

Legal Counsel for Long-Term Care

→ **NEW PROTECTIONS FOR RESIDENTS, STRENGTHENING LEGAL SUPPORTS**

**LAUNCHING
JANUARY 2026**



State law guarantees the right to counsel for low-income residents facing housing evictions. However, many Washington residents live in assisted living facilities (ALF), adult family homes (AFH), and enhanced service facilities (ESF), where similar protections have not previously been in place.

Recent federal Medicaid guidance from the Centers for Medicare & Medicaid Services (CMS) requires Washington to extend further discharge protections to these settings. Compliance is necessary to align with federal law and maintain Medicaid funding.

To meet these requirements and address the risks residents may face, the Office of Civil Legal Aid is administering the new Legal Counsel for Long-Term Care program. This program ensures eligible residents receive representation when they are facing removal and helps protect the rights guaranteed to individuals in long-term care settings.

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→ **The Problem: Unsafe Discharges and Transfers**

Today, when a resident is transferred or discharged—from an adult family home, assisted living facility, or enhanced service facility—they often have no clear path to appeal and limited access to legal advocacy, even though state law grants specific rights and protections related to transfers and discharges. Discharges and transfers can result from changes in medical needs, behavioral challenges, funding or insurance limitations, or facility capacity issues. Very few attorneys currently handle this type of work, leaving residents with minimal legal support to represent their rights.

Despite these rules and protections, media reports have highlighted problems with discharges from these settings, and hospitals report increased unnecessary boarding when residents cannot return to their prior facilities.

“ **Resident Voice**

Most residents don't even know they can fight a discharge. They don't know how they can get an attorney. They just leave—sometimes to the streets, sometimes to a shelter.

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Representing legal interests protects residents' rights. Without it, they may be at risk, including:

- Moves to more intensive and expensive care than they need, even when a safer, less restrictive setting would work.
- Moves to places that do not provide the services they need, which can lead to repeated hospital stays.
- Being denied return to their previous home after a hospital stay.
- Ending up without a stable home—sometimes in shelters, motels, or experiencing homelessness.

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Residents of Long-Term Care Facilities Need Stronger Eviction Protections,

Washington State Standard, (Dec.18,2023)

Some of the most vulnerable members of our community – residents of long-term care facilities – have little protection from unlawful discharge or eviction. The state's Residential Landlord-Tenant Act covers evictions but does not apply to people living in long-term care facilities.... Too often it is only through appeals undertaken by attorneys or other advocates that residents in these situations can get into an appropriate home that provides the care they need.

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STRUCTURE AND OUTCOMES

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Access and Intake

Beginning January 1, 2026, amendments to certain WACs will require facilities to give Medicaid-recipient residents written notice at transfer or discharge with information about available legal resources. This must include a statement that—subject to legislative appropriation—residents have the right to legal counsel at public expense. It will also specifically include the phone number for the Legal Counsel for Long-Term Care Screening Line. Access to legal services will be coordinated through a single point of entry, designed to be highly accessible for all residents. At this access point, residents will be screened for eligibility, provided with clear legal information, and connected with attorneys for full representation. Residents can reach the service directly or with support from advocates, ombuds, or case managers.

Direct Representation

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A panel of specially trained attorneys will accept case assignments from the centralized screening hub and represent residents in matters related to their residency rights, with the goal of achieving stability and preserving continuity of care. These attorneys will work across venues, including negotiating reasonable accommodations, filing administrative appeals, and defending against unlawful detainers if eviction proceedings are initiated in superior court. They will bring expertise in Medicaid, long-term care settings, eviction defense, and related legal areas to ensure residents receive appropriate representation. In addition, they will collaborate closely with the resident's broader support network, including ombuds, case managers, guardians, and family members.

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Short-term Stability and Long-Term Impacts

This program safeguards long-term care (LTC) residents' health and stability by preventing the loss of their home and source of care or by ensuring safe, lawful discharges to appropriate settings. It also helps reduce strain on hospitals, shelters, and other entities that often absorb residents discharged unsafely or unlawfully. For instance, the Washington Complex Discharge Task Force reports that unnecessary hospital stays average 32 days and cost about \$12,700 per Medicaid case, with even greater impacts in rural areas. Providing legal support for safe discharges can reduce these costly, harmful delays and improve outcomes for residents and facilities alike.



Statewide Reach

- 19,000 individuals reside in eligible facilities with demand continuing to grow
- Approximately 2,400 residents are expected to be eligible for legal services annually

Resident-Centered Legal Protections, Supporting the Broader System



While outcomes will depend on the unique circumstances of each client served, the program has the potential to generate meaningful benefits across multiple stakeholders:

- **Residents:** Will gain access to legal representation and advocacy, helping safeguard rights and address individual needs.
- **Hospitals:** Could see increased capacity and fewer uncompensated care days, contributing to stronger financial and patient care outcomes.
- **Facilities:** May benefit from added supports for residents and continuity of Medicaid funding when residencies are retained.
- **Local Governments:** Could experience reduced demand on emergency and shelter services, alleviating pressure on local resources.
- **State:** Will ensure compliance with federal and state requirements.

National Support

“Tenants funded through Medicaid home and community-based services are particularly vulnerable, since by definition their care needs are nursing-home-level. Federal Medicaid law requires that they at a minimum have the same rights as any other tenant in the state to contest an eviction through a court trial or administrative hearing. Since Washington provides tenants with the right to an attorney in evictions, Washington has taken an important step forward in providing the same right to an attorney to HCBS-funded tenants.”

Eric Carlson

Director, Long-Term Services and Supports Advocacy
Justice in Aging

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