



**Kansas Advocates  
for  
Better Care**

# *The Law of Care - No Matter Where*

*A Legal Guide for Consumers*

*Considering Nursing Home, Assisted Living or  
Home & Community Based Long-Term Care in Kansas*



funded by a 2009 grant from  
**The Kansas Bar Foundation**  
**Interest On Lawyers Trust Accounts (IOLTA)**

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By Kansas Advocates for Better Care, Inc.,  
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First Printing, April, 2010

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# Acknowledgments

*Kansas Advocates for Better Care appreciates the generosity of those who made this reference guide possible:*

- ☆ **The Kansas Bar Foundation** through a grant from the **Interest On Lawyers Trust Accounts (IOLTA)** for underwriting the cost of printing the booklet and web posting at [www.kabc.org](http://www.kabc.org)
- ☆ **Margaret Farley, Rachel Monger, and Molly M. Wood**, Kansas lawyers who volunteered their time and expertise to provide the useful content contained within this booklet.



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# Dedication

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To “Petey” Anna Ballard Cerf and Harriet Burgess Nehring. Thanks to their deep compassion, fierce determination, and steadfast dedication there are stronger laws and enforcement that better safeguard the rights of persons receiving long-term care in Kansas and the nation.

Petey and Harriet - along with a small group of Kansans - were concerned with poor care and indignities suffered by elders in nursing homes, and demanded change. In 1975, they formed **Kansans for Improvement of Nursing Homes (KINH)**. They also were co-founders of the National Citizens’ Coalition for Nursing Home Reform - NCCNHR.



In the 1990s KINH became **Kansas Advocates for Better Care (KABC)**, a reflection of our continued concern for the quality of long-term care in nursing homes, assisted living and in-home services.

Significant improvements in care, training and enforcement have been the result of persistent advocacy by KABC and include: direct care workers receive training **prior** to caring for elders; workers receive much more caregiving training; background checks on workers have been added; educational requirements for administrators increased; more disciplinary oversight for administrators; advances in conducting facility inspections; significant monetary penalties against adult care facilities that do not comply with laws and regulations. On the near horizon we strive for better care, including: increased nursing staffing hours for each resident; better training for workers caring for persons with Alzheimer’s or mental illness; access to an advocate ombudsman for persons receiving care at home; improvement in the care that facilities provide, and more person-centered care.

Thanks to Petey and Harriet and many others...

**Kansas Advocates for Better Care** exists to improve the quality of long-term care in our state. In order to achieve our mission, KABC provides:

- ◆ personal guidance to elders and family members seeking long-term care or having problems in long-term care,
- ◆ advocacy with state agencies who inspect and enforce regulations in long-term care,
- ◆ a strong voice to speak out on elders’ concerns in the legislature, and
- ◆ training for professional and family caregivers in best practices for providing the highest quality of care for elders.

If you would like to volunteer with or join Kansas Advocates for Better Care, a non-profit organization, or need help for yourself or a loved one, please call us toll-free: **800-525-1782**, email us at [info@kabc.org](mailto:info@kabc.org) or visit our website: [www.kabc.org](http://www.kabc.org)

# Introduction

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Publication of this booklet on **KABC's 35<sup>th</sup> anniversary** is especially meaningful to us because many of the issues detailed in the pages of this guide are legal remedies that were hard-earned over the last thirty-five years: Remedies that we have had the privilege of fighting for along side elders, family members, concerned citizens and elected officials in Kansas and nationally.

6,000 people contacted Kansas Advocates for Better Care in 2009 because:

- they needed guidance in selecting long-term care services for themselves or a loved one
- they wanted to know how to select an adult care home that would provide good care
- they wanted more information on how to appropriately find or give good care
- they needed help to address a problem they were having with a care provider
- they felt that no one would help them in resolving a problem with care
- they wanted to know how they could help or volunteer on behalf of others

Most of us don't plan for needing help or care, nor do we expect to live in a nursing home. And yet over 18,000 Kansans, most of whom are older, live in adult care homes. Most often we or our loved ones must find and make choices about care services in the midst of a crisis brought on by illness, injury, surgery or a hospital stay. Sometimes we have the presence of mind to understand, negotiate and contract for our own care, sometimes it falls to a spouse or child or grandchild or trusted friend.

This guide will help to inform you about the legal issues involved in securing care, such as signing contracts for the purchase of care, responsibilities of those who provide your care, self-advocacy to work out problems with care, or finding who can help when you cannot resolve a problem on your own.

The questions contained in this booklet represent the ones we are asked most frequently by elders, family members and professionals who are at the point of choosing long-term care, or who have encountered a problem with long-term care they are receiving.

In the following pages, you'll find information about Home & Community Based Services, Assisted Living Facilities, Nursing Facilities/Homes and additional resources.

## **Disclaimer**

This legal guide was compiled by volunteer attorneys and the staff of Kansas Advocates for Better Care. The publisher is not rendering legal or professional services. This guide is not intended to be a substitute for sound legal advice. This guide is to provide accurate information and to increase the awareness and knowledge about long-term care issues for elders, family members and interested citizens. Laws and regulations change, and the statements in this guide are based solely on those in force on the date of publication. *(March 2010)*

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# Home- and Community-Based Long-Term Care Services

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Molly M. Wood

Many seniors who need long-term care are able to live safely at home with some outside assistance. Most long-term care services are provided informally by family and friends. Such assistance can be as limited as home-delivered meals or a ride to the grocery store. But even folks with severe impairments can maintain themselves in their homes – and avoid institutionalization – if they receive adequate in-home care services, especially if they have a spouse or family members living with or near them to help coordinate the care plan.

## 1. What do you mean by “home- and community-based services?”

Home- and community-based services are personal care services that keep you at home rather than in a residential care facility – “custodial” care services rather than traditional medical services. Such services could include:

- Companion services (*intermittent or round-the-clock personnel provide support, encouragement and companionship to older adults in their own homes*);
- Housekeeping (*laundry and cleaning*);
- Personal care attendant (*dressing, toileting, bathing, eating*);
- Transportation (*medical appointments, shopping, or social engagements*);
- Meal preparation (*meals-on-wheels, pre-made meals*);
- Bill paying and other financial management;
- Medication aide (*medication pre-packaged by dose, or medication set-up*);
- Oral health services (*routine dental care, acute care*);
- Sleep cycle support (*monitoring & support during hours of sleep*);
- Shopping assistance;
- Adult day care (*activities, socialization, medication assistance, in a congregate setting*);
- Respite care (*short-term care for an elder, providing relief for your primary caregiver*);
- Tele-medicine (*application of clinical medicine where medical information is transferred through the phone or the Internet*);
- Case management (*identify and coordinate services*).

## 2. How can I pay for home- and community-based services?

There are three sources of payment for in-home long-term care:

- a. You pay for any care you need out of your pocket – from your savings, your monthly income, reverse mortgage, or the sale of your assets;

# HCBS - Regulations; Hiring Caregivers

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- b. You have insurance coverage for in-home long-term care – if you have a “tax qualified” long term care insurance policy (issued after November 1996) or a policy issued since Kansas adopted the Long-Term Care Partnership Act (April 4, 2007) – some in-home care assistance is covered, and even older policies sometimes have this coverage;
- c. You are eligible for a needs-based public benefit – the Veterans’ Administration<sup>1</sup> provides assistance to veterans and spouses who are either homebound or need aid and attendance in their homes AND who have limited income and assets, Medicaid<sup>2</sup> provides in-home assistance through the HCBS/FE (home- and community-based services for the frail elderly) to low-income Kansans who have exhausted their other resources, and the Kansas Senior Care Act<sup>3</sup> (K.S.A. 75-5926) provides assistance on a sliding fee scale depending upon the applicant’s income and assets.

### 3. **Where can I find the laws and regulations governing home- and community-based services?**

Because most in-home care is provided informally and does not require a licensed professional to perform the service, laws and regulations governing such care is spotty. If, for example, you are receiving in-home physical therapy from a licensed visiting nurses program, both the visiting nurses program and the physical therapist are licensed by the Kansas Department of Health and Environment for their respective disciplines. But there is no licensing requirement for a bath aide, an in-home companion, or a housekeeper. In fact, many people hire a trusted family member or a friend who has no credentials and who is not expected to render medical care – just like you used to hire a baby-sitter for an evening out when your children were little. ([www.agingkansas.org/Publications/Other/hcbsfe.htm](http://www.agingkansas.org/Publications/Other/hcbsfe.htm) info about Home & Community Based Services)

### 4. **Who can I hire to provide care for me in my home?**

Anyone you choose . . . but choose wisely. Our legal system puts a high value on personal freedom, but your exercise of that freedom exposes you to harsh consequences if you fail to choose wisely. Here’s a list of questions to help you think through who you should hire:

- If you hire a family member or friend, how will you pay him or her? If you pay cash, you are potentially liable for your employee’s payroll taxes, including state and federal withholding, the employer’s contribution to Social Security and Medicare, and if your employee is injured on the job, Worker’s Compensation.

# HCBS - Health Care Decision-Making

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- There are many “private duty” organizations springing up to meet the need for in-home care. What screening of employees does the private duty organization use?
- What happens if your in-home care provider doesn’t show up? Do you (or the private duty organization) have a back-up plan?
- Do any of your in-home care providers have access to your credit cards, identification, or financial records? What safeguards do you have in place for your financial protection?
- Who has oversight authority? Other than you, who is supervising/coordinating your in-home care plan, keeping you safe and protecting you against financial exploitation, neglect, or abuse?



**KABC Consumer Key:** For more information regarding how you go about hiring and managing a care worker visit the Kansas Association of Centers for Independent Living at [www.kacil.org](http://www.kacil.org) and click on [Self-direction Toolkit](#). For Negotiating a Contract, see pages 17-19

## 5. Who would make decisions for me if I’m too sick or disabled to act for myself?

That can be a difficult problem because your spouse, your family, and your friends do not have the legal authority to make decisions for you unless you have appointed them or a Court has appointed a decision-maker for you. If you cannot make your own decisions, you’ll need an agent under your Power of Attorney for Health Care Decisions (HCPOA) or a Guardian to make your home-care arrangements for you. (*refer to page 52.*)

If you are a competent person, you have the ability to delegate your decision-making authority to another person. In Kansas we recognize HCPOAs and Living Wills as written legal documents that permit you to make health care directives in advance of a time of illness or incompetence. A Living Will permits you to make a “declaration” regarding whether you want medical treatment – and what kind of treatment, e.g., feeding tube, surgery, ventilator, pain management, etc. – when your doctors and other health care professionals conclude that your recovery is very doubtful. A Living Will is only effective if you are unable to express your decision and are terminally ill. (*See forms on pages 57 & 58.*)

A HCPOA permits you to delegate your authority to another person who can make health care decisions for you. Like a Living Will, the appointment of a health care agent is only effective if you are unable to express your decisions, but it would cover other situations beyond terminal illness. If you have not appointed an agent under a HCPOA, but are too sick or disabled to act for yourself, it becomes necessary to ask your local District Court to appoint a Guardian to make those decisions for you. The Court must

# HCBS - Need for Care Assistance

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hear evidence proving that you are incompetent and must approve the suitability of the person who seeks to be your Guardian. If guardianship is sought, you have a right to a Court-appointed attorney to contest the claim that you are incompetent and you have the right to a jury trial. The Guardian is accountable to the Court for any decisions made on your behalf and must file an annual report regarding your condition and whether you continue to need a Guardian. (*refer to page 52*)

As you can imagine, imposing a guardianship is a time-consuming and expensive process. If you have a spouse, family members, or friends who you trust, you should make HCPOA appointments before you need them.

## **6. Will any of the “needs-based” programs that pay for in-home care permit me to choose my provider?**

Yes. The Veterans’ Administration benefit for qualified veterans and their spouses provides an income supplement if you have limited assets and your income is below a pre-determined threshold *after* your out-of-pocket medical expenses are deducted. So, for example, as a widow of a veteran, your monthly income is \$1,200 per month, but you are spending \$500 per month on hiring a bath aide, transportation to medical appointments, and adult day care, your countable income is only \$700, which is low enough to qualify for assistance. The assistance comes in the form of monthly payments that you can use to pay for whatever in-home care you choose.

Both the Medicaid program’s Home- and Community Based Services (HCBS) program for the Frail Elderly and services funded by the Senior Care Act permit you to employ who you choose – it’s called “self-directed care” – but you would have to use a payroll agent (sometimes provided through a center for independent living) or use a private duty in-home care or other qualified provider to receive Medicaid dollars as reimbursement. That’s because the payments for care don’t come directly to you, rather, the Medicaid or Senior Care Act payments go to the provider that, in turn, pays its employee-caregivers.

## **6. How do I know if I need services and what kind of services I need?**

If you are not seeking assistance with the cost of your in-home care, you decide who to hire. There are many private businesses that provide in-home services for a fee, and this approach can be an economical way to use your long-term care dollars. If, for example,

# HCBS - Medicaid; Provider Agreements

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you can purchase in-home services for less cost than institutional care, AND you prefer to stay at home rather than move to a care facility, maybe that's how you want to spend your money.

If you can't afford private home care services, then the place to start is the Kansas Department of Aging (KDOA). Through your local Area Agency on Aging (AAA)<sup>4</sup> an evaluator will come to your home and perform a CARE assessment – a review of what type of assistance you might need. You are under no obligation to accept any services, and there is no fee for the CARE assessment. Because the KDOA administers the Senior Care Act and coordinates the HCBS program for the Frail Elderly, the AAA representative who conducts the CARE assessment should also be able to answer your questions about available services in your community.

## **7. Who decides if I'm eligible to receive Medicaid under the HCBS waiver?**

KDOA makes the determination of whether you meet the threshold for medical need through the CARE assessment process, and the Kansas Department of Social and Rehabilitation Services (SRS) makes the determination of whether you meet the financial eligibility threshold. A single person must be poor: No more than \$2,000 in assets (not counting your home, your car, your household goods, your pre-paid burial, and some other exemptions). But married people are permitted to retain a lot more in assets (up to about \$100,000) and still be eligible for assistance under the Division of Assets rules. It is very complicated, but you can find the answers to the most frequently asked questions at [www.agingkansas.org/choices/faq/faq\\_div\\_of\\_asset.htm](http://www.agingkansas.org/choices/faq/faq_div_of_asset.htm)

## **8. What kind of agreement should I have with my in-home care provider?**

Written. Period. An agreement is a contract that sets out the expectations of both parties to the contract. Although an oral agreement is legally binding, how does one party prove his or her recollection of the terms is better than the other party's? How does someone in your family who is assisting you know the terms of the agreement? How would a dispute about the terms of the agreement be resolved? The terms of an in-home care agreement could include:

- Rate and frequency of payment
- What specific services are contracted-for and how other services would be added
- Use of your vehicle or home; for example, whether workers would be permitted to use

# HCBS - Financial Exploitation

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your car to run errands for you or take you to appointments, or whether workers would have sleeping quarters in your home

- Whether you provide meals to workers
- Whether workers are licensed or subject to a background check
- Who should be contacted in case of an absent worker
- Who should be contacted in case you're dissatisfied with the services
- How the contract is terminated, and how much advance notice is required to terminate the contract
- How disputes are to be resolved
- Do not agree to arbitration – that is, that you cannot sue in court if you are damaged or injured
- Do not agree to “waive liability” – that is, give up your right to be compensated for any losses caused by workers

## 9. **What should I do if I (or my family/friends) think I've been financially exploited, abused, or neglected in my home?**

You should contact the police/sheriff if you believe a crime has been committed or if you are in imminent danger.

If you believe the situation is not that serious or if you're not sure whether there is any wrong-doing, you should contact the Kansas Dept. of Social and Rehabilitation (SRS) and make a report to SRS's Adult Protective Services division (800-922-5330). Kansas law requires SRS to investigate all reports of possible abuse, neglect (including self-neglect), and financial exploitation of adults living in the community. You may also contact the Kansas Attorney General's Consumer Fraud & Elder Abuse Unit (800-432-2310).

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<sup>1</sup> Assistance with VA benefits is available through the Kansas Commission on Veterans' Affairs -- [www.kcva.org](http://www.kcva.org)

<sup>2</sup> Medicaid is administered in Kansas by the Department of Social and Rehabilitation Services -- [www.srskansas.org/services.htm](http://www.srskansas.org/services.htm)

<sup>3</sup> The Senior Care Act is administered by the Kansas Department of Aging -- [www.aging.state.ks.us/](http://www.aging.state.ks.us/)

<sup>4</sup> The Kansas Area Agencies on Aging Association can put you in touch with your local office -- [www.k4a.org/area-agencies-on-aging](http://www.k4a.org/area-agencies-on-aging)

# ASSISTED LIVING TYPES - ADULT CARE HOMES

| Licensed As (Abbreviation)                      | Assisted Living Facility (ALF)   | Residential Health Care Facility (RHCF)  | Home Plus (HP)  | Boarding Care Home (BCH)  | Adult Day Care (ADC) |
|---|--|--|---|---|----------------------|
| Must be licensed by State                       | Yes  | Yes  | Yes   | Yes   | Yes                  |
| Number of Residents Permitted                   | 6 or more  | 6 or more  | 8 or less   | 10 or less  | Unlimited Number     |
| Type of Living Unit                             | Apartment: Bathing, toilet, kitchen **, sleeping, living, storage, locked door (for entry) | Individual Living Unit: Same as apartment in ALF but no kitchen                        | Residence or Facility   | Place or Facility One Bedroom with no more than 5 beds, no less than 1 toilet, bathtub or shower per 5 beds | Place or Facility    |
| Type of Nursing or other Care provided          | Personal or Supervised Nursing Care 24/7; Intermittent or limited skilled nursing care     | Personal or supervised Nursing care 24/7; Intermittent or limited skilled nursing care | Personal or supervised nursing care; other care only as pre-approved by Kansas Dept. on Aging | Only supervision of Activities of Daily Living (bathing, dressing, eating, etc.)                            | Personal Care        |
| Must have a licensed Operator or Administrator* | Yes, Operator if 60 beds or less. If 61 beds or more, must have licensed Administrator     | Yes, Operator if 60 beds or less. If 61 beds or more, must have licensed Administrator | Yes   | No  | Yes                  |

\*A Kansas licensed administrator is required for management of any Kansas licensed nursing facility. A licensed administrator must have a bachelor's degree and must complete a supervised practicum of at least 480 hours at a nursing facility, and pass a licensing test.

A Kansas certified operator must take a training program of at least 45 hours on the principles of assisted living, and may only administer a Kansas licensed ALF.

**For all above if the number of beds or slots are 120 or more, a second Administrator is required.**

\*\* Kitchen: Sink, Refrigerator, Oven or Microwave

# Assisted Living Facilities

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*Margaret Farley, BSN, JD*

Assisted living residences are very popular today. They offer more individual choice and a more home-like way of living compared to most traditional nursing homes. Assisted living can be an appealing choice when you or your family require or desire greater help with daily routines. And most of the time, assisted living costs less than nursing home care, and certainly much less than 24/7 care in your home. On the other hand, assisted living apartments are essentially congregate living plus extra services. They offer less privacy than a person's own home. The communal life of assisted living is more like life in a college dormitory, well-aged.

## **1. How do Assisted Living and Nursing Home costs and facilities compare?**

Semi-private rooms are the industry standard in nursing homes. Most, but certainly not all of assisted living type facilities offer private rooms or private living units. According to Met Life<sup>1</sup>:

- In Kansas, the average annual nursing home rate for a semi-private room in 2009 was \$50,370, based upon an average daily rate of \$138. (Wichita average daily rates were slightly higher at \$142.) The average private room daily rate in a Kansas nursing home was \$150.
- The annual base rate for assisted living in Kansas in 2009 was \$33,684, based upon an average monthly base rate of \$2,807. (Wichita monthly rates averaged less than the rest of the state, coming in at \$2,541).
- Base rates in assisted living facilities equate to the bare minimum of services offered at the facility, in the simplest living unit. However, the actual cost of living in an assisted living facility can be much more than its base rate, depending on the unit design and the types of services you will need. Unlike nursing home care, many services you may want or need are not included in the assisted living facility base rate. Services added increase the monthly rate. The MetLife study found that the average national monthly rate for assisted living type care, with five or fewer services in 2009 was \$2,740, for six to nine services was \$3,133, and for ten or more services was \$3,469.
- Across the nation, the average annual rate for a private room in an Alzheimer's unit or wing in 2009 was \$85,045; the average daily rate for the same was \$233. A semi-private room in a nursing home Alzheimer's unit or wing in 2009 cost \$75,920 annually, and averaged \$208 daily. (*see pg. 50*)

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<sup>1</sup> The 2009 MetLife Market Survey of Nursing Home, Assisted Living, Adult Day Services, and Home Care Costs", October 2009, published by the MetLife Mature Market Institute.

# Assisted Living Facilities Defined



**KABC Consumer Key:** When you are shopping for assisted living care, be sure to compare the top tier care and services rates of the facilities, even if your initial needs are far less. Generally a move is not desirable simply to find a better monthly rate as service needs increase. So, when you are comparing facilities, know the cost of care if your services needs increase significantly. Then you will have a more accurate cost comparison at both the low end and the high end of services. Also, make sure that you understand whether the facility has any requirements for you to move to a different, and more costly, unit if your care needs increase.

## 2. Are all Assisted Living Facilities the same?

In Kansas, there are several different types of assisted living facilities licensed by the state. The licensed categories are: Assisted Living Facilities (ALF), Residential Health Care Facilities (RHCF), Home Plus (HP), Boarding Care Homes (BCH), and Adult Day Care (ADC). All assisted living facilities and nursing homes licensed in Kansas are also called adult care homes. Generally, in this guide, we will refer to assisted living facilities collectively as ALFs. This part of the guide concerns these types of residences. In this guide we will indicate if the rule or right is different for a specific type of ALF, and doesn't apply to all types.

### Assisted Living Facilities (ALF)

ALFs 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.

### Residential Health Care Facilities (RHCF)

The licensure for a RHCF is virtually the same as an ALF. 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. An **intermediate personal care home** under the VA system of benefits is a **residential health care facility**.

### Home Plus Facilities (HP)

A Kansas licensed Home Plus facility can have up to 8 residents, and may provide personal care and supervised nursing care (*as defined in the regulations, and described at pg 22*). The level of care that can be provided at a Home Plus facility is dependent on the type of professional training of the staff, as approved by the Kansas Department on Aging, and in accord with regulations. If the operator is a registered nurse, the care which can be provided in the home plus may be more complicated than if the operator has no nursing training. If you are considering a Home Plus facility, it may be helpful to contact the Kansas Department on Aging to know exactly what type of care is authorized at the Home Plus.

# ALF - Your Rights

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## **Boarding Care Homes (BCH)**

Boarding care facilities are only licensed for up to 10 residents, and may admit persons who only need some general supervision. The boarding care facility must have qualified staff to meet the needs of their residents, but in general, the residents must make their own arrangements for medical care and dental care. Supervised self-administration of medication is permitted. This means that the home can identify the pill and dosage by the label on the bottle, remind the resident to take her medication, remove the cap, and watch the resident take the medication, but cannot give the medicine to the resident. If the boarding care home is supervising a resident taking her own medication, the facility staff must make a record of every time they assist with medications. They must also notify the medical provider and family member or legal representative if there is a change in the resident's condition. No physical restraints are permitted in boarding care facilities. The boarding care facilities must provide meal services. However, all residents in boarding care facilities must be able to feed themselves. If a resident in a boarding care facility requires assistance with eating, or the services of a paid nutrition assistant, she is in the wrong level of care.

## **Adult Day Care (ADC)**

Adult day care providers in Kansas are permitted to offer services less than 24 hours per day for adults who need supervision of or assistance with activities of daily living. Adult day care facilities are licensed adult care homes, and may be a specialized service provided within an ALF or a RHCF. The adult day care facility must have a set of residents rights policies which incorporate autonomy, privacy, dignity, choice and individuality. Further the facility must be operated in such a way as to provide each resident's needs and services according to his functional capacity screen and negotiated services agreement.

### **3. Do I give up my rights as guaranteed under the constitution when I move into an Assisted Living Facility?**

Remember that a U.S. citizen is a U.S. citizen no matter where she lives. Keep in mind that citizens have certain legal rights: the right of privacy; the right to vote; the right to associate with whom they choose; the right to choose where to live. It is true enough that money or health considerations or cognitive inability can limit your choices in life. But it is equally important to remember that a person does not lose their rights as a citizen just because they have chosen to live in an adult care home.

# ALF - Admissions Contract



**KABC Consumer Key:** Before signing a contract or moving in to an assisted living facility of any type, make sure the home or facility is licensed by the state of Kansas. If it isn't, the state of Kansas has no regulatory control over the facility. That means the home doesn't have to meet even minimal license requirements, and it is operating illegally. Safety will be a major concern in such a place.

If you check out an assisted living-type facility that does not have a Kansas license, you should report it to the Kansas Department on Aging (KDOA) at 800-842-0078. Reporting this will help keep other Kansans safe. If you have Internet access, you can go to the KDOA website [www.agingkansas.org/CultureChange/Culture\\_Change\\_Index.html](http://www.agingkansas.org/CultureChange/Culture_Change_Index.html) and look in the online directory of adult care homes to see if a facility is actually licensed. You can go there by clicking on "Culture Change" in long-term care, on the left panel of the home page.

#### **4. Do I have to sign an admissions contract no matter what is in it, if I want to live at a facility? How do I Negotiate a Good Service Agreement in an ALF?**

In the term "Negotiated Service Agreement," the emphasis should be on the first word. YOU are negotiating for the services the ALF will provide, so make sure to actually negotiate for the services you need or want. If the services you think you need aren't in the contract, the home may not be obliged to provide them. Ask for any services not mentioned and find out what they will cost, if there are extra charges. The ALF must tell you what additional services cost. Take all the time you need to get it right. The owner of the ALF has thought long and hard about what services it will provide for what cost. You need to think long and hard about what services you need, too.

- A. Make sure that you know what all of the service and care terms mean. If you don't, you really don't know what care and service the home is supposed to be providing, or for what care you are paying. For example, what does "medication assistance" really mean? How often is it provided? Who is passing out the medicines? What is her level of training or licensing - Registered nurse, Licensed Practical nurse or Certified Medication Assistant? What happens if doses are missed? What does "assistance with bathing and dressing" mean? How much assistance? How often? What if more help is needed?
- B. Make sure that you know who is providing exactly what type of service, and what their level of training or certification is. Is the employee a fully trained nurse, or certified nursing/medication aide? Does their work have to be supervised by a licensed nurse? Make sure that you know how often particular services are to be provided. If your care needs change, the negotiated service agreement will need to be

## ALF - Admissions Contract *(continued)*

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changed to fit your needs. Also find out what nursing care is provided, how the facility is managed on a day to day basis, who the key manager and director of nursing is, what housekeeping services are provided, and what the dietary services are.

- C. Don't rely on verbal promises, wonderful web sites or pretty public relations pamphlets for assurances about the care and services in an ALF. If a service you are relying on is not in the written contract, signed by you and the home's representative, the home may not be legally obligated to provide the service. Assisted living can be great, but it is very much a "buyer beware" situation.
- D. Aside from care and services, ask the home's manager about safety and security measures. You would do this anywhere you live. If you are a family member selecting an ALF for someone with dementia, an imperfect comparison would be checking out a day care center for your child. How is security provided in the evening or at night? Who has access to the building at night? Can an unknown visitor gain entry without any employee seeing them? This is especially important if your family member has dementia or mental confusion.
- E. Make sure you know whether any of the other residents have a prior violent criminal history which could place your family member at risk. The danger is rare, but the potential injury is extremely serious. Make sure that all of the employees from nurses to maintenance to dietary have been fully screened for criminal activities such as theft or abuse. Any adult care home in Kansas is required to do a background check. Make sure that they tell you they have.
- F. Remember that nothing in any contract or admissions document can limit the legal duties of the assisted living facility under Kansas or federal statutes or regulations. So, the contract cannot take away certain legal rights that you have under Kansas law. And there may be additional duties of the ALF under Kansas or federal law, as discussed in detail below. For example, a contract cannot limit the liability of the ALF to be responsible or legally liable for negligent care that injures a resident. That is an illegal and unconscionable clause. If an aide is helping your family member with a bath and accidentally causes an injury such as a fracture, the contract cannot relieve the ALF of liability for such negligence. (*refer to page 20.*)
- G. No admission agreement or contract can provide a general waiver of liability for the health and safety of any resident. But understand that under the system of negotiated services, an ALF and a competent resident or their legal representative, acting in good faith, can enter into a fully informed consent not to provide particular services. See the section on informed consent and on preventing abuse and neglect. (*refer to page 50.*)

# ALF - Admissions Contract (*continued*)

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- H. You have a legal right, before signing an admission agreement, to read and receive a copy of residents' rights and the ALFs policies on advanced directives and filing grievances. If you don't agree with any of these policies, you need to consider it carefully before signing the admission agreement. Make sure that the advance directives policies fit what you would agree to in the event of a terminal illness, for example. Some homes have a religious affiliation which may not permit them to honor your particular advance directive, such as withholding food and water in the event of a terminal illness. You must also be given notice of additional charges for optional services. And you must be given the facility's rules for residents' conduct.
- I. See **arbitration agreements** in admissions contracts on page 20.

## 5. How can I find out what the cost to me will be? Can the Assisted Living Facility raise the cost once the admissions contract is signed?

Prior to a new admission, the ALF must tell the resident or his guardian or legal agent in writing the rates and charges for the services that will be provided. The notice must also include the ALFs refund policy.

Notice of changes in charges or services, except those due to a change in the necessary level of care, require 30 days notice in advance. When there is a change in the level of care, the costs will change accordingly: they could go down if care needs are reduced, but usually costs are increasing as care increases. The ALF must provide written copies of your records within two business days of a written request. The facility is allowed to charge a reasonable fee, and can't exceed the actual cost of producing the copies.

**Except for boarding care homes**, you have a legal right to notice from the ALF before you are admitted if the ALF is not going to provide you with any of the following:

- daily meal services based on each resident's needs;
- housekeeping services essential for each resident's health, safety and comfort;
- health care services based upon an assessment by a licensed nurse;
- medical, dental and social transportation;
- planned group and individual activities that meet the needs and interests of each resident;
- other services as necessary to meet the health and safety of each resident;

# ALF - Arbitration Agreements

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## 6. What is an Arbitration Agreement? Am I required to agree to Mandatory Arbitration in the event of a dispute or injury?

Sometimes in the contract which the facility offers you there will be a clause known as an “mandatory arbitration agreement”. A mandatory arbitration clause may even have its own signature line in the contract. If mandatory arbitration is in the contract the home offers you, tell the ALF employee asking you to sign it to mark out or to delete it from the contract. Make sure you initial and date the deletion. Why would smart consumers want to delete the arbitration agreement? Because if anything goes wrong with the care, services, or security at the home, and the resident loses property, is denied his rights or is seriously injured, an arbitration agreement forces the resident into private arbitration, and out of the public courts. This means you are giving up your constitutional right to have a jury decide disputes between you and the corporation.

Corporations often put mandatory arbitration agreements in admission contracts for the simple reason that they favor the corporation in the event of a dispute. First, trying to recover damages for injuries through private arbitration costs more than public courthouse access. This will stop many injured persons in their tracks, and corporations and chain operators know this. A big chain can afford the cost of arbitration more than most individuals. Also, citizens don’t have as many tools in private arbitration to find out how the ALF operates. That information can often help an injured party or her family pinpoint what went wrong.

Many consumers overlook the arbitration clauses because they don’t completely understand them, or they don’t think anything will go wrong at the ALF. Many people assume that the admission to the ALF or the nursing facility requires that you sign the contract “as is”, without any changes. You may ask to delete a provision in the contract. Usually the corporation will remove that provision if you ask them to, because they want to be able to prove that it is not a forced provision. If you ever ask a provider to delete a contract provision, and the employee refuses, make a written note of your request, reminding yourself of the date of your request, the date it was denied, what you

### **KABC Consumer Key: Keeping records.**

If anything goes seriously wrong with the care or services at the ALF or nursing home, make sure that you keep your own records with important details. You can be sure the health care provider will be keeping its own records from its viewpoint. Entirely understandable. Medical records are mostly one-sided documents. But, if a dispute or serious injury results, you may need to be able to prove that you tried to get the problem fixed. Without your own contemporaneous written notes, it will be your word against that of the health care provider.



# ALF - Determining Care Needs

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requested and who denied it. It will come in handy if there is a dispute later. If you are requesting such a change, you will probably want to speak with a facility manager or ask them to contact their legal department to consider the change.

No one ever wants to think that something will go wrong, and most of the time it doesn't. However, if something does go seriously wrong, it is best to have your own record of what happened. Keeping your own notes about registering complaints or concerns with the health care provider means that you note:

- the date of your concern,
- who you told at the facility,
- what they told you to do, or
- what they told you they would do, and whether it was done.

Who? When? and What? are key questions and facts in the event that something goes wrong at the home. Your notes with those answers can help answer the questions, Why? and How? later on. It is important to make your notes as close to the time the event occurs as possible. Notes written soon after an event or conversation are perceived to be more reliable, and not clouded by the passage of time.

## 7. How do I determine what care I need and what the ALF will provide?

ALFs are required by law to have an initial and annual assessment of each resident, and a written contract with the resident setting out the specific services the facility will provide. The assessment is officially known as a "Resident Functional Capacity Screen" and the contract is known as a "Negotiated Service Agreement." In nursing homes, federal and state laws require a certain level of services and quality of care and quality of life. There are no such federal requirements for ALFs in Kansas. There are state regulations for ALFs, but they are significantly less detailed than federal and state nursing home laws.

ALFs aren't as closely monitored by the state as nursing homes are. They have fewer regulations to meet. And, you have to decide the level of care that you want. You may need or want extra help now or in the near future, but you can't always predict just how much help you or your family member will need later, or through the end of life.



**KABC Consumer Key:** The limited regulation of ALFs in Kansas is all the more reason to know your legal rights when you or your family member move into or is already living in an ALF. Keep a copy of all of the admission documents that you sign or are given when you enter an assisted living facility. If you don't have a complete set of your entry documents, ask the administrator or operator to give you another copy of all the documents. It is your right, and the information in these documents may answer many questions, and help you problem-solve.

## ALF - Care Needs (*continued*)

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Very few of us will choose nursing home care over ALF care, if we qualify for both. However, nursing home care is offered and regulated in such a way that more skilled nursing care and services are usually available when you need them. Not so in an ALF. So contracting for care and services and assuring good quality of care and services becomes an important part of the job of the consumer buying assisted living services. It is especially important to keep a copy of the Resident Functional Capacity Screen and the Negotiated Service Agreement, because these two documents define the care you will receive and the level of care for which you will pay. They are the two most important papers in an ALF, and they mostly control the care your family member will receive in the ALF.

### 8. Will there be any assessments of my needs after the initial one completed when I enter the ALF?

You have a legal right to a **new Functional Capacity Screen and new or renewed Negotiated Service Agreement**:

- once every year,
- when you or your legal representative request it,
- if you begin to need a paid nutrition assistant to help you eat, and,
- if you have a significant change in your condition.

And, you have a **right to an assessment by a licensed nurse if your functional capacity screen shows that you need health care**. In which case, the licensed nurse must develop a health care services plan for you, which shows what your health care needs are and how they will be treated, and who will provide the services. If your resident functional capacity screen demonstrates that you have a need for health care services, a licensed nurse must help create, review and revise your negotiated service agreement.

### 9. Can a person with mental illness or mental health needs live in an ALF?

Persons who have mental illness **and** who need specialized services for it can only be admitted to an ALF if the ALF has services that will help the person maintain the highest practicable level of physical, mental and psychosocial functioning. The goal is to keep the person at his or her best, so far as can reasonably be done. The exception to this rule is for a boarding care facility, which can only offer personal care services.

## ALF - Care Needs (*continued*)

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### 10. How much say do I have in the care I receive?

Each resident has the legal right to participate in the **development of her negotiated service agreement**, unless she is unable to do so. If the resident is unable to do so, her legal representative or health care power of attorney has the legal right to participate. Each resident has the right to her own physician of choice, and to be kept informed of her medical condition. The choice of pharmacy is up to the resident, too, except that the ALF can require that the pharmacy chosen be able to provide the medicine be packaged to dispense in unit doses. Managing your own personal finances is your right as well, and you can exercise that right yourself or through the assistance of an appointed agent. The ALF cannot require that you deposit money with them.

### 11. If I disagree with a recommended treatment do I have the right to refuse it?

You have the **right to refuse treatment**, but you must be fully informed about the alternatives to the treatment you are refusing, and you must be fully informed about the consequences to your health of refusing treatment.

If you refuse a service that the operator or administrator, licensed nurse (RN or LPN), physician, physician's assistant (PA), nurse practitioner (ARNP) or case manager says is necessary for your health and safety, the negotiated services agreement must include your refusal. The written agreement must:

- identify the services you are refusing;
- state clearly the possible problems of not having the services;
- give written proof that you and/or your legal representative have been educated about the potential problems; and
- include a written statement that you accept the risks of doing without the service or services.

### 12. How important is the Administrator, Operator or Director of Nursing to the kind of care I receive?

Each licensee (owner or whomever applies/holds the State license to operate) of an adult care home or ALF must tell KDOA within two working days if there is a change in the administrator, director of nursing or operator. If they know it, you should too. They are as critical to the management of the ALF as the manager of a restaurant. Ever notice how quickly the quality of food at a restaurant can go down hill when there is a turnover in management? The same can certainly hold true for the much more complex and critical care in an ALF. So, you may want to ask the ALF to let you or your legal representative know if there is a change in who is in charge.

# ALF - Staff Definitions

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Ask the operator or administrator if s/he supervise or oversee staff in more than one facility. This may affect the attention given to managing employees and the services provided in your ALF. Generally, state law allows operators to oversee operations in up to four ALFs or nursing homes if the combined total of the residents in the shared supervision is not greater than 60. It allows licensed administrators to monitor up to four homes if the combined total of the residents in the facilities is not more than 120. An informed consumer is a safer consumer. You are relying on the operator to maintain quality. If he or she isn't around, doing that job becomes a lot more difficult. Remember that fewer regulations and oversight by the state means that you may have to monitor the quality more carefully in ALFs.

## 13. What is the definition of Nursing Care?

Nursing care is defined in regulations in order to let ALFs know the type of care that they can legally provide. It is the measuring stick by which the facilities are licensed and inspected. So in choosing an ALF and knowing what your legal rights are in an ALF, can help to know the type of nursing care an ALF can provide: **skilled nursing, supervised nursing, or personal care.**

Today's medical and nursing care is vastly different than even thirty years ago. Many medical tasks that only doctors used to perform are now carried out under the doctor's supervision by a physician's assistant, or a clinical nurse specialist. And, nursing care that in the past could only be done by a Registered Nurse (RN), may now be performed by a Licensed Practical Nurse (LPN), a Certified Nursing Assistant (CNA), a Certified Medication Assistant (CMA), and in some cases a Paid Nutrition Assistant (PNA), if under the supervision of an RN or LPN. Adequate staffing by properly trained licensed nurses (RNs and LPNs), certified nurse aides (CNAs) and medication aides (CMAs) is critically important to the quality of care and the health and safety of residents even in ALFs. Under the law of the Kansas Nurse Practice Act, and other laws and regulations, RNs delegate duties to LPNs, and supervise their work. LPNs may perform duties that they have been trained to do during their schooling, but only under the supervision of RNs. Licensed nurses - RNs and LPNs - may delegate duties to CNAs and CMAs, but they must closely supervise them.

As a general rule, the determination of whether particular nursing tasks and duties may be delegated by an RN to an LPN, or by a RN or LPN to a PNA, a CNA, or a CMA depends upon four things:

- The resident has been fully assessed, and a care plan has been created to fit the resident's needs;

# ALF - Staff Definitions

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- The licensed nurse has determined that certain nursing care tasks for the resident, according to the assessment and the care plan, can be carried out safely by a lesser trained individual nurse or aide;
- The person to whom the nursing tasks are delegated has the ability to perform the tasks because he or she was trained to do so in nursing school or during aide training school; and,
- The nurse delegating the duties is responsible for the proper performance of the duties, and is responsible to supervise the nurse or aide performing the tasks.

As of June 2009, the Kansas Department on Aging requires that if a licensed nurse in an adult care home is delegating a nursing task to a CMA or a CNA, the aide must be named in writing for each nursing task assigned to her. And the delegating nurse must train the aide in the performance of the task and must document in writing that the aide has demonstrated competency to perform the task. In addition the aide must co-sign that she has been trained in the task and is competent to perform it.

**NOTE:** The above rules from June 2009 only apply to nursing tasks assigned to CNAs or CMAs which are not tasks identified in the aides' state approved curricula.

( [www.kdheks.gov/hoc/index.html](http://www.kdheks.gov/hoc/index.html) )

## 14. What care can Licensed Practical Nurses provide?

The rules under the Kansas Nurse Practice Act for LPN functioning are:

- the LPN must have an RN supervisor;
- the LPN must only function in the area of supportive or restorative care; and,
- the LPN must have acceptable educational preparation for the duties she will perform.

Generally, if the LPN meets these criteria, she will be able to care for resident, perform nursing diagnoses, supervise CNAs and CMAs, teach the nursing process, and execute physician orders, for example.

As a general rule, since ALFs have fewer licensed staff on duty than nursing homes, it is much more difficult to be sure that CNAs, CMAs, PNAs and LPNs are performing only the duties they are legally permitted to do, and doing so with proper supervision. For example, an aide in an ALF may be assigned the responsibility to perform a blood glucose test, and to give insulin on the basis of the result of the blood glucose test. But if the aide has to determine whether or what amount of insulin to give based on the result of the blood glucose test, that is not permissible. Why not? Because the determination is the same thing as assessing a condition, and that can only be done by a licensed nurse.

# ALF - Types of Care

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Another example is when a resident has a skin ulcer in an ALF that needs daily wound treatments. Generally speaking, the aide would be able to perform wound treatments but would not be able to assess the progress of the wound healing. That would be the job of the licensed nurse supervising the aide's wound care.

## 15. What are the differences between types of nursing care?

**Skilled nursing** includes nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles. This type of nursing care can be performed by an RN or an LPN, but the LPN must be under the immediate supervision of an RN. These types of tasks include assessment of a resident's condition, creating a care plan to meet the nursing care needs of the resident, administering medications (even though even CMAs can give medication under nursing supervision), deciding when "as needed" medications may be given, and providing wound care and other treatments. The RN uses her judgment in assessing the resident, monitoring progress and reporting to the doctor in these situations. All of the above, of course, are nursing care duties under the direction of the medical provider. Skilled nursing care generally requires closer management by the nurse than supervised nursing care.

**Supervised nursing care** is when services are provided by or under the guidance of an LPN with initial direction for nursing procedures and periodic inspection of the actual act of doing the procedures, administration of medications and treatments as prescribed by a licensed physician.

**Personal care** is defined in the law as care and assistance with the activities of daily living, such as bathing, toileting, walking, using a wheel chair, daily grooming and hygiene, dressing, bed mobility and bed to chair, or similar transfers.

Generally speaking, skilled nursing care and supervised nursing care could include supervision of personal care when a person also has health care needs, which in ALFs will occur quite a bit of the time. Persons without significant diagnoses, multiple medications or other complicated conditions requiring licensed nursing supervision or care will only need personal care. In that case the person will not usually require a health care plan or nursing supervision. If the state licenses an ALF to provide the highest level of care, skilled nursing care, then the facility can also provide the lowest level of care, personal care. But if a facility is licensed to only provide personal care, this generally means the ALF cannot provide skilled nursing or supervised nursing care.

# ALF - PNA; Home Plus Staff

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## 16. If I need assistance in eating, who will help me?

Some ALF residents, except those in boarding care facilities, will require assistance with eating. In 2004 Kansas statutes created the paid nutrition assistant (PNA) health occupation. A PNA must work under the supervision of an LPN or RN. In order for a PNA to be assigned to a resident in an ALF or a NF, the supervising nurse must first make the determination that it is appropriate, based upon the assessment and the care plan of the resident.

Once a Paid Nutrition Assistant is assigned to a resident, the PNA can only help the resident with eating when a licensed nurse is on duty at the same time in the facility, for the resident's safety. While the PNA is assisting the resident with eating, the PNA must have a call system available, such as a call light to reach the LPN or RN right away in the event of a problem. PNAs cannot help a resident with a complicated eating problem such as difficulty swallowing or recurrent lung aspirations or tube feedings, and they may not be appropriate to help residents who have other serious conditions. It is the duty of the licensed nurse to make that determination. If you think your loved one should not be having assistance with eating by a PNA, make sure that you notify the licensed nurse in charge immediately, and explain your concerns.



**KABC Consumer Key:** If your resident is being assisted by a PNA, make sure that the care home is following the law by having a licensed nurse fully assess the resident before assigning a PNA. Also make sure that the PNA is being closely supervised by an LPN or RN who is in the facility. Remember that under Kansas law, the decision of whether a resident may have a PNA is up to the LPN or RN who assesses the resident and **not** the facility owners or operators.

PNAs are only required to have 12 hours of training; CNAs have 90 hours of training. CMAs are CNAs with an additional 75 hours of training. ALFs who use PNAs must assess the resident with at least the information required in the resident functional capacity screen. They must also keep the assessment current and accurate for residents who receive help from a PNA. Family members and volunteers who help residents eat are exempt from these requirements. You may also contact the resident's physician, physician's assistant or Advanced Registered Nurse Practitioner (ARNP) if you have any concerns about the facility's use of the Paid Nutrition Assistant.

## 17. What Staff are Home Plus required to have?

Direct care staff or licensed nursing staff must be present and available at all times. An RN must be available to supervise LPNs. This is required by the Kansas Nurse Practice Act. There must be enough staff to take all the residents who would require assistance to a secure location in the event of an emergency.

# ALF - It's Your Right

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**18. Regarding my rights: When may I have visitors?**

In an ALF you have the right to an immediate visit with your relatives, your physician, and representatives from the state or the ombudsman at any time. The ALF can place reasonable restrictions on visits from others. It is your legal right to choose who may visit you. If you want a visitor to leave, it is your right to make them leave and to have help if you need it. Married couples have a right, of course, to share a living unit, so long as both consent.

**19. May I take my own medications, or must the ALF do that?**

In an ALF you have a right to self-administer your own medication, so long as a licensed nurse has determined that you can do so safely and accurately.

**20. Will the ALF let my family know if something happens to me?**

If you have an accident or a significant change in your physical, mental or psychosocial status, the ALF **must notify your designated family** member or your agent, and your physician. These persons must also be notified if there is a need to alter your treatment significantly or if there is a decision to discharge you from the ALF. The notice must occur when the change is identified or decided.

**21. Will my medical privacy and personal privacy be protected in an ALF?**

Your medical information and medical records must be kept confidential. You must be permitted privacy when you are making telephone calls, sending or receiving mail, and receiving visitors, if you wish. You have a **legal right to access to a telephone** for emergencies, at no cost to you.

**22. Can I see the state inspection report on the ALF where I live?**

At any time, you, and any member of the public, have a right to look at the most recent copy of the **state inspection results and the facility's written plan to correct violations** of the law. It must be posted in a common area for residents and the public. By law, the Kansas Department on Aging must conduct at least one unannounced inspection of ALFs every 15 months, with a statewide average of no more than every 12 month inspections.

## ALF - Your Rights (*continued*)

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### 23. If I have a disagreement that I complain about to the facility, how will it be handled?

You have a right to make complaints without suffering any adverse reaction from the ALF as a result. The ALF must have a policy that your complaints will be answered or processed within thirty days. Therefore, you have a legal right to know how the ALF has handled or processed your complaint within thirty days.



**KABC Consumer Key:** Rights are only as good as they can be enforced. Kansas doesn't have a legal remedy for consumers to enforce their rights in an ALF, other than to try to get the Kansas Department on Aging (KDOA) to enforce the right. If you have tried to correct a rights violation by talking with the operator or administrator, but haven't succeeded, you have basically three options left. One is to send a good faith letter by certified mail to the home stating what right you believe is being violated and how, and what you want done to fix it. Another route is to make a complaint to KDOA by calling 800-842-0078, or by making a good faith written complaint to KDOA. KDOA can enforce the law if they believe the ALF is violating a right. In addition you can contact the state long-term care ombudsman at 877-662-8262 and see if their office can be of assistance. The ombudsmen are not able to enforce the laws, but they can work closely with residents and facilities to try to mediate differences.

### 24. How do the laws change for me in a nursing home or ALF if I am not able to handle my own affairs? For example, what if I have a court-appointed guardian, or a legally designated agent under a power of attorney?

The laws are the same and still apply to you in all circumstances, except that the person who exercises your rights for you is your guardian or your lawful agent under a durable power of attorney. So, since you have a right to your health care records if you request them in writing, your agent or your guardian has the right to get the records for you. And, they have the right to be a part of creating your negotiated service agreement in an ALF, or your care planning meetings in a nursing home. As a general rule, for every right a resident has, her agent or guardian also may exercise that same right, for the benefit of the resident. (*Please refer to section on Guardianship on page 52, and pages 57 & 58.*)



**KABC Consumer Key:** Some people believe that if they are an agent or a guardian for a person in a nursing home or in an assisted living facility they have to make all of the decisions for the person all of the time. However, the job isn't quite that big. Many times it is entirely appropriate and healthy for a person who has an agent or a guardian to make some of their own daily decisions if they are able to, such as when to have a bath, or when they want to get up in the morning, or when and what they want to eat.

Very few people are completely unable to tell or show others what they want, but of course it is true with some. Another area that even a confused person may be permitted to indicate is whether family members or friends may visit them. Often even if the person is quite impaired mentally, the nurses can assess whether the visit is too stressful based upon how the resident reacts. Adult care home staff and the resident's agent or guardian have a duty to protect an incompetent resident from harm or serious emotional distress

# ALF - Safety Issues: Restraints

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from a visitor. So in certain rare situations, it may be appropriate to restrict visitors to protect the resident's safety and well-being. But most visits from family and friends for even the most confused residents can be positive and even therapeutic, and should be permitted.

Sometimes even adult care home employees get it wrong, and think that they should keep visitors away just because the guardian or agent says so, without a good reason. But, just like the home setting, it might be a warning sign of possible abuse, neglect or exploitation if someone tries to limit outside visitors. Except in an emergency, any time visitors are restricted, it should be the result of a careful care plan meeting, even in an ALF. It is too important a right to take away without proper justification.

Also remember that just because you have signed a power of attorney appointing an agent who is currently acting for you, that doesn't mean you have given up all of your rights to make your financial and health care decisions forever. Until you have been declared incompetent through a judicial proceeding, or until one or more qualified doctors have examined you and determined that you aren't capable of making your own health care decisions, you haven't lost that right. Your health care providers have the duty to make sure that your agent and/or your guardian are acting in your best interest. If you believe an agent which you have designated is treating you wrong, you can seek legal and medical help to get another agent, or to exercise your civil rights to make your own decisions.

➤ **No employee or person with any financial interest in the ALF where you live** can act as your conservator or guardian or agent under a power of attorney, unless they are related to you within the second degree. That means that if your legal representative is also an employee of the home or owns a share in it, she could continue as your legal representative only if you are closely related, for example, your child or grandchild or parent. This requirement helps protect residents from predatory caregivers who steal residents' money or otherwise exploit them. Of course, families are also capable of such neglect or exploitation, so the system isn't perfect, but does try to protect residents from predatory practices.

**25. Safety: Why are physical restraints and bed rail restraints prohibited in ALFs?**  
Kansas law defines a physical restraint as a device or material attached to or near a resident that the resident cannot easily remove and that restricts the resident's freedom of movement or ability to touch her own body. Essentially, it is a method to tie down and

# ALF - Safety Issues; Involuntary Discharge

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restrain a person in a seat or bed. Most people use them to try to keep the resident safe, but physical restraints can do the opposite and actually injure residents rather than protecting them. The use of physical restraints is prohibited in an ALF, RHCF, HP and BCH. Physical restraints are only permitted in certain very limited situations anyway. Therefore a person who was admitted to the ALF, RHCF, HP or BCH without a physical restraint, but who later needs one due to a clinical condition, cannot continue to stay in an ALF, RHCF, HP or BCH and must be discharged. Nursing home/facilities must have more licensed staff than ALFs are required to have. If the use of restraints is considered risky in nursing facilities, with more licensed staff, there is no doubt that physical restraints are dangerous in ALFs with fewer nursing staff.

Also, bed rails, depending on how they are used, can be physical restraints. That is because they are adjacent to the resident who is in bed, they can't be easily removed and they restrict a resident's freedom of movement. Therefore bed rails are not permitted in ALFs and RHCFs as physical restraints. Many people believe that bed rails prevent falls, and so they believe that bed rails make residents safer. Unfortunately, the opposite has been proven to be true. Many people have been killed or injured with the use of bed rails.

Bed rails are the safest when they are fitted properly to the mattress and bed, and are used for the right reason. It is only appropriate and safer for side rails to be used as a tool for an alert, oriented and non-agitated resident to reposition herself in bed. Therefore, the law only permits bed rails to be used in ALFs by residents who are alert and oriented and who can safely use the rails for repositioning themselves in bed.

## **26. Safety: What requirements are there for ALFs to plan for emergencies?**

Fires can happen. A tornado can strike. You have the legal right to a copy of the ALFs emergency management plan, which will show what is supposed to happen in the event of a tornado or fire, or other emergency. ALFs have to conduct emergency drills on a monthly basis. While you are checking on the emergency plans, you should find out if the home has fire sprinklers; some older homes in Kansas do not.

## **27. Can I be forced to leave the ALF against my will? What is Involuntary Discharge?**

The law says that you can only be moved out of the ALF against your will, if:

- A. It is necessary for your health or welfare and the ALF cannot meet your needs
- B. The safety of other residents is endangered

## ALF - Involuntary Discharge (*continued*)

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- C. The health of other residents is endangered
- D. The resident hasn't paid her bill, and has been given reasonable notice that the bill is due, or
- E. The home closes.

If a resident is being discharged because their health condition is so critical that the ALF cannot meet his needs (or so good that he no longer needs ALF care—uncommon) his physician must document that in the record. If the safety or health of other residents is at risk, causing the resident to be discharged, any physician, even one employed by the ALF, must certify the reason for forced discharge. The facility must provide a notice of transfer or discharge in writing to the resident or resident's legal representative at least 30 days before the resident is transferred or discharged involuntarily, unless the reason for the discharge is A or B above.

Notices of involuntary discharge and transfer must be given in writing with thirty days advance notice in all other situations. Notices must include the manner by which the resident can make a complaint to the state about the involuntary discharge, and the operator or administrator must provide a safe and orderly discharge from the ALF. Abandonment or delivery of the resident to location unprepared to receive the resident is not permitted. The ALF must create a discharge plan, and involve the resident, his family, and his legal representative when it can reasonably do so. If the resident is being involuntarily transferred to another health care facility, the ALF must send enough information about health care needs of the resident to insure continuity of care.

**28. If I am discharged, does the ALF keep my full monthly payment?** You are only legally responsible for charges for which you have been given adequate notice and which are stated in an admission agreement signed by you or by your legal representative. With limited exceptions, you may be charged for increases in rates after admission if you are given thirty days advance written notice.

There are two key categories of costs in ALFs, as a general rule. They are "room and board" costs and charges for "services". So for persons who are forced to leave the facility, the rules are different for each type of charge. Under a forced discharge the resident may not be charged beyond the date of actual discharge for room and board if notice has been given to the resident. And, beyond the date of forced discharge, or death, the ALF cannot charge you for any services you haven't received. If you voluntarily leave the ALF, the facility may not charge you for room and board beyond your 30 day

# ALF - Residency Requirements

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notice to them or for any services after you have left the ALF and aren't receiving any services.

**The Rule:** All ALFs must give notice to a resident who is being sent to a hospital or who is leaving the facility on therapeutic leave about the ALF's policies concerning how long the residence will be held for the resident and how much it will cost to hold it.

**Exception:** Boarding Care Homes do not have to provide such a notice.

You and your family have a right to see a copy of the ALF's policies which concern resident services. There are very few policies that an ALF will have, which do not concern resident services. A legal request should permit you to obtain most of the ALF's policies. Resident services policies would include, for example, the policies on health care, and on conducting the resident functional capacity screen.

## 29. Who is not qualified to live in an Assisted Living Facility?

ALFs cannot keep persons who have the following conditions or characteristics, unless the resident and the home agree in writing that the ALF will provide services that will meet the needs of the resident:

- A person who is incontinent, if the resident can't or won't participate in the management of the condition;
- A person who has problems with mobility, if the resident is totally dependent on the assistance of another person to exit the building;
- If the person always requires the assistance of two or more persons to get around;
- If the person has an ongoing need for skilled nursing care, that is the care of an RN; and
- If a resident has a behavioral symptom or symptoms that cannot be managed at the ALF (for example, aggressive behavior toward staff or other residents; frequent falls, etc.)

**Exception:** Persons with these types of needs cannot be admitted to or remain in a boarding care facility, even if the facility states that it can provide services that will meet the needs of residents with such conditions. This care exceeds what a boarding care home can provide.

A person whose medical or clinical condition requires the use of restraints cannot be admitted or allowed to stay at an ALF, under any circumstances. However, there are other restrictions as to who can live in an ALF. ALFs aren't required to have as many qualified staff on duty as in nursing homes. Health care can become a concern if a person

# ALF - Home Health and Hospice Care

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is declining, and that decline may not be noticed soon enough by the ALF. There are regulations related to emergency safety set by the State Fire Marshal which requires a minimum number of staff to assist ALF residents to safety in the event of a fire.

**30. If my family member lives in an ALF, and declines in a way that she requires more care than what the assisted living facility staff can provide, what are my options for keeping her in the ALF?**

The state regulations will permit the following in a licensed ALF:

1. The family or friends of the resident can provide the care without pay;
2. The staff of a home health agency, LPNs, RNs, and home health aides, can provide the necessary care;
3. The staff of a hospice service, LPNs, RNs and home health aides can provide the necessary care.
4. If the ALF agrees, the family may pay the ALF to hire additional staff with proper qualifications, such as licensed nurses, CNAs or CMAs to provide the increased care.

The goal of these regulations is to make sure that if a paid employee is providing the necessary services to help the resident stay in the assisted living facility, that there is a legally responsible employer managing the work of the employee, that care is appropriately coordinated and delivered and that the employee is properly trained or licensed to provide the care.

**31. May I receive Home Health care or hospice care in an ALF?**

Yes, if the ALF embraces “aging in place”, they would have to have a contract or be an approved contractor for the ALF. The exception to this rule is for a boarding care facility, which can only offer personal care services.

Remember that the staff in Home Plus, RHCF and ALF’s have a duty to monitor outside services and to act as your advocate regarding those services if the outside services don’t meet professional standards.

# Nursing Homes - Background

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In Kansas there are more than 300 nursing homes with more than 18,000 Kansans living in them. Many residents are in their 80s, some are much younger. Most counties have at least one nursing facility. Some nursing facilities are self-contained or stand-alone buildings, others share a building with assisted living facilities or are on the campus of a continuing care retirement community, and yet others are attached to hospitals. Nursing facilities offer care 24 hours a day, 7 days a week, 365 days a year. At all times residents are to have access to healthcare that includes physicians, nurses, pharmacists and other care professionals. Doctors and pharmacists are not on-site at all times, but can be reached for consultation by nursing staff.

Nursing facilities are known as nursing homes, skilled nursing facilities and long-term care units (when attached to hospitals). Nursing facilities are licensed by the state and are required to hire adequate numbers of staff to provide care for residents needing a range of care, including high care needs or specialized care needs, such as Alzheimer's, bariatric, or ventilator care. Most nursing facilities in Kansas are governed by federal and state laws and regulations. Some nursing homes accept payment from Medicare for short-term rehabilitation stays (100 days maximum), from Medicaid for longer-term care stays, or from private sources only (such as long-term care insurance or a resident's personal financial resources). Most nursing homes accept payment from all of these payer sources. A few accept only persons who have adequate financial resources to cover the cost of their care – referred to as "private pay"; a few accept only Medicare and private pay. In order to receive Medicare or Medicaid reimbursement, the facility must apply and be "certified" by the Center for Medicare and Medicaid Services. Medicare and Medicaid don't pay for the same types of care, so if you are going to a nursing facility for rehabilitation after a surgery, make sure that the facility is certified by Medicare so that the physical therapy services you'll need will be covered by Medicare, not always the case in facilities not certified to receive Medicare. The same is true for other specialized health care. Before you sign a contract, make certain it states that what you need will be provided in the facility.

The Kansas Department on Aging (KDOA) and the Centers for Medicare & Medicaid Services (CMS) are responsible for nursing home oversight and inspection surveys. The KDOA responds to and investigates complaints that are made about nursing homes, and conducts inspections. Care in traditional nursing facilities is offered in a manner similar to hospital settings, but with fewer professional staff, diagnostic and treatment equipment, and for less acute care needs. In the last few years there has been an important movement to make the setting and care, more "home-like." This approach involves the elder and her/his family in creating a plan for care, encourages elders to voice their choices about what and when to eat, when to sleep and arise, when to shower or bathe, and to participate more in decorating her room and the common areas of the nursing home. Paying greater heed to the desires of elders is referred to as **Person-Centered Care**. If you live in a person-centered care home, you will still receive 24/7 care and still have access to doctors, pharmacists, and nursing staff.

# Nursing Homes

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*Rachel Monger*

## **1. How do I know if I need nursing home care?**

A physician or an Area Agency on Aging (AAA) can assess you to determine if your need for assistance and care is appropriate to nursing facility care.

## **2. Who can sign an admission contract with the nursing home on my behalf?**

Ideally, you would sign a nursing home admission contract on behalf of yourself. Unfortunately, many residents enter a nursing home impaired by illness, injury, or some form of mental incapacitation. Under these circumstances, you would not be able to legally enter into a contract, and a personal representative would have to enter into it for you.

Only two types of people can sign an admission contract as your legal representative: a health care power of attorney or a guardian. Sometimes, if you are incapacitated, a family member who is not your legally appointed agent may be asked by the adult care home to sign a document on your behalf. As a general rule, a family member or friend who is not your legally appointed representative has no legal power to act on your behalf.

A health care power of attorney is the person you appoint to make your health care decisions, in the event you become unable to handle such matters. In order for your power of attorney to make health care decisions on your behalf, their appointment papers must specifically state that health care decisions are a part of their duties and responsibilities. This appointment must be done while you are still capable of making your own decisions. You can not legally appoint anyone as your agent after you have become mentally incapacitated.

If you become unable to make your own decisions for yourself due to mental or physical incapacitation, and no health care power of attorney exists, an application must be made to the district court to judge you temporarily or permanently incapacitated, and to appoint a guardian and conservator to handle your affairs. The court can appoint any person it deems qualified for the job: a spouse, a family member, or even a volunteer whom you have never met. Once a guardian and conservator has been appointed, he or she will have the power to make most decisions concerning your care, living situation, finances, and property. Certain limited decisions may require prior court approval, including, sometimes, whether a person should be admitted to a nursing home. (*see page 52.*)



**KABC Consumer Key:** See Negotiating Contract, pages 17-19.

# Nursing Homes - Payment; Dental Care; Rights

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## 3. Who is liable for payment of my nursing home care?

You, as the resident, are responsible for payment of your nursing home care. This is true whether you are paying through private funds, Medicare, Medicaid or long-term care insurance. Under federal law it is illegal for the Medicare or Medicaid-certified nursing home to require someone else – such as a family member - to be liable for payment of your care, especially if the facility makes it a condition of admission or continued stay at the facility. If a facility makes such a request to you or your family, report it immediately to the complaint hotline of the Kansas Department on Aging: 800-842-0078.

If you have someone with legal access to your assets (e.g. spouse, conservator, power of attorney) the facility can require that representative to agree to pay for your care using your assets. Once again, the facility can not require the representative to be personally liable for the cost of your care. In the event that your legal representative fails to pay the nursing home on your behalf, the facility may bring suit against that person in their capacity as your representative, and as the person who has access to your funds. In most circumstances, the facility cannot file a lawsuit or collection action against your representative personally.

If you have a spouse, the rules regarding who is responsible for payment of your care become a bit murkier. It will often touch on more complicated issues of state law or a division of assets under Medicaid. If you have a spouse, and are concerned about paying for nursing home care, you should consult an experienced attorney to help you determine the best way to protect yourself, your spouse, and your shared assets.

## 4. My spouse and I reside in the same nursing facility. Can the facility prevent us from sharing a room?

Generally, under federal law, as long as both spouses consent, a married couple in the same facility have the right to share a room. In rare circumstances, the facility may have health or safety concerns about one of the spouses, and require separation of the couple. For example, one spouse might develop a communicable disease which would require isolation. In that case, the health concern would most likely trump the right of the couple to stay together.

## 5. Is the nursing home required to provide me with dental care?

If requested or necessary, the nursing facility must assist you in obtaining routine and 24 hour emergency dental care. If necessary, the facility must also assist you in making an appointment, and by arranging transportation to and from the dentist's office.

# Nursing Homes - Mental Health Care; Rehab Care

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You are entitled to use your own personal dentist, or you may choose a dentist from a list provided by the nursing home. If you are a Medicaid recipient, ask the nursing home about whether you qualify for Medicaid payment for your dental services.

## 6. **Is the nursing home required to provide me with mental health care?**

Before you are admitted to a Medicare- or Medicaid-certified nursing home, you will be screened to determine whether you have mental health needs, under the PASARR program. (PASARR means pre-admission screening and annual resident review). PASARR also requires pre-admission screening for residents who have mental retardation. Upon your admission to the facility the nursing home is required to develop a “plan of care” for you, which details the type of nursing and rehabilitative care you will require while at the nursing home. This plan must be periodically updated throughout your stay. If your care plan at the facility indicates that you need rehabilitative mental health care, the facility is required to either provide it to you, or obtain care for you from an outside resource.

Many residents in nursing homes experience depression, and others may have chronic mental illnesses. Even if you develop mental health issues after your initial PASARR screening, the law requires the nursing home to make sure that you are receiving the mental health care you need in accordance with an appropriate care plan.

## 7. **Is the nursing home required to provide me with rehabilitative care?**

If your care plan indicates that you need some type of rehabilitative therapy, the facility is required to provide it to you, or obtain care for you from an outside resource. The types of rehabilitative services the facility must provide include, but are not limited to, physical therapy, speech therapy, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation.

If your stay in the facility is being covered by Medicare, you may qualify for Medicare Part A coverage of your rehabilitative services. If you are not in the Medicare “unit” of the facility, you may qualify for Medicare Part B coverage of your rehabilitative services. If the home tells you that you are not eligible for Medicare coverage of rehabilitative services, you may have a right to appeal that decision. If you are on Medicaid and you medically require rehabilitation services, you may have to specially apply for those services to be provided to you under the Medicaid system.

## **Nursing Homes - Physical Care; Transportation; Hospice Care**

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### **8. Is the nursing home required to provide me with physical health care?**

When you are a resident of a nursing home, you must always be under the care of a physician. You are entitled to use your own physician. If you do not have a personal physician, the facility will place you under the care of the in-house doctor, often known as the facility's medical director. Your doctor must provide the home with your medical diagnoses, and supervise your medical care and treatments. The facility must allow you access to your doctor at any time. State and federal law require the facility to arrange for a physician to be available 24 hours a day in case of emergencies.

If you are a Medicare recipient, a doctor must see you once every 30 days for the first 90 days after your admission to the nursing home. After that, a doctor must see you at least once every 60 days. Non-Medicare recipients must be seen by a doctor at least once a year, or whenever it is necessary due to a change in the resident's condition.

### **9. I want to attend religious services outside of the facility. Does the nursing home have to provide transportation and an attendant if I need it?**

For an extra charge, many nursing homes will provide transportation and an attendant for you if you would like to attend outside religious services. However, no law requires the nursing home to provide such a service. If you have need of transportation or an attendant, and the nursing home does not offer the service, you will have to arrange for it privately.

### **10. I want to play bridge with my bridge club or attend other community social functions. Does the nursing home have to provide transportation and an attendant if I need it?**

Once again, for an extra charge, many nursing homes will provide transportation and an attendant for you if you would like to attend social activities outside of the facility. However, no law requires the nursing home to provide such a service. If you have need of transportation or an attendant, and the nursing home does not offer the service, you will have to arrange for it privately.

### **11. Does the nursing home have to allow hospice care? Who decides how care is offered and coordinated?**

The nursing home does have to allow hospice care. The nursing home has a duty to obtain the care necessary to meet your needs according to your comprehensive plan of care. The nursing home is also required to accommodate your needs, as long as it does not interfere with other residents.

# Nursing Homes - Visitors; Special Equipment

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Once you have arranged for hospice care, the hospice and nursing home staff will have to coordinate your care. In order to do this, a new comprehensive care plan will need to be drafted with consultation by hospice staff, nursing home staff, your physician, and if possible, you, your family or your legal representative. The new care plan will be an agreement between the nursing home and the hospice providers, allocating their respective duties and responsibilities in caring for you. This agreement must be put in writing, and placed in your medical record.

Please note that the fact that you have brought in hospice care to assist with your terminal illness does not relieve the nursing home of its duty to provide you with all necessary care that is not related to such illness. Make sure that the nursing home does not reduce or eliminate the facility staff taking care of you merely because you are receiving hospice services.

## **12. Does the nursing home have the right to limit my visitors, or to determine visiting hours?**

It depends on the visitor. You have a right, and the facility must provide immediate access to, the following people: any representative of Center for Medicare and Medicaid Services, any representative of the State of Kansas, your personal physician, the long term care ombudsman, or a representative of the Disability Rights Center.

You have the right to deny or withdraw your consent for visitation by your family members. If you consent to visits from your family, you must be provided immediate access to them, and they to you.

The nursing home may place reasonable restrictions, such as visiting hours, on anyone else you have consented to visit you. Once again, you have the right to deny visitation, and may withdraw your consent for the visit at any time.

Provided you give consent, the nursing home must provide reasonable access (as opposed to immediate access) to any entity or individual that provides health, social, legal or other services, and which are not already listed above.

## **13. Does the nursing home have to provide an air bed/mattress to prevent pressure ulcers, or any other special healthcare equipment I require? Is there an additional charge for this equipment?**

If you entered the facility without pressure ulcers, the facility must do what is necessary to ensure that you do not develop them during your stay, unless your clinical condition makes pressure ulcers unavoidable (which is rare and must be well-documented). If you did have pressure ulcers when you were admitted, the facility must

# Nursing Homes - Your Pharmacy and Physician Rights

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provide you the necessary treatment to promote healing, prevent infection and prevent new pressure ulcers from developing. If your comprehensive plan of care indicates that you need special equipment, such as an air bed/mattress, to prevent or treat pressure ulcers, the nursing home has a duty to provide it to you.

As to any other special health care equipment, it depends upon your doctor's recommendations and what is recommended in your comprehensive plan of care. The nursing home has a duty to obtain the care necessary to attain or maintain your highest practicable physical, mental and psychosocial well-being. The strategies for doing this are found in your comprehensive plan of care. If your plan of care indicates that you need any kind of special healthcare equipment, the nursing home must provide it to you.

Whether or not there will be an additional charge for such equipment depends upon your payment status. If you are admitted to the facility as a Medicare or Medicaid recipient, the nursing home is required to give you a written list of items and services which are covered by each program. If the medical equipment you need is on one of these applicable lists, the facility is not allowed to charge you an extra amount. If it is not on the list, you should expect to be charged for the item. In that case, ask the nursing home's social worker if it might be covered by any other resource.

If you are admitted to the facility as a private pay resident, whether or not you will be charged an extra amount for your equipment depends upon the admissions contract you signed. If the medical equipment you need is not encompassed in the standard monthly fee, you will most likely be charged extra for the item.

## **14. Can the nursing home require me to only use a pharmacy chosen by the facility?**

No. Generally, you have the right to choose the pharmacy where your prescribed medications are purchased. Many nursing homes use a unit-dose or similar medication distribution system. If this is the case, the pharmacy you choose must offer, or be willing to offer, the same or a compatible system.

## **15. Can the nursing home require me to only use the physicians that have a contract with the facility?**

No. In general, you have the right to choose your own personal attending physician. Unfortunately many physicians do not provide care to their patients when they move to a nursing home. The nursing home is required to have a doctor available for emergencies 24 hours a day. If you suffer an emergency, and your chosen doctor is unavailable, you will most likely be treated by the doctor who has a contract with the facility, or sent to an emergency room via ambulance.

# Nursing Homes - Care Changes; Your Rights

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**16. Is the nursing home allowed to make changes in my treatment, medication or physician without prior consent from myself or my legal representative?**

No. You have the right to choose your own doctor, and the nursing home can not hire a new doctor for you without your consent, or the consent of your legal representative if you are incapacitated.

If the nursing home feels that you need a change in your treatment or medication, they must consult with your physician, and notify you and/or your legal representative of the proposed change. You or your legal representative have a right to participate in the planning of your care and treatment, and in any changes to your care and treatment

Ultimately, you have the right as a resident and as a citizen to refuse medical treatment. If you or your legal representative do not agree with the changes in your treatment or medications, the nursing home may not give you the new treatment or medication without your or your legal representative's consent.

**17. Can the nursing home increase my monthly charges without my consent, or that of my legal representative?**

It depends on the contract you have with the nursing home. If the contract does not allow the nursing home to increase its rates, then any increase in your monthly charges is a breach of that contract. If this is the case, you may want to file a complaint with the Kansas Department on Aging as well as consult with an attorney.

Most of the time, the contract you sign with the nursing home will allow the facility to periodically increase its rates. If this is the case, Kansas law only requires that the facility give you thirty days' written notice of the change. If you disagree with the increased cost, your only recourse may be to find a new nursing home. Before you do, consult with an attorney to make sure there are no other options.

**18. Do I have the right to decide what time I go to bed, and what time I get up?**

Under federal and state law, you have the right to choose your daily schedule as long as it is consistent with your interests and plan of care. Rising and retiring according to your own choice adds to your quality of life, and the nursing home has a duty to protect your right to make such choices.

You are an adult who is free to refuse treatment, and to make your own schedule. No one should be forcing you to go to bed or get out of bed against your will. If that is the case, you need to make a complaint to the Kansas Department on Aging (800-842-0078) and your long-term care ombudsman (877-662-8362).

# Nursing Homes - Your Rights

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## **19. Do I have the right to decide what I eat, and when?**

Under federal and state law, you have the right to choose your activities, schedules and health care as long as it is consistent with your interests and plan of care. If the dietary plan developed by you, your doctor and facility staff does not require that you eat specific foods at specific times, you may eat whatever and whenever you like. If you do not like certain foods, the nursing home is required to substitute food that you do like. Of course, the facility should never serve you food to which you are allergic. Make sure that the facility and your doctor are aware of any food dislikes or allergies so that it may be included in your dietary plan.

If you disagree with any requirements in your dietary plan, you should work with the facility and your doctor to change it. In the end, you are an adult who is free to refuse treatment and to make your own decisions. No one should be forcing you to eat something against your will. If this is the case, you need to make a complaint to the Kansas Department on Aging and your long-term care ombudsman.

## **20. Do I have the right to decide how and when I bathe?**

Under federal and state law, you have the right to choose your activities, schedules and health care as long as it is consistent with your interests and plan of care. If the care plan developed by you, your doctor and facility staff does not contain requirements on how and when you bathe, which is rare, you may do so however and whenever you like.

If you disagree with any bathing requirements in your care plan, you should work with the facility and your doctor to change it. In the end, you are an adult who is free to make your own decisions. No one should be forcing you into an activity against your will. If this is the case, you need to make a complaint to the Kansas Department on Aging and your long-term care ombudsman.

## **21. Can I drink alcohol at the nursing home?**

You have the right as a resident to make choices about aspects of your life in the facility that are significant to you. You also have the right to participate in activities of your choice, as long as those activities do not interfere with the rights of other residents in the facility, or pose a danger to the health and safety of others. As long as your imbibing does not negatively effect others in the facility, there is no legal reason why you can not do so.

If drinking alcohol violates your plan of care, the nursing facility may try to discourage you from doing so. If you take prescription medications, you need to consider the potential for contraindications that your doctor or pharmacist may caution you about.

# Nursing Homes - Private Room; Temporary Leave

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However, you are an adult who is free to make your own decisions. You have the right to participate in your health care decisions, and you have a right to refuse medical treatment. If the nursing home insists that you can not drink alcohol, you may want to contact the Kansas Department on Aging and your long-term care ombudsman to consult with you on the issue.

## **22. Am I entitled to have a private room?**

If you are paying privately for your care, you can obviously contract with the nursing home to pay for the accommodations which you choose, including a private room. If you are in a facility as a Medicare or Medicaid resident, you are entitled to a private room only if it is medically necessary – such as isolation for infection control. If it is not medically necessary, then you are *not* entitled under any law to have a private room. Nursing facilities charge residents more for a private room (that is not medically required), and the extra cost is not covered by Medicare or Medicaid. If you wish to have a private room you will have to make up the extra cost through your own funds, or those of a family member. If you are a Medicaid recipient, check with the nursing home and SRS about any Medicaid rules pertaining to yourself or family members paying for you to have a private room.

## **23. Can I visit family out of town for more than one night?**

Assuming you are not physically or mentally incapacitated, the nursing home can not ever stop you from leaving to visit your family. However, if you elect to leave the facility for an extended period of time the facility might consider you to have vacated your room, and discharge you, or there may be consequences for Medicare or Medicaid reimbursement. Because you are visiting your family, and are not on therapeutic leave (i.e. the hospital), the legally required bed hold policy does not come into effect.

If you are planning an overnight visit with your family for even one night, you need to find out the facility's policies on such absences, and you should check with the facility to see if your overnight stay will affect Medicare or Medicaid reimbursement. No matter what the policy, you need to inform the facility of your plans, and make arrangements with the facility to ensure that they will not discharge you during your absence. If the worst does occur, and you find you have no home to return to at the facility, immediately notify the Kansas Department on Aging, your long-term care ombudsman and consult with an attorney.

# Nursing Homes - Leaving the Facility

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**24. If I'm hospitalized, does the facility have to save my bed and allow me to return to the facility? Do they have to give me the exact same room or bed?**

Under federal and state law, every Medicare- or Medicaid-certified nursing facility is required to have a written "bed hold policy", which they are to provide to you when you are admitted to the facility. This policy takes effect when you are transferred to a hospital, or take any other kind of therapeutic leave from the facility. The bed hold policy must state how long the facility will hold your bed for you while you're at the hospital, the cost (if any) of holding your bed, and what will happen if you stay in the hospital longer than the time given to hold your place at the facility. If you still need services from the nursing facility after you are discharged from the hospital, but you are past the deadline given to hold your bed, the nursing facility must readmit you immediately upon their first available bed.

The amount of time the facility will hold your bed depends on the facility policy and whether or not you receive Medicaid. If you are a Medicaid recipient, federal law requires the facility to hold your bed for at least 10 days. If you are a private pay resident, check your individual contract with the facility, and the facility's policies, which may give you a contractual right to return to the facility no matter how long you were in the hospital.

If you are readmitted to a Medicare- or Medicaid-certified facility before the deadline given for holding your place, you are entitled to return to the same bed or room that you occupied before your hospitalization. If you are readmitted to a Medicare- or Medicaid-certified facility after the bed hold deadline, you will be given the first available bed, and it will not necessarily be the same bed or room you previously occupied.

**25. If a resident or her legal representative (e.g. Power of Attorney or Guardian) wishes the resident to leave a facility for any reason, can the facility legally prevent the resident from leaving or moving out?**

As a general rule, if a resident, or the appropriate legal decision maker, wishes the resident to move out of a nursing facility, the nursing facility has no legal grounds to prevent it. However, the nursing facility may have a duty to confirm that safe discharge planning arrangements are made.

A resident does not give up her rights as a United States citizen when she enters a nursing home. As citizens, residents have the right to refuse medical or nursing treatment, and no medical or nursing facility is allowed to hold a resident against her will, except in rare situations where there is a court order. If the resident has been judged unable to make her own decisions, her legal representative is allowed to exercise her constitutional rights for her.

# Nursing Homes - Crimes; Involuntary Discharge

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There are narrow exceptions to this rule for persons who have been involuntarily committed to a psychiatric institution. If this applies to your situation, you will most likely need to consult an experienced attorney to advise you on what to do.

## **26. If I am the victim of a crime while in a nursing home, what should I do?**

If you are the victim of a crime, you should notify the police immediately. Make sure that an investigation of the crime is conducted, and a police report is filed. You should also make a complaint to the Kansas Department on Aging through its hotline asking that the agency conduct their own investigation into the matter.

If you are unsatisfied with the results of the investigation, or feel that the nursing home was either uncooperative with the investigation, or may itself have been involved in the crime, you need to once again make a complaint to the Kansas Department on Aging. It is also a good idea to consult with an attorney.

## **27. My family member is being forced out of her nursing home. Is this legal? Is there any way to stop it?**

When a nursing home decides to discharge a resident without the resident's consent, it is called an "involuntary discharge." An involuntary discharge is legal only under certain limited circumstances.

Federal and state law require that in a non-emergency situation, the nursing facility must give the resident or her legal representative 30 days written notice before the resident is involuntarily discharged. Under the law, there are only 6 reasons why a resident can be involuntarily discharged. The nursing home must determine that at least one of these circumstances exists:

- A. The discharge is necessary to protect the resident's welfare, and the nursing facility is unable to meet the resident's needs
- B. The resident has improved, and no longer needs nursing home level of care
- C. The resident is endangering the health of others in the facility
- D. The resident is endangering the safety of others in the facility
- E. The nursing home has billed the resident, but no payment has been made by the resident, Medicare, Medicaid or her private insurer
- F. The nursing home closes down

If the facility wishes to discharge a resident under circumstances (A) or (B) above, the resident's physician must confirm the reasoning in the resident's clinical record. If the

## Nursing Homes - Involuntary Discharge (*continued*)

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facility wishes to discharge a resident under circumstance (C) above, the facility must also document the reasoning in the resident's clinical record. However, in this circumstance the facility can use any physician they choose to make the appropriate clinical documentation. The physician used by the facility will usually be the facility's in-house physician or the medical director for the facility.

**Rule:** No matter what the reason for the involuntary discharge, when the facility delivers their written notice, it must contain the following information:

- The reason for the discharge
- The date when the discharge will occur
- The location to which the resident will be discharged
- Notice and explanation of the right to appeal the facility's decision to the State (of course if the facility is closing down, there will not be a right of appeal)
- Contact information for the long-term care Ombudsman
- Contact information for the complaint program for the Kansas Department on Aging
- If the resident is mentally ill or has developmental disabilities, contact information for the Disability Rights Center of Kansas

If the nursing facility is not Medicare or Medicaid certified, it does not have to specifically notify you of your right to appeal. The facility only has to supply you with the contact information for the complaint program of the Kansas Department on Aging where you can register a complaint about the involuntary discharge.

**Exception:** The nursing facility does not have to give the resident or her representative 30 days written notice of an involuntary discharge if it is an emergency situation. Under state law, there are only two circumstances which would allow quick action by the nursing home, without the required notice. The circumstances are:

- The safety of other individuals in the facility would be endangered
- The resident's urgent medical needs require an immediate transfer to another health care facility.

Preventing an involuntary discharge can be difficult. If you disagree with the discharge, or the reason behind the discharge, you should involve as many state agencies as possible, as quickly as possible. You have the right of appeal, but you must follow the directions in the notice of appeal, and file it within thirty (30) days of the notice. You will most likely want an attorney to assist you with the appeal. You should call the complaint

## Nursing Homes - Involuntary Discharge (*continued*)

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hotline of the Kansas Department on Aging to start an investigation into the legality of the discharge under Kansas law. You should contact the long-term care ombudsman to explain your concerns, and ask for assistance in a possible mediation of the problem with the facility.

Do not forget that you can appeal the involuntary discharge with the State, but your appeal *must* be made within thirty days of the nursing home issuing you notice. To find out how to make an appeal, call the complaint hotline of the Kansas Department on Aging for direction. At the time of this writing, involuntary discharge appeals are handled by the Department of Administrative Hearings. However, you should contact both the Kansas Department on Aging and the Department of Administrative Hearings before you make your appeal to make sure this information is still correct. Although not required, it is a good idea to contact an experienced attorney to represent you during the appeal hearing. If the appeal decision is not in your favor, you may be able to appeal the decision to an administrative Appeals Committee. If you do not agree with the Committee's decision, you may appeal to the district court for a limited review of the decision. You will undoubtedly want an attorney to assist with the higher level appeals, even if you have handled the first appeal on your own.

Unfortunately, the appeal hearing is usually not scheduled to occur before the date the resident is discharged. If this is the case, ask the facility to postpone the discharge date until after the administrative hearing. If the facility refuses, you may be able to seek a temporary restraining order in the district court, requiring the facility to postpone the discharge date until after the appeal ruling. To pursue this route, you should consult an attorney for guidance and representation as soon as possible.

### **28. If I die, or am discharged from the nursing home early in the month, can the facility charge me or my estate for the entire month?**

This issue of whether the facility can charge you for your stay depends on what services they are charging you for, and whether or not you are a private pay resident. If you are a Medicare or Medicaid recipient, the facility is generally reimbursed by those programs for your room and board, as well as any necessary medical and nursing services and certain equipment and supplies. Therefore, no matter when you leave the facility, you will not be charged for such items. In fact, it violates federal law for the facility to ever demand payment from a resident for expenses that are reimbursable to the

# Nursing Homes - Death of Resident

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certified facility through Medicare or Medicaid, aside from any applicable Medicare deductible or coinsurance payments.

If you are a private pay resident, or a Medicare/Medicaid recipient who is privately paying for services not covered by those programs (e.g. private room, private telephone line, cable, etc.), whether or not you will be charged for the entire month will depend on the contract you signed with the nursing home, and may also depend on the facility's written policies. If the nursing home contract or policies state that the expenses will be pro-rated, then you should not be charged for the entire month. Whether or not the nursing home charges you for the whole month often depends upon whether your discharge was voluntary or involuntary. If you believe that the nursing home is overcharging you, and you are unable to work out the dispute with the nursing home, you should contact the KDOA complaint hotline, or the Ombudsman program, or an attorney.

**29. If I die in a long-term care facility, does my family or durable power of attorney have the right to obtain my medical records and personal property? What is the preferred process to do so?**

Whether or not a family member or durable power of attorney will be able to obtain the personal property of a deceased resident depends upon the individual policy of the nursing home. Most nursing homes will automatically allow a family member or power of attorney to collect the resident's belongings, while other nursing homes may insist that the belongings may only be released to the legally appointed administrator or executor of the resident's estate. Usually this only happens if there is a family dispute over the distribution of the personal property.

Under Kansas law, the medical records of a deceased resident may only be obtained from the nursing home by the Executor of the resident's estate, or the resident's spouse, adult child, parent or adult brother or sister.

# Concerns Across Care Settings

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## **Special Care Units in Nursing Homes and Assisted Living**

Many persons look to special care units, even in assisted living facilities, for care of the cognitively impaired, or persons with Alzheimer's. The regulations in Kansas for special care units are spotty. However, it is clear that if an ALF is offering special care, the care should be special. That is the staff should have particular training in caring for persons with Alzheimer's. The facility, whether it is a home plus, assisted living facility, residential health care facility or adult day care should have special programs and services that are more tailored for persons with cognitive disorders. The facility should be able to tell you what special services they provide for this population. The resident assessment for each resident should result in a particular plan set out in the negotiated service agreement or health care services plan which will meet the particular needs of the confused resident. If the resident has particular behavioral symptoms, such as wandering, the facility should have a plan for that symptom.

## **Abuse, Neglect & Exploitation**

In any facility, all licensed staff (Registered Nurse, Licensed Practical Nurse, Therapists (Physical [PT], Occupational [OT], or Respiratory [RT]) Social Workers, Administrators, Operators) are required to report the reasonable suspicion of abuse, neglect or exploitation of an ALF resident to their superiors and to the Kansas Department on Aging. The staff member reporting the suspicion of abuse, neglect or exploitation does not have to prove that it occurred, but must have a good faith suspicion that it has occurred.

You may be surprised to learn that under the law, reportable abuse is many things, and not only hitting someone, which is certainly bad enough. Abuse of a nursing facility or ALF resident that must be reported to state authorities is defined as any intentional or reckless act or failure to act that causes or is likely to cause harm to a resident, including the following.

### **Abuse is:**

1. Infliction of physical or mental injury;
2. A non-consensual sexual act with a resident, or with a resident who is incapable of resisting or declining the sexual act;
3. An unreasonable use of a physical restraint, or isolation or a medication that harms or is likely to harm a resident;
4. The unreasonable use of a physical or chemical restraint, medication or isolation as punishment, or for convenience, that is in conflict with a doctor's orders or that is a substitute for treatment, except when it is in furtherance of the health and safety of the resident or another resident; (Note that physical restraints are discussed at page 30.)

# Concerns Across Care Settings

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As a general rule, chemical restraints are medications that are used solely to control the behavior of a resident, and not for the primary purpose of treating a medical condition.)

5. A threat or menacing conduct which is 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;
7. When a caretaker or other person deprives a resident of goods or services which are necessary to avoid physical or mental harm or illness.
8. **Neglect** is legally defined as the failure by one's self, a caretaker or another person with the duty of care, to provide goods or services which are reasonably necessary to ensure the resident's safety and well-being and avoid physical or mental harm or illness. There can be situations where a person neglects their own care, and in such a case, a guardianship may be an appropriate consideration.
9. **Exploitation** is when a caretaker or other person takes a resident's property or takes unfair advantage of an adult's physical or financial resources for another's personal or financial gain using undue influence, coercion, harassment, duress, deception, false representation or false pretense.

If a licensed staff member (nurse, PT, OT, RT, administrator) has a reasonable suspicion that an ALF or nursing facility resident has been subjected to abuse, neglect or exploitation, they must report it to the Kansas Department on Aging (KDOA). Unlicensed staff are encouraged but not required to report. The facility has a duty to conduct its own investigation into such occurrences also. KDOA must receive the report and is required to investigate. These are often known as complaint surveys, and KDOA should keep a record that the complaint or report of abuse, neglect or exploitation was done.

In the event that you believe your family member in an ALF has been intentionally hurt, struck, sexually assaulted, raped or has had property stolen, it is important to make a **report to the local police or sheriff** and to **the facility managerial staff**. It is a crime for a person in an ALF to knowingly or intentionally inflict physical injury upon a resident, to financially exploit a resident, or to deprive the resident of goods or services necessary to maintain the resident's mental or physical health. Occasionally the perpetrator of the crime may be another resident, or a family member. To assist the resident with support and advocacy, it is helpful to contact the **long-term care ombudsman** in addition to others already noted.

If you are acting in good faith, with a reasonable belief that a crime has been committed, you should always report physical or sexual abuse, theft or other crimes to the local police. You should only make such allegations in good faith, and confidentially, so that you do not risk personal liability for making such a report. Most residents in ALFs are not able to protect

# Concerns Across Care Settings

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their own interests in the face of such crimes. If these crimes are not reported to the local police, and to the facility management, there is a good chance that the resident or other residents will be injured, seriously neglected or stolen from again.

## **Guardians & Conservators**

Both of the above terms are used in this booklet. As a general rule, a guardian is the person appointed by the court to oversee and manage the needs, residence, care and services of a person (the ward) who has been declared incompetent to manage his/her own affairs. And, generally, a conservator is the person appointed by the court to oversee and manage the finances and property of a person (conservatee) declared incompetent by the courts. Both are required by law to take into account the expressed needs and desires of the ward and must act in the best interest of the ward or conservatee.

There are certain limitations on the powers and duties of the guardian or conservator. For example, a guardian must make sure that her ward is in the least restrictive setting for her needs, as is reasonably available, and can only consent to the termination of life support in certain circumstances. And a guardian cannot consent to the admission of a person to certain psychiatric hospitals or mental institutions unless the court authorizes it. Likewise, a conservator will need a court order to convey the person's real estate, and the decision to give gifts on behalf of the conservatee must meet certain statutory requirements.

## **Complaints about Care Providers**

If you have a complaint about a care provider or wish to know more about requirements for licensing, oversight or discipline, Kansas governmental agencies provide the functions of licensing, training, oversight and discipline of health care providers. See the [Where to Turn Section](#) for a listing and for contact information.

## **Continuing Care Retirement Communities**

Continuing Care Retirement Communities (CCRC) are usually campus-type settings that include a variety of living settings and levels of care. The types of living settings might include some or all of the following - independent living in free standing structures or in apartments; assisted living in apartment or studio apartment with reduced kitchens; skilled nursing in private rooms or semi-private rooms.

CCRC's are **not** licensed as a whole. Each part that requires licensure is licensed as assisted living or nursing facility or adult day care. In addition many CCRCs offer home health which is licensed separately, and many provide or contract with a provider of home- and

# Concerns Across Care Settings

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community-based services in independent living or assisted living. CCRCs sometimes provide housekeeping, transportation and home and grounds maintenance for additional fees.

CCRC's are the most expensive long-term-care solution available to seniors. If you are thinking of signing a contract with a CCRC, it would be highly advisable that you seek legal counsel and talk with your financial advisor before signing on the dotted line. These contracts are often like a real estate contract and a life care services contract rolled into one. Does the contract cover any care that you need throughout your lifetime? If not what will your additional financial responsibilities include? Your financial advisor can help you determine if this is a manageable investment for you.

On top of entrance or buy-in fees that can range from \$20,000 to \$400,000 there are monthly maintenance fees that can range from \$400 to \$2500 or more. Fees may be higher or lower depending upon:

- You rent or own the living space;
- Where the living space is located and its size;
- What additional decoration, transportation, housekeeping, meals, etc. that you want to purchase;
- Whether the living space is for one or two people;
- What services you want to contract for now and for future care and assistance;
- How much care you already need and how you plan for future care needs.

Because you sign a binding, lifelong contract at the beginning of your CCRC residency, it's prudent to seek financial and legal advice as you go about making this important decision. If you break the contract later, you may forfeit the entrance fee. As with any new residence you are contemplating, it's wise to do as much research as possible.

If it is not accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), you will want to thoroughly review the services offered, the manner in which it is operated and financial controls, safeguards and solvency. Ask to stay overnight at the CCRC and spend two days participating fully in the activities they offer to see if it is a good match for you. During your temporary stay consider all aspects of what your life there would be like whether that would be in the independent living setting or in the nursing home setting – look at all the care and activities.

## Where to Turn

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| <b>Kansas Advocates for Better Care</b> A Citizen Advocacy Group<br>Helps with - finding long-term care, addressing problems in care   | 800-525-1782<br>785-842-3088<br><a href="http://www.kabc.org">www.kabc.org</a>               |
| <b>Kansas State Long-Term Care Ombudsman</b><br>Advocates for Residents in Adult Care Homes  | 877-662-8362<br><a href="http://www.kansasombudsman.ks.gov">www.kansasombudsman.ks.gov</a>   |
| <b>Adult Protective Services</b> Advocates for persons living at home<br>Investigates elder abuse, neglect and exploitation  | 800-922-5330 (24/7)  |
| <b>Kansas Department on Aging Adult Care Home Complaint Unit</b><br>State agency reviews and acts on complaints made about adult care homes or home health care providers (M-F; 8 am - 5 pm) | 800-842-0078<br><a href="http://www.agingkansas.org">www.agingkansas.org</a>                 |
| <b>Kansas Attorney General</b> Consumer Fraud & Elder Abuse Unit<br>Can investigate and prosecute criminal charges and civil claims  | 800-432-2310<br>800-828-9745   |
| <b>Local police, sheriff, and country attorney/prosecutor</b><br>Investigate and prosecute criminal actions committed against elder victims  | Dial 911 if available<br>Local phone book  |
| <b>Kansas Area Agencies on Aging</b><br>Information & referral, case management, meals, assess care needs, many other services   | 866-457-2364<br><a href="http://www.k4a.org">www.k4a.org</a>                                 |
| <b>Kansas Centers for Independent Living</b> Information & referral, case management, many other services for persons with disabilities  | 800-569-5926<br>785-625-6942 TDD<br><a href="http://www.kacil.org">www.kacil.org</a>         |
| <b>Statewide Independent Living Council of Kansas</b><br>Advocacy for persons with disabilities in Kansas  | 785-234-6990 (Voice/TDD)<br><a href="http://www.silck.org">www.silck.org</a>                 |
| <b>Kansas Crisis Hotline</b> Crisis intervention for domestic violence victims   | 888-363-2287   |
| <b>Disability Rights Center of Kansas</b><br>Investigates & advocates through case management & the court system on behalf of persons with disabilities                                      | 877-776-1541<br><a href="http://www.drckansas.org">www.drckansas.org</a>                     |
| <b>ElderLaw Hotline</b> Legal Assistance for issues affecting elders   | 888-353-5337   |
| <b>Kansas Legal Services</b><br>Assistance to resolve financial problems   | 785-233-2068<br><a href="http://www.kansaslegalservices.org">www.kansaslegalservices.org</a> |

# Where to Turn

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**Kansas Department on Aging** 800-432-3535  
State Agency responsible for all programs that serve older Kansans [www.agingkansas.org](http://www.agingkansas.org)

**Kansas Governor's Office** 877-579-6757  
Constituent Services 785-296-6240

**Kansas Guardianship Program** 800-672-0086  
Assists persons needing a guardian to manage finances or other matters [www.ksgprog.org](http://www.ksgprog.org)

**Kansas Insurance Department** 800-432-2484  
Assists with insurance questions, addresses complaints regarding insurance products

**Veterans Affairs** 800-827-1000  
Assists with VA questions, benefits, caregiver support, healthcare resources

**Alzheimer's Helpline and Parkinson's Helpline** 800-432-3535

**National Stroke Foundation** [www.stroke.org](http://www.stroke.org) 800-787-6537

**Hospice Association of Kansas** Assistance in finding hospice 800-767-4965

**Consumer Credit Counseling** 800-388-2227  
Assistance with credit and financial information, or problems

**To report suspected Medicare fraud** 800-876-3160

**Kansas Department of Social & Rehabilitation Services** 888-369-4777  
For info about Medicaid & many long-term care supports

**Kansas Foundation for Medical Care (KFMC)** 800-432-0407  
For no-cost mediation regarding problems with Medicare Providers

**Guardians and Conservators** [www.kansasjudicialcouncil.org/GuardianConservatorTraining.shtm](http://www.kansasjudicialcouncil.org/GuardianConservatorTraining.shtm)

**Information about Home & Community Based Services for Frail Elder in Kansas**  
[www.agingkansas.org/publications/other/HCBSFE\\_0609\\_web.pdf](http://www.agingkansas.org/publications/other/HCBSFE_0609_web.pdf)

**Kansas Statutes Annotated (K.S.A.) and Kansas Administrative Regulations (K.A.R.) for Adult Care Homes** – the laws and regulations that govern Kansas Adult Care Homes:  
[www.aging.state.ks.us/policyinfo\\_and\\_regs/ACH\\_current\\_regs/ACH\\_regsets/nf\\_regs\\_complete.pdf](http://www.aging.state.ks.us/policyinfo_and_regs/ACH_current_regs/ACH_regsets/nf_regs_complete.pdf)

# Where to Turn

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**Program of All Inclusive Care of the Elderly - PACE** is a form of long-term managed care, wherein the provider accepts a rate to provide all Medicaid/Medicare long-term care and medical services. Premiums for qualified individuals are paid by the Kansas Department on Aging (KDOA), Kansas Health Policy Authority (KHPA) and the federal Centers for Medicare and Medicaid Services (CMS). The PACE provider coordinates and provides all needed preventive, primary, acute and long term care services, so that older individuals functionally eligible for nursing home care can continue living in the community:  
[www.agingkansas.org/choices/PACE.html](http://www.agingkansas.org/choices/PACE.html)

**To report a Complaint or for information on Licensing, Training, and Disciplinary actions:**

## **Administrators & Operators of Adult Care Homes**

### **Speech Pathologists**

### **Audiologists**

Board of Adult Care Home Administrators

785-296-0061

[www.kdheks.gov/bacha/](http://www.kdheks.gov/bacha/)

## **Nurses – RN, LPN, ARNP**

Kansas State Board of Nursing

785-296-4929

[www.ksbn.org](http://www.ksbn.org)

## **Certified Nurse Aide, Certified Medication Aide, Dieticians and the Kansas Nurse Aide Registry listing of persons with abuse, neglect or exploitation history**

Kansas Department of Health and Environment

785-296-1240

[www.kdhe.state.ks.us/hoc/](http://www.kdhe.state.ks.us/hoc/)

## **Home Health Agencies and Home Health Aides**

Kansas Department of Health and Environment

785-296-1240

[www.kdheks.gov/bhfr/](http://www.kdheks.gov/bhfr/)

## **Social Workers**

Behavioral Sciences Regulatory Board

785-296-3240

[www.ksbsrb.org/socialworkers.htm](http://www.ksbsrb.org/socialworkers.htm)

## **Physicians, Physician's Assistant, Occupational Therapist & OT Assistant, Physical Therapist & PT Assistant, Respiratory Therapist**

Kansas State Board of Healing Arts

888-886-7205

[www.ksbha.org/licensure.html](http://www.ksbha.org/licensure.html)

## **Pharmacist & Pharmacy**

Kansas State Board of Pharmacy

Toll Free: 888-792-6279

785-296-4056

[www.kansas.gov/pharmacy/](http://www.kansas.gov/pharmacy/)

## **Center for Medicare Advocacy**

Works to advance fair access to comprehensive Medicare coverage and quality health care for older people and people with disabilities by providing the highest quality analysis, education and advocacy.

202-293-5760

[www.medicareadvocacy.org/](http://www.medicareadvocacy.org/)

# Durable Power of Attorney for Health Care Decisions

*It is important to choose someone to make health care decisions for you when you cannot. Talk with the person (agent) you choose about what you would want. You may write any specific instructions for what you DO or DO NOT want. The person you choose has the same right as you do to make decisions and to make sure your wishes are honored. If you DO NOT choose someone to make decisions for you, write **NONE** on the line for the agent's name.*

I, (print your name) \_\_\_\_\_, appoint the person named below to be my agent to make health care decisions for me when and only when I cannot make decisions or communicate what I want done. This is a Durable Power of Attorney for Health Care Decisions, and the power of my agent shall not end if I become incapacitated or if there is uncertainty that I am dead. This revokes any prior Durable Power of Attorney for Health Care Decisions. My agent may not appoint anyone else to make decisions for me. I and my estate hold my agent and my caregivers harmless and protect them against any claim based upon following this Durable Power of Attorney for Health Care Decisions or my written directive. Any costs should be paid from my own resources. I grant to my agent full power to make all decisions for me about my health care, including the power to direct the withholding or withdrawal of life-prolonging treatment. In exercising this power, I expect my agent to be guided by my wishes.

My agent is authorized to:

- Consent, refuse or withdraw consent to any care, treatment, service or procedure (including artificially supplied nutrition and/or hydration / tube feeding) used to maintain, diagnose or treat a physical or mental condition;
- Make all necessary arrangements for any hospital, psychiatric treatment facility, hospice, nursing home, or other health care organization; employ or discharge health care personnel (any person who is authorized or permitted by the laws of the state to provide health care services) as my agent shall deem necessary for my physical, mental, or emotional well being.
- Request, receive, and review any information regarding my physical or mental health, or my personal affairs, including medical and hospital records; execute any releases of other documents that may be required to obtain such information;
- Move me into or out of any State or institution for the purpose of complying with my written directive or the decisions of my agent;
- Take legal action, if needed, to do what I have directed;
- Make decisions about autopsy and organ donation, and the disposition of my body; and
- Become my guardian if one is needed.

*If you DO NOT want the person (agent) you name to be able to do any of the above things, draw a line through it, and put your initials at the end of the line. You may choose to add additional instructions for what you DO or DO NOT want from your agent.*

Agent's Name \_\_\_\_\_ Phone # \_\_\_\_\_  
Address \_\_\_\_\_

*If the above-named agent is unable or unwilling to make health care decisions for me, I designate the following person(s), in the order listed, to be my agent for health care decisions. If you do NOT want to name an alternate, write "none."*

| First Alternate Agent | Second Alternate Agent |
|-----------------------|------------------------|
| Name _____            | Name _____             |
| Address _____         | Address _____          |
| Phone _____           | Phone _____            |

**SIGN HERE** for the *Durable Power of Attorney for Health Care Decisions*. Many states require notarization. Please ask at least two (2) persons at least 18 years of age to witness your signature who are not related to you nor financially connected to you or your estate.

|                 |            |
|-----------------|------------|
| Signature _____ | Date _____ |
| Witness _____   | Date _____ |
| Witness _____   | Date _____ |

## NOTARIZATION:

On this \_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, personally appeared before me the person signing, known by me to be the person who completed this document and acknowledged it as his / her free act and deed.

IN WITNESS WHEREOF, I have set my hand and affixed my official seat in the County of \_\_\_\_\_, State of \_\_\_\_\_, on the date above written.

My commission expires: \_\_\_\_\_

# Healthcare Treatment Directive

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■ If you only want to name a Durable Power of Attorney for Healthcare Decisions, draw a large X through this page ■

I, \_\_\_\_\_, SS# \_\_\_\_\_ want everyone who cares for me to know what healthcare I want. (optional)

I always expect to be given care and treatment for pain or discomfort even if such care may affect how I sleep, eat, or breathe.

I would consent to, and want my agent to consider my participation in federally regulated research related to my disorder or condition.

I want my doctor to try treatments/interventions on a time-limited basis when the goal is to restore my health or help me experience a life in a way consistent with my values and wishes. I want such treatments/interventions withdrawn when they cannot achieve this goal or become too burdensome to me.

I want my dying to be as natural as possible. Therefore, I direct that no treatment (including food or water by tube) be given just to keep my body functioning when I have

- A condition that will cause me to die soon, or
- A condition so bad (including substantial brain damage or brain disease) that I have no reasonable hope of achieving a quality of life that is acceptable to me.

An acceptable quality of life to me is one that includes the following capacities and values. (Describe here the things that are most important to you when you are making decisions to choose or refuse life-sustaining treatments.)

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**Examples:**    - recognize family or friends    - make decisions    - communicate  
                  - feed myself                            - take care of myself    - be responsive to my environment

*If you do not agree with one or other of the above statements, draw a line through the statement and put your initials at the end of the line.*

In facing the end of my life, I expect my agent (if I have one) and my caregivers to honor my wishes, values and directives.

***Be sure to sign the reverse side of this page even if you do not wish to appoint a Durable Power of Attorney for Healthcare Decisions***

**Talk about this form and your ideas about your healthcare with the person you have chosen to make decisions for you, your doctors, family, friends, and clergy. Give each of them a completed copy.**

You may cancel or change this form at any time. You should review it often. Each time you review it, put your initials and the date here: \_\_\_\_\_

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# Making Elder Care Better for 35 Years

Kansas Advocates  
for  
Better Care

Formerly *Kansans for Improvement of Nursing Homes* (KINH)



## About Kansas Advocates for Better Care

Founded in 1975 as *Kansans for Improvement of Nursing Homes*, the 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**

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