



The NEW Nursing Home Regulations

Involuntary Transfer and Discharge From a Nursing Home: Resident Rights and Protections

Presented by Richard Mollot, Long Term Care Community Coalition

www.nursinghome411.org

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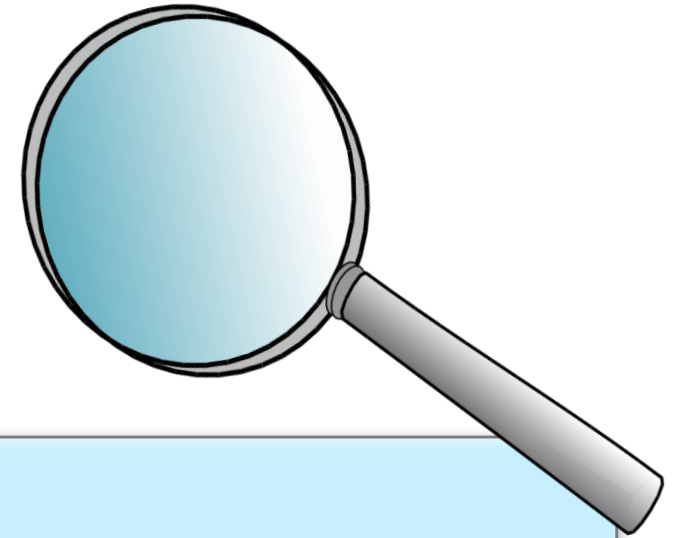
+ What is the Long Term Care Community Coalition?

- **LTCCC**: Nonprofit organization dedicated to improving care & quality of life for the elderly & adult disabled in long-term care (LTC).
- **Our focus**: People who live in nursing homes & assisted living.
- **What we do**:
 - Policy analysis and systems advocacy in NYS & nationally;
 - Education of consumers and families, LTC Ombudsmen and other stakeholders.
- **Richard Molloy**: Joined LTCCC in 2002. Executive director since 2005.



+ What Will We Be Talking About TODAY?

- Brief Background: **The Nursing Home System**
- Focus: **Resident Protections From Involuntary Transfer or Discharge**



Remember:

All rights center on the resident. However, when a resident assigns decision-making authority to another individual, or lacks capacity, the individual making decisions takes the place of the resident in respect to receiving information and exercising rights on the resident's behalf.

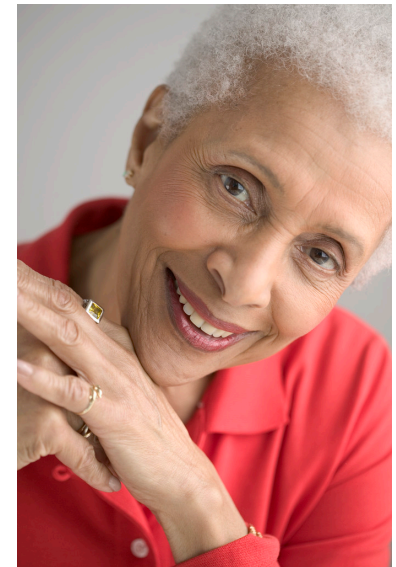
+ The Nursing Home System in a Nutshell

- Virtually all nursing homes participate in Medicaid and/or Medicare.
- In order to participate in Medicaid/Medicare, a facility agrees to meet the standards provided for in the federal **Nursing Home Reform Law**.
- States may have *additional* protections, but no state can have less protections.
- Federal *protections are for all the residents* in a facility, whether their care is paid for by Medicare, Medicaid or private pay.
- The federal agency, CMS, contracts with the state DOH to ensure that residents are protected and receive the services they need and deserve.



+ The Nursing Home Reform Law

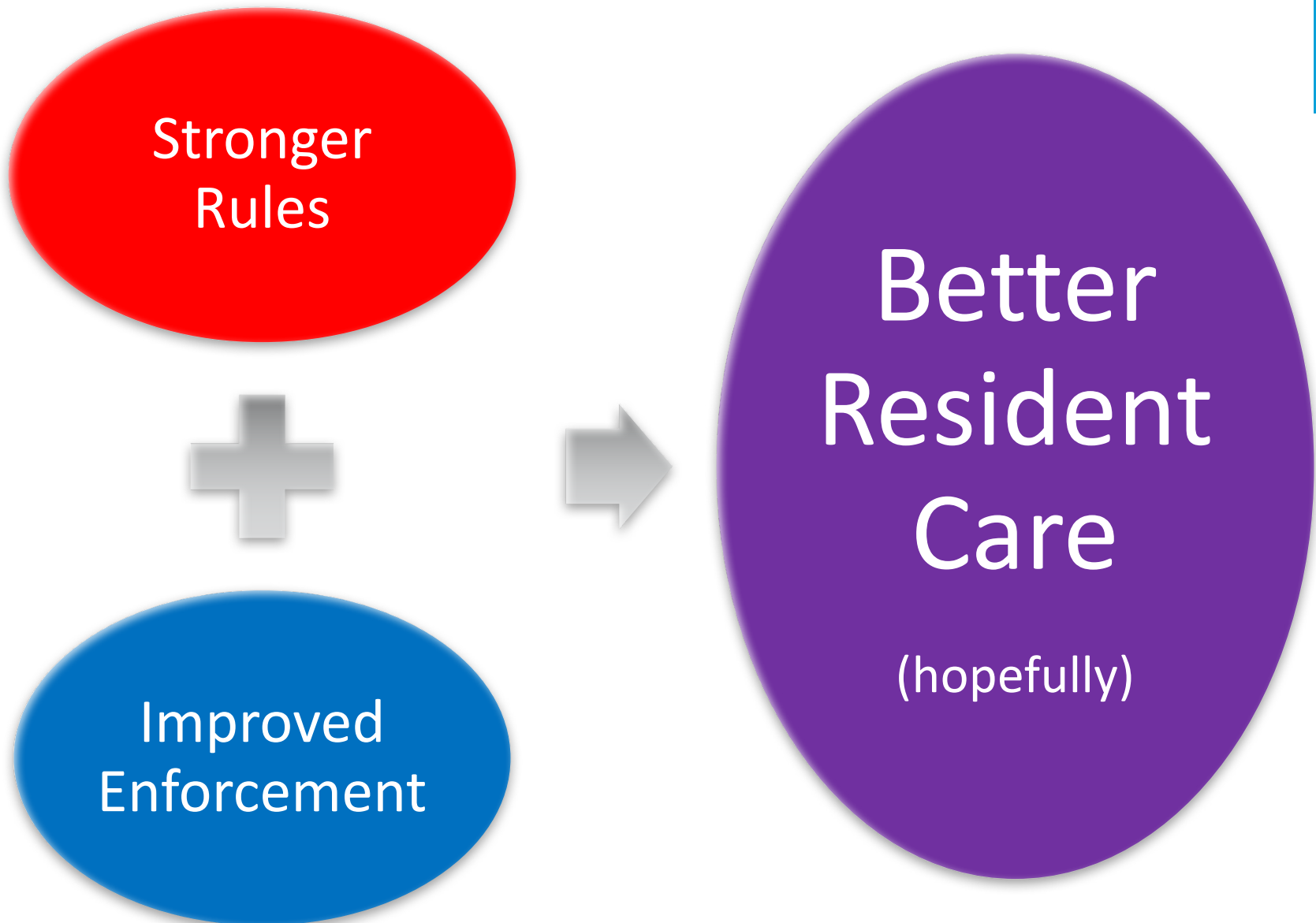
- The federal law requires that every nursing home resident is provided the care and quality of life services sufficient to attain and maintain her **highest practicable physical, emotional & social well-being**.
- The law emphasizes **individualized, patient-centered care**.
- Importantly, the law lays out specific resident rights, from **good care** and monitoring to a quality of life that maximizes **choice, dignity & autonomy**.
- The law passed in 1987. Regulatory standards came out in 1991.



+ **What** Is Happening Now?

- For the first time in 25 years, the federal regulatory system has been significantly revised and updated.
- This will affect **every aspect of care & quality of life**.
- **All of the Regulations are changing**. For 25 years everyone – nursing homes, surveyors, ombudsmen and advocates – knew what the rules were and where to find them. That entire structure has changed.
- **All of the Guidelines are changing**. The guidelines detail what is expected of nursing homes in relation to each standard – what they are supposed to do and how they are suppose to do it.
- **The F-tag system, used by nursing home inspectors, is changing**. When a surveyor identifies a problem in care or living conditions in a nursing home, she cites the nursing home using a system called “F-tags” – numbers that correlate with the regulatory requirements.

+ Why Does it Matter?



+ **WHY** Is This Information Important to Us?

We must be prepared and know our rights as the changes are implemented, and beyond!

Knowledge
=
Power

Resident Rights

- Law
- Regulation
- Oversight



+ How Will This Program Help **YOU** Achieve This?

1. **New Federal Language.** We will review together the federal requirements, so you can see exactly what nursing homes are being told they must do for their residents.
2. **Summaries of Important Points.** At the end of the program we will simplify and recap some of the important points for you.
3. **Fact Sheets.** For each program we are developing free, easy-to-use fact sheets which you can use now and in the future to support resident-centered advocacy and problem solving.

All programs, fact sheets and other resources are available for free on our website, www.nursinghome411.org. **There is no need to worry about remembering details - when you have an issue or concern in the future you can easily find and print out the information you need.**

+ Now more than ever....

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We **MUST** be aware of
what our rights are, and
what we have a right to
expect from our nursing
homes.



Resident Rights: Protections from Involuntary Transfer & Discharge

Why Are These Important Issues?

Involuntary transfer and discharge are growing problems for nursing home residents and families. Too often, we hear about residents being discharged for reasons that may be inappropriate or even illegal.

Note About The Program

This program focuses on the federal resident protections from involuntary transfer and discharge. These rights apply to all residents, however, different states may have different rules when it comes to individual beds within a facility being certified for Medicare or Medicaid. New York does not allow facilities to say that only some of its beds are for Medicaid residents and others are Medicare or private pay, but if your resident is in another state his or her rights in this regard may differ.

If you are faced with a discharge situation we strongly recommend: (1) Know your rights, (2) Take advantage of any appeal process available to you ASAP, (3) Contact your LTC ombudsman and, if necessary, (4) Seek professional legal advice.

+ When Can a Nursing Home Discharge Involuntarily?

1. *The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—*
 - *The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;*
 - *The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;*
 - *The safety of individuals in the facility is endangered **due to the clinical or behavioral status of the resident**;*
 - *The health of individuals in the facility would otherwise be endangered;*
 - *The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. ...**For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid**; or*
 - *The facility ceases to operate.*



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New
Regulatory
Language**

+ Rights During Resident Appeal

2. The facility may not transfer or discharge the resident while the appeal is pending... unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

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+ Documentation Requirements

When the facility transfers or discharges a resident under any of the circumstances specified [above], *the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.*

Documentation in the resident's medical record must include:

- *The basis for the transfer...*
- *In cases in which transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility ...the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).*

Documentation must be made by a physician except if discharge is due to failure of payment or the facility closing.

Important
Points

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+ Requirements for Notice to Resident

Before a facility transfers or discharges a resident, the facility must—

- *Notify the resident and the **resident's representative(s)** of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. **The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.***
- *Record the reasons **for the transfer or discharge** in the resident's **medical record...***

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Language

+ Requirements for Notice to Resident

The written notice... must include the following:

- *The reason for transfer or discharge;*
- *The effective date of transfer or discharge;*
- *The location to which the resident is transferred or discharged;*
- *A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;*
- *The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;*
- *For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities...; and*
- *For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.*

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Resources @ www.nursinghome411.org

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

CONSUMER FACT SHEET: TRANSFER & DISCHARGE RIGHTS

The threat of transfer or discharge from a nursing home can be stressful and frightening to a resident and his or her family. For this reason, there are significant federal protections that limit the circumstances under which residents can be transferred or discharged from their facility.

Below are relevant standards with descriptions excerpted from the federal regulations. On the next page are some points for you to consider when you advocate on these issues. [Note: The brackets below provide the relevant federal regulation (CFR) for your reference.]

I. Transfer & Discharge Protections [42 CFR 483.15(c)]

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;*
- The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;*
- The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;*
- The health of individuals in the facility would otherwise be endangered;*
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. ...For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid*
- The facility ceases to operate.*

II. Right to Appeal

The facility may not transfer or discharge the resident while the appeal... unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose. [See <http://ltcombudsman.org/issues/transfer-discharge#what> for more information.]

III. Documentation Required

When the facility transfers or discharges a resident under any of the circumstances specified [above]..., the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Documentation in the resident's medical record must include:

- The basis for the transfer....*
- When a resident is being transferred because the facility says it cannot meet the needs of a*

LTCCC Fact Sheet: Transfer & Discharge Rights

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resident, ***the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).*** [Emphasis added.]

IV. Notice Before Transfer. Before a facility transfers a resident, it must provide:

- Written notice to the resident and his/her representative in language and manner that they can understand;
- Notice must be given at least 30 days in advance. (With very limited exceptions, such as when a resident cannot be cared for safely or is a danger to others, in which case "notice shall be given as soon as practicable before transfer or discharge" and the facility must document the danger that failure to transfer/discharge would impose.)
- The facility must send a copy of the notice to... the State Long-Term Care Ombudsman.*

THINGS TO KNOW & CONSIDER:

- Protections against discharge.** When a nursing home accepts a resident, it is saying that it can provide safety and good care to meet the needs of that resident as an individual. Thus, there are significant federal protections to ensure that residents are not discharged unfairly by their nursing home. Facilities can only discharge a resident if:
 - The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
 - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
 - The health of individuals in the facility would otherwise be endangered;
 - The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility; or
 - The facility ceases to operate.
- Documentation of reasons for discharge.** To prevent nursing homes from inappropriately discharging a resident, federal regulations require that the facility:
 - Ensure that the transfer or discharge is documented in the resident's medical record;
 - Ensure that appropriate information is communicated to the receiving health care institution or provider;
 - A physician documents the basis for the transfer;
 - In cases in which transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility, the facility must document:
 - The specific resident need(s) that cannot be met by the facility,
 - The attempts the facility made to try and meet these needs and
 - The specific service available at the receiving facility to meet the need(s).

RESOURCES

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care, a listing of antipsychotic drug names and other resources.



Resources @ www.nursinghome411.org

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Frequently Asked Question:

What can you do when a resident receives a notice of involuntary discharge?

Two Illustrative Examples

1) Mr. Caruthers has lived in the nursing home for three years and is on Medicaid. He was just given a notice that in 30 days he will be discharged to a homeless shelter because he no longer needs nursing home services.

2) Ms. Stewart is in the nursing home for short-term rehab. She received a notice that her physical therapy will no longer be covered because she has reached a "plateau" and is no longer improving.

-- See the back page for what happened to Mr. Caruthers & Ms. Stewart --

Relevant Nursing Home Standards

I. Transfer and discharge—Facility Requirements [42 CFR 483.15(c)(1)(i)]

Nursing homes are prohibited from discharging or transferring residents against their will except under very limited circumstance, such as when the welfare of the resident, or other residents, is at serious risk, the resident no longer needs nursing home care, the resident fails to pay (or have paid under Medicare or Medicaid) for his or her care or the facility closes. For more details on the specific facility requirements, see our free *CONSUMER FACT SHEET: TRANSFER & DISCHARGE RIGHTS*, available in the Learning Center at www.nursinghome411.org.

II. Timing of the Notice [42 CFR 483.15(c)(4) and 42 CFR 405.1202(b)(1)]

In most cases, if the resident's stay in the facility has exceeded 30 days the resident must be given at least 30 days' notice of discharge. A short-term resident under Medicare may be given only two days' notice of non-coverage but may continue to reside in the facility during appeal if able to pay for the services.

III. Appeals Process [42 CFR 483.204, 42 CFR 431.200-250, and 42 CFR 405.1202(b)]

Each state must provide an appeals system subject to certain guidelines. In New York State, involuntary discharge notices are appealed to the Department of Health by calling (888)201-4563. One has 60 days to file the appeal, but must file within 15 days of receiving the notice in order to remain in the facility during the appeals process.

Appeals of notices of Medicare non-coverage are made to the regional Quality Improvement Organization (QIO). The QIO for NY State is Livanta, at (866)815-5440. To obtain an expedited

appeal one must file by noon of the day following reception of the notice. After that one may request a standard appeal, which will take longer to resolve. This is important, because if one loses the appeal one must pay in full for all services received since the Medicare termination date.

Important Considerations on Making an Appeal

Prepare carefully & as soon as possible. It is essential to prepare very carefully before appealing either a discharge notice or notice of Medicare non-coverage. If you simply file the appeal, without adding information to support your case, you will almost certainly lose. Consult an attorney if possible. If not, call the nearest office of the Long-Term Care Ombudsman Program for guidance. To win a Medicare non-coverage appeal you will usually require supporting evidence from a physician confirming that Medicare services are still necessary. If you cannot provide this evidence, the prospect of having to pay for services received after termination may make the appeal unfeasible. The deadline for filing an expedited appeal is so short that most people cannot meet it, especially if they need time to consult their physician.

For Medicare (short-term rehab) Discharges. Discharges of short-term residents are subject to the same federal regulations as long-term residents. A notice of Medicare non-coverage is technically not a discharge notice. However, to remain in the facility after coverage lapses one will need another source of payment.

What Happened With Our Two Illustrative Examples?

1) Upon receiving a discharge notice Mr. Caruthers dialed the number for the Long-Term Care Ombudsman Program, which the notice is required to list. They referred him to an agency that was able to provide a *pro bono* attorney. The attorney carefully examined the medical record and discharge plan. She found that Mr. Caruthers requires dialysis, making shelter placement medically unsafe. She also uncovered income sources for Mr. Caruthers (Social Security and a pension), making the resident eligible for subsidized housing. The Administrative Law Judge (ALJ) who heard the appeal directed the nursing home to pursue a non-shelter discharge plan and initiate a housing application.

2) Ms. Stewart was able to provide a statement from her physician attesting that she still needed skilled therapy services to keep her from losing the progress that she made. According to an important legal decision, *Jimmo v. Sebelius*, it is not necessary to continue to show actual improvement in order to qualify for Medicare payment of skilled therapy services, but only that skilled therapy is needed to keep a person from relapse or decline.

Resources for More Information

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care, including our fact sheets and other resources.

WWW.MEDICAREADVOCACY.ORG. The Center for Medicare Advocacy has information and resources on consumer rights, particularly for Medicare beneficiaries.

WWW.THECONSUMERVEICE.ORG. The Consumer Voice has many resources for residents, families and LTC ombudsmen on discharge and transfer and other resident rights issues.



Questions?

Comments?

+ Our Goal: To Provide **You** With **Knowledge** and **Resources** to Support Your Resident-Centered Advocacy

■ **Knowledge...**

- **Free monthly training programs** for Resident & Family Councils, LTC Ombudsmen and those who work with them.
- Each program will focus on a nursing home standard that is relevant to resident care, dignity or quality of life.

■ **Resources...**

- **WWW.NURSINGHOME411.ORG** has a **Learning Center for Residents, Families, Ombudsmen** and those who work with them.
- For every standard we will post a **free handout** on our website that you can use now and in the future to know your rights about a specific issue or standard.
- **Presentation materials** will be posted on the website after each program for future reference.
- **Technical support for your questions** or concerns on the quality standards via our NYS List-serve and email. Email info@ltccc.org.

You DON'T need to memorize every Resident Right!
Just remember www.nursinghome411.org for free info & resources.

+ Coming Up

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Next Program: July 18th at 1pm.

Topic: Requirements for...
Nursing Staff
&
The Nursing Home's
Administration

Are there any requirements to ensure that the care staff is competent to meet the needs of residents?



Who determines how many staff have to be in the nursing home... and how?





Thank You For Joining Us Today!

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Email info@ltccc.org or call **212-385-0355** if you would like to...

- Receive the advocacy fact sheet for this program;
- Receive alerts for future programs;
- Sign up for our newsletter and action alerts; or
- Join our list-serve community, open only to residents, families, LTC Ombudsmen and advocates in NY State.

You can also...

- Join us on **Facebook** at www.facebook.com/ltccc
- Follow us on **Twitter** at www.twitter.com/LTCconsumer
- Visit us on the **Web** at www.nursinghome411.org.

We encourage family members to connect with the Alliance of NY Family Councils at www.anyfc.org (or email info@anyfc.org).



Thank you to the New York State Health Foundation for supporting these programs!