

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Fighting Evictions in Nursing Homes and Assisted Living Facilities

Webinar Transcript

April 29, 2026

Presenter:

Eric Carlson

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

Eric Carlson:

Welcome to today's webinar, Fighting Evictions in Nursing Homes and Assisted Living Facilities. I'm Eric Carlson, and I'll be presenting the material today. On the logistical side, I suspect this isn't your first webinar, so you're familiar with Zoom. If you want to submit any questions, there's a questions button. So hit that, write your question. And to the extent we have time, we'll address some of them at the end. And then you can, in the Resource Library at Justice in Aging, you can access this webinar subsequently along with other webinars that we've done in the past. Justice in Aging is a national organization that uses the power of law to fight senior poverty. And historically, we've always focused on defending populations that have historically been out of power and have needed additional assistance. You can join our network by going to justiceinaging.org and clicking on the sign up button or send an email to info@justiceinaging.org. So with that, let's move into the content of today's webinar.

I want to talk a little bit about language used and attitudes. If you look at the nursing facility law or the assisted living law, there's a lot of references to transfer or discharge. We're going to use generally eviction here instead because transfer and discharge sound a bit sterile, a bit mechanical to business-like. They're focused more on the institutional processes, like you're just doing some sort of mechanical chore that's necessary. But the most important thing from our perspective is that we're talking about a human being. It's somebody who has been living in the facility but is being forced out. So you don't want the language to obscure what's really going on here, which is why I generally talk about evictions. When we talk about apartment tenants, we talk about evictions because there are people being pushed out. And the same thing is true in long-term care facilities, which necessitates using the same language.

And then one other introductory point, the most important rule in fighting evictions from long-term care facilities, really simple. Just three words. Don't

move out. And your response could easily be, "Well, how sophisticated is that? I didn't need to go to law school to figure that out." The reason it's important though, is that the vast majority of residents, to the extent that they lose, don't lose because they appeal and go to a hearing or go to a trial and have a judgment go against them. They lose right up front because they get a notice and they panic and they worry, they obsess about it, and then they leave because they don't want to deal with it. And I'm not casting aspersions on anyone. I understand it's easier for me sitting in an office to say this than it would be if I were living in a long-term care facility, but if I were given advice to myself living in a long-term care facility, I would give this advice.

Don't move out. That if you get a notice, as we'll discuss, folks generally have defenses, often have defenses, oftentimes win. And long-term care facilities are, I think, too accustomed to giving notices and having people immediately capitulate. If residents stay and then win, they do okay. And the nursing facility gets the message or the assisted living facility gets the message that these folks will stand up for themselves and they generally do better in the facility subsequently than they did before getting the eviction notice. With that, let's move on to the specific facility type. We're going to discuss nursing facility evictions first and then move on to assisted living. It's a bit easier on a national webinar like this to talk about nursing facilities because the law is consistent across the country. The federal nursing home reform law applies to every nursing facility that's certified for Medicare and/or Medicaid, and that's the vast, vast majority of facilities in the country.

There's just a tiny fraction that don't accept either because Medicare and Medicaid are such important reimbursement sources. As a practical matter, virtually every facility has to be certified. So in almost all circumstances, the facility that you're dealing with accepts Medicare and Medicaid or both, and because of that has to comply with the federal law. And then within the facility, the nursing home law applies regardless of the resident's payment source. So for the individual resident, it doesn't matter if that resident's care is being funded through Medicare, through Medicaid, just paying out of pocket, through a third-party long-term care insurance policy, whatever it is. As long as they're in a certified facility, the law covers every single resident of that facility, regardless of how the resident's bill is being paid. And then the final broad note on law here, there's a citation for the eviction regulations, Title 42 of the Code of Federal Regulations, 43.15 subsection C.

Under those regulations, there are only six liable reasons for eviction. The first two relate to the resident's care needs. Number one, the resident needs a higher level of care. So in this case, transfer to a different facility is necessary, a level of care above nursing facility care. Number two, the resident's health is improved so that he or she no longer needs nursing facility services and could allegedly move into an assisted living facility, for example, or to a house or apartment. Reasons three and four deal with the wellbeing, not of the resident, but of other people. So number three, the resident supposedly needs to be

evicted because the resident's presence in the facility endangers the safety of others in the facility, or number four, the resident's presence in the facility endangers the health of others in the facility. Reason number five is nonpayment after the facility is given reasonable notice, and then six, the facility is going out of business and isn't operating as a nursing facility anymore. So those are the only allowable reasons for eviction.

And if the facility tries to argue something else, that should be a non-starter because these are the only six. There's a notice requirement in the federal regulations. The facility has to give written notice to the resident, the resident's representative, and to the applicable long-term care ombudsman program. The notice has to be in writing in a language that the resident and the resident's representative will understand. So note that you've got to... If it needs to be translated, it should be translated under the regulations. The notice has to include the reason, one of those six reasons that I mentioned just a couple of minutes ago, the date of the proposed transfer of discharge, the location to where the resident is to be moved, the resident's right to appeal, and then the contact information for the applicable long-term care ombudsman program.

This notice generally has to be given. This written notice that we just discussed generally has to be given at least 30 days in advance of the proposed action. Want to note that the regulations call in unusual urgent circumstances, practical notice of less than 30 days if there's some urgency of the resident has lived in the facility for less than 30 days. But note here that practical isn't defined in law, but what we need to argue if in the rare instances when the facility might be trying to move with less than 30 days notice, is that practicable has to mean that the resident is able to stay at least until his or her appeal can be heard and ruled upon because it wouldn't be practicable. Let's say I'm in a nursing facility and the facility says you have to get out in four days, but I've got a righteous case. It's not fair. I need at least enough time to be able to request an appeal, have that appeal heard, and then have a ruling on that appeal to determine if the eviction is appropriate in the first place.

There's also a documentation requirement in the federal regulations. The reason for this has to be documented. First of all, if this is based on supposedly the resident's own good, the first two reasons that we talked about, the resident needs a higher level of care or the resident doesn't need nursing facility care anymore. This has to be documented by the resident's own physician, which makes sense because again, this is supposedly for the resident's own good, but if the transfers instead based on the health or safety of others in the facility, then documentation from any physician is adequate. And then within the last 10 years, the regulations were revised to add this additional requirement. If there's a situation where the facility claims that it can't meet the resident's needs, that's reason number one. The facility's arguing, you need more than a nursing facility, and so we can't meet your needs, then the documentation has to explicitly include all three of these.

The needs that allegedly can't be met. So you can't just say, "Oh, we can't meet your needs, but we can't assist you with whatever it is specifically." And then number two, we've tried. These are our efforts to meet those needs. We've done our best in trying to meet your needs. And then number three, this is why this new facility that we're suggesting for you, this is how they can meet your needs in that new facility to guard against the possibility. And I've seen these dozens of times over the years when the facility just waves its hands and says broadly, "Oh, we can't meet your needs when we're just sending you someplace else." Even though on paper, someplace else looks little different than the original nursing facility. That's dealt with by this requirement that the facility has to explicitly note the needs that can't be met, what they've tried to do to meet those needs and what the new facility can do to meet the resident's needs.

And then also in the regulations, there has to be preparation for transfer discharge. There's two specific sections of the regulation. One is specific to these involuntary situations. That's the language that's quoted here. The facility has to provide and document "Sufficient preparation and orientation to ensure safe and orderly transfer discharge." And then secondly, all residents should have a discharge plan as part of the care plan. So between those two regulations, there's a clear requirement that the facility can't just say, "Well, we're putting you out and it's your problem as to where you go and what happens." There needs to be the specific design and documentation of adequate preparation. I've mentioned the right to appeal. Here are some of the specifics on those appeal hearings under the federal regulations. Here, there's some variation depending on what states you're in, but the broad parameters are the same. We're talking about administrative hearings here.

We're not talking about state court processes. So there's going to be a hearing officer. There's less formality certainly than you would have in a formal courtroom. My sense is that these are generally held at the nursing facilities, relatively informal, as I said, but you still, as a party, have the right to introduce evidence and cross-examine adverse witnesses. One suggestion about the psychology of this, that when I was doing direct service work, and I think this is representative of how it generally plays out, the resident was generally vastly outnumbered. Usually these are situations when the facility was trying to criticize the resident's behavior or characterize the resident's care needs. So it might be the advocate that me in that case and the resident or resident's family member and across the table from you, you'd have the administrator and the director of nurses and a few nurse aides and maybe someone else who worked in a nursing facility, and they were generally all prepared to criticize the resident, say bad things about what the resident, how the resident misbehaved or caused a disturbance or whatnot.

So my suggestion would be that that's a difficult position for the resident or the resident's family member to be in. So it's really important for the representative, whether it be a lawyer or a paralegal or someone from the ombudsman program or a family member, who whatever it is, to really push

back and as much as possible, try to turn the tables. So the hearing just doesn't become a criticism session directed against the resident, but more an explanation by the advocate or other person is why the nursing facility is wrong. And in many cases, why the nursing facility has made a mistake, why instead of evicting, it should have instead done care planning and provided more careful assistance so that the residents' needs could be met in the facility or that the problems wouldn't be as significant.

Go back to the point about don't move out, because that implicitly suggested the possibility of retaliation, or if not retaliation, just general fear by residents and residents family members. The response will be, "Well, if these people don't want me, maybe I shouldn't be here." "They're going to retaliate against me in some way. I don't want to get into a dispute with the facility." And as I suggested earlier in the don't move out discussion, first of all, again, it's easier for the advocate or lawyer to say this than the resident, but I think residents are well advised to hang in there. The disputes oftentimes, not with the staff, it's with the management. So it's not like the nurse aid, for example, necessarily has a particular dispute with the resident. There is no guarantee whatsoever that the resident's going to do better if they move to some other place.

Again, sometimes it seems like the path of least resistance is to just go ahead and go, but there is no guarantee, particularly in a situation like this when you're just being sent someplace on short notice. And as I mentioned, residents do okay after they appeal and win. I've been involved in many of these situations and after the resident wins, the facility gets the message and they figure it out and they understand that the resident will not be pushed around. And the relationship is better with better care planning and a better ability to meet the residents' needs. So I think both for systemic reasons and individual reasons, systemically, you don't want residents always capitulating. It's better if residents push back on a broad perspective. But also, I think I can say honestly that's true individually as well, that residents are going to do better. They don't necessarily do better being pushed out and moving precipitously someplace else, and they're better when getting the notice, taking a deep breath, appealing it, and moving forward. Let's talk about some common problems.

Presumably, if you're listening to this webinar, you're obviously interested in these issues and have some experience. There's a good chance that some of these will be very familiar to you. The first is the Medicare related problem. The facility says, "You have to leave, your care was being funded by Medicare, that's a short-term thing. And this facility doesn't provide long-term care, doesn't provide custodial care." However, they might describe the situation. That is not true, that the resident has a right to stay. Medicare, true. Medicare is short-term, a hundred days max under traditional Medicare, and oftentimes just three or four or five weeks, but that doesn't mean that the resident's stay is necessarily limited. You shouldn't have eviction based on change of form of payment. And if and when Medicare reimbursement ends, the resident has a

right to stay under Medicaid or private payment. The facility has two sets of notice requirements.

There's the Medicare notice requirements, and then there's the eviction notice requirements that we've discussed, and the facility has to comply with both of those. Just following the Medicare requirements is insufficient, and it is improper facilities to... You see this, but it is improper facilities to try to set themselves up as Medicare specific. Their financial incentives, because Medicare pays highest is generally the highest reimbursement rate. Facilities have a financial incentive to just keep bringing in Medicare people, cycling through them every four or five weeks and going forward on that basis. That may be financially advantageous to the provider, but it's completely unfair to the residents when they get their Medicare reimbursement extracted and then discarded. So completely inappropriate in those situations, the resident has to be prepared to just stay put. And if the resident needs continued nursing facility care, the form of payment can be switched from Medicare to paying out of pocket or Medicaid.

And the only one note that they should make in the states where there's distinct part Medicaid certification, it maybe could be a little bit complicated, but other than that, if you're in a facility where every single room is Medicaid certified, there shouldn't be any trouble whatsoever in switching from Medicare reimbursement to Medicaid reimbursement. You'll see oftentimes various allegations by facilities that the resident has essentially misbehaved, that has been disruptive, has broken the rules, exhibited behaviors, or then oftentimes is packaged as needing a higher level of care. This is almost, again, in my experience, not a viable situation for eviction. And first of all, if the facility sets this up as being just disruptive or breaking rules or having behaviors, that's not one of the six reasons. So the resident should win right off the bat because they haven't even articulated one of the six reasons.

But even if they do articulate the, "Oh, the resident needs a higher level of care." reason, that is generally not true. The resident, it's true, may be difficult. It may not be the easiest resident, may present some challenges, but that's why he or she's living in a nursing facility. It's not a finishing school. It's a nursing facility that's specifically set up to care for people who need ADL assistance and who oftentimes have some significant level of dementia. As a practical matter, these people don't need a higher level of care. They're not appropriate for subacute. They don't need an acute care hospital. They need a nursing facility, and the facility doesn't have grounds to evict them based on their care needs or their "behaviors". What the facility should be doing is doing some care planning.

There's ways of working things out and oftentimes the facility just on the face of it shows that the argument about needing a higher level of care is not viable because as I mentioned, they have to list a location to which the resident will be moved and the facility oftentimes lists another nursing facility, and it should be hard for them to claim that the resident needs more the nursing facility care if

they are proposing to send the resident to another nursing facility. Another invalid argument is the facility claiming that the resident requires one-on-one care, then that's not something that they do. The facility has to provide the care that is necessary. The language of the federal regulations talks about the care necessary for the resident to attain or maintain the highest practical physical, mental, and psychosocial wellbeing. That's a high standard.

They need to provide what the resident needs, and some residents require relatively less care, and some residents require relatively more care, and the facility has to provide the level of assistance that the resident needs. Again, as long as the resident is within that broad swath of care needs that qualify for stay in a nursing facility. Sometimes the facility will couch this as the resident's expense being too high. Oftentimes, this is directed at residents who are being reimbursed by Medicaid, and you'll hear complaints from the facility saying that they're losing X number of dollars per day on that resident or Medicaid residents generally, and that Medicaid just doesn't pay them enough to provide the necessary care.

That is improper on its face based on the nursing facility regulations. The facility can't discriminate in service provision or on evictions based on payment source. So in general, in advocacy, whenever you hear the, "Oh, Medicaid doesn't pay enough." You should be prepared to push back because the facility has agreed to accept that rate. Just imagine on your own healthcare coverage, let's just assume you have coverage from your employer and you went to the doctor and the doctor says, "Well, what you need is X, but because you've got Blue Cross or whatever you might happen to have, I can't do that for you because I don't consider their payment rate adequate." And your response would be, "Are you kidding me? You're getting paid. You signed up for Blue Cross." I'm not just picking on Blue Cross randomly. It could be any health insurer, "And you're telling me you won't do it." It's obviously wrong.

The same thing is true in this Medicaid situation. The facility has signed up to participate in Medicaid. They went to the state Medicaid program and said, "I want to be a certified provider. And I promise that in return for the payment rate, which I know about, I will comply with all these federal regulations and provide the level of care that's required under those standards." So it is completely inappropriate for the facility to go to the state to sign up, to sign up for that reimbursement rate, to take the money and then turn around and tell the individual, "Hey, I'm taking the money, but I don't think it's enough, so I'm not going to do this, that, or the other thing." Whenever you hear the Medicaid is not enough, you want to push back really strongly. Sometimes you have situations where there's Medicaid pending, person's in the nursing facility, the application is pending, the facility may try to evict because they're not getting paid at that point.

They are not allowed to evict under those circumstances. It's explicit in the regulations. As long as the paperwork has been submitted, then the facility has

to wait for the conclusion of the application process and can't evict while the application is pending. Move on to affirmative defenses. These can be described relatively easily and quickly. Remember those affirmative obligations that the facility had about notice and discharge planning and other documentation. So these defenses would be saying that the facility didn't do what they were supposed to. So all those things that the facility had to do on notice about listing the date, 30 days in advance, listing the appeal rights. If they fail to do it, that's a violation and arguably a defense.

Hearing officers, some will rule in the resident's behavior for these, let's just say "technical violations". And some won't, but you want to argue in these situations that actually technical is the wrong way to describe it. It's really important. It's important that the facility do this right, that they give notice, that they do the documentation, that they do all those things, and they're professionals and they've got to do it right. And what if they did it wrong for nine people and those people picked up and left because they didn't get appeal rights. And then the 10th person knew enough to appeal and they said, "Oh, sorry, just a technical violation." No, it's not. You're cutting corners and you can't, that's the price you pay. Maybe by cutting corners, you get some unfair wins, but if you get caught, if somebody knows enough to appeal and to make these arguments, then to keep the system operating appropriately, the requirement has to be enforced against the facility.

We'll walk through some of these other requirements that then turn into affirmative defenses that they didn't list the location. They list the location that was inadequate. Sometimes you'll see notices just say, "Oh, we're going to transfer so and-so to our daughter's house or toward a homeless shelter." Something like that. Inadequate, shouldn't be accepted, should be grounds for ruling against the facility. We talked about the physician documentation earlier. If the provider is unable to show that documentation, that's a ground to automatically rule against the facility as well. And then other defenses are pushing back on the... Doing battle essentially on the allegations themselves to prove that the facility can't make their case based on the merits. If they say, for example, that the resident needs higher than a nursing facility or that the resident's presence in the facility endangers rather the health or safety of others make a request for the resident's file, and there's useful information in the nurses notes, in the assessment document, in the care plan, social service notes.

And a lot of times you'll look for those things to see that either not much happened. So maybe they're arguing that the resident is really a danger and you look in the nurses' notes and there's not that much there. Or if there is something there, you can also look at the care plan and say, "What did the facility do? They've got an obligation if there's a problem to do some care planning and try to address the problem." If they didn't do that, those are grounds to rule against the facility in the eviction as well. And that's something that can come up to the extent that you're cross-examining people, the staff may be in the facility, in the hearing rather, all prepared to say terrible things

about the resident and how the resident has misbehaved and supposedly endangered others. You can turn the tables to a certain extent by showing that there's things that the facility didn't do.

They didn't do the care planning, they didn't do the discharge planning that we talked about earlier, and/or they're proposing to send the resident to nursing facility B, that on paper is just no different than nursing facility A. A variation on the eviction situation is the returning after hospitalization, so called hospital dumping. The right of the resident to come back is based on two things. One, the state law often includes a bedhold, and it's generally consistent with the Medicaid payment for bedholds. So a state may say you have a right to hold your bed in a nursing facility for a week or two while you're hospitalized, and then the Medicaid program oftentimes will often be willing to pay for that bed hold for the same length of time. Also, there's a federal law that gives a right to return to the next available bed under Medicaid or Medicare is regardless of the length of the hospitalization. So in that situation, for example, no one wants to pay for a vacant room, vacant bed for a month or six weeks, for example.

But if after, we'll just say six weeks in the hospital, the resident wants to return and the facility has a vacancy, it's perfectly appropriate to require the facility to allow the resident to return. And in the majority of nursing facilities, certainly there is a vacancy. Occupancy rates are more often than not far short of 100%. There are some advocacy priorities here because on an eviction, like I said, it's easier, relatively easier to say, "Don't move out." You just stay put. But if you're in the hospital and trying to get back in, it is harder. And you could do advocacy, you can make a complaint to the inspection agency, but really try to communicate some sense of urgency to get them to take strong action, ASAP. And you also have the option if you're a lawyer, have access to a legal services program that will consider it to go to the local trial court and get an injunction that would obligate the nursing facility to allow the resident to return. When I did direct services, I did a handful of those.

And generally, I found that the judges were very amenable to that because you're in a sympathetic situation. Oftentimes in that situation, the inspection agency has ruled in the resident's favor, but the facility has just stonewalled them, and your local state court judge will certainly understand, will be willing to see this as a lockout situation in something that's completely unfair to the resident. So with that, let's move to assisted living. There's some difficulties here. I said upfront in the nursing facility, talking about the same federal law. So it's easier to generalize in a national webinar like this, not true in assisted living, you're talking about state law, and you're talking even about different terminology for the same general level of care. Some states will say assisted living. Some states will say residential care facility for the elderly or housing with services.

And so I can't tell you exactly what your state law will say. I can talk about some things that are common. The facility can't meet the residents' needs, non-

payment. Some of the justifications... The law isn't nearly as good here as getting the nursing facility side. So in some states, you'll see really broad authorization that allow eviction just if the facility gives notice or if they've broken the house rules or things like that. So if people are in the position to do systemic advocacy, I encourage them to look at the state law and consider the possibility that it may need some tightening up, and that there's some good arguments to be made oftentimes to make the assisted living law closer to the nursing facility law.

Oftentimes, the facility is saying that it can't meet the resident's needs. Sometimes there may be something specific in the state regulations and say, and once you have pressure sores beyond a certain level, that they're unable to stay in the facility, you want to, in that case, prove that the disqualifying condition is not in fact the case. And in some cases, you might want to argue that to take a run at the law itself saying that the federal ADA requires that there be some level of accommodation, but that's a heavier lift because you're not just prosecuting the appeal, you're also suggesting that the state law has to be... Anyway, you're requiring the state court judge to consider the ADA as well, which is not impossible. Certainly, it's important, but it makes things a bit more complicated. You also see some situations where there's not a categorical disqualification. It's just a broader disqualification about the resident's needs being too great.

And in those cases, you want to show that the resident's needs actually aren't that high and/or argue that the facility should be in a position to provide the necessary care due to the state law, due to what promises they've made in the admission agreement or in advertising. And again, also their obligation under the ADA to accommodate conditions. In the nonpayment situation, a little more straightforward. Looking at the admission agreement, oftentimes private pay is much more common in assisted living than it is in the nursing facility situation. You don't have the same prevalence of Medicaid and Medicare, certainly. So there's a lot of discretion with the facility. You still want to take a hard look at the admission agreement. You've got admission agreements that play a little loose about tiers and particular rates associated with tiers of level of care and want to look hard at those to make sure that the facility doesn't get ahead of itself.

In some situations, there may be state law that limits what can be charged when a resident is eligible for SSI or if their care is covered via a Medicaid home and community-based services program, but it's hard to generalize here because some state laws aren't nearly as strong as they could be in this particular area. One thing I can mention that you see across the states are facilities that attempt to enforce agreements that say that they will not accept Medicaid unless the resident has already paid out of pocket for specific number of months or years. I know they're common, particularly in some states and just accept it as well, that's the way it is. I would encourage people to push back and to consider

challenges and to consult with us if you're interested in such a challenge, it is really problematic.

It's clearly not allowed in the nursing facility space. It used to be common in... It used to be 30 years ago. It used to be fairly common in the nursing facility space, but it's explicitly prohibited now. And then in Medicaid in general, you look at the law that says that a Medicaid certified provider can't charge a Medicaid beneficiary anything more than what's allowed. And that's what the facility is trying to do here. They want a situation. Let's say that when I entered, I signed some piece of paper that said I promised to pay out of pocket for a year and a half, but maybe just a year has gone by and I'm at Medicaid levels right now. I'm not in a position to pay privately anymore.

And the facility says, oh, they're essentially saying we're not accepting Medicaid from you because of this agreement. But that's inappropriate. If I get qualified via Medicaid and I come to them with the possibility of Medicaid payment and they're certified to accept Medicaid, they shouldn't be allowed to turn that down. And as I mentioned, it is prohibited under the nursing facility law, and I think it's vulnerable to challenge under just broad Medicaid law now. And if you see those situations, don't immediately assume that that's just the way it is and consider the possibility of pushing back and feel free to consult with us because you should be able to recognize the unfairness of this, that anyone who should be able to recognize the unfairness of this.

Somebody's in the facility, they have spent the last of their life savings probably paying for assisted living care, but the facility says, "Well, not enough though. That's all the money you've got, but we're going to force you to leave now because we don't consider the amount that you've paid us out of pocket sufficient in order for us to agree to bill Medicaid." And again, as a Medicaid provider, it's a little bit insulting if you're certified with the state to provide this assistance and then telling people to get lost instead rather than accepting their Medicaid, it is a problem. So as I mentioned, hope that we can find a way to push back in these facilities or the states where it has presented a problem. As far as procedures are concerned, it varies from state to state. Sometimes the state's landlord-tenant law, you go to the same court that all evictions are heard in, or some states there's an administrative hearing, and then in some cases it's a little bit murky.

The state regulations don't reference either the landlord-tenant unlawful detainer processes or an administrative hearing. The landlord-tenant law has some pros and some cons. It's obviously more expensive going to court, it's more intimidating to the resident, but it also is a little bit intimidating to the providers as well. And sometimes if they're presented with a situation where the resident says, "I'm not leaving, I think you're wrong," the provider is unwilling to retain a lawyer and go through the process to pursue an eviction in the landlord-tenant court. As I mentioned, some cases there's ambiguity, and I think in that situations, I encourage their people not to automatically capitulate.

There may be an argument. Oftentimes the landlord-tenant law will say that there's unlawful detainer procedures available in situations where a person has hired real property, but there's nothing explicit that says that includes assisted living, but there's nothing explicit that says it doesn't either. And so the argument is good that it should be covered.

Again, it's going to vary from state to state, but I encourage people to consider it because if you do get in that situation, there's likely a very colorable argument that it should apply, that it doesn't make a lot of sense that apartment tenants are protected, but assisted living residents can just be put on the street without any process whatsoever. So finally, we'll conclude with the discussion of the overlay of the federal law relating to Medicaid HCBS payment for assisted living care. Since 2023, there has been the effective application of the HCBS settings rule, which establishes minimum standards for those residential settings that accept the HCBS reimbursement to make sure that those settings are non-institutional, that home and community-based services are supposed to be an alternative to nursing facilities, a non-institutional alternative.

And so the settings rule is set up to ensure that that's actually true, that residents have rights and that settings at which they live are non-institutional, even in those situations when home and community-based services are provided, not just in the person's home or apartment, for example, but in a communal residential setting, like a group home or an assisted living facility, the HCBS regulations refer to these facilities as "provider owned or controlled residential settings." So the provider, the provider of services also owns the building.

It's not just that the HCBS provider is coming into your home and providing personal care assistance, but you're essentially moving into their home, their facility, and they are collecting rent and also providing the personal care service. It could be assisted living, could be group homes and other facilities for older folks or persons with disabilities. The settings rule says, for again, the evictions just make this broader point, that the living unit is a specific physical place rented under a legally enforcement agreement. So if you're in an assisted living facility that it's certified for Medicaid home community-based services, you're renting that space and the facility shouldn't be able to say, "Oh, we decided, Mr. Carlson, to move you from room number four to room number eight for whatever reason." No, because it should be a non-institutional setting. When I move in there, I have rented a space.

I have rented room number four, just the same way that I would rent apartment number 201 in some apartment building, and I have the right to remain in that unit. As far as evictions are concerned in these HCBS reimbursed settings, the resident has a right to the same responsibilities and protections from eviction that tenants have. So either you're protected by the landlord, tenant law, under unlawful detainer procedures, you get the hearing right, or that there has to be a written agreement that give you comparable protections. That's this

paragraph at the bottom that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord, tenant law. So there's ways that the state can comply, either landlord-tenant law, the law applies it, the law covers by its terms, oftentimes combined with regulations that limit the evictions from assisted living. So maybe the regulations will say you can only be forced to leave if you need a higher level of care or you're in danger to safety or whatever it is.

And then those particular requirements would be implemented within the landlord-tenant unlawful detainer trial process. Or that's one way. The other would be to have written agreements that establish comparable protections. There's one other possibility the state could have an administrative appeal process similar to the nursing facility process where these disputes would be handled by an administrative law judge. It doesn't technically comply with what we just discussed because it's not landlord-tenant law or it's not landlord-tenant equivalent established through a written agreement, but states may do it regardless because it seems to establish adequate protections. And there certainly are states that have done that and that's been accepted by CMS regardless, even though, like I said, it's not when you look at the language, it isn't technically in compliance.

So if you get in one of these situations, depending on the state you're in, you should follow one of these processes, either the landlord-tenant, the landlord-tenant lookalike through a written agreement or the administrative appeal. And if there aren't such procedures, then you want to be prepared to also stay put and demand adequate protections and consider... The most important thing here, again, is don't move out and maybe put the burden on the provider to figure out what's going on, but also potentially to... We wrote an issue brief on this last year that considered some of the options, the links here at the end of the program. So there are various permutations, but I encourage people to take it seriously. There has been a real problem across the country with non-compliance. You see states where there are no procedures. Just what I said about there has to be a protection, there isn't a protection or the protection isn't adequate. Last I looked in Nevada, there's no appeal processes whatsoever.

And in Washington earlier this year, a lawsuit was filed against the state by the Long-term Care Ombudsman Program and by an individual consumer arguing that residents of assisted living facilities did not get the equivalent protections that are available to tenants in the state's landlord-tenant processes. So again, really important, difficult to generalize on this national webinar because there's so much variation from state to state, but we'd be very interested in assisting if you see some problems in this area. And here's the references that I just mentioned. We've got a couple of minutes to handle some questions. I'll just say just to wrap up, really appreciate whether there's got a really good attendance today, so appreciate folks' interest in this topic. From where I sit, it doesn't get enough attention and residents are in such a vulnerable position. So hats off to you and your programs for doing this work, and if we can be any assistance to

you at any point, please let us know. So my colleague, Gelila, has been looking over the questions and maybe we can handle a couple before we run out of time.

Gelila Selassie: Yeah. Thanks, Eric. That was really helpful. There was a couple questions about Medicaid distinct parts certification with facilities. One was if a facility can require the resident to pay privately when their Medicare ends, if there's no Medicaid bed available.

Eric Carlson: Yeah. So distinct parts are not good that in a limited number of states, the facilities rather have the ability to limit the Medicaid certification just to certain rooms within the facility. So you get these unfortunate situations where the resident says, "I'm eligible for... Switch to Medicaid for me." And they say in response, "Well, sorry, sir, you're in the wrong room. You're in a non-certified place in the facility." In those situations, people want to ask as soon as possible for transfer to a certified room to make it clear. And so then in situations like this, they have a good faith argument to say, "Not my fault. I tried to get this addressed. I asked to be moved to a certified room and the facility wouldn't do it. So it's unfair for the facility to charge me like this when it's their fault that they didn't get me into a certified room."

So beyond that, I don't want to be in a position to say, "Oh yeah, you have to pay out of pocket." But I will say it's difficult though. That's the argument. That's the advocacy strategy would be to ask for transfer ASAP and then a facility tries to bill privately saying that it's their own fault for not addressing the situation despite being given adequate notice. But I will recognize that it is... I wouldn't want to say more than that on a national webinar. There's some complications here and it's really difficult to generalize. I can't say you will or will not prevail in those situations. It is a problem.

Gelila Selassie: Thanks, Eric. And then there were a couple questions about the notices for evictions. A lot of questions we're looking at if the notice always has to have the location listed where the resident is being discharged to, regardless for the reason of the discharge or whether it's a transfer, does the location always have to be on the notice?

Eric Carlson: Yes. There's a more complicated... So the answer is yes, I get it. I will say this. I understand that it's sometimes more complicated. The facility will say, "Well, the resident's not cooperating. What can we do? We're trying to figure it out. It's premature." Well, the regulation though is clear. It's got to list the location of "transfer discharge" when the notice is given.

Gelila Selassie: Great. And then last question, a lot of people have been noticing all these great protections that facilities just are not abiding by. And where can people turn to if their facilities are not following these regulations or these federal protections?

Eric Carlson: Well, that's the million-dollar question, isn't it? I mean, first of all, I will say that there There's something that all of us can do as far as our advocacy. That's why we're doing this webinar. This work that you can do at a small level, it's just the don't move out. People have that control. I mean, again, I'm not disparaging anybody, but don't move out. Those can be fought individually. I think you can make complaints with the licensing agency. You can make a broader complaint saying, "Here's systemic non-compliance." You could do education processes within your own community.

You could go to the networking, the aging services and networking if facilities are just tossing their Medicare people aggressively to do this kind of education and show this is wrong here, to try to change the culture, to get something in the newspaper, to do all the education that you can to... If you're a lawyer, you file a... There was a case in Maryland a few years back against a chain that was doing this kind of Medicare related discrimination they was talking about. They were just churning through Medicare people and tossing folks when their Medicare ended, and the State Attorney General brought a lawsuit. So all of those are options.

Gelila Selassie: Great. Thank you so much, Eric.

Eric Carlson: All right. Thanks much. Thank you, everyone. Appreciate your attendance.