

# Committees on Health & Human Services and Senate Judiciary

Present

**HB 2306/SB 430**

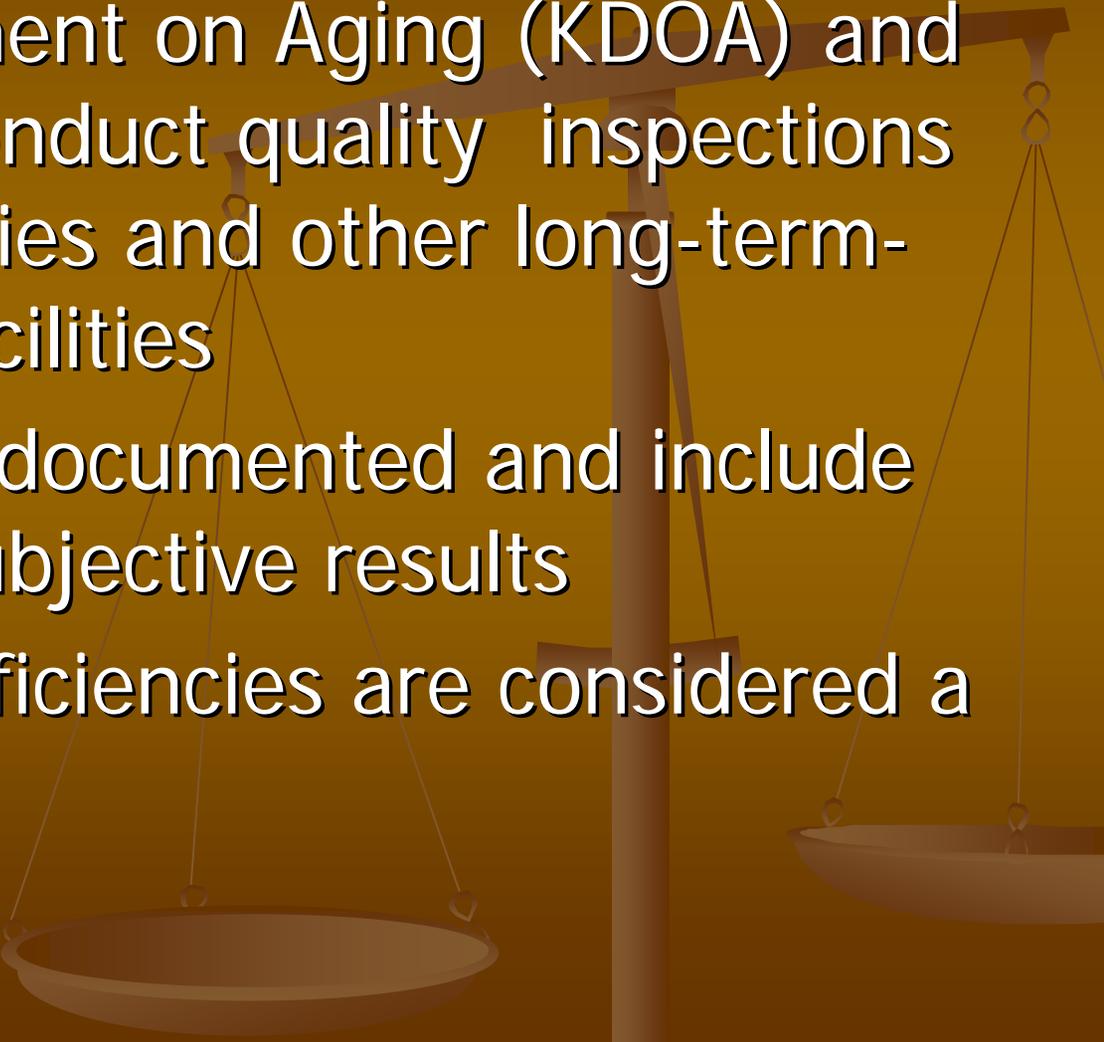
An amendment to K.S.A. 39-935,  
relating to inspection reports of adult  
care homes.

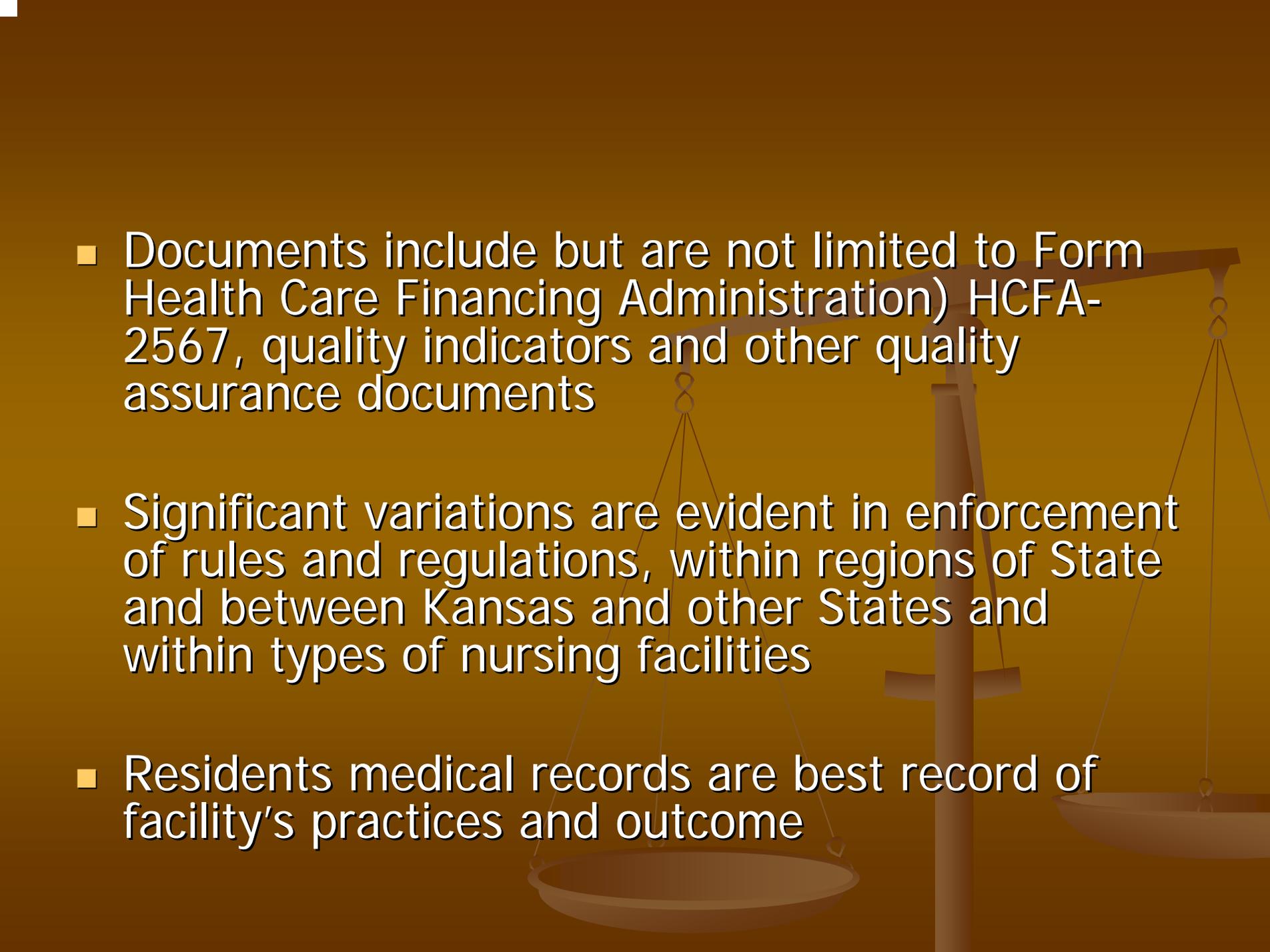
# A Matter of Record

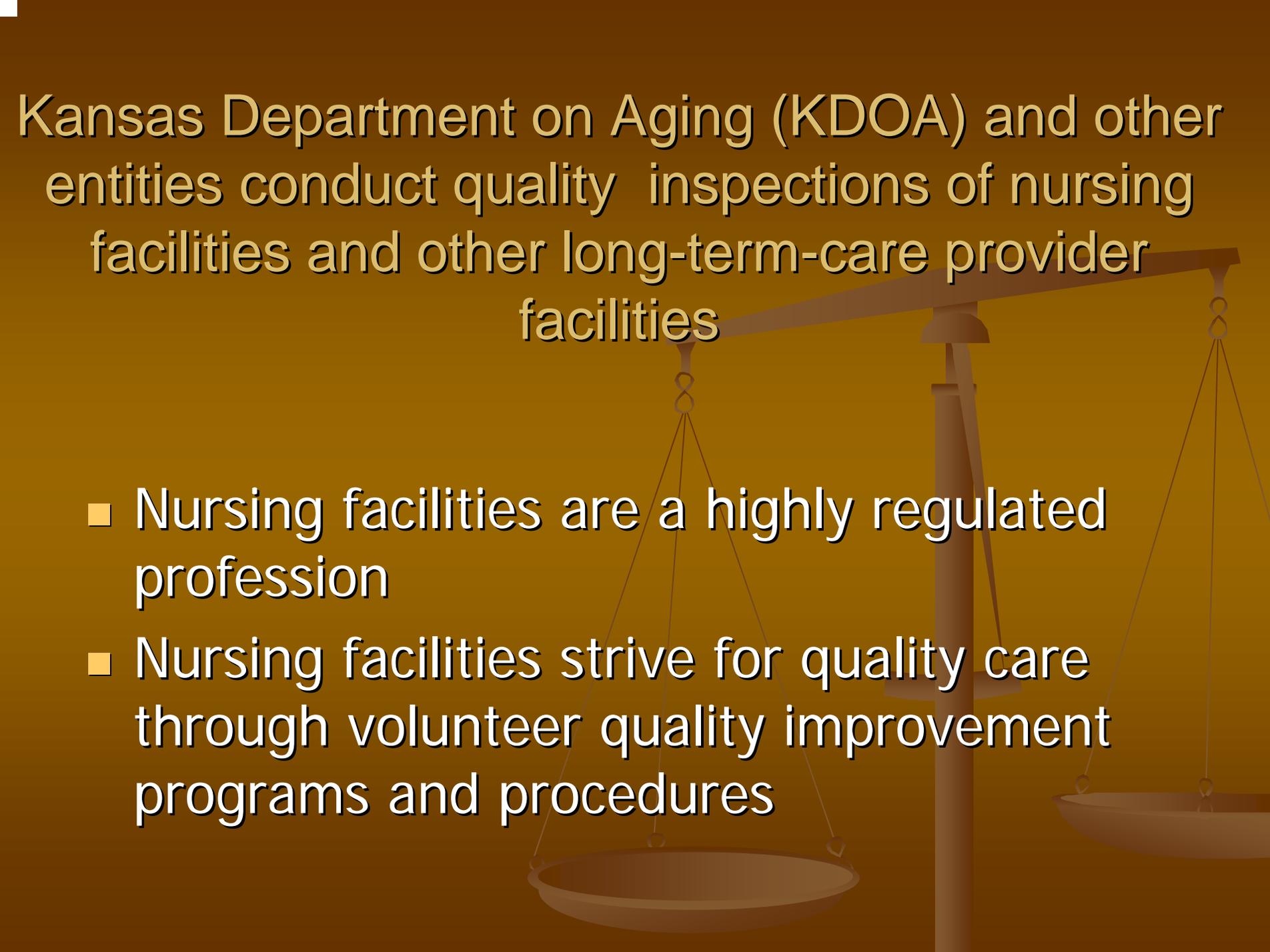
- Utilizing the right record
- For the right reason
- At the right time



# Introduction

- Kansas Department on Aging (KDOA) and other entities conduct quality inspections of nursing facilities and other long-term-care provider facilities
  - Inspections are documented and include objective and subjective results
  - Documented deficiencies are considered a 'peer review'
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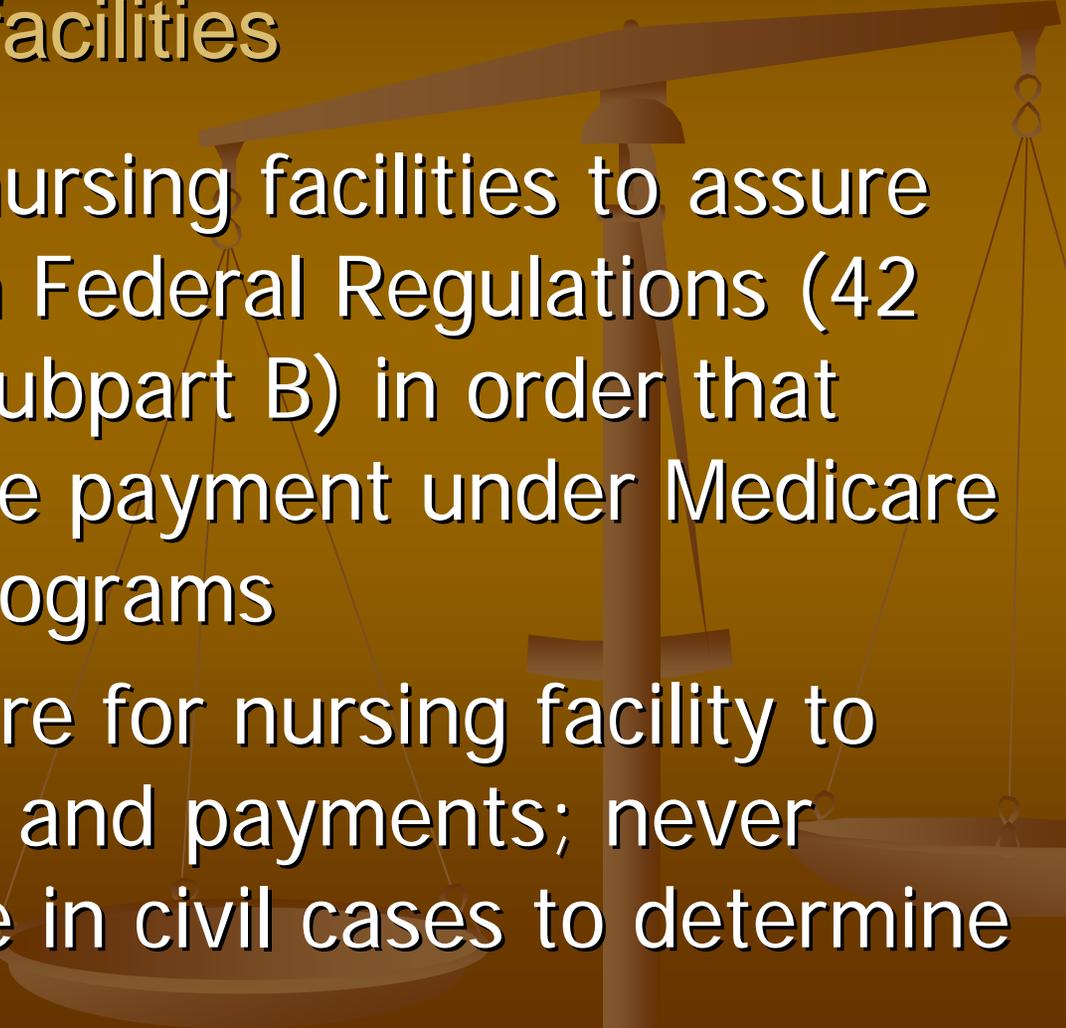
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- Documents include but are not limited to Form Health Care Financing Administration) HCFA-2567, quality indicators and other quality assurance documents
  - Significant variations are evident in enforcement of rules and regulations, within regions of State and between Kansas and other States and within types of nursing facilities
  - Residents medical records are best record of facility's practices and outcome



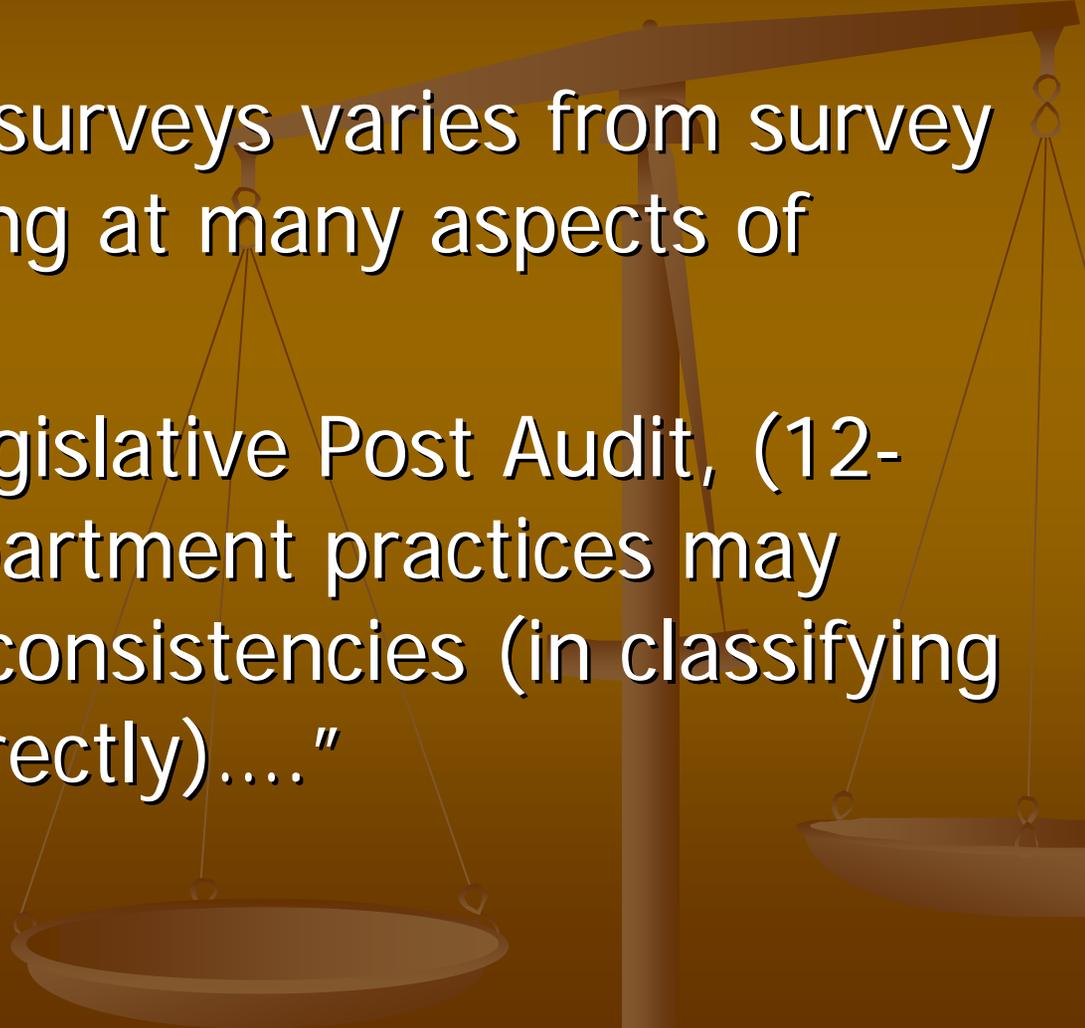
# Kansas Department on Aging (KDOA) and other entities conduct quality inspections of nursing facilities and other long-term-care provider facilities

- Nursing facilities are a highly regulated profession
- Nursing facilities strive for quality care through volunteer quality improvement programs and procedures

# Kansas Department on Aging (KDOA) and other entities conduct quality inspections of nursing facilities and other long-term-care provider facilities

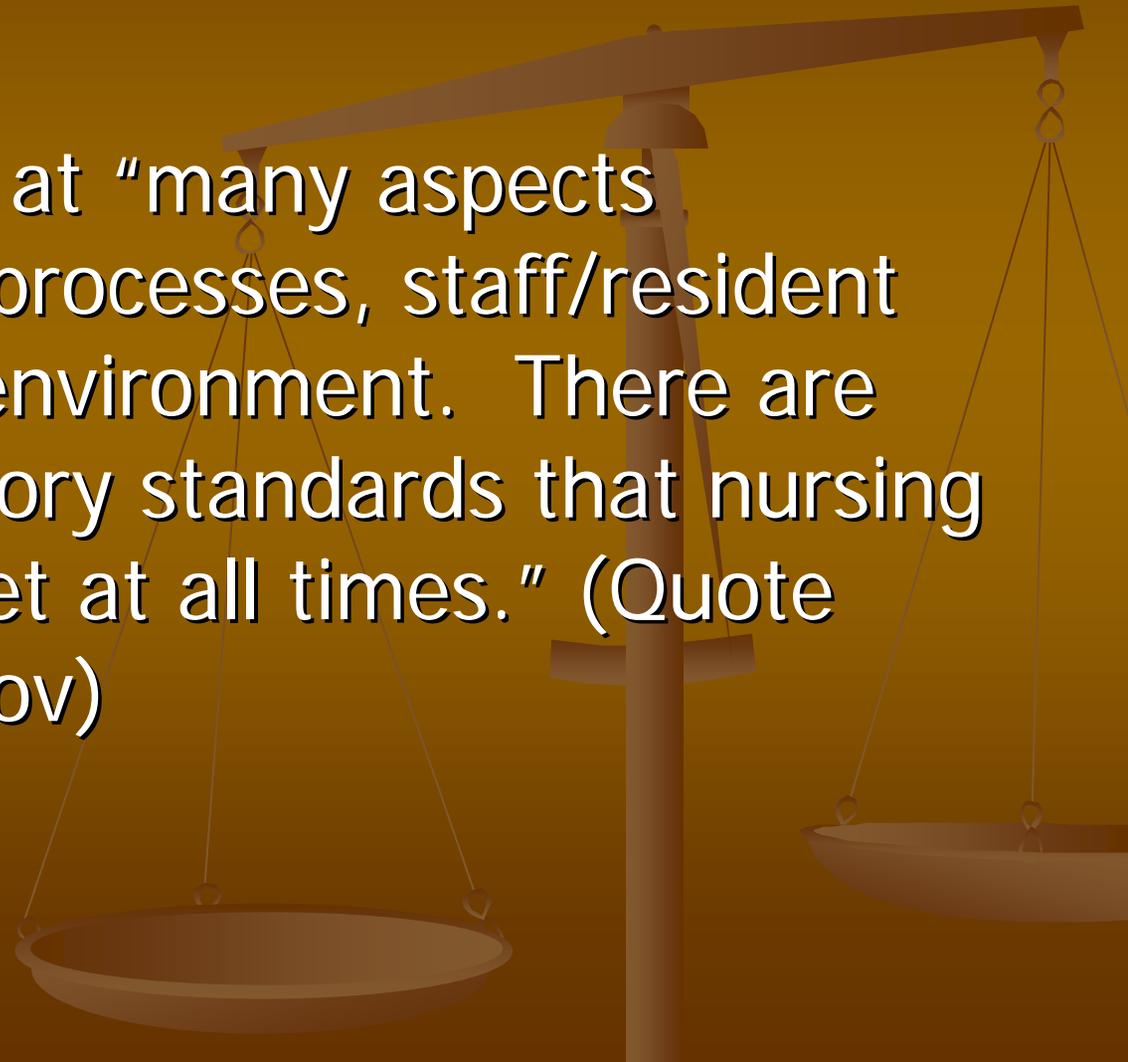
- KDOA surveys nursing facilities to assure compliance with Federal Regulations (42 CFR Part 483, Subpart B) in order that they may receive payment under Medicare and Medicaid programs
  - Survey results are for nursing facility to obtain licensure and payments; never intended for use in civil cases to determine liability
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# Inspections are documented and include objective and subjective results

- Focus of KDOA surveys varies from survey to survey, looking at many aspects of quality
  - According to Legislative Post Audit, (12-01), "Some Department practices may contribute to inconsistencies (in classifying deficiencies correctly)...."
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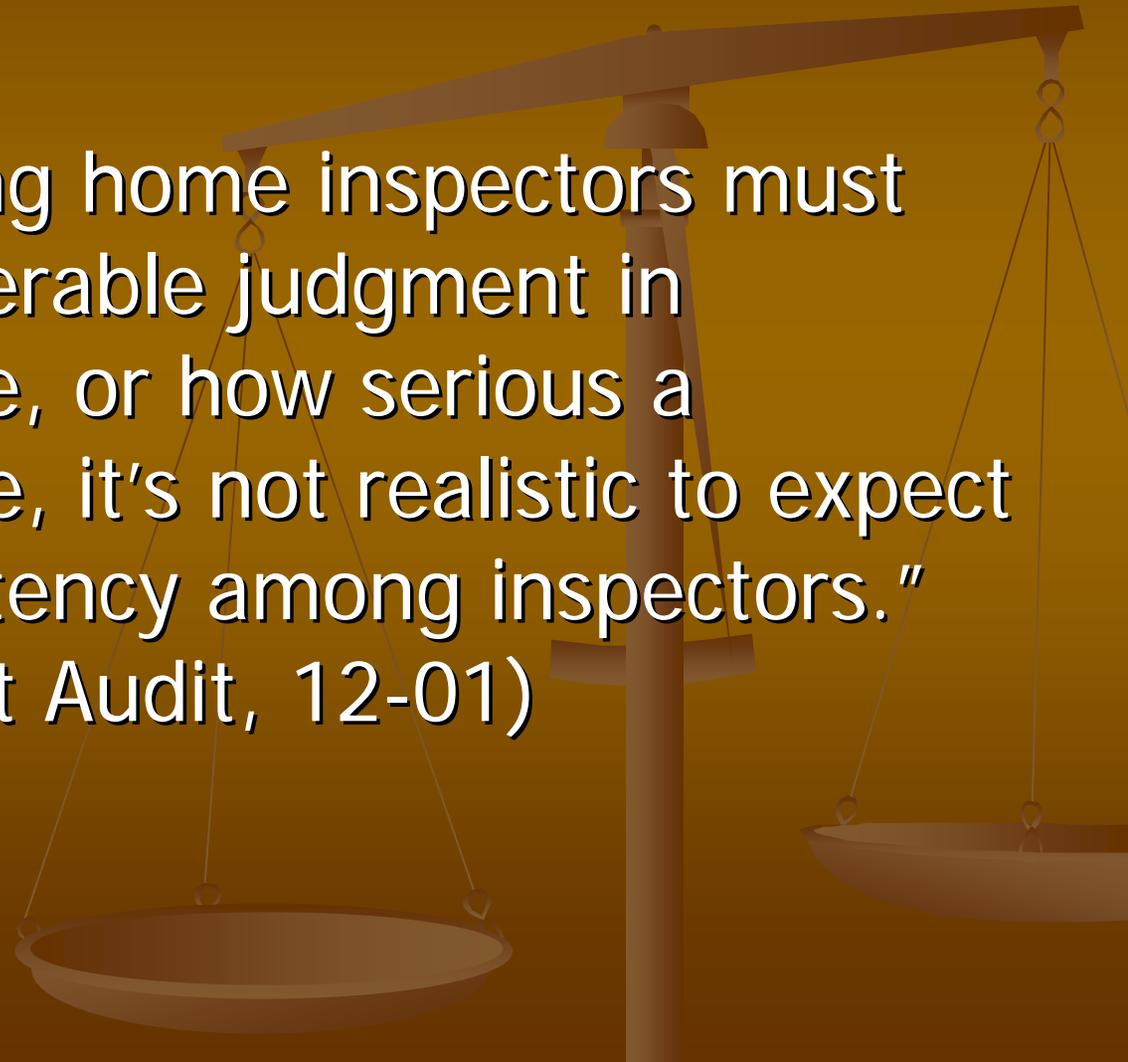
# Inspections are documented and include objective and subjective results

- Inspections look at “many aspects ...resident care, processes, staff/resident interaction and environment. There are over 150 regulatory standards that nursing homes must meet at all times.” (Quote from Medicare.gov)

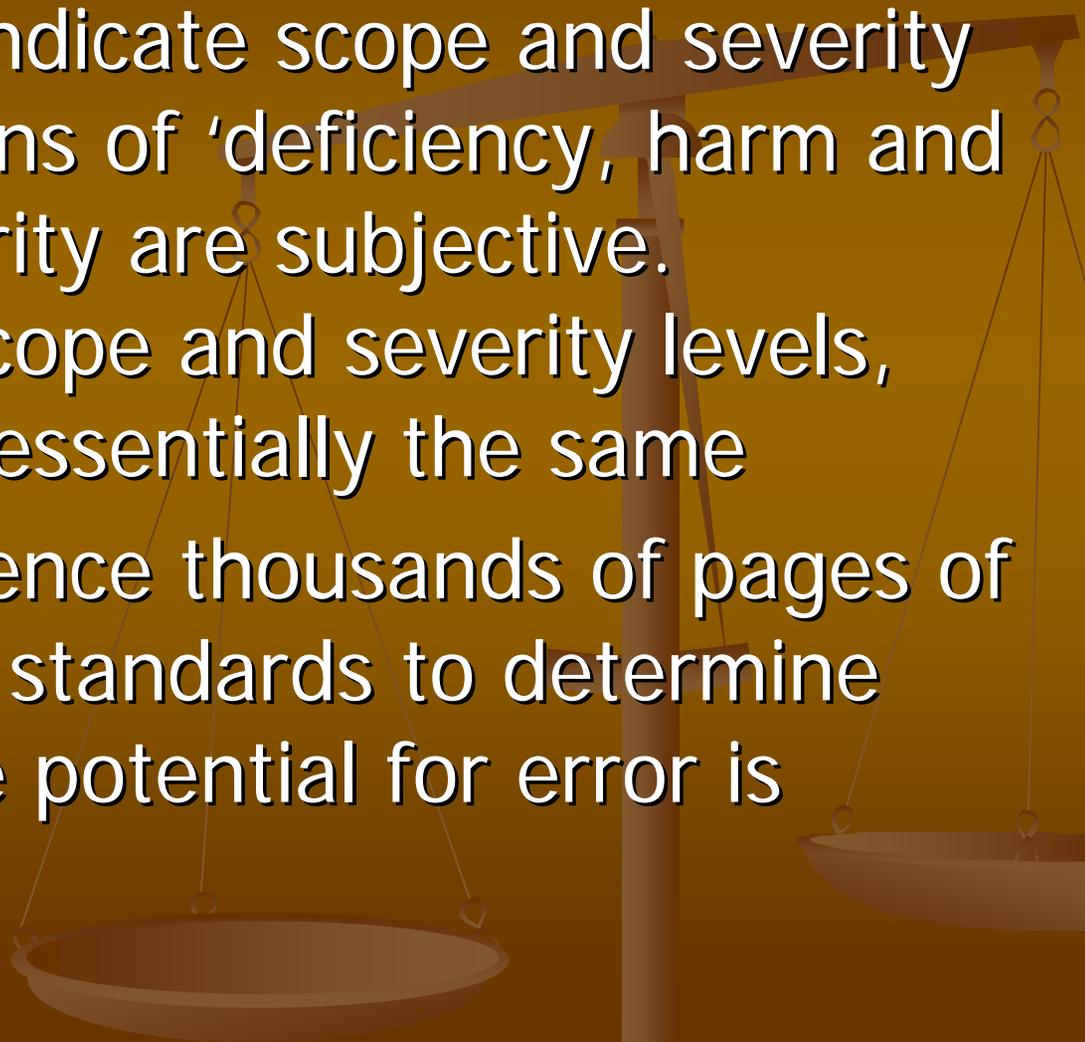


# Inspections are documented and include objective and subjective results

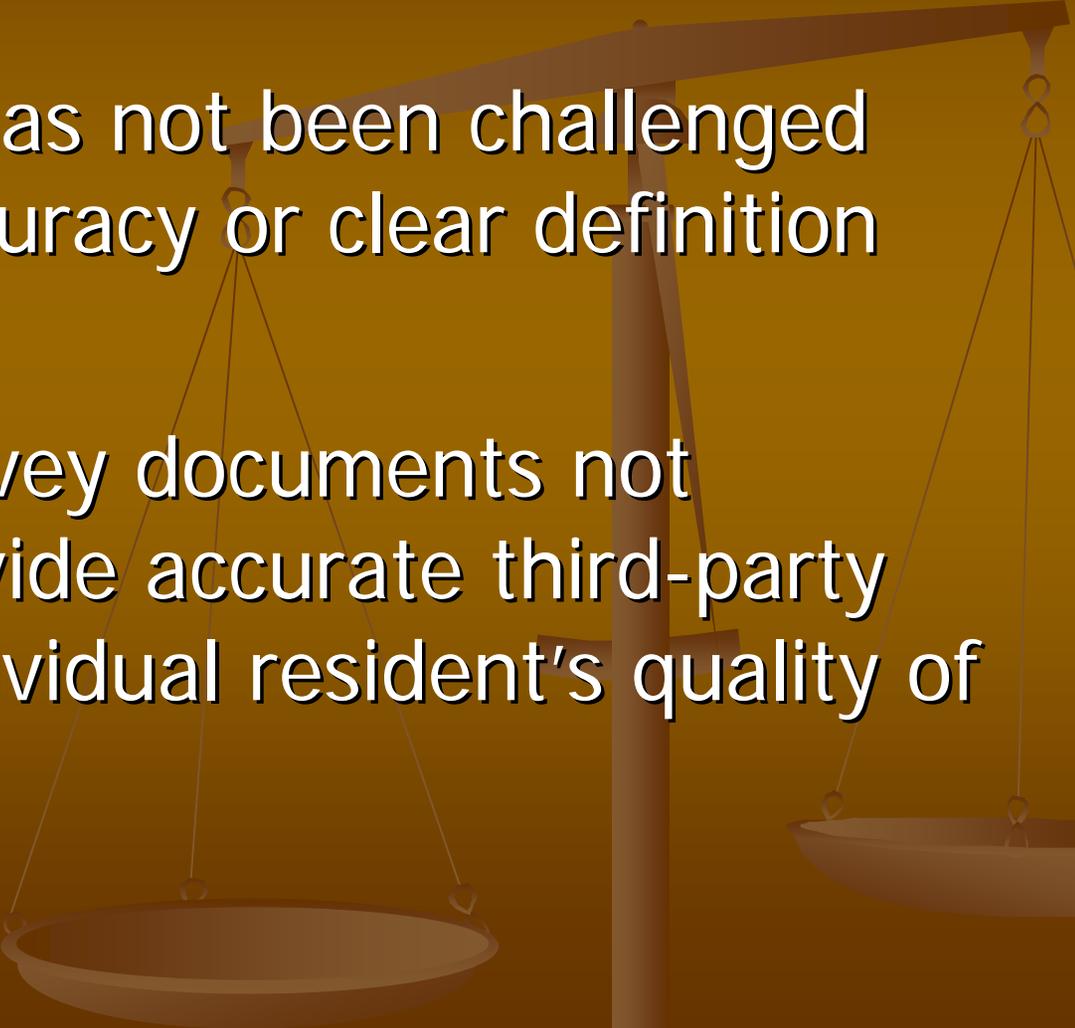
- “Because nursing home inspectors must exercise considerable judgment in evaluating...care, or how serious a violation may be, it’s not realistic to expect absolute consistency among inspectors.”  
(Legislative Post Audit, 12-01)

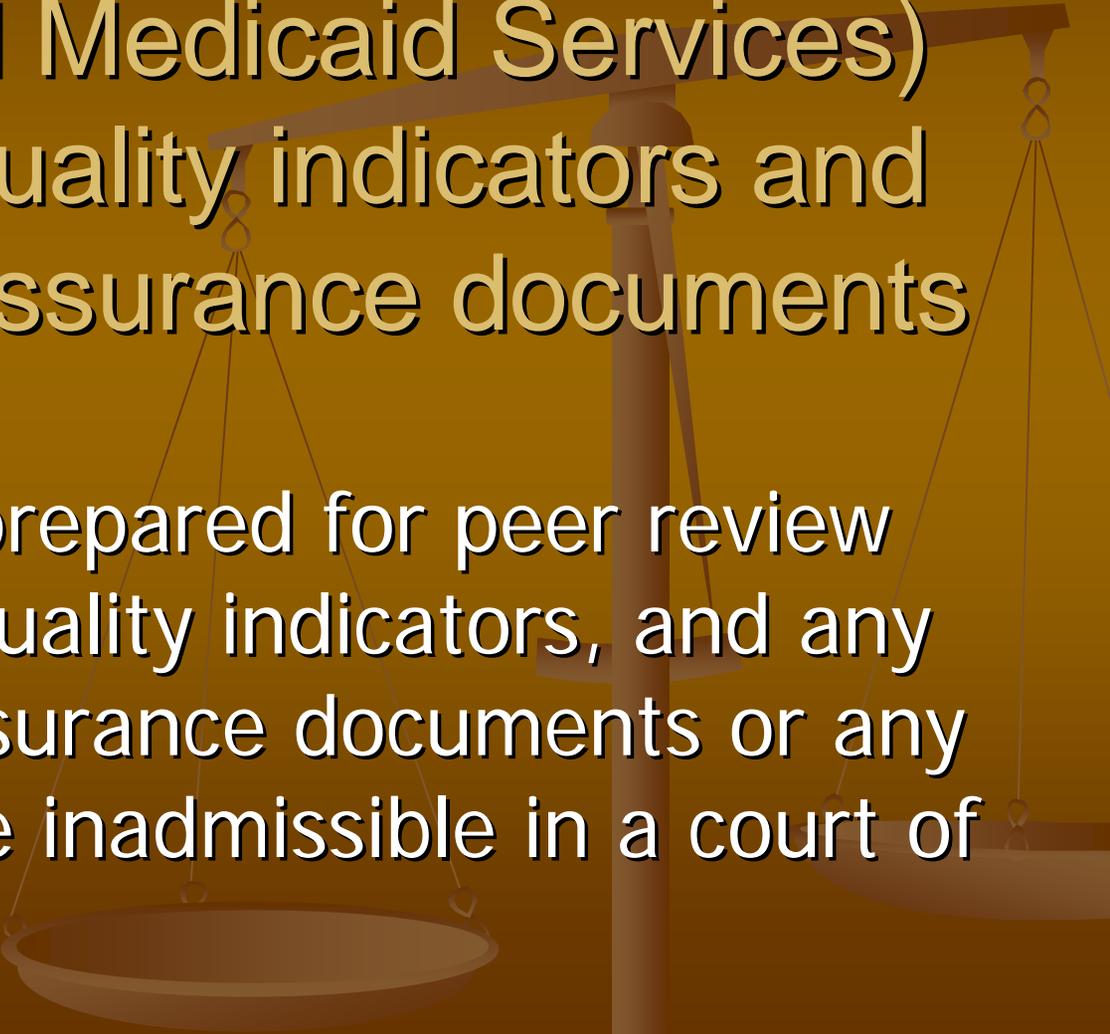


# Documented deficiencies are considered a 'peer review'

- Survey results indicate scope and severity yet the definitions of 'deficiency, harm and scope and severity are subjective. Regardless of scope and severity levels, documentation essentially the same
  - Surveyors reference thousands of pages of regulations and standards to determine deficiencies, the potential for error is significant
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# Documented deficiencies are considered a 'peer review'

- The CMS-2567 has not been challenged for objective accuracy or clear definition
  - Surveys and survey documents not designed to provide accurate third-party review of an individual resident's quality of care
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Documents include but are not limited to Form (Centers for Medicare and Medicaid Services) CMS-2567, quality indicators and other quality assurance documents

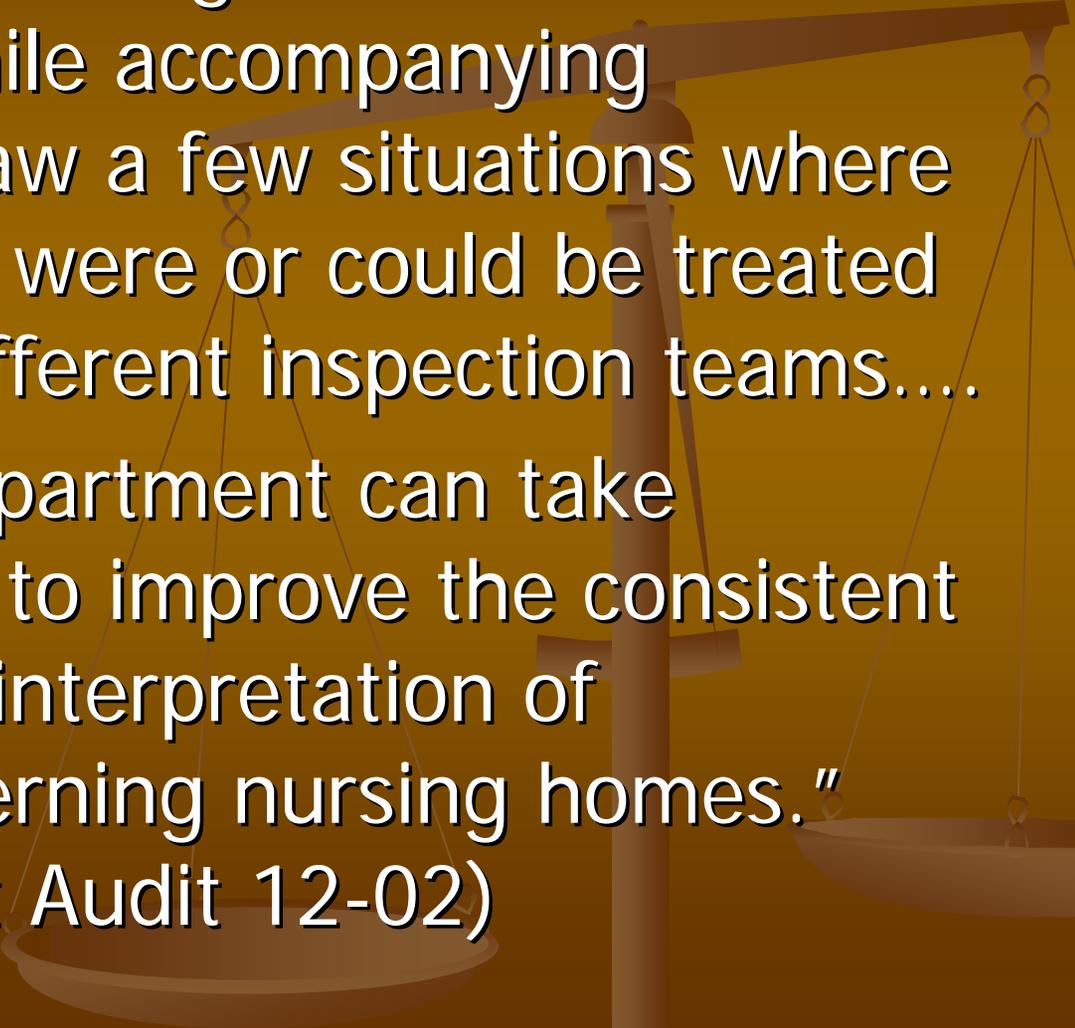
- Any document prepared for peer review purposes, any quality indicators, and any other quality assurance documents or any notes, should be inadmissible in a court of law

Documents include but are not limited to Form (Centers for Medicare and Medicaid Services) CMS-2567, quality indicators and other quality assurance documents

- Any other evidence of the 'general pattern' and practice of the operation should not be admissible
- Federal regulation allows deficiencies to stand even if surveyors do not follow CMS survey procedures. [42 CFR Part 488.318(b)(2)]

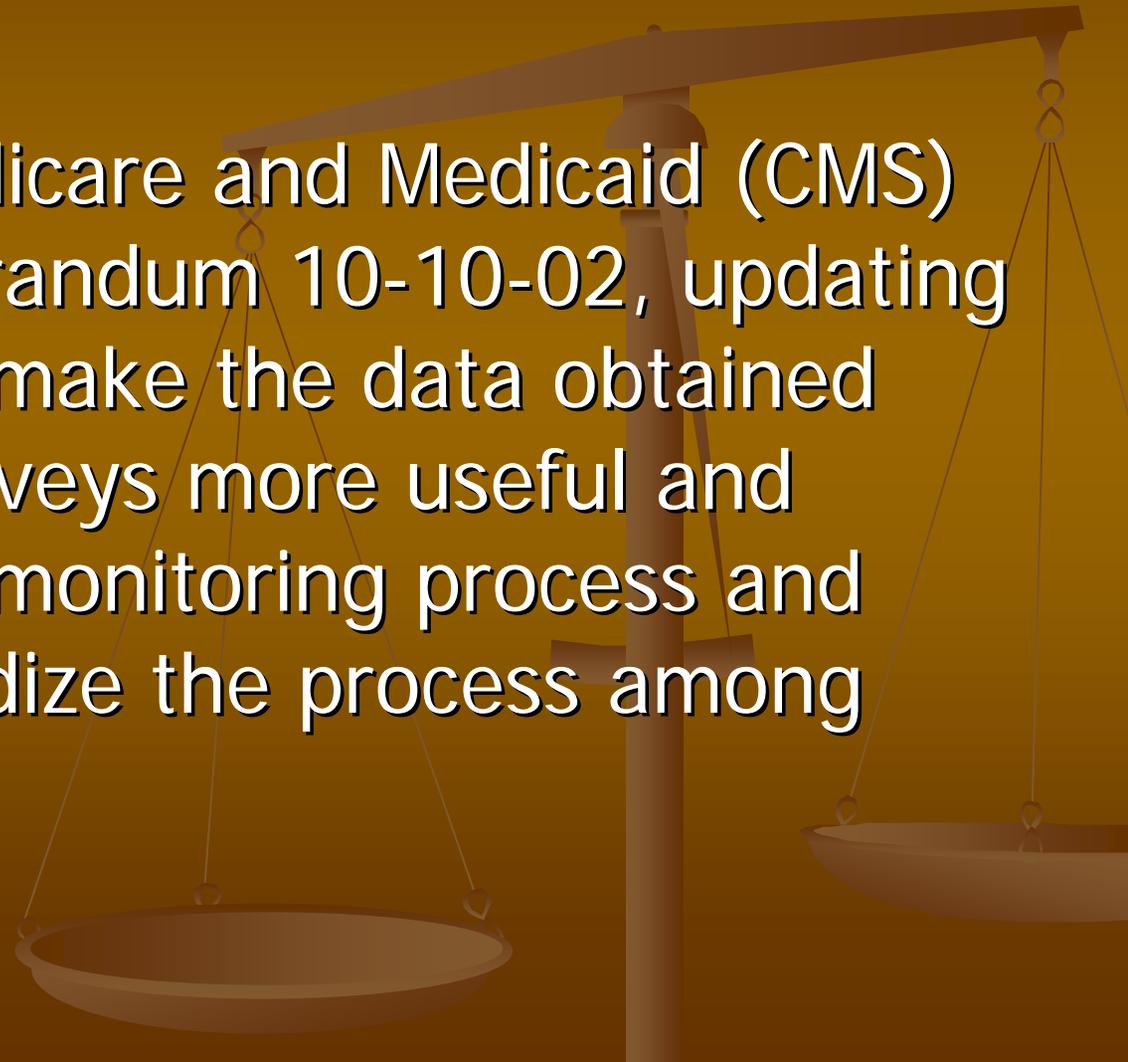
Significant variations are evident in enforcement of rules and regulations, within regions of State and between Kansas and other States and within types of nursing facilities



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- “There are significant differences between regions in the number of deficiencies cited, and even during our limited observations while accompanying inspectors we saw a few situations where violations either were or could be treated differently by different inspection teams....
  - we think the Department can take additional steps to improve the consistent application and interpretation of regulations governing nursing homes.”  
(Legislative Post Audit 12-02)

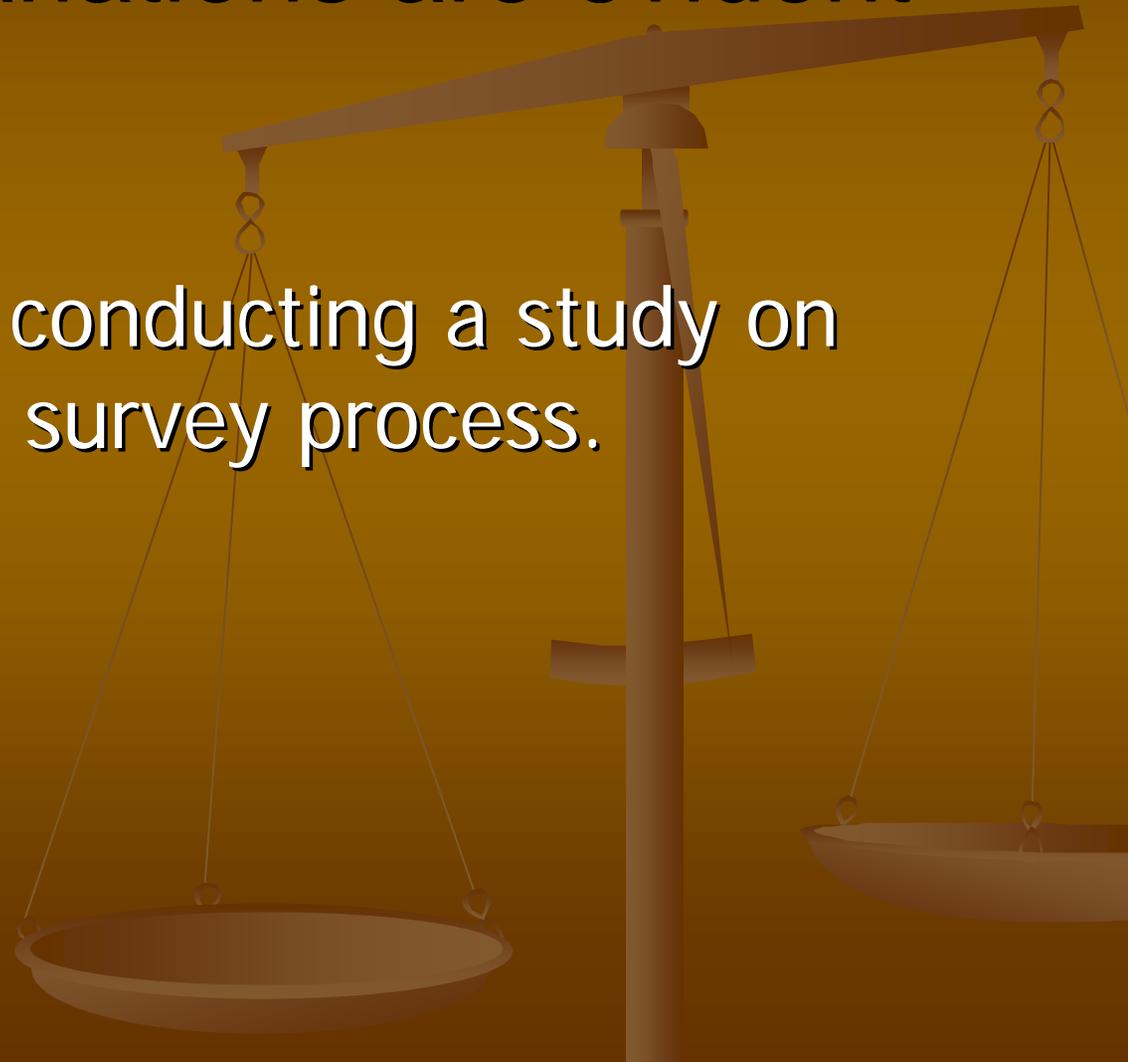
# Significant variations are evident

- Centers for Medicare and Medicaid (CMS) issued a memorandum 10-10-02, updating procedures to “make the data obtained through the surveys more useful and relevant to the monitoring process and help to standardize the process among Regions.”

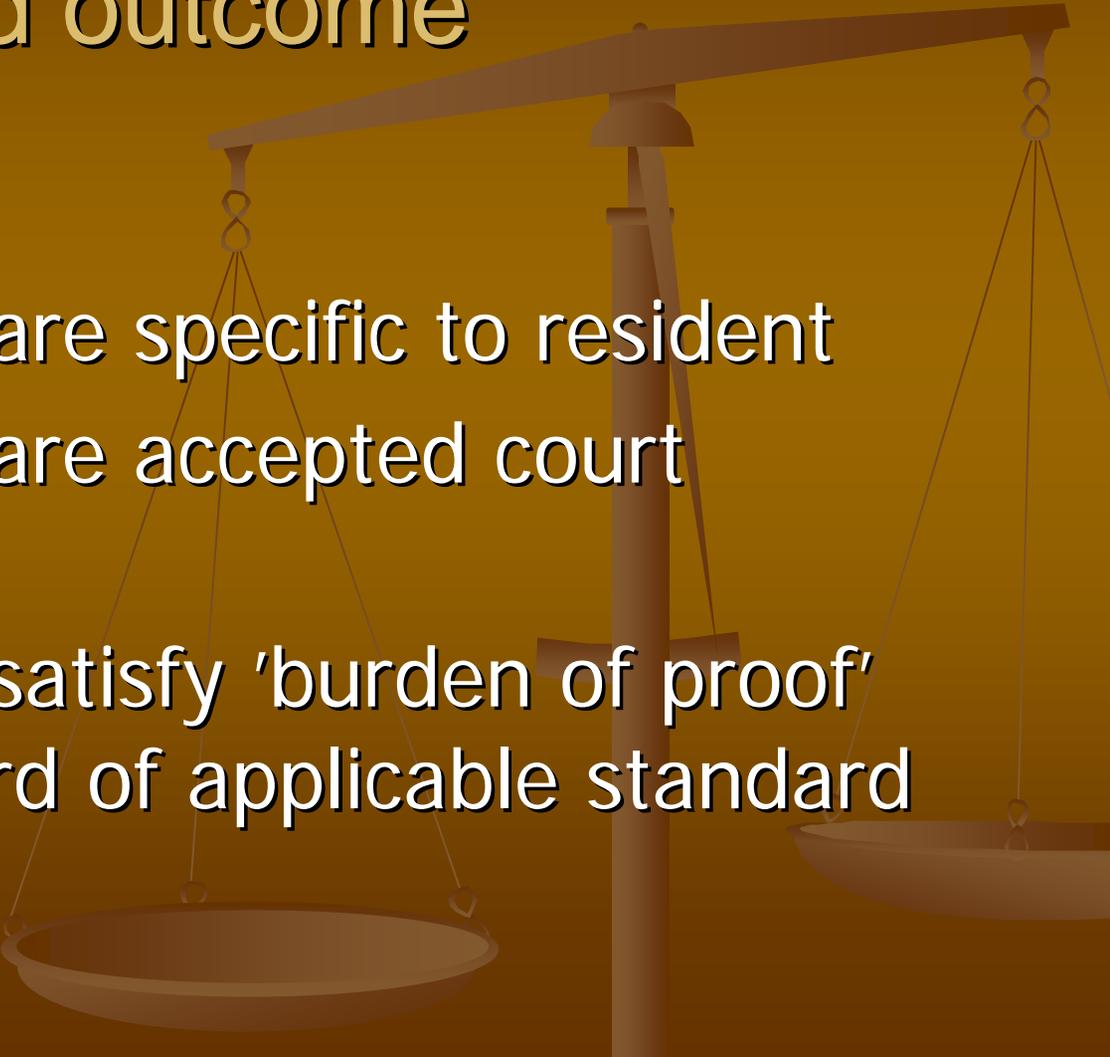


# Significant variations are evident

- CMS is formally conducting a study on inconsistency in survey process.



# Residents medical records are the best record of facility's practices and outcome

- Medical records are specific to resident
  - Medical records are accepted court records
  - Medical records satisfy 'burden of proof' providing a record of applicable standard of care
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