



Cases to Protect Residents in Long-Term Care Settings

Kelly Bagby and Meryl Grenadier
AARP Foundation Litigation

What We Will Discuss

This presentation will focus on AARP Foundation Litigation's recent work to defend the civil rights of people in long-term care settings.

- What is AARP Foundation Litigation?
- Fighting Resident Dumping
- Ensuring Appropriate Staffing
- Advocating for HCBS
- Stopping Use of Chemical Restraints

What is AARP Foundation Litigation?

- AARP Foundation Litigation advocates for systemic change in federal and state courts nationwide, advancing the legal rights and interests of people 50 and older.
- One area we focus on is defending the rights of nursing facility residents and residents in other long-term care settings.
- We are a team of 14 attorneys, 3 paralegals, 2 legal assistants, and 4 law fellows with a nationwide practice.

Fighting Against Illegal Dumping

Fighting Against Illegal Dumping

What is it?

Illegal “dumping” is when a nursing facility involuntarily transfers or discharges a resident to a hospital or other inappropriate location and refuses to readmit them.

Fighting Against Illegal Dumping

What does the law say?

The law says a facility can only transfer or discharge a resident in the following limited circumstances:

- Cannot meet the resident's needs;
- Resident's health has improved sufficiently;
- Health or safety of individuals in facility is endangered;
- Resident has failed to pay;
- Facility is closing.

42 C.F.R. § 483.15(c)(1)

Fighting Against Illegal Dumping

Gloria Single v. Pioneer House

- Gloria and Bill Single were married, residents of Pioneer House
- “Emergency” incident, nursing facility called 911 and transferred her to a hospital for evaluation
- Pioneer House refused to readmit
- No discharge planning or notice
- Won administrative hearing
- Lawsuit filed in 2017, on behalf of Ms. Single and the California Long-Term Care Ombudsman Association



Fighting Against Illegal Dumping

Gloria Single v. Pioneer House

Summary Adjudication Decision for CLTCOA (April 2022)

- A facility's refusal to accept a resident back from the hospital after the hospital clears the resident for return to the facility constitutes an involuntary transfer under state and federal law.
- A facility's refusal to readmit a resident under these circumstances triggers the facility's obligation to comply with the "transfer and discharge" requirements listed in 42 C.F.R. § 483.15.
- The involvement of a third party in a resident's admission to the hospital does not exempt the facility from complying with the transfer and discharge requirements of 42 C.F.R. § 483.15.
- Once a hospital clears a resident to return to the facility, the facility may not refuse to accept the resident on the grounds that the facility cannot properly care for the resident, or that the facility is still gathering information to assess the resident's current condition.

Ensuring Appropriate Staffing

Ensuring Appropriate Staffing

What are the standards?

A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

Specific staffing standards:

- Federal: Nursing Home Reform Act requires nursing staff sufficient to meet residents' needs (42 U.S.C. § 1395i-3(b)(4)(C)(i))
- State: varied, some require specific staffing ratios, others do not

Ensuring Appropriate Staffing

Why does staffing matter?

Higher staffing levels at skilled nursing facilities results in better resident care, specifically:

- Fewer pressure ulcers
- Lower restraint use, and less inappropriate use of antipsychotics
- Decreased infections
- Less pain
- Improved independence
- Less weight loss and dehydration
- Lower mortality rates
- Reduced rehospitalization and emergency room visits
- Decreased deficiencies

Ensuring Appropriate Staffing

John and Jane Does v. Alden Group, et al.

- Filed in September 2022
- Class action complaint on behalf of residents of six Alden facilities in Illinois
- The lawsuit claims that Alden systematically understaffs the facilities, leading to neglect, preventable injuries and illnesses, and dangerous and often grossly unsanitary living conditions for the residents
- The plaintiffs seek monetary, declaratory, and injunctive relief to correct dangerous conditions
- Plaintiffs also challenge provisions in the Alden admission agreement concerning arbitration and waiver of legal rights

Ensuring Appropriate Staffing

John and Jane Does v. Alden Group, et al.

BREAKING NEWS

Lawsuit alleges Alden nursing homes provided inadequate staff and care, leading to injuries and illness

By Robert McCoppin
Chicago Tribune • Sep 27, 2022 at 5:47 pm

A lawsuit filed Tuesday by residents against the operators of Alden nursing homes claims that an intentional lack of staffing has led to numerous injuries and illness.

“Residents have fallen down stairs while strapped to a wheelchair,” the lawsuit states, “fractured their neck when dropped by one person using a mechanical lift that requires two people, and ingested poisonous chemicals due to lack of care and supervision.”

<https://www.chicagotribune.com/news/breaking/ct-alden-nursing-homes-class-action-lawsuit-20220927-v6ouxgf4yzd6fee7gizeogvytq-story.html>

Ensuring Appropriate Staffing

Bright v. Brookdale Senior Living Services

- Class action lawsuit filed in federal court in Tennessee on behalf of current and former residents of certain Brookdale assisted living facilities
- Assisted living regulated at state level
- Alleges that Brookdale violated consumer protection laws when it promised to provide care based on residents' personal assessments, but instead provided care based on pre-determined profit goals

Advocating For Access to Home & Community Based Services

Advocating for Access to HCBS

L.C. v. Olmstead

The Supreme Court Declared in its landmark decision ***L.C. v. Olmstead*** that it is per se discrimination to leave a person with a disability in an institutional setting when they can be served in the community.

Advocating for Access to HCBS

What is the ADA's Integration Mandate?

- In *Olmstead*, the Supreme Court declared that, because “unjustified isolation of persons with disabilities is a form of discrimination,” the ADA and its implementing regulations “require placement of persons with mental disabilities in community settings rather than in institutions” under certain circumstances.
- “Such action is in order,” the Court said, “when (1) the State's treatment professionals have determined that community placement is appropriate; (2) the transfer from institutional care to a less restrictive setting is not opposed by the affected individual; and (3) the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.”

Advocating for Access to HCBS

HCBS are More Individualized than Nursing Facility Care

Home and community-based services are the same sort of assistance that people get in facilities:

- Moving from bed to wheelchair
- Eating
- Toileting
- Dressing
- Bathing
- Positioning when a resident cannot reposition themselves

Advocating for Access to HCBS

Why Can't People Just Leave Nursing Facilities Without Help?

Many people who are institutionalized feel helplessness and hopelessness.

Isolation promotes isolation:

- Don't know what exists in the community
- Cannot apply for the services without help
- Little access to computers
- Little access to WiFi for many people

Advocating for Access to HCBS

Brown v. District of Columbia

- Class action brought in 2010 against D.C.
- Seeking transition assistance for all nursing facility residents who want to learn about the community and move out of a facility
- Needs information about the possibility of moving to the community
- Class needs help rebuilding their community lives with services that assist them with their activities of daily living

Advocating for Access to HCBS

Brown v. District of Columbia

Status of Litigation:

- Our team finished our second trial in December 2021 in the D.C. Federal Court.
- We were at trial the first time in 2016 and lost.
- We appealed and the D.C. Circuit reversed the case and remanded the case for a new trial.
- We are hoping for a big win!

Advocating for Access to HCBS

Avoiding Institutionalization – Price v. DHHS

- Litigation on behalf of people who are supposed to get home care services through the New Hampshire home and community-based waiver program.
- AARP Foundation, Disability Rights Center New Hampshire, Nixon Peabody and New Hampshire Legal Assistance represent a class of people who want to remain in the community.

Advocating for Access to HCBS

Avoiding Institutionalization – Price v. DHHS

- Because of the poor administration of the program, many hundreds of people each month don't get the services they need placing them at serious risk of going into hospitals and nursing facilities.
- The services they need are the same they would get in the nursing facility. The state fails to ensure they get these services. The state is obligated under the ADA to prevent institutionalization when it can.

Thank you!
Questions?

Kelly Bagby
Vice President, Litigation
kbagby@aarp.org

Meryl Grenadier
Senior Attorney
mgrenadier@aarp.org

AARP Foundation[®]
For a future without senior poverty.