

FREQUENTLY ASKED QUESTIONS:

Program Placement, Services, Disclosure of Information, and Conflicts of Interest

The [report](#), “Collaborations between Long-Term Care Ombudsmen and Protection & Advocacy Agencies” written by the National Disability Rights Network (NDRN), National Long-Term Care Ombudsman Resource Center (NORC), and National Association of State Long-Term Care Ombudsman Programs (NASOP) identified the most common questions that staff of both programs have about each other.¹ This brief provides guidance and resources for these questions.

Where are the Protection and Advocacy Agencies (P&As) and Long-Term Care Ombudsman Programs located?

- To locate Protection and Advocacy organizations in states, territories, and tribal nations visit this page <http://www.ndrn.org/en/ndrn-member-agencies.html>.
- To locate State LTC Ombudsman programs and local Ombudsman representative programs visit this page <http://ltcombudsman.org> and click “Visit our Map.”

Why are these programs occasionally known by names other than P&A or Ombudsman program in their state/region?

Each state program and their representative offices may have distinct names. It is helpful to check the national websites above to locate state offices for each program. The state program websites will provide the unique name for the state office and any of their representative offices.

Is it a conflict of interest for an Ombudsman program or P&A agency to be a part of a government entity?

Per the Older Americans Act, State Units on Aging are required to establish and operate an Office of the State Long-Term Care Ombudsman (the “Office”) and are responsible for deciding where the Office will be housed. State Units on Aging may operate the program directly within the state agency or by contract or another arrangement with another public agency or a private, non-profit organization. In addition, representatives of the Office may or may not be employees of government or quasi-governmental agencies. The Code of Federal Regulations 45 CFR parts 1321 and 1324, published February 11, 2015, outline in detail both organizational and individual conflicts of interests for the placement of the Office, the Ombudsman, host agencies of local Ombudsman entities, and individual representatives.²

The Developmental Disabilities Assistance and Bill of Rights (DD) Act of 1975 provided for the governor of each state to designate an agency to be the P&A and to assure that the P&A was, and would remain, independent of any service provider. Most entities designated as P&As are private non-profit organizations created specifically for the purpose of conducting the P&A program. However, some P&As are part of state government, a few are hybrid

¹ *Collaborations between Long-Term Care Ombudsmen and Protection & Advocacy Agencies*. September 2013.

<http://ltcombudsman.org/uploads/files/support/ltcop-pa.pdf>

² Additional information about the LTCOP Final Rule is available here: http://ltcombudsman.org/library/fed_laws/ltcop-final-rule

quasi-public agencies, and a few P&As reside within civil legal services programs. Subsequent P&A statutes, with a single exception (Client Assistance Program-CAP), provide for the new P&A programs to be housed within the same agency designated by the governors under Protection and Advocacy for Individuals with Developmental Disabilities (PADD).³

What settings do the Ombudsman programs and P&A agencies serve and are services dependent on the age of the person?

The Older Americans Act authorizes the Ombudsman program to advocate for all residents of nursing homes, board and care homes, assisted living facilities, and other similar adult care facilities, regardless of age.⁴ Some states have expanded the scope of their Ombudsman program to also serve individuals receiving long-term care services and supports in their home (e.g., home and community based services).⁵

P&A agencies have the authority to provide legal representation and other advocacy services to all people with disabilities, regardless of age, based on a system of priorities for services. All P&A agencies have broad jurisdiction to assist persons with disabilities regardless of where the person lives (including long-term care facilities or other institutional settings). Check your state's P&A website to learn of their state-specific priorities for who they will serve. The service priorities may change annually and will vary by state.

How can P&A agencies and Ombudsman programs coordinate when there is potential for an overlap of services?

Since Ombudsman programs have a specific mandate to assist people living in long-term care facilities and the P&A can also provide assistance to people in long-term care facilities it could lead to a duplication of services or to confusion as to who and how residents are being served. Therefore, programs may want to coordinate these services in order to make the best use of limited resources and to clearly explain to residents the depth and breadth of services. A memorandum of understanding (MOU) can be very helpful to determine coordination, best use of resources, complaint investigation, and systems advocacy strategies.⁶

How can P&As and Ombudsman programs work together on behalf of a resident receiving long-term care if programs have restrictions on sharing confidential information?

This can be a challenge, but not an unsurmountable one. A partnership agreement, such as a memorandum of understanding (MOU), between programs could establish the parameters for disclosure of client information.

The Ombudsman program advocates for residents and follows resident direction regarding whether to share their information with others. The Ombudsman program regulations provide further guidance for people who are unable to communicate their wishes to the Ombudsman.⁷

³ Additional information regarding the P&A and CAP Network: <http://www.ndrn.org/en/about/paacap-network.html>

⁴ Older Americans Act (OAA) of 1965, Section 711 (6). Definition of "resident" means "an individual who resides in a long-term care facility" and the definition for "long-term care facility" is in Section 102 (35). See the 2016 OAA Frequently Asked Questions document for more information regarding the definition of "resident" (page 6) <http://ltombudsman.org/uploads/files/issues/2016-OAA-FAQs.pdf>.

⁵ For state specific information locate State LTC Ombudsman programs by visiting this page (<http://ltombudsman.org>) and clicking "Visit our Map."

⁶ Additional information and examples of MOUs is available on the NORC website: http://ltombudsman.org/omb_support/pm/collaboration/ltcop-protection-and-advocacy-agencies-collaboration-toolkit

⁷ See 45 CFR 1324.19 "Duties of the Representative of the Office" for more details and the NORC [website](#) for resources regarding the rule, including complaint investigation and abuse reporting.

The P&A staff, many who are lawyers and paralegals, have a code of ethics to maintain confidentiality between the client and legal staff. P&As do have special investigative authority to act on behalf of an individual if there is probable cause to believe that the individual has been subject to abuse or neglect and the individual, because of mental or physical condition, cannot authorize access and there is no guardian, or the guardian is the state, or a non-state guardian does not respond to the P&As offer to assist.

Are volunteers in the Ombudsman program trained and as knowledgeable about the program as paid staff?

Ombudsman program volunteers are trained and designated as representatives of the Office of the State Long-Term Care Ombudsman Program. The number of classroom and field training hours for initial designation and for continuing education hours vary by state. Volunteer representatives must be free of individual conflicts of interest and are supervised by paid staff.

Resources

Note: This resource is part of series of materials regarding Ombudsman program and P&A collaboration, visit the NORC [website](#) for additional information on this topic.

National Long-Term Care Ombudsman Resource Center- LTCOP Rule page
http://ltcombudsman.org/library/fed_laws/lcop-final-rule

Enabling Laws Protection and Advocacy for Individuals with Developmental Disabilities (DADD)
http://dadsupport.ndrn.org/other/Statutory_Requirements_of_PAs.pdf

Contact Us

If you have questions about this brief or would like to share examples of your state's Ombudsman program and P&A collaborations, please email ombudcenter@theconsumervoice.org or call 202.332.2275.