

Martin O'Malley
Governor

Gloria Lawlah
Secretary

Anthony G. Brown
Lt. Governor



MEMORANDUM

TO: Voices for Quality Care
FROM: Alice H. Hedt, State Long Term Care Ombudsman
DATE: May 23, 2011
RE: Response to Questions on Involuntary Discharge Cases

Here are my responses to the questions that Voices for Quality Care is asking the State Ombudsmen in different states to answer. Please note that this topic is very important to the Maryland Ombudsman Program. To be more effective, we have conducted an intensive training on this session conducted by Legal Aid staff in January 2011 and a shorter follow-up session by conference call in February 2011.

As the State Ombudsman, I am beginning to work on the systemic issues related to involuntary discharge including the processing of Medicaid applications and renewals and the need for appropriate care for those who need to live in nursing homes and have mental health diagnoses that result in behaviors that the staff may not know how to address or be willing to address. I anticipate advocating for changes in the Assisted Living regulations that will ensure that residents in these facilities have specific rights and protections in cases of involuntary discharge.

The answers to your specific questions are below. Let me know if there are any questions.

1. Do Maryland Long-Term Care Ombudsmen assist individuals receiving an involuntary discharge notice from a facility?

Yes, every discharge notice from a nursing home is responded to by the appropriate local program. In most cases, the nursing homes send the notice to the local ombudsman program. In some cases, the notice is sent to the State Ombudsman Office where we follow a specific procedure of notifying the ombudsman program by e-mail and sending the program a copy if they have not already received one.

In assisted living facilities, ombudsmen are not required to be notified of the discharge and the discharge process is not as formalized as in nursing homes. However, we do respond to all calls related to involuntary discharge from residents themselves or from family members.

The local Ombudsman Program visits the resident to be discharged and develops a strategy depending on the wishes of the resident or the legal representative. If the resident does not want assistance or the situation has already been resolved, the ombudsman counts this as a

consultation. If the ombudsman takes specific action on a discharge, the ombudsman counts this as a case.

In FY2010, the Maryland Ombudsman Program handled 429 cases involving involuntary discharge in nursing homes. This is 19% of all nursing home cases addressed by the Ombudsman Program. In assisted living facilities, the Ombudsman Program handled 27 cases of involuntary discharge, which is 5% of all Ombudsman Program cases in assisted living facilities.

In February 2010, the State Ombudsman Program examined the involuntary discharges received at our office and found that ~72% were related to financial issues. The local programs indicate to us that this is probably true for the notices that they receive directly as well.

2. What services are the ombudsmen able to provide?

The local ombudsmen provide the full range of services to the person involved in an involuntary discharge depending on the situation and the resident's wishes including:

- Consultation (explaining the discharge and the appeals process, resident's rights related to discharge, advocating to get medical assistance paperwork handled in a timely way, etc.)
- Case advocacy (working with and for the resident to keep the facility from discharging the resident, participating in care planning situations to address the underlying issues for discharge, working with the facility to make sure the person's right to smoke is being addressed appropriately, etc.)
- Referral (to legal aid, pro bono attorneys and other appropriate services)

In addition, consultation may be done with the facility, particularly when the facility may not be aware of or may have ignored resident's rights that apply to the situation. In some cases, the ombudsman may have concrete suggestions that the facility can take to address specific behavioral issues.

Statewide, the ombudsmen have distributed the excellent brochures on involuntary discharge, residents' rights, and medical assistance developed by the Legal Aid Bureau so that consumers are more aware of their rights related to involuntary discharge.

3. Do the ombudsmen represent individuals or families at any resulting hearings?

In some cases the ombudsman participates in the session with the individual or the family. Oftentimes, by the time it reaches the hearing stage it is more effective for the ombudsman to work in partnership with Legal Aid or an attorney focused on the resident issues.

4. What legal services do Maryland ombudsmen use or refer to for assistance in these hearings?

We use the Maryland Legal Aid Bureau and a few pro bono attorneys that provide services within a specific county.

301 West Preston Street • Suite 1007 • Baltimore, Maryland 21201-2374
Local: 410-767-1100 • Toll Free: 1-800-243-3425 • TTY users call via Maryland Relay
Fax: 410-333-7943 • www.aging.maryland.gov