



Long-Term Care Ombudsman Programs: Opportunities for Collaboration

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Power and Possibility of PASRR



Purpose

- To describe the role of the LTC Ombudsman as a person-centered resource for individuals living in long-term care facilities
- To discuss case examples and explore opportunities to support the PASRR process
- To explore how LTC Ombudsman programs can support residents in accessing services required of PASRR

Agenda

This session will provide an overview of:

- Mission, History & Structure
- Role and functions of the Long-Term Care Ombudsman
- Common resident issues, Ombudsman data
- Partnerships
- Question & Answer

Administration for Community Living

(includes Administration on Aging)



Mission:

Maximize the independence, well-being, and health of older adults, people with disabilities, across the lifespan, and their families and caregivers.

Administration for Community Living

An operating division within the Department of Health and Human Services (April 2012)

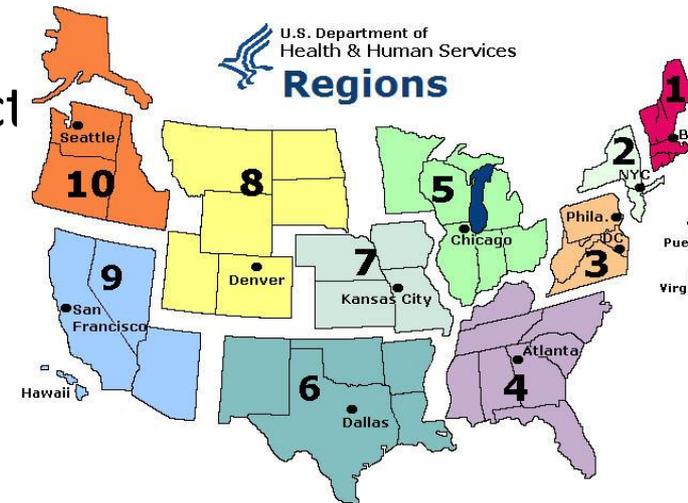
1. Administration on Aging (administers Older Americans Act including the LTC Ombudsman Program)

- Includes 10 Regions

2. Administration for Intellectual and Developmental Disabilities (administers the “DD Act”)

3. Workforce Innovation and Opportunity Act

National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Assistive Technology (AT) Act Programs; Independent Living (IL) Programs among others



Role of the Administration on Aging (AoA)

AoA administers Older Americans Act (OAA):

The OAA lays out duty and function of the Administration:

“serve as the effective and visible advocate for older individuals within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities over all Federal policies affecting older individuals;”

– Created, authorizes and funds grants to states

- State units on aging
- Area agencies on aging
- “Aging network” leverages state, local, and other funds

LTC Ombudsman Program History



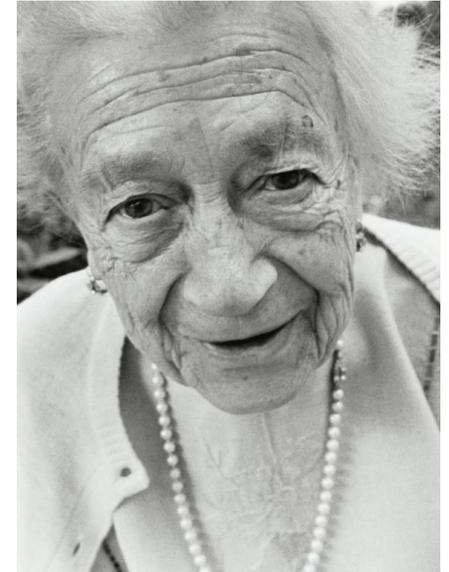
- **1970s**--Nursing Home Ombudsman program created by US Commissioner on Aging Arthur Flemming as part of President Nixon's initiative to improve conditions amid reports of nursing home resident abuse.
- **1980s**--LTC Ombudsman program expanded to serve residents of "board and care" and similar adult care facilities.
- **1992**--LTC Ombudsman program part of new Title VII Elder Rights Title of OAA.
- **2000**--LTC Ombudsman service to residents of "assisted living" expressly included.

Since inception:

- Envisioned as an autonomous entity able to represent consumer interests.
- Challenges to full implementation due to bureaucratic structures and/or political environment of many states.
- No regulations* to fully implement the program and provide consistent level of consumer protection across states.

“Our nation has been conducting investigations, passing new laws and issuing new regulations relative to nursing homes

If the laws and regulations are not being applied to [the individual], they might just as well not have been passed or issued.”



- *U.S. Commissioner on Aging Arthur S. Flemming, 1976*

Program Description

A person-centered consumer protection service that resolves problems and advocates for the rights of individuals residing in:

- Nursing facilities
- Assisted living
- Board and care
- Other similar adult care facilities.



Case Example

George, a vigorous 83 year old man, falls from a horse trailer 400 miles from home and sustained serious injuries. While hospitalized he had a stroke increasing his care needs.

- Challenges: (1) how to pay for care; (2) finding a nursing facility close to home and (3) how to return home.
- State & Local Ombudsmen worked to help George find local nursing home options. He was happy with this as it is close to home and his wife and dog can visit.
- Outcome: Three weeks later, George's wife calls the State Ombudsman to report that George is going home. He rallied, is eating pureed food, gaining strength and with support from his doctor returned home with supportive services. **His wife believes the LTC Ombudsman program has saved his life.**

LTC Ombudsman Functions: OAA Section 712

Identify, investigate, and **resolve complaints** that—

- are made by, or on behalf of, residents; and
- relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents . . . of—
 - (I) providers, or representatives of providers, of long-term care services;
 - (II) public agencies; or
 - (III) health and social service agencies

Inform the residents about means of obtaining services

Ensure that the residents have **regular and timely access** to the services . . .and that the residents and complainants receive timely responses . . . to complaints

LTC Ombudsman Functions (continued)

Represent the interests of the residents before governmental agencies and **seek administrative, legal, and other remedies** to protect the health, safety, welfare, and rights of the residents

Analyze, comment on, and **monitor the development and implementation of** Federal, State, and local laws, regulations, and other **governmental policies and actions**, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care

Recommend . . . changes in such laws, regulations, policies, and actions



Role of State Units on Aging

- OAA grants to States for aging services include funds/requirements related to operation of the LTC Ombudsman program.
- The State agency must establish and operate (directly or by contract or other arrangement) an Office of the LTC ombudsman.
- The State agency must ensure that Ombudsman programs have:
 - Access- to **residents, facilities and resident and facility records**
 - Procedures for **access to residents and records** in accordance with the OAA and procedures
 - Procedures for the **disclosure of records** –the files and records may be disclosed only at the discretion of the Ombudsman; and **prohibit the disclosure of the identity of any complainant or resident** unless—
 - the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure or
 - the disclosure is required by court order.

Role of State Units (continued)

Ensure that Ombudsman Programs have:

- A **statewide uniform reporting system** to— collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and
- Mechanisms to identify and remove **conflicts of interest**; these procedures are specified in writing
- **Legal counsel**:
 - to provide advice and consultation needed to protect the health, safety, welfare, and rights of residents;
 - assist the Ombudsman and representatives of the Office in the performance of the official duties ;
 - legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought
 - legal, and other appropriate remedies on behalf of residents.

Role of State Units (continued)

The State agency shall:

- Require the Office to:
 - prepare an **annual report**
 - provide such **information** as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding— the problems and concerns of older individuals residing in long-term care facilities; and
 - **make recommendations** related to the problems and concerns.
- Ensure that:
 - **willful interference** with representatives of the Office in the performance of the official duties **shall be unlawful**;
 - **prohibit retaliation** and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
 - **provide for appropriate sanctions** with respect to the interference, retaliation, and reprisals.

Program structure: Staff and volunteers

- Each State has one State Long-Term Care Ombudsman who heads the “Office of the State Long-Term Care Ombudsman”
- The State LTC Ombudsman has the authority to designate representatives of the Office (staff and volunteers)
- Nationally, there are:
 - 1,000 FTE State LTC Ombudsman and staff
 - 8,155 certified ombudsman volunteers
 - 4,064 other volunteers

Source: ACL/Administration on Aging, FFY 2014



Where are State Ombudsman Programs Housed?

In State Unit on Aging (36 states; 2 territories)

In Independent SUA:

Alabama, California, Florida, Idaho, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, New Mexico, Virginia, West Virginia

In (or attached to) SUA inside umbrella agency:

Arizona, Arkansas, Connecticut, Georgia, Guam, Hawaii, Indiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Utah

Elsewhere in state government (7 states)

Alaska, Delaware, Kansas, New Hampshire, New Jersey, Oregon, Wisconsin

In non-profit advocacy agency (7 states; DC)

District of Columbia, Colorado, Kentucky, Maine, Rhode Island, Vermont, Washington, Wyoming

Program expansion

14 States:

LTCO programs are authorized under State authority to expand services to individuals receiving long-term services and supports in:

- In their own home settings,
- Through Medicaid waivers, and/or
- Through Medicaid/Medicare demonstration projects for dually eligible beneficiaries*

Alaska, District of Columbia, Idaho, Indiana
*Illinois, Maine, Minnesota, *Ohio, Pennsylvania
Rhode Island, Vermont, *Virginia, Wisconsin
Wyoming



Strengths of the Ombudsman Model

- Person-centered: focus is on resident's goal and perspective
- Flexibility in working towards resolution
- Resolution at lowest level often without additional intervention:
 - can result in quicker outcome for the resident
 - can save regulatory and legal resources
- Engagement of community: use of volunteers and local Ombudsman entities
NOTE: use of volunteers and/or local Ombudsman entities varies by state
- Residents' individual complaints and interests are translated into systems advocacy and policy-level solutions

A successful ombudsman has: credibility

- An ombudsman's most valuable asset
 - cannot enforce regulations or withhold funds
- Knowledgeable
- Protects the confidentiality of identity and information of individual residents and complainants
- Fair (though OAA makes it clear that role is not as neutral, but as resident advocate)
- Develop relationships of respect with providers and other agencies, and
- Has no conflicts that compromise a focus on the resident's rights and interests

Final rule published for State Long-Term Care Ombudsman Programs

The rule addresses:

- ✓ Responsibilities of key figures in the system, including the Ombudsman and representatives of the Office of the Ombudsman;
- ✓ 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;
- ✓ Appropriate role of LTC Ombudsman programs in resolving abuse complaints; and
- ✓ Conflicts of interest: processes for identifying and remedying conflicts so that residents have access to effective, credible ombudsman services.

The rule will become effective on July 1, 2016, in order to give states time to evaluate their compliance and make changes, where necessary.

<https://www.federalregister.gov/articles/2015/02/11/2015-01914/state-long-term-care-ombudsman-programs>

An Elder Justice Service

- LTC Ombudsman programs investigate and work to resolve abuse, neglect, and financial exploitation complaints for/with the consumer
 - worked to resolve over 17,800 abuse, neglect, exploitation complaints for/with abuse survivors (FY 14)

- Person-centered complaint resolution for abuse survivor



- not the official abuse investigators (i.e. determining whether abuse occurred for criminal, protective or regulatory action)
- OAA disclosure limitations: LTC ombudsman programs are not mandated abuse reporters (if resident does not want issue reported)
- coordinate with official abuse investigators for person-centered resolution (e.g., law enforcement, licensing and survey, adult protective services)
- systems-level work – examples:
 - participate in elder abuse Multi-Disciplinary Teams (MDTs)
 - advocate for strengthened laws, policies regarding abuse, neglect, exploitation

Some Key Distinctions between APS and LTCO

	LTC Ombudsman	Adult Protective Services
Mission	<ul style="list-style-type: none"> -Resolve complaints to satisfaction of the resident -Improve the quality of care and quality of life of residents 	<ul style="list-style-type: none"> -Stop abuse, neglect and exploitation; -Protect the victim
Role of individual self-determination	Resident-directed advocate; represents resident interests	Stress victim self-determination, but protect victim even if not consistent with individual wishes
Abuse, neglect, exploitation	<ul style="list-style-type: none"> -Respond to any resident-related complaint (ACL provides 119 complaint types) -8% abuse/neglect/exploitation, 2014 	Respond to reports of abuse, neglect, exploitation (and self-neglect in some states)
Purpose of “investigation”	<p>RESOLVE:</p> <ul style="list-style-type: none"> -<u>Not</u> the official finder of fact; do not “substantiate” abuse -“Verify” to determine whether sufficient information to continue toward resolution -Gather information in order to resolve the problem, not for any legal proceeding 	<p>DETERMINE:</p> <ul style="list-style-type: none"> -Official finder of fact -Determine whether reported allegation occurred -Many states use the term “substantiate” -If determined, case often referred to law enforcement for prosecution
Systems-level advocacy	Older Americans Act requires.	Not a responsibility (may be prohibited by state law)

Examples of Ombudsman program activities

- Provided at least quarterly visits to:
 - 69% of nursing homes
 - 29% of assisted living/board and care.
- Provided more than 370,310 consultations to residents, families and others
 - Resident and family council support – providing technical assistance, training and information to resident councils (22,214 sessions) and family councils (2230 sessions);
 - Trained long-term care facility staff (5269 sessions); provided 121,063 instance of information and assistance
 - Educated the community (12,023 sessions)
- NORS Data can be found on <http://www.agid.acl.gov/>

Complaint Processing

- 125,642 closed cases
 - regarding 191,553 complaints (i.e. issues)
 - 75% were partially or fully resolved to the satisfaction of the resident



- Nursing facility-related: 73%
- Board and care/assisted living-related: 25%
- Other settings: 2%

Frequent complaints Ombudsman programs resolve

Nursing facilities – top ten:

1. Discharge/eviction-planning, notice, procedure, including abandonment
2. Failure to respond to requests for assistance
3. Dignity, respect - staff attitudes
4. Resident conflict, including roommates
5. Medications - administration, organization
6. Food service – quantity, quality , choice
7. Care plan/resident assessment inadequate, failure to follow plan or physician orders
8. Accident or injury of unknown origin, falls, improper handling
9. Personal hygiene
10. Exercise preference/choice and/or civil/religious rights



Causes of Eviction

- Increased complexity of residents' needs, especially with regards to supporting individuals with dementia or persons with other behavioral health needs, which require additional staff training to learn best approaches.
- Inappropriate placement in institutional settings, rather than community based settings with supportive services.
- The lack of affordable housing along with limited waiver benefits for mental or behavioral health needs continues to challenge many states. The inappropriate placement and subsequent eviction often leads to a lengthy hospital stay in spite of the hospital's efforts to find appropriate housing, services and supports.
- Family and resident lack of understanding of Medicaid requirements which has made some nursing home residents ineligible and therefore lacking a payment source; or
- Financial exploitation, where a responsible party chooses to not pay the bill.

Examples of Systems Advocacy

- Seeking legislative changes to strength protections against illegal or improper evictions; development of consumer fact sheets and training of ombudsmen on transfer and discharge rights
- Participation in multi-disciplinary task forces to develop comprehensive strategies to prevent and respond to abuse, neglect and exploitation.
- Recommending laws and government actions to improve on the services provided in long-term care facilities, including consumer protections such as the development model disclosure standards to assist individuals to compare services prior to admission to a facility
- Training of facility staff on abuse and neglect prevention, resident rights and chemical and physical restraint reduction practices.

LTC Ombudsmen as Partners

Ombudsmen recognize that systems change requires partnerships:

Common Partners include:

- ✓ Protection & Advocacy Systems to address improvements to laws & regulations, develop reports and participate on task forces on abuse and neglect, facility closures, conduct joint investigations.
- ✓ Regulatory and providers - often partner on training and to promote initiatives such as reducing inappropriate use of antipsychotic medications in nursing homes. May work with regulatory to improve laws and regulations.
- ✓ Centers for Independent Living to coordinate nursing home transitions, sometimes as part of Money Follows the Person

LTC Ombudsmen as Partners (continued)

Common Partners include:

- ✓ “Senior Lobby” or “Silver Haired Legislature” associations – partner on legislative and policy issues that impact older adults, including long-term care services and supports
- ✓ Statewide Resident Council Associations (in a few states) – quality of facilities, especially nursing homes, increase of personal needs allowance
- ✓ Developmental Disability Councils – addressing systems issues such as closures of state operated Intermediate Care Facilities for IADD, guardianship and health care decision making policy, access to community supports and services

Partnership example

“LTCO and Department of Mental Health continued its efforts to address concerns specific to residents in long-term care facilities with mental health issues by continuing to provide training sessions for long-term care providers entitled Nursing Homes and Mental Health: What Do People Who Work in Nursing Homes Need to Know to Better Manage their Residents with Mental Health Issues? As a result, more needed attention has been given to residents in long-term care settings with mental illness, specifically mental health services and staff training.”

National Ombudsman Resource Center

- ACL Cooperative Agreement with the National Consumer Voice for Quality Long-Term Care provides:
 - Specialized training and resources to Long-Term Care Ombudsman programs
 - Ombudsman program contact information at state and county levels
 - Volunteer management training and technical assistance;
 - Training on strategies to combat illegal evictions;
 - Training and technical assistance on the final rule for State Long-Term Care Ombudsman Programs
- Locate an Ombudsman Program at:
 - http://theconsumervoice.org/get_help



Case Example - Why we need PASRR

An unfortunate but common complaint:

Sylvia has struggled with a chronic mental health condition for many years. She lived in the community and managed to keep her family intact until she developed several chronic and debilitating physical problems which ultimately led her to need nursing home care. Her care at the facility was compromised because her mental health condition was unaddressed.

Police were (inappropriately) summoned one night and took her against her will to a nearby hospital where she was abandoned. In spite of many months of work by the LTCOP, she could not find any nursing home to accept her. The State Hospital maintained she had a chronic mental illness but it was not severe enough for admission. The State Medicaid agency dismissed her as a person who didn't qualify for services at home because she was disturbed by germ phobia which didn't allow her to accept any persons entering her home for care. She moved back to her home and continues to struggle without services and supports.

Case Example

Mr. T., asked the Ombudsman to “help me get my wheels back.” He stated that due to a physical condition, he could not maneuver his motorized wheelchair safely. The nursing home had concerns about “his driving” and their solution was to remove the power chair and replace it with a manual wheelchair. The Ombudsman, resident approached the and worked together to secure a smaller motorized wheelchair that was easier to steer. On a follow up visit with the resident, he told the Ombudsman “Don’t you love my sporty new chair? Now I can go all over the place again- I’m thrilled!”

The Long-Term Care Ombudsman Program . . .



“serves a vital public purpose. Every year the Long-Term Care Ombudsman Program helps many thousands of individual residents ...[and] the program can justly claim to have improved the system of long-term care services.”

- *Institute of Medicine, 1995*

Additional Resources

National Ombudsman Resource Center – www.ltcombudsman.org

Videos on the LTC Ombudsman Program –

Connecticut – Voices Speak Out Against Retaliation

http://www.youtube.com/watch?v=feoQjIW3_bc

Washington State LTC Ombudsman Program

<http://www.youtube.com/watch?v=20rzmCSDXU0>

Ohio – the LTC Ombudsman Stepped Up for Me

http://www.youtube.com/watch?v=UI0G-G6U_ac

New York

<http://www.youtube.com/watch?v=Ylb9LrKtYZQ>

Contact:

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http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/index.aspx

Networking with NAPP

(National Association of PASRR Professionals)

<http://www.pasrr.org/about.aspx>



- Networking with NAPP is a follow up discussion on the webinar.
- The next Networking with NAPP session is:

Tuesday, March 22nd, 2016

1 PM EST

To register for the session, please contact nappfrontdesk@pasrr.org

A reminder invite will be sent to all webinar participants.

