

# Understanding the Role of the Long-Term Care Ombudsman:

## Clarifying Discharge Reporting Requirements

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# Key Points

- When a nursing home resident is transferred to the hospital and the home refuses to allow the resident to return, it is considered “hospital dumping”. This is a violation of residents’ rights and has a negative impact on the resident’s physical and mental health and overall well-being.
- Long Term Care Ombudsmen advocate for resident rights, improvements in the long-term care system, and assist residents with resolving concerns including readmission from the hospital.

# Key Points

- Federal regulation (42 CFR 483.15) and state law (K.A.R. 28-39-148) protect a nursing home resident's right to return to the nursing home after hospitalization. Residents have bed hold rights and may return to their room, or the next available semi-private room in the nursing home.
- Transfer to an acute care setting is not an appropriate or lawful discharge. Failure to properly discharge a resident is a violation of their rights.

# The Detrimental Impact of Hospital Dumping

- Lengthy hospital stays
- Disrupts the continuity of care
- Relocation may impact visitation causing isolation
- Transfer Trauma/Relocation Stress Syndrome

# Transfer Trauma

- Transfer Trauma refers to the physiological and psychosocial disturbances experienced following a transfer from one environment to another.
- At the core of Transfer Trauma is fear and loss; fear of the unknown, loss of control and choice, loss of a home, familiar routines, and relationships.
- Transfer Trauma may trigger a cluster of symptoms including anxiety, anger, grief, insomnia, loss of appetite, and depression.
- Leads to a decline in physical and emotional wellbeing causing health complications for residents and may increase morbidity and mortality.
- Those with dementia are more susceptible to Transfer Trauma. It may cause increased combativeness, refusal of care, and overall cognitive decline.

# Long-Term Care Ombudsman Program

- Authorized under the Older Americans Act (Title VII, Part A)
- Advocates who empower and support residents by:
  - Protecting residents' rights
  - Promoting dignity and choice
  - Educating residents about their rights
  - Promoting person-centered care practices
  - Assisting residents with resolving concerns
  - Helping residents to file complaints and appeal discharges
  - Connecting residents to legal and community resources
- Ombudsmen must have resident/legal representative consent to advocate and must maintain confidentiality.

# Nursing Home Resident Rights

Nursing home residents have the right to:

- Be free from abuse, neglect, and exploitation
- A dignified existence
- Make independent choices
- Manage their finances (resident trust accounts)
- Be fully informed (care plan, treatment options)
- Access to information, visitors, and personal property
- Present grievances without fear of retaliation
- Privacy during care, treatment, and communication
- Safe and lawful transfers and discharges

# Rights & Acute Care Transfer

- Federal regulation (42 CFR 483.15) and state law (K.A.R. 28-39-148) requires nursing homes to establish a written policy permitting residents to return after hospitalization.
- Nursing homes are required to have bed hold policies and must inform residents of the policy in writing at the time of transfer. If Medicaid will not cover the bed-hold, the resident should be informed of the length of the bed hold period , the option to pay to hold the room, and the daily rate.
- Even if the bed-hold period has been exceeded or was not covered by Medicaid or private funds, the resident always maintains the right to return to their previous room, or the next available semi-private room if the previous room is no longer available.



# Involuntary Discharge

- An involuntary discharge occurs when a resident is required to leave the nursing home and is not permitted to return.
- Why might homes attempt to forcibly discharge a resident?
  - In response to increased complex care needs or perceived behavioral challenges they claim they cannot manage.
  - Retaliation for complaints filed by the resident or their family.
  - Financial incentives related to the higher reimbursement for care from Medicare or private pay when compared to Medicaid.

# Rights During Facility-Initiated Transfer and Discharge

The Code of Federal Regulations (42 CFR 483.15) protects a resident's right to return the nursing home following hospitalization or therapeutic leave, and the right to:

- Be informed of the bed hold rights and policies
- Be discharged only for limited reasons
- Receive a written 30-day advance notice of discharge
- Appeal the proposed discharge/transfer
- Not be discharged while the appeal is pending

# Discharge Regulations

## 42 CFR 483.15 (c)(1)(i) A - F

Federal law prohibits nursing homes from transferring or discharging a resident unless one of these reasons apply.

- A. The nursing home closes.
- B. It is necessary for resident's welfare. Resident's needs cannot be met.
- C. The resident no longer needs nursing home care.
- D. The safety of individuals in the home is endangered.
- E. The health of individuals in the nursing home is endangered.
- F. The resident has failed to pay nursing home charges, or have these charges paid by Medicare, Medicaid or other insurance.

# Discharge Regulations

If the nursing home refuses to readmit a resident claiming it is for their welfare or claim they cannot meet their needs, the nursing home's attending physician must have documented the following information in the medical record:

- The specific needs the nursing home cannot meet.
- The nursing home's attempts to meet those needs.
- The services available at the receiving nursing home that can meet those needs. Where do they propose the resident will receive a higher level of care?

# Discharge Regulations

- The nursing home **MUST NOT** assess a resident based on their condition when originally transferred to the hospital, but rather on their condition when they are ready to be released from the hospital.
- An allegation that a resident is a danger to the health and safety of others is only legitimate if the resident presents an immediate, substantial danger to others.

# Rights During Involuntary Discharge

When the nursing home refuses to allow a resident to return after a hospital stay and the resident wishes to return, the home must comply with the regulations regarding an involuntary discharge.

- The resident should be allowed to return to the home, and then the facility can initiate an involuntary discharge, if it chooses.
- The nursing home must provide a 30-day advanced notice of discharge in writing to the resident/representative, KS-LTCO and DRC.
- The resident has the right to appeal the discharge and remain in the nursing home while the appeal is pending.
- The resident is entitled to a hearing with an Administrative Law Judge (OAH). The burden of proof that the discharge is permissible rests on the nursing home.

# Advocacy Tips

- Inform the transferring nursing home that the resident has the right to return under the federal regulations and state laws and the resident is entitled to return to their room if available, or the next available semi-private room.
- Remind the nursing home that a transfer to acute care does not constitute a lawful discharge and therefore the nursing home must comply with the regulations regarding an involuntary discharge and meet these requirements:
  - Allow the resident to return to the nursing home.
  - Provide a written 30-day advanced Notice of Involuntary Discharge.
  - Inform the resident of the right to appeal the discharge.
  - Assist the resident with completing and filing the appeal.

# Advocacy Tips

- Contact your local ombudsman for resident assistance by calling **877-662-8362**
- File a complaint with the Kansas Department of Aging and Disability Services (KDADS) if the nursing home will not comply with the regulatory requirements.
  - online at **<https://www.kdads.ks.gov>**
  - call **800-842-0078**



# Mandated Reporters

## Reminder...

If you are a part of any of the professions listed below, you may have a legal obligation to report any suspicions regarding vulnerable adults who you believe have been harmed or are at risk of harm from abuse, neglect or exploitation. To make a report, call Adult Protective Services at **800-922-5330**.

### **Health Care Services**, including, but not limited to:

- Physicians, nurses, and aides
- Psychologists and Counselors
- Hospital Administrators and Staff

### **Public Services**, including, but not limited to:

- Social workers (administrators, supervisors, caseworkers, etc.)
- Law Enforcement Officers
- County medical examiner and employees of the county medical examiner
- Adult Day Care Providers
- Bank and Credit Union Staff

# Reporting Suspected Incidences of Abuse, Neglect or Exploitation

- To report abuse in a nursing home, file a complaint with the Kansas Department of Aging and Disability Services) if there is an allegation of abuse, neglect or exploitation **by a staff member.**
  - online at <https://www.kdads.ks.gov>
  - call **800-842-0078**

# Reporting Suspected Incidences of Abuse, Neglect or Exploitation

Notify Adult Protective Services at **800-922-5330** if you suspect abuse, neglect or exploitation of a vulnerable individual has occurred in the nursing home where:

- the suspected perpetrator is **NOT** an employee of the nursing home, or
- the resident is on leave from the nursing home.

For more information about APS, visit <https://www.dcf.ks.gov>

# Reporting Suspected Incidences of Abuse, Neglect or Exploitation

To report abuse in a nursing home, contact the Attorney General's Medicaid Fraud Control Unit at:

Phone: **800-551-6328**

Online: <https://www.ag.ks.gov>

# Contacting the Ombudsman

For more information on the  
Kansas Long Term Care Ombudsman Program  
(KSLTCOP), visit <https://www.ombudsman.ks.gov>

To find the contact information for your  
local long term care ombudsman, please visit the  
above website and select the **“Find Your  
Ombudsman”** box.

# Questions?



# Contact Us...

Phone (785) 296-3017 or (877) 662-8362 Toll Free



Email [LTCO@KS.GOV](mailto:LTCO@KS.GOV) or [Haely.Ordoyne@ks.gov](mailto:Haely.Ordoyne@ks.gov)



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