

California Long Term Care Ombudsman Summit Summary

Pathways to Effectiveness

April 2005

CONTENTS

INTRODUCTION	1
SUMMIT STRUCTURE & ACTIVITIES	1
SUMMIT FOCAL TOPIC AREAS	2
APPROVED RECOMMENDATIONS BY TOPIC AREA	3
PRIORITY RECOMMENDATIONS & ACTION STEPS	4
ADDITIONAL CONSIDERATIONS & COMMENTS	5
BACKGROUND OF SUMMIT & THE LOCAL OMBUDSMAN PROJECT	5
SUPPORTING DOCUMENTS & MATERIALS	6
FEEDBACK FROM SUMMIT PARTICIPANTS	6

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The *Pathways to Effectiveness: California Local Long Term Care Ombudsman Summit* was held on April 27th - 28th 2005 in Sacramento, California. Focusing on critical topic areas related to the performance of Local Long Term Care Ombudsman Programs (LLTCOP), the meeting was highlighted by intensive discussion and debate. The Summit was a one and one half day convening, sponsored by the Institute for Health & Aging at the University of California, San Francisco, in conjunction with the California Long Term Care Ombudsman Bi-Annual Training Conference and Association meetings. The Summit produced a comprehensive set of recommendations and priorities to enhance the performance of LLTCOPs in California.

Eighty-nine attendees participated in the Summit, representing a broad spectrum of advocates in the arena of aging. They included representatives of the 35 LLTCOPs across the State and the State Office of the LTCOP, most notably, Joe Rodriques, California State Ombudsman. An expert panel recognized for their knowledge in Long Term Care (LTC), health care policy and law, state government policy, consumer advocacy, and the LTCOP assisted in leading proceedings. William Benson, *President, National Citizens' Coalition for Nursing Home Reform & Andersen Benson Consulting Services, Washington, DC* and Sara Hunt, *Consultant, National Ombudsman Resource Center, Washington DC* served as co-moderators. Sue Wheaton, *Ombudsman Program Specialist, Administration on Aging, Washington, DC* and Carroll Estes, *Founding Director, Institute for Health & Aging, UCSF* delivered remarks. Facilitators for topic areas



included: Eric Carlson, *National Senior Citizens Law Center, Los Angeles, CA*, Patricia Nemore, *Center for Medicate Advocacy, Washington, DC*, along with Sara Hunt and William Benson. Representatives from the California Long-Term Care Ombudsman Association (CLTCOA) served as co-facilitators for discussions including: Kathy Badrak, Susan Zibblatt, Benson Nadell, Donna DiMinico, and Brandi Yancy, offering considerable hands-on knowledge and expertise in respective topic areas. Special invitees included a contingent representing both local and state ombudsmen from New York State, including: Marty Haase (NY State Ombudsman) and George Pettengill (Local NYS Ombudsman Association President).

This paper includes selected information related to the California Local Long-Term Care Ombudsman Summit including: summit structure & activities, priority topic areas and initial action steps, and recommendations to enhance program performance related to each topic area.

The Summit: Structure & Activities

The nature of the Summit was participatory and hands-on, utilizing a consensus-building framework modeled on that used for the 2002 NASOP Retreat¹. This model provided for in-depth discussion of issues and maximum opportunity for participation among local ombudsmen. Participants were asked to consider a number of discussion questions and to develop a set of recommendations to enhance the performance of LLTCOPs. Five broad topic areas framed deliberations:

- **Rehabilitative, Convalescent & Post Acute Care**
- **Board & Care Facilities**
- **Systems Advocacy and Legal Support**
- **Use of Volunteers and the Adequacy of Resources**
- **Meeting the Elder Abuse Mandates².**

A **Briefing Paper** was prepared by the project staff focusing on each topic area, with input from the CLTCOA executive committee and selected expert reviewers. Each paper contained information specific to the topic area, including an introduction

and overview, relevant research findings from the IHA/UCSF Local Ombudsman Study, major issues and concerns, related literature and web resources, and prepared discussion questions. Reports were distributed via email to each Local Ombudsman Program and the Office of the State LTC Ombudsman in California the week prior to the Summit.

The format of the Summit activities involved an **Introductory Session** followed by a series of **Topic Area Breakout Sessions**. Breakout Sessions addressed each of the key topic issues listed above separately. The sessions were intended to promote group discussion of major issues, consider specific discussion questions relating to the effectiveness of LLTCOPs, and propose recommendations to enhance the performance of LLTCOPs in these areas. Attendees selected and participated in the breakout

1 National Association of State Ombudsman Programs (NASOP) Retreat (2002). *The LTCOP: Rethinking and Retooling for the Future*. Peachtree City, Georgia.

2 *Supplemental Topic Session organized and hosted by CLTCOA.*

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We would like to thank the California LTC Ombudsman Association (CLTCOA), the New York State Ombudsman Association (NYSOA), the California Office of State Long-Term Care Ombudsman, the New York State Office of Long-Term Care Ombudsman, and the California Department of Aging for their support and assistance.

We thank the members of the Project Advisory Committee, Project Consultants and Special Reviewers for their support and thoughtful input on these topics and papers, and the Ombudsmen and Key Respondents who shared their experiences and knowledge throughout this project.

sessions of their choosing. Each session was led by a Facilitator, a State or National expert in issues relating to a particular topic area, and a Co-Facilitator, a Local CA Ombudsman representative with hands-on programmatic knowledge of the issue.

The Break-Out Topic Sessions were followed by **Work Group Meetings**, intensive small group meetings. Each Ombudsman Coordinator selected one primary topic area and attended the Work Group Meeting targeting that issue. Each Work Group was charged with the responsibility to synthesize and summarize information gathered during Topic Area Breakout Sessions into a single set of recommendations (short and long term) related to the topic area. Work Group Meetings were attended by Local Ombudsman Coordinators as well as a limited number of interested local program staff and volunteers.

The culmination of the summit was the **Plenary Session**, involving brief presentations of recommendations drafted by each Work Group. During this session three priority recommendations were presented for each topic area. An opportunity for additional feedback and audience comments was

also provided to clarify recommendations and to enhance the proposed set of recommendations related to each topic area. Recommendations were individually ratified by the closing plenary session of all ombudsman participants through a general majority vote. Ultimately, of the 13 recommendations that were supported and reviewed by the group three recommendations were selected via vote as the key priorities in the closing plenary.



Summit Topic Areas

The Summit was organized around five topic areas, based largely on survey input from local ombudsmen. Areas were designed to encompass a range of potential issues for discussion.

REHABILITATIVE, CONVALESCENT, AND POST ACUTE CARE

This session focused the roles and challenges of LLTCOPs relating to Rehabilitative, Convalescent and Post Acute Care. Discussion centered on the definition of Rehabilitative, Convalescent and Post Acute Care, on defining the Ombudsman role in that setting, and how to work with other entities to best serve the needs of the residents.

BOARD & CARE FACILITIES

This session focused on the roles and challenges of LLTCOPs relating to serving Board & Care facilities. Discussion centered on improving coverage and services to residents in Board & Care Facilities, how to effectively work with other organizations in this area, and how to advocate for better oversight in these facilities.

SYSTEMS ADVOCACY & LEGAL SUPPORT

This session focused on the roles and challenges of LLTCOPs relating to Systems Advocacy and Legal Support. Discussion centered on the effectiveness of systems advocacy, how to build the necessary relationships to engage in systems advocacy, and the need for legal support for the local programs.

USE OF VOLUNTEERS / ADEQUACY OF RESOURCES

This session focused on the roles and challenges of LLTCOPs relating to Volunteers & Adequacy of Resources. Discussion centered on the stigma of the word “volunteer,” the amount and quality of training the volunteers receive, and the legal ramifications of using volunteers.

MEETING THE ELDER ABUSE MANDATES

This special session, organized and sponsored by CLTCOA*, focused on the roles and challenges of LLTCOPs relevant to meeting Elder Abuse program mandates. Consideration was given to effectiveness of the mandates and the implications for quality of care, considering the following issues: (1) Protective Role of Ombudsman - Advocate vs. Investigator, (2) Confidentiality Law and Conflicts with the State and Federal Laws, Liability Issues and Use of Volunteers in Investigations, and (3) Role of Ombudsman with Jurisdiction, Complaints Against Outside Agencies and Relationships with Other Agencies. Discussion centered on the conflict of being a mandated reporter of abuse (both legal and philosophical), the amount of training received on elder abuse investigations, and the need for legal support. (*Note: This special session was held on April 25th).

Approved Recommendations by Topic Area

A closing plenary presentation was held on the second day of the summit, involving brief presentations of recommendations to improve California Local Ombudsman programs that had been drafted by each Topic Area Work Group. Three (3) priority recommendations for each of the five topic areas were outlined, with a short period of time allotted for requested clarification of recommendations. An opportunity was provided to openly discuss and debate the merits of each proposed recommendation and, if necessary, to enhance or modify the recommendation. Ultimately, recommendations were individually considered and ratified through a general majority vote. Each recommendation was either accepted or rejected. Only Local California Ombudsmen were eligible to vote.

The following list of proposed recommendations is organized by Topic Area as recorded verbatim from session proceedings. Check marks denote that the recommendation was approved by a majority vote, while an 'x' denotes the proposal was not approved. Thirteen (13) recommendations of the fifteen (15) proposed recommendations put forth by Topic Area Work Groups were approved by the California local ombudsmen in attendance at the summit.

REHABILITATIVE, CONVALESCENT & POST ACUTE CARE

- Create curriculum on Medicare advocacy
- Increase ways to inform ombudsmen of new admissions to sub-acute Skilled Nursing Facilities (SNFs) (ideally through faxing) and patient notification of Medicare non-coverage to ombudsmen*
- Create demonstration/pilot project in OAA for effective ombudsman involvement in short term post-acute SNFs with funding with assurances that no conflicts of interest occur*

BOARD & CARE FACILITIES

- Office of the State Long Term Care Ombudsman will work with sub-state coordinators to develop components for post-certification education including but not limited to, mental health, Alzheimer's, dementia, developmental disabilities, parolees, registered sex offenders, and diversity. Consider levels of designation and specialization
- Promote clarification of and change in Residential Care Facilities for the Elderly (RCFE) regulations
 - o Increase RCFE staff training
 - o Require training component by ombudsman about ombudsman to licensees, etc.
 - o Quality of Care standards
 - o Use standardized admissions agreement form
 - o Increase the number of Ombudsman posters in larger RCFEs
 - o Increase staff in RCFEs
- Resources
 - o Increase staff and volunteer numbers
 - o Increase training
 - o Explore donated services in addition to dollars
 - o Advocate to state and federal legislators for funding sources for low-income residents to continue to reside in RCFEs, B&C and ALFs.

SYSTEMS ADVOCACY & LEGAL SUPPORT

- Office of the State Long Term Care Ombudsman (OSLTCO) will hold accountable licensing and certification and community care licensing, including cross reporting responsibility
- Change the status of the state LTC Ombudsman to a non-politically appointed position
- OSLTCO shall ensure that each program has legal representation according to federal law

USE OF VOLUNTEERS / ADEQUACY OF RESOURCES

- Advocate for Ombudsman program that is staff driven with volunteer support enabled by increased funding
- Create new job titles with 3 tiers & delete "Volunteer" from position title
 - Advocate Level I [Basic Certification]
 - o Regular and constant visitation to facilities
 - Advocate Level II
 - o Witnessing Advance Health Care Directives
 - Advocate Level III
 - o Community Outreach education
 - o Mentoring state certified ombudsmen
- Require fingerprinting for all staff and volunteers of LTCOPs

MEETING THE ELDER ABUSE MANDATES

- Abide by federal laws regarding confidentiality; OSLTCO to develop protocols regarding implementation
- Change state law to remove the Ombudsman as the mandated reporter
- Change state law to remove the Ombudsman responsibility and liability as mandated investigator of elder abuse (cross reports to ombudsman shall continue to allow ombudsman to fulfill their advocacy role related to elder abuse)

Priority Recommendations & Action Steps

California Local Ombudsman adopted three recommendations as their highest priority. Selected through an open voting process, Local Ombudsman attendees were charged with identifying three recommendations that were of the highest priority from among the thirteen (13) approved recommendations (representing the recommendations approved earlier during the Summit from each of the five topic areas). Following this vote, each recommendation was discussed individually by the larger group of all summit attendees. The group collectively identified specific action steps to guide implementation of each recommendation. This section outlines the priority recommendations selected by Local Ombudsman and the initial strategy, other stakeholders, and persons/organizations who will assume leadership in initiating implementation efforts concerning each recommendation.

PRIORITY RECOMMENDATION #1

Change state law to remove the Ombudsman responsibility and liability as mandated investigator of elder abuse. Cross reports to ombudsmen shall continue to allow ombudsmen to fulfill their advocacy role related to elder abuse.

Identification of Potential Outside Stakeholders: San Diego County, Area Agencies on Aging, County Welfare Association, California Advocates for Nursing Home Reform (CANHR), Community Care Licensing, Licensing & Certification, Protection & Advocacy, law enforcement, Attorney General, Local District Attorney's Association, California Senior Legislature, AARP, California Commission on Aging, California Long Term Care Ombudsman Association (CLTCOA), Office of the State Long Term Care Ombudsman (OSLTCO), California Department of Aging, residents

Leadership: Sharon Cordice (Local San Diego LTCO) and CLTCOA

PRIORITY RECOMMENDATION #2

Change the status of the State LTC Ombudsman to a non-politically appointed position.

Identification of Potential Outside Stakeholders: California Department of Aging, Governor, health and welfare agencies, CLTCOA, CANHR, National Citizens' Coalition for Nursing Home Reform (NCCNHR), California Association of Area Agencies on Aging (C4A), National Association of Local Long Term Care Ombudsmen (NALLTCO), Long Term Care Ombudsmen, legislator/central committees, Little Hoover Commission, California Senior Legislature

Leadership: CLTCOA

Initial Strategy /Action Steps: Examine what implementation of this recommendation means for California

- Information/ study/ plan
- Talk with stakeholders
- Then legislative involvement

PRIORITY RECOMMENDATION #3

The state office shall ensure that each program have legal representation according to federal law.

Identification of Potential Outside Stakeholders: Local LTCOP, California Department of Aging, OSLTCO, Attorney General, host agencies for Local LTCOPs, Area Agencies on Aging, Health and Human Services, legal service providers, CANHR, Association for County Counsels, AARP

Leadership: OSLTCO

Additional Considerations & Comments

Issues of Consensus

It should be noted that there were several instances of prolonged dialogue and lack of unanimous consensus on particular issues. Among the topics that generated the most intense debate were the issues of Elder Abuse Investigation. This debate centered on apparent conflicts between California Law designating the ombudsmen as mandated reporters of Elder Abuse, and federal legislation under the Older American's Act, prohibiting disclosure of a resident's identity without consent.

Voting Process

For purposes of expediency, a threshold was adopted in the voting process to approve or reject a recommendation. Specifically, rather than to require that each recommendation be considered 'perfect' or 'ideal' in scope and wording, each ombudsman was instructed to use a criteria of general acceptability phrased in the following manner: *'Could you live with this recommendation – Yes or No?'*

Recommendation Phrasing/Wording

Recommendations as prepared and presented during the Summit and herein were not intended to be the final or legal wording, but rather were drafted for the purpose of initial discussion.

Additional Recommendations

Each Topic Work Group generated a list of several recommendations relating to each respective Topic Area; however, only those 'three top' recommendations selected and put forth during the plenary session were presented and debated. As such, the additional recommendations (not put forth during the plenary session) were *not* rejected by the local ombudsmen, but rather were considered tabled for discussion at a later point. A listing of these additional recommendations has been transcribed by research staff and retained by CLTCOA for future reference and use.

Background of Summit & the Local LTC Ombudsman Project

California Local Long Term Care Ombudsman Project is a collaborative effort between the University of California, San Francisco - Institute for Health & Aging (IHA) and the California Long Term Care Ombudsmen Association (CLTCOA) to identify and examine factors that affect performance of the 35 LLTCOPs in California. The project is supported by the Archstone Foundation and The California Endowment. The Commonwealth Fund, the Langeloth Foundation, and the New York Community Trust fund a comparable project being carried out in New York State. The project is expected to contribute to dialogue at both the state and national levels concerning future programmatic and policy directions in time for deliberations concerning the 2005 re-authorization of the Older Americans Act and the Long Term Care Ombudsman Program within it.

The California Summit represents one component of a larger overarching project focused on Local Long Term Care Ombudsman Programs, entitled the *Enhancing the Performance of Local Long Term Care Ombudsman Programs in New York State and California*.

The Enhancing the Performance of Local Long Term Care Ombudsman Programs in New York State and California project, builds on the work and expertise of Principal Investigator Dr. Carroll L. Estes who also served as Chair of the 1995 Institute of Medicine/IoM National Evaluation of the LTC Ombudsman Program and a more recent 50 state LTCOP survey funded by the Kaiser Family Foundation³.

The current project was designed to identify the specific factors (activities, resources, roles and organizational characteristics) that are associated with program effectiveness in order to improve the quality of care for residents of LTC facilities. This two-year, two-phase project entails two primary components: (1) Research Phase and (2) Dissemination Phase.

The research phase of the project involved: (1) collecting and analyzing CA (and NYS) local ombudsmen telephone survey interview and secondary data (from the National Ombudsman Reporting System/NORS) and interview data from selected state officials, federal experts, and other key informants. Specifically, the project focuses on federally mandated activities and roles of ombudsman programs as well as associations with the

organizational elements hypothesized as distinguishing effective programs: adequacy and control over resources, organizational autonomy, and inter-organizational relationships. The role and work of LLTCOPs is examined in specific issue domains of elder abuse, neglect, and financial exploitation; post-acute, rehabilitative, and convalescent care; cultural competency; end-of-life issues; legal service and support; staffing and staff training; relationships and interagency coordination; and system advocacy.

The Dissemination Phase involves several critical elements, of which the California Ombudsman Summit and a corresponding New York Ombudsman Summit (held in September 2005) are central features. This phase of the project involves working collaboratively with local and state ombudsman programs in California and New York, as well as policy makers, key experts in fields related to Long Term Care and Ombudsman programs.

An additional component of the Dissemination Phase is a 'Policy Event' to be held in California and New York. The Policy Event will emphasize recommendations for future state and national level policy surrounding Ombudsman programs and intended to further draw attention to the project's findings and implications for change. Finally, the research team will integrate materials, research findings, and information gathered through dissemination activities to develop a best practices tool kit relating to local ombudsman programs in each of the project states.

Additionally, project staff will monitor progress regarding work toward implementation of recommendations and related follow-up to other aspects of the Summit through the life of the project. Research staff will encourage those persons and organizations occupying leadership roles in the implementation of the three priority recommendations to provide periodic updates to summit attendees regarding activities and accomplishments in these areas.

3 C.L. Estes, D.M. Zulman, S.C. Goldberg and D.D. Ogawa. *State Long-Term Care Ombudsman Programs: Factors Associated with Perceived Effectiveness*. *The Gerontologist*, Vol. 44(1), 2004.



Supporting Documents & Materials

- **Briefing Papers**
 - Role and Challenges relating to Rehabilitative, Convalescent and Post Acute Care
 - Challenges in Board & Care Facilities
 - Systems Advocacy and Legal Support
 - Role and Challenges relating to the Use of Volunteers and Adequacy of Resources
 - Role and Challenges relating to Elder Abuse Mandates
- **Research Project Background: Supplement**
- **California Chartbook** (*available January 2006*)

Feedback from Summit Participants

An evaluation form was provided to all Summit attendees to obtain anonymous feedback regarding the Summit. Forty-nine attendees completed and returned evaluations of the Summit. The majority rated the Summit and specific portions of the meeting favorably. More than 90% rated the Summit as either *Good* or *Excellent* (with *Excellent* being the most commonly reported rating across all questions). Most positively rated was the opportunity to network and discuss the program with other staff and to discuss opportunities to advocate for change. A common concern expressed by attendees was the lack of 'down-time' for participants. As the schedule was tightly planned, involving a series of intensive discussions and debates around a broad range of critical topic areas, the meeting offered limited opportunity for unstructured activity. Another criticism involved inconsistency concerning the distribution of materials (namely Briefing Papers that provided an overview of topic areas) prior to the Summit. While some attendees received these materials prior to the Summit, others had not had the same opportunity to familiarize themselves with the topic papers or to distribute the materials to their staff prior to the commencement of the summit. Researchers are addressing these shortcomings for the New York State Summit.

Several summit attendees volunteered comments concerning potential impacts they believed the Summit may have for LLTCOPs in California:

"I feel that I was part of a purposeful movement for change."

"The major recommendations, when implemented, will make us advocates for residents while abuse is investigated by other agencies, and will free us up for complaints around resident care, resident rights, and quality of life."

"Empowerment- what a wonderful opportunity you gave us to allow our voices to be heard."

Finally, one attendee, in conversation with members of the research staff, reported that s/he believed the California Ombudsman Summit would be a "*catalytic event for making important changes in the ombudsman program*".