

**WISE & HEALTHY AGING**

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**LONG-TERM CARE  
OMBUDSMAN PROGRAM**

**COVERING CITY AND COUNTY OF LOS ANGELES**

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# WISE & Healthy Aging

- Private non-profit that provides an array of social services to older adults and their caregivers
- Sole Long-Term Care Ombudsman Program (LTCOP) provider in City and County of Los Angeles
- Molly Davies, LCSW, Vice President, Elder Abuse Prevention and Ombudsman Services

**Elders and Disabled Adults  
Discharged to  
Homeless Shelters  
from Long Term Care Facilities**

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# Relevance to Your Work

- Today's session will provide you with tools to:
  - Help you advocate for clients
  - Identify if a client was inappropriately sent to shelter by a long-term care (LTC) facility and what to do about it
  - Help make better transitions for clients to and from LTC facilities
  - Help a client who needs a higher level of care than shelter without 911 and hospitalization as the only option
  - Help clients who have had a bad experience or were discriminated against at a LTC facility

# Objectives

- Learn basic transfer discharge rights of residents in LTC facilities
- Provide resources for shelter operators when a LTC facility sends a resident who needs care, supervision or treatment that the shelter cannot provide
- Know what to do when a facility says the resident left against medical advice (AMA)?
- Consider, what are you seeing? I want to learn from you!

# Long-Term Care Ombudsman

- Advocates for residents residing in LTC facilities
- Federal and State mandated program
- Older Americans Act
- Older Californians Act
- Administered by California Department of Aging through the local Area Agencies on Aging

# Ombudsman Responsibilities

- Identify, investigate & resolve complaints made by or on behalf of residents
- Educate residents & their loved ones on residents' rights and facility regulations
- Conduct regular unannounced visits to Skilled Nursing Facilities (SNFs) and assisted living or board and care homes
- Witness Advance Health Care Directives in SNFs
- Conduct preliminary investigations of suspected elder and dependent adult abuse that occurs in LTC settings
- Monitor the quality of care provided by a health care business during bankruptcy and report findings to the court

# Issues Addressed and the Process

- Those related to quality of care and quality of life
- Questions about what services should be provided
- Concerns involving the rights of residents and family members
- Matters of dignity and respect
- Resident-centered program
- Resident-driven process
- Consent-based program
- Self determination over protection-harm reduction focus

# Collaborations

- Department of Health Services (DHS) Housing for Health
- Managed Medi-Cal Health Plans
- Department of Mental Health (DMH) Enriched Residential Care (ERC)
- Regulatory Agencies
- Department of Public Health (DPH) ACDC for COVID-19 response
- Fire Departments
- Law Enforcement
- City Attorney

# Contact Information

Insert ombudsman contact information here

# Questions for Consideration During Break

- What do you do when you think a client came from a skilled nursing home or assisted living and they can't be cared for at a shelter?
- How often does this occur?
- Do you feel confident in handling these situations?



# Long-Term Care Facilities

- Skilled Nursing Facilities (SNFs), also known as (a.k.a.) nursing homes, convalescent home, rehabilitation centers, wellness centers
- Residential Care Facilities for the Elderly (RCFE), a.k.a. assisted living, board and care, retirement home

# What is the Difference?

- SNFs provide 24-hour skilled nursing care, wound treatment, complex medical conditions, physical therapy. Have medical director, nursing staff. More regulation due to Medicare and Medi-Cal reimbursement. Regulated by Department of Public Health
- RCFEs provide 24-hour care and supervision, no nurses, less regulation. Private pay or pay at SSI rate. Prohibited health conditions. Regulated by Community Care Licensing

# Who is a Resident?

- A resident is what a SNF, RCFE or an adult residential facility (ARF) call the individuals who live there:
  - Residents in SNF's and RCFE's are generally older adults who need care, supervision and medical treatment. Some residents are younger people who have disabilities
  - Residents in ARF's are generally younger people 18-64 who have a developmental disability or a severed mental illness

# Facility Obligations to Residents

- SNFs, RCFEs and ARFs have an obligation to ensure that:
  - Discharge is necessary
  - Discharge is for one of the legal reasons for discharge
  - Discharge is safe and orderly
  - Level-of-care that the resident is discharged to is determined by a doctor
  - Residents are involved in the planning of a discharge
  - Residents agree with the location they will be transferred to
  - Facility provides due process including 30-day notice

# Legal Reasons for SNF Transfer/Eviction

A facility must follow the proper eviction procedure, including providing a 30-day written notice and citing one of 6 legal reasons for transfer/discharge. (42 CFR 483.15 (c)(1)(i)(A-F):

1. Needs of the resident cannot be met at facility and resident's welfare is at risk if they were to stay; i.e., resident needs a higher level of care, subacute care or a secured unit due to wandering behavior
2. Resident's health has improved, and they no longer require the facility; i.e. the resident requires a lower level of care
3. Safety of other individuals is endangered by the retention of the resident
4. Health of other individuals is endangered by the retention of the resident
5. Resident, after appropriate notice, has failed to pay
6. Facility ceases to operate

# When a SNF Transfers a Resident to Shelter

- Contact facility and negotiate resident back in. Let facility know that the resident's needs are not manageable in shelter. Be specific (i.e., the resident can't take their own medication and needs help toileting)
- Let facility know that residents have a right to a safe and orderly transfer/discharge, which includes transfer to appropriate care level
- Let facility staff know that you understand the resident's rights and that you will assist the resident in exercising their right to an appeal hearing with the Department of Health Care Services (DHCS), Office of Administrative Appeals. Often this is the only step that will need to be taken to get the resident readmitted to the facility

# What to Do: SNF's-DHCS Appeals

- If the SNF won't let the resident return, then...
- Contact the DHCS, Office of Appeals at 1-916-322-5603
- Specifically request a “readmission hearing”, a.k.a. an appeals hearing
- DHCS Office of Administrative Appeals is at the State level and will schedule the hearing
- The hearing will take place at the facility or where the resident is staying. Residents generally win these appeals. Shelter staff can participate

# What to Do: SNF's-DPH

- Contact DPH Licensing and Certification to make a complaint against the facility for violating transfer discharge rights and or neglect depending on the severity
- DPH enforces the appeal decisions made by DHCS Office of Administrative Appeals with daily penalties

# What to Do: SNF's-Ombudsman

- Contact Ombudsman program to assist in:
  - Exploring the discharge
  - Negotiating the resident back to SNF
  - Requesting appeal for those residents that can consent to Ombudsman intervention, or have a representative who can consent, or for those who do not have a representative

# What to Do: SNF's-Ombudsman Cont'd

- Ombudsman can:
  - Get the facility census to determine if there is an available bed
  - With consent, obtain medical records from SNF
  - Attend appeals hearings at the invitation of the resident and assist in asserting the rights of resident at the hearing
  - Make referral to DPH with consent
  - Be available to consult with shelter staff, residents and family members, to help guide them through the process

# Legal Reasons for RCFE Transfer/Eviction

Facility must provide a 30-day written notice with one of the legal reasons below for eviction. If resident disagrees with eviction, resident is not required to vacate the premises until a ruling is made in an unlawful detainer action (Title 22 Section 87224):

1. Non-payment of rate for basic services within 10 days of due date
2. Failure of resident to comply with state or local law after receiving written notice of alleged violation
3. Failure of resident to comply with general policies of the facility. Policies must be in writing and part of the admission agreement, for the purpose of making it possible for residents to live together
4. If, after admission, it is determined resident has a need not previously identified and a reappraisal has been conducted
5. Change of use of the facility

# When a RCFE Transfers a Resident to Shelter

- If rent has been paid for the month then a resident has a right to return to the facility, assuming they have not intentionally given up their room. If the resident has not been given notice and/or they need a higher level of care than a shelter, then contact the facility to negotiate resident back in
- If a facility refuses to readmit a resident, a complaint can be made to Community Care Licensing, Centralized Complaint Unit at (844)-538-8766
- Contact the Ombudsman office to assist with negotiations with the facility and with licensing to assist with the assertion of the resident's right to return to the facility. Consent from resident or their legal representative is required for Ombudsman to intervene

# Self Determination

- Elders and dependent adults have right to make their own personal decisions that may not appear to be in their own best interest
- Only if persons meet 5150 criteria, may law enforcement or psychiatric emergency response intervene:
  - Suicidal
  - Homicidal
  - Gravely disabled
- \*Self neglect is not against the law

# Cognitive Impairment

- People with cognitive impairment (dementia) still retain their rights to self-determination even if they make unsafe choices
- Only through a court process can this right to be taken away from someone who is cognitively impaired
- What can be done if a cognitively-impaired resident wants to leave a facility?
  - The facility should: try and redirect the resident; try to convince resident to stay so they can make a safe transfer; make a referral to public guardian for conservatorship; call law enforcement and licensing if resident leaves AMA

# Let's Talk AMA

- Many facilities will say that a resident left AMA or against medical advice. They must be more specific:
  - Residents have a right to leave a facility for an outing AMA
  - Residents going on an outing AMA is not a reason for discharge. Residents do not need an order from a doctor to go on an outing
  - Residents have a right to discharge out of a facility AMA
- Most facilities will lump these two versions of AMA together and that is not appropriate

# Exploring a Bad Transfer: What to Ask?

- What facility were you staying at last? (Is there a bracelet with facility information?)
- How long ago were you there?
- What was the last day you were there?
- What were they treating you for?
- Any improvements while there?

# Exploring a Bad Transfer: What to Ask? Cont'd

- Do you still have those treatment needs?
- Why did the facility say you had to leave?
- Do you know if the doctor said you needed to go to assisted living or another nursing home? (Getting at level of care needs)
- Did you get a 30 written notice?
- Were you given choices for where you were going to transfer to?
- Did you want to leave and agree to come here?

# When is a Transfer to a Shelter OK?

- Resident agrees to the transfer to a shelter
- Resident is given 30-day notice (this has been loosened due to COVID-19 in SNF's)
  - That notice must be given to the Ombudsman (if it is a SNF)
  - Must be one of the legal reasons for a transfer discharge
- Resident's doctor determines level of care needs can be managed at a shelter
- Resident leaves a facility against medical advice and then self-selects coming to a shelter

Questions?



# Important Phone Numbers CA

Community Care Licensing Division  
(844)-538-8766 intake phone  
(916)-651-6668 intake fax  
[LetUsNo@dss.ca.gov](mailto:LetUsNo@dss.ca.gov) intake email

Department of Public Health  
(headquarters)  
(562)-345-6852 phone  
(562)-409-5096 fax

Department of Health Care Services  
Office of Administrative Appeals  
(916)-322-5603 phone  
(916)-323-4477 fax

Long-Term Care Ombudsman  
Program at WISE & Healthy Aging  
(800)-334-9473 intake phone  
(800)-231-4024 after hours Crisis  
Line

[www.wiseandhealthyaging.org](http://www.wiseandhealthyaging.org)

# What are You Seeing?



# Take Aways

- What is one thing that you are going to do differently given what you have learned in this training?
- Do you feel more confident in handling these situations as a result of this training?