



CENTER FOR
ELDER
LAW &
JUSTICE

Results of the NYS LTC Ombudsman-
Center for Elder Law & Justice
Project(s)

Presentation by:
Lindsay Heckler
Pronouns: She/Her/Hers

Agenda

- ❖ Overview of the Project
- ❖ Discharge/Transfers: suggestions and further advocacy
- ❖ Select Issues
- ❖ Centers Health Care
- ❖ ANE Contract Extension



Overview of the Project



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 FAQ documents for program use
 - Strategy discussions
 - In-service trainings
- ❖ Systems advocacy initiatives
- ❖ Building connections with legal services



The Numbers

- ❖ Total Consults on Ombudsman Cases and Information: 257
 - Discharge/Transfer and Related Matters (April 2021-August 2022):
 - 182
 - Abuse Neglect Exploitation Cases and Related Matters (October 2021-August 2022):
 - 75
- ❖ In-Services (26)
 - Voluntary and Involuntary Discharges/Transfers: 12
 - Medicare and Medicaid – Overview/101: 10
 - Elder Abuse: 4
- ❖ Presentations with SLTCOP:
 - New York Independent Living Center Webinar Series (February 2022)
 - Aging Concerns Unit Us Conference (June 2022)
 - Schoharie OFA (September 2022)
 - Consumer Voice (November 2022)



Recent Webinar LTCOP Series

❖ Leaving the Nursing Home: Voluntary and Involuntary Discharges

- <https://elderjusticenyc.org.zoom.us/rec/share/qAr-kpHEjB-yiOdRaQfw8YteOJLE3M2fQ29Cr3ZjlvxL3rb9nG7h9-YLkLxljZYt.XF43c6P2OC1DYHcZ>
- Passcode: Ng&D9.p*

❖ Medicare and Medicaid: Introduction to Coverage in Nursing Home

- https://elderjusticenyc.org.zoom.us/rec/share/XBTsumPeksFZwdbRlqC71VrqN4IXXgZgMdlbmjsrPDUWrDjS-CVM0OCvIZwU_ZvJ.SBYFdMoQW6uJFpzW
- Passcode: C+xVN0L+

❖ Elder Abuse in Nursing Homes: Ombudsman Advocacy and Nursing Home Responsibility

- https://elderjusticenyc.org.zoom.us/rec/share/mtNKIYOnj9RhhK_b7ez-vgQ76R7KlzPsu_stzZUQ2OaripiRU0Ox2cM4Sipe1Olw.BxYc6amXnMrf69OW
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Cases/Issues Handled under Discharge and ANE Contracts

- Nursing Home Facility Initiated Discharge/Transfers
- Adult Care Facility Evictions
- Hospital dumping
- Abuse Neglect Exploitation
- Barriers to discharge
- 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
- CMS waivers
- COVID-19
- Threats
- Care planning
- Reporting
- Records access
- Surrogate decision-making
- Medications



Advocacy

(some examples)

- ❖ One page handout: resident discharge/transfer rights
- ❖ Hospital Dumping:
 - One page handout for patients/residents
 - Sample language/materials for LTCOP use with hospital staff
- ❖ Legislative*
 - January 14th LTCOP Briefing (with LTCCC, Lifespan, AARP)
 - Budget
 - Legislation
- ❖ Woodland Behavioral and Nursing Center



One Page Resident Rights Handout



Office of the State
Long Term Care
Ombudsman



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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://elderjusticenyc.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@elderjusticenyc.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.



Draft/Template Letter to 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.



Flowchart for Hospital Staff



Office of the State
Long Term Care
Ombudsman



When a Nursing Home Refuses to Accept a Patient Back After Hospitalization

Discharge Notice: NH provides either verbal or written notice of refusal to accept an individual back from the hospital.

Patient Meeting: Hospital staff, typically discharge staff, will meet with the individual or someone with authority to act on the individual's behalf. The goal of the patient meeting is to determine if the individual would like to return to the NH.

Patient Does Not Wish to Return to NH: the hospital coordinates a discharge plan as otherwise is normally coordinated. LTCOP is available to discuss NH resident rights with the patient. ()

Patient Desires to Return to NH: The patient has the right to return to the first available bed at the NH. The hospital can assist the patient by:

- Providing the patient with the enclosed resident right handout and connect the patient with LTCOP by calling ();
- Assist patient with placing a call to the Department of Health (DOH) to appeal the discharge and request a hearing with the Bureau of Adjudication (BOA);
- Connect the patient with local legal services or other entity for potential representation.

Records Needed for Hearing: While the NH has the burden of proving the discharge to the hospital was appropriate, the patient has the right to produce records. The hospital admission evaluation of the patient as well as any records reflecting that the patient is not in need of hospital level of care can be requested from the hospital. *

Pre-hearing Conference: It is encouraged that hospital staff, legal services (or other counsel retained by the patient as applicable), and/or LTCOP meet at least one day prior to the scheduled hearing date. This allows coordination of case presentation including evidence and witnesses. Testimony from hospital staff can be considered on a case-by-case basis.



Discharge/Transfer: Suggestions for LTCOP Advocacy



Adult Care Facility vs Nursing Home Discharges/Evictions

Adult Care Facility	Nursing Home
<p>Written notice is required</p> <ul style="list-style-type: none"> • Must use DOH mandated form • https://www.health.ny.gov/forms/doh-5237.pdf 	<p>Written notice is required:</p> <ul style="list-style-type: none"> • DOH suggested template • https://www.health.ny.gov/facilities/nursing/rights/transfer_discharge_appeal.htm
<p>30 day notice</p>	<p>30 day notice (facility-initiated) except:</p> <ul style="list-style-type: none"> • Resident cannot be cared for safely; • Danger to others; • Not resided in facility 30 days
<p>6 valid reasons for discharge</p>	<p>6 valid reasons for discharge</p>
<p>Resident has no appeal right via the notice. Resident objects to the notice/eviction and facility is responsible to initiate a special court proceeding.</p>	<p>Resident initiates appeal with NYS DOH before an Administrative Law Judge</p>



Using Discharge Notices for Ombudsmen Advocacy

❖ Individual resident advocacy

- Unsafe/questionable discharge? Meet with resident
 - Already transferred? Up to 60 days from notice to appeal.
- Resident frequently transfers to hospital. (Care issue?)

❖ Facility-wide or operator issues

- Uptick in transfers to hospitals
- Non-payment
- Lateral transfers for health improved

❖ Challenge: only so much ombudsman staff time to track

- Suggestions: track by discharge reason; focus on invalid notices/questionable discharge locations (another nursing home; shelter; hotel; LDSS; TBD;)



Select Issues



Facility Policies and Procedures

- ❖ **When a facility uses “it’s our policy”:** obtain a copy of that policy!!!
(Same with “it’s law” or “it’s regulation”)
- ❖ Facilities must fully inform residents of resident rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility.
- ❖ Residents have the right to request nursing home policies and procedures that impact their rights.
- ❖ Nursing home are required to consult with residents in establishing and implementing facility policies regarding residents’ rights and responsibilities.
- ❖ Ombudsman have the right to access facility documents in accordance with the Older Americans Act and regulation (with some exceptions-consult with ASO)



Guardianship: Basics

- ❖ Article 81 Case: a judge decides whether a person (alleged incapacitated person-”AIP”) is incapacitated and if they need to have a guardian appointed.
- ❖ Process:
 - Petitioner submits a request asking the court to start the case (petition). An Order to Show Cause (OSC) is submitted with the petition.
 - Resident (AIP) is served with the OSC which informs the AIP an Article 81 has been filed, explains the AIP’s legal rights, lists the powers the petitioner believes a guardian should have over the AIP, date/time/place of the hearing.
 - Court Evaluator: the “eyes and ears” of the Court. This person, often a lawyer, will review records, interview the AIP and interested parties, and makes recommendations to the court
 - Hearing: formal process whereby the petitioner must provide the AIP is in need of a Guardian.
- ❖ Ombudsman Tips:
 - Told there is a guardian? Ask for the court order!
 - Resident told guardianship case has been filed?
 - Verify whether resident has been served
 - Support the resident (explain the process, connect with counsel as appropriate).

<https://www.elderjusticenyc.org/blog/adult-guardianship-basics-how-to>



Centers Health Care Report (early 2023)



What will be in the final report(s)?

- ❖ State-wide analysis, discussion, and recommendations.
 - Overview
 - Individual Owners
 - Quality of Care: inspections, staffing, enforcement

- ❖ Regional
 - Specific analysis and comparison within the region
 - Recommendations
 - Facility examples



Overview

- ❖ Currently operates 40 facilities in NYS*
 - 6,415 residents (~7.31% NYS)
 - Majority facilities in NYC and Capital District.
 - Pre-pandemic: one of the fastest growing nursing home chain in NYS
 - 2017 acquired 11 facilities
 - Expanding towards Western and Upstate NY since 2013.

- ❖ Centers Skilled Nursing: network of SNFs in NY, NJ, RI, KS, MO

- ❖ Many related companies:
 - Centers Business Office
 - Nursing home staffing, supply purchasing, billing and collections, financial management and consulting.
 - Other companies: home care, urgent care, training and laboratory products.



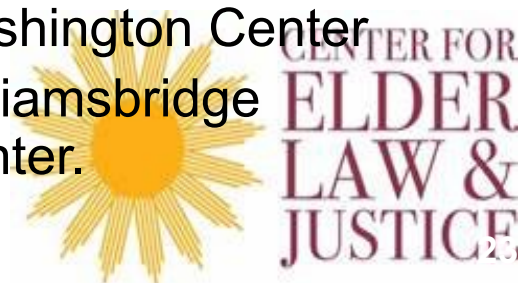
Major Players

- ❖ Kenneth Rozenberg Chief Executive Officer
- ❖ Amir Abramchik Chief Operating Officer
- ❖ Jeffrey Sicklick Director of Operations
- ❖ Hillel Weinberger: venture capitalist and investor
 - Has transferred interest either substantially or entirely
- ❖ Up and coming:
 - Eli Rozenberg (Kenneth Rozenberg's son)
 - Bishop Rehabilitation and Nursing: DOH approved 9% transfer to Eli Rozenberg from Edward and Orly Farbenblum)
 - Project 3221195; approved as statutorily complaint 9/7/22
 - Avraham Areman*
- ❖ Minor players
 - Other employees of Centers Health Care- for example, Elliot Kahan Chief Marketing Officer
 - Jonathan Hagler, Daryl Hagler, Beth Rozenberg



Centers Facilities

- Amsterdam Nursing Home Corporation*
- Beth Abraham Center
- Boro Park Center, Bronx Center
- Brooklyn Center
- Buffalo Center
- Bushwick Center
- Carthage Center
- Concord Nursing*
- Cooperstown Center (FKA Focus Rehabilitation & Nursing)
- Corning Center,
- Delmar Center (fka Bethlehem Commons Care Center)*
- Ellicott Center
- Essex Center
- Far Rockaway Center
- Fulton Center
- Glens Falls Center
- Granville Center
- Holliswood Center
- Hope Center for HIV and Nursing
- Martine Center
- New Paltz Center
- Northern Manor Geriatric Center*
- Northern Metropolitan Residential Health*
- Northern Riverview Health Care*
- Oneida Center
- Onondaga Center
- Ontario Center
- Richmond Center
- Rochester Center (fka Creekview)
- Schenectady Center
- Slate Valley Center
- Steuben Center, Suffolk Center+
- Triboro Center
- Troy Center
- University Center
- Warren Center
- Washington Center
- Williamsbridge Center.



Rebranding

- ❖ Waterfront Center (now known as Ellicott Center)
 - Centers took over 2013
 - November/December 2016: admitted level 3 registered sex offender who sexually assaulted another resident
 - September 2017: changed name to Ellicott Center
- ❖ Cooperstown Center for Rehabilitation and Nursing
 - Centers managerial control since April 2017: consulting agreement with Focus Family of Companies (Joseph Zupnik)*
 - Zupnik pled guilty in 2018 for endangering resident. Had to divest all interest in current facilities.**



Failing to Improve Care

❖ 65% of facilities have 1 or 2 star overall rating.

➤ Time of expansion: 2.47 CMS Overall Star Rating.

➤ 2021: 2.22 CMS Overall

❖ Average Total Health Scores (Higher=Worse):

	Centers	NYS
Cycle 1	45.05	26.68
Cycle 2	53.30	27.59
Cycle 3	65.20	30.91

❖ Responsible for 16.23% of Actual Harm and Immediate Jeopardy Deficiencies. (Centers = ~6.5% of NYS facilities)

❖ CMS Special Focus Facilities

➤ 1 SFF; 4 candidates; 1 recent graduate (Rochester Center)**

➤ Current (Aug 2022): 1 SFF; 4 candidates +



Health Deficiency Citations per Rating Cycle

- ❖ Centers overall perform worse compared with NYS averages
- ❖ # of citations higher in each of the 3 survey cycles

	Centers Avg	Centers Median	NYS Avg	NYS Median	Centers Range	NYS Range
Cycle 1	7.75	7	5.03	4	0-27	0-30
Cycle 2	8.73	9	5.08	4	1-21	0-28
Cycle 3	7.70	6.5	5.12	4	0-36	0-36

- ❖ Cycle 1:
 - Centers (27): Delmar Center (Reg 6)
 - NYS (30): Van Duyn (Reg 10)



Health Deficiency Scores per Rating Cycle

- ❖ Centers overall performs worse compared to NYS averages
- ❖ More Centers facilities exceeded overall average

	Centers Avg	Centers Median	NYS Avg	NYS Median	Centers Range	NYS Range
Cycle1	45.05	34	26.68	20	0-242	0-248
Cycle 2	53.30	40	27.59	20	0-236	0-236
Cycle 3	65.20	28	30.91	20	0-747	0-747

- ❖ Cycle 1:
 - Centers (242) Buffalo Center (Reg 15)
 - NYS (248) : Casa Promesa (Reg 3)



Repeat Deficiencies

Top 5 Centers Deficiencies

- ❖ F880: Infection Prevention & Control
 - 32 of 40 Centers cited (80%). 12 had repeat deficiencies.
- ❖ F656: Develop/Implement Comprehensive Care Plan
 - 32 of 40 Centers cited (80%). 4 had repeat deficiencies
- ❖ F812: Food Procurement, Store/Prepare/Serve-Sanitary
 - ❖ 28 of 40 Centers cited (70%). 5 had repeat deficiencies.
- ❖ F684: Quality of Care
 - 23 of 40 Centers cited (57.5%). 5 had repeat deficiencies.
- ❖ F585: Safe/Clean/Comfortable/Homelike Environment
 - 21 of 40 Centers cited (52.5%). 3 had repeat deficiencies.

University Center for Rehabilitation is the only Centers not cited for the top 5 deficiencies.



Facility Focus: Amsterdam Nursing Home Corp (1992)

❖ CMS records list facility as NFP with directors and managing employees dating back to Dec 1, 2009.

- Lists Shlomo Katz as administrator Jan 1, 2021
- Katz is an administrator with Centers

❖ Ownership change application (#2211172) Apr. 22, 2021

- Amsterdam Operations Assoc LLC (Kenneth Rozenberg and Care Continuum Ventures)

❖ Has care improved since early 2021?

Cycle Survey Date	# of Health Deficiencies	Cycle Total Health Score
02/16/2022	12	52
06/07/2019	5	24
05/31/2018	5	32

- ❖ Concern: assessment/care plan
 - (F656) 2/10/20; 08/10/21; 02/16/22
 - (F657) 05/31/18; 06/07/19; 02/16/22

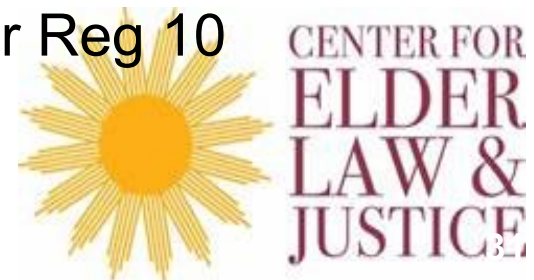
Tangled Web Example: Suffolk Center

- Suffolk Center is not officially owned/operated by Kenneth Rozenberg or Amir Abrimchik according to CMS. However, Centers employees and affiliates have operated Suffolk Center since at least May 2007. Suffolk Center Receiver, LLC has owned/operated the Suffolk Center since May 2007. The members of Suffolk Center Receiver, LLC are: Herbert Paul Konstam (95%) and Devorah Konstam (5%). Herbert Paul Konstam: the Chief Operator Officer and administrator of Suffolk Center.
- On June 30, 2021, a CON application for ownership change was received by the DOH. On March 2, 2022, the PHHPC approved the application and the final PHC Approval Letter was sent on June 9, 2022. **The approved operator is J & H Operations, LLC, with Jacob Hager as the sole member (100%).** The CON publically accessible document states, “the applicant has entered into a consulting and administrative services contract with Blue Sapphire Consulting Company, LLC (Allen Stein manager). There is no relationship besides contractual between Blue Sapphire Consulting Company, LLC and the member of J&H operations, LLC. **Blue Sapphire Consulting Company, LLC and A&S Acquisitions, LLC, the proposed realty owner, are both owned and managed by Allen Stein.**”
- Jacob Hager: employed at Luxor Care Center as the VP, since 2018, and has 25% ownership interest in two nursing homes: Luxor Nursing and Rehab at Sayville and Luxor Nursing and Rehab at Mills Pond. Centers Health Care employee, Elliot Kahan, has 8% interest in both Luxor facilities. **Elliot Kahan is the Chief Marketing Officer for Centers Health Care CON Project # 61178,** accessed via <https://apps.health.ny.gov/facilities/cons/nysecon/ProjectInformation.action>



Centers Expansion: Bishop Rehab and Nursing (fka James Square)

- ❖ New PHL/Regulation: When an individual of applicant/operator has >40% nursing homes with a CMS star rating of 1 or 2 stars there shall not be a determination of consistently high level of care. (PHHPC/DOH cannot approve ownership change.)
- ❖ Project # 221026
 - Application received: 01/20/22
 - 9% Edward Farbenblum's interest in Clinton Square Operations → new member Kenneth Rozenberg
 - Withdrawn on 05/26/22
- ❖ Project # 221195
 - Application received: 05/15/22
 - 8% Edward Farbenblum's interest and Orly Farbenblum's 1% interest in Clinton Square Operations → new member Eli Rozenberg.
 - Approved: statutorily compliant 09/07/22
- ❖ March 2022: New Administrator with Centers (per Reg 10 LTCOP)



Ombudsman Notification

Work with your ASO on this advocacy

❖ Certificate of Need – Ownership Change

- DOH shall notify SLTCOP of an ownership change application within 30 days of DOH acknowledgement of the application
- When application is scheduled for consideration by PHHPC, DOH shall notify SLTCOP.

❖ Requirements related to nursing homes and related assets and operations

- Operator shall notify SLTCOP at least 90 days prior to executing a letter of intent or other contractual agreement related to:
 - The consulting, operations, staffing agency or other entity to be involved in the operations of the facility.
- Notification to SLTCOP, all residents/ reps and staff/ reps within 5 days of executing a binding letter of intent or other contractual agreement.



ANE Contract Extension: September 2024

- ❖ 'In-house' advisory support on complaints/issues pertaining to abuse, neglect, exploitation, and related matters in nursing homes and adult care facilities:
 - Financial exploitation, staff treatment of residents, resident-resident altercations, family dynamics and authority, care planning, failure to provide care, staffing, care planning, concerns on ownership/contracts, and more
- ❖ In-house support:
 - Ombudsman case specific guidance:
 - Strategy, memos, phone calls, emails, guiding questions.
 - Can be 5 min discussion, in-depth assessment, detailed memorandum.
 - Legal and regulatory research:
 - Can be quick (ie pull the law/regulation/guidance with citation for LTCOP advocacy)
 - Questions on facility policies and procedures and resident rights perspective/compliance.
 - Strategy discussions on facility and region-wide issues
 - Tailored advocacy resources and FAQ documents for LTCOP use



Contact

Lindsay Heckler

Consultant

lheckler@elderjusticenyc.org

(716) 853-3087 x212

