



117 SW 6th Avenue, Suite 200
Topeka, Kansas 66603
(785) 267-6003 Phone
(785) 267-0833 Fax
www.khca.org Website
khca@khca.org E-mail

kcal

ahca

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House Committee on Aging and Long Term Care

Chairman Bob Bethell

Testimony for HB 2583

My name is Cindy Luxem, Executive Director of the Kansas Health Care Association and Kansas Center for Assisted Living, a trade association with a membership of nursing homes, assisted living, residential health care, home plus, and nursing facilities for mental health. Thank you for the opportunity to testify.

Today, we are here to discuss HB 2583, concerning registration of an offender admitted to an adult care home in Kansas. Along with the greying of society, comes the aging of the offender population also.

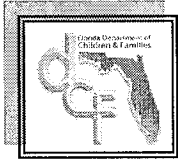
Providing long term care-and other health services-for those who have any type of criminal past is a critical societal issue, the solution for which must include not only health care providers and their patients but also law enforcement and our health care oversight federal and state agencies. The basic question seems to be what and whose ethical and legal obligation it is to ensure that individuals who have "paid their debt" for prior criminal activity have their health care needs met as members of our society. When these individuals reach an age or exhibit physical conditions or cognitive impairments that require long term care services, where and how should their healthcare needs be met to ensure everyone's safety and security.

When these individuals require long term care, providers are legally obligated to provider appropriate care and services. Under Medicare and Medicaid regulations, there is no prohibition for providers who deny admission to their home solely based on the applicant's status as a sex offender. Absent state law restrictions, skilled nursing centers may adopt policies to screen and deny admission to a convicted offender.

Long term care centers are vital to our nation's aging population, and will only become more so as the number of Kansans requiring care continues to escalate. As the caregivers for this growing population, skilled nursing centers have an obligation to provide care to all individuals who need it, regardless of their past.

Skilled nursing centers need to be informed of incoming patients' criminal background, in order to better assess the patients' needs. Policy makers and law enforcement have a responsibility to provide clear policies that deal effectively with vulnerable patients and residents, yet at the same time complying with state and federal laws.

HB 2583 might be a step in the right direction of beginning the dialogue on how to handle our aging Kansas offender population. But it is only the beginning....



Nursing Homes Recommended Guidelines



Purpose: To recommend guidelines for residents when Sexual Offenders/Predators reside in long-term care facilities in Florida.

Form Completion Instructions: Provide recommended guidelines information requested in each of the shaded boxes below.

1. Issue (Briefly describe why there is a need to recommend guidelines, or describe the problem the guidelines are intended to address)

Sexual Offenders or Predators in Long Term Care Facilities

Under current statutes and rules nursing homes are allowed the latitude to admit or not admit individuals into their facilities. This decision is based on whether the facility can meet the needs of the individual. This would also be true if the applicant for admission were classified as a sexual offender or predator. This decision must be made by the facility Administrator on a case by case basis.

2. Description of Recommended Guideline (Provide detailed information of the recommended guideline)

The facility staff may utilize the Florida Department of Law Enforcement (FDLE) database to screen individuals prior to admission to the facility.

The facility must have physician orders for the resident's immediate care.

Federal law (42 CFR 483.20) requires that the facility conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This must be done within 14 days of admission and must be updated quarterly or when there is a significant change in the resident's physical or mental condition. This assessment is completed on a multi-page (10) document mandated by federal law.

Federal law (42 CFR 483.20) requires the nursing home to develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the services that are to be furnished and must be completed within 7 days of the completion of the comprehensive assessment.

3. Resources Needed to Implement the Recommended Guidelines (Identify human and material resources needed)

Facility staff would be used to screen individuals through the FDLE Sexual Offenders/Predators public registry. Physician will complete admission orders for the resident's immediate care.

An interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other facility staff in disciplines as determined by the resident's needs will work together to develop the comprehensive care plan.

The resident, resident's family and other legal representatives will also participate in the development of the care plan to the extent they are capable and available.

4. Other Comments (Provide any additional comments regarding the recommended guidelines)

Federal (42 CFR 483.13) and state (s. 400.022 (1) (o), F.S.) regulations provide that each facility is required to protect all residents from abuse.

White Paper Sexual Offenders in Skilled Nursing Facilities and RCFs

OHCA/OCAL recommends that member facilities make the best admission and retention decisions possible to assure that they are able to provide for the needs and services of those under their care, including the potential impact on other residents. This would include researching sex offender background status about existing and potential residents.

Background

There has been recent media attention regarding sexual offenders residing in Ohio nursing homes and assisted living facilities. Currently Ohio's Megan's Law (ORC Chapter 2950) requires that sheriffs notify neighbors of offenders residing within 1000 feet, but the form notification to facilities has largely been up to each sheriff department, and the requirements are not specifically clear related to long term care facilities. As a result, facilities may or may not be aware of the offender status of their current residents or of those seeking admission. Ohio adopted the federal Adam Walsh Child Protection and Safety Act of 2006 in June, 2007 (SB 10) which revises Ohio's Offender Registration and Notification Law (Megan's Law) parts of which are already in effect and the remainder takes effect January 1, 2008.

Legal Considerations

- Potential for lawsuits related to resident to resident sexual abuse, or resident to staff sexual abuse.

Regulatory & Survey Considerations

- F223 §483.13(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.
- <http://codes.ohio.gov/orc/2950>
Ohio adopted the federal Adam Walsh Child Protection and Safety Act of 2006 in June (SB 10) which revises Ohio's Offender Registration and Notification Law (Megan's Law). As currently posted on Lawriter (<http://codes.ohio.gov/orc>), ORC 2950 lists the current law language and the language changes that will be effective January 1, 2008. This law relates to sex offenders' requirement for registration, and sheriff departments' requirements for notification.
- Effective January 1, 2008: Sexually oriented offender or a child-victim oriented offender is prohibited from living within 1,000 feet of a preschool or child day-care center premises in the same manner as such an offender is prohibited from living within 1,000 feet of a school premises.

Policy Considerations

- Consider using the search tool provided by the attorney general's office which allows providers and others to research community individuals' offender status at Ohio Sex Crimes Notification-<http://www.sexcriminals.com/registration-notification/us/ohio/> prior to every admission to determine the appropriateness of the admission.

- Consider establishing policies and procedures that include researching current and potential residents' sex offender status, especially if the facility is within 1000 feet of a school, preschool or day care center.
- Make admission and retention decisions related to the facility's ability to provide for the needs and services of the individual, including the potential impact on other residents. Consider preadmission visits, interviews and record reviews to assist in making such determinations.
- Consider contacting your county sheriff regarding the notification that you would like for your facility. After January 1, 2008 – they must notify anyone who so requests, in addition to those within 1000 feet of sex offender's residence. This can also be accomplished via the Ohio Attorney General's eSORN, Ohio's Electronic Sex Offender Registration and Notification. Here, you will find information about how to sign up to receive automated messages when a sex offender moves near a location of concern (your facility, daycare provider, home, etc.) and how to submit tips to investigators on offenders within the system: <http://ohio.esorn.net/registeroh.php>
- Develop appropriate care plans for any residents with sex offender history that you decide to admit, as appropriate, including but not limited to:
 - Monitoring of behaviors
 - Room, roommate selection
 - Proximity to vulnerable residents
- Assure that all staff members are aware of such POCs and their responsibilities related to monitoring of behavior of applicable residents.

Educational Considerations

- Staff education regarding abuse prevention, observation and reporting
- Need for immediate reporting to Administrator and DON for investigation

Additional Information

- GAO study March 2006: Long-Term Care Facilities: Information on Residents Who Are Registered Sex Offenders or Are Paroled for Other Crimes.
 - "However, while long-term care facilities may learn that certain of their residents are sex offenders or parolees through required community notification or through other means, our findings did not indicate that residents with prior convictions are more likely than other residents to commit abuse within these facilities. Absent such evidence, it may be more appropriate to focus on residents' behaviors versus their prior convictions when assessing the potential for committing abuse." For the complete GAO report: <http://www.gao.gov/cgi-bin/getrpt?GAO-06-326>
- Senate Bill 10 analysis – changes to ORC 2950
http://www.legislature.state.oh.us/analysis.cfm?ID=127_SB_10&ACT=As%20Enrolled&hf=analyses127/07-sb10-127.htm