Nursing Home Transitions: Success Through Collaborative Advocacy

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March 27, 2018
Housekeeping

• All on mute. Use Questions function for substantive questions and for technical concerns.

• Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.

• Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.
About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living’s Administration on Aging.
Faculty

• Gwen Orlowski, Esq.
  Attorney, Central Jersey Legal Services

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  Director of Advocacy and Outreach,
  I Choose Home NJ / NJ Long-Term Care Ombudsman
Learning Objectives

Participants in this session will:

1. Gain an understanding of the Money Follows the Person program and how it serves to successfully transition Medicaid residents from nursing homes.

2. Describe various legal issues that arise in complex nursing home transitions and how, in light of NJ’s experience, some of these issues can be addressed.

3. Identify scenarios in which collaboration with Legal Services and/or Long-Term Care Ombudsman to advance NF transitions can prove fruitful.

4. Review the federal HCBS person-centered planning rules and better understand how those rules can be used to advocate on behalf of nursing home residents with challenging/complex circumstances in an effort to transition back to the community.
Two Nursing Home Transition Stories
Survey Question re George

What do you think will be the most difficult barrier for George to overcome to move out of the facility?

A) past rental/housing issues  
B) cognitive/clinical issues  
C) intransigent facility staff
Ana
Survey Question re Ana

What do you think will be the most difficult barrier for Ana to overcome to move back home?

A) family support/dynamics
B) high need for services
C) intransigent facility staff
D) concerns about diminished capacity
E) keeping apartment during planning process
What is I Choose Home NJ (MFP)?

• Helps low-income seniors and individuals with disabilities to transition from nursing homes back to the community.

• Program savings are invested into long-term care supports and services in the community, as opposed to institutions.
Long-Term Care Ombudsman (LTCO) Strengths When Transitioning Residents

- Resident-focused advocacy
- Power to investigate and resolve barriers to transition
- Access to other state partners/agencies
- Power to educate facility staff, residents, and families
- Volunteer Advocates in 80% of nursing homes
Legal Services Strengths When Transitioning Residents

- Title IIIB Mandate
- Broad subject matter legal expertise
- Litigation experience/knowledge
- Representation often ensures greater responsiveness
## Subject Matter Expertise

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Top 5 Barriers to Transition

- Housing
- Family conflict
- Unresponsive/intransigent facility staff
- Medicaid eligibility and service planning
- Residents with diminished capacity
Housing

• Acute lack of affordable and accessible housing for very low-income NF residents
• Prior evictions, bad credit history, criminal history
• Difficulty maintaining current housing
Family Conflict

• Family and friends (loved ones) invested in person remaining in the nursing home
• Facility deferring to family, not the resident
• **Family guilt / indecision about caring for person in community**
Unresponsive / Intransigent Staff

- Pressure from management to keep residents
- Constant turnover and need to educate new staff
- Facility ignorance of M.D.S. Section Q
- Lack of consideration of **clinical and social** needs pre-transition
Medicaid

• Difficulty applying
• Confusing clinical and financial eligibility criteria
• HCBS services upon discharge
• Denials/reductions/terminations in services
Diminished Capacity

- Facility “best interest” mentality
- Not speaking directly to resident him/herself
- Inappropriate deference to family/friends
- Lack of financial control
Nursing Home to HCBS: What’s in the Attorney’s Toolbox?

• Person-Centered Planning Rules
• Medicaid Waiver: Short Term Nursing Home Stay benefit
• State-level Advocacy → LTCO
• Litigation
Person Centered Planning Rules

• 2014 Federal HCBS Rule
  • Justice in Aging: “A Right to Person-Centered Planning”

• 2016 Revisions to Federal Nursing Home Regulations
  • Consumer Voice: “Assessments, Care Planning, and Discharge Planning”
HCBS PCP Rules & Transition Planning (2014)

Consumer Leads the Process

• Requires informed choices
• Reflects strengths, preferences, goals, and desired outcomes
• Consumer retains due process rights
NF PCP Rules & Transition Planning (2016)

New!

- Definition of Person-Centered Care
- Comprehensive Person-Centered Care Plans
- On-going Discharge Plans: focus on resident’s discharge goals
- Resident has control during care planning and day-to-day decisions
Short-Term Nursing Facility Stay Benefit
NJ’s 1115 Waiver STC #33

Benefit = Right to retain income while in NF short-term

• Must be receiving HCBS prior to entering NF
• Reasonably expected to be discharge and resume HCBS within 180 days
• Use the post-eligibility rules at 42 CFR §435.726 (HCBS) rather than 42 CFR §435.725 (institutional)

$2205/month MA vs. $50/month PNA
Collaborating with LTCO

CJLS reaches out to NJ LTCO when:

- Nursing home is being recalcitrant
- When housing is needed
- Resident has complex medical needs
- Difficult family dynamics
George
Scenario 1, Question 1

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

_The NF social worker is not advancing George’s transition and consistently says “But I just don’t think leaving is in his best interest!”_

A) LTCO

B) Legal Services

C) Both are equally equipped to handle
Scenario 1, Question 2

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

*The State Public Housing Authority denied George’s housing voucher, citing threatening behavior in a PHA property 15 years ago.*

A) LTCO

B) Legal Services

C) Both are equally equipped to handle
Scenario 1, Question 3

George has a TBI and his capacity is slightly diminished, he sometimes is aggressive and makes compulsive decisions. How would this affect your advocacy?

A) Stronger advocacy with the NF to maximize his autonomy/capacity.
B) Ensure HCBS care plan includes TBI-specific services.
C) Help resident identify a circle of support for decision-making in the community.
D) All of the above.
Ana
Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

A critical element of Ana’s discharge plan is that her niece move in with her to provide LTSS to wrap around MCO-provided PCA, but the niece keeps changing her mind and will not commit.

A) LTCO
B) Legal Services
C) Both are equally equipped to handle
Scenario 2, Question 2

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

Ana’s MCO will only authorized a maximum of 40 hrs/wk of PCA even though there is authority under state law to provide more in exceptional circumstances. Even with niece’s help, 40 hrs/wk is not sufficient.

A) LTCO

B) Legal Services

C) Both are equally equipped to handle
No one questioned Ana’s capacity when she first arrived at the NF, but as the discharge planning drags on, she is beginning to exhibit short-term memory issues and has trouble making decisions.

How does this change your approach to advocacy on behalf of Ana?

A) Review RPC 1.14 Client under a Disability
B) Access behavioral health consult and services
C) Include support network to help with decision-making
D) All of the above
Summary of Learning Objectives

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Questions?

All attendees can submit questions via the chat feature on the webinar interface.
Case Consultations

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