



AANHR

Arkansas Advocates for Nursing Home Residents

PROTECTING NURSING HOME RESIDENTS
March 2011

Conway (501) 450-9619 · Fairfield Bay (501) 884-6728
Conway (501) 450-7405

AANHR's Mission Statement:
"To protect and improve the quality of care and life for residents in Arkansas nursing homes."

**Next Meeting
March 14**

MEETING PLACE:

First Assembly of God Church

**4501 Burrow Road
North Little Rock**

Directions to church on back of Newsletter.

10:00 a.m.

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

11:00 a.m.

Public Meeting (see article at right)

DID YOU KNOW?

The AANHR Newsletter Is Available Online At aanhr.org



**March 14 AANHR Program topic:
Public Guardians for Adults
Speaker: Ivy Lincoln**

Our Arkansas State General Assembly found that many adults lack the capacity to provide informed consent to necessary health care, have not executed an advance health care directive or a durable power of attorney, and have no friend or family member qualified and willing to consent on their behalf. Act 862 of 2007

created the Office of Public Guardian for Adults to meet this public need, and funding was secured in 2009. The Office of the Public Guardian for Adults is within the Department of Human Services Division of Aging and Adult Services.

Ivy Lincoln, our state's first Public Guardian for Adults, was selected from a field of applicants and began work May 3, 2010. Ivy comes to us with a broad range of experience. A second-generation attorney, he has practiced law in federal, state, and private practices since earning his Juris Doctor in 1978. He has also worked for public school districts, serving as director of human resources for Fayetteville School District and chief financial officer for Watson Chapel School District in Pine Bluff. He and his wife Jacqui have been married 33 years and live in Little Rock, where they both grew up. Ivy has helped Jacqui raise four children and enjoy six grandchildren. His hobbies are boating and photography.

Please join us March 14th at 11:00 am to learn important information about the public guardian program in Arkansas. You never know when you may need the program for a family member or encounter someone who needs the information.

NOTE: This program pre-empted by inclement weather on January 10.

Calendar of Events		
Mar. 14	10:00 AM	AANHR Meeting
Apr. 11	10:00 AM	AANHR Meeting



From the President's Desk Martha Deaver

AANHR members field many telephone calls on a weekly basis from family members around the state and nation who are encountering road blocks to getting good care for their family member nursing home residents. My best advice, given me by a seasoned nursing home veteran, is: be a squeaky wheel and demand solutions to problems. To that end we offer readers advice on some of the average problems encountered in a nursing home environment.

20 Common Nursing Home Problems and How to Resolve Them

- #1. **Discrimination against Medicaid-Eligible Residents.** One may be told that "Medicaid does not pay for the service that you want." The fact is that a nursing home cannot discriminate against residents based on who pays their bill. A Medicaid-eligible resident is entitled to the same level of service provided to any other resident.
- #2. **Care Planning.** The resident and resident's family have the right and **should** participate in deciding what care the resident will receive and the resident's needs and wants need to be taken into consideration.
- #3. **Honoring Resident Preferences.** A nursing home must make reasonable adjustments to honor resident needs and preferences. The wants and need of the residents take priority over the convenience of the staff. The resident should insist on staff adjusting to his/her schedule, not vice versa.
- #4. **Providing Necessary Services.** A nursing home is required by law to provide the care necessary to meet residents' physical and social needs. Not having enough staff is no excuse, not even on a short-term basis.
- #5. **Use of Physical Restraints.** The law also states that restraints cannot be used for the nursing home's convenience or as a form of discipline. This means that they are required to have enough staff to prevent harm from falls or wandering.
- #6. **Inappropriate Use of Behavior-Modifying Medication.** Medications should never be given simply to make residents more manageable. Psychotropic medications are to be used only to treat a diagnosed illness, i.e., such as depression or mental illness.
- #7. **Use of Feeding Tubes.** There are times when feeding tubes are appropriate but they should be a last resort, not for the convenience of the staff.
- #8. **Visitors.** Family and friends of residents have the right visit at any time of the day or night unless the resident objects.
- #9. **"Responsible Party" Provisions in Admission Agreements.** You cannot be told that you must agree to be financially liable for the resident's cost of care unless you are the appointed legal agent for them. A nursing home cannot require anyone but the resident to be financially responsible for their nursing home expenses.
- # 10. **Arbitration agreements.** This has become a staple within the admission agreement and requires the resident or resident's representative to agree to submit all future disputes to a private arbitrator. **This effectively takes away the right to sue in court.** Arbitration is often more expensive than a lawsuit and the arbitrator may be more familiar with and sympathetic to the nursing home than to you. **Facilities cannot refuse admission if you refuse to sign an arbitration agreement.** You have every right to circle that portion of the admission papers and state that you do not agree with that provision.
- #11. **Determining Eligibility for Medicare Payment.** The nursing home cannot decide whether a care procedure is covered by Medicare or not. -- that is determination that is made only by Medicare. A service that is disputed should be submitted to Medicare and the doctor or therapist should be enlisted to certify the need.
- #12. **Continuation of Therapy When Resident is Not Making Progress.** Therapy may be appropriate to prevent further deterioration or to slow the decline in the resident's condition even if there seems to be no improvement. Remember the nursing home is required to meet the needs of the resident.

(continued on pg. 3)

#13. Continuation of Therapy After Medicare Payment Has Ended. Therapy should be provided whenever medically appropriate, regardless of the resident's source of payment. The most important person to convince is the doctor, since the nursing home and the therapist are required to comply with a doctor's orders. The focus should be the resident's need for therapy, rather than on payment.

#14. Continued Stay in Medicare-Certified Bed Even After End of Medicare Payment. Medicare certification does not apply to any certain bed. Therefore any bed can be occupied by a residents whose care is paid through Medicare and likewise that bed can continue to be occupied by the resident after his Medicare days are ended if he continues to need care.

#15. Medicaid Certification. When residents become eligible for Medicaid after privately paying for a time, they sometimes are told that the facility does not have available Medicaid-certified beds. This is a situation that should be dealt with in advance, giving the facility time to obtain additional certification.

#16. Readmission from Hospital. A nursing home cannot arbitrarily use a resident's hospitalization as an excuse not to readmit him. Residents and family members need to contact the Office of Long Term Care or an ombudsman to determine the rules that will apply in each specific case or if problems arise with re-admittance after a hospitalization.

#17. Extra Charges. Charges for extra supplies such as catheter supplies, diapers, etc. are covered by Medicare and Medicaid and those residents may not be charged extra for them. Private pay residents are liable only as authorized in the admission agreement.

#18. Resident and Family Councils. A nursing home must provide private meeting space for a resident council or family council. The facility must seriously consider, and respond to, all complaints or recommendations made by such councils. Resident and family councils can be a powerful mechanism for making positive changes in a nursing home.

#19. Eviction Threatened for Being "Difficult". Eviction of a resident is allowed only for the following six reasons:

1. The resident has failed to pay.
2. The resident no longer needs nursing home care.
3. The resident's needs cannot be met in a nursing home.
4. The resident's presence in the nursing home endangers others' safety.
5. The resident's presence in the nursing home endangers others' health.
6. The nursing home is going out of business.

To evict a resident, the nursing home must give 30 days written notice giving the reason for the eviction. The notice must also give instructions on how to appeal the eviction.

#20. Eviction Threatened for Refusing Medical Treatment. This is not one of the six reasons allowed for eviction.

These 20 problems are unfortunately common. But it doesn't have to be that way. These problems are reduced significantly when residents and family members are knowledgeable about the Nursing Home Reform Law's protections, and more willing to be the squeaky wheels that get the grease. So speak up! You may feel embarrassed or awkward at first, but don't let that stop you. It is the nursing home that should be embarrassed when it is violating the law.

Nursing home residents deserve high-quality care. For this high-quality care to become reality, residents and family members must demand it.

**** Additional information on the 20 Common Problems is available in a booklet available from AANHR or the National Senior Citizens Law Center.**



Abuse and Maltreatment of Persons in Long Term Care Facilities

Have you ever wondered what to do if you witness what you suspect may be abuse or neglect while you are visiting in a nursing home? Stormy Smith with the Office of Long Term Care (OLTC), spoke to AANHR members present at the February 14th meeting about this very subject. First of all, you must make a mental note of the event, its participants and the surroundings in order to document who, what, when, where, & how regarding the incident.

Incidents are to be reported to the designated staff member in the facility.

This may be the Director of Nursing or assistant Administrator - the person designated to complete a written report about the incident/accident (I/A). Everyone involved in the care of residents is responsible to report possible abuse/neglect. Mr. Smith also reminded us that there must be a preponderance of evidence to support the allegation. A one-on-one allegation will not be conclusive.

Abuse, according to the law (Arkansas Act 283 of 2007), has several definitions, besides those involving physical harm, including any intentional or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm. One example Mr. Smith mentioned: throwing a resident's baby doll against the ceiling fan.

When an abuse or neglect allegation is reported, the nursing facility must first protect the individual (victim), then report to the proper authorities, investigate to determine what wrong doing if any occurred. An abuse claim is customarily directed against an individual perpetrator, whereas neglect may involve several persons, such as those involved in the care of a nursing home resident. Neglect for example could include negligently failing to carry out a prescribed treatment plan i.e. a caregiver lifting a resident (who is prescribed to have two persons lifting and also using a mechanical lifting aid) by himself/herself. Another example might be a resident who choked when given the wrong type of prepared food. A nurse aide failing to report to the charge nurse a change in the condition of a resident is another example of negligence.

Facilities are required by law to report all accidents via the Incident/Accident (I/A) form and notify the OLTC (Office of Long Term Care) by 11:00 a.m. the next business day following the incident. Failure to report is a serious offence. Following a thorough investigation every substantiated case of abuse/neglect is forwarded to the Arkansas Attorney General's office. If a licensed staff member is involved, the report is also sent to state licensing officials.

Mr. Smith assured those present that the OLTC does contact the facility administrator anytime an allegation of abuse/neglect is reported to his office by an individual. The facility must respond to the allegation, show that it is taking steps to protect the resident from further harm, investigate and provide a full report to OLTC within five working days of the incident.

If an allegation is supported by a preponderance of evidence, notice will be sent to the administrators of the facility where the incident occurred and also the facility where the perpetrator is employed. The OLTC will send notice to the resident and also a notice to the administrator for forwarding to the resident's legal guardian, if any.

Notice of unfounded reports will be sent to the administrators of facilities where the incident occurred, along with a copy to be passed along to the legal guardian of the resident.

*Boredom, loneliness, and helplessness:
the three main diseases in a nursing home.*



END OF LIFE ISSUES

During the admission to a nursing home, your loved one will be asked if they have an Advance Directive, a legal document which will guide the doctor and the nursing home regarding treatment if your resident becomes unable to express his or her own wishes. If a resident does not have an Advance Directive and is or becomes unable to make their own decisions someone else will make those decisions and it may not be what the individual would have wished. It is important to understand that these documents take effect only when the resident is unable to make or express his or her own wishes and that they can be revoked or changed at any time.

There are at least three important kinds of Advance Directives:

- * **A Living Will** tells family members and medical professionals to what extent special means should or should not be used when a person becomes incurably ill or permanently unconscious. Such a statement can relieve family members of the burden and stress of trying to guess at a very emotional what their loved one might want.
- * **Financial Durable Power of Attorney** - in which a person is appointed to make business and financial decisions for the resident. This person is not authorized to make health decisions.
- * **Health Care Durable Power of Attorney** - which names the person to make decisions about health care and treatment. Appointment of such a person may avoid later quarrels between family members who may disagree about treatment.

Advance Directives must be in writing, signed by the maker, and witnessed by two other adults. Forms prepared by the Health Law section of the Arkansas Bar Association are available at <http://www.arkbar.com> or from any attorney.



Great Source of Information!

AANHR would like to recommend the publication AGING ARKANSAS as a source for helpful news relevant to senior citizens. One can subscribe to this monthly newsletter for one year by mailing a \$12.00 check to AGING ARKANSAS, 706 South Pulaski St., Little Rock, AR 72201. Phone 501-376-6083

Residents' Rights Relating to Individualized Care

“42 CFR 483.1” (*electronic code of federal regulations*)

The care plan meeting and care planning are the best ways to help staff individualize care for each resident.

1. Residents have the right to accommodation of individual needs and preferences
2. Each resident has the right to a comprehensive assessment of his/her needs
3. Each resident has the right to care and services to attain or maintain his/her highest practicable level of well-being
4. Residents have the right to participate in the planning of their care and treatment or changes thereto
5. Residents have the right to choose a personal attending physician
6. Residents have the right to be fully informed in advance about care and treatment and any changes in that care and treatment
7. Residents have the right to be cared for with dignity and respect and in full recognition of their individuality
8. Residents have the right to choose activities, schedules, and health care consistent with their interests, assessments, and plans of care
9. Residents have the right to make choices about aspects of their life in the facility that is significant to them

Make a Difference: Volunteer Ombudsmen Needed

Do you have one hour per week to visit with residents (those who have few/if any visitors) in a nursing home? We have a place for you. After one day of training and a short orientation period one can become a Certified Ombudsman and can choose to be assigned to a specific nursing home where just two hours service per week is expected.

Regardless of whether or not you end up becoming a volunteer ombudsman, your knowledge will increase greatly by attending an ombudsman training session. Volunteer Ombudsman training takes only one day and can make an incredible difference in the life of a nursing home resident. A volunteer ombudsman is authorized to help residents with any concerns. Protecting the resident's rights is a priority. The volunteer ombudsman is authorized to take complaints and report things they see that are questionable to their regional ombudsman, who can take steps to remedy the situation. A volunteer ombudsman can make a big difference brightening the life of a nursing home resident. If interested, please contact Martha Deaver at 501-450-7405; she will put you in touch with your regional ombudsman.

AANHR Videos for Loan

AANHR has several wonderful videos that we would like to loan for use at Family Council meetings, or to help any family member seeing to learn more about receiving good care of residents in nursing homes. If you cannot attend our monthly meetings in Little Rock, please contact one of the offices listed in this newsletter and make arrangements to have one of these helpful videos mailed to you. The videos are:

Nursing Home Care Plans
The Importance of Nursing Home Family Councils
Bathing Without a Battle

“Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.” Proverbs 31:8 NIV

AANHR Special Thanks

We extend our heartfelt thanks to the following people and groups who make our outreach possible:

Bob Edwards of Wilkes and McHugh for its financial assistance in the printing and mailing of AANHR's newsletter and other publications as well as financing the attendance of two board members to the annual NCCNHR conference.

Paschall Strategic Communications for their continued assistance with public relations needs.

First Assembly of God Church in North Little Rock for providing AANHR a meeting room.

David Couch of The Law Offices of David A. Couch, PLLC, PA, for employing Brent Birch of One6 Media, LLC, to create and maintain AANHR's website.

Gary Miller of ProSmart Printing for assistance in newsletter and brochure publication.

M. Darren O'Quinn, Attorney, Little Rock, for his offer of free assistance in preparing advance directives, to those present at the April AANHR meeting.

AANHR Officers and Board Members

President - Martha Deaver, Conway

Vice President - Gary Melton, Searcy

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Treasurer - Frances Walker, Benton

Program Chairman - Gary Melton, Searcy

Members of the Board: Nancy Allison, Conway; Martha Blount, Searcy; Linda Brimer, Searcy; James Brooks, North Little Rock; Julie Edwards, Mabelvale; Pat McGuire, Alexander; Nancy Patterson, Searcy; and Ann Pinney, Benton.

Honorary Board Member: Faye Sandstrum, Searcy.

Newsletter Editors: Martha & Ernie Blount, Searcy

Helpful/Important Numbers

The Office of Long Term Care (OLTC)

has a toll-free number for information, assistance and complaints for residents and family members:

1 - 800 - LTC - 4887 between 8 a.m. and 4:30 p.m. on weekdays.

You may also write to: Office of Long Term Care (OLTC) P.O. Box 8059, Slot 400 Little Rock, AR
72203-8059

OLTC website:

<https://www.medicaid.state.ar.us/InternetSolution/General/units/oltc/index.aspx>

You should also report complaints to the Arkansas Attorney General

Toll Free: 1 - 866 - 810 - 0016

Little Rock Local: 682 - 7760

For additional assistance or a listening ear, call AANHR at

(501) 450 - 9619 in Conway;

(501) 884 - 6728 in Fairfield Bay;

Visit our website at www.aanhr.org or e-mail us at Info@aanhr.org

Your local Ombudsman's number should be posted in a prominent place in the nursing home, preferably near the front entrance. You may also call your local Area Agency on Aging to secure the name and phone number of the Ombudsman.

The UALR Senior Justice Center can be reached at: **501 - 683 - 7153.**



Arkansas Advocates for Nursing Home Residents

AANHR

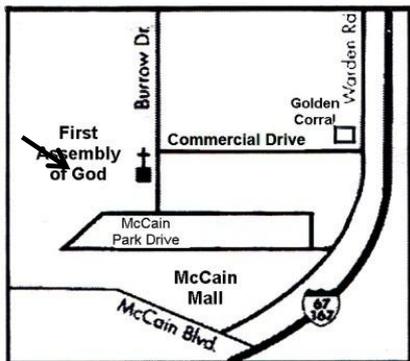
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Strength in Numbers-AANHR Needs You!

AANHR is a nonprofit organization run by non-paid volunteers dedicated to protecting and improving the quality of care and life for Arkansas residents in long term care facilities.

Please lend your support by joining AANHR. Your membership dues help to pay for our activities that support our mission statement. Memberships are available on a calendar year basis. Join now and you will be a member through **December 31, 2011.**

Today's Date _____

Name _____

Mailing address _____

City/State/Zip _____

Phone _____

Email _____

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

Please make checks payable to: AANHR and mail to 2336 Riverview Circle, Benton AR 72019

Driving directions to First Assembly of God Church, 4501 Burrow Road, North Little Rock

Coming from the North:

When driving South on Highway 67/167, take exit #1 onto Warden Road. As soon as you safely can, move into the right-hand lane, as you will be turning right at the Golden Corral Restaurant onto Commercial Drive.

Coming from East, West or South:

If you are on either I-30 or I-40, take Highway 67/167 North. Take exit #2 onto Landers Road. Stay in the left-hand lane, as you will be turning left and going under Highway 67/167 and enter Warden Road going southbound. As soon as you safely can, move into the right-hand lane, as you will be turning right at the Golden Corral Restaurant onto Commercial Drive.

Commercial Drive terminates at the church. Proceed straight across Burrow Road into the church's parking lot and turn right at the far side of the building into the narrow alley-like drive.

The entry door is located about half-way down this side of the church and the meeting room (#113) is immediately inside the entrance door.