

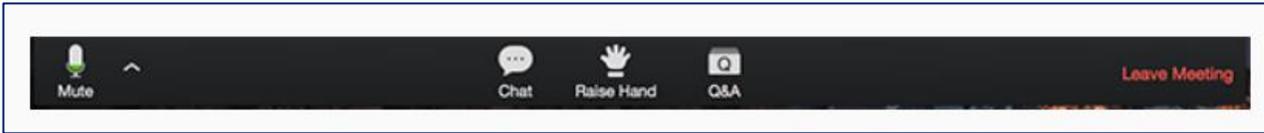


**The National Long-Term Care
Ombudsman Resource Center**

Protecting Residents from Inappropriate Evictions in Residential Care Communities

October 27, 2021

Welcome and Reminders



- Use the Q&A feature for questions for the speakers.

Question & Answer

The Q&A window allows you to ask questions to the host and panelists. They can either reply back to you via text in the Q&A window or answer your question live.

1. Click Q&A to open the Q&A window.
2. Type your question into the Q&A box. Click **Send**.



You have no question

What happens when I raise my hand?

Send Anonymously

Chat

The in-meeting chat allows you to send chat messages to and send a message to the host, panelists, and attendees (if permitted).

1. Click **Chat** to open the in-meeting chat.



2. The chat will appear on the right side of your Zoom window if you are not in full screen. If you are in full screen, it will appear in a window that you can move around your screen as needed.

3. To change who you are chatting with, click the drop down beside **To:**.



4. Type your message and press **Enter**.

- Use the chat feature to submit comments or respond to questions from speakers or other attendees.
- Please complete the evaluation questionnaire when the webinar is over.

NEW Certificates of Participation

- Assist representatives in achieving their annual in-service training/continuing education.
- Must participate in live Zoom training for at least 30 minutes.
- Certificate will include name, training details, and amount of time on webinar.
- FAQs - https://ltcombudsman.org/omb_support/training/certificates



Speakers



Eric Carlson
Directing Attorney
Justice in Aging



Amanda Scott
Idaho State Long-Term Care
Ombudsman



Molly Davies
Vice President, Elder Abuse
Prevention and Ombudsman
Services
WISE & Healthy Aging



Protecting Residents from Inappropriate Evictions in Residential Care Communities

Eric Carlson
Directing Attorney
October 27, 2021

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

What Is Assisted Living?

- Standards set by state law.
- Various terms used by the states.
 - E.g., assisted living, residential care, housing with services, etc.

Assisted Living Level of Care

- On average, assisted living resident has lesser care needs than nursing facility residents.
- But many assisted living residents have significant care needs – in many cases equal to or greater than the care needs of some nursing facility residents.

Allowing Admission of Residents with Greater Care Needs

- States have eliminated various admission restrictions.
 - E.g., former prohibitions on residents unable to walk, or with health care needs.
- Why?
 - Consumer demand.
 - Provider desire for broader consumer base.
 - Americans with Disabilities Act.

What **Can** Be Provided versus What **Must** Be Provided

- Level of care ceilings generally have been raised.
- But regulations generally do not require facilities to provide services up to regulatory ceiling.

Level of Care Limits May Be Vague

- States with more than one level of assisted living are more likely to set specific standards for level of care.
 - E.g., Assisted Living I and II.
- In states with one level of assisted living, the level-of-care standards are more likely to be set by
 - Admission agreements.
 - Ad hoc facility decisions.

Limited Relevant Federal Law

- Most states have limited Medicaid waiver funding for assisted living.
 - Usually funded through Medicaid home and community-based services (HCBS) waiver.
 - May have limited enrollment.
- HCBS waivers have quality assurance provisions, but they are generally invisible to residents.
- In March 2023, HCBS Settings Regulation will establish limited standards related to setting not being overly institutional.
 - 42 C.F.R. § 441.301(c)(4)-(6).

The Prime Directive in Fighting Evictions Is ...

- Don't
- Move
- Out!!!



What Is Facility Claiming?

Substantive Limitations in State Eviction Laws

- Common eviction justifications.
 - Facility can't meet resident's needs.
 - Nonpayment.
 - Various expansive justifications.
 - E.g., facility gives notice
 - Resident not compatible with others.
 - For the resident's welfare.

Can't Meet Resident's Needs

- In some states, facility may be citing a state law that does not allow residents with particular condition.
 - E.g., needing insulin injections, or having Stage 3 pressure sores.
- In such cases, be prepared to prove that the resident in fact does not have the disqualifying condition.
 - Maybe also challenge the state law under the Americans with Disabilities Act (but that obviously would be a heavy lift).

More General Claims of “Can’t Meet Your Needs.”

- These vaguer claims are more common.
 - E.g., resident’s worsening dementia requires too much staff time.
- Combat these claims by
 - Citing favorable language from
 - State law.
 - Admission agreement.
 - Pointing out that facility is misrepresenting resident’s condition.

Non-Payment

- Admission agreement sets private pay rates.
- Facility should be limited in what can be charged when resident eligible for SSI or Medicaid – but some state laws are deficient in this area.

“Supplementing” SSI

- Although SSI-eligible resident will have limited income, facility may attempt to obtain “supplementation” from family member or friend.
 - These claims should be challenged – facility should expect to receive any more than the designated SSI allocation.

Push Back Against Evictions Based on Resident Becoming Medicaid-Eligible

- Do **NOT** let facility enforce a supposed agreement by the resident to pay private-pay for a specified number of months or years.

No Private-Pay Rates for Medicaid-Eligible Residents

- In general, Medicaid-certified provider cannot charge a Medicaid beneficiary anything more than what is allowed under Medicaid rules.
 - Section 447.15, Title 42 of Code of Federal Regulations

“Duration of Stay” Agreements

- Historically, some LTC facilities have required period of private-pay residence as condition of accepting Medicaid.
- Explicitly barred by federal nursing facility law.
 - Section 483.10(f)(11), Title 42 of Code of Federal Regulations

Some Assisted Living Facilities Require “Duration of Stay” Promise

- Should be considered violation of federal regulations.
- But states generally have allowed the practice to continue.
 - In HCBS waivers, CMS generally defers to the states re: quality of care.

Challenge Is Required to Make Change

- Don't assume that duration of stay agreements are enforceable.
- Feel free to contact Justice in Aging for consultation if you encounter one of these situations.



Eviction Procedures

Procedures

- State's landlord-tenant law.
- Administrative hearing.
- None specified (or, at least, facilities believe that landlord-tenant law does not apply).

Good and Bad of Landlord-Tenant Law

- More expensive than administrative hearing.
- Generally, resident will be less likely to go that route, because of expense and being intimidated by court process.
- But facilities also are scared by the cost and intimidated by court process, and thus more likely to just let resident stay.

Landlord-Tenant Law in Practice

- Educated guesses:
 - When landlord-tenant law applies, few assisted living evictions go to trial.
 - Judges know very little about assisted living.



Federal HCBS Settings Rule

HCBS Settings Regulation

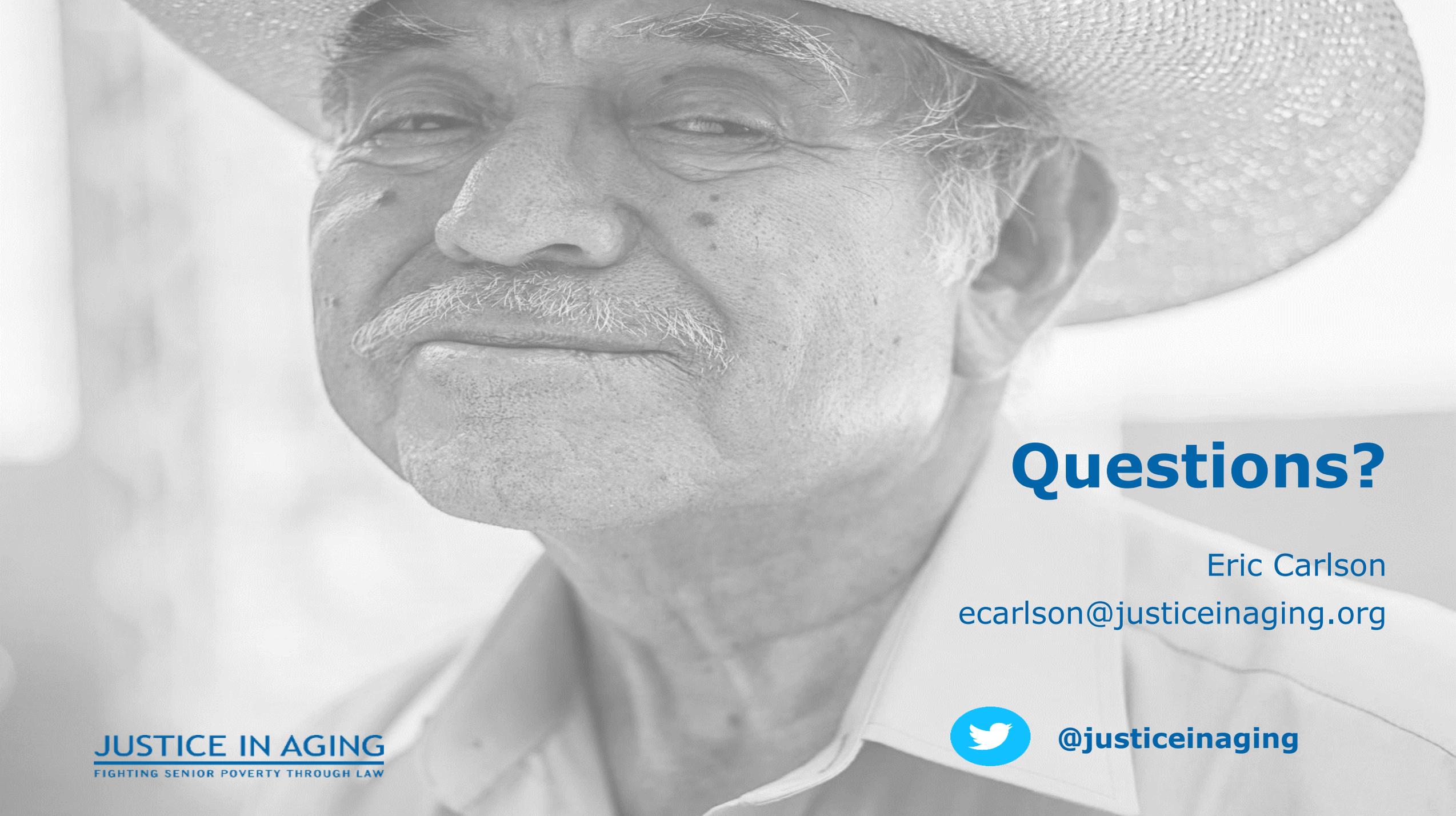
- Won't be effective until March 2023.
- Individual states have been developing transition plans to implement this regulation.

Eviction Requirement

- Person “has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law.”
- “[T]he State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.”
 - Section 441.301(c)(4)(vi), Title 42 of Code of Federal Regulations.

Remember, Not Effective Until March 2023

- Current advocacy might involve state's transition plan.
- Many states have merely repeated language from regulation.



Questions?

Eric Carlson

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JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW



IDAHO'S RESPONSE TO ALF EVICTIONS

Collaborative Partnership

What options did I have



- Run for my LIFE !
- Run towards the problem!!
 - First, I spoke with the Manager of the Residential Assisted Living Facility program at H&W (RALF)
 - Met with our legal council (Attorney General Office)
 - Reached out to Legal Aid, Intermountain Fair Housing and DisAbility Rights Idaho.

Answers to my Desperation



Courtney Holthus



Rachel Piscette



Zoe Ann Olson

Residents' Rights in Long- Term Care Seminar

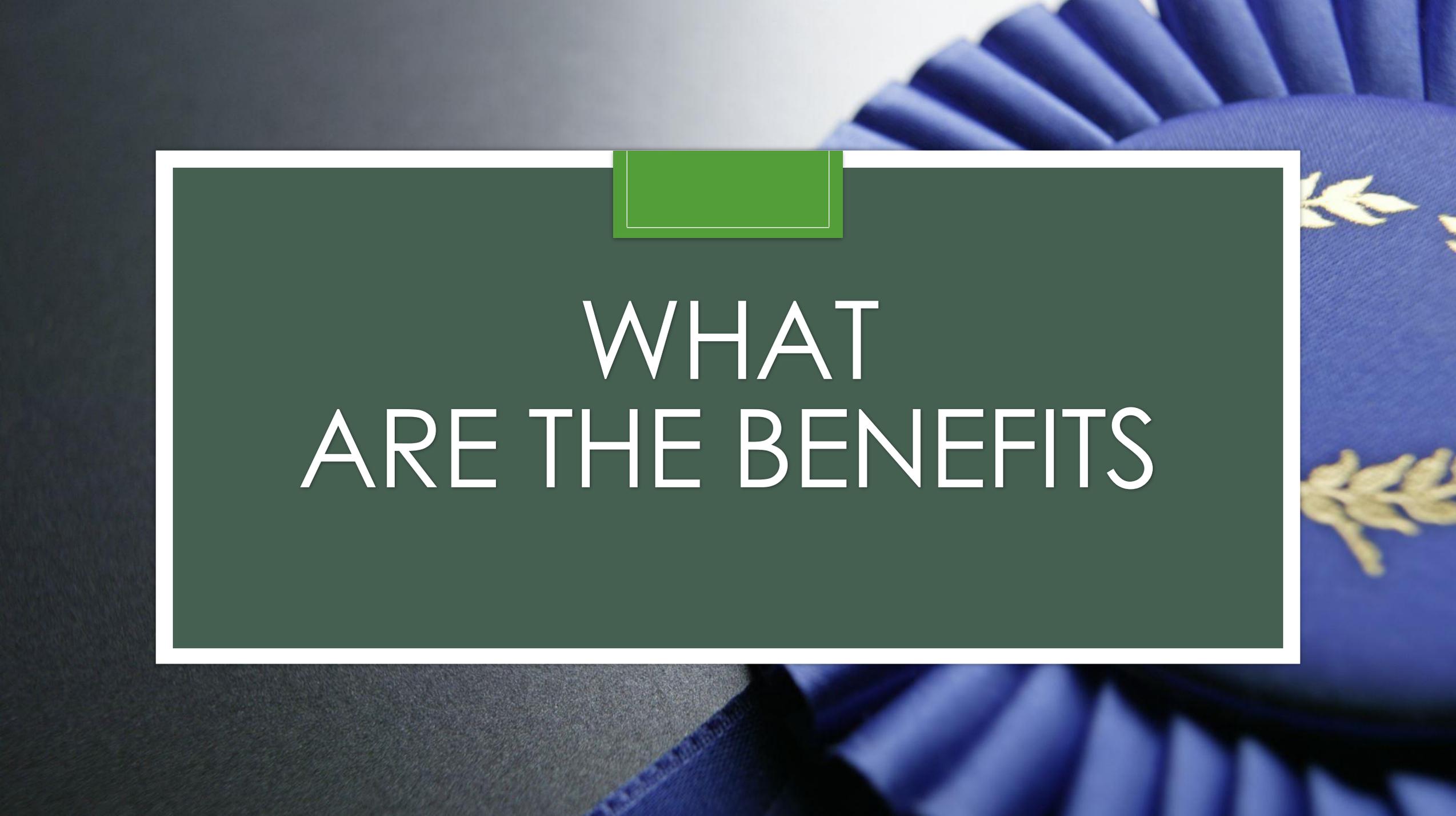
C H O I C E

P R I V A C Y

What tools have come from our collaboration

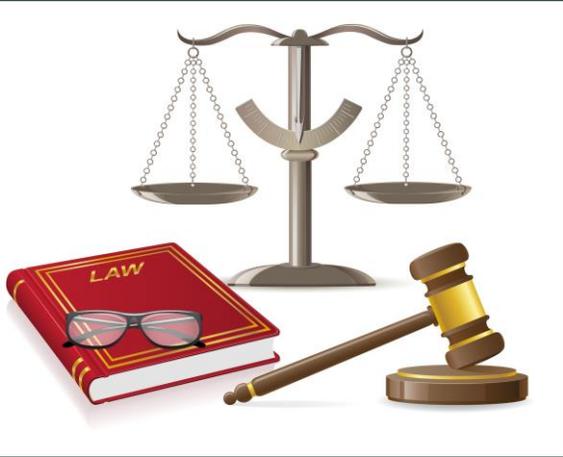
- Discharge/Eviction QA
- Resident Rights info Letter-Facilities
- Resident Rights info Letter-Residents
- Poster for facility --Discharge Evictions
- Resident info document
- Power Point training
- Continued consultation and referral





WHAT
ARE THE BENEFITS

Benefits include



Working with Idaho Legal Aid Services has expedited response to eviction cases for referrals by Local Ombudsmen. When ILAS receives a case from the ombudsman program they contact the local ombudsman to address and pull in resident and family.

Legal Aid takes on Cases which can slow the discharge process and challenges the discharge.

Limitations-

- Family and residents' willingness to pursue a legal suite once the resident has moved out is unlikely.
- The ombudsman doesn't learn of the eviction until after the discharge.



- Referrals to Intermountain Fair Housing Council (IFHC) for representation related to reasonable accommodations in the event of an eviction notice-
- A case of resident being evicted due to facility closure via homeless shelter/hospital. Resident's desire was to be admitted to the VA long term care facility.
- At minimum we have found that by having IFHC it slow the process so that the ombudsman can assist in the discharge process and assure it is a more appropriate setting and is what the resident's preference is.
- Re-send the eviction
- File complaints of discrimination with HUD or assist in obtaining an attorney to file in state or federal court.



DisAbility Rights Idaho

- Disability Rights Idaho provides advocacy to individuals with disabilities who reside in facilities. They advocate for residents' rights from a legal perspective.
- For settings where L/T does not apply – facilities 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**.
- 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 under state landlord tenant law**.



The view through a different window

- The advantages to building relationships with your State Advocacy Program, Legal services and Fair Housing Agency.

WISE & HEALTHY AGING

**LONG-TERM CARE
OMBUDSMAN PROGRAM**

COVERING CITY AND COUNTY OF LOS ANGELES

Molly Davies, LCSW

Executive Vice President

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

Collaborating with Homeless Shelters

- Identified residents getting discharged from SNF and RCC to homeless shelters inappropriately
- Ombudsman only discovers a fraction of these bad discharges
- Ombudsman wanted to intervene as soon as possible
- Started raising awareness about this to homeless shelter and homeless service providers
- Started showing up at homeless service provider events and meetings and talking about this issue
- Offered to give training on this issue

Training and Resources

- Created a training for homeless service providers -“Elders and Disabled Adults Discharged to Homeless Shelters from LTC Facilities”
- Created a LTC Facility Resident Transfer discharge guide for homeless and emergency shelter operators and advocates
- Collaborated with CSH (Corporation for Supportive Housing) who was hosting trainings open to all homeless shelters in Los Angeles
- CSH is a national organization that focuses on training, education, lending, policy reform, consulting and technical assistance for housing people experiencing homelessness

Relevance to Their Work

- Session provides tools to:
 - Help 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 of the training

- 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)?
- Learn from them

Training Outline

- LTC Ombudsman, roles, responsibilities, issues addressed and process
- List of collaborations with other agencies (establish credibility)
- Brief definition of LTC facilities and who residents are
- Facility obligations to residents during discharge
- Legal reasons for SNF and RCC transfer/discharge/eviction
- What to do when a SNF or RCC transfers a resident to homeless shelter from negotiations to making reports and formal appeals
- What an ombudsman can do to help
- Explore: Self Determination, cognitive impairment, AMA
- Exploring a bad transfer what to ask
- When is a transfer to a shelter ok?

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

A Guide for Homeless & Emergency Shelter Operators, and
Advocates



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RESOURCES

Webinar Resources

https://ltcombudsman.org/omb_support/training/trainings-and-conference-calls/2021

Idaho

WISE & Healthy Aging (CA LTCOP)

Why Your Nursing Home

Probably Can't Force You to Move Out



Three Important Things to Remember!

- The law limits the reasons for eviction from a nursing home.
- A nursing home has to give written notice of any eviction.
- A nursing home resident can appeal an eviction to a state hearing officer.

Limited Reasons for Eviction.

("Involuntary Discharge—appealing the 30 day notice")

Did you receive a discharge notice?

YOU HAVE RIGHTS!

As a resident of a long-term care facility or nursing home, you have the responsibility to follow the rules of the facility. If you do not follow the rules, the facility has the right to discharge you.

HOWEVER, you have rights in the discharge process. You have protections under Idaho regulations, Idaho landlord/tenant law, federal Fair Housing law, and Medicaid requirements.

Your rights during discharge include:

- **Proper Notice** – the facility must provide you with written notice, all requested documentation, and a proper amount of time to find another housing option
- **Right to Appeal** – you have the right to appeal your discharge and/or pursue legal action if the discharge is not correct
- **Getting Assistance** – you have the right to speak with your family, caregivers, the Ombudsman, an advocate, or a lawyer about your case
- **Staying in your Home** – you have the right to stay in your home while the discharge is pending, and not be locked-out or physically forced out. **YOU CANNOT BE FORCED-OUT OF YOUR HOME WITHOUT A COURT ORDER.**

Coeur d'Alene—Jan Young
Area Agency on Aging: Northern Idaho
(208)667-3179

Pocatello—Liz Delaney
Area Agency on Aging: Southeast Idaho
(208)233-4032

Lewiston—Becky Lee
Area Agency on Aging: Northern Central Idaho
(208)743-5580

Meridian—Stephanie Persinger
Area Agency on Aging: Southwest Idaho
(208)898-7060

Idaho Falls—Tera Fellows
Area Agency on Aging: Eastern Idaho
(208) 522-5391

Twin Falls—Marilyn Shiroma
Area Agency on Aging: South Central Idaho
(208)736-2122

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

A Guide for Homeless & Emergency Shelter Operators, and
Advocates



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Residents' Rights in Long- Term Care Seminar

C H O I C E

P R I V A C Y

<https://ltcombudsman.org/assisted-living>



The National Long-Term Care Ombudsman Resource Center

Specialized Information for:

- Nursing Homes
- Assisted Living/Board & Care
- Home and Community Based Services

Assisted Living/Board & Care

- ▶ ALF Compendium
- ▶ Reports/Resources
- ▶ Training Materials
- ▶ Information to Share with Consumers

Assisted Living



Strengthening assisted living standards is critical to protect vulnerable residents and ensure a reasonable quality of care. Follow the development of this issue as many seek to define assisted living in a meaningful way.

- **LTC Ombudsman Program Advocacy in Assisted Living Facilities Compendium**
- **Reports/Resources**
- **Training Materials**

QUESTIONS?

Are You New to the Ombudsman Program?



<https://ltcombudsman.org/new-ombudsman>

Are you new to the Ombudsman program?

HERE IS WHAT YOU NEED TO KNOW

- **GET TO KNOW THE NATIONAL OMBUDSMAN RESOURCE CENTER (NORC)**
[REVIEW LTCOMBUDSMAN.ORG/ABOUT](https://ltcombudsman.org/about)
NORC provides support, technical assistance, and training to long-term care Ombudsman programs. If you need assistance [email us!](mailto:info@ltcombudsman.org)
- **VISIT THE NORC WEBSITE**
[REVIEW LTCOMBUDSMAN.ORG](https://ltcombudsman.org)
The NORC website is filled with information, resources, and news from Ombudsman programs to support and inform programs across the country. Watch this short [video](#) as an introduction to the NORC website.
- **GET TO KNOW KEY NORC RESOURCES**
[REVIEW LTCOMBUDSMAN.ORG/KEY-NORC-RESOURCES](https://ltcombudsman.org/key-norc-resources)
This page serves as a shortcut to access key NORC resources quickly. If you have trouble finding a resource visit the [site map](#) to view all web pages.
- **JOIN NORC'S EMAIL LIST**
[REVIEW WWW.LTCOMBUDSMAN.ORG/SIGN-UP](https://www.ltcombudsman.org/sign-up)
Fill out the form on this page to receive the quarterly *Ombudsman Outlook*, monthly *NORC Notes*, training opportunities, and additional information from NORC!
- **GET TO KNOW THE LONG-TERM CARE OMBUDSMAN PROGRAM**
[REVIEW LTCOMBUDSMAN.ORG/NEW-OMBUDSMAN](https://ltcombudsman.org/new-ombudsman)
This page includes information on the history of the program, applicable federal law and regulations, key stakeholders, and an overview of available NORC resources.

MORE TIPS: [WWW.LTCOMBUDSMAN.ORG](https://www.ltcombudsman.org)

https://ltcombudsman.org/uploads/files/support/Get_to_Know_NORC.pdf

Join Our Mailing List!



<https://ltcombudsman.org/sign-up>

Events

**Residents' Rights Month
October 2021**



<https://theconsumervoice.org/events/2021-residents-rights-month>

**2021 Consumer Voice Conference
November 3 – 5**



<https://theconsumervoice.org/events/2021-conference>



Your input matters!

Please complete the evaluation after we close out the webinar.



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

Connect with us:

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The National LTC Ombudsman Resource Center



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