Office of the State
Long Term Care
Ombudsman

Enhancing Resident Advocacy in Facility-Initiated Discharges

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- Background: NYS LTCOP and CELJ
- Forming the Partnership
- Overview of work
- Materials Created
- Case Examples

Administration of the LTCOP Program

- The Older Americans Act, administered by the Administration on Community Living (ACL), requires each state to establish an Office of the State Long-Term Care Ombudsman.
  - In **New York**, the program is administratively housed within the State Office for the Aging (NYSOFA) and provides advocacy services through a network of regional programs.
    - The NYS LTCOP has 3 Assistant State Ombudsmen who supervise all regional programs and who are overseen by both a Senior Assistant State Ombudsman and the New York State Ombudsman.
      - To manage the 15 regional LTCO Programs from the State LTCOP Office, each ASO is individually assigned to 5 separate regional LTCO Programs.
        - Each regional ombudsman program has a designated ombudsman coordinator who recruits, trains and supervises a corps of volunteers that provide a regular presence in nursing homes and adult care facilities.

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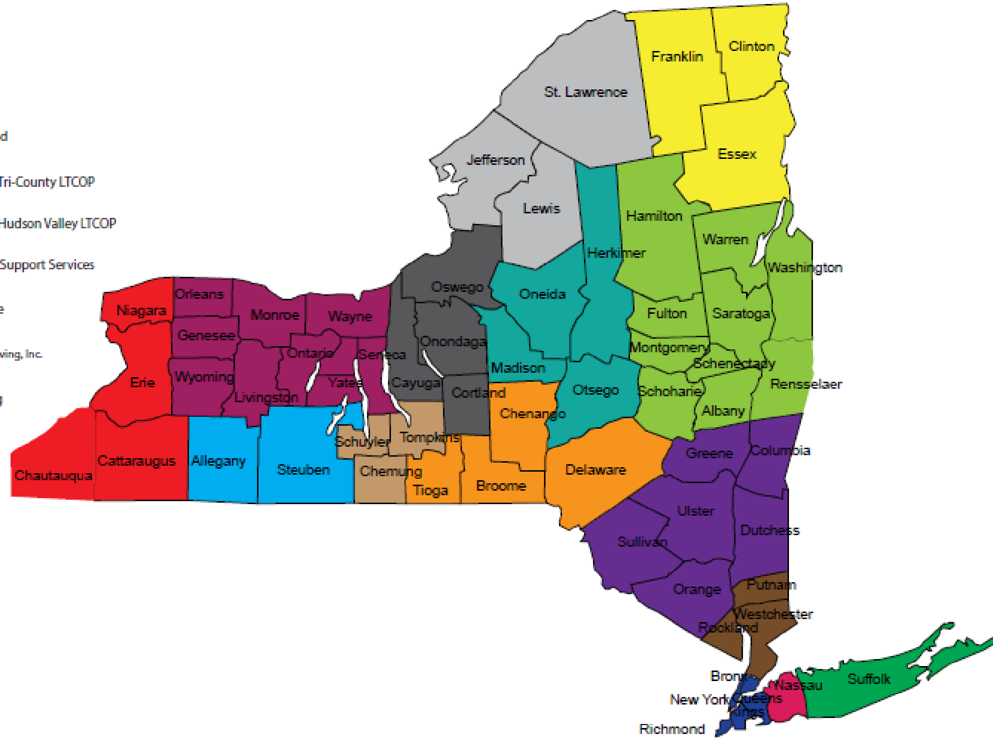
LTCOP Regions

Region	Organization
1	Family Service League
2	Family and Children's Association
3	Center for Independence of the Disabled
4	Long Term Care Community Coalition : Tri-County LTCOP
5	Long Term Care Community Coalition : Hudson Valley LTCOP
6	Catholic Charities Senior and Caregiver Support Services
7	North Country Center for Independence
8	Northern Regional Center for Independent Living, Inc.
9	Resource Center for Independent Living
10	ARISE Child and Family Services, Inc.
11	Action for Older Persons
12	Tompkins County Office for the Aging
13	Lifespan
14	AIM Independent Living Center, Inc.
15	People, Inc.



LTCOP by the Numbers

- Approximately 1,400 Long Term Care Facilities
- Over 160,000 beds
- Includes over 600 Skilled Nursing Facilities, 550 Adult Care Facilities and 200 Family Type Homes
- Approximately 40 Full Time and 20 Part Time Staff Statewide
- Approximately 200 Certified Volunteer Ombudsmen

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Center for Elder Law & Justice (CELJ)

- Civil legal services agency in Buffalo, NY serving 11 WNY Counties.
- Provide free legal services to older adults, people with disabilities, and low-income populations.
- Partnership with Region 15 LTCOP (Cattaraugus, Chautauqua, Erie, Niagara Counties)
  - "Referring ("navigating") the client (resident) between LTCOP and CELJ.
  - Training: Resident Rights and Related Topics
  - Guidance and research support – "in-house" legal support
  - Legislative and systems advocacy

Forming the Partnership

- Discharge Task Force developed in 2018
- Recognized a need for improved education around discharges as a whole
- CELJ had a current subcontract with one region
- CARES Act Funds provided the opportunity to create the partnership statewide and focus on discharge issues as a whole

Addressing Involuntary Discharge/Transfers

Purpose of Contract: reduce the numbers of involuntary (and inappropriate) discharges/transfers and evictions by:

- Working with regional LTCOP staff to address issues and complaints (both proactively and reactively)
  - Ombudsman case specific guidance
  - Legal and regulatory research
  - Tailored advocacy resources and documents for program use
  - Strategy discussions
  - In-service trainings
- Systems advocacy initiatives
- Building connections with legal services

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Summary of Work

April 2021-September 2022

- Total Consults on Ombudsman Cases and Information: 195
- In-services (22)
  - Voluntary and Involuntary Discharge/Transfers (12)
  - Medicare and Medicaid: Overview (10)
- Presentations with SLTCOP (3)
- Legal Services and Conflict Dispute Resolution Services contact list
- Discharge/transfer taskforce: template notice
- Developed materials for LTCOP use

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Areas of Consult

- Nursing Home Facility Initiated Discharge/Transfers
- Adult Care Facility Evictions
- Hospital dumping
- Barriers to discharge
- Care planning
- Discharge planning
- Quality care
- Staffing
- Medicare coverage
- Medicaid coverage
- Facility policies
- Guardianship
- Family dynamics
- Capacity
- Visitation
- Personal Needs Allowance
- Dementia care
- Hospice
- Responsiveness
- Discharge planning
- Billing disputes
- NAMI
- Facility/Unit Closures
- Physician involvement (lack thereof)
- CMS waivers
- COVID-19
- Threats
- Reporting
- Records access
- Surrogate decision-making
- Medications

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Resources and Materials Created for LTCOP Advocacy

- One Page Handout: Discharge/Transfer Resident Rights
- Addressing Discharges to Hospitals
- Discharge/Transfer Guide for LTCOP

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Resident Rights Education-Handout

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CENTER FOR ELDER LAW & JUSTICE

Nursing Home Resident Rights: Involuntary Transfer or Discharge

Every nursing home resident has the right to receive advance written notice prior to be asked to leave and has the right to appeal. The following provides a brief overview on resident rights and how to appeal an involuntary discharge/transfer. For additional information and resources, please visit: https://elderjusticeny.org/resources/long-term-care-resources/ to access a detailed guide on resident rights when being asked to leave and other resident rights information.

There are **only 6 reasons** a nursing home may ask you to leave and **you have the right to appeal each** instance and remain in the facility:

1. It is necessary for your welfare and your needs cannot be met;
2. It is appropriate because your health has improved sufficiently so you no longer need nursing home level of care;
3. Your clinical or behavioral status places the safety of individuals in the facility in danger;
4. The health of individuals in the facility would otherwise be endangered;
5. Failure to pay; or
6. Facility closure.

*If the facility is asking you to leave for any other reason, you also have the right to appeal.

Once the nursing home admits you as a new resident, it is the facility's responsibility to meet your care needs and you have rights. Common scenarios that you can appeal:

- You are transferred to the hospital and refused readmission.
- There is no discharge location or the discharge location is not safe.
- You need "long-term care".
- Insufficient staffing.

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How to appeal an involuntary transfer or discharge from a nursing home

1. Call the NYS Dept. of Health: 1-888-201-4563 and clearly state you are appealing an involuntary discharge. An appeal can also be filed by emailing: nhintake@health.ny.gov
2. Inform the facility you have filed an appeal and are asserting your right to not be moved during the appeals process.

After the appeal is filed, the NYS Dept. of Health will schedule a hearing before an Administrative Law Judge. You have the right to retain attorney representation, but an attorney will not be appointed.

To speak with an attorney, contact the Center for Elder Law & Justice Free Senior Legal Advice Helpline (ages 55+) 1-844-481-0973 or email helpline@elderjusticeny.org.

To speak with an Ombudsman, contact the Long Term Care Ombudsman Program 1-855-582-6769

*The above is for informational purposes only and should not be construed as legal advice.

Addressing Discharges to Hospitals

- Materials
- Issue spotting through discharge/transfer notices
  - Uptick in transfers to hospitals?
  - Resident is sent to hospital frequently?
  - Reason for transfer
- Training:
  - Ombudsmen
  - Hospital

Template Language to use with Hospital

It has come to our attention that some area nursing homes are transferring residents to area hospitals and refusing to readmit them to the first available bed. This violates federal and state laws, regulations, and nursing home resident rights.

The Long Term Care Ombudsman Program (LTCOP) serves as an advocate and resource for older adults and persons with disabilities who live in long-term care facilities such as nursing homes, adult homes, assisted living facilities, and family type homes.

While federal and state law requires LTCOP be sent copies of involuntary discharges notices, this is not always happening for a variety of reasons. **If you have a patient who has been sent to your hospital by a nursing home and the nursing home is now refusing to accept the patient back, and the patient wants to return to the nursing home, LTCOP is available as a resource to the patient**. The patient has appeal rights and LTCOP can explain those rights to the patient and offer advocacy assistance.

We have enclosed the following documents to assist your staff and the patient:

- Flowchart for hospital staff on the patient's right to return to the nursing home and actions that may be taken.
- Handout for patients on their rights.

We are available to meet to discuss this issue and how we can work together to resolve it.

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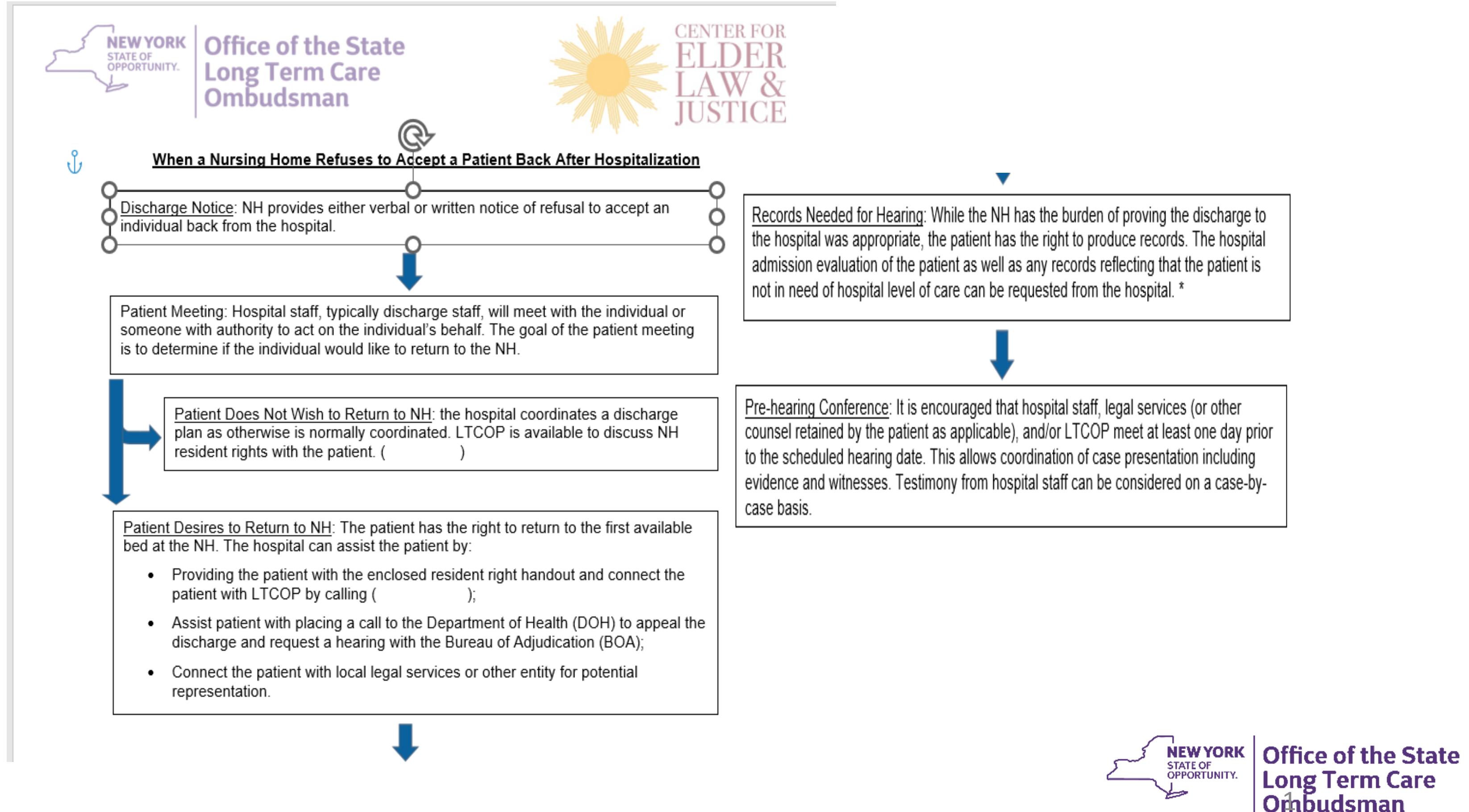
Flowchart for Hospital Staff



Discharge/Transfer Guide for NYS LTCOP

- Purpose: continued ombudsmen advocacy
  - Covers federal and state laws and regulations;
  - Advocacy through use of Appendix PP and lessons/experiences throughout the contract.
- Topics Covered:
  - Discharge Planning
  - Resident vs Facility Initiated
  - Notice to LTCOP
  - Resident Right to Appeal
  - Advocacy at the Hearing
  - Bed holds
  - Return after hospitalization
  - Threat of AMA
  - Non-payment
  - Lateral transfers
  - Needs cannot be met
  - Discharge to shelters

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Case Example 1: Discharge for Health Improved

- March 15 resident issued discharge notice on the grounds his condition sufficiently improved such that nursing home level of care was no longer required. Discharge location to adult care facility owned by same corporate entity as nursing home. Resident appealed and hearing scheduled May 6.

- April 20: ombudsman spoke with CELJ about the case and seeking advocacy assistance. Resident unable to retain attorney. Resident is a “thorn in the administration’s side” and frequently complains. Retaliation is suspected. No records provided by facility at this time.

- CELJ involvement
  - Education: facility's burden to prove discharge is necessary and discharge plan is appropriate.
  - Strategy: what are the resident's care needs? Is the discharge location appropriate to meet the resident's care needs?
    - Discharge location: licensed as "adult home" – this is the lowest level in NYS "assisted living"
- Outcome: resident won appeal
  - Facility failed to present sufficient evidence that the resident's discharge was necessary and the discharge plan appropriate.
  - Facility stated discharge appropriate because resident would have greater freedom. Problem: no evidence from physician.
  - Evidence showed while resident partially independent in his ADLs he still needed some assistance. Resident contended he still needed the services of the facility, and the facility did not know whether the discharge location could meet his needs.

Case Continued: Facility Discharges Resident to Hospital

- Facility transferred resident to hospital and refused to readmit. Resident never issued discharge notice.
- CELJ Involvement:
  - Discussed situation and supported ombudsman action plan to speak with resident to discuss goals and rights. Reinforced ombudsman knowledge on handling 'hospital dump' situations. Resident pursued appeal.
- November 12: administrative hearing
  - Resident successful in appeal: hospital is not a discharge location
  - Facility failed to establish it took the steps expected of nursing homes to manage resident's behaviors.

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Case Example 2: Hospital Dump

- Oct 18 LTCOP contacted by daughter of resident who was transferred out of facility to hospital due to aggression towards staff and other residents. Facility refusing to take back resident.
- LTCOP contacted facility Administrator for copy of discharge notice. Administrator states he was within his right to discharge resident because resident is aggressive and facility is unable to provide care.
- October 19: LTCOP contacts CELJ for assistance

- CELJ involvement
  - Education: resident right to return to the nursing home once stable; overview on bed hold policies; appeal process; and discharge/transfer rights handout to provide to resident's daughter.
  - LTCOP Advocacy: provided resident's daughter with information on how to file an appeal and resident's right to return to the facility.

- Outcome: resident returned to the facility
  - LTCOP confirmed resident's daughter filed an appeal on 10/19;
  - 10/20: hospital tells resident's daughter facility allowing resident to return;
  - 10/21: resident's daughter reports DOH spoke with administrator and told administrator facility would lose if it went to an appeal;
  - 10/22: LTCOP confirms with facility resident would return Monday;
  - 10/25: resident returned to the facility.

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Case Example 3: Advocacy Across Regional LTCOPs

- (Early 2022) Resident nursing home A (Carthage, NY) for rehab following a stoke that left him blind and memory impaired. Resident suffered seizures and was transferred to area hospital. Hospital unable to treat resident who was then sent to hospital in Westchester. (~280 miles) Hospital discharged resident to nursing home B (White Plains, NY).

- Nursing home A and B are part of the same ownership group.

- Resident's daughter contacted Carthage area LTCOP (Reg. 8) for assistance getting resident home. Reg. 8 contacted White Plains area LTCOP (Reg. 4).

- Resident had a heart monitoring system after his stroke that disappeared prior to move to nursing home B. Resident was seeing cardiologist in upstate NY but nursing home B would not address nor facilitate a referral to a cardiologist near nursing home B.

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- CELJ involvement
  - Developed initial action plan with Regions 4 and 8:
    - Reg 8: investigate whether nursing home A will take resident back
    - Reg 4: care planning and transfer advocacy.
  - Continued assistance/support:
    - Guidance re discharge/transfer rules – resident right to return to first available bed.
    - Advocacy to ensure nursing homes A and B are working together to facilitate transfer.
    - Who pays for the transport from White Plains to Carthage?
    - How will resident's care needs be met during the 5-hour trip?
- Outcome: resident successfully transferred to nursing home A.

Other Advocacy

- Region 13 LTCOP discharge/transfer taskforce
  - Monthly meetings open to programs state-wide with legal services
- Legal Services Advocacy
  - Meetings with NYS Department of Health and Attorney General Staff:
    - Concerns with ALJ Consistency and Training
    - Publication of discharge hearing decisions
      - https://www.health.ny.gov/facilities/nursing/rights/appeal_decisions/ (up to 6/3/20)
    - Discharge Notice Template
      - https://www.health.ny.gov/facilities/nursing/rights/transfer_discharge_appeal.htm
  - Hearing Decision Bank for Legal Services (and Ombudsman Use)
  - Listserv

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Continued Advocacy:

- SLTCOP: continued education and support of regional programs
- Addressing lack of enforcement
- Discrimination based on payment source
- Continued advocacy with NYS DOH

Center for Elder Law & Justice

- Non-profit legal services agency, providing free full legal representation in eleven WNY counties. (716) 853-3087 ; https://elderjusticeny.org

- Senior Legal Advice Helpline- NYS Residents
  - Free legal help for New Yorkers 55+
  - Answers to brief legal questions and referrals to legal resources across NYS; including nursing home residents rights questions and concerns.
  - Monday through Friday from 9:00am to 11:00am EST at 1-844-481-0973. You can also call and leave a message outside of those hours, and e-mail us at any time at helpline@elderjusticeny.org. A licensed attorney will respond to you within 2-3 business days.

- Contact:

  Lindsay Heckler

  (716) 853-3087 x212

  lheckler@elderjusticeny.org

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1-855-582-6769

https://ltcombudsman.ny.gov/

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Questions

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