



# AANHR

*Arkansas Advocates for Nursing Home Residents*

**PROTECTING NURSING HOME RESIDENTS**  
**January 2012**

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**  
**Jan 9**

**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)**



**Cecilia Vinson, MSN, RN, to speak on the Informal Dispute Resolution Process for Nursing Homes**

The Informal Dispute Resolution Process (IDR) for Nursing Homes will be discussed at the AANHR meeting planned for Monday, January 9<sup>th</sup>.

Arkansas Act 1108 of 2003 and Act 1144 of 2011 created a process for Nursing Homes to provide evidence that deficiencies should not have been cited, or that evidence did not support the Scope and Severity of Immediate Jeopardy, Harm or Substandard Quality of Care.

Speaker will be Cecilia Vinson, Nurse Manager for the Arkansas Department of Human Services-Office of Long Term Care and has over twenty years of nursing experience with a Master's Degree in Nursing, and a Post Baccalaureate Certification in Public Health. In addition, Ms. Vinson is certified as a Long Term Care Surveyor through CMS (Centers for Medicaid and Medicare Services).

We hope you will plan to join us in a new year of advocating to improve the quality of life for our nursing home residents in Arkansas. Business meeting begins at 10:00 a.m. followed by the program at 11:00 a.m. featuring Ms. Vinson.

**Complimentary Lunch**

The Wilkes McHugh Law Firm has graciously offered those who attend AANHR monthly meetings a complimentary catered lunch at noon following the meetings. Please feel free to stay for this time of fellowship after our meetings. AANHR thanks Wilkes McHugh for their many years of support to our organization.



**Share Your Happy New Year With AANHR!**



*From the President's Desk . . . . . Martha Deaver*

## **It is time to renew your AANHR membership. (See page 8)**

We are beginning a new fiscal year so I'm reminding you it's time to renew your membership. Occasionally I ask myself "why do I stay involved in AANHR". My immediate reaction is that, although my mother is gone and there is nothing I can do now to make her life in a nursing home easier, I can work to make it better for someone else. I can try to correct the things that are still wrong. I think of the thirty years Elma Holder dedicated to improving a situation she KNEW had to be better, the obstacles she overcame in the federal government, the inspiration she gave to me when I last spoke with her, the challenge she gives us all to continue the work she started - AND I GO ON. I hope you will too.

I quote from an article by Donna Lenhoff, executive director of the National Citizens' Coalition for Nursing Home Reform (NCCNHR). Ms. Lenhoff states that "most of America's 17,000 nursing homes are so dangerously understaffed that residents are needlessly suffering and dying from neglect, while nursing home profits climb amid nursing home corporate scandals over misuse of public funds". This is not just her opinion - she quotes from reports by the General Accounting Office and the federal Centers for Medicare and Medicaid Services. We have this information and are in contact with state and federal legislators making them aware of it. We know legislators who have pledged their help in trying to see that minimum staffing is increased to more than 80% of the time. They want to help us improve the training requirements for CNAs which will enable them to do a better job, command more respect from their superiors and the families of their patients and give them the right to a better salary.

We need each and every one of you. If you are still receiving this newsletter and are questioning whether you need to stay involved - PLEASE - reach through your pain and know how much your help can mean to this organization and the many who are tirelessly working to improve conditions for all nursing home residents. Again, I quote Donna Lenhoff who says "if nursing homes were staffed according to the minimum levels reported by the Dept. of Health and Human Services, there would be one certified nursing assistant for every five or six residents during the day. In the majority of America's nursing homes, there is one certified nursing assistant for every eight to fourteen residents. Most families of nursing home residents know the ratio is much higher - especially at night and on weekends". When the burden of doing the job of two or more people is removed from each position, it will be easier to hire and retain good CNAs.

If you can renew your membership for \$15 or \$20, we will appreciate it. If you can stay active by attending our meetings, helping us make phone calls, writing letters to legislators, or attending legislative committee meetings, that is appreciated also. Either by your financial support or your help in contacting legislators, we need each and every one of you and I appreciate your dedication to staying involved in a cause that must be seen through until we are all satisfied with care in nursing homes.



## *Tender Loving Greed*

Current nursing home care is compartmentalized into so many different “pigeon holes” that it is difficult to figure out whom to hold accountable when care is inadequate to the point of causing harm or even death to a family member resident. It now takes a team of lawyers to figure out where the buck stops.

Little Rock Attorney David Couch delved into the elaborate organizational maze nursing home owners create to insulate themselves from the care their facilities provide for residents and to maximize profits when he spoke at the monthly AANHR meeting November 14, 2011.

David’s AANHR presentation began at the local nursing home level and ended with the CEO at the corporate level, usually in another state - far removed from point of care. Between these two entities exist a complicated maze including many separate “companies”, among them: one entity is the licensee, another owns the facility and its grounds, and another manages the care staff. Some have board of directors; some have employees, while other entities have neither. Other “companies” might provide therapy, pharmaceuticals, groceries, or other supplies used in the day to day care of nursing homes’ residents.

According to David, “accountability breeds response -- ability”. There are basically four players in long term care oversight today: 1. the OLTC (Office of Long Term Care) 2. State Attorneys General, who answer legal questions and investigate fraud and abuse 3. State General Assemblies who make laws governing long term care (but whose members must ward off the influence of nursing home industry highly paid lobbyists and 4. Attorneys retained to seek grievance for harm done to residents as a result of inadequate staffing and/or care.

*Tender Loving Greed*, is the title of a book written in 1974, with an extended title: “*how the incredibly lucrative nursing home "industry" is exploiting America's old people and defrauding us all*” by Mary Adelaide Mendelson. Ms Mendelson wrote this book as the result of having served on a committee formed to figure out ways to improve care in nursing homes. At her request, her son, Walton Mendelson issued a follow up book: “*TLG*” - 2009 Notes” published in 2009. The book basically affirms David Couch’s premise in his presentation that accountability becomes more elusive with the creation of elaborate organizational mazes in the nursing home industry today. The sad fact is that each entity relies chiefly on government dollars via the Medicaid program, whose funds derive from taxpaying citizens. Are citizens getting their monies’ worth? But more important: are our frailest family members being cared for properly? AANHR’s chief goal is to improve the quality of life for those who reside in nursing homes.

David Couch is a strong advocate for our civil justice system, and thus dedicates time working to insure that the rights of innocent individuals who have been harmed are protected. In recognition of his efforts to protect the rights of individuals in 2003 he was awarded the Civil Justice Advocacy Award by the Arkansas Trial Lawyers Association and in 2010 the President’s Award.

David worked 15 years at a large civil defense law firm in Little Rock. In 2001 he left to start his own firm dedicated to protecting those injured and harmed by the neglect of others. He is a member of the American Association of Justice where he is active in the Nursing Home Litigation Group having served as the Chair of that organization. He is a former member of the Board of Directors of NCCNHR, now the Consumer Voice. He is the co-author of the book *Litigating Nursing Home Abuse Cases* by the AAJ Press and has written numerous articles on Nursing Home Abuse that have been published in various publications. Contact info for David Couch can be found at [couchfirm.com](http://couchfirm.com).

## Medicaid pay for nursing home care??

(adapted from <http://www.elderlawanswers.com>)

Medicaid (called "Medi-Cal" in California and "MassHealth" in Massachusetts) is a joint federal-state program that provides health insurance coverage to low-income children, seniors and people with disabilities. In addition, it covers care in a nursing home for those who qualify. In the absence of any other public program covering long-term care, Medicaid has become the default nursing home insurance of the middle class.

As for home care, Medicaid offers very little except in New York, which provides home care to all Medicaid recipients who need it. Recognizing that home care costs far less than nursing home care, a few other states notably Hawaii, Massachusetts, Oregon and Wisconsin--are pioneering efforts to provide Medicaid-covered services to those who remain in their homes.

While Congress and the federal Centers for Medicare and Medicaid Services (CMS) set out the main rules under which Medicaid operates, each state runs its own program. As a result, the rules are somewhat different in every state, although the framework is the same throughout the country. The following describes those basic rules, but check your state for the specific application where you live.

### Resource (Asset) Rules

*These are general federal guidelines. The specific rules in your state may differ somewhat.*

In order to be eligible for Medicaid benefits a nursing home resident may have no more than \$2,000 in "countable" assets.

The spouse of a nursing home resident--called the "community spouse" -- is limited to one half of the couple's joint assets up to \$109,560 (in 2011) in "countable" assets (see Medicaid, Protections for the Healthy Spouse). This figure changes each year to reflect inflation. In addition, the community spouse may keep the first \$21,912 (in 2011), even if that is more than half of the couple's assets. This figure is higher in some states, even up to the full maximum of \$109,560 (in 2011).

All assets are counted against these limits unless the assets fall within the short list of "non-countable" assets. These include the following:

- Personal possessions, such as clothing, furniture, and jewelry
- One motor vehicle is excluded, regardless of value, as long as it is used for transportation of the applicant or a household member. The value of an additional automobile may be excluded if needed for health or self-support reasons. (Check your state's rules.)
- The applicant's principal residence, provided it is in the same state in which the individual is applying for coverage (the states vary in whether the Medicaid applicant must prove a reasonable likelihood of being able to return home). Under the Deficit Reduction Act of 2005 (DRA), principal residences may be deemed non-countable only to the extent their equity is less than \$500,000, with the states having option of raising this limit to \$750,000. In all states and under the DRA, the house may be kept with no equity limit if the Medicaid applicant's spouse or another dependent relative lives there.
- Prepaid funeral plans and a small amount of life insurance
- Assets that are considered "inaccessible" for one reason or another

### The Transfer Penalty

The second major rule of Medicaid eligibility is the penalty for transferring assets. Congress does not want you to move into a nursing home on Monday, give all your money to your children (or whomever) on Tuesday, and qualify for Medicaid on Wednesday. So it has imposed a penalty on people who transfer assets without receiving fair value in return. These restrictions, already severe, have been made even harsher by enactment of the DRA.

(continued)

(continued from previous page)

This penalty is a period of time during which the person transferring the assets will be ineligible for Medicaid. The penalty period is determined by dividing the amount transferred by what Medicaid determines to be the average private pay cost of a nursing home in your state.

**Example:** For example, if you live in a state where the average monthly cost of care has been determined to be \$5,000, and you give away property worth \$100,000, you will be ineligible for benefits for 20 months ( $\$100,000 \div \$5,000 = 20$ ).

Another way to look at the above example is that for every \$5,000 transferred, an applicant would be ineligible for Medicaid nursing home benefits for one month.

In theory, there is no limit on the number of months a person can be ineligible.

**Example:** The period of ineligibility for the transfer of property worth \$400,000 would be 80 months ( $\$400,000 \div \$5,000 = 80$ ).

However, for transfers made prior to enactment of the DRA on February 8, 2006, state Medicaid officials will look only at transfers made within the 36 months prior to the Medicaid application (or 60 months if the transfer was made to or from certain kinds of trusts). But for transfers made after passage of the DRA the so-called look back period for all transfers is 60 months.

For instance, if an individual transfers \$100,000 on April 1, 2007, moves to a nursing home on April 1, 2008, and spends down to Medicaid eligibility on April 1, 2009, that is when the 20-month penalty period will begin, and it will not end until December 1, 2010. How this change will be implemented from state-to-state will be worked out over the next few years.

### Treatment of Income

The basic Medicaid rule for nursing home residents is that they must pay all of their income, minus certain deductions, to the nursing home. The deductions include a \$60-a-month personal needs allowance (this amount may be somewhat higher or lower in particular states), a deduction for any uncovered medical costs (including medical insurance premiums), and, in the case of a married applicant, an allowance for the spouse who continues to live at home if he or she needs income support. A deduction may also be allowed for a dependent child living at home.

In some states, known as "income cap" states, eligibility for Medicaid benefits is barred if the nursing home resident's income exceeds \$2,022 a month (for 2011), unless the excess above this amount is paid into a "(d)(4)(B)" or "Miller" trust. If you live in an income cap state and require more information on such trusts, consult an elder law specialist in your state.

For Medicaid applicants who are married, the income of the community spouse is not counted in determining the Medicaid applicant's eligibility. Only income in the applicant's name is counted in determining his or her eligibility. Thus, even if the community spouse is still working and earning \$5,000 a month, she will not have to contribute to the cost of caring for her spouse in a nursing home if he is covered by Medicaid.

A Miller Trust makes Social Security and other income exempt from calculations of income and resources if the state is reimbursed from the trust for Medicaid expenses upon the recipient's death. In this situation, the applicant assigns all of their non-exempt income to an irrevocable trust. The trust pays out the maximum allowable amount of income to the applicant, without losing their eligibility. This income is paid directly to the Medicaid recipient's nursing home and the excess income stays in the trust. Medicaid picks up the tab for the portion of the nursing home bill that exceeds the maximum acceptable income and any income left in the trust is used to pay back the state upon the death of the recipient. Such an income diversion trust is also now called a Qualifying Income Trust (QIT).

***AANHR Newsletter Editors' note: Readers should seek professional advice before undertaking the process to qualify a family member to receive benefits that pay for nursing home care.***

## STARTING A FAMILY COUNCIL

### A Booster Club for A Nursing Home's Residents

### That Results in Better Care for All Residents and Thus, Each Resident

By Gary Melton, Searcy, Arkansas

During the past several years, I have had family members in two nursing homes. Sometimes I have found the care to be adequate; however, a few times the care was less than adequate and that is unacceptable!

Having recently retired from the military and wanting to improve the quality of care of residents, I thought of starting a Family Council. First, I asked the administration to announce a meeting and help spread the word by posting announcements on doors, talking to acquaintances and posting a notice in the nursing home newsletter.

At our first Family Council meeting we discussed the election of officers, our goals, organization of the meetings and plans for the next meeting. Fortunately, the six people in attendance were persons with a can-do attitude. The vice-president elect is a schoolteacher who has received major awards in her career field, the secretary is a CPA, and the treasurer/staff advisor is a social worker on the staff of the facility.

By the second meeting, I was hearing the questions: What is a Family Council? What does a Family Council do? And, I don't need you to help take care of my love one!

Fortunately, in talking with my Regional Ombudsman she had a movie entitled, "Strength in Numbers, The Importance of Nursing Home Family Councils." The movie became our next program.

By working hard and spreading word of the movie, we had 20 present. At this second meeting, we passed a budget of \$1000 for the year. We arrived at this amount by deciding on our projects: (1) donate \$25.00 to the employee of the month, (2) furnish snacks to the midnight shift, once a quarter and (3) a complimentary meal for each dietary staff member and spouse at a local restaurant. We discovered having our meetings in the dining room was disrupting the feeding/bingo schedule, so we moved to the big, front lobby. Our meetings are from 6:30 PM to 7:30 PM and everyone walking in or out of the facility during this high visitation period is exposed to our meeting.

Much work by the leaders was initially required between meetings. For example, our secretary completed the paperwork to establish us as a non-profit organization under U.S. Tax Code 501 (C) (3).

This designation allows council members to collect tax-deductible donations for our budget. One local bank agreed to donate a \$50.00 savings bond in its name and the Family Council name to the employee of the month for a year. Another member worked with a local artist to have a painting donated for a raffle.

By the third meeting, we were beginning to get comfortable with each other. One of the members always volunteers to furnish the next month's meeting refreshments. We all wear nametags and start our meetings by introducing ourselves and stating our relationship with the facility. Near the end of a meeting, facility staff members present are asked to step outside so we can discuss care issues without any hesitancy. Areas of common concern are agreed on and are submitted in writing to the administration.

The most favorable comments I have had concern starting on time and ending on time. Most people work during the day and are ready to go home but can give their full attention for one hour to a worthwhile endeavor.

If you want to start or already have a council, I recommend the aforementioned movie available from your Regional Ombudsman or the AANHHR. In addition, I recommend the publication, "The Family Council Guide" located at [www.medicaid.state.ar.us](http://www.medicaid.state.ar.us). This publication is a guide to organizing and maintaining an effective family council.



## AANHR Special Thanks

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

**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 continued assistance to and support of AANHR.

**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.

## AANHR Officers and Board Members

**President** - Martha Deaver, Conway

**Vice President** - Gary Melton, Searcy

**Secretary** - Betty Buckta, Judsonia

**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, Alexander; 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:

<http://humanservices.arkansas.gov/dms/Pages/oltcHome.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](http://www.aanhr.org) or e-mail us at [Info@aanhr.org](mailto: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.**

[www.ualr.edu/seniorjustice](http://www.ualr.edu/seniorjustice)



Arkansas Advocates for Nursing Home Residents

AANHR

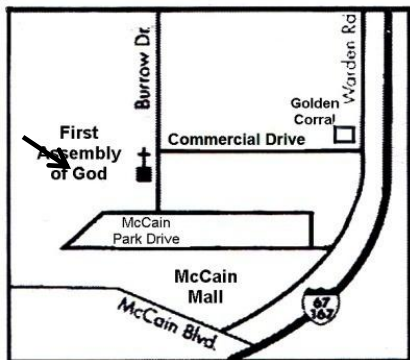
P.O. Box 165641 Little Rock, AR 72216

www.aanhr.org

NON-PROFIT ORGANIZATION  
U.S. POSTAGE PAID  
LITTLE ROCK, AR  
PERMIT NO. 1886

### Address Service Requested

January 2012



### 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, 2012.**

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 #1A 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.