Ombudsman Interaction with State Survey Agencies

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Administration for Community Living Office of LTCO Programs

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Ombudsman Basics

Our nation has been conducting investigations, passing new laws and issuing new regulations relative to nursing homes at a rapid rate during the past few years. All of this activity will be of little avail unless our communities are organized in such a manner that new laws and new regulations are utilized to deal with the individual complaints of older persons who are living in nursing homes. The individual in the nursing home is powerless. If the laws and regulations are not being applied to her or to him, they might just as well not have been passed or issued.

~Arthur Flemming, 1976
Authority & Structure

• Older Americans Act Title VII
• AoA – Office of Long-Term Care Ombudsman Programs
• Office of the State LTC Ombudsman – 53
  – Distinct entity, separately identifiable
  – Designation
  – Training
§1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.

(a) Functions. The Ombudsman shall, personally or through representatives of the Office—

(1) Identify, investigate, and resolve complaints that—
(2) Provide services to protect the health, safety, welfare, and rights of the residents;
(3) Inform residents about means of obtaining services provided by the Ombudsman program;
(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;
(5) Represent the interests of residents before governmental agencies,
(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;
(7) Analyze, comment on, and monitor the development and implementation of … laws, regulations, policies…
(8) Promote the development of citizen organizations
(9) Provide TA to resident & family councils
b) The Ombudsman shall be the head of a **unified statewide program** and shall:

(1) Establish or recommend policies, procedures and standards for administration of the Ombudsman program pursuant to §1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in §1324.19 in accordance with Ombudsman program policies and procedures.
(c) **Designation.** The Ombudsman shall determine designation, and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act and the policies and procedures set forth in §1324.11(e)(6).

(1) Where an Ombudsman chooses to designate local Ombudsman entities, the Ombudsman shall:

(i) Designate local Ombudsman entities to be organizationally located within public or non-profit private entities;

(ii) Review and approve plans or contracts governing local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and

(iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.
(e) **Disclosure.** In making determinations regarding the disclosure of files, records and other information maintained by the Ombudsman program, the Ombudsman shall:

1. Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act in responding to requests for disclosure of files, records, and other information, regardless of the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;

2. Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records or other information of the Office; and

3. Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including…
(f) **Fiscal management.** The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies and procedures governing the Ombudsman program.

(g) **Annual report.** The Ombudsman shall independently develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and as otherwise required by the Assistant Secretary.
§1324.13 (h) Through adoption of memoranda of understanding and other means, the Ombudsman shall lead state-level coordination, and support appropriate local Ombudsman entity coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being or rights of residents of long-term care facilities including, but not limited to:

(1) Area agency on aging programs;
(2) Aging and disability resource centers;
(3) Adult protective services programs;
(4) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
(5) Facility and long-term care provider licensure and certification programs;
(6) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
(7) Victim assistance programs;
(8) State and local law enforcement agencies;
(9) Courts of competent jurisdiction; and
(10) The State legal assistance developer and legal assistance programs, including those provided under section 306(a)(2)(C) of the Act.
Capacity Data - 2022

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>State</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff</td>
<td>1,835</td>
<td>442</td>
<td>1,393</td>
</tr>
<tr>
<td>Volunteers</td>
<td>4,049</td>
<td>761</td>
<td>3,288</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number and Capacity</th>
<th>Total</th>
<th>Nursing Facilities</th>
<th>Residential Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of facilities</td>
<td>76,059</td>
<td>15,734</td>
<td>60,325</td>
</tr>
<tr>
<td>Resident capacity</td>
<td>3,236,126</td>
<td>1,659,959</td>
<td>1,576,167</td>
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</tbody>
</table>
Location of State LTCO Office
- State unit on aging
  - Inside state government other agency
  - Outside state government within a non-profit agency
  - Outside state government in a stand-alone non-profit agency

Location of Local Ombudsman Entities
- Area agency on aging (AAA)
- Legal services provider
- Non-profit agency, with 501(c)(3) status
- Stand-alone non-profit agency
- Other
Resident Access to Ombudsman

- Facilities with at least one visit:
  - 35,202 in 2021
  - 46,977 in 2022

- Total visits:
  - 151,094 in 2021
  - 287,215 in 2022
### Complaints in 2022 (Preliminary)

<table>
<thead>
<tr>
<th>Complaint Category</th>
<th>Total</th>
<th>Nursing Facilities</th>
<th>Residential Care Communities</th>
<th>Other Settings</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Abuse, gross neglect, exploitation</td>
<td>20,154</td>
<td>13,954</td>
<td>5,683</td>
<td>517</td>
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<tr>
<td>B. Access to information</td>
<td>4,542</td>
<td>3,179</td>
<td>1,319</td>
<td>44</td>
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<tr>
<td>C. Admission, transfer, discharge, eviction</td>
<td>15,618</td>
<td>10,926</td>
<td>4,298</td>
<td>394</td>
</tr>
<tr>
<td>D. Autonomy, choice, rights</td>
<td>26,786</td>
<td>19,049</td>
<td>7,382</td>
<td>355</td>
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<tr>
<td>E. Financial, property</td>
<td>10,174</td>
<td>6,801</td>
<td>3,272</td>
<td>101</td>
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<tr>
<td>F. Care</td>
<td>56,189</td>
<td>43,837</td>
<td>11,787</td>
<td>565</td>
</tr>
<tr>
<td>G. Activities and community integration and social services</td>
<td>7,167</td>
<td>5,098</td>
<td>1,981</td>
<td>88</td>
</tr>
<tr>
<td>H. Dietary</td>
<td>10,726</td>
<td>7,411</td>
<td>3,260</td>
<td>55</td>
</tr>
<tr>
<td>I. Environment</td>
<td>13,536</td>
<td>8,052</td>
<td>5,392</td>
<td>92</td>
</tr>
<tr>
<td>J. Facility policies, procedures and practices</td>
<td>10,700</td>
<td>6,134</td>
<td>4,379</td>
<td>187</td>
</tr>
<tr>
<td>K. Complaints about an outside agency (non-facility)</td>
<td>1,858</td>
<td>939</td>
<td>483</td>
<td>436</td>
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<tr>
<td>L. System and others (non-facility)</td>
<td>5,414</td>
<td>3,451</td>
<td>1,685</td>
<td>278</td>
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<tr>
<td><strong>Total Complaints</strong></td>
<td>182,864</td>
<td>128,831</td>
<td>50,921</td>
<td>3,112</td>
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</table>
State & Local Coordination Activities

• Area Agencies on Aging
• Aging & Disability Resource Centers
• Adult Protective Services
• Protection & Advocacy Systems
• Regulatory Systems
• Law Enforcement (MCFU)
• Victim Assistance Programs
• Legal Assistance Programs
• Centers for Independent Living
Survey Participation – Relevant Responsibilities

• Provide services to protect the health, safety, welfare, and rights of the residents
• Represent the interests of residents before governmental agencies
• Data collection
  – Total number of instances of survey activity by representatives of the Office
  – Include participation in both standard surveys and complaint surveys. Survey participation includes but is not limited to pre-survey information to surveyors, sharing complaint summary reports, participation in exit conferences and informal dispute resolution.
## Facility Survey Participation

### FACILITY SURVEY PARTICIPATION

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2022</th>
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<tbody>
<tr>
<td>RCC</td>
<td>3,848</td>
<td>3,019</td>
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<tr>
<td>NF</td>
<td>12,339</td>
<td>10,858</td>
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<tr>
<td>TOTAL</td>
<td>16,187</td>
<td>13,877</td>
</tr>
</tbody>
</table>

### Facility Survey Participation

- **Nursing Facilities**
  - 2021: 16,187
  - 2022: 13,877

- **RCC**
  - 2021: 3,848
  - 2022: 3,019
## Complaints Referred

<table>
<thead>
<tr>
<th>Referrals to ==&gt;</th>
<th>Licensing, Certification</th>
<th>APS</th>
<th>Law Enforcement</th>
<th>P &amp; A</th>
<th>Legal Services</th>
<th>Other</th>
<th>None</th>
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<tbody>
<tr>
<td>A. Abuse, gross neglect, exploitation</td>
<td>2,012</td>
<td>1,446</td>
<td>595</td>
<td>130</td>
<td>148</td>
<td>202</td>
<td>16,267</td>
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<tr>
<td>B. Access to information</td>
<td>330</td>
<td>28</td>
<td>9</td>
<td>14</td>
<td>34</td>
<td>66</td>
<td>4,098</td>
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<tr>
<td>C. Admission, transfer, discharge, eviction</td>
<td>914</td>
<td>192</td>
<td>29</td>
<td>92</td>
<td>488</td>
<td>371</td>
<td>13,791</td>
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<td>D. Autonomy, Choice, Rights</td>
<td>1,716</td>
<td>241</td>
<td>49</td>
<td>89</td>
<td>177</td>
<td>476</td>
<td>24,276</td>
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<td>E. Financial, Property</td>
<td>436</td>
<td>90</td>
<td>93</td>
<td>30</td>
<td>149</td>
<td>204</td>
<td>9,300</td>
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<tr>
<td>F. Care</td>
<td>4,160</td>
<td>674</td>
<td>114</td>
<td>65</td>
<td>88</td>
<td>653</td>
<td>50,917</td>
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<td>G. Activities and community integration and social services</td>
<td>473</td>
<td>41</td>
<td>10</td>
<td>10</td>
<td>20</td>
<td>190</td>
<td>6,474</td>
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<td>H. Dietary</td>
<td>761</td>
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<td>10</td>
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<td>190</td>
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<td>191</td>
<td>12,121</td>
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<td>J. Facility policies, procedures and practices</td>
<td>2,267</td>
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<td>39</td>
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<td>29</td>
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<td>8,249</td>
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<td>K. Complaints about an outside agency (non-facility)</td>
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<td>3</td>
<td>32</td>
<td>74</td>
<td>145</td>
<td>1,526</td>
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<tr>
<td>L. System and others (non-facility)</td>
<td>179</td>
<td>138</td>
<td>33</td>
<td>63</td>
<td>269</td>
<td>340</td>
<td>4,508</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>14,510</strong></td>
<td><strong>3,194</strong></td>
<td><strong>1,001</strong></td>
<td><strong>553</strong></td>
<td><strong>1,510</strong></td>
<td><strong>3,168</strong></td>
<td><strong>161,253</strong></td>
</tr>
</tbody>
</table>
NASOP Member Survey

• 36 responses
• Advance notice of exit conferences
• Timing of notice
• Virtual participation
• IIDR participation
• Complaint routing
Discussion

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