

## The Role of the Long-Term Care Ombudsman Program in Nursing Facility Closures

Long-Term Care Ombudsman programs (LTCOPs) have an important role advocating with, and for, residents of nursing facilities that are closing. This guide reviews the federal requirements regarding nursing facility closures, highlights Ombudsman program management and advocacy considerations, and shares additional resources. More comprehensive resources are available in the [Nursing Home Closure Toolkit for Ombudsmen and Advocates](#). The toolkit includes state case studies, examples of letters to residents and families, forms, checklists, and consumer resources.

### Federal Requirements

#### Notice Requirements<sup>1</sup>

At least 60 days prior to the closure date, or not later than the date set by the Secretary of Health & Human Services if participation in Medicare and Medicaid has been terminated, the facility administrator must provide written notice and a copy of the facility's state-approved closure plan to the Office of the State Long-Term Care Ombudsman. At the same time, written notice of the impending closure and the closure plan must be given to facility residents, their representatives, and the state survey agency. The notice to residents and their representatives must include the plan for transferring residents. Also, the facility must provide assurances that residents will be transferred to the most appropriate facility or setting with comparable quality, services, and location by taking into consideration the needs, choice, and best interest of each resident.

From the date when the facility submits notice to the State regarding closure, it should not admit any new residents.

#### Transfer Procedures

The closing facility is required to facilitate a safe and orderly closure. That includes sending resident information, including contact information for the resident's doctor(s) and family (or representative); advance directive information, if relevant; special care instructions and comprehensive care plan goals; and all other necessary information, such as a copy of the resident's discharge summary to the resident's new facility or setting.<sup>2</sup>

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<sup>1</sup> 42 CFR 483.70(l)(1)(i) – 483.70(l)(1)(ii). Note also that the temporary relocation of residents during an emergency does not constitute closure. In the case of a facility that is being terminated from participation in Medicare and/or Medicaid, notice must be communicated when the Secretary of the Department of Health and Human Services deems "appropriate." Id.

<sup>2</sup> 483.15(c)(2)(iii). See also 483.21(c)(2) for information that must be included in the discharge summary.

Every effort should be made to lessen the transfer trauma for residents. Such as, facility staff reviewing resident care routines, needs, and preferences with staff at the receiving location, and assisting residents and their representatives with obtaining information necessary to make an informed decision about relocation.<sup>3</sup>

## Transfer Trauma

***Relocation stress* is defined as “the physiologic and psychosocial disturbances caused by change in health care environment”<sup>4</sup> and is also known as *transfer trauma* when the relocation is *involuntary* and the *outcomes are negative*.<sup>5</sup> Symptoms may be obvious or subtle and can include: loneliness, depression, anger, apprehension, anxiety, changes in eating and sleeping habits, dependency, insecurity, lack of trust and a need for excessive reassurance.<sup>6</sup>**

## Closure Plan

The nursing facility must submit its closure plan to the State Survey Agency for review and approval.<sup>7</sup> The plan must address the steps for a safe and orderly facility closure, including the transfer and adequate relocation of residents to the most appropriate facility or other setting “in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.”<sup>8</sup> It must also identify the individuals responsible for implementing the plans and procedures are successfully carried out, and the contact information of the primary facility contact(s) responsible for the daily operation and management of the facility during the closure process.<sup>9</sup>

## State Survey Agency Responsibilities

In addition to reviewing and approving the facility’s closure plan, the State Survey Agency should request the facility’s admissions records to verify that no new residents have been admitted after the date that the notice of closure was provided; and ensure that the facility is implementing the components of the closure plan. Evaluation of the facility’s closure plan, policies and procedures may include assistance from the State Long-Term Care Ombudsman.<sup>10</sup>

The State Survey Agency should also have procedures in place to notify the State Ombudsman (Ombudsman) of voluntary and planned terminations of provider agreements, including facilities’ closure dates. Additionally, the State Survey Agency should consider Ombudsman information and the credibility of the provider’s allegations of compliance, in addition to sharing Statements of Deficiencies and Plans of Correction with the Ombudsman.<sup>11</sup>

<sup>3</sup> State Operations Manual Appendix PP

<sup>4</sup> Carpenito-Moyet, L., Nursing diagnosis: Application to clinical practice (12th ed.); Lippincott, Williams and Wilkins, Philadelphia; 2007.

<sup>5</sup> Hodgson, N., Freedman, V., Granger, D. and Erno, A., Biobehavioral correlates of relocation in the frail elderly: Salivary cortisol, affect, and cognitive function, Journal of the American Geriatrics Society; 52(11); p.1856-1862; 2004.

<sup>6</sup> Carpenito-Moyet, L., 2007.

<sup>7</sup> 483.70(l)(3). See also State Operations Manual Appendix PP.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> CMS State Operations Manual Ch. 3 (Rev. 202), 3000B (June 19, 2020).

# Ombudsman Program Management and Advocacy Considerations

## State Ombudsmen

- Create policies and procedures for closure that highlights federal and state requirements and explains the role of the Ombudsman, Ombudsman representatives, and how the program will work with other state and local entities.
- Advocate for the creation of, or coordinate, a relocation team that includes representatives of all entities that may be involved in the nursing facility closure process such as the State Survey Agency, Department of Aging, Medicaid Agency, Department of Mental Health, Money Follows the Person Program, Protection and Advocacy, Adult Protective Services, etc.
- Identify and train a member of the State Ombudsman Office to act as a relocation specialist. Examples of relocation specialist responsibilities include, but are not limited to, coordinate Ombudsman program activities related to closures, provide technical assistance and training to Ombudsman program representatives about closures and relocations, represent the Ombudsman program on the relocation team (if applicable), and identify trends and “lessons learned” during closures and share with involved entities.
- Develop resources for residents and families on residents’ rights throughout the closure process, including how to contact the Ombudsman program and where to file a complaint or get help.
- Develop in-service training, with examples of resident experiences, for nursing facility staff about how to prevent, identify, and minimize transfer trauma.
- Develop consumer education materials regarding identifying, preventing, and minimizing transfer trauma.
- Advocate for the facility to remain open, and Medicare and Medicaid payments to continue, until all residents have been relocated.
- Urge the placement of a temporary manager or receiver if necessary to protect the health and well-being of the residents.
- Contact the state employment agency and request that they provide employment resources to the staff.

## Ombudsman program representatives

- Be aware of potential warning signs of issues that may affect resident care during closures and ask residents about their experiences (e.g., significant loss of staff; major reduction in quality of services, such as activities, food, and housekeeping).
- Meet one-on-one with individual residents and/or resident representatives (families) to discuss residents' rights, the closure process, and their discharge planning process.
- Create opportunities for regular updates for residents, families, and staff on the status of the facility and any necessary or helpful information regarding the closure and relocation processes.
- Communicate frequently with partner agencies and organizations involved in the closure process or that advocate for residents (e.g., State Survey Agency, Department of Aging, Medicaid Agency, Department of Mental Health, Money Follows the Person Program, Protection and Advocacy, Adult Protective Services, etc.).
- Share information about how to prevent or minimize transfer trauma with residents and families.
- Provide in-service training for staff of the closing and receiving facilities about how to prevent, identify, and minimize transfer trauma.
- Organize and facilitate a group meeting with residents, families, and representatives of state agencies to discuss the closure process, residents' rights, facility responsibilities, and address questions.
- Encourage the closing facility administration to assist their staff with future employment options (e.g., closing facility leadership could refer staff to their sister facilities, provide staff with a list of employment resources).
- Follow up with transitioned residents after the closure and relocation to check in on their well-being and provide continuity. Ask questions about their experience and provide support and advocacy as needed (e.g., if they are experiencing transfer trauma advocate for support, ensure their belongings arrived at the new location).

Ombudsman program advocacy during the closure and relocation process is critical to ensuring residents' rights are protected and supported. As you can see from these examples, your work during closures remains consistent with the role and responsibilities of the Ombudsman program in that you are to ensure others do their job before, during, and after nursing facility closures, not to do their job (e.g., pack belongings, transport residents to their new location, coordinate transitions, etc.). If you have questions about your role, review your state program policies and procedures and consult with your supervisor and/or State Ombudsman.

## Resources

- [Nursing Home Closures Toolkit for Ombudsmen and Advocates](#) (Consumer Voice)
- [Successful Transitions: Reducing the Negative Impact of Nursing Home Closures](#) (Consumer Voice)
- *Know Your Rights During a Nursing Home Closure* – [postcard](#), [brochure](#) (Consumer Voice)
- [The Role of Long-Term Care Ombudsmen In Nursing Home Closures And Natural Disasters](#) (NORC)
- [Directory of State Agencies on Aging and Disabilities and Long-term Services and Supports](#)



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