



**The National Long-Term Care
Ombudsman Resource Center**

Long-Term Care Ombudsman Program Strategy Session

December 2011

Final Report



**The National
CONSUMER VOICE**
for Quality Long-Term Care
formerly NCCNHR

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Lori Smetanka
Director, National LTC Ombudsman Resource Center

About the Project

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Introduction

The National Long-Term Care Ombudsman Resource Center (NORC) held a daylong strategy session December 8, 2011¹, bringing together long-term care and ombudsman experts, associational representatives, and advocates to discuss issues impacting State Long-Term Care Ombudsman Programs². Administration on Aging (AoA) Assistant Secretary Kathy Greenlee and the Director of the Office of Long-Term Care Ombudsman Programs, Becky Kurtz, seek to develop guidance to States around program structure and operations that will address and clarify inconsistencies across states. The Administration, through a contract with the National Long-Term Care Ombudsman Resource Center (NORC), provided for the gathering to participate in the strategy session to identify issues impacting state LTCO programs and recommendations for addressing those issues.

In preparation for the strategy session, the NORC identified six issue areas³ around which additional guidance from AOA would be helpful to LTCOP structure and operation, as determined through questions and requests for technical assistance received by NORC and conversation with State and Local Ombudsmen. NORC staff and consultants then prepared background informational briefs on six challenging issues for the participants. The issues are (1) Office of the LTCO; (2) Conflict of interest – LTCO program placement; (3) Conflict of interest – LTCO individual roles and responsibilities; (4) Systems advocacy; (5) LTCO services to residents; and (6) LTCO training and certification. The briefs include relevant language from the Older Americans Act, as well

¹ See Appendix A – LTCO Program Strategy Session Agenda

² See Appendix B – LTCO Program Strategy Session Participant List

³ See Appendix C – LTCO Program Strategy Session Discussion Issues

as pertinent language from research studies (such as the 1995 Institute of Medicine Report, *Real People, Real Problems: An Evaluation of Long-Term Care Ombudsman Programs Under the Older Americans Act*⁴), and an overview of guidance already provided by AOA to specific questions on these issues.

In addition to the issue briefs, participants were provided a list of discussion topics under each issue⁵. Select national associations (NASOP, NALLTCO, NASUAD, and n4a) were encouraged to share the discussion questions with their memberships and solicit feedback to share with AOA during the Strategy session, through this report, or through another vehicle.

Twenty-six participants, four AoA official listeners, and seven people affiliated with NORC, convened in Washington, D.C., on December 8, 2011, for a full day of intense focus on the identified issues. AoA Deputy Assistant Secretary Cindy Padilla, on behalf of Assistant Secretary Greenlee, welcomed participants and talked about the important work of the LTCO program. Deanna Okrent, Senior Health Policy Associate with the Alliance for Health Reform, facilitated the day's session.⁶ Sara Hunt, consultant with NORC, provided a brief overview of the LTCO program⁷ and Lori Smetanka, NORC Director, summarized the six major topics.

Participants were assigned to two workgroups facilitated by NORC staff and consultants. Workgroup participants volunteered as scribes and reporters of the groups' work to the larger group. Groups were encouraged to identify:

- concerns relevant to the main topic;
- consensus, when noted;
- disagreement, when voiced;
- need for AoA guidance; and
- recommendations.

⁴ Institute of Medicine. *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995

⁵ Appendix D1 through D6 – LTCO program discussion topics overview

⁶ Appendix A – LTCO program strategy session agenda

⁷ Appendix E – LTCO program history and overview

During group reports, the group at large was invited to comment on each issue. At the end of the day, the group at large had one more opportunity to provide comments concerning any of the six topics. A summary is provided for each topic area along with issues discussed during the large group commentary at the end of the day.

Lori Smetanka and Becky Kurtz closed the meeting with remarks. Participants were thanked for participating in these important discussions.

A summary and recommendations report from this strategy session was provided to AoA Assistant Secretary Greenlee in a meeting that she requested with representatives from various associations and organizations on December 19, 2011.

Office of the State Long-Term Care Ombudsman

Participants were asked to consider the “Office of the State Long-Term Care Ombudsman (SLTCO)” as mentioned in the Older Americans Act and discuss and consider the following with respect to this issue:

- Define the Office of the State Long-Term Care Ombudsman. Who encompasses it?
- Describe the Office’s authority and responsibilities to local LTCO (LLTCO) including designation, de-designation, accountability between the SLTCO and LLTCO, oversight of LLTCO work, and grievance procedures for LLTCO.
- Define the ideal Office of the SLTCO and State Unit on Aging’s (SUA) organizational alignment and relationship. Suggest possible remedies for any real and/or perceived conflict of interest resulting from program placement.
- Describe the SUA’s accountability and responsibility for the LTCOP.
- Depict the SUA’s role in LTCOP policy setting, contracting, and OAA and State Plan assurances.
- Discuss provisions for adequate and accessible legal counsel for the LTCOP. Describe options for the provision of conflict-free legal counsel.

Discussion and Ideas:

- There was general agreement among the group that the “Office of SLTCO” is the SLTCO, staff, and representatives of the local Long-Term Care Ombudsman (LLTCO) programs. The Office of the SLTCO is not the State Unit on Aging (SUA). Authority to designate local entities and individuals as representatives of the program rests with the State LTC Ombudsman. According to the small group, the OAA provides a clear line between the authority of the SLTCO and the program s/he oversees.
- The administration of the SLTCO program is a responsibility of both the SUA and SLTCO. And because the SUA has the authority to carry out administrative components for the program, there was agreement that there was SLTCOP responsibility to the SUA.
- General consensus held that the SUA director designates the SLTCO. The SUA director and the designated SLTCO should be free of conflicts of interest such as a fiduciary relationship with providers of long-term care, and the entity housing the Office of SLTCO should not also be the licensing and certification body.
- LTCO programs need clarification on whether it is a program that is designated or an individual within an organization that is designated as representative of the LTCOP.
- The SUA director and AAA directors should be supportive of the LTCO program. Examples given include: SUA director educating commissioners, board members, and elected officials about the unique role of the SLTCO and the SLTCO program; SUA and AAA directors facilitating memoranda of understanding regarding potential conflicts of interest between the LTCO program and other programs such as the Adult Protective Services (APS) program.
- Group discussion included the role of SUA directors and SLTCO evaluation and criteria for SLTCO disciplinary actions, including access to and review of SLTCO program records.
- The Planning and Service Areas (PSA) for the LTCO program may be determined by the SLTCO. The SLTCO program’s designated PSAs do not need to mirror the SUA’s designation of PSAs for Area Agencies on Aging (AAA).

- General consensus held that SUAs, SLTCO programs, AAAs, and LLTCO programs should continually analyze their program's placement for any perceived or real conflicts of interest for the LTCO program placement. They should seek remedies and/or resolutions for conflicts of interest in program placement and should seek guidance from AoA regarding possible remedies and solutions.

Recommendations for AoA:

- Provide guidance related to such shared responsibilities as contracting, quality assurance, program performance measures, and State Plan on Aging development.
- Provide guidance and share best practices on how a SUA director and AAA directors may be supportive of the LTCO program.
- Provide guidance to SUA directors on SLTCO evaluation and criteria for SLTCO disciplinary actions, including access to and review of SLTCO program records.
- Provide guidance on adequate legal counsel for the Office of the SLTCO program.
- Provide guidance on what it means to designate an entity as a LLTCOP.
- Suggest language to be included in contracts between the SLTCO and LLTCO including accountability to the SLTCO, technical assistance, training, performance measures, and quality assurance activities.
- Provide guidance on a grievance procedure between LLTCO and SLTCO. Clarify whether the SUA should coordinate actions in response to grievances across SLTCO, LLTCO, and AAAs. Provide guidance for SUA actions related to grievances against the SLTCO.

Conflict of Interest – LTCO Program Placement

Conflict of Interest as it pertains to LTCO program placement was discussed. Participants considered the following discussion points:

- Identify scenarios for program placement that would be detrimental to the integrity of the program.
- Describe acceptable and unacceptable remedies to conflict of interest around State and Local LTCO placement. Are there conflicts for which no remedy is acceptable?
- Discuss who should make the decisions regarding an inappropriate remedy or resolution to a conflict of interest and the final determinations and consequences.

Discussion and Ideas:

- The group did not agree on whether a political appointment for the SLTCO was appropriate.
- The group discussed placements and best practices related to placements of the SLTCO program and LLTCO programs. General consensus held that there are many different models for LTCO program placement that are acceptable, each with its own pros and cons.
- Processes/protections for independence of the LTCOP need to be in writing, firewalls installed and institutionalized as part of the organizational culture.
- Memoranda of Understanding (MOUs) should be created regarding any real or perceived conflicts of interest for the SLTCO and LTCO programs.
- Legal counsel to the LTCO programs must be independent. The ability of, for example, state assistant attorneys general to address LTCOP issues in a comprehensive way is challenging as their duties are so diverse.
- Advisory Councils to LTCO programs are helpful, although they should not have decision making authority over LTCOP policies or operations.
- States are unwilling to identify their LTCO program placement or conflict of interest issues to AoA because of the possible consequences. There needs to be clear mechanisms for reporting conflicts to AoA.
- AoA should enforce standards and implement the LTCO program statutes in the Older Americans Act (OAA). Suggested possible remedies raised by the group included: withholding funds for non-compliance, monitors, receivers, and contracts

out to other organizations; issuing of strong reports; and requiring a plan of correction with follow-up.

Recommendations for AoA:

- Give guidance on criteria for the position of SLTCO
- Provide guidance on placement and share best practices related to placement of the SLTCO program and LLTCO programs.
- Provide general guidance about MOUs and the types of MOUs that are appropriate regarding conflicts of interest.
- Provide a checklist for use by the SUA director and SLTCO for LTCO program effectiveness.
- Provide clear mechanisms for reporting conflicts of interest to AoA.

Conflict of Interest – LTCO Individual Roles and Responsibilities

Conflict of interest as it pertains to individual roles and responsibilities of the LTCOP was discussed. The workgroup participants considered the following:

- Conflicts of interest may arise for individual LTCO. Identify scenarios and describe acceptable and unacceptable remedies to individual conflicts of interest. Are there conflicts for which no remedy is acceptable?
- Discuss who should make the decisions regarding the appropriateness of a remedy or resolution to a conflict of interest and the final determinations and consequences. Provide guidance regarding LLTCO being asked or required by their employer to do tasks outside of their LTCO responsibilities that may be actual or perceived conflicts of interest.
- Discuss whether it is a conflict of interest for individuals whose prior role was working in a LTC facility, providing services to a facility or residents, or with a

survey/licensing agency, to become a LTCO. If it is a conflict, suggest a reasonable remedy or other provisions.

Participants identified scenarios where potential conflicts may exist. Discussion regarding actual or perceived conflicts of interest and possible remedies included the following:

- Potential staff or volunteer LTCO worked at a nursing home or assisted living/board and care facility. Options discussed were: a) Do not hire that person for one year; b) Hire the person but do not allow them to be the LLTCO for that facility or other facilities owned by that corporation. Discussion included the duration of the waiting period to hire and/or assigning the LLTCO to other facilities not associated with their previous employer. Discussion also included allowing SLTCO discretion for waivers of a waiting period.
- LTCO has a family member that works or lives in a nursing home or assisted living/board and care facility. Similar discussion as the example above.
- LLTCO coordinator has a family member in a facility. LLTCO coordinator assigns another staff LLTCO to cover that facility and asks the SLTCO to review the staff person's casework.
- A LLTCO program is housed in an agency whose executive director has an immediate family member that works or lives in a nursing home or assisted living/board and care facility in their region. Staff of a neighboring LLTCO program or the SLTCO covers that facility.

Discussion regarding actual or perceived conflict of interest with no acceptable remedies:

- Volunteers who may sell products to LTC residents or facilities (i.e., LTC insurance, durable medical equipment); and state survey agency staff who wish to volunteer with the LTCO program.
- It is a conflict of interest for a LTCO to be responsible for Adult Protective Services (APS) investigations in facilities.

- Where one's ability to leave personal biases behind is an issue and cannot be put aside.

Additional Comments:

- Screening, training, and evaluation are important to identify personal bias or values that conflict with the role of the LTCO and to establish boundaries between LTCO and facility staff.
- There are conflicts of interest related to confidentiality requirements for a LTCO who is also a licensed professional with state requirements for mandatory reporting of alleged abuse, neglect, and exploitation of vulnerable adults by licensed professionals.
- Participants noted that the integrity of the ombudsman is his/her greatest asset and so clear definition is needed of where conflicts of interest exist and loss of credibility results in loss of influence and impact of role.

Recommendations for AoA:

- Apply appropriate remedies and sanctions to SLTCO programs that have significant conflict of interest issues at the state and local level.
- Provide guidance for investigation of complaints against SLTCO and LLTCO.
- LTCO should not have APS responsibilities and AoA should address the conflicts of interests between the APS and LTCO programs.
- The SLTCO should make final decisions regarding LLTCO conflicts of interests. If there is a conflict of interest involving the SLTCO, the AoA should review the conflict of interest and determine a remedy and possible sanctions.
- AoA should provide guidance that LTCOs should not be: mandatory reporters of abuse, neglect, and exploitation; or responsible for APS duties. Also provide guidance on the differing roles of LTCO program, APS program, and state survey agencies.

LTCOP Systems Advocacy

Participants were asked to consider Systems Advocacy and discussed the following as it pertains to the LTCOP:

- Provide guidance on how the SUA should provide support to the Office of the SLTCO and the AAA should provide support to local LTCO in carrying out the responsibility for systems advocacy. Include a discussion of both resources and political support.
- Offer guidance on how the SLTCO provides support and seeks consensus with local LTCO on systems advocacy issues. Discuss possible resolutions between SLTCO and LLTCO regarding disagreement on systems advocacy issues.
- Offer suggestions on how legal counsel can help to support LTCOP systems advocacy.

Discussion and Ideas:

- The SUA and AAAs need to facilitate this responsibility by supporting the LTCO program. Examples include: coordinate stakeholders supporting the LTCO program advocacy even if contrary to the SUA or AAA agenda; support uncensored access to media, legislators.
- Examples of SUA support of the SLTCO program include: administrative support; informing SLTCO of state politics, policies, and procedures; and ensuring the SLTCO is represented in state agency workgroups, task forces, etc.
- There should be an established process for two-way communication between the SLTCO and the SUA and AAA directors (including LLTCO/AAA communication). The process should be part of the organizational culture, not a fluke or very haphazard or non-existent. Each should be respectful of the distinct roles of each organization.
- The SLTCO has the responsibility to inform and educate the LLTCO about the OAA.
- LTCO should not be impeded from contacting legislators, media, or making public statements.

- SLTCO should have a process for convening local ombudsmen to develop consensus on issues, delegation of work, and development of mutually supportive systems advocacy agenda. Some states have associations that already serve in this fashion and may be considered as models of practice for legislative advocacy. SLTCO can convene state level groups or participate in them to develop a legislative agenda. SLTCO involve LLTCO in developing consensus on issues, delegation of work and development.
- The role of technology in advocacy was discussed. The coordination of advocacy action across various stakeholder groups via technology is a useful strategy to pursue.
- Participants noted the ideal relationship would be in-house counsel dedicated to the LTCO program. Various avenues to secure legal counsel were discussed such as pro-bono attorneys, state agency legislative counsel, and public interest law centers. It was discussed that the role of the Title VII attorney encompasses systems advocacy and that most states are out of compliance with Title VII. The SUA must be involved in systems advocacy and coordinating justice related activities for the LTCO program.
- Adequate legal counsel to support the LTCO program's systems advocacy functions would include drafting legislation and regulations, analyzing contracts/policies, initiating legal action when necessary, drafting LTCOP policies/by-laws, guidance on how to best argue cases or work to resolve cases, providing support on cases, participate in task forces and other meetings, training for ombudsmen, representing residents and ombudsmen. The LTCO program's legal counsel needs to have expertise in long-term care issues and related laws.
- The workgroup discussed how to mitigate differences regarding advocacy issues when the SLTCO and the LLTCO are in disagreement about advocacy issues. It did not reach consensus on a resolution.

Recommendations for AoA:

- Provide guidance regarding how the SUA director and AAA directors may facilitate the systems advocacy responsibilities of the LTCO program. Provide guidance on

how the LTCO program should be able to do systems advocacy work, including access to legislators and media representatives. Models of practice from states could be provided as good ways for LTCO programs to do systems advocacy.

- Provide guidance on adequate legal counsel for the Office of the SLTCO program, including references to the responsibility for systems advocacy work.

LTCO Services to Residents

Services to residents, including issues around access to ombudsman records, access to residents and resident records, confidentiality, and serving special populations, including unbefriended elders and residents under age 60 was discussed by participants. They discussed the following:

- Ombudsman records. Discuss what constitutes Ombudsman records. Who owns the LTCO records; who has access, and what access means.
- Access to residents' records. Determine major access issues and possible remedies to disclosure of records, especially when a resident has diminished capacity and may have been abused, neglected, and/or exploited.
- LTC under the age of sixty (60). Discuss access by LTCO and any contradictions to the authority established in the OAA.

Discussion and Ideas:

- The issue of who owns LTCO records was discussed. Group consensus was that all LTCO records belong to the SLTCO program. Records were defined as any type of record regardless of its format such as hand-written, typed, or electronic record.
- The SLTCO should give permission for the release of LTCO records. Appropriate court orders may also be needed along with agreement by the SLTCO to release the records.

- The group discussed the subject of the LTCO having no consent from a resident to report Abuse/Neglect/Exploitation or review their records. It reached no consensus. Discussed methods of “creative ombudsing” to support the resident and get them the help they need – including reminding others of their duty to report ANE, recommending to APS a court order is needed to access information, etc.
- The group discussed new models of intake for information, especially regarding the role of Aging and Disability Resource Centers (ADRC). When ADRCs are doing intake for the LTCO program, what level of access to e-records should others in the aging disability network have? Discussion revolved around security levels for access to electronic information and records.
- The group recognized that guardians and agents with powers of attorney (POA) often try to interfere or inhibit the LTCO’s access to visit with a resident. Discussion pursued the subject of LTCO services to unbefriended persons, wards, and persons with cognitive impairments. The group also discussed the LTCOP’s relationship (or lack of) with the court systems regarding wards and guardians.
- The group discussed advocating for unbefriended elders and recommended that ombudsmen have full access to these individuals.
- The group discussed whether the SLTCO’s designee (LLTCO) has the authority to release LTCO records and whether the “designee” is the LLTCO or the “entity”. The group leaned toward a distinct designation of an individual being designated to release records and not the entity.
- Group consensus held that most state laws covered an LTCO’s access to residents of LTC facilities under the age of sixty years. Participants agreed that it is important to provide LTCO access to persons in facilities under the age of sixty or to have another designated state protection/advocacy agency responsible for persons under the age of sixty.
- The group discussed conflicting roles of LTCO in regards to mandatory reporting of abuse, neglect, or exploitation and/or being responsible for investigation abuse, neglect, or exploitation in LTCFs.

Recommendations for AoA:

- Provide clarification on ownership of LTCO records; who has access to them; and who has the authority to release the LTCO records.
- Provide guidance on what “records” means (i.e., records, files, electronic information, etc), and what an ombudsman who has access can do with them/the information
- Clarify what “designation” means, such as individual vs. programs, with reference to releasing documents.
- Provide guidance regarding: a LTCO’s access to residents with guardians and/or agents; access to residents’ records when the resident has cognitive limitations and may not be able to give clear consent; and the LTCO’s role with court appointed guardians and the court system. Models of practice regarding LTCO program relationships with courts and educational programs with courts regarding guardians and wards would be helpful.
- Provide clarification on access to LTCO electronic records, especially when the initial intake for LTCO services is through an ADRC or similar entity.
- Provide models of practice for LTCO and/or protection & advocacy groups’ responsibilities for residents sixty years of age or younger in facilities.
- Provide guidance that LTCO should not be mandatory reporters of abuse, neglect, and exploitation nor responsible for APS duties.
- Provide guidance around the LTCO’s access to all licensing and certification records of LTCFs, including hand-written notes and non-redacted files. Examples of MOUs between SLTCO programs and licensing and certification agencies would be useful.

LTCO Training and Certification

With respect to Training and Certification, workgroup participants were asked to discuss the following:

- Discuss standards for LTCO Training
- Describe general standards for LTCO and minimum requirements for LTCO training, certification, and de-certification.

Discussion and ideas:

- Some LTCO programs identify certification and designation as separate, yet some programs use the terms interchangeably. In order to remain consistent with OAA language the term “designation” should be used rather than “certified” in regards to training and final designation of LTCO responsibilities.
- Establish minimum requirements for training. Recommend minimum hours of classroom training, field experience/job shadowing/mentorship, observation by an experienced designated LTCO, and other training deemed necessary by the SLTCO. An exam should be a part of the initial training process.
- Core competencies for ombudsmen should be established. The basic elements should be drawn from the current NORC curriculum, i.e. complaint resolutions, confidentiality, etc.
- The re-certification process would entail continuing education credits (one recommendation was for 12 hours/year) and professional development opportunities available through various mediums. The CE content and source must be approved by the SLTCO, but not always conducted by the SLTCO.
- To receive designation as a LTCO, an individual must complete the required training, sign a Code of Ethics, be free of conflict of interest, sign LTCO program policy and procedures agreement, and pass a criminal background check.
- The group discussed but did not reach consensus on whether “certification” or “designation” for a LTCO should mean that the individual (staff and volunteer) investigates complaints.
- The group discussed but did not reach consensus on whether there should be a waiting period for volunteers prior to extensive training and testing. In addition, participants discussed how long should it take to train and test LTCO.

- The group discussed whether SLTCO should be held to the same requirements as LLTCO, or more broadly, what the training and certification requirements should be for the SLTCO.
- Additional comments by the group included: training may be provided in different formats such as interactive, webinars, conference calls, etc.; an example of a standardized exam within the aging network is the SMP and it should be reviewed; and a consistent role for LTCO volunteers should be established, along with training requirements for volunteers.
- There was a discussion of reciprocity between states as it relates to the designation of LTCOs. No consensus was reached by the group.

Recommendations for AoA:

- Provide guidance regarding designation as it relates to training and testing of LTCOs. Clarify the use of the words “designation” and “certification” as related to the OAA and training and testing of LTCOs.
- Establish minimum requirements for LTCO training. Recommend that core elements be based on the NORC curriculum. Provide guidance regarding the length of time to train and test potential LTCOs.
- Establish minimum requirements for continuing education for LTCOs.
- Provide guidance on what potential LTCOs should do regarding training, exams, criminal records checks, etc. prior to becoming an LTCO.
- Provide guidance regarding volunteer roles (i.e., investigations vs. administrative support), training, exams, and continuing education.
- Review evidence-based practices in core competency models as a possible approach for addressing training issues.

Comments by the Group not Captured in the Issues Summaries

- The organizational structure within AoA should help clear the distinctions between the LTCO program and the APS program.
- Legal counsel for the LTCO program within AoA is needed.
- The participants agreed that unique placements and structures of LTCO programs are acceptable as long as they produce the desired outcomes for long-term care residents and the LTCO program can fulfill its OAA responsibilities.
- Guidance is needed regarding the need for the SLTCO to have knowledge and/or control of the LTCO budget.
- Guidance and direction are needed on Lesbian/Bi-sexual/Gay/Transgender (LBGT) training and bias within long-term care settings.
- Guidance is needed on measurement of resources and the adequacy of programs to meet the needs of the long-term care residents.
- AoA should send out “Dear Director” letters similar to CMS’ “Dear Medicaid Director” letter to the network to provide guidance to LTCO programs.

Appendices

- A: LTCO Program Strategy Session Agenda
- B: LTCO Program Strategy Session Participant List
- C: LTCO Program Strategy Session Discussion Issues
- D1: Issue Brief – Office of Ombudsman
- D2: Issue Brief – Conflict of Interest: Program Placement
- D3: Issue Brief – Conflict of Interest: Individual Roles & Responsibilities
- D4: Issue Brief – Systems Advocacy
- D5: Issue Brief – Services to Residents
- D6: Issue Brief – LTCOP Training & Certification
- E: Unique Characteristics of the LTCOP PowerPoint



LONG-TERM CARE OMBUDSMAN PROGRAM GUIDANCE STRATEGY SESSION

December 8, 2011

Hilton Garden Inn WDC/US Capitol

1225 First Street NE

Washington, DC 20002

AGENDA:

- | | |
|-------------------|--|
| 8:30am – 9:00am | Breakfast |
| 9:00am – 9:30am | Welcome & Introductions |
| 9:30am – 10:15am | Setting the stage for the day's discussion – brief overview of why we're there, the major issues |
| 10:15am – 12:30pm | Break out group discussions #1 |
| | <ol style="list-style-type: none">1. Instructions and workgroup assignments2. Working group3. Report back & big group discussion |
| 12:30pm – 1:30pm | Lunch Discussion |
| 1:30pm – 3:30pm | Break out group discussions #2 |
| | <ol style="list-style-type: none">1. Working group2. Report back & big group discussion |
| 3:30pm – 3:45pm | Break |
| 3:45pm – 4:30pm | Big group discussion – review of recommendations |
| 4:30pm – 5:00pm | Closing & Next Steps |



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Long Term Care Ombudsman Program Strategy Session

Dear Participant:

Thank you for agreeing to participate in the Long Term Care Ombudsman Program (LTCOP) Strategy Session on December 8, 2011, convened by the National Ombudsman Resource Center (NORC) and made possible by the Administration on Aging. Participants will receive six issue briefs covering the following topic areas: Office of the State Long-Term Care Ombudsman; Conflict of Interest - Program Placement; Conflict of Interest - Individual Roles and Responsibilities; Training; Systems Advocacy; and Services to Residents. This document lists potential discussion points for the topic areas.

Office of the Long-Term Care Ombudsman

- Define Office of State Long-Term Care Ombudsman (SLTCO).
- Describe the Office's authority and responsibilities to local LTCO (LLTCO) including designation, de-designation, accountability between SLTCO and LLTCO, oversight of LLTCO work, and grievance process for the LLTCO.
- Define the ideal Office of the SLTCO and State Unit on Aging's (SUA) organizational alignment and relationship. Suggest possible remedies for any real and/or perceived conflict of interest resulting from program placement.
- Describe the SUA's accountability and responsibility for the SLTCOP.
- Depict the SUA's role in LTCOP policy setting, contracting, and OAA and State Plan assurances.
- Discuss provisions for adequate and accessible legal counsel for the LTCOP. Describe options for the provision of conflict-free legal counsel.

Conflict of Interest – LTCO Program Placement

- Identify scenarios for program placement that would be detrimental to the integrity of the program.
- Describe acceptable and unacceptable remedies to conflict of interest around State and Local LTCOP placement. Are there conflicts for which no remedy is acceptable?
- Discuss who should make the decisions regarding an inappropriate remedy or resolution to a conflict of interest and the final determinations and consequences.

Conflict of Interest - LTCO Individual Roles and Responsibilities

- Conflicts of interest may arise for individual LTCO. Identify scenarios and describe acceptable and unacceptable remedies to individual conflicts of interest. Are there conflicts for which no remedy is acceptable?
- Discuss who should make the decisions regarding the appropriateness of a remedy or resolution to a conflict of interest and the final determinations and consequences. Provide guidance regarding LLTCO being asked or required by their employer to do tasks outside of their LTCO responsibilities that may be actual or perceived conflicts of interest.
- Discuss whether it is a conflict of interest for individuals whose prior role was working in a LTC facility, providing services to a facility or residents, or with a survey/licensing agency, to become a LTCO. If it is a conflict, suggest a reasonable remedy or other provisions.

Systems Advocacy

- Provide guidance on how the SUA should provide support to the Office of the SLTCO and the AAA should provide support to Local LTCO in carrying out the responsibility for systems advocacy. Include a discussion of both resources and political support.
- Offer guidance on how the SLTCO provides support and seeks consensus with Local LTCO on systems advocacy issues. Discuss possible resolutions between SLTCO and LLTCO regarding disagreement on systems advocacy issues.
- Offer suggestions on how legal counsel can help to support LTCOP systems advocacy.

LTCO Services to Residents

- Ombudsman records. Discuss what constitutes Ombudsman records. Discuss who owns the LTCO records. Discuss who has access to Ombudsman records.
- Access to residents' records. Determine major access issues and possible remedies to disclosure of records especially when a resident has diminished capacity and may have been abused, neglected, and/or exploited.
- LTC residents under the age of sixty (60). Discuss access by LTCO and any contradictions to the authority established in the OAA.

LTCO Training and Certification

- Discuss Standards for SLTCO Training
- Describe general standards for LTCO and minimum requirements for LTCO training, certification, and de-certification.

During the Strategy Session we will break into smaller groups to give focused, thoughtful, and detailed discussion to each issue. **Please let me know your top three areas of interest by Wednesday, December 7.** We will do our best to accommodate each person's top two choices, however, based on your experience and expertise, we may ask that you participate in a different small group discussion. All participants will be given an opportunity throughout the day to comment and provide input on all six issues.

Sincerely,



Lori Smetanka
Director, National LTC Ombudsman Resource Center



OFFICE OF OMBUDSMAN

Issue Brief Prepared for the Long-Term Care Ombudsman Guidance Strategy Session December 8, 2011

BACKGROUND

Older Americans Act Provisions

The Older Americans Act requires the following with respect to the Office of Ombudsman:

- The State Agency shall establish and operate an Office of the SLTCO; and carry out through the Office a SLTCOP¹.
- The Office shall be headed by an individual known as the SLTCO, who shall have expertise and experience in the fields of long-term care and advocacy.
- The Ombudsman shall serve on a fulltime basis and personally or through representatives of the Office perform required functions.
- The State Agency may establish and operate the Office, and carry out the program directly or by contract or other arrangement with any public agency or nonprofit private organization².

With respect to designation of representative of the Office, the OAA includes the following:

- The Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity³. Individuals designated as representatives of the Office shall carry out the functions of the office in accordance with the policies and procedures established by the Office and the State agency.
- Entities designated as representatives of the Office must meet additional requirements as the Ombudsman may specify.

The OAA includes several areas of responsibility for the State Agencies:

- The State Agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office. When entities are AAAs, the State agency shall develop the

¹ Older Americans Act of 1965, 42 U.S.C. 3058g, Section 712(a)

² Section 712(a)(4)

³ Section 712(a)(5)

policies in consultation with the AAAs; the policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

- The State Agency shall develop the policies and procedures regarding confidentiality and conflict of interest
- The State shall ensure representatives of the Office shall have access to residents, facilities, and access to review records; and shall establish procedures to ensure access
- The State shall establish a statewide uniform reporting system
- The State agency shall establish procedures for disclosure of files maintained by the program
- In planning and operating the program, the State agency shall consider the views of AAAs, older individuals, and providers of long-term care.
- The State Agency shall ensure that conflict of interest does not exist with representatives of the office, and must establish, and specify in writing, mechanisms to identify and remove conflicts of interest.⁴
- The State Agency shall ensure that adequate legal counsel is available to provide advice and consultation; assist the Ombudsman and representatives in the performance of duties; and provide legal representation to any representative against whom suit or other legal action is brought or threatened⁵.
- The State Agency shall require the Office to: prepare an annual report; analyze, comment on, and monitor the development of laws, regulations and policies; provide information to public and private agencies, legislators, and others; enact procedures for training representatives of the Office; coordinate services with PnA, legal services, law enforcement, etc⁶.
- The State shall ensure that willful interference with representatives of the Office is unlawful; prohibit retaliation and reprisals against anyone filing a complaint with or providing information to any representative of the Office; and provide appropriate sanctions⁷.

Code of Federal Regulations

While regulations corresponding to the Ombudsman Provisions in the Older Americans Act do not yet exist, there is regulatory language that addresses the State Agency's responsibility regarding the LTCOP:

"The State Agency shall have within the State agency, or contract or otherwise arrange with another agency or organization, an Office of the State LTC Ombudsman, with a full-time State ombudsman and such other staff as are appropriate. If a State statute establishes a State ombudsman program, ... the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds."⁸

⁴ Section 712 (a-f)

⁵ Section 712(g)

⁶ Section 712(h)

⁷ Section 712(j)

⁸ 45C.F.R. 1321.9

Administration on Aging Statements

The Administration on Aging (AoA) has responded to questions related to the establishment of the Office of the Ombudsman and the responsibilities of the State Agency. An overview of AoA's statements related to key areas of concern is provided. These statements are a representative sample, not a comprehensive set of responses.

"The SUA and the Office of the SLTCO are distinct entities within the OAA....Whether the LTCO is placed within the single State agency, or by contract with an entity outside the State agency, the OAA is explicit that the LTCO is to be established in, and is to carry out his or her functions, in a separate 'Office'." ⁹

"...Cooperation and advance communication are implicit in the regulatory provisions which provide that the State agency has the responsibility to ensure that the Office of the SLTCO performs its functions and may establish policies for, and monitor the performance of, that Office." ¹⁰

"The requirement for an Office of the LTC Ombudsman implies that the State Ombudsman should have a significant placement within the agency and have control over all aspects of the program." ¹¹

"The designation of volunteers, including de-designation of volunteers, must be the purview of the LTCO and it must be clear to the volunteers that they work for and are answerable only to the LTCO for LTCOP activities." ¹²

"AOA has concluded that, if the "Office" equates to the State LTCO and his or her representatives, then it is only logical that determinations of the Office are the same as determinations of the State LTCO. However, AOA understands that there has been a lack of uniform understanding around the interpretation of the term "Office" As a result, AOA sees a need to provide further guidance to states." ¹³

In a 1996 letter, AOA addresses issues related to designation and ombudsman responsibility by stating, "Under the OAA, the Ombudsman is responsible for the actions of representatives of the Office, either through supervision or through the designation of programs... While other individuals or agencies may employ individuals who serve as representatives of the ombudsman program, only the Ombudsman may designate such individuals as an ombudsman representative." Further, AOA states, "Representatives of the Office are accountable in the performance of their activities on behalf of the Office of the State Long-Term Care Ombudsman to the State Ombudsman, who has direct responsibility for the Office of the State Long-Term

⁹ Administration on Aging. Letter to John McCalley, Iowa Department on Aging, April 26, 2010

¹⁰ Ibid.

¹¹ Administration on Aging. Letter to Director Sanderson, August 4, 2004

¹² Administration on Aging. Review of the State of Florida Long-Term Care Ombudsman Program. Sept 1, 2011

¹³ Ibid. p.27

Care Ombudsman, either as a result of supervision or through the designation of substate or local programs which meet the criteria of the Act.”¹⁴

“The intention is that a state ombudsman program be a single, cohesive, statewide program and that all representatives and entities which sponsor them meet criteria established by the State Ombudsman and be designated to participate in the statewide program by the State Ombudsman. By establishing the Office of the Ombudsman, the OAA makes the State Ombudsman directly responsible for all program representatives' actions relative to the program.”¹⁵

Reports and Research: Key Findings

The 1995 IOM study reported that, “...state LTC ombudsman programs need further guidance from AOA on the federal government’s expectations for operating a unified and cohesive Office of the State LTC Ombudsman program. Two key features and functions are relevant to whether a state ombudsman program operates as a cohesive unit: (1) methods by which local host agencies and individual ombudsmen are designated, trained, assisted, and monitored; and (2) methods by which the state unit on aging (SUA) carries out its responsibilities to the ombudsman program.”¹⁶

Recommendation 3.4 The committee recommends that the Assistant Secretary for Aging issue clearly stated policy and program guidance that sets forth the federal government’s expectations of state long-term care ombudsman programs. Such guidance should articulate operational principles in terms of basic elements of the program, including:

- Definitions, criteria, and standards to determine whether a state ombudsman program is operating as a unified entity throughout the state;
- Designation and de-designation process(es) of all host agencies and all individual representatives within the ombudsman program;
- Process(es) by which the state ombudsman program provides assistance (including training) to local ombudsman programs;
- Method(s) by which the state ensures that its ombudsman program has suitable access to facilities, records, and residents
- Method(s) by which the state ensures that its ombudsman program provides meaningful annual reports; and
- Method(s) by which the state ensures that adequate legal counsel is an integral part of the ombudsman program in both representing the ombudsman program itself and in providing advice and counsel in matters related to long-term care facility residents.¹⁷

¹⁴ Letter from AOA to Shedd and Hoberman, Nov. 8, 1996

¹⁵ Ibid.

¹⁶ Institute of Medicine. *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995. p.90

¹⁷ Ibid.

The IOM Report includes recommendations related to the provision of legal counsel for state and local ombudsman programs:

“Recommendation 3.7 The committee recommends that the Assistant Secretary for Aging develop plans of action and cooperative agreements with the Legal Services Corporation, the National Association of Protection and Advocacy Systems [now the National Disability Rights Network], the National Association of Medicaid Fraud Control Units, and the Office of Inspector General of the Department of Health and Human Services, to foster and encourage a variety of legal assistance resources for residents of long-term care facilities.”¹⁸

Recommendation 3.8 The committee recommends that the Assistant Secretary for Aging require that each state unit on aging include in its state plan a description of how the state has funded and ensured the provision of adequate and independent legal counsel to the ombudsman program, including how all designated representatives of the Office of the State Long-Term Care Ombudsman are afforded legal counsel so that all their mandated duties and services can be and are performed.¹⁹

“The [IOM] committee recognizes that adequate legal resources are not an end in themselves but are an essential element of the ombudsman programs’ infrastructure. Without such resources, the program is greatly hampered in its ability to comply with other mandated provisions in the OAA....”²⁰

Table 5.2 Structure of the Office of the State LTC Ombudsman and Elements of the Host Agency(s) for the State and Local Entities – Essential Practices

“The state ombudsman is the head of the Office of the State LTC Ombudsman program and controls the administrative, advocacy, and budget decisions of the Office. The state ombudsman is independent in all actions but reports and consults with the head of the SUA or their designee to ensure identification and resolution of agency-wide issues, programmatic and fiscal integrity, and coordination of efforts.”²¹

Table 5.4 Legal Authority – Essential Practices

“The Office or state ombudsman has authority and written procedures to designate or de-designate all representatives of the Office and the host agencies of local ombudsman programs.

The state has provided for sanctions and applied them for the willful interference with a representative of the Office when performing assigned duties and for any retaliation or reprisal by any entity against any person who cooperates or works with a representative of the Office.”²²

Table 5.5c Resources: Legal – Essential Practices

¹⁸ Ibid. p.95

¹⁹ Ibid. p.96

²⁰ Ibid. p.96

²¹ Ibid. p.162

²² Ibid. p.166

“The Office and all its representatives have adequate legal counsel to: defend and assist it in the performance of all mandated duties of the Office; provide advice and counsel needed to protect the health, safety, welfare, and rights of residents; and pursue administrative, legal, and other appropriate remedies on behalf of residents.

For purposes of fulfilling these functions, legal counsel is adequate if it is: (a) a regular and integral part of the ombudsman program; (b) knowledgeable; and (c) without conflict of interest. “Knowledgeable” means that counsel has in-depth training and experience in LTC, elder law, disability law, issues of program administration, and the legal needs of facility residents. “Without conflict of interest” means that the principles stated by the committee in Recommendation 4.4 are followed.”²³

More recently, in 2002, NASOP hosted a retreat, *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, in which stakeholders made numerous recommendations related to LTCOP operations and effectiveness including:

A recommendation from the Bader Retreat states: “The Office of the State Long-Term Care Ombudsman should employ, contract or otherwise have a formal agreement with an attorney who has relevant experience and expertise and who is free of conflicts of interest.”²⁴

Independence and the LTCO’s Ability to Fully Represent Residents, Estes et al –

“Recommendation 2.4: State LTCOPs should increase communication between parties (e.g. SUA administration, licensing agencies, and CAGs) by setting up work groups and negotiating memoranda of understanding that clarify and delineate respective roles and responsibilities in order to ensure that all parties are aware of the designated roles, responsibilities, and capabilities of ombudsmen.”

“Recommendation 2.5: The LTC Ombudsman Program should be a coherent unified program with continuity in the state system and the local Ombudsman Programs clearly designated as reporting to the State Ombudsman Program director on all matters related to the Ombudsman Program. Relationships between state and local LTCOPs should be enhanced through increased training, supervision and technical assistance, provision of educational materials, and timely information on legislative and advocacy issues.”²⁵

“The OAA grants authority to the State Ombudsman to designate entities and individuals to represent the Office. This authority should be formalized at the State level into administrative rules, with the assistance of legal counsel for the LTCOP, to assure that certain conditions exist

²³ Ibid. 173-174

²⁴ National Association of State Long-Term Care Ombudsman Programs. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, April 2003, p.43

²⁵ Estes, Carroll, Zulman, Donna, Goldberg, Sheryl, & Ogawa, Dawn. *Independence and LTCOP’s Ability to Fully Represent Residents*. Appendix IV. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*. National Association of State Long-Term Care Ombudsman Programs. April 2003.

in local entities before contracts are signed and that only appropriate persons are hired to serve as local ombudsmen.”²⁶

“Barriers to performance of advocacy functions by local Ombudsmen may be erected by sponsoring agencies for local programs and may be subtle or blatant, much as barriers that exist at the state level for some LTCOPs. Routine assessments of local programs, along with frequent contact of other sorts, is vitally important if those barriers are to be identified, let alone remedied. Area Ombudsmen may not feel free to tell the State Ombudsman when they have been forbidden to issue a press release, distribute an action alert, or testify at a meeting. When they likewise are restricted, State Ombudsmen may not do anything to intervene. The result is an ineffective program.”²⁷

“State Ombudsmen should expect the federal Administration on Aging to monitor each state’s program performance, identify problems, and require correction by the State Agency or State Ombudsman involved. In much the same way, local ombudsmen should be assured that the State LTCOP has quality control measures in place, and will enforce the terms of its contract with a local program’s sponsor.”²⁸

²⁶ Houser, Esther. Systems Advocacy in the Long-Term Care Ombudsman Program. Appendix V. The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future. National Association of State Long-Term Care Ombudsman Programs. April 2003

²⁷ Ibid. p.119

²⁸ Ibid. p.120



CONFLICT OF INTEREST: PROGRAM PLACEMENT

Issue Brief Prepared for the Long-Term Care Ombudsman Guidance Strategy Session

December 8, 2011

Older American Act Provisions - State LTCOP

- LTCOP is established in Title VII Chapter 2 of the OAA.¹
- LTCOP shall serve on a fulltime basis, and shall, personally or through representatives of the Office....”²
- The state agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.³
- The office of the SLTCO must not be located in an organization responsible for licensing and certification of long-term care services or an association or affiliate of long term care facilities.⁴

Older Americans Act – local LTCOP

- In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.⁵
- Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall (i) have demonstrated capability to carry out the responsibilities of the Office; (ii) be free of conflict of interest and not stand to gain financially through an action or potential action brought on behalf of

¹ OAA Title VII, Chapter 2, Section 712, (a) Establishment

² OAA Title VII, Chapter 2, Section 712, (a)(3) Functions

³ OAA, Title VII, Chapter 2, Section 712, (4)(a) In General

⁴ OAA, Title VII, Chapter 2, Section 712 (4)(b) Licensing and Certification

⁵ OAA, Title VII, Chapter 2, Section 712, (5)(a)

individual the Ombudsman serves; (iii) in the case of the entities be public or nonprofit private entities; and (iv) meet such additional requirements as the Ombudsman may specify.

Administration on Aging Statements

The Administration on Aging (AoA) has responded to questions and non-compliance issues related to conflicts of interest for the LTCOP in the state of Florida.⁶

“Appointment and Removal of the State Long Term Care Ombudsman - ...AoA sees the need to provide additional clarification to the states regarding the concept of the “Office of the State Long Term Care Ombudsman” in relation to the State agency.”

“...By placing responsibility for promulgation of facility licensure rules in the agency that is also tasked with the appointment and removal of the LTCO who in turn is responsible in part for assessing the adequacy of facility licensure rules, Florida has created an organizational conflict of interest. The OAA indicates that the appointment and removal of the LTCO must be free from conflict of interest. ... AoA sees the need to provide additional clarification to the states to help states properly identify and remedy conflicts of interest.”

“The Secretary of DOEA effectively serves as a gatekeeper for volunteers who apply to become local Ombudsmen.... This perception is further reinforced by the practice of the Secretary of DOEA acting to de-designate Ombudsman volunteers ... these practices usurp the authority and responsibility of the LTCO to designate local volunteers and undermine the representative relationship between the LTCO and local ombudsman representatives, including local ombudsman volunteers. The designation of volunteers, including de-designation of volunteers, must be the purview of the LTCO and it must be clear to the volunteers that they work for and are answerable only to the LTCO for LTCOP activities.”

The Administration on Aging (AoA) has responded to questions and non-compliance issues related to conflicts of interest and advocacy for the LTCOP in the state of Iowa.⁷

Whether the Long-Term Care Ombudsman is placed within the single State agency, or by contract with an entity outside the State agency, the OAA is explicit that the Long-Term Care Ombudsman is to be established in, and is to carry out his or her functions, in a separate “Office.” 42 U.S.C. §§ 3058f(1); 3058g(a)(1)(A). The OAA also explicitly

⁶ Administration on Aging, Department of Health and Human Services, Compliance Review of the State of Florida Long Term Care Ombudsman Program, September 1, 2011.

⁷ Administration on Aging, Department of Health and Human Services, Memorandum from Jim Varpness to John McCalley, Director of Iowa Department on Aging, April 26, 2010.

describes the responsibilities of the Ombudsman and makes clear that the Ombudsman's duties include testifying before a State legislature or other policy-making body.

In a letter to Connecticut in 1997, the issue of program placement was raised. In this letter, AOA said, "... the [LTCOP] is organizationally placed in a variety of settings in states throughout the nation. No one setting is necessarily inherently preferable to another. What is most important is that the LTCOP be located organizationally where it is most fully and effectively able to respond to the complaints, individually and collectively, made on behalf of facility residents and to otherwise represent the interests of such residents in the manner delineated in the ombudsman provisions of the OAA. In AoA's view, the organizational location that is the most free of conflicts of interest, potential conflicts of interest, and conflicts with the mission and operations of other programs organizationally co-located is the one that will enable the program to best serve the mission and requirements of the OAA."⁸

Overview of Literature/Research

The National Ombudsman Resource Center (NORC) and the National Association of States United for Aging and Disabilities (NASUAD) issued in 2011, A Primer for State Aging Directors and Executive Staff, The State Long Term Care Ombudsman Program.⁹ Data collected in 2011 reflects the following:

- 14 SLTCOPs are within independent SUAs
- 23 SLTCOPs are within SUAs inside an umbrella agency
- 2 SLTCOPs are outside of the SUA in an umbrella agency that includes the SUA
- 2 SLTCOPs are outside of the SUA but within other multifunction government agencies
- 3 SLTCOPs are inside state government in an independent agency
- 9 SLTCOPs are outside state government within an advocacy agency

The Institute of Medicine (IOM) study¹⁰ in 1995 included an entire chapter on the discussion of conceptual variations including (1) conflicts of loyalty, (2) conflicts of commitment, and (3) conflicts of control. The discussion centered on issues of judgment and objectivity, time and attention, and independence. The IOM study committee made the following recommendations:

⁸ AOA letter to Joyce Thomas, April 4, 1997

⁹ A Primer for State Aging Directors and Executive Staff, State Long Term Care Ombudsman Program, National Ombudsman Resource Center, National Association of States United for Aging and Disabilities, 2011.

¹⁰ The Institute of Medicine, An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act, 1995

4.1 The committee recommends that Congress amend the Older Americans Act to include the following policy directive. By fiscal year 1998, no ombudsman program should be located in an entity of government (state or local) or agency outside government whose head is responsible for:

- Licensure, certification, registration, or accreditation of long term care residential facilities;
- Provision of long term care services, including Medicaid waiver programs;
- Long term care case management;
- Reimbursement rate setting for long term care services;
- Adult protective services;
- Medicaid eligibility determination;
- Preadmission screening for long term care residential placements; or
- Decisions regarding admission of elderly individuals to residential facilities.

4.2 The committee recommends that the Assistant Secretary for Aging adopt a clear policy that prohibits parties who provide, purchase, or regulate services that are within the purview of the ombudsman program from membership on policy boards having governance over the long term care ombudsman program. The policy should not prohibit these parties from membership on boards and councils that serve solely in advisory capacities.

4.3 The committee recommends that the Assistant Secretary for Aging establish procedures and resources by which to identify potential conflicts of interest in the areas of loyalty, commitment, and control that are pertinent to the long term care ombudsman and ombudsman representatives and provide guidance on how to address such conflicts of interest.

In a study and review of the Colorado Long Term care Ombudsman Program¹¹, the following abbreviated recommendations were provided:

1. Continue to contract the LTCO Program outside of state government. Though many states do it, a December 18, 2001 discussion draft memo to all State Ombudsmen issued by the AoA stated a State Agency on Aging “cannot serve as the State LTC Ombudsman.”
2. Follow the current procurement process for the LTCO Program unless after following recommendation three below, The Legal Center continues to be the only bidder. There is great benefit to contracting only with the State’s Protection and Advocacy (P&A) Agency, but given the State’s procurement rules, the rationale for maintaining the program specifically

¹¹ Bozinovski, Susanna, “Review of the Colorado Long Term Care Ombudsman Program”, December 2008

with the P&A Agency may not be appropriate.

3. Solicit widely in January 2009 for Letters of Intent to bid on the LTCO Program contract for 2009-2011.

4. Synchronize the dates of this sole source or regular contract with the State Plan on Aging timeframe as soon as possible.

5. Continue to have an experienced, high-level Program Specialist within the SUA to oversee contractual activities and serve as an liaison between the contractor and the SUA. The SUA Director needs to have real-time knowledge of what is happening in the State LTCO Program. Assignment of this task must be to someone who can and will directly communicate with the SUA Director. Recommend minimizing the layers through which information between contractor and State staff must travel.

6. Whenever there is a vacancy of the LTC Ombudsman position, the contractor must allow the State staff to participate in the recruitment ... The performance management process for the State LTC Ombudsman should be a joint undertaking led by the contractor but involving input from the State and local Lead Ombudsmen and AAAs.

8. The SUA should consider giving authority to the State LTC Ombudsman to designate the local agencies that house the local programs. This would likely strengthen the relationship between the local ombudsmen and the State Ombudsman throughout the state. Colorado is one of only four states nationally that does not allow the State LTC Ombudsman to designate local ombudsman programs, which are AAAs or other entities in many other states (NASUA, January 2008).

9. Before making a significant change to the placement or structure of Colorado's LTCO Program take additional time and involve many stakeholders.



CONFLICT OF INTEREST: INDIVIDUAL ROLES AND RESPONSIBILITIES

Issue Brief Prepared for the Long-Term Care Ombudsman Guidance Strategy Session

December 8, 2011

BACKGROUND

Older Americans Act Provisions – Roles and Responsibilities

The state LTCOP shall be headed by an individual to be known as the State Long Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy.¹

“The Ombudsman shall serve on a full-time basis...”²

Duties of the SLTCO are defined in the OAA, section 712 (a)(3)(A) (i) through (l). Key responsibilities include: identify, investigate, and resolve complaints; provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents; inform the residents about means of obtaining services; ensure that the residents have regular and timely access to LTCO services; represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies; provide administrative and technical assistance; analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, etc.; recommend any changes in such laws, regulations, etc; facilitate public comment on the laws, etc.; provide for training of the representatives of the Office; promote the development of citizen organizations to participate; and provide technical support for the development of resident and family councils.

¹ OAA Title VII, Chapter 2, Section 712, (a)(2) Ombudsman

² OAA Title VII, Chapter 2, Section 712, (a)(3)(A)

Duties of the local LTCO are defined in the OAA, section 712 (a)(5)(B)(i) through(vii). Key responsibilities include: provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents; ensure that the residents have regular and timely access to LTCO services; identify, investigate, and resolve complaints; represent the interests of the residents before governmental agencies; analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, etc.; facilitate public comment on the laws, etc.; support the development of resident and family councils; and carry out other activities that the Ombudsman determines to be appropriate.

Older Americans Act Provisions – Individual Conflicts of Interest

The State agency shall (1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the LTCO (whether by appointment or otherwise) or the designation of an entity designed... is subject to a conflict of interest. State LTCOP shall ensure that the Ombudsman does not have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care services; does not have an ownership or investment interest in a long term care facility or a long term care service; not employed by or participating in the management of a longer care facility; and does not receive or have the right to receive, directly or indirectly, remuneration under a compensation arrangement with an owner or operator of a long term care facility; and establish, and specify in writing, mechanisms to identify and remove conflicts of interest; identify methods by which the State agency will examine individual, and immediate family members to identify the conflict; and the actions that the state agency will require the individuals and such family members to take to remove such conflicts.³

Older Americans Act Provisions – Legal Counsel

The Older Americans Act specifies that the State agency shall ensure that adequate legal counsel is available, and is able, without conflict of interest, to provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; assist the Ombudsman and representative of the Office; and legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened; and the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

³ OAA, section 712, (a)(F) Conflict of Interest, (1) – (4)(B)

Overview of Literature/Research

The Institute of Medicine 1995 committee⁴ recommends the following regarding (1) individual conflicts of interest, and (2) legal counsel and conflict of interest.

The committee recommends that the Assistant Secretary for Aging establish procedures and resources by which to identify potential conflicts of interest in the areas of loyalty, commitment, and control that are pertinent to the long term care ombudsman and ombudsman representatives and provide guidance on how to address such conflicts of interest.

The committee recommends that each state unit on aging, in exercising its responsibility to ensure that legal counsel is available without conflict of interest to the statewide long term care ombudsman program, adopt the following three principles to guide the selection of counsel:

For purposes of representing the ombudsman in 9a) employment, contract, or other administrative functions and (b) litigation brought against the ombudsman in connection with the performance of his or her official duties, representation by the state's office of the attorney general is appropriate and generally free of conflict of interest.

If advice and counsel related to the rights of long term care facility residents is provided by a government employed lawyer, then the lawyer and agency employing the lawyer, including any "umbrella" agency, should not advise or represent other agencies or interests that could conceivably have a conflict of interest with the resident's interests or ombudsman's responsibilities.

If advice and counsel related to the rights of long term care facility residents is provided by a lawyer not employed by government, then the ombudsman should receive assurances of conformance to state rules of professional conduct for the legal profession.

Frequently States will seek guidance from their state's Office of Attorney General. In a letter dated June 11, 1996, from the State of Nebraska Office of Attorney General and the Nebraska

⁴ Institute of Medicine, Real People Real Problems: An Evaluation of the Long Term Care Ombudsman Programs of the Older Americans Act, 1995.

Department of Aging⁵, clarification was provided regarding an Ombudsman Advocate (volunteers) employed by a long term care facility. The Nebraska Attorney General's office concluded that employment in a long-term care facility would constitute a "pecuniary" interest and would, therefore, bar an individual from serving as an Ombudsman advocate.

A study conducted in Kentucky regarding the placement of local Ombudsman programs⁶ concluded that "...it does not appear that contracting with a non-AAA service provider assures autonomy and singularity of purpose or eliminates the risk for conflict of interest. In some states, AAAs contract for Ombudsman services but do so with generic "senior service" type agencies or a community action agency. Here the Ombudsman may be no less constrained than one on the payroll of an AAA."

⁵ Nebraska Office of the Attorney General, letter dated June 11, 1915

⁶Huber, Netting, and Kautz, "Difference in Types of Complaints and How They were Resolved by Local Long Term Care Ombudsmen Operating In/Not In Area Agencies on Aging", Journal of Applied Gerontology, Volume 15, number 1, March 1996.



SYSTEMS ADVOCACY

**Issue Brief Prepared for the Long-Term Care Ombudsman Guidance Strategy Session
December 8, 2011**

BACKGROUND

Older Americans Act Provisions

Engaging in systems advocacy is a core function of the Long-Term Care Ombudsman Program. The Older Americans Act (OAA) responsibilities require the program and its representatives to:

- Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to long-term care facilities and services in the state;
- Facilitate public comment on laws, regulations, policies, and actions related to residents of long-term care facilities and the ombudsman program;
- Recommend any changes in laws, regulations, policies, and actions that will further promote the interests, well-being and rights of residents;
- Provide such information as the State Ombudsman Office determines to be necessary to public and private agencies, legislators, and other persons, regarding: (1) the problems and concerns of individuals residing in long-term care facilities; (2) and recommendations related to these problems and concerns (Older Americans Act of 1965, Sec. 712(a)(3), 42 U.S.C. §3058g)

Requirements for adequate legal counsel provide support for the systems advocacy responsibilities. The State agency shall ensure that

- adequate legal counsel is available, and is able, without conflict of interest, (i) to provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; (ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and (iii) 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

- the Office pursues administrative, legal, and other appropriate remedies on behalf of residents. (Older Americans Act of 1965, Sec. 712(g), 42 U.S.C. §3058g)

Administration on Aging Statements

The Administration on Aging (AoA) has responded to questions related to the implementation of the LTCOPs systems advocacy responsibilities in the OAA. An overview of AoA's statements related to key areas of concern is provided. These statements are a representative sample, not a comprehensive set of responses.

"The State [Unit on Aging] must affirmatively require the LTCOP to carry out issue advocacy and logically may not simultaneously erect barriers to the advocacy."¹

"The State agency does not have the right to approve the communications that the Ombudsman's Office chooses to make to policy makers, including a State legislature. However, the OAA does not prohibit you from adopting a policy requiring proposed testimony from being shared in advance or circulated for comments or in-put, provided that in the end the ombudsman retains the absolute right to decide what finally should be presented by that Office."²

"...Information dissemination is often one of the most effective ways for the LTCO to conduct issue advocacy on behalf of residents and their interests as well as to provide valuable information to the public...Effectively conducting information dissemination depends upon the program's ability to freely respond to media inquiries, issue press releases and hold press conferences."³

"...The concept of replacing an ombudsman as part of Gubernatorial turnover is less than compelling since the principles of LTCO independence and focus on the 'health, safety, welfare, and rights' of residents require that the LTCO not be appointed for the purpose of representing a Governor's policy positions."⁴

Reports and Research: Key Findings

A study conducted by the National Association of State Long-Term Care Ombudsman Programs in 2005–2006 found evidence of state imposed limitations on systems advocacy.⁵

- 36% of state ombudsmen need prior approval before testifying to legislators on issues related to long-term care facility residents;

¹ Administration on Aging. Review of the State of Florida Long-Term Care Ombudsman Program. September 1, 2011. p. 14.

² AoA Region V Memorandum to Iowa State Agency, April 26, 2010.

³ AoA. Review of the Florida LTCOP. op.cit, p. 19.

⁴ Ibid., p. 24.

⁵ National Association of State Long-Term Care Ombudsman Programs. White Paper: Systems Advocacy and The Long-Term Care Ombudsman Program. March 2007.

- 21% of state ombudsmen are not allowed to initiate contact with legislators;
- 12% of state ombudsmen have never provided written or oral testimony to lawmakers regarding the interests of long-term care residents;
- 6% of state ombudsmen were unwilling to respond to the survey during office hours.

The 1995 IOM study reported that, “Ombudsmen—particularly state ombudsmen—operate in a politically charged environment accentuated by the fact that most often the state ombudsman is a state employee. Government cannot function efficiently if its employees work in opposing directions. All levels of government in the United States have formal and informal standards that govern chains of command. Every executive branch of government justifiably exercises some control over its employees’ contacts with the legislative branch and media.... By federal statute, the ombudsman is required to speak out against government laws, regulations, policies, and actions when the circumstances justify such action. Taking such steps, however, is antithetical to the hierarchical rules of government. It is not surprising, therefore, that conflicts occur. The imposition of a state’s routine chain-of command rules on the ombudsman can significantly constrain his or her independence, although no person in such situations may intentionally act to interfere with the work of the ombudsman.” (p. 8)

“The committee believes that the individual and systemic successes attributed to the ombudsman program occur despite considerable barriers in most, if not all states...In many states, the program attempts to operate in a structural environment that expressly prohibits or, at least, does not foster its ability to carry out all federally mandated functions. The committee observed such examples as prohibitions on state and local ombudsmen from talking to any state or federal legislators about issues of concern to residents...” (IOM, 1995, p.12)

To review the literature, despite the assertion of the illegality of impeding LTCOPs systems advocacy efforts in the OAA, many host agencies continue to prevent the LTCOP’s advocacy work (Estes *et al.*, 2006; 2004b; 2001b; Houser, 2002; NASOP, 2003). Often this restriction on autonomy is the result of a miscommunication regarding what systems advocacy work is, while other instances are due to the restrictions imposed on the host agency by funding sources (i.e., Georgia Elderly Legal Assistance Program, ELAP) (Estes *et al.*, 2007).⁶

The bureaucratic rationality of the environment in which the LTCOP functions influences the program’s effectiveness in systems advocacy by imposing normative structures on the LTCOP that conflict with their participation in systems level advocacy. While it may not be intentional, the LTCOPs placement under Area Agencies on Aging, legal services agency or other host agencies may limit the LTCOPs ability to perform systems advocacy such as talking to the media, monitoring and speaking out on legislation or lobbying for policy change.⁷

⁶ Hollister, Brooke. Systems Advocacy and the Local Long-Term Care Ombudsman Program. 2008. p. 275.

⁷ Ibid. p. 276.

More than half of state ombudsmen (55%) report that the placement of their state LTCOP creates difficulties for their ability to fulfill their mandate under the Older Americans Act. Reported difficulties include lack of autonomy to speak to legislators or the media, conflicts of interest, barriers to policy information, bureaucracy, limited access to resources, and budget vulnerability.⁸

LTCOPs in state agencies (both SUA and non SUA) are much more likely (63% and 60%, respectively) than state LTCOPs in legal or nonprofit agencies (22%) to report difficulties in carrying out their responsibilities and providing services.⁹

More than half (54.9%) of ombudsmen stated that the placement of their state LTCOP creates difficulties for them in terms of their ability to fulfill their mandate under the OAA (Survey Question 1). In some instances, constraints around organizational placement impede the efforts of ombudsmen to fulfill the requirements of legislative and administrative policy advocacy. When state ombudsman responses are examined by the organizational placement of their LTCOP, 62.2% of those within SUAs and 60% of those in other state agencies reported that the placement of their program creates difficulties for service provision, whereas only 22.2% in independent agencies reported difficulties caused by program placement.¹⁰

⁸ Estes, Carroll, Zulman, Donna, Goldberg, Sheryl, & Ogawa, Dawn. Independence and LTCOP's Ability to Fully Represent Residents. Appendix IV. The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future. National Association of State Long-Term Care Ombudsman Programs. April 2003.

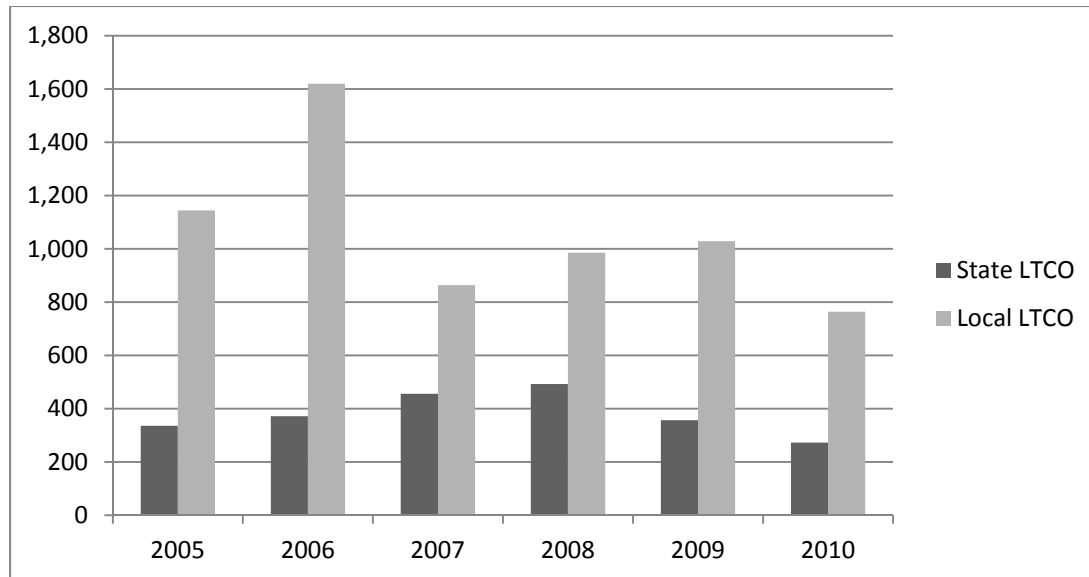
⁹ Ibid.

¹⁰ Estes, C., Zulman, D., Goldberg, S., & Ogawa, D., State Long Term Care Ombudsman Programs Factors Associated With Perceived Effectiveness. The Gerontologist. Vol. 44, No. 1, p. 111.

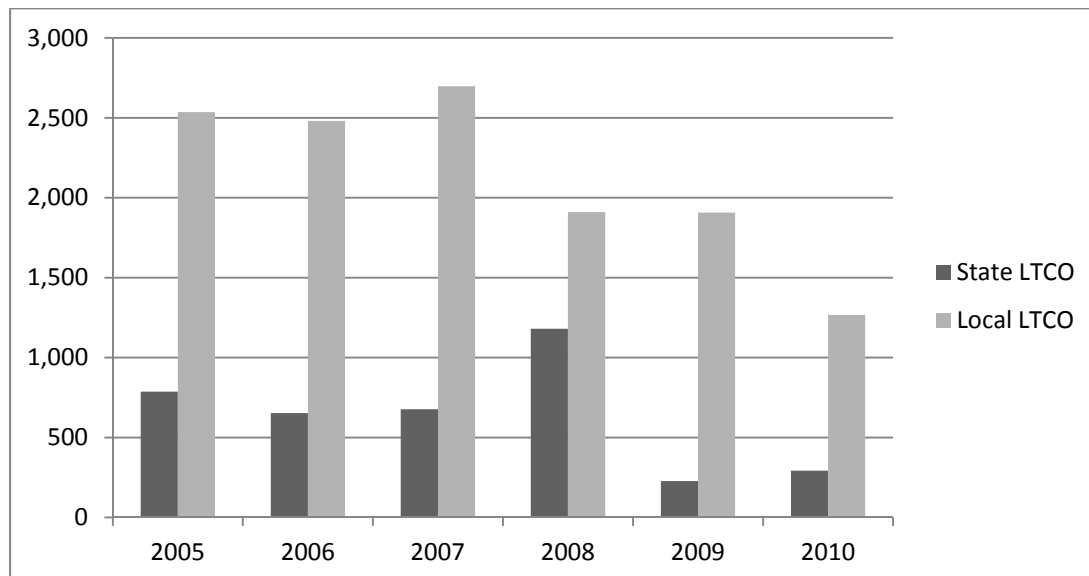
NATIONAL OMBUDSMAN REPORTING SYSTEM DATA¹¹

Work with Media

Number of Interviews and Discussions, State and Local LTCO Contacts



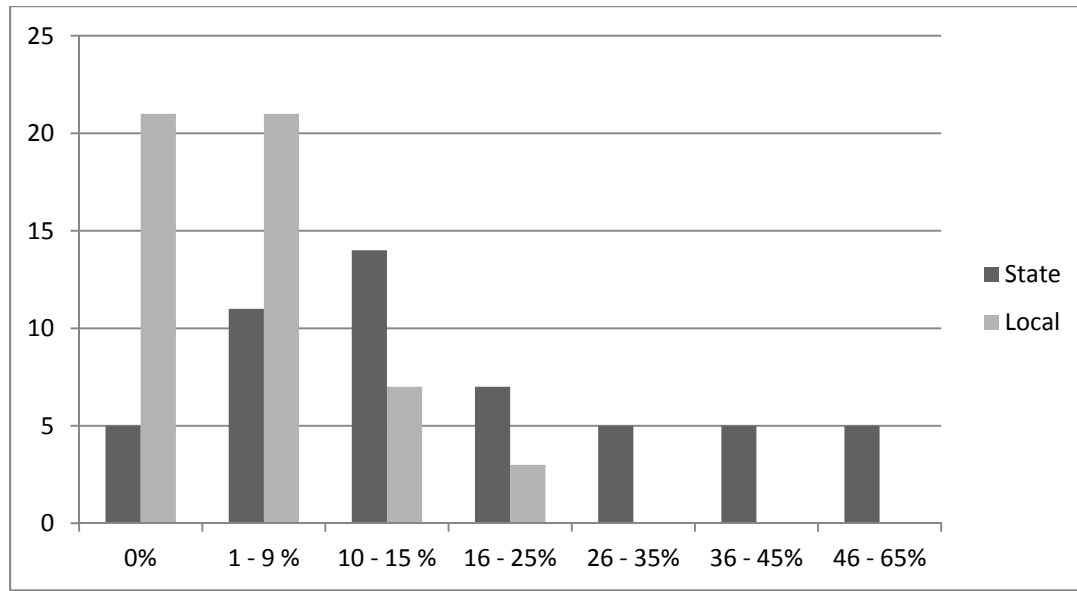
Number of Press Releases



¹¹ Administration on Aging. NORS Data 2010, Tables A.

http://www.aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Ombudsman/National_State_Data/index.aspx

Percent Time Monitoring, Working on Laws, Policies, Regulations, NORS Data 2010





SERVICES TO RESIDENTS:

Access to Records, Access to Residents, Disclosure, Confidentiality

**Issue Brief Prepared for the Long-Term Care Ombudsman Guidance Strategy Session
December 8, 2011**

DISCLOSURE OF OMBUDSMAN RECORDS/INFORMATION

Older Americans Act Provisions

The Older Americans Act requires the following with respect to Ombudsman Records/Information:

Procedures are to be established by the State Agency for the disclosure of ombudsman program files. Those procedures must include language that¹:

- Ombudsman program files/records may be disclosed only at the discretion of the State Ombudsman (or someone designated to disclose the files and records); and
- Prohibit the disclosure of the identity of any complainant or resident with respect to whom records/files are kept, unless
 - The complainant or resident (or their legal representative) consents to the disclosure in writing;
 - Consent is given orally and then is documented by the ombudsman program representative according to procedure; or
 - Disclosure is required by a court order

Administration on Aging:

In reviewing a question regarding whether a state's abuse reporting law that did not contain an exception for the ombudsman program was in conflict with the ombudsman confidentiality provisions of the Older Americans Act, AOA wrote, "The ...legislation...requires the reporting of alleged elder abuse with no explicit exception for the ombudsman. To the extent that the legislation is interpreted to require reporting by the State Ombudsman, it conflicts with the confidentiality requirements of OAA section 712..."²

¹ OAA Title VII, Section 712(d)

² Letter from AOA to Sue Ward, Aug 28, 1998

In a separate letter, AOA wrote, "... the ombudsman may not disclose the identity of the resident or complainant at issue without appropriate consent. State law may not require reporting of suspected abuse, neglect or exploitation by the LTCO Program where such reporting violates the Federal requirement that an ombudsman is prohibited from the disclosure of the identity of a complainant or resident without appropriate consent pursuant to Section 712(d) of the OAA."³

Research Findings:

During the retreat held by the National Association of State LTC Ombudsman Programs, The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future, the issue of was addressed through discussion of how to safeguard information due to advances in technology. Questions arose, and a request for guidance from AOA issued on electronic security⁴.

ACCESS TO RESIDENTS and RESIDENT RECORDS

The Older Americans Act requires the State Agency to ensure that representatives of the Office of the Ombudsman have access to⁵:

- long-term care facilities and residents
- medical and social records of a resident if:
 - s/he (or her legal representative) has given consent;
 - s/he is unable to give consent and has no legal representative; or
 - access is necessary to investigate a complaint if
 - a legal guardian refuses to give permission
 - the representative (of the Office of Ombudsman) has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
 - the representative gets approval from the State Ombudsman

ACCESS TO RESIDENTS UNDER AGE 60

The Older Americans Act defines "older individual" as someone who is 60 years of age or older⁶. "Resident" is defined as an older individual who resides in a long-term care facility⁷.

³ AOA Letter to Nels Holmgren, October 31, 2011.

⁴ Kautz, James. Data and Information in Long-Term Care Ombudsman Programs: Challenges, Opportunities, *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, Appendix VII. NASOP. April 2003.

⁵ OAA Title VII, Section 712(b)

⁶ OAA Section 102(a)(40)

⁷ OAA Section 711(6)

Research Findings:

The Institute of Medicine addressed the unmet need among residents not typically served by the OAA program, including individuals less than 60 years of age. The Committee found that expansion to this population appears to violate the OAA, although there are examples of OAA dollars being used to provide services to individuals less than 60. It goes on to state that all residents, despite their age, typically experience similar impairments and face similar issues in adjusting to the facility. Further, some ombudsman programs have already determined to serve younger residents, and do so through non-OAA funding. Reasoning has been that if one resident in a facility – regardless of age – has a problem, other residents might have similar problems. The Committee concluded that including younger residents makes sense in that it provides a valuable service to those residents; draws on the considerable knowledge developed by LTCO; and may identify issues that could lead to preventive actions that benefit the residents traditionally served by the ombudsman⁸.

⁸ Institute of Medicine. *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995. P.85



The National Long-Term Care Ombudsman Resource Center

TRAINING AND CERTIFICATION

Issue Brief Prepared for the Long-Term Care Ombudsman Guidance Strategy Session
December 8, 2011

BACKGROUND

Older Americans Act Provisions

The Older Americans Act contains basic requirements regarding training for Long Term Care Ombudsmen (LTCO).¹ A summary of these requirements from a 2000 NORC document are below.

- The Administration on Aging (AoA) is to develop model standards for training LTCO—both paid and unpaid volunteer
- The State Long Term Care Ombudsman (SLTCO) is responsible for establishing procedures for training representatives of the LTCO Program based on the AoA standards
- The training is to be developed in consultation with representatives of citizen groups, long-term care providers, and ombudsmen
- A minimum number of hours of initial training and an annual number of hours of in-service training for all designated representatives (LTCO) is to be specified
- The training is to include content relating to:
 - Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;
 - investigative techniques; and
 - such other matters as the State determines to be appropriate.
- The Office of State Long Term Care Ombudsman shall prohibit any representative of the LTCOP, except the SLTCO, from carrying out ombudsman program responsibilities unless the individual has:
 - completed the required training and
 - been approved by the SLTCO as qualified to carry out the activity on behalf of the program.²

Administration on Aging Statements

The Administration on Aging (AoA) has addressed training and certification in a few documents.

In a Program Instruction memo from 1981 the AoA says the following regarding LTCO training and complaint resolution:

“The development and provision of regular training support for staff on the State and local levels is essential to the continuing successful operation of long-term care ombudsman programs. The Long-Term Care Ombudsman Program and the

¹ 42 U.S.C. 3058g

² Hunt, Sara. National Long-Term Care Ombudsman Resource Center. Best Practices: Training for Long-Term Care Ombudsmen. June 2000.

State and Area Agencies on Aging should ensure that persons with complaint investigation and resolution responsibilities who are affiliated with ombudsman programs receive training in the amount and frequency necessary to fulfill those responsibilities.”³

More recently, the 2004 Regional AoA Checklist for Effective State Long-Term Care Ombudsman Program states the following:

3. If the state has local ombudsman programs and representatives, there is an established process for a) ensuring that they have demonstrated capability to carry out the responsibilities of the Office and can operate without conflict of interest; b) designating them to participate in the statewide LTCOP, and c) monitoring their performance.⁴

11. The Office has written procedures which specify the content and number of hours of initial training and annual in-service training and training content; and the Office provides training to representatives of the office, including unpaid volunteers, according to the procedures.⁵

12. The Office ensures that all LTCOP representatives in the state receive training in documentation of cases and complaints to increase consistency and uniformity in the National Ombudsman Reporting System (NORS) (training initially offered in 2004).⁶

Additionally, a 2004 letter from the Regional Administrator of AoA Region VI Office following a site visit gave the following recommendation regarding the placement of the Volunteer Coordinator for volunteer Ombudsmen:

Placement of volunteer ombudsman. In Arkansas, AARP recruits the volunteer ombudsmen and the volunteers report to the Area Agencies on Aging. The Volunteer Ombudsman Coordinator does not report to the State Ombudsman.

Recommendation: AoA suggests placement of volunteer ombudsman program under the Office of State Ombudsman. The SUA doesn't necessarily have to supervise the volunteer ombudsmen, but organizationally the volunteers should be under the Office of the State Ombudsman for oversight and training.⁷

Overview of Key Issues

A 2000 NORC document reviewed the key components of a training and certification process and determined the following four elements were present in most programs.⁸

³ Administration on Aging. AoA-PI-81-8. Supplemental Guidance in Implementation of Long-Term Care Ombudsman Program Requirement of the Older Americans Act. January 1981.

⁴ Administration on Aging. Regional AoA Checklist for Effective State Long-Term Care Ombudsman Programs. 2004.

⁵ Ibid. pg. 2.

⁶ Ibid., pg. 2.

⁷ Administration on Aging. Letter to Director Sanderson, Arkansas Department of Human Services. May 2004.

⁸ Hunt, Sara. National Long-Term Care Ombudsman Resource Center. Best Practices: Training for Long-Term Care Ombudsmen. June 2000.

Designation or Certification

According to the OAA, the Office of the LTCO can designate representatives of the Office and most states call this process designation or certification. The official designation of representatives of the Office is important for a variety of reasons including:

- strengthen the credibility of the LTCOP by having a standardized process to achieve designation,
- adhere to the OAA requirements by involving the SLTCO in the process as the SLTCO usually has the final authority in granting designation or certification status,⁹
- maintenance of standards to retain designation as a LTCO such as, no conflicts of interests, completing continuing education, submitting reports and adhering to program policies and procedures,
- maintain consistency of program standards by creating a process for revoking designation usually due to violation of LTCOP policy and procedures.

The terms “designation” and “certification” are used interchangeably in this document since most states use either term to identify a similar process; however, it is important to note that some states have both a designation and certification process. States using both terms use certification to mark the successful completion of initial training and require additional criteria (e.g. being free of conflict of interests, signing an agreement to comply with the LTCOP policies and procedures, sign a code of ethics) to receive designation as a long-term care ombudsman.¹⁰

Levels of Training

Some SLTCO programs have different levels of training that lead to different classifications of volunteers or staff. For example, some programs have “Friendly Visitors” that receive an entry level amount of training about residents’ rights, long-term care and the Ombudsman Program and visit residents to provide information about the LTCOP and residents’ rights. If the resident has a complaint or needs assistance the Friendly Visitor cannot provide, the volunteer would make a referral to a Certified Long-Term Care Ombudsman.

Training Content and Curriculum

Based on the OAA requirements and the basic knowledge an individual needs to serve as an Ombudsman most state LTCO programs use a training curriculum that features several “core” areas that usually include, but are not limited to the following elements: introduction to the LTCOP, long-term care residents, the aging process, long-term care facilities, the regulatory system, long-term care financing, residents’ rights, the problem-solving process and the state structure of the LTCOP.¹¹

However, despite most state LTCO programs using a training curriculum with core components the training content and process vary dramatically among programs. Additionally, according to an April 2003 document many state LTCO programs are “sorely deficient” in creating an effective training program that includes “detailed position descriptions, written policies, regular performance evaluations, intermittent training audits, standardized certification tests and

⁹ OAA Title VII, Chapter 2, Section 712 (a)(5)(A)

¹⁰ Hunt, Sara. Electronic Memo: Steps to Implement a Certification Process in Maryland. December 2009.

¹¹ Hunt, Sara. National Long-Term Care Ombudsman Resource Center. Best Practices: Training for Long-Term Care Ombudsmen. June 2000.

procedures, formal disciplinary and grievance policies as well as other aspects of organizational coordination and communication.”¹²

A few of the fundamental recommendations made to improve consistency in training standards in the April 2003 report included: mandating a minimum standard of 60 hours of basic certification training, incorporate training methods that use a variety of training aids other than lecture, require a certification exam, provide regular training assessments and continuing education to meet those needs and include education regarding resident autonomy and paternalism in initial certification training.¹³

Training Components and Methods

Responses from 45 State Long-Term Care Ombudsmen to a recent certification questionnaire illustrate the variety of training and certification requirements among state LTCOPs.¹⁴ Major differences for training and certification among the states include:

- A few programs have multiple levels of certification for volunteers and staff
- Some programs train, but do not certify staff and volunteers
- A few programs train and certify staff and volunteers who do not investigate complaints¹⁵
- Of the 13 programs that said they have a required number of hours for initial training and certification the responses ranged from a total of 14 hours to 96 hours
- Not all state programs require a certification exam
- Not all programs have a required timeframe for completion of initial training/certification and those that do average 3-6 months

Comments regarding several of the primary areas of training and certification are reflected in the table below:

	Paid Staff Ombudsmen (certified and investigates complaints)	Volunteer Ombudsmen (certified and investigates complaints)
Certification/Training Requirements are located in	93%: State Regulation 46%: LTCOP Policy and Procedure 44%: State Law	88% LTCOP Policy and Procedure 43%: State Regulation 43%: State Law
Most common components of training for Ombudsmen that investigate complaints	93%: Classroom Training 84%: Facility Tour 82%: Mentoring/Job Shadowing	
Training conducted by	89%: SLTCO Staff 58%: Regional LTCO 13%: Regional LTCO approved as trainers	80%: Regional LTCO 71%: SLTCO Staff 11%: Regional LTCO approved as trainers

¹² NASOP. The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future, NASOP Retreat Proceedings and Recommendations. April 2003.

¹³ NASOP. The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future, NASOP Retreat Proceedings and Recommendations. April 2003.

¹⁴ National Long-Term Care Ombudsman Resource Center/National Association of State Long-Term Care Ombudsmen. Long-Term Care Ombudsman Certification Survey. March 2010.

¹⁵ According to the questionnaire, 11 respondents certify volunteers that are not allowed to investigate complaints and one program certifies staff ombudsmen that are not allowed to investigate complaints.

Most common curriculum	80%: Standardized state curriculum 71% Cover specific topics 49%: State version of NORC Curriculum	53%: Cover specific topics 47%: Standardized state curriculum 44%: Same as paid staff
Continuing Education	6-24 hours annually	6-24 hours annually
Conflict of Interest Screening	41%: Annually	37%: Annually

The Institute of Medicine Report

The 1995 Institute of Medicine's report identified key components that are necessary for an effective LTCOP and practices related to training or certification are in the following chart.¹⁶

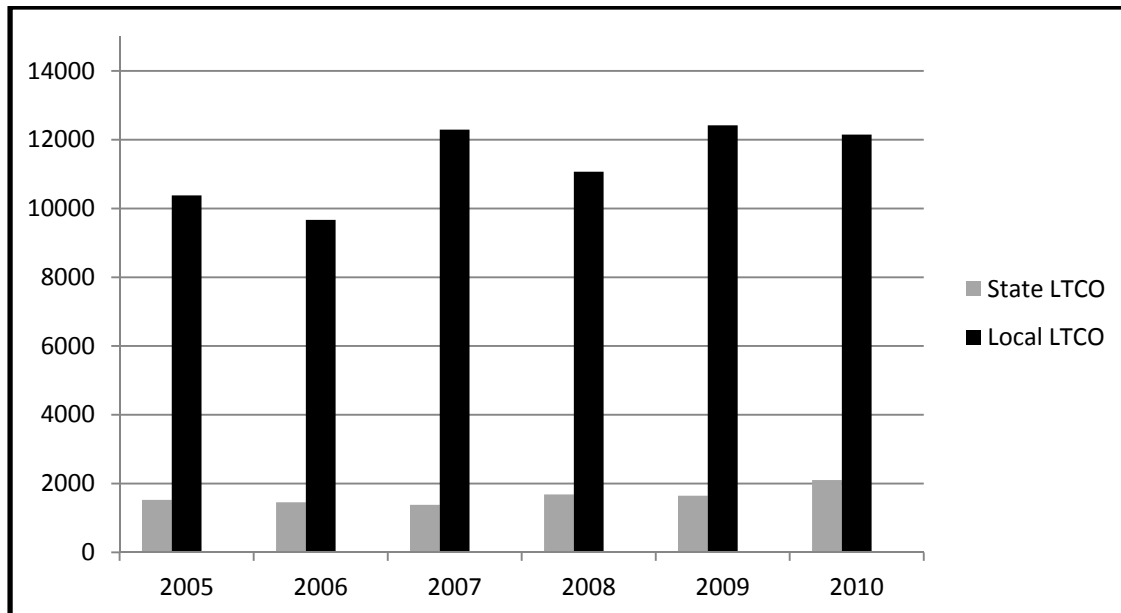
Exemplary Practices	Essential Practices	Unacceptable Practices
<p>All representatives have knowledge or understanding of LTC consumers, facilities, services, or their management, but no prohibited ties with facilities, services, or their management.</p> <p>All representatives have knowledge or understanding of LTC consumers, facilities, services, or their management, but no prohibited ties with facilities, services, or their management.</p> <p>All representatives have knowledge or understanding of the variety of regulatory functions (licensing, survey, certificate of need, rate setting, etc.) and their effects on LTC consumers but no prohibited ties with regulatory agencies.</p> <p>The program maintains a reputation as one staffed by well-prepared, knowledgeable workers familiar with the latest developments and trends and generously able to help others learn its knowledge and skills. Training is conducted in a manner developed to foster and encourage the ongoing improvement and skills of every representative of the Office.</p> <p>The Office has an established procedure for terminating any representative of the Office for unacceptable job performance.</p>	<p>Representatives possess the skills to perform the duties and responsibilities of assigned tasks.</p> <p>Representatives have no prohibited ties to LTC facilities, services, or their management.</p> <p>Representatives have no prohibited ties to any regulatory agency (licensing, survey, Medicaid, rate setting, etc.).</p> <p>Representatives have no responsibilities for Adult Protective Services (APS), nor do they serve as a guardian for an unrelated resident of a LTC facility within his or her service area.</p> <p>Representatives have in-depth initial training prior to performing any duties, are assessed for competence prior to acting directly without direct supervision, and receive ongoing training and supervision to improve skills and to stay abreast of program and LTC developments.</p> <p>The Office has an established procedure for terminating any representative of the Office for unacceptable job performance.</p>	<p>Representatives lack the skills to perform the duties and responsibilities of assigned tasks.</p> <p>Representatives have prohibited ties to LTC facilities, services, or their management.</p> <p>Representatives have prohibited ties to any regulatory agency (licensing, survey, Medicaid, rate setting, etc.).</p> <p>Representatives have responsibilities for APS or are guardians for an unrelated resident of a LTC facility within his or her service area.</p> <p>Representatives have little or no initial or ongoing training sufficient to provide the full range of ombudsman services in a way that meets program standards.</p> <p>The Office has no established procedure for terminating any representative of the Office for unacceptable job performance or the Office fails to use the established procedure in face of unacceptable job performance.</p>

¹⁶ Institute of Medicine. *Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995. Table 5.3, pp. 164-165.

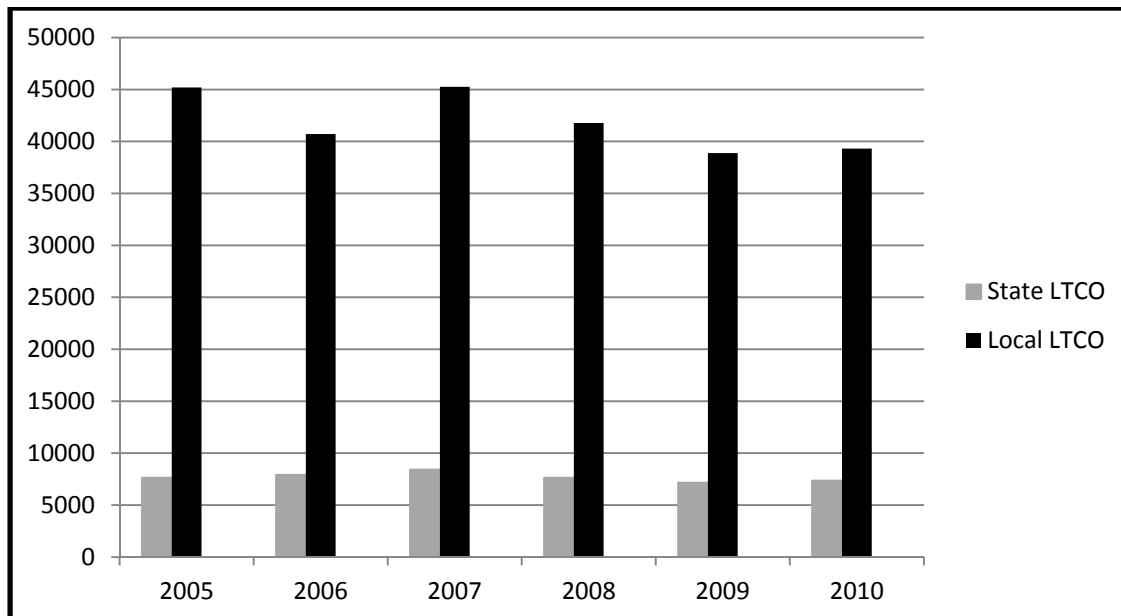
NATIONAL OMBUDSMAN REPORTING SYSTEM DATA¹⁷

Training for Ombudsman Staff and Volunteers

Number of Training Sessions



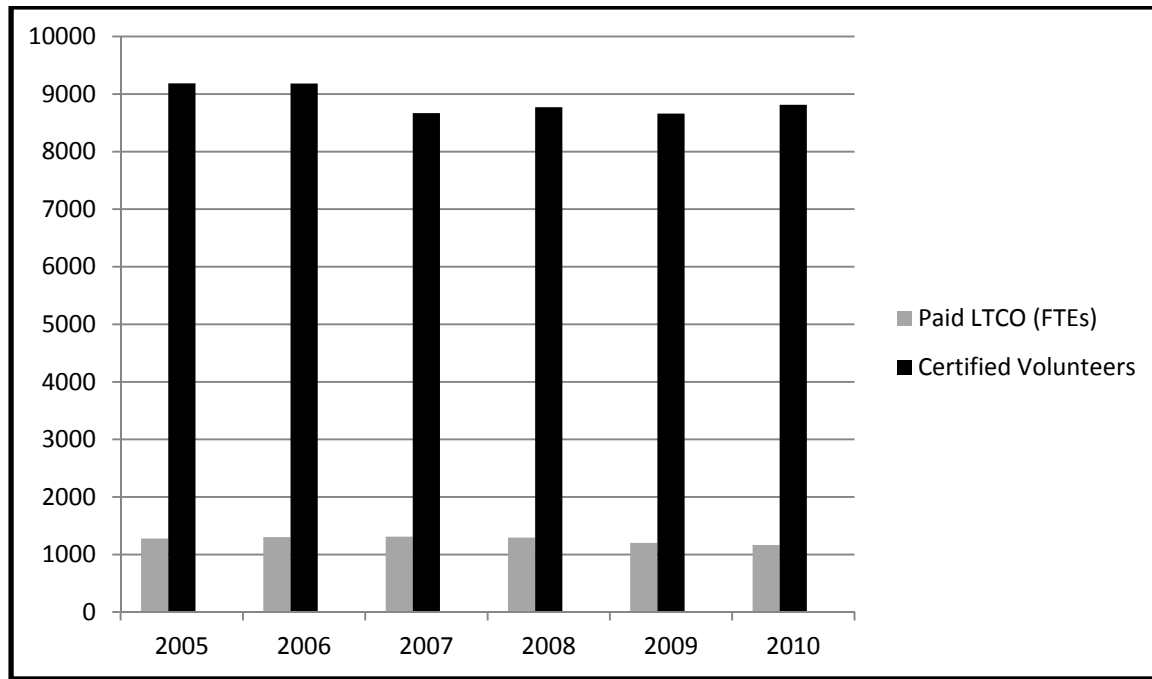
Number of Training Hours



¹⁷ Administration on Aging. NORS Data 2010, Tables A.

http://www.aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Ombudsman/National_State_Data/index.aspx

Number of Certified Ombudsmen¹⁸



¹⁸ **The Full-Time Equivalent (FTE)** count includes both staff who work full-time on the ombudsman program and those who work part-time on the program. **Certified Volunteers** are individuals that have completed a training course prescribed by the state ombudsman and is approved by the state ombudsman to participate in the statewide ombudsman program (Instructions for Completing the SLTCOP Reporting Form for The National Ombudsman Reporting System (NORS))

Unique Characteristics **of the** Long-Term Care Ombudsman Program

Long-Term Care Ombudsman Guidance
Strategy Session
December 8, 2011

Adapted from Unique Characteristics, *Equipping State LTC Ombudsmen
for Their Leadership Role*, NORC. Sara S. Hunt, Consultant

The Long-Term Care Ombudsman Program

“...serves a vital public purpose. Every year the Long-Term Care Ombudsman Program helps many thousands of individual ...residents ...[and] the program can justly claim to have improved the system of long-term care services.”

Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act

Institute of Medicine, 1995, p. 11

History

- Growth in Nursing Homes
 - 1965 Medicare and Medicaid
 - Provided public money for care
- What Happened
 - Abuse
 - Neglect
 - Substandard care
 - Fires resulting in deaths
- Publicity About Poor Care and Owner Profits
- Congressional Hearings 1970
- Apparent that systems to protect individuals had failed
- Improvements in quality of care needed



Development

- Ombudsman Program
 - Idea developed by Dr. Arthur Flemming
 - Influenced by Swedish model
 - Proposed to President Nixon and included in his nursing home agenda in 1971
- Presidential directive — help states establish units to respond to complaints made by or on behalf of individual patients
- Nursing Home Ombudsman Demonstration Projects contracts granted in 1972



Development and Growth

- Projects had impressive record of complaint resolution
- In 1975 all states could seek funds for ombudsman activities
 - Funding through the Administration on Aging (AoA)
 - To develop capabilities of Area Agencies on Aging for ombudsman activities
- 1978 All states were required to operate a Nursing Home Ombudsman Program
 - Enacted in amendments to Older Americans Act (OAA)
 - 1981 changed to Long-Term Care Ombudsman Program due to expanded responsibilities



Conclusion

- The laws and regulations enacted will be of little avail unless
 - "...communities are organized...to deal with the individual complaints of older persons living in nursing homes.
 - The individual in the nursing home is powerless."

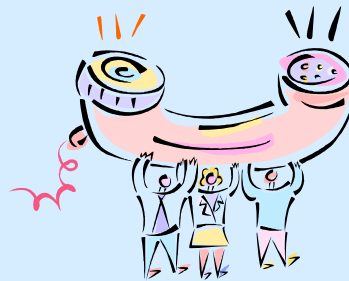
AoA Commissioner Flemming

1976

Advocate Ombudsman

Long-Term Care Ombudsmen are Advocates.

- LTCO carry the message for residents.
- LTCO are
 - impartial in gathering information.
 - advocates for residents in seeking resolution.



Long-Term Care Ombudsman Program (LTCOP)

- Is one of a kind within the Older Americans Act (OAA)
- Has several distinctions in definitions that set it apart from other service programs
- Is unique

WORD FROM WASHINGTON 

“One of a Kind” Within the Aging Network (OAA)

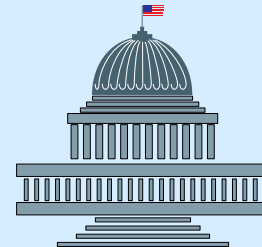
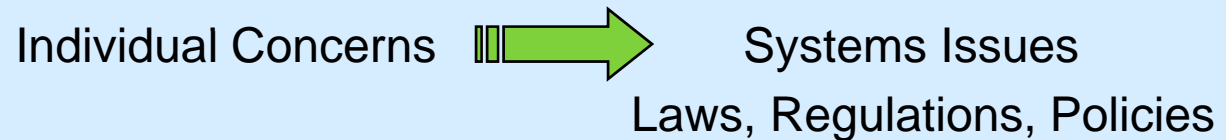
The Long-Term Care Ombudsman Program

- Operated by Office of the LTCO, headed by a State LTCO, responsible for a statewide program
- Has more strict confidentiality provisions
- Has specific conflict of interest provisions
- Pursues administrative, legal, and other remedies on behalf of residents
- Is protected from willful interference
- Has legal counsel available that is free of conflict of interest

Bottom Line

The LTCOP is unique in OAA because it

- Addresses concerns of individual residents,
- Calls upon others to fulfill their responsibilities to residents, and
- Gives a public voice to residents' needs by working for legislative and regulatory changes.



Program Responsibilities



- Prevention
 - Provide information to residents
 - Promote development of citizen organizations
 - Provide technical support for resident and family councils
 - Recommend changes in laws, regs, and policies to benefit residents
 - Provide access to ombudsman services
 - Assist residents in asserting rights
 - Identify, investigate, and resolve complaints made by, or on behalf of, residents

Program Responsibilities

- Intervention
 - Seek legal and other remedies to protect residents
 - Analyze, comment on, and monitor laws, regs, and governmental policies on behalf of residents
 - Facilitate public comment pertinent to residents

Office of the LTCO

Leading or supporting the Office of the LTCO may be a “climb” for everyone.

- Primary role is representing residents.
- Fulfilling this role may be viewed as
 - Refusing to be a team player,
 - Not being loyal to employer,
 - Being a “difficult” employee.



Distinctions in Definitions

- Sounds like_____, but it isn't
- LTCOP and other programs use same terms but with different meanings
- Differences in definitions based on OAA



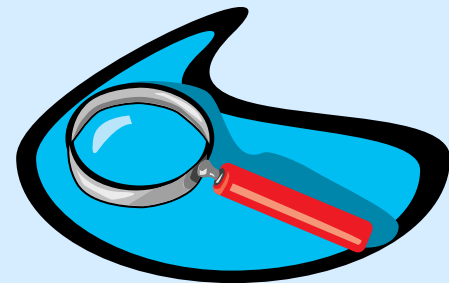
Distinctions = Strength

Definitions based on OAA are
the strength of the LTCOP



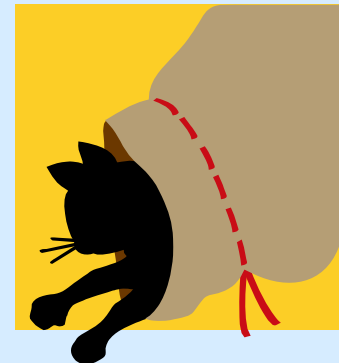
Investigation

- Agreement on purpose—to determine the facts
- How facts are used can be different with LTCO.
 - LTCOP gather information to resolve issue to resident's satisfaction.
 - Others determine if a law, standard, or regulation has been violated.



Confidentiality

- Lots of agencies and programs have confidentiality policies.
- OAA standards for LTCO are more strict.
 - Not allowed to share confidential information without consent.
 - Federal law takes precedence if state law conflicts.



Conflict Of Interest

- Many agencies and programs have conflict of interest policies.
- The LTCOP has OAA provisions
 - For program placement and
 - For individual ombudsmen.
- Additional dimensions for LTCOP from, *Real People, Real Problems*
 - Loyalty
 - Commitment
 - Control



Guidance Strategy Focus

- Office of the Long-Term Care Ombudsman
 - Definition
 - Authority and responsibilities
 - Role clarification, SUA and SLTCO
- Conflict of Interest, Program Placement
 - Program integrity
 - Remedies
- Conflict of Interest, Individual Ombudsman
 - Roles and Responsibilities
 - Remedies

Guidance Strategy Focus

- Systems Advocacy
 - Role and Support: SUA and AAA
 - Roles of state and local ombudsmen
 - Legal counsel
- Ombudsman Services to Residents
 - Ombudsman Records
 - Access to residents' records
 - Services to residents < 60 years
- Ombudsman Training and Certification
 - Training Standards
 - Designation and de-designation

Workgroup Directions

