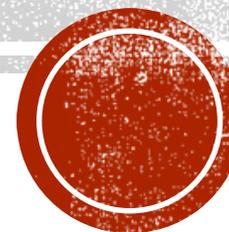


# ELDER JUSTICE & AUTONOMY

Advocating for Residents in Long-Term  
Care Facilities



Presented by Linnea Forsythe, State Long-Term Care Ombudsman  
August 14, 2019



# TOPICS COVERED

- Aging and Long-Term Care Landscape in New Mexico
- What is Quality Care & How to Advocate for It
- Protections Against Inappropriate Discharge
- Pre-Dispute Arbitration Agreements
- National Advocacy
- Long-Term Care Ombudsman Program



# AGING IN NEW MEXICO

- In 2015, there were 486,868 people age 60 and older in New Mexico.
- By the year 2030, 32.5% of New Mexico's population will be age 60 or older. New Mexico will rank 3<sup>rd</sup> in the nation in percentage of population age 60 and older.
- The 85+ population of New Mexico will more than triple from 23,306 in 2000 to 75,629 in 2030.
- 31,000 people in New Mexico are directly suffering from Alzheimer's disease or related disorders; this is projected to increase to 43,000 New Mexicans by 2025.



# LONG TERM CARE IN NEW MEXICO

- Approx. 70 Nursing Facilities (National – 15,660 facilities)
  - 5,500 Nursing Home Residents (National - 1.3 million residents)
- Approx. 230 Assisted Living Facilities
- 52% of people turning age 65 who will need some type of long-term care services in their lifetimes.
- Of people who will need long-term care, 14% will need it for longer than five years.
- Medicaid is the primary payer for formal long term care services, covering about 43% (\$146 billion) of all long term care services spending.



# WHAT ARE...

NURSING FACILITIES	ASSISTED LIVING FACILITIES
<p>Provide full-time access to nursing and medical care for people who are unable to care for themselves.</p> <p>Staff: Administrator, Director of Nursing, CNAs, other Care Staff, access to Physician and Rehabilitation Services</p> <p>Cost: ~\$90,000+ / year</p> <p>Regulated by Federal and State</p>	<p>Provide room and board and assistance with activities of daily living; for people who are generally more independent.</p> <p>Staff: Administrator, Care Staff</p> <p>Cost: ~\$45,000+/year</p> <p>Regulated by State only</p>



# WHAT IS QUALITY CARE?

- **Quality Care**
  - Is individualized to meet the care needs and preferences of **each resident**.
  - Promotes resident **dignity, choice, and self-determination** in all aspects of life and care.
  - Improves, or maintains, the **highest practicable well-being** of each resident.



# RIGHTS, LAW, AND REGULATIONS

- **All residents**, regardless of the type of facility, have:
  - the same rights as those in the larger community plus additional protection in federal and/or state law and regulation.
  - the right to be protected from mistreatment, including abuse, neglect, and exploitation and are entitled quality, individualized care.
- There are federal requirements for participation in Medicare and Medicaid for nursing homes, but no federal regulations for assisted living.



# SIGNS OF QUALITY CARE



- Quick and kind response to call lights.
- Resident involvement in care and daily life is encouraged.
- Residents appear clean, well groomed, comfortable, engaged, happy, and without visible restraints.
- Residents' rights are respected and supported.

- Facility is clean, clutter and odor free, comfortable temperature.
- Food is appetizing.
- Community is warm and engaging.
- Staff know residents and communicate respectfully.
- Meaningful individual and group activities.



# ADVOCACY TIPS



- Get to know other residents, especially those without family or visitors.
- Get involved in the Resident or Family Council.
- Share information about residents' rights and signs of quality care.
- Communicate with staff, compliment good care.
- Learn about the Long-Term Care Ombudsman (LTCO) Program and get to know your local ombudsman.
- If you are a family member or friend, continue to visit often and at varying times.



# WARNING SIGNS



- Facility appears understaffed (e.g. call lights not answered promptly).
- Residents' rights are not respected (e.g. no choices in daily routine, not involved in care decisions).
- Quality and quantity of food declines.
- High staff turnover, staff not familiar with residents.
- Residents appear bored, less active, not engaged with others or activities.
- Residents and/or family members say concerns have not been resolved.
- Facility uncomfortable (e.g. not clean, has an odor, too cold/hot, too noisy).
- Medication errors.



# ADVOCACY TIPS



- Work with the Resident or Family Council to address concerns as a group.
- Become familiar with residents' rights and facility requirements (federal and/or state).
- Document your concerns. Discuss your concerns with the Administrator or other key staff, share your observations, and resolution goal.
- Contact the Long-Term Care Ombudsman Program.
- Visit frequently, vary the time of your visits, and take notes of any issues you identify.
- Review state survey reports to see if the facility has been cited for similar issues before.



# RED FLAGS



- Significant, sudden change in behavior (e.g. withdrawn, fearful, lack of appetite).
- Dramatic physical changes (e.g. weight loss, decline in mobility).
- Unexplained injuries (e.g. bruising).
- Residents are physically restrained and/or appear to be over medicated (e.g. slumped in wheelchairs).
- Severe lack of staff (e.g. no response to call lights, frequent falls, lack of assistance to use the restroom).
- Residents appear unclean, have body odors.
- Staff disregard residents and their rights. Complaints are ignored.
- Missing personal items or funds.



# ADVOCACY TIPS



- Take detailed notes of concerns (names, dates, times of incidents).
- Contact the facility owner and/or corporate office and share your concerns.
- Contact the Ombudsman if complaints are not resolved, staff is unresponsive, and/or for information or advocacy.
- Contact the state survey agency to file complaints, be as specific as possible.
- Report any suspected abuse, neglect, or exploitation to the investigating agency (e.g. state survey agency or Adult Protective Services) and/or local law enforcement.



# ADDRESS CONCERNS:

*CLEARLY, DIRECTLY, AND PROMPTLY*

- **Before speaking with the staff, define the issue.**
  - Stick to the facts, your observations, and resident direction regarding care needs and preferences.
- **Focus on the problem, not the person, and avoid using emotive words that are tied to a person's perception.**
- **Be direct, specific, and non-judgmental.**
  - Describe the situation without sharing your opinion about why it happened.
- **Discuss your resolution goal, document everything, follow-up with the staff if the issue is not fully resolved.**



# **PROTECTIONS AGAINST INAPPROPRIATE DISCHARGE**

**MANY FACILITY-INITIATED DISCHARGES CAN BE RESOLVED SUCCESSFULLY.**

**YOU HAVE RIGHTS. BECOME INFORMED AND ACT.**



# WHY IS THIS TOPIC IMPORTANT?

- Discharges that violate residents' rights can be unsafe, harmful, and traumatic. They can result in:
  - Being uprooted from a familiar setting
  - The ending of relationships with other residents and staff
  - Fewer visits from family and friends, especially if relocation is a long distance away
  - Remaining in the hospital for months
  - Homelessness
- **Discharges are the #1 complaint received by Long-Term Care Ombudsman Programs across the nation.**



# FIVE FACTS TO KNOW RIGHT AWAY

1. All notices of discharge must be communicated in writing, in a language and manner you understand.
2. Nursing Home discharge notices must be given 30 days before the discharge date. Assisted Living Facilities must give 15 days.
3. You have the right to appeal the discharge and must do so before the date of discharge.
4. Federal law provides residents with rights and protections against discharge.
5. If you receive a notice, contact the Long-Term Care Ombudsman program (LTCOP) immediately.



# PROTECTIONS AGAINST INAPPROPRIATE DISCHARGE

- **There are only 6 reasons why a facility can transfer or discharge a resident against their will:**
  - The facility cannot meet the resident's needs;
  - The resident no longer needs nursing facility services;
  - The resident's presence endangers the safety of others in the facility;
  - The resident's presence endangers the health of others in the facility;
  - The resident has failed to pay; or
  - The facility is closing.
- **Tips**
  - ✓ The law requires the nursing home to problem-solve the reason for discharge and make attempts to address the issue(s).
  - ✓ A doctor must document the reason for discharge in your medical record.
  - ✓ The facility must state the reason for discharge in the written notice.



# PROTECTIONS AGAINST INAPPROPRIATE DISCHARGE

- If the reason for discharge is that the facility “cannot meet the resident’s needs,” the facility must document the following in your record:
  - The specific need(s) that allegedly cannot be met.
  - What the facility has done to try to meet those needs.
  - The services available in the “new” facility that will meet your needs.
- **Tip**
  - ✓ Except for specialized needs such as acute psychiatric, bariatric, or ventilator care, nursing homes are certified to provide similar types of care and services.



# PROTECTIONS AGAINST INAPPROPRIATE DISCHARGE

- If you have submitted paperwork for third party payment and payment status is pending, such as applying for Medicaid, the facility cannot discharge you for failure to pay.
- **Tips**
  - ✓ The facility is responsible for notifying residents of their change in payment status and should ensure residents' have the assistance they need in completing the paperwork.
  - ✓ If a resident's initial application to Medicaid is denied and the resident appeals, the resident cannot be discharged until the appeal is decided.



# WRITTEN NOTICE REQUIRED

- A discharge notice must be in writing and in a language and manner you understand. It must include:
  - The reason for the discharge,
  - The proposed effective date,
  - The location to which you will be discharged,
  - Information on your rights to appeal the discharge and have an administrative hearing, and
  - Contact information for the LTCOP and, if applicable, the agencies responsible for advocacy on behalf of persons with mental illness and developmental disabilities.

**\*The notice must be given to the resident and the resident's representative.**

**\*Discharge notices from nursing homes must be given at least 30 days prior to the discharge date. (15 days for assisted living facilities)**

**\*The listed location must be specific, appropriate, available, and agreeable to admitting you.**



# RIGHT TO APPEAL THE DISCHARGE

**You have the right to appeal your notice of discharge and remain in the facility pending the outcome of the appeal.**

Medicaid: Appeal through your MCO

Medicare: Appeal through Kepro, the Beneficiary Family-Centered Care Quality Improvement Organization (BFCC-QIO) at 1-888-315-0636.

## ▪ Tips:

- ✓ The facility must help you complete and file a request for an appeal.
- ✓ File your appeal before the date of discharge.
- ✓ Contact the Long-Term Care Ombudsman Program for information, support, and advocacy in appealing the discharge and/or assistance finding legal assistance providers.
- ✓ Our State Health Insurance Assistance Program (SHIP) can also assist with information about the appeals process (1-800-432-2080).
- ✓ More information - [https://www.medicareadvocacy.org/self-help-packet-for-expedited-skilled-nursing-facility-appeals-including-improvement-standard-denials/#contact\\_QIO](https://www.medicareadvocacy.org/self-help-packet-for-expedited-skilled-nursing-facility-appeals-including-improvement-standard-denials/#contact_QIO).



# A DETAILED DISCHARGE PLAN IS REQUIRED

- You have the right to participate in all aspects of discharge planning. The written discharge plan must include a living location, services, care, and medications, if needed.
  - The facility must prepare and orient you for a safe and orderly discharge in a language and manner you understand.
- **Tips**
  - ✓ Ask to visit your new home. This is considered part of orientation.
  - ✓ It is the facility's responsibility to ensure that you arrive safely to your new location with your possessions, including transferring any personal funds to you or a new account.



# IF YOU ARE AWAY, YOU CAN RETURN

- **You have the right to return to the facility following hospitalization or therapeutic leave, including the right to return to your bed or the first available bed. The facility must give you information about these rights, as well as a copy of its bed-hold policy in advance of your leave.**
- **Tip**
  - ✓ **Sending you to the hospital does not relieve the facility of the responsibility of following the discharge requirements.** If the facility decides that you cannot return, it must issue a discharge letter that gives all the notice requirements (including 30 days notice, and your appeal rights), documentation, and information required under law. If the facility refuses to re-admit you, contact the Long-Term Care Ombudsman program and the state's licensing and certification agency that oversees nursing homes to file a complaint.



# PRE-DISPUTE ARBITRATION AGREEMENTS

- Centers for Medicare and Medicaid Services (CMS) released a final rule on Long-Term Care Facility Requirements allowing Arbitration Agreements (84 Fed. Reg. 34718). This reverses the 2016 ban on pre-dispute arbitration agreements.
- This applies to any dispute and takes away a resident's right to have their dispute heard by a jury.
- **A resident may not be required to sign the agreement as a condition of admission or continuation of care.**
- The facility must ensure the resident or his or her representative understands the agreement.
- Both parties must agree to the arbitrator and venue.
- **RESIDENTS HAVE THE RIGHT TO RESCIND THE ARBITRATION AGREEMENT WITHIN 30 DAYS.**



# NATIONAL ADVOCACY

CMS has proposed new regulations, including:

- Eliminating **notice to the Long-Term Care Ombudsman** of emergency transfers to an acute care setting when return to the facility is expected.
- Revising the requirement for an evaluation by the attending physician or prescriber if **PRN use of Psychotropic Drugs** is to be extended beyond 14 days and instead relying on facility policies and procedures to set the circumstances for extending their use.

**\*\*Comments on these proposed rules are due September 16, 2019.\*\***

- More Information - <https://theconsumervoice.org/news/detail/latest/residents-rights-rolled-back-in-cms-rules>



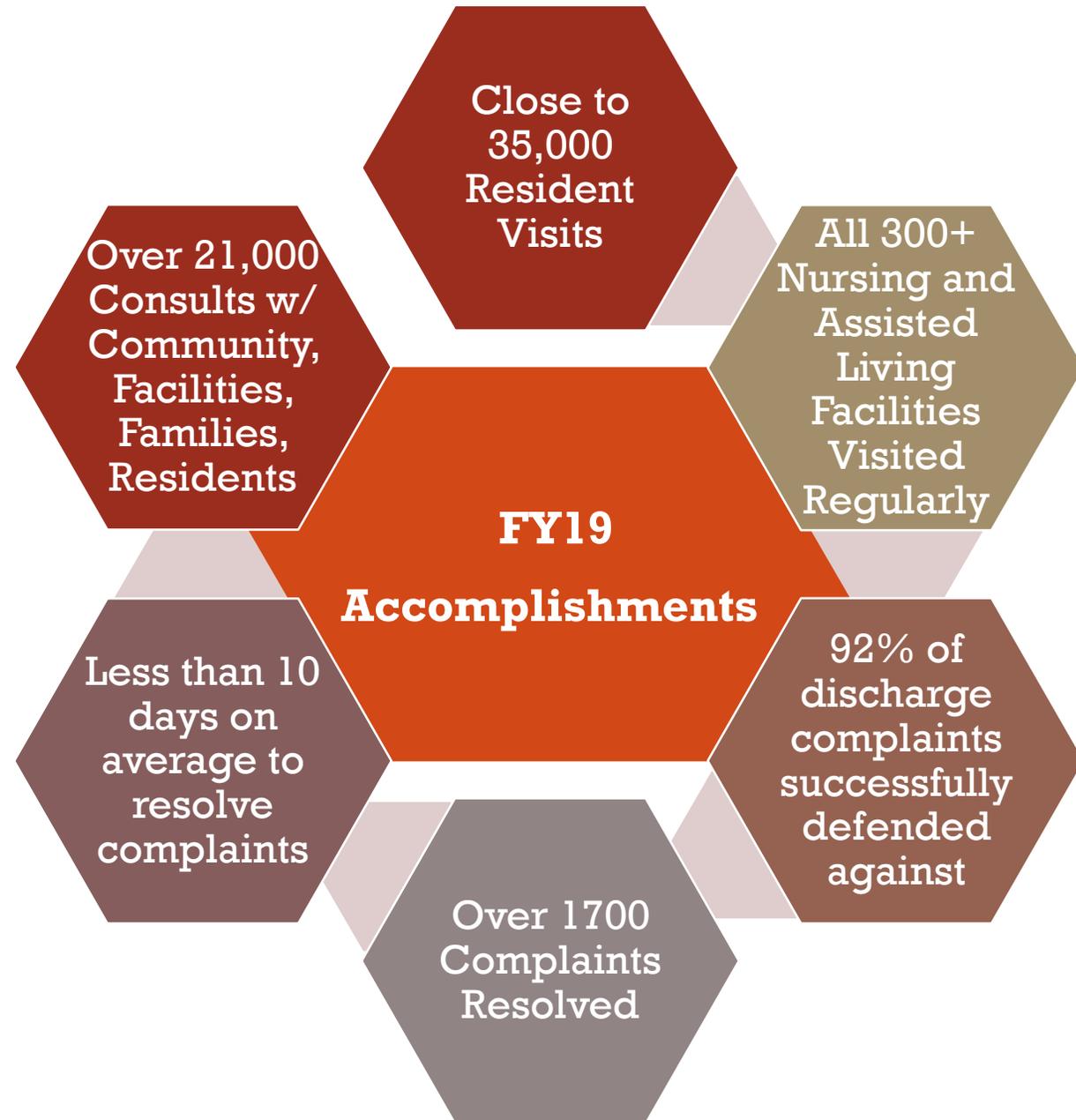
# LONG-TERM CARE OMBUDSMAN PROGRAM

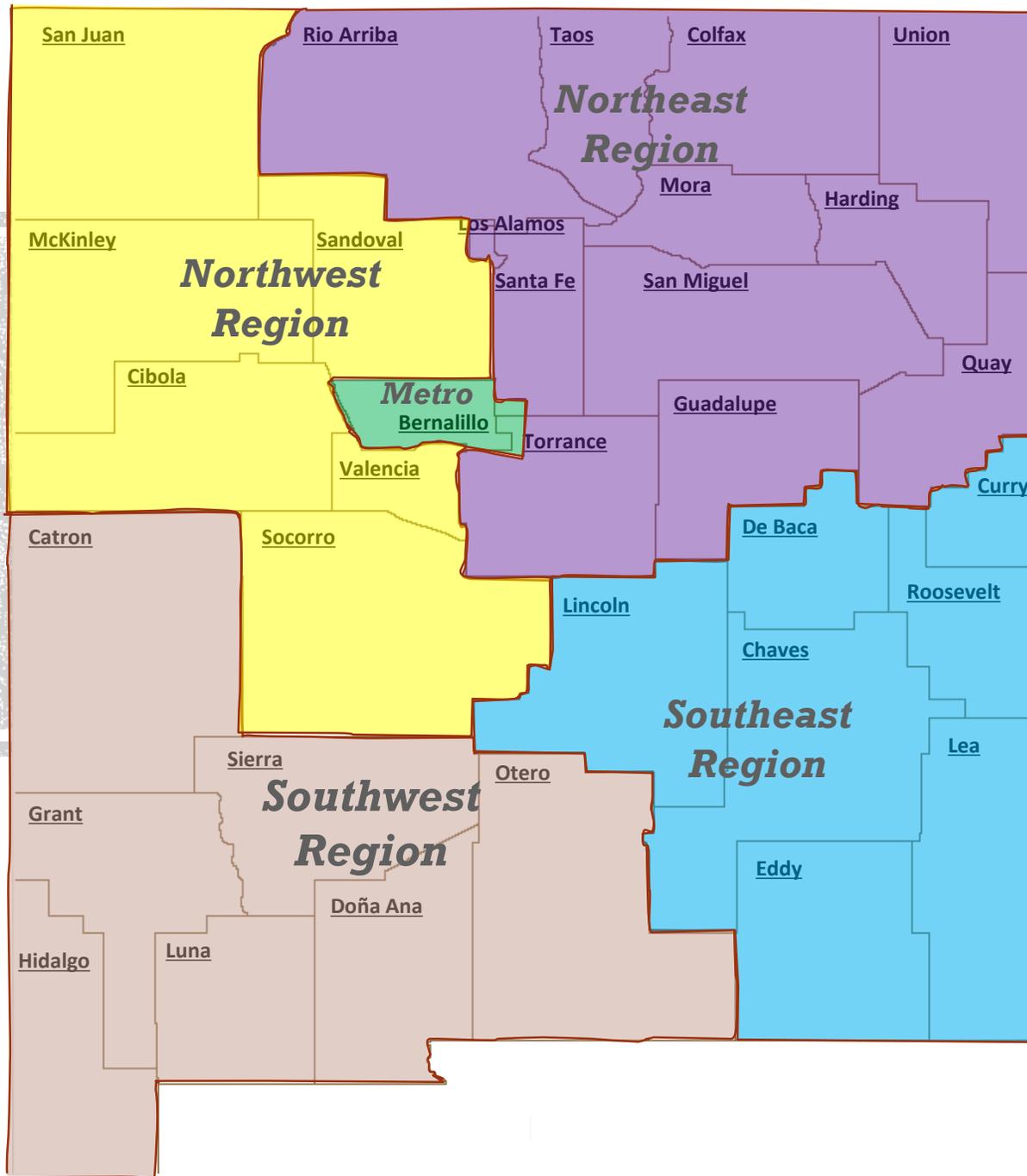
- A Long-Term Care Ombudsman (LTCO) is a resident advocate.
- LTCO advocate for quality of care and quality of life of residents in long-term care (nursing homes, board and care/assisted living, other similar adult care facilities).
- LTCO provisions in the Older Americans Act (OAA) include:
  - Investigate and resolve complaints
  - Provide information to residents, families, staff (e.g. residents' rights)
  - Advocate for systemic changes to improve residents' care and quality of life.





# NEW MEXICO LTCO PROGRAM IMPACT





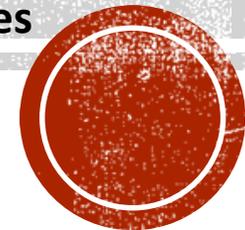
**Northeast Region:**  
Gigi Greco

**Northwest Region:**  
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**Albuquerque Metro Region:**  
Christine Jacques

**Southwest Region:**  
Rosa Torres

**Southeast Region:**  
Sheri Jones



# VOLUNTEERS NEEDED!

- **Good communication and listening skills.**
- Ability to advocate in a professional and diplomatic manner.
- Sensitivity to elders and individuals with disabilities.
- Compassionate.
- Positive attitude.
- **Fair, open-minded and non-judgmental.**
- **Reliability & perseverance in problem resolution.**
- Willingness to write good documentation.
- Respect for confidentiality.
- Diverse career and social backgrounds a plus!!



# LONG-TERM CARE OMBUDSMAN RESOURCES

**New Mexico Long-Term Care Ombudsman Program**

**1-866-451-2901 Toll-Free**

- **Consumer Voice**
  - <https://theconsumervoice.org/>
- **National Long-Term Care Ombudsman Resource Center**
  - <https://ltcombudsman.org/>
- **Our Mother's Voice**
  - <https://www.ourmothersvoice.org/>



# AGING & LONG-TERM SERVICES DEPARTMENT RESOURCES

- **Aging and Disability Resource Center**
- 1-800-432-2080 Toll-Free  
1-505-476-4937 TTY
  - State Health Insurance Assistance Program - SHIP
  - Senior Medicare Patrol - SMP
  - Care Transitions Program
- **Adult Protective Services Intake**
- 1-866-654-3219 Toll-Free  
1-505-476-4912 Santa Fe



# LEGAL RESOURCES

**FREE**  
**Legal Helpline**  
*for Seniors*

1-800-876-6657

**Legal Resources**  
*for the*  
**Elderly Program**



*A statewide, free legal helpline for  
New Mexico residents 55 and older.*

**SENIOR**  
**CITIZENS**  
**LAW OFFICE**

4317 Lead Avenue S.E., Suite A  
Albuquerque, New Mexico 87108  
(505) 265-2300

