

**Washington State Judicial Branch
2025-27 Biennial Budget
Legal Counsel for Long Term Care Discharge**

Agency: Office of Civil Legal Aid

Decision Package Code/Title: 1L – Long-Term Care Discharge Counsel

Agency Recommendation Summary Text:

The Office of Civil Legal Aid (OCLA) requests \$5,854,000 GF-State and 1.5 FTE to provide legal counsel for Medicaid-eligible residents facing discharge or transfer from long-term care facilities. This request follows a determination by the Centers for Medicare and Medicaid Services (CMS) that Washington's protections for residents in certain long-term care settings are insufficient to meet federal standards. To address these compliance issues, the Department of Social and Health Services (DSHS) will update state regulations to guarantee the right to legal counsel for eligible residents. This funding will support statewide legal contracts and staffing at OCLA to administer the program, ensuring that vulnerable long-term care residents experience safe, lawful discharge and are protected from unnecessary displacement. (General Fund-State)

Fiscal Summary:

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	1.50	1.50	1.50	1.50	1.50	1.50
Operating Expenditures						
Fund 001-1	\$2,887,000	\$2,967,000	\$5,854,000	\$3,072,000	\$3,181,000	\$6,253,000
Total Expenditures						
	\$2,887,000	\$2,967,000	\$5,854,000	\$3,072,000	\$3,181,000	\$6,253,000

Package Description:

In June 2024, the Center for Medicare and Medicaid Services (CMS) determined that Washington's Statewide Transition Plan is out of compliance with the federal Home and Community Based Services (HCBS) settings rules. Specifically, CMS determined that Washington is not complying with 42 CFR § 441.530(a)(1)(vi)(A) because residents in provider-owned or controlled settings do not have protections related to eviction and appeals that are comparable to those afforded to tenants under Washington's Residential Landlord Tenant Act (RLTA), *see* RCW 59.18.

To comply with federal regulations, the Department of Social and Health Services (DSHS) will amend the Washington Administrative Code to require applicable long-term care providers to establish legally

enforceable agreements with residents, offering discharge and transfer protections comparable to those under the RLTA.¹

The RLTA provides that indigent tenants are appointed counsel to represent them in eviction proceedings at public expense under the terms of RCW 59.18.640. Therefore, under DSHS's amended rules, Medicaid-eligible residents of certain facilities will have a comparable right to legal counsel at public expense to represent them during a discharge or transfer process. The scope of legal counsel to eligible residents will be for the purpose of enforcing legal protections related to a resident's discharge or transfer under applicable statutes, regulations, and the terms of the written agreements between residents and long-term care providers. The right to legal services will be available when an eligible resident receives, or should have received, a discharge or transfer notice as required by RCW 70.129.110. The purpose of the legal services is to promote safe and orderly discharges, ensure due process, and prevent unlawful or unnecessary discharges of individuals residing in long-term care facilities.

DSHS currently serves over 19,000 individuals in settings that will be impacted by this rule change, and estimates that 1,380 residents will be eligible for legal counsel every year. OCLA requests \$5,854,000 and 1.5 FTE to administer this program and contract with legal service organizations specializing in applicable administrative regulations.

Fully describe and quantify expected impacts on state residents.

Long-term care settings provide a residence as well as necessary medical and safety care for qualifying individuals, many of whom are vulnerable adults and adults living with disabilities. Individuals living in long-term care are reliant on the setting to provide a home and to provide necessary care for their health and safety. This high-level of reliance makes Individuals living in long-term care vulnerable and at risk of harm if they are required to move out of their long-term care setting, especially if no alternative setting has been identified to provide continuing care and services. Ensuring that these individuals are not being removed from their long-term care setting unlawfully and ensuring that they are transferred or discharged to a safe place is of paramount importance for their health and safety. Legal counsel will provide the necessary advice and representation to ensure that resident's rights are being asserted and that any discharge or transfer is safe and orderly. Legal services provided through this program will ensure that eligible residents continue to receive care in a long-term care setting that that can meet their health and safety needs.

Explain what alternatives were explored by the agency and why this was the best option chosen.

There is no alternative that exists at DSHS or at OCLA to support this funding request. DSHS is relying on the expertise that OCLA has in overseeing and administering publicly funded civil legal services, including the program that provides right to counsel in eviction proceedings. OCLA has expertise in administering civil legal services and ensuring appropriate oversight and accountability to legislative intent and any applicable statutory or legislative mandates.

What are the consequences of not funding this request?

If this request is not funded, vulnerable residents in certain long-term care settings will continue to have fewer legal protections than in landlord-tenant arrangements, contrary to federal Medicaid regulations. Washington's noncompliance with federal regulations puts its federal Medicaid funding at

¹ For purposes of this program, applicable facilities will include only Adult Family Homes (AFHs), Assisted Living Facilities (ALFs), and Enhanced Services Facilities (ESFs).

Office of Civil Legal Aid
Policy Level – 1L – Long-Term Care Discharge Counsel

risk, as the Centers for Medicare and Medicaid Services (CMS) has mandated that Washington implement this program to achieve compliance. If noncompliance continues, CMS may enforce actions that jeopardize millions of dollars in annual federal Medicaid funding for Washington's long-term care system.

Without this funding, Medicaid-eligible residents in Adult Family Homes (AFHs), Assisted Living Facilities (ALFs), and Enhanced Services Facilities (ESFs) will lack essential legal counsel during discharge and transfer processes, increasing their risk of unlawful or unsafe displacement. This leaves many vulnerable residents without access to appropriate long-term care options, potentially resulting in homelessness or health deterioration due to inadequate care. Additionally, unsafe or unnecessary discharges can lead to residents being stuck in inappropriate settings, such as acute-care or psychiatric hospitals, without the requisite medical needs, adding strain on these resources and reducing their availability for other public needs.

Is this an expansion or alteration of a current program or service?

No

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 26	FY 27	FY 28	FY 29	
Program Manager	1.0	1.0	1.0	1.0	Develops program policy, performs oversight and monitoring functions, collaborates with partners
Administrative Support	0.5	0.5	0.5	0.5	Performs contract administration, invoice processing, and other administrative tasks

Use Standard Costs?

No

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Salaries & Benefits	\$209,000	\$209,000	\$209,000	\$209,000	1.0 Program Manager 0.5 Administrative Support
Contracts	\$2,600,000	\$2,700,000	\$2,805,000	\$2,914,000	
Goods and Services	\$15,000	\$15,000	\$15,000	\$15,000	
Travel	\$13,000	\$13,000	\$13,000	\$13,000	

Equipment	\$10,000	\$10,000	\$10,000	\$10,000	
Contractor Training	\$40,000	\$20,000	\$20,000	\$20,000	

How does the package relate to the Judicial Branch principal policy objectives?

Fair and Effective Administration of Justice

The program will ensure that residents at risk of discharge from a long-term care facility receive the necessary legal representation to assert their rights, provide for safe discharge and transfer, prevent unnecessary displacement, and prevent homelessness.

Accessibility

This program enhances access to justice by providing legal resources and representation to indigent long-term care residents, many of whom are vulnerable adults and/or are living with a disability.

Access to Necessary Representation

This program provides legal representation to long-term care residents, many of whom are vulnerable adults, who need legal assistance to assert their rights, prevent unnecessary or unlawful displacement, and ensure their safety and continued access to necessary care.

Commitment to Effective Court Management

N/A

Sufficient Staffing and Support

N/A

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

This package addresses equity by providing legal assistance to individuals living in long-term care settings who are also eligible for Medicaid. These individuals are low-income, reliant on public assistance, and many are vulnerable adults with disabilities. Many of these individuals are from marginalized and low-income communities, and all of these individuals have been assessed to require assistance with activities of daily living. By offering targeted legal assistance, the package helps correct systemic inequities and provides these individuals with the tools to secure their residency and prevent displacement or homelessness.

Describe the how the agency conducted community outreach and engagement.

OCLA has met with stakeholders to discuss this proposal and has received positive feedback.

Consider which target populations or communities would be disproportionately impacted by this proposal. Explain why and how these equity impacts will be mitigated.

No target populations or communities would be disproportionately harmed. Instead, this proposal aims to mitigate existing inequities by providing necessary legal assistance to residents of long-term care facilities that are facing discharge or transfer.

Are there impacts to other governmental entities?

Yes, this decision package is reliant on DSHS rulemaking and ongoing collaboration with DSHS to ensure proper implementation. If this funding is not provided, DSHS may be impacted by CMS enforcement actions for continuing noncompliance with federal regulations.

Stakeholder response:

There is broad support for this request from communities and organizations that assist residents of long-term care facilities.

Are there legal or administrative mandates that require this package to be funded?

DSHS is currently conducting rulemaking to comply with Centers for Medicare and Medicaid (CMS) regulations. This funding is necessary to implement the amended rules and to come into compliance with federal regulations. Continuing noncompliance could have an impact on federal funding and Washington's ability to administer the state's Medicaid funded Long-Term Services and Supports programs.

Does current law need to be changed to successfully implement this package?

Yes, as stated above, DSHS is currently in the process of amending rules for AFHs, ALFs, and ESFs to achieve compliance with federal regulations.

Are there impacts to state facilities?

No.

Are there other supporting materials that strengthen the case for this request?

Please see attached budget spreadsheet.

Are there information technology impacts?

No

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