

JANUARY 2004

Arkansas Advocates For Nursing Home Residents



Conway (501) 327-3152 • Fairfield Bay (501) 884-6728 • Little Rock (501) 225-4082

NEXT MEETING
January 12, 2004

LOCATION:

First Assembly
Of God Church
Room 113
4501 Burrow Road
North Little Rock
Directions to Church
On page 6

AGENDA:

10 a.m.
Meeting for members,
family and friends
of residents
(Closed to persons
representing
the nursing home
industry.)

11 a.m.
Public Meeting
Speakers: Nancy Allison
and Nancy Johnson

12:00 Noon
Bring a sack lunch

AANHR Special Thanks

AANHR is grateful to The Law Offices of Darren O'Quinn and Wilkes & McHugh, both located in Little Rock, for their assistance in the publication of this newsletter. These law firms represent nursing home residents and can be reached toll-free at 1-800-455-0581 or 501-371-9903, respectively. You can also visit their websites at www.DarrenOQuinn.com and www.wilkes-mchugh.com

We're On The Web With A New
and Updated Website!
www.AANHR.org

AANHR would like to thank David Couch 501-370-9192 for designing its website

January General Meeting to Highlight NCCNHR Conference

The annual fall conference of National Citizens Coalition for Nursing Home Reform (NCCNHR) was held as usual, in Washington D.C. This year the theme was, "ELDER JUSTICE, Shaping Policy, Saving Lives." AANHR was represented by President Nancy Allison and Vice President Nancy Johnson. At our next public meeting, we can all enjoy the NCCNHR Conference vicariously as we listen to Allison and Johnson tell about the Conference and the things they learned. To hear the report, join us on January 12, 2004 at 11:00 a.m.

January Business Meeting will Feature a Family Council Video

Do you want ideas on how to make your Family Council more effective? AANHR plans to view a Family Council video as part of the business meeting on January 12 at 10:00 a.m. It provides an overview of the focus, techniques, and strategies of effective Family Council development. We encourage you to come and view this video. Interesting discussion will follow. You can merely listen or participate, as you wish.

Videos Available

AANHR is establishing a library of materials for your use. Borrowing arrangements can be made at the monthly meeting or by calling 501-327-3152. The two videos currently available are: *Care Plan* and *Strength in Numbers, The Importance of Nursing Home Family Councils*.

REMINDER:

If the Little Rock Public Schools are closed due to inclement weather, there will be no AANHR meeting in January

AANHR's Mission:

"To protect and improve the quality of care and life for residents in Arkansas nursing homes"



From the President's Desk

Nancy Allison

I hope you have had a very Happy Holiday Season and are looking forward to a very good 2004. As I prepared some thoughts for the New Year, I looked back through our 2003 newsletters and noted some of the specific topics we addressed.

Our January report from the 2002 NCCNHR Conference was *No More Excuses – We Demand Quality Care*. And we went from that into a tough, long lasting legislative session where we fought attempts to take away the civil justice rights of residents of nursing homes and their families. The general tort reform bill was passed and then the Fair Care and Treatment Act of 2003 was brought forward by the Nursing Home Industry. They said it was about forming a liability insurance pool for their homes, but it sounded a lot like a very restrictive form of tort reform. It died when the session was ended abruptly on April 15th.

We addressed the proper use of restraints on several occasions hoping that you, the family members, will become more involved in determining what is the best way to handle some of the difficult situations that occur with wandering, falling and behavioral problems. Restraints should be a last resort and closely monitored.

We learned that the top 10 deficiencies surveyors find in nursing homes in Arkansas seem to *always be* the top 10 deficiencies. Then we heard about what things an attorney looks for in proving a neglect case. And we encouraged you to learn how to access the medical record of your loved one.

“Arbitration” and “Mediation” became words we need to be familiar with and understand. We are told that some nursing homes are *requiring* arbitration clauses and you must be sure you understand what this is. It is wise to get counsel before signing these papers. During this long lasting 84th Legislative Session AANHR worked together with other groups forming an Alliance with people who all saw the need to improve care in nursing homes. We will maintain this alliance giving us a larger voice.

Most recently you will have received a letter from the AANHR board explaining the findings of a Special Investigations Division Committee on Government Reform of the U. S. House of Representatives. AANHR members were familiar with the workings of this committee and contacted Arkansas legislators in Washington, D.C. asking them to request this study for the state of Arkansas. Congressman Vic Snyder moved forward with this request and recently that report was published. It is unsettling, to say the least, to have a loved one in a nursing home knowing that 95% of nursing homes in Arkansas had at least one violation with the potential to cause *more than minimal harm* to residents. Only 13 facilities (5%) of the homes in Arkansas were found to be in full or substantial compliance with federal standards.

Please continue to support AANHR with your dues and your presence at our meetings. As I stated above – *NO MORE EXCUSES – WE DEMAND QUALITY CARE* – and we continue to work to that end.

IMPORTANT NUMBERS

•Office of Long Term Care•

The Arkansas OLTC has a toll-free number for information, assistance, and complaints for residents and family members between 8 a.m. and 4:30 p.m. on weekdays: **1-800-LTC-4887**. A social worker or nurse will be available to answer questions and address concerns. You may also write to: **Office of Long Term Care, P. O. Box 8059, Slot 400 Little Rock, AR 72203-8059**.

NOTE: YOU SHOULD ALSO REPORT COMPLAINTS TO THE ATTORNEY GENERAL'S OFFICE BELOW

For additional assistance or a listening ear, **call AANHR at**

(501) 327-3152
Conway

(501) 884-6728
Fairfield Bay

(501) 225-4082
Little Rock

For instructions on how to file a Complaint with OLTC, visit our website at **www.AANHR.org** or e-mail us at **info@AANHR.org**.

•Attorney General's Office•

The Arkansas AG has a number to investigate elder abuse and Medicaid fraud. Please do not hesitate to call them:

TOLL FREE
1-866-810-0016

Little Rock local number:
682-7760

Alternative Dispute Resolution Defined At AANHR's November Meeting

By Nancy Johnson



More and more Arkansas nursing homes are asking residents or their representatives to sign an Alternative Dispute Resolutions (ADR) contract at the time of admittance. If you sign it, you may have waived your right to be heard by a jury if you or your family member is harmed through neglect or abuse. Don't sign it without first asking to take the agreement home for 48 hours to read it thoroughly and/or show to your attorney. ***By law, a nursing home is not allowed to refuse admittance to a person because they refused to sign the ADR.*** (See "AANHR Tip" below.)*

Ron Sheffield, Little Rock attorney, spoke to AANHR members at the monthly meeting November 10, 2003, and explained more about the ADR process. Nursing homes sometimes seek this route in an effort to avoid lengthy and costly court proceedings.

An ADR may take one of two forms: mediation or arbitration. In mediation the two opposing parties meet with a mediator, a neutral person, who can observe the dispute objectively, and he works with both sides to try to reach a solution which is agreeable to both. The mediator acts as a facilitator to bring about an agreement and does not himself rule on the matter. The goal of mediation is a written agreement between the two parties. If this occurs the agreement is binding and cannot be appealed further. This process is completely voluntary for both parties and either party can pull out at any time prior to signing a final agreement.

Arbitration differs from mediation in that the neutral third party, the arbitrator, will hear both sides of the dispute and then issue a binding opinion. In arbitration there is no attempt to reach an agreement satisfactory to both parties. They must agree to abide by the decision of the arbitrator.

The key to both forms of alternative dispute resolution is the impartiality of the mediator/arbitrator. The Arkansas Supreme Court has formed an ADR Commission which certifies mediators and arbitrators. Certification is not mandatory, however. ***Mr. Sheffield highly recommends that anyone going into ADR understand the difference between mediation and arbitration and insist upon certification of the mediator/arbitrator.*** There will be fees associated with any ADR process for the services of the mediator/arbitrator and to cover costs. Usually, however, this is much less than the costs associated with a court trial.

As previously stated, many nursing homes are now including mandatory arbitration clauses in their admission contracts. Beverly Enterprises has openly announced that their admission contracts will include a binding arbitration clause. ***By signing a contract containing such a clause, the resident or responsible party is committing themselves to binding arbitration (not mediation) in the event of a dispute or claim against the nursing facility, forfeiting their right to bring a lawsuit should they wish to do so in the future.*** There is some dispute whether such a clause can be held to be legally binding. The matter has yet to be decided by the courts. In Arkansas the Office of Long Term Care has taken the position that a binding arbitration clause violates Medicare/Medicaid regulations. However, if the admission agreement is not carefully read and understood prior to signing, a resident or their family may be forfeiting an important right.

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New State Ombudsman Hired

After about a year of vacancy, a new State Ombudsman has been hired by the Division of Aging in the Department of Human Services. Kathie Gately had been State Ombudsman about 9 weeks, when AANHR President Nancy Allison and Vice President Nancy Johnson secured a meeting with her. Ms. Gately has been traveling to all areas of Arkansas, meeting each regional ombudsman. She is pleased to have the volunteer ombudsman program working in the northwest corner of the state and says she is excited about the responses she is getting from each ombudsman.

Allison and Johnson discussed AANHR's hopes to have an effective ombudsman program, and Ms. Gately said she shared this desire. In addition, she wants to do what she can to create more family councils in Arkansas nursing homes and make them more effective. She has had a child in the disability program and understands the problems from both sides of the table.

Ms. Gately has been with various divisions of Arkansas Department of Human Services for 16 years. Nancy Allison reports that she and Nancy Johnson look forward to meeting with her again in 3 or 4 months.

A list of the State Regional Ombudsmen follows. Bear in mind, however, that each nursing home is required to post in a highly visible location, the name of the Regional Ombudsman for that home.

ARKANSAS STATE OMBUDSMEN:

Region I - Carol Loring
Northwest Arkansas Area Agency on Aging
1510 Rock Springs Road
P.O. Box 1795
Harrison, AR 72602
Phone: 1-800-432-9721 or 870-741-1144

Region II - Royce Haigwood
White River Area Agency on Aging
3998 Harrison Street
P.O. Box 2637
Batesville, AR 72503
Phone: 1-800-382-3205 or 870-612-3000

Region III - Harold McMickle
East Arkansas Area Agency on Aging
P.O. Box 5035
Jonesboro, AR 72401
Phone: 1-888-311-2238 or 870-930-2238

Region IV - Carolyn Thomas
Area Agency on Aging of Southeast Arkansas
P.O. Box 8569
Pine Bluff, AR 71611
Phone: 1-800-264-2535 or 870-543-6300

also Region IV - Jean Douglas
Area Agency on Aging of Southeast Arkansas
P.O. Box 722
Monticello, AR 71655
Phone: 1-800-737-1629 or 870-367-9673

Region V - Herman Estau
Carelink
706 West 4th Street
P.O. Box 5988
North Little Rock, AR 72119
Phone: 1-800-482-6359 or 501-372-5300

Region VI - Emelie McDonald
West Central Arkansas Area Agency on Aging
905 West Grand Avenue
Hot Springs, AR 71913
Phone: 1-800-467-2170 or 501-321-2811

also Region VI - Judy McCready
West Central Arkansas Area Agency on Aging
1310 West Main, Suite A
Russellville, AR 72801
Phone: 1-800-467-2171 or 501-967-9300

Region VII - Deborah Hanson
Southwest Arkansas Area Agency on Aging
600 Columbia
P.O. Box 1863
Magnolia, AR 71753
Phone: 1-800-272-2127 or 870-234-7410

Region VIII - Debbie Medley
Western Arkansas Area Agency on Aging
524 Garrison Avenue
P.O. Box 1724
Fort Smith, AR 72902
Phone: 1-800-320-6667 or 501-783-4500

All regional ombudsmen can be contacted via e-mail by going to the Arkansas Ombudsman web page @ <http://www.arombudsman.com/>.

AANHR SYMPATHIES

**Lon Sauer, dedicated AANHR member, passed away on December 12, 2003.
AANHR extends its deepest sympathies to the his brother Ed and the Sauer
Family**

(Continued from page 3)

AANHR Tip:

1. **Don't sign a contract containing an arbitration agreement until you thoroughly understand it, because it will be legally binding. Ask to take it home for 48 hours to study it or to show it to your attorney.**
2. **When you sign admittance papers for your loved one, follow your signature with, "attorney in fact" in order to avoid responsibility for the bills. Give the home a copy of your power of attorney.**
3. **Remember the home cannot lawfully deny admittance because you refuse to sign the arbitration clause. In addition, nursing homes are required to explain the arbitration clause and allow plenty of time to read and reflect upon the document.**

*AANHR Tip facts derived from *Nursing Home Arbitration May Limit Legal Alternatives* (11/24/03 Ft. Lauderdale Sun-Sentinel) by Diane Lad and H. Cruz

For Your Information:

Carol Shockley, Director of the Office of Long Term Care (OLTC), has shared with AANHR the answer to a frequently-asked question. She secured the information from the Division of Medical Services with the Department of Human Services.

Question: *Are nursing homes required to supply diapers for incontinent residents?*

Answer: *Diapers and other incontinence supplies are an allowable cost item. Therefore, the facility must pay for them. They cannot be billed as Durable Medical Equipment through the Medicaid program. We will allow for cost reporting purposes any type of diaper or method for dealing with incontinence the facility decides to use.*

Do YOU have a question? If so, contact AANHR. If we can't answer it, we'll take it to OLTC.

Investigation on Arkansas Nursing Homes Reveals Serious Problems

In response to a request by AANHR and AARP, Rep. Vic Snyder asked the Special Investigations Division of the United States Congress to study conditions of Arkansas Nursing Homes. The report, one of about 30 which have been completed in different states, was released the first week of November. The findings in the release were based on the results of state survey and complaint reports between May 2002 and August 2003, together with staffing ratios which nursing homes are required to regularly self-report. Here are the findings on 245 nursing homes:

1. 95% (232 nursing homes) had at least one violation with the potential to cause more than minimal harm to residents.
2. One-third (81 nursing homes) had violations that caused actual harm to residents.
3. 05% (13 nursing homes) were found to be in full or substantial compliance.
4. Most nursing homes (92% or 224 nursing homes) failed to meet minimum staffing levels recommended by the Department of Health and Human Services. HHS recommends a minimum of 4.1 hours of direct care to residents each day. Less than 4.1 hours has proven to be unsafe, according to a HHS ten-year study on staffing in the nation's nursing homes.

Arkansas state regulations require 2.8 hours of direct care per resident 80% of the time.

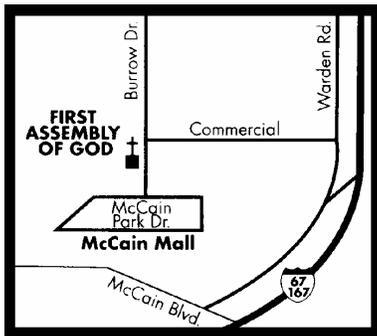


**Arkansas Advocates
For
Nursing Home Residents**

P. O. Box 22421 Little Rock, AR 72221-2421

**PROTECTING THE RIGHTS OF
NURSING HOME RESIDENTS FROM FRAUD, ABUSE, AND NEGLECT**

NON-PROFIT
ORGANIZATION
U.S. POSTAGE
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MAP TO MEETING

**Strength in Numbers,
AANHR Needs You**

Please take a moment to find out if you've renewed your AANHR membership. (Our fiscal year began on November 1, 2003. If you have not paid your dues since August 2003, then you are past due.) We are so appreciative of people like you who support us because together we can make a difference.

- I wish to receive AANHR newsletter
- \$15 per individual membership enclosed
- \$20 per family membership enclosed
- \$ 4 per student or CNA
- Waive dues because of financial hardship

Please make checks payable to:
AANHR P. O. Box 22421 LR, AR 72221-2421

AANHR Officers and Board Members

- President** – Nancy Allison, Conway
- Vice President** – Nancy Johnson, Fairfield Bay
- Secretary** – Kelly O'Quinn, Little Rock
- Treasurer** – Ralph Erwin, Little Rock
- Members of the Board of Directors:**
Marce Best, Maumelle; Betty Buckta, Fairfield Bay;
Virginia Cross, Little Rock; Martha Deaver, Conway;
Catherine Donovan, Little Rock; Larry Wakefield,
Fairfield Bay

AANHR MEETING DIRECTIONS

**First Assembly of God Church, 4501
Burrow Road, North Little Rock, AR**
(See Map Above)

From Little Rock, on Highway 67-167 take the West McCain Blvd. exit. Immediately after crossing the overpass, turn right (North) on Warden Road (the access road that parallels the divided highway and McCain Mall). Stay on Warden Road for three blocks.

Turn left on Commercial Street, the street with the Golden Corral Restaurant on the corner. Commercial Street ends three blocks later at Burrow Road.

The church is at the end of Commercial Street and is easily recognized by three large crosses. Proceed ahead in the parking lot (do not turn right) past the crosses to the Southwest corner of the building. Turn right on the narrow alley-like drive. Enter the door halfway down this side of the church. The Meeting is in Room No. 113 (immediately inside the entrance door)