



The National **Long-Term Care**
Ombudsman Resource Center



VIRTUAL **OFFICE**
HOUR *Last Wednesday of the Month*

June 26, 2024



Ombudsman Program Role in Investigating Abuse, Neglect, and Exploitation

Responding to Allegations of Abuse

- ▶ The Ombudsman program:
 - ▶ investigates and resolves complaints on behalf of residents
 - ▶ resolves complaints to the “satisfaction of the resident”
 - ▶ does not “substantiate” to prove the allegation occurred

<https://acl.gov/programs/long-term-care-ombudsman/long-term-care-ombudsman-faq>

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RESPONDING TO ALLEGATIONS OF ABUSE: ROLE AND RESPONSIBILITIES OF THE LONG-TERM CARE OMBUDSMAN PROGRAM

OVERVIEW

Provisions in the Older Americans Act (OAA) state that the Long-Term Care Ombudsman Program (LTCOP) shall “identify, investigate and resolve complaints” regarding “action, inaction, or decisions that may adversely affect the health, safety, welfare or rights of the residents” made by, or on behalf of, residents. ¹ Complaints may include, but are not limited to, allegations of abuse, gross neglect, and exploitation. Long-Term Care Ombudsman programs provide resident-centered advocacy and are directed by resident goals for complaint resolution. Due to strict federal requirements, resident and complainant information shared with or gathered by the LTCOP is confidential unless consent is obtained (as described below in the federal requirements). Therefore, the Ombudsman program role in investigating allegations of abuse is unique and differs from other entities such as, adult protective services and state licensing and certification agencies.

In 2016, the Administration for Community Living (ACL) published the State Long-Term Care Ombudsman Programs Final Rule which provides more specific guidance regarding investigating allegations of abuse, including how Ombudsman program representatives should respond if they witness abuse. ²

The purpose of this guide is to discuss how Ombudsman program representatives can respond to allegations and observations of abuse, neglect, and exploitation when the resident does not or cannot give consent to pursue the complaint. In the absence of resident consent, LTCOP representatives can take other actions to adhere to disclosure requirements and work to ensure the resident receives quality care and is protected from harm. This guide reviews the federal requirements regarding complaint investigations and disclosure, highlights statements from the Administration on Aging, and provides advocacy strategies and additional resources.

KEY POINTS

What is abuse?

Since states have different definitions for abuse, neglect, and exploitation, this guide will use the definitions provided in the National Ombudsman Reporting system (NORS) definitions of complaint codes and unless otherwise stated, we use the term “abuse” to include any willful act of “abuse, gross neglect and exploitation” throughout this resource. ³

Administration on Aging Statements

In addition to the program requirements regarding disclosure and complaint investigation outlined in the Older Americans Act and the Rule, the Administration for Community Living/Administration on Aging has responded to questions regarding the role of the Office of the State Ombudsman in investigating allegations of abuse.

LTCOP Role in Investigating Allegations of Abuse, Gross Neglect, and Exploitation

The primary responsibility of the LTCOP is to investigate and resolve complaints on behalf of residents, but the LTCOP program is unique in that its goal is to resolve the complaint to the “satisfaction of the resident or

https://ltcombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf

NORS Data – Physical Abuse

- ▶ The abuse category with all types of abuse counted, represented 11.9% of total complaints in FFY2023.
- ▶ There were 24,140 complaints out of a total of 202,894.
- ▶ Physical abuse reached the top 5 in 2020.
 - ▶ For all provider types, physical abuse was #2 in 2020, #3 in 2021, #4 in 2022, and #3 in 2023.

LTCOP Rule Updates

- ▶ [ACL – 2024 Final Rule to Update Older Americans Act Regulations](#)
- ▶ <https://www.govinfo.gov/content/pkg/FR-2024-02-14/pdf/2024-01913.pdf>
- ▶ https://ltcombudsman.org/uploads/files/support/Redline_of_LTCOP_OAA_Reg_Changes.zip

Rule § 1324.11(e)(1)(v)

Standards to ~~assure prompt response to complaints~~
~~by~~ ensure that the Office and/or local Ombudsman entities
provide prompt response to complaints, with priority given
to complaints regarding ~~which prioritize~~ abuse, neglect,
exploitation and ~~time-sensitive~~ complaints that are time-
sensitive. ~~and which consider~~ At a minimum, the standards
shall require consideration of the severity of the risk to the
resident, the imminence of the threat of or potential harm
to the resident, and the opportunity for mitigating harm to
the resident through provision of Ombudsman program
services.

§ 1324.11(e)(3)(v)

(v) Prohibition on requirements for mandatory reporting abuse, neglect, or exploitation to adult protective services or any other entity, long-term care facility, or other concerned person, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in [§ 1324.19\(b\)\(5\)](#) through [\(8\)](#); and

§ 1324.19(b)(1)

The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident.

§ 1324.19(b)(3)(iii)

In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in [paragraphs \(b\)\(5\)](#) through [\(7\)](#) of this section, notwithstanding State laws to the contrary.

§ 1324.19(b)(8)

The procedures for disclosure, as required by [§ 1324.11\(e\)\(3\)](#), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies;

§ 1324.19(b)(8)(ii)

Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

§ 1324.19(b)(8)(ii)

(A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in [paragraph \(b\)\(9\)](#) of this section.

§ 1324.19(b)(8)(iii)

In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in [paragraph \(b\)\(9\)](#) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

“

What deidentified examples (or questions) do you have regarding investigating a case involving allegations of abuse, neglect, or exploitation?



Resources

Key Resources

▶ Abuse, Neglect, and Exploitation in Long-Term Care Facilities

<https://ltcombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities>

▶ Responding to Allegations of Abuse: Role and Responsibilities of the LTCOP

https://ltcombudsman.org/uploads/files/issues/an-e-no-consent-ref-guide-july_2018.pdf

▶ LTCOP: What You Must Know

<https://ltcombudsman.org/uploads/files/library/long-term-care-ombudsman-program-what-you-must-know.pdf>

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In 2016, the Administration for Community Living (ACL) published the Long-Term Care Ombudsman Programs Final Rule which provides more specific guidance regarding the role and responsibilities of Long-Term Care Ombudsman program representatives should be followed.

The purpose of this guide is to discuss how Ombudsman programs should investigate and observations of abuse, neglect, and exploitation when they receive a complaint. In the absence of resident consent, Ombudsman programs should adhere to disclosure requirements and work to ensure the safety and well-being of residents. This guide reviews the federal requirements regarding the role and responsibilities of Long-Term Care Ombudsman program representatives from the Administration on Aging, and provides information on how to access these resources.

KEY POINTS

What is abuse?

Since states have different definitions for abuse, neglect, and exploitation, we use the term "abuse" to include any violation of a resident's rights throughout this resource.³

Administration on Aging Statements

In addition to the program requirements regarding disclosure of information, the Administration on Aging, in response to questions regarding the role of the Office of the Long-Term Care Ombudsman, issued the following statements:

LTCOP Role in Investigating Allegations of Abuse, Gross Neglect, and Exploitation

The primary responsibility of the LTCOP is to investigate and resolve complaints. The LTCOP program is unique in that its goal is to resolve the complaints of residents, family members, and others.

¹ Older Americans Act of 1965, Section 712 (b)(3)(A) published in the Federal Register, 02/11/2015, Vol. 80, No. 28, LTCOP Final Rule <http://www.federalregister.gov/documents/2015/02/11/2015-03455/state-long-term-care-ombudsman-programs>, correcting document with technical and editorial changes.

² Administration on Aging, Administration for Community Living, Long-Term Care Ombudsman Program, http://ltcombudsman.org/uploads/files/support/Complaint_Coding_Guide.pdf, 01/31/2019.

LONG-TERM CARE OMBUDSMAN PROGRAM **FACT SHEET**

What You Must Know

WHAT IS THE LONG-TERM CARE OMBUDSMAN PROGRAM (LTCOP)?

Under the federal Older Americans Act (OAA) every state is required to have an Ombudsman Program that addresses complaints and advocates for improvements in the long-term care system. Each state has an Office of the State Long-Term Care Ombudsman (Office), headed by a full-time State Long-Term Care Ombudsman (Ombudsman) who directs the program statewide. Across the nation, staff and thousands of volunteers are designated by State Ombudsmen as representatives to directly serve residents.

WHAT DOES THE OMBUDSMAN PROGRAM DO?

The Ombudsman program advocates for residents of nursing homes, board and care homes, assisted living facilities, and other similar adult care facilities. State Ombudsmen and their designated representatives work to resolve problems individual residents face and effect change at the local, state, and national levels to improve quality of care. In addition to identifying, investigating, and resolving complaints, **Ombudsman program responsibilities include:**

- Educating residents, their family and facility staff about residents' rights, good care practices, and similar long-term services and supports resources;
- Ensuring residents have regular and timely access to ombudsman services;
- Providing technical support for the development of resident and family councils;
- Advocating for changes to improve residents' quality of life and care;
- Providing information to the public regarding long-term care facilities and services, residents' rights, and legislative and policy issues;
- Representing resident interests before governmental agencies; and
- Seeking legal, administrative and other remedies to protect residents.

Ombudsman programs do not:

- Conduct licensing and regulatory inspections or investigations;
- Perform Adult Protective Services (APS) investigations; or
- Provide direct care for residents.

RESIDENTS' RIGHTS

Ombudsman programs help residents, family members, and others understand residents' rights and support residents in exercising their rights guaranteed by law. Most nursing homes participate in Medicare and Medicaid, and therefore must meet federal requirements, including facility responsibilities and residents' rights. For more information about residents' rights visit <http://ltcombudsman.org/issues/residents-rights> and <http://theconsumerveice.org/issues/recipients/nursing-home-residents/residents-rights>. Rights and care standards for assisted living/board and care facilities are regulated, licensed or certified at the state level.¹ For more information on assisted living visit <http://ltcombudsman.org/assisted-living> and <http://theconsumerveice.org/issues/recipients/assisted-living>. Regardless of the type of facility all residents have the right to be protected from abuse and mistreatment and facilities are required to ensure the safety of all residents and investigate reports of mistreatment.

¹ Some assisted living facilities provide services for residents receiving Medicaid benefits and must meet federal standards for that program.

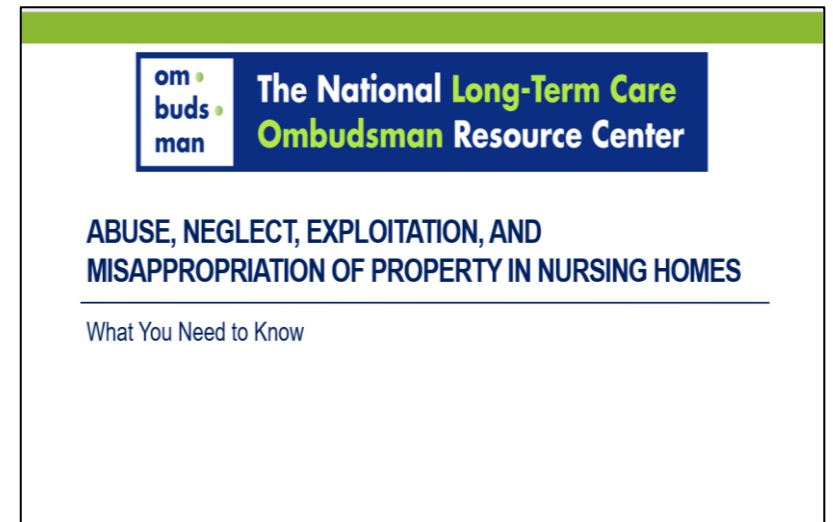
Keck School of Medicine of USC NCEA National Center on Elder Abuse CONSUMER VOICE The National Long-Term Care Ombudsman Resource Center

Training Toolkit

<https://ltcombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities#info-for-consumers>

► *Abuse, Neglect, Exploitation, and Misappropriation of Property in Nursing Homes: What You Need to Know*

- Prezi – video with voiceover
- Prezi – clickable, without voiceover with script
- PowerPoint
- Fact Sheet



Resident-to-Resident Mistreatment


<https://ltcombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities#recognizing-abuse>

- ▶ In-service training guide
- ▶ PowerPoint
- ▶ LTCOP Reference Guide
- ▶ Consumer fact sheet



PREVENTING AND RESPONDING TO RESIDENT-TO-RESIDENT MISTREATMENT

Date
Speaker name and contact



LTCOP REFERENCE GUIDE

RESIDENT-TO-RESIDENT MISTREATMENT: LONG-TERM CARE OMBUDSMAN ADVOCACY

Terminology and definitions used to describe resident-to-resident aggression (RRA) vary, but for this reference guide RRA is defined as "negative and aggressive physical, sexual, or verbal interactions between long-term care residents that (as in a community setting) would likely be construed as unwelcome and have high potential to cause physical or psychological distress in the recipient."¹ Incidents of RRA include physical, verbal, and sexual abuse and are likely to cause emotional and/or physical harm. However, not all incidents of resident-to-resident aggression are considered "abuse," meaning that the resident involved did not willfully harm the other resident. Other examples of RRA include: roommate conflicts, invasion of privacy and personal space, verbal threats and harassment, unwanted sexual behavior, using personal property without permission, and destroying personal property.


The purpose of this reference guide is to provide an overview of resident-to-resident aggression to assist Long-Term Care Ombudsman (LTCO) programs in effectively responding to complaints involving resident-to-resident aggression, as well as help prevent RRA and reduce the prevalence of these incidents.

Learn about Resident-to-Resident Aggression (RRA)

Incidents of resident-to-resident aggression occur in all types of long-term care facilities, including nursing homes, assisted living and other residential facilities. Although LTCO advocacy approaches may differ depending on the incident, residents involved, type of facility, and size of the facility, the LTCO advocacy strategies and recommendations to prevent and reduce incidents of RRA provided in this resource are applicable to all long-term care communities.

Resident-to-resident aggression is a serious issue that has a significant negative impact on all residents involved, but incidents are often not reported and investigated. Research regarding the prevalence of RRA is limited, yet information from a variety of sources suggests RRA occurs frequently. Despite these limitations a variety of possible risk factors for RRA have been identified.² A primary risk factor is cognitive impairment, in fact, one study found that "cognitive impairment, and worsening cognitive impairment in particular, conferred a five-fold risk of mistreatment in victims."³

¹ Jeanne A. Teresi, Miled Ramirez, Julie Ellis, Stephanie Silver, Gabriel Boratko, Jian Kong, Joseph P. Elmick, Karl Filmer, and Mark S. Lachs. A staff intervention targeting resident-to-resident elder mistreatment (R-RRM) in long-term care increased staff knowledge, recognition and reporting: Results from a cluster-randomized trial. *International Journal of Nursing Studies* (2013), 444-454.
² Information in charts from: Division of Geriatrics and Palliative Care, Weill Cornell Medical College, Cornell University and Research Division, Hebrew Home of Riverside. Documentation of Resident to Resident Elder Mistreatment in Residential Care Facilities. Mark Lachs, Jeanne A. Teresi, Miled Ramirez, Karl Filmer, Jay Solomon, and Kimberly van Halbeem (March 28, 2014) and Elon Caspi. Deaths as a Result of Resident-to-Resident Altercations in Dementia in Long-term Care Homes: A Needs for Research, Policy, and Intervention. *Editorial, JAMDA* (2016).
³ Tony Rosen, Karl Filmer, and Mark Lachs. Resident-to-resident aggression in long-term care facilities: An understudied problem. *Aggression and Violent Behavior* (2008). doi: 10.1016/j.avb.2007.12.001.



Resident-to-Resident Mistreatment In-Service Training Guide

This is a guide for the [Preventing and Responding to Resident-to-Resident Mistreatment in-service training](#). The [PowerPoint with presenter notes](#), is intended for use by Long-Term Care Ombudsman programs to provide in-service training for staff of nursing facilities and residential care communities on the topic of resident-to-resident mistreatment (RRM).

Learning Objectives

By the end of the training attendees will:

1. Be able to define resident-to-resident mistreatment.
2. Be able to provide practical solutions to prevent incidents of resident-to-resident mistreatment.
3. Understand the importance of individualized, resident-centered care, and
4. Know how to report incidents of RRM.

Training Notes

- The training is approximately 30 minutes long, incorporating time for questions and discussion. Depending on how much time you are given for your presentation and your audience, you may need to skip some of the slides to reduce the length and/or remove slides that are not specific to your audience (e.g., remove slides referring to nursing facility requirements if you are presenting to non-nursing facility staff).
- You will want to practice the presentation to see how long it takes. Some of the slides are designed for staff to respond to, so you may need to limit the responses to just one or two comments, if you have an engaged group.
- There are reminders or tips for trainers (marked as "Trainer Note") in the presenter notes of the slides.
- Consider asking the facility administration about providing a brief reminder (5 minutes or less) about the facility policies for reporting and investigating resident-to-resident mistreatment (see presenter notes of slide 18).
- Prior to conducting this presentation, you are encouraged to review the following resources to have a better understanding of this topic.

Additional Resources

- ▶ Consumer information
- ▶ Webinar recordings
- ▶ Federal requirements and guidance

NORC:

<https://ltcombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities>

Consumer Voice:

<https://theconsumervoice.org/issues/other-issues-and-resources/elder-abuse>

ISSUE BRIEF

The National CONSUMER VOICE
for Quality Long-Term Care
formerly NCOHR

Sexual Abuse in Nursing Homes: What You Need to Know

Sexual abuse is non-consensual sexual contact by one person upon another. It may happen as the result of deceiving, manipulating, or forcing the resident into sexual contact. Sexual abuse is a form of elder abuse that frequently goes underreported, under-investigated, and unnoticed. In 2016, Ombudsman programs investigated 819 complaints regarding sexual abuse.¹

Sexual abuse can take on many forms and includes:

- Unwanted intimate touching of any kind, especially to breasts or genital area;
- Rape, oral or anal sex;
- Forced nudity;
- Forced observation of masturbation and/or pornography; and
- Taking sexually explicit photographs or audio/video recordings of a resident and distributing them online or in-person. This includes pictures or recordings of residents that are not fully clothed while they are being cared for (bathing, dressing, etc.).

Women and residents with dementia are more likely to be victims of sexual abuse. Women comprise nearly two-thirds (65.6%) of the nursing home population.² Residents with dementia are particularly susceptible to sexual abuse because of their impaired memory and communication skills. While women and residents with dementia are more likely to become victims of sexual abuse, all residents are vulnerable to abuse.

The abuser can be anyone who has contact with the resident. Residents may know their abuser, such as a family member, friend, or staff person, or they could be complete strangers. Abusers could include permanent and temporary staff, visitors to the facility, and even other residents. Some residents may have dementia or another mental health issue that impacts their choices and behavior and result in resident-to-resident sexual aggression (RRSA). Dementia-driven RRSA is the most common form of sexual abuse in nursing homes.³

It is important to note that residents have the right to engage in consensual sexual activity, but this is dependent on both residents having the capacity to consent. A resident's ability to consent to sexual activity needs to be carefully and adequately assessed through proper legal and ethical processes, as

¹ See National Ombudsman Reporting System, Nursing Facility Complaints by Category and Sub-Category (2016) at <http://ltcombudsman.org/uploads/files/complaints/2016-8-2-ntf-coms-full.xlsx>.

² See Nursing Home Data Compendium 2015 Edition, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium_508-2015.pdf.

³ See The Medico-Legal Aspects of Dementia-Driven Resident-to-Resident Sexual Abuse in Nursing Homes, Lisa Tripp, 2011 Consumer Voice Annual Conference at http://theconsumervoice.org/uploads/files/events/ued-2em-lisa-tripp-dementia-driven-sexual-abuse_111.pdf.

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10 THINGS OMBUDSMAN PROGRAMS CAN DO TO PROTECT RESIDENTS: PREVENTING, DETECTING, AND REPORTING FINANCIAL EXPLOITATION

Long-Term Care Ombudsman programs (LTCOP) are often the first to notice the warning signs of possible financial exploitation or the first person a resident confides in regarding being a victim of financial abuse. Included below are tips, tools and action steps to help LTCOP protect long-term care consumers from financial exploitation.

- 1. Learn about Financial Exploitation**
Financial exploitation is the improper or illegal use of the resources of an older adult or an individual with a disability, such as misappropriation or misuse of income or assets, fraudulent use of power of attorney, and identity theft. Financial exploitation is the fastest growing form of elder abuse and is often not reported. Becoming familiar with how to prevent, detect and report financial exploitation is the first step in protecting residents. Visit the [National Center on Elder Abuse \(NCEA\)](#) website (link below in "Resources") for training materials, best practices and resources regarding financial exploitation. The [National Long-Term Care Ombudsman Resource Center \(NORC\)](#) website has information regarding financial exploitation in long-term care. Make sure all LTCOP representatives understand how and when to report allegations of financial exploitation.
- 2. Speak with Residents about Their Rights**
Provide residents with information regarding their rights, especially their right to be free from all types of abuse, including financial exploitation. Fact sheets regarding residents' rights, individualized care and more are available on the [National Consumer Voice for Quality Long-Term Care's \(Consumer Voice\)](#) website.¹
- 3. Share Information About Financial Exploitation with Residents, Family Members/Friends**
Share information about preventing, detecting, and reporting financial abuse (e.g. role of representative payee for Social Security benefits and receipt and use of personal needs allowance for Medicaid recipients). Download fact sheets on financial exploitation for residents and family members/friends of nursing homes and assisted living from the [NORC](#) website (link below in "Resources").
- 4. Discuss the Responsibilities of Long-Term Care Providers to Protect Residents from Financial Abuse**
Share information and resources regarding the responsibilities of long-term care providers in supporting residents' rights, protecting residents from financial exploitation and reporting allegations of abuse.² Inform providers about state and local resources regarding financial exploitation and encourage them to share the financial exploitation fact sheets from the [NORC](#) website with residents, family members and other visitors (link below in "Resources").

¹ <https://theconsumervoice.org/issues/residents>

² Find links to the federal nursing home requirements in the NORC Library https://ltcombudsman.org/library/ndg_news; see the CMS Survey & Certification letter "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility" http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/ncetr11_30.pdf

Register for a Webinar on DEIA and the Ombudsman Program



u July 10, 2024 | 2:00 – 3:15 pm ET | [Register](#)

u Older adults of historically marginalized communities often come into long-term services after experiencing a lifetime of barriers due to discrimination. The U.S. Census estimates that more than half of Americans will belong to a minority group by 2044, so the need for inclusive, culturally aware, and trauma-informed services increases as our population ages. Join this webinar to hear how three states have thoughtfully and purposefully started to focus on DEIA principles internally; how your program (and the residents you serve) will benefit when you apply a DEI lens to your management, processes, and advocacy; and hear experiences and considerations from a local perspective. NORC will also introduce a new tool for program self-assessment. [Learn more and register.](#)

Registration is Open for the Consumer Voice Conference



Join Consumer Voice in **San Francisco, California September 23-26, 2024** for their 48th Annual Conference! This year's theme, *The Power of Together*, highlights the strength and effectiveness that can result from collaboration, unity, and working collectively to improve care and conditions around long-term care. The Consumer Voice Conference is an opportunity to hear from experts on long-term care issues, learn best practices, and exchange ideas with advocates from around the country.

[Register now](#) and see the [preliminary agenda with session topics](#). Start planning early by making [hotel reservations at Hotel Nikko](#). If you can't make it in-person, there is also the option to participate online as Consumer Voice will livestream ALL plenaries and breakout sessions! Learn about opportunities for [sponsorship and exhibiting](#) at the conference. Sponsorship offers multiple ways to increase your visibility with attendees and promote your partnership with Consumer Voice. Find information on the [Consumer Voice website](#).



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 The National LTC Ombudsman Resource Center

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