

LTC OMBUDSMAN ADVOCACY IN ASSISTED LIVING FACILITIES COMPENDIUM

INTRODUCTION AND OVERVIEW

PURPOSE

The *LTC Ombudsman Advocacy in Assisted Living Facilities Compendium* is intended to assist long-term care ombudsman programs (LTCOP) in increasing their effectiveness in advocacy for and with residents in assisted living facilities.¹

BACKGROUND²

The *Nursing Home Ombudsman Program* was mandated for all states in the 1978 amendments to the Older Americans Act (OAA). Widespread reports of abuse, neglect, and poor care in board and care facilities began to garner national attention. The need for a consumer advocate for individuals living in those settings became obvious. In the 1981 amendments to the Older Americans Act, the Nursing Home Ombudsman Program was renamed the *Long-Term Care Ombudsman Program* and its jurisdiction was expanded to long-term care facilities, including board and care or similar facilities. The 2006 OAA amendments clarify inclusion of LTCO services to residents of “assisted living.” No additional federal funding was appropriated.

As a result of the lack of federal regulations, state definitions and regulations for board and care homes or assisted living facilities vary. For the LTCOP, the definition of board and care facilities encompasses residential care facilities, adult congregate living facilities, assisted living facilities, foster care homes, and other adult care homes similar to a nursing facility. These facilities provide room, board, and personal care services to a primarily older residential population. Under the Older Americans Act, the LTCOP may serve residents of all such facilities. The Administration on Aging (AoA) has not limited States’ ability to authorize the program to serve only residents of regulated long-term care facilities, and instructs States to report complaints related to both regulated and unregulated long-term care facilities.³ Due to the rapid growth in these facilities and the widespread variation in state regulation of and names for these facilities, the Compendium uses *assisted living facilities (ALFs)* to identify the various non-nursing home facilities covered by ombudsmen.

The significance of LTCO services in board and care homes was underscored by Dr. Arthur Flemming, former Commissioner on Aging and architect of the LTCO program, in testimony during a 1985 congressional hearing when he said, “I believe in the ombudsman concept. I feel that it is contributive to the improvement of the quality of care in a significant number of nursing homes, and boarding care homes. There are still many nursing homes operating in our Nation that do not measure up to acceptable standards as far as quality of care is concerned. And, of course, the same is true for boarding care homes.”⁴ More than thirty years later, this finding is likely to still be true today as the number of assisted living facilities continues to grow.

¹ Throughout this Compendium, the term “assisted living facility (ALF)” means any non-nursing facilities such as; board and care homes, adult care homes, foster care homes, and residential care facilities. Consult the Older Americans Act for definitions of “board and care” and “long term care facility” and for LTCO access to these facilities in Sections 711, 712.

² For more complete information and references refer to Ombudsman Programs: Advocacy in Board & Care 1981 – Present. Louise Ryan. Presentation at the Consumer Voice Conference, Washington, DC. October 26, 2013. <http://theconsumervoicework.org/archived-events/archived-annual-conferences/2013-annual-conference>

³ OAA Section 102(a)(35)(C) and (D). See also, “Instructions for Completing the State Long-Term Care Ombudsman Program Reporting Form for The National Ombudsman Reporting System (NORS).” Part III. A., page 6. OMB NO.: 0985-0005.

⁴ The LTCOP: A Decade of Service to the Institutionalized Elderly. Hearing before the Subcommittee on Human Services of the Select Committee on Aging House of Representatives. Ninety-ninth Congress. September 10, 1985. Comm. Pub. No. 99-537. Pg. 21.

KEY POINTS

Older Americans Act Provisions

The Older Americans Act (OAA) defines “long-term care facilities” as skilled nursing facilities, nursing facilities, board and care facilities and other adult care homes. The OAA states that LTCO must ensure residents of long-term facilities have “regular and timely access” to LTCO services and “that the residents and complainants receive timely responses” from representatives of the LTCO program.⁵

All of the LTCO functions, duties and other requirements (e.g. facility visits, complaint resolution, systems advocacy, community education, information and assistance) outlined in the OAA apply to LTCO services for residents of all long-term care facilities. However, the National Ombudsman Reporting System (NORS) data indicates that most LTCO programs provide more complaint investigation and resolution services, and visits to residents of nursing facilities than to residents in assisted living facilities.⁶ Some of the Older Americans Act provisions regarding LTCO responsibilities to assist individuals living in long-term care facilities are below.

(3) FUNCTIONS. — The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

- (A) identify, investigate, and resolve complaints that—
 - (i) are made by, or on behalf of, residents; and
 - (ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—
 - (I) providers, or representatives of providers, of long-term care services;
 - (II) public agencies; or
 - (III) health and social service agencies;
- (B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;
- (C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);
- (D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;
- (E) 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;
- (F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;
- (G)
 - (i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;
 - (ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and
 - (iii) facilitate public comment on the laws, regulations, policies, and actions;
- (H)
 - (i) provide for training representatives of the Office;
 - (ii) promote the development of citizen organizations, to participate in the program; and
 - (iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

⁵ Older Americans Act of 1965. Section 102 (a)(35) and Section 712 (a)(3)(D)

⁶ 2013 National Ombudsman Reporting Systems Data. Administration for Community Living, Administration on Aging, http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/National_State_Data/2013/Index.aspx.

(I) carry out such other activities as the Assistant Secretary determines to be appropriate.

The Older Americans Act requires that annual State LTCO reports include an analysis of the state LTCO program's services to residents of assisted living facilities.

(h) ADMINISTRATION.—The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c);

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities

Administration on Aging Statements

A consistent LTCO presence in long-term care facilities through regular facility visits and communication with residents is critical in order to build relationships with residents, promote residents' rights and provide effective resident-directed advocacy.

The Administration on Aging (AoA) addresses the provision of state LTCOP services and facility coverage in the "Instructions for Completing the State Long Term Care Ombudsman Reporting Form for the National Ombudsman Reporting System (NORS)." In the NORS instructions, AoA defines "statewide coverage" as state LTCOPs ensuring that "residents of both nursing homes and board and care homes (and similar adult care facilities) and their friends and families throughout the state have access to knowledge of the ombudsman program and how to contact it, and complaints received from any part of the state are investigated and documented and steps are taken to resolve problems in a timely manner, in accordance with federal and state requirements."

The NORS instructions define "facility coverage" as "the number of facilities (unduplicated count) covered on a regular basis, not in response to a complaint, by paid and volunteer Ombudsmen" and "regular basis means no less frequently than quarterly."⁷

STATUS OF OMBUDSMAN ADVOCACY IN ASSISTED LIVING FACILITIES

Since the 1980s numerous studies of assisted living as well as studies of the LTCO Program emphasize the need for an increase in LTCO services in these facilities. While there are SLTCOPs that have established an increased presence in ALFs, that is not universally true among LTCOPs.

LTCO Quarterly Visits

(2014)

69% Nursing Facilities

28.7% Board & Care/ALFs

Nationally there has been a significant and rapid increase in the number of assisted living beds and facilities as well as a slight decrease in the number of nursing home beds and facilities. In addition to more individuals choosing assisted living for their long-term care needs, residents (often with significant care needs) are transitioning out of nursing homes and into assisted living facilities as states strive to offer consumers more options in how and where they receive long-term care services (e.g. Medicaid waivers for services outside of nursing homes).

⁷ "Instructions for Completing the State Long-Term Care Ombudsman Program Reporting Form for The National Ombudsman Reporting System (NORS)." OMB NO.: 0985-0005. Page 10. http://tcombudsman.org/uploads/files/support/Instructions_Final_2019.pdf

The National Ombudsman Reporting System (NORS) data show that a majority of LTCO Programs focus more of their activities in nursing homes than in assisted living facilities. Nursing home residents receive more quarterly visits (not in response to a complaint), than do residents in ALFs. According to the 2014 NORS data, 69% of nursing homes and 28.7% of assisted living facilities received a quarterly visit. The NORS data show a total of 51,152 complaints in assisted living (0.039 complaints per bed) in 2014, compared to a total of 136,795 complaints in nursing facilities (0.080 complaints per bed). There is a wide range of assisted living complaint numbers among the states, from 10 in one state to a high of 13,189 in another state.⁸

There are a variety of reasons for the discrepancy in regular LTCO visits to these facilities, such as a lack of volunteer LTCO visiting ALFs, the sheer number of facilities, advocacy challenges due to the absence of federal regulations and possibly minimal state regulations and enforcement, and insufficient program funding to support regular visits.⁹ Despite these challenges and explanations for the contrast between LTCO services in nursing homes and ALFs, the need for LTCO programs to analyze their data, evaluate their activities, identify and address barriers in order to enhance LTCO services in this setting remains.

Compendium Organization and Development

This compendium has four sections.

- **Program Assessment, Development, & Management**
 - The purpose of this section is to provide LTC Ombudsman programs with tips, tools and resources for assessing their current activities in assisted living facilities, enhancing their program services in these facilities and managing aspects of their program related to serving residents in ALFs.
- **Skills Training**
 - This section will discuss LTCO training specifically for advocacy in assisted living facilities.
- **Issue Advocacy**
 - This section will discuss common complaints and issues specific to assisted living and provide effective advocacy strategies.
- **Systems Advocacy**
 - This section will review systems advocacy strategies regarding the quality of life and care in ALFs, highlight resources regarding systems advocacy, and provide examples of successful systems advocacy related to assisted living by state and local LTCOPs.

Each section contains the following tools.

- An introduction and overview for each section
- Technical Assistance (TA) Briefs and Program and Practice Tip Sheets for specific aspects of the section topic and links to additional resources
- Examples of best practices

The Compendium is a work in progress, beginning with the section on [program assessment](#), development, and management. The tools and resources will be posted on the NORC website as they are developed. You are encouraged to check the Compendium on a routine basis and to share your best practices and information related to this topic with NORC.

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⁸ 2013 National Ombudsman Reporting Systems Data. Administration for Community Living, Administration on Aging, http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/National_State_Data/2013/Index.aspx

⁹ See "Background" above for additional information regarding the expansion of the program in 1981.