

Ombudsman Outlook: News, Resources, and Tips

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Federal Nursing Home Regulations - Phase 2 and More

Phase 2 requirements of the revised federal nursing home regulations and the revised interpretative guidelines for the regulations (<u>State Operations Manual – Appendix PP</u>) went into effect November 28, 2017.

An 18-month moratorium on full enforcement of some Phase 2 requirements also started on November 28, 2017. On the same day, CMS launched a new computer-based survey process referred to as LTCSP (Long-Term Care Survey Process). Due to changes in the survey process, CMS announced they will be "freezing" the health inspection star rating for health inspection surveys and complaint investigations conducted on or after November 28, 2017.

Brief highlights of the changes and additional resources are below.

Phase 2 Regulations Require Facilities To:

- Have policies and procedures ensuring that any reasonable suspicion of a crime is reported by covered individuals to the state survey agency and one or more law enforcement entities.
- Document the reason for the transfer/discharge in the resident's medical record. If the reason for the proposed transfer/discharge is because the facility says it cannot meet the resident's needs the facility must document the specific needs that cannot be met; what the facility has done to try to meet the resident's needs, and the services available in the receiving facility that will meet the resident's needs. The facility must also provide the receiving facility with detailed information about the resident.
- Ensure residents displaying or diagnosed with dementia receive appropriate treatment and services to attain or maintain their highest level of well-being.
- Conduct and document a facility-wide assessment to determine what
 resources are needed to competently care for residents on a day-to-day
 basis and during emergencies. The assessment must be used in
 determining the number of staff and the competencies and skills sets
 staff must have.
- Develop and implement a "baseline care plan" within 48 hours of admission. The baseline care plan must include instructions and

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NORC is on Facebook and Twitter!





NORC Featured Resource

Program and Practice: LTCOP Advocacy in Assisted Living Facilities

Program Management: Training for Ombudsman Program Representatives

- healthcare information so that the facility can properly care for the resident in a person-centered way.
- Ensure that the monthly drug regimen review conducted by the pharmacist includes a review of the resident's medical chart.
- Implement an antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use.
- Have policies regarding smoking, smoking areas, and smoking safety.
 The policies must take into account non-smoking residents and comply with applicable Federal, State, and local laws and regulations.
- Have a policy identifying when loss or damage of dentures is its responsibility. The facility may not charge residents for loss or damage if it is determined to be the facility's responsibility in accordance with the facility policy.

The above list is not comprehensive, for more details review the resources below.

Moratorium on Full Enforcement of Some Phase 2 Regulations

For a period of 18 months, as of November 28, 2017, a directed plan of correction or a directed in-service training are the only remedies that can be imposed on the following regulations:

- F655 (Baseline Care Plan); §483.21(a)(1)-(a)(3)
- F740 (Behavioral Health Services); §483.40
- F741 (Sufficient/Competent Direct Care/Access Staff-Behavioral Health); §483.40(a)(1)-(a)(2)
- F758 (Psychotropic Medications) related to PRN Limitations §483.45(e)(3)-(e)(5)
- F838 (Facility Assessment); §483.70(e)
- F881 (Antibiotic Stewardship Program); §483.80(a)(3)
- F865 (QAPI Program and Plan) related to the development of the QAPI Plan; §483.75(a)(2) and,
- F926 (Smoking Policies); §483.90(i)(5)

Read the memo issued by CMS on the moratorium for more details.

Resources

Federal Nursing Home Regulations (NORC webpage)

Summary of Key Changes – Phase 2 (Consumer Voice) http://theconsumervoice.org/uploads/files/general/summary-of-key-changes-effective-phase-2.pdf

Side-by-Side Comparison of Revised and Previous Federal Nursing Home Regulations (Consumer

Voice) http://theconsumervoice.org/uploads/files/issues/Side-by-Side_Comparison_of_Revised_and_Previous_Requirements_of_Participation_1-20-2017.pdf

Ombudsman Program References in Revised Nursing Home Regulations http://ltcombudsman.org/uploads/files/library/ltcop-references-new-regs-old-regs-side-by-side.pdf

Online Surveyor Training (CMS) Phase 2 Launch the course from this page or visit the CMS Survey and Certification



This resource highlights key elements to include in training for Ombudsman program advocacy in ALFs (in addition to initial certification training that addresses the history, role, and responsibilities of the program). Read the tip sheet here.

Calendar of Events

January 8, 2018 NNHQI Webinar on Consistent Assignment. Register here.

January 23, 2018 Webinar
- Targeting OAA Legal
Services to Those in
Greatest Need Without
Means Testing. More
information here.

Questions or Ideas?

Do you have any questions or challenges related to LTCO advocacy and program management you want addressed in a future newsletter? Do you have any suggestions for articles or feedback about this issue? If so, please let us know.

Save and Share

We encourage you to share this newsletter with your LTCO program. You can Group Integrated Surveyor Training website, choose "I am a Provider," select the "Course Catalog" button on the top of the screen, choose "Long-Term Care" in the menu, click on "LTC Survey Process SME" videos from the list of courses, and launch the course. More information about this training is available in this memo.

Survey Process

1. CMS' website at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html and click on "New Long-term Care Survey Process - Slide Deck and Speaker Notes 2. The Integrated Surveyor Training Website (https://surveyortraining.cms.hhs.gov/index.aspx)

CMS has replaced Appendix P with a LTCSP procedure guide which will be what surveyors will follow when conducting a standard survey. To access the LTCSP Procedure Guide and Survey Resources, go

to: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html.

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New and Updated NORC Resources

NEW! Monthly Email: NORC Notes

NORC Notes is a monthly email reminder of available resources on the NORC website and tips for how your program can use them. If you would like to sign-up to receive the NORC Notes, email ombudcenter@theconsumervoice.org. You can access the NORC Notes page by hovering over the "Support" tab on the homepage menu and then clicking "NORC Notes." The first NORC Notes email was on program promotion and the second email was on Long-Term Care. Ombudsman Program Advocacy in Assisted Living Facilities: Tips for Training Program Representatives.

NEW! Tip Sheet - LTCOP Advocacy in ALFs: Training for Ombudsman Program Representatives

One of the first steps in program management is defining training requirements for Ombudsman program representatives (staff and volunteers) working in assisted living facilities (ALFs). This resource highlights key elements to include in training for Ombudsman program advocacy in ALFs (in addition to initial certification training that addresses the history, role, and responsibilities of the program).

NEW! Issue Page: Individuals with Disabilities

This issue page is intended to provide Ombudsmen and program representatives with resources for advocating for residents with disabilities living in long-term care.

NEW! Infographic for Ombudsman Program Promotion

This infographic has been created to give a brief overview of the work Ombudsman Programs do and the impact they have around the nation. The infographic can be used for volunteer recruitment or program promotion. View the program promotion page here.

NEW! Webinar Materials - Exploring the Resources and Supports of the Christopher & Dana Reeve Foundation's Paralysis Resource Center

This webinar introduced participants to the Christopher & Dana Reeve Foundation's Paralysis Resource Center (PRC), a comprehensive national source of free information, services, and programs for individuals with paralysis and their families and caregivers. Participants heard about the PRC's Information

forward this email or save and share the PDF version saved on our website.

Want to receive the Ombudsman Outlook directly?

Did you receive this issue of the Ombudsman Outlook from a colleague or your LTCO supervisor? Let us know if you want to subscribe and receive our newsletter directly.

Do You Miss The Voice?

LTCOPs no longer receive The Voice (the Consumer Voice weekly enewsletter) automatically. If you miss the long-term care news from The Voice subscribe for free or become a member to receive this publication.

Specialists, who are available to answer questions about living with paralysis and assist with locating resources, and the Peer & Family Support Program, a national mentoring program for people living with paralysis and their family members.

NEW! The Who, What, Where, Why, and How of the Long-Term Care Ombudsman Program (presentation)

This presentation provides a brief overview of the progam responsibilities required by federal law, so the information is applicable in every state. Attendees will gain an understanding about what the LTCOP does, who the LTCOP services, and how to contact the program.

LTCOPs can personalize these slides and use this presentation during:

- Orientation and/or initial training of new LTCOP representatives
- Resident Council or Family Council meetings
- Community education sessions
- In-services for facility staff

View the slides as a PDF or PowerPoint.

UPDATED! LTCOP Organizational Conflict of Interest Charts

NORC updated the four charts, "LTCOP Organizational Conflict of Interest – Examples of Identification" and "LTCOP Organizational Conflicts of Interest – Examples of Remedies & Removal" for the Office of the State Ombudsman and Local Ombudsman Entities. These charts are now combined to provide examples of how to identify and remedy organizational conflicts of interest all in one place, they also highlight prohibited conflicts. The chart for Local Ombudsman Entities is available here and the chart for the Office of the State Ombudsman is available here.

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News from the Network...

Cleveland Ohio volunteer Ombudsman program representative wins AARP Andrus Award

Cleveland Ohio volunteer Ombudsman program representative, BJ Blanchard, was honored by AARP with the Andrus Award, which came with a \$1,500.00 check for the Cleveland regional program. BJ is 90 years old and has volunteered with the Ombudsman program for over 25 years.

The Michigan Long-Term Care Ombudsman Program Published Residents' Rights Bookmarks

The Michigan Long Term Care Ombudsman Program published new Residents' Rights bookmarks. Each of the Ombudsman program representatives (staff and volunteer) will be distributing the bookmarks to nursing home residents during the month of October. There is room below the geo-routed toll-free number to add the local ombudsman name and contact information. Read the full article.

Tennessee Ombudsman Program Representative Interviewed by PBS

Zev Samuels, Tennessee Ombudsman program representative, is interviewed by Channel 10 WKNO PBS. The program is titled, The Nursing Home Puzzle & The Greenhouse Project. In this video Zev discusses one of the realities of dealing

with life after fifty, the threat of a debilitating disease or a catastrophic injury. Watch the video here.

Another Tennessee Long-Term Care Ombudsman Program Representative, Richard Robinson, was featured on the local news in Nashville to discuss the role of the Ombudsman program. Watch the video here.

Rhode Island SLTCO Appeared on the Lieutenant Governor's Cable TV Show

View more videos on the Governor's website here.

Northern Kentucky Ombudsman Works with City Council to Build a Sidewalk Near Nursing Home

A nursing home resident in northern Kentucky was injured while trying to cross a busy road. He was concerned the facility would restrict others from going to the store or getting out and about in the community so he contacted District LTC Ombudsman Bethany Breckel. Bethany and volunteer Ombudsman, Bill D'Andrea looked to their Advisory Council for suggestions. Then in June, Bethany joined Bob, the resident, to discuss the problem with the City Administrator, the Nursing Home Administrator, and one of the council men. The city leaders took notes and agreed to work on the problem of pedestrian safety near the nursing home. In August, the city council alerted Bethany that they were going to do more than just put up a sign or a flashing light, they were going build a sidewalk. The sidewalk is now complete and the residents of this nursing facility are so grateful that the Ombudsman program helped them to work to improve their quality of life.

Florida Ombudsmen Were Featured in UnivisionSalud's Facebook Live Video

Florida District Managers Alicia Salinas and Gloria Freyre discussed the Long-Term Care Ombudsman Program and the importance of volunteers. The video is in Spanish and was viewed by over 60,000 people. Watch the video here.

This "News from the Network" article appears in every issue in order to highlight your work and news. We encourage you to <u>send</u> your advocacy successes, program management examples, and resources so we can learn from you and share your experience with your peers.

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TA Hot Topic

Organizational Conflict of Interest

Since the implementation of the Ombudsman Rule in July 2016, Ombudsman programs have been looking at their policies and procedures (and state laws) to ensure compliance with all aspects of the Rule. This article focuses on resources regarding organizational conflicts of interest (COI).

Organizational conflicts of interest may have a chilling effect on the LTCOP, at either the state or local level. As noted in the IOM report "Real People, Real Problems,"

"The ombudsman program has a mandate to focus on the individual resident. If the ombudsman finds him or herself in a conflict of interest situation (whether it is a conflict of loyalty, commitment, or control), the resident, even more than the program, may suffer. The resident's problem may not be resolved, certain avenues of resolution may be foreclosed, the resident's voice may not be heard by policymakers, and the resident's interests will be inadequately represented or altogether absent from the table at which public policy is made." See here.

Section §1324.21 of the LTCOP Rule says the following about conflicts of interest.

"The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section. (a) Identification of organizational conflicts. In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency and the Ombudsman shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office.

Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

- (1) Is responsible for licensing, surveying, or certifying long-term care facilities;
- (2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
- (3) Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;
- (4) Has governing board members with any ownership, investment or employment interest in long-term care facilities;
- (5) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
- (6) Provides long-term care coordination or case management for residents of long-term care facilities;
- (7) Sets reimbursement rates for long-term care facilities;
- (8) Provides adult protective services:
- (9) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;

- (10) Conducts preadmission screening for long-term care facility placements:
- (11) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
- (12) Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities. See here (page 7765, column 3).

The Rule requires three steps regarding organizational COI:

- Identify.
- Remove or Remedy, and
- Report through the National Ombudsman Reporting System (NORS).

Below are Issue Briefs which walk through the numerous things to consider, as well as, charts listing COI and possible remedies for both State and Local Ombudsman Entities (LOE).

- LTCOP Rule Issue Brief: State LTCOP Organizational Level Conflict of Interest
- LTCOP Rule Issue Brief: Local Ombudsman Entity Organizational Level Conflict of Interest
- LTCOP Organizational Conflict of Interest Examples of Identification, Remedies, and Removal (Office of the State Long-Term Care Ombudsman and Local Ombudsman Entities)

QUESTION? Can you can find the answer to the following situations. Is this a conflict that can be remedied or not?

- The host agency is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities (CFR 1324.21(a)(9)).
- The Board of Directors of the host agency includes members who operate a long-term care facility.

The resources above and more are available on the NORC website (click on Library, Federal Laws and Regulations, and then click on: Long-Term Care Ombudsman Final Rule).

Feel free to contact NORC if you have questions or comments.

NORS Corner

"NORS Corner" is a new article that will be in every issue in order to highlight frequently asked questions about NORS, share NORS training materials, and examples of program practices regarding NORS.

The data collected by Ombudsman programs across the country is reviewed by many individuals and organizations for a variety of reasons. It's used by ACL to inform Congress and others of the work done by the program to justify funding; it's used by states for the same reason; and researchers and the media use the

data in their work. Therefore, it's critical that the data is reliable and accurately portrays the work of the program.

To enhance reporting consistency Ombudsman programs should frequently revisit NORS training materials. Information below can be used to revisit he basics in determining whether they are providing information or working a case.

The difference between "consultation" and "complaint" is often a source of confusion. The Ombudsman program has a variety of responsibilities and all of these duties are important; therefore, it's critical to ensure program work is accurately reflected in NORS.

The Three C's are:

CASE

- Is an Inquiry brought to, or initiated by the LTCO, on behalf of a resident or group of residents.
- Involves at least one complaint which requires opening a case and
- Includes LTCOP investigation, strategy to resolve, and follow-up.
- The number of cases is equal to the number of complainants. Case =
 One or more people jointly filing complaint count as one complainant.

COMPLAINT

- Concern brought to, or initiated by, LTCOP for investigation and action on behalf of 1 or more residents
- Relating to the health, safety, welfare or rights of a resident.
- TIP: One or more complaints constitute a case. You cannot have a case without a complaint.

CONSULTATION

- Providing information and assistance to an individual or a facility.
- Does not involve investigating and working to resolve complaints.
- If LTCOP refers someone with a concern to another agency and is not actively involved in investigating and working to resolve the problem.

Resources

- Aging Integrated Database (AGID) (NORS data from 2000 to 2015).
- NORS training materials and 2015 NORS data
- NORS Train the Trainer Session 2011 Consumer Voice Conference.
 This video contains teaching tips and suggestions from NORC, AOA, and State and local representatives who have many years of experience with NORS Training.
- NORS Frequently Asked Questions (FAQ)

Complaint versus Consultation

LTCOP Rule §1324.19 (b) Complaint Processing

The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for

satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate and resolve a complaint impacting multiple residents or all residents of a facility.

- Personally Discuss with Resident
- Privacy
- Resident communicates informed consent to take action on the complaint
- · Determine the wishes of the resident
- Determine / obtain consent to disclose resident identifying information

Information and Consult Practice

- Resident/staff/Family, etc. has a question about rights, care, etc. LTCO provides answer, resources, referral information. The LTCO may or may not follow up to see if more assistance is needed (i.e. when someone calls the program there may not be a call back).
- May or may not discuss with the resident (depending on who called)
- Privacy may or may not be a factor, i.e. may be a phone call that the resident makes from a public phone
- Work is not done to determine the inquirer's perspective other than to understand the question/concern and provide accurate information
- There is no informed consent because no further action is needed
- However, the conversation cannot be disclosed without consent per disclosure requirements of the rule.

Complaint versus Consultation

LTCOP Rule §1324.19 (b) Complaint Processing

Advise the resident (and resident representative, where applicable) of the resident's rights;

Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint

Investigate the complaint to determine whether the complaint can be verified; and

Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

Case notes are documented within the case, not as a consultation activity.

May offer consultation related to the complaint but that is documented in the case notes.

Information and Consult Practice

Provide information on applicable rights, laws, etc. if appropriate

No action for complaint resolution requested so no plan to develop

No investigation

May or may not follow up with inquirer; there is no requirement to determine level of satisfaction

Consultations are documented as activities; document each instance and the topic(s)

Stay tuned for more updates on NORS Next!

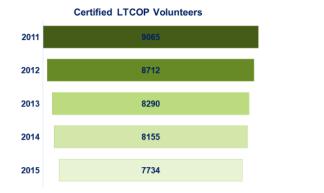
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LTCOP Volutneer Management

Take Stock in Your Volunteer Program

In the past 5 years, the number of LTCO volunteers has decreased 15%. That is 1,331 less people visiting long-term care facilities. Perhaps the decline is due to "cleaning up" the lists of volunteers, or they are "aging" out, or maybe our attention has been focused on other issues. Volunteers (just like staff) need care and nurturing.

Certified LTCOP Volunteers*





*certified volunteer: an individual who has completed a training course prescribed by the state ombudsman and is approved by the state ombudsman to participate in the statewide ombudsman program (National Ombudsman Reporting Systems, NORS, Instructions)

Another reason for the decline may just be that we're losing more volunteers than we're bringing on board. So, maybe it's time to take a step back and spend some time concentrating on how your program is doing in the recruitment field.

Let us suggest using a "logic model" to help focus your efforts (whether it's recruitment, training, retention, etc.)

Peter Lane, Director, Leadership and Volunteer Development, Aging Network Volunteer Resource Center at n4a, and several LTCO discuss the use of a logic model in planning in this <u>webinar</u>.

View the slides as a PDF or PPT. View the Logic Model here.

Resources

- Recruitment resources
- Ombudsman Compendium
- If you would like to post specific information regarding your program, please see the following on the NORC <u>website</u>, scroll down to: I'm Interested. Who do I Contact? Do you have volunteer opportunities available? E-mail NORC at ombudcenter@theconsumervoice.org.

Join the LTCO Volunteer Management Network today to connect with your peers, exchange ideas, share resources and talk about LTCO volunteer management.

Quick Tips!

Resources for Individuals with Disabilities

Visit NORC's new Individuals with Disabilities issue page for additional information and resources to share with individuals your program serves.

A disability is an impairment that may be cognitive, developmental, intellectual, mental, physical, sensory, or some combination of these. It substantially affects a person's life activities and may be present from birth or occur during a person's lifetime. Disability is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Disability is thus not just a health issue. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives.

Paralysis Resource Center

The Christopher & Dana Reeve Foundation is dedicated to curing spinal cord injury by funding innovative research, and improving the quality of life for people living with paralysis through grants, information and advocacy. The foundation operates the Paralysis Resource Center (PRC) funded through a cooperative agreement with the US Department of Health and Human Service's Administration for Community Living program. The PRC provides information to empower those affected by paralysis with knowledge, resources, and support.

The Reeve Foundation offers <u>support and technical assistance</u> to anyone needing additional information. Contact the Foundation by calling 1-800-539-7309 or emailing <u>InfoSpecialist@ChristopherReeve.org</u>.

The PRC holds a Peer & Family Support Program. The Peer & Family Support Program is for people living with paralysis, as well as those who care for them, to come together for hope, support, and a way forward. Find out more information about this program here.

View a webinar on exploring the resources and supports of the PRC <u>here</u> and the slides for the webinar <u>here</u>.

Assistive Technology (AT)

Assistive technology (AT) is a term that includes assistive, adaptive, and rehabilitative devices for people with disabilities and is used to maintain or improve the independence and function of people with disabilities and seniors, in education, employment, recreation, and daily living activities. AT promotes greater independence by enabling people to perform tasks that they were formerly unable to accomplish, or had great difficulty accomplishing, by providing enhancements to, or changing methods of interacting with, the technology needed to accomplish such tasks.

ACL Website on Assistive Technology

ACL's Center for Integrated Programs, Office of Consumer Access and Self-Determination, oversees the State Grant for Assistive Technology Program and the Assistive Technology National Activities funded under the Assistive Technology Act of 1998.

Assistive Technology Training Center

The National Assistive Technology Act Technical Assistance and Training (AT3) Center is your one-stop connection to resources about the Assistive Technology Act, State Assistive Technology Programs, and general assistive technology information....

Additional Resources

- Centers for Disease Control and Prevention Website
- ACL Administration on Disabilities Website

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State and local long-term care ombudsmen receive this email. If you do not want to receive this e-mail update, unsubscribe here.

Clicking the unsubscribe link will remove you from all Consumer Voice and NORC email lists.

The National Consumer Voice for Quality Long-Term Care - 1001 Connecticut Avenue, NW, Suite 632 - Washington, DC 20036 - telephone: (202) 332-2275 - fax: (202) 403-3473 -info@theconsumervoice.org