

LEGAL  
ASPECTS  
*of* ELDER  
CARE

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# Preface

Caring for older individuals is a significant component of professional life for providers of health and human services in the United States today. Planning, providing, and evaluating geriatric care raises a wide variety of legal issues for health and human services practitioners and those who advocate for, develop, and enforce the public policies within which services are delivered. Therefore one would expect educators of present and future service and public policy professionals in the aging arena to integrate a substantial amount of teaching about legal issues into the course content for those professionals, and indeed we are seeing some substantial movement in this direction in undergraduate, graduate, and continuing professional education programs aimed at the student audience just described.

However, a major obstacle to the effective, aggressive integration of legal content into the aging curriculum is the absence of good, targeted pedagogical material aimed specifically at teaching health and human services and public policy professionals about the legal aspects of geriatric care. This book aims to fill that gap by supplying an organized collection of materials that can be used for educational purposes at various levels and by instructors with or without prior legal teaching expertise and experience.

I hope this text will be useful for lecture courses, seminars, and tutorials at various levels for students in the fields of public policy and administration, social work, nursing, sociology, psychology, health and human services administration, philosophy (including ethics), medicine, and criminal justice, among others, who are interested in aging. Each chapter provides excerpts (to the extent they are relevant and available) from selected statutes and regulations, judicial opinions, and the legal and healthcare journal literature, as well as commentary on these materials, discussion questions and hypothetical cases, and suggestions of other information sources for the teacher and student. My goal is to inform and sensitize those who will deal professionally with older persons about some of the current and potentially emerging legal issues they may encounter in providing services to older persons and to help them deal intelligently with legal issues and the responsibilities they impose.

# A Note on Legal Citations and Legal Sources

This book includes legal citations for statutes and regulations, judicial decisions, and published articles. The law has its own unique method for citing these sources of authority.

Legal citations for statutes and regulations generally take the form of Volume, Name of Publication (abbreviated), Section or Part, and Year. Thus, for example, 42 U.S.C. §1395 (1999) (the Medicare statute) is found at Volume 42 of the United States Code, Section 1395, with the most recent publication of that Section in 1999. In some situations, such as citation to the Federal Register or Congressional Record, the page number rather than section number is given.

Citations to judicial opinions in litigated cases take the form of name of case, volume, name of official reporter system (abbreviated), first page of opinion plus page(s) of material specifically quoted or referred to, and year. For state court cases, there usually is a parallel citation to the state Reporter system. For example, *Kapp v. The World*, 333 A.2d 450, 400 N.J. 100 (1998) refers to a case that can be found in Volume 333 (Second Series), beginning at page 450 of the Atlantic Reporter system or Volume 400, beginning at page 100 of the New Jersey Reporter system. For federal cases, F. Supp. refers to the Federal Supplement Reporter system (which contains opinions of the federal district, or trial level, courts); F., F.2d, or F.3d refers to opinions by Federal Circuit Courts of Appeal; and U.S. or S.Ct. refers to opinions by the United States Supreme Court.

Legal citations to published articles ordinarily take the form of Author, article title, volume of journal, name of journal (abbreviated), beginning page and page number(s) of material specifically quoted or referred to, and date. A reference to Marshall B. Kapp, *A Brilliant Idea*, 125 Harvard L. Rev. 400 (2007) thus could be found in Volume 125 of the Harvard Law Review beginning at page 400 and published in 2007.

For further information about legal citation forms, consult the latest edition of *The Bluebook: A Uniform System of Citation*, published by the

Harvard Law Review Association in Cambridge, MA. *The Bluebook* is now in its 18th edition.

Copies of any of the legal sources cited throughout this text may be obtained by instructors and students for free. Hard copies of all federal and state statutes and regulations, as well as federal case reports and case reports from one's particular state (and often from other states as well), may be found at local law libraries (located in law schools and federal and county courthouses) and most decent-sized public and college libraries. Federal laws may also be obtained by contacting one's congressional representative, and state laws may be obtained from one's state representative. Law libraries are the best place to find law review/law journal articles; articles usually may be ordered through a college's interlibrary loan system.

Statutes and regulations also are easily obtainable on the World Wide Web. Federal judicial opinions are available for free at [www.uscourts.gov/link](http://www.uscourts.gov/link) and [www.Alt.Law.org](http://www.Alt.Law.org). Materials from individual states generally are available at [www.state.\[abbreviation of specific state\].us](http://www.state.[abbreviation of specific state].us). Another valuable web portal for obtaining primary legal materials is [www.findlaw.com](http://www.findlaw.com). Valuable government links include [www.gpo.gov/su\\_docs](http://www.gpo.gov/su_docs) (for Code of Federal Regulations and Federal Register), [www.gao.gov](http://www.gao.gov) (for reports of the Government Accountability Office), [www.cms.gov](http://www.cms.gov) (for materials of the Centers for Medicare and Medicaid Services, including the Medicare and Medicaid laws and interpretations), and [www.medicare.gov](http://www.medicare.gov) (Medicare materials).

General websites of interest to teachers and students of law and aging include [www.aclm.org](http://www.aclm.org), [www.uslaw.com](http://www.uslaw.com), [www.nih.gov/signs/bioethics](http://www.nih.gov/signs/bioethics), [www.law.uh.edu/healthlaw](http://www.law.uh.edu/healthlaw), and [www.healthlawyers.org](http://www.healthlawyers.org). To research questions relating to law and aging in countries besides the United States, begin with *International Elder Law Research: A Bibliography*, 2 J. Internat'l Aging, L. & Pol'y 143–166 (2007).

# About the Author

Marshall B. Kapp is the Garwin Distinguished Professor of Law and Medicine in the School of Law at Southern Illinois University-Carbondale. He holds a joint faculty appointment in the Department of Medical Humanities at the SIU School of Medicine. He is Professor Emeritus at Wright State University School of Medicine, where he taught and directed the Office of Geriatric Medicine and Gerontology from 1980 through 2003. He was a member of the adjunct faculty during that time at the University of Dayton School of Law, where he taught a course on Law and Aging. In 2003, the Gerontological Society of America presented Kapp with its Donald P. Kent Award.

# Abbreviations Used in This Text

\**See generally* Acronyms in Aging: Organizations, Agencies, Programs, and Laws, [www.aarp.org/research/reference/agingtrends/aresearch-import-881.html](http://www.aarp.org/research/reference/agingtrends/aresearch-import-881.html)

Activities of daily living (ADLs)  
Administration on Aging (AoA)  
Adult Protective Services (APS)  
Adverse drug events (ADEs)  
Age Discrimination in Employment Act (ADEA)  
Agency for Healthcare Research and Quality (AHRQ)  
Alzheimer's disease (AD)  
Alzheimer's Home Screening Test (AHST)  
American Association of Homes and Services for the Aging (AAHSA)  
American Medical Association (AMA)  
Americans with Disabilities Act (ADA)  
Area Agencies on Aging (AAA)  
Artificial nutrition and hydration (ANH)  
Assisted Living Federation of America (ALFA)  
Association of American Medical Colleges (AAMC)  
Attorney General (AG)  
Cardiopulmonary resuscitation (CPR)  
Centers for Medicare and Medicaid Services (CMS)  
Certified nurse assistants (CNAs)  
Chronic obstructive pulmonary disease (COPD)  
Clinical Laboratory Improvement Act (CLIA)  
Contract Research Organization (CRO)  
Compliance Program Guidance (CPG)  
Congestive heart failure (CHF)  
Continuing care retirement community (CCRC)  
Controlled Substances Act (CSA)

Department of Health and Human Services (DHHS)  
Department of Health, Education and Welfare (DHEW)  
Department of Housing and Urban Development (HUD)  
Department of Justice (DoJ)  
Department of Motor Vehicles (DMV)  
Do not resuscitate (DNR)  
Driver rehabilitation specialist (DRS)  
Drug Enforcement Agency (DEA)  
Durable power of attorney (DPOA)  
Emergency medical service (EMS)  
Emergency Medical Treatment and Active Labor Act (EMTALA)  
Employee Retirement Income Security Act (ERISA)  
End-of-life (EOL)  
End-stage renal disease (ESRD)  
Equal Employment Opportunity Commission (EEOC)  
Fair Housing Amendments Act (FHAA)  
Fair Labor Standards Act (FLSA)  
Family and Medical Leave Act (FMLA)  
Federal Bureau of Investigation (FBI)  
Federal Insurance Contributions Act (FICA)  
Federal Trade Commission (FTC)  
Federation of State Medical Boards (FSMB)  
Fiscal year (FY)  
Food and Drug Administration (FDA)  
Food, Drug, and Cosmetic Act (FDCA)  
Health Insurance Portability and Accountability Act (HIPAA)  
Home- and community-based long-term care (HCBLTC)  
Home- and community-based services (HCBS)  
Home Health Advance Beneficiary Notice (HHABN)  
Home health agency (HHA)  
Home health care (HHC)  
Institutional ethics committee (IEC)  
Institutional review board (IRB)  
International Federation on Ageing (IFA)  
Least restrictive alternative (LRA)  
Licensed practical nurse (LPN)  
Life-sustaining medical treatments (LSMTs)

Long-term care (LTC)  
Managed care organization (MCO)  
Mini-Mental State Examination (MMSE)  
Minimum Data Set (MDS)  
National Academy of Elder Law Attorneys (NAELA)  
National Bioethics Advisory Commission (NBAC)  
National Highway Traffic Safety Administration (NHTSA)  
National Research Council (NRC)  
Nursing Home Quality Initiative (NHQI)  
Office of Inspector General (OIG)  
Old Age, Survivors and Disability Insurance (OASDI)  
Older Americans Act (OAA)  
Omnibus Budget Reconciliation Act (OBRA)  
On-Line Survey and Certification Assessment Reporting (OSCAR)  
Oregon Death With Dignity Act (ODWDA)  
Patient Self-Determination Act (PSDA)  
Persistent vegetative state (PVS)  
Personal Responsibility and Work Opportunity Reconciliation Act (PRA)  
Power of Attorney (POA)  
Preferred provider organization (PPO)  
Quality Improvement Organization (QIO)  
Resident Assessment Instrument (RAI)  
Registered nurse (RN)  
State Units on Aging (SUAs)  
Study to Understand Prognoses and Preferences for Outcomes and Risks of Treatment (SUPPORT)  
Supplemental Security Income (SSI)  
Uniform Determination of Death Act (UDDA)  
Uniform Guardianship and Protective Proceedings Act (UGPPA)  
Utilization review (UR)

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