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State Long-Term Care Ombudsman Program

A Primer for State Aging Directors and Executive Staff

National Ombudsman Resource Center

PREPARED BY THE NATIONAL ASSOCIATION OF STATE UNITS ON AGING





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I. Introduction

Why does a SUA Director need a SLTCOP Primer?

Ombudsman: a Swedish word meaning agent, representative, or someone who speaks on behalf of another

The State Long-Term Care Ombudsman Program (SLTCOP) was established to advocate for people who live in long-term care facilities. One primary responsibility of the SLTCOP, as outlined in Title VII of the Older Americans Act (OAA), is to respond to and resolve complaints made by, or on behalf of, these residents. The State Unit on Aging (SUA) Director, the State Long-Term Care Ombudsman (SLTCO) and other elder rights program specialists work together to ensure that residents in long-term care settings receive a good quality of life and care. The Ombudsman Program accomplishes this by providing information to consumers about their long-term care options, working to resolve problems on behalf of residents, and advocating for improvement in the long-term care system. This document provides an introduction to the program, its history, practices and unique structure within the Older Americans Act.

This document is designed to enable new State Unit on Aging (SUA) Directors to quickly understand the unique role of the State Long-Term Care Ombudsman Program (SLTCOP). The Older Americans Act (OAA) establishes this program with responsibilities that make it different from other aging programs. Within the network of services provided under the OAA, the LTCOP has some mandates that set it apart from other services.

By Congressional intent, the administration and functions of the SLTCOP are distinct. For instance, unlike most OAA programs, this is a statewide program and is not designed for AAA's or other locally designated organizations to establish their own unique programs with policies/procedures that differ from the state program. Much of the structure and the operational guidelines of the program are specified in the federal law. Implementing these mandates may result in challenges as well as opportunities. These federal provisions also mean that the LTCOP does not easily fit with typical bureaucratic agency structure. Good working relationships allow agencies to fulfill the intent of the Older Americans Act. This primer explains the basic distinctions of the State Long-Term Care Ombudsman Program (SLTCOP).

II. Table of Contents

I.	Introduction	1
II.	Table of Contents	3
III.	History of Long-Term Care Ombudsman Program.....	5
	■ Established as a separate program by Older Americans Act (OAA)	
	■ Older Americans Act (OAA) Amendments	
IV.	Older Americans Act (OAA) Requirements	8
V.	Relationship between the State Units on Aging and the State Long-Term Care Ombudsman Programs	14
VI.	State Long-Term Care Ombudsman Practices	16
VII.	An Independent Voice	17
VIII.	Long Term Care Ombudsman Program Challenges.....	18
	■ Systems Advocacy	
	■ Home and Community Based Services	
IX.	Questions SUA Directors Might Ask the State Long-Term Care Ombudsman	21
	Appendix I—OAA Title VII, Chapter 2.....	25
	Appendix II—Resources	35

III. History of the Long-Term Care Ombudsman Program

1972

The Long-Term Care Ombudsman Program began in 1972 out of an effort by the federal government to address widely reported problems of abuse, neglect and substandard care in nursing homes nationwide. In 1972, five demonstration programs were established: four were located in state government agencies, while the fifth program tested a non-profit program model. The original demonstrations focused on complaint resolution activities. Based on the early success of the demonstration programs, the Older Americans Act was amended to expand the program.

1975

The 1975 amendments to the Older Americans Act authorized the Administration on Aging to make grants to states for the development of Ombudsman Programs. All states except Nebraska and Oklahoma received grants that year and hired a Nursing Home Ombudsman Specialist.

1978

By 1978, the nationwide Ombudsman Program was lifted to a statutory level, where it adopted a model which relied on a network of local volunteers to act as advocates for residents. In the following years, the need for ombudsmen at the local level became apparent. The Older Americans Act amendments of 1978 created the framework from which the program has evolved encompassing both a model that relied heavily on volunteers and that focused on complaint resolution functions. Emphasis also was given to the Ombudsman's role in systems advocacy through the identification of significant problems and monitoring of federal, state and local laws and policies.

1981

The 1981 amendments to the Act made the following changes:

- Extended Ombudsman services to residents of board and care facilities.
- The Nursing Home Ombudsman Program was re-named the Long-Term Care Ombudsman Program to reflect its expanded scope.

1987

Substantive changes were again made in 1987, including:

- States being required to provide Ombudsman access to residents and resident’s records.
- Ombudsman immunity for good faith performance of their duties.

1992

The 1992 amendments to the Older Americans Act created the *Vulnerable Elder Rights* title, Title VII of the Older Americans Act. The changes included:

- The creation of an Office of the State Long-Term Care Ombudsman (OSLTCO).
- Clarification of conflict of interest.¹

The 1992 amendments to the Older Americans Act, which created the Vulnerable Elder Rights Title, Title VII, focused renewed attention on the individual and collective advocacy functions of the aging network. While recognizing the unique role played by each of the four advocacy programs—Ombudsman, elder abuse prevention, legal assistance, and benefits counseling—Title VII emphasizes the benefit of a coordinated advocacy approach to address older persons’ understanding and exercise of their rights and access to assistance with problems they encounter.

2000

The Older Americans Act Amendments of 2000 reauthorized all programs under the act through FY 2005. The Amendments included specific language that prohibited local ombudsmen from financial gain through an action or potential action brought on behalf of individuals they served. They also required coordination of the program with state and local law enforcement agencies. Further additions in the 2000 amendments included:

- Further clarification of financial conflicts of interest
- Coordination of the Long-Term Care Ombudsman Program with law enforcement and the courts

¹ Hunt, S. Ombudsman Desk Reference, August 2004

2006

The Older Americans Act Amendments of 2006 reauthorized all programs under the act through FY 2011. At this time, the Act extended the responsibilities of the aging network to encourage Home and Community Based Services. The 2006 reauthorization included one key provision:

- Added “assisted living facility” to the definition of “long-term care facility.”

2010

The Administration on Aging created and staffed the position of the National Ombudsman. Congress passed the Patient Protection and Affordable Care Act (PPACA) as part of Health Care Reform legislation. The PPACA provided additional consumer protections, ombudsman responsibilities and abuse prevention requirements which are included in the following sections:

- Nursing Home Transparency and Improvement
- Elder Justice Act
- Patient Safety and Abuse Prevention Act
- CLASS Act
- Home and Community-Based Services

2011

The Older Americans Act is due to be reauthorized in 2011.

Key Resources: Older Americans Act, Title VII, Chapter 2
Hunt, S. Ombudsman Desk Reference, August 2004

IV. Older Americans Act Requirements

Elder Rights

Title VII authorization includes the SLTCOP, legal services, and the elder abuse prevention program. While one primary responsibility of the SLTCOP is to hear and investigate the complaints of persons who live in long term care facilities, SLTC Ombudsmen are also required to function as representatives of the interests of these residents to government agencies. As a representative, an ombudsman coordinates with government agencies seeking legal and administrative solutions to ensure resident rights are honored. This is done by monitoring and commenting on laws, regulations, and policies that impact long-term care residents.

The challenge for the State LTC Ombudsman Program, legal services, and the elder abuse prevention programs is to develop strong linkages, both inside and outside the traditional aging network, to ensure that older persons' advocacy needs are fully met. In developing an elder rights system, each state is required to:

- Obtain the views of older persons, Area Agencies on Aging, service providers and other interested persons and entities regarding Title VII programs; and
- Identify and prioritize statewide elder rights activities. (Section 705)

Challenges occur when an Ombudsman's resident-centered view of laws, regulation, policies and practices differ from those of their own agency or any state agency. Conversations need to occur to establish how the Ombudsman and the State Unit on Aging will handle situations where there is internal conflict. It is important to note that this aspect of Ombudsman work is common when looking at the many other kinds of Ombudsman programs around the world (i.e. business Ombudsman, college Ombudsman, government Ombudsman, etc).

When necessary, education to other state agencies and/or the governor's office needs to occur so that there is a full understanding of the unique role the Ombudsman has in making recommendations which may differ from others in state government. (This issue applies equally to SLTC Ombudsman who are not part of state government.)

Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman Program is established in Title VII Chapter 2 of the Older Americans Act.² It is established as a separate program with the Office of the SLTCO, headed by a full-time State Long-Term Care Ombudsman, who is responsible for the statewide program. Understanding the OAA mandate can clarify the unique role of an ombudsman within the aging network.

According to the Older Americans Act, the State LTC Ombudsman³ shall⁴:

1. Identify, investigate, and resolve complaints that are made by or on behalf of residents and relate to action, inaction or decisions that may adversely affect the health, safety and welfare of the residents of long-term care facilities.
2. Provide services to assist residents in protecting the health, safety, welfare, and rights of residents
3. Inform residents on ways of obtaining services for which they are entitled,
4. Ensure that residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from the Office to complaints
5. 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;
6. 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 long-term care residents with respect to the adequacy of long-term care facilities and services in the State. They will recommend changes in such laws, regulations, policies and actions as appropriate and facilitate public comment.
7. Promote the development of and provide assistance to citizen advocacy groups that want to protect the well-being and rights of residents.
8. Provide for training representatives of the Office.
9. Provide technical support for the development of resident and family councils to protect the wellbeing and rights of residents and
10. Carry out other activities as the Assistant Secretary determines to be appropriate.

² Please see Title VII, Chapter II of the Older Americans Act in the Appendix.

³ In this document, Ombudsman refers to the State Long-Term Care Ombudsman who heads the Office of the State Long-Term Care Ombudsman as stipulated in the OAA.

⁴ Text that originates in the Older Americans Act reflects OAA language.

Key Older Americans Act Requirements

What should State Unit Directors be aware of⁵:

Designation

- Authorizes the SLTCO to designate “local ombudsman entities”, employees or volunteers to represent the program. (Section 712(a)(5)(A))
- Prohibits the state from placing restrictions, other than the restrictions contained in the Older Americans Act, on the eligibility of entities to be designated as local ombudsman programs. (Section 705(a)(5))
- Sets criteria for entities and individuals eligible to be designated, including:
 - demonstrated capability to carry out Ombudsman Program responsibilities;
 - freedom from conflict of interest; strict conflict of interest requirements (Section 712(a)(5)(C)(ii) and 712(f))
 - ability to meet additional requirements set by the SLTC Ombudsman; and
 - entities must be public or non-profit organizations. (Section 712(a)(5)(C))

Policies and Procedures

- Requires designated programs and individuals to follow policies and procedures set by the Office of the State Long-Term Care Ombudsman and the State Unit on Aging in carrying out the duties specified in the Act. (Section 712(a)(5)(B))
- Requires the SUA, “in accordance with the Office [of the SLTC Ombudsman],” to establish policies and procedures for monitoring local programs. Policies must be developed in consultation with AAAs when the AAA provides Ombudsman Program services directly or by contract. (Section 712(a)(5)(D))

Data and Annual Report

- Authorizes the SUA to require the SLTC Ombudsman to prepare an annual report which describes the program’s activities, analyzes the program’s success, makes recommendations, and identifies barriers to optimal operation of the program. (Section 712(h)) The requirements dictate that the report be submitted to a list of specific individuals, to other appropriate entities, and available to the public.
- The Administration on Aging requires the State LTC Ombudsman to report data separately from the SUA using the National Ombudsman Reporting System and a specific reporting tool.

⁵ These requirements have been highlighted for the State Unit on Aging Director’s knowledge. To view the full legislation, please see the Older Americans Act, Title VII, Chapter II in the Appendix.

Training

- Requires the SLTC Ombudsman to provide training to representatives of the Ombudsman Program. (Section 712(a)(3)(H))
- Requires the Office of the State LTC Ombudsman to establish procedures for training Ombudsman Program representatives, including volunteers, based on model standards established by AoA. Training modules have been developed by the National Ombudsman Resource Center in accordance with AoA guidance. (Section 712(h)(4))
- Prohibits representatives from carrying out the duties of the Ombudsman Program unless they have received required training and have been approved as qualified by the State LTCO. Requirements include a minimum number of hours of initial training, specific content, and an annual number of continuing education hours for all representatives of the program.(Section 712(h)(5))

In Practice: The SLTC Ombudsman (and/or direct staff) must approve all training and will spend a considerable amount of time providing technical assistance to their regional programs. Recognizing the critical role training plays for SLTC Ombudsman, the OAA authorized the creation of a National Ombudsman Resource Center. There are generally one or two national trainings held each year.

Location

The Office of the SLTC Ombudsman must not be located in an organization responsible for licensing and certification of long-term care services or an association or affiliate of long-term care facilities. (Section 712 (a)(4))

Advocacy

- Identify, investigate and resolve complaints made by, or on behalf of, residents. (Section 712 (a)(3) (A)) Complaints may concern: long-term care service providers, public agencies, health and social service agencies, or the appointment and activities of guardians or representative payees. (Section 712 (a)(3)(A))
- Make policy, regulatory and legislative recommendations in the annual report to solve identified problems, resolve complaints and remove barriers. (Section 712 (h)(1)(F))
- Assist residents in protecting their health, safety, welfare and rights. (Section 712 (a) (3)(B))
- Represent the interests of residents before public agencies. (Section 712 (a)(3)(E))

- Pursue administrative, legal and other appropriate remedies on behalf of residents. (Section 712(g)(2))
- Analyze, monitor, and recommend changes regarding federal, state and local laws, regulations, and other government policies and actions which impact residents' health, safety, welfare and rights. (Section 712 (a)(3)(G)(i)(ii) & (h)(2))
- Promote the development of citizen organizations. (Section 712 (a)(3)(H)(ii))
- Provide technical support for the development of resident and family councils. (Section 712 (a)(3)(H)(iii))

Information

- Inform residents about how to obtain services from long-term care service providers, public agencies, and health and social service agencies. (Section 712 (a)(3)(C))
- Inform the public and facilitate public comment on the laws, regulations, policies and actions that pertain to residents. (Section 712 (a)(3)(G)(iii))

Confidentiality

- With respect to elder abuse prevention programs, states are required to assure that information gathered in the process of receiving reports or making referrals is kept confidential except when the release of information is to the Ombudsman Program. (Section 705 (a)(6)(C)(ii))

In Practice: The SLTC Ombudsman will be interested in not only what is occurring within the state regarding policies, laws, etc., but will also need to be aware of policies from a national perspective which may impact state laws, etc. There is a national organization of SLTC Ombudsman, National Association of State Ombudsman Programs (NASOP), in which your State Ombudsman should participate.

In Practice: Because most residents do not have access to computers, the Ombudsman program will most likely need to continue future printing of brochures and other information. Also, the responsibilities of the position require that time be spent in direct communication with consumers, and traveling around the state speaking about the rights of residents. This can also mean sending out news releases and commenting on current event requests from the media.

- The SUA is required to develop procedures for disclosure by the SLTC Ombudsman of the program's files, ensuring that disclosure is made "only at the discretion of the SLTC Ombudsman" and prohibiting disclosure of the complainant's or resident's identity unless oral or written consent is obtained or disclosure is required by a court order. (Section 712 (d))

In Practice: According to the OAA, LTC Ombudsman may not be mandated reporters. Because federal law trumps state laws, all staff need to be aware of this.

Legal Counsel

- The SUA shall ensure that adequate legal counsel is available and is able, without conflict of interest, to provide specified assistance to the SLTCOP. (Section 712 (g))

Funding

- Each SUA will develop a plan that provides assurances that the area agency on aging, in carrying out the State Long-Term Care Ombudsman program under section 307(a)(9), will expend not less than the total amount of funds appropriated under this Act and expended by the agency in fiscal year 2000 in carrying out such a program under this title. (Section 306(a)(9))
- The plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 712 and this title, and will expend for such purpose an amount that is not less than an amount expended by the State agency with funds received under this title for fiscal year 2000, and an amount that is not less than the amount expended by the State agency with funds received under title VII for fiscal year 2000. (Section 307(a)(9))

V. Relationship of the SUA and the State Long-Term Care Ombudsman Program

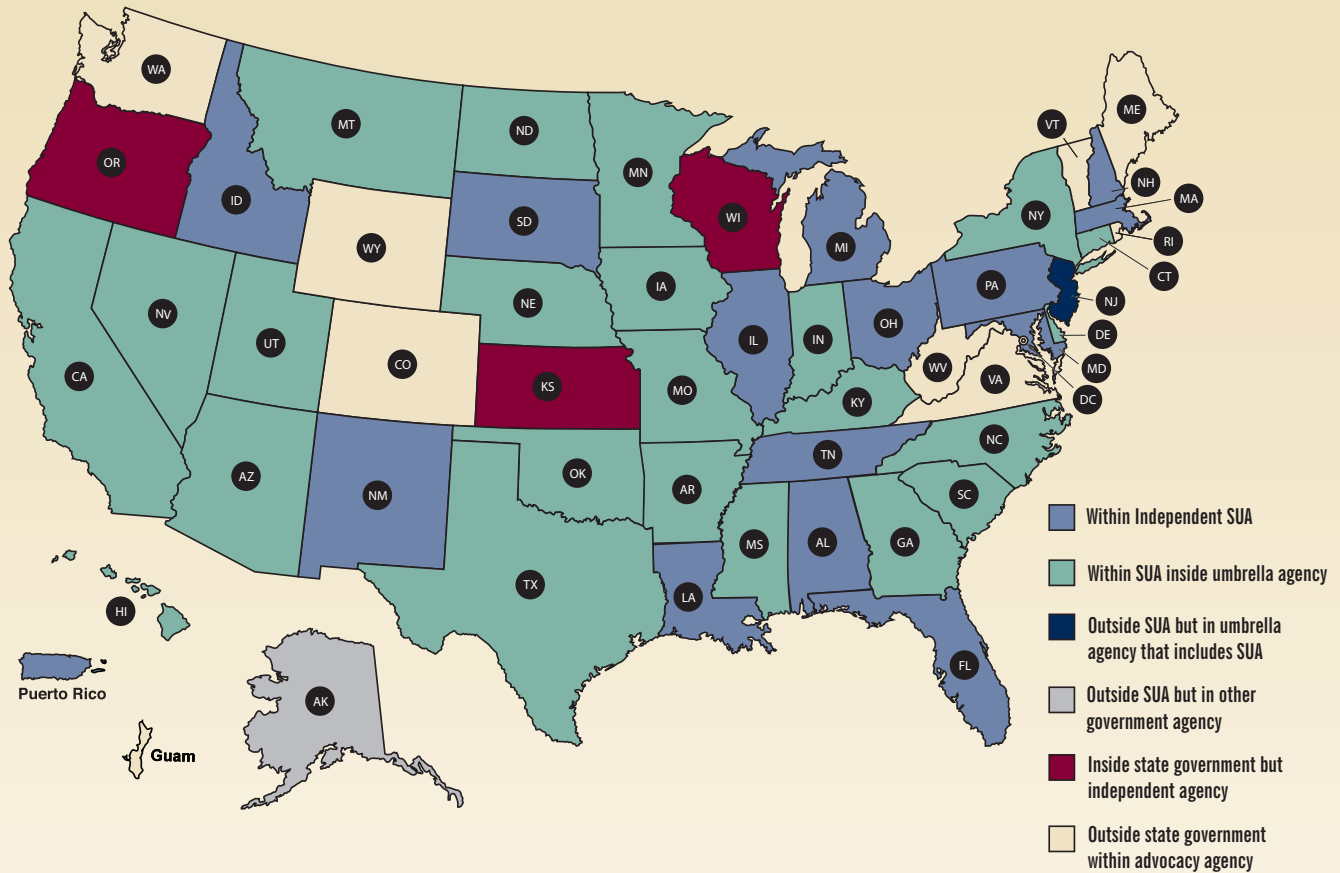
State Units on Aging (SUAs) are tasked with deciding where the SLTC Ombudsman Program will be located in their state. Figure I shows the location of the SLTCOP in each of the states. The Older Americans Act requires SUAs, through the Office of the State Long-Term Care Ombudsman, to set expectations for both staff training and monitoring of local ombudsman programs. In practice, the SUA relies on the State Long-Term Care Ombudsman (SLTCO) to oversee the statewide ombudsman program's operation. Throughout their history, Ombudsmen have been skillful builders of coalitions, have successfully negotiated agreements with a variety of agencies and programs and have involved residents and families in developing their advocacy agenda. This creates an interesting dynamic as the SLTC Ombudsman partners with the state to design and implement an elder rights agenda and administer a program within the Aging Network, but is also responsible for independently representing long-term care residents.

The Ombudsman Program is part of the state's elder rights system envisioned by Title VII of the Older Americans Act. This requires embracing a two-fold approach to working with the State Unit on Aging. First, the Ombudsman Program and the SUA work together to develop the elder rights agenda each year, coordinate cross training sessions between state agencies and programs, and develop new programs. The State Ombudsman is responsible for designating local entities, managing the statewide program budget, and evaluating and overseeing the program. The Ombudsman Program also collects data on complaints of long-term care facility residents and ombudsman activities in the state, which can be utilized to support consumers making choices based on information about quality, as well as a valuable tool for program management and development.

Second, the Ombudsman Program must function as a program with an independent voice from that of the SUA. The Older Americans Act mandates that the program represent the view of long-term care residents.⁶ In some cases, the SLTCO is required to be a registered lobbyist to communicate with legislators. In other states, the statutory provisions for the SLTCOP provide the authority for the Long-Term Care Ombudsman to communicate with legislators despite any restrictions on other state employees. At times, this role can require the SLTC Ombudsman to take a position that differs from that of the SUA Director.

⁶ OAA Section 712 (a)(3)(E)

Location of Long-Term Care Ombudsman Programs in States*



Within Independent SUA: Alabama, Florida, Idaho, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New Hampshire, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, New Mexico

Within SUA inside umbrella agency: Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Utah

Outside SUA but in umbrella agency that includes SUA: New Jersey

Outside SUA but in other government agency: Alaska

Inside state government but independent agency: Kansas, Oregon, Wisconsin

Outside state government within advocacy agency: District of Columbia, Colorado, Guam, Maine, Rhode Island, Vermont, Virginia, Washington, West Virginia, Wyoming

* Information from *Long-Term Care Ombudsman Program: Structure, Responses, Quality and Funding, 2003 and Administration on Aging*

VI. State Long-Term Care Ombudsman Practices

The following table is from the Institute on Medicine’s 1995 report *Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*.⁷ It is one section of a set of ideal practice standards to guide the Administration on Aging and SLTCOP toward more effective practice developed by the study committee. According to the principles outlined in the study, “Exemplary Practices” represent the functions of an ideal Ombudsman Program, while the “Essential Practices” represent the required functions of an Ombudsman Program, as described in the Older Americans Act. The “Unacceptable Practices” represent practices that are violations of the Older Americans Act.

Exemplary Practices	Essential Practices	Unacceptable Practices
<p>All representatives have knowledge or understanding of LTC consumers, facilities, services, or their management, but no prohibited ties with facilities, services, or their management.</p> <p>All representatives have knowledge or understanding of the variety of regulatory functions (licensing, survey, certificate of need, rate setting, etc.) and their effects on LTC consumers but no prohibited ties with regulatory agencies.</p> <p>The program maintains a reputation as one staffed by well prepared, knowledgeable workers familiar with the latest developments and trends and generously able to help others learn its knowledge and skills. Training is conducted in a manner developed to foster and encourage the ongoing improvement and skills of every representative of the Office.</p>	<p>Representatives have no prohibited ties to LTC facilities, services, or their management.</p> <p>Representatives have no prohibited ties to any regulatory agency (licensing, survey, Medicaid, rate setting, etc.).</p> <p>Representatives have no responsibilities for Adult Protective Services (APS), nor do they serve as a guardian for an unrelated resident of a LTC facility within his or her service area.</p> <p>Representatives have in-depth initial training prior to performing any duties, are assessed for competence prior to acting directly without direct supervision, and receive ongoing training and supervision to improve skills and to stay abreast of program and LTC developments.</p>	<p>Representatives have prohibited ties to LTC facilities, services, or their management.</p> <p>Representatives have prohibited ties to any regulatory agency (licensing, survey, Medicaid, rate setting, etc.).</p> <p>Representatives have responsibilities for APS or are guardians for an unrelated resident of a LTC facility within his or her service area.</p> <p>Representatives have little or no initial or ongoing training sufficient to provide the full range of ombudsman services in a way that meets program standards.</p>

⁷ Institute of Medicine. *Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995. Table 5.3, pp. 164-165.

VII. An Independent Voice

The SLTC Ombudsman Program must remain an independent voice for long-term care residents. This voice may or may not represent the position of the SUA and other government agencies.⁸ One state recommends having a separate letterhead for the Ombudsman Program, so their advocacy efforts are clearly communicated as coming directly from the Ombudsman Program. Separate toll-free phone numbers, websites and budgets are also suggested.

Systems advocacy presents another challenge. One state advises SUA Directors and SLTCO to “talk about why ombudsmen are unusual and help lay the foundation⁹” for a better understanding of the program by state partners, including the Governor’s Office, the Office of Planning and Budget, the Medicaid Program, Licensing and Certification, and other agencies related to long-term care or home and community based services. It is a good practice to establish clear and direct channels of communication between the SUA Director and the SLTCO. This allows the SLTCO to alert the SUA Director when the Ombudsman program is working on an issue that may be controversial. Clear communication between the SLTCO and the SUA Director is the key to a successful relationship.

.....

“We in the Ombudsman Program have separate letterhead. We found that it is important to assure that the ombudsman positions are never interpreted as the Division’s (of Aging Services) position.”

—Becky Kurtz, GA SLTCO

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⁸ From the presentation: Time and Leadership: Keys to Building Synergy between State Ombudsmen and State Aging Directors.

⁹ Ibid.

VIII. Long-Term Care Ombudsman Program Challenges

Systems Advocacy

Advocating for policy or legislative change is a pivotal component of the Long-Term Care Ombudsman Program. In many cases, a resolution to the problems long-term care facility residents are experiencing may only be achieved by changes in policy, law, or regulation. Facilitating public comment, providing education of the public and families, or changes in policies and regulations can benefit the overall goals of advocacy.

“Systems Advocacy” can be focused on a “system” within a single facility, all the facilities owned by a particular entity, or all facilities in a state or the nation. Such activities often lead the Long-Term Care Ombudsman to see broader trends, across a wider system, and to expand the goal of the advocacy effort¹⁰. In a Program Instruction, AoA clarified the role of the SUA and the SLTCOP regarding systems advocacy.

“The SUA is directed to “independently and through coordination between its SLTCOP...engage in significant activities related to issues on behalf of elderly institutionalized persons...Such efforts consist of the identification of major concerns that affect large numbers of long-term care institutionalized older persons...and the aggressive advancement (at all relevant levels of government) of changes necessary in laws, regulations of policies to strengthen the legal position and enforcement of that position for institutionalized older persons.” AoA-PI-81-1, p. 36

Typically, each State LTC Ombudsman leads development of an annual advocacy agenda to benefit residents of long-term care facilities, whether through a formal report or an informal set of ideas. The State Ombudsman identifies legislative issues by reviewing their complaint data and gathering input from local entities, residents and their families. Some programs coordinate with stakeholder groups and coalitions to identify changes that could be beneficial to the health, safety, welfare and rights of long-term care residents. The advocacy agenda is pursued through participating in state level task forces or work groups, coalition building and community advocacy as well as legislative activities. Some ombudsman program legislative activities include:

- Initiating dialogue with policy makers, department heads, legislators and their staff regarding identified problems for residents that require a system level resolution.

¹⁰ Systems Advocacy in the Long-Term Care Ombudsman Program, Esther Houser, The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future Appendix V.

- Responding to legislative and regulatory proposals
- Submitting written comments on state/federal regulations
- Testifying at legislative committee meetings or public hearings, and
- Coordinating with the SUA director/senior staff to develop legislative priorities.

.....

“Our ombudsman is very good about letting me know ahead of time when she has talked to the media, because if she is talking to them about something controversial and she’s taking a different position from the Office of Regulatory Services or from Medicaid, I need to know.”

—*Maria Greene, GA SUA Director*

.....

Many state ombudsmen and state aging directors find clear communication about public policy and legislative issues to be central to a successful working relationship. In many cases, they will work together to strategize about how to support the program’s priorities on behalf of persons receiving long-term care services. In some cases, SUA Directors work to educate other state agencies and Governors’ offices about the Ombudsman Program and the positions it takes on specific legislative issues.

Home and Community Based Services

The role of the State Long-Term Care Ombudsman (SLTCO) in the planning of a modernized system of long-term services and supports is evolving. As states transform their services for long term care from institutional settings to more community settings, the role of the ombudsman may expand. Historically, the role of the ombudsman is to hold systems accountable to fulfill their responsibilities to residents. The potential role for the ombudsman in a modernized long-term care system could be the same, ensuring that the long-term care systems that are in place work toward assuring safety and quality for consumers. Long-term care ombudsmen have a knowledge base and skill set that can be helpful to consumers both in resolving issues for individuals and in shaping long-term care policies which include home and community based services.

The Older Americans Act directs the Long-Term Care Ombudsman Program to serve residents of long-term care facilities. There are strict conflict of interest safeguards for individual ombudsmen and for the state and local ombudsman programs. A number of Older Americans Act provisions (including, for example, confidentiality provisions) make it clear that the ombudsman serves the resident. LTCOP expansion into non-facility settings may require some changes in program location and/or procedures in order to comply with the OAA.

There are additional considerations if a LTCOP is examining expanding into home and community based services. Handling complaints in a home care setting is much more time and resource intensive than handling a complaint in a long-term care facility where an ombudsman can see multiple residents on a single visit. Most Ombudsman Programs are understaffed and

have limited financial resources, so the additional demands of serving an expanded consumer base would require additional resources. Without adequate resources, these demands could negatively impact services to the LTCOP current service population, long-term care residents.

Currently, states cannot use Older Americans Act funds designated for the LTCOP for activities in home care settings. The Older Americans Act defines the scope of ombudsman services to include nursing facilities, skilled nursing facilities, board and care and “similar” adult care homes. Thus, programs that provide home care advocacy rely on state general revenues or other sources of

funding to support their work in this arena.¹¹ Typically, state funds supplement the Ombudsman Program’s federal funding and are not earmarked specifically for home care.

Another issue is the emergence of new conflicts for the Ombudsman Program with the expansion of services. The expansion may cause some overlap of services with other state agencies (such as Adult Protective Services (APS)), creating the need for role clarification. Individuals receiving services and their families may not completely understand the role of the ombudsman. A conflict of interest may exist if the Ombudsman Program is housed in the Area Agency on Aging or other aging service provider that is providing, certifying, managing, or brokering the in-home services to consumers.

Info: For more information on modernization of the system of long-term care services and supports, go to: www.ltcombudsman.org/Issues

Key Questions: Two key questions arise when considering the role of the long-term care ombudsman program in a modernized long-term care system.

What can the long-term care ombudsman program do within its current federal responsibilities relevant to home and community based services, nursing home diversions, and nursing home transitions?

If the long-term care ombudsman program responsibilities are expanded to more direct work with individuals who are transitioning or who need an independent advocacy (outside the service determination and delivery systems), what policy and procedural changes are necessary, e.g. staffing, funding, protections against conflict of interest?

¹¹ Funds authorized and/or appropriated under the Older Americans Act for the Long Term Care Ombudsman Program may not be used for ombudsman services in settings other than those included in the program as defined in the Act: nursing homes, board and care homes and similar adult care facilities (Section 102(a)(32)). This includes Title III funds taken “off the top” by the state under Section 304(d)(1)(B); Title VII, Chapter 2 ombudsman funds and state and other funds included in the required minimum funding levels under Sections 307(a)(9) and 306(a)(9) of the Act. (See AoA PI 94-02, issued April 5, 1994.)

IX. Questions SUA Directors Might Ask?

SUA Directors should take the time to orient themselves to the LTC Ombudsman Program in their state. The SLTC Ombudsman has a unique expertise and understanding of the long-term care services and supports in your state, and is a valuable resource. The LTCOP offers an independent perspective of aging services consumers in your state. Long-Term Care Ombudsmen have open lines of communication with residents in long-term care facilities. Developing an understanding of the LTC Ombudsman work and communicating with them regularly gives the SUA Director a different perspective of the consumer's experience with long term supports and services. Questions SUA Directors might ask the SLTC Ombudsman:

Structure:

- What are the programs strengths and weaknesses with regard to:
 - Conflicts of interest with other state agencies? (i.e. licensing agencies, APS)
 - Visibility?
 - ◆ Are long-term care consumers familiar with the program?
 - Accessibility to residents and families?
- What efforts have been made to address the weaknesses?
- What structural changes could be made to address the weaknesses?

Planning:

- Do you find the State Planning process to be a useful advocacy tool?
 - What could be done to make this more useful?
 - How could you be better involved in the planning process?

Data Collection:

- How do you use your NORS data for advocacy?
- What would improve your ability to use the NORS data for advocacy and for program management?
- Do you see any opportunities for the SUA to utilize NORS data for planning?

Program Performance and Quality:

- How do you assess the quality of the program performance at both the state and local levels?
- What is your assessment of the quality of the Ombudsman Program in our state?
 - What are your recommendations for improvement?
 - What data in the annual report of the Ombudsman Program could be used to assess quality?
- How does the Ombudsman Program include aging network partners (AAAs, local program sponsors, local ombudsmen) in setting goals for the statewide program?
- What efforts does the Ombudsman Program make to involve consumers in setting program standards and program assessment?

Individual Advocacy:

- Within the past year, what has the SLTCOP done to try to improve the quality of long-term care in the State?
- Do all persons who need the Ombudsman Program services have access to the program? Do they receive timely responses to their complaints? What is your standard of timeliness?
- What steps can be taken to improve the program's limitations? What can the SUA do? What can the Ombudsman Program do?

Systems Advocacy

- Within the past year, what has the SLTCOP done to try to improve the system of long-term care services in the State?
- What is the Ombudsman Program's advocacy agenda for the current year?
- Do you feel that you have the ability to speak freely and timely with legislators, the media, and the public about the concerns of residents?
- Do you feel there are barriers to state and local ombudsman in participation in advocacy, what are they? What would it take to remove the barriers?
- Describe your leadership with local programs and ombudsmen in guiding and supporting their participation in systems advocacy.
- What can the SUA do to improve the SLTCOP's ability to engage in systems advocacy?

Coordination with other agencies:

- How does the Ombudsman Program work with other state agencies: licensing and certification agencies, Adult Protective Services, etc.?
- What barriers have the Ombudsman identified which prevent the program from working more closely with regulatory agencies and other advocacy programs?
- Do you have written MOU's with other agencies or programs? If so, do any of them need to be updated?
- What can the SUA do to facilitate a more coordinated advocacy approach in the state?

Appendix I

OAA Title VII, Chapter 2

Section. 712. State Long-Term Care Ombudsman Program.

(a) ESTABLISHMENT.—

- (1) IN GENERAL.—In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this section—
- (A) establish and operate an Office of the State Long-Term Care Ombudsman; and
 - (B) carry out through the Office a State Long-Term Care Ombudsman program.
- (2) OMBUDSMAN.—The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.
- (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
- (I) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) CONTRACTS AND ARRANGEMENTS.—

- (A) IN GENERAL.—Except as provided in subparagraph (B) the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.
- (B) LICENSING AND CERTIFICATION ORGANIZATIONS; ASSOCIATIONS.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—
 - (i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

- (ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) DESIGNATION OF LOCAL OMBUDSMAN ENTITIES AND REPRESENTATIVES.—

(A) DESIGNATION.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) DUTIES.—An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

- (i) provide services to protect the health, safety, welfare[14] and rights of residents;
- (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;
- (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- (v)
 - (I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
 - (II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;
- (vi) support the development of resident and family councils; and
- (vii) carry out other activities that the Ombudsman determines to be appropriate.

(C) ELIGIBILITY FOR DESIGNATION.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

- (i) have demonstrated capability to carry out the responsibilities of the Office;

- (ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
- (iii) in the case of the entities, be public or nonprofit private entities; and
- (iv) meet such additional requirements as the Ombudsman may specify.

(D) POLICIES AND PROCEDURES.—

- (i) IN GENERAL.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.
- (ii) POLICIES.—In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.
- (iii) CONFIDENTIALITY AND DISCLOSURE.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) PROCEDURES FOR ACCESS.—

(1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—

- (A) access to long-term care facilities and residents;
- (B)(i) appropriate access to review the medical and social records of a resident, if—
 - (I) the representative has the permission of the resident, or the legal representative of the resident; or
 - (II) the resident is unable to consent to the review and has no legal representative; or
- (ii) access to the records as is necessary to investigate a complaint if—
 - (I) a legal guardian of the resident refuses to give the permission;
 - (II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
 - (III) the representative obtains the approval of the Ombudsman;

- (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and
 - (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.
- (2) PROCEDURES.—The State agency shall establish procedures to ensure the access described in paragraph (1).
- (c) REPORTING SYSTEM.—The State agency shall establish a statewide uniform reporting system to—
- (1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and
 - (2) submit the data, on a regular basis, to—
 - (A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;
 - (B) other State and Federal entities that the Ombudsman determines to be appropriate;
 - (C) the Assistant Secretary; and
 - (D) the National Ombudsman Resource Center established in section 202(a)(21).
- (d) DISCLOSURE.—
- (1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).
 - (2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—
 - (A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and
 - (B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—
 - (i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;
 - (ii) (I) the complainant or resident gives consent orally; and

- (II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
- (iii) the disclosure is required by court order.
- (e) CONSULTATION.—In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.
- (f) CONFLICT OF INTEREST.—The State agency shall—
 - (1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;
 - (2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;
 - (3) ensure that the Ombudsman—
 - (A) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;
 - (B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
 - (C) is not employed by, or participating in the management of, a long-term care facility; and
 - (D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; and
 - (4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—
 - (A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and
 - (B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

- (g) LEGAL COUNSEL.—The State agency shall ensure that—
- (1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—
 - (i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and
 - (ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and
 - (B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and
 - (2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.
- (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; and
 - (ii) identifying barriers that prevent the optimal operation of the program; and
 - (F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;
 - (2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

- (3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—
 - (i) the problems and concerns of older individuals residing in long-term care facilities; and
 - (ii) recommendations related to the problems and concerns; and
 (B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);
- (4)(A) not later than 1 year after the date of the enactment of this title, establish[15] procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—
 - (A) specify a minimum number of hours of initial training;
 - (B) specify the content of the training, including training relating to—
 - (i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;
 - (ii) investigative techniques; and
 - (iii) such other matters as the State determines to be appropriate; and
 - (C) specify an annual number of hours of in-service training for all designated representatives;
- (5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative—
 - (A) has received the training required under paragraph (4); and
 - (B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;
- (6) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—
 - (A) subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000[16]; and

(B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986
(42 U.S.C. 10801 et seq.);

- (7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;
 - (8) coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and
 - (9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).
 - (i) LIABILITY.—The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.
 - (j) NONINTERFERENCE.—The State shall—
 - (1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;
 - (2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
 - (3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.
- (42 U.S.C. 3058g)

Appendix II

Resources

Administration on Aging

Ombudsman Program fact sheet can be downloaded on the AoA website:

http://www.aoa.gov/prof/aoaprof/elder_rights/lcombudsman/ltc_ombudsman.aspx

Congressional Research Service

CRS Report for Congress: Older Americans Act: Long-Term Care Ombudsman Program

Updated April 17, 2008

<http://aging.senate.gov/crs/aging12.pdf>

National Association of State Long-Term Care Ombudsman Programs

NASOP's position papers on systems advocacy, core principles, and other relevant topics can be found on the Web site.

www.nasop.org

National Association of State Units on Aging

www.nasua.org

National Ombudsman Resource Center

Key documents can be downloaded, including training materials explaining the unique characteristic of the Ombudsman Program, program history, and technical assistance papers such as confidentiality.

www.lcombudsman.org

National Health Policy Forum

“The Role of Ombudsman in Assuring Quality for Residents of Long-Term Care Facilities,”
December 2009

<http://www.nhpf.org/library/background-papersBP71LongTermCareOmbudsmanProgram12-02-09.pdf>

The **NATIONAL LONG-TERM CARE OMBUDSMAN RESOURCE CENTER** was established as a result of 1992 amendments to the Older Americans Act. Its purpose is to enhance the skills, knowledge and management capacity of the State Long-Term Care Ombudsman Programs. The Center provides national technical assistance, training and information dissemination, serving as a resource on Ombudsman Programs funded by State Agencies on Aging. The Center is administered by the NCCNHR, The National Consumer Voice for Quality Long-Term Care, in cooperation with the National Association of State Units on Aging. For more information contact the Center at 1828 L Street, NW, Suite 801, Washington, DC 20036, (202) 332-2275, Fax (202) 332-2949, www.ltombudsman.org

The **NATIONAL ASSOCIATION OF STATE UNITS ON AGING (NASUA)**, founded in 1964, is a nonprofit, public interest organization dedicated to advancing responsive state and national policies for Older Americans. The Association conducts continuing policy analysis, program development research in the fields of community-based long-term care, elder rights, older worker employment, housing, human services management, and various other areas pertinent to state aging concerns. Providing an organized channel for sharing information on new and innovative aging policies and programs among the states, the Association works to increase the capacity of State Units on Aging to apply creative leadership on behalf of America's elderly. For more information, contact: NASUA, 1201 15th Street, NW, Suite 350, Washington, DC 20005, (202) 898-2578, Fax (202) 898-2583

NCCNHR, The National Consumer Voice for Quality Long-Term Care, founded in 1975, is a consumer-based nonprofit organization for local and state member groups and individuals, working to improve health care and the quality of life. For more information contact: NCCNHR at 1828 L Street, NW, Suite 801, Washington, DC 20036, (202) 332-2275, Fax (202) 332-2949





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