

Helping Older Persons and Caregivers Deal with Nursing Home Problems: the Role of the Long Term Care Ombudsman

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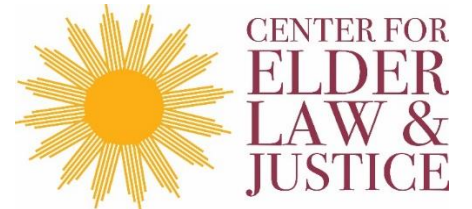
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NYS Ombudsman Program Mission

- To serve as an advocate and resource for older adults and persons with disabilities who live in long-term care facilities
- NYS LTCOP provides services to Nursing Homes, Adult Care Facilities and Family Type Homes
- Approximately 1500 facilities
- Over 160,000 residents
- New York City encompasses about 1/3 of all homes and residents



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NYS Ombudsman Program Structure

- State Office: State Ombudsman, Senior Assistant State Ombudsman, 3 Assistant State Ombudsman, 1 Clerical, 1 Half-time Legal Counsel
- 15 Regional Programs: 14 Not for Profit Agencies, 1 AAA (Approximately 35 full-time and 15 part-time staff statewide)
- Volunteers: Recruited/trained in each region (Approximately 560 statewide)



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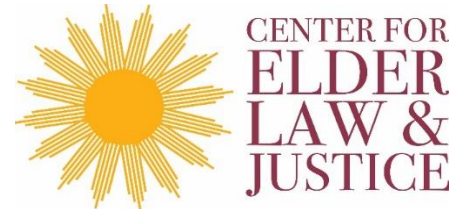


What does the Long Term Care Ombudsman Do?

- Long Term Care Ombudsman Program:
 - An advocate and resource for people who reside in long-term care settings such as nursing homes, assisted living, and adult care facilities.
 - Advocates for residents by receiving, investigating, and working to resolve complaints made by or on behalf of residents.
- Ombudsman:
 - Help residents and their families understand and exercise their rights to quality care and quality of life.
- Resident Focused Advocacy
- Provider of Information on Long Term Care Facilities



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Long Term Care Ombudsman Program Responsibilities

- Provide information to residents about long-term care services
 - I.e. How to choose a nursing home or other long-term care
- Identify, investigate, and resolve complaints made by or on behalf of residents
- Provide support for the development of resident and family councils
- Advocate for changes to improve residents' quality of life and care
- Provide connections/linkages to available resources
 - i.e. Legal Services Organizations, Filing Complaints with Dept. of Health and other Enforcement Entities, Open Doors Project



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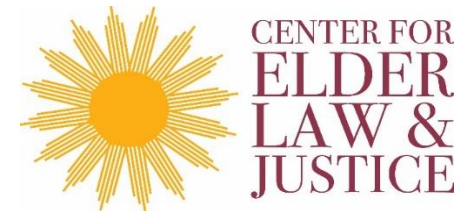


Regional Long Term Care Ombudsman Programs

- Each region covers a specific portion of NYS
 - I.e. Region 15 covers: Cattaraugus, Chautauqua, Erie, Niagara Counties
- Every region is operated by a Regional Coordinator and 1+ staff
 - Staff ombudsman oversee a corps of volunteer ombudsmen who are in the nursing homes, adult care facilities, and family-type homes
 - Staff ombudsman also are in facilities
- Calls come into regional programs in different ways:
 - Though State office of the Long Term Care Ombudsman Program
 - Directly from: residents, family, friends, staff
 - Elected Officials

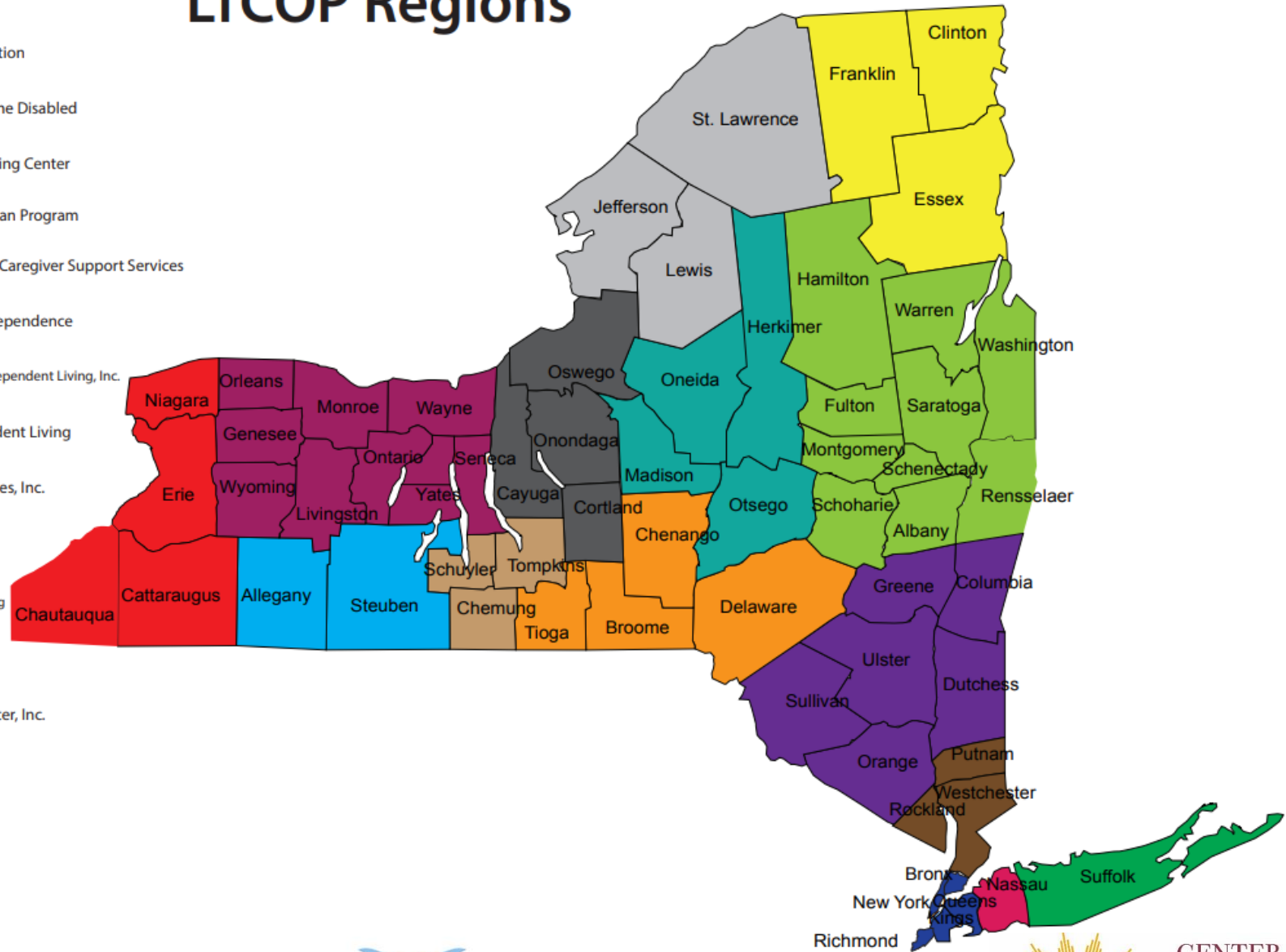


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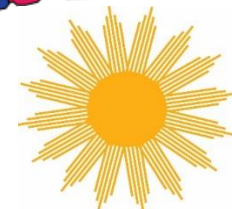


LTCOP Regions

- 1 Family Service League
- 2 Family and Children's Association
- 3 Center for Independence of the Disabled
- 4 Westchester Independent Living Center
- 5 Hudson Valley LTC Ombudsman Program
- 6 Catholic Charities Senior and Caregiver Support Services
- 7 North Country Center for Independence
- 8 Northern Regional Center for Independent Living, Inc.
- 9 Resource Center for Independent Living
- 10 ARISE Child and Family Services, Inc.
- 11 Action for Older Persons
- 12 Tomkins County Office for the Aging
- 13 Lifespan
- 14 AIM Independent Living Center, Inc.
- 15 People, Inc.



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Tips for Choosing a Nursing Home

- Utilize Nursing Home Compare and NYS Department of Health Nursing Home Profiles Websites to review recent inspections
- Is nursing home located close enough for family and friends to visit?
- If possible visit:
 - Are residents clean, well groomed, and appropriately dressed for the season or time of day?
 - Is the nursing home free from unpleasant overwhelming orders?
 - Does the nursing home appear clean and well kept?



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Choosing a Choosing Nursing Home

- CMS Nursing Home Compare:
 - <https://www.medicare.gov/nursinghomecompare/search.html?>
- NYS Department of Health Nursing Home Profiles:
 - https://profiles.health.ny.gov/nursing_home
- NYS Long Term Care Ombudsman Program:
 - Provide general information such as types of complaints the program receives regarding a specific facility. Cannot provide specific complaint information that may violate resident confidentiality.
 - <https://ltcombudsman.ny.gov/>



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CMS Nursing Home Compare

- <https://www.medicare.gov/nursinghomecompare/search.html>
- Allows the consumer to find and compare nursing homes certified by Medicare in Medicaid.
- General Information
 - I.e. address, whether the nursing home is located within a hospital, whether there is a resident and family council, type of ownership (for-profit, non-profit, government)
- Star Ratings: between 1 (worst) and 5 (best) stars
 - Health inspections, Staffing, Quality of care measures
- Health & Fire Safety Inspections
- Federal Enforcement



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NYS Dept. of Health Nursing Home Profiles

- https://profiles.health.ny.gov/nursing_home
- New York State Specific
- Provides the following information:
 - Health and Fire Safety Inspections
 - Services: i.e. baseline, respite care, ventilator dependent, pediatric
 - Quality Measures
 - Number of complaints received by NYS Dept. of Health
 - Number of citations
 - State based enforcement



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Region 15 Long Term Care Ombudsman Program

Hosted by People Inc.

- Buffalo, NY non-profit created in 1970 by a small group of parents wanting to address intellectual disabilities. Now over in 9 counties, 200 residential sites, day programs, and regional offices with nearly 4000 employees. In 1993 People Inc. expanded to include senior living apartments; also, the agency operates a Senior Companion Program

Covers 4 Counties: Cattaraugus, Chautauqua, Erie and Niagara

- Contact: (716) 817-9222
- 60 skilled nursing facilities, 8826 beds; 60 adult care facilities (ACF), 5512 beds; 9 family type homes; 14,338 total residents
- 70+ volunteer ombudsmen covering 78 facilities, some covering more than one, some share a facility, some are “roving” ombudsmen
- Currently 2 program FT and 2 PT staff, and 1 contracted legal liaison
- Assign volunteers to nursing homes first as priority, focusing on 1-2 stars
- Complaints that are of legal matter are navigated to Center for Elder Law and Justice legal liaison



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Nursing Home Resident Rights: Key Points

- In general, any rights you have in the community follows you into the nursing home
- All nursing homes are required to “provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care”
- Person Centered Care
- Resident and Family Councils: become active participants
- All nursing home residents shall be free from abuse and neglect



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Person-Centered Care

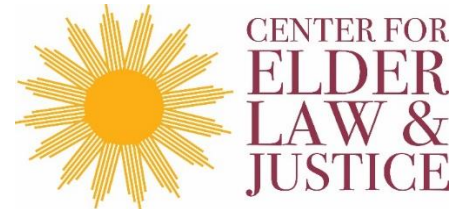
To focus on the resident as the locus of control and support the resident in making their own choices and having control over their daily lives.

What does this mean?

- Residents and chosen supporters have the right to participate in own care:
 - Ask questions about medical and social care
 - Be informed about changes to the plan of care
 - Participate in establishing goals



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Nursing Home Residents Have the Right to:

Dignity, Respect, and Freedom

- Be treated with consideration, respect, and dignity
- Self-determination, independent choice
- Security of possessions

Be Fully Informed

- Diagnoses, proposed treatment, risks/benefits
- Medications

Participation in Care

- Participate in own assessment, care planning, treatment, and discharge
- Refuse medication and treatment
- Be informed of all changes in medical condition
- Refuse chemical and physical restraints
- Review one's medical record

Make Independent Choices

- Person decisions: what to wear, when to wake/sleep
- Participate in activities inside and outside the nursing home
- Organize and participate in a resident council
- Manage one's own financial affairs

Privacy and Confidentiality

- Medical, personal, or financial affairs.

Voice Complaints

- To facility staff, Dept of Health, LTCOP, etc., without fear of retaliation/reprisal

Visitors

- Residents have the right to refuse visitors



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Resident and Family Councils

- Residents and family have the right to form councils
- Benefit/Purpose:
 - Support, voice concerns about facility policy, resident care, quality of life, presentations
 - It is up to the council who (i.e. staff/visitors) can attend
- Nursing Home Responsibility:
 - Provide a private space and to take reasonable steps to make residents and family aware of upcoming meetings (with council approval)
 - Act promptly upon grievances and recommendations of the council concerning care and life in the facility



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Resident Right: Freedom from Abuse, Neglect, and Exploitation

- The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation
- This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physician or chemical restraint not required to treat the resident's medical symptoms



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Abuse and Neglect: Definitions

- Abuse:
 - Willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish
 - Includes deprivation by an individual, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being
 - Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish
 - Includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through use of technology
- Neglect:
 - Failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress



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Misappropriation & Exploitation

Misappropriation:

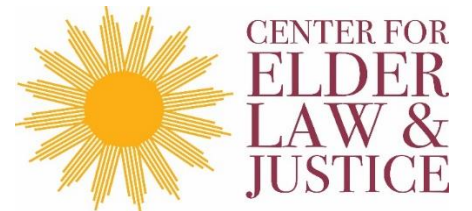
- The deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent

Exploitation:

- Taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion



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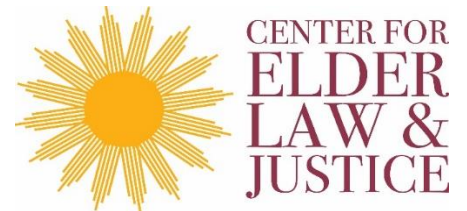


Reporting Requirements: Abuse, Neglect and Suspicion of a Crime against Resident

- The nursing home must report all alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.
- Reporting requirements for alleged abuse, neglect, exploitation or mistreatment:
 - No later than 2 hours if results in serious bodily injury;
 - No later than 24 hours if does not result in serious bodily injury
- Reporting requirements for suspicion of a crime against resident:
 - Within 2 hours if resulted in physical injury
 - Otherwise within 24 hours.



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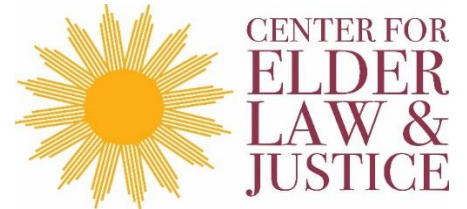


NYS Long Term Care Ombudsman Program: Connections to Legal Services

- When NYS LTCOP regionalized in October 2015, People Inc. looked to add the Ombudsman Program; talking with Center for Elder Law and Justice, there was mutual interest and the partnership was formed.
- Partnership created the role of the “Legal Liaison” (who is also an ombudsman)
 - Referring (“navigating”) the client (resident) between LTCOP and Legal Services (CELJ).
 - Training:
 - New ombudsman certification training presentations
 - Current ombudsman in-service presentations
 - Facility training and presentations
 - Community presentations
 - Guidance and research support – “in-house” legal support
- Legislative and systems advocacy



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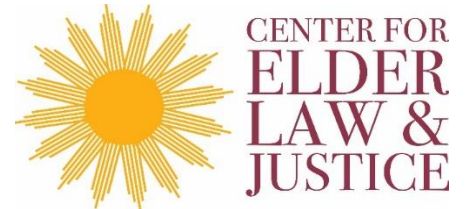


NYS Long Term Care Ombudsman Program: Connections to Legal Services

- Nursing Home (and Adult Care Facility) Discharge/Transfers
- Medicare and Medicaid Appeal Assistance
- Financial Exploitation Preventative and Corrective Assistance
- Consumer Protection
- Advance Directives
- Private Bar Referrals



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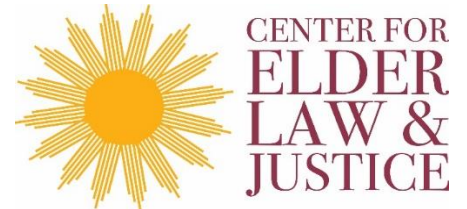


Financial Abuse Against Resident

- Facility has responsibility to protect the resident from financial abuse
 - This includes from facility staff, volunteers, and resident representatives
- Growing issue: Exploitation or misappropriation of resident funds by representative
 - Consequence: facilities are moving to discharge (evict) residents for nonpayment
 - The facility is responsible to take steps to notify authorities on the resident's behalf before discharging the resident
- Resources are available to assist the resident!
 - Enhanced Multidisciplinary Teams (E-MDTS)
 - Holistic response to elder abuse
 - <https://www.nyselderabuse.org/emdts/>



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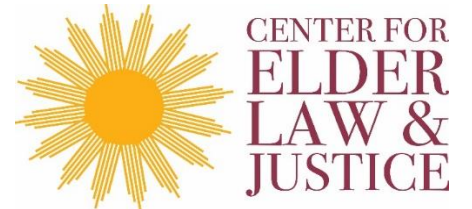


Reporting a Problem

- Be a squeaky wheel- if you have a concern speak up!
- Grievance Process
 - <https://elderjusticenyc.org/wp-content/uploads/2018/10/Nursing-Home-Grievance.pdf>
- Know the staffing structure in your facility
- Document document document!
 - Obtain copies of your plan of care
 - Document when and to whom you voiced a concern or request to staff (unit manager, directors of nursing, housekeeping, social work, administrator)
 - <https://nursinghome411.org/wp-content/uploads/2018/11/Resident-Concern-Record-Keeping-Form.pdf>
- Know where to file complaints: Long Term Care Ombudsman, Department of Health, Attorney General, Police Department



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NYS Department of Health

- Responsible for investigating complaints and incidents for nursing homes in NYS which are related to Federal and/or State regulatory violation
- Has the ability issue citations and fines for violations.
- Complaints may be filed two ways:
 - Complaint form:
https://apps.health.ny.gov/nursing_homes/complaint_form/complain.action
 - Complaint Hotline: 1-888-201-4563

<https://www.health.ny.gov/facilities/nursing/complaints.htm>



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NYS Attorney General

NYS Attorney General Medicaid Fraud Control Unit (MFCU)

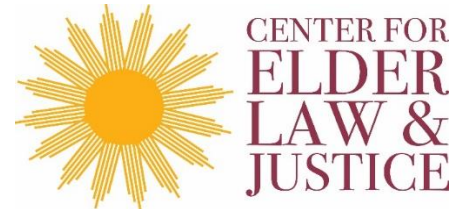
- Specializes in investigating and prosecuting abuse and neglect of residents in care facilities
- Jurisdiction extends to all residential care facilities (including nursing homes) regardless whether the patient/resident is a Medicaid recipient

To report resident abuse of neglect:

- Complete the MFCU form: <https://ag.ny.gov/comments-mfcu> ; or
- Call 1-866-697-3444



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Contact

- NYS Long Term Care Ombudsman Program:
 - 1-855-582-6769
 - Information on state-wide ombudsman program
- Region 15 Long Term Care Ombudsman Program:
 - (716) 817-9222
 - For ombudsman advocacy in Cattaraugus, Chautauqua, Erie and Niagara Counties
- Center for Elder Law & Justice:
 - (716) 853-3087
 - Civil legal services in WNY



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Resources

- NYS Long Term Care Ombudsman Program:
 - <https://www.ltcombudsman.ny.gov/>
- Centers for Medicare & Medicaid Services:
 - <https://www.medicare.gov/Pubs/pdf/02174-Nursing-Home-Other-Long-Term-Services.pdf>
 - <https://www.medicare.gov/nursinghomecompare/search.html?>
- Nursing Home Resident Rights information:
 - <https://nursinghome411.org>
 - <https://theconsumervoicework.org/>
 - <http://www.justiceinaging.org/nursing-homes/>



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