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Resident's Rights Issues in Group Homes and Assisted Living Facilities

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June 28, 2022

Helping people. It's who we are and what we do.

Agenda

1. Long Term Care Ombudsman Program
2. Regulatory Overview
3. Settings Rule
4. Additional Challenges
5. Proposed Role of the Ombudsman
6. Questions
7. Contact Information
8. Acronyms



Overview of Long-Term Care Ombudsman Program (LTCOP)

- Authorized under the Older Americans Act
 - Federal law requires each state to have a Long-Term Care Ombudsman Program
- LTCOP receive complaints and conducts investigations
 - Assist resident with concerns related to day-to-day care, health, safety, and personal preferences;
 - Provide information to the community regarding long term care in Nevada;
 - Provide education to residents, families, facility staff and others on a variety of issues related to aging, long term care and resident rights; and
 - Provide in-service training for long term care professionals regarding trends and best practices to improve the quality of care for residents
- Conduct regular unannounced visits to facilities





Facility Types

- Home for Individual Residential Care (HIRC) Home
- Residential Facilities for Groups (RFGs)
 - Also referred to as Assisted Living Facilities (ALF)
 - Alzheimer Endorsement for Residential Facilities for Groups
 - Mandates one staff member for every six residents
- Skilled Nursing Facility (SNF)
 - NRS 449A Care and Rights of Patients

Lower Levels of Care

- State legislation attempted to provide a baseline of resident's eviction rights, similar to the Nursing Home Reform Act (NHRA), in 2019 under NRS 449A.114
 - 30-day notice when transferring or discharging the patient, provide the patient and the Ombudsman with written notice of the intent to transfer or discharge the patient; and
 - *No mechanism to enforce or penalties, no portal to collect notices*
 - Within 10 calendar days after providing written notice to the patient and the Ombudsman pursuant to paragraph (a), allow the patient and any person authorized by the patient the opportunity to meet in person with the administrator of the facility to discuss the proposed transfer or discharge.
 - *No forum to adjudicate eviction disputes with due process*
 - Does not apply to voluntary transfer at request of the resident
 - Transfer to a higher level of care because the condition of the patient necessitates an immediate transfer



Overview of Settings

	Skilled Nursing Facilities	Non-Skilled Facilities
Governing Law	Nursing Home Reform Act	NRS 449A; NAC 449
Minimum Care Standards	Yes	Yes
Bill of Rights	Yes	Yes
Regulatory Oversight	Yes	Yes
Discharge Process with Appeal Rights	Yes	No

Settings Rule and Resident Rights

- Applies to Home and Community Based Waiver (HCBS) recipients
 - Meet minimum standards for integration, access to community life, choice, autonomy, and other important consumer protections
 - Ensure that people with disabilities living in the community have access to the same kind of choice and control over their own lives as those not receiving Medicaid HCBS funding.
- HCBS Settings Rule and “provider-owned or controlled residential setting”
 - Have privacy in their unit, including lockable doors, choice of roommates and freedom to furnish or decorate the unit;
 - Have the right to control his/her own schedule including access to food at any time;
 - Have the right to visitors at any time; and
 - Have a setting that is physically accessible.
 - Have a lease or other legally enforceable agreement providing similar protections;
 - In effect 03/17/2023



Compliance with Federal Regulations

- (A) The unit or dwelling is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity. *For settings in which landlord tenant laws do not apply, **the State must ensure** that a lease, residency agreement or other form of written agreement will be in for each participant and that the document provides protections that **address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.***

- [42 CFR § 441.530](#)



Implementation Barriers

- Appeals process exists for the waiver itself but there is no appeals process for evictions
 - Nevada's landlord tenant laws does not apply to these settings
 - NRS 118A.180
- [Illinois](#) has an explicit eviction process for residential care facilities
- Other states such as Idaho and Virginia are addressing eviction protections currently

Additional Challenges in Non-Skilled Settings

- Hospital Contracts with Residential Facilities for Groups
 - Difficult residents to place
 - Residents who need to apply for Medicaid services
 - Residents sent out for acute issues and not permitted to return to the facility usually due to undesirable behaviors
- No eviction protections
 - Homeless shelter or rehospitalization
- Lack of follow-through to assist residents with applying for social service programs



Protections for ALL Residents

- Establish a universal appeal process to match protections in Skilled Nursing Facilities
- Require process for eviction letters that are sent to the Ombudsman Office within 30 days of the proposed eviction
- Impose penalties for facilities who do not follow the process

Proposed Ombudsman Role in Evictions

- Receive notices under state law
- Screen letters and open cases as necessary
 - Case is initiated as soon as possible but policy is within 7 business days
- Advocacy of LTCOP
 - Obtain consent
 - Assist resident to file eviction appeal
 - Referral to Legal Services
 - Ongoing advocacy



Questions?



Contact Information

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Acronyms

- ADSD – Aging and Disability Services Division
- ALF - Assisted Living Facility
- CBC – Community Based Care
- HCBS – Home and Community Based Services
- HIRC – Home for Individual Residential Care
- LTCO – Long Term Care Ombudsman
- NHRA - Nursing Home Reform Act
- OAA – Older Americans Act
- RFGs – Residential Facilities for Groups
- SNF – Skilled Nursing Facility