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Office of the DC Long-Term Care Ombudsman Review of Notices of Discharge, Transfer and Relocation

Office of the
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Long-Term Care
Ombudsman

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Introduction

This report presents the results of a review of discharge, transfer and relocation notices received by the Office of the DC Long Term Care Ombudsman (DCLTCO) from nursing homes from May 28 through July 23, 2018. This annual review is conducted and shared in order to identify and address any trends that may negatively impact residents' legal rights to information and appeal processes associated with such notices. Discharge and transfer issues remain the single most frequent complaint handled by the ombudsman program both in the District and nationally.

Washington, DC enacted the Nursing Home and Community Residence Facility Resident's Protection Act (6-108 law) in 1985. The 6-108 law serves to protect residents by providing a clear process for handling discharges, transfers, and relocations from long-term care facilities. The law requires facilities to provide both oral and written notice to a resident and to his or her representative. The mayor proscribes the forms to be used for notices and DC Code § 44-1003.02 iterates the specific language that needs to be used and what additional attachments must be provided to the resident and his or her representative. DC Code § 44-1003.01 also describes the only grounds for which a resident can be involuntarily discharged, transferred, or relocated. The law explicitly states that there are five legal and valid reasons:

- (1) essential to meet documented healthcare needs;
 - (2) necessary to protect any resident from physical or emotional injury;
 - (3) non-payment after *reasonable and appropriate* notice;
 - (4) no practicable alternative to meeting essential administrative needs;
- or,
- (5) the facility is closing or reducing licensed capacity.

Per DC Code § 44-1003.03, the notices provided to the residents and their representatives must also be sent to the Department of Health/Health Regulation & Licensing Administration (DOH/HRLA) and the Office of The DC Long-Term Care Ombudsman. The DCLTCO reviews the notices for compliance with DC and federal law to ensure that residents' rights are protected. If the DCLTCO notes concerns with a notice, it will contact the facility and/or file a Fair Hearing Request on behalf of the resident. It is necessary that the DCLTCO receive these notices in a timely fashion to safeguard residents' rights.

While there has been improved compliance since DOH/HRLA instituted an electronic filing process in 2010, compliance is still uneven at times. In addition to the notices the DCLTCO never receives, a significant number of the submitted notices are either incomplete, sent past the deadline when the DCLTCO can file on behalf of the residents, or are deficient in other capacities. The DCLTCO is also concerned that the resident and his or her representative are receiving these same legally deficient notices, which can constitute a violation of due process.

Data Analysis 2018

Between May 28th and July 23rd, the DCLTCO conducted a review of all discharge, transfer, and relocation notices it received from nursing homes located in Washington, DC. An incomplete or legally deficient notice, especially one that does not contain a hearing request form as required by DC Code § 44-1003.02, can constitute a due process violation because the resident is not being fully informed of his or her right to appeal the facility's decision. Incomplete notices do not inform residents of all their rights as required and failure to provide a hearing request form strips residents' rights of meaning and prevents residents from actualizing their legal protections.

Between May 28th and July 23rd, the DCLTCO received a total of 461 notices of which 190 were discharge notices, 195 were transfer notices, and 76 were relocation notices. Of this total, around 63% were filed incorrectly in some capacity. While approximately 98% of the notices included the resident's appeals rights, 58% failed to include the hearing request form as required. This was a 4% decrease from 2017. While failure to include the hearing request form was the most prevalent deficiency in the notices, there were frequently other errors noted. For example, only 50% of transfer notices included a bed hold policy and 70% provided the number of bed hold days available to the resident. This represents an increase by 11% from 2017. DC nursing home residents on Medicaid are entitled to 18 bed hold days per fiscal year, but notices often provided zero days without explanation.

A significant percentage of all notices reviewed contained some deficiency.

A common deficiency noted was the lack of a discharge location. DC Code § 44-1003.02(d) (7) specifically states that a notice must contain the location to which the resident will be moved. A discharge based on notice lacking a destination does not constitute a safe discharge as required by 42 CFR § 483.15(c) (7). It should be noted that there was a significant decrease in notices that failed to provide a clear reason for discharge, transfer, or relocation from 2017.

Of the 18 nursing homes in Washington, DC, the DCLTCO received notices from 14 during the review period. Our review indicated that the following facilities did not supply a notice of transfer, discharge, or relocation to the Office of the State Long-Term Care Ombudsman through the standard process: Bridge Point Sub-Acute Rehabilitation at Hadley Hospital; Stoddard Baptist Nursing Home; Stoddard Baptist Global Care at Washington Center for Aging Services; and, United Medical Center. While the time frame of our review was shorter this year (56 days compared to 82 days in 2017), we cannot present any explanation for this lack of notices, and therefore will be vigilant to future notices from these facilities.

Another identified concern was that some facilities supply all notices at the conclusion of each month instead of on an ongoing basis as they should be provided. Nineteen percent (19%) of the discharge, transfer, and relocation notices the DCLTCO received were sent after the filing deadline for an appeal and several were sent multiple months after the resident left the facility,

essentially voiding the purpose of the protocol. This is a 7% increase from 2017.

In May and June the Office conducted trainings on transfer and discharges for two nursing homes; Bridgepoint Subacute and Rehabilitation at Capitol Hill and Ingleside Presbyterian Retirement Home. Earlier this year the Office also conducted a city-wide Leadership Conference for resident council presidents, hosted by Carroll Manor Nursing and Rehabilitation Center, which included a discussion of transfer and discharge rights. The DCLTCO remains committed to working with residents and facilities on this critical issue.

Ombudsman staff are available to provide training for facilities and residents.

Conclusion

The DCLTCO is encouraged by the improvements it has seen in discharge, transfer, and relocation notices, and acknowledges the work of facilities to ensure that residents’ rights are protected in this important area. However, every facility either continues to send deficient notices or fails to comply with sending notices all together. These deficiencies must be remedied to ensure that residents’ rights are protected.

The Office of the State Long-Term Care Ombudsman welcomes the opportunity to work with facilities and DOH/HRLA to improve compliance with the discharge notice law. For more information please contact Mark Miller, District Ombudsman at (202) 434-3038 or mcmiller@arp.org, or Mary

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