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 Monday - Friday 8 - 5	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 Monday - Friday 9 - 5	Voice: 1-877-776-1541 TDD: 1-877-335-3725
InterHab - Developmental or Intellectual Disability, M-F 8-5	1-785-235-5103
Elder Law Hotline Monday - Friday 8 - 5	1-888-353-5337
Veterans Affairs Monday - Friday 8 - 5	1-800-827-1000
Governor's Office Monday - Friday 8 - 5	1-800-748-4408
TTY - communication access number for hearing impaired	1-800-767-1833
Medicaid Fraud Monday - Friday 8 - 5	1-800-432-3913
Medicare Fraud Monday - Friday 8 - 5	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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