

MINUTES OF THE HOUSE AGING AND LONG TERM CARE COMMITTEE

The meeting was called to order by Chairman Bob Bethell at 3:30 p.m. on January 29, 2009, in Room 711 of the Docking State Office Building.

All members were present except:

Representative Connie O'Brien- excused

Committee staff present:

Norm Furse, Office of the Revisor of Statutes

Doug Taylor, Office of the Revisor of Statutes

Kelly Navinsky-Wenzl, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Judith Holliday, Committee Assistant

Conferees appearing before the committee:

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services

Tom Laing, Executive Director, InterHab

Craig Kaberline, Executive Director, Kansas Area Agency on Aging

Cindy Luxem, CEO/President, Kansas Health Care Assn./Kansas Center for Assisted Living

Debra Zehr, President, Kansas Association of Homes and Services for the Aging

No written testimony:

Loren Snell, Deputy Attorney General and Director of Medicaid Fraud & Abuse Division

Warner Harrison, Owner/Administrator, LakePoint of Wichita

Gilbert Cruz, State Ombudsman

Others attending:

See attached list.

Chairman Bethell called the meeting to order and asked Committee members to provide him with their names, email addresses, and office locations so they can receive information on the fitness challenge between the Social Services Budget Committee and the Aging and Long Term Care Committee. He stated that more pedometers would be coming soon.

Chairman Bethell entertained a motion to approve the minutes of the January 20 and January 22 Committee meetings. Representative Horst moved to approve the minutes, seconded by Representative Myers. The motion carried.

Chairman Bethell asked conferees to keep their comments as short as possible to enable the meeting to conclude at an appropriate time.

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services (SRS) testified before the Committee on the role of SRS in providing adult protective services (APS). (Attachment 1) SRS is mandated by statute to provide APS for any individual age 18 and older. Protective services include investigating reports on abuse, neglect, or exploitation of individuals; assisting in obtaining appropriate social services; and securing legal and medical services. SRS has a legal mandate to maintain a registry of individuals who have committed abuse to prevent these individuals from being employed in nursing homes or other facilities where they can be in close proximity with vulnerable adults.

The duty to protect must be balanced with an adult's right to self-determination. Abuse is sometimes reported, but even when an investigation is started the adult has the right to refuse services under the National Adult Protective Services guidelines. Last year, Adult Protective Services completed 9,256 investigations with 2,136 confirmed findings. The allegations investigated involved 4,065 adults age 18-59, and 5,024 adults over age 60. In 840 of the cases, the facility was identified as the individual's residence, while 8,416 were for those in their homes, living with families or other arrangements..

SRS has a 1-800 number for people to call if they suspect or are a victim of fiduciary exploitation. Education of individuals, such as bank tellers who may become suspicious of money taken out of a person's account,

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Minutes of the House Aging And Long Term Care Committee at 3:30 p.m. on January 29, 2009, in Room 711 of the Docking State Office Building.

or credit card companies who notice increased activity on an account, is a goal of the Department to increase awareness of the problem to prevent some of the abuse. Secretary Jordan took questions from the Committee regarding the reporting and investigative process of these cases.

A brochure entitled "How do I pay for nursing home care?" has been developed through collaboration of the Department of Social and Rehabilitation Services, the Kansas Department on Aging, the Kansas Health Policy Authority, Kansas Health Care Association, and Kansas Association of Homes and Services for the Aging. It is a tool for families upon entering a nursing facility, and a worksheet to assist the financial departments of nursing facilities. (On file in Room 161-W)

Tom Laing, Executive Director, InterHab, testified on the role of InterHab in developing a partnership in the investigation and remediation of identified instances of ANE of persons with disabilities. (Attachment 2) He stated some concerns regarding inconsistent review and screening of complaints; follow-through on ANE complaints in a timely manner; and bias against complainants with developmental disabilities.

Mr. Laing asked the Legislature to review the benefits to the state and community staff by expanding the role of the Long Term Care Ombudsman to include persons served by the developmental disability community network.

Craig Kaberline, Executive Director, Kansas Area Agency on Aging Association (K4A), testified before the Committee. (Attachment 3) The K4A represents eleven Area Agencies on Aging serving all 105 counties in Kansas; these eleven agencies are the single points of entry that coordinate publicly funded community-based services. The services available include information and access services; community services; in-home services; housing; and elder rights, with a range of programs within each category.

The staff of the Area Agencies on Aging often discover situations or are contacted about situations of ANE and are often the people reporting these situations to APS. Mr. Kaberline stated that under the current system, persons charged with fiduciary abuse are not likely to be prosecuted. More resources, more staff and federal funding are all needed to improve the work, timeliness and outcomes for older adults that are victims of ANE.

Loren Snell, Deputy Attorney General and Director of Medicaid Fraud and Abuse Division, spoke to the group about fraud abuse. (No written testimony) He stated that with the economic crisis and the increasing number of elderly, the incidence of scams is rapidly rising.

Mr. Snell cited some problems in the Abuse and Exploitation (A&E) unit implemented in 2006: inadequate funding; finger-pointing for lack of results; and the need for better training to facilitate better referrals from APS. He estimated that scams surface statewide at the rate of one or two per day.

Fiduciary abuse with respect to a Durable Power of Attorney was discussed. The problem with a Durable Power of Attorney is that it is not entered into under false pretenses, so it is not the same as fiduciary abuse. Often a dependent adult will not agree to prosecution. Chairman Bethell suggested that work needs to be done on language for prosecution even if the elderly person does not agree.

Discussion ensued on making information available about this problem. It was suggested that Legislators use their newsletters to include information about scams or fiduciary abuse, and anyone who suspects a scam should contact the Consumer Protection Division of the Kansas Attorney General's Office and the Better Business Bureau.

Cindy Luxem, CEO/President, Kansas Health Care Assn./Kansas Center for Assisted Living, testified before the Committee on the issue of financial exploitation of the elderly. (Attachment 4) She expressed concern that there is not enough 'teeth' in the Adult Protective Services to be effective, and that her agency is willing to be part of the solution in dealing with family members and others who do not have the resident's best interests in mind.

Warner Harrison, Owner/Administrator, LakePoint of Wichita, testified as an owner of five nursing homes in Sedgwick and Butler County, and Greensburg. (No written testimony) He stated that fraud is rampant in

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nursing homes and there are no ramifications. He estimated that 5 to 7 percent are not paying and the amount is written off by the facility, which ultimately drives up costs for the other residents.

Debra Zehr, President, Kansas Association of Homes and Services for the Aging, testified before the Committee. (Attachment 5) She told the Committee that the system is not effective and it is time for the Legislature and state agencies to work together to fix the problem through statutes and education.

Gilbert Cruz, State Ombudsman, addressed the Committee. (Attachment 6) Mr. Cruz referenced an annual report from the State Ombudsman that shows an increased trend of financial exploitation, which results in loss of assets and loss of relationship. He directed the Committee to check out the report on the website, [www.kansasombudsmanksgov.com](http://www.kansasombudsmanksgov.com).

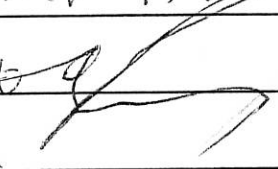
Chairman Bethell moved to introduce conceptually a bill on loan forgiveness for physicians, seconded by Representative Schwab. The motion carried.

The meeting was adjourned at 5:00 p.m.

The next meeting is scheduled for February 3, 2009.

# HOUSE AGING & LONG TERM CARE COMMITTEE

DATE: 1/29/09

NAME	REPRESENTING
Cindy Luxem	Kansas Health Care Assoc.
Warner Henson	LakePoint of Wichita
AM. H. 	SKIL
Soc. Execs	KANSA
Tom Laing	InterHab
Jeanette Shue	GALA Interhab (TARC)
Shelley Kelly	Kansas Adult Care Executives
Debra Harmon Zehr	KATKA
Craig Kaberline	K4A
Patrick Vogelberg	Kennedy and Assoc.
Michelle Butler	Capital Strategies
Camie Huesee	KFMC
Camie Russell	Ks Attorney General
Loren Snell	Ks Attorney General's Office
Deborah Merrill	KHPA
Avis Hyten	TILRC
MATT FLETCHER	INTERHAB

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# HOUSE AGING & LONG TERM CARE COMMITTEE

DATE: 1/29/09

NAME	REPRESENTING
Erin Roberts	InterTab
Gilbert CRUZ	KLTCG

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DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

Don Jordan, Secretary

**Aging and Long Term Care**

**January 29, 2009**

**Adult Protective Services**

For Additional Information Contact:  
Katy Belot, Director of Public Policy  
Docking State Office Building, 6<sup>th</sup> Floor North  
(785) 296-3271

HOUSE AGING & LONG TERM CARE  
DATE: 1/29/09  
ATTACHMENT: 1



**KANSAS**  
DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

Over the last year we have completed 9256 APS investigations and had 2136 confirmed findings in the following areas.

Type	Investigations	Confirmations
Abuse	1486	100
Neglect	1865	133
Self Neglect	3934	1705
Exploitation	1439	136
Fiduciary Abuse	532	62
Total Allegations <sup>1</sup>	9256	2136

The allegations investigated involved 4065 adults age 18 to 59 and 5024 adults age 60 and over. In 840 of the investigations, facility was identified as the individual's residence, while the remaining 8416 were for those in their homes, living with families or other arrangements.

SRS is sometimes called upon to investigate issues of non-payment for residents of long term care facilities. Failure to fulfill a financial obligation, by either the resident or their authorized representative, does not in itself constitute fiduciary abuse or cause for APS involvement. SRS assesses whether the resident's funds have been misappropriated by someone acting on their behalf or determines capacity of the adult to handle the funds. Cases involving documented misappropriation lead to a finding of confirmed fiduciary abuse. Notice of the confirmed finding is sent to the Attorney General's Office and other law enforcement agencies as appropriate, which may choose to pursue criminal action against the perpetrator. While SRS may testify in related court proceedings, we are not involved in funds recovery or related disbursements to those for whom the incurred debt is owed. Several administrative options exist as tools that APS staff or other concerned parties may pursue:

- If the investigation reveals the representative isn't acting appropriately, then we may take steps to remove them from the role of representative. If the person has capacity, we would work with them to identify an alternate representative.
- If a person lacks capacity, we would look at whether a guardian would be appropriate. Persons are presumed to have decision making capacity unless a court adjudicates otherwise.

<sup>1</sup> More than one allegation may be associated with the adult which accounts for the variance in the totals.

Allegations Investigated in FY '08 by type

Type	Investigations	Confirmations
Abuse	1486	100
Neglect	1865	133
Self Neglect	3934	1705
Exploitation	1439	136
Fiduciary Abuse	532	62
Total	9256	2136



## Sample Stories of Fiduciary Abuse of Older Kansans

A resident's family didn't pay her bill for two months. When asked, the Durable Power of Attorney would not give an explanation of how they used their mother's money those months. This was 9 months ago and no payment has been made on the outstanding balance.

### Pratt

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"We have a current situation in which a Medicaid eligible resident has been exploited by her daughter: opened credit card accounts, purchased furniture, and had the Mother purchase a car for her. Situation was reported to APS who conducted an investigation. Abuse was deemed to have occurred and a police report was filed. Daughter lives out of state and no arrests have been made. During the fraud, daughter failed to renew the resident's Medicaid status and the resident was "private pay" for several months. Social security is direct deposited into the resident's account but a pension check continued to go to the daughter. Daughter refuses to make restitution and the resident is making payments of \$20/month toward a bill of \$15,000. Unless the 83 year old resident lives to be 147, we will never collect the entire amount. It took several months for APS to take action after they were notified. The original report did not result in a case being opened because the resident did not want to make things difficult for her daughter. When the daughter continued stealing the resident's money, the resident finally consented to filing the complaint."

### Manhattan

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"We routinely have one to five financial exploitation cases at any given time.

On one current case a responsible part admits that she failed to pay \$24,875 toward her now her deceased aunt's care and refuses to do so. We were able to obtain the aunt's social security payments but not her pension funds. Medicaid coverage was finally achieved. SRS determination was that full funding of the amount due should have been available to compensate the facility for the amount owed. In addition the resident's authorized representative "durable power of attorney" failed to compensate the facility with the resident's SRS determined resident monthly financial portion. SRS APS determined financial exploitation occurred yet no constructive remedy has been achieved. We continue to work with our attorney to address this case.

In another situation we advocated for Medicaid coverage for a resident for nearly four years, during which time we issued three "involuntary discharge" letters because the family never paid anything toward their elderly family member's care. Placement at another facility could not be achieved because no other facility desires to acquire a resident for whom payment will not be available. Foot dragging son was less than reliable. Bounced checks, failure to sell a home, failure to apply for Medicaid; failure to provide information required by SRS for Medicaid coverage. Finally we obtained a court judgment for a lien on the home. Sheriff's sale followed. SRS determined financial abuse

yet no action was taken. Son moved Medicaid application to another county. Medicaid coverage finally obtained. The facility lost somewhere between \$20,000 and \$40,000 plus legal fees during this time of non-coverage.”

### Wichita

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One example is when a Daughter used her Mother's money inappropriately. The Daughter had control of her Mom's Social Security check. The Daughter would not pay her Mom's obligation to our Nursing Home. We eventually got the resident to remove her Daughter as the financial custodian to her account, and the resident signed her Social Security checks over to the Hospital. We are unable to recoup past accounts due to the Daughter's improprieties.

### Ness City

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We had an instance recently which I am still working on with the credit card company and credit agency. An elderly lady who is on Medicaid got a credit card approved in her name and her son charged up over \$5000 on the 29% interest rate credit card. The credit card company would not write it off and they would not accept her \$60 a month payments, so sent it to collection agency which I am working with now. Her son has been removed from being her DPOA.

### Liberal

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We have a situation in which a guarantor didn't for a resident's care. In the beginning, the guarantor stated that the resident did not qualify for Medicaid because she owned property and she was trying to sell it to pay the balance. The guarantor moved out of the area and remarried. She was located, but when another attempt to contact was made she had moved again. Phone calls went un-answered, mail returned no forwarding address. We have gone through our procedures for collections, including the last recourse of filing for arbitration with a positive ruling from the mediator. The resident has since deceased and her balance left is \$16,021.

Another resident's son mismanaged his mother's financial affairs, i.e. not filing for Medicaid when it was apparent her funds were decreasing. Once the son made application he had accrued a past due balance of \$20,000. Medicaid did go back 3 months but left the remainder balance of \$11,536. There were no funds available to cover this balance.

Third example – Our facility has become responsible payee for the residents Social Security Check. The son continues to receive her pension check and will not pay his father's outstanding balance. Collection letters and attempts have been made with no response. Social Security and Adult Protective Services contact on numerous occasions with little or no response.