

Long-Term Care Ombudsman Program: A Summary of State Enabling Statutes

Prepared by The National Association of State Units on Aging

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State Enabling Statutes

Long-Term Care Ombudsman Program: A Summary of State Enabling Statutes

Introduction

State enabling laws for the Long-Term Care Ombudsman Program are important because they legitimize the program by giving it legal standing and help clarify to the individuals the program serves, the public, providers and other agencies the roles and responsibilities of the program and the scope of those responsibilities. The laws can also serve as the foundation for program policies and procedures. Periodic review and amendment is necessary to keep up with changes in the long-term care environment in order to keep the program relevant as well as to ensure legal access and protection to an increasingly diverse clientele.

The summary of state long-term care ombudsman program enabling statutes presented in this document is based on research conducted during the fall of 2000 by Deborah Armstrong, then a third year student at the New Mexico School of Law, under the direction of Michelle Lujan-Grisham, Director of the New Mexico State Agency on Aging. The methodology involved a review of state statutes, supplements, and relevant regulations published through 2000, that were available on the internet. The primary objective of this research conducted by the New Mexico State Agency on Aging was to compare state statutes concerning the authority of the Long-Term Care Ombudsman Program to access residents and facilities and resolve complaints. According to the researcher, only statutes and regulations directly related to the Ombudsman Program were reviewed.

Building on this compilation of data, the National Association of State Units on Aging (NASUA) surveyed State Aging Directors and state long-term care ombudsmen in the summer of 2001 to verify the accuracy of the data and request necessary corrections, updates and clarifications. States were also asked to provide information concerning challenges to the Ombudsman Program's authority or jurisdiction. Responses were received from all 52 state long-term care ombudsman programs (the 50 states, District of Columbia and Puerto Rico). A draft table was distributed and discussed at the National Ombudsman Training Conference, held in Columbus, Ohio in April of 2002. The table of state statutes in this document reflect updates and corrections collected through May of 2002 from state ombudsmen. Regulatory provisions included in the table are noted in *italics*.

When appropriate, we have included in the tables statutory references from the state unit on aging (SUA) and other state agencies that give ombudsman programs authority. In such instances, an ombudsman enabling statute may not include some of the provisions typically found in state enabling laws. For example, the Pennsylvania

Ombudsman Program is provided access to all long-term care facilities through the state's licensing regulations. Likewise, program authority or legal representation may be provided under the auspices of the SUA, as is the case in New Mexico, where the State Agency on Aging confers its authority to conduct undercover investigations of long-term care facilities to the Ombudsman Program.

Statutory Elements

The tables provide information on the following statutory elements for each state.

- ◆ **Statute title** under which provisions related to the Ombudsman Program are found.
- ◆ **State code citation.**
- ◆ **Date** the statute was **enacted** or most recently **revised** (if applicable).
- ◆ **References to the Older Americans Act.**
- ◆ **Identity of the state oversight agency** that administers or has responsibility for the Ombudsman Program.
- ◆ **Definition of target population** the Ombudsman Program serves (may include age, type of facility or service).
- ◆ **Complaints** --- authority to receive, investigate and resolve complaints.
- ◆ **Access to facilities** -- conditions under which the Ombudsman Program representative may enter a facility.
- ◆ **Access to residents' records** -- conditions under which the Ombudsman Program representative may access a resident's record.
- ◆ **Coordination with other agencies** -- requirements to coordinate or share complaint information with other agencies (e.g., licensing, adult protective service, other state agencies).
- ◆ **Seeking remedies on behalf of residents** -- authority or requirements to assist residents with seeking legal remedies or exercising their legal rights.
- ◆ **Confidentiality** -- requirements for accessing resident information and terms under which information may be shared with providers or other agencies or entities.
- ◆ **Legal Representation** -- identity of the entity that provides legal representation for the state ombudsman and representatives of the program.
- ◆ **Interference** -- prohibitions on actions that interfere with the Ombudsman Program's performance of official duties or authority and/or retaliation against persons making a complaint to, or in any way cooperating with, program representatives. Penalties for such interference, obstruction, or retaliation may be specified.
- ◆ **Other** significant provisions relative to the Ombudsman Program.
- ◆ **Regulations on line** indicates whether the Ombudsman Program's regulations are available on the internet.

Survey Results

Survey responses were received from all 52 state ombudsman programs (50 states, the District of Columbia and Puerto Rico). The survey reveals that all 52 states/territories have established a **long-term care ombudsman program through their state code**. In Hawaii, the program's responsibilities are included under the Executive Office on Aging without specific reference to the Older Americans Act or the Long-Term Care Ombudsman Program. Iowa's statute refers to a long-term care residents' "advocate" not an "ombudsman." The majority of states have revised or enacted enabling statutes since the 1992 amendments to the Older Americans Act. One state, Illinois, revised their statute in 2001; 35 states between 1993 and 2000; 12 states between 1988 and 1992; and four states between 1985 and 1987. Twenty-two states indicated their ombudsman program **regulations may be accessed via the internet**. The survey reveals that:

- ◆ 33 enabling statutes make **reference to the Older Americans Act**.
- ◆ All 52 statutes **identify the agency or entity that administers or has responsibility for the Ombudsman Program**.
- ◆ 49 statutes **specify or define the target population** which the Ombudsman Program serves.
- ◆ 50 statutes specify the **program's authority to receive, investigate and resolve complaints**.
- ◆ 49 statutes provide programs with **access to long-term care facilities**.
- ◆ 47 statutes provide programs with **access to residents' records**.
- ◆ 42 statutes include provisions which address the program's **coordination with other agencies or entities**.
- ◆ 22 statutes address the **authority or requirements of the program to assist residents with seeking legal remedies or exercising their rights**.
- ◆ 46 statutes specify the program's requirements concerning **confidentiality** of resident information, including terms for accessing and sharing such information.
- ◆ 25 statutes have a provision which addresses who or how **legal representation** is provided to the program.
- ◆ 40 statutes address **willful interference and/or retaliation**.

Major Issues

Three major issues emerged from an analysis of survey responses. They are:

- **Access to residents, facilities and residents' records;**
- **Willful interference;** and
- **Legal representation of the program.**

This analysis addresses the issues of willful interference and legal representation in access-related situations. It is not meant to be a comprehensive discussion of these issues. NASUA will examine legal representation of ombudsman programs in a separate paper on program profiles.

It is important to recognize the potential linkage between the elements of access willful interference and legal representation. Access to facilities and residents, as well as access to residents' records when appropriate and necessary to investigate client specific complaints, is critical to the accomplishment of the Ombudsman Program's primary responsibility to resolve individual residents' complaints. A provider's attempt to restrict the program's **access** to the facility and residents may constitute **willful interference** with an ombudsman's official duties. Willful interference is considered any action or inaction, or pattern of actions or inactions, on the part of a provider or other entity intended to obstruct, inhibit, or in any way prevent a representative of the Ombudsman Program from fulfilling his or her duties as specified under the Older Americans Act or state code to protect the health, safety, welfare and rights of a long-term care facility resident.

When a provider does not recognize an ombudsman's right of access to the premises, the program's legal counsel should be consulted to successfully address these challenges. Therefore, adequate and available **legal representation** for the Ombudsman Program becomes a critical element to consider.

Access to Residents, Facilities and Residents' Records

The Older Americans Act, (PL-106-501), specifies the requirements for the program's access to facilities, residents and records, as follows:

Sec. 712(a)(3)(D) The Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office --- ensure that residents have regular and timely access to the services provided through the Office and that residents and complainants receive timely responses from representatives of the Office to complaints.

Sec. 712 (b)(1) Procedures for Access. In General --- The State shall ensure that representatives of the Office shall have ---

(A) access to long-term care facilities and residents;

(B) (i) appropriate access to review the medical and social records of a residents, if ---

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if ---

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

- (III) the representative obtains the approval of the Ombudsman;
- (C) access to the administrative records, policies and documents, to which the residents have, or the general public has access, of long-term care facilities; and
- (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) Procedures. --- The State agency shall establish procedures to ensure the access described in paragraph (1).

Review of the enabling statutes revealed that **six states (Arizona, Michigan, Montana, New York, Pennsylvania and South Dakota) have no provision in their enabling statutes to provide the Ombudsman Program access to facilities and/or residents' records.** These states vary in how they address the issue of access.

- **New York, Pennsylvania and South Dakota** rely on the laws of the appropriate state licensing agencies to gain access to facilities, residents and/or records.
- While obtaining a release form is standard practice for ombudsmen, **Michigan and Montana** rely solely on obtaining a release form from residents or their legal representatives to gain access to their records since neither state has a statute providing this access.
- **Arizona** relies on the OAA language and non-interference provisions in their state statute to give them access to residents' records.

Willful Interference

The Older Americans Act requires the state to address the issue of outside interference with an ombudsman's official duties. Specifically the OAA states:

Sec. 712(j) Noninterference. The State shall ---

- (1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Commissioner) shall be unlawful;
- (2) prohibit retaliation and reprisals by a long term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
- (3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

Review of the enabling statutes revealed that:

- **Thirty-three states have an enabling statute or regulation that addresses interference with an ombudsman's duties, twenty-eight of which specify a penalty or sanction** (e.g., civil, misdemeanor, monetary fine, etc.) related to interference with the Ombudsman Program. Those states are denoted by an *.

Alaska*	Kansas*	North Carolina*
California*	Kentucky*	Oklahoma*
Colorado*	Louisiana*	South Carolina*
Connecticut*	Maryland*	South Dakota*
Delaware*	Massachusetts	Texas*
District of Columbia*	Michigan*	Utah*
Florida	Nebraska	Vermont*
Georgia*	Nevada*	Washington*
Idaho	New Jersey*	West Virginia*
Illinois*	New Mexico*	Puerto Rico*
Indiana*	New York	Montana*

- **Seven states' enabling statutes contain provisions which prohibit discrimination or retaliation** against a resident or other individual who files a complaint, provides information or in some other way cooperates with the Ombudsman Program:

Minnesota	North Dakota	Wisconsin
Missouri	Rhode Island	Wyoming
New Hampshire		

Legal Representation

The Older Americans Act lays out the requirements for providing the Ombudsman program with adequate legal representation.

Sec. 712(g) Legal Counsel. The State agency shall ensure that ---

- (1)(A) adequate legal counsel is available, and is able, without conflict of interest, to ---
 - (i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and
 - (ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and
- (B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and
- (2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

Twenty-five states address the issue of legal representation of their ombudsman program in statute. Of these 25 states:

- **Statutes in 10 states require the state to ensure counsel is available:**

Colorado	Nebraska	Texas
District of Columbia	New Mexico	Utah
Indiana	Ohio	
Kansas	Oklahoma	

- **Statutes in nine states make the Attorney General the program's legal representative:**

Alaska	Delaware	North Carolina
Arizona	Illinois	North Dakota
California	Mississippi	West Virginia

- **Statutes in two states require the Ombudsman Program to employ independent legal counsel:**

New Jersey	Wisconsin
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- **Statutes in two states require the contracting agency (Vermont in a legal services agency and Washington in a private non-profit) to ensure provision of legal counsel:**

Vermont - statute requires contractee to provide legal representation and advice, if the State Ombudsman and ombudsman representatives are not state employees.

Washington - budget proviso requires contract for legal services.

- **One state (Connecticut) statute requires the Attorney General and independent legal counsel to represent the program.**
- **One state (Florida) statute requires that a "legal advocate" be employed to represent the program.**

Access Challenges Faced by Four Ombudsman Programs

In response to the survey, four states reported that their ombudsman program had experienced, or was currently experiencing, a challenge relating to access to facilities and residents. The types of challenges varied, as did the methods these programs used to remedy the problems. Interference with regard to access may take numerous forms, including:

- requiring program representatives to give advance notice of their visit to the provider;
- restricting access to the facility and/or residents to certain hours or times;
- being escorted or "shadowed" by facility staff while walking around the facility and attempting to speak with residents;
- not allowing an ombudsman to access information from a resident's record when consent has been obtained from the resident or her legal representative, or when there is a complaint and the resident cannot give consent and has no legal representative, or the complaint involves the resident's guardian.

A summary of these programs' experiences as of May, 2002 follows.

Colorado: scope of access. In 2001, the State Ombudsman reported that the owner of a chain of nursing and personal care homes in Colorado asserted that certain of his facilities were not covered under the authority of the Ombudsman Program because all the residents pay privately for their care and the facilities receive no public funds. The nursing homes which are part of the chain do receive Medicare payments, and there have been no access problems in these facilities. The Ombudsman Program has received few complaints at the personal care homes operated by this chain. The ombudsman enabling statute in Colorado [Section 26-11.5-108] states that "(1) An ombudsman, upon presenting a long-term care ombudsman identification card, shall have immediate access to a long-term care facility and to its residents eligible for ombudsman services pursuant to this article for the purposes of effectively carrying out the provisions of this article." The facility owner requested a hearing by an administrative law judge, who ruled in January 2002, that private pay personal care boarding homes fall under Ombudsman Program jurisdiction. The judge further ruled that since the company's facilities fit the definition of licensed personal care boarding homes, they are included in the program's jurisdiction. This challenge may not be totally resolved, as an appeal of the ruling was filed by the facility owner in 2002.

Hawaii: access definition. The State Ombudsman reported that Hawaii's enabling statute [Section 349-13] states that "Any long-term care facility which receives public funds shall permit access to the facility to the executive office on aging in the performance of its duties and functions under this chapter." Access problems experienced by the Ombudsman Program have involved adult residential care homes but not nursing homes. Access has not been an issue for the Ombudsman Program when investigating complaints in adult residential care homes, but access has been denied when Ombudsman Program volunteers attempt to make routine visits without providing advance notice to these providers. Four associations representing adult residential care homes claim "access" is not clearly defined in the OAA; therefore, they are not required to give the Ombudsman Program access to their facilities. The associations currently insist program

representatives to call and make an appointment before visiting residents in their facilities. The associations have threatened to challenge in court the program's interpretation of access as "unannounced at any time" but have not yet done so. The State Ombudsman believes that at some point the program will be refused entrance and a legal challenge may ensue. The state is currently in the process of drafting regulations which more clearly define the term "access" as "any time necessary 24 hours a day, seven days a week, without prior notice."

Pennsylvania: access ensured by another agency. The Pennsylvania Ombudsman Program reported that in a single incident during the past three years, a personal care home provider challenged the Ombudsman Program's right to enter the facility and meet with residents. The Ombudsman Program's authority to enter these types of facilities and see residents is provided in the state licensing regulations for personal care homes. The Department of Public Welfare's Office of Social Programs is the licensing agency for personal care homes in Pennsylvania. The regulations for personal care homes concerning access [Title 28, Part IV, Subpart C, Chapter 2620.62(a)] states: "The administrator and staff shall provide immediate access to the home, the residents and the residents' records to agents of the Department, representatives of the Department of Aging's Older Adults Protective Services Program, and the Long-Term Care Ombudsman Program, upon request." After the above incident occurred and at the Ombudsman Program's urging, the state licensing agency sent a letter to the provider citing the regulation and the provider withdrew its challenge. No further problems have occurred.

Utah: facility "escorts." Utah's enabling statute [Section 62A-3-206] states that in the course of an investigation, an ombudsman may "enter upon and inspect any premises, without notice to the facility, provided the investigator identifies himself upon entering the premises as a person authorized by this part to inspect the premises." While there have been no court challenges, the Ombudsman Program reports that they have had challenges concerning their authority to be in facilities "unsupervised" or without a "facility escort." In a handful of facilities, administrators or facility staff "shadow" the local ombudsman while in the facility. This issue, while not currently widespread, has not been systematically addressed. Rather, the program attempts to deal with these incidents on a case-by-case basis.

Ombudsman Program Enabling Statutes: Essential Considerations for Access

After completing its review of ombudsman program enabling statutes, NASUA convened a workgroup to discuss the findings and identify essential components and questions that ensure the program has adequate access to facilities, residents and records to accomplish its responsibilities as specified in the federal Older Americans Act. Following the workgroup discussion, NASUA convened a teleconference open to all state ombudsmen as an opportunity to share their experiences with access.

Each state must ultimately determine the adequacy of its own statutes to ensure that the Long-Term Care Ombudsman Program has the authority to carry out its responsibilities according to the Older Americans Act. **In determining whether access provisions are adequate, states need to consider the following questions:**

- ♦ Is access defined in a way that provides maximum access for the Ombudsman Program while also protecting residents' rights?
- ♦ Do the provisions permit unconditional access for the Ombudsman Program and do they specify the conditions under which an ombudsman may enter a facility (e.g., wear or show a badge or identification, sign in at the front desk, announce her presence, etc.)?
- ♦ Do the access provisions permit an ombudsman to enter a facility at any time in connection with official duties, and without providing advance notice when investigating complaints?
- ♦ Are the provisions clear that access is for all representatives of the program (including volunteers) and not just the State Ombudsman?
- ♦ Do the provisions specify that an ombudsman has a right to visit privately with residents as long as residents want to speak with the ombudsman?
- ♦ Is access to residents' records included in the statute?
- ♦ Do provisions grant access to records for the Ombudsman Program when the resident is unable to give permission and has no legal representative?
- ♦ Are there provisions to prohibit willful interference with an ombudsman's right to enter facilities, visit with residents and access residents' records?
- ♦ Are sanctions for willful interference, as related to access, available and the circumstances under which sanctions can be used clearly defined?

Summary

Periodic review of ombudsman program enabling statutes is important to ensure that provisions are in place which give the program and its representatives clear legal authority to access facilities, residents and records. When problems with access arise, ombudsman programs need the tools to resolve these issues quickly. Those tools include the authority of the program or some other entity in the state (e.g., the licensing agency) to take action against providers that interfere with the Ombudsman Program's ability to act on behalf of residents. Ombudsman programs also need access to legal counsel to provide support, guidance and if necessary, legal representation, when such situations arise.

The data included in the attached table presents a comparison of states' ombudsman enabling statutes. It is meant to be a reference for states looking to enhance their statutes relative to the Ombudsman Program.

TABLE 1

Long-Term Care Ombudsman Program: State Enabling Statutes

April 2002

Note: Information presented in *italics* pertains to regulations relative to the Ombudsman Program.

	ALABAMA	ALASKA	ARIZONA
Program	Yes	Yes	Yes
Statute/Title	Long-Term Residential Health Care Recipient Ombudsman Act	Alaska Commission on Aging	Adult Protective Services
Citation	ALA CODE § 22-5A-1—7 (Michie 1997)	ALASKA STAT § 44.21.200—240 (Lexis 1998)	ARIZ REV STAT ANN § 46-452.01—.02 (West 1997)
Enacted/Revised	1985	1988	1991
Per OAA	No mention	No mention	Yes – has responsibilities as required
Oversight Agency	Commission on Aging	Commission on Aging	Dept of Economic Security, Aging & Adult Admin
Recipient	Resident in-patient of health care facility, including B&C	Older Alaskans	Not specified
Complaints	Receive, investigate, respond to, and attempt informally to resolve complaints	Investigate and resolve complaints relating to the long term care or “residential circumstances” – includes landlord, senior housing, public assistance, utilities, health care providers/facilities	Hear, investigate and attempt to resolve
Access to Facility	Shall be permitted during regular operating hours	May not be denied	Authority to enter LTC facilities to communicate with residents
Access to Records	Requires current valid auth & release signed by recipient or legal rep to review her info/records	With consent of resident, legal rep, or court order	No provisions
Coordination With Other Agencies	Report fraud, abuse, neglect, exploitation immediately May report other complaints that aren’t resolved in reasonable time	Shall enter cooperative agreements with other agencies	Refer cases involving abuse, neglect, exploitation or health and safety to APS or licensing agency
Represent Residents to Seek Remedies	NO – “serves as 3 rd party mechanism for protecting...”	May pursue administrative, legal, or other remedies on behalf of resident	No provisions
Confidentiality of Ombudsman Records	Info not to be disclosed to any person not directly involved in complaint	Confidential, not subject to inspection except at discretion of Ombudsman, or court order	No provisions
Legal Rep of Office	No provisions	Attorney General	Attorney General
Interference	No provisions	May not intentionally interfere – misdemeanor	No provisions
Other	Complaints requiring remedial action brought to Administrator’s attention, who shall develop corrective action plan and be given reasonable time to resolve	May subpoena witnesses & compel their attendance; Require production of evidence; Administer oaths & examine any person	
Regulations	Regs on-line*		

	ARKANSAS	CALIFORNIA	COLORADO
Program	Yes	Yes	Yes
Statute/Title	Long-Term Care Ombudsman Act	Older Californians Act, Ombudsman	Colorado Long-term Care Ombudsman Act
Citation	ARK CODE ANN § 20-10-601—603 (Lexis 2000)	CAL WELF & INST CODE § 9700—9745 (West 1998 & Supp 2000)	COLO REV STAT ANN § 26-11.5-101—102 (West 1990 & Supp 1999)
Enacted/Revised	1987	1999	1994
Pursuant to OAA	Yes – shall administer in accordance with	Yes	Yes - Nothing in this article shall be construed to prevent compliance with OAA
Oversight Agency	Div. of Aging & Adult Services – Dept of Human S.	Dept of Aging	Dept of Human Services
Recipient	Any patient or resident of LTC facility	Older or elderly person residing in LTC facility, including residential care fac.	Elderly resident of LTC, including B&C (> 60 y.o.) – includes former & prospective residents
Complaints	No provisions	Shall investigate and seek to resolve - Findings shall be reported to the complainant	Identify, investigate, and seek resolution or referral of complaints
Access to Facility	Shall not be denied access to resident during any period of operation Per § 20-10-1206, has right to enter premises at any time to determine compliance	Right of entry at any time necessary and reasonable to hear, investigate, or resolve complaints, or render advice <i>Hours 7am-10pm – other hrs need authorization by State Ombud</i>	Immediate access to facility & <i>eligible</i> residents – Must show ID
Access to Records	Per § 20-10-1206, any records necessary & essential to establish compliance with this chapter shall be made available	Shall have access to any state agency (even confidential); Access to medical record with consent or sufficient cause – copies can be made	Shall have access to <i>eligible</i> resident records with resident or guardian consent or by State Ombudsman
Coordination With Other Agencies	No provisions Per § 20-10-1206, results of all inspections of LTC facilities shall be forwarded to ombudsman	Advocacy & other programs similar to Ombuds shall cooperate, as appropriate May refer complaints to other agencies – those agencies must give the referral priority – agency must provide copy of reports and actions taken	No provisions
Represent Residents to Seek Remedies	No provisions	No – maintain close working relationship with legal services to ensure provision of counsel/legal services	Authority to pursue administrative, legal or other remedies
Confidentiality of Ombudsman Records	No provisions	Confidential – disclosure must be authorized by patient or legal rep; or court order; or to law enforce, APS, licensing	Disclosed only at discretion of Ombudsman
Legal Rep of Office	No provisions	Attorney General	Ensure counsel available
Interference	No provisions	Willful interference – civil penalty – report to licensing	No person shall willfully interfere – civil penalty
Other	§ 20-10-1201 et seq (1999) “Protection of LTC Facility Residents”	Probate Code Sec. 4675, Ombudsman must witness advance health care directives of SNF residents; H & S Code Sec. 1289, Ombud. must witness prop. transfers to staff / officials.	
Regulations			

	CONNECTICUT	DELAWARE	DIST of COLUMBIA
Program	Yes	Yes	Yes
Statute/Title	Office of the Long Term Care Ombudsman	Office of Long-Term Care Ombudsperson	Long-Term Care Ombudsman Program Act
Citation	CONN GEN STAT ANN § 17b-400—412 (West 1998)	DEL CODE ANN 16 § 1131—1140 and 1150—1156 (Michie 1995 & Supp 1998)	DC CODE ANN § 6-3501—3551 (Michie 1995)
Enacted/Revised	1995	1998	1988
Pursuant OAA	Yes	Yes	No mention
Oversight Agency	Dept of Social Services	Dept Health & Social Service Div of Services for Aging	Office of Aging
Recipient	Residents of long term care facilities, including residential care homes	Resident of LTC facility, including assisted living, adult or foster care, group homes	Older person or resident of LTC facility, including community residence facility
Complaints	Receiving, evaluating, resolving and referring health and human service complaints affecting nursing home residents – authorized to investigate	Elicit, receive, investigate, verify, refer & seek to resolve complaints; Receive and investigate complaints of quality of care, services and quality of life	Elicit, receive, investigate, verify, refer and resolve complaints; monitor quality or care, services, quality of life of older persons and residents
Access to Facility	Refusal of entry or access to residents subjects facility to penalty	Shall have access to any facility – may initiate investigation independent of receipt of specific complaint	Access permitted to visit with, make services avail, inform of and assist to assert rights, inspect all areas of facility 8 am – 8 pm, unless otherwise required; show ID
Access to Records	Shall have access to all relevant public records and resident records with written consent	Shall have access to any relevant record (even confidential), with consent of resident or legal rep as needed	Same access as Mayor to review, inspect, copy; Agencies shall cooperate, assist, provide access as needed
Coordination With Other Agencies	May use any other state dept or public/private agency or others in performance of duties. Health & social service providers have a duty to report all suspected abuse, neglect, exploitation to the Commissioner of the Dept. of Social Services	Enter into MOU, cooperation, coordination with other gov't agencies – any agency to which Ombudsman makes referral most keep office informed of status and disposition	Enter into MOU, cooperate, coordinate with other gov't agencies Report abuse, neglect, exploit to APS
Represent Residents to Seek Remedies	Facilitation of private legal action	No provision	Legal rep of resident to bring court action for injunctive relief or damages
Confidentiality of Ombudsman Records	Not a public record – may be disclosed by Ombudsman, with consent, or court order	Confidential – disclosure at sole discretion of Ombuds (or with consent or court order)	Shall protect confidentiality – shall not be disclosed to public – consent needed to disclose identity
Legal Rep of Office	Attorney General and an independent legal counsel	Attorney General	Director shall ensure legal counsel for advice & rep.
Interference	Willful interference by any entity subject to penalty for refusal to cooperate	No person/agency/facility shall interfere – civil penalty	No person/agency/facility shall interfere – civil penalty
Other			
Regulations		Regs on-line	

	FLORIDA	GEORGIA	HAWAII
Program	Yes	Yes	NO – <i>Not titled as such</i>
Statute/Title	Long Term Care Facilities: Ombudsman Program	Long-Term Care Ombudsman Program	Executive Office on Aging
Citation	FLA STAT ANN § 400.0060—.0091 (Harrison 1999 & Supp 2000)	GA CODE ANN § 31-8-50—63 (Michie 1996)	HAW REV STAT § 349-1—14 (Lexis 1999)
Enacted/Revised	1999	1995	1990
Pursuant to OAA	Yes – shall carry out purpose & functions in accord with Federal law	Yes	No mention
Oversight Agency	Dept of Elderly Affairs	Dept of Human Resources (Office of Special Programs)	Executive Office on Aging (in office of the governor)
Recipient	Resident > 60 y.o. of LTC facility, includes B&C	Current/former/prospective recipient of care in LTC facility, B&C	Elders
Complaints	Elicit, identify, receive, investigate and resolve complaints of residents – Administrator to develop remedial action plan	Receive, investigate, refer, attempt to resolve; learn about general conditions affecting residents – Try to resolve informally – Admin to do corrective action plan	Clearinghouse for complaints regarding services to elders – investigate and resolve or refer to appropriate agency for corrective action
Access to Facility	Warrants not required; Annual unannounced admin inspection at times necessary <i>Adopts OAA procedures</i>	Authority to enter – normal visit hrs if possible; authority to inspect facility – identify self as ombudsman	Establish procedures for... But LTC facility receiving public funds shall allow
Access to Records	Shall have access to resident records (can review personal property & money accounts of Medicaid pts.) <i>Adopts OAA procedures</i>	Shall have access to resident records with consent or cause – authority to inspect admin records and documents – can obtain gov’t agency records	Establish procedures for... but access to resident records only with consent
Coordination With Other Agencies	No executive agency can interfere with determination of presence of conditions that threaten rights, health, safety, welfare of residents. Coord if possible with P&A systems for DD and MH	May refer to an appropriate agency for action Gov’t agencies shall provide cooperation & assistance as needed Suspected abuse, etc <i>may</i> be reported to Ombudsman	Nothing in this chapter shall be deemed to delegate or detract in any way from the functions, powers, and duties prescribed by law to any other state depart or agency
Represent Residents to Seek Remedies	Position of legal advocate – may seek administrative, legal and other remedies – may initiate & prosecute legal & equitable actions	No provision	Represent interests of LTC residents, individually or as a class
Confidentiality of Ombudsman Records	Records and council minutes confidential – disclosure of identity needs consent, court order; control by Council	Confidential – identity cannot be disclosed w/o consent or court order	Establish procedures for... but identity cannot be disclosed w/o consent or court order
Legal Rep of Office	Legal advocate also represents office	No provision	No provision
Interference	No executive agency can interfere	Willful interference prohibited – civil penalty	No provision
Other	Most authority lies with State/District Ombudsman Councils, including investigations		Ombudsman is never mentioned – all of above refers to Executive Office on Aging
Regulations	Regs on-line *		

	IDAHO	ILLINOIS	INDIANA
Program	Yes	Yes	Yes
Statute/Title	Commission on Aging – Office of Ombudsman	Illinois Act on Aging	Aging Services – Long Term Care Ombudsman Program
Citation	Idaho Code § 67-5009 (1948-1999)	20 ILL COMP STAT ANN 105/4.03 (West 1993 & Supp 2000)	IND STAT ANN § 12-10-13-3 —20 (Michie 1997 & Supp 2000)
Enacted/Revised	1999	2001	1993
Pursuant to OAA	No mention – <i>Commission has authority re OAA</i>	Yes – program established in accordance with OAA	Yes
Oversight Agency	Commission on Aging	Department on Aging	Bureau of Aging and In-Home Services (BAIHS)
Recipient	Residents of LTC facilities or persons aged 60+ living in community	Residents of LTC facilities	Patient/resident/client of LTC facility (also B&C) or home care service funded by Medicaid, county or aging
Complaints	Receive, investigate, resolve any complaints deems appropriate – jurisdiction to investigate admin acts of facility or state agency/dept	Investigate and resolve complaints of residents.	Receive, investigate, <i>resolve, or</i> attempt to resolve
Access to Facility	May enter facility or state agency/department during reg business hrs – <i>right to enter – notify of presence</i>	Must permit immediate access to residents – May observe all areas of facility	Must be provided access <i>at all times</i> to LTC facility and home care entity and residents or clients
Access to Records	May obtain such information as deems necessary (no specific mention of records) <i>Access per OAA provisions</i>	Facility must permit access to resident records with consent or to the records of incapacitated residents under circumstances defined by rule (89 Ill. Admin. Code 270.120)	Must be provided access to resident/client’s medical, financial and social records w/ consent or cause; Shall give approp access to <i>relevant</i> facility/entity records
Coordination With Other Agencies	Shall notify the state/county agency/dept affected by an investigation of the intent to investigate. Nothing in this section shall be construed to limit powers/responsibility of state/county agency/dept	When appropriate, shall refer complaints to appropriate regulatory state agency	Shall coordinate with legal services, APS, DOH, P&A, attorney general’s fraud unit <i>Participate in state surveys, whenever possible</i>
Represent Residents	No provision	No specific provision	<i>Represent interest before gov’t agencies; seek admin, legal & other remedies</i>
Confidentiality of Ombudsman Records	No provision – <i>Per OAA provisions</i>	Confidential – Ombudsman must authorize disclosure – disclosure of identity requires consent or court order	Confidential - Ombudsman must authorize disclosure; disclosure of identity requires consent or court order
Legal Rep of Office	No provision	Attorney General	<i>Shall have access to legal counsel</i>
Interference	Willful interference is unlawful	No person shall intentionally interfere or attempt to impede – civil penalty provided	Misdemeanor for intentional interference or bribes
Other	Upon investigation, ombud issues opinion/ recommend to facility/agency & may request notification when recommended actions taken	Dept on Aging shall evaluate all programs, services and facilities for the aging, which are furnished by state agencies	BAIHS also administers APS, provides focal point for advocacy, evaluates programs, services and facilities for aged

	IDAHO	ILLINOIS	INDIANA
Regulations	Regs on-line*	Regs on-line*	Regs on-line*

	IOWA	KANSAS	KENTUCKY
Program	Yes – “ <i>Advocate</i> ”*	Yes	Yes
Statute/Title	Department of Elder Affairs LTC Resident’s Advocate	Long-Term Care Ombudsman Act	Long-Term Care Ombudsman Program
Citation	IOWA CODE ANN § 231.41— .44 (West 1994 & Supp 2000)	KAN STAT ANN § 75-7301— 7314 (1997 & Supp 1999)	KY REV STAT ANN § 194A.050, 205.204 (Banks- Baldwin 1993 & Supp 1999)
Enacted/Revised	1999	1998	2000
Pursuant to OAA	Yes – establish program in accordance with and adopts supporting regulations and guidelines for implementing	Mentioned only in regard to funding.	Yes – implement a state program as required by federal law
Oversight Agency	Commission of Elder Affairs	Independent state agency Ombuds appt’d by governor	Cabinet for Health Services
Recipient	Elderly in LTC facility, group or foster home	Defined elsewhere	<i>Residents/applicant of LTC facility</i>
Complaints	Elicit, receive, investigate and resolve complaints about administrative actions that adversely affect...	Shall investigate and resolve complaints (except abuse, etc. to be reported to APS)	<i>Receive, investigate, resolve, and report complaints</i>
Access to Facility	Shall have access to LTC facilities and residents – <i>May enter w/o prior notice but must notify of presence</i>	Authorized to enter any facility (any area) at any time with or w/o prior notice – Shall have access to residents at all times – Show ID	<i>Unrestricted access w/o prior notice to meet with resident or observe facility – Show ID (Volunteers have more restrictions)</i>
Access to Records	Shall have access to resident records <i>w/ consent or court order & other facility, gov’t agency records necessary to resolve complaint</i>	Shall have access to resident records with consent or cause; Shall have access to all relevant facility and state agency records	<i>Shall have access to resident records with consent of resident. Access to facility financial record with administrator consent</i>
Coordination With Other Agencies	Shall coordinate develop- ment of appropriate rules with state agencies/commissions – <i>refer to approp agency Resident Advocate Com- mittee for each facility – admin by Office to conduct ongoing review of each resident, investigate c/o</i>	Coordinate services with P&A system for DD & MH Shall report to appropriate state agency regarding health & safety concerns	<i>Shall refer reports of abuse, etc to Family Services or Licensing, but maintains a continuing duty & indepen- dent authority to investigate and resolve, and monitor agency responsiveness</i>
Represent Residents	No provision	Ability to pursue administra- tive, legal and other remedies on behalf of residents	No provision
Confidentiality of Ombudsman Records	Establish procedures to protect confidentiality of resident’s records/files – <i>Disclose only w/ Ombuds auth – identity w/ consent</i>	Confidential – may be disclosed only with consent or court order; except shall report to appropriate state agency re: health and safety	<i>Confidential – may be disclosed only at the discretion of the State Ombudsman</i>
Legal Rep of Office	No provision	Shall ensure legal counsel is available for advise & rep.	No provision
Interference	No provision	Willful interference prohibited – misdemeanor	<i>Willful interference is unlawful – civil penalty</i>
Other	* Refers to LTC resident’s “advocate” <i>not</i> ombudsman	1998 Amend removed Office from Dept on Aging & made independent state agency	
Regulations	Regs on-line*	Regs on-line	Regs on-line*

	LOUISIANA	MAINE	MARYLAND
Program	Yes	Yes	Yes
Statute/Title	Office of The State Long-Term Care Ombudsman	Services to Maine's Aging and Adults	Department of Aging
Citation	LA REV STAT ANN § 40:2010.1—5 (West 1992 & Supp 2000)	ME REV STAT ANN <u>TITLE 22</u> § 5107-A (West 1992 & Supp 1999)	MD ANN CODE art 70B § 5 (Michie 1998 & Supp 2000)
Enacted/Revised	1997	1995	2000
Pursuant to OAA	No mention – <i>Off of Elderly Affairs has power & duty to admin OOA related program</i>	Yes – support and maintain ombudsman program in accordance with OAA by agreement with a nonprofit organization	No mention – <i>Dept of Aging has authority to admin programs per OAA</i>
Oversight Agency	Office of Elderly Affairs	Bureau of Elder and Adult Services	Dept of Aging
Recipient	Residents of facilities	Residents of nursing, assisted living, or residential facilities or persons receiving in-home LTC services and consumers of Adult Day Care Services	Residents of “related institutions”
Complaints	Responsible to visit facilities regular, become acquainted with residents, family, personnel; serve as liaison; encourage self-advocacy <i>Investigate & resolve c/o – if referral to another agency is approp, shall refer with consent of complainant</i>	Investigate complaints regarding care or other concerns about resident or individuals receiving in-home LTC services, or consumers of Adult Day Care Services	Secretary may delegate his authority to ombudsman to receive, investigate & seek to resolve complaints re: operations of “related institutions” & to notify institution of violation and request State agency action if not corrected reasonable time
Access to Facility	Shall have immediate access to any resident – notify of presence	May enter onto premises of any residential care, assisted living or nursing facility to investigate, speak with resident	May, on own motion, make on-site visits to “related institutions” to determine compliance
Access to Records	May review or obtain <i>portion relevant to specific c/o of any books, files, medical, social or financial or other records pertaining to particular resident with consent if able</i>	May inspect and copy all records pertaining to resident with consent unless not competent & has no legal rep	Regulations shall provide for access, review, and copying of medical records to extent authorized by § 4-305(b)(3)
Coordination With Other Agencies	Nothing in this section shall be construed to supersede ultimate authority of Dept of Health over nursing homes <i>Coord w/ P&A systems</i>	Participate as observer and resource in any on-site survey or other regulatory review. Several other Maine laws have created mandatory collaboration with the Ombudsman Program.	Regulations shall provide for cooperation with other Depts
Represent Residents to Seek Remedies	No provision	Shall make legal services available – assist in asserting legal rights	No provision
Confidentiality of Ombudsman Records	Confidential – shall not disclose identity without consent or court order	May not be disclosed unless authorized by Ombudsman – disclosure of identity requires consent or court order	Confidential – regulations shall assure
Legal Rep of Office	No provision	No provision	No provision

	LOUISIANA	MAINE	MARYLAND
Interference	Willful interference unlawful Misdemeanor	No provision	May not willfully interfere – misdemeanor
Other	<i>Ombudsman Advisory Council</i>		
Regulations	Regs on-line*		Regs on-line

	MASSACHUSETTS	MICHIGAN	MINNESOTA
Program	Yes	Yes	Yes
Statute/Title	Department of Elder Affairs – LTC Ombudsman Program	Older Michiganians Act	Office of ombudsman for Older Minnesotans
Citation	MASS GEN LAW ANN ch 19A § 27—35 (West 1994)	MICH COMP LAWS ANN § 400.586g—j (West 1997)	MINN STAT ANN § 256.974 —.9744 (West 1998)
Enacted/Revised	1989	1987	1997
Pursuant to OAA	No mention	No mention – <i>Office on Aging has power to admin & supervise state plan per OAA</i>	Yes – Board on Aging incorporates Ombudsman program as required by OAA
Oversight Agency	Department of Elder Affairs	Office of Services to Aging	Minnesota Board on Aging
Recipient	Persons receiving treatment or care in licensed LTC facility – includes applicants, transfers and discharged	Residents of LTC facilities, includes foster care and homes for aged	Client = resident of LTC, Medicare recipient re access, d/c or denial of in/out-pt service, individual receiving or requesting home care serv
Complaints	Receive, investigate and resolve complaints – May initiate own investigation of facility w/o complaint – Make recommendation to facility for correction	Accept, investigate, verify, & work to resolve complaints reported to or initiated by Ombud relating to any action which may adversely affect...	**Shall gather info and eval any act, practice, policy, procedure or admin action that may adversely affect...
Access to Facility	Right of entry any time necessary & reasonable	Shall be allowed access 8am-8pm (volunteers limited to visiting hours) to speak with residents & observe all resident areas	Enter LTC facility w/o notice any time, hospital during bus hrs unless investigating & presence doesn't intrude
Access to Records	Shall have access to any resident's records (with consent or cause) & records of any public agency, including abuse complaints	No provision	Shall inspect records that pertain to care of client; shall have access to client records (consent needed only if competent or has legal rep)
Coordination With Other Agencies	If investigation determines act by facility may violate law/reg, shall report to appropriate agency – Shall report to AG and DOH upon receipt of c/o abuse, etc	Cooperate with persons or public/private agencies Make referrals to appropriate government and private agencies	Has access to state agency records, including confidential. Licensing agencies shall forward copies of corrective orders, penalties & complaint investigation reports
Represent Residents to Seek Remedies	May assist residents in asserting their legal rights	No provision	No provision
Confidentiality of Ombudsman Records	Disclosure only with Ombud authorization – disclosure of identity requires consent or court order	Shall establish and implement procedures to assure confidential processes	Data released at discretion of ombudsman – disclosure of identity requires consent or court order
Legal Rep of Office	No provision	No provision	No provision
Interference	No person shall willfully interfere – May petition court for injunction/relief	Misdemeanor to willfully hinder or refuse to comply	Misdemeanor to discriminate or retaliate against anyone who provides info to ombud
Other			** Authority extends to LTC facilities, hospitals, and home health agencies
Regulations			

	MISSISSIPPI	MISSOURI	MONTANA
Program	Yes	Yes	Yes
Statute/Title	LTC Facilities Ombudsman Act	State Ombudsman for LTC Facility Residents	Ombudsman Services*
Citation	MISS CODE ANN § (Law Co-op 1993 & Supp 2000)	MO ANN STAT § 660.600 – .608 & 660.620 (West 2000 & Supp 2000)	MONT CODE ANN § 52-3-601 –605 (1999)
Enacted/Revised	1988	1991	1995
Pursuant to OAA	Yes	Yes	Yes – As required by OAA, serves as advocate for LTC residents & coordinates legal services
Oversight Agency	Dept. of Human Services, Division of Aging and Adult Services	Division of Aging	Dept of Public Health & Human Services
Recipient	Residents of LTC facilities (skilled, nursing and care homes)	Any person receiving care or treatment in licensed LTC facility	Citizens residing in LTC facilities (skilled, intermed, or personal care) of any age
Complaints	Receive, investigate and resolve complaints	Receive, process, respond to, <i>investigate</i> and resolve complaints	Through necessary investigations, reports and corrective action, ensure a good quality of care and life be maintained for residents of LTC facilities
Access to Facility	Shall have access to LTC facilities during reasonable hours or at other times with prior approval of the administrator. May enter facility at a time appropriate to the complaint.	Has authority to enter and have access to residents at reasonable time in reasonable manner – <i>develop procedures to assure appropriate access</i>	Shall have access w/o prior notice – access must be granted during normal visiting hrs (9am-6pm) or any other time necessary
Access to Records	The clinical records of a resident may be examined by a representative of the Ombudsman Program, with permission of the resident or resident's representative	Shall have access to review records if given per-mission by resident/legal rep (no provision if resident unable to consent & has no legal rep) - <i>develop procedures to assure appropriate access</i>	No provision
Coordination With Other Agencies	State agencies authorized and directed to provide LTCO with requested information, cooperation and assistance. All advocacy organizations that receive state funding or designation shall cooperate with the LTCO Program.	No provision <i>except</i> Office of Advocacy for Elders shall coordinate activities with LTC Ombudsman regarding complaints (Elderly Advocate also investigates complaints)	No provision
Represent Residents to Seek Remedies	LTCO activities shall include mediation, negotiation, informing parties of alternative remedies, and report suspected criminal violations to the appropriate agencies	No provision	Coordinates legal services (mentioned only in purpose)

	MISSISSIPPI	MISSOURI	MONTANA
Confidentiality of Ombudsman Records	Shall not disclose identity of resident or complainant without written consent of resident or complainant or the legal rep of either. LTCO investigation files shall remain confidential except as required to carry out the duties of the program or by court order.	Files shall be disclosed only at discretion of Ombudsman; disclosure of identity requires consent or court order – Ombudsman not required to testify unless court deems necessary to enforce this act.	No provision
Legal Rep of Office	Attorney General	No provision	No provision
Interference	No provision	Class A misdemeanor for reprisal or retaliatory action for communicating with the Ombudsman	Civil penalty for violating access provisions
Other			“Office of Legal and LTC Ombudsman Services”
Regulations	Regs on-line	Regs on-line*	

	NEBRASKA	NEVADA	NEW HAMPSHIRE
Program	Yes	Yes – “Advocate”	Yes
Statute/Title	LTC Ombudsman Act	Services to Aging Persons	Office of the Ombudsman
Citation	NEB REV STAT § 81-2237—2264 (1999)	NEV REV STAT ANN § 427A.125—.165 & 427A.300 (Michie 1996)	NH REV STAT ANN § 161-F:10—:19 (Butterworth 1994)
Enacted/Revised	1996	1993	1990
Pursuant to OAA	Yes – Office established pursuant to OAA	Aging Services Division per OAA (comply as necessary to secure federal funds)	No mention
Oversight Agency	Dept of Health & Human Services	Aging Services Division of Dept of Human Resources	Dept Health & Human Services
Recipient	Resident/patient/client of LTC facility (age 60+), also B&C, adult day care	“Advocate” for residents of LTC facilities & residential care	Patient/resident/client 60+ of LTC facility (includes B&C, VA, rehab, psych hosp) < 60 some cases
Complaints	Investigate & seek to resolve complaints not reportable to APS – May initiate investigation based on observation of conditions in facility	Advocates receive, investigate & attempt to resolve complaints; investigate acts, practices, policies or procedures of any LTC facility or gov’t agency	Elicit, receive, investigate, & resolve complaints/concerns; Investigate admin acts or omissions of any facility or gov’t agency
Access to Facility	Shall have immediate access to patient/resident/client – must show ID	May enter any area of facility at reasonable times w/ or w/o notice, show ID – must allow access to residents at all times	May enter during normal business hours, show ID – may inspect premises
Access to Records	Shall have access to medical, personal records w/ consent or emergency or if no one able to give consent. Shall have access to any gov’n’t record necessary.	May inspect any records maintained by facility – medical records w/consent, if poss. May interview any officer, director, employee of facility or any resident/family	May inspect any books, files, medical records pertaining to resident – with consent, if possible
Coordination With Other Agencies	Referral to APS required for abuse, etc – ombud shall coord investigation w/ APS or police, if requested. <i>May report to other agencies</i> Any state agency responding to referral by ombud shall forward copy of reports, plan of correction, agency actions	May obtain such assistance and info as necessary from any state/local agency If appropriate, shall refer results of investigation to appropriate agency with authority to enforce law/regs	Upon request, all gov’t agencies shall cooperate and assist in provision of services, data necessary
Represent Residents	No provision	No provision	Prohibited from representing in state/federal courts
Confidentiality of Ombudsman Records	Confidential – disclosure of identity only with consent or court order or to APS	NRS 200.5095	Confidential – files shall not be disclosed w/o consent or court order
Legal Rep of Office	Ensure adequate legal counsel avail to office	No provision	No provision
Interference	No person shall willfully interfere (no penalty defined)	Shall not willfully interfere – monetary penalty	No provision – discrim & retaliation prohibited
Other			
Regulations	Regs on-line*		

	NEW JERSEY	NEW MEXICO	NEW YORK
Program	Yes	Yes	Yes
Statute/Title	Ombudsman for Institutionalized Elderly	Long-Term Care Ombudsman Act	Office for the Aging – LTC Ombudsman
Citation	NJ STAT ANN § 52:27G-1—16 (West 1986 & Supp 2000)	NM STAT ANN § 28-17-1—19 (Michie 2000) <i>State Agency on Aging at §28-4-1—9</i>	NY EXEC LAW § 544-a (McKinney 1996 & Supp 2000)
Enacted/Revised	1997	1997	1997
Per OAA	No mention	Yes	Yes
Oversight Agency	Independent state agency (Governor appointed)	State Agency on Aging	Office for the Aging
Recipient	Patient/resident/client (60+) of any facility (also B&C, VA, rehab, Psych hosp, day care, but not acute care)	Resident of any residential facility providing LTC services, includes B&C, adult day care	Residents of residential health care or adult care facility, including persons enrolled in LTC managed care plans
Complaints	Elicit, receive, process, respond to and resolve complaints – May investigate on own initiative	Identify, investigate & resolve complaints – May initiate investigations based on observation of condition of facility	Identify, investigate, resolve complaints
Access to Facility	May enter w/o notice, show ID & inspect premises (facility or gov't agency)	Shall have immediate access to resident – <i>SAoA may conduct unannounced quality eval, including undercover**</i>	No provision – investigation to be conducted in manner prescribed in regulations
Access to Records	May inspect any books, files, medical or other records that pertain to pt/res – May subpoena person, document	Shall have access to resident records w/ consent or cause Shall have access to state agency records, as necessary	“Record access ombudsman” must be competent to review medical & personal record – applies to State Ombuds also
Coordination With Other Agencies	Shall refer to approp gov't agency for action if pertains to regulatory compliance – if civil or criminal action is warranted, shall refer and agency shall report back on findings/actions	Refer to APS & licensing & coord investigation re: abuse, etc – State agencies/boards shall give priority to referrals from ombudsman – shall report back results, actions Coord with P&A systems	Ombud shall immediately report possible abuse, etc or Medicaid fraud to approp investigatory agency Office on Aging may request assist & data – such agencies are authorized to provide
Represent Residents to Seek Remedies	May institute action for injunctive relief or civil damages	Shall rep interests of residents before gov't agencies & seek admin, legal & other remedies	May rep interests of resident before gov't agencies & seek admin, legal, other remedies
Confidentiality of Ombudsman Records	Not public record, but may make public the complaint, the acts/practices, office opinion & recommendations	May be disclosed only at discretion of ombudsman; disclosure of identity w/ consent or court order or if needed to provide services	May not disclose any info w/o ombuds approval – Shall not disclose identity w/o consent or court order except to report abuse or M/M fraud
Legal Rep of Office	Shall employ independent legal counsel (<i>not</i> Atty Gen) – may institute action to enforce Act	SAoA shall ensure adequate legal counsel avail to office for consult, represent office, or to pursue remedy for resid.	No provision
Interference	Willful interference subject to civil penalty	Willful interference subject to civil penalty	Facility fails to coop – may be penalty per license agency
Other	Anyone suspects abuse, in course of employ, shall report (civil penalty if don't) Office is APS for institutionalized elderly		Ombuds has no authority to impose resolution unacceptable to either party or investigate final admin determin of state agencies
Regulations			

	NORTH CAROLINA	NORTH DAKOTA	OHIO
Program	Yes	Yes	Yes
Statute/Title	LTC Ombudsman Program	Long-Term Care Ombudsman	Dept of Aging – LTC Ombudsperson Program
Citation	NC GEN STAT ANN § 143B-181.15—.25 (Lexis 1999)	ND CENT CODE § 50-10.1-.01—.07 (Lexis 1999)	OHIO REV CODE ANN § 173.14—.26 and 173.99 (Anderson 1999 & Supp 1999)
Enacted/Revised	1997	1987	2000
Pursuant to OAA	Yes	No mention	No mention (Dept of Aging designated agency per OAA)
Oversight Agency	Dept of Health & Human Services *	Dept of Human Services	Dept of Aging
Recipient	Any person receiving care or treatment in LTC facility, includes adult care homes	Resident of LTC facility, includes B&C (includes those persons d/c last 9 mo)	Current, prospective, previous resident of LTC facility, includes foster care, B&C OR recipient of community-based LTC services
Complaints	Receive and attempt to resolve complaints informally – must allow facility to respond, correct, or provide info before any action taken	Investigate and resolve complaints	Receive, investigate, attempt to resolve complaints (may decline to invest for lack of funds or staff, or if frivolous, not made in good faith, or conflict of interest, or if long time has lapsed) or refer
Access to Facility	May enter facility and have reasonable access to resident w/o disruption of care – Must register presence if facility requires	Shall have reasonable access (norm working hours or by appt and w/ notice)	“Right” to access residents, facilities & tour unescorted during reasonable hours or as appropriate to investigation
Access to Records	Shall have access to patient records as permitted under OAA	Shall have access to resident records w/ consent of resident or legal rep, or w/ court order (no other provision)	Shall have access to recipient records reasonably necessary w/ consent or cause or <u>any</u> facility record (facility shall designate employees to witness consent, copy records)
Coordination With Other Agencies	May obtain cooperation, assistance, records from any gov’t agency and such agency shall provide – Shall notify APS if suspected abuse, etc	Report to any state agency factors found to relate to duty of agency – Lic & cert agency shall submit to Ombud approp complaints/info on conditions affecting health, welfare, civil rights – Ombuds may accept other agency investigations	Shall cooperate (reciprocal); State agencies shall provide access to records – Shall adopt rules re referral to state agencies – State agencies receiving referral shall keep office informed of disposition
Rep Residents	No provision	No provision	Coord with legal services
Confidentiality of Ombudsman Records	Confidential – identity shall be disclosed only as permitted by OAA	Confidential – Ombuds must auth release; disclosure of identity w/ consent or court order	Not public record, identities disclosed only w/consent or court order – other disclosure at discretion of Ombuds
Legal Rep of Office	Attorney General shall provide legal staff and advise to this Office	Attorney General's Office	Ensure adequate legal counsel - May subpoena persons, documents
Interference	Willful or unnecessary obstruction is misdemeanor	No provision – retaliation prohibited–no defined penalty	No provision

	NORTH CAROLINA	NORTH DAKOTA	OHIO
Other	* AAAs provide admin supervision of Regional Ombudsman		Shall register as resident advocate with Dept of Health <i>Office funded thru bed fee.</i> SLTCO may seek injunction against facility violation of residents' rights. Certification requirements for reps of the SLTCO.
Regulations			Regs on-line

	OKLAHOMA	OREGON	PENNSYLVANIA
Program	Yes	Yes	Yes
Statute/Title	LTC Ombudsman Act	Long Term Care Ombudsman	Department of Aging
Citation	OKLA STAT tit 63 § 1-2211—2216 (West 1997)	OR REV STAT ANN § 441.100—.153 (Butterworth 1991& Supp 1998)	PA STAT ANN tit 71 § 581-1—12 (West 1990) and tit 35 § 10225.301—.310 (Supp 2000)
Enacted/Revised	1996	1995	1988
Pursuant to OAA	Yes – shall carry out program in accord with	No mention	No mention – <i>Dept on Aging sole agency to receive or disperse funds per OAA</i>
Oversight Agency	Dept of Human Services	Independent agency, but LTC Advisory Committee monitor program - <i>appt by gov & legis</i>	Dept on Aging
Recipient	Resident of LTC facility	Resident of any licensed LTC facility, including NFs, adult foster homes, residential care and assisted living facilities	Older (60+) consumers of LTC services
Complaints	Identify, investigate, resolve complaints	Investigate, attempt to resolve complaint per informal means (mediation, persuasion) or refer to approp state agency	Investigate and resolve complaints * <i>AAAs responsible for protective services (may contract)</i>
Access to Facility	Shall have access to facility & resident	Right of entry any time necessary & reasonable, w/o disrupt care – Must show ID – prior notice not required – access public & service areas	No provision – <i>Protective services has access to persons in need by consent or court order</i>
Access to Records	Shall have access to resident records w/ consent or cause; access to facility records that are public; access to lic & cert agency records	Shall have access to any resident records & to records of public agency necessary to fulfill duty & relate to an investigation (access to medical record w/ consent, subpoena)	No provision – <i>Protective services has access by consent or court order</i>
Coordination With Other Agencies	No provision (except shall have access to lic & cert records)	Shall collaborate with specified state agencies	No provision – <i>Dept to coop. w/ approp. Public & private agencies to conduct evals re: quality of care...</i>
Represent Residents to Seek Remedies	Shall rep interest of residents before gov't agencies & seek admin, legal, other remedies	No provision	No provision – <i>Dept on Aging to “serve as advocate for the aging at all levels of gov’t” – AAA area plans to provide for legal counsel/rep</i>
Confidentiality of Ombudsman Records	Shall be disclosed only at discretion of Ombuds – disclose identity w/ consent or court order	Confidential – shall not disclose identity, except to state agencies, w/o consent or court order	No provision – <i>Protective service records confidential – release info to law enforce, obtain services, court order</i>
Legal Rep of Office	Shall assure adequate legal counsel avail for advice/rep–shall not rep individual residents	No provision though as a state agency has ability to access the Attorney General's Office	No provision
Interference	Shall not willfully interfere – misdemeanor	Refer to apporp agency for sanctions or other action	No provision
Other		Facility may file complaint re Ombuds or appeal action to LTC Advisory Committee	* Dept of Aging to establish Ombud program, including provide resources to AAAs and other contractors to investigate & resolve complaints

	OKLAHOMA	OREGON	PENNSYLVANIA
Regulations		Regs on-line*	

	RHODE ISLAND	SOUTH CAROLINA	SOUTH DAKOTA
Program	Yes	Yes	Yes
Statute/Title	LTC Ombudsman Act of 1995	Investigation of Health Facilities by Ombudsman	
Citation	RI GEN LAWS § 42-66.7-1—13 (Lexis 1998) and 23-17.5-121-14 and 23-17.16-2	SC CODE ANN § 43-38-10—60 (Law Co-op 1985 & Supp 1999)	SD CODIFIED LAWS § 28-1-44—45.7 (Lexis 1999)
Enacted/Revised	1995	1993	1991
Pursuant to OAA	Yes	Ombudsman program “may designate entities in accordance with OAA”	Yes – Office authorized under OAA
Oversight Agency	Dept of Elderly Affairs (administratively)	Dept. of Health and Human Services	Dept of Social Services
Recipient	Resident of health facility for institutionalized elderly, includes rehab, VA, rehab, B&C, residential care, home care	Client/patient/resident of facility	Residents of nursing and residential facilities
Complaints	Identify, investigate & resolve thru mediation, negotiation, admin action, education and training	Investigate any problem or complaint – Following investigation may issue report and recommendations	Purpose of Office is to investigate and resolve complaints
Access to Facility	Shall have access and enter facilities after notifying of presence	Shall have access to all facilities	No provision
Access to Records	Shall inspect any books, files medical or other records that pertain to resident & required by law to be maintained by facility	May request and receive written statements, documents, exhibits & other pertinent items	No provision
Coordination With Other Agencies	Make appropriate referrals of investigations to other state agencies (i.e. DOH, AG) Cooperation of any gov’t agency required (reciprocal) Shall establish interagency agreement	All departments/agencies shall cooperate <i>Allegations of abuse/neglect of resident to be investigated by Ombud, not Social Service, even if a child</i>	No provision
Represent Residents to Seek Remedies	No provision	No provision	No provision
Confidentiality of Ombudsman Records	Confidential – disclosed only with consent or court order – or as necessary to investigate & resolve or to refer to other state agency	Disclose only at discretion of Ombud – identity, disease, illness disclosed only with consent or court order	Confidential, but may release for any purpose directly related, as well as to federal agencies, and any committee or legislative body
Legal Rep of Office	No provision	No provision	No provision
Interference	No provision – retaliation prohibited	No person shall willfully interfere - misdemeanor	No person shall willfully interfere - misdemeanor
Other	Nothing in this chapter shall be deemed to limit powers & responsibilities prescribed by law to any other state depart or agency		Secretary may adopt reasonable & necessary rules for admin & operation of program
Regulations			

	TENNESSEE	TEXAS	UTAH
Program	Yes	Yes	Yes
Statute/Title	Tennessee Commission on Aging Act of 1982	Office of LTC Ombudsman	LTC Ombudsman Program
Citation	TENN CODE ANN § 71-2-101—111 (Michie 1995)	TEX HUM RES CODE ANN § 101.051—.064 (West 1990 & Supp 2000)	UTAH CODE ANN § 62A-3-201—208 (Michie 1997 & Supp 2000)
Enacted/Revised	1989	1999	1997
Pursuant to OAA	Yes – Ombud office shall carry out those function delineated in OAA	Yes – Shall have powers & duties required by state and federal law	Ombudsman shall comply with OAA – Div of Aging sole state agency w/ respon.
Oversight Agency	Commission on Aging	Dept on Aging	Dept Human Services – Div of Aging & Adult Services
Recipient	No provision	Elderly resident (60+) of licensed LTC facility	Resident (60+) in LTC,B&C, foster, residential facility
Complaints	No provision	Shall investigate & resolve complaints – <i>develop written complaint management process</i>	Receive, investigate, resolve complaints – after investigation, report findings/ recomm to complainant, resident, facility, gov’t agency
Access Facility	<i>Shall have access w/o notice 8am-8pm, by prior arrange, or good cause & 24 hr prior notice – notify of presence</i>	Shall have access to elderly residents – <i>have visible active presence</i>	May enter & inspect facility w/o notice – must show ID
Access to Records	<i>Shall have access reg business hrs to resident personal, medical, financial record to resolve specific problem – w/ consent, per Licensing or AG</i>	Shall have access to patient care records – Shall establish, by rule, procedures for access to medical records	May inspect, obtain any book, file, medical or other record – medical record can’t be accessed if competent resident or legal rep refuses
Coordination With Other Agencies	No provision	Shall coord w/ DD/MH P&A systems – Does not affect authority of DOH or DHS to regulate LTC facilities – <i>participate in survey activities</i>	Coordinate Dept’s services for elderly residents; Request & receive coop from any gov’t agency – Refer to APS, involve all approp agencies
Represent Residents	No provision	May use appropriate admin, legal & other remedies to assist elderly residents	No provision
Confidentiality of Ombudsman Records	No provision	Confidential – disclose identity only w/ consent or court order – other info disclosed only w/ Ombud authority	Disclose only at discretion of Ombud – identity disclosed w/ consent, court order, or to AAA, DOH, APS, law enforce, county atty
Legal Rep of Office	No provision	Dept shall ensure adequate legal advice & rep (AG)	<i>Shall assure adequate counsel</i>
Interference	No provision	Intentional interference is misdemeanor	Misdemeanor to: give advance notice to facility or agency, disclose confid. info, willfully interfere/refuse to comply w/ lawful demands
Other	Shall designate & contract with directly, or thru AAA, a local grantee to establish & operate local Ombudsman program	Shall estab statewide reporting system to collect, analyze data re c/o, if doesn’t duplicate other state report system; shall give info to DOH/DHS	May hold investing. hearings Operation joint respons. of Div on Aging & AAAs
Regulations	Regs on-line*	Regs on-line*	Regs on-line*

	VERMONT	VIRGINIA	WASHINGTON
Program	Yes	Yes	Yes
Statute/Title	State LTC Ombudsman	Department for the Aging	LTC Ombudsman Program
Citation	33 VT STAT ANN § 7501—7510 (Equity 1991 & Supp 2000)	VA CODE ANN § 2.1-371—373.9 (Michie 1995 & Supp 2000)	WASH REV CODE ANN § 43.190.010—.900 (West 1998 & Supp 2000)
Enacted/Revised	1999	2000	1999
Pursuant to OAA	Yes – Office established in accordance with OAA	Yes – program operated pursuant to OAA; Dept sole state agency w/ responsibility	Yes – instituted to comply with OAA
Oversight Agency	Dept of Aging & Disabilities	Department for the Aging	Dept of Community, Trade & Economic Development
Recipient	Older (60+) or disabled residents of LTC (nursing or residential care home)	Older persons (60+) – resident of LTC facility or recipient of community LTC services	Residents of LTC facilities, includes B&C, group home
Complaints	Shall investigate & resolve complaints	Dept/designee shall investigate <i>reasonably specified complaints referred to them</i> re: community services that provide LTC to elderly	Identify, investigate, resolve com-plaints
Access to Facility	LTC facilities shall provide access - may obtain access orders from judge if access denied	Right of access to residents & LTC facilities, including state hospitals, during normal work hrs, unless emergency	<i>Shall have approp access to facilities & residents – regular visiting hrs or as required by investigation – must show ID</i>
Access to Records	May review records of residents w/ written consent - may obtain access orders from judge if access denied by facility	Right of access to patient records w/ consent, or as appropriate if unable to consent	<i>Shall have access only w/ written consent of resident or legal rep.</i>
Coordination With Other Agencies	All state agencies shall comply w/ reasonable requests of ombudsman for info and assist	<i>Refer c/o re: LTC regulatory issues or alleged abuse, etc to approp agency</i>	Refer any complaint to any approp gov't agency – Dept of social & health services shall act as quickly as poss to referral from Ombud & shall report back results & action
Represent Residents to Seek Remedies	May pursue admin, judicial, other remedies on behalf of residents	No provision	No provision
Confidentiality of Ombudsman Records	Identity disclosed only w/ written consent or court order	Confidential – not subject to Va FOIA – may be released on confidential basis in compliance w/ regulations and OAA – Identity disclosed only w/ consent or court order	Confidential – disclosed only at discretion of Ombuds – identity disclosed only w/ consent or court order
Legal Rep of Office	Statute requires contractee to provide legal rep and advice, if not state employees	No provision	Budget proviso requires contract for legal services to the LTCOP
Interference	Person intentionally hinders, subject to prison/fine	No provision	Nursing home, boarding home and adult family home licensing laws provide for sanctions against a facility that interferes with an ombudsman. Max fine = \$3,000

	VERMONT	VIRGINIA	WASHINGTON
Other	May obtain access orders from judge if access denied	Dept shall contract w/ non-profit agency or AAA to administer Ombuds program	Nothing shall be construed to empower Ombudsman w/ authority re: licensing or sanctions
Regulations		Regs on-line*	Regs on-line*

	WEST VIRGINIA	WISCONSIN	WYOMING
Program	Yes	Yes	Yes
Statute/Title	W. Va. LTC Ombudsman Program Act	Board on Aging and LTC	LTC Ombudsman Act
Citation	W VA CODE § 16-5L-1—22 (West 1998 & Supp 2000)	WIS STAT ANN § 16.009 (West 1996 & Supp 1999)	WYO STAT ANN § 9-2-1301 —1309 ((Lexis 1999)
Enacted/Revised	1998	1999	1991
Pursuant to OAA	Yes – established to comply with & duties as mandated	Yes – shall operate office to carry out requirements of	No mention, but office exists pursuant to federal law
Oversight Agency	Bureau of Senior Services	Board on Aging and LTC (Exec Dir is the Ombudsman)	Dept of Health – Division on Aging
Recipient	Person living in a LTC facility	Aged or disabled receiving LTC, also community residential care or hospice	Anyone receiving care in LTC, includes home health, B&C, assisted living, adult day care, and APS -Senior /Elder abuse
Complaints	Receive, investigate, resolve complaints – may investigate on own initiative – don’t have to investigate if resources insufficient or complaint is trivial, frivolous, or not made in good faith or has been too long delayed	Investigate & serve as mediator or advocate to resolve complaints	Investigate & resolve complaints – Prior to investigate, shall notify facility/agency unless notice would result in increase harm or risk of
Access to Facility	Shall have access at time appropriate to complaint – prior notice not required – must show ID – may apply for warrant if access denied	May at any time, w/o notice, enter & have immediate access to resident in LTC facility	May enter a facility, w/ 24 hr prior notice & must show ID
Access to Records	Allowed access to all facility records and any resident record reasonably necessary w/ consent	May have access to & review records pertaining to care w/ consent or cause – Access to facility records as necessary – Access to DHFS records	If inspection requires review of record, shall refer to Dept, & must have consent of resident or legal rep
Coordination With Other Agencies	Shall have access any public record and be notified & allowed to observe surveys; shall refer suspected abuse to APS & Licensing & coord investigation or refer to other approp agencies, which shall report back	Joint investigations carried out with State DHFS under terms of a MOU	No provision – If problem not resolved w/i reasonable time, or if seriously threatens safety or well-being, then Ombudsman shall refer to appropriate agency
Represent Residents to Seek Remedies	May institute action for injunctive or declaratory relief, but not damages – shall coord w/ legal service prog	Refer residents to legal assistance providers as necessary	No provision
Confidentiality of Records	Disclosure of identity only w/ consent, court order, or to APS or Licensing	Disclosed only at discretion of Ombud – identity disclosed only w/ consent or court order	Identity disclosed only w/ consent or court order
Legal Rep of Office	Ensure sufficient access to legal counsel to bring actions on behalf of residents – AG, upon request, shall provide legal counsel & services	Shall employ an attorney for provision of legal services in accord w/ OAA	No provision

	WEST VIRGINIA	WISCONSIN	WYOMING
Interference	Misdemeanor for willful interference – fine and/or jail	Resident guaranteed right to communicate with Ombudsman. Retaliation for such communication prohibited	No provision – discrimination prohibited
Other	May apply to court for subpoena to compel testimony or production of document	Systemic advocacy to include monitoring implementation of state/federal rules	Person c/o against shall have opportunity to respond & appeal finding
Regulations	Regs on-line		

	Puerto Rico
Program	Yes
Statute/Title	Office of the Ombudsman for Elder Residents in LTC Facilities
Citation	PUBLIC LAW 308
Enacted/Revised	1999
Pursuant to OAA	No mention, but established to comply with duties as mandated
Oversight Agency	Governor's Office of Elderly Affairs
Recipient	Elders living in LTC facilities
Complaints	Receive, investigate, and resolve complaints
Access to Facility	Shall have access as deemed necessary by the Ombudsman - prior notice not required
Access to Records	Allowed access to all facilities' records and to residents' records unless they deny access
Coordination With Other Agencies	No provision
Represent Residents to Seek Remedies	No provision
Confidentiality of Records	Identity disclosed only at discretion of Ombudsman or with written consent or court order
Legal Rep of Office	No provision
Interference	Person intentionally hinders or retaliates against informant subject to legal procedures according to existing laws
Other	Immunity in carrying on functions
Regulations	

Note: Information presented in *italics* pertains to regulations relative to the program.

* Citations for regulations that are on-line were provided by the following states:

Alabama: AAC 70-X-3.12

Florida: FAC 58L-1-3

Idaho: IDAPA 15.01.03
Illinois: 89 Ill. Admin. Code 270 (subpart B)
Indiana: 460 IAC 1 - 7
Iowa: IAC 321-8-9
Kentucky: 910KAR 1:210
Louisiana: LAC 4:VII.1229
Missouri: 13 CSR 15-4.060
Nebraska: 15 NAC 3
Oregon: ORS 114-002 - 006
Tennessee: TRR 0030-1 - 9
TEXAS: TAC 40-9 Sec. 260.11
Utah: UAC R510-200-1 - 8
Virginia: 22 VAC 5-20-580 - 590
Washington: WAC 388-18-010 - 130