



*Improving the Lives of Older Adults and People with Disabilities
Through Services, Research, and Education*

To: State Long-Term Care Ombudsmen
cc: State Unit on Aging Directors
Date: March 10, 2020
Re: Long-Term Care Ombudsman Program and COVID-19

Preparing for and responding to emergencies to support people living in long-term care facilities requires the work of many; and while Long-Term Care Ombudsman programs (Ombudsman programs) are not first responders, they can play an important role. Ombudsman programs can resolve complaints, protect rights, and promote access to services for residents before, during and after emergencies such as COVID-19. In this difficult time, Ombudsmen must value the needs and rights of residents in facilities under quarantine or in which there is risk of exposure, and at the same time attend to their own health and safety.

What is COVID-19?

According to the Centers for Disease Control and Prevention (CDC), a novel coronavirus is a new coronavirus that has not been previously identified. The virus causing coronavirus disease 2019 (COVID-19), is not the same as the [coronaviruses that commonly circulate among humans](#) and cause mild illness, like the common cold.

The new name of this disease is coronavirus disease 2019, abbreviated as COVID-19. In COVID-19, 'CO' stands for 'corona,' 'VI' for 'virus,' and 'D' for disease. Formerly, this disease was referred to as "2019 novel coronavirus" or "2019-nCoV".

There are [many types](#) of human coronaviruses including some that commonly cause mild upper-respiratory tract illnesses. COVID-19 is a new disease, caused by a novel (or new) coronavirus that has not previously been seen in humans¹.

What is the role of the Ombudsman program in responding to residents during a COVID-19 outbreak?

The Older Americans Act (OAA) does not authorize Ombudsman programs to serve as first responders in emergencies or disasters. While the OAA does not contain any specific provisions regarding activities related to Ombudsman program emergency preparedness or response, the OAA and federal regulations² do require the Ombudsman program to provide services to assist residents in protecting their health, safety, welfare, and rights, as well as to represent the interests of residents before governmental agencies.³

¹ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#basics>

² 45 CFR 1324

³ OAA Section 712(a)(3)(B),(E), 712(a)(5)(B)(iii), (iv); 42 USC 3058g(a)(3)(B), (E), 3058g(a)(5)(B)(iii), (iv); 45 CFR 1324.13(a)(1),(5), .19(a)(1), (4)

The following information is intended to point state Ombudsmen to existing tools and resources, provided now in the context of responding to COVID-19. This information does not replace, and is meant to supplement guidance issued by the CDC, any state or local health department, or the Centers for Medicare & Medicaid Services (CMS).

Personal Safety is Paramount:

- Request that all representatives of the Office carefully review the following fact sheets from the CDC:
 1. What You Should Know, <https://www.cdc.gov/coronavirus/2019-ncov/about/index.htm>
 2. What You Should Do If You Are Sick, <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>
 3. What You Need to Know about Handwashing <https://youtu.be/d914EnpU4Fo>

Program Preparation Before an Emergency:

If your state is not yet affected by COVID-19, use this opportunity to prepare.

- Add to your policies and procedures using existing materials being disseminated by the National Ombudsman Resource Center and other state Ombudsman programs
- Participate in any meetings or training offered by local health departments or your state survey agency, encourage representatives to participate as appropriate.
- Contact the provider associations to learn how their members are preparing.
- Instruct representatives to contact their facilities and inquire about their emergency response plan.
- Ombudsman programs are to serve as a resource and refer individuals to appropriate public health entities, not attempt to answer specific questions about COVID-19.
 - Inform representatives of state-specific protocols and resources regarding the COVID-19 response and prevention.
 - Assist representatives with messaging for community education and information and assistance regarding COVID-19 (e.g., provide talking points on residents' rights regarding visitation, state and local procedures for quarantine).
 - Encourage representatives of the Office (representatives) to distribute CDC and related information if visiting or through the mail and e-mail.
 - Ensure that representatives have the phone number of local health departments or COVID-19 hotlines to refer residents, their families and facility staff.

Program Response During an Emergency - Continuity of Operations:

- Refer to ACL's [Emergency Preparedness and Response: Model Policies and Procedures for State Long-Term Care Ombudsman Programs](#) Section 400, *Continuity of Operations* in case your program needs to telework. Ensure that you and all representatives of your Office have the resources to conduct business remotely including:
 - a) Appropriate technology, laptop, printer, internet access, electronic tablets, cell phones, etc.
 - b) contact information for the Ombudsman, representatives of the Office (both staff and volunteer), legal counsel, agency leadership, other State Ombudsmen,
 - c) copy of Ombudsman laws, regulations, program policies and procedures, including emergency preparation and response policies and procedures,
 - d) Ombudsman program training manual,
 - e) Business cards,
 - f) Ombudsman program brochures and/or other outreach materials, and
 - g) Ombudsman program forms, such as consent to access and disclosure forms
 - h) Relevant contact information of other entities as described in 400.7.

- Consider alternative formats to ensure that CDC guidance is widely available to all representatives of the Office; i.e. mailing hard copies for those representatives who are not typically on-line.

- Consider gathering resident and family contact information now. See below, Communication with residents and families.

Alternative Methods to Conduct Ombudsman Program Work During a Quarantine:

Refer to ACL's [Emergency Preparedness and Response: Model Policies and Procedures for State Long-Term Care Ombudsman Programs](#) Section 600 – *Ombudsman Program Services Related to Emergencies* to determine if there is a need to make adjustments in response to an outbreak of COVID-19. Such adjustments may include temporary changes to procedures or standards concerning facility coverage through visits to residents, alternative formats to conduct resident communication, such as through video conferencing, or phone calls, and suspension of some activities, as appropriate.

Communication with residents and families:

Be proactive and ensure that your state policies and procedures require that representatives routinely obtain a resident census list. If one is not available and visits are prohibited, instruct representatives to call the facility and ask for the list.

Outreach to residents – start with the telephone:

- States may want to develop a script and brief questionnaire when contacting residents to ensure some consistency. Use introductory language and questions typically asked during routine visits. Additionally:
 - Ask residents if they have access to a computer, tablet or has a smart phone and if they are interested in video chats or conferences.
 - Ask residents if they have e-mail addresses and if they would like to receive e-mail updates or correspond through e-mail.
 - Ask residents if they prefer that you contact a representative for on-going communication.

Reminder about Ombudsman Communications:

- All communications with residents, complainants, others, via e-mail or other methods are considered Ombudsman program information and disclosure provisions apply. Ensure that your program has technology in place to protect the privacy of e-mail correspondence.

Resident Councils:

- Ensure that your state policies and procedures require that representatives routinely obtain the contact information of resident council leadership, including phone numbers and e-mail addresses.
 - If this was not in your policies and procedures, consider activating this requirement for future visits.
 - Do not wait for an outbreak of COVID-19 – instruct representatives to call the facility and ask for this information now.
 - Contact the resident council president – assess the level of technological capacity to hold resident council teleconferences
 - Seek facility staff support to establish this meeting format, if necessary.

Resident Representatives, Families and Family Councils:

- Ensure that your state policies and procedures require that representatives routinely obtain resident representative or family contact information, including phone numbers and e-mail addresses.
 - If this was not in your policies and procedures, consider activating this requirement.
 - Do not wait for an outbreak of COVID-19 – instruct representatives to call the facility and ask for resident representative or family contact information now.
 - Create and send an e-mail introduction, which includes how to contact the program.

- Ombudsman programs may want to consider activating family councils where they do not exist or holding family teleconference meetings. This type of meeting creates an opportunity to introduce the program before a crisis occurs. Establishing communication may be more difficult when the facility is in the middle of a crisis.
- If a family council exists, ensure that representatives contact the president and ask to be invited to their meeting, if not already involved.

Additional communication approaches when a facility is under quarantine:

- Post Ombudsman program contact information on front door.
- Make brochures available outside by the front door, if practical.
- Mail brochures and other information to the facility and ask the administrator to distribute program brochures.
- Consider issuing a press release to remind the public that the program is a resource.
- Contact elected officials to remind them that the program is a resource for their constituents.

Complaint Processing:

Refer to ACL's [*Emergency Preparedness and Response: Model Policies and Procedures for State Long-Term Care Ombudsman Programs*](#) Section 600.2 Complaint Processing

- Assess complaint intake, response, investigation, referral, and resolution procedures and standards applicable under normal operating conditions and determine if adjustments are necessary.
 - Ensure that the complaint process during emergencies continues to reflect the primacy of the resident's goals, wishes and determination of satisfaction with the resolution, as required by 45 CFR 1324.19(b).
 - Ensure consistency of complaint processing practices regarding disclosure of resident or complainant identifying information, as required by 45 CFR 1324.19(b). The program continues to obtain informed consent to the greatest extent possible with consideration of the specific circumstances of this emergency.
- The Ombudsman program may be the complainant when there is difficulty accessing resident, for example, or if there are general concerns about care or infection control and similar circumstances. Remind representatives to document all activities (e.g., complaints, information and assistance, community education) using appropriate NORS codes. Document these complaints in your state's software; this includes activities and complaint work conducted by the state Ombudsman.

Ombudsman Program Authority:

The Ombudsman program has authority to access residents and their representatives although during this crisis the method may change.

- 45 CFR 1324.11(e)(2)(iii) Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §§1324.13.
- 1324.19 (e)(2)(vii) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

Review your state's Memorandum of Understanding (MoU) with your state survey and certification agency to ensure that lines of communication are consistent with the MoU. Advocate for the program to be included in any statewide task force and that the program is involved in applicable conference calls, etc.

Legal counsel – ensure that your legal counsel is activated to help if you are having difficulty accessing residents or their representatives and for consultation on complaints and other programmatic issues related to COVID-19.

Facility Emergency Preparedness and Response Requirements:

Nursing homes are to have an emergency preparedness plan – see §483.73 - Emergency preparedness.

The LTC facility must comply with all applicable Federal, State and local emergency preparedness requirements. The LTC facility must establish and maintain an emergency preparedness program that meets the requirements of this section. The emergency preparedness program must include, but not be limited to, the following elements:

(a) Emergency plan. The LTC facility must develop and maintain an emergency preparedness plan that must be reviewed, and updated at least annually. The plan must do all of the following:

- (1) Be based on and include a documented, facility-based and community-based risk assessment, utilizing an all-hazards approach, including missing residents.*
- (2) Include strategies for addressing emergency events identified by the risk assessment.*
- (3) Address resident population, including, but not limited to, persons at-risk; the type of services the LTC facility has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans.*
- (4) Include a process for cooperation and collaboration with local, tribal, regional, State, or Federal emergency preparedness officials' efforts to maintain an integrated response during a disaster or emergency situation.*

The policies and procedures require the nursing home to maintain an emergency communication plan that specifically includes contact information for the Office of the State LTC Ombudsman Program. 42 CFR § 483.73(c)(2)(iii).

Resident Rights: 42 CFR § 483.10(f)(4)(i)

(4) The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident. (i) The facility must provide immediate access to any resident by—

(C) Any representative of the Office of the State long term care ombudsman, (established under section 712 of the Older Americans Act of 1965, as amended 2016 (42 U.S.C. 3001 et seq.). 42 CFR § 483.10(f)(4)(i)(C).

Again, the method of communication with the resident may not be in a personal visit but this does not mitigate the responsibility of the nursing home to facilitate resident communication (by phone or other format) with the Ombudsman program or any other entity listed in 42 CFR § 483.10(f)(4).

Residential Care Communities:

Review your state requirements for emergency preparedness requirements. Reports of assisted living residents and staff with COVID-19 indicate that they will need to prepare and respond.

Resources:

Administration for Community Living (ACL) <https://acl.gov/COVID-19>

Centers for Disease Control – Check the CDC website for the most timely, comprehensive information about the national response to the outbreak.

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Centers for Medicare & Medicaid Services (CMS)

<https://www.cms.gov/medicare/quality-safety-oversight-general-information/coronavirus>

- CMS recently issued guidance for surveyors ([QSO-20-12-All](#)) and a call to action to long-term care providers ([QSO-20-14-NH](#)) and hospitals to assist in preventing the spread of COVID-19.

National Ombudsman Resource Center (NORC)

- *Coronavirus Prevention in LTC Facilities: Information for State Long-Term Care Ombudsmen* – https://ltcombudsman.org/state_home/state_support/COVID-19 (password-protected SLTCO side)
- *Infection Control* issue page – <https://ltcombudsman.org/issues/infection-prevention-flu-viruses-and-other-health-issues>