

NATIONAL LONG-TERM CARE
OMBUDSMAN RESOURCE CENTER

**Long-Term Care Ombudsman
Programs and Legal Assistance
Developers Collaboration**



The National Long-Term Care Ombudsman Resource Center (NORC) provides support, technical assistance, and training to the 53 State Long-Term Care Ombudsman Programs and their statewide networks of almost 600 local Ombudsman entities. NORC's objectives are to enhance the skills, knowledge, and management capacity of the State programs to enable them to handle resident complaints and represent resident interests (individual and systemic advocacy). Funded by the Administration for Community Living, NORC is operated by the National Consumer Voice for Quality Long-Term Care.

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Introduction

There is a natural partnership between State Long-Term Care Ombudsman Programs and Legal Assistance Developers in advocating for the rights of vulnerable elders receiving long-term services and supports. To better understand the relationship between the two programs, the Administration for Community Living (ACL) provided a grant to the National Long-Term Care Ombudsman Resource Center (NORC) to identify areas of collaboration, barriers to collaborative efforts, and strategies for developing a more effective partnership between the two programs.

NORC worked with the National Association of State Long-Term Care Ombudsman Programs (NASOP), the National Association of Legal Services Developers (NALSD), and the Center for Social Gerontology in the development of two questionnaires, one sent to State Ombudsmen, and the other to Legal Assistance Developers. The questions were designed to assess each program's understanding of the role and responsibilities of the other, the level of engagement between them, and the formal or informal mechanisms for collaboration and/or information sharing with each other. All recipients were also asked to comment on the specific instances in which they collaborated. A selection of questions in the State Ombudsman's questionnaire related to Ombudsman program connection and collaboration with Legal Assistance Programs directly.¹

Descriptions of Programs

Long-Term Care Ombudsman Program

Required by the Older Americans Act², every state has a Long-Term Care Ombudsman Program (LTCOP) that empowers residents, addresses complaints, and advocates for improvements in the long-term care system. Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, and assisted living facilities. Additionally, in about fifteen states, the state has expanded their services to advocate for individuals receiving care and services in their own home.

¹ See the "Long-Term Care Ombudsman Programs and Legal Assistance Developers Collaboration Toolkit" on the NORC website:
http://ltcombudsman.org/omb_support/pm/collaboration/legal-services-developers-toolkit

² Older Americans Act, Title VII, Chapter 2, Sections 712

The Ombudsman program is administered by the Administration on Aging/Administration for Community Living. The network has more than 7,000 volunteers designated to handle complaints, and 1,200 paid staff. Most Offices of the State Long-Term Care Ombudsman are located in their State Unit on Aging. Nationally, in 2015, the LTCOP investigated over 190,000 complaints on behalf of 125,000 individuals, and provided more than 390,000 consultations to individuals.³

The Older Americans Act requires the following core functions of the Ombudsman program:⁴

- Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities;
- Provide information to residents about long-term care services, residents' rights, and advocating for quality care;
- Provide services to assist residents in protecting health, safety, welfare, and rights of residents in long-term care facilities;
- Ensure residents have regular, timely, and private access to the Ombudsman program;
- Advocate for changes to improve residents' quality of life and care;
- Provide information to the public on nursing homes and other long-term care facilities and services, residents' rights, and legislative and policy issues;
- Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect residents;
- Promote the development of citizen organizations;
- Actively encourage the development of resident and family councils and provide technical support;
- Analyze, comment on, and recommend changes in laws and regulations pertaining to the health, safety, welfare, and rights of residents.

³ 2015 National Ombudsman Reporting System (NORS) Data.
http://ltcombudsman.org/omb_support/training/nors#Data

⁴ Older Americans Act, Title VII, Chapter 2, Sections 712

State Legal Assistance Developers

Under Title VII of the Older Americans Act⁵, each state is required to appoint a Legal Assistance Developer, an individual responsible for developing and coordinating the state's legal assistance and elder rights programs.

The Legal Assistance Developer is responsible for:

- State leadership in securing and maintaining the legal rights of older individuals
- State capacity for coordinating the provision of legal assistance
- State capacity to provide technical assistance, training and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and others, as appropriate
- State capacity to promote financial management services for older individuals at risk of conservatorship
- State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship
- State capacity to improve the quality and quantity of legal assistance provided to older individuals

Title III-B Legal Assistance Programs

The Title III-B⁶ legal assistance programs provide legal assistance specifically targeted to “older individuals with social or economic needs.” They assist older persons in accessing long-term care options and services, and protect individuals facing challenges to their independence, choice, and financial security.

Legal assistance provided by the Title III-B legal assistance programs includes:

- Accessing public benefits – Social Security/SSI/SSDI, Medicaid, Medicare, Veterans Benefits
- Representation for older persons who are facing guardianship actions

⁵ OAA, Title VII, Chapter 4, Section 731

⁶ Title III-B, Section 321 of the Older Americans Act

- Drafting of advance directives and designation of surrogate decision makers
- Accessing housing options, including low income housing programs
- Assistance for older persons facing foreclosure or eviction proceedings
- Assistance for older persons who have experienced elder abuse, including financial exploitation

Questionnaire Responses

Separate questionnaires were sent to State Long-Term Care Ombudsmen and Legal Assistance Developers.⁷

Summary of State Ombudsman Responses

Thirty-four (34) of 53 State LTC Ombudsmen (64%) submitted responses to the questionnaire. Respondents said the following:

- 42% reported ongoing engagement with Legal Assistance Developers
 - 9% reported some engagement
 - 21% reported minimal engagement
 - 27% reported no engagement
- 52% reported directly collaborating on policy issues with Legal Assistance Developers.
- 39% indicated collaborating with Legal Assistance Developers to educate state or federal policymakers; while 61% do not.
- 44% attended trainings and conferences with Legal Assistance Developers.
- 52% reported a formal or informal mechanism for information sharing and referral regarding the needs and complaints focused on long-term care services and supports.
- 44% utilized Legal Service Developers for technical support regarding legal assistance.
- 84% are housed within the same agency as Legal Assistance Developers.

⁷ NORC sent the questionnaire to State Ombudsmen and Legal Assistance Developers in 2015 so responses reflect activities in 2013-2014. Prior to the 2016 reauthorization of the [Older Americans Act](#), State Legal Assistance Developers were called “State Legal Services Developers (LSD)” so “Legal Services Developer” is used in the questionnaires in the appendix.

- 48% collectively engaged in workgroup tasks with Legal Assistance Developers.
- 16% reported that they are responsible for managing the Legal Assistance Developer position.

State Ombudsman respondents indicated that collaborations with Legal Assistance Developers include:

- Joint training
- Policy collaboration
- Technical assistance
- Securing legal assistance for residents of long-term care facilities
- Direct communications
- Joint participation on workgroups and task forces
- Joint agency assignments

In regard to understanding the role and responsibility of Legal Assistance Developers, of the State Ombudsmen responding:

- 63% felt they had some to minimal understanding
- 28% said they were very to extremely knowledgeable
- 9% said they had no knowledge

The most critical responsibilities of the Legal Assistance Developer, from the perspective of the State Ombudsmen included:

- Protecting the legal individual rights to safety, health, and welfare for aging adults
- Facilitating and identifying legal assistance training resources and opportunities
- Administration of legal assistance contracts
- Acting as state liaison to state legal issue committees
- Supplying legal support for the aging network
- Ensuring adequate access to legal assistance, and
- Overseeing the efficiency of legal assistance programs

Of the 33% of State Ombudsmen respondents who reported having an advisory board:

- 3% report having the Legal Assistance Developer sit on the Advisory Board
- 30% reported the Legal Assistance Developer does not sit on the Ombudsman program Advisory Board

With respect to Title III-B Legal Assistance Programs, State Ombudsmen respondents report:

- 57% have moderate to ongoing engagement with Legal Assistance Programs
- 43% have minimal to no engagement with Legal Assistance Programs

Engagement with Legal Assistance Programs included:

- 44% - Joint training
- 52% - Policy collaboration
- 44% - Technical assistance
- 84% - Being in the same agency
- 48% - Jointly sitting on workgroups or task forces
- 68% - Case referral
- 52% - Collaborating to secure the availability of legal assistance to residents of long-term care facilities
- 20% - Ombudsman program staff are housed within a Title III-B Legal Assistance Agency at the state or local level

When asked whether they had a formal or informal mechanism for referrals or information sharing with Title III-B Legal Assistance programs regarding the legal assistance needs of residents of long-term care facilities, of the State Ombudsmen responding:

- 39% reported having a formal or informal mechanism
- 35% did not have a formal or informal mechanism for referral or information sharing
- 26% did not know

Referral and information sharing between the State Ombudsman Program and Title III-B Legal Assistance programs included:

- 79% - Technical assistance and information
- 68% - Legal advice, counsel, opinions
- 32% - Legal representation

Summary of Legal Assistance Developer Responses

Twenty-eight (28) of 52 Legal Assistance Developers (54%) submitted responses to the questionnaire.

When asked how much of their time was dedicated to Legal Assistance Developer responsibilities respondents said the following:

- 18% (5 respondents) spent 76% - 100% of their time on legal assistance development
- 18% (5 respondents) spent 51% - 75%
- 25% (7 respondents) spent 26% - 50%
- 11% (3 respondents) spent 11% - 25%
- 29% (8 respondents) spent less than 10% of their time

Examples of other responsibilities for the individual serving as Legal Assistance Developer included:

- Assistant Legal Counsel for the Department
- Assistant Director of the Division of Aging and Adult Services
- Program Manager for the Public Guardianship Program
- Elder Awareness and Abuse Prevention Program
- Tribal Liaison
- Management oversight of the AAAs
- Manager of the state funded caregiving programs and other special projects
- Manager of the Alzheimer's and Memory Care Program
- Legislative Technical Advisor
- Director, Senior Medicare Patrol
- Director, Senior Community Service Employment Program
- Director, Senior Companion Program
- Director, Adult Protective Services
- Long-Term Care Ombudsman Program – various positions
- Executive Director, Legal Services
- Director, State Health Insurance Assistance Program
- Program Director, State Adult Guardianship Program

With respect to engagement with State Ombudsman Programs, respondents said the following:

- 93% reported having moderate to ongoing levels of engagement with the State Ombudsman; while 7% reported minimum to no engagement

Engagement with the State Ombudsman Program included:

- 38% - Joint training
- 54% - Policy collaboration
- 65% - Technical assistance
- 85% - Being in the same agency
- 62% - Jointly sitting on workgroups or task forces
- 19% - Report directly to the State Ombudsman
- 50% - Collaborating to secure the availability of legal assistance to residents of long-term care facilities

In terms of their overall understanding of the roles and responsibilities of the State Ombudsman, respondents reported:

- 15% had some to minimal understanding
- 85% thought they were very to extremely knowledgeable

The most critical responsibilities of the State Ombudsman, from the perspective of the Legal Assistance Developer included:

- Resident advocacy
- Investigating and seeking resolutions to resident complaints
- Ensuring residents' individual rights are protected
- Monitoring and enhancing the quality of life for residents
- Training and supervision of local ombudsmen, and providing advocacy information to affiliating agencies

With respect to Advisory Boards, Legal Assistance Developer respondents stated:

- 56% do not sit on the State Ombudsman Program's Advisory Board
- 7% do have a position on the Advisory Board
- 37% stated that Ombudsman Advisory Boards do not exist in their state

When asked whether they had a formal mechanism, such as a memorandum of understanding (MOU) for referrals or information sharing with State LTC Ombudsman Programs:

- 12% reported having a formal agreement
- 85% did not have a formal agreement
- 4% did not know

With respect to engagement between the Ombudsman program and Title III-B Legal Assistance Programs:

- 7% have no engagement
- 34% have minimal to no engagement
- 22% have moderate engagement
- 33% have ongoing engagement

Engagement between Ombudsman programs and Legal Assistance Programs included:

- 44% - Joint training
- 36% - Policy collaboration
- 52% - Technical assistance
- 56% - Being in the same agency
- 40% - Jointly sitting on workgroups or task forces
- 60% - Case referral
- 64% - Collaborating to secure the availability of legal assistance to residents of long-term care facilities
- 28% - Ombudsman program staff are housed within a Title III-B Legal Assistance Agency at the state or local level

When asked whether there was a formal or informal mechanism for referrals or information sharing between the Ombudsman program and Title III-B Legal Assistance programs regarding the legal assistance needs of residents of long-term care facilities:

- 42% reported having a formal or informal mechanism
- 31% did not have a formal or informal mechanism for referral or information sharing
- 27% did not know

Developers were asked whether Title III-B Legal Assistance programs provide the following to the Ombudsman Program at the State or local level:

- 88% - Technical assistance-information
- 59% - Legal advice, counsel, opinions
- 29% - Legal representation

Barriers to Collaboration

State Ombudsman Responses

State Ombudsmen reported that time constraints were the greatest barrier to collaboration with the Legal Assistance Developer. Other barriers included role limitations, not having a dedicated person in the role of Legal Assistance Developer, a lack of emphasis/resources/support for the Legal Assistance Developer, and lack of funding for the work of the Legal Assistance Developer. One Ombudsman reported that limitations are placed on the Legal Assistance Developer by the agency in which they are housed, thus impacting their ability to actively engage in addressing proposed policies.

Furthermore, State Ombudsmen reported time constraints and a lack of resources as challenges to collaboration with the Title III-B Legal Assistance Providers. One State Ombudsman reported that insufficient funding limits the Legal Assistance Developer's ability to provide assistance with legal issues affecting residents of long-term care facilities.

Legal Assistance Developer Responses

Legal Assistance Providers identified time constraints as the primary barrier to collaboration with the State Ombudsman. Numerous responders also cited lack of funding for the Legal Assistance Developer work as a barrier. For many responders, lack of funding means only a small percentage of the individuals' position is dedicated to LAD responsibilities. The lack of consistency and accessibility of the legal provider to the local Ombudsman entity staff was cited as a barrier, as is the age requirement for legal assistance under the Older Americans Act.

With respect to Ombudsman program collaboration with Title III-B Legal Assistance Providers, the Legal Assistance Developers cited similar issues as barriers to collaboration. Challenges included: limited funding, age limitations for those who can be provided legal assistance under the Older Americans Act, lack of resources, time constraints, and limited accessibility of information for the State Ombudsman.

Examples of Effective Collaboration

Despite the barriers, the information received from the State Ombudsmen and Legal Assistance Developers yielded numerous examples of successful collaboration between the two networks. This was particularly true around training and systems advocacy. Some examples of effective collaboration reported by respondents include the following.

Multiple states shared similar examples of collaboration, such as:

- A joint effort to update policy manuals to ensure comprehension throughout the Ombudsman program with the Legal Assistance Developer providing information and resources regarding guardianship, fraud prevention, tax protection, abuse, neglect, and the exploitation of elders.
- The Ombudsman and Legal Assistance Developer work together to provide training opportunities and creating resources regarding guardianship, transportation, nutrition, legal issues, abuse, and neglect.
- Several states reported that the Ombudsman and the Legal Assistance Developer work jointly on state legislation and keep each other informed of developments and trends for each respective program.
- The Legal Assistance Developer participates in assisting the Ombudsman program's Advisory Council on legal issues and resources.

Individual states shared the following examples:

- State Ombudsman utilizes the Legal Assistance Developer as the primary source of information on guardianship while working together on very complex cases.

- The Legal Assistance Developer monitors laws and regulations related to the aging population and shares that information with the Ombudsman to ensure the Ombudsman is aware of all current laws and regulations of interest to individuals receiving long-term care services.
- The Ombudsman and Legal Assistance Developer work together on systems issues, such as, reviewing and submitting comments on proposed legislation impacting long-term care residents; addressing problematic facility issues and problematic corporations; and addressing key issues like pressure sores and mental health problems.
- The Legal Assistance Developer and the Ombudsman meet regularly to discuss program activities and share information.
- The Legal Assistance Developer and the Ombudsman work together on aspects of the State Plan.
- Collaboration arises when a representative of the Office encounters a resident that needs assistance with legal issues and gives the representative permission to make a referral for legal assistance.
- The Ombudsman and the Legal Assistance Developer work together to revise agency policy addressing the issues affecting both programs.
- The Legal Assistance Developer works closely with the Ombudsman on Legal Assistance Guidelines and Ombudsman Policies and Procedures, as well as on contracts with AAAs that include a requirement to work with the Ombudsman program.
- The Legal Assistance Developer and Ombudsman work together on funding initiatives that impact Title III-B providers.
- The Legal Assistance Developer represents the Ombudsman in Federal bankruptcy matters, provides advice when requested on an ongoing basis, and helps to develop policies and procedures for the Ombudsman program to be consistent with changes at the Federal level.

Next Steps

Based on the information received from the State Ombudsmen and the Legal Assistance Developers, we suggest the following steps to create, strengthen, and deepen collaborations between the Legal Assistance Developers and the Ombudsman program:

1. If the state does not have a memorandum of understanding (MOU) between the Ombudsman program and State Legal Assistance Developer and legal assistance programs, use the resources found in the NORC [toolkit](#) to develop such a MOU to detail the roles and responsibilities of each entity when working on cases, how the two can effectively and efficiently share information, establish referral processes, and explore avenues for cross-training.⁸
2. Legal Assistance Developers and Ombudsmen should meet regularly to discuss complaint trends and other identified concerns to support case collaboration, systemic advocacy, and training opportunities.
3. Legal Assistance Developers and Ombudsmen should identify opportunities for cross training to increase knowledge of the other agency.
4. Ombudsmen and Legal Assistance Developers should continue to seek out opportunities to work together on systemic issues (e.g., jointly participating in legislative coalitions, training conferences, Olmstead Councils, providing testimony).
5. NORC, NASOP, and NALSD will create opportunities for cross-training at the national level through conferences, webinars, or conference calls to increase the exposure and recognition between the programs.⁹
6. NORC, NASOP, and NALSD should explore ways to increase collaboration to better educate their respective members on the roles and responsibilities of the Ombudsman program and Legal Assistance Developers.

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⁸ Long-Term Care Ombudsman Programs and Legal Assistance Developers Collaboration Toolkit. NORC. http://ltcombudsman.org/omb_support/pm/collaboration/legal-assistance-developers-toolkit

⁹ See toolkit referenced above for presentation materials regarding collaboration between Ombudsman programs and Legal Assistance Programs.