

# STATE LONG-TERM CARE OMBUDSMAN PROGRAM

*2019 Revised Primer for State Agencies*



NATIONAL LONG-TERM CARE  
OMBUDSMAN RESOURCE CENTER

The NATIONAL LONG-TERM CARE OMBUDSMAN RESOURCE CENTER (NORC) was established as a result of 1992 amendments to the Older Americans Act. Its purpose is to enhance the skills, knowledge, and management capacity of the State Long-Term Care Ombudsman Programs. The Center provides national technical assistance, training and information dissemination, serving as a resource on Ombudsman Programs funded by State Agencies on Aging. The Center is administered by The National Consumer Voice for Quality Long-Term Care, in cooperation with the National Association of States United for Aging and Disabilities. For more information contact the Center at 1001 Connecticut Ave., NW, Suite 632, Washington, DC 20036, (202) 332-2275, Fax: (202) 332-2949, [www.ltombudsman.org](http://www.ltombudsman.org).

The NATIONAL ASSOCIATION OF STATES UNITED FOR AGING AND DISABILITIES (NASUAD) was founded in 1964 under the name National Association of State Units on Aging (NASUA). In 2010, the organization changed its name to NASUAD in an effort to formally recognize the work that the state agencies were undertaking in the field of disability policy and advocacy. Today, NASUAD represents the nation's 56 state and territorial agencies on aging and disabilities and supports visionary state leadership, the advancement of state systems innovation and the articulation of national policies that support home and community-based services for older adults and individuals with disabilities, and their caregivers. The mission of the organization is to design, improve, and sustain state systems delivering home and community-based services and supports for people who are older or have a disability, and their caregivers. For more information, contact: NASUAD, (202) 898-2578, Fax: (202) 898-2583, [www.nasuad.org](http://www.nasuad.org).

The NATIONAL CONSUMER VOICE FOR QUALITY LONG-TERM CARE was founded out of public concern for the quality of care in nursing homes in 1975, as the National Citizens' Coalition for Nursing Home Reform. This consumer-based nonprofit organization advocates for public policies that support care and quality of life in all long-term care settings. With the expanded focus to advocate for people who need long-term care in any setting, the name was changed to The National Consumer Voice for Quality Long-Term Care. The Consumer Voice empowers and educates consumers and families by providing them with the knowledge and tools to advocate for themselves and their loved ones. Its members comprise a diverse, national coalition of consumers, citizen advocacy groups, state and local long-term care ombudsmen, lawyers, professional groups, frontline workers and unions, concerned providers, national organizations, and family and resident councils. For more information contact: The Consumer Voice at 1001 Connecticut Ave., NW, Suite 632, Washington, DC 20036, (202) 332-2275, Fax: (202) 332-2949, [www.theconsumervoice.org](http://www.theconsumervoice.org).

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# INTRODUCTION

## Why an Ombudsman Program Primer for State Agencies?

**Ombudsman:** a Swedish word meaning agent, representative, or someone who speaks on behalf of another.

State Long-Term Care Ombudsman programs (Ombudsman programs) serve as advocates for residents of nursing homes, board and care homes, assisted living and similar adult care facilities. They work to resolve problems of individual residents and to bring about improvements to residents' care and quality of life at the local, state, and national levels. Begun in 1972 as a demonstration program, Ombudsman programs today exist in all States, the District of Columbia, Puerto Rico and Guam, under the authorization of, and appropriations to implement, the Older Americans Act (OAA). These states and territories have an Office of the State Long-Term Care Ombudsman (the Office), headed by a full-time State Long-Term Care Ombudsman (the Ombudsman)<sup>1</sup>.

This Primer is intended to support State Agency<sup>2</sup> Directors to understand the unique role of the State Long-Term Care Ombudsman Program. By Congressional intent, the administration and functions of the Ombudsman program are in many ways distinct from other programs administered by State agencies. For instance, unlike most OAA programs, this is a statewide program, headed by the Ombudsman, who heads the Office of State Long-Term Care Ombudsman and leads the Ombudsman program under an established set of policies and procedures. These federal provisions also mean that the Ombudsman program may not easily fit within a typical agency structure. While the Ombudsman may work as a state employee or under the direction of the State Agency director, the Ombudsman does have specific functions that require independence and autonomy. The Ombudsman's duties also require a good working relationship among agencies that support the intent of the Older Americans Act as laid out in the statute and the implementing regulation for the Long-Term Care Ombudsman Program. The Ombudsman collaborates with the State Agency to design and implement an elder rights agenda within the Aging Network but must represent long-term care residents autonomously.

<sup>1</sup> In this document, Ombudsman refers to the State Long-Term Care Ombudsman who heads the Office of the State Long-Term Care Ombudsman as stipulated in the OAA.

<sup>2</sup> The term State Agency, State Unit on Aging, State unit and State agency are sometimes used interchangeably and have the same meaning.

In 2015, the Administration for Community Living (ACL) promulgated the first federal regulation specifically focused on the Ombudsman program and aimed to create greater alignment and consistency across state Ombudsman programs. The regulation provides clarification and delineation around the functions and responsibilities of the Ombudsman program and the State Agency. The regulation also articulates specific provisions for State Long Term Care Ombudsman operations, such as conflict of interest, exemption from mandatory reporting requirements, among other key requirements.

Throughout this Primer, you will find boxes titled “For Consideration,” “Conversation Starters,” “In Practice,” and “Key Resources” to highlight the unique aspects and resources of the program. The “For Consideration” prompts may assist State Agency Directors to think through key points regarding State Agency responsibilities to the Ombudsman program and the “Conversation Starters” invite State Agency Directors to initiate conversations with the Ombudsman.

### **Get to know the Ombudsman**

The Ombudsman has unique expertise and understanding of long-term care services and supports, offers an independent perspective, and has direct, open lines of communication with residents in long-term care facilities. Developing an understanding of the Ombudsman program work and communicating with them regularly gives the State Agency Director a compelling perspective of the consumer’s experience with long-term supports and services.

# OLDER AMERICANS ACT REQUIREMENTS

## Older Americans Act

In 1972 Congress established an Ombudsman program to help provide a source of independent support to nursing home residents. The Ombudsman program provides information to consumers about their long-term care options, works to resolve problems on behalf of residents, and advocates for improvements in the long-term services and supports system. The Ombudsman program has several characteristics that are unique to this program and are unlike other parts of the OAA. The OAA includes provisions that aim to protect vulnerable elders by strengthening the Long-Term Care Ombudsman Program and elder abuse screening and prevention efforts.

The 2016 OAA clarified two functions of the Ombudsman program including<sup>3</sup>: Clarification that the Long-Term Care (LTC) Ombudsman program has the authority to serve (and utilize OAA appropriations to serve) residents of long-term care facilities, *regardless of age*. Section 711(6) reads, “The term ‘resident’ means an individual who resides in a long-term care facility.”

The provision related to residents transitioning from a long-term care facility to a home care setting 712(a)(3) FUNCTIONS.—The Ombudsman... shall, personally or through representatives of the Office...

(I) when feasible, continue to carry out the functions described in this section on behalf of residents transitioning from a long-term care facility to a home care setting; ...

ACL interprets the term “when feasible” to mean that Ombudsman programs shall serve this expanded population when adequate resources exist, without diminishing services to the resident population. ACL interprets this provision to authorize the use of OAA appropriations by states for LTC Ombudsman program services to individuals living in a home care setting only during a transition period.<sup>4</sup>

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<sup>3</sup> This excerpt of the ACL frequently asked question on the OAA reauthorization is not a comprehensive review of all OAA reauthorization provisions; see <https://www.acl.gov/about-acl/authorizing-statutes/older-americans-act> for a full review of the 2016 OAA reauthorization.

<sup>4</sup> This excerpt of the ACL frequently asked question on the OAA reauthorization.



# Elder Rights and the Long-Term Care Ombudsman Program

Title VII of the Older Americans Act includes the Ombudsman programs (Chapter 2), Programs for Prevention of Elder Abuse, Neglect, and Exploitation (Chapter 3) and State Legal Assistance Development Program (Chapter 4). These sections are together under Elder Rights to emphasize multi-disciplinary and collaborative approaches to promoting the health safety, welfare, and rights of long-term care residents and supports the State agency's coordination of programs [to address elder abuse, neglect and exploitation] with other state and local program and services for the protection of vulnerable adults.<sup>5</sup>

The goal for the State LTC Ombudsman Program, legal assistance, and the elder abuse prevention programs is to develop strong linkages, both inside and outside the traditional aging network, to support older persons' advocacy needs. In developing an elder rights system, each state is required to:

- Obtain the views of older persons, Area Agencies on Aging, service providers, and other interested persons and entities regarding Title VII programs
- Identify and prioritize statewide elder rights activities;<sup>6</sup> and
- Coordinate, to the greatest extent possible, Ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means.<sup>7</sup>

Throughout their history, Ombudsmen have built skillful coalitions and successfully negotiated agreements with a variety of agencies and programs, and involved residents and families in developing their advocacy agenda. This creates an interesting dynamic as the Ombudsman partners with the state to design and implement an elder rights agenda and administer a program within the Aging Network but is also responsible for independently representing long-term care residents.

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<sup>5</sup> Section 721(d) of the Act.

<sup>6</sup> Section 705 of the Act.

<sup>7</sup> Section 712 of the Act.

## Long-Term Care Ombudsman Program

The Older Americans Act calls upon the Ombudsman<sup>8</sup> to be responsible for the management, including the fiscal management, of the Office of the Ombudsman and to personally or through representatives of the Office:

- Identify, investigate, and resolve complaints made by or on behalf of residents.
- Provide information to residents about Long-Term Services and Supports (LTSS).
- Ensure that residents have regular and timely access to Ombudsman program services.
- Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect residents.
- Analyze, comment on, and recommend changes in laws and regulations pertaining to the health, safety, welfare, and rights of residents.
- Promote the development of and assist citizen advocacy groups that want to protect the well-being and rights of residents.
- Provide technical support for the development of resident and family councils to protect the wellbeing and rights of residents.

### IN PRACTICE

Many individuals living in long-term care facilities, as well as their family members, may not have regular access to the internet, so it is likely Ombudsman programs will continue to need to make resources and information available in print (e.g., fact sheets regarding resident rights, posters about the Ombudsman program).

## INTRODUCTION TO THE OMBUDSMAN PROGRAM RULE

This section reviews significant portions of the Ombudsman program federal rule 45 CFR Part 1324 with supporting reference to the Older Americans Act. The functions of the Ombudsman program were outlined in the OAA since the creation of the program in the 1970s; however, regulations were not promulgated specifically focused on States' implementation of the program. In the absence of regulation, there has been significant variation in the interpretation and implementation of these provisions among states. The State Long-Term Care Ombudsman Programs rule, published in February 2015, became effective on July 1, 2016.

<sup>8</sup> This is a broad overview of the functions and responsibilities. For specific details see Section 712 SEC. 712. State Long-Term Care Ombudsman Program of the Older Americans Act. <https://www.acl.gov/node/650/>

## Purpose of the Rule: Administration for Community Living Perspective

“AoA believes that consumers (particularly residents of long-term care facilities) and long-term care providers will benefit from the implementation of this rule. Consumers and other complainants across the country will receive services from Ombudsman programs with more consistent quality and efficiency of service delivery. For years, States, Ombudsmen, and representatives of the Offices of State Long-Term Care Ombudsmen have reported to AoA that they have found some provisions of the Act confusing to implement. This rule seeks to provide the clarity that Ombudsman program stakeholders have requested.”

*Administration on Aging/Administration for Community Living, preamble of the Long-Term Care Ombudsman Program Rule, 7704 Federal Register / Vol. 80, No. 28 / Wednesday, February 11, 2015 / Rules and Regulations*

The rule addresses:

- Responsibilities of key figures in the system, including the Ombudsman and representatives of the Office of the Ombudsman;
- State agency responsibilities related to the Ombudsman program;
- Responsibilities of the entities in which LTC Ombudsman programs are housed;
- Criteria for establishing consistent, person-centered approaches to resolving complaints on behalf of residents, including the role of LTC Ombudsman programs in resolving abuse complaints; and
- Processes for identifying and remedying organizational and individual conflicts of interest so that residents have access to effective, credible Ombudsman services.

## KEY RESOURCES

This Primer does not intend to cover all aspects of the Ombudsman program rule or the Older Americans Act. Visit the National Long-Term Care Ombudsman Resource Center (NORC) website, *Long-Term Care Ombudsman Program Final Rule* page for links to the Rule and materials created by the Administration for Community Living and NORC. This page is your one-stop for frequently asked questions, webinars, issue briefs, side-by-side charts, technical assistance responses, and state resources regarding the Rule. [http://ltcombudsman.org/library/fed\\_laws/ltcop-final-rule](http://ltcombudsman.org/library/fed_laws/ltcop-final-rule).

# THE OMBUDSMAN PROGRAM RULE: KEY PROVISIONS

A culmination of several years of collaborative work with states and other partners, this rule guides implementation of the portions of the OAA governing grants to states for operation of Long-Term Care Ombudsman Programs.<sup>9</sup>

## KEY RESOURCES

### ***Program Structure***

Visit NORC's Ombudsman Program Structure and Management page for more information, including the State Long-Term Care Ombudsman Programs: Organizational Structure report [http://ltcombudsman.org/omb\\_support/pm/structure-management](http://ltcombudsman.org/omb_support/pm/structure-management)

## Establishment of the Office of the State Long-Term Care Ombudsman

The rule, in accordance with the OAA, requires the State agency to establish the State Long-Term Care Ombudsman Office as a “distinct entity” that is “separately identifiable” in order to provide ease of access for residents and complainants and to effectively meet other statutory requirements of the Office. The State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

## CONVERSATION STARTERS

### ***Program Structure***

What are your state program's strengths and weaknesses regarding:

- Visibility and accessibility of the program?
- Conflicts of interest with other entities?

What efforts has the program made to address identified weaknesses?

What structural changes could the program make to address such weaknesses?

What are the benefits and challenges regarding program effectiveness and collaboration in the current structure?

<sup>9</sup> This overview does not cover all provisions of the regulation, to view the full regulation see 45 CFR 1324.

## ***Policies and Procedures***

Policies and procedures specify how the Ombudsman program is carried out in accordance with the Act. Some states convey legal authority upon the Ombudsman to establish policies and procedures, in consultation with the State agency. In states that do not have a law that provides the Ombudsman with legal authority to establish policies and procedures, the Ombudsman shall recommend policies and procedures to the State agency or other agency in which the Office is organizationally located, and such agency shall establish Ombudsman program policies and procedures. The development of policies and procedures must include consultation with the agencies hosting local Ombudsman entities and with representatives of the Office.

The policies and procedures must address the following provisions:

- **Program administration** to monitor local Ombudsman entities by the Ombudsman; standards of promptness for complaint responses;
- **Procedures for access** to facilities, residents, and appropriate records;
- **Procedures for Disclosure**
  - Disclosure is prohibited unless there is resident consent.
  - Must address steps required in order to disclose resident identifying information for purposes of complaint resolution.
  - Must clarify that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman.
  - Must exclude the Ombudsman and representatives of the Office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order.
- **Conflicts of interest** of both individual and organizational.
- **Systems advocacy** require the Office has sufficient authority to carry out its statutory responsibilities, as the Office determines is appropriate, and regardless of State lobbying laws.
- **Designation** establish the criteria and process by which the Ombudsman shall designate and refuse, suspend, or remove designation of local Ombudsman entities and representatives of the Office.
- **Grievance process** describe the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

- **Determinations of the Office** the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the State agency or other agency in which the Office is organizationally located, regarding:
  - Disclosure of information maintained by the Ombudsman program.
  - Recommendations to changes in Federal, State and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents.
  - Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations to address those problems and concerns.

## CONVERSATION STARTERS

### ***Policies and Procedures***

- In your state, does the Ombudsman have the legal authority to establish policies and procedures?
- Are there any remaining policies and procedures to complete?
- Are there any roadblocks to achieving full implementation of the Ombudsman program regulation?
- Have representatives of the Office and local Ombudsman entities (if applicable) received training on the program policies and procedures?

## KEY RESOURCES

### ***Ombudsman Program Policies and Procedures***

Visit NORC's *Policies and Procedures* page for state Ombudsman program examples. ([http://ltcombudsman.org/omb\\_support/pm/policies](http://ltcombudsman.org/omb_support/pm/policies)).

## Functions and Responsibilities of the State Long-Term Care Ombudsman

The Ombudsman, as head of the Office, has the responsibility for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program. This management includes programmatic oversight of the local Ombudsman entities and representatives of the Office.

### *Functions and Responsibilities*

In addition to the complaint investigation and systems advocacy previously described, the Ombudsman, as head of a unified statewide program, is responsible for a variety of programmatic functions. The Ombudsman must:

1. Require representatives of the Office to fulfill the duties in accordance with Ombudsman program policies and procedures.
2. Determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office.
3. Designate local Ombudsman entities, staff and volunteer representatives of the Office, including the following programmatic requirements
  - Review and approval of plans or contracts governing local Ombudsman entity operations, including, where applicable, through Area Agency on Aging plans, in coordination with the State agency.
  - Monitor local Ombudsman entities.
  - Establish certification training requirements for purposes of designation.
  - Investigate allegations of misconduct by representatives of the Office.
  - Implement procedures for refusal, suspension, or removal of designation of entities and representatives.

## CONVERSATION STARTERS

### ***Program Management***

- Do all individuals who may need Ombudsman program services have access to the program?
  - Do they receive timely responses to their complaints?
  - What is your standard of timeliness?
  - Within the past year, what has the Ombudsman program done to try to address consumer access to the program?
- How frequently do representatives of the Office submit their complaint and activity data?
- Do you see differences in complaint trends between nursing homes and board and care facilities? If you do, how do you and the Ombudsman understand the differences?
- How does the Ombudsman determine the use of fiscal resources appropriated or otherwise available for the operation of the Office?
- What can the State agency do to support the program's efforts?

## IN PRACTICE

### ***Reporting to the Assistant Secretary for Aging: National Ombudsman Reporting System (NORS)***

States fulfill their obligation to report to the Assistant Secretary by reporting their NORS data in the ACL approved software-reporting system. NORS data includes numeric data on cases, complaints and program activities and narratives on systems issues, complaint examples and organizational conflicts of interest identification and remedies. ACL's Office of Long-Term Care Ombudsman Programs welcomes Ombudsman program reports in other formats in addition to the submission of the annual NORS report.



## ***Annual Report***

The Ombudsman is to independently develop and provide final approval of an annual report. The report is to be available to the public and submitted to the Assistant Secretary, the Governor, the state Legislature, the State Agency, the State Licensing and Certification Agency, and other appropriate entities. The report must:

- Describe the activities carried out by the Office in the year for which the report is prepared;
- Contain analysis of Ombudsman program data;
- Describe evaluation of the issues experienced by, and the complaints made by or on behalf of residents;
- Contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;
- Contain analysis of the success of the Ombudsman program, including success in providing services to residents of, assisted living, board and care facilities, and other similar adult care facilities; and
- Describe barriers that prevent the optimal operation of the Ombudsman Program.

## **FOR CONSIDERATION**

### ***Data***

- Are there opportunities for the State agency to utilize NORS data in developing state plan goals and objectives?

## **CONVERSATION STARTERS**

### ***Data***

- How is NORS data used for advocacy and program management?
- What would improve your ability to use NORS data for advocacy and program management?
- What types of trends (complaints, visits, volunteer numbers, etc.) have you identified?

## Coordination with Other Entities

### KEY RESOURCES

Visit NORC's Program Management page for information regarding collaborating with other entities, including two toolkits (*Long-Term Care Ombudsman Programs and Legal Assistance Developers Collaboration Toolkit* and *Long-Term Care Ombudsman Programs and Protection & Advocacy Agencies Collaboration Toolkit*), [https://ltcombudsman.org/omb\\_support/pm](https://ltcombudsman.org/omb_support/pm). These Toolkits include sample Memorandum of Understanding (MoU) and a MoU template.

The Rule requires Ombudsman program coordination with entities, such as Older Americans Act-funded legal assistance providers, Protection and Advocacy Systems, and the State Licensing and Certification Agency, but the nature of that coordination may vary. While memoranda of understanding are a common approach to clarify and formalize a working relationship between entities, they may not be the best mechanism to promote successful coordination in every instance. However, the Act specifically requires adoption of memoranda of understanding with respect to coordination with one entity: Title IIIB legal assistance providers and the State's Legal Assistance Developer.

### CONVERSATION STARTERS

#### **Coordination with Other Agencies**

- Does the program have Memoranda of Understandings (MOUs) with other programs to ensure each program understands what services each can provide and how and when they will work together (e.g., OAA-funded legal assistance providers, Adult Protective Services (APS), State Licensing and Certification Agency)?
- How does the Ombudsman program work with other state agencies or programs, such as State, Licensing and Certification Agency, APS, Protection and Advocacy, the Legal Assistance Developer? Can you share examples of coordination with each of these entities?
- What barriers have been identified which prevent the program from working more closely with regulatory agencies and other advocacy programs?
- What can the State agency do to facilitate a coordinated advocacy approach?

## State Agency Responsibilities Related to the Ombudsman Program

The State agency has distinct responsibilities to the program including assurance of Ombudsman compliance with the OAA and the rule and that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to perform the functions, responsibilities, and duties of the Office.

### *The State Agency is to Provide*

- Training opportunities—a State agency may utilize Title IIIB and Title VII funding for this purpose.
- Personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency, including assessment of Office fulfillment of functions.
- Contract monitoring, including fiscal monitoring, where applicable; and may request reports of aggregated program data for this purpose.

Additionally, the State agency is to ensure—regardless of the organizational placement of Office—that

- Reviews of files, records or other information maintained by the Ombudsman program is consistent with the rules governing disclosure limitations.
- It has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals regarding Ombudsman program duties and provide for sanctions.
- provides for adequate legal counsel for the program that has competencies relevant to the legal needs of the program and of residents and is without conflict of interest.
- requires the Office to provide final approval of an annual report.

### IN PRACTICE

NORC hosts an annual national training conference for State Ombudsmen and provides orientation training for new State Ombudsmen. **The OAA states that the State Agency must “ensure that the Ombudsman or a designee participates in training provided by the National Ombudsman Resource Center” [OAA Section 712 (h)(4)].**

Although many of the functions of the Ombudsman program by their very nature are to be autonomous from other State agency operations, there are important prescribed functions for the State agency concerning the program. For example, the Older Americans Act requires the State agency to ensure that the Ombudsman sets expectations for both staff training and monitoring of local Ombudsman entities.

## CONVERSATION STARTERS

### ***Program Monitoring***

- What is your assessment of the quality of the Ombudsman program in our state?
  - What efforts has the program made to involve consumers and other stakeholders in assessing program effectiveness and quality?
- How can the program improve the quality of services?
- Do you routinely review NORS data to ensure data quality?

## FOR CONSIDERATION

- As the State agency Director, how do you assess whether the Ombudsman program is performing all the functions, responsibilities, and duties required of the Ombudsman and representatives of the Office?
- Does your Ombudsman program provide your State agency with data (for example, monthly or quarterly reports for monitoring purposes)?

### ***Legal Counsel***

Specific State agency requirements related to legal counsel include:

- Representation of “any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties.” (Older Americans Act Section 712(g)(1)(B); 45 CFR 1324.15(j)(1)(iii)).
- Legal counsel for “advice and consultation needed to protect the health, safety, welfare, and rights of residents.” In addition, legal counsel is required to be available to “assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives.” (OAA Section 712(g)(1)(A); 45 CFR 1324.15(j)(1)(i)).

Depending on identified programmatic needs, examples could include legal advice related to:

- Developing programmatic policies or legal documents (e.g., program regulations, contracts, and policy and procedure manual reviews).
- Systems advocacy on behalf of resident interests (e.g., review of legislation, drafting of recommended legislative or regulatory language).
- Complaint resolution for complex cases, including those that involve legal issues.
- Advice, drafting responses, and/or representation in response to formal requests for disclosure of program information (e.g., depositions, subpoenas, interrogatories, public records requests).

The Ombudsman, in coordination with the State agency, may beneficially assess their programmatic needs for legal assistance and determine unmet needs for access to adequate, available, competent, and conflict-free legal counsel. It is possible that one law firm or attorney can best serve the Ombudsman program legal needs. Alternatively, the Ombudsman program may need to access legal services from a variety of sources depending on the legal needs. Merely having an Ombudsman or representative of the Office who is a licensed attorney is not sufficient by itself to meet the requirements of the Rule.<sup>10</sup>

## Responsibilities of Agencies Hosting Local Ombudsman Entities

States with local Ombudsman entities may divide some responsibilities between the host agency and the Ombudsman. For example, the host agency may retain the authority over the personnel functions of the agency, such as hiring and firing. However, the Ombudsman must have responsibility for the programmatic functions of the Ombudsman program, including designation and de-designation of representatives of the Office.<sup>11</sup>

Representatives of the Office, including those hired by (or volunteers managed by) a local Ombudsman entity, are to be accountable to the head of the Office (i.e., the Ombudsman) for purposes of Ombudsman program operations. For example, they must follow the policies, procedures, and guidance of the Ombudsman regarding complaint processing and other Ombudsman program activities. In addition, the Ombudsman must provide technical assistance to representatives of the Office. (OAA Section 712(a)(3)(F); 45 CFR 1324.13(a)(6)).

## Duties of the Representatives of the Office

Through designation, both paid, and volunteer representatives of the Office address complaints and must follow the programs policies and procedures about receiving and resolving complaints. Representatives of the Office are typically the “eyes and ears” of the Ombudsman program, addressing resident complaints; supporting resident and family councils; and educating residents, families, facility staff, and other stakeholders on resident rights, quality care, and similar matters. This unique role allows the Ombudsman to expand the reach of the program throughout the state.

A key duty of representatives of the Office is to identify, investigate, and resolve complaints made by or on behalf of residents. The Ombudsman program rule clarifies many aspects of complaint handling to support the representatives of the Office in conducting person-centered problem solving and complaint resolution.

The 2015 Ombudsman rule clarifies the Ombudsman program role related to abuse, neglect, or exploitation complaints where residents are *unable to communicate informed consent*; it also provides guidance on what to do when the Ombudsman or representative of the Office personally witnesses abuse. These provisions support the Ombudsman program to assist those residents in need of intervention to address suspected abuse, neglect or exploitation.

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<sup>10</sup> 45 CFR 1324.15(j)(3)).

<sup>11</sup> ACL Frequently Asked Questions (FAQ) <https://www.acl.gov/node/762>

## Person-Centered Complaint Processing Approach

The Ombudsman or Representative of the Office shall support and maximize resident participation by:

- Offering privacy;
- Discussing the complaint with the resident (and/or resident's representative) in order to:
  - ◆ Determine the perspective of the resident;
  - ◆ Request informed consent in order to investigate the complaint;
  - ◆ Determine the wishes of the resident with respect to the resolution of the complaint;
  - ◆ Disclosure of information to the facility and/or outside agencies;
  - ◆ Advise the resident of his/her rights;
  - ◆ Work with the resident to develop a plan of action for resolution of the complaint;
  - ◆ Investigate to determine whether the complaint can be verified; and
  - ◆ Determining whether the complaint is resolved to the resident's satisfaction.<sup>12</sup>

The Ombudsman program can work *with the appropriate resident representative* if a resident is unable to communicate consent.

The Ombudsman program has the authority to work to resolve complaint (and disclose relevant information) when the resident is unable to communicate informed consent, and has *no resident representative available* to do so.

If a resident cannot consent, the representative of the Office may refer and disclose resident-identifying information to appropriate agencies under certain criteria and with the consent of the Ombudsman.

## Conflicts of Interest

**The State Agency and the Ombudsman are responsible for identifying conflicts that “may impact the effectiveness and credibility of the work of the Office” [§1324.21(c)(1)].**

The Ombudsman program Rule requires the establishment and implementation of policies and procedures related to conflicts of interest including a process to identify and remove or remedy conflicts of interest. The purpose is described in the Ombudsman program rule preamble which states; “We believe that the approach we have taken in the final rule at §1324.21, which provides for annual identification of organizational conflicts and description of steps taken to remedy or remove conflicts, will provide an orderly process that will implement the requirements of the Act, enhance transparency, avoid burdensome reporting requirements on Ombudsman programs, and emphasize the importance of States providing credible, conflict-free Ombudsman programs for residents.”<sup>13</sup>

<sup>12</sup> 45 CFR 1324.19(b)

<sup>13</sup> ACL/AoA Long-Term Care Ombudsman Program rule preamble (page 188)

## FOR CONSIDERATION

### ***Conflicts of Interest***

- Does program monitoring include a review of conflicts of interest screening tools, both individual and organizational?
- Does the State agency need to enact any organizational or procedural restructuring to ensure proper firewalls exist between the Ombudsman program and other programs?

### ***The Rule Requires Five Steps Regarding Organizational Conflicts of Interest (COI)***

1. Avoid COI prior to designating or renewing designation.
2. Establish a process for periodic review and identification of COI.
3. Require disclosure of COI and steps taken to remove or remedy.
4. Establish criteria and process for review and approval of steps to remedy or remove the COI.
5. Report identified conflicts and remedies through the National Ombudsman Reporting System.

### ***Prohibited Conflict of Interest—those that cannot be remedied***

Placement of the Office in the organization that:

- Is responsible for licensing, surveying or certifying LTC facilities;
- Is an association (or an affiliate of such an association) of LTC facilities; or
- Has ownership, operational, or investment interest in a LTC facility.

### ***The Rule Requires Four Steps Regarding Individual Conflicts of Interests***

1. Establish and implement conflict of interest policies and procedures.
2. Identify conflicts of interests.
3. Avoid appointing or designating individuals with a conflict of interests.
4. Remove or remedy the conflict.

The State agency must ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest.

### ***Prohibited Individual Conflict of Interest***

**For Ombudsman:** Has been employed by or participating in the management of a LTC facility within the previous twelve months.

**For representatives of the Office:** current employment, receipt of, or right to receive remuneration from a facility or its management.

- Has direct involvement in licensing, surveying, or certifying LTC facilities.
- Has ownership, operational, or investment interest in a LTC facility.

## CONVERSATION STARTERS

### ***Conflicts of Interest***

#### **Organizational Conflicts of Interest**

- How do the State agency and the Ombudsman consider both the organizational and individual conflicts of interest that may affect the effectiveness and credibility of the work of the Office?
- What are the program's strengths and weaknesses regarding any conflicts of interest with other state agencies such as state licensing agencies, APS?
- What efforts has the program made to address any weaknesses?

#### **Individual Conflicts of Interest**

- Does the program, including local Ombudsman entities where applicable, have established conflict of interest policies and procedures?
- Do the policies and procedures include mechanisms, such as screening questions on applications, interview questions, disclosure of conflicts form to assist with identification of conflicts?
- Do the policies and procedures outline mechanisms to remove or remedy the conflicts?



# UNIQUE ROLE AND RESPONSIBILITIES OF LONG-TERM CARE OMBUDSMAN

The State agency will have situations where an internal conflict between the Ombudsman's responsibility to advocate directly for LTC residents might conflict with the views of the State agency. It is important to note that this aspect of Ombudsman work is common and occurs in many other kinds of Ombudsman programs around the world (e.g., business Ombudsman, college Ombudsman, government Ombudsman, etc.<sup>14</sup>).

When necessary, education to other state agencies and/or the governor's office can provide a full understanding of the unique role the Ombudsman has in making recommendations, which may differ from others in state government. This applies equally to Ombudsman programs that are not part of state government. Regardless of the organizational structure, State agencies must enable the Ombudsman to fulfill all of the functions of the State Long-Term Care Ombudsman.

## ***Systems Advocacy—An Independent Voice***

"On-going and open communication between the State Ombudsman and the State Agency Director is critical. The Ombudsman has a good pulse on emerging issues facing residents in long-term care facilities. The State Ombudsman keeps me well informed on his advocacy efforts and positions on key issues. While we have different roles and responsibilities, we work together in a very complementary way to inform policy deliberation and momentum in addressing these issues."

*—Lora Connolly, Former California State Aging Director and NASUAD Past President*

In addition to individual problem resolution, Ombudsman programs advocate for resident interests in public policy arenas. The OAA requires the Ombudsman to analyze, comment on, and recommend changes in laws, regulations, and government policies and actions to benefit residents. Ombudsmen commonly refer to this responsibility as "systems advocacy."

A state's policies and procedures must assure that the Office of the State Long-Term Care Ombudsman is required and has sufficient authority to carry out its responsibility to, among other things, recommend changes to laws, regulations, and policies as the Office determines to be appropriate.<sup>15</sup> Such procedures must exclude the Ombudsman and representatives of the Office from any state lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act.

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<sup>14</sup> See The American Bar Association Ombuds Standards, which describes various Ombudsman models.  
[http://apps.americanbar.org/dch/thedl.cfm?filename=/AL322500/sitesofinterest\\_files/last\\_year.doc](http://apps.americanbar.org/dch/thedl.cfm?filename=/AL322500/sitesofinterest_files/last_year.doc)

<sup>15</sup> Older Americans Act Section 712(h)(2); 45 CFR 1324.11(e)(5)

The Ombudsman must fulfill other functions related to systems advocacy, including “leadership to statewide systems advocacy efforts of the Office ... including coordination of systems advocacy efforts carried out by representatives of the Office.”<sup>16</sup>

### ***Examples of Ombudsman Systems Advocacy Strategies***

- Initiating dialogue with policymakers, agency heads, legislators, and their staff regarding identified problems for residents that require a system level resolution
- Responding and actively engaging in legislative and regulatory proposals
- Submitting written comments on state/federal regulations
- Testifying at legislative committee meetings or public hearings

### ***Systems Advocacy in Practice***

#### **IN PRACTICE**

Advocacy and representing the interests of residents at the state, local, and federal level can include many concerns about the actions or inactions of a wide variety of entities that can positively or negatively affect a resident’s health, safety, or welfare. The Ombudsman not only engages in systems advocacy at a local and state level but also must be aware of policies from a national perspective, which may impact individuals receiving long-term care services and the state. The National Association of State Long-Term Care Ombudsman Programs (NASOP) helps inform State Ombudsmen of national long-term services and supports issues and opportunities for advocacy.

Ombudsmen report their systems advocacy agenda, barriers, and resolution strategies in the National Ombudsman Reporting System (NORS) each year. Reported in Federal Fiscal Year 2016 is that inappropriate eviction and discharge continue to be the most common complaint among residents in nursing homes and board and care settings. Ombudsman programs support individual residents to oppose the eviction and work to address the root causes through systems advocacy.

<sup>16</sup> 45 CFR 1324.13(a)(7)(iv)

Examples of ways Ombudsmen support residents through system advocacy include:

- Developing task forces, proposing legislation, speaking with the media to educate the public.
- Training both hospital social workers and long-term care facility staff on relevant requirements.
- Training residents and their families on their rights regarding discharge and transitioning out of a long-term care facility.

## CONVERSATION STARTERS

### ***Systems Advocacy***

- Within the past year, what systems advocacy activities have the Ombudsman initiated or accomplished?
- What is the Ombudsman program's advocacy agenda for the current year?
  - How is the advocacy agenda developed?
- Are there barriers to Ombudsman program (state and local level) participation in advocacy (e.g., speaking with legislators, the media, and the public)?
  - If so, what are they?
  - What would it take to remove the barriers?
- Describe your leadership strategies to coordinate and generate participation in systems advocacy with Ombudsman program representatives.
- What can the State agency do to improve the program's ability to engage in systems advocacy?

Many Ombudsmen and State agency Directors find clear communication about public policy and legislative issues to be central to a successful working relationship. In many cases, they will work together to strategize about how to support the program's priorities on behalf of individuals living in long-term care facilities. In some cases, State agency Directors work to educate other state agencies and Governors' offices about the Ombudsman program and its positions on specific legislative issues.

## ***Home and Community-Based Services***

### **KEY RESOURCES**

#### ***Systems Advocacy***

Visit NORC's Systems Advocacy page for additional information including a resource titled, "*Role and Responsibilities of Ombudsman Programs Regarding Systems Advocacy.*" There are separate versions for Ombudsmen and representatives of the Office ([http://ltombudsman.org/omb\\_support/advocacy](http://ltombudsman.org/omb_support/advocacy)).

# **THE OMBUDSMAN PROGRAM IN A CHANGING LONG-TERM SERVICES AND SUPPORTS LANDSCAPE**

## ***Role of the Ombudsman Program in a Changing Long-Term Services and Supports Landscape***

The role of the Ombudsman in the planning of a modernized system of long-term services and supports (LTSS) is evolving. As states transform their long-term care services with a focus on person-centered community settings, the role of the Ombudsman program may expand. Historically, the role of the Ombudsman is to hold systems accountable to fulfill their responsibilities to residents. The potential role for the Ombudsman program in this expanding long-term services and supports system could be the same, ensuring that the systems that are in place work toward assuring safety and quality for consumers. Ombudsman programs have a knowledge base and skill set that can be helpful to consumers both in resolving issues for individuals and in shaping long-term care policies in a variety of settings and services.

## ***Home and Community-Based Settings Rule***

The Medicaid home and community-based services (HCBS) provided under sections 1915(c), 1915(i) and 1915(k) of the Medicaid statute add another layer of complexity to Ombudsman programs as states develop their transition plans to bring their Medicaid HCBS systems into compliance with the new federal regulations on community-based settings. Ombudsman programs have the opportunity to participate in transition planning and to represent the resident perspective.

The final HCBS rule includes additional requirements for provider-owned or controlled home and community-based residential settings. These requirements include such protections as assuring resident privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit; controls over schedules; access to food at any time; and access to visitors, to name a few. These requirements give Ombudsman programs a framework that may add additional advocacy and complaint handling to ensure that residents in these residential settings benefit from this regulation. Note: The Centers for Medicare & Medicaid Services (CMS) has extended the transition period for states to demonstrate compliance with the home and community settings criteria until March 17, 2022.

## CONVERSATION STARTERS

### ***Role of the Ombudsman Program in HCBS***

- Is the Ombudsman program involved in the HCBS settings transition planning?
- What can the Ombudsman program do within its current federal responsibilities relevant to HCBS, nursing home diversions, and nursing home transitions?

### ***Managed Long-Term Services and Supports Ombudsman***

In 2013, Centers for Medicare and Medicaid Services (CMS) began requiring states, as a condition of approving any new 1915(b) or 1115 waiver implementing a managed long-term services and supports (MLTSS) program, to establish a member Ombudsman program. It is one part of a comprehensive “independent consumer support” system that must provide pre-enrollment assistance as well as post-enrollment assistance.

A few states have embedded this function in their LTC Ombudsman program, recognizing the functional similarities between the two services. This placement allows states to utilize existing infrastructure, such as toll-free phone lines, websites and tracking databases while adding additional staff with expertise in community-based services and managed care. Generally, the Ombudsman program coordinates with other advocacy entities to provide this Ombudsman service in accordance with their jurisdiction and area of expertise. The Ombudsman program addresses concerns of MLTSS enrollees who are living in facility settings, while other entities provide services to address concerns of MLTSS enrollees who are not living in long-term care facilities.

## FOR CONSIDERATION

### ***Expanding the Role of the Ombudsman Program***

- Has the state considered expanding Ombudsman program services into non-facility HCBS settings such as home care and adult day services?
- What are some reasons for or against expanding?
- Is your state considering or offering MLTSS? If so, is the Ombudsman program under consideration to provide MLTSS Ombudsman services?
- What policy and procedural changes would be necessary, e.g., statutory authority, staffing, funding, protections against conflict of interest, if the Ombudsman Program services were to expand?

## KEY RESOURCES

Visit NORC's HCBS and Medicare and Medicaid pages for additional information on HCBS, LTSS/MLTSS and the Ombudsman program <http://ltombudsman.org/home-and-community-based-services> and <http://ltombudsman.org/issues/medicare-and-medicaid>.

This Primer is a starting point to improve your understanding of the distinct provisions of the Long-Term Care Ombudsman program and to provide technical assistance in support of effective and credible Ombudsman programs. The resources in the appendix provide further details on all aspects of the Ombudsman program allowing for deeper exploration. The complexities of the Ombudsman program are vast; do not hesitate to call upon the National Ombudsman Resource Center, the National Association for States United on Aging and Disabilities (NASUAD,) or the Administration for Community Living when questions arise.

# APPENDICES

# APPENDIX A: HISTORY OF THE LONG-TERM CARE OMBUDSMAN PROGRAM<sup>17</sup>

- 1970s** The Nursing Home Ombudsman Program is created as part of President Nixon’s initiative to improve conditions and respond to widespread reports of resident abuse in the nation’s nursing facilities. The initiative started as a demonstration program to test its effectiveness, and by the late 1970s, all states were required to have Ombudsman Programs as a requirement of the Older Americans Act (OAA).
- 1980s** The Ombudsman Program expanded in the 1980s to include board and care as well as other similar adult care facilities. Clarifying language was included into the OAA in the late 1980s to ensure that the Ombudsman program’s access to long-term care facilities, residents and access to resident and facility records. The amendments also provided immunity from liability to the Ombudsman and representatives of the Office who were acting in “good faith” in the performance of their duties. The program was also renamed the Long-Term Care Ombudsman Program to reflect its expanded scope.
- 1990s** The 1992 amendments to the OAA created the Vulnerable Elder Rights title, Title VII of the OAA. Title VII and focused renewed attention on the individual and collective advocacy functions of the aging network and recognized the unique role played by each of the four advocacy programs: Ombudsman, elder abuse prevention, legal assistance, and benefits counseling. Title VII emphasized the benefit of a coordinated advocacy approach to address older persons’ understanding and exercise of their rights and access to assistance with problems they encounter. The 1992 amendments included the creation of an Office of the State Long-Term Care Ombudsman (the State Ombudsman Office) and some clarification of conflicts of interest.
- 2000s** The 2000 OAA amendments included specific language that prohibited Ombudsmen entities and representatives of the Office from financial gain through an action or potential action brought on behalf of individuals they served. It also required coordination of the program with state and local law enforcement agencies. The OAA amendments retained and updated ombudsman provisions in Titles II, III and VII, including specific conflict of interest provisions; the Ombudsman Title III minimum funding requirement was narrowed from the broad requirement in the 1992 OAA Amendments.

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<sup>17</sup> A detailed history of the program is on the NORC website. <http://ltombudsman.org/about/about-ombudsman/program-history>



- 2006** Reauthorization added “Assisted Living Facilities” to the definition of “Long-term Care Facility” thereby requiring the Ombudsman program to provide services to residents of Assisted Living Facilities.
- 2015** Long-Term Care Ombudsman Programs Final Rule was published in February with an effective date of July 1, 2016, to allow states appropriate time to make any changes necessary in order to comply with the final rule. The rule adds clarity to many of the program responsibilities and provisions in the OAA.
- 2016** The 2016 OAA amendments added clarity and additional authority to the Ombudsman Program in several areas. Pertinent amendments to the Ombudsman Program include:
- Authorized the program to serve all LTC facility residents regardless of their age;
  - To serve residents transitioning from a long-term care facility to a home-care setting, when feasible;
  - Clarifies that the program may work to resolve complaints on behalf of residents unable to communicate their wishes, including those lacking an authorized representative;
  - Requires programs to actively encourage and assist in the development of resident and family councils;
  - Clarifies that the program is considered a “health oversight agency” for purposes of the Health Insurance Portability and Accountability Act (HIPAA).

# APPENDIX B: GLOSSARY OF USEFUL TERMS<sup>18</sup>

**Local Ombudsman Entity**—An entity designated by the Ombudsman to carry out the Ombudsman program duties within a geographic area. Examples of agencies hosting local Ombudsman entities include Area Agencies and other public or nonprofit organizations.

**National Ombudsman Reporting System (NORS)**—NORS is a set of data collection requirements that Ombudsman programs collect. NORS is comprised of data on resident complaints and outcomes on complaints, Ombudsman program activities and narratives. In accordance with the OAA, Ombudsmen report their NORS data annually in the ACL approved software-reporting tool. NORS data is available at <https://agid.acl.gov/>.

**Office of the State Long-Term Care Ombudsman (Office)**—The organizational unit in a state or territory which is headed by a State Long-Term Care Ombudsman.

**Ombudsman**—A Swedish word meaning agent, representative, or someone who speaks on behalf of another.

**Representatives of the Office of the State Long-Term Care Ombudsman**—Staff or volunteers designated by the Ombudsman to fulfill the duties of the State’s Long-Term Care Ombudsman Program.

**State Long-Term Care Ombudsman (SLTCO) or Ombudsman**—The individual who heads the State LTC Ombudsman Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in the OAA and Ombudsman program rule.

**State Long-Term Care Ombudsman Program**—The program through which the functions and duties of the State Ombudsman Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

**State Agency**—A designated state division or department that holds the primary responsibility for the planning, policy development, administration, coordination, priority setting, and evaluation of all state activities related to the objectives of the OAA. The specific title and organization of the governmental unit will vary from state to state. Most states administer the OAA programs through their State Agency on Aging and Disabilities, referred to as “State Unit on Aging” (SUA). The Older Americans Act and the Ombudsman program rule use the term “State agency.”

**Willful interference**—Is the actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman program from performing any of the functions or responsibilities or duties.

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<sup>18</sup> Further clarification on the definitions of the Ombudsman program can be found in 45 CFR §1324.1 of the Code of Federal Regulations.

# APPENDIX C: ACRONYMS

**AAA**—Area Agency on Aging

**AoA**—Administration on Aging

**ACL**—Administration for Community Living

**APS**—Adult Protective Services

**COI**—Conflict of interest

**CMS**—Centers for Medicare & Medicaid Services

**HCBS**—Home and Community-Based Services

**HIPAA**—Health Insurance Portability and Accountability Act

**LOE**—Local Ombudsman entity

**LTC**—Long-Term Care

**LTCO**—Long-Term Care Ombudsman

**LTCOP**—Long-Term Care Ombudsman Program

**LTSS**—Long-Term Services and Supports

**MLTSS**—Managed Long-Term Services and Supports

**NORC**—National Long-Term Care Ombudsman Resource Center

**NORS**—National Ombudsman Reporting System

**OAA**—Older Americans Act

**SLTCO**—State Long-Term Care Ombudsman

**SUA**—State Unit on Aging

# APPENDIX D: RESOURCES

**Administration for Community Living Long-Term Care Ombudsman Programs,**

Frequently Asked Questions: <https://www.acl.gov/node/762>

**AGing Integrated Database (AGID)** <https://agid.acl.gov/>

**Code of Federal Regulations (CFR) Title 45: Public Welfare PART 1324—**

**ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION**

**ACTIVITIES Subpart A—State Long-Term Care Ombudsman Program:**

<https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

**National Association of Local Long-Term Care Ombudsman:** <https://nalltco.weebly.com/>

**National Association of State Long-Term Care Ombudsman Programs:**

<http://www.nasop.org/>

**National Association of States United for Aging and Disabilities:** <http://nasuad.org/>

**Older Americans Act of 1965 [Public Law 89–73] [As Amended through P.L. 114–**

**144, Enacted April 19, 2016]:** [https://legcounsel.house.gov/Comps/Older%20Americans%20](https://legcounsel.house.gov/Comps/Older%20Americans%20Act%20Of%201965.pdf)

[Act%20Of%201965.pdf](https://legcounsel.house.gov/Comps/Older%20Americans%20Act%20Of%201965.pdf)

**Older Americans Act: ACL Resources:** <https://www.acl.gov/node/650/>

**State Long-Term Care Ombudsman Programs Final Rule as Published**

**in the Federal Register February 11, 2015:** [https://www.federalregister.gov/](https://www.federalregister.gov/documents/2015/02/11/2015-01914/state-long-term-care-ombudsman-programs#sectno-reference-1327.11%20)

[documents/2015/02/11/2015-01914/state-long-term-care-ombudsman-programs#sectno-](https://www.federalregister.gov/documents/2015/02/11/2015-01914/state-long-term-care-ombudsman-programs#sectno-reference-1327.11%20)

[reference-1327.11%20](https://www.federalregister.gov/documents/2015/02/11/2015-01914/state-long-term-care-ombudsman-programs#sectno-reference-1327.11%20). {NOTE: when published the LTC Ombudsman program rule was

45 CFR 1327; it is now 45 CFR 1324.}

**State Long-Term Care Ombudsman Programs: Final Rule (2015) Overview, 45 CFR**

**1321 and 1324; Administration for Community Living; PowerPoint Presentation:**

<http://ltcombudsman.org/uploads/files/support/ltco-rule-overview-training.pdf>

**The National Consumer Voice for Quality Long-Term Care:** <http://theconsumervoice.org/>

**The National Long-Term Care Ombudsman Resource Center:**

<http://ltcombudsman.org>

# APPENDIX E: FACT SHEET: LONG-TERM CARE OMBUDSMAN PROGRAM—WHAT YOU MUST KNOW

## LONG-TERM CARE OMBUDSMAN PROGRAM

## FACT SHEET

### What You Must Know

#### WHAT IS THE LONG-TERM CARE OMBUDSMAN PROGRAM (LTCOP)?

Under the federal Older Americans Act (OAA) every state is required to have an Ombudsman Program that addresses complaints and advocates for improvements in the long-term care system.

Each state has an Office of the State Long-Term Care Ombudsman (Office), headed by a full-time State Long-Term Care Ombudsman (Ombudsman) who directs the program statewide. Across the nation, staff and thousands of volunteers are designated by State Ombudsmen as representatives to directly serve residents.

#### WHAT DOES THE OMBUDSMAN PROGRAM DO?

The Ombudsman program advocates for residents of nursing homes, board and care homes, assisted living facilities, and other similar adult care facilities. State Ombudsmen and their designated representatives work to resolve problems individual residents face and effect change at the local, state, and national levels to improve quality of care. In addition to identifying, investigating, and resolving complaints, **Ombudsman program responsibilities include:**

- Educating residents, their family and facility staff about residents' rights, good care practices, and similar long-term services and supports resources;
- Ensuring residents have regular and timely access to ombudsman services;
- Providing technical support for the development of resident and family councils;
- Advocating for changes to improve residents' quality of life and care;
- Providing information to the public regarding long-term care facilities and services, residents' rights, and legislative and policy issues;
- Representing resident interests before governmental agencies; and
- Seeking legal, administrative and other remedies to protect residents.

#### Ombudsman programs **do not**:

- Conduct licensing and regulatory inspections or investigations;
- Perform Adult Protective Services (APS) investigations; or
- Provide direct care for residents.

#### RESIDENTS' RIGHTS

Ombudsman programs help residents, family members, and others understand residents' rights and support residents in exercising their rights guaranteed by law. Most nursing homes participate in Medicare and Medicaid, and therefore must meet federal requirements, including facility responsibilities and residents' rights. For more information about residents' rights visit <http://ltombudsman.org/issues/residents-rights> and <http://theconsumervoice.org/issues/recipients/nursing-home-residents-rights>. Rights and care standards for assisted living/board and care facilities are regulated, licensed or certified at the state level.<sup>1</sup> For more information on assisted living visit <http://ltombudsman.org/assisted-living> and <http://theconsumervoice.org/issues/recipients/assisted-living>. Regardless of the type of facility all residents have the right to be protected from abuse and mistreatment and facilities are required to ensure the safety of all residents and investigate reports of mistreatment.

<sup>1</sup> Some assisted living facilities provide services for residents receiving Medicaid benefits and must meet federal standards for that program.

Keck School of  
Medicine of USC

NCEA  
National Center on Elder Abuse

The National  
CONSUMER VOICE  
for Quality Long-Term Care

om -  
buds-  
man  
The National Long-Term Care  
Ombudsman Resource Center

#### Ombudsman program investigate?

Ombudsmen handle a variety of complaints about quality of life and care. Not all complaints are about the care provided by a facility, some complaints are about outside agencies, services or individuals (e.g., Medicaid or Medicare benefits). They can also receive and respond to complaints from individuals other than the resident (e.g., family member), but still need resident permission to investigate or share information.

<sup>3</sup> Older Americans Act of 1965, Section 712 (a)(3)(A)

<sup>2,4,5</sup> For more information about the program's role in responding to complaints, including allegations about abuse, see the Administration for Community Living's Frequently Asked Questions about the LTCOP program [http://www.acl.gov/AoA\\_Programs/OAA/resources/Faqs.aspx#Ombudsman](http://www.acl.gov/AoA_Programs/OAA/resources/Faqs.aspx#Ombudsman) and the National Ombudsman Resource Center (NORC) website <http://ltombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities>.

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#### Do ombudsmen investigate complaints involving allegations of abuse, neglect, and exploitation?

Yes. The Ombudsman program investigates and resolves complaints that "relate to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of the residents" and that includes complaints about abuse, neglect, and exploitation.<sup>3</sup> Ombudsmen are directed by resident goals for complaint resolution and limited by federal disclosure requirements. Therefore, the Ombudsman program's role in investigating allegations of abuse is unique and differs from other entities such as, adult protective services and state licensing and certification agencies. Ombudsman programs attempt to resolve complaints to the residents' satisfaction (including those regarding abuse) and do not gather evidence to substantiate that abuse occurred or to determine if a law or regulation was violated in order to enforce a penalty. If necessary, with resident consent or permission of the State Ombudsman if the resident can't consent and does not have a legal representative, the ombudsman will disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action about the alleged abuse, neglect or exploitation.<sup>4</sup>

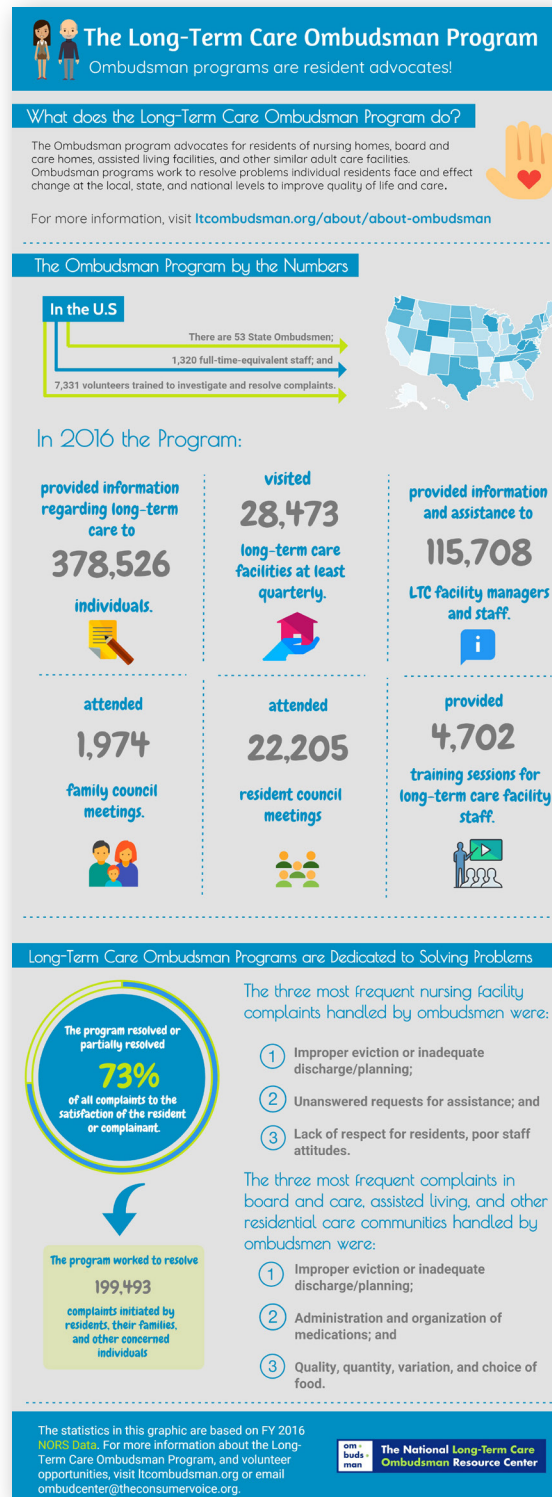
#### Is the Ombudsman program required to report allegations of abuse?

There are strict federal requirements regarding disclosure of Ombudsman program information. Resident-identifying information cannot be disclosed without resident consent, the consent of the resident representative, or a court order. Therefore, these disclosure requirements prohibit Ombudsman programs from being mandatory reporters of suspected abuse.<sup>5</sup>

#### How do I find more information about the Ombudsman program and contact an ombudsman?

Visit the National Long-Term Care Ombudsman Resource Center (NORC) website ([www.ltombudsman.org](http://www.ltombudsman.org)) to learn more about the program. Locate an Ombudsman program by clicking "Visit Our Map."

# APPENDIX F: INFOGRAPHIC: LONG-TERM CARE OMBUDSMAN PROGRAM







National Association of States  
United for Aging and Disabilities

Phone: 202-898-2578

*[www.nasuad.org](http://www.nasuad.org)*