



Nursing Home Ombudsman Agency of the Bluegrass, Inc.

*Improving the quality of care for residents in long-term care facilities.*

Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Lincoln, Madison, Mercer, Nicholas, Powell, Scott, Woodford

## Protecting Kentucky's Long-Term Care Residents from Financial Exploitation

By Denise Kennedy



The Nursing Home Ombudsman Agency of the Bluegrass regularly works to educate residents, families, and facilities about the ways we can all improve the quality of care and quality of life for all long-term care residents. Recently, NHOA was awarded grants from the Kentucky Bar Foundation and the Fayette County Bar Foundation to create and share materials to protect long-term care residents from financial exploitation. This manual, based on a manual created by the Consumer Financial Protection Bureau, aims to educate long-term care facility staff about how they can prevent, identify, and report the financial exploitation of their residents. To schedule a training for your facility, please call Denise Kennedy at 859-277-9215 or email [denisekennedy@ombuddy.org](mailto:denisekennedy@ombuddy.org).

### Warning Signs of Financial Abuse

- △ Unpaid facility bills
- △ Possessions begin disappearing
- △ Checks made out to "cash"
- △ Resident being pressured to make a decision or sign a document
- △ A previously uninvolved person appears and makes demands of resident

Financial exploitation is the illegal or improper use of an older adult's funds, property, or assets. Financial exploitation is the most common form of elder abuse, but only a small fraction of incidents are reported. Residents with cognitive impairments such as Alzheimer's disease are most at risk of exploitation. When a resident in a personal care home or nursing facility is the target of financial abuse, everyone suffers. Financial losses affect the resident and their family, the facility, and the broader community. The primary victim is the vulnerable resident, robbed of economic security and placed at risk of involuntary discharge for nonpayment.



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*Financial Exploitation (continued from page 1)*

NHOA’s facility staff training includes a Model Response Protocol that includes:

- ❖ **A team approach**  
Who in your facility should be involved?
- ❖ **Investigating as soon as warning signs appear**  
Suspicious should be investigated as soon as red flags are seen to prevent more exploitation.
- ❖ **Advocating for vulnerable residents**  
Support residents who are being victimized and get the ombudsman involved.
- ❖ **Understanding the reporting requirements**  
Kentucky requires anyone who has a suspicion of abuse or exploitation to report their suspicions to Adult Protective Services at 1-800-752-6200. Nursing facilities must report suspected abuse within 24 hours, or within 2 hours if serious bodily harm is suspected.
- ❖ **Reporting—Who, what, when, where, and how**  
Reporting tips to help investigators launch investigations.
- ❖ **Following up**  
Adult Protective Services may not be able to share information about a case, but following up with APS and other investigative bodies can make a difference in the outcome.
- ❖ **Additional avenues for action**  
Who else can investigate exploitation and protect vulnerable residents?

To schedule a training for your facility staff to learn more about this Model Response Protocol and the 4 Pillars of Successful Intervention, call Denise Kennedy at 859-277-9215 or email [denisekennedy@ombuddy.org](mailto:denisekennedy@ombuddy.org).

**4 Pillars of Successful Intervention**

1. PREVENT
2. RECOGNIZE
3. RECORD
4. REPORT

**Special thanks to the Fayette County Bar Foundation for making this newsletter possible, and to the Kentucky Bar Foundation for supporting this project. *Protecting Kentucky’s Residents from Financial Exploitation: A Manual for Long-Term Care Facilities* will be available this summer from NHOA and at [www.ombuddy.org](http://www.ombuddy.org).**



# Power of Attorney or Guardian: What's the Difference?

## Power of Attorney

A Power of Attorney typically gives authority to another person to handle financial and property decisions rather than health care decisions, but it can be utilized to authorize both. Sometimes a person appointed to act as a Power of Attorney is said to have “power over” an individual. This is not true. The Power of Attorney always works at the direction of the person who has appointed them. Neither a Power of Attorney nor a Health Care Surrogate authorizes an individual to act against the interests of the person who appointed them. Residents retain the right to direct their own life and care decisions so long as they are able, despite having designated a Power of Attorney or Health Care Surrogate. As soon as the person is either deemed incompetent by a court or passes away the General Power of Attorney document is null and void. A Power of Attorney is said to be “durable” if it remains in effect after the person granting it becomes incapacitated.

## Guardian

Guardianship is a legal proceeding that grants an individual or state the legal authority to make decisions for a legally disabled adult. An adult is considered to be legally disabled (a ward) if a court, after a jury trial, rules in a disability hearing that the person cannot take care of her personal needs or manage her finances. At the same time the court declares a person to be disabled, it appoints a guardian or a conservator to help with personal or financial needs in the areas the disabled person can't manage alone. If a person has no friends or relatives appropriate to serve as a guardian, the court may appoint a state guardian or conservator. The goal of guardianship is to protect the disabled person's rights and to ensure their well-being, not to force someone to do what another person thinks they should do.

## Limited Guardianship

Limited guardianship is determined through the same procedure as a Guardian. It is used when a person is unable to make decisions related to self-care. Only self-care rights are granted to the Limited Guardian by the court.

## Conservator

A Conservator may be appointed to handle the resident's finances if the court finds that the resident is unable to handle his or her financial affairs but is capable of making his or her own self-care decisions.

## Sign Up to Receive Scam Alerts

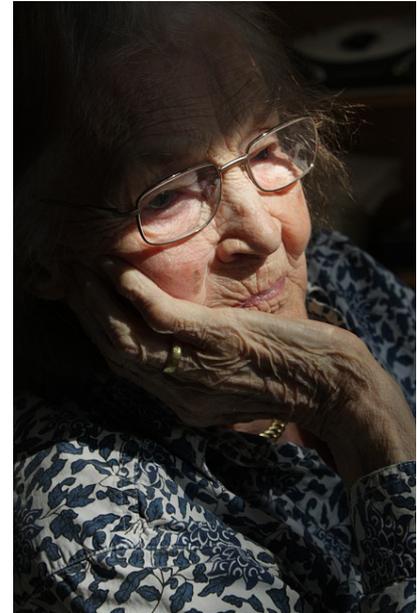
According to the Kentucky Attorney General's Office, scams have reached an all-time high. IRS scams, “grandparent scams,” and door-to-door home improvement scams are just a few of the common scams con artists perpetrate. In an effort to protect families and senior citizens, the Attorney General launched a scam alert messaging service to alert Kentuckians when con artists are on the attack.

**Sign up to receive alerts via text or email:** text “KYOAG Scam” to GOV311 (468311) or visit [ag.ky.gov](http://ag.ky.gov).

## Bluegrass District Services in 2016

In calendar year 2016, NHOA's Bluegrass ombudsmen:

- Targeted services to approximately 7,000 residents in nearly 100 nursing homes, personal care homes, and family care homes.
- Made 5,487 site visits to long-term care facilities to monitor care and advocate for residents.
- Provided information or consultation to individuals and families about nursing facility placement, care planning, and questions about rights, abuse, Medicare, and Medicaid on 5,109 occasions.
- Worked with the KY Office of Inspector General surveyors on 126 occasions (pre-survey, survey, and complaint survey collaborations).
- Provided 144 training sessions to facility staff on abuse prevention, residents' rights, and other topics.
- Provided 235 individual consultation sessions for facility staff.
- Assisted with Family Councils and Resident Councils on 450 occasions.
- Provided 347 community education sessions.
- Identified, investigated, and worked to resolve 2,261 complaints.
- Identified 64 complaints of abuse and neglect.
- 88% of complaints worked by the LTCOP were completely resolved to the satisfaction of the residents.



### Top 10 Complaints about Long-Term Care

### Number of Complaints

1. <i>Care:</i> Failure to respond to requests for assistance	191
2. <i>Staffing:</i> Staff unresponsive, unavailable	182
3. <i>Dietary:</i> Food service—quantity, quality, variation, choice	108
4. <i>Care:</i> Personal hygiene/dressing and grooming	102
5. <i>Care:</i> Medication administration	97
6. <i>Care:</i> Toileting, incontinent care	86
7. <i>Autonomy &amp; Rights:</i> Dignity, respect—staff attitudes	83
8. <i>Staffing:</i> Shortage of staff	79
9. <i>Care:</i> Symptoms unattended, including pain, pain not managed, no notice to others of change in condition	76
10. <i>Care:</i> Care plan/resident assessment—inadequate, failure to follow plan or physician orders	75

# From the Desk of Kentucky's State Ombudsman

By Sherry Culp



## Recently Revised Nursing Home Regulations Improve Training Requirements

Almost all nursing homes accept Medicare or Medicaid, or both. As a condition of accepting federal reimbursement, these nursing homes follow quality of care standards set by the Nursing Home Reform Law. The Reform Law became effective in 1990, and corresponding regulations were issued in 1991. The nursing home regulations became dated during the 25 years since they first were issued. To incorporate modern-day language, technological advances, and best practices, the Centers for Medicare and Medicaid Services (CMS) released a comprehensive revision of the regulations in September 2016.

The revised regulations contain important consumer protections that were not included in the previous regulations. For example, training requirements were expanded to apply to all staff, contractual employees, and volunteers. Mandatory topics include communication, residents' rights, and prevention of abuse, neglect and exploitation. Training for nursing assistants was expanded to include dementia management and resident abuse prevention.

With the support of the Kentucky Bar Foundation and the Consumer Financial Protection Bureau, Long-Term Care Ombudsmen are preparing to offer

training to facility staff on how providers of services may be able to prevent financial abuse and exploitation. Thank you to our supporters!

## SEC Aims to Prevent Financial Exploitation of Seniors

The U.S. Securities and Exchange Commission has approved rules aimed at preventing the financial exploitation of seniors. The new FINRA Rule 2165 (Financial Exploitation of Specified Adults) was adopted. The rule permits members of the SEC to place temporary holds on disbursements of funds or securities from accounts of specified customers where there is a reasonable belief of financial exploitation of these customers. In addition, FINRA Rule 4512 (Customer Account Information) has been amended to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account. Both will become effective February 5, 2018.

**If you are a member of a church or civic group and you would like NHOA to come talk about preventing, identifying, and reporting financial exploitation, please call our office at 859-277-9215.**

## Bluegrass Ombudsmen

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Wini Yunker



*Love is ageless. Visit someone in a nursing home today!*

Become a Friendly Visitor.

Change the life of a resident, and your own, as a Volunteer Friendly Visitor.

Interested?  
Call Denise Kennedy  
at (859) 277-9215



Nursing Home Ombudsman Agency

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**NHOA is a local, independent nonprofit agency that relies on funding through individual donations, local United Way agencies, and grants to serve the Bluegrass area.**

***NHOA's Services are free. Donate at [www.ombuddy.org](http://www.ombuddy.org)***

This information is made possible by state and/or federal funding provided by the Department for Aging and Independent Living.



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## Dear NHOA

*Dear NHOA,*

*I am my mother's Power of Attorney. I am trying to get mom's Medicaid approved, but the facility is telling me that I have to pay her bills until Medicaid is approved. Mom doesn't have any savings, and I'm living paycheck to paycheck. Am I supposed to be paying for her nursing home bills?*

*Sincerely,*

*Worried*

.....  
Dear Worried,

By law, a nursing facility must not require another person to guarantee payments as a condition of the resident's admission or continued stay. If you believe you have signed a third-party or responsible-party agreement, request a copy of the agreement and consult an attorney.

As the Power of Attorney, you are responsible for acting in the best interests of your mother. In general, a Power of Attorney is responsible for paying a resident's bills with the resident's money. Keep a clear record of what you do with your mother's funds, such as paying her Social Security to the nursing home to meet her patient liability. You should continue to work on your mother's Medicaid application. If the application is denied, you may appeal that decision. For assistance, call us at 859-277-9215 or call Legal Aid of the Bluegrass at 1-800-888-8189.

Guardians have some other responsibilities, but they too are generally required to use a resident's money to pay the resident's bills. They are also responsible for arranging for Medicaid to pay for a resident's long-term care bills. A guardian is required to submit an accounting of their ward's finances and well-being to the court.

For more information call our office at 859-277-9215.