Empowering Choice of Residency
A Path to Avert Involuntary Discharges for Failure to Pay
Goals

Avoiding Discharge and creating Continuity of Care
In order to assure residents care needs and respect their rights

Timely Payment to Facility
In order to make sure the facility receives the financial compensation for providing care

Regulatory compliance With Discharge Laws/Rules
To make sure the facility understands and follows laws/rules related to involuntary discharge
The Workgroup

Ombudsman Office

Adult Protective Services

Adult and Family Services

Care Oklahoma

Leading Age Oklahoma

OKALA

Department of Health
CEO & Founder

Disability Law Center

Alliance on Aging
A Special Thank you for the DHS Office of Innovations, Rhonda Souders, for mapping the process in swim lanes for us.

We didn’t do this alone

Roles and Responsibilities

Swimlane

Adobe Acrobat Document

Critical Processes

Kaizen Bursts Indicate Critical Junctures

Averting Involuntary Discharges for Failure to Pay
A Review of Roles and Processes
<table>
<thead>
<tr>
<th>Acronyms</th>
<th>Description</th>
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<td>AFS-</td>
<td>Adult and Family Services</td>
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<td>APS-</td>
<td>Adult Protective Services</td>
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<tr>
<td>CAP-</td>
<td>Community Living, Aging and Protective Services</td>
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<tr>
<td>DA-</td>
<td>District Attorney</td>
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<tr>
<td>ODLC-</td>
<td>Oklahoma Disability Law Center</td>
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<td>OHCA-</td>
<td>Oklahoma Healthcare Authority</td>
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<td>OSDH-</td>
<td>Oklahoma State Department of Health</td>
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<td>OSLTCO-</td>
<td>Office of the State Long Term Care Ombudsman</td>
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<th>Forms</th>
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<tr>
<td>ABCDM83-</td>
<td>Medicaid Application form</td>
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<tr>
<td>ABCDM37C-</td>
<td>Medicaid Approval Notice</td>
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Nursing Homes & Care Providers

Facility Triggers and the Implications Of Financial Exploitation And Neglect

Presented by Kristy DeRoin And Jeromy Buchanan
<table>
<thead>
<tr>
<th>Trigger</th>
<th>Action Steps</th>
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<td><strong>Non-Payment of Care</strong></td>
<td><strong>ACTION REQUIRED</strong> Begin collection efforts as soon as payment is missed.</td>
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1. If payment is received by end of month – no further action is needed.
2. Does responsible party or resident indicate they are out of funding? If yes - make application with AFS for Medicaid eligibility determination.
   - **Apply** - Send in ABCDM83 either at time of admission or when responsible party/resident has indicated funds have been depleted.
   - **Collect** - estimated patient liability monthly. Total monthly income less $75 personal spending allocation.
3. If payment is not received within 30 days and collection attempts go unanswered:
   - **Letter** - Send letter from CAP Director
   - **Rep Payee** - Facility Files for Rep Payee
   - **Referral** - Facility makes a Financial Neglect/Exploitation referral to APS ([www.OKHotline.org](http://www.OKHotline.org) or 1-800-522-3511)
   - **Eviction** - Discharge Notice is issued to the resident
   - **Notification** - Notify Ombudsman that Discharge Notice has been issued. **Key Personnel** - Ombudsman Supervisors ([oklahoma.gov](http://oklahoma.gov))
August 19, 2021
Department of Human Services
Attn: Caretaker of Vulnerable Adult
2400 N. Lincoln Blvd.
Oklahoma City, OK 73105

Re: Failure of Caretaker to Pay for Nursing Care

Dear Caretaker,

The Oklahoma Department of Human Services (OKDHS) has responsibilities, pursuant to the following legal authority, to protect the public's health, safety and welfare by investigating and obtaining information for the purpose set forth in and authorized by said cited authority:

- The Protective Services for Vulnerable Adults Act, 43A O.S. §§10-101 through 10-114.

As the Director of Community Living, Aging and Protective Services, I am obliged to inform you of the potential consequences for failing to use the resident's resources to pay for the care of the vulnerable adult for whom you have assumed the role of caretaker.

“Caretaker” means a person who has:
- the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
- assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act, 43A O.S. §10-103(A)(6).

Failure by a caretaker or responsible party to pay or to keep current an account with a nursing care facility may result in the termination of a caregiver's role in the care of the vulnerable adult. If substantiated, could result in prosecution by the State of Oklahoma pursuant to 21 O.S. §§4831–4834.

Sincerely,

[Signature]

Jeremy Buchanan
Director of Community Living, Aging and Protective Services
Key Take Aways

Don’t Let too much time pass before Acting
As soon as the bill is 30 days past due, act.

Educate about financial exploitation/neglect
The letter from Director Buchanan is available for you to use in your education

Apply for Medicaid ASAP
Medicaid can only be back dated for 90 days (not applicable for assisted living)

Refer allegations of financial exploitation or neglect to APS as soon as you find out about it
Medicaid Approval for Hardship requires APS involvement

Engage the Ombudsman for assistance
If discharge notice is issued notify the Ombudsman.
Facility Processes and the implications of financial exploitation and neglect

Questions
Assisted Living Providers

Facility Triggers And how they Differ from Nursing Homes

Presented by Melissa Holland
## Assisted Living Facility Role

### Facility Business Office

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<td>- Eviction – Discharge notice is issued to the resident, the resident’s representative, and/or the person responsible for the payment of charges for the resident’s care</td>
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<td>- Notification – Written notice is sent to the OSDH</td>
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Assisted Living Providers

Questions
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| ➢ APS Involved Client with Pending Medicaid Application, or a Pending Review | **ACTIONS REQUIRED.** Case action requires LTC supervisor approval. Do not deny or close benefits before contacting the APS worker.  
**ONGOING ACTIONS REQUIRED.** The AFS worker will communicate about any type of case change or activity and work with the APS worker to obtain eligibility documentation. If eligibility cannot be determined, assess the need for a legal impediment or hardship determination. Legal impediments and hardships may be requested by the AFS supervisor. If a legal impediment or hardship is needed, send a request to [HRMS2@okdhs.org](mailto:HRMS2@okdhs.org). |
| ➢ Evidence that Client with Open Medicaid Application may be Victim of Exploitation or Financial Neglect | **ACTIONS REQUIRED.** Submit an APS Referral immediately.  
➢ Public Reporting Portal: [www.AbuseisnotOK.org](http://www.AbuseisnotOK.org)  
➢ Abuse and Neglect Hotline: 1-800-522-3511 |
Hardships

The following actions are detrimental to the approval or denial of a hardship
- Communication is KEY
- AFS and/or the Facility needs to make an APS referral for Financial neglect/exploitation
- Importance of the APS referral date
- Importance of actions taken to stop exploitation

Legal Impediments
Policy 317:35-5-41(b)

Legal Impediments can be considered when, a countable resource isn’t available to be converted for current use due to a legal impediment.

- Legal Impediments are not indefinite. All reasonable steps to initiate legal action must be started within 30 days. For the resource to be considered as unavailable while the legal action is in process.
Hardships and Legal Impediments

Hardships

- If a determination is made and documented that the cost of making a resource available exceeds the gain, the member will not be required to pursue action to make it available.

Examples of legal impediments include but are not limited to:
- Clearing of an estate, Probate, Petition to sell, Appointment of legal guardian or Power of Attorney
Key Take Aways

Communication is Key
Keep the lines of communications open between the applicant/POA/Guardian, AFS and APS.

Take Action
Don’t wait initiate communication or make a referral

• Hardship requests, if approved, can only be backdated 60 days from the Date an exploitation referral was made;
Medicaid Hardships and Legal Impediments

Questions
Adult Protective Services

Presented by Director Jeromy Buchanan

APS Triggers

Letter from Director Buchanan
# APS Worker or MAPSS

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<tr>
<td>APS Referral Due to Notice of Eviction</td>
<td><strong>ACTION REQUIRED.</strong> Send the following information to AFS County Director, AFS Supervisor, LTC Worker, APS Supervisor, and <a href="mailto:HRMS2@ekchhhs.org">HRMS2@ekchhhs.org</a>. Refer to LTC worker directory: LTC Worker Directory.</td>
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1. **Subject Line:** APS/NH Referral
2. **Email Body:**
   - Client Name
   - AFS Case #
   - Nursing Facility
   - County #
   - Brief Description of Circumstances that led to the Notice of Eviction
APS Worker or MAPSS

Trigger

- APS Client with Open Medicaid Application

Action Steps

ACTION REQUIRED. Send the following information to the AFS County Director, AFS Supervisor, LTC Worker, and APS Supervisor. Refer to LTC worker directory: LTC Worker Directory

1. Subject Line: APS Involved Medicaid
2. Email Body:
   - Client name
   - SSN
   - AFS case #
   - APS KID #
   - Guardianship or non-guardianship
   - Type of allegations
   - APS worker name and contact
   - "Responsible party" listed for communication
   - Current address and contact information with a note specifying if the AFS system needs to be updated
   - Nursing facility
   - County #
   - Date of LTC application
3. ADD to Service Plan:
   - Check the "Medicaid Application Pending" box
4. Make Contact:
   - Conduct a TEAMS meeting or TEAMS chat with the AFS worker to brief staff the case

ONGOING ACTION REQUIRED. The APS worker or MAPSS worker will communicate about any type of case change or activity and work with the APS worker to obtain eligibility documentation.

- Do NOT close the APS case before the Medicaid Application has been approved.

If eligibility cannot be determined, assess the need for a legal impediment or hardship determination. Legal impediments and hardships may be requested by the AFS supervisor. If a legal impediment or hardship is needed, send a request to HRMSS@okufh.org.
**Key Take Aways**

**APS does not require resident consent to investigate**
As soon as the bill is 30 days past due, make a referral to both APS and the Ombudsman.

**Educate about financial exploitation/neglect**
The letter from Director Buchannan is available for you to use in your education.

**Financial exploitation and Neglect is a crime**
Title 21 indicates a person found guilty of the crime may be punished by fine and/or imprisonment.

**A substantiated allegation of financial neglect or exploitation opens the door for a hardship request for Medicaid eligibility**
Adult Protective Services

Questions
Break Time

15 Minutes
Ombudsman

Presented by William Whited

Ombudsman Triggers
Transfer and Discharge Resource
Ombudsman Action

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

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<td>➢ Ombudsman is contacted about an involuntary discharge</td>
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CMS rules requires all Medicaid and Medicare certified Nursing Homes to send a copy of every discharge notice a facility issues to the Long-Term Care Ombudsman Program. The following protocol will be followed when an Ombudsman receives a request from the resident, the family or the facility for assistance in averting a potential discharge for failure to pay.

1. A case will be opened for advocacy assistance:
   - An in-person visit with the resident will be made within five business days.
   - Consent will be sought from the resident and/or their legal representative to proceed in taking actions to avert the involuntary discharge:
     i. If consent is denied, Ombudsman cannot act;
     ii. If consent is received, Ombudsman will proceed with coordinating with facility, resident and other parties to create a plan to avert any potential discharge for failure to pay;
     iii. This can occur whether a discharge notice has been issued or not. We
### Trigger

**Ombudsman is contacted about an involuntary discharge**

### Action Steps

1. **We encourage facilities to request assistance from the Ombudsman before a discharge notice is ever issued;**

2. If the Ombudsman discovers the failure to pay is a result of financial exploitation or financial neglect the Ombudsman will seek consent and take proper steps to make a referral to Adult Protective Services (APS) for further investigation;

3. If a discharge notice has been issued the Ombudsman will assist the resident with filing appropriate appeals, communicating with APS, their Medicaid eligibility specialist and seeking legal representation.

4. The goal will be to avert the discharge, address any possible exploitation and/or financial neglect and to identify pathways for payment for their care in the facility.

2. A case in this instance is only considered resolved when the resident is allowed to remain in the facility and any potential discharge has been averted.

3. If a client/attorney requests a hearing:
   - The Ombudsman may act as a witness, provide technical assistance or act as a liaison.
Key Take Away

Ombudsman are the Residents’ Advocate
Ombudsman will open a case for advocacy but must have consent from the resident to act.

Ombudsman Can work with the Payer to identify barriers and resolutions
The goal is to avert discharge and make sure the facility is paid.

Federal Regulations require Facilities to notify the Ombudsman if a discharge notice is issued
Failure to pay requires a written 30 day discharge notice.

Ombudsman will engage APS, ODLC and OSDH with consent of the resident
The goal is to create continuity of care for the resident.

Residents have the right to seek a hearing if an involuntary discharge is issued
Referrals may be made to ODLC or others for legal representation.
Ombudsman Advocacy

Questions
# Dismissal Law Center

## Involuntary Discharge Process

### Triggers

- **OKDLC is contacted about an involuntary discharge**

### Action Steps

**ACTION REQUIRED.**

1. If the discharge is legal, discuss transfer and discharge planning with discharge planning coordinator and client's family.

2. If the discharge is not legal:
   - Discuss involuntary discharge hearing option and facility's obligation to follow federal regulations 42 C.F.R §483.15
   - Review NOTICE to ensure it addresses:
     i. Reason for discharge stated
     ii. Effective date of discharge
     iii. Location to which Resident will be discharged, MUST be a specific place
     iv. Appeal rights with contact information. 10 days to appeal which is made to OSDH
     v. Contact Information for LTCOP (Long-term care ombudsman program)

3. Speak with Ombudsman and facility discharge planner

4. If a client/attorney requests a hearing:
   - Litigate hearing (10 days to issue ruling) Issue is whether facility is discharging for a legal reason?
   - Successful: client remains in facility and should keep in contact with ombudsman
   - Unsuccessful, client will be discharged from facility based on time frame of original notice
     i. Refer to APS to address abuse, neglect, and exploitation concerns
Key Take Aways

ODLC may request a hearing

Provides legal advice/explanation to resident And Ombudsman

There is no Charge to the resident for this service

May represent the resident at any hearing on discharge

This service is provided at no cost to the resident
Oklahoma State Department of Health

Presented by Janene Stewart

OSDH Triggers
### OSDH Triggers

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<tr>
<td>OSDH Complaint due to failure of following Transfer and Discharge Policy/Rules</td>
<td><strong>ACTION REQUIRED.</strong> The division is responsible for processing complaints that allege violations of federal and/or state rules/laws. Intakes or complaints are prioritized based on CMS triage guidelines and/or state statutes that take into consideration the seriousness of the allegations. Complaints by interested parties are investigated by qualified survey staff. 1. Any individual with personal knowledge or specific information, who believes that state or federal laws/regulation have been violated may request an investigation through the complaint intake process. To file a complaint you may call the main OSDH number at (405) 426-8200 or e-mail the complaint to <a href="mailto:Litcomplaints@health.ok.gov">Litcomplaints@health.ok.gov</a></td>
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Federal and State regulations require the facility establish and implement an admissions policy
Facility may request and require a resident/resident representative provide facility payment from the resident’s income or resources

Federal and State regulations allow for Involuntary Transfer or Discharge
Reasons include Medical, Resident’s Safety, and Non-payment of Charges

State regulations establish a process to resolve disputes related to Involuntary Transfer or Discharge
The process represents both the resident and the facility’s rights

OSDH has dual roles, Hearings and Enforcement
Each function is done by different parts of the agency

Failure to comply with orders by hearing office may result in deficiencies
The letter from Director Buchannann is available for you to use in your education
Resources

- Process Swimlane Map
- Letter from Director of APS
- Transfer and Discharge Booklet
- Medicaid Application
- Sample Transfer and Discharge Notice
- Survey Monkey
THANK YOU

CONTACT US
Ombudsman.intake.org@okdhs.org
Ombudsmanfax@okdhs.org
1-800-211-2116