



Ombudsman Outlook: News, Resources, and Tips

Brought to you by:



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Volume 2, Issue 1

Proposed Nursing Home Regulations and Proposed Voluntary APS Guidelines

As you may know, there has been a lot of recent activity at the federal level that will impact the lives of older adults and individuals with disabilities.

Proposed Revisions for Federal Nursing Home Regulations

The Centers for Medicare & Medicaid Services (CMS) published proposed revisions for the federal requirements that nursing homes must meet in order to participate in the Medicare and Medicaid programs (also known as Requirements of Participation). The full text of the proposed rule is available on the Federal Register [website](#). The comment period has been extended and individuals, groups, and organizations may submit formal comments regarding the proposed revisions through the Federal Register website until **October 14, 2015**.

The proposed rule is reorganized and includes modified and new definitions, provisions, and sections, such as the Quality Assurance and Performance Improvement (QAPI) section (483.75), provisions regarding binding arbitration agreements, Transitions of Care section (formerly known as “Admission, transfer, and discharge rights”), and a requirement for reporting suspicion of a crime (CMS Survey & Certification Memo regarding this [requirement](#)). The new QAPI section was added in accordance with the Affordable Care Act requirement for the Secretary to “establish and implement a Quality Assurance and Performance Improvement (QAPI) program requirements” and the proposed section requires facilities to “develop, implement, and maintain an effective comprehensive, data-driven QAPI program that focuses on systems of care, outcomes of care and quality of life” (more information about QAPI is available on the NORC [website](#)).

Consumer Voice created a side-by-side chart ([PDF](#), [Excel](#)) comparing the proposed rule with the current regulations and [sample comments](#). NORC developed a [chart](#) that includes

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NORC Featured Resource

NORC Residents' Rights Issue Page

In recognition of 2015 Residents' Rights Month visit the NORC issue [page](#) to find resources, training materials, webinar, and activities celebrating residents' rights.

Calendar of Events

October

2015: Residents' Rights Month. This year's theme is CARE Matters and materials and Resident's Voice Challenge submissions are available on the

references of the Long-Term Care Ombudsman Program (LTCOP) in the current and proposed regulations and related language from the preamble of the proposed rule. Additional information is available on the Consumer Voice [website](#).

Comments are due by **5 p.m. ET on October 14, 2015** through the Federal Register [website](#) and additional information will be provided as it becomes available.

Proposed APS Guidelines

The [draft Voluntary Consensus Guidelines for State Adult Protective Services \(APS\) Systems](#) published by ACL were developed by experts in the field of APS and adult maltreatment in order to provide a core set of principles and common expectations to encourage consistency in policies and practices of APS across the country. The LTC Ombudsman Program is mentioned in the guidelines regarding collaboration and investigation. Through these guidelines ACL seeks to:

- Help ensure that adults are afforded similar protections and service delivery, regardless of which state or jurisdiction they live in.
- Assist states in providing effective, efficient, and culturally competent services to victims and responses to perpetrators.
- Enhance partnerships and interagency coordination between APS and other state and local aging, disability, and adult service providers, by providing a consistent approach and thorough understanding of APS' responsibilities and role.
- Demonstrate the value this nation places on its older adults and adults with disabilities as contributing members of society.

ACL is particularly interested in receiving feedback from the Long-Term Care Ombudsmen and others in the LTC Network. A specific Listening Session has been set up for LTCO on October 7, 2015 at 2:30 pm – 3:30 pm (Eastern). Click [here](#) to register for the call.

You can also share your feedback on the draft guidelines by submitting a comment by October 30, 2015 on the ACL [website](#).

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New NORC Resources

A brief overview of new resources that have recently been added to the NORC website is below.

NEW! [Emergency Preparedness Kit for LTC Ombudsman](#)

September is National Preparedness Month, and it's a good opportunity for ombudsman programs to evaluate preparedness for emergency. NORC has created an Emergency Preparedness Kit that includes a drawstring bag; flashlight; NORC Tip Sheets for Ombudsman – Being

Consumer Voice [website](#).

November 4-7, 2015: 39th Annual Consumer Voice Conference (Arlington, VA). For more information and an updated agenda click [here](#).

Questions or Ideas?

Do you have any questions or challenges related to LTCO advocacy and program management you want addressed in a future newsletter?

Do you have any suggestions for articles or feedback about this issue? If so, [please let us know](#).

Save and Share

We encourage you to share this newsletter with your LTCO program. You can forward this email or save and share the PDF version saved on our [website](#).

Want to receive the Ombudsman Outlook directly?

Did you receive this issue of the Ombudsman Outlook from a colleague or your LTCO supervisor? [Let us know](#) if you want to subscribe and receive our newsletter directly.

Do You Miss The Voice?

LTCO no longer receive The Voice (the

Prepared! Things Ombudsmen Should Do Before, During and After an Emergency, Smart Phone Apps and Emergency Management Dictionary and Translations; and CMS Emergency Preparedness Checklist for People Living in Long-Term Care Facilities, their Families and Ombudsmen. Kits are available for \$14 each (plus shipping and handling). Discounts are available for bulk orders (20 or more).

[NEW! Ombudsman References in Proposed Federal Nursing Home Regulations](#)

The Centers for Medicare & Medicaid Services (CMS) published proposed revisions for the federal requirements that nursing homes must meet in order to participate in the Medicare and Medicaid programs (also known as Requirements of Participation). The chart linked above was developed by NORC and includes the references of the Long-Term Care Ombudsman Program (LTCOP) in the current and proposed regulations and related language from the preamble of the proposed rule.

[NEW! Webinar on Identifying, Preventing and Responding to Bullying in Long-Term Care Facilities](#)

This webinar discussed bullying among residents in long-term care facilities. Dr. Robin Bonifas, John A. Hartford Faculty Scholar in Geriatric Social Work, Associate Professor with the School of Social Work at Arizona State University shared findings from her recent work regarding bullying in long-term care facilities.

[NEW! Side-by-side of the Long-Term Care Ombudsman Program Final Rule with the Pertinent Preamble Language](#)

This document lists each section of the Final Rule alongside the pertinent response to comments from AoA found in the preamble. The preamble language is helpful as it gives insight into the considerations behind the language and intent of the regulation.

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Disclosure of Files, Records, and Other Information Maintained by the LTCOP

Providing technical assistance to state and local LTCO is a primary responsibility of NORC and since the final LTCOP rule was published NORC staff continue to respond to LTCO seeking assistance regarding the rule. NORC has produced several [resources](#) regarding the rule and will continue to develop materials and training in order to assist LTCO programs in understand the content of the regulation and what changes, if any, are needed for implementation.

The disclosure of LTCO information has been a recent hot topic, specifically how state LTCOPs address disclosure of LTCOP information in program practice, policies and procedures. The [final rule](#) includes the following requirements

Consumer Voice weekly newsletter) automatically. If you miss the long-term care news from The Voice [subscribe for free](#) or become a [member](#) to receive this publication.

for policies and procedures for SLTCOPs regarding disclosure [§1327.11(e)]:

3) *Disclosure.*

Policies and procedures regarding disclosure of files, records and other information maintained by the Ombudsman program must include, but not be limited to:

(i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by § 1327.13(e);

(ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by § 1327.19(b)(5) through (8), unless:

(A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:

(A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iv) Exclusion of the Ombudsman and representatives of the Office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1327.19(b)(5) through (8); and

(v) Adherence to the provisions of paragraph (e)(3) of this section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(c) of the Act.

Based on these federal requirements case information and documentation maintained by the ombudsman program should be disclosed only at the discretion of the State Ombudsman in accordance with developed criteria, and with the written consent of the complainant or resident, or their legal representative, or except as required by a court order. Any information that would identify a resident (including information from conversations between a resident and a representative of the State Long-Term Care Ombudsman) is confidential, and should be protected as such.

Additionally, the SLTCO and representatives of the Office are excluded from abuse reporting requirements including when the reporting would disclose identifying information of a resident complainant without consent or court order. Ombudsmen can look to their legal representatives to help ensure they are only providing information specifically required through a court order, or with the written consent of the resident and/or their legal representative.

The NORC website has examples of state LTCOP [policies and procedures](#) and additional information regarding the final LTCOP rule is available [here](#).

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News from the Network...

Residents' Rights Month Activities ([CARE Matters, October 2015](#))

Several state and local LTCOPs are hosting events and activities to recognize Residents' Rights Month. Residents' Rights Month resources and information about these activities are available [here](#) and some examples include:

- *Iowa State LTCOP*: Conducting a training for anyone interested in learning more about residents' rights and the experiences of residents in LTC facilities. The training is called [Care Matters: A Cultural Sensitivity Training](#) and will be held in seven cities across the state.
- In *Richmond, Virginia*, Senior Connections' Long-Term Care Ombudsman will be meeting with local hospitals in the area to provide education on residents' rights with focus on discharge concerns relating to nursing homes assisted living facilities.
- In *Orange County, Texas*, the Orange County Commissioners Court [proclaimed](#) October 2015 as National Long-Term Care Residents' Rights Month.

Ohio SLTCOP Data Dashboard

The Ohio State Long-Term Care Ombudsman Program created a data dashboard in order to show what representatives of the Office are doing to carry out the mission of the program; disclose information about services funded with public dollars; educate partners and the public about ombudsman services and how those services contribute to the lives of long-term care consumers; raise awareness of long-term care issues; and provide partners and the public with information on key indicators of ombudsman performance that are used to evaluate the program. The dashboard will display quarterly data and includes Ombudsman Quality Measures. Visit the NORC website for the first quarter of the [data dashboard](#) and a [memo](#) explaining the dashboard.

Alabama Local LTCO Retire

The Alabama State LTCO shared that two local LTCO from Jefferson County are retiring. After nearly 15 years as a LTCO, Karen A. Guice is retiring. During her time as a LTCO Karen has served as an officer and member of the National Association of Local Long Term Care Ombudsman Board, Co-founder and Chairman of the Alabama Coalition for Culture Change, and Chairman of the Board and Contestant Consultant, Emcee, and Pageant Director for Ms. Senior Alabama, Inc. Evelyn Shaw is also retiring and has worked alongside Karen Guice for ten years. They will be missed by the Alabama LTCOP, the residents they served, and the LTCOP network.

Alaska LTCO

The Alaska LTCOP has partnered with the Alaska Native Tribal Health Corporation to [translate residents' rights](#) into Yupik and Inupiaq. The Alaska Native Tribal Health Corporation has an Elder Outreach program that visits Alaska natives in nursing homes and assisted living homes in Anchorage. Additional information regarding LTCO services and tribal elders is available on the NORC [website](#).

Emergency Planning Seminar- California

The Long Term Care Ombudsman of San Luis Obispo County is hosting an [Emergency Planning Seminar](#) on October 16, 2015. The seminar will provide information regarding what type of emergencies can happen locally, review emergency planning tips and considerations, and share how healthcare providers can join the Healthcare Coalition to receive support and information during an emergency.

This "News from the Network" article will appear in every issue in order to highlight your work and news. We invite and encourage you to [send](#) your advocacy successes, best practices, program management examples, and resources so we can learn from you and share your experience with your peers.

LTCO Volunteer Management

Criminal Background Checks and Liability Insurance

Conducting criminal background checks for potential staff and volunteer LTCO is part of a comprehensive screening process and an important to reduce risk for your program and those you serve. Many LTCOPs conduct criminal background checks; however, the scope and frequency of the checks vary. Several State LTCOPs work with their state agencies/programs (e.g. state police, DOJ, state background check services) to conduct inexpensive statewide background checks and in some cases, national background checks. Some states require the local host agencies/local LTCO programs to conduct the background checks (as part of the contracts) and they are paid for by the local host agency or program, while other states conduct all background checks from the state office.

N4A (The National Association for Area Agencies on Aging) through the Aging Network's Volunteer Collaborative (ANVC) has partnered with First Advantage (formerly LexisNexis) to provide background screening services for volunteers and staff of aging programs . Agencies are not required to participate in this program and some programs may not be able to due to individual state requirements, but due to this national partnership First Advantage is offering discounted rates to provide a variety of background check services. Visit the ANVC's [website](#) for additional information regarding these services. Examples of screening [materials](#) and [practices](#) are on the NORC website.

Another way to reduce risk for your volunteer, your program, and those you serve is to purchase liability insurance for your volunteers. The Older Americans Act requires the state agency to ensure that "that no representative of the Office will be liable under State law for the good faith performance of official duties" and to provide legal representation "to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative" [(Older Americans Act of 1965. Section 712 (i) and (g)(1)(B)]. Many State LTCOPs choose to provide liability insurance as another way to reduce risk and protect their program, according to a NORC report 55% of State LTCOPs with a volunteer LTCO program had liability insurance for the volunteers. Some SLTCOPs require their local host agencies to carry insurance for their volunteers (e.g. [CIMA](#) Volunteers Insurance Service) and a few state LTCOPs take advantage of their statewide volunteer insurance program.

If you have any questions regarding criminal background checks or liability insurance, please contact [NORC](#).

[Join](#) the LTCO Volunteer Management Network today to connect with your peers, exchange ideas, share resources and talk about LTCO volunteer management.

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Technical Assistance Hot Topic: LTCO Role in Discharge Hearings

As a resident advocate, LTCO may be asked by a resident (or a resident's legal representative) to attend a discharge appeal hearing in order to support a resident, represent a resident, or act as a witness. There are no federal requirements or guidance that prohibits LTCO from either representing or serving as a witness during appeal hearings and the role of LTCO in hearings varies across the country.

The most common ways a LTCO supports a resident facing a discharge hearing include: informing residents of their right to an appeal, explaining the appeal process, offering to support the resident during the process (e.g. advocacy preventing the discharge, communicate with the facility staff and others as necessary related to the discharge plan and/or appeal, attend the hearing), and referring the resident to legal aid for legal representation. Since residents can act as their own representative "or use legal counsel, a relative, a friend, or other spokesman" [42 CFR 431.206(b)(3)] and per the Older Americans Act LTCO shall "represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents" some LTCO represent the resident during the hearing or provide information as a witness.

As long as LTCO are supporting the resident's wishes and the resident wants them to act on their behalf these activities fall within the responsibilities of a LTCO. However, some LTCO programs refer residents to legal counsel for representation feeling that legal counsel is the best fit for this role due to their legal expertise and/or they don't want to provide additional training to LTCO to act in this role. The Administration on Aging responded to a comment regarding the [final LTCOP rule](#) that said "Ombudsman programs are not adequately equipped to undertake the requirement to pursue "administrative, legal, and other remedies" providing additional support for the role of the LTCO during an appeal hearing:

AoA Response: We note that this is not a new requirement, but has long been required by the Act at section 712(a)(3)(D) and (g)(2). Our intent in finalizing this rule is to help provide additional clarity around this expectation. To further clarify the meaning of §1327.13(a)(5), we provide the following examples of ways States can fulfill this requirement:

1. Ombudsman assures individual resident access to an administrative remedy: A resident receives an involuntary

discharge notice that provides a notice of right to a fair hearing. The Ombudsman makes sure the resident knows how to request the hearing and is informed of available supports to make sure his/her interests are represented in the process. The Ombudsman program could, for example, refer the resident to a non-profit legal services program to file the appeal and represent the resident interests at the hearing, or provide inhouse legal counsel to represent the resident, and/or provide a representative of the Office to accompany the resident to the hearing as emotional support. Alternatively, a representative of the Office could serve as a spokesperson for a resident in a hearing as provided in 42 CFR 431.206(b)(3).

For additional information regarding transfer and discharge visit the NORC [website](#).

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Quick Tips!

In recognition of [National Preparedness Month](#) here are some emergency preparedness tips for LTCO:

- Ombudsmen spend a great deal of time in the car traveling for work. Prepare a Ready Bag specifically for your vehicle. Find a conference bag or small plastic container and fill it with the basics: flashlight & batteries, phone charger & external battery, paper state or city maps, paper & pen, water & snack, money, and seasonal clothes. Why money? ATMs and pay-at-the-pump services may not be operable.
 - Create a similar Ready Bag for the office. When attending health fairs and conferences pick up the vendor goodies such as first aid kits, sewing kits, paper & pens, etc. and include them in your Ready Bags. Add comfortable shoes because you may have to walk long distances from the office.
 - Write or type names and phone numbers (work, cell, home) of family, friends, employer, co-workers, facility administrators, local emergency managers, and other important people. Think of people and numbers that you have stored on smart phones and computers. Print copies for the office, vehicles and home.
 - Once a quarter or as often as you deem necessary print two sets of paper copies of basic information about the facilities that you cover. Print a MapQuest or similar navigation app's directions and maps for driving to your facilities. Keep one set of papers at home and work.
 - Encourage facility staff to actively engage residents (not just staff) in emergency preparedness planning and drills. Ask the administrator to invite local emergency managers, Fire and EMT personnel and emergency transportation drivers to visit with the residents and to show them their vehicles and life saving equipment. Facility staff may help to lessen the fear of emergencies by assisting residents in creating their own Ready Bags.
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- For more tips and ideas for being prepared review NORC's [emergency preparedness briefs](#) and www.ready.gov.

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