



**Residents'  
Rights  
in Long-  
Term Care  
Seminar**



**C H O I C E**



**P R I V A C Y**

# Residents' Rights in Long-Term Care Seminar



**Amanda  
Scott**



**Rachel  
Piscette**



**Zoe Ann  
Olson**



**Courtney  
Holthus**

Amanda Scott  
State Long Term Care Ombudsman



We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness



# Overview

- Resident Rights in Assisted Living
- Rights within Nursing Homes
- CMS Guidance Related to COVID-19
- Rights during Transfer Discharge

➤ AS

# Residential Assisted Living Facilities Resident Rights

➤ IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE Division of Licensing and Certification  
16.03.22 – (Updated 7-1-2020)

➤ Section 550. Requirements For Resident Rights-The administrator must ensure that policies and procedures are developed and implemented to ensure that residents' rights are observed, promoted, and protected.

➤ Resident Records

➤ Privacy

➤ Humane Care and Environment

➤ Personal Possession

➤ Personal Funds

Management of Personal Funds

Access to Visitation

Freedom From Abuse

Control of Health-Related Services

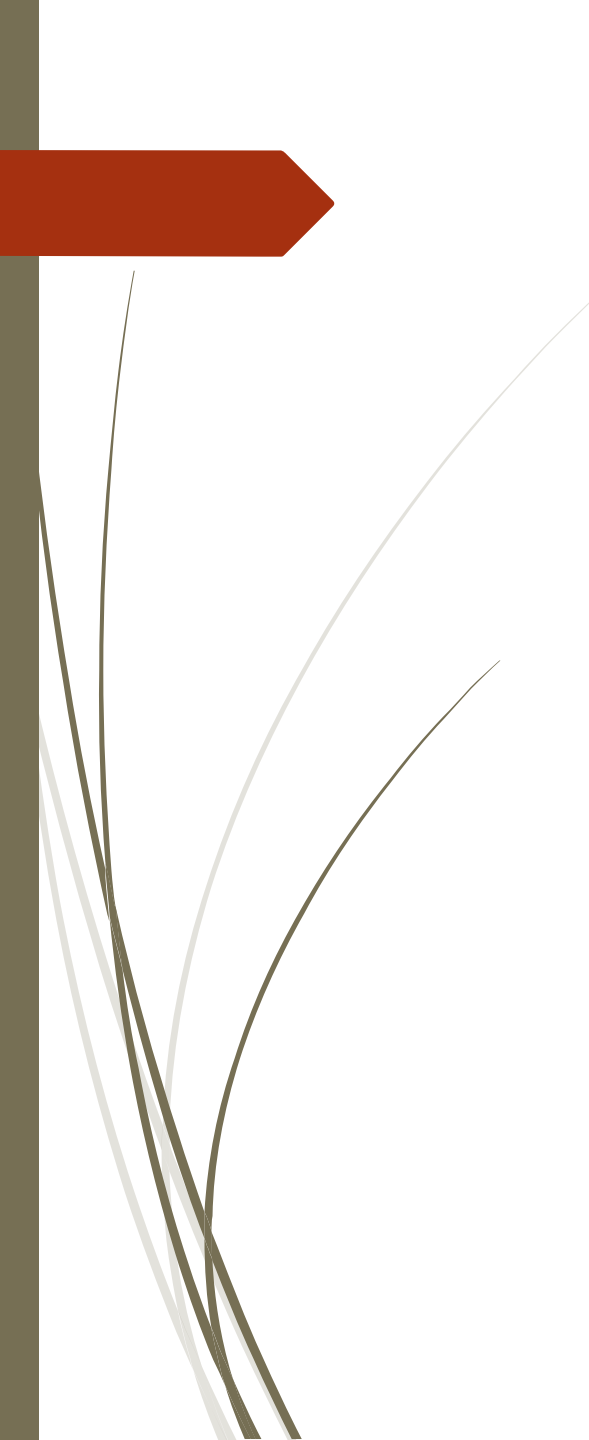
Grievances

# RALF--Resident Rights continued

- ▶ **Participation in Resident and Family Groups**
- ▶ **Participation in Other Activities**
- ▶ **Examination of Survey Results**
- ▶ **Access by Advocates and Representatives.**
- ▶ **Access by Protection and Advocacy System**
- ▶ **Access by the Long-Term Care Ombudsman**
- ▶ **Transfer or Discharge**
- ▶ **Citizenship Rights**
- ▶ **Advance Directives**
- ▶ **Fee Changes**
- ▶ AS

# RALF--Resident Rights Continued

- ▶ **Section 560 NOTICE OF RESIDENTS' RIGHTS.** Each facility must:
  - ▶ **Inform Residents Orally and in Writing.** Inform each resident, orally and in writing at the time of admission to the facility, of their legal rights during the stay at the facility. (7-1-20)T
  - ▶ **Written Statements.** Make available to each resident, upon reasonable request, a written statement IDAHO ADMINISTRATIVE CODE IDAPA 16.03.22 – Residential Department of Health and Welfare Assisted Living Facilities Section 600 Page 50 of such rights and when the rights change the resident is notified. (3-20-20)T
  - ▶ **Written Description of Rights.** Ensure the written description of legal rights in this rule includes a description of the protection of personal funds and a statement that a resident may file a complaint with the Department respecting resident abuse, neglect, and misappropriation of resident property in the facility. (7-1-20)T
  - ▶ **Posting of Resident Rights.** Conspicuously post the residents' rights in the facility at all times



The 1987 the **Nursing Home Reform Law**  
(as part of the Omnibus Budget  
Reconciliation Act) requires each nursing  
home to provide care for its residents in a  
manner that promotes and enhances the  
quality of life of each resident, ensuring  
dignity, choice, and self-determination,  
State Operations Manual Appendix PP  
Guidance to Surveyors For LTC facilities 42  
C.F.R. §483.10, .483.12, 483.15.

AS

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# NH--Right to Participate in One's Own Care



- Receive adequate and appropriate care
- Be informed of all changes in medical condition
- Participate in their own assessment, care-planning, treatment, and discharge
- **Refuse medication and treatment**
- Refuse chemical and physical restraints
- Review one's medical record
- Be free from charge for services covered by Medicaid or Medicare

# NH-- Right to Privacy and Confidentiality



**Private and unrestricted communication** with any person of their choice

During treatment and care of one's personal needs

Regarding medical, personal, or financial affairs

# Right to Choice



- Make **personal decisions**, such as what to wear and how to spend free time
- **Reasonable accommodation** of one's needs and preferences
- **Choose a physician**
- Participate in **community activities**, both inside and outside the nursing home
- Organize and participate in a **Resident Council**
- **Manage one's own financial affairs**

# NH--Right to Complain

- Present grievances to staff or any other person, without fear of reprisal and with prompt efforts by the facility to resolve those grievances
- To complain to the ombudsman program
- To file a complaint with the state survey and certification agency

➤ AS





# The Right to Be Fully Informed

- Available services and the charges for each service
- Facility rules and regulations, including a written copy of resident rights
- Address and telephone number of the State Ombudsman and state survey agency
- State survey reports and the nursing home's plan of correction
- Advance plans of a change in rooms or roommates
- Assistance if a sensory impairment exists
- Residents have a right to receive information in a language they understand (Spanish, Braille, etc.)

# **CMS Guidance related to COVID-19**

**March 13, 2020 CMS released QSO-20-14-NH**


**Sept 17, 2020 CMS released Guidance for Nursing  
Home Visitation - COVID-19 , Ref: QSO-20-39-NH**

AS



# Right to Visits

- By a resident's personal physician and representatives from the state survey agency and ombudsman programs
- By relatives, friends, and others of the residents' choosing
- By organizations or individuals providing health, social, legal, or other services
- Residents have the right to refuse visitors



# Rights During Transfers and Discharges

- ▶ Remain in the **nursing facility** unless a transfer or discharge:
  - ▶ (a) is necessary to meet the resident's welfare;
  - ▶ (b) is appropriate because the resident's health has improved, and s/he no longer requires nursing home care;
  - ▶ (c) is needed to protect the health and safety of other residents or staff;
  
- ▶ AS



## Rights During Transfers and Discharges Continued

- ▶ d) is required because the resident has failed, after reasonable notice, to pay the facility charge for an item or service provided at the resident's request
- ▶ Receive **thirty-day notice** of transfer or discharge which includes the **reason, effective date, location** to which the resident is transferred or discharged, the **right to appeal**, and the **name, address, and telephone number of the state long-term care ombudsman**
- ▶ **Safe transfer or discharge** through sufficient preparation by the nursing home

▶ AS



# Office of the State Long-Term Care Ombudsman

Idaho Commission on Aging  
6305 W. Overland Road  
Suite 110  
Boise, ID 83709

Direct:208-577-2855  
[Amanda.scott@aging.idaho.gov](mailto:Amanda.scott@aging.idaho.gov)

# Rachel Piscette

- **Staff Attorney**
- **IDAHO LEGAL AID SERVICES,  
INC.**



# Tenants' Rights in Long-Term Care Facilities



Rachel Piscette, Staff Attorney  
IDAHO LEGAL AID SERVICES, INC.



# Overview

- Understanding the Context: the Different Laws Applicable to Tenants in Idaho
- IDAPA
- Landlord/Tenant Protections under Idaho Statute
  - Right to Request Repairs
  - Implied Warranty of Habitability
  - Rights during Eviction (Discharge)
- Other Tenant Protections
  - Consumer Protections
    - Implied Warranty of Good Faith and Fair Dealing
    - Consumer Protection Act
  - Breach of Contract
  - Tort Claims

# Applicable Laws and Regulations

## STATE REGULATIONS

- ▶ IDAPA 16.03.22
  - ▶ Sxn 221 – Requirements for Termination of an Admission Agreement
  - ▶ Sxn 225 – Requirements for Behavioral Management
  - ▶ Sxn 550 – Requirements for Resident Rights

## STATE STATUTES

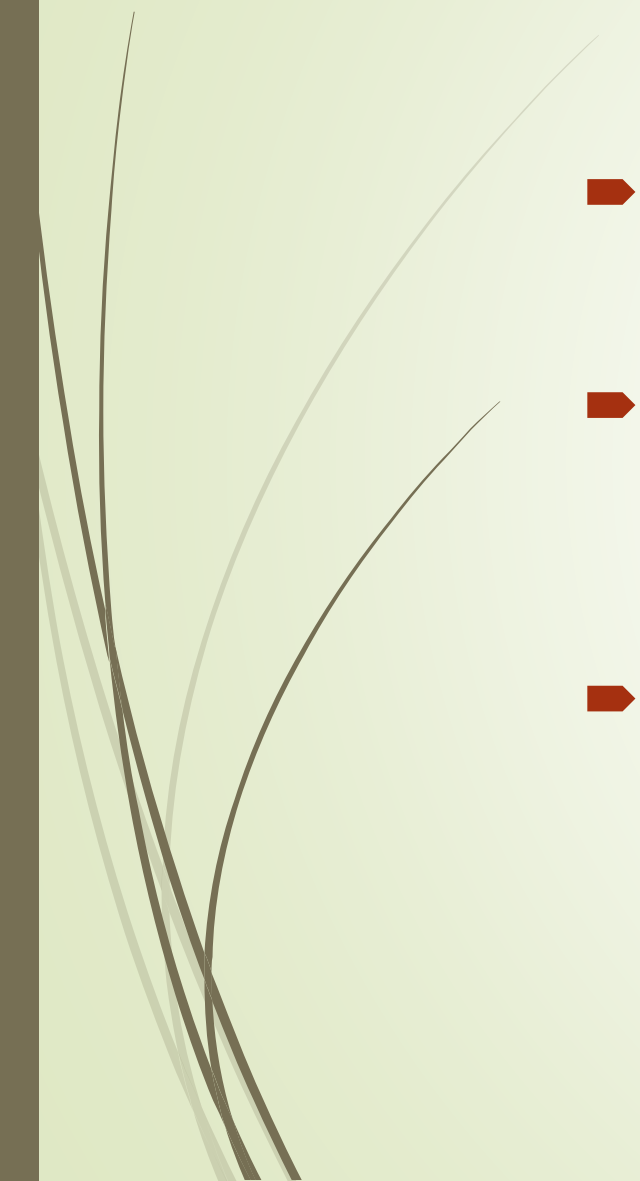
- Idaho Code Title 6 Chapter 3 – Forcible Entry and Unlawful Detainer
- I.C. Title 55 – Property in General
- I.C. 39-3316 – Resident Rights in Residential Care or Assisted Living Facilities
- I.C. 66-412 – Rights in Facilities

## FED'L LAWS and REGULATIONS

- 42 C.F.R. 483 - CMS Conditions of Participation
- 41 C.F.R. 440 and 441 - HCBS Setting Requirements
- 42 U.S.C. 3601 - Fair Housing Act



# Resident Rights Under IDAPA 16.03.22

- ▶ Section 550 – Requirements for Resident Rights
  - ▶ Section 225 – Requirements for Behavioral Management
  - ▶ Section 221 – Requirements for Termination of the Admission Agreement
- 



## IDAPA 16.03.22

# Section 550 – Requirements for Residents' Rights

- ▶ **(13) Grievances** – Each resident has the right to voice grievances with respect to treatment or care...without discrimination or reprisal...
- ▶ **(20) Transfer or Discharge** – Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment of his stay. In non-emergency conditions, the resident must be given at least thirty calendar days notice of discharge. A resident has the right to appeal any involuntary discharge.

▶ RP



# IDAPA 16.03.22

## Sxn. 225 – Requirements for Behavior Management

“The facility must identify and evaluate behavioral symptoms that are distressing to the resident or infringe on other residents’ rights”

- ▶ (1) - Evaluation for Behavior Management ...
- ▶ (2) – Intervention. The facility must develop an intervention for each behavioral symptom ...
  - ▶ (b) The intervention needs to be the least restrictive

RP

## IDAPA 16.03.22

# Section 221 – Requirements for Termination of an Admission Agreement

1. **Conditions for Termination of the Admission Agreement.** The admission agreement cannot be terminated, except under the following conditions:
  - a) Giving the other party 30 days written notice for any reason;
  - b) The resident's death;
  - c) Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm;
  - d) The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307 Idaho Code Subsection 152.05 of these rules;
  - e) Nonpayment of the resident's fees;
  - f) When the facility cannot meet resident needs due to changes in services, in house or contracted, or inability to provide the services; and
  - g) Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission

# IDAPA 16.03.22

## Section 221 cont'd

- 2. Facility Responsibility During Resident Discharge.** The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident.
- 3. Resident's Appeal of Involuntary Discharge.** A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm.
  - a) ...the facility must notify the resident...
  - b) This notice must be in writing...

# IDAPA 16.03.22

## Section 221 cont'd

4. **Written Notice of Discharge.** The written notice of discharge must include the following:
- a) The reason for the discharge;
  - b) Effective date of the discharge;
  - c) A statement that the resident has the right to appeal the discharge to the Department within thirty calendar days of receipt of the written notice of discharge;
  - d) The name and address of where the appeal must be submitted;
  - e) The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and
  - f) The name, address, and telephone number of CO-AD, for residents with developmental disabilities or mental illness.
  - g) If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies.
  - h) When the notice does not contain all the above required information, the notice is void and must be reissued.

# Tenant Rights under Idaho Code

## **Title 55-307 – Change in Terms of Lease, Notice**

*At least 15 days notice for lease changes*

## **Title 6-320 – Action for Damages and Specific Performance by Tenant**

*Right to request and receive repairs within three days of written notice;  
Implied warranty of habitability*

## **Title 6-317 – Treble Damages**

*Three times the amount of actual damages can be awarded for actions brought against a tenant or in bad faith*

# IDAHO CODE TITLE 6 CHAPTER 3

## ▶ **6-303 – Unlawful Detainer Defined**

- ▶ Three days, written notice to terminate a tenancy where non-payment of rent or material breach of the lease exists
- ▶ Thirty days' notice to terminate a month to month tenancy for any other reason
- ▶ If resident still within property after the notice period, can sue for unlawful detainer (eviction or discharge)

## ▶ **6-304 – Service of Notice**

- ▶ Written notice of termination must be delivered in-person or left with a person of suitable age at the residence/taped to the door, with an additional copy sent by mail

RP

# IDAHO CODE TITLE 6 CHAPTER 3, cont'd

## ▶ **6-310 – Action for Possession**

- ▶ Can sue for unlawful detainer
- ▶ Cannot use self-help

## ▶ **6-313 – Trial by Jury**

- ▶ Residents can request a jury trial in any case where there is an issue of fact

## ▶ **6-317 – Treble Damages**

- ▶ Treble damages exist where parties acted in bad faith

# CDC Eviction Moratorium

Evictions for non-payment of rent halted when individuals:

- Expect to have less than \$99,000 in income in 2020
- Can't pay rent due to income loss or medical bills resulting from COVID
- Have used best efforts to obtain governmental rent assistance
- Will be homeless or have to live in "close quarters" if evicted
- Promise to make (partial) payments where able

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Source: NHLP  
CDC Eviction  
Analysis

Applies to  
"all  
residential  
properties"

Exceptions:

- Criminal activity
- Threatening the health or safety of other residents
- Damaging or posing risk of immediate damage to property
- Violating building codes, health ordinances, or similar regulations relating to health and safety

Declaration  
form  
available  
on ILAS  
website

# OTHER TENANT PROTECTIONS

## ➤ Consumer Protections

- **Implied Warranty of Good Faith and Fair Dealing** – *must engage in good faith to uphold contract terms*
- **Consumer Protection Act** – *applies when a business has engaged in false, misleading, deceptive, or unconscionable practices (source: Idaho Attorney General's Consumer Protection Manual)*
- **Special Provisions for Seniors** – *the greater of \$15,000 or treble damages if 1) the offender knew or should have known the victim was elderly or disabled or 2) the offender's conduct resulted in the loss...of the home or...more than 25% of the victim's income, money, or retirement funds*

## ➤ Breach of Contract

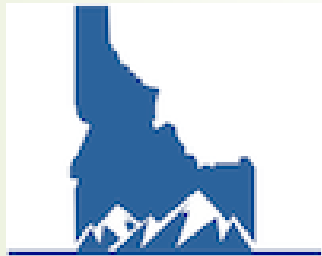
## ➤ Tort Claims

- **Assault, Battery**
- **Intentional Infliction of Emotional Distress**



## **Rachel Piscette, Staff Attorney**

Idaho Legal Aid Services, Inc.  
1447 South Tyrell Lane  
Boise, ID 83706



Tel: (208) 807-2615



**DISABILITY RIGHTS**  
IDAHO  
Protection & Advocacy for Individuals with Disabilities



**Courtney R. Holthus, Esq.**

Director of Legal and Advocacy Services

# Presentation Overview:

- Introduction
- Overview of Resident Rights Protections Under:
  - Federal Law
    - *Nursing Facilities, Skilled Nursing Facilities*
    - *Home and Community Based Setting Providers (Residential Assisted Living Facilities, Certified Family Homes)*
  - State Law
  - State Administrative Rules
  - Enforcement Agencies
- Conclusion

# Overview of Resident Rights Protections under Federal Law:

- ***Nursing Facilities/Skilled Nursing Facilities***
  - Applicable Federal Law: CMS Conditions of Participation – 42 C.F.R. §483
  - Applies to: NF/SNF Who Are Medicare and/or Medicaid Providers
  - Resident Rights – 42 C.F.R. §483.10

# Resident Rights Under 42 C.F.R. §483.10

- **Dignified existence, self-determination, and communication** with those inside/outside facility
- Right to **exercise rights** as a resident of facility, citizen or resident of US
- Right to be informed of and **participate in care/treatment**
- Right to **choose** attending **physician**
- Right to be **treated with respect** and **dignity**
- Right to self-determination through **resident choice**
- Right to be **visited by/communicate with LTC Ombudsman** and **DRI**

CH



## ▶ **Home and Community Based Settings (HCBS)**

- ▶ Applicable Federal Law: 42 C.F.R. §§440.180, 440.181, 441.300-365
- ▶ Applies to: adult day health providers, developmental disability agencies, certified family homes, residential assisted living facilities.
  - ▶ Does not apply to: nursing homes, ICF/IIDs, hospitals.
- ▶ Resident Rights/Provider Requirements – 42 CFR §441.301
  - ▶ Providers expected to fully comply with these requirements in order to be a Medicaid provider – enforced as of January 1, 2017.
- ▶ CH

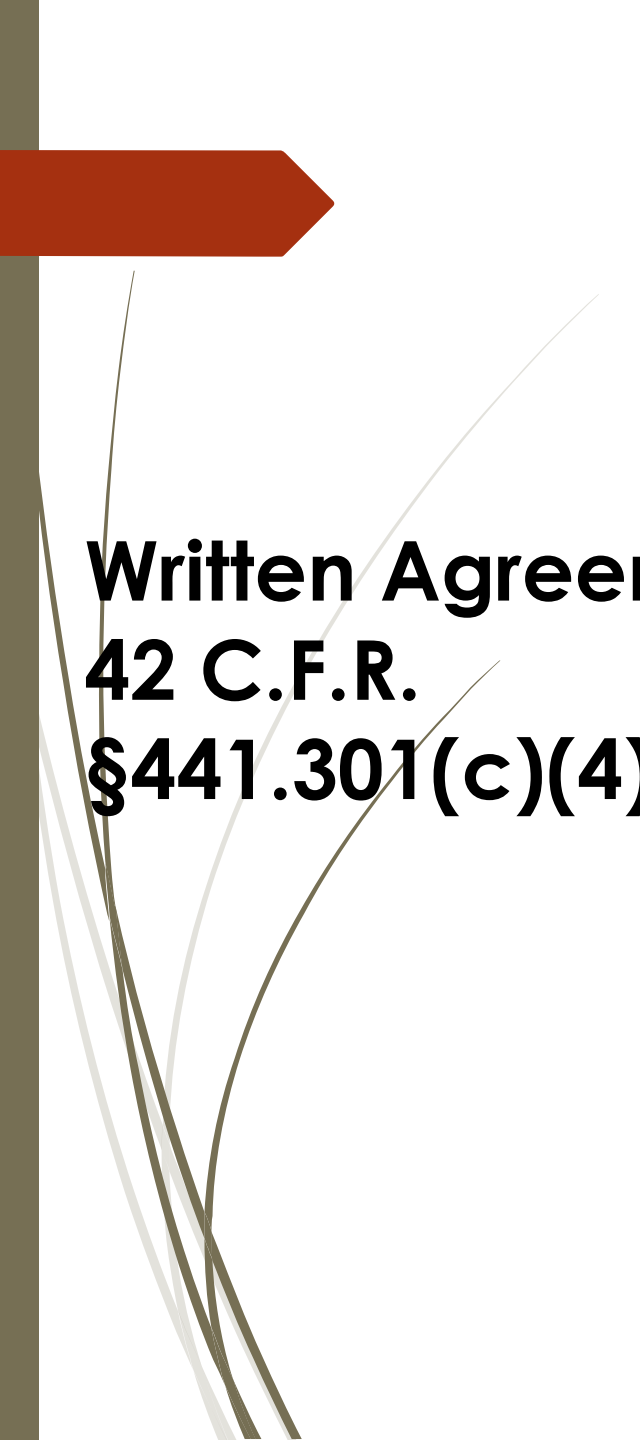


# HCBS Setting Requirements:

- **Integration and access** – setting is integrated and supports full access to the community, includes typical age-appropriate activities such as employment, control of personal resources, etc.
- **Selection of setting** – setting selected by the participant or participant's decision-making authority.
- **Participant rights** – ensures rights of privacy, dignity, respect, freedom from coercion, and unauthorized restraint are honored.
- **Autonomy and independence** – optimizes an individual's initiative, autonomy, independence in making life choices including daily activities, physical environment, and with whom to interact.
- **Choice** – promotes participant choice regarding services and supports provided.
- CH

## HCBS provider-owned or controlled settings must also meet additional conditions regarding:

- **Written Agreement** – lease, residency agreement, admission agreement, or other written agreement in place for each participant at time of occupancy. Must provide protections that address evictions and appeals comparable to those found under Idaho landlord tenant law. 42 C.F.R. §441.301(c)(4)(vi)(A).
- **Privacy** – right to entrance doors which are lockable by the individual, choice of roommates in settings where units are shared. 42 C.F.R. §441.301(c)(4)(vi)(B).
- **Décor** –freedom to furnish, decorate sleeping or living units. 42 C.F.R. §441.301(c)(4)(vi)(B)
- **Schedules and Activities** – freedom and support to control their own schedules and activities. 42 C.F.R. §441.301(c)(4)(vi)(C).
- **Access to Food** – access to food at any time. 42 C.F.R. §441.301(c)(4)(vi)(C).
- **Visitors** – participants are able to have visitors of their choosing at any time . 42 C.F.R. §441.301(c)(4)(vi)(D).
- **Accessibility** – setting is physically accessible. 42 C.F.R. §441.301(c)(4)(vi)(E).



**Written Agreement –  
42 C.F.R.  
§441.301(c)(4)(vi)(A)**

- Unit/room is a specific physical place that can be owned, rented or occupied under another ***legally enforceable agreement*** by the individual receiving services – and ***provides at a minimum the same responsibilities/protections from eviction that tenants have state landlord tenant law.***
- For settings where L/T does not apply – still must have a ***lease, residency agreement for each HCBS participant*** which ***provides protections addressing evictions and appeals comparable to*** those provided under ***state landlord tenant law.***

# IDHW Guidance for HCBS Providers on Discharge/Eviction Notice:

Under Idaho Landlord Tenant Guidelines, a ***three-day written notice is permitted if***

- ▶ a resident has not paid rent or room and board, has violated the terms of their signed admission agreement, or
- ▶ has engaged in use or production of a controlled substance in the residence.

Otherwise, a ***thirty-day notice is required.***

Source:

<https://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf>

# IDHW Guidance for HCBS Providers on Discharge/Eviction Notice:

## *The following should not occur:*

- A resident is forced to move out without due process – including providing adequate notice.
- A provider discharges/evicts a resident for an issue that was not included or described in the admission agreement that was signed by the resident.
- An admission agreement is used inappropriately to force a resident to waive certain rights under “house rules.” For example, an admission agreement cannot state that a resident is prohibited from having any visitors.

Source:

<https://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf>

➤ CH

# IDHW

## Guidance for HCBS Providers in Regard to Participant Choice and Health/Safety Risks:

- Providers must maximize participant's ability to make choices while ensuring that those choices do not endanger the participant or others.
- For **participants with an identified health or safety risk**, providers must either **implement risk mitigation strategies or request an exception** to the requirements, (if the setting is provider owned and controlled).
  - "In order to do this, the participant's **person-centered planning team** should identify a goal and risk mitigation strategy for you to implement.."
  - "Providers can limit their liability by implementing agreed upon strategies for any known health or safety risk and notifying the (PCP) team when a new health or safety risk is identified."
- Sources:
  - <https://healthandwelfare.idaho.gov/Portals/0/Medicaid/CHIP/HCBS/RulesAndGuidance.pdf>
  - <https://healthandwelfare.idaho.gov/Portals/0/Medicaid/CHIP/HCBS/RestrictingHCBSSettingQualitiesFAQs.pdf>
- CH



➤ I.C. §39-3316 - ***Resident Rights in Residential Care or Assisted Living Facilities***

➤ I.C. §66-412 - ***Rights in Facilities*** (for individuals with developmental disabilities) - applies to nursing facilities, residential or assisted living facility

➤ CH

# Overview of Resident Rights Protections Under State Administrative Rules:



## ***Skilled Nursing Facilities***

IDAPA 16.03.02.050.05 – Denial or  
Revocation of License



## ***Residential Assisted Living Facilities***

IDAPA 16.03.22.550 – Requirements for  
Resident Rights  
IDAPA 16.03.22.650 – Notice  
Requirements



# Enforcement Agencies:

- ▶ CMS
- ▶ **Idaho Department of Health and Welfare**
  - ▶ *Division of Medicaid*
  - ▶ *Division of Licensing & Certification*
  - ▶ *Bureau of Long-Term Care*
- ▶ CH

**Pocatello Office:**

1246 Yellowstone Ave., Suite A-3  
Pocatello, ID 83201  
Phone: (208) 232-0922  
Fax: (208) 232-0938

**Boise Office:**

4477 Emerald Street, Suite B-100  
Boise, ID 83706  
Phone: (208) 336-5353  
Fax: (208) 336-5396

Statewide Toll Free Number 1-866-262-3462  
Email Address: [info@disabilityrightsidaho.org](mailto:info@disabilityrightsidaho.org)  
Website: [www.disabilityrightsidaho.org](http://www.disabilityrightsidaho.org)

**DISABILITY RIGHTS**

IDAHO

Protection & Advocacy for Individuals with Disabilities





# Zoe Ann Olson

Executive Director of the  
Intermountain Fair Housing  
Council, Inc



## Residents' Rights in Long-Term Care Facilities under the Fair Housing Act

Intermountain Fair Housing Council is a nonprofit organization whose mission is to ensure open and inclusive housing for all people. The IFHC's purpose is to advance equal access to housing for all persons without regard to race, color, sex, religion, national origin, familial status, gender identity, sexual orientation, source of income, or disability. The IFHC attempts to eradicate discrimination through education of the fair housing laws, housing information and referrals, housing counseling and enforcement including filing complaints under the Fair Housing Act.



**Housing Justice For All**

## The Fair Housing Act Title VIII of the Civil Rights Act: Four Jurisdictional Elements of a Case



<https://www.loudounhabitat.org/blog/2019/4/22/fair-housing-act>

1

Covered housing provider: a) 4 or more units/property OR (b) a person/entity in the business of housing (Yes, ALL Long-term Care/Congregate Living Facilities are Covered!)

2

That a member of a protected class (or someone associated with a person in a protected class) was discriminated against (Residents, their families, care givers and providers of this housing)

3

A discriminatory act occurred because of an individual's protected class:

- During application or screening
- Denial of reasonable accommodation
- Different policies, charges, treatment

4

Within the Statute of Limitations

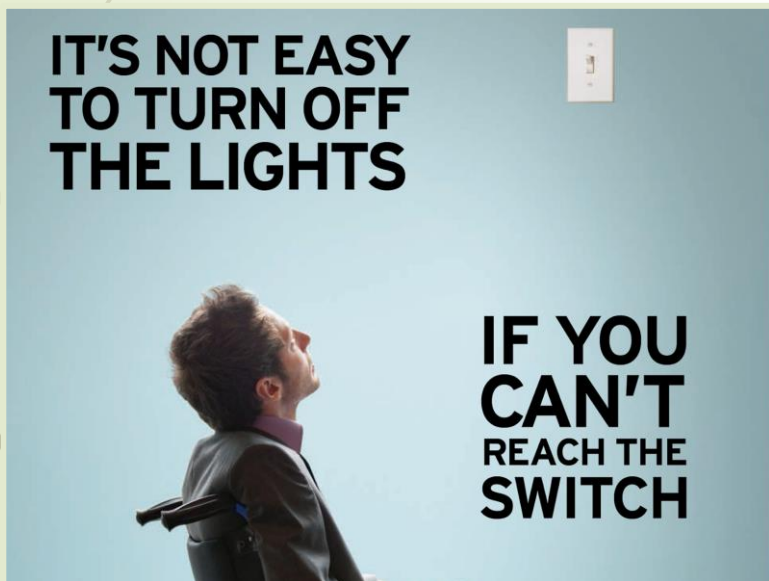
# The Seven Protected Classes



<https://www.nytimes.com/2019/08/20/upshot/housing-discrimination-algorithms-hud.html>

- 1 Race
- 2 Color
- 3 Religion
- 4 National Origin
- 5 Sex (failure to comply with gender stereotypes)
- 6 Disability (Both Physical & Mental)
- 7 Familial Status

# Making Housing Unavailable



- **Failing to accept** a bona fide offer
- **Refusing to negotiate** with someone
- Imposing **different rental charges**
- Using **different qualification criteria** or applications
- Evicting someone
- **Conditioning availability** on response to harassment
- **Harassing someone** until they leave

(Document and Investigate)

## Making Housing Unavailable

42 U.S.C. sec. 3604(a); examples at 24 CFR sec. 100.60

## Discriminatory Terms and Conditions



- Using **different provisions** in a lease or contract of sale
- Failing to make **repairs**
- Failing to **process an offer**
- **Limiting use** of privileges and facilities
- **Tying services** to sexual favors
- **Harassing people** when they use services
- (Document and Investigate)

**Discriminatory Terms and Conditions**  
42 U.S.C. sec. 3604(b); examples at 24  
CFR sec. 100.65

# Discriminatory Statements



**DISCRIMINATION IS RARELY THIS OBVIOUS,  
BUT IT'S JUST AS REAL. AND JUST AS ILLEGAL.**

- Words or pictures hinting or implying a place is available or unavailable to groups of people
- Being told a place is available or unavailable to groups of people
- Different terms in advertising  
(Document and Investigate)

**Discriminatory Statements**  
42 U.S.C. sec. 3604(c); examples  
at 24 CFR sec. 100.75

# Steering



- Lying about availability
- Lying about conditions of rental or sale
- Enforcing restrictive covenants
- Failing to offer available places
- Lying in response to harassment  
(Document and Investigate)

## Steering

42 U.S.C. sec. 3604(d); examples at 24 CFR sec. 100.80



# Coercion and Retaliation



It shall be **unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of**, or on account of that person having exercised or encouraged any other person in the exercise or enjoyment of, **any right granted or protected** by this part.

(Document and Investigate)

**Coercion and Intimidation**

42 U.S.C. sec. 3617



# Being a fair housing partner

01

Keep in mind that the lack of protections impact the most vulnerable of our population, which often fall into one or more protected classes

02

Try and be creative and flexible in your interactions with tenants – point them to as many resources as possible so they can be good tenants

03

Consider COVID 19 when tenants ask for reasonable accommodations, which we will discuss further below.

# Who Is Disabled As Defined by the Fair Housing Act?

A person who (42 U.S.C. 3602 (h)(1)-(3)):

- ▶ has a physical or mental impairment that substantially limits one or more major life activities
- ▶ has a record of such impairment
- ▶ is regarded as having such an impairment
- ▶ broadly defined





## Common issues we are seeing

- ▶ **Individuals who live in facilities are being illegally evicted, being denied reasonable accommodations and modifications, facing shortage of caregivers, PPE, etc. This has resulted in a higher number of individuals in facilities, where they are more exposed to the dangers of COVID and evicted without housing and proper supports.**
  - ▶ **Take away – work to keep an individual housed in the home of their choice if at all possible.**
  - ▶ **Work to create affordable housing that is accessible—housing is healthcare.**

# Reasonable Accommodations

- Changes in rules, policies, practices, or services, that are necessary because of someone's disability
- Housing provider bears any costs involved

<https://www.justice.gov/crt/us-department-housing-and-urban-development>




# Reasonable Modifications

- Changes to the premises
- Resident bears costs (unless the cost is low or the housing is federally subsidized)
- Landlords can require tenant to remove interior modifications upon leaving unless it benefits everyone or was required to be constructed accessibly
- [https://www.hud.gov/sites/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf)

# Don't just say no!

- ▶ Housing providers are required to have an interactive process: if you can't give them what they initially ask for, ask if there are other accommodations or modifications that might work





# Commonly requested accommodations

- Additional time to move out for people with mobility impairments
  - Waive a “no cosigners” rule for someone whose only source of income is disability
  - Assigned parking spaces for people with parking cards
  - Overlook a previous eviction or arrest if they happened during a period of untreated mental illness if the individual taken steps to eliminate the previous threat:
    - If individual has received intervening treatment of medication
  - Allow service and assistance animals
- <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

# When can you turn down a request?

## ACCOMMODATIONS

- ▶ The person doesn't have a disability
- ▶ The accommodation they're asking for isn't related to their disability
- ▶ They're asking you to act as a service provider
- ▶ It's unreasonable, considering
  - ▶ Cost of accommodation
  - ▶ Housing provider's resources
  - ▶ Benefits of accommodation
  - ▶ Availability of other accommodations

## MODIFICATIONS

- ▶ The person doesn't have a disability
- ▶ The modification they're asking for isn't related to their disability
- ▶ The person didn't get required permits or did a shoddy job



# REASONABLE ACCOMMODATIONS & COVID 19

COVID 19 *MAY* be considered a disability and thus, housing providers should consider granting RAs related to COVID:

- additional time to find affordable, accessible housing
- additional time for whatever is needed if the individual has COVID – an extension on time to find housing, an extension on eviction procedures, an accommodation in the manner rent is paid, etc.

**\*\*NOTE:** HUD has not yet decided this issue



# Verifying disability



- If the disability is obvious, and the nexus between the reasonable accommodation request and disability is obvious, no verification is necessary.
- If the nexus is not obvious, landlord can request third party verification from the applicant that they do have a disability (without inquiring into the nature and severity of the disability) and the nexus between the disability and the reasonable accommodation.



# Proof of disability

Information About Disability May Include . . .

- A determination of disability from a federal, state, or local government agency.
- Receipt of disability benefits or services (Social Security Disability Income (SSDI)), Medicare or Supplemental Security Income (SSI) for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency.
- Eligibility for housing assistance or a housing voucher received because of disability.
- Information confirming disability from a health care professional – e.g., physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.

Note that a determination that an individual does not qualify as having a disability for purposes of a benefit or other program does not necessarily mean the individual does not have a disability for purposes of the FHA, Section 504, or the ADA



# Housing providers should...

Assist the person requesting the accommodation to understand what information the housing provider is seeking.

Not ask about the nature or severity of the disability.

Housing providers are encouraged to direct the requester to the [Guidance on Documenting an Individual's Need for Assistance Animals in Housing](#). Referring the requester to that Guidance will also help ensure that the housing provider receives the disability-related information that is actually needed to make a reasonable accommodation decision without revealing the nature and or severity of the disability.



# Fair Housing Issue Process

- IFHC receives calls/emails for help with allegations of discrimination and housing issues, technical assistance on best practices and policies, and education
- IFHC investigates allegations from people/entities who believe they have been denied housing or have been treated unequally because of race, color, national origin, religion, sex, disability, or familial status.
- After IFHC determines that a fair housing violation or violation has occurred and after attempts to educate and or resolve it by IFHC, the consumer and or their advocates/care givers, a consumer, their advocate (family member, organization, the like, IFHC will help the victim of discrimination file a complaint with HUD and or assist in obtaining an attorney to file in state or federal court. IFHC may file its own complaint with HUD or in court.



# Filing a complaint with HUD

- **When an individual reports possible discrimination, we check whether a formal complaint can be filed under one of the laws we enforce.**
- *What to Expect:*
- Where appropriate, FHEO will draft a formal complaint, have the individual review and sign the complaint, and notify the parties that a complaint has been filed.
- In certain circumstances, FHEO may initiate a compliance review based on the information submitted in a complaint.
- [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process)



# HUD Conciliation Process

- **At any time, the parties can resolve the complaint under terms that are satisfactory to the parties and HUD.**
- *What to Expect:*
- Throughout the investigation, HUD will try to help the parties resolve the complaint through an agreement. Any agreement is voluntary; no party is required to accept an offer.
- If the parties agree, HUD will prepare an agreement for signature.
- Following a signed agreement, HUD will close the investigation and monitor compliance with the agreement.
- Depending on the authorities that apply to the complaint, HUD may resolve the investigation through a document called a Conciliation Agreement, a Voluntary Compliance Agreement, or both.

# HUD Investigation

- **After a formal complaint is filed, we investigate the allegations.**
- HUD will assign one or more investigators to investigate the allegations made in the complaint.
- After you submit a complaint, the investigator may ask you to provide more information. Generally, it will be helpful if you are prepared to provide:
  - A timeline of events, starting with the first contact you had with the person or entity you believe violated your rights;
  - The locations of events;
  - Any people who were present when events occurred;
  - Any other people who might have information related to your complaint; and
  - Any relevant documents.
- HUD will provide the party against whom the complaint has been filed notice and an opportunity to respond to the allegations.
- HUD may gather evidence in many ways, including interviewing parties and witnesses, getting documents, and inspecting properties.
- After completing the investigation, FHEO will send you a written report of its findings—HUD will find cause or no cause. If no caused, the HUD process is typically over unless the party asks for reconsideration or files in court. If caused, the complainant can bring their case in front of a HUD Administrative Law Judge or file in federal court with Department of Justice.



# When HUD Takes Legal Action

- ▶ **Where appropriate, we take actions to enforce the law.**
- ▶ *What to Expect:*
- ▶ The government may bring a Fair Housing Act or other civil rights case based on the findings of a HUD investigation. Examples of relief sought in such cases may include compensation for victims, changes to policies and procedures, and training.
- ▶ When the government brings a legal action, it does not charge any fees or costs to individuals who are alleging discrimination.
- ▶ Cases before HUD Administrative Law Judges are handled by HUD's Office of General Counsel, and cases in the federal courts are handled by the U.S. Department of Justice.

# Where we can help you

- ▶ Providing sample forms and position statements
- ▶ Resources on inclusive housing for people at all levels of income
- ▶ Providing resources to anyone facing discrimination whether in the purchase of their home, renting a home, or in a facility
- ▶ Providing training opportunities for housing providers, advocates, caregivers, and consumers, among others

**Intermountain Fair Housing Council**

**Concilio de Vivienda Justa**

**4696 W Overland Rd, Ste 140**

**Boise, ID 83705**

**Phone: 208-383-0695**

**Fax: 208-383-0715**

**[contact@ifhcidaho.org](mailto:contact@ifhcidaho.org)**

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# Questions & Answers



In collaboration with:

**Office of the Idaho State Ombudsman  
Program**

**Idaho Legal Aid Services, Inc.**

**DisAbility Rights Idaho**

**Intermountain Fair Housing Council**

