

RESOURCE BRIEF: OMBUDSMAN PROGRAM MEMORANDA OF UNDERSTANDING

Prepared by the National Association of State Units on Aging



National Long-Term Care
Ombudsman Resource Center

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About the Author

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The National Association of State Units on Aging (NASUA) is a private, nonprofit organization whose membership is comprised of the 56 state and territorial offices on aging.

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Resource Brief: Ombudsman Program Memoranda of Understanding

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Resource Brief: Ombudsman Program Memoranda of Understanding

Introduction

Memoranda of Understanding (MOUs), sometimes referred to as “interagency agreements”, are written agreements that provide direction and guidance about how the ombudsman program relates to state-level agencies/programs with which it routinely interacts. These documents help clarify the roles and responsibilities of the parties involved around issues such as information sharing, referral protocols, coordination of complaint investigations, joint training and other critical activities.

In the past few years, the National Ombudsman Resource Center has received a number of inquiries from states looking to formalize or update their current cooperative agreements, primarily with state licensure and certification (L&C) agencies and adult protective services (APS). In 1988, NASUA conducted a comprehensive analysis of state ombudsman programs, which included an examination of written working agreements between ombudsman programs and other agencies to clarify roles and coordinate services. At that time 20 ombudsman programs had 35 agreements with 15 different agencies and programs, the majority of which were with agencies responsible for licensing nursing homes and other types of residential care. In 2003, the National Ombudsman Resource Center conducted an informal survey to identify state ombudsman programs that have an MOU with the state’s Protection and Advocacy Agency. However, since then no other effort has been made to gather information about formal agreements between ombudsman programs and the myriad of state agencies and programs with which the program routinely interacts.

As part of its work in support of the National Ombudsman Resource Center, the National Association of State Units on Aging (NASUA) conducted an inquiry of all state ombudsman programs to identify programs that have formal written agreements with state agencies with whom they routinely interact. The findings, along with sample agreements, are presented in this summary document.

Task

NASUA sent a questionnaire to all state long-term care ombudsman programs, seeking to:

1. Identify ombudsman programs that have written memoranda of understanding with other agencies and programs; and
2. Collect examples of memoranda of understanding to provide a resource for state units on aging and state ombudsman programs.

In July 2005, NASUA convened a small workgroup to assist with the development of a questionnaire for gathering information from state long-term care ombudsman programs. The workgroup was comprised of representatives from three state

units on aging, three state ombudsmen, the Ombudsman Resource Center Director and the Ombudsman Program specialist from the Administration on Aging. Input from the workgroup was incorporated into the questionnaire (see Appendix A). The questionnaire was emailed to all state ombudsmen on October 15, 2005 and responses were collected through November 2005. Follow-up contact was made with state ombudsmen to seek clarification and additional information where needed.

The workgroup decided that for the purpose of this paper, memoranda of understanding do NOT include:

- ❑ MOUs that are ONLY for the purpose of providing funding to the ombudsman program (this includes MOUs between the state unit on aging or the ombudsman program and the Medicaid Agency for the purpose of providing the program with Medicaid administrative funds).
- ❑ Contracts between the state unit on aging (SUA) and the ombudsman program for the purpose of operating the program outside the SUA and/or state government.
- ❑ Local MOUs.

The questionnaire sought information on six elements of ombudsman program MOU:

- Agency/program(s) involved in the MOU
- Purpose(s) of the MOU
- Date the MOU was initiated or revised
- Any requirement for periodic review of the MOU and if so, the frequency of such review
- Whether or not the agency/program(s) that is party to the MOU is in the same agency with the ombudsman program
- Whether the MOU involves one or more agencies/programs.

Copies of MOUs were requested and are referenced as examples in this paper. The MOUs collected (listed in Appendix B) are available as resource materials for state units on aging and state ombudsman programs upon request. Two examples appear in Appendices C and D).

Findings

Responses were received from 50 programs, a response rate of 96%. The findings indicate that half of the ombudsman programs responding have at least one memorandum of understanding with a state agency or program, most frequently with the state agency responsible for licensure and certification of nursing homes. Twenty-six programs reported having no MOUs. The findings are displayed in a chart in Appendix B.

Ombudsman Programs with MOUs

California	Maine	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Texas
District of Columbia	Nevada	Vermont
Georgia	North Carolina	Virginia
Idaho	New Mexico	Washington
Louisiana	North Dakota	West Virginia
Massachusetts	Pennsylvania	Wisconsin

Number of MOUs

- Twenty-four (24) of the 50 ombudsman programs that responded to the questionnaire have at least one MOU.
- Fourteen (14) of the 24 ombudsman programs have more than one MOU.
- The 24 ombudsman programs have a total of 44 MOUs.

Agencies/programs with which the ombudsman program has Memoranda of Understanding

With two exceptions, ombudsman programs with MOUs all have at least one MOU with the state agency responsible for the licensure and certification of nursing homes. The findings identified four categories of agencies/programs with which the ombudsman program has MOUs: licensing agencies; adult protective services; Medicaid Fraud Control Units; and protection and advocacy agencies. In addition, ombudsman programs have MOUs with other agencies/programs (as identified below). The number of MOUs with each type of agency/program is listed below and depicted by general category in the accompanying figure.

Licensing agencies:

- nursing home licensure and certification (23 programs)
- licensing agency for assisted living facilities (2 programs)
- nursing home administrator board (2 programs)

Adult Protective Services (APS) (8 programs)

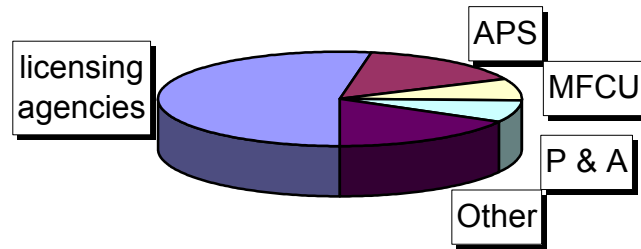
Medicaid Fraud Control Units (MFCU) (4 programs)

Protection and Advocacy agency (P&A) (4 programs)

Other:

- Mental Health / Developmental Disabilities agency (4 programs)
- state unit on aging (2 programs)
- state Medicaid Agency (2 programs)
- elderly legal assistance program (1 program).

Types of Agencies with which the Ombudsman Program has Memoranda of Understanding



Ombudsman programs are more likely to enter into MOUs with agencies or programs outside of the agency where the ombudsman program is located. Findings reveal that 38 (86%) of the 44 ombudsman program MOUs are with entities that are not in the same agency as the ombudsman program. These numbers include five programs (District of Columbia, Maine, Vermont, Virginia, Washington State) that are located outside of state government. These five programs together reported having 10 MOU with state agencies.

Single and multiple agency agreements

The majority of MOUs (40 out of 44 reported) are between the long-term care ombudsman program and one other agency or program. Four (4) programs (GA, NV, NM, WV) reported having multiple-agency MOUs. These MOUs are umbrella agreements involving four or five agencies to which the ombudsman program is a party.

- Georgia: This agreement between the ombudsman program, the office of regulatory services (nursing home licensure and certification), adult protective services, and the division of mental health, developmental disabilities and addictive services addresses the coordination of investigations involving allegations of abuse, neglect and exploitation of disabled adults and older persons.
- Nevada: the ombudsman program is party to an agreement with the state nursing home licensure and certification agency, the nursing home administrators' board, and the state Medicaid agency. The purpose of the

agreement includes information sharing, complaint referrals, coordination of investigations and joint training.

- New Mexico: This MOU involves the state agency responsible for licensure and certification of nursing homes, adult protective services and the state Medicaid agency. Its purpose is comprehensive in scope and includes information sharing, complaint referral protocols, coordination of investigations and joint training. It also includes a protocol for the monthly meetings of state and regional representatives of the agencies involved to identify and strategize ways to address statewide and local issues.
- West Virginia: the ombudsman program is party to an MOU with the state nursing home licensure and certification agency, adult protective services, the protection and advocacy agency and the Office of Behavioral Health Services, which serves persons with mental health, developmental disabilities and substance abuse problems. The single purpose of this MOU is to coordinate information sharing between the agencies and programs that are party to the agreement.

Purpose of the MOUs

The purposes of the MOUs may be categorized as indicated below. The findings reveal that **91% of the MOUs address protocols for sharing information and/or complaint referrals between the ombudsman program and other agencies**. Most of the MOUs (39) identified serve multiple purposes, including:

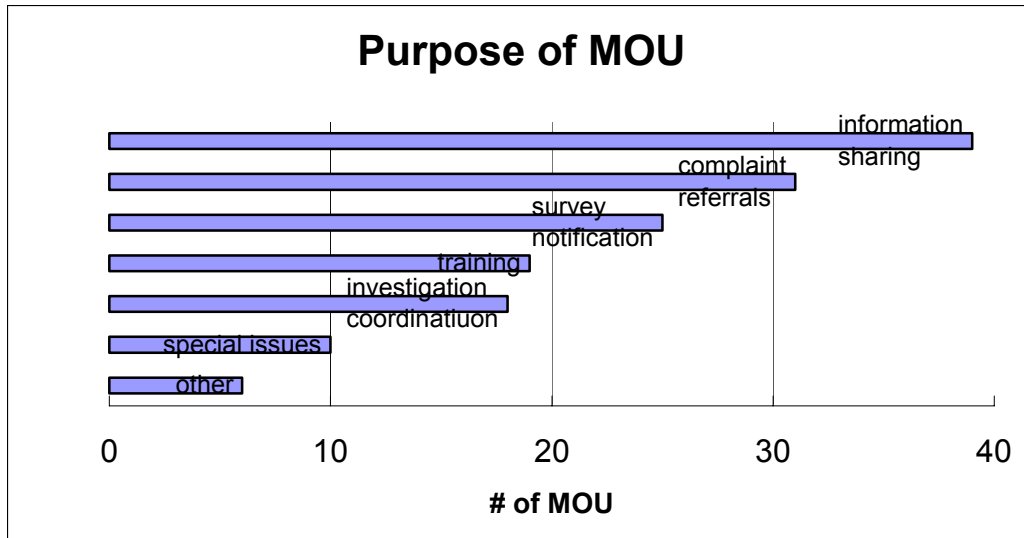
- information sharing - 39 MOUs
- complaint referral protocols -31 MOUs
- coordination of complaint investigations -25 MOUs
- training -19 MOUs
- survey notification (by nursing home licensure and certification agencies) – 18 MOUs
- special issues – 10 MOUs
- other – 6 MOUs

“Special issues” identified through the questionnaire include: the ombudsman program’s role in facility closures, resident relocations and emergency situations.

“Other” purposes of the MOUs identified by ombudsman program respondents include:

- ombudsman participation in “Operation Guardians”, a program to prevent resident abuse and neglect (CA)
- securing legal representation for incapacitated residents (GA)
- setting protocols for ombudsman program work with consumers under public guardianship, including access to the ward’s record (ME)

- ombudsman involvement in the Informal Dispute Resolution process for nursing homes (NC)
- specifications for state and regional Health Facilities Joint Protocol meetings to address local issues and trends (NM)
- policy and procedure for the release of ombudsman program data by the state unit on aging (VT).



Date of initiation or revision of the MOUs

The majority of ombudsman program MOUs (24 of 43 reported) were initiated or revised since 2000. Forty of 42 MOUs for which data is available were initiated or revised within the past 10 years. Of the 43 responses received about when MOUs were initiated or revised:

- 24 are new or revised since 2000
- 18 are new or revised since 1995
- only 1 was initiated prior to 1990

Review of the MOUs

Based on 43 responses, the findings reveal that fewer than 30% (13) of the MOUs require review within a specified timeframe. These include:

- 6 require a yearly review
- 2 require a review every 2 years
- 3 require a review every 3 years
- 1 require a review within 5 years
- 1 specifies a review “as needed”

Of the 24 MOU revised or initiated since 2000, almost half (11) have a requirement for review clause, while only 2 of the 18 older MOUs have a review clause. These findings indicate a trend toward incorporating periodic review into the MOU. While the questionnaire did not collect information on why a review clause was included, the intent appears to be to ensure the document reflects current responsibilities and practices of the participating parties.

Sample MOUs

One of the objectives of this project was to collect samples of ombudsman programs' MOU with other agencies to provide as a resource to state ombudsman programs and state units on aging upon request. Fifteen ombudsman programs provided copies of their MOUs in either hard copy or an electronic format. This paper includes two of these agreements in Appendices C and D.

Appendix C contains an MOU between the District of Columbia Ombudsman Program and the agency responsible for the licensure and certification (L&C) of nursing homes. This MOU represents the most common type of agreement between the ombudsman program and another agency and is comprehensive in scope, addressing information sharing, complaint referrals, coordination of complaint investigations, joint training, survey notification and special issues (notification of adverse actions).

Appendix D contains a multi-agency agreement between the New Mexico state unit on aging (long-term care ombudsman program), the state's nursing home L&C agency, adult protective services, and the state Medicaid agency. This agreement is comprehensive and addresses information sharing complaint referrals coordination of complaint investigations, joint training, and a protocol for monthly meetings of state and regional representatives of the agencies. The monthly meetings are used to identify state and local trends impacting long-term care residents and strategize how to address issues impacting quality of care and residents' rights.

Summary

Fifty (50) ombudsman programs responded to a questionnaire about their use of Memoranda of Understanding (MOUs) with state agencies. The findings revealed that 24 programs have a total of 44 MOU, the majority of which (27) are with state agencies that handle the licensure of nursing homes, nursing home administrators or assisted living facilities

Findings show that ombudsman programs use MOUs for a variety of purposes, the most common being to set protocols for information sharing and complaint referrals with other agencies. The majority of these MOUs (40 of 44) are between the ombudsman program and one other agency or program. The findings also reveal that 24 MOUs have been initiated or revised since 2000, and that 11 of these MOUs have a requirement for periodic review to determine the need for revision.

Based on the findings presented in this paper, Memoranda of Understanding between ombudsman programs and state agencies continue to be useful documents for clarifying the roles and responsibilities of the parties involved around issues such as information sharing, referral protocols, coordination of complaint investigations, joint training and other critical activities. Sample MOUs are included in the Appendices along with a chart of program responses to the questionnaire.

APPENDIX A

Questionnaire

Instructions for completing the questionnaire on

Memoranda of Understanding

Definition: Memoranda of Understanding (MOUs), sometimes referred to as interagency agreements, are written agreements that provide direction and guidance about how the ombudsman program relates to other state-level agencies/programs with which it routinely interacts. These documents help clarify the roles and responsibilities of the parties involved around issues such as information sharing, referral protocols, coordination of complaint investigations and other activities. For purposes of this questionnaire MOUs do NOT include:

- MOUs that are ONLY for the purpose of providing funding to the ombudsman program (this includes MOUs between the SUA, or the ombudsman program, and the Medicaid Agency for the purpose of providing the ombudsman program with Medicaid administrative funds).
- Contracts between the SUA and the ombudsman program for the purpose of operating the ombudsman program outside of the SUA or state government.
- Local MOUs.

Types of MOUs: This questionnaire will examine two types of MOUs.

1. Agreements between the ombudsman program and one other agency or program.
2. Agreements that involve multiple agencies/programs to which the ombudsman program is a party.

Some state agencies/programs with which ombudsman programs may have MOUs include, but are not limited to:

- Adult Protective Services
- Licensing, Survey and Certification (nursing homes)
- Licensing agency for assisted living, board and care or other adult care residences
- Medicaid Fraud Control Unit
- Office of the Attorney General
- State Health Insurance Counseling Program (SHIP)
- Information/Referral & Assistance
- Aging and Disability Resource Centers (ADRCs)
- Protection & Advocacy Agency
- Mental Health/Substance Abuse/Developmentally Disabled

Response Date: Please return to Mark Miller via email at mmiller@nasua.org or via fax at (202) 898-2583, by **November 4, 2005**.

State: _____

1. Does the ombudsman program have written memoranda of understanding (MOUs) with any state agency/program?

Yes No (you do not need to answer question 2)

If NO, is there a reason the program has not entered into any MOUs? (e.g., the program does not have authority to enter into such agreements, relationships with other agencies covered in policy or are mandated in statute, etc.)

2. Provide the following information for EACH MOU to which the ombudsman program is a party. Use as many copies of this form as needed. Include any additional comments concerning the MOU, such as what makes it unique or helpful. Please attach or send a copy of the MOU if possible. (Form is on the next page.)

MOU # _____

Agency / program(s) included in the MOU	
Is the entity in the same agency as the ombudsman program?	<input type="checkbox"/> Yes <input type="checkbox"/> No
The MOU is:	<input type="checkbox"/> Specific to the ombudsman program and the agency(is) named <input type="checkbox"/> An inter-agency agreement created by the SUA or other umbrella organization, not specific to the ombudsman program, but which includes the ombudsman program
Date of initiation or revision	
Is there a requirement/policy that the MOU be reviewed or updated on a regular basis?	<input type="checkbox"/> Yes. If YES, how often? <input type="checkbox"/> No
Purpose of the MOU (check all that apply)	<input type="checkbox"/> Information sharing <input type="checkbox"/> Complaint referral protocols (including abuse reporting) <input type="checkbox"/> Coordination of complaint investigations <input type="checkbox"/> Training (joint or otherwise) <input type="checkbox"/> Survey notification / receipt of survey reports <input type="checkbox"/> Special issues (please specify; e.g., ombudsman role in facility closures, resident relocations, emergency situations, etc.) <input type="checkbox"/> Legal representation <input type="checkbox"/> Other (please specify):
Special notes/comments	

APPENDIX B

Long-Term Care Ombudsman Programs with Memoranda of Understanding: Chart of Questionnaire Responses

Long-Term Care Ombudsman Programs With Memoranda of Understanding

State	Agency/Program with which the Ombudsman Program has an MOU								Purpose of the MOU							Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA	
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification	Special issues				Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
California MOU #1	X									X	X	X	X	X	X		2004	As needed	No
California MOU #2		X								X	X	X	X	X	X		2003	every 3 years	No
California MOU #3						X				X	X	X			X ¹		2005	every 3 years	No
Connecticut							X			X	X		X				1998	No	Yes
Delaware	X									X	X	X	X	X	X		1999	yearly	Yes
D.C. MOU #1	X									X	X	X	X	X	X		2005	yearly	Yes
D.C. MOU #2				X						X	X	X	X		X		2005	yearly	Yes

¹ California: Describes LTCOP participation in Operation Guardians which uses multi-agency teams to conduct unannounced nursing home inspections aimed at preventing resident abuse and neglect.

State	Agency/Program with which the Ombudsman Program has an MOU								Purpose of the MOU							Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA	
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification	Special issues				Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
Georgia MOU #1	X ²			X			X ³	X			X						2004	No	Yes
Georgia MOU #2									X ⁴							X	1997	No	Yes
Idaho MOU #1	X									X				X			2001	Every 2 years	No
Idaho MOU #2					X					X	X	X					1998	No	No
Louisiana MOU #1	X									X		X	X				1999	No	Yes
Louisiana MOU #2				X						X	X						1995	No	Yes
Massachusetts	X									X		X		X			1995	No	Yes

² Georgia: Office of Regulatory Services (licensing and certification for nursing homes and other health care providers).

³ Georgia: Services for mental health and persons with developmental disabilities are under one agency.

⁴ Georgia: Agreement with Elderly Legal Assistance Program to secure legal representation for incapacitated residents referred by the ombudsman program.

State	Agency/Program with which the Ombudsman Program has an MOU								Purpose of the MOU							Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA	
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification	Special issues				Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
Maine MOU #1						X				X	X	X	X				2004	Within 5 years	Yes
Maine MOU #2	X									X	X	X		X	X		1995	yearly	Yes
Maine MOU #3								X ⁵		X	X	X				X ⁴	1999	No	Yes
Mississippi	X									X				X			1995	No	No
Missouri MOU #1	X									X			X	X			2005	No	Yes
Missouri MOU #2					X					X	X		X				2004	yearly	Yes
Nevada	X		X					X ⁶		X	X	X	X				2002	Every 3 years	Yes

⁵ Maine: This MOU is between the Long-Term Care Ombudsman Program and the Maine Department of Human Services, Bureau of Elder and Adult Services (the state unit on aging). It sets forth protocols for LTCOP work with consumers who are under Maine court-ordered public guardianship, and includes access to the ward's record.

⁶ Nevada: This MOU includes the state Medicaid Agency (state purpose).

State	Agency/Program with which the Ombudsman Program has an MOU								Purpose of the MOU							Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA	
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification	Special issues				Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
New Mexico	X			X				X ⁷	X	X	X	X			X ⁷	2003	Not specified	Yes	
North Carolina	X								X	X			X		X ⁸	2005	yearly	No	
North Dakota MOU #1	X								X				X			2005	No	No	
North Dakota MOU #2					X				X	X						2002	No	No	
Pennsylvania MOU #1	X									X	X					1998	No	Yes	
Pennsylvania MOU #2		X							X	X	X			X		1997	No	Yes	

⁷ New Mexico: This multi-agency agreement specifies the protocol for joint investigations of health facilities and the monthly convening of state and regional representatives of the agencies involved to identify, discuss and strategize ways to address statewide and local issues and trends. The state Medicaid Agency is a party to this MOU.

⁸ North Carolina: Describes the Informal Dispute Resolution process for nursing homes.

State	Agency/Program with which the Ombudsman Program has an MOU									Purpose of the MOU						Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA	
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification	Special issues				Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
South Carolina MOU #1	X									X	X	X	X	X			1995	No	No
South Carolina MOU #2						X				X	X	X					1999	Not specified	No
South Carolina MOU #3			X							X	X	X	X				1995	Not specified	No
South Carolina MOU #4							X			X	X	X	X				2005	Not specified	No
South Carolina MOU #5								X		X	X	X	X				2005	Not specified	No
South Dakota*						X													
Texas	X									X	X		X	X	X		2005	No	Yes

*South Dakota: no additional information was provided.

State	Agency/Program with which the Ombudsman Program has an MOU								Purpose of the MOU						Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA		
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification				Special issues	Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
Vermont MOU #1	X									X				X			2001	No	Yes
Vermont MOU #2								X ⁹								X ¹⁰	1997	No	Yes
Virginia MOU #1	X									X				X			1995	No	Yes
Virginia MOU #2				X						X	X	X					1989	No	Yes
Washington	X									X				X			1995	No	No

⁹ Vermont: This MOU is with the Department of Aging and Independent Living and specifies the policy and procedures for release of ombudsman program data to the public.

State	Agency/Program with which the Ombudsman Program has an MOU								Purpose of the MOU						Date of initiation / revision of the MOU	Review requirement	MOU available from NASUA		
	Licensing Agencies			Adult Protective Services	Protection and Advocacy Agency	Medicaid Fraud Control Unit	Mental Health	Developmental Disabilities	Other	Info sharing	Complaint referrals	Coordination of investigations	Training	Survey notification				Special issues	Other
	Licensure & Certification	ALF Licensing	NH Administrators Board																
West Virginia MOU #1	X			X	X		X ¹⁰	X		X							2001	No	Yes
West Virginia MOU #2	X									X	X			X			2003	No	Yes
West Virginia MOU #3				X						X	X	X			X		2005	No	Yes
Wisconsin MOU #1	X									X	X	X	X	X			2005	biennially	No
Wisconsin MOU #2				X						X	X	X			X		2002	No	No

¹⁰ West Virginia: The Office of Behavioral Health Services serves persons with mental health, developmental disabilities and substance abuse problems.

APPENDIX C

Memorandum of Agreement District of Columbia Department of Health, Health Regulation Administration And District of Columbia Long-Term Care Ombudsman Program

This MOU is between the agency responsible for the licensure and certification of nursing homes in the District of Columbia and the Long-Term Care Ombudsman Program, which is located outside of city government. It specifies quarterly meetings to assure coordination and to maintain efficient and effective referral and communication mechanisms.

Contact: Jerry Kasunic, D.C. State Ombudsman
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Memorandum Of Agreement
D.C. Department of Health, Health Regulation Administration,
And
District of Columbia Long-Term Care Ombudsman Program

This updated Memorandum of Agreement sets forth the responsibilities of the District of Columbia Long-Term Care Ombudsman Program and the D.C. Department of Health's Health Regulation Administration for the coordination of nursing home, assisted living, and community residence facility survey and complaint investigation activities in the District of Columbia.

While both parties seek through this agreement to improve cooperation and information sharing that will enable them to better carry out their mission to protect and improve the quality of life for long-term care residents in the District of Columbia, each party also recognizes the mutual obligations that they have under federal and District law to protect confidential information. Therefore, the parties agree that any item in this Memorandum of Agreement that conflicts with confidentiality provisions required of the parties by District or federal law shall be void.

- I. Responsibilities of The District of Columbia Long-Term Care Ombudsman Office (DCLTCOP):
 - A. Provide the Department of Health, Health Regulation Administration (DOH/HRA), with a copy of the District of Columbia Long-Term Care Ombudsman Program's annual report on complaints;
 - B. Monitor areas of deficiency identified in the DOH/HRA's survey, inspection, and complaint investigation reports;
 - C. Investigate complaints referred to the DCLTCOP by the DOH/HRA and report ombudsmen's findings to DOH/HRA in a timely manner;
 - D. Provide the DOH/HRA quarterly with a list of complaints received by the DCLTCOP;
 - E. Refer complaints substantiated by the DCLTCOP and needing further investigation and/or other regulatory action to the DOH/HRA by telephone, fax, electronic mail, and/or first class mail;
 - F. Participate in joint investigations and monitoring surveys as requested by DOH/HRA; and
 - G. Participate in training of DOH/HRA and provider staff on the Ombudsman Program law, other relevant state laws, and quality initiatives, as requested by DOH/HRA; and

- H. Maintain confidentiality of all information and records provided to the DCLTCOP by the DOH/HRA within the parameters of relevant federal and District laws.
- II. Responsibilities of The Department of Health, Health Regulation Administration (DOH/HRA):
- A. Provide the DCLTCOP with a copy of the DOH/HRA's quarterly or annual report of complaints received and investigated;
- B. Investigate complaints referred to the DOH/HRA by the state office of the DCLTCOP and by local ombudsman programs and provide reports of findings in a timely manner to the DCLTCOP;
- C. Provide the DCLTCOP semi-annually with a list of the District's licensed community residential facilities and licensed Assisted Living Residences;
- D. Refer complaints to the DCLTCOP for investigation on the DOH/HRA complaint intake form;
- E. Provide the DCLTCOP with the following information:
- One copy of all completed Survey and Inspection Reports (2567's) including Statements of Deficiency and Plans of Correction, as soon as these documents are accepted by the Health Regulation Administration;
 - One copy of all Survey and Inspection Reports and Plans of Correction for community residence facilities and assisted living residences, as requested by the DCLTCOP;
 - One copy of all final notices of adverse action against nursing homes (and, as requested, against community residence facilities and assisted living residences), including fines imposed, bans on admissions, issuance of a provisional or restricted license, imposition of a receiver or monitor, and closure;
 - One copy of all findings of investigations of complaints against nursing homes, community residence facilities, and assisted living facilities referred to DOH/HRA by the DCLTCOP, including, as requested, a copy of the complaint investigation report submitted to the Program Manager of the Long-Term Care Branch of HRA by the investigator assigned to the complaint.

- F. Participate in training DCLTCOP volunteer advocates, as requested, by speaking on the role of the DOH/HRA in ensuring that the health, safety, welfare, and rights of long-term care residents are protected;
 - G. Participate in joint complaint investigations as requested by the DCLTCOP;
 - H. Maintain confidentiality of all information and records provided to the DOH/HRA by the DCLTCOP within the parameters of federal and District laws, including the names of complainants and the names of residents involved in the complaints, absent specific authorization of the complainant and/or resident to reveal his or her name or identifying information;
 - I. Notify and consult with the DCLTCOP prior to beginning a survey of a nursing home or licensure renewal of an assisted living or community residence facility for the purpose of eliciting information related to individual or a pattern of complaints in that facility.
- III. The Department of Health, Health Regulation Administration and the District of Columbia Long-Term Care Ombudsman Program will meet quarterly to assure program coordination and to maintain efficient and effective referral and communication mechanisms.
- IV. This Memorandum of Agreement may be amended at the request of either party by presenting any such amendment in writing to the other party and having both parties sign the amendment.

For the purpose of this Memorandum of Agreement, the Administrator of the Health Regulation Administration is responsible for the actions of the Department of Health's Health Regulation Administration, and the Director of the Office of the District of Columbia Long-Term Care Ombudsman Program is responsible for the actions of the District of Columbia Long-Term Care Ombudsman Program.

 Director, D.C. Department of Health

 Date

 Director, D.C. Office on Aging

 Date

 Director, D.C. Long-Term Care Ombudsman Program

 Date

APPENDIX D

Protocol for Joint Investigation of Health Facilities Between New Mexico Department of Health, New Mexico Children, Youth and Families Department, New Mexico Human Services Department, And New Mexico Aging and Long Term Care Department

This multi-agency agreement between the agency responsible for licensure and certification of nursing homes, adult protective services, the state Medicaid agency and the state unit on aging (long-term care ombudsman program) specifies the protocol for joint investigations of health facilities and the monthly convening of state and regional meetings of the parties to the agreement in order to identify, discuss and strategize ways to address statewide and regional issues and trends.

Contact: Office of the State Long-Term Care Ombudsman
New Mexico Aging & LTC Services Department
1015 Tijeras Avenue, NW, Suite 200
Albuquerque, NM 87102
(505) 222-4500

Protocol for Joint Investigation of Health Facilities

HEALTH FACILITIES JOINT PROTOCOL BETWEEN NEW MEXICO DEPARTMENT OF HEALTH, NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT, NEW MEXICO HUMAN SERVICES DEPARTMENT, AND NEW MEXICO AGING AND LONG TERM CARE DEPARTMENT

The purpose of the protocol is to ensure maximum coordination in the management of allegations of abuse, neglect and exploitation of persons in health facilities in New Mexico, thus improving their quality of life. The primary concern of those involved in this process is maintaining and promoting the health, safety, rights and dignity of individuals. The NM Children, Youth & Families Department (CYFD) Protective Services Division, the NM Department of Health (DOH) Division of Health Improvement, the NM Aging & Long Term Care Department (ALTCD) Long Term Care Ombudsman Program, and the NM Human Services Department (HSD) Medical Assistance Division, or the successor(s) of these agencies, all have roles in responding to suspected abuse, neglect and/or exploitation. These roles, which are governed by statute, regulation and policy, mandate that each agency conduct specific activities with respect to allegations of abuse, neglect and/or exploitation. Through this protocol, each agency agrees to cross-refer, cooperate and communicate in the management and investigation of such allegations and to maintain the confidentiality of any confidential information obtained or exchanged during the course of any investigations. Collectively, Health Facilities Joint Protocol members have agreed to adopt and implement operational guidelines for on-going communication, management of referrals and conducting investigations of abuse, neglect and exploitation, including joint investigations. The Joint Protocol process is intended to maximize limited available resources, minimize trauma to clients associated with multiple investigations and to cooperate fully to assure thorough investigations. Joint investigations may not be feasible in all cases; therefore, Health Facilities Joint Protocol members shall share investigative information and findings, unless otherwise prohibited by law. Coordination among the agencies which are parties to this protocol will be assured by regular communication and sharing of allegations, findings and evidence among representatives of each agency. This protocol among New Mexico state agencies is mandated by Sec. 24-1-5(L) NMSA 1978, a section of the NM Public Health Act.

ROLES OF PARTICIPATING AGENCIES

AGING AND LONG TERM CARE DEPARTMENT (Long Term Care Ombudsman Program)

The Long Term Care Ombudsman Program of the Aging and Long Term Care Department advocates for the rights of residents of long term care facilities. The Long Term Care Ombudsman Program is authorized by law to: (1) investigate and resolve complaints on behalf of residents of long term care facilities; (2) recruit and train volunteers to advocate for the rights of residents of long term care facilities; (3) analyze, monitor and recommend changes in laws, regulations and policies which affect residents of long term care facilities; and (4) provide information to other agencies and the public regarding problems and concerns of residents of long term care facilities. The Long Term Care Ombudsman Program is mandated by the Older Americans Act, 42 U.S.C. § 3058g and enabled by New Mexico's Long-Term Care Ombudsman Act (Secs. 28-17-1 through 28-17-19 NMSA, as amended).

DEPARTMENT OF HEALTH (Division of Health Improvement)

The New Mexico Public Health Act (Secs. 24-1-1 through 24-1-22 NMSA 1978, as amended) requires that health care facilities be licensed in accordance with applicable State Rules and Regulations. The Division of Health Improvement of the Department of Health is the designated agency for monitoring facilities certified to receive reimbursement under the Social Security Act with regard to compliance with Medicare and/or Medicaid regulations. Division staff conduct scheduled on site surveys of licensed and/or certified facilities. The Division investigates allegations of non-compliance with applicable laws, rules and regulations and is authorized to require corrective actions and impose sanctions.

CHILDREN, YOUTH & FAMILIES DEPARTMENT (Adult Protective Services)

The New Mexico Protective Services (APS) Act (Secs. 27-7-14 through 27-7-31 NMSA 1978, as amended) declares that many adults in the state are unable to protect themselves from abuse, neglect or exploitation, or are unable to manage their own affairs. The Act directs the Children, Youth & Families Department (CYFD) to “develop a coordinated system of protective services for incapacitated or protected adults”. CYFD has a number of legislatively mandated duties, but of particular importance is the directive that APS “shall investigate all reports of suspected abuse, neglect or exploitation of adults...and take whatever action is necessary.” Included in necessary action is the provision of

protective services to an incapacitated or protected person with the person's consent or by obtaining appropriate legal authority through the state district courts.

HUMAN SERVICES DEPARTMENT
(Medical Assistance Division)

The Human Services Department (HSD), through its Medical Assistance Division, has the authority to investigate potential violations of the Medicaid Fraud Act and to impose sanctions or penalties against providers for violations of the Medicaid Fraud Act (42 CFR § 455.14 and Sec. 30-44-3 NMSA 1978). HSD is required, under Sec. 8.351.2.9 NMAC, to impose sanctions or penalties against providers for fraud, violations of federal or state law, failure to meet professional standards of conduct, non-compliance with Medicaid policies, violation of the Medicaid Providers Act, and/or other misconduct. HSD is also required to recover overpayments made to Medicaid providers. Investigations conducted by other agencies regarding allegations of Medicaid provider abuse, neglect and/or exploitation of New Mexico Medicaid recipients can also be used by HSD to impose sanctions, corrective actions or other remedies, impose additional sanctions or remedies, or conduct additional investigations when appropriate.

HEALTH FACILITIES JOINT PROTOCOL
BETWEEN
NEW MEXICO DEPARTMENT OF HEALTH,
NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT,
NEW MEXICO HUMAN SERVICES DEPARTMENT,
AND NEW MEXICO AGING AND LONG TERM CARE DEPARTMENT

OPERATIONAL GUIDELINES

I. Scope of the Health Facilities Joint Protocol

A. Goals

- To improve the quality of care and protect the health and safety of individuals in health facilities in New Mexico.
- To identify systems issues, which, may not cause actual harm but collectively, place residents/recipients at risk and compromise their health and safety.
- To develop strategies to address systemically identified patterns of abuse, neglect and exploitation and areas of concern and to collectively implement plans to monitor and remedy such issues within the guidelines of each agency.
- To identify health facility issues and recommend changes.
- To share information regarding allegations of abuse, neglect or exploitation.
- To improve communication between Health Facility Joint Protocol member agencies.
- To utilize the strengths of each member agency to improve the quality of health facilities.
- To regularly evaluate the effectiveness of the Health Facility Joint Protocol.
- To conduct joint investigations as practical and permissible by law.
- To assure facility fiscal accountability and compliance.

B. Ensuring Health, Safety and Rights of Individuals in Health Facilities

1. **Ageing & Long Term Care Department (Long-Term Care Ombudsman Program)** will:
 - a. investigate and resolve allegations of abuse, neglect and exploitation; resident's rights; and quality of care complaints in health care facilities.

- b. work to resolve complaints, that do not rise to the level of abuse, neglect or exploitation, collaboratively (when appropriate) with facilities, family members, and/or other involved parties.
- c. refer complaints that are substantiated and remain unresolved to the appropriate HFJP members.
- d. provide supporting documentation for substantiated and unresolved complaints to the appropriate HFJP members on a timely basis.

2. Department of Health (Division of Health Improvement) will:

- a. investigate complaints regarding potential violations of State and Federal law and regulation applying to health care facilities.
- b. provide completed reports, and any subsequent modifications, of substantiated complaints of regulatory violations to appropriate HFJP members.
- c. provide, on a timely basis, supporting documentation for completed reports of substantiated complaints to the appropriate HFJP members, unless otherwise prohibited by law.

3. Children, Youth and Families Department (Adult Protective Services) will:

- a. investigate allegations regarding abuse, neglect or exploitation.
- b. upon completion of an investigation, the CYFD/Protective Services Division/APS, will ensure that copies of the Findings Letter, and any subsequent administrative review determinations, are sent to all HFJP members on a timely basis.

4. Human Services Department (Medical Assistance Division) will:

- a. investigate potential violations of the Medicaid Fraud Act.
- b. review DOH and CYFD sanctions, recoupments, corrective action and other remedies to assure fiscal accountability and facility compliance.
- c. conduct additional investigations and impose additional sanctions, recoupments corrective action and other remedies where appropriate.
- d. share findings and any subsequent modifications of those findings with HFJP members on a timely basis.

C. Information Sharing

The Health Facility Joint Protocol (HFJP) member agencies are responsible for sharing information (in accordance with the Privacy Rule [45 CFR Parts 160 and 164] of the Health Insurance Portability and Accountability Act of 1996) and distributing documentation among members regarding: 1) allegations of abuse, neglect and exploitation; 2) regulatory non-compliance; 3) violations of residents' rights in health care facilities; and 4) potential Medicaid fraud.

1. Referral of Allegations of Abuse, Neglect or Exploitation
 - a. Each HFJP member agency will designate a contact person to share and receive information with/from the protocol members.
 - b. Abuse, neglect or exploitation complaints and allegations will be provided to HFJP members within one (1) business day of receipt by the contact person through telephone and/or written referrals.
 - c. HFJP member agencies will track the outcomes of investigations within each member's rules.
 - d. Electronic communication among protocol members will be utilized when possible to improve the timeliness of information sharing with HFJP member agencies.
 - e. Each HFJP member agency will refer complaints that are not under its authority/jurisdiction to the appropriate agency or agencies.
2. Investigations of Abuse, Neglect or Exploitation
 - a. Investigations shall be conducted by each HFJP member agency, within the strict priority time frames established by each protocol member's rules.
 - b. Whenever all HFJP members deem it necessary, there will be a coordinated investigation involving representatives from the entire HFJP membership.
3. Investigation Findings
 - a. Each HFJP member agency will share its investigative information and findings with other agencies, unless otherwise prohibited by law.
4. Referring of Information of Findings to other Agencies
 - a. HFJP member agencies will refer information of findings related to allegations of abuse, neglect or exploitation; regulatory non-compliance; and violations of residents' rights.
 - b. The receiving member agency will accept the information as potential evidence to initiate and conduct investigations.
 - c. HFJP member agencies will refer potential Medicaid fraud to the Human Services Department (MAD) after preliminary investigations are completed.

II. Health Facilities Joint Protocol Meetings

Regional Health Facilities Joint Protocol Meetings:

The **Regional Health Facilities Joint Protocol** membership consists of regional ombudsmen staff and volunteers, regional DHI surveyors and managers, local APS supervisors and social workers, and representatives of MAD. The identified regions are based on DHI districts. Regional protocol members will meet (in person as practical or through teleconferencing) monthly to discuss major community issues, trends in local facilities, current cases, problems associated with implementation of the joint protocol, etc. and develop a plan of action to address local issues. The Department of Health will have the responsibility of chairing the meetings and reporting issues of the meeting to the chair of the State Health Facilities Protocol.

State Health Facilities Joint Protocol Meetings:

The **State Health Facilities Joint Protocol** membership consists of representatives from the LTCOP, APS, DHI and MAD agencies who have knowledge of high profile issues, patterns, problems and investigations as well as an understanding of long-term care issues statewide. The State HFJP members will meet monthly to review the issues reported by the Regional HFJP members, examine the reports to identify statewide trends and systemic issues, and develop a plan of action to address issues. The Department of Health will have the responsibility of chairing the meetings.

III. Training of Members

- A. Each HFJP member agency shall assure that respective agency staff will receive periodic training about the HFJP purpose and operational guidelines.
- B. Each HFJP member agency will provide periodic training to members about its investigative procedures.

PROTOCOL FOR JOINT INVESTIGATION OF HEALTH FACILITIES

Signature Page

MICHELLE GRISHAM, Secretary Designate
NM Department of Aging & Long Term Care
(Long Term Care Ombudsman Program)

Date

PAMELA HYDE, Secretary
NM Human Services Department
(Medical Assistance Division)

Date

PATRICIA MONTOYA, Secretary
NM Department of Health
(Division of Health Improvement)

Date

MARY-DALE BOLSON, Secretary
NM Children, Youth & Families Department
(Adult Protective Services)

Date