



Process Evaluation and Special Studies Related to the Long-Term Care Ombudsman Program

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Kim Nguyen, PhD

Evaluation Team

Process Evaluation and Special Studies Related to the LTCOP

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Background

National Studies on the LTCOP

- 1995: Institute of Medicine completed the first national evaluation of the LTCOP.
- 2011-2013: ACL/AoA contracted with NORC and its partners to develop a comprehensive evaluation design of the LTCOP.
- 2015-2018: ACL/AoA contracted with NORC and its partners to conduct a process evaluation of the LTCOP.
- Looking ahead: ACL/AoA intends to conduct an outcome evaluation of the LTCOP.

Research Questions

Process Evaluation and Special Studies Related to the LTCOP

- How is the LTCOP structured and how does it operate at the local, State, and Federal levels?
- How do LTCOPs use existing resources to resolve problems of individual residents and to bring about changes at the facility and governmental (local, State, and Federal) levels that will improve the quality of services available/provided?
- With whom do LTCOPs partner, and how do LTCOPs work with partner programs?
- How does the LTCOP provide feedback on successful practices and areas for improvement?

Data Collection

Process Evaluation and Special Studies Related to the LTCOP

■ Round 1 Data Collection

- Telephone Interviews
 - Federal Staff
 - Stakeholders
 - State Ombudsmen

■ Round 2 Data Collection

- Online Surveys
 - State Ombudsmen
 - Local Directors/Regional Representatives
 - Local Representatives
 - Volunteers



Special Study: Research Questions

The LTCOP and Changing Landscape of LTSS

- What are important, defining changes of the LTSS landscape currently and in the foreseeable future?
- How is the LTCOP preparing for, addressing or struggling with these issues?
 - For those addressing the changes, what is working and why are they using the identified approaches?
 - For those not addressing the changes, what barriers are they facing?
- What are the policy, advocacy and legal implications of these changes and the ways that the LTCOP is adapting or not adapting?

Special Study: Data Collection

The LTCOP and the Changing Landscape of LTSS

- Process Evaluation of the LTCOP
 - Round 1 Data Collection
 - Round 2 Data Collection
- New Data Collection
 - Focus Groups
 - State Ombudsmen
 - Site Visits
 - Interviews



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Thank You!



NORC⁷⁵
at the UNIVERSITY of CHICAGO

 insight for informed decisions™



Strengthening Person-Centered Advocacy for Long-Term Care Facility Residents:

Promising Policies & Practices in States' LTC Ombudsman Programs

August 29, 2017

HCBS Conference-Baltimore, MD

Presenters

- Louise Ryan, MPA Ombudsman Program Specialist, Administration for Community Living
- Stevanne Ellis, Maryland State LTC Ombudsman
- Kim Nguyen, PhD Senior Research Scientist-NORC at the University of Chicago

Overview

- This session will address 3 major LTC Ombudsman Program initiatives:
 - The Older Americans Act & the LTC Ombudsman Program Rule
 - LTC Ombudsman Program Evaluation
 - Updates to the National Ombudsman Reporting System (NORS)



Part I:

The Older Americans Act and the State LTC Ombudsman Programs Rule

Reauthorization of the Older Americans Act

Congress passed April 2016

Long-Term Care Ombudsman (LTCO) Programs:

- Are authorized to serve residents, regardless of age.
- May work on complaints for residents unable to communicate wishes.
- Are to provide residents with private, unimpeded access.
- Must actively encourage and assist in development of resident and family councils.
- Are authorized to serve to residents transitioning from a LTC facility to a home-care setting.

Other LTCO-related highlights:

- State LTCO responsible for fiscal management of Office.
- Program is a “health oversight agency” under HIPAA.
- Clarifies requirements about information disclosure.
- Provides examples of conflicts of interest, requiring remedy or removal.
- Requires state LTCO participation in National Ombudsman Resource Center training.



For more information: http://www.aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/index.aspx

Federal Rule on State LTC Ombudsman Programs

Goals:

- Long-term care facility residents in every state receive consistent approaches to person-centered problem resolution and advocacy.
- States maintain flexibility in program structure and service delivery:
 - Centralized vs. de-centralized
 - Within State Unit on Aging, other state agency, or contracted to non-profit
 - Reliance on staff and/or volunteers

45 CFR Part 1324, published in Feb 2015; effective July 2016

For more information: <https://www.acl.gov/node/762>

LTC Ombudsman Programs Rule: Table of Contents

1321.11(b) State agency policies (revises existing rule).

New Rule

1324.1 Definitions.

1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

1324.15 State agency responsibilities related to the Ombudsman program.

1324.17 Responsibilities of agencies hosting local Ombudsman entities.

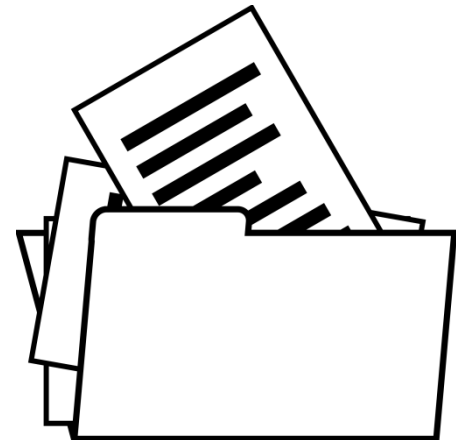
1324.19 Duties of the representatives of the Office.

1324.21 Conflicts of interest.

1. Disclosure of Ombudsman Program Information

OAA law requires:

- Ombudsman determines disclosure of Ombudsman program information
- But Ombudsman prohibited from disclosing complainant- or resident-identifying information unless:
 - Consent, or
 - Court order



Disclosure (cont'd)

Rule clarifications:

- State must develop disclosure policies and procedures consistent with OAA
- State laws mandating abuse reporting by Ombudsman programs are not consistent with OAA
 - Consistent with long-standing AoA interpretation
 - This policy supports a person-centered approach
 - Residents – not Ombudsman program or State representatives -- determine what of their information can be shared with whom
- But . . . This does not mean Ombudsman program work to support resident should end if resident doesn't consent to disclosure of information to other entities

45 CFR 1324.11(e)(3)

2. Complaint processing

OAA law requires:

The Ombudsman and/or representatives of the Office:



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
 - Providers of LTC services,
 - Public agencies, or
 - Health and social service agencies.

Resident/complainant:

“If I have a complaint about _____ agency/service, do I trust the Ombudsman program to investigate and resolve my complaint?”



Complaint processing

Rule clarifications:

- Purpose of complaint resolution: person-centered problem-solving
- Ombudsman program role related to abuse, neglect or exploitation complaints
- Complaints where residents are unable to communicate informed consent
- Personally witnessing abuse
 - Relevant rule sections: provisions related to representatives of the Office (45 CFR 1324.19)

Complaint processing: abuse complaints

Rule clarifies Ombudsman program responsibility with respect to abuse complaints:

- As advocate and problem-solver for abuse survivor, not to substantiate (or, prove whether suspected abuse occurred)

Current variation among states in handling LTC facility abuse complaints:

- Most common:
 - APS and/or licensing/survey agency are state's official investigator;
 - LTC Ombudsman program serves as resident-centered advocate and problem-resolver
- A few states: LTC Ombudsman program is the official investigator of abuse complaints
- A few states: LTC Ombudsman program refers all abuse allegations to APS and/or licensing survey

Complaint Processing: serving residents who cannot consent

- Ombudsman program can work with appropriate resident representative if resident unable to communicate consent
 - Must ascertain the extent of resident representative's authority (e.g., guardian, power of attorney)
- Ombudsman program's authority to work to resolve complaint (and disclose relevant information) where the resident is unable to communicate informed consent, and has no resident representative available to do so. The representative of the Office:
 - works to resolve the complaint in order to protect the resident's health, safety, welfare and rights
 - determines whether the complaint was resolved to the satisfaction of the complainant.

45 CFR 1324.19(b)(2)

Complaint Processing: disclosure/sharing information with other agencies

- Ombudsman program may provide information to other agency if adhere to disclosure requirements.
- If resident (or resident representative) communicates goal:
 - for regulatory, protective services, or law enforcement action – then the Ombudsman program shall assist the resident in contacting the appropriate agency and/or disclosing information.
 - that can be served by disclosing information to a facility representative or referral to other entity, then the Ombudsman program may assist the resident with contact, provide information regarding contact and/or disclose information.
- Ombudsman program shall not report suspected abuse when a resident (or resident representative) has not communicated informed consent (exceptions in (b)(5)-(7))

Complaint Processing: disclosure/sharing information with other agencies

The exceptions to no disclosure:

Ombudsman program MAY disclose resident-identifying information under some circumstances:

- No one available to communicate consent
 - or resident representative has taken action to harm resident;
- Reasonable cause to believe that an action may adversely affect the resident's health, safety, welfare, or rights;
- No evidence that resident would not wish a referral;
- Reasonable cause to believe a referral is in residents' best interest; AND
- Ombudsman approval (or otherwise follows Office policies)

45 CFR 1324.19(b)(6), (7)

Complaint processing: personally witnessing abuse

Ombudsman program representatives shall report abuse under some circumstances:

- Ombudsman or representative of the Office “personally witnesses” suspected abuse;
 - No one available to communicate consent
 - or resident representative has taken action to harm resident;
 - No evidence that resident would not wish disclosure;
 - Reasonable cause to believe disclosure is in residents’ best interest;
- AND
- Ombudsman approval (or otherwise follows Office policies).

45 CFR 1324.19(b)(8)

Resident/complainant:

“If I have a complaint about _____ agency/service, do I trust the Ombudsman program to investigate and resolve my complaint?”



3. Conflict of interest

OAA requires:

- Ombudsman and representatives of the Office are free of conflict of interest (i.e. “individual conflicts of interest”), and
- Limits organizational locations of the Office to avoid conflicts of interest (i.e. “organizational conflicts of interest”)

Conflict of interest: process

Rule requires:

- Ombudsman programs must have policies and procedures regarding conflicts of interest
- State and Ombudsman to follow 3-step process:
 1. Identify conflicts
 - both individual and organizational
 2. Remedy or remove any identified conflicts
 - both individual and organizational
 3. For organizational conflicts, report steps taken to remove/remedy to ACL via National Ombudsman Reporting System (NORS)

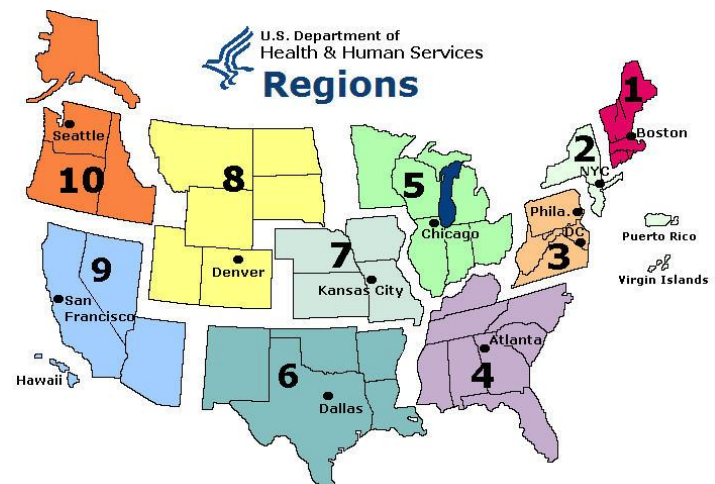
Conflict of Interest

Why this matters for person-centered complaint resolution:

- Ombudsman program represents resident interests and resolves complaints to resident's satisfaction
- Residents, families/representatives, facilities, other agencies, etc., should have no question about Ombudsman program loyalties:
 - Individually
 - Ombudsman or representatives of the Office, or
 - Organizationally
 - Ombudsman program's host agency, governing body, or organizational placement

Federal Rule on State LTC Ombudsman Programs – current status

- ACL Regional Offices are providing TA to every state to support implementation
- Every state (plus DC, Puerto Rico) have received a review by an ACL Regional Office
- States are responding to issues identified by ACL



Maryland State Ombudsman Response

The screenshot shows a web browser window with the URL www.aging.maryland.gov/Pages/Ombudsman.aspx. The page header features the Maryland Department of Aging logo and a search bar. A navigation menu includes links for HOME, PROGRAMS AND SERVICES, NEWS ROOM, EVENTS, CAREERS, and SCAMS ALERT. The main content area is titled "Welcome to the Ombudsman Program" and includes a banner image of an elderly woman being embraced by a caregiver. Below the banner, there is a paragraph describing the Long-Term Care (LTC) Ombudsman's role and a section titled "What does the word 'Ombudsman mean?'".

About MDoA

- Department Overview
- Office of the Secretary
- Area Agencies on Aging
- Maryland Commission on Aging
- Long Term Care Ombudsman Program: Protecting Rights, Promoting Quality
- State Plan
- Public Records Requests
- Contact Us

For Professionals

- Eligibility Criteria for Programs
- Proposed Regulations

Welcome to the Ombudsman Program

Maryland State Ombudsman Program

Protecting the rights and promoting the well-being of residents of long-term care facilities

The Long-Term Care (LTC) Ombudsman are advocates for residents of nursing homes, board and care homes, and assisted living facilities. They work to resolve problems of individual residents and to bring about changes at the local, state, and national levels that will improve residents' care and quality of life. Ombudsman can be volunteers or paid employees that are independent of any conflict of interest with a long-term care facility. Services are free and confidential.

What does the word "Ombudsman mean?"

The term ombudsman (om-bud-z-man) is Scandinavian in origin. In the United States, it has come to mean

Template Org. Conflict of Interest Form



Organizational Conflicts

Each local ombudsman office, in consultation with the host agency, will complete the following questions, provide any necessary explanation(s), and describing whether a remedy can be offered if there is a conflict.

Does (host agency) have any of the following organizational conflicts of interest?

If the answer is yes, please provide more information.

1. Is responsible for licensing, surveying, or certifying of long-term care facilities.

2. Is an association or affiliate of an association of long-term care facilities or of any other residential facilities for older adults or individuals who have disabilities.

3. Has ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility.

Maryland LTCOP Webpage Resources

The screenshot displays a web browser window with the URL www.aging.maryland.gov/Pages/Ombudsman.aspx. The browser tabs include "Organizational Conflict" and "Ombudsman Program". The page content is organized into several sections:

- Left Navigation Menu:**
 - Proposed Regulations
 - Elder Rights Protection**
 - Ombudsman Advocacy for Residents of Assisted Living and Nursing Homes
 - Public Guardianship Services
 - Senior Legal Assistance

Main Content Area:

- What does the word "Ombudsman mean?"**

The term ombudsman (om-budz-man) is Scandinavian in origin. In the United States, it has come to mean "advocate".
- Find Your Ombudsman**
 - [Find an Ombudsman in Maryland](#)
 - [Find an Ombudsman in the United States](#)
- Become a Volunteer**
 - [Volunteer Ombudsman Job Description](#)
 - [Want to Volunteer? Apply Now!](#)
- Additional Information and Resources**
 - [About the Ombudsman Program](#)
 - [Our Mission and Philosophy](#)
 - [What services are available through the Long-Term Care Ombudsman Program?](#)
 - [Who can Contact the Long-Term Care Ombudsman Program?](#)
 - [How can I become a Long-Term Care Ombudsman?](#)
 - [Policies and Procedures Manual](#)
 - [Forms](#)
 - [Resources](#)



Part II:
ACL's LTC Ombudsman Program
Evaluation



Our Goals: Program Effectiveness and Public Accountability

- (1) Understand how the program addresses a problem
- (2) Inform improvements to program design or management
- (3) Support or change resource allocations
- (4) Identify promising practices or lessons learned
- (5) Improve quality of program

NORC University of Chicago

FINAL REPORT

Evaluation Study Design for Long-Term
Care Ombudsman Programs under the
Older Americans Act:
Research Design Options

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Part III:
Updating the National Ombudsman
Reporting System



National Ombudsman Reporting System

“NORS Next”

Goals:

- Enhance ACL’s ability to understand and report on:
 - LTCO program operations,
 - implement regulatory requirements,
 - experience of long-term care facility residents and
 - changes in long-term supports and services policies, research, and practices.
- Example: ACL would be able to analyze resolution by type of complaint:

Complaint Category	Complaints	Verified	% Verified	Resolved	% Resolved (verified)
Abuse& Neglect, Exploit	165	57	35%	44	77%
Transfer/Discharge	373	329	88%	283	86%
Care	668	564	84%	526	93%

“NORS Next” (continued)

Why? To address past criticisms* regarding -

- inconsistencies across states and recommendations to:
 - increase reliability and accuracy of the data,
 - simplify codes and number of data elements,
 - streamline reporting by states and
 - reduce manual entry to avoid errors in complaint and activity data.

*HHS-ASPE, OIG, NASOP, recommendations from Bader Report, etc.

“NORS Next” Process

- Proposed changes to the National Ombudsman Reporting system (NORS) published in Federal Register:
 - August 8, 2016 for a 60 day public comment period which ended October 7
 - 17 comments received from NASOP, NALLTCO, individual states and other stakeholders
 - Revisions under consideration based on comments
 - Once all comments considered and revisions made will go back out for a 30 day public comment period before final

“NORS Next” Process (continued)

- ACL has obtained a contractor to work with ACL and stakeholders to develop software for ACL to receive states' data
- Requirements include:
- Agile process, incorporating “Sprints” with feedback from 7 State LTC Ombudsman programs
 - Final design, testing and piloting
 - Development of training materials
 - Training
 - Implementation Goal – Federal Fiscal year 2019
 - First report to ACL January 2020
- Note: Implementation date is a goal.



Your questions and perspectives

