



# *Protecting* Resident Rights

**Ombudsmen in Assisted Living Facilities**



State fiscal year 2014



## Overview

*The 83<sup>rd</sup> Texas Legislature increased funding for long-term care ombudsmen to expand services to protect residents' rights and regularly visit assisted living facilities (ALFs). In 2014, ombudsmen services to ALFs grew dramatically. This report describes ALFs in Texas, ombudsmen services, and recommendations to ensure the highest quality of life and care for residents.*

# Texas Assisted Living Facilities

*ALFs serve residents with varying degrees of needs. Facilities are licensed by the state of Texas based on the number of beds and the residents' abilities. A facility is licensed as Type A, B or C, classified as small or large, and may be Alzheimer's certified. There are 1,773 ALFs in Texas.<sup>1</sup>*



Type A facilities care for residents who can evacuate the facility unassisted, do not require routine attendance during sleeping hours, and can follow directions during an emergency. Thirty-two percent of ALFs are licensed as Type A. Type B facilities care for residents who may need help evacuating, cannot follow directions during an emergency, require staff attendance during sleeping hours, and need help transferring to a wheelchair.

Type B facilities are the most prevalent, accounting for 66 percent of ALFs. Since 2003, the number of Type B facilities has increased by 89 percent. This increase in Type B ALFs illustrates a demand for a higher level of care. Type C facilities are four-bed facilities that provide adult foster care and are the least common type of ALF, representing only 2 percent of ALFs.

ALFs are also categorized by size to care for a specific number of residents. A facility licensed to care for 16 or fewer residents is a small facility. Small facilities are typically single-story homes in residential neighborhoods. A large facility is licensed to care for 17 or more residents. These facilities may be multi-story, apartment complexes, or resemble a hotel structure. The largest facility in Texas is licensed for 300 residents.<sup>2</sup>

Twenty-three percent of ALFs are licensed to serve residents with Alzheimer's disease and related disorders. Other facilities may serve a specific group of residents with the same or similar conditions; however, a separate license is not required. For instance, some facilities care for residents with intellectual and development disabilities, traumatic brain injuries, or serve predominately people with mental illness.

<sup>1</sup> DADS Regulatory Services, October 2014

<sup>2</sup> Long-term Care Quality Reporting Systems, <http://facilityquality.dads.state.tx.us/qrs/public/qrs.do>



## Quick Facts on Assisted Living Facilities in Texas

- 1,773 assisted living facilities.
- 60,393 assisted living beds.
- **Type A:** Care for residents who can evacuate the facility unassisted, do not require routine attendance during sleeping hours, and can follow directions during an emergency.
- **Type B:** Care for residents who may need help evacuating, cannot follow directions during an emergency, require staff attendance during sleeping hours, and need help transferring to and from a wheelchair.
- **Type C:** Four bed facilities that provide adult foster care.
- **Alzheimer's facility:** Type B facility certified to provide specialized services to resident's with Alzheimer's or a related condition.
- **Small:** Licensed to care for 16 or fewer residents.
- **Large:** Licensed to care for 17 or more residents.
- Rates vary from \$700 to more than \$8,000 a month.

Residents of assisted living facilities have a range of needs. Generally, residents may need help moving, bathing, dressing or taking medications, are hearing or speech impaired, use self-help devices, exhibit symptoms of mental or emotional disturbances, or are incontinent.

The cost of living in an ALF can vary greatly. Insurance companies may cover the cost of assisted living such as a limited number of contracted beds for STAR+PLUS (Medicaid) and some long-term care insurance plans. ALF services are primarily private pay and monthly rates can range from \$700 to more than \$8,000.



## Long-term Care Ombudsman Services

In 1972, the Older American's Act (Title VII, Chapter 2) established ombudsmen and their presence in nursing homes. With the growth of ALFs, the Act was amended in 1981 to allow ombudsmen services to expand to ALFs.

The mission of the Texas Long-term Care Ombudsman Program is to improve the quality of life and care for residents of nursing homes and ALFs by providing prompt, informal complaint resolution and promoting systemic change on behalf of residents' interests.

### A long-term care ombudsman

- Advocates for increased consumer protections in state and federal laws and regulations.
- Educates residents about their rights.
- Empowers and supports residents and families to discuss concerns with facility staff.
- Identifies and seeks to remedy gaps in facility, government or community services.
- Protects the health, safety, welfare and rights of residents of nursing homes and assisted living facilities.
- Provides information and assistance about long-term services and supports.
- Receives and investigates complaints, and helps residents resolve problems.
- Represents residents' interests before governmental agencies.
- Respects the privacy and confidentiality of residents and complainants.

The 83rd Texas Legislature made it possible for ombudsmen to serve and regularly visit ALF residents by increasing funds for long-term care ombudsmen. With this support for the growth of staff and services, ombudsmen expanded their knowledge of ALFs. In June 2013, ombudsmen were given basic training on the types, sizes and specialties of ALFs. Statewide mandatory ombudsmen webinars were conducted in

October and December 2013, covering topics that included facility visit best practices, common problems, and problem-solving strategies. Ombudsmen also completed DADS computer-based trainings to ensure comprehensive knowledge of rules and regulations; these include the ALF pre-licensure process and requirements, aging-in-place, retaliation safeguards and a review of regulatory compliance correction procedures.



In March 2014, ombudsmen gathered in Austin for a three-day training covering topics such as Alzheimer’s disease and related disorders, aging-in-place, inappropriate placement, and

advocacy with special populations. The following paragraphs detail ombudsmen work to protect residents’ rights and promote quality care in ALFs in 2014.

## Building Relationships

*Visiting facilities regularly allow ombudsmen the opportunity to build strong relationships with residents.*

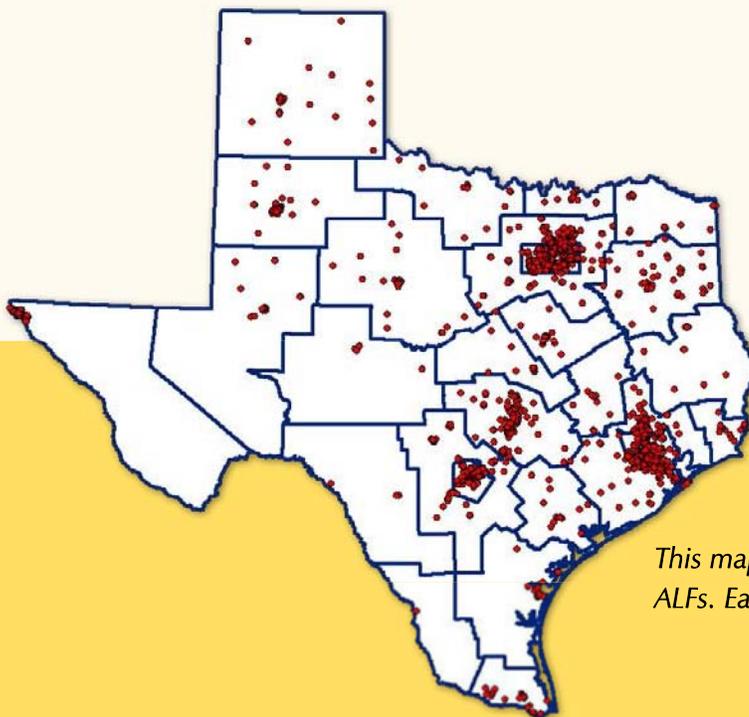
**Schedule of ALF Ombudsman Visits**

| Facility Size | Facility Type | Visits Per Year |
|---------------|---------------|-----------------|
| Small         | A             | 2               |
|               | B             | 4               |
|               | C             | 2               |
| Large         | A             | 4               |
|               | B             | 6               |

Ombudsmen visits increased dramatically between 2013 and 2014. Ombudsmen made 10,343 visits to assisted living facilities in 2014 compared to the 5,157 visits in 2013. Frequency of visits is based on the facility type and size (see chart); however, visits have similar components and are generally unannounced.

During a visit, ombudsmen examine the outside and inside of the facility for any unsafe conditions. Once inside, ombudsmen greet and notify staff of their presence. On a first visit to the facility, ombudsmen explain their role to staff and residents. The majority of time during a visit is spent talking with the residents, asking about their experience at the ALF and exploring any complaints. The visits center on an ombudsman’s goal to protect residents’ rights and ensure their quality of life and care is at its highest.

**ALFs in Texas**



*This map illustrates the number and location of ALFs. Each dot represents an ALF.*

## Providing Information

*Ombudsmen are resources for residents, family members, and facility staff.*



In 2014, ombudsmen provided 1,154 consultations to residents and families and 578 to facility staff. This is an increase from 2013 with 382 consultations to residents and families and 314 to facility staff. The most common topics ombudsmen are consulted on, in order of frequency, include: the ombudsmen program and role; residents' rights; outside services, such as legal aid or home health; questions about care; and discharge procedures and planning.



Ombudsmen also provide support and consultation by attending service plan meetings with residents. Service plan meetings include members of the interdisciplinary team, the resident, and sometimes family members. During a meeting, service plans are reviewed, issues discussed, and changes to the plan are made to ensure a resident's needs are met. Ombudsmen attend these meetings only at the request of the resident, and in 2014 ombudsmen attended 41 service plan meetings.

Resident council meetings allow residents to discuss topics and issues related to their homes. Resident councils can request ombudsmen to share information at their meetings about the role of the ombudsman, problem-solving techniques, and residents' rights. Ombudsmen attend only at the invitation of the council or a resident. Ombudsmen attended 175 resident council meetings and 23 family council meetings in 2014.



## A Resident's Story...

An ombudsman shares the following story of advocating for a resident's choice and improved living conditions.



*A woman named Veronica lived in a small Type B assisted living facility. Due to a stroke, she has paralysis on the right side of her body causing her to need extra support in her daily living. Veronica was unhappy living in this facility. It had foul odors, broken flooring, torn fencing, and lacked a ramp for wheelchair access. Veronica and several of the residents were too intimidated to share their complaints for fear of retaliation from staff. Residents reported that after the ombudsman visited, the owner would question residents about their conversations. To protect residents from retaliation, the ombudsman spent equal time with each resident and identified herself as the complainant when talking with the owner about problems. Working with the owner over several weeks, the owner took steps to improve the cleanliness and condition of the home. A ramp was installed and the fence was replaced. Walls were repainted and the flooring repaired.*

*With the ombudsman's continued presence in the facility, Veronica began to trust the ombudsman and told the ombudsman she was unhappy living there. She wanted to move to a new facility, but did not know how. At the resident's direction, the ombudsman gave her information on facilities and advocated for her right to live where she wanted. Veronica happily moved into her new home and continues to call on the ombudsman for her expertise.*

The ombudsman's sensitivity to a resident's concerns made her an effective resident advocate and significantly improved Veronica's quality of life. The ombudsman's resilience in forging productive working relationships with staff created a positive change in the quality of life for all residents in the facility.

## Resolving Complaints

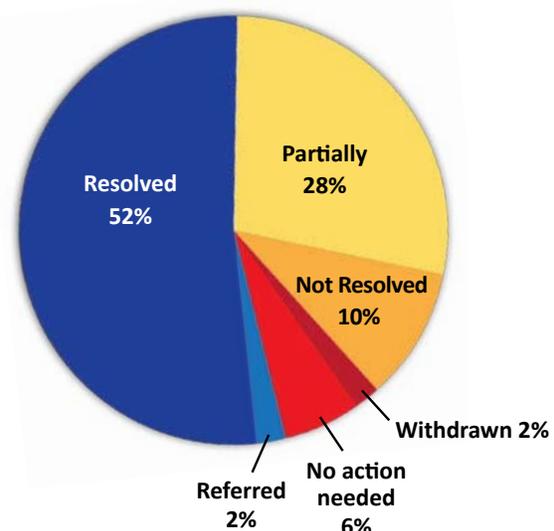
Ombudsmen open a case when a complaint is made. A case can have one or more complaints. Ombudsmen opened 1,238 cases in 2014 with 1,450 complaints. This is a significant increase from the previous year's 711 opened cases and 881 complaints. Ombudsmen gather complaints in person, by phone and email. Complaints can come from any source, including residents, facility staff, resident's family members or friends, or ombudsmen. In 2014, most reported complaints came from residents with 40 percent, and 38 percent by ombudsmen.

When a complaint is received, ombudsmen ask the resident's permission to take steps to resolve the issue. With the resident's permission, ombudsmen use problem-solving skills to advocate for the resident's rights and reach a solution. In order of frequency, the most common complaints in 2014 involved food service; environmental and safety concerns; cleanliness; medication issues, and odors. The 10 most frequent complaints account for 50 percent of total complaints received. Before a case is closed, complaints may be resolved, partiality resolved, not resolved, withdrawn, referred to another agency, or require no action. On average, cases are closed in 25 days.

**Most Frequent Assisted Living Complaints 2014**  
**Total Complaints: 1,450**

| Complaint   | Total      |
|---|------------|
| Food service: quantity, quality, variation or choice  | 159        |
| Equipment or building: disrepair, hazard, fire safety | 112        |
| Building cleanliness, pests or housekeeping           | 98         |
| Medications: administration or organization           | 80         |
| Odors   | 68         |
| Dignity, respect or poor staff attitudes              | 56         |
| Environment, air or water temperature or noise        | 44         |
| Activities: availability, choice or appropriateness   | 42         |
| Discharge or eviction: planning, notice or procedure  | 34         |
| Shortage of Staff                                     | 31         |
| <b>Total (of 10 most frequent complaints)</b>         | <b>724</b> |

**Complaint Outcomes**





## Recommendations\*

*Ombudsmen are directed by the Older Americans Act to recommend improvements to the long-term care system to better the lives of residents. The following recommendations are based on collective program experience of state and local ombudsmen.*

*\*For a complete set of recommendations from the Office of the State Long-term Care Ombudsman, refer to the annual report for state fiscal years 2013-2014.*

### **Remedy interference with the Office of the Texas Long-term Care Ombudsman.**

The enabling state statute for the Office of the State Long-term Care Ombudsman does not clearly address and deter interference by providers with ombudsmen performing official duties. Interference wastes state resources and impedes advocacy on behalf of residents who have a right to access their ombudsman. To remedy interference, include a representative of the long-term care ombudsman program in the list of interference actions prohibited by Health and Safety Code §247.0451(a).

### **Fund the DADS Legislative Appropriations Request, Protecting Vulnerable Texans Exceptional Item, which funds long-term care ombudsmen to regularly visit and resolve complaints on behalf of ALF residents and funds DADS Regulatory Services to regularly survey ALFs.**

With 1,773 ALFs in Texas, residents need the services of an independent advocate to resolve concerns, including medication errors,



environmental and safety issues, and involuntary discharge. State funding is needed to fully address the cost of staff ombudsmen and their travel to ALFs. Another concern addressed by the Protecting Vulnerable Texans Exceptional Item is regulatory surveys. ALFs are surveyed once every two years, unlike nursing homes, which are surveyed annually. Additional positions are needed for surveyors to license and regulate ALFs and formally investigate complaints such as abuse and neglect. Funding both requests will ensure residents are protected by both formal and informal long-term care oversight functions.

### **Develop ALF specialization standards.**

ALFs serve residents with complex needs such as dementia, traumatic brain injuries (TBI), intellectual and developmental disabilities (IDD), and mental illness. Like specialized Alzheimer's facilities, residents with complex needs are

often concentrated in a particular facility but, unlike the Alzheimer's specialization, ALF rules are generic for other specializations. Residents deserve licensing rules specific to their needs. Creating more specialized licenses would inform the public on the services provided and support residents choosing the right level of care. Defining facilities with specializations would provide DADS and other state agencies more information about the services and residents of a facility. Separate ALF specializations should be created in Chapter 247 of the Health and Safety Code for facilities that predominately serve people with TBI, IDD and mental illness.

### **Require ALF employees who provide direct care to be certified nurse aides.**

In many instances, unlicensed and uncertified ALF employees help residents take their medications. Ensuring that all employees who provide direct care have a minimum standard of training regulated by DADS will help ensure that residents get the help they need, including recognizing adverse reactions to drugs and other changes in their condition. Another benefit of requiring all direct-care staff to be CNAs is comprehensive training on residents' rights and identification and prevention of abuse, neglect and exploitation. This requirement would be addressed in Chapter 247 of the Health and Safety Code.

### **Provide a state fair hearing for ALF residents facing discharge.**

Unlike nursing home residents, ALF residents have no right to appeal their discharge to a state agency to ensure the reason for their discharge is valid and to determine that the ALF is taking appropriate action. Without a fair hearing, residents have no access to due process in situations where they were retaliated or discriminated against for their disability. This issue would be addressed by adding language in Health and Safety Code §247.064(b) providing residents the right to a state fair hearing.

### **Prevent unnecessary discharge from an ALF.**

If an ALF discharges a resident without proper reason or notice, the current penalty is not a sufficient deterrent. Providers are willing to pay the small penalty, which is subject to the right to correct with a potential for no fine. Elevating the penalty communicates that the state takes involuntary discharge seriously and creates a better deterrent of unnecessary discharge. Elevate the administrative penalty for violations of discharge procedures to no less than \$1,000, and make any violations not subject to the right to correct in Health and Safety Code §247.0452.



Office of the Texas Long-term Care Ombudsman  
Texas Department of Aging and Disability Services  
701 W. 51st St., Austin, Texas 78751  
P.O. Box 149030, MC-W250, Austin, Texas 78714  
Telephone: 512-438-4265  
Fax: 512-438-3233  
[www.dads.state.tx.us](http://www.dads.state.tx.us)

