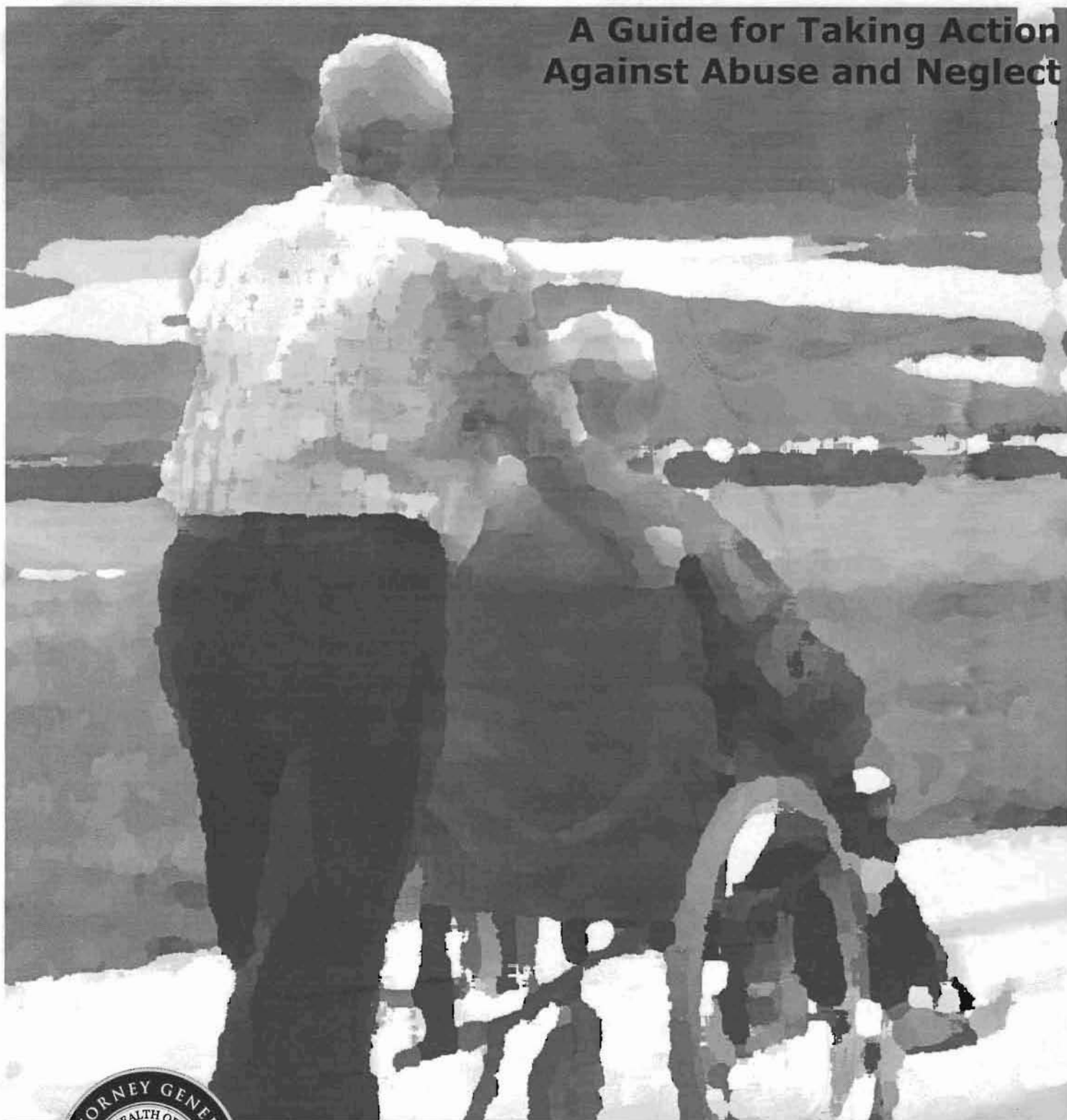


HOW TO PROTECT NURSING HOME RESIDENTS

A Guide for Taking Action
Against Abuse and Neglect



COMMONWEALTH OF KENTUCKY
ATTORNEY GENERAL GREGORY D. STUMBO



Dear Fellow Kentuckian:

This booklet is for Kentucky families who have loved ones in a long term care facility that is a nursing home. There are about 300 nursing homes in Kentucky and more than 23,000 residents. That number is expected to increase as baby boomers enter the market for nursing home care.

Many of the residents in nursing homes are given decent care, but not all. Some are neglected and abused. It is estimated that 84% of all elder abuse cases are never reported and as many as 5 million seniors are abused each year in the United States. Many nursing homes are understaffed and are not providing the care the residents are entitled to by law.

Understanding how to protect residents from abuse and neglect, and understanding how to deal with violations of residents' legal rights are the purposes of this booklet. Additionally, this booklet will also help you to learn how to recognize and report abuse. It is not only our obligation, it is the law!

It is important that state officials be notified of any suspected abuse, neglect or exploitation. Reporting is the first step in protecting your loved one. It is the right of every resident in a nursing home to be safe, secure and treated with dignity. It is the right of every family to feel free to demand that level of care.

Sincerely,

A handwritten signature in dark ink that reads "Gregory D. Stumbo". The signature is written in a cursive, flowing style.

Gregory D. Stumbo
Attorney General

How to protect nursing homes

A guide for taking action against abuse and neglect

This booklet will help you learn how to recognize and report abuse, neglect and financial exploitation. It provides guidance for recognizing, reporting, documenting and keeping track of the complaints that you make. It also includes sample forms which may be helpful in assisting you with this reporting process.

You should be aware that nursing homes are accountable for the care of their residents. A nursing home may be held responsible for its negligence in hiring, training or supervising its staff. Additionally, a nursing home may be held responsible for the acts and omissions of its employees while they are acting in the course of their employment.

The Office of the Attorney General hopes that you find this booklet helpful in assisting with the protection of your loved one in nursing home care. Not only is reporting the first step in protecting your loved one, it is the law!

Protection from abuse, neglect, and exploitation

Making a report

Kentucky law, KRS Chapter 209, protects our most vulnerable adults from abuse, neglect and exploitation and requires us to report our suspicions of these activities. Any suspected abuse, neglect or exploitation, whether against loved ones or other residents who may be unknown, must be reported to Adult Protective Services. This agency investigates complaints of abuse, neglect and exploitation. If you suspect abuse, neglect or exploitation, make a record of the incident and ALERT authorities. A report may be written or oral and can even be made anonymously to:

Adult Protective Services
275 E. Main Street
Frankfort, KY 40621
1-800-752-6200

Complaints against the nursing home should also be made to the Office of the Inspector General, which is responsible for licensing nursing homes.

Office of the Inspector General
502-564-7963

Additionally, reports of abuse in a nursing home facility may be made to the Office of the Attorney General's Abuse Tip Line.

Office of the Attorney General
877-ABUSE-TIP
(877-228-7384)

As soon as you suspect abuse or neglect, call the numbers listed above immediately. If you have specific information, including the name of the victim, the name of the facility and location, the name of any witnesses, date and time of incident, etc., make sure to include this in your report. See the sample form provided in the back of this booklet. Remember, a report may be written or oral and can even be made anonymously.

Recognizing the indicators

Abuse

Abuse is the intentional infliction of injury or pain and includes physical, mental, verbal, psychological, sexual, unreasonable seclusion, intimidation, etc. It should be noted that more than one form of abuse might be occurring at the same time.

(Definitions and indicators of abuse and neglect are used with permission from the National Citizens' Coalition for Nursing Home Reform.)

Some indicators of abuse:

- ▶ Physical abuse from a staff member, other resident, or an intruder or visitor from outside the facility can include:
 - hitting
 - pinching
 - shoving
 - force-feeding
 - scratching
 - slapping
 - spitting
 - bruises from careless transfers
 - rough handling during care giving, medicine administration or moving a resident
- ▶ Psychological, emotional or verbal abuse is the infliction of mental pain or anguish which is caused by:
 - berating
 - ignoring
 - intimidating
 - ridiculing
 - cursing the resident
 - threats of punishment or deprivation
 - isolation
 - demeaning or controlling behavior
- ▶ Sexual abuse — including improper touching or coercion to perform sexual acts when resident does not give or is not capable of giving consent which may be noted by:
 - unexplained injury, redness or bruising to private parts or mouth
 - expressions of fear toward a particular person
 - medical finding of sexually transmitted disease
 - sudden unexplained onset of urinary tract infections
 - unexplained shame, fear or embarrassment
 - allegations of abuse made by the victim



Neglect

Neglect occurs when an adult is unable to perform or obtain for himself the goods or services that are necessary to maintain his health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult. Neglect may be intentional or unintentional. For example, a caring aide who is poorly trained may not know how to provide proper care. Regardless of whether the neglect is intentional or unintentional, it is still against the law.

Some indicators of neglect:

- ▶ Substandard care which often results in one or more of the following conditions:
 - immobilization
 - loss of bowel or bladder control
 - dehydration
 - bed sores
 - depression
- ▶ Failure to turn or reposition resident on a regular schedule, including use of physical restraints or overmedication, which leads to:
 - limb contractures
 - skin breakdown (bed sores)
- ▶ Lack of toileting or changing of disposable briefs, which causes:
 - loss of bowel or bladder control, resulting in residents sitting in urine and feces
 - increased falls and agitation
 - indignity
 - skin breakdown
 - persistent odor of urine or feces
- ▶ Unmet personal or medical needs:
 - inappropriate clothing
 - poor hygiene
 - incorrect use or administration of medicine
- ▶ Poor or absent oral hygiene, which leads to:
 - tooth decay
 - oral infections
 - loose teeth
- ▶ Lack of assistance with eating and drinking or inadequate or improperly prepared food, which leads to:
 - malnutrition
 - dehydration
 - weight loss
- ▶ Lack of assistance walking/moving, which leads to lack of mobility
- ▶ Poor hand washing techniques, which leads to infection
- ▶ Withdrawal or isolation which may be caused by the failure to provide assistance and/or encouragement in participating in activities of interest
- ▶ Ignoring call bells or cries for help

**Ask yourself:
"Do I want
this happening
to others?"**

Exploitation

Exploitation means obtaining or using another person's resources, including but not limited to money, assets or property without the resident's direct consent or as a result of improper influence with the intention to deprive the person of those resources.

Some indicators and examples of exploitation:

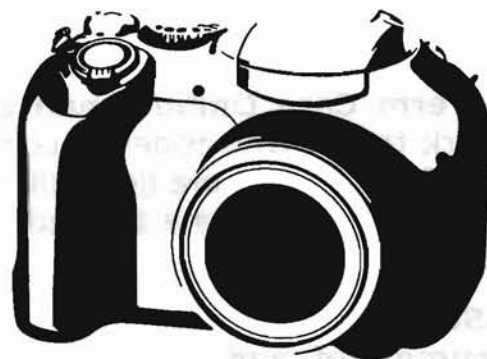
- ▶ Excessive interest by a staff member in a particular resident;
- ▶ Stealing or embezzling a resident's money or personal property, such as jewelry or clothing or efforts to obtain resident's money or personal property through trickery or lies;
- ▶ Failure to provide services or goods for which resident has paid;
- ▶ Suspicious checks made out to cash;
- ▶ Unexplained or suspicious bank activity such as ATM use;
- ▶ Not placing resident's money in separate interest-bearing accounts where required.

Documenting suspected abuse, neglect and exploitation

As stated before, Kentucky law requires you to report suspected incidents of abuse, neglect, or exploitation to authorities. Documentation is important to law enforcement and other authorities when reporting incidents of abuse. Be prepared to give specific information and be aware that taking pictures may be very helpful as part of your documentation process. A sample incident report form is provided for your convenience in the back of this booklet.

If possible include:

- ▶ Name of victim
- ▶ Age, if known
- ▶ Name and address of facility
- ▶ Date of incident(s)
- ▶ Time(s)
- ▶ Description of incident(s)
- ▶ Nature of the abuse, neglect or exploitation
- ▶ Name of alleged perpetrator
- ▶ Names of any witnesses and how to reach them



Nursing home records

Nursing home staff is required to make timely and accurate entries of treatment and care in the patient's record. Make sure that this is being done. Request to see documentation and records on a routine basis. If refused, make note of who, what, when, where and why. You have the right to review these records. The family may need to designate one family member to be the contact person but the family cannot be denied total access to the records.

If medical records are incomplete or missing, it should be reported to the Office of the Inspector General at 502-564-7963.

If, at any time, you feel the safety of your loved one is at risk, report it immediately. Even if you cannot pinpoint an exact incident but have an uneasy feeling – report it. Ask yourself “Do I want this happening to others?” Report the incident or incidents (or your uneasy feelings) promptly to:

The facility — Nursing home administrator, director of nursing, social worker or other nursing home management staff.

Adult Protective Services (APS) at 800-752-6200 — This agency is responsible for accepting and investigating complaints concerning the abuse, neglect and/or exploitation of vulnerable adults. This is done in cooperation with other agencies or law enforcement to substantiate complaints or ascertain if services are needed. There is a local office in each county which may be listed in your telephone directory under the Kentucky State Government section Cabinet for Health and Family Services, Department for Community Based Services — Protection and Permanency or you may call the state hotline number listed above.

Office of Inspector General (OIG) at 502-564-7963 — The staff of this office is highly trained to identify situations in which the elderly have been subjected to abuse, neglect or exploitation in a health care facility. When these facilities fail to provide the necessary care, provide poor care or fail to protect victims from predators, the OIG staff can be of great help in establishing causation or link between services poorly or not provided and decline in the victim’s health, often ending in death. The agency can also impose sanctions that can result in facility closure.

Local law enforcement — Contact your local police department, sheriff’s department or the Kentucky State Police post nearest you.

Office of the Attorney General (OAG) at 877-ABUSE-TIP (877-228-7384) — The Medicaid Fraud and Abuse Control Unit (MFCU) in the Attorney General’s Office prosecutes fraud perpetrated by providers against the Medicaid program, the state program that provides health care for people based on financial eligibility. In addition to fraud, the MFCU prosecutes crimes of abuse, neglect and exploitation against victims in health care facilities. MFCU staff is always available to prosecute these cases or to assist local prosecutors in any way to bring to justice those who prey upon vulnerable citizens.

Long Term Care Ombudsman at 800-372-2991 — Ombudsmen identify, investigate and work to resolve residents’ concerns, as well as empower residents to make informed choices. Ombudsmen are generally well aware of facilities’ history of care and compliance or noncompliance with state and federal laws and regulations governing care and can provide a wealth of information.

PLEASE NOTE: It is best that you notify all agencies listed to ensure that your report is documented, addressed and investigated.

Follow-up

Follow up with the agency conducting the investigation, i.e. Adult Protective Services, the Office of the Inspector General, local law enforcement, etc. to determine what action has been taken on your complaint.

It will be helpful to document these agency contacts as well, noting the date, time, with whom you spoke and what you were told.

You should also check with the resident and/or facility to determine if the problem has been corrected.

**Nursing Home Residents'
Bill of Rights
KRS 216.515**

(6) All residents shall be free from mental and physical abuse...

(18) Each resident shall be treated with consideration, respect, and full recognition of his dignity and individuality...

Open Records

What is it?

Kentucky Open Records law provides you access to records retained by the government. You may ask to review complaints, investigations, reports, complaint resolutions, statements of deficiencies, plans of correction, Type A or B citations, allegations of compliance, continuous quality assessments and any and all other records pertaining to the facility. If you feel you are not getting the information you are entitled to, you may wish to file an open records request.

How to obtain open records

The records may be requested by letter to the Department for Community Based Services or the Office of the Inspector General. There may be a fee charged for copies. We have provided you sample copies of letters for an open records request. You will see that there are many terms used that you may want to include in order to obtain the records.

Please note that you may face some limitations when submitting an open records request due to the confidentiality of the information such as medical information, financial information, time limitations, etc. If you do not receive the information you requested or were denied any or all the information you requested, you may file an appeal with the Office of the Attorney General by calling 502-696-5664.



Sample Open Records request letter #1:

Date

Inspector General
Office of Inspector General
Cabinet for Health and Family Services
275 East Main St., 5EB
Frankfort KY 40621

RE: Open Records Request

Dear Inspector General:

I am respectfully requesting copies of the following records for (name of Nursing Home) at (Address).

1. Records reflecting results of any and all surveys for (years, for example, 2004, 2005 and 2006) including follow up surveys
2. Records reflecting results of Complaint Investigations
3. All Statements of Deficiencies and Plans of Correction
4. Complaints received
5. Records reflecting Type A or B citations
6. Records reflecting credible allegations of compliance
7. Records reflecting allegations of removal of jeopardy
8. Written communication with the Centers for Medicare and Medicaid Services regarding this provider
9. Letters to and from the provider regarding, in any way, quality of care for patients or residents

Please deliver them to the address below. If there is a charge for the copies, please let me know the amount in advance.

Sincerely,

Your signature
Your Name (printed or typed)
Address
City, State, Zip Code
Phone Number

Sample Open Records request letter #2:

Date

Official Custodian of Records
Department for Community Based Services
Records Management Section
Adult Protective Services
Cabinet for Health and Family Services
275 East Main St., 3E-G
Frankfort, KY 40621

Dear Custodian of Records:

I respectfully request to inspect (and obtain copies of) the following records:

All records relating to the Cabinet's investigation of my (date complaint was filed) complaint concerning the treatment of (relative's name) at the (name of nursing home or facility), including, but not limited to, records reflecting any final action taken on my complaint.

It is my understanding that the Cabinet must respond to my request in writing, and within three business days, and either disclose the requested records to me on the third day, or cite the statutory exemption authorizing nondisclosure and explain how it applies to the records withheld. I agree to pay reasonable copying costs for these records not to exceed 10 cents per page per 200 KAR 1:020 Section 3 (1).

Thank you for your attention to this request.

Sincerely,

Your signature
Your Name (printed or typed)
Address
City, State, Zip Code
Phone Number

In case of death or injury as a result of suspected abuse or neglect

If you suspect your loved one's death is the result of abuse or neglect, report your suspicions immediately to Adult Protective Services, the Office of the Inspector General, the Office of the Attorney General and local law enforcement at the numbers given in this booklet.

Before the body is removed to the funeral home, request that the coroner examine the body for any signs of abuse or neglect. Ask the coroner to request an autopsy.

If the body has already been removed to the funeral home, request the funeral home director to examine the body and indicate in writing any signs of abuse or neglect. If the funeral home director believes the death is the result of abuse or neglect, he should ask the coroner for an autopsy. This should be done as quickly as possible.

If you find you need legal help

If your efforts to solve problems are not successful and your loved one continues to be at risk, you may need legal help. To help organize the details of your loved one's situation in a way that can be pursued legally, the following steps will be helpful:

- ▶ Keep detailed records of your loved one's stay in a nursing home from the beginning. You may wish to keep a journal of your visits and document what you notice during your visit. Keep this journal in your possession.
- ▶ Record each time and date you make a complaint including name/position of person you talk to.
- ▶ Keep a camera with you on each visit. Photograph anything out the ordinary as well as good times. It may be useful to demonstrate that your person does have a good quality of life within their limitations.
- ▶ Photograph skin and hygiene problems. Be sure to date these items.
- ▶ Ask friends and other visitors to be alert for problems.
- ▶ Note how many caregivers are on duty when you find a problem.

If you find you need an attorney, you may contact the Kentucky Bar Association to obtain information on Lawyer Referral Services to assist you in selecting an attorney who is familiar with these types of cases. Contact the Kentucky Bar Association at 502-564-3795 or www.kybar.org.

Tips for people with family or friends in a nursing home

The following are some recommendations to help you monitor and document care provided in the nursing facility.

- ▶ The facility must develop a care plan enabling your loved one to achieve the highest practical level of functioning. This includes all aspects of care and services and identities changes. It is very important for you to be at the initial and follow-up care plan meetings, as regularly scheduled. The meeting should include the medical director, dietitian, physical therapist, pharmacist, nursing director, social director and activities director.

- ▶ Request to see charts regularly to ensure that proper documentation of activities of daily living (ADLs) are noted as well as any reports you requested to be included such as new bruises, bedsores, etc. Changes in behavior, fever and falls should automatically be included in the chart, as this is required. These records can assist in care planning.
- ▶ Have a routine of frequently reviewing the nurses' notes contained in the charts. The facility may require you to designate one person who is allowed to review the chart.
- ▶ Document whether the nursing home calls to report changes in the condition of the resident, such as any falls encountered, fever, etc. Are these documented in the resident's medical chart?
- ▶ Federal law requires postings of direct caregivers on each shift. Take notice of it.
- ▶ Ask about staffing ratios and how many "hours of direct care" the facility's residents receive per day. Be aware that you may be given ratios based on number of staff per number of residents. This could include maintenance, cooks, etc. You want to know hours of direct care, not how many people are employed there.
- ▶ Visit at irregular times. If staff expects your visits, you may only witness desirable behaviors or treatment of residents.
- ▶ Follow up/communicate with family and friends who have visited during your absence. Were any changes in condition noticed with the patient?
- ▶ Keep a journal of your visits. Include the demeanor of the patient, attitude of staff, any unusual bruising, etc.
- ▶ Become familiar with staff and names of staff, shifts worked, etc.
- ▶ Review annual inspections of the nursing home. You have the right to do this. These reports should be in an accessible location on the premises.
- ▶ Become aware of and document any unpleasant smells in the nursing home, physical obstacles in the hallway, inattentive staff, unanswered call bells or cries for help, etc.
- ▶ Get to know family members of other residents who visit regularly. Sharing information and concerns is important.
- ▶ Take photos of suspicious bruises or wounds, etc. Use a reference tool, such as a coin, to place near the affected area to indicate the size of the bruise or wound.
- ▶ Take photos of good times, too.
- ▶ Get involved with Family Councils. These councils meet to discuss issues and concerns of the residents. Appoint a family member to take minutes at the meetings instead of relying on nursing home staff.
- ▶ Make copies of reports and complaints you make to any agency.
- ▶ Ask for copies of medical records if your loved one is sent to a hospital for medical care.
- ▶ If the problem is not resolved to your satisfaction, you may choose to seek private legal counsel.

Example of the type of information that should be documented:

Date	Time	Description of Incident	Report to staff member / agency	Witness and/or contact, who was on duty? Phone #	Location / site of incident	Treatment / action	other notes
11-26-06	2pm	Mom was lying in soiled bed clothes which appeared to be somewhat dry indicating that the mess had been there for a while	Charge nurse, Ann Smith	Betty Jones, resident in same room with mom and nurse's aide, Mary Brown. Also called APS and spoke with Bill White at 800-752-6200	In her room.	Nurse changed bed and mom's nightgown and apologized. She said they were "short staffed today."	Took a picture of the mess.

Adult Protective Services 800-752-6200
 Office of the Inspector General 502-564-7963
 Office of the Attorney General ... 877-ABUSE-TIP (877-228-7384)
 Office of the State Long Term Care Ombudsman ... 800-372-2991

Documentation form — make copies as needed

Date	Time	Description of Incident	Report to staff member / agency	Witness and/or contact, who was on duty? Phone #	Location / site of incident	Treatment / action	other notes

Adult Protective Services 800-752-6200

Office of the Inspector General 502-564-7963

Office of the Attorney General ... 877-ABUSE-TIP (877-228-7384)

Office of the State Long Term Care Ombudsman ... 800-372-2991

Suggestions for documentation by family members and visitors:

- ▶ It is important to keep your log/journal of documentation in a safe place in order that it is not lost or destroyed by the perpetrator. Consider keeping it at your own home.
- ▶ Family members are encouraged to keep a record of suspected abuse/neglect by filling in as much information as they can about such incidents. Your loved one may not be able to articulate what is happening to them, but you may notice bruises or other physical signs of abuse/neglect. In this instance, it is important to document in order to discover a pattern of abuse and to report such violence.
- ▶ When writing a description of the incident against your loved one, try to note where the abuse occurred (what room the victim was in) as well as any details of physical or emotional harm. It is helpful to be as detailed and specific as possible. List the time and date of the incident. If there are no physical signs of abuse, note the change in your loved one's emotional state or behavior. For example, does your loved one appear uncomfortable or fearful around certain workers?
- ▶ If someone else witnessed abuse/neglect against your loved one, it is important to note some specifics about the person. Writing down the witness' name, contact information, whether or not the witness is a staff member at the facility, his/her position, etc. will be helpful for investigators.
- ▶ Take pictures of any suspicious bruises or wounds. Remember it is helpful to use a coin or other object as a reference tool to place near the affected area. If your camera does not have an automatic date feature, make sure that you document the date and time the picture was taken.
- ▶ Document all particular incidents reported to a staff member. Make sure you obtain the name and job title of this individual, the date and time, and what the staff member told you at the time of your report.
- ▶ If the abuse/neglect warranted treatment, note the particulars of the care given. For instance, if your loved one or other resident received medical treatment, it is important to write down what it was, the hospital and/or doctor that administered care, the date, and time treatment was received. Ask for copies of the hospital records.
- ▶ Other documentation that is helpful in the prosecution of cases include photographs of injuries and records (date and time) of calls made to Adult Protective Services, Office of the Inspector General and the Office of the Attorney General.

Resources

Kentuckians for Nursing Home Reform

1530 Nicholasville Road
Lexington, KY 40503
859-312-5617
<http://www.kynursinghomereform.org>

Kentucky Office of the Attorney General

1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
502-696-5389
<http://ag.ky.gov>

Office of the Inspector General

502-564-7963
<http://chfs.ky.gov/oig>

Adult Protective Services

800-752-6200
<http://chfs.ky.gov/dcbs/dpp/facs.htm>

Office of the State Long Term Care Ombudsman

800-372-2991
<http://chfs.ky.gov/omb>

National Adult Protective Services Association (NAPSA)

<http://www.apsnetwork.org>

National Alzheimer's Association

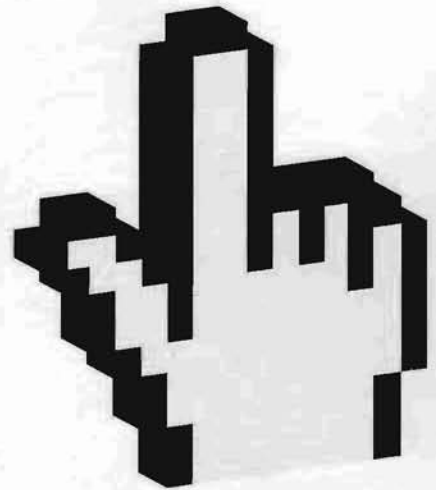
225 N. Michigan Ave., Fl. 17
Chicago, IL 60601-7633
800-272-3900
312-335-8700
<http://www.alz.org>

National Center on Elder Abuse

1201 15th Street, NW, Suite 350
Washington, DC 20005
202-898-2586
<http://www.elderabusecenter.org>

National Citizens' Coalition for Nursing Home Reform

1828 L Street, NW
Washington, DC 20036
202-332-2275
<http://www.nursinghomeaction.org>





Gregory D. Stumbo
Attorney General

For more information:

Kentucky Office of the Attorney General
Office of Consumer Protection
1024 Capital Center Drive
Frankfort, KY 40601
(502) 696-5389

<http://www.ag.ky.gov/consumer>

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