

## **PROGRAM MANAGEMENT:**

### **TRAINING FOR OMBUDSMAN PROGRAM REPRESENTATIVES**

One of the first steps in program management is defining training requirements for Ombudsman program representatives (staff and volunteers) working in assisted living facilities (ALFs).<sup>1</sup> This resource highlights key elements to include in training for Ombudsman program advocacy in ALFs (in addition to initial certification training that addresses the history, role, and responsibilities of the program).<sup>2</sup> Due to the lack of federal regulations, state definitions and regulations for board and care homes or assisted living facilities vary and Ombudsman programs will need to modify their training materials to reflect state specific information.

#### **Key Training Elements**

##### **Describe the Setting**

What are the names used in your state to categorize care homes which do not meet the definition of a nursing home? (e.g., assisted Living, board and care, personal care home, etc.)

- What are the characteristics of this type of care? (e.g., number of residents, type of care permitted, etc.)
- Include the state law/regulations which describe these homes.
- Describe Medicaid and other government payment sources available in your state (e.g., Medicaid waivers (HCBS), Veteran's benefits, etc.). Include your state statistics regarding individuals living in assisted living that are Medicaid beneficiaries or using another benefit to receive services.
  - If applicable, here are some resources to educate representatives regarding the Home and Community Based Services (HCBS) Settings Final Rule (2014):<sup>3</sup>
    - U.S. Department of Health and Human Services Medicaid Home and Community Based Services [webpage](#)
    - [Overview of HCBS Settings Rule](#)
    - [Key Provisions of the Final HCBS Settings Rule \(January 10, 2014\)](#)
  - The final rule includes requirements for provider-owned or controlled home and community-based residential settings. These requirements include:
    - The individual has a lease or other legally enforceable agreement providing similar protections;
    - The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;

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<sup>1</sup> Due to the variation in facility type, terminology and licensure for these facilities by states the term "assisted living facilities" (ALFs) is used in this compendium to refer to all non-nursing homes covered by the Ombudsman program such as: board and care facilities, residential care homes, adult foster care homes, and personal care homes.

<sup>2</sup> Training for Ombudsman program representatives is critical for maintaining an effective program. The National Long-Term Care Ombudsman Resource Center develops and collects materials and information that enhance and strengthen the training of paid and volunteer ombudsmen. The NORC Curriculum is designed to help states improve their basic training for program representatives and the teaching methods are based on principles of adult learning and grounded in Ombudsman program values and responsibilities. The [curriculum](#) and other training materials are available on the NORC website: [http://ltcombudsman.org/omb\\_support/training](http://ltcombudsman.org/omb_support/training).

<sup>3</sup> Links to resources in this section are Medicaid.gov- <https://www.medicaid.gov/medicaid/hcbs/index.html>; CMS Fact Sheet Overview of HCBS Settings Rule- <https://www.medicaid.gov/medicaid/hcbs/downloads/final-rule-fact-sheet.pdf>; CMS Fact Sheet, Summary of Key Provisions- <https://www.medicaid.gov/medicaid/hcbs/downloads/hcbs-setting-fact-sheet.pdf>; NORC HCBS webpage- <http://ltcombudsman.org/issues/home-and-community-based-services>

- The individual controls his/her own schedule including access to food at any time;
  - The individual can have visitors at any time; and
  - The setting is physically accessible.
- For more information regarding the HCBS Settings Rule, including training materials, visit the NORC HCBS [webpage](#).

## Understanding the Authority

What **federal** authority allows Ombudsman to advocate on behalf of residents in these homes?

The Older Americans Act (OAA) defines “long-term care facilities” as skilled nursing facilities, nursing facilities, board and care facilities and other adult care homes. The OAA states that LTCO must ensure residents of long-term facilities have “regular and timely access” to LTCO services and “that the residents and complainants receive timely responses” from representatives of the LTCO program.<sup>4</sup> All the LTCO functions, duties, and other requirements (e.g., resident access to program services, complaint resolution, systems advocacy, community education, information and assistance) outlined in the OAA apply to LTCO services for residents of all long-term care facilities.

Some of the Older Americans Act provisions regarding LTCO responsibilities to assist individuals living in long-term care facilities are below.<sup>5</sup>

**OLDER AMERICANS ACT OF 1965** [Public Law 89–73] [As Amended Through P.L. 114–144, Enacted April 19, 2016]

- SEC. 102. (35) The term “long-term care facility” means— (A) any skilled nursing facility, as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a)); (B) any nursing facility, as defined in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a)); (C) for purposes of sections 307(a)(12) 1 and 712, a board and care facility; and (D) any other adult care home, including an assisted living facility, similar to a facility or institution described in subparagraphs (A) through (C).
- The word “older” was removed from the definition of resident in the 2016 reauthorization of the OAA.<sup>6</sup> SEC. 711(6) RESIDENT—The term “resident” means an individual who resides in a long-term care facility.
- The Older Americans Act requires that annual State LTCO reports include an analysis of the state LTCO program’s services to residents of assisted living facilities. SEC. 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM. (h)(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities

### **Long-Term Care Ombudsman Program Final Rule**

There are many references to ALFs in the [LTCOP Final Rule](#) and in the Analysis of Comments.

- Background - State Long-Term Care Ombudsman programs (Ombudsman programs) serve as advocates for residents of nursing homes, **board and care homes, assisted living and similar adult care facilities**.

<sup>4</sup> Older Americans Act of 1965. Section 102 (a)(35) and Section 712 (a)(3)(D).

<sup>5</sup> More information regarding the OAA is available on the NORC website <http://ltombudsman.org/issues/older-americans-act>.

<sup>6</sup> See “2016 Older Americans Act Reauthorization FAQ” for more information <http://ltombudsman.org/uploads/files/issues/2016-OAA-FAQs.pdf>. Also, prior to the definition change in the OAA, the guidance in U.S. Department of Health and Human Services, Administration on Aging, Program Instruction (PI) 81-8, said that Ombudsman programs may provide services to all residents regardless of age if the complaint impacts other residents in the facility (<http://ltombudsman.org/uploads/files/library/aoa-pi-81-8.pdf>).

They work to resolve problems of individual residents and to bring about improvements to residents' care and quality of life at the local, state and national levels.

- The OAA provides authority for the Ombudsman program to serve residents living in “long-term care facilities” as defined at Section 102(35) of the Act (i.e. nursing facilities, **board and care homes, assisted living, and similar adult care facilities**).
- “We note that historically Congress changed the title of Nursing Home Ombudsman to Long-Term Care Ombudsman in the 1981 reauthorization of the OAA, expanding the service population to include residents of board and care residents and other similar adult care facilities. Then, in the 2006 reauthorization, Congress clarified that the Ombudsman program service population includes residents of assisted living. However, Congress did not choose on either occasion to create separate ombudsman programs for these populations; instead, it choose to coordinate the efforts so that long-term care facility residents in a variety of residential settings had access to the services of the Long-Term Care Ombudsman program. In addition, AoA has long held that States are not prohibited from using OAA funds to support Ombudsman services to younger residents of long-term care facilities, even though the Act is designed to primarily benefit individuals over age 60. AoA Program Instruction 81-8.” [AoA Response to Comment in Preamble of the [LTCOP Final Rule](#)]
- The State Ombudsman is responsible for submitting an annual report. One of the areas to be covered is: § 1324.13 (g)(1)(v) Contain analysis of the success of the Ombudsman program, including success in providing services to residents of, assisted living, board and care facilities and other similar adult care facilities.

#### **What state authority exists?**

- State law
- State regulations

#### **What Ombudsman program policies and procedures exist in your state which are applicable to these homes?**

#### **Advocacy in ALFs Versus Nursing Homes: What’s the Same, What’s Different?**

The role of the Ombudsman program and core advocacy approaches are the same regardless of the setting (e.g., all work is resident centered; the investigation techniques and resolution process is the same). However, there may need to be changes made in advocacy strategies to resolve issues to the satisfaction of the residents.

#### **Similarities include:**

- Most residents in both environments are older adults.<sup>7</sup>
- Many of the same services are provided in both setting (e.g., administering medications and providing assistance with activities of daily living).
- Characteristics of assisted living residents are becoming increasingly like those of nursing home residents (e.g., similar acuity levels, many of the residents have some form of dementia).<sup>8</sup>

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<sup>7</sup> *Long-Term Care Providers and Service Users in the United States: Data from the National Study of Long-Term Care Providers*. U.S. Department of Health and Human Services. Centers for Disease Control and Prevention. February 2016. Page 105. [https://www.cdc.gov/nchs/data/series/sr\\_03/sr03\\_038.pdf](https://www.cdc.gov/nchs/data/series/sr_03/sr03_038.pdf); “Who Lives in Assisted Living?” AssistedLivingFacilities.org. CDC data cited. <https://www.assistedlivingfacilities.org/resources/who-lives-in-assisted-living/>.

<sup>8</sup> *Long-Term Care Providers and Service Users in the United States: Data from the National Study of Long-Term Care Providers*. U.S. Department of Health and Human Services. Centers for Disease Control and Prevention. February 2016. Page 40. [https://www.cdc.gov/nchs/data/series/sr\\_03/sr03\\_038.pdf](https://www.cdc.gov/nchs/data/series/sr_03/sr03_038.pdf).

- Residents in assisted living often experience a sense of loss and grief similar to individuals living in nursing homes.

#### Differences include:

- Unlike nursing homes, there are no federal regulations specifically for assisted living facilities and state regulations and enforcement vary. However, there is a federal regulation regarding how states use federal Medicaid funds to pay for home and community based services [Home and Community Based Services (HCBS) final rule].<sup>9</sup> Despite federal regulations related to Medicaid funded HCBS services there is no Medicaid entitlement to HCBS services; therefore, in some states there may be wait lists or no services available for people who rely on Medicaid to pay for their long-term services and supports.
- Assisted living operators and staff frequently have less training than nursing facility administrators and staff.
- Operators in some assisted living facilities are providing care in their own personal home.
- States may or may not have a “Bill of Rights” for assisted living residents.
- Some assisted living facilities serve young people with mental problems or impaired cognitive functions.

The unique features of assisted living facilities, such as the lack of federal regulations, variation in state regulatory oversight, and small size of some homes, require that some advocacy and/or communication strategies be adapted or that new ones be developed. Ombudsman program representatives have to utilize approaches that are based more on resident agreement or contract provisions, their ability to develop a connection with the provider, and their skills in convincing the provider to take certain actions. These strategies are also used in advocacy for residents living in nursing homes, but become much more important in assisted living due to the differences in regulations.

#### TRAINING TIPS

- [Translating Nursing Home Ombudsman Skills to Assisted Living: Something Old, Something New](#) and the [Teaching Guide](#) can be used for training program representatives. The guide includes discussion points and case studies. The content of the resource and the teaching guide is for program representatives that already have experience providing program services in nursing homes and that are knowledgeable about the Ombudsman program role, basic skills, and the problem-solving process. This training guide is not a basic training to equip individuals to become assisted living ombudsmen without additional training, knowledge, and skills.<sup>10</sup>
- Create training materials regarding advocacy strategies and applicable state regulations to common assisted living complaints received by your program.<sup>11</sup>
- Visit the NORC Training [webpage](#) for additional resources and examples.<sup>12</sup>

*This project was supported, in part, by grant number 90OM002, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. 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 for Community Living policy.*

<sup>9</sup> NORC Home and Community Based Services (HCBS) page includes information regarding the final rule. <http://ltombudsman.org/home-and-community-based-services/hcbs-reports-resources#regulations>

<sup>10</sup> Resource- <http://ltombudsman.org/uploads/files/support/Translating-NH-Ombudsman-Skills-to-Assisted-Living.pdf> and Teaching Guide- <http://ltombudsman.org/uploads/files/support/translating-nh-to-al-advocacy-teaching-guide.pdf>

<sup>11</sup> See webinar example from the Texas Ombudsman program <http://ltombudsman.org/uploads/files/support/tx-assisted-living-facility-regulations-webinar.pdf>

<sup>12</sup> NORC Training and In-Services page [http://ltombudsman.org/omb\\_support/training/training-programs#alf](http://ltombudsman.org/omb_support/training/training-programs#alf)