

The Role of Long-Term Care Ombudsman in Preventing, Reporting and Investigating Abuse

SLTCO NORC Questionnaire, February 2011

OVERVIEW

The role of Long-Term Care Ombudsmen in preventing, reporting and investigating abuse in long-term care facilities varies widely across the country. The purpose of this brief is to summarize the responses received in the February 2011 questionnaire from State Long-Term Care Ombudsmen regarding their program's role. Additionally, this brief highlights barriers to Ombudsmen addressing abuse, promotes successful practices, and identifies potential topics for future training opportunities and further discussion.

KEY POINTS

- 30 State Long-Term Care Ombudsmen, 57%, responded to the February 2011 survey.
- The majority of respondents said their state has an active statewide multidisciplinary group to address elder abuse and 17 of the respondents participate in those meetings on a regular basis.
- The most common systemic issue identified by the respondents was the lack of coordination, communication and consistency among agencies involved in addressing elder abuse. Specifically, 7 respondents state there is a lack of communication between their Ombudsman Program and Adult Protective Services agency, 6 respondents said there is little coordination among agencies related to elder abuse, 3 respondents are concerned about a low rate of prosecution in cases of elder abuse and 2 respondents said local law enforcement agencies are reluctant to investigate cases in long-term care facilities.
- The most commonly requested training topic was for examples of best practices of effective collaboration among agencies addressing elder abuse (i.e. sample Memorandums of Understanding and protocols for coordination).
- 69% of the respondents (20) communicate regularly with their state's Medicaid Fraud Control Unit (MFCU) and 90% of respondents (26) refer cases directly to their MFCU.
- Several State Ombudsmen stated that Long-Term Care Ombudsman programs should not be the primary investigator of abuse, neglect and exploitation as they consider it a conflict of interest and an inappropriate role for an advocate. Furthermore, one respondent suggested that leadership by the Administration on Aging and changes to the Older Americans Act may be necessary in order to ensure that all Long-Term Care Ombudsmen programs are no longer considered mandatory reporters of abuse by their state.

SUMMARY OF SURVEY RESULTS

Note: The percentages included below reflect the percentage of respondents that answered specific questions, not the overall response rate as some respondents did not answer all questions.

COORDINATION WITH OTHER AGENCIES

- 19 respondents (66%) said their state has an active statewide multidisciplinary group and 17 of those respondents (89%) participate in this group.
- 86% of respondents (24) said their program communicates with representatives from law enforcement regarding abuse in long-term care and 18 respondents (60%) referred cases of alleged abuse directly to law enforcement. Most of the communication with law enforcement involves specific cases; however, some states include members of law enforcement in their

statewide and local multi-disciplinary task forces, participate in local TRIAD meetings and provide elder abuse training to law enforcement officials.

- 17 respondents (63%) stated they have local or regional multi-disciplinary groups meeting on a regular basis to address elder abuse and their local ombudsmen participate either on a regular basis or as needed.
- Slightly more than half of the respondents (14) said facilities in their state were required to contact local law enforcement in cases of alleged abuse. 17 respondents (68%) state that the agency investigating alleged abuse is required to contact local law enforcement in cases of abuse, neglect and exploitation.
- The majority of respondents (17) said they did not know if their state has notified facilities of the new reporting requirement passed in the Affordable Care Act. According to the respondents, 4 states have notified their facilities of the new requirement that states facilities receiving \$10,000 or more in federal funds to report potential cases of abuse to the Secretary and at least one law enforcement entity.
- 17 respondents (61%) said their state's regulatory agency does not notify their program when facilities submit self-reported incidents of possible abuse, neglect or exploitation.
- Most of the respondents communicate with the MFCU regarding specific cases (10), some of the respondents said they meet regularly with representatives of the MFCU (9) and a couple respondents mentioned contact with the MFCU through their state Senior Medicare Patrol (SMP) program.
- One respondent said their program refers cases to the MFCU and provides the MFCU with information upon request; however, they do not receive information from the MFCU regarding the cases they refer.
- 24 respondents communicate with their Attorney General's office regarding abuse in long-term care and nearly half of the respondents communicate with representatives from local District Attorney Offices (13) and the Department of Justice (11) regarding abuse in long-term care.
 - **California and Illinois:** These states have Operation Guardian programs in which multiple agencies conduct surprise, on-site facility inspections. The task force includes representatives from the Attorney General's Office, the regulatory agency, the LTCOP and law enforcement and each agency investigates based on their independent mandate, but coordinates with the other agencies for the unannounced inspection.
- Less than half of the respondents had written agreements with agencies regarding responsibilities in preventing, reporting and investigating abuse in long-term care. Of those with such agreements, 13 respondents had a written agreement with their state's long-term care licensing and regulatory agency, 9 had an agreement with Adult Protective Services and 5 had an agreement with their Medicaid Fraud Control Unit. One respondent stated their office has an agreement with law enforcement, another respondent has an agreement with their state's mental health department and another state has plans to create an agreement between their program and their state's Trust Fund Monitoring division.

ACTIVITIES AND SUCCESSFUL PRACTICES

Note: This is a brief summary of successful practices; please refer to the supplemental chart for additional information regarding state projects, initiatives and legislation.

- Most State Ombudsman programs provide training regarding abuse, neglect and exploitation. Specifically, 17 respondents state they provide in-service training for long-term care facility staff, 7 respondents lead or assist with conducting statewide conferences or training, 4 respondents said their program provides training for law enforcement entities and 1 respondent provides training and information to elder law agencies. Some examples of activities are as follows:
 - **Statewide Activities:**
 - **Colorado:** Colorado Coalition for Elder Rights and Adult Protection (CCERAP) and the coalition's goal is to promote awareness of elder abuse across the state and provides free quarterly elder abuse training on their website, www.ccerap.org.

- **Connecticut:** The Coalition for Abuse Prevention of Elderly (CAPE) was formed in 2008 with a grant from the National Center for Prevention of Elder Abuse and CAPE conducts educational conferences and provides training for the community and professionals.
- **Maine:** The Maine Elder Death Analysis Review Team (MEDART) is a multidisciplinary team under the Attorney General's Office that meets monthly to evaluate the system of elder protection and the Elder Justice Partnership (EJP) includes 17 state government and non-profit agencies with the goal to improve the response to elder abuse cases and has provided elder abuse training to over 500 professionals, www.elderjusticepartners.org.
- **Missouri:** Through a project called MoSAFE (Missourians Stopping Adult Financial Exploitation) a training DVD regarding financial exploitation was created for bank employees and elders. SERVE (Serving Elderly Residents who are Victims of Crime) started in 1996 to provide victim advocacy for residents in LTC, including support, counseling and information regarding victim's rights.
- **North Carolina:** Original multidisciplinary taskforce, S.A.F.E. in Long Term Care (Strategic Alliances for Elders in Long Term Care) was initiated by the SLTCO, <http://www.ncdhhs.gov/aging/pub/safe.pdf>. The taskforce has developed a diagram illustrating the role of all agencies in response to allegations of abuse, created "Investigating Crimes in Long-Term Care Facilities: Voiceless Victims" for law enforcement (available as a 3-day course or an internet course) and participates in annual World Elder Abuse Awareness Day activities.
- **Virginia:** Created a statewide Elder Law Task Force with representatives from local legal service agencies and local ombudsmen to review cases and discuss systemic elder care issues. The taskforce also created a statewide listserv to provide a forum for discussion among members.
- **Wisconsin:** Participates in quarterly meetings with representatives of the DOJ, US Attorneys' Office, VA, long-term care regulatory and licensing, OIG, Medicare/Medicaid units to share concerns, address issues and discuss potential prosecutions.
- **Wyoming:** Received a 3-year grant to provide elder abuse education to members of law enforcement, judges and prosecutors and is applying for the second phase of the grant in order to provide elder abuse training in the law enforcement academy.
- **Regional Activities:**
 - **Kentucky:** The SLTCO initiated the formation of Regional Multi-Agency Forums to address the systemic response to elder abuse, promote collaboration and communication and develop regional training and increase public awareness.
 - **Montana:** Local LTCO participate in local monthly Adult Protection Team (APT) meetings.
 - **Oklahoma:** Oklahoma County Coalition Against Financial Exploitation of the Elderly (CAFEE) is a multidisciplinary group addressing financial exploitation in all settings and includes members from the Oklahoma Bankers Association, APS, law enforcement, the LTCOP and the Attorney General's Office.
 - **Wisconsin:** Regional LTCO participate in county interdisciplinary teams called I-Teams to discuss elder abuse, neglect and exploitation.
- Several respondents (8) also mentioned promoting public awareness of elder abuse through health fairs, visits to senior centers or other public events.

INVESTIGATING AND REPORTING ABUSE, NEGLECT AND EXPLOITATION

- 66% of respondents (18) said they are not considered mandatory reporters of abuse and 9 respondents (33%) said their state regulations designate the Ombudsman program as mandatory reporters of abuse. Of the 9 respondents with programs that are mandatory reporters, 6 respondents state their program informs potential complainants of their mandate to report abuse

and potential limitation on confidentiality related to abuse allegations at the beginning of their conversation.

- As of March 25, 2011, Ombudsmen in D.C. will no longer be considered mandatory reporters, as their statute will be removed in order to come into compliance with the confidentiality requirements in the Older Americans Act.
- 46% of respondents (12) said their program attempts to verify the abuse complaint before referring it to the investigating agency.
- 81% of respondents (21) said their programs do not investigate complaints regarding abuse, neglect and exploitation in unlicensed facilities and 5 respondents (19%) state their programs do investigate these complaints in unlicensed facilities.
- 11 respondents (42%) state their program has written guidelines for local long-term care ombudsmen when reporting abuse, neglect or exploitation and 9 of the 11 respondents are willing to share their guidelines with NORC and other states.

DISCUSSION AND FUTURE TRAINING

- Multiple respondents claimed the most significant barrier to preventing, detecting and reporting abuse in long-term care was the lack of communication and collaboration between the Ombudsman program and Adult Protective Services (APS) and inconsistent involvement of APS. Specifically, two respondents said APS in their state operates differently based on the region and some regions do not investigate cases of alleged abuse in long-term facilities claiming the resident is in a “protected environment.”
- The second most common barrier to preventing, detecting and reporting abuse identified by respondents was the federal mandate to maintain resident confidentiality as residents often refuse to give consent to investigate or refer cases of alleged abuse. In relation to this barrier, one respondent requested training in how to address the conflict of having knowledge of alleged abuse, but not receiving resident consent to investigate or refer the case.
- 3 respondents mentioned a need for more public awareness of elder abuse and the role of the LTCOP. In addition to public awareness, 2 respondents requested training or examples of best practices on how to get other entities involved in addressing abuse in long-term care.
- Respondents requested training on the following topics: detecting, reporting and investigating abuse and neglect (4), detecting overmedication of residents (1), how to handle cases of sexual assault (i.e. informing facility staff not to bathe the resident in order to preserve evidence) (1), and preventing, reporting and investigating financial exploitation (2).
- One respondent expressed the need for “creative and innovative” ways to educate others about abuse, neglect and exploitation. Similarly, another respondent requested simple handouts (in English and Spanish) with presenter notes regarding the prevention and detection of abuse, neglect and exploitation that Ombudsmen can use for in-service presentations.
- 6 respondents mentioned the lack of adequate funding for staff and volunteers as the most significant barrier to preventing, investigating and reporting abuse. Specifically, the respondents said they need more funding to increase the number of staff and volunteers in order to visit facilities regularly, to provide training for facility staff and residents regarding abuse and pay for additional elder abuse training for their staff and volunteers.