

Making Elder Care Better Since 1975

Kansas Advocates
for
Better Care



February 19, 2013

Chairwoman O'Brien, Members of Children & Senior Committee Testimony: Elders, Older Adults, Adults with Disabilities and Long-Term Care Thank you for this opportunity.

Kansas Advocates for Better Care

- **Mission: Improving the *Quality* of Long Term Care in Kansas**
- Voicing Quality, Health & Safety Concerns of Elders and Disabled Adults using Long-Term Care in Kansas
- Statewide Not for Profit, Citizen Advocacy Organization
- 850 citizen members & volunteers across Kansas; Volunteer Board of Directors
- Focus on older adults and adults with disabilities needing/using long-term care in Kansas
- 37 years of speaking out about quality and elder needs. Formerly, Kansans for the Improvement of Nursing Homes
- Advocacy
 - 1) with elders & families, one-on-one provide problem solving and LTC provider information;
 - 2) educating & training caregivers, paid and family;
 - 3) public policies that improve care quality, care access and choice, protection from abuse, & appropriate health and safety standards
- Margaret Farley, President of Board, Mitzi McFatrach, Director; Barbara Conant, Public Policy Coordinator
- Operations and Advocacy are funded by private donations & members. State or federal dollars received are for training caregivers and citizens to improve care or prevent abuse. KABC provides training on behalf of KDADS or CMS initiatives to improve care and prevent abuse, neglect or exploitation.
- www.kabc.org 1-800-525-1782 or 785-842-3088 info@kabc.org or mitzim@kabc.org
` 913 Tennessee, Ste. 2, Lawrence, KS 66044

Table 4.
Counties Exceeding the U.S. Percent 65 Years and Older and 85 Years and Older by Region and State: 2010

(For information on confidentiality protection, nonsampling error, and definitions, see www.census.gov/prod/cen2010/doc/sf1.pdf)

Area	Total counties	Counties exceeding U.S. percent 65 years and over ¹		Counties exceeding U.S. percent 85 years and over ²	
		Number	Percent	Number	Percent
United States	3,143	2,378	75.7	1,871	59.5
Northeast	217	181	83.4	183	84.3
Connecticut	8	6	75.0	7	87.5
Maine	16	16	100.0	16	100.0
Massachusetts	14	10	71.4	12	85.7
New Hampshire	10	7	70.0	7	70.0
New Jersey	21	9	42.9	16	76.2
New York	62	53	85.5	50	80.6
Pennsylvania	67	63	94.0	61	91.0
Rhode Island	5	5	100.0	5	100.0
Vermont	14	12	85.7	9	64.3
Midwest	1,055	904	85.7	854	80.9
Illinois	102	87	85.3	88	86.3
Indiana	92	75	81.5	55	59.8
Iowa	99	93	93.9	95	96.0
Kansas	105	89	84.8	92	87.6
Michigan	83	72	86.7	60	72.3
Minnesota	87	67	77.0	75	86.2
Missouri	115	100	87.0	86	74.8
Nebraska	93	87	93.5	82	88.2
North Dakota	53	47	88.7	48	90.6
Ohio	88	73	83.0	58	65.9
South Dakota	66	54	81.8	51	77.3
Wisconsin	72	60	83.3	64	88.9
South	1,423	1,026	72.1	618	43.4
Alabama	67	55	82.1	29	43.3
Arkansas	75	64	85.3	47	62.7
Delaware	3	2	66.7	1	33.3
District of Columbia	1	—	—	—	—
Florida	67	51	76.1	31	46.3
Georgia	159	91	57.2	39	24.5
Kentucky	120	87	72.5	38	31.7
Louisiana	64	30	46.9	12	18.8
Maryland	24	12	50.0	11	45.8
Mississippi	82	48	58.5	30	36.6
North Carolina	100	78	78.0	51	51.0
Oklahoma	77	65	84.4	46	59.7

1. Kansas Older Adult Demographics

2010 65+ 376,116/ 13.2 % of population ~ increase of 19,887 older adults

85+ 59,318/ 2.1 % ~ increase 7,548 among older adults most likely to need long-term care

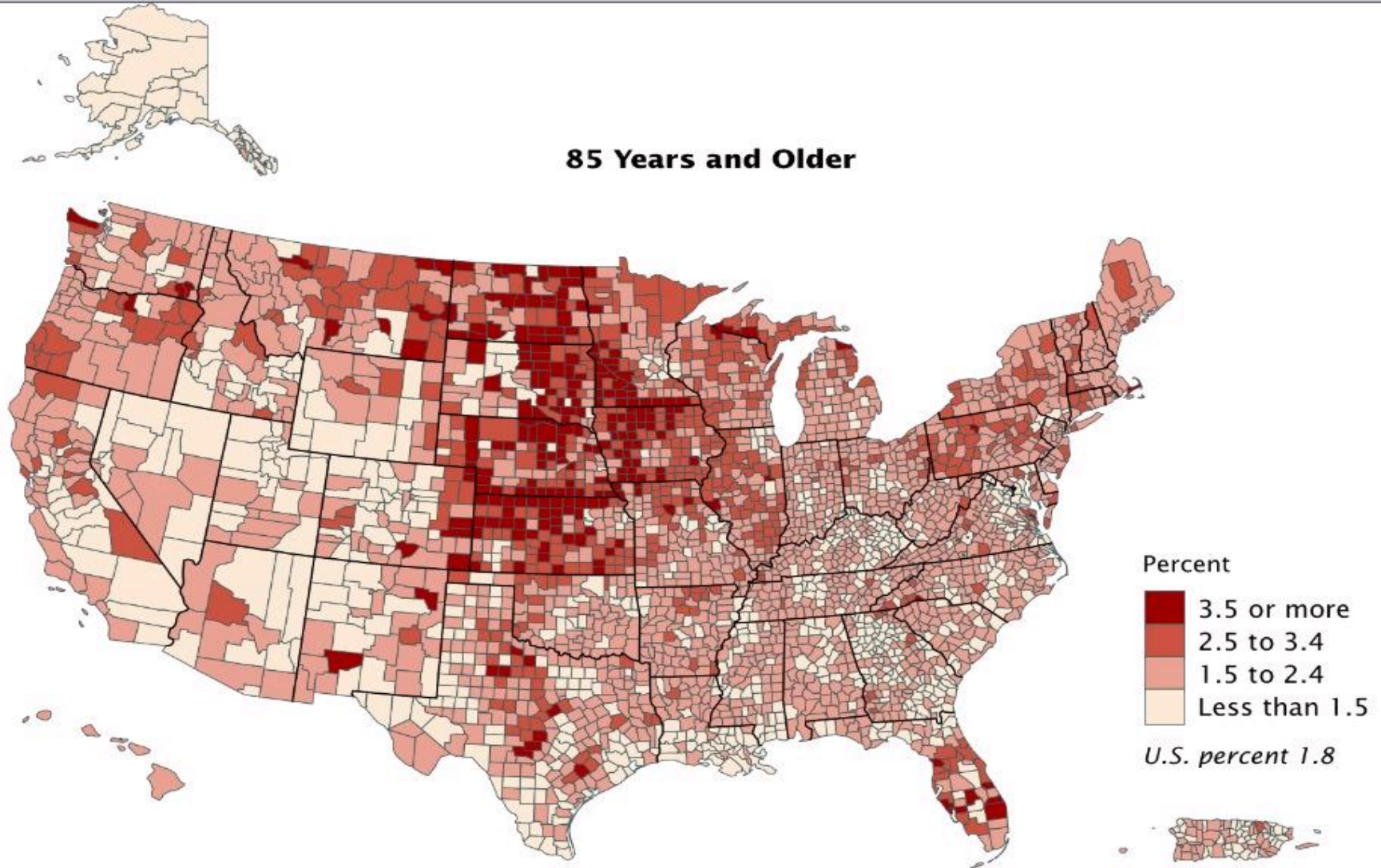
2000 65+ 356,229/ 13.3%

85+ 51,770/ 1.9%

Kansas has 105 counties
92 counties or 87.6% exceed USA percent of population that are age 85+
89 counties or 84.8% exceed USA percent age 65+

★ Elders 85 and over are by percent higher users of long-term care in a facility or at home

85 Years and Older



Source: U.S. Census Bureau, 2010 Census Summary File 1.

2. Elder Abuse Neglect & Exploitation in Kansas

A. Adult Protective Services (APS) (FY-2012) (APS reports include adults of all ages)

13,812 – Total Reports Received by APS

9,424 – Total Reports Assigned by APS

% Assigned to Investigate by Alleged Maltreatment

20.1% - Abuse

57.9% - Neglect (includes Self-Neglect)

16.9% - Exploitation

5.0% - Fiduciary Abuse

Source KS Social & Rehabilitation Services (SRS) FY 2012

B. Attorney General's Office

Two units handle Elder Abuse/Neglect/Exploitation:

1) Medicaid Fraud, and

2) Abuse, Neglect and Exploitation

3) 2013 Newly assigned Attorney to Senior Fraud cases

Completed – Convictions or Diversions

2012: 0 cases filed, 2 cases completed

2011: 4 cases filed, 5 cases completed

2010: 3 cases filed, 4 cases completed

2009: 10 cases filed, 4 cases completed

2008: 2 cases filed, 5 cases completed

C. Attorney General Referrals from Kansas Department for Aging & Disability Services

2007-08: 65 Referrals Only *doesn't reflect investigations opened*

2008-09: 69

2009-10: 76

2010-11: 60

2011-12: 25 *Source Loren F. Snell, Jr., Deputy Attorney General/Director, Medicaid Fraud and Abuse Division; July 2012*

D. Kansas Department for Aging and Disability Services

Complaint Line (FY 2012) - 1-800-432-3535 toll free reporting M-F 8-4:30

7, 589 - Number of Calls to KDOA/KDADS hotline resulting in Intakes

Number of Allegations of **ANE** reported to the **hotline**:

515 - Misappropriation/Exploitation

2,072 - Abuse (includes resident to resident)

3,028 - Neglect/Injuries of Unknown Source

5,615 Total

563 - Number of reports made to **Law Enforcement**

44 - Number of findings of **ANE** placed on the **Ks Nurse Aide Registry**

Number of **citations** related to **ANE (Nursing Homes only)**

2 - F223 (Free from Abuse/Involuntary Seclusion)

6 - F224 (Prohibit Mistreatment/Misappropriation)

85 - F225 (Investigate and Report)

45 - F226 (Develop and implement Policies & Procedures)

138 Total

Source KDADS - State Fiscal Year 7/1/2011-6/30/2012

E. Kansas Long-Term Care Ombudsman (Adult Care Homes & Nursing Facilities only)

<http://www.kansasombudsmanksgov.com/>

1 (877) 662 - 8362 toll free Elder Advocate non-legal

Abuse, Neglect, Exploitation*	2009 – 67	2010 – 78	2011 – 56
Abuse, neglect or abandonment**	2009 – 15	2010 – 10	2011 – 10
Financial exploitation by family or other	2009 – 47	2010 – 48	2011 – 53

* Not including Resident to Resident

**by non-facility staff; family member/friend/guardian or, while on visit out of facility, any other person

Source Ks State Long Term Care Ombudsman

3. Nursing Facility Long-term Care

A. Nursing Facilities – 18,000 adults reside in 342 Nursing Facilities and Long-Term Care units in hospitals

1) **OBRA1987** – Landmark Federal law which enhanced regulation, new requirements on quality of care, resident assessment, care planning, use of neuroleptic drugs and physical restraints

2) **Federal regulations** through Center for Medicare & Medicaid Services (CMS) – CMS issues regulation and guidance (current initiatives reduce inappropriate use of anti-psychotics), trains surveyors/inspectors, issues certification for Medicare & Medicaid reimbursement,

3) **State Law** – Kansas mirrors federal laws and regulations to some degree

4) **State Regulations** mirrors federal regulations to some degree under KDADS as of July 2012.

KDADS Responsible for

- Licensing,
- Oversight and Enforcement of Adult Care Homes and Nursing Facilities laws and regulations,
- Certification of Facilities by CMS for Medicare/Medicaid reimbursement
- Annual Survey/Inspection 12-15 months; must average 12 months.

5) **Nursing Facility Utilization Rate** in Kansas – See Chart page 2 and Map page 3 to better understand why KS has a high utilization rate. Combine with no home health services in many western Kansas counties and nursing facilities become an elder's only option.

Kansas Law and Regulations governing Adult Care Homes can be found at
http://www.aging.ks.gov/PolicyInfo_and_Regs/ACH_Current_Regs/ACH_Reg_Index.html
Kansas Adult Care Home Providers
http://www.kdads.ks.gov/LongTermCare/SCC/Licensure_Certification.html

B. Nursing Staffing in Nursing Facilities

- 1) RN, LPN, CNA (certified nurse aide), CMA (certified medication aide), PNA (paid nutrition assistant) provide direct care for bathing, eating, hygiene, mobility
- 2) Nursing Staffing hours reported once annually at time of survey by facility, not audited, provided from staff scheduled not from payroll data
- 3) Training: CNA – 90 hours training; CMA – CNA training plus 75 hours training; PNA – 12 hours
- 4) Ratio: 1 RN 8 hours per day; 1 LPN 16 hours per day; CNA – 1 per 30 adult residents
- 5) KS Average – 3.75 hours per nursing care per resident per day (hprd)
- 6) 4.44/4 hours & 26 minutes hprd needed according to CMS research study to avoid injury, illness, death

C. Payment for Nursing Facility Long-Term Care

- 1) 53% Medicaid pays for Nursing Facility care for approximately 10,000 older & disabled adults
 - Since 2011 – Quality Care Assessment (tax) added \$47 million to NFs Medicaid Reimbursement
 - Medicaid Reimbursement = 53% Federal funds & 47% SGF (not including above tax)
- 2) 47% Payment made from Elders and Disabled Adults Personal Resources
- 3) Unknown % Veterans Administration
- 4) Monthly payment is all-inclusive of care, assistance, room & board

D. Quality Issues for Elders

- 1) **27% of Nursing Facilities** cited with “**Actual Harm, Immediate Jeopardy of Harm, and/or Mistreatment** of an adult/ANE” – can be cited during annual inspection or during complaint inspection/survey
- 2) **Health & Safety Survey/Inspection:** Need for objective, external, strong, oversight and enforcement for frail elders in facilities. Single most important health & safety oversight for frail and cognitively challenged elders. Required 12 month frequency. 2 years to adequately train surveyor. All surveyors are RNs.
- 3) **Institutionalized Care vs. Home-like Person-Centered Care.**
 - KDADS PEAK 2.0 – Reimbursements without Quality Improvement Assurance for Elders
- 4) **Inappropriate use of anti-psychotic** medications ~ AP danger to elders –seizures and death. Used often to control behaviors rather to increase staffing. March 2009 through Nov 2012, KDOA/KDADS cited 140 facilities for 207 deficiencies related to antipsychotic medications.
- 5) Inadequate staffing to “maintain highest practical level of mental, physical, emotional functioning”. Standard set in federal law
- 6) Lack of dental care
 - Elder Smiles 2012 KDHE released Study on Oral Health in KS nursing facilities
 - 1/3 more likely to have lost all of natural teeth; 17% higher than counterparts receiving care at home
 - 1/3 of elders in nursing homes have untreated dental decay
 - Cost to fund dental care for elders \$4.2 million
 - KanCare covers one or two dental cleanings and extractions, not dentures, not fillings/decay RX
- 7) Lack of mental health care
 - KanCare provides coverage, but no funding to extend coverage or staff to cover additional clients
 - Elders in facilities rarely have transportation for mental health care appointments – facilities lack qualified staff
 - Elders have sustained higher percentages of loss of loved ones with accompanying grief and depression

4. Facilities with Assistance – about 9,000 adults in 340 free-standing or attached to nursing facility

A. Types – All have limited nursing care except Board & Care homes (no nursing care)

- Assisted Living Facility ~ small studio apartment, bathroom, locked door to room, microwave & fridge (small). 6 or more adults.
- Residential Health Care Facility ~ small studio apartment, no kitchen. 6 or more adults
- Home Plus ~ up to 12 licensed beds, shared sleeping, bath/toilet, living & kitchen areas
- Board & Care Homes – up to 10 adults, shared bedrooms, bath/toilet, living & kitchen areas, assistance with bathing, dressing, hygiene, but no nursing care

B. Regulation – State-only Regulation, Licensing, & Survey

- 1) minimal regulation, minimal staffing, minimal training of staff required
- 2) resident functional criteria – must be able to function with 1 person assist; control continence
- 3) Oversight & Enforcement – annual survey/inspection by KDADS

See www.kabc.org “Law of Care No Matter Where” publication for licensing criteria, regulation, and consumer issues

B. Payment for assisted types LTC in Kansas

- 1) Room & Board are separate from cost of Care monthly cost averages \$4,500 to 7,000
- 2) Medicaid HCBS can pay for cost of care but not room & board
- 3) 100% Private Pay for Room & Board

C. Quality Issues for Elders

- 1) Transfer trauma when required to move to higher level of care/nursing facility
- 2) No standards for dementia/Alzheimer’s care, lack adequate staff training, lack appropriate activities
- 3) No definition/criteria for “Special Care Units” – dementia/memory care translates to “locked” unit
- 4) No dental care –emergency/crisis only
- 5) Lack of mental health care
- 6) Inadequate transportation for health care or socialization

Continue – Quality Issues for Elders

- 7) Live in facility past point of level of need matching level of care
- 8) Minimal nursing staff in facility

5. Home & Community Based Services (HCBS)

About 6,000 Kansans receive HCBS through Medicaid (at home or in assisted type facility – not a nursing facility).

As of January 1, 2013 KanCare – Medicaid Managed Care will determine provider and amount of care

A. State only regulated – Frail Elders, state waiver must be approved by federal government (CMS)

- 1) Variety of providers with different regulations and training requirements – home health vs. home care
- 2) Inconsistent requirements on background checks for workers, health & safety inspections, quality assurance
- 3) Informal Caregivers – cost to families in actual dollars or loss of work income

B. Quality Issues for Elders

- 1) Abuse/Neglect/Exploitation, Self Neglect and need for stronger Adult Protective Services and Elder specific laws and coordinated interventions
- 2) Lack of access to 24 hour care
- 3) Lack of dental care
- 4) Lack of mental health care
- 5) Lack of access to transportation and affordable housing

6. Senior Care Act Programs and Nutrition Programs

A. Senior Care Act funding comes from SGF for assistance to keep an elder at home rather than in a nursing facility. Services provided are light housekeeping, shopping, meal preparation, case management, bathing/hygiene. Currently seniors waiting for these program services.

B. Senior Nutrition Program - Funded through Older Americans Act and SGF

- 1) Meals on Wheels (5 days per week, 1 meal per day)
- 2) Meal Vouchers can be used with vendors – Schwanns, Food bars in Grocery stores, etc.

7. Public Policy Concerns

- A. Adequate Care for elders in nursing facilities that reduces or prevents injury, illness & death.
Kansas' current standards don't achieve this, leaving elders at high risk. Need 4.26 hours of direct care per day.
- B. Protection from and Prevention of Abuse, Neglect & Exploitation of elders and adults receiving long-term care at home or in a facility in Kansas
- C. Improve laws specific to mistreatment of dependent adults (SB 19 fiduciary abuse; yet to be proposed dependent adult statutory language)
- D. Improve Oversight of and Performance in Nursing Facilities
- 27% - 92 of 345 nursing facilities cited with serious harm deficiencies
 - 33% - 115 of 345 nursing facilities cited with mistreatment of an adult/ANE deficiencies
 - 24 of 197 stand-alone assisted type living facilities cited with serious harm deficiencies
 - 29 of 197 stand-alone assisted type living facilities cited with mistreatment of an adult/ANE def.
- E. Adult Protective Services
- Placement in Attorney General's office – better coordination with law enforcement resources, APS is currently in Dept. for Children & Families.
- F. Access to Long-Term Care services for elders and adults
- G. Barriers to getting needed care specific to Rural and Urban settings
- Inadequate provider networks promote out of home placement - home health care and home care
 - Cost of care; unfunded care types -sleep cycle support, routine dental, mental health
 - Utilization rate of NH in Kansas and demographics of 85+ population
 - Seniors Right to Choose Care and Setting – In general none of us wants to go to a nursing home – already delay entry far beyond eligibility point/required CARE score 26, avg. score 70+ in NH
- H. Dental Care: No Access to routine maintenance, dentures, daily oral healthcare assistance;
Resulting in - serious illness, infection, confusion, falling, malnutrition disorientation/delusion
Findings - one third of nursing facility residents lost all natural teeth, over one third of nursing facility residents suffer from untreated dental decay, population has poor oral hygiene and limited access to oral health care.

Recommendations: nursing facilities to monitor that residents receive adequate daily oral care and identify oral health needs requiring professional attention, and access to dental professionals should be made physically and financially accessible. From first-ever 2012 Elder Smiles report by KDHE & Oral Health KS:

I. Mental Health Care: Barriers to Access – frailty, transportation, older adults more reluctant to request MH care, not available in nursing facilities/at home, lack of funding to make available in all settings; and no funding for MHC to expand their capacity to serve the needs of this population.

KABC Resources

Provides Assistance at No Cost

- Citizen assistance and information on long-term care for elders and adults with disabilities
- Long Term Care Information and Expertise on issues of quality
- Education, Training, Informational Booklets and Newsletters
- Assistance to Self Advocate, and assistance to caregivers
- Referral to Advocacy programs such as KS Long Term Care Ombudsman, KDADS complaint unit/survey, Adult Protective Services, Law Enforcement, Legal Services
- Database of all Nursing Facilities, Assisted Living, Home Plus, Residential Health Care Facilities, Board & Care Homes

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