# How to Protect Nursing Home Residents

A Guide for Taking Action Against Abuse and Neglect



COMMONWEALTH OF KENTUCKY ATTORNEY GENERAL ANDY BESHEAR

#### How to protect nursing home residents

#### A guide for taking action against abuse and neglect

This booklet will help you learn how to recognize and report abuse, neglect and financial exploitation. It provides guidance for recognizing, reporting, documenting and keeping track of the complaints that you make. It also includes sample forms which may be helpful in assisting you with this reporting process.

You should be aware that nursing homes are accountable for the care of their residents. A nursing home may be held responsible for its negligence in hiring, training or supervising its staff. Additionally, a nursing home may be held responsible for the acts and omissions of its employees while they are acting in the course of their employment.

The Office of the Attorney General hopes that you find this booklet helpful in assisting with the protection of your loved one in nursing home care. Not only is reporting the first step in protecting your loved one, it is the law!

#### Protection from abuse, neglect, and exploitation

#### Making a report

Kentucky law, KRS Chapter 209, protects our most vulnerable adults from abuse, neglect and exploitation and requires us to report our suspicions of these activities. Any suspected abuse, neglect or exploitation, whether against loved ones or other residents who may be unknown, must be reported to **Adult Protective Services (APS)**. This agency investigates complaints of abuse, neglect and exploitation. If you suspect abuse, neglect or exploitation, make a record of the incident and ALERT authorities. A report may be written or oral and can even be made anonymously to:



Complaints against the nursing home should also be made to the Office of the Inspector General (OIG) which is responsible for licensing nursing homes.

Office of the Inspector General
502-564-7963
~/

Additionally, reports of abuse in a nursing home facility may be made to the Office of the Attorney General's Abuse Tip Line.

Office of the Attorney General 877-ABUSE-TIP (877-228-7384)

As soon as you suspect abuse or neglect, call the numbers listed above immediately. If you have specific information, including the name of the victim, the name of the facility and location, the name of any witnesses, date and time of incident, etc., make sure to include this in your report. See the sample form provided in the back of this booklet. Remember, a report may be written or oral and can even be made anonymously.

#### Recognizing the indicators

#### Abuse

Abuse is the intentional infliction of injury or pain and includes physical, mental, verbal, psychological, sexual, unreasonable seclusion, intimidation, etc. It should be noted that more than one form of abuse might be occurring at the same time.

(Definitions and indicators of abuse and neglect are used with permission from the "National Citizens' Coalition for Nursing Home Reform".)

#### Some indicators of abuse:

- Physical abuse from a staff member, other resident, or an intruder or visitor from outside the facility can include:
  - hitting
  - pinching
  - shoving
  - force-feeding
  - scratching
  - slapping
  - spitting
  - bruises from careless transfers
  - broken bones
  - rough handling during care giving, medicine administration or moving a resident
- Psychological, emotional or verbal abuse is the infliction of mental pain or anguish which is caused by:
  - berating
  - ignoring
  - intimidating
  - ridiculing
  - cursing the resident
  - threats of punishment or deprivation
  - isolation
  - demeaning or controlling behavior
- Sexual abuse including improper touching or coercion to perform sexual acts when resident does not give or is not capable of giving consent which may be noted by:
  - unexplained injury, redness or bruising to private parts or mouth
  - expressions of fear toward a particular person
  - medical finding of sexually transmitted disease
  - sudden unexplained onset of urinary tract infections
  - unexplained shame, fear or embarrassment
  - allegations of abuse made by the victim



#### <u>Neglect</u>

Neglect occurs when an adult is unable to perform or obtain for himself the goods or services that are necessary to maintain his health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult. Neglect may be intentional or unintentional. For example, a caring aide who is poorly trained may not know how to provide proper care. Regardless of whether the neglect is intentional or unintentional, it is still against the law.

#### Some indicators of neglect:

- Substandard care which often results in one or more of the following conditions:
  - immobilization
  - loss of bowel or bladder control
  - dehydration
  - bed sores
  - depression
- Failure to turn or reposition resident on a regular schedule, including use of physical restraints or overmedication, which leads to:
  - limb contractures
  - skin breakdown (bed sores)
- ► Lack of toileting or changing of disposable briefs, which causes:
  - loss of bowel or bladder control, resulting in residents sitting in urine and feces
  - increased falls and agitation
  - indignity
  - skin breakdown
  - persistent odor of urine or feces
- ▶ Unmet personal or medical needs:
  - inappropriate clothing
  - poor hygiene
  - incorrect use or administration of medicine
- Poor or absent oral hygiene, which leads to:
  - tooth decay
  - oral infections
  - loose teeth
- Lack of assistance with eating and drinking or inadequate or improperly prepared food, which leads to:
  - malnutrition
  - dehydration
  - weight loss
- Lack of assistance walking/moving, which leads to lack of mobility
- Poor hand washing techniques, which leads to infection
- Withdrawal or isolation which may be caused by the failure to provide assistance and/or encouragement in participating in activities of interest
- ► Ignoring call bells or cries for help

Ask yourself: "Do I want this happening to others?"

#### **Exploitation**

Exploitation means obtaining or using another person's resources, including but not limited to money, assets or property without the resident's direct consent or as a result of improper influence with the intention to deprive the person of those resources.

#### Some indicators and examples of exploitation:

- Excessive interest by a staff member in a particular resident;
- Stealing or embezzling a resident's money or personal property, such as jewelry or clothing or efforts to obtain resident's money or personal property through trickery or lies;
- ► Failure to provide services or goods for which resident has paid;
- Suspicious checks made out to cash;
- Unexplained or suspicious bank activity such as ATM use;
- ► Not placing resident's money in separate interest-bearing accounts where required.

#### Documenting suspected abuse, neglect and exploitation

As stated before, Kentucky law requires you to report suspected incidents of abuse, neglect, or exploitation to authorities. Documentation is important to law enforcement and other authorities when reporting incidents of abuse. Be prepared to give specific information and be aware that taking pictures may be very helpful as part of your documentation process. A sample incident report form is provided for your convenience in the back of this booklet.

#### If possible include:

- Name of victim and your relationship to victim
- ► Age, if known
- Name and address of facility
- Date of incident(s)
- Time(s)
- Description of incident(s)
- Nature of the abuse, neglect or exploitation
- Name of alleged perpetrator
- Names of any witnesses and how to reach them Any pictures, videos, etc.

#### Nursing home records



Nursing home staff is required to make timely and accurate entries of treatment and care in the patient's record. Make sure that this is being done. Request to see documentation and records on a routine basis. If refused, make note of who, what, when, where and why. You have the right to review these records. The family may need to designate one family member to be the contact person but the family cannot be denied total access to the records. If medical records are incomplete or missing, it should be reported to the Office of the

.

Inspector General at 502-564-7963.

#### **REPORT THE INCIDENT – Who to Contact**

If, at any time, you feel the safety of your loved one is at risk, report it immediately. Even if you cannot pinpoint an exact incident but have an uneasy feeling – report it. Ask yourself "Do I want this happening to others?" Report the incident or incidents (or your uneasy feelings) promptly to:

**The facility** — Nursing home administrator, director of nursing, floor supervisor, social worker or other nursing home management staff. The nursing home ombudsman should also be contacted regarding the incident.

Adult Protective Services (APS) at 800-752-6200 — This agency is responsible for accepting and investigating complaints concerning the abuse, neglect and/or exploitation of vulnerable adults as prescribed in KRS Chapter 209. This is done in cooperation with other agencies or law enforcement to substantiate complaints or ascertain if services are needed. There is a local office in each county which may be listed in your telephone directory under the Kentucky State Government section Cabinet for Health and Family Services, Department for Community Based Services— Protection and Permanency or you may call the state hotline number listed above.

**Office of Inspector General (OIG) at 502-564-7963** — The staff of this office is highly trained to identify situations in which the elderly have been subjected to abuse, neglect or exploitation in a health care facility. When these facilities fail to provide the necessary care, provide poor care or fail to protect victims from predators, the OIG staff can be of great help in establishing causation or link between services poorly or not provided and decline in the victim's health, often ending in death. The agency can also impose sanctions that can result in facility closure.

**Local law enforcement** — Contact your local police department, sheriff's department or the Kentucky State Police post nearest you.

**Office of the Attorney General (OAG) at 877-ABUSE-TIP (877-228-7384)** — The Medicaid Fraud and Abuse Control Unit (MFCU) in the Attorney General's Office prosecutes fraud perpetrated by providers against the Medicaid program, the state program that provides health care for people based on financial eligibility. In addition to fraud, the MFCU prosecutes crimes of abuse, neglect and exploitation against victims in health care facilities. MFCU staff is always available to prosecute these cases or to assist local prosecutors in any way to bring to justice those who prey upon vulnerable citizens.

Long Term Care Ombudsman at 800-372-2991 — Ombudsmen identify, investigate and work to resolve residents' concerns, as well as empower residents to make informed choices. Ombudsmen are generally well aware of facilities' history of care and compliance or noncompliance with state and federal laws and regulations governing care and can provide a wealth of information.



Kentucky Office of the Attorney General

# PLEASE NOTE: It is best that you notify all agencies listed to ensure that your report is documented, addressed and investigated

#### Follow-up

Follow up with the agency conducting the investigation, i.e. Adult Protective Services, the Office of the Inspector General, local law enforcement, etc. to determine what action has been taken on your complaint. Please be aware that some agencies, due to procedural policies, may not be able to provide specific information to you; however it will be helpful to document these agency contacts as well, noting the date, time, with whom you spoke and what you were told. *Keep this information in you Resident File.* 

You should also check with the resident and/or facility to determine if the problem has been corrected.

#### Open Records

#### What is it?

Kentucky Open Records law provides you access to records retained by the government. You may ask to review complaints, investigations, reports, complaint resolutions, statements of deficiencies, plans of correction, Type A or B citations, allegations of compliance, continuous quality assessments and any and all other records pertaining to the facility. If you feel you are not getting the information you are entitled to, you may wish to file an open records request.

#### How to obtain open records

The records may be requested by letter to the Department for Community Based Services or the Office of the Inspector General. There may be a fee charged for copies. We have provided you sample copies of letters for an open records request. You will see that there are many terms used that you may want to include in order to obtain the records.

Please note that you may face some limitations when submitting an open records request due to the confidentiality of the information such as medical information, financial information, time limitations, etc. If you do not receive the information you requested or were denied any or all the information you requested, you may file an appeal with the Office of the Attorney General by calling 502-696-5664.



Date

Inspector General Office of Inspector General Cabinet for Health and Family Services 275 East Main St., 5EB Frankfort KY 40621

RE: Open Records Request

Dear Inspector General:

I am respectfully requesting copies of the following records for (name of Nursing Home) at (Address).

- 1. Records reflecting results of any and all surveys for (years, for example, 2004, 2005 and 2006) including follow up surveys
- 2. Records reflecting results of Complaint Investigations
- 3. All Statements of Deficiencies and Plans of Correction
- 4. Complaints received
- 5. Records reflecting Type A or B citations
- 6. Records reflecting credible allegations of compliance
- 7. Records reflecting allegations of removal of jeopardy
- 8. Written communication with the Centers for Medicare and Medicaid Services regarding this provider
- 9. Letters to and from the provider regarding, in any way, quality of care for patients or residents

Please deliver them to the address below. If there is a charge for the copies, please let me know the amount in advance.

Sincerely,

Your signature Your Name (printed or typed) Address City, State, Zip Code Phone Number

Date Official Custodian of Records Department for Community Based Services **Records Management Section** Adult Protective Services Cabinet for Health and Family Services 275 East Main St., 3E-G Frankfort, KY 40621 Dear Custodian of Records: I respectfully request to inspect (and obtain copies of) the following records: All records relating to the Cabinet's investigation of my (date complaint was filed) complaint concerning the treatment of (relative's name) at the (name of nursing home or facility), including, but not limited to, records reflecting any final action taken on my complaint. It is my understanding that the Cabinet must respond to my request in writing, and within three business days, and either disclose the requested records to me on the third day, or cite the statutory exemption authorizing nondisclosure and explain how it applies to the records withheld. I agree to pay reasonable copying costs for these records not to exceed 10 cents per page per 200 KAR 1:020 Section 3 (1). Thank you for your attention to this request. Sincerely, Your signature Your Name (printed or typed) Address City, State, Zip Code Phone Number

#### In case of death or injury as a result of abuse

If you suspect your loved one's death is the result of abuse or neglect, report your suspicions immediately to Adult Protective Services, the Office of the Inspector General, the Office of the Attorney General and local law enforcement at the numbers given in this booklet.

Before the body is removed to the funeral home, request that the coroner examine the body for any signs of abuse or neglect. Ask the coroner to request an autopsy if any signs of abuse or neglect is found. (Each county has a coroner. If you cannot locate a phone number for the coroner, contact a local funeral home director.)

If the body has already been removed to the funeral home, request the funeral home director to examine the body and indicate in writing any signs of abuse or neglect. If the funeral home director believes the death is the result of abuse or neglect, he should ask the coroner for an autopsy. This should be done as quickly as possible.

#### If you findyou need legal help

If your efforts to solve problems are not successful and your loved one continues to be at risk, you may need legal help. To help organize the details of your loved one's situation in a way that can be pursued legally, the following steps will be helpful:

- ► Keep detailed records of your loved one's stay in a nursing home from the beginning. You may wish to keep a journal of your visits and document what you notice during your visit. Keep this journal in your possession.
- Record each time and date you make a complaint including name/position of person you talk to. Keep copies of any letters you write to the administration or other persons of authority.
- Keep a camera with you on each visit. Photograph anything out the ordinary as well as good times. It may be useful to demonstrate that your person does have a good quality of life within their limitations.
- ▶ Photograph skin and hygiene problems. Be sure to date these items.
- ► Ask friends and other visitors to be alert for problems.
- ▶ Note how many caregivers are on duty when you find a problem.

If you find you need legal help, you may contact the Kentucky Bar Association to obtain information on Lawyer Referral Services to assist you in selecting an attorney who is familiar with these types of cases. Contact the Kentucky Bar Association at 502-564-3795 or www.kybar.org.

#### How to deal with a nursing home closure

The Cabinet for Health and Family Services Adult Protective Services (APS) ensures the safety and stability of Kentucky's vulnerable adults. Adult Protective Services are directed toward preserving the vulnerable adult's independence to the maximum degree possible and recognizing the inherent individual right of self determination. APS works to ensure that vulnerable adults are protected from abuse, neglect, and exploitation as prescribed in KRS Chapter 209. During a Medicaid de-certification or nursing home closure APS contracts with Medicaid to facilitate the movement and placement of all Medicaid eligible residents.

#### Private Resident and Family Meetings

Once it has been determined that Medicaid de-certification will occur and a termination date has been set by Medicaid, resident and family meetings may be scheduled by the provider to inform residents and families of what issues led to the termination of the Medicaid Provider Agreement and what steps to take to make arrangements for resident placements. It is the responsibility of the provider to schedule and take the lead on all resident and family meetings. A representative from the Office of the Inspector General is typically present at these meetings to speak to the residents and families about what deficiencies were cited that led to the action being taken by Medicaid. A representative from Medicaid is also in attendance and provides residents and families with an overview of their function and information concerning the implications for Medicaid residents. Adult Protective Services is also present to advise families on their role as facilitator of resident movement and placement. Residents and families will receive information about bed availability in other long term care facilities in the area, information on transportation and packing and moving of resident belongings. Residents and families are also advised that each resident will be assigned an APS case worker to assist with facilitating the move. It should be noted that the resident, if competent, or the Guardian or the responsible part may pursue placement options independently without the assistance of APS should they elect to do so.

#### APS Role:

- Adult Protective Services will secure office space at the facility to work out of and to meet with residents and families on an individual basis.
- Adult Protective Services will assign on (1) APS worker to each resident to facilitate the process of locating a facility.
- Adult Protective Services will have staff assigned to assist families with packing the residents' belongings and transporting the belongings to the receiving facility if requested.
- If the resident is a Medicaid recipient Adult Protective Services will arrange transportation either via ambulance, wheelchair transport or other depending on the needs of the reside. APS will work with the resident, family and receiving facility to schedule a date for the move. Family has the right to transport the resident if desired.
- Adult Protective Services medical staff will copy all resident records and forward to receiving facility. It should be noted if family transports their loved one that they can pick up a copy of the chart to take to the receiving facility.

DCBS will track all resident movement and placement. This information is shared with Medicaid, the Office of the Inspector General, and Long Term Care Ombudsman to ensure all residents receive uninterrupted service

#### Tips for people with family or friends in a nursing home

The following are some recommendations to help you monitor and document care provided in the nursing facility.

Keep a Resident File or binder of important information or papers relating to your loved one from the beginning of their stay in a facility. This file may contain copies of care plans and charts, your incident reports, dates and responses to your requests and complaints, dates of any calls to outside agencies for help etc. Request to see charts and make copies regularly. Make it a complete record of your loved one's stay. The facility is required to develop a care plan enabling your loved one to achieve the highest practical level of functioning. This includes all aspects of care and services and identifies changes. Ask for a copy of the care plan. Make sure you understand all details of the care plan. It is very important for you to be at the initial and follow-up care plan meetings, as regularly scheduled. The meeting should include the medical director, dietitian, physical therapist, pharmacist, nursing director, social director and activities director.

Request to see charts regularly to ensure that proper documentation of activities of daily living (ADLs) are noted as well as any reports you requested to be included such as new bruises, bedsores, etc. Changes in behavior, fever and falls should automatically be included in the chart, as this is required. These records can assist in care planning.

Have a routine of frequently reviewing the nurses' notes contained in the charts. The facility may require you to designate one person who is allowed to review the chart.

Document whether the nursing home calls to report changes in the condition of the resident, such as any falls encountered, fever, etc. Are these documented in the resident's medical chart?

Federal law requires posting of direct caregivers on each shift, such as nurses and CNAs. Make a note if the postings are not accurate.

Ask about staffing ratios and how many "hours of direct care" the facility's residents receive per day. that you may be given ratios based on number of staff per number of residents. This could include maintenance, cooks, etc. You want to know hours of direct care, not how many people are employed there.

Visit at irregular times. If staff expects your visits, you may only witness desirable behaviors or of residents.

Follow up/communicate with family and friends who have visited during your absence. Were any changes in condition noticed with the patient?

Keep a journal of your visits. Include the demeanor of the patient, attitude of staff, any unusual bruising, etc.

Become familiar with staff and names of staff, shifts worked, etc.

Review annual inspections of the nursing home. These reports should be in an accessible location on the premises. You have the right to see these inspection reports. For information on how the Centers for Medicare and Medicaid Services (CMS) rate nursing homes in your area, visit the website <u>www.medicare.gov/NHCompare</u>. (See additional resources listed in the back of this guide.)

Become aware of and document any unpleasant smells in the nursing home, physical obstacles in the hallway, inattentive staff, unanswered call bells or cries for help, etc.

Get to know family members of other residents who visit regularly. Sharing information and concerns is important.

Take photos or videos of suspicious bruises, scratches or wounds, etc. and add to the file. Use a reference tool, such as a coin, to place near the affected area to indicate the size of the bruise or wound. Take photos of good times, too.

Get involved with Family Councils. These councils meet to discuss issues and concerns of the residents. Appoint a family member to take minutes at the meetings instead of relying on nursing home staff.

Make copies of reports and complaints you make to any agency.

Ask for copies of medical records if your loved one is sent to a hospital for medical care.

If the problem is not resolved to your satisfaction, you may choose to seek private legal counsel.

## Example of the type of information that should be documented:

Date	Time	Description of Incident	Report to staff member / agency	Witness and/or contact, who was on duty? Phone #	Location / site of incident	Treatment / action	other notes
11-26-06	2pm	Mom was lying in soiled bed clothes which appeared to be somewhat dry indicating that the mess had been there for a while	Charge nurse, Ann Smith	Betty Jones, resident in same room with mom and nurse's aide, Mary Brown. Also called APS and spoke with Bill White at 800-752- 6200	In her room.	Nurse changed bed and mom's nightgown and apologized. She said they were "short staffed today."	Took a picture of the mess.

Office of the Attorney General 877-ABUSE-TII	P (877-228-7384)
Office of the Inspector General	502-564-7963
Adult Protective Services	800-752-6200
Office of the State Long Term Care Ombudsman	800-372-2991

### Documentation form — make copies as needed

Date	Time	Description of Incident	Report to staff member / agency	Witness and/or contact, who was on duty? Phone #	Location / site of incident	Treatment / action	other notes
			C	Office of the In	spector General	I 877-ABUSE-TIP (87 50 	02-564-7963

Office of the State Long Term Care Ombudsman ... 800-372-2991

# Suggestions for documentation by family members and visitors:

- It is important to keep your log/journal of documentation in a safe place in order that it is not lost or destroyed by the perpetrator. Consider keeping it at your own home.
- ► Family members are encouraged to keep a record of suspected abuse/neglect by filling in as much information as they can about such incidents. Your loved one may not be able to articulate what is happening to them, but you may notice bruises or other physical signs of abuse/neglect. In this instance, it is important to document in order to discover a pattern of abuse and to report such violence.
- ▶ When writing a description of the incident against your loved one, try to note where the abuse occurred (what room the victim was in) as well as any details of physical or emotional harm. It is helpful to be as detailed and specific as possible. List the time and date of the incident. If there are no physical signs of abuse, note the change in your loved one's emotional state or behavior. For example, does your loved one appear uncomfortable or fearful around certain workers?
- ► If someone else witnessed abuse/neglect against your loved one, it is important to note some specifics about the person. Writing down the witness' name, contact information, whether or not the witness is a staff member at the facility, his/her position, etc. will be helpful for investigators.
- Take pictures or video of any suspicious bruises, scratches or wounds. Remember it is helpful to use a coin or other object as a reference tool to place near the affected area. If your camera does not have an automatic date feature, make sure that you document the date and time the picture was taken. If your suspicions of abuse are strong, but you have been unable to identify physical signs, or there are unreasonable explanations given for bruises, scratches or wounds on your loved one, your family may wish to consider installing a hidden camera to record activity within the room of the resident. Remember that any video you turn over to law enforcement becomes evidence. This evidence will not be altered or changed, so any views of your loved one may be presented in the public arena for all to see.
- Document all particular incidents reported to a staff member. Make sure you obtain the name and job title of this individual, the date and time, and what the staff member told you at the time of your report.
- ► If the abuse/neglect warranted treatment, note the particulars of the care given. For instance, if your loved one or other resident received medical treatment, it is important to write down what it was, the hospital and/or doctor that administered care, the date, and time treatment was received. Ask for copies of the hospital records.
- Other documentation that is helpful in the prosecution of cases include photographs of injuries and records (date and time) of calls made to Adult Protective Services, Office of the Inspector General and the Office of the Attorney General.

### Resources

#### **Adult Protective Services**

800-752-6200 http://chfs.ky.gov/dcbs/dpp/facs.htm

# Office of the Inspector General 502-564-7963

http://chfs.ky.gov/oig

#### Kentucky Office of the Attorney General 1024 Capital Center Drive, Suite 200 Frankfort, KY 40601 502-696-5389 http://ag.ky.gov

#### Office of the State Long Term Care Ombudsman

800-372-2991 http://chfs.ky.gov/omb

## National Adult Protective Services Association (NAPSA)

http://www.apsnetwork.org

#### National Alzheimer's Association

225 N. Michigan Ave., Fl. 17 Chicago, IL 60601-7633 800-272-3900 312-335-8700 http://www.alz.org

#### National Center on Elder Abuse

c/o University of California-Irvine Program in Geriatric Medicine 101 The City Drive South 200 Building Orange, CA 92868 (855) 500-3537 http://www.ncea.aoa.gov

# Centers for Medicare and Medicaid Services <a href="http://www.cms.gov">http://www.cms.gov</a>

Medicare (to compare nursing homes) http://www.medicare.gov/NHCompare

#### The Department of Health and Human Services

Administration on Aging (800) 677-1116 <u>http://eldercare.gov</u>



#### How to Protect Nursing Home Residents CITIZEN ADVOCACY GROUPS

#### Kentucky Initiative for Quality Nursing Home Standards 5248 Skyline Dr. Cold Spring, KY 41076 http://www.kyignursinghome.org

#### Kentuckians for Nursing Home Reform

1530 Nicholasville Road Lexington, KY 40503 859-312-5617 http://www.kynursinghomereform.org

#### The National Consumer Voice for Quality Long-Term Care

1001 Connecticut Avenue, NW Suite 425 Washington, DC 20036 (202) 332-2275 http://www.theconsumervoice.org



Jack Conway Attorney General

For more information:

Kentucky Office of the Attorney General Office of Consumer Protection 1024 Capital Center Drive Frankfort, KY 40601 (502) 696-5389

http://www.ag.ky.gov/consumer

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