Since the Summary Sheet "Sex Offenders and Parolees in LTC Facilities," April, 2004, several states have begun to take a more in-depth look at issues of sex offenders in LTC facilities. This Summary Sheet is a follow-up to the April Summary Sheet.

**QUESTION:** Have any states developed any protocols, regulations, or other guidance for long-term care facilities regarding admission or retention of registered sex offenders? Are facilities developing any protocols for housing registered sex offenders, i.e. separating these residents from other residents, notifying staff, families, other residents, monitoring behavior more closely, etc? Are facilities attempting to discharge residents who are registered sex offenders? Are the Ombudsman Program finding this is a bigger issue in nursing homes, or assisted living, board and care facilities?

**RESPONSES:** Of the ten respondents, no state currently has regulations or protocols regarding admission or retention of registered sex offenders, nor are respondents aware of facilities developing regulations or protocols. Three states (DC, NY, and SC) are currently working on regulations. While it does not relate directly to long-term care facilities, Wisconsin has a statutory provision that places offenders who are not fully rehabilitated into a state facility, rather than releasing them into the public. In one state (AZ) there is an instance of a facility discharging a resident because of past misconduct. No other states have incidents of discharge due to sex offense. In four states (DC, ID, PA, and SC) the issue of sexual offenders seems to be more prevalent in board and care, residential care, and assisted living facilities than in nursing homes. Other respondents said that the issue is no more prevalent in a particular type of facility.

**Arizona:** So far this is not an issue for the state licensing agency, so they, as an agency, have not developed protocols, regulations or guidance to assist facilities. Therefore, it is up to individual facilities to handle admission, retention, and discharge as they see fit. There is one facility involved in a situation where a current resident, who was charged with a sexual offense with a minor years ago, was admitted to the facility. This resident served his time and has had no (known) repeat instances of sexual offense. The nursing home became aware of this situation, and has issued a thirty-day notice of discharge indicating that the resident is a danger to others. The
A resident has asked the Ombudsman Program to advocate for him to stay at the facility. In doing their investigation the ombudsmen determined that the facility's basis for discharge was that the resident had not registered as a sex offender.

The health department indicated that sex offenders in nursing homes were not an issue for them— that is, they have no regulations requiring that people register. Local laws/regulations take precedence. It turns out that the laws in the city where the nursing home is located require that all sex offenders register. Since he refused to, he was in violation of local statutes, and, therefore, the nursing home was within its authority to discharge. The health department further indicated that it would be supportive of the nursing home's action because the nursing home has the legal responsibility to abide by local laws. In this instance, the ombudsman encouraged the resident to register and advised him that the nursing home had acted properly per the health department and local statutes. The resident is appealing. The nursing home involved in the above situation is in the process of developing protocols, and is monitoring the resident's behavior during his appeal. The Ombudsman Program does not know, and the facility would not give a definitive answer as to whether they would have kept him if he had registered. The Ombudsman Program is finding this issue about the same between nursing homes and assisted living facilities, however, it is easier (for now, at least) to find another placement for assisted living residents. For more information contact Robert Nixon, State LTC Ombudsman, (602)542-6454, rnixon@azdes.gov.

**California:** California does not have any regulations for LTC Facilities regarding sex offenders, nor are facilities developing protocols for housing these residents. Some facilities have attempted involuntary, three-day psychiatric observations. This issue is about as prevalent in nursing homes as in assisted living and board and care homes. For more information contact Joseph Rodrigues, State LTC Ombudsman, (916)323-6681, JRodrigu@aging.ca.gov.

**District of Columbia:** D.C. has not yet developed new regulations regarding sex offenders. The Ombudsman Program, Office of Inspector General (OIG), and Adult Protective Services (APS) are waiting to see what North Dakota will produce and most likely adopt similar language to suit the District of Columbia. APS and the Ombudsman Program have been in communication and will most likely be the agencies introducing new protocols or regulations. Facilities are not developing any protocols for housing registered sex offenders at this time, but the Ombudsman Program, Department of Health, Health Regulations Administration, Medical Assistance Administration, Department of Mental Health, and the DC Health Care Association (nursing home association) have been meeting this past year to discuss how to better monitor behaviors, protect residents, and notify families without violating any current civil or resident rights. D.C. has not attempted to discharge residents who are sex offenders, and the respondent believes that that population in our nursing
homes is extremely low at this point. The major problem is nursing home administrators discharging (dumping) residents with behavior problems in hospitals—thus the respondent assumes that sex offenders will be facing the issues as mental health or severe dementia residents have faced in the past. D.C. has not found this issue to be a big problem at this time, although we are highly conscience of the fact that more parolees are being released this year and there will be an increase in long-term care services needed by these individuals. There have been sex offenders in mental health community residential facilities (board and care) and just two residents in nursing homes that the respondent is aware of, but discharges or dumping scenarios are not the issue. The issue is to find alternative placements and programs where professional and consistent medical and psychiatric services can co-exist for residents, instead of “piece-mealing” the two services in nursing homes where psychiatric expertise is very limiting and challenging to reimburse. The above question addresses the need for alternative programs that can handle intensive psychiatric or parolee residents that need such medical and psychiatric rehabilitation rather then adjusting admission statements and procedures. For more information contact Jerry Kasunic, State LTC Ombudsman, (202)434-2140, GKasunic@aarp.org.

Hawaii: The respondent is not aware of this ever being a problem in Hawaii but is sure that if it's happening on the Mainland it could also happen there. He has asked the Department of Health and the two trade associations for their input and will forward on anything else to offer. For more information contact John G. McDermott, State LTC Ombudsman, (808)586-0100, jgmcderm@mail.health.state.hi.us.

Idaho: Unfortunately, the respondent doesn't have an answer to parts one and two of the question. This problem just seems to be surfacing, so there isn't any hard and fast data. If facilities are trying to discharge, they are unable to find other placement. It seems that the problem is more prevalent in assisted living. For more information contact Cathy Hart, State LTC Ombudsman, (208)334-3833, chart@ICOA.state.id.us.

Missouri: The state has not developed any protocols or regulations for LTC facilities regarding sex offenders. Facilities are not developing any protocols for housing registered sex offenders. Facilities are not attempting to discharge residents who are registered sex offenders. There are too few cases so far to say whether it is a bigger issue in nursing homes, assisted living facilities, or board and care homes. For more information contact Carol Scott, State LTC Ombudsman, (800)309-3282, ScottC@dhss.mo.gov.

New York: The State Ombudsman and other Ombudsman Program staff are on a committee to work on the Regulation for the new Assisted Living Law
that just passed in New York State, and will work on this issue. For more information contact Marty Haase, State LTC Ombudsman, (518)474-7329, Marty.Haase@ofa.state.ny.us.

Pennsylvania: There are no protocols or regulations for long-term care facilities regarding sex offenders. Facilities are not developing any protocols for housing registered sex offenders nor attempting to discharge residents who are registered sex offenders. This is a bigger issue in personal care homes than in other LTC facilities. For more information contact Susan Getgen, State LTC Ombudsman, (717)783-7247, sgetgen@state.pa.us.

South Carolina: There are no regulations or protocols yet, but a committee has been established to study the issues. Facilities are not attempting to discharge residents who are registered sex offenders that the Ombudsman Program is aware of. This issue is bigger in Residential Care Facilities than in other LTC facilities. For more information contact Jon Cook, State LTC Ombudsman, (803)898-2850, Cook@dhhs.state.sc.us.

Wisconsin: There are, at this time, no specific regulations regarding admissions of persons with this legal constraint. If a sexual offender does not appear to have been rehabilitated to the point of being safe to release into the public Wisconsin has a statutory provision that allows a court to "commit" them to a state facility, run cooperatively by the departments of Corrections and Health and Family Services for this purpose. This does not necessarily address the question as it relates to persons who require LTC services for reasons of age or disability. The respondent has heard of no such protocols, but would not be surprised if facilities were developing them in order to maintain the security of the resident population as a whole. He hasn't heard of any instances of discharge exclusively for this reason. For more information contact Bill Donaldson, Counsel to the Board on Aging and Long Term Care, (608)246-7018, bill.donaldson@ltc.state.wi.us.

Summary sheets are compilations of responses received from an informal survey of State Ombudsmen originating from inquiries made by other state and sometimes local ombudsmen. Summary sheets are not formal documents and therefore are not for public distribution. The contents should be used as information for State Ombudsman Programs to include in decision making but are not to be regarded as a definitive study of a particular topic. These sheets are compiled quickly in order to get the information out; there is little to no additional verification work. However, care is taken to accurately reflect the responses given by State Ombudsmen.

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For more information contact the National Long Term Care Ombudsman Resource Center, at (202) 332-2275 or ombudcenter@nccnhr.org