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

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

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

3. **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

Critical Processes

Kaizen Bursts Indicate Critical Junctures

Averting Involuntary Discharges for Failure to Pay
A Review of Roles and Processes
### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFS</td>
<td>Adult and Family Services</td>
</tr>
<tr>
<td>APS</td>
<td>Adult Protective Services</td>
</tr>
<tr>
<td>CAP</td>
<td>Community Living, Aging and Protective Services</td>
</tr>
<tr>
<td>DA</td>
<td>District Attorney</td>
</tr>
<tr>
<td>ODLC</td>
<td>Oklahoma Disability Law Center</td>
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<tr>
<td>OHCA</td>
<td>Oklahoma Healthcare Authority</td>
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<tr>
<td>OSDH</td>
<td>Oklahoma State Department of Health</td>
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<tr>
<td>OSLTCO</td>
<td>Office of the State Long Term Care Ombudsman</td>
</tr>
</tbody>
</table>

### Forms

<table>
<thead>
<tr>
<th>Form Code</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>ABCDM83</td>
<td>Medicaid Application form</td>
</tr>
<tr>
<td>ABCDM37C</td>
<td>Medicaid Approval Notice</td>
</tr>
</tbody>
</table>
Involuntary Discharges Due to Non-Payments Process

Adult Protective Services Facility Long-Care Term Ombudsman

Does Responsible Party pay by end of month? Yes

Does Responsible Party agree to amend or dismiss discharge notice? Yes

Request responsible party to get bill and notify Ombudsman

If resident consents, Ombudsman makes a referral to APS (No later than 60 days)

Is resident almost out of funding? Yes

APF Director to Ombudsman outlines the consequences of financial neglect

Disburse payment (this must be done 30 days prior to discharge)

Send letter to Resident and responsible party

Does the facility agree to amend or dismiss discharge notice? Yes

Request responsible party to obtain plan of Rep Payee for resident

Contact responsible party to request a hearing, within 10 days of the discharge

Anyone can hold an appeal notice of decision

Certify or Ref?

Is resident almost out of funding? Yes

Notify Ombudsman

Is responsible party unresponsive or has discharged residents without legal authority? Yes

Referral to APS (No later than 60 days of discharge)

Does the facility agree to amend or dismiss discharge notice? Yes

As of July 20, 2021

Swimlane Process Map
OUR AGENDA

LTC Facility Processes
Kristy DeRoin, Jeromy Buchanan and Melissa Holland

Medicaid Roles and Processes
Cindi Morris

APS Involved Medicaid
Director Jeromy Buchanan

Long-Term Care Ombudsman
William Whited

Oklahoma Disability Law Center
Solola Webb, J.D.

Oklahoma State Department of Health
Janene Stewart
Nursing Homes & Care Providers

Facility Triggers and the Implications Of Financial Exploitation And Neglect

Presented by Kristy DeRoin And Jeromy Buchanan
## Facility Triggers

### Non-Payment of Care

**ACTION REQUIRED** Begin collection efforts as soon as payment is missed.

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 or 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 or any individual or family who is threatened with substantial harm due to neglect or exploitation. This includes the following:

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

As the Director of Community Living, Aging and Protective Services, I am responsible for ensuring that all necessary steps are taken to ensure the safety, health, and well-being of vulnerable adults. Failure to adhere to these responsibilities may result in civil and criminal penalties.

- A caretaker means any person who has:
  a. 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.
  b. Assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the laws of guardianship.
  c. Been appointed a guardian, a limited guardian, or a 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 an allegation of financial neglect or exploitation, which, if substantiated, could result in prosecution by the Oklahoma State Department of Health pursuant to 21 O.S. §843.1–843.4.

Sincerely,

Jerome Buhsemen
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 Facility Triggers

### Facility Business Office

<table>
<thead>
<tr>
<th>Trigger</th>
<th>Action Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-Payment of Care</strong></td>
<td><strong>ACTION REQUIRED</strong> Begin collection efforts as soon as payment is missed.</td>
</tr>
<tr>
<td></td>
<td>1. If payment is received by end of month - no further action is needed.</td>
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<tr>
<td></td>
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<td></td>
<td>- Letter – Send letter from CAP Director</td>
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<td></td>
<td>- Referral – Facility makes a Financial Neglect/Exploitation referral to APS</td>
</tr>
<tr>
<td></td>
<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>
</tr>
<tr>
<td></td>
<td>- Notification – Written notice is sent to the OSDH</td>
</tr>
</tbody>
</table>
Assisted Living Providers

Questions
Adult and Family Services

AFS Triggers

Hardships and Legal Impediments
## Adult Family Services - APS Involved Medicaid

<table>
<thead>
<tr>
<th>Trigger</th>
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</table>
| ➢ APS Involved Client with Pending Medicaid Application, or a Pending Review | **ACTION REQUIRED.** Case action requires LTC supervisor approval. Do not deny or close benefits before contacting the APS worker.  

**ONGOING ACTION 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. |

| ➢ Evidence that Client with Open Medicaid Application may be Victim of Exploitation or Financial Neglect | **ACTION REQUIRED.** Submit an APS Referral immediately.  

- Public Reporting Portal: [www.AbusesnotOK.org](http://www.AbusesnotOK.org)  
- Abuse and Neglect Hotline: 1-800-522-3511 |
Hardships and Legal Impediments

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

- 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 Triggers

Adult Protective Services
APS Involved Medicaid

APS Worker or MAPSS

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

**Trigger**

- **APS Client with Open Medicaid Application**

**Action Steps**

- **ACTIONS 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 CID #
   - Guardian 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 briefly 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@oklthe.org](mailto:HRMSS@oklthe.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 Buchanan 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**
Break Time

15 Minutes
Presented by William Whited

Ombudsman

Ombudsman Triggers
Transfer and Discharge Resource
# Office of the State Long-Term Care Ombudsman

<table>
<thead>
<tr>
<th>Trigger</th>
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</tr>
</thead>
<tbody>
<tr>
<td>➢ Ombudsman is contacted about an involuntary discharge</td>
<td>ACTION REQUIRED. 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.</td>
</tr>
<tr>
<td>1. A case will be opened for advocacy assistance:</td>
<td></td>
</tr>
<tr>
<td>➢ An in-person visit with the resident will be made within five business days.</td>
<td></td>
</tr>
<tr>
<td>➢ Consent will be sought from the resident and/or their legal representative to proceed in taking actions to avert the involuntary discharge:</td>
<td></td>
</tr>
<tr>
<td>i. If consent is denied, Ombudsman cannot act;</td>
<td></td>
</tr>
<tr>
<td>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;</td>
<td></td>
</tr>
<tr>
<td>iii. This can occur whether a discharge notice has been issued or not. We</td>
<td></td>
</tr>
</tbody>
</table>
Office of the State Long-Term Care Ombudsman

<table>
<thead>
<tr>
<th>Trigger</th>
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</tr>
</thead>
<tbody>
<tr>
<td>➢ Ombudsman is contacted about an involuntary discharge</td>
<td>Actions continued</td>
</tr>
</tbody>
</table>

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

ii. 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;

iii. 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.

iv. 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 consider 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 a liaison.
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
### OKDLC Triggers

**OKDLC is contacted about an involuntary discharge**

<table>
<thead>
<tr>
<th>Trigger</th>
<th>Action Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACTION REQUIRED.</strong></td>
<td></td>
</tr>
<tr>
<td>1. If the discharge is legal, discuss transfer and discharge planning with discharge planning coordinator and client’s family.</td>
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</tr>
<tr>
<td>2. If the discharge is not legal:</td>
<td></td>
</tr>
<tr>
<td>➢ discuss involuntary discharge hearing option and facility’s obligation to follow federal regulations 42 C.F.R §483.15</td>
<td></td>
</tr>
<tr>
<td>➢ Review NOTICE to ensure it addresses:</td>
<td></td>
</tr>
<tr>
<td>i. Reason for discharge stated</td>
<td></td>
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<tr>
<td>ii. Effective date of discharge</td>
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</tr>
<tr>
<td>iii. Location to which Resident will be discharged, MUST be a specific place</td>
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</tr>
<tr>
<td>iv. Appeal rights with contact information. 10 days to appeal which is made to OSDH</td>
<td></td>
</tr>
<tr>
<td>v. Contact information for LTCOP (Long-term care ombudsman program)</td>
<td></td>
</tr>
<tr>
<td>3. Speak with Ombudsman and facility discharge planner</td>
<td></td>
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<tr>
<td>4. If a client/attorney requests a hearing:</td>
<td></td>
</tr>
<tr>
<td>➢ Litigate hearing (10 days to issue ruling)</td>
<td></td>
</tr>
<tr>
<td>➢ Issue is whether facility is discharging for a legal reason?</td>
<td></td>
</tr>
<tr>
<td>➢ Successful: client remains in facility and should keep in contact with ombudsman</td>
<td></td>
</tr>
<tr>
<td>➢ Unsuccessful, client will be discharged from facility based on time frame of original notice</td>
<td></td>
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<tr>
<td>i. Refer to APS to address abuse, neglect, and exploitation concerns</td>
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</table>
**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.
Questions
### OSDH Triggers

<table>
<thead>
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<tbody>
<tr>
<td><strong>OSDH Complaint due to failure of following Transfer and Discharge Policy/Rules</strong></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.</td>
</tr>
</tbody>
</table>

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 Ltc@health.ok.gov
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 Buchannan is available for you to use in your education.
THANK YOU

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