

LTCOP and Legal Services: Working Together to Protect Residents from Nursing Facility-Initiated Discharges

June 22, 2022

3:00 – 4:30 pm ET



The National **Long-Term Care**
Ombudsman Resource Center

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**



Speakers

- **Carol Scott**, Manager, Program & Policy, National Ombudsman Resource Center
- **Sarah Galvan**, Directing Attorney, Elder Rights, Justice in Aging & National Center on Law and Elder Rights
- **Angela Van Pelt**, Iowa State Long-Term Care Ombudsman
- **Salli Pung**, Michigan State Long-Term Care Ombudsman
- **Mireille Phillips**, Legal Counsel to the Michigan State Long-Term Care Ombudsman Program
- **Stephanie D. Langguth**, Economic Stability Unit Manager, Legal Aid of the Bluegrass, Kentucky
- **Sam Brooks**, Manager, Program & Policy, Consumer Voice





The National Long-Term Care Ombudsman Resource Center

The National Long-Term Care Ombudsman Resource Center provides **support, technical assistance, and training** to the 53 State Long-Term Care Ombudsman Programs and their statewide networks.

The Center's objectives are to enhance the skills, knowledge, and management capacity of the State programs to enable them to handle residents' complaints and represent resident interests in both individual and systems advocacy. Funded by the Administration for Community Living (ACL), the Center is operated by the National Consumer Voice for Quality Long-Term Care (Consumer Voice), in cooperation with the ADvancing States.


National Consumer Voice

State Ombudsman Login



Shop Our Store


[Home](#) [News](#) [About](#) [New ombudsman?](#) [Library](#) [Events](#) [Support](#) [Issues](#)


 **The National Long-Term Care Ombudsman Resource Center**

Specialized Information for:
[Nursing Homes](#) [Assisted Living/Board & Care](#) [Home and Community Based Services](#)

NEW Initial Certification Training Curriculum for Long-Term Care Ombudsman Programs

[Learn more](#)






Locate an Ombudsman program, volunteer opportunities, and help near you [Visit our map](#)

News and Press

- ▶ **Rhode Island State Ombudsman, Kathleen Heren, on Nursing Home Closures**
Posted: May 26th, 2022
- ▶ **Radio Interview with Edwin Walker, ACL, on Older American's Month and Karen Morgan, Maryland Ombudsman Program Representative on Protecting Seniors from Scams and Fraud**
Posted: May 23rd, 2022

Resource Center Updates

- ▶ **New Fact Sheet on Representing Residents During Nursing Facility Discharge Appeal Hearings**
Posted: June 14th, 2022
- ▶ **Updated Fact Sheet on Residents' Rights and the LGBTQ+ Community**
Posted: June 13th, 2022

 **COVID-19 Updates**
Learn about the most recent information and resources.
[Stay informed >>](#)

<https://ltcombudsman.org/>

National Center on Law & Elder Rights & Introduction to Legal Assistance for Older Adults

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

NCLER Offers

Legal Trainings

Technical
Assistance & Case
Consultation

Capacity Building

Information
Dissemination

Legal Assistance for Older Adults

- Older Americans Act (OAA) Title III-B
 - Directs area agencies on aging to award funds to legal assistance providers
 - OAA Legal Assistance Providers = III-B attorneys
- Additional legal assistance programs/funders:
 - [Legal Services Corporation](#) (LSC)- funded programs
 - [VOCA](#)-funded programs (usually with a focus on victims of crime)
 - [ACL](#) grantees

Finding Your Local III-B Provider

- [Elder Care Locator](#)
- Area Agency on Aging
- [LawHelp](#) (by state)
- State Legal Assistance Developer
- Reach out to [NCLER](#)!

Scope & Priorities of III-B Legal Assistance

- Priority case types:
 - Income
 - Health care
 - **Long-term care**
 - Nutrition
 - Housing
 - Utilities
 - Protective services
 - Defense of guardianship
 - Abuse & neglect
 - Age discrimination
- Too many older adults do not receive the legal help they need
 - May not realize their problem has a legal solution
 - Unaware that they may be eligible for help
 - Barriers to access- partnerships are key

Role of Legal Services in Discharge Hearings

- Representation of resident in hearings
 - Evaluate whether reason is valid
 - Determine if proper notice was given
 - Gather and present evidence/conduct cross examination
- Identify and address underlying legal issues or additional legal issues
- Partnership with LTCO is key
- Learn more: NCLER- [Using the New Toolkit to Fight Nursing Home Evictions](#)

Building & Maintaining Relationships

- Regular cross-training is recommended
 - Learn what you each do and strengths; what your guidelines are, hours, etc.
 - Points of Contact are important for emergencies
- Develop referral systems
 - Possibly outside of regular legal aid intake systems
- Understanding possible concerns
 - Confidentiality
 - Avoiding Conflicts
 - Client's ability to consent—Capacity

Visit Our Website: [NCLER.acl.gov](https://ncler.acl.gov)

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov





Iowa Office of the State Long-Term Care Ombudsman

June 22, 2022

Iowa Landscape

- ▶ Iowa Department on Aging (SUA)
- ▶ Centralized system
- ▶ 3 Major Programs
 - Local, Managed Care and Volunteer Ombudsman
- ▶ 12 Staff / 99 Counties / 6 Local Long-Term Care Ombudsman
- ▶ Over 900 Facilities and almost 57,000 Beds



Legal Services Partnerships

Iowa Legal Aid

Disability Rights Iowa

Legal Hotline for Older Iowans-60 and over

Iowa Attorney General

Department of Inspection and Appeals



Partnering for Positive Resident Outcomes

- ▶ What is the resident's desired outcome for placement?
- ▶ What does the partnership look like?
- ▶ Collect and Organize-do the legwork before and during the process.

Partnering for Positive Resident Outcomes

- ▶ Establish dialogue with the facility
- ▶ Ensure the notice is in compliance
- ▶ Turnover effects institutional knowledge-teaching moments
- ▶ Request copies of documents
 - Hearing documents, Administrative records Medical / Social Records
- ▶ Communicate
- ▶ Embrace Opportunities

Contact Information

Office of the State Long-Term Care Ombudsman

Phone: 515-725-3308 OR 866-236-1430

Email: SLTCO@iowa.gov

Website: <https://iowaaging.gov/state-long-term-care-ombudsman>



The MLTCOP and Michigan Elder Justice Attorneys: **Working Together to Protect Nursing Home Residents from Involuntary Discharge**

June 2022



Michigan Statewide Advocacy Services (MSAS)

Michigan Elder Justice Initiative (MEJI)

Michigan Long Term Care Ombudsman Program (MLTCOP)

- State LTC Ombudsman
- Assistant State LTCO
- Legal Council
- 20 local ombudsmen

Crime Victims Legal Assistance Program (CVLAP)

Elder Justice Program

- 12 Attorneys
- 2 Managers

Michigan's Notification Process

- * State form which includes appeal request form and ombudsman contact information
- * Must be given to resident, state survey agency, and MLTCOP office
- * State survey agency accepts or rejects notice
- * MLTCOP tracks data points from the notice
- * MLTCOP forwards notice to local ombudsman for resident follow-up

A Look at the Data

Notices received since February 2016

- 1,454 total

- 1,021 non-payment (70%)

- 194 welfare of other residents or staff

- 106 medical reasons

- 64 resident's welfare

Location listed on notices

- 659 pending

- 245 other (mostly return to home in community)

- 18 shelter

- 8 hotel

A Look at the Data

Rescinded by the provider

- 109 total

 - 84 issued for non-payment

 - 24 reported resident initiated the transfer

 - 3 resident death

Rejected by the state survey agency (started in Jan 2020)

- 58 total

 - 29 were issued for non-payment

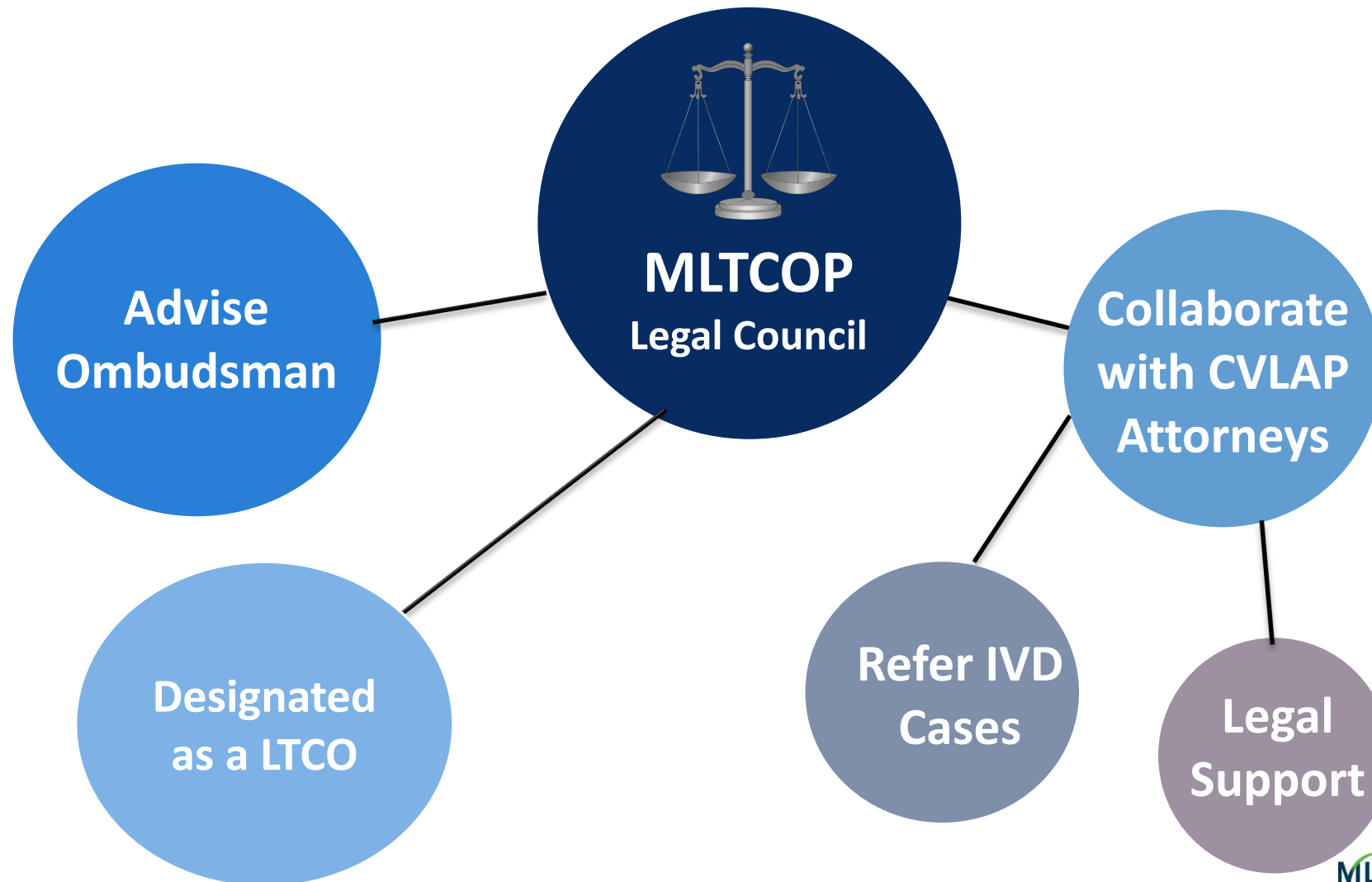
 - 14 were medical or risk to self/others

 - 15 no reason given for rejection

Ombudsmen Response

- * Visit resident to offer assistance
 - * Explain the notice and rights during discharge
 - * Open a case for investigation and seek resolution
 - * Help file an appeal at the resident's request
 - * Refer the resident to legal services

Collaborative Relationship



Appeal Process in Michigan after a Notice of Involuntary Discharge

- * File written appeal within 10 days of receipt of notice
- * State request for hearing form
- * Request for hearing stays the transfer or discharge
- * Ombudsmen often assist residents with completing and submitting form – benefit to submit on last day possible
- * ALJ hearing no sooner than 7 days of appeal date
- * ALJ decision within 14 days of appeal date
- * Need for a speedy legal referral process



CVLAP REFERRAL FORM – NEW CLIENT

To: _____ Date: _____

To Phone: _____ From (agency): _____

To Fax: _____ From (county): _____

Is this an Emergency? ☐ Yes, Deadline: _____ (ex: court date, eviction) ☐ No

Name of Person Completing Referral: _____

Phone Number of Person Completing Referral: _____

Did Applicant Request or Give Consent for this Referral for Legal Assistance: ☐ Yes ☐ No*

*Without consent from the Applicant our staff may not be able to follow up this referral

Is this current CVLAP client? ☐ Yes ☐ No If yes, PIKA #: _____

Name of Applicant & Preferred Pronoun: _____

Age & Date of Birth of Applicant: _____

Applicant's Phone Number: _____ Safe to Call? ☐ Yes ☐ No

Applicant's Street Address: _____

City: _____ State: _____ Zip: _____ Safe to Mail? ☐ Yes ☐ No

Tribal Affiliation: _____

Residence Type: ☐ Apartment ☐ Own Home ☐ Facility (ex: nursing home) ☐ With Family

Monthly Income & Source: _____

Pronoun: _____ Language: _____ Marital Status: _____ Citizenship: _____

Power of Attorney or Guardian Name (if any): _____

Contact Information for POA or Guardian: _____

Quick Tips for Legal Aid Attorneys in Involuntary Discharge Cases

- * Obtain copies of resident documents ASAP
(admission contract, care plan, progress notes, etc.)
- * Negotiate with NH administrator or attorney to rescind notice
- * Request adjournment/in-person hearing
- * Request hearing be treated as pre-trial
- * Motion for summary disposition

How Ombudsmen Help Legal Services Attorney

- * Obtain resident records quickly
- * Assist with understanding medical records - what provider could have done better or differently
- * Obtain and help interpret NH survey findings
- * Insight into nursing home, administrator, and proposed transfer location
- * Provide emotional support to resident during what can be a very traumatic time

How Ombudsman Legal Counsel Can Help Legal Services Attorneys

- * Maintain bank of sample motions and briefs
- * Consult on cases
- * Edit briefs
- * Explain resident records, survey findings, and nursing home rules and regulations
- * Conduct training on litigating involuntary discharge cases

Questions?

Michigan Long Term Care Ombudsman Program

<https://mltcop.org/>

Salli Pung, State Long Term Care Ombudsman
spung@meji.org

Mireille Phillips, Legal Counsel, MLTCOP
mphillips@meji.org



Collaboration Examples of LTCO and Legal Aid Programs

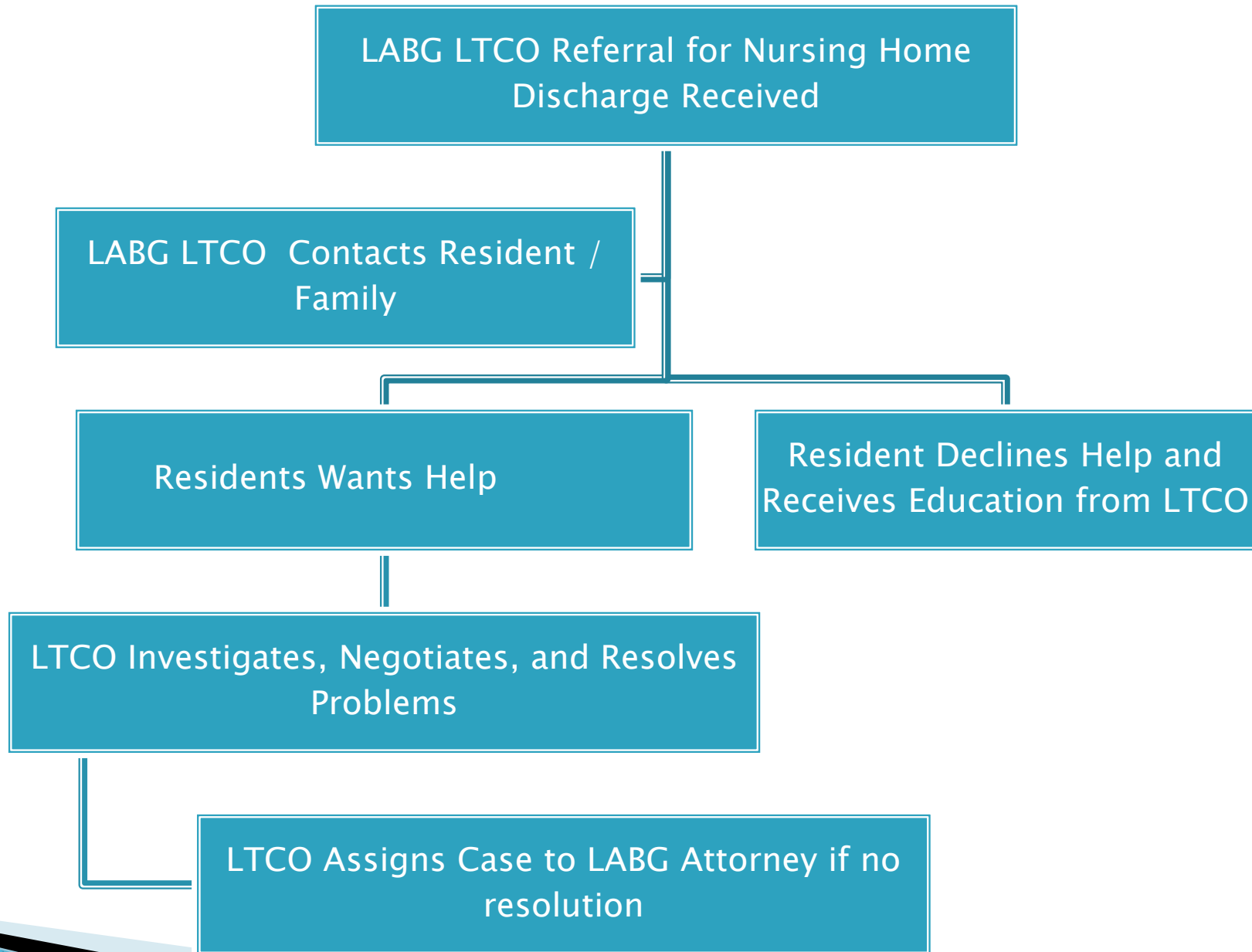
Stephanie D. Langguth, Esq.,
Economic Stability Unit Manager
Legal Aid of the Bluegrass
June 22, 2022

Kentucky LTCO Structure

- ▶ Kentucky's Department for Aging and Independent Living (DAIL) contracts with the Nursing Home Ombudsman Agency (NHOA) to operate the State Long-Term Care Ombudsman Program.
- ▶ Kentucky has 15 District Ombudsman affiliated with Area Agencies on Aging and Independent Living who coordinate Ombudsman services, along with the State Long-Term Care Ombudsman, Sherry Culp, who heads the statewide program.
- ▶ Some of the Area Agencies on Aging and Independent Living organizations contract with other agencies, such as Legal Aids or other non-profits to provide LTCO services.

LABG LTCO Discharge Referral

- ▶ Legal Aid of the Bluegrass (LABG) has the contract for two District Ombudsman Programs and the collaboration is seamless between the LTCO and LABG Attorneys.
- ▶ The LABG Ombudsman are also experts in identifying other legal issues that an attorney can assist with such as drafting Power of Attorneys, Revocation of Power of Attorneys, Living Wills, Wills, and Long-Term Care Medicaid issues.



LTCO Discharge Referral

- ▶ A District Ombudsman may get notice of a discharge either from the State Long-Term Care Ombudsman, the nursing home or the resident / resident's family.
- ▶ Once the LTCO has been asked to assist with the discharge they might investigate the matter and try to get the nursing facility to rescind the discharge and then if no resolution either help the resident file an appeal and refer them to Legal Aid for representation or send them to their local Legal Aid to file an appeal.

Collaboration is Key

- ▶ Each District Ombudsman should have a relationship with the local Legal Aid staff who handle discharge cases
- ▶ The LTCO and the Legal Aid should decide when a referral is necessary and plan on who is going to file the appeal

Help the LTCO Provides to the Legal Aid Attorney

- ▶ LTCO are boots on the ground and they provide details that it would be impossible for the attorney to know.
- ▶ LTCO can help the Legal Aid attorney gather records, interpret records, give details about the nursing home and staff, and in some situations be a witness at a hearing.

Discharge Based on Behavior Collaboration

- ▶ Legal Aid collaborates the most with the LTCO on nursing home discharges cases based on behaviors.
- ▶ In a recent case, the LTCO contacted LABG after they filed an appeal for a discharge due to allegedly not being able to meet the needs of the resident (but it was really being issued due to the resident's behaviors) and they referred the resident/family to call LABG.
- ▶ After the family contacted LABG, completed an intake, and was assigned to an attorney. The attorney got permission to speak with the LTCO and reached out to the LTCO to obtain a copy of the discharge/appeal.
- ▶ The LTCO was able to provide the attorney details of their involvement and knowledge about the situation.

Discharge Based on Behavior Collaboration Cont.

- ▶ The LTCO had attempted to get the facility administrator to rescind the discharge, but they were not willing. The LTCO tried to connect the facility with training to help them work with residents with dementia, but the facility declined the training. The LTCO kept detailed notes about conversations with the staff from the facility.
- ▶ The LTCO attended the personal care plan meeting at the request of the family due to the suggestion of the attorney and tried to assist in setting up an effective care plan.
- ▶ The LTCO testified at the discharge hearing about their involvement in the case such as: their meetings and conversations about the resident and shared their opinion about things that could be put in place to help the resident to not have behaviors.

RESOURCES

<https://ltcombudsman.org/uploads/files/issues/ltcop-and-legal-services-fact-sheet.pdf>

Representing Residents During Nursing Facility Discharge Appeal Hearings: The Basics

Purpose

The purpose of this fact sheet is to provide a basic overview about residents' rights in appealing nursing facility discharges and tips for Ombudsman program advocacy considerations before, during, and after an appeal hearing.

Before Using This Resource

For an understanding of residents' rights and facility responsibilities regarding discharge and/or the role of the Long-Term Care Ombudsman program and legal assistance providers we recommend the following:

- ✓ Read [*Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges*](#).
- ✓ Read the [*Long-Term Care Ombudsman Program \(LTCOP\) and Legal Assistance Developers Collaboration Toolkit*](#).
- ✓ Consult applicable state Ombudsman program policies and procedures.

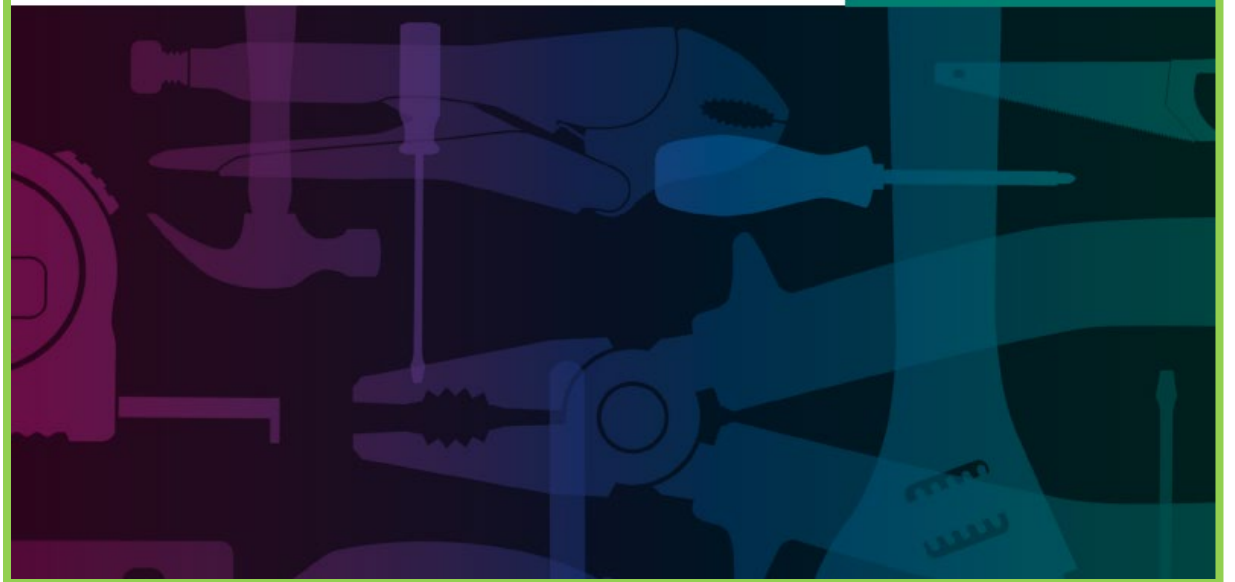
Key Points About Nursing Facility Discharge Appeals

- Residents have the right to appeal a discharge.¹ The discharge notice must include a statement of the resident's appeal rights, information about how to appeal, and their right to assistance in completing and submitting a request for an appeal.²
- States must provide a system for residents in nursing facilities to appeal facility-initiated transfers and discharges³ and an opportunity for an appeal hearing.⁴
- The nursing facility cannot discharge a resident before the appeal hearing, if the appeal is requested timely, or pending the hearing decision.⁵
- Residents have the right to appeal a hearing decision that was not in their favor.⁶ The appeal process and terminology varies by state.

[https://ltcombudsman.org/
uploads/files/support/enha
ncing-your-advocacy-
toolbox.pdf](https://ltcombudsman.org/uploads/files/support/enhancing-your-advocacy-toolbox.pdf)

Enhancing Your Advocacy Toolbox

Protecting Residents from Nursing
Facility-Initiated Discharges



https://ltcombudsman.org/omb_support/pm/collaboration/legal-assistance-developers-toolkit

Long-Term Care Ombudsman Programs and Legal Assistance Developers Collaboration Toolkit

Introduction

Long-Term Care Ombudsman Program

Every state has a Long-Term Care Ombudsman Program (LTCOP) that empowers residents, addresses complaints, and advocates for improvements in the long-term care system. Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. They work to resolve problems of individual residents and to bring about changes at the local, state and national levels that will improve residents' care and quality of life.

The program began in 1972 as a demonstration program. Now, the LTCOP exists in all states, the District of Columbia, Puerto Rico and Guam. Each state has an Office of the State Long-Term Care Ombudsman, headed by a full-time ombudsman. Thousands of local ombudsman staff and volunteers work in communities across the country as part of the statewide programs. These statewide programs are federally funded under **Title III** (page 44) and **Title VII** (page 150) of the OAA and other federal, state and local sources.

See **Title VII Chapter 2** (page 154) of the Older Americans Act for the authorizing language of the LTCOP.

Legal Assistance Developers

Title VII (page 168) of the Older Americans Act (OAA) requires each state to appoint a legal assistance developer (LAD). This position is similar to an SLTCO in that the LAD is responsible for developing and coordinating the state's legal services and elder rights programs. The LAD's role is becoming more integral as more and more states are moving toward an integrated legal and aging service delivery model. See this section for the authorizing language of the LAD.

The Basics of Nursing Home Evictions

JULY 2021

FEDERAL LAW

Federal law allows eviction from a nursing facility only for six reasons:

1. The resident has failed to pay.
2. The resident no longer needs nursing facility care.
3. The resident's needs cannot be met in a nursing facility.
4. The resident's presence in the nursing facility endangers others' safety.
5. The resident's presence in the nursing facility endangers others' health.
6. The nursing facility is going out of business.

If a nursing facility believes that it has grounds to evict a resident, it must give a written notice to the resident and resident's representative in a language that the resident and representative understand. The notice must include the alleged reason for the eviction, the planned eviction date, the location to which the resident will be transferred, an explanation of the resident's appeal rights, and contact information for the long-term care ombudsman program. In general, the notice must be given at least 30 days before the planned eviction, although in some cases a shorter notice period is allowed.

If the resident appeals, a hearing officer decides whether the nursing facility will be allowed to carry out the eviction. Hearing procedures vary from state to state. Generally the hearing is held in the facility itself.

The relevant federal regulations can be found at section 483.15(c) of Title 42 of the Code of Federal Regulations.

HOW TO CHALLENGE AN EVICTION

There are two simple steps in challenging an eviction:

1. Don't move out!
2. Request an appeal hearing.

The "don't move" advice seems obvious but in fact, many residents panic and move out after receiving a notice. Residents should resist any such sense of panic. Residents win most appeal hearings (with state-to-state variance), and there generally is little downside to remaining in the nursing facility and requesting a hearing.

The request for a hearing generally should be made to the designated state agency, which should be identified in the eviction notice. If the notice does not include the necessary information, the resident or representative should make phone calls or do internet research to identify the correct phone number or e-mail address. Understand that the agency conducting the hearings may or may not be the same agency that investigates complaints against nursing facilities. In this case, the resident is requesting a transfer/discharge hearing, which is not the same as filing a complaint.

Improper evictions are a longstanding problem in nursing facilities across the country. This information is part of a toolkit that offers resources for both consumers and professionals. [The full toolkit is available online here.](#)

<https://justiceinaging.org/wp-content/uploads/2021/07/The-Basics-of-Nursing-Home-Evictions.pdf>

Toolkit for Fighting Nursing Home Evictions

Improper evictions are a long-standing problem in nursing facilities across the country. Federal law allows eviction only for six narrow reasons, but facilities often evict residents for various invalid reasons, including being “difficult,” needing one-on-one attention, switching from Medicare to Medicaid payment, and not complying with treatment plans. Advocates and consumers can use the materials in the toolkit below to fight back.

The Basics of Nursing Facility Evictions

Recognizing Improper Evictions

Administrative Hearing Briefs

Seeking Court Order to Stop Hospital Dumping

Below advocates can access, download, and adapt five sample briefs developed by Justice in Aging for defending residents at eviction hearings.

Facility Alleges Nonpayment for Charges Incurred Prior to Resident's Medicaid Coverage

Facility Bases Transfer/Discharge on Supposedly Endangering Safety of Others

Facility Bases Transfer/Discharge on Supposed Need for Higher Level of Care

Facility Alleges Nonpayment While Resident's Medicaid Application is Pending

Facility Bases Transfer/Discharge on Resident's Refusal of Treatment

<https://justiceinaging.org/our-work/healthcare/long-term-services-and-supports/nursing-facilities/>

QUESTIONS?



The National Long-Term Care Ombudsman Resource Center

Connect with us:

www.ltcombudsman.org

ombudcenter@theconsumervoice.org



The National LTC Ombudsman Resource Center



@LTCombudcenter



Get our app! Search for "LTC Ombudsman Resource Center" in the Apple Store or Google Play

This project was supported, in part, by grant number 90OMRC0002-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.