



**Office of the
State Long-
Term Care
Ombudsman**

Empowering Choice of Residency

A Path to Avert Involuntary Discharges for Failure to Pay

Goals



Avoiding Discharge and creating Continuity of Care

In order to assure residents
care needs and respect their
rights



Timely Payment to Facility

In order to make sure the
facility receives the financial
compensation for providing
care



Regulatory compliance With Discharge Laws/Rules

To make sure the facility
understands and follows
laws/rules related to
involuntary discharge

The Workgroup

Ombudsman Office

Adult Protective Services

Adult and Family Services

Care Oklahoma

Leading Age Oklahoma

OKALA

Department of Health

CEO &
Founder

Disability Law Center

Alliance on Aging

Averting Involuntary Discharges for Failure to Pay

A Review of Roles and Processes

We didn't do
this alone

A Special Thank you for the DHS Office of Innovations, Rhonda Souders, for mapping the process in swim lanes for us.

01

Roles and
Responsibilities

Swimlane



Adobe Acrobat
Document

02

Critical
Processes

Kaizen Bursts Indicate Critical
Junctures

03

Acronyms

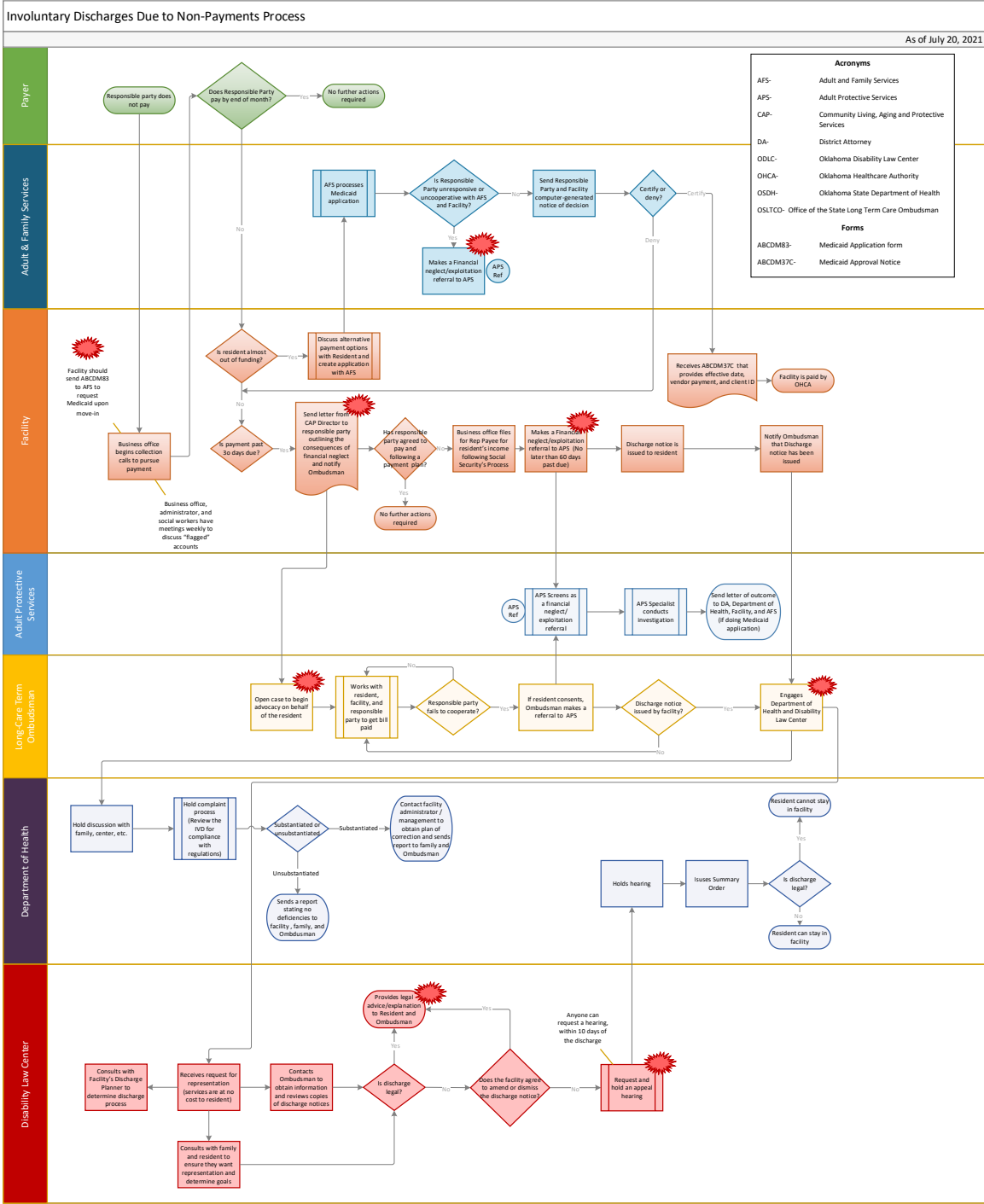
Acronyms

AFS-	Adult and Family Services
APS-	Adult Protective Services
CAP-	Community Living, Aging and Protective Services
DA-	District Attorney
ODLC-	Oklahoma Disability Law Center
OHCA-	Oklahoma Healthcare Authority
OSDH-	Oklahoma State Department of Health
OSLTCO-	Office of the State Long Term Care Ombudsman

Forms

ABCDM83-	Medicaid Application form
ABCDM37C-	Medicaid Approval Notice

Swimlane Process Map





OUR AGENDA



LTC Facility Processes

Kristy DeRoin, Jeromy Buchanan
and Melissa Holland



Medicaid Roles and Processes

Cindi Morris



APS Involved Medicaid

Director Jeromy Buchanan



Long-Term Care Ombudsman

William Whited



Oklahoma Disability Law Center

Solola Webb, J.D.



Oklahoma State Department of Health

Janene Stewart



**Presented by Kristy DeRoin
And Jeromy Buchanan**

**Nursing Homes
& Care Providers**

**Facility Triggers and the
Implications Of Financial
Exploitation And Neglect**

Facility Triggers

Facility Role

Facility Business Office

Trigger	Action Steps
Non-Payment of Care	ACTION REQUIRED Begin collection efforts as soon as payment is missed. 1. If payment is received by end of month – no further action is needed. 2. Does responsible party or resident indicate they are out of funding? If yes - make application with AFS for Medicaid eligibility determination. ➤ Apply - Send in ABCDM83 either at time of admission or when responsible party/resident has indicated funds have been depleted. ➤ Collect - estimated patient liability monthly. Total monthly income less \$75 personal spending allocation. 3. If payment is not received within 30 days and collection attempts go unanswered: ➤ Letter - Send letter from CAP Director ➤ Rep Payee - Facility Files for Rep Payee ➤ Referral - Facility makes a Financial Neglect/Exploitation referral to APS(www.OKHotline.org or 1-800-522-3511) ➤ Eviction - Discharge Notice is issued to the resident ➤ Notification - Notify Ombudsman that Discharge Notice has been issued. Key Personnel - Ombudsman Supervisors (oklahoma.gov)

CAP Director Letter



ADULT PROTECTIVE SERVICES
Sequoyah Building
2400 N Lincoln Blvd
Oklahoma City, OK 73105
800-522-3511



August 19, 2021
Department of Human Services
Attn: Caretaker of Vulnerable Adult
2400 N. Lincoln Blvd.
Oklahoma City, OK 73105

Re: Failure of Caretaker to Pay for Nursing Care

Dear Caretaker,

The Oklahoma Department of Human Services (OKDHS) has responsibilities, pursuant to the following legal authority, to protect the public's health or safety and investigate or obtain information for the purposes set forth in and authorized by said cited authority:

- The Protective Services for Vulnerable Adults Act, 43A O.S. §§10-101 through 10-114.

As the Director of Community Living, Aging and Protective Services, I am obliged to inform you of the potential consequences for failing to use the resident's resources to pay for the care of the vulnerable adult for whom you have assumed the role of caretaker.

"Caretaker" means a person who has:

- a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
- b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act.

43A O.S. §10-103(A)(6).

Failure by a caretaker or responsible party to pay or to keep current an account with a nursing care facility may result in an allegation of financial neglect or exploitation, which, if substantiated, could result in prosecution by the State of Oklahoma pursuant to 21 O.S. §§843.1 – 843.4.

"Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.
43A O.S. §10-103(A)(9).

Financial neglect" means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

- a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
- b. refusing to pay for necessities or utilities in a timely manner, or
- c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

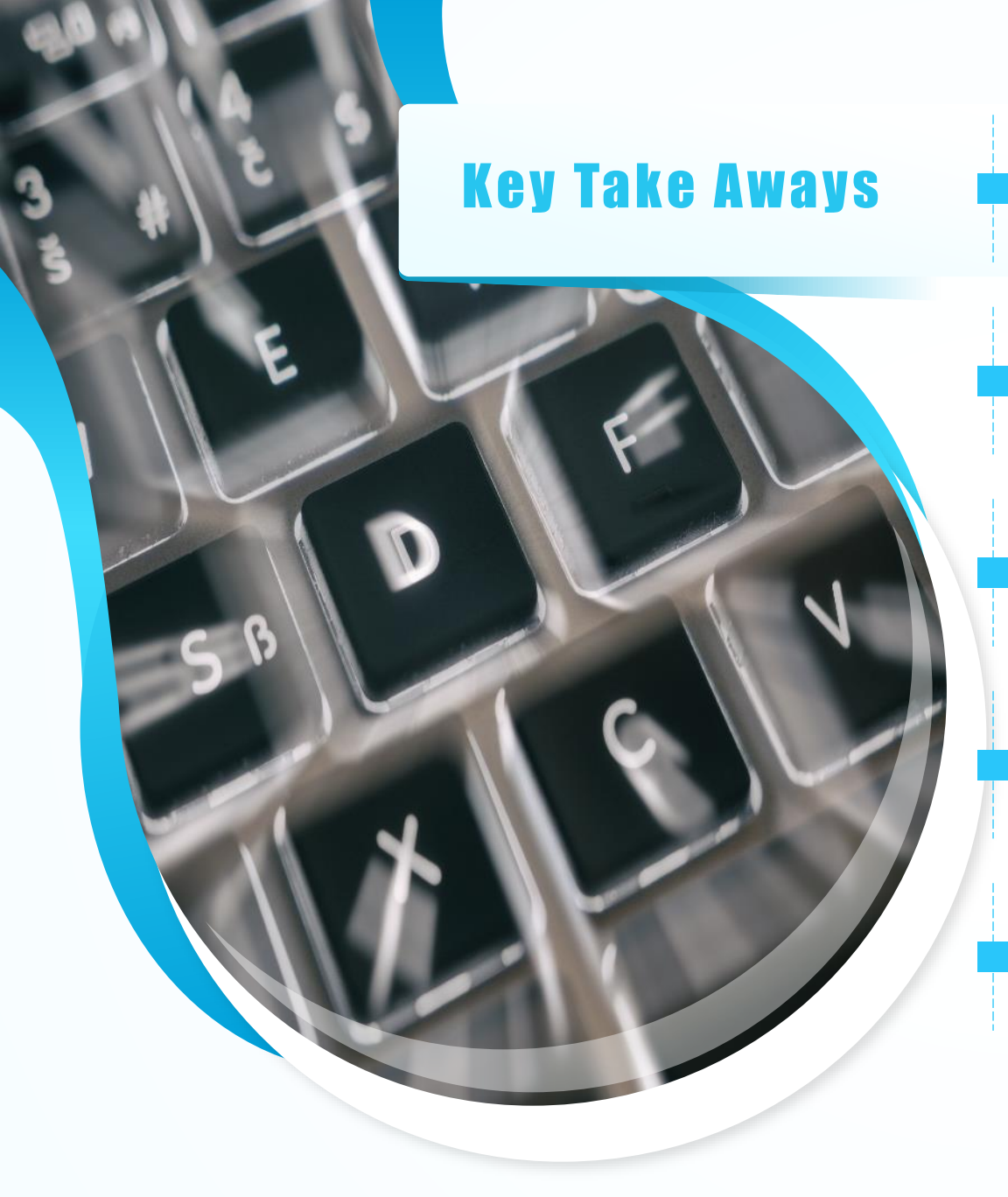
43A O.S. §10-103(A)(10).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeromy Buchanan".

Jeromy Buchanan

Director of Community Living, Aging and Protective Services



Key Take Aways

Don't Let too much time pass before Acting

As soon as the bill is 30 days past due, act.

Educate about financial exploitation/neglect

The letter from Director Buchanan is available for you to use in your education

Apply for Medicaid ASAP

Medicaid can only be back dated for 90 days
(not applicable for assisted living)

Refer allegations of financial exploitation or neglect to APS as soon as you find out about it

Medicaid Approval for Hardship requires APS involvement

Engage the Ombudsman for assistance

If discharge notice is issued notify the Ombudsman.

**Facility
Processes
and the
implications
of financial
exploitation
and neglect**

Questions



Presented by Melissa Holland

**Assisted Living
Providers**

**Facility Triggers
And how they
Differ from
Nursing Homes**

Assisted Living Facility Triggers

Assisted Living Facility Role

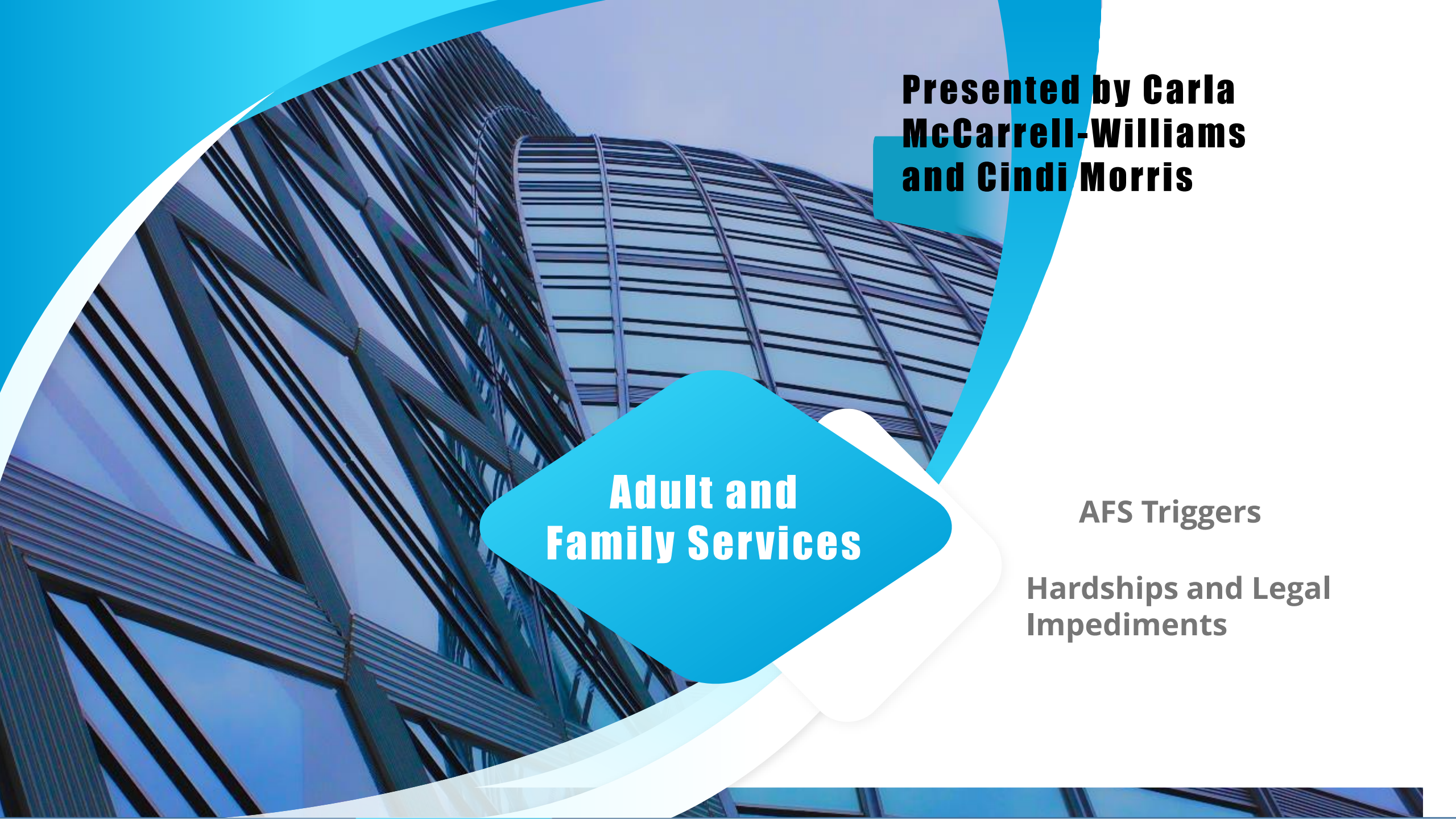
Facility Business Office

Trigger	Action Steps
Non-Payment of Care	ACTION REQUIRED Begin collection efforts as soon as payment is missed. 1. If payment is received by end of month - no further action is needed. 2. If payment is not received within 30 days and collection attempts go unanswered: ➤ Letter – Send letter from CAP Director ➤ Referral – Facility makes a Financial Neglect/Exploitation referral to APS ➤ Eviction – Discharge notice is issued to the resident, the resident's representative, and/or the person responsible for the payment of charges for the resident's care ➤ Notification – Written notice is sent to the OSDH



Assisted Living Providers

Questions



**Presented by Carla
McCarrell-Williams
and Cindi Morris**

**Adult and
Family Services**

AFS Triggers

Hardships and Legal
Impediments

AFS Triggers

Adult Family Services - APS Involved Medicaid

Trigger	Action Steps
➤ APS Involved Client with Pending Medicaid Application, or a Pending Review	ACTION REQUIRED. Case action requires LTC supervisor approval. Do not deny or close benefits before contacting the APS worker. ONGOING ACTION REQUIRED. The AFS worker will communicate about any type of case change or activity and work with the APS worker to obtain eligibility documentation. If eligibility cannot be determined, assess the need for a legal impediment or hardship determination. Legal impediments and hardships may be requested by the AFS supervisor. If a legal impediment or hardship is needed, send a request to HRMS2@okdhs.org.
➤ Evidence that Client with Open Medicaid Application may be Victim of Exploitation or Financial Neglect	ACTION REQUIRED. Submit an APS Referral immediately. ➤ Public Reporting Portal: www.AbuseisnotOK.org ➤ Abuse and Neglect Hotline: 1-800-522-3511

Hardships and Legal Impediments

Hardships Nursing Home Hardship Policy 317:35-19-20(5)(H)

The following actions are detrimental to the approval or denial of a hardship

- Communication is KEY
- AFS and/or the Facility needs to make an APS referral for Financial neglect/exploitation
- Importance of the APS referral date
- Importance of actions taken to stop exploitation

Legal Impediment Policy 317:35-5-41(b)

Legal Impediments can be considered when, a countable resource isn't available to be converted for current use due to a legal impediment.

- Legal Impediments are not indefinite. All reasonable steps to initiate legal action must be started within 30 days. For the resource to be considered as unavailable while the legal action is in process.

Hardships and Legal Impediments

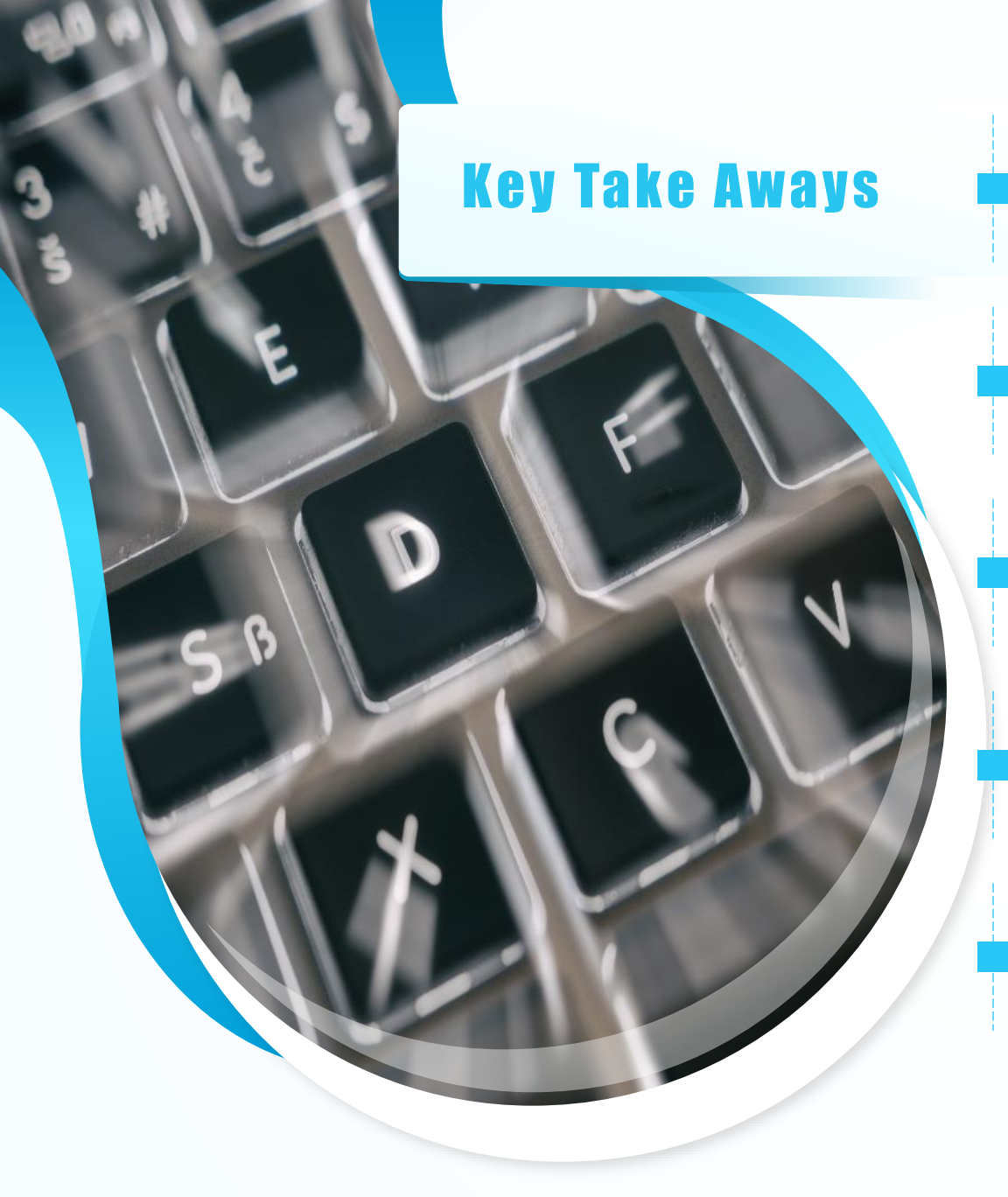
Hardships

Nursing Home Hardship Policy 317:35-19-20(5)(H)

- If a determination is made and documented that the cost of making a resource available exceeds the gain, the member will not be required to pursue action to make it available.

Examples of legal impediments include but are not limited to:

- Clearing of an estate, Probate, Petition to sell, Appointment of legal guardian or Power of Attorney



Key Take Aways

Communication is Key

Keep the lines of communications open between the applicant/POA/Guardian, AFS and APS.

Take Action

Don't wait initiate communication or make a referral

- Hardship requests, if approved, can only be backdated 60 days from the Date an exploitation referral was made;



Medicaid Hardships and Legal Impediments

Questions



Presented by Director Jeromy Buchanan

**Adult
Protective
Services**

APS Triggers

Letter from Director Buchanan

APS Triggers

Adult Protective Services APS Involved Medicaid

APS Worker or MAPSS

Trigger	Action Steps
➤ APS Referral Due to Notice of Eviction	ACTION REQUIRED. Send the following information to AFS County Director, AFS Supervisor, LTC Worker, APS Supervisor, and HRMS2@okdhs.org. Refer to LTC worker directory: LTC Worker Directory. 1. Subject Line: APS/NH Referral 2. Email Body: ➤ Client Name ➤ AFS Case # ➤ Nursing Facility ➤ County # ➤ Brief Description of Circumstances that led to the Notice of Eviction

APS Ongoing Action

APS Worker or MAPSS

Trigger	Action Steps
➤ APS Client with Open Medicaid Application	ACTION REQUIRED. Send the following information to the AFS County Director, AFS Supervisor, LTC Worker, and APS Supervisor. Refer to LTC worker directory: LTC Worker Directory. 1. Subject Line: APS Involved Medicaid 2. Email Body: ➤ Client name ➤ SSN ➤ AFS case # ➤ APS RID # ➤ Guardianship or non-guardianship ➤ Type of allegations ➤ APS worker name and contact ➤ "Responsible party" listed for communication ➤ Current address and contact information with a note specifying if the AFS system needs to be updated ➤ Nursing facility ➤ County # ➤ Date of LTC application 3. ADD to Service Plan: ➤ Check the "Medicaid Application Pending" box 4. Make Contact: ➤ Conduct a TEAMS meeting or TEAMS chat with the AFS worker to briefly staff the case ONGOING ACTION REQUIRED. The APS worker or MAPSS worker will communicate about any type of case change or activity and work with the AFS worker to obtain eligibility documentation. ❖ Do NOT close the APS case before the Medicaid Application has been approved. If eligibility cannot be determined, assess the need for a legal impediment or hardship determination. Legal impediments and hardships may be requested by the AFS supervisor. If a legal impediment or hardship is needed, send a request to HRMS2@okdhs.org.



Key Take Aways

APS does not require resident consent to investigate

As soon as the bill is 30 days past due, make a referral to both APS and the Ombudsman.

Educate about financial exploitation/neglect

The letter from Director Buchannan is available for you to use in your education

Financial exploitation and Neglect is a crime

Title 21 indicates a person found guilty of the crime may be punished by fine and/or imprisonment

A substantiated allegation of financial neglect or exploitation opens the door for a hardship request for Medicaid eligibility



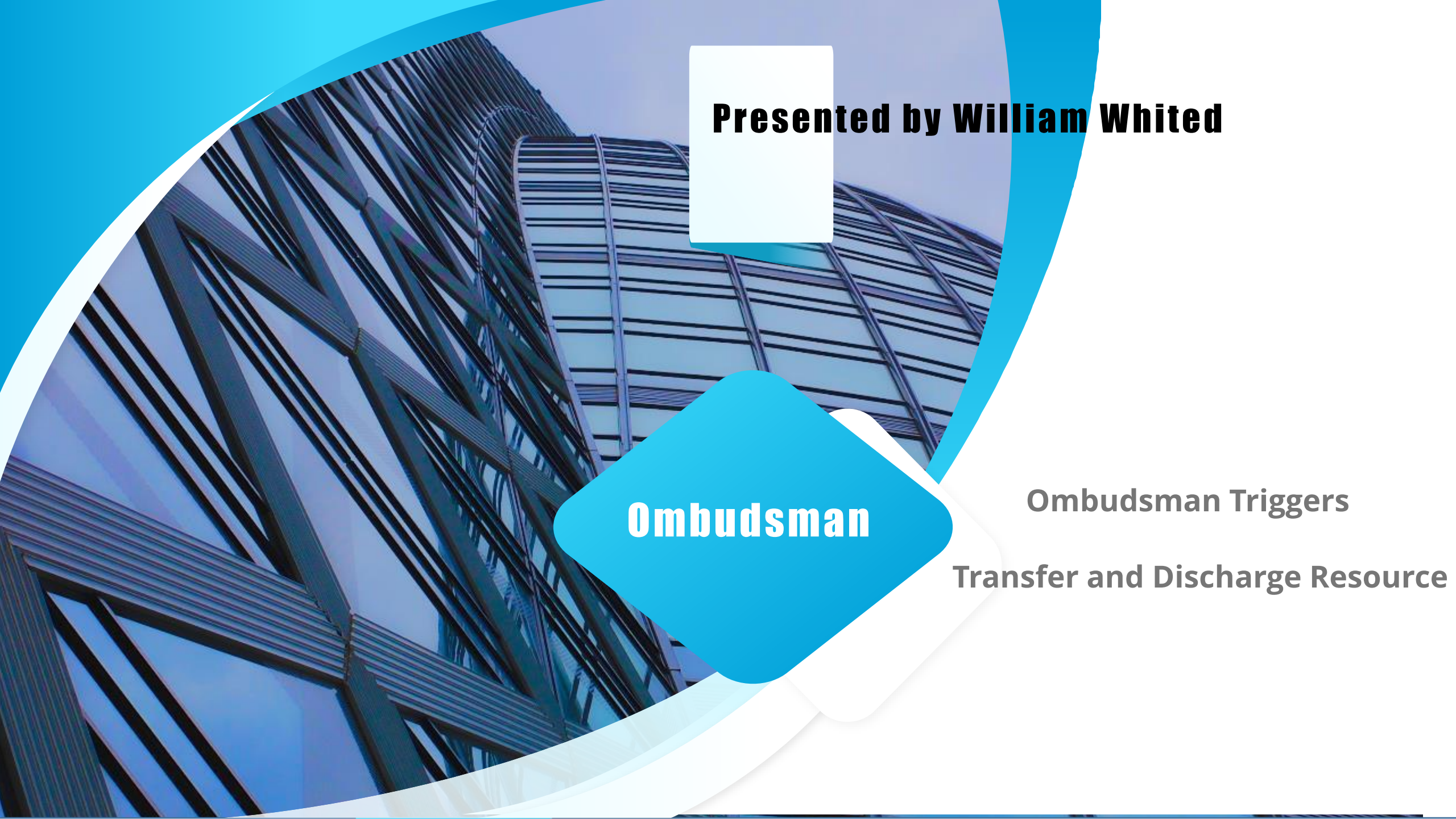
Adult Protective Services

Questions



Break Time

15 Minutes



Presented by William Whited

Ombudsman

Ombudsman Triggers

Transfer and Discharge Resource

Ombudsman Action

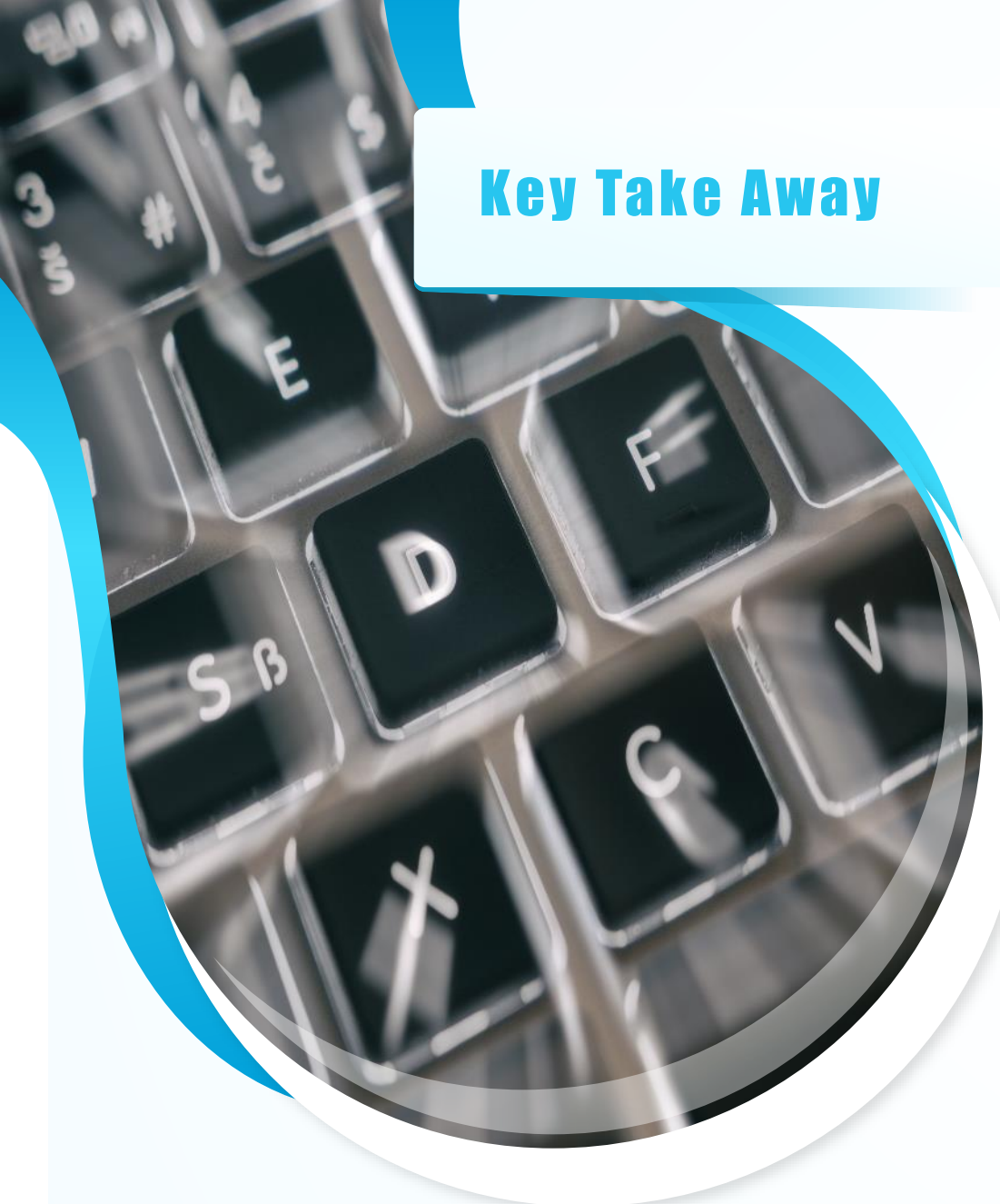
Office of the State Long-Term Care Ombudsman

Trigger	Action Steps
➤ Ombudsman is contacted about an involuntary discharge	ACTION REQUIRED. CMS rules requires all Medicaid and Medicare certified Nursing Homes to send a copy of every discharge notice a facility issues to the Long-Term Care Ombudsman Program. The following protocol will be followed when an Ombudsman receives a request from the resident, the family or the facility for assistance in averting a potential discharge for failure to pay. 1. A case will be opened for advocacy assistance: ➤ An in-person visit with the resident will be made within five business days. ➤ Consent will be sought from the resident and/or their legal representative to proceed in taking actions to avert the involuntary discharge: i. If consent is denied, Ombudsman cannot act; ii. If consent is received, Ombudsman will proceed with coordinating with facility, resident and other parties to create a plan to avert any potential discharge for failure to pay; iii. This can occur whether a discharge notice has been issued or not. We

Ombudsman Action Continued

Office of the State Long-Term Care Ombudsman

Trigger	Action Steps
➤ Ombudsman is contacted about an involuntary discharge	Actions continued i. We encourage facilities to request assistance from the Ombudsman before a discharge notice is ever issued; ii. If the Ombudsman discovers the failure to pay is a result of financial exploitation or financial neglect the Ombudsman will seek consent and take proper steps to make a referral to Adult Protective Services (APS) for further investigation; iii. If a discharge notice has been issued the Ombudsman will assist the resident with filing appropriate appeals, communicating with APS, their Medicaid eligibility specialist and seeking legal representation. iv. The goal will be to avert the discharge, address any possible exploitation and/or financial neglect and to identify pathways for payment for their care in the facility 2. A case in this instance is only consider resolved when the resident is allowed to remain in the facility and any potential discharge has been averted. 3. If a client/attorney requests a hearing: ➤ The Ombudsman may act as a witness, Provide technical assistance or a liaison.



Key Take Away

Ombudsman are the Residents' Advocate

Ombudsman will open a case for advocacy but must have consent from the resident to act.

Ombudsman Can work with the Payer to identify barriers and resolutions

The goal is to avert discharge and make sure the facility is paid

Federal Regulations require Facilities to notify the Ombudsman if a discharge notice is issued

Failure to pay requires a written 30 day discharge notice

Ombudsman will engage APS, ODLC and OSDH with consent of the resident

The goal is to create continuity of care for the resident.

Residents have the right to seek a hearing if an involuntary discharge is issued

Referrals may be made to ODLC or others for legal representation



**Ombudsman
Advocacy**

Questions



Presented by Solola Web, JD

**Oklahoma
Disability Law
Center**

ODLC Triggers

OKDLC Triggers

Disability Law Center

Involuntary Discharge Process

Trigger	Action Steps
➤ OKDLC is contacted about an involuntary discharge	ACTION REQUIRED. 1. If the discharge is legal, discuss transfer and discharge planning with discharge planning coordinator and client's family. 2. If the discharge is not legal: ➤ discuss involuntary discharge hearing option and facility's obligation to follow federal regulations 42 C.F.R §483.15 ➤ Review NOTICE to ensure it addresses: i. Reason for discharge stated ii. Effective date of discharge iii. Location to which Resident will be discharged, MUST be a specific place iv. Appeal rights with contact information; 10 days to appeal which is made to OSDH v. Contact information for LTCOP (Long-term care ombudsman program) 3. Speak with Ombudsman and facility discharge planner 4. If a client/attorney requests a hearing: ➤ Litigate hearing (10 days to issue ruling) Issue is whether facility is discharging for a legal reason? ➤ Successful; client remains in facility and should keep in contact with ombudsman ➤ Unsuccessful; client will be discharged from facility based on time frame of original notice i. Refer to APS to address abuse, neglect, and exploitation concerns



Key Take Aways

- ODLC may request a hearing

- **Provides legal advice/explanation to resident And Ombudsman**

There is no Charge to the resident for this service

- **May represent the resident at any hearing on discharge**

This service is provided at no cost to the resident



**Disability Law
Center**

Questions



Presented by Janene Stewart

**Oklahoma State
Department of
Health**

OSDH Triggers

OSDH Triggers and Processes

OSDH Triggers



Trigger	Action Steps
OSDH Complaint due to failure of following Transfer and Discharge Policy/Rules	ACTION REQUIRED. The division is responsible for processing complaints that allege violations of federal and/or state rules/laws. Intakes or complaints are prioritized based on CMS triage guidelines and/or state statutes that take into consideration the seriousness of the allegations. Complaints by interested parties are investigated by qualified survey staff. 1. Any individual with personal knowledge or specific information, who believes that state or federal laws/regulation have been violated may request an investigation through the complaint intake process. To file a complaint you may call the main OSDH number at (405) 426-8200 or e-mail the complaint to Ltccomplaints@health.ok.gov





Key Take Away

- **Federal and State regulations require the facility establish and implement an admissions policy**

Facility may request and require a resident/resident representative provide facility payment from the resident's income or resources

- **Federal and State regulations allow for Involuntary Transfer or Discharge**

Reasons include Medical, Resident's Safety, and Non-payment of Charges

- **State regulations establish a process to resolve disputes related to Involuntary Transfer or Discharge**

The process represents both the resident and the facility's rights

- **OSDH has dual roles, Hearings and Enforcement**

Each function is done by different parts of the agency

- **Failure to comply with orders by hearing office may result in deficiencies**

The letter from Director Buchannan is available for you to use in your education



**Department
of Health**

Questions

Resources



Process Swimlane Map



Adobe Acrobat
Document



Letter from Director of APS



Microsoft Edge
PDF Document



Transfer and Discharge Booklet



Adobe Acrobat
Document



Medicaid Application



Adobe Acrobat
Document



Sample Transfer and Discharge Notice



Survey Monkey



Adobe Acrobat
Document

Questions

THANK YOU

CONTACT US

Ombudsman.intake.org@okdhs.org

Ombudsmanfax@okdhs.org

1-800-211-2116



