

'I WANT TO GO HOME': ONE SENIOR'S STORY

The Progressive

February / March 2022

SPECIAL EDITION

EVICTING THE
ELDERLY

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Dear Reader,

Because we feel our feature story from the February/March 2022 issue of *The Progressive* is so important, we are sending it out in this format, as a downloadable PDF at <https://progressive.org/evicting>. You can also find it on our website at progressive.org/magazine/evictingelderly-lueders. We encourage you to pass these links on to others.

In a recently issued [report](#) on “facility-initiated discharges”—evictions—by nursing homes and other long-term facilities, the Office of Inspector General for the U.S. Department of Health and Human Services prominently mentions that “media reports have highlighted the rise in these discharges.” We want to continue applying that pressure of outside scrutiny.

“I Want to Go Home” is our effort to call attention to this national disgrace of evicting the elderly. We hope it helps force federal and state authorities to take seriously their responsibility to protect the most vulnerable among us.

The Progressive is a 113-year-old political magazine based in Madison, Wisconsin; it was founded by Robert M. La Follette, better known as Fighting Bob. We publish six issues a year, post new stories at progressive.org each day, and oversee two projects—one [tracks attacks](#) on public schools and the other [places op-eds](#) on topics of progressive interest in newspapers all over the country.

“I Want to Go Home,” as long as it is, accounts for only about a quarter of the content of *The Progressive*’s current issue. (We are currently in the process of [rolling out](#) the other important stories and columns online.) But we’ve decided to make this article available for free, to help raise awareness about the eviction of elderly people from their homes.

Let’s make what happened to Elaine Benz serve to galvanize support for reforms that will put an end to this disgraceful practice.

Thank you,
The Progressive

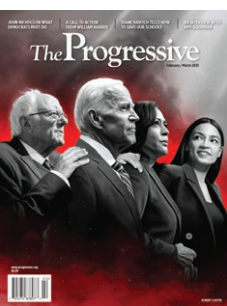


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EVICTING THE ELDERLY

In our December/January issue, I used my “Editor’s Note” to tell you about how my mother, Elaine Benz, was evicted from her senior living facility at age ninety-seven. I noted that she was not allowed to return after a brief stay at another facility, forcing my family to scramble to find a new place for her to live. And I promised you an “update” on the situation in this issue.

That update ended up being the article we present here, “‘I Want to Go Home.’” At more than 8,500 words, it is perhaps the longest article in *The Progressive’s* 113-year history, and certainly in recent years. It became a big story when I found out, quite unexpectedly, that the eviction of elderly people from their nursing homes and senior living facilities is a huge national problem.

In mid-November, as the drama involving my mom was playing out, the Office of Inspector General for the U.S. Department of Health and Human Services put out a [major report](#) on “facility-initiated discharges,” or forced evictions, in long-term care facilities. It noted that “discharge/eviction” has for years been the single most frequent complaint recorded by the federal [Long-Term Care Ombudsman Program](#), which works to resolve problems in these facilities.

In one case cited in the report, “police found one resident on the streets after a nursing home discharged him to an unlicensed boarding house without notifying his family.” I spoke to an attorney in Michigan who said her group has seen cases in which elderly residents were approved for discharges to a homeless shelter and to a house that had burned down. Multiple sources told me that evictions often occur when a resident gets sent to the hospital, sometimes at the facility’s instigation, as happened with my mom.

In 2019, there were more than 13,000 discharge-related complaints received by ombudsmen nationally, and [available numbers suggest](#) that the problem is on the rise. The reason for this, advocates agree, is that there are seldom any negative consequences for facilities that evict elderly residents, even when they do so in ways that clearly violate the law—either at the federal level for nursing homes or at the state level for other kinds of facilities.

“The benefits of breaking the law are greater than the cost of breaking the law,” says Tony Chicotel of [California Advocates](#)

for [Nursing Home Reform](#). “So, consequently, you get a lot of law breaking.”

Whether or not there will be consequences for the provider in my mom’s case is still an open question, along with the question of whether or not these consequences will be tough enough to deter future evictions. As the Inspector General’s report noted, a number of state ombudsmen “opined that stronger enforcement actions could help to reduce these discharges.”

Or, as Chicotel puts it, “Anytime there’s an inappropriate transfer discharge that either the federal government or state government finds out about, there should be significant financial penalties for that.”

The first step in that direction is making people aware of the problem, as we have tried to do here. We hope our readers will spread the word about this article, which can be read and shared at [progressive.org/magazine/evictingelderly-lueders](#). A downloadable pdf version of the story is also available at [progressive.org/evicting](#). Both of these versions include links

to referenced reports, letters, and other supporting documentation.

Meanwhile, my family and I will keep trying to secure justice for my mom. In our next issue of the magazine, I’ll have another update.

With this issue, we bid farewell to Kerstin Vogdes Diehn, our longtime art director. Though Kerstin was technically a contractor, for whom *The Progressive* was one of several clients, she was in fact a member of our family. Kerstin led us

through several redesigns of both the magazine and of our website, and her conscientious attention to detail was a good match for our perfectionism. We wish her well as she takes on digital design roles for new clients. And we send our deep gratitude to Susan Webb for laying out this issue.

As always, we ask that you help us to raise awareness of *The Progressive*, passing it on to friends, buying gift subscriptions, and talking us up. The wider our reach, the more of a difference we can make toward our goal of building a better world.



Bill Lueders
Editor



Elaine on Christmas with Diane, Bill, and Rick.

'I WANT TO GO HOME'

All over the country, nursing homes and senior care facilities are breaking the law, evicting elderly residents, and getting away with it.

BY BILL LUEDERS



IT WAS THE WORST THING THEY COULD HAVE DONE TO HER. THE ABSOLUTE WORST.

In late October, my ninety-seven-year-old mother, Elaine Benz, was evicted from the senior care facility in Wisconsin where she had lived for ten years. It happened from one day to the next, in an apparent violation of state law. The Regency New Berlin, in Waukesha County near Milwaukee, decided that she had become too much work.

What followed was a nightmare for our family. My sister, Diane, who lives in New Berlin and has visited Mom daily for years, was unable to see her for weeks because the physical rehabilitation facility she ended up being stranded at was in a COVID-19 lockdown.

During this time, I was unable to talk to her by phone, as I try to do every day. (She can no longer use the phone by herself, so Diane calls me during her visits and hands the phone to Mom.) Twice, Diane stood in the cold outside of the rehab facility to wave at Mom through the window to her room. Once, they spoke by phone. “I need you,” Mom said.

Elaine, who has been in assisted living since February 2020, after years in independent living, was sent to the rehabilitation facility after a fall. She was supposed to be there for about two weeks and return home on the morning of October 29. At 4 p.m. the day before, someone from the Regency told Diane, for the first time, that our mom could not come back.

Wisconsin law [requires](#) facilities in the licensing category that includes the Regency—officially ProHealth Care Regency Senior Communities, New Berlin—to provide at least thirty days’ advance notice before booting a resident, and even then [only for certain reasons](#), which were not present here.

Across the nation, laws like these on the

books at the federal and state level are routinely ignored without serious consequence. Federal agencies have known for years that improper discharges are a problem, yet the laws against them have been allowed to atrophy into irrelevance, due to a lack of enforcement.

In our case, the Wisconsin Department of Health Services launched an investigation based on my complaint. The investigator assigned to the matter filed a report on or around November 10. State health officials assured me there would be an enforcement action, including fines. But as of mid-January, nothing more has happened. Purportedly, the matter is still “under investigation.” We have reams of documentation, backing up what I’m saying here, that no one from the state has asked to see.

While we waited in vain for the state to act, Diane and I tried to work out a way for our mom to stay at the Regency, where she and her late husband Don had lived happily. But that effort collapsed under the weight of its deliberate impracticality. The Regency wanted her gone, and the Regency prevailed.

My mother has already paid her penalties. The Regency charged her \$5,685 for the month of November, during which she required no food and no assistance of any kind—because she was barred from the facility. (In fact, she was [initially double-charged](#) for this month, as I’ll explain.) She lost her home, and her connection to her friends and caregivers.

On November 17, we moved Elaine into a new place. It was, as we expected, a difficult transition. When my wife, Linda, and I visited her a few days later, Elaine was sullen and despondent. She would not eat her breakfast and, for more than an hour, did not say a word as we put up shelves for family photos in her new apartment. Then, as I knelt before her wheelchair, she looked at me and said, “I want to go home. I want to go home.”



Elaine Benz

WHAT HAPPENED TO MY MOTHER HAPPENS TO ELDERLY PEOPLE IN THE UNITED STATES ALL OF THE TIME.

It's against the law. It's cruel. It is driven by a desire to maximize profits—or nonprofit revenues, as we'll see. Yet it happens routinely, often without due process or recourse.

"It's a huge problem across the board, particularly when you look at assisted living or personal care, residential-type care homes where the protections for people are not as high as they might be in a nursing home," says Lori Smetanka, executive director of the National Consumer Voice for Quality Long-Term Care, or [Consumer Voice](#). "Many of these residents have spent hundreds of thousands of dollars in these facilities and then can be kicked out on a whim or just not accepted back." (A [tally](#) shows that, during the last ten years, Mom and Don paid the Regency more than \$321,000 out of their Social Security and life savings, now mostly gone.)

"State protections in a lot of cases need to be enhanced. But there also needs to be swift, active enforcement of people's rights."

—Lori Smetanka, executive director of the National Consumer Voice for Quality Long-Term Care



"It puts families such as yours in a really difficult position because you generally are not being given a lot of notice," Smetanka tells me. "You're scrambling at the last minute trying to figure out where your loved one is going to live, as well as trying to assert your rights. And you are paying generally thousands of dollars a month for care and services that you're ultimately not receiving."

Smetanka says that even in nursing home settings, where the protections are more stringent, residents are often illegally evicted—sometimes "even with an administrative law judge's order requiring the person to be taken back."

On November 18, the day after we moved Mom into her new place, the Office of Inspector General for the U.S. Department of Health and Human Services released a [forty-page report](#) on "facility-initiated discharges." It notes that "discharge/eviction" has for years been the single most frequent complaint recorded by the federal [Long-Term Care Ombudsman Program](#), which operates in all fifty states and the District of Columbia.

The report was produced by Principal Deputy Inspector General Christi A. Grimm, President Joe Biden's [pick](#) for the office's top job. In April 2020, when she held the post in an interim capacity, Grimm was [attacked](#) by then President Donald Trump for releasing a report that documented shortages of protective gear and COVID-19 tests for use in hospitals early in the pandemic. He bashed Grimm for producing "another Fake Dossier," without knowing her name or gender.

"Where did he come from, the inspector general?" Trump demanded. "What's his name?" Trump's attempts to have Grimm removed from her job were unsuccessful.

Despite its tepid title, "Facility-Initiated Discharges in Nursing Homes Require Further Attention," the report clearly identifies a need for action.

"Our findings raise concerns about weaknesses in the safeguards to protect nursing home residents from harm that may result from inappropriate facility-initiated discharges," it says. In one instance, "police found one resident on the streets after a nursing home discharged him to an unlicensed boarding house without notifying his family."

The report says notices of discharge, [required](#) of nursing homes by federal law, are often not issued until after the resident has already left the facility. Several ombudsmen "volunteered that nursing homes have said that they would rather accept a deficiency or enforcement penalty than keep the resident." Other ombudsmen "opined that stronger enforcement actions could help to reduce these discharges." The report said differences in how ombudsmen, state agencies, and various federal offices approach their shared goal of protecting residents from harm "may, in fact, inhibit efforts to prevent inappropriate facility-initiated discharges." (For more on this report, see sidebar, "Measures of the Problem," page 9.)

In 2019, state ombudsmen nationally logged 10,508 discharge/eviction-related complaints involving [nursing homes](#) and 3,110 for [other long-term care facilities](#). But the actual number of improper discharges is likely much higher—especially given how little good it does to complain.

OFTEN, AS WITH ELAINE, NURSING HOMES AND OTHER SENIOR CARE FACILITIES EVICT RESIDENTS WHILE THEY ARE TEMPORARILY MOVED TO ANOTHER FACILITY.

"There's a lot of discharges that are done this way throughout the United States, where they send people to the hospital and then just refuse to take them back," says Tony Chicotel, a staff attorney for [California Advocates for Nursing Home Reform](#).

Again, this is something the government has known about for years.

“Sometimes facilities discharge residents while the resident is hospitalized for health concerns unrelated to the behaviors that form the alleged basis for the discharge,” concluded a [2017 memo](#) from the Centers for Medicare & Medicaid Services.

The memo said discharges that break the law often directly harm residents and their families: “These discharges may result in residents being uprooted from familiar settings; termination of relationships with staff and other residents; and residents may even be relocated long distances away, resulting in fewer visits from family and friends and isolation of the resident. In some cases, residents have become homeless or remain in hospitals for months.”

Nicole Shannon, a frontline attorney for the [Michigan Elder Justice Initiative](#), says providers often concoct ruses to facilitate hospital dumping: “The nursing home will say, ‘Well, it sure seems like you need a psychiatric consult, we’re gonna send you to the hospital.’ The hospital turns around and says, ‘You know, this person does not require psychiatric care. You can go back to your nursing home now,’ and the nursing home says ‘Nope, no thanks, you’re no longer welcome here.’”

Shannon adds that “the technical term [for such actions] is ‘involuntary discharge or transfer’ from a nursing home. It’s really a nursing home eviction.” Her group has seen cases in which nursing home residents have had discharges approved for transfers to a homeless shelter, to the home of an unwilling relative, to a house that no longer existed because it had burned down, and to an apartment the person no longer rented. One of her clients was transferred from a hospital “to a nursing home on the other side of the state with just a terrible reputation that’s kind of known as the nursing home of last resort.”

According to Shannon, the Michigan Department of Licensing and Regulatory Affairs has shown no interest in enforcing the laws. In one recent case, it declined to issue a citation in response to what she calls “a clear case of hospital dumping.” She finds this inaction “extremely frustrating.” Her group is continuing to work with state health and regulatory officials to find ways to protect residents.

Even cases that go through the administrative appeal process fail to result in satisfactory outcomes, Shannon says. “The administrative law judges in those cases will say, ‘Well, you know, this was not legal. You could not discharge this person in this way. You broke the law. But we don’t have the power to require the nursing home to take you back. All we can do is call balls and strikes and say that this was not permitted. So good luck to you,’ which leaves my clients without any real recourse.”



“The technical term [for such actions] is ‘involuntary discharge or transfer’ from a nursing home. It’s really a nursing home eviction.”

—Nicole Shannon, attorney for the Michigan Elder Justice Initiative

NURSING HOMES IN THE UNITED STATES ARE GOVERNED BY THE NURSING HOME REFORM ACT OF 1987,

which expressly prohibits discharging residents except for a narrow list of reasons, including facility closure, failure to pay for services, and cases where “the resident’s welfare cannot be met in the facility”—a determination that must be documented.

The act also requires nursing homes to give residents at least thirty days’ advance written notice before terminating their living arrangement. The notice must include a reason for the discharge, provide contact information for the Long-Term Care Ombudsman Program, and notify residents and their families of their right to appeal.

The rules for other long-term care facilities, including senior living centers, vary from state to state. Some states have few if any protections. In Wisconsin, [Residential Care Apartment Complexes](#), the licensing category into which the Regency falls, are governed by the Department of Health Services’ administrative code, [Chapter DHS 89](#).

According to this code, which has the force of state law, “a residential care apartment complex shall provide [thirty] days advance notice of termination to the tenant and the tenant’s designated representative, if any.” The notice must state the grounds for termination and how to file a grievance.

Advocates for the elderly say laws like these are violated with impunity.

“In my experience, the requirement for written notice is almost universally disregarded,” Chicotel says. “It is rare for a resident to ever get thirty days’ notice.” When notice is given at all, “it’s usually the day of, the day before, or the days after the transfer or discharge has actually happened.”

Chicotel attributes this to the lack of consequences imposed on those who break these laws. “You see deficiencies issued for failure to provide a written notice from time to time, but there’s very rarely a financial penalty attached to that.” And even in cases where fines are imposed, they’re “very minimal.”

In fact, he argues, it is in the facilities' best interests not to provide notice, because doing so informs residents and their families of their rights, which if exercised often keep the eviction from happening.

"Not giving a notice is just standard practice because it saves time, it saves energy, and, ultimately, it saves money," Chicotel says. "The benefits of breaking the law are greater than the cost of breaking the law. So, consequently, you get a lot of law breaking."

IN ITS 2017 MEMO, THE CENTERS FOR MEDICARE & MEDICAID SERVICES STATED THAT WHILE THE REASONS FOR EVICTING ELDERLY RESIDENTS CAN VARY,

"Analysis of federal deficiencies indicate that some discharges are driven by payment concerns, such as when Medicare or private-pay residents shift to Medicaid as the payment source."

In Elaine's case, her eviction came as she is nearing the depletion of her life savings, although she will continue to receive about \$2,100 a month in Social Security and small pensions from my late father and her years of working as a clerk at a Woolworth's in Milwaukee. When her savings run dry, a government program will likely pick up some of the costs, but the amount would be far less than what the Regency had been receiving.

The Regency of New Berlin is one of several health care facilities owned by ProHealth Care Inc., mostly in Waukesha County. ProHealth's portfolio includes two other senior centers, in Brookfield and Muskego; and three hospitals, in Waukesha, Oconomowoc, and, newly opened as of January, Mukwonago. It also runs a hospice in Oconomowoc, as well as a foundation and a "medical group," both based in the city of Waukesha. The various arms of ProHealth, according to a recent listing in the *Milwaukee Business Journal*, hold about 5,000 employees.

ProHealth Care's various facilities are officially "not-for-profit." But, as Steven Brill documented in "Bitter Pill," his landmark 2013 *Time* magazine article on runaway medical costs, this in no way means it is not actively engaged in profiteering, especially for upper management. "In health care," Brill wrote, "being nonprofit produces more profit" because of the exemption from income tax. One analysis he cited found that the nation's 2,900 nonprofit hospitals actually had higher average profit margins than the 1,000 for-profit hospitals.

In the fiscal year that ended September 30, 2020, according to IRS 990 forms provided to me by ProHealth Care Inc., as the law requires, the tax exempt entity known as the "National Regency

of New Berlin" reported revenues of \$22.7 million and "revenue less expenses" (what other operations might call profit) of \$4.7 million. ProHealth's seven affiliated not-for-profits that year reported nearly \$103 million in net revenue.

For calendar year 2019, ProHealth had twenty-six executives who made more than \$250,000, including



IN THE MONEY:
Susan Edwards
ProHealth Care's
president and chief
executive

fourteen who surpassed \$500,000 and four who topped \$1 million. Leading the pack is Susan Edwards, ProHealth Care's president and chief executive officer since 2010. The 990 forms show that Edwards received nearly \$19 million in compensation from ProHealth in just the last six years, including a deferred accrued compensation payout of \$6.6 million in

2018. That averages out to \$3.2 million per year.

To put this in perspective, Gail McGovern, president and CEO of the American Red Cross, a much larger medical nonprofit, is paid about \$750,000 a year. Harold Wimmer, the president and CEO of the American Lung Association, makes about \$550,000.

In January 2021, my sister, Diane, at the Regency's urging, made an upfront payment of \$5,685 for mom's "final month," whenever that should be. After evicting Elaine in late October, the Regency initially kept this amount, as well as her \$5,685 rent for November 2021, until Diane and I pointed out what the Regency agreed was "double billing." On the form refunding this amount, the Regency's "reason for vacating" was written in by hand: "Evicted."

The Regency also notified Diane that the usual monthly bill of \$5,685 would be automatically withdrawn from Elaine's savings for the month of December. Diane went to the bank and had this payment blocked; the bank charged her a \$35 fee to do so.

MY MOTHER WAS BORN ELAINE M. POGGENBURG IN MILWAUKEE ON FEBRUARY 16, 1924.

She met my father, Lorenz, in grade school. They married and had four children. My brother Jimmy died in 1967, when a bus came crashing over a freeway median into the station wagon he was driving. He was nineteen.

My sister, Diane, who will turn seventy-five in February, has inherited Elaine's mantle as the anchor of the family. Diane has always enjoyed helping others, and is good at it. My brother Rick has been completely blind for a decade, and legally blind all of his life. He'll turn sixty-eight in early February.

Measures of the Problem

HOW OFTEN DO THE PEOPLE WHO RUN NURSING HOMES AND SENIOR CARE FACILITIES BOOT ELDERLY PEOPLE FROM THEIR HOMES?

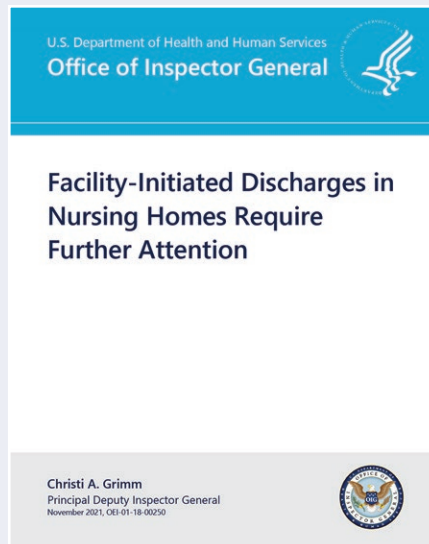
The truth is that no one knows. While nursing homes have been [required since 2017](#) to notify state Long-Term Care Ombudsmen every time they evict someone, these notifications are often late or incomplete.

On the state level, I tried to obtain statistics on complaints and enforcement actions, largely without success. The best the state's Long-Term Care Ombudsman could do was a barebones tabulation that it has received 306 complaints regarding "discharge or eviction" over the past three years. This number spiked dramatically from 40 in [2019](#), to 129 in [2020](#), to 137 in [2021](#). It said between 56 percent and 70 percent of these complaints were at least "partially" resolved, whatever that means. My request for more detailed records was [denied](#).

The state of Wisconsin runs an [online search portal](#) to look up enforcement actions against regulated providers for the prior three years. It does not allow searches for, say, all of the discharge-related citations issued in a given year, only searches for individual providers. When I looked up ProHealth, my main subject of inquiry, nothing came up. I later learned from a department spokesperson that this was because the state has misspelled the name as Pro Health. To get responsive records, you have to use this misspelling. Doing so, I found an [enforcement action](#) against New Berlin Regency in 2019 over the lack of staff training in first aid and the facility's emergency plan. Corrective action was required, and a [follow-up investigation](#) was conducted.

No deficiencies were reported at either of ProHealth's two other residential senior centers, in Brookfield and Muskego. I tried to get more specific information on discharge-related citations for the state as a whole, but my request of November 18 and follow-up request on December 20 were not answered. State health officials have not provided any information on how often facilities have been cited for violating discharge or eviction rules.

A recent [report](#) from the Office of Inspector General acknowledges, as one of its key findings, that "the magnitude of facility-initiated discharges



in nursing homes is unknown." But it does provide some useful metrics, based on its interviews with state ombudsmen. Among them:

- Thirty-one of forty-seven ombudsmen reported that nursing homes in their states "do not have a clear understanding" of the law regarding facility-initiated discharge notices.
- Forty of forty-seven ombudsmen found "achieving a resolution before a nursing home discharges a resident to be a challenge."
- In 2018, state agencies cited 1,924 nursing homes (13 percent of those surveyed) for deficiencies in facility-initiated discharge notices, a six-fold increase from the year before. But the report said it was unclear whether this was due to actions by federal officials.

The report recommends working with state ombudsman programs to establish a better data collection system for facility-initiated discharge notices, as well as "guidance for analysis and reporting" for the information that is collected. And it calls on various players to "share information about oversight and enforcement practices."

A second Office of Inspector General report, on nursing homes' compliance with eviction protections, is [expected soon](#).

—Bill Lueders

Forty of forty-seven ombudsmen found "achieving a resolution before a nursing home discharges a resident to be a challenge."

He works long days at a Milwaukee nonprofit, [Beyond Vision](#), running lathes and milling machines; at home he does elaborate woodworking projects, like a [three-story, twenty-room birdhouse](#), using dangerous power tools. I'm the youngest, at sixty-two the same age as my dad was when he died in 1985.

A few years later, Mom married Donald Benz, whom she actually had known longer than my dad; they [met as toddlers](#). Don's first wife had also passed. Mom and Don were together for twenty-five years. On the night he died, in 2014, he held her hand and sang, "Let me call you sweetheart, I'm in love with you. Let me hear you whisper that you love me, too." "I love you, too," my mom sang back. The nurses in the room were crying.

The Regency was where Don, a World War II veteran, spent his final years. It was where our family gathered for many holidays, birthdays, and anniversaries. In the years following Don's death, Elaine stayed in her apartment, which continued to be a hub of family activity. She often said how glad she was that she and Don had moved there.

But over time, her needs became too great for her to remain in independent living. On February 28, 2020, we moved her into assisted living, or what the Regency calls "attended care," on the other side of the same complex. A few days later, COVID-19 struck, and the facility shut its doors; no one could visit.

In mid-April, with the lockdown still in place, Elaine ended up in the hospital due to dehydration. It was a very dark period for my mother. Still able to use a phone, she begged us to come get her and take her back to her old apartment. She had panic attacks and tore out her IVs. The following January, when Diane was making a payment for Elaine's ongoing care, she told Cherie Carty, then the Regency's campus administrator, that she feared another relocation could be fatal.

And so Carty [put a signed note](#) in Elaine's files, with a copy to Diane, promising that when Mom's money ran out "she will be permitted to remain in her current unit as long as she can remain at the Regency within our licensing restrictions."

It was an explicit promise that in the end was not worth the paper it was printed on.

DIANE IS GOOD AT SEWING. SHE MAKES THESE CUTE LITTLE BAGS THAT ATTACH TO PEOPLE'S WALKERS, PROVIDING A HANDY PLACE TO PUT THINGS. She's made one a day for the last five years—365 per year, plus one for a leap year. These she gives away—to the Regency, to a nearby physical rehabilitation center, to strangers she sees using walkers. When at the Regency to visit our mom, Diane would see people with her bags "everywhere." She's also made and given away about 2,100 COVID-19 masks.

On October 11, Elaine fell in her apartment, and the Regency had her taken to the hospital. She had a slight fracture but was not seriously hurt; hospital staff recommended physical therapy to build up her leg strength so she would not fall again. Diane thought of [Heritage Square Health Care Center](#), a rehabilitation facility to which she has donated "at least 200" of her bags.

Heritage agreed to take Elaine in for sixteen days of physical therapy. Diane was still able to visit her every day. Then, on October 25, the rehab facility went into lockdown because of a COVID-19 infection. Mom's stay would have been for just a few more days, but then, on October 28, the Regency barred Elaine from returning. Diane learned about it around noon that day from a staffer at Heritage, not the Regency. The person at Heritage said that if it tried sending Elaine back, the Regency would "turn her away at the doors."

From 12:30 to 4 p.m., Diane called the Regency four times asking to talk to New Berlin Campus Administrator Mara Henningsen; each time, she was told that Henningsen was "in a meeting." Diane left two voice messages. At about 4 p.m., she got a call from a Regency nurse named Kim who was charged with explaining that Elaine's needs had gotten too great and she would not be allowed to return. "Just some poor girl," Diane said of the deliverer of this news.

On the morning of Friday, October 29, I sent an email titled "Emergency Issue" to the office of U.S. Senator Tammy Baldwin, Democrat of Wisconsin. It was forwarded to Mike Helbick, a case-work supervisor in Baldwin's Milwaukee office, who connected me to Leanne Bergstrom, a constituent relations specialist with the Wisconsin Department of Health Services.

In a phone conversation with Diane and me later that day, Bergstrom gathered detailed information about our mom's situation. (Both Diane and I have an activated power of attorney for Elaine.) The case was assigned to the DHS's Division of Quality Assurance, which includes the Bureau of Assisted Living.

Elaine and Don at the Regency.



BILL LUEBERS

The following Monday, after a restless weekend, I received a call from Vicky Wittman, [director](#) of the Division of Quality Assurance's Northeastern Regional Office, who confirmed to me that the Regency is legally required to give at least thirty days advance notice before kicking someone out. Patricia Noble, an ombudsman with the Wisconsin Board on Aging, told me the same thing; she said she had left a message for Henningsen.

Late in the day I spoke with Matthew Ellis in the Division of Quality Assurance, who confirmed that facilities in the Regency's licensing category are required, under [DHS 89](#), to give advance notice, and that the failure to do so could result in enforcement actions including fines. The only exception was for life-threatening emergencies, which he thought did not apply in the circumstance I described.

I felt reassured by these contacts with state health officials. I should not have been.

AT 4:59 P.M. ON MONDAY, NOVEMBER 1, four days after Diane called the Regency four times and left two messages, Henningsen left a voice message on Diane's home phone. She had heard that Diane wanted to talk.

Diane called twice the next morning, leaving messages when told that Henningsen was "in a meeting." Henningsen called around 11:30 a.m. Diane and I were both in on the call. She claimed to be completely unaware of the situation involving Elaine, despite the calls from Diane and Ombudsman Noble, saying, "I was out with a family emergency last week." Apparently, the staffer who kept saying that Henningsen was in a meeting was unaware she wasn't even at work.

Diane told Henningsen, "We're paying for her to stay at Heritage until she can get back to you. She's just gonna die if she has to go someplace else." I added that it was traumatic for Elaine to be stuck in a facility under COVID lockdown, separated from us. Henningsen brushed off these concerns, saying "a lot of the skilled rehab places are having outbreaks again." (Ford Titus, Edwards's predecessor as CEO of ProHealth Care, [died](#) in November 2020 of complications from COVID-19.)

Henningsen said she would look into the matter and get back to us later that day. She didn't. Instead, at 2:30 p.m., we received a call from Nancy Nguyen, the Regency's director of health services, who affirmed

that Elaine would not be allowed to return, and that we would be receiving a written thirty-day notice of termination. The only way Elaine could come back, she said, would be if we hired an outside company to provide personal care attendants for her around-the-clock—as in twenty-four hours a day, seven days a week. Someone would even have to stay in her room while she slept.

We explained that Elaine has never needed or received anywhere near this level of care and was not receiving it currently at Heritage. "There's no reason she can't come back," Diane said. "She's at the same level of care as when [she left]."

Eric Carlson, directing attorney with [Justice in Aging](#), a Los Angeles-based advocacy group, says assertions that a facility can no longer meet the care needs of a particular resident are "usually inappropriate." In most cases when this is alleged, "the resident is still within the facility's level of care. The resident may not be a particularly easy resident. They may have greater care needs than most residents. But they're still within the level of care that the facility is licensed and certified to provide."

It's true that, in recent months, Elaine's needs have gotten greater. She now uses a wheelchair and her memory is seriously impaired. But she has never not immediately recognized any of us when we stop by or call. At the Regency, she won often at bingo.

In fact, on October 28, the same day that the Regency said its evaluation determined that our mom needed 168 hours of direct attention per week, Elaine's insurer [denied](#) Diane's request that she receive additional physical therapy, on grounds that she was just fine.

"Further skilled nursing facility services are not indicated," the insurer wrote after evaluating Elaine's condition. "The patient is medically stable. There is no documented evidence that continued skilled services are needed daily to maintain or prevent decline. There are no documented medical issues to support the need for daily skilled nursing care."

We sent a copy of this letter to Nguyen, along with the letter signed by former Campus Administrator Carty. Nguyen held firm on the round-the-clock care, saying that if it turned out Mom needed less than that, this requirement could be reassessed. She said people "above my pay grade" were involved in this decision.

The next morning, Nguyen called with a list of three potential providers of round-the-clock care. She explained that even if we went this route, Elaine would have to find a new place to live when her money ran out. She apologized to us that "everything just happened so fast." Diane said, "I feel like if we move her to a different place, she'll die." Nguyen replied, "I know."



"IN A MEETING":
Mara Henningsen
New Berlin campus
administrator

I have thought about this comment a lot. I think Nguyen meant to convey that she was aware of this concern, which we had also raised with Henningsen. But, clearly, it was a risk she was willing to take.

As crazy as we considered the Regency's demand for round-the-clock care, we tried to make it work. Diane contacted one of the providers that Nguyen suggested, a company called Comfort Keepers. One of its representatives met with Diane, pulled together a team of three providers, and set up an arrangement that was supposed to start on November 5. Diane was told to buy or bring a mattress for the person who would be staying overnight in Elaine's small apartment.

The afternoon before, Nyugen sent an [email](#) to me, Diane, and Comfort Keepers, reminding everyone that "ProHealth Regency requires all staff and third-party caregivers to be COVID-19 VACCINATED in order to provide care and enter the building." Then Comfort Keepers disclosed that all three of the providers it had lined up for the job were unvaccinated.

So the deal fell through. We wondered afterward if that was the intent.

director of the Bureau of Assisted Living within the Division of Quality Assurance, saying the case had been assigned to an investigator, who would conduct an unannounced visit to the Regency to "make observations, conduct interviews, and review records as appropriate." Diane and I decided to let that process play out. The only legal way the Regency could do what it did was if Elaine's situation presented an emergency in which her life was at risk.

And that's exactly what the Regency argued.

On November 4, a full week after declaring that Elaine had only a few hours to find a new place to live, the Regency emailed us a [letter](#), signed by Henningsen, terminating Elaine's contract. It claimed the thirty-day notice rule didn't apply because this was "an emergency, meaning an immediate documented threat to the health and safety of the resident or others." It said reassessments of her condition, going back to September 25, led it to conclude that "Elaine's care needs exceed the 28 hours per week we are legally able to provide and that her functional level and need for care posed a threat to her health and safety."

Why the Regency waited more than a month before alerting us to this emergency was not adequately explained. But the letter did provide notice of our right to file a grievance with the state.

The next morning, I sent a [grievance](#) to the many

ON NOVEMBER 2, WE RECEIVED A LETTER FROM HILLARY HOLMAN, southern regional



THE EVICTION OF ELAINE BENZ: A TIMELINE

October 15, 2011: Elaine Benz and her husband, Don Benz, move into the Regency, 13750 West National Avenue, New Berlin, Wisconsin. Their apartment is for independent living.

August 23, 2014: Don Benz dies at age eighty-nine. Elaine continues to live in the apartment they shared.

February 28, 2020: Elaine

moves into an "attended care" apartment in another wing of the Regency. It is a tough adjustment.

April 14: Elaine is briefly hospitalized due to dehydration and experiences panic attacks.

January 29, 2021: Regency Campus Administrator Cherie Carty [puts in writing](#) her assurance to Elaine's daughter, Diane Roth, that Elaine "will be permitted to remain in her current unit as long as she can remain at the Regency within our licensing restrictions."

October 11: Elaine falls in her room and is sent by the Regency to a nearby hospital, where she is found to have a minor fracture.

October 13: Elaine is moved to Heritage Rehabilitation Center, 5404 West Loomis Road, Greendale, Wisconsin, to undergo sixteen days of physical therapy.

October 25: Heritage goes into a COVID-19 lockdown, meaning Diane cannot continue her daily visits.

October 28, noon: A staffer at Heritage tells Diane that Elaine will not be allowed to return to the Regency, which was supposed to happen the next day. No one from the Regency has said anything about this to Diane.

October 28: 12:30 to 4 p.m.: Diane calls four times and leaves two messages for Mara Henningsen, Regency campus

administrator, who is said to be "in a meeting."

October 28, 4 p.m.: Diane receives a phone call from a nurse named Kim, who says that Elaine will not be allowed to return because her care needs are too great. Nothing is provided in writing, nor any mention made of the right to appeal.

Friday, October 29: Elaine's son, Bill Lueders, contacts the office of U.S. Senator Tammy Baldwin, Democrat of Wisconsin, which puts him in touch with state health officials, one of whom leaves a message for Henningsen.

Monday, November 1, 4:59 p.m.: Henningsen leaves a message on Diane's home answering machine.

people at the Department of Health Services who had been involved in the case. It challenged the Regency's assertions regarding Elaine's care needs.

"Elaine needs help getting up, getting dressed, going to the bathroom, and getting in and out of a wheelchair," the grievance said. "She gets taken to and from meals. All of these things together require far less than twenty-eight hours of direct attention per week. We believe it's at most a couple hours per day."

It continued: "We believe that ProHealth Regency's claim that she needs extraordinary levels of care has been concocted because of the otherwise clear violation of law that the Regency committed in preventing her from coming home with less than 24-hour notice. We suspect it may be tied to the investigation started by the [Division] of Quality Assurance in response to my contacts."

"We further believe that the reason ProHealth Regency decided to kick our mom out is not because she needs 24/7 care or anything close to it but because she needs a little more care than the average resident."

The grievance concluded: "There is a reason, and a good one at that, why the law requiring at least thirty days advance written notice is on the books. It's to prevent providers from putting families in the



"The benefits of breaking the law are greater than the cost of breaking the law. So, consequently, you get a lot of law breaking."

—Tony Chicotel, staff attorney for California Advocates for Nursing Home Reform

predicament that ProHealth Regency has put us. We request your immediate intervention."

On November 8, I received a call from the investigator assigned to my case, GERALYN SPITZER of the Division of Quality Assurance. She said she would be conducting her site visit that day. Her report, she later recollected to me, was submitted on November 10. On November 18, I spoke with Spitzer's supervisor, HILLARY HOLMAN, who told me there "absolutely" will be an enforcement action against the Regency. "In this case, they'll be put on notice that a violation occurred. They'll be charged fines." She said the facility will then have to correct any identified "deficiencies." On November 29, she said she expected this to happen in mid-December.

November 2: Diane and Bill speak with Henningsen, who claims to know nothing of the matter. Around 2:30 p.m., Nancy Nguyen, the Regency's director of health services, calls to say that the only way Elaine will be allowed back is with a round-the-clock personal care team. The state tells Bill it has assigned an investigator to the case.

November 3 and 4: Diane arranges for a company called Comfort Keepers to provide twenty-four-hour care, starting November 5.

November 4, 3:20 p.m.: Nguyen emails Diane a [termination notice](#) for Elaine, saying no advance

notice is needed because it's an emergency.

November 4, 3:30 p.m.: Diane learns that none of the members of the Comfort Keepers' care team are vaccinated, meaning they would not be allowed into the Regency.

November 5: Bill files a [grievance](#) with state health officials over Elaine's eviction. Diane continues her search for a new facility.

November 8: GERALYN SPITZER of the Wisconsin Department of Health Services' Division of Quality Assurance, Bureau of Assisted Living, conducts an unannounced on-site visit to the Regency.

November 10: Spitzer files her completed report. (Date is based on her recollection.)

November 12: Layton Terrace Senior Living in nearby Greenfield agrees to accept Elaine as a resident for \$7,365 a month. She can move in the following week.

November 16: Bill, Diane, and two other family members move Elaine's belongings into her new apartment.

November 17: Diane moves Elaine to Layton Terrace, after paying Heritage Square \$7,486 for the nineteen days it kept Elaine after the Regency barred her return.

November 18: Spitzer's supervisor, Hillary Holman of the Bureau of Assisted Living, tells Bill there "absolutely" will be an enforcement action against the Regency. "In this case, they'll be put on notice that a violation occurred. They'll be charged fines," she says.

November 29: Elaine finally gets her COVID-19 booster shot, three months after becoming eligible.

Mid-January: This issue of *The Progressive* goes to press without the Division of Quality Assurance taking any announced action. The state is said to be still investigating—more than two months after saying the matter would lead to findings of a violation and fines.



BILL LUEDERS PHOTOS

LEFT: The Regency, in New Berlin, Wisconsin.

BELOW: Diane with Mom at her ninety-sixth birthday in 2020.



But that deadline came and went as the office seemed to turn increasingly tight-lipped. In early January, I learned through channels that the state was “still investigating,” presumably in response to the overtures from ProHealth Care. We have not heard anything more, nor been asked for more information. At one point, I wrote to Holman, “My family and I worry night and day that you guys really aren’t going to do anything, after telling me you would. Is that an unreasonable fear?”

She left the question unanswered.

DIANE STARTED LOOKING FOR A NEW PLACE FOR MOM TO LIVE as soon as she learned that the Regency would not let her come back. She worked with an elder-care advocate who identified several options. We chose a facility called [Layton Terrace](#) in nearby Greenfield, Wisconsin. Diane toured it on a Friday and made a deposit the next morning. It’s in a state licensing category called Community-Based Residential Facility, which has the [same provisions](#) regarding discharges and transfers as the Regency. The rent is \$7,365 a month.

On November 16, four of us—Diane, her husband, Mark, and son, Joe, and I—moved Elaine’s belongings from the Regency. It took two trips in Joe’s pickup truck.

Rod Humpal, then the Regency’s director of community services for all three of its senior living facilities, was on hand for the moveout. “This is heartbreaking for us,” I told him, thinking as we all did that he was with maintenance. (It was only later when I looked him up that I learned his rank in the organization, at which he [stopped working](#) later that month.)

“I understand,” Humpal replied, adding “I shouldn’t say that. I’m sorry [this is happening].” As we walked down a hallway to toss some silk flowers into a garbage chute, I said to him, “My mom loved this place.” He replied, “We loved having her.”

In moving Mom’s belongings, I found her high school yearbook from 1939, one of her few remaining mementos. I learned for the first time that her nickname back then was “Peanuts.”

Diane moved our mom to Layton Terrace from Heritage the next day. The whole time she was at Heritage, under COVID lockdown, she was eligible for but did not receive a booster vaccination shot. Heritage [charged](#) \$7,486 “Private Pay Room and Board” for the nineteen days that Elaine was stuck there. (During this time, she received no actual further therapy because her insurer refused to pay for it.)

On the night of the move, in a [Facebook post](#), Diane said the Regency did all it could to kick Mom out “but would not put forth the effort to give her the one thing she needs—just a little more help.”

Elaine did not go gently into her new place. When I spoke to her for the first time in more than a month, the day after the move, I asked how she was doing. “Don’t ask,” she said.

The biggest mistake that Diane and I made was hoping that, given the clarity of the Regency’s violation and the potential harm that it might cause to Elaine, the state would take some sort of meaningful action. If we had it to do over, we would have either snuck Mom back into her room using the back door we used to move her belongings out of or hired an attorney to seek injunctive relief.

That was something I looked into. The office of one attorney I contacted wanted \$592.50 up front for a one-hour consultation. Another told me to expect charges in the neighborhood of \$500 an hour, and total expenditures in the tens of thousands of dollars, which would likely not be recoverable if the intervention was successful.

A third attorney said he would not get involved because “someone I’m very close to” lives at the Regency, and he feared the facility would take it out on this person. At first I considered this ridiculous—

Hell No, Don't Go

ERIC CARLSON, OF THE ADVOCACY GROUP

JUSTICE IN AGING, says the biggest mistake made by people facing evictions from nursing homes and other elder care facilities is to do as they're told.

"The resident needs to be prepared to say, 'No, I'm not leaving. I disagree with you. And I will assert my appeal rights.' There's so many of these cases where residents just panic when they hear anything about eviction. And I get it. It seems intimidating for them. They think that if a facility doesn't want them, they don't want to be there. But I think that's a counterproductive response. What people should do is stay put."

When residents faced with eviction do assert their appeal rights, Carlson says, "their chances of winning are pretty good. But the majority of them don't get that far, because they're intimidated by the whole concept of eviction."

Justice in Aging has produced an online **toolkit** for fighting nursing home evictions. It tells how to recognize improper evictions and provides sample briefs to seek administrative hearings in response to various stated grounds for kicking elderly people out. The group also has a guide called "**25 Common Nursing Home Problems—& How to Resolve Them.**" Problem number fourteen is the eviction of residents while they are hospitalized. It argues that nursing home residents should be allowed to return home while their appeals are pending.

The protections are often much lower for people in other long-term care arrangements. And even in nursing homes and states with strong laws, violations are common.

Drawing on advice given by Justice in Aging and other groups, as well as on my own experience, I have come up with a list of six ways to fight the folks who throw elderly people out of their homes:

ASK NOW, KNOW LATER

Whether you're just moving in or already there, ask the facility whether it has evicted residents, and under what circumstances. Ask about specific issues including dementia, incontinence, and falls. Ask about facility staffing levels and how they affect these decisions.

BE PREPARED

Have a plan in place to fight an eviction before you need it. Look for lawyers in advance. Maybe even stow some money away in a personal legal defense fund. If you cannot afford an attorney, use the resources provided by the **toolkit** from Justice in Aging. To watch a video on how to use it, visit <https://vimeo.com/647818672>.

DOCUMENT EVERYTHING

The moment that you learn of a possible eviction, keep a detailed log of all contacts, efforts to make contact, letters and emails sent and received, and information on the condition of the resident. Record key conversations with one-party consent, if your state allows this. Most do. (For a listing see: <https://www.justia.com/50-state-surveys/recording-phone-calls-and-conversations>.)

DON'T RELY ON THE GOVERNMENT TO HELP

Yes, do complain to state health care officials and seek assistance from your state's **Long-Term Care Ombudsman Program**, but do not count on them to act quickly and resolve your problems. Ombudsmen have no power to impose penalties, and state regulators can be bureaucratic and deferential to providers.

REFUSE TO COMPLY

If you or a loved one is asked to leave, refuse to go, insisting on the right to appeal. If it's possible to sneak in a resident who has been told not to return, do that.

SEEK JUSTICE

Find an attorney to sue for monetary restitution for wrongful evictions, or pursue an action in small claims court. In egregious cases, as many are, ask the local district attorney to consider bringing criminal charges, possibly for endangerment. The more you can do to balance the scales of justice, the better.

—Bill Lueders



"The resident needs to be prepared to say, 'No, I'm not leaving. I disagree with you. And I will assert my appeal rights.'"

—Eric Carlson, directing attorney with Justice in Aging, a Los Angeles-based advocacy group



Elaine Benz shortly after moving into her new place.

suggestive of a level of evil beyond anything I would have supposed. But then it occurred to me that the Regency had in fact made matters worse for Elaine after we turned to the state for help when it insisted that she needed round-the-clock care just as the state was questioning its decision to evict her without any advance notice.

During this time, our lives were in turmoil, waiting for return calls that didn't come and corrective actions that didn't happen, gathering information that didn't seem to change a thing. One time, I broke down and cried. For Diane, it was more than once.

SO WHAT CAN BE DONE TO PREVENT NURSING HOMES AND OTHER SENIOR CARE FACILITIES FROM EVICTING RESIDENTS?

Carlson cites the need for education. People who live in nursing homes and other senior care facilities—and their families—should be prepared in advance to fight an improper eviction (see sidebar, “Hell No, Don't Go,” page 15). “It's just incredibly important that residents be familiar with their rights ahead of time,” he says. The day before we spoke, Justice in Aging held a [webinar](#) on its eviction toolkit.

For Chicotel, the most important thing is vigorous enforcement. “Anytime there's an inappropriate transfer discharge that either the federal government or state government finds out about, there should be significant financial penalties for that,” he says. “There's got to be real deterrence.”

Chicotel notes with frustration that nothing much came of the Centers for Medicare & Medicaid Services' 2017 memo. The agency had scheduled a July

2020 brainstorming session on how to address inappropriate transfers, but the pandemic put an end to that. He hopes some progress can be made during the Biden Administration.

Smetanka, of Consumer Voice, calls for better state laws and better enforcement: “State protections in a lot of cases need to be enhanced. But there also needs to be swift, active enforcement of people's rights. They should be allowed to return home, while a decision is pending, or whatever the case may be. And that's what we've been advocating for.”

Elaine has adjusted to Layton Terrace. For the first week, as a new arrival, she had to be isolated from others. But after she had a chance to see the place, she warmed to it. (On November 29, she finally got the COVID booster shot for which she'd been eligible since mid-August.)

“I'm pretty good,” Elaine told my son Jesse in December, when I looped him in on one of our calls. “I'm in a new place again, takes a little time to get used to.” She joins in group activities and exercise classes. She's once again getting rehabilitative therapy, unlike at the rehab facility. She still does not receive, nor need, anywhere near twenty-eight hours of direct care per week. On Christmas Day, everyone in our family who was not living in another state or in COVID quarantine, ten people in all, [gathered](#) in Elaine's room at Layton Terrace. We met her new main caregiver, who promised us he would always treat her as he would his own mother.

The thing people might not understand is that we love Elaine not just for the person she was once, but for the person she is now—her surprising resilience, her determination to be as independent as possible, her tenderness toward all. She didn't deserve for this to happen. It really ought to be treated as a crime, and not just something that's technically illegal.

Elaine tells me during my visits how much she likes to look out the window. She loves the photo I gave her of Felix, my newborn grandson and her fourth great-grandchild. She keeps a picture of my late brother, Jimmy, on her dresser.

Diane continues to visit Mom's old friends who are still at the Regency. Will she still give walker bags to its residents? “Of course,” she tells me, although “everyone seems to have one already.” ♦

Editor's note: On January 25, the day copies of this issue of *The Progressive* arrived from the printer, Elaine Benz got out of her wheelchair, held onto a walker, and [walked](#) for the first time in months, going more than one hundred feet. Twice.

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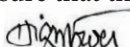
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