

Association of Health Facility Survey Agencies

Annual Training Conference

Ombudsman Interaction with State Survey Agencies

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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

Functions & Responsibilities

§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

Functions & Responsibilities: Detail

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.

Functions & Responsibilities: Detail (2)

(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.

Functions & Responsibilities: Detail (3)

(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...

Functions & Responsibilities: Detail (4)

(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.

Functions & Responsibilities: Detail (5)

§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.

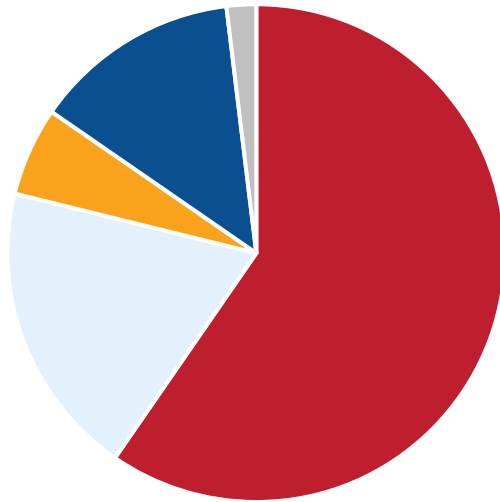
Capacity Data - 2022_(preliminary)

	Total	State	Local
Staff	1,835	442	1,393
Volunteers	4,049	761	3,288

Number and Capacity	Total	Nursing Facilities	Residential Care
Number of facilities	76,059	15,734	60,325
Resident capacity	3,236,126	1,659,959	1,576,167

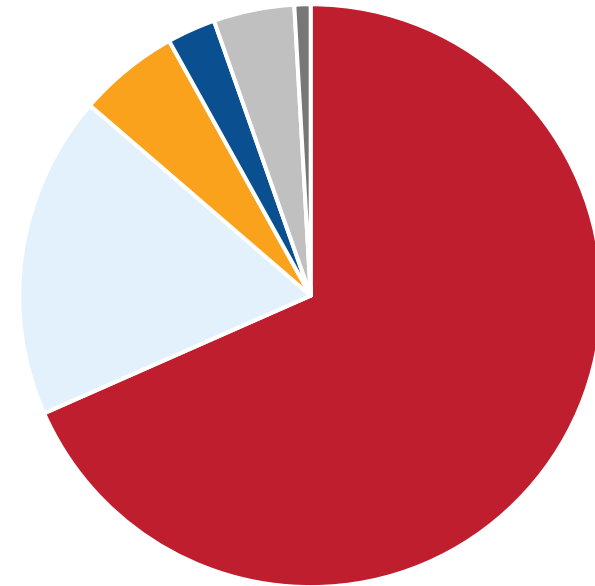
Program Structure

Location of State LTCO Office



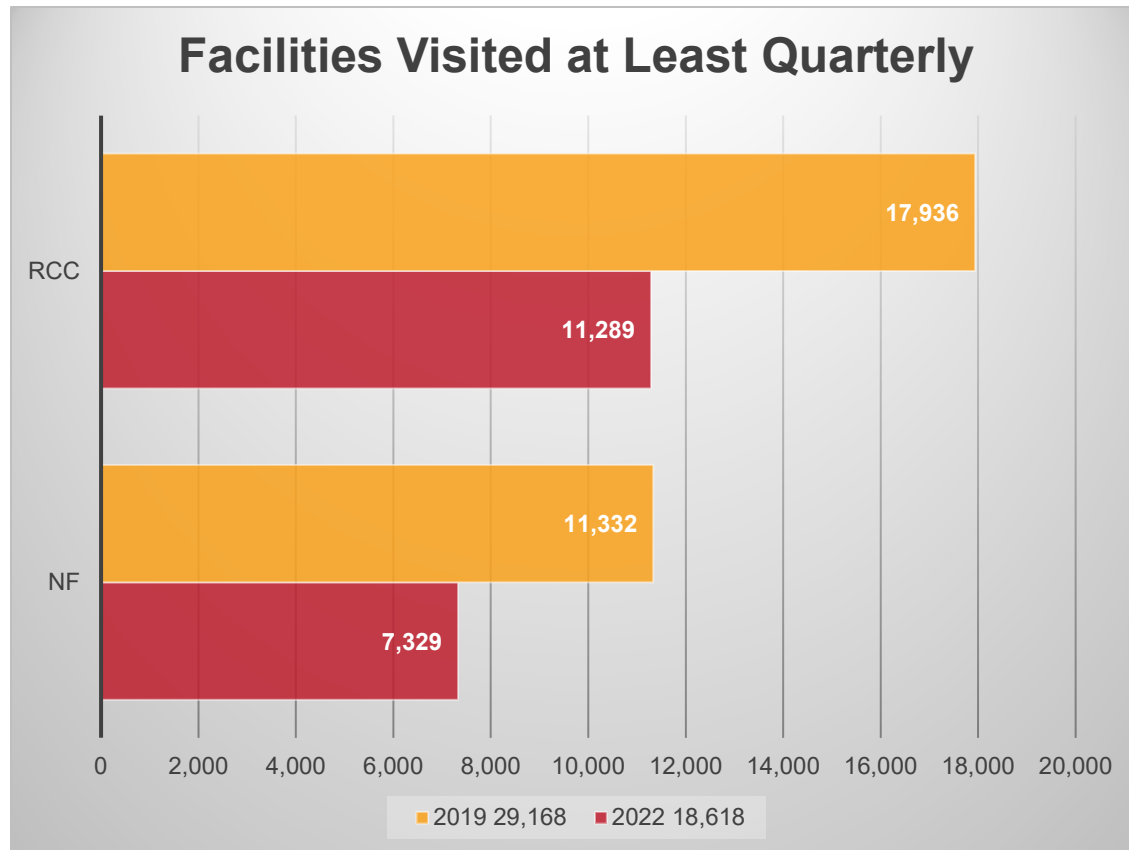
- State unit on aging
- Inside state government other agency
- Inside state government, stand-alone agency
- Outside state government within a non-profit agency
- Outside state government in a stand-alone non-profit agency

Location of Local Ombudsman Entities



- Area agency on aging (AAA)
- Non-profit agency, with 501(c)(3) status
- Legal services provider
- Stand-alone non-profit agency
- There are no local Ombudsman entities
- 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)

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

State & Local Coordination Activities

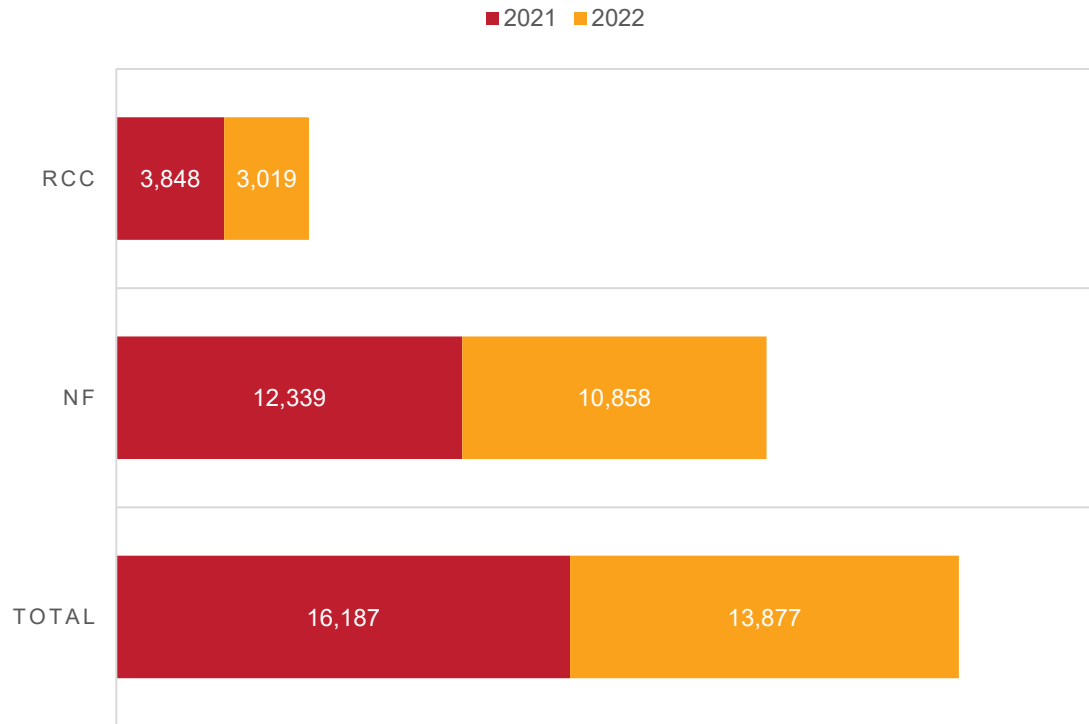
- Area Agencies on Aging
- Aging & Disability Resource Centers
- Adult Protective Services
- Protection & Advocacy Systems
- Regulatory Systems
- Law Enforcement (MCFU)
- Victim Assistance Programs
- Legal Assistance Programs
- Centers for Independent Living

Survey Participation – Relevant Responsibilities

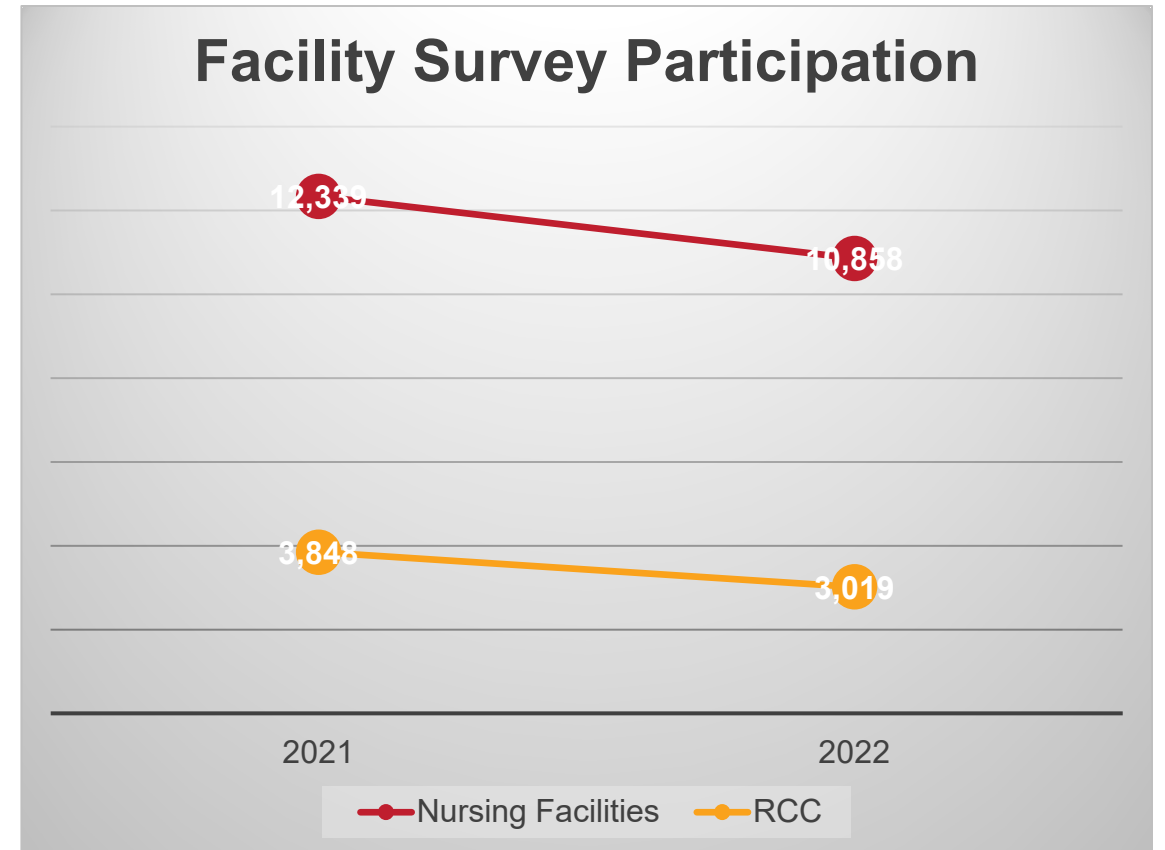
- Provide services to protect the health, safety, welfare, and rights of the residents
- Represent the interests of residents before governmental agencies
- Data collection
 - Total number of instances of survey activity by representatives of the Office
 - Include participation in both standard surveys 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



Facility Survey Participation



Complaints Referred

Referrals to ==>	Licensing, Certification	APS	Law Enforcement	P & A	Legal Services	Other	None
A. Abuse, gross neglect, exploitation	2,012	1,446	595	130	148	202	16,267
B. Access to information	330	28	9	14	34	66	4,098
C. Admission, transfer, discharge, eviction	914	192	29	92	488	371	13,791
D. Autonomy, Choice, Rights	1,716	241	49	89	177	476	24,276
E. Financial, Property	436	90	93	30	149	204	9,300
F. Care	4,160	674	114	65	88	653	50,917
G. Activities and community integration and social services	473	41	10	10	20	190	6,474
H. Dietary	761	92	9	10	16	190	9,726
I. Environment	1,167	99	18	5	18	191	12,121
J. Facility policies, procedures and practices	2,267	136	39	13	29	140	8,249
K. Complaints about an outside agency (non-facility)	95	17	3	32	74	145	1,526
L. System and others (non-facility)	179	138	33	63	269	340	4,508
Total	14,510	3,194	1,001	553	1,510	3,168	161,253

NASOP Member Survey

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

Discussion

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