

# ETHICAL GUIDANCE FOR LONG-TERM CARE OMBUDSMEN

November 2010

*This quick reference guide provides an overview of the topic, foundation points for ombudsman practice, and key resources for more in-depth knowledge and to improve ombudsman skills. Because there are a number of resources from which ombudsmen can gain information about ethics, the focus of this guide is identifying resources that discuss ombudsman practice related to working through ethical dilemmas.*

## OVERVIEW

The primary responsibilities of long-term care ombudsmen (LTCO) are to resolve the concerns of individual residents and to voice their needs and advocate for changes on a systems level. Ombudsmen are resident advocates. Another major responsibility comes with the privilege and duty to represent residents. That is to exemplify ethical behavior and decision-making. Achieving the residents' goals is essential. The process that LTCO follow in resolving concerns is also as important as the outcome. Because LTCO call on others to uphold confidentiality, resident's rights, and professional standards, LTCO must meet the same standards.

By its very nature, LTCO work is filled with ambiguity regarding how to proceed. Ombudsmen often work with individuals with cognitive impairments or encounter situations where there are conflicting views or questions about unintended consequences of actions. To maintain credibility as the resident's advocate, LTCO must be aware of avoiding the appearance of conflict of interest. Furthermore, actions taken by an individual ombudsman can have a long-term impact on the credibility of the statewide ombudsman program. Ombudsmen need to be able to work in situations where there may not be clearly "right" or "wrong" actions. Working through "gray" issues is typical for ombudsmen. A key challenge is remaining sensitive to such issues by identifying the ethical dimensions of a situation and working through them with some thoughtfulness and consistent adherence to ombudsman principles.

Ethics is defined as a set of moral principles: a theory or system of moral values; the principles of conduct governing an individual or a group; a guiding philosophy. (Merriam-Webster online dictionary) Like many other professions, LTCO have a code of ethics that provides the guiding philosophy and principles for their work. Dilemmas sometimes arise regarding how to apply the ethical principles to a specific situation.

A few examples of situations where the "right" course of action for a LTCO may not be clear follow.

- A LTCO visits a board and care home, the residents are content and the care and the environment seem adequate. During the visit the ombudsman learns that the home is operating without a license. The home's owner says that complying with licensure requirements would be too expensive to stay in business. Does the LTCO report this unlicensed facility to a regulatory agency, knowing that the regulatory response could lead to the home's closure and require residents to move?
- A resident will soon be discharged from a psychiatric unit and wants to return to the nursing facility where she lived before being transferred to the psychiatric unit. She wants the LTCO to help her return to the facility. The nursing facility does not want her to return. The LTCO knows that other residents in the nursing facility do not want this resident to return because they feel intimidated by her. The LTCO questions the ability of the facility to provide the care that this resident needs. Does the LTCO advocate for the resident to return to the nursing facility?

- The children of a resident are arguing about an invasive and risky medical procedure recommended by the resident's physician. The resident has very limited ability to make decisions and to communicate. The son who is the guardian wants to proceed. The other siblings insist that their father would be adamantly opposed to the procedure if he could understand and voice his opinion. The facility and the guardian ask the LTCO to intervene. What does the LTCO do?
- While visiting an assisted living facility, the LTCO realizes that a couple of residents have needs that exceed the licensure standards of the facility. The residents are very pleased that the facility is letting them stay and are piecing together as much assistance as they can arrange. Although they need more care, they do not want to go to a nursing facility. What action, if any, does the LTCO take?
- An ombudsman program receives a voice message alleging serious care issues in a facility. The caller does not give identifying information and clearly states that this is an anonymous complaint. The LTCO has several questions, additional information would be helpful. There is a number on caller identification for the complaint message. Does the ombudsman call the number, seeking more information?

These examples provide an opportunity for dialogue within a statewide LTCO program and may generate additional program guidance or clarification of the LTCO problem-solving process and role. The two lists of questions included in this guide and the resource, *Working Through Ethical Dilemmas in Ombudsman Practice*, may be helpful in determining appropriate LTCO actions. These examples illustrate the difficulty in establishing rigid steps because of the potential impact of case specific information related to the situation and context for action. LTCO must be grounded in their role, in the Code of Ethics, and be equipped to apply these to determining a course of action.

The initial section of this guide provides some foundation points. To build upon the foundation, the key resources section describes educational tools to gain more in-depth knowledge and to increase ombudsman skills and effectiveness in advocacy.

## FOUNDATION POINTS

Long-Term Care Ombudsmen are required to be advocate ombudsmen, representing and empowering residents. As the preceding examples illustrate, knowing what actions to take as an advocate ombudsman may not always be obvious. Joan McIver Gibson<sup>1</sup> and Jacqueline Glover<sup>2</sup>, Ph.D. philosophers and bioethicists, have provided guidance in applying ethical principles to LTCO work through several training sessions. A few key points follow, the resources contain much more detailed guidance for LTCO practice.

### ETHICS

- Ethics is about the process as well as what you do. It is about how you get there.
- Good ethics begins with good facts.
- There is always a range of morally acceptable actions. (Glover, 2001 presentation to LTCO)

### PRINCIPLES FOR DECISION-MAKING

- Informed consent
- Substituted judgment
- Best interest

<sup>1</sup> Joan McIver Gibson is a philosopher and consultant in applied ethics, bioethics, and decision making. In 2003, she retired as Director of the University of New Mexico Science Ethics Program.

<sup>2</sup> Jacqueline J. Glover is a philosopher with a concentration in bioethics. She is an associate professor of pediatrics and of bioethics and humanities at the Center for Bioethics and Humanities, University of Colorado, Denver.

As advocate ombudsmen, LTCO seek to assure that informed consent is utilized to the greatest extent possible. When the principle of informed consent is not applicable, LTCO advocate for the use of substituted judgment as a decision-making principle. There may be situations where best interest may be appropriate or the only recourse. Other cases may call for a combination of substituted judgment and best interest, with neither being applied to the exclusion of the other. Ombudsmen must consider a resident's decision-making capacity and ways to reinforce the resident's autonomy when choosing which decision-making principle would be applicable to a case. (Hunt, Working Through Ethical Dilemmas in Ombudsman Practice, 1989)

## CONFLICT RESOLUTION

- Conflicts usually arise over the application of values, instead of over the values themselves.
- Values emerge from relationships.
- Values may evolve and change depending upon who's involved in the conversation.
- LTCO need to identify individuals to be involved in the conversation with the resident when conflicts arise.
- LTCO need to be able to tolerate ambiguity.
- The key is the process used to sort out the options and arrive at a choice. (Gibson, 1991 presentation to LTCO)

## INTERNAL QUESTIONS FOR LTCO TO CONSIDER REGARDING CONFLICTING INTERESTS<sup>3</sup>

What questions might LTCO ask themselves when facing inner turmoil or uncertainty, to sort through the issues in cases in which it is hard to determine, or to act upon, what a resident wants? The following list suggests some factors to consider.

- What internal conflict am I feeling?
- What is the basis of the conflict?
- Whose interests am I representing?
- Am I seeking to balance the needs of various parties? If so, why? What needs? For whom?
- Have I taken reasonable actions to:
  - respect and maintain the confidentiality of the resident;
  - ascertain what the resident wants;
  - identify the underlying issue/problem;
  - verify the complaint;
  - identify as many solutions as possible;
  - seek the assistance of other resources as appropriate;
  - consult with the resident throughout the process;
  - follow the resident's desires, not my determination of the best interest of the resident;
  - encourage the resident to exercise self-advocacy;
  - discuss with the resident the potential ramifications of this course of action, or of taking no action;
  - engage in advocacy, not just accept the explanations of others as to what "has to be"?
- Have my actions been in accordance with the Ombudsman Code of Ethics<sup>4</sup>, my state's LTCO Program policies and applicable laws or local ordinances?
- Will my actions impair the credibility of the Ombudsman Program?
- Have I used my influence to support the resident's agenda rather than persuade the resident to pursue my agenda?
- Is what I'm asking of the resident in concert with the resident's abilities, capacity and condition?
- Have I been honest with the resident?

3 Sara S. Hunt. *Working Through Ethical Dilemmas in Ombudsman Practice*. National Center for State Long Term Care Ombudsman Resources. 1989.  
4 <http://nasop.org/ethics.htm>

## EXTERNAL CONFLICTS ABOUT BIOMEDICAL ISSUES<sup>5</sup>

Many of these situations arise, or become more complicated, due to the resident's inability to clearly express himself/herself. The questions in the following list apply to such cases where the resident cannot communicate his/her wishes. When there are conflicting perspectives among caregivers, family, and/or the resident, who makes the decisions? What role should the LTCO assume? Are there unique perspectives that a LTCO brings into situations where there is conflict about medical treatment? Although the LTCO may have some internal conflict regarding a course of action, usually an external conflict exists in these cases.

There seems to be a process that LTCO can advocate for to ensure that the decision-making is resident focused and upholds the autonomy and dignity of the resident to the greatest extent possible. This process is similar to the one often used for everyday complaint resolution. It involves much discussion and care plan meetings may be an appropriate context for such dialogue.

- Maintain the focus on the resident. This may involve asking questions of other sources, such as relatives, friends, roommates, and staff, if the resident is unable to express his/her own views. Ask each person interviewed for specific information to support their perspectives.
- Are there any written or oral expressions of the resident's wishes? (If pertinent)
- Is the principle of substituted judgment applicable to this case?
- Did the resident have any conversations with anyone regarding this subject?
- What actions/behaviors on the part of the resident offer clues as to the resident's feelings or values?
- Who knows the resident best?
- Who knew the resident well in the community?
- Who else might offer some insight regarding the resident's perspective?
- Are the individuals who know the resident best (preceding three bullets) involved in this process? What are their views?
- Attempt to get the parties involved in the decision-making process to meet together for the purposes of:
  - stating their views, hopes, and fears;
  - identifying common goals and concerns;
  - focusing on what is known about the resident's values and wishes;
  - listing as many alternatives as possible to this dilemma;
  - identifying one or more solutions that are acceptable and consistent with any applicable laws.
- Seek to ensure that any policies that the facility has pertinent to this issue are followed throughout the process.
- Bring in other resources as necessary. If the facility has an ethics committee, it might be helpful in clarifying the positions and possible courses of action. Clergy, other medical professionals, and other service personnel might offer additional alternatives for resolution.

## KEY RESOURCES

To learn more about ethics and ethical guidance for LTCO practice begin with the following resources available through the National Long-Term Care Ombudsman Resource Center.

***Code of Ethics for Ombudsmen. National Association of State Long-Term Care Ombudsman Programs.***  
<http://nasop.org/ethics.htm>

***NALLTCO Code of Ethics for Ombudsmen. National Association of Local Long-Term Care Ombudsmen.***  
<http://nalltco.org/codeofethics.html>

5 Hunt, *ibid.*

***Working Through Ethical Dilemmas in Ombudsman Practice. An Ombudsman's Resource Paper for Effective Advocacy.*** Sara S. Hunt. National Center for Long-Term Care Ombudsman Resources. 1989. <http://ltombudsman.org/ombudsman-support/program-management#Ethics>

This paper provides an overview of ethics and specific guidance for LTCO work related to individual advocacy, systems advocacy, and program management applications. It contains case examples, guidelines for LTCO practice and ethical issues, a glossary, ethical positions of selected other organizations, and other resources.

***Working Through Ethical Dilemmas in Ombudsman Practice. An In-Service Training Guide for Ombudsmen.***

Sara S. Hunt. National Center for Long-Term Care Ombudsman Resources. 1989. <http://ltombudsman.org/ombudsman-support/program-management#Ethics>

This is a companion teaching guide to the preceding paper to enable LTCO programs to offer in-service training programs on ethics for ombudsmen.

***Ethical Issues in Ombudsman Advocacy.*** Sara S. Hunt and Jean Wood. National Long-Term Care Ombudsman Resource Center. 1991. [http://www.ltombudsman.org/sites/default/files/ombudsmen-support/program-management/Advocacy-in-Ethical-Issues\\_0.pdf](http://www.ltombudsman.org/sites/default/files/ombudsmen-support/program-management/Advocacy-in-Ethical-Issues_0.pdf)

This article summarizes a presentation by Joan Gibson and LTCO consensus regarding appropriate LTCO actions in case examples. There are three sections: an ethical framework for LTCO, LTCO responsibilities with advance directive issues, and LTCO responsibilities with residents who cannot consent.

***Applying Ethical Principles to Individual Advocacy.*** Joan Gibson presentation summarized by Sara S. Hunt. National Ombudsman Resource Center (National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services). 1992. <http://www.ltombudsman.org/sites/default/files/ombudsmen-support/program-management/Applying-Ethical-Issues-to-Individual-Advocacy.pdf>

This resource paper contains a discussion of the ethical dilemmas facing LTCO in their daily practice. It includes decisional capacity, the use of a values history, and suggests a process LTCO might use for individual case advocacy.

***Advocacy in Ethical Issues: A Multi-Disciplinary Approach: A Guide for Ombudsmen.*** Carolyn Wanner. National Long Term Care Ombudsman Resource Center. 1995. <http://www.ltombudsman.org/sites/default/files/ombudsmen-support/program-management/Advocacy-in-Ethical-Issues.pdf>

This technical assistance paper captures the panel presentations and the state LTCO consensus during the "Advocacy in Sticky Situation" session at the 1994 annual state ombudsman training conference. A case study was presented followed by responses from different professional disciplines and a LTCO. The unique role of the LTCO and application to LTCO program management were discussed and compiled.

***Safety, Self-Determination, and Choice in Long-Term Care: The Consumer and Ombudsman Experience.*** Beverley Laubert & R. Michael Laubert. Chapter 5. Ethics, Law, and Aging Review. Vol. 9. 2003. <http://www.ltombudsman.org/sites/default/files/ombudsmen-support/program-management/Safety-Self-Determination-and-Choice.pdf>

This article uses case illustrations to discuss how LTCO handle their own view of protection against harm and the "right" course of action with their mandated responsibility to support consumer rights and autonomy to make decisions. The role of the advocate ombudsman as distinct from the role of other professions is delineated.

***Equipping Long-Term Care Ombudsmen for Effective Advocacy: A Basic Curriculum.*** Sara S. Hunt, National Long Term Care Ombudsman Resource Center. <http://ltombudsman.org/ombudsman-support/training#Curriculum>

Ethical guidance for LTCO is interspersed throughout this curriculum in both the curriculum resource material and in the teaching notes for the modules. Two modules have specific sections on ethical applications and guidance.

- *History And Role Of The Long-Term Care Ombudsman Program*
- *The Problem-Solving Process: Investigation*

*This document was supported, in part, by a grant from the Administration on Aging, Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration on Aging policy.*