

# **Legal Counsel and Representation of the Long-Term Care Ombudsman Program**

Prepared by the National Association of State Units on Aging

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Ombudsman Resource Center

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### **Acknowledgements**

We wish to acknowledge and thank the 39 state ombudsman programs that responded to the Ombudsman Program Questionnaire. Responses were received from February through April 2003. The questionnaire collected basic program information about the entities that provide legal counsel and representation to the ombudsman program and the functions they perform on behalf of the program.

### **About the Author**

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The National Association of State Units on Aging (NASUA) is a private, nonprofit organization whose membership is comprised of the 57 state and territorial offices on aging.

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# **Legal Counsel and Representation of the Long-Term Care Ombudsman Program**

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# Legal Counsel and Representation of the Long-Term Care Ombudsman Program

## Introduction

Adequate legal counsel for the ombudsman program and its representatives is critical to fulfilling the program's responsibility to advocate for older persons residing in nursing homes, assisted living facilities and board and care residences. This paper provides information about the entities that provide legal counsel and representation to the ombudsman program at the state and local levels, the types of support provided, and how ombudsman programs assist consumers to obtain legal assistance when necessary.

As part of its workplan for the National Ombudsman Resource Center, the National Association of State Units on Aging (NASUA) gathered information about states' enabling statutes for the ombudsman program in 2001, identifying 25 states (AK, AZ, CA, CO, CT, DE, DC, FL, IL, IN, KS, MS, NE, NJ, NM, NC, ND, OH, OK, TX, UT, VT, WA, WV, WI) that address the provision of legal counsel in statute or regulation. Some states reiterate the OAA requirements in their enabling statutes, while others are more specific about who should provide such counsel.

The Older Americans Act (OAA) specifies the requirements for providing the ombudsman program with adequate legal representation and for pursuing administrative, legal and other appropriate remedies on behalf of residents. Specifically, section 712(g) states:

*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.*

While the OAA requires the state unit on aging to ensure the ombudsman program has adequate legal counsel, it gives states flexibility to determine the most effective manner in which to fulfill this requirement.

## Questionnaire

Questions about legal counsel and representation (see Appendix A) were included in a broader questionnaire regarding ombudsman program structure, scope and funding. The primary questions about legal counsel were:

- ♦ What entities provide legal counsel and representation to the ombudsman program?
- ♦ What functions does the legal counsel perform for the ombudsman program?
- ♦ How is legal representation provided for local ombudsman programs?
- ♦ How do ombudsman programs assist residents to obtain legal assistance when necessary?

The questionnaire was sent to state ombudsman programs by email in February 2003 and was also disseminated at the 2003 Ombudsman Training Conference held in Chicago, Illinois on April 12 -15, 2003. Responses were compiled in chart form. The chart was shared with state ombudsmen respondents to enable them to make any necessary corrections. The data is accurate as of April 2004.<sup>1</sup>

## Findings

Thirty-nine (39) state ombudsman programs responded to the questionnaire. The information collected in the questionnaire about the provision of legal counsel and representation to the ombudsman program addresses the following:

- The entity that provides legal counsel to the Office of the SLTCO.
- State authority for providing legal counsel to the ombudsman program.
- The entity(ies) that provide legal counsel to local ombudsman programs.
- Program requirements for the provision of legal counsel at the local level.
- Mandatory qualifications of legal counsel (if any).
- Functions performed by legal counsel at the state and/or local level.
- The process for accessing legal counsel.
- Authority and circumstances for obtaining outside legal counsel.
- Authority to pursue administrative and legal remedies on behalf of residents.

Appendix B contains a chart that provides program specific information on the 39 programs that responded to the questionnaire. A list of materials that ombudsman programs provided to supplement their responses can be found in Appendix C. Appendix D contains a chart of the entities in each state and the District of Columbia that provide legal counsel and representation to the ombudsman program. Job descriptions of legal

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<sup>1</sup> Michigan's Long-Term Care Ombudsman Program was housed at Elder Law of Michigan at the time of this survey. The state ombudsman's office is now housed in the state unit on aging and information in this document reflects this current placement.

counsel for the Florida, Maine and Wisconsin ombudsman programs are included in the appendices E, F and G respectively.

This paper contains an analysis of the aggregate responses to the questionnaire and addresses the data elements listed above. How ombudsman programs establish working relationships with their legal counsel, how the program helps residents who need legal assistance, and whether the ombudsman program has ever been the subject of a lawsuit are also discussed although not specifically addressed in the chart in Appendix B.

### **Entities that provide legal counsel to the Office of the State Ombudsman**

The entities that provide legal counsel and representation to the Office of the State Long-Term Care Ombudsman include:

- Office of the Attorney General - 25 programs (AL, AK, AZ, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, MI, MN, NE, NV, NC, ND, OH, RI, SC, TX, WV). The Office of the Attorney General is the single source of legal counsel and representation for the ombudsman program in seven states (AK, DE, HI, IA, MN, NE, NV).
- In-House Counsel (not a Legal Assistance Developer) - 22 programs (AZ, CA, CT, DC, FL, GA, IL, IN, KY, LA, ME, MO, MT, NJ, NM, NY, ND, OH, PA, SC, WV, WI).
- Private attorneys under contract - 11 programs (AZ, CO, GA, IL, IN, MO, MT, NC, RI, TN, WA).
- Title III legal assistance providers - 7 programs (AL, CA, GA, IL, IN, KY, WA).
- Legal Assistance Developers (LAD) at the SUA - 5 programs (AZ, CA, CO, GA, IL).
- Other (i.e., county or local government attorney, Protection & Advocacy attorney, legal division of umbrella agency, Legal Aid organization, university law school, etc.) - 8 programs (FL, ID, LA, MI, OK, TX, WA, WV).

See Appendix D for a chart of the entities that provide legal counsel and representation to the ombudsman program in each state and the District of Columbia. In twenty-three states (AL, AZ, CA, CO, CT, FL, GA, ID, IL, IN, KY, LA, MI, MO, MT, NC, ND, OH, RI, SC, TX, WA, WV) more than one entity provides legal counsel to the ombudsman program at the state and/or local levels. In some of these states, the state ombudsman may use a different legal counsel than the local programs. In other states different entities may provide specific types of legal counsel for the ombudsman program at both the state and local levels.

### **Authority for providing legal counsel to the state ombudsman**

The OAA requires states to ensure the ombudsman program has access to adequate legal counsel, without conflict of interest. Some of the ombudsman programs

that responded to the questionnaire indicated that their states have specified how legal counsel will be provided through:

- state statute (21 programs)
- operating policy of the SUA (16 programs)
- ombudsman program policy (15 programs)
- regulation (6 programs).

Rhode Island includes a requirement for legal counsel in the program's budget proviso and the Maine SUA includes a requirement for the provision of legal counsel in its contract with the Maine Long-Term Care Ombudsman Program.

### **Entities that provide legal counsel to local ombudsman programs**

Of the 39 programs that responded to the questionnaire, 31 operate local ombudsman programs. In 23 of these 31 programs legal counsel is statewide, meaning the same entity provides legal counsel to both the state ombudsman and local ombudsman programs. In six of these ombudsman programs (AL, CA, ID, IL, IN, WA) where legal counsel is provided by the same entity at the state and local levels, local programs may also use additional sources of legal counsel to perform functions not provided by the statewide legal counsel. In the remaining eight programs (AZ, CO, GA<sup>2</sup>, KY, MO, MT, NC, WV), a separate entity(ies) provides legal counsel at the local level. Providers of legal counsel to local ombudsman programs include: Title III legal assistance providers, in-house counsel, private attorneys under contract, county or city attorneys, and a university law school.

### **Requirements for legal counsel at the local level**

Local ombudsman programs in 13 states (AL, AZ, CA, CO, GA, ID, IL, IN, KY, MO, NC, TX, WV) must secure their own legal counsel. States specify these requirements in a variety of ways including:

- program policy and procedures (CA, CO, GA, ID, IL, IN, MT, NC)
- regulation (AL, AZ, CO, WV)
- state statute (CO, IN, WV)
- area plans (AL, KY, NC)
- contracts between the state and local ombudsman program (TX, WV).

### **Qualifications of legal counsel**

The District of Columbia, Florida, Maine, Washington and Wisconsin have prescribed qualifications or job descriptions for the ombudsman program's legal counsel.

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<sup>2</sup> The Georgia State Ombudsman directly responds to all subpoenas and Freedom of Information requests on behalf of the statewide program since records are property of the State Office. Local ombudsman programs refer all such requests to the state ombudsman.

Developing qualifications and job descriptions has allowed these programs to establish basic criteria and expectations for adequate legal counsel.

The Washington State Ombudsman Program requires legal counsel to have knowledge of the long-term care field, policy and regulatory experience, be a registered lobbyist, and to have the ability to train ombudsmen.

See Appendices E, F, and G for a description of the legal counsel's functions for the Florida, Maine and Wisconsin ombudsman programs, respectively.

### **Functions performed by legal counsel at the state and/or local level**

Functions performed by legal counsel vary by state and may include a range of tasks such as:

- Providing general advice and consultation.
- Reviewing program regulations and policies.
- Responding to subpoenas of the program.
- Representing the ombudsman program in court.
- Handling access problems to facilities, residents and residents' records.
- Training ombudsman program staff on legal issues.
- Consulting with the ombudsman program on specific cases.
- Reviewing and assisting the program respond to FOI requests.

The functions that the ombudsman program's legal counsel performs may be different at the state and local levels. In Georgia for example, legal counsel at the state level reviews program regulations and policies, Freedom of Information (FOI) requests and subpoenas, while legal counsel at the local level provides ombudsman programs with general advice and consultation, case specific consultation, representation in court, training on legal issues and handles problems related to the program's access to facilities, residents and residents' records. See Appendix B for a list of the functions each program's legal counsel performs at the state and local levels.

### **Process for accessing legal counsel**

Ombudsman programs access assistance from legal counsel in several ways --- by direct contact (phone, email, etc.), in writing, or through the SUA or other entity that houses the ombudsman program.

Thirty-five (35) of the 39 programs responding to the questionnaire have access to legal counsel through direct contact, either by calling or email. In three states (AL, IN, MI) the state ombudsman may only access legal counsel through the SUA. In these states the SUA may contact legal counsel on behalf of the program or give permission to the state ombudsman to contact the legal counsel. In California the state ombudsman may access legal counsel either in writing or through the SUA. See Appendix B for information on how each ombudsman program accesses legal counsel.

## **Authority and circumstances for obtaining outside legal counsel**

In addition to the official entity(ies) that provides legal counsel to the ombudsman program, thirteen (13) programs (AK, DC, GA, IN, LA, ME, MI, MT, NJ, OH, OK, TX, WA) also have authority to obtain legal advice or support from an outside entity such as a private attorney. The circumstances under which these programs have used outside legal counsel include:

- When legal counsel has a conflict of interest (AK, GA, OK).
- Consultation on individual cases (MI, TX).
- Assisting local ombudsman programs with discharge appeals (IN).
- Handling issues for residents under 60 when no pro bono attorney is available (ME).
- Supporting the ombudsman program in legal actions against local government agencies (DC).
- Providing strategy support on legislative advocacy issues (OH).
- Defense of the ombudsman program in litigation cases (NJ).

## **Authority to pursue administrative and legal remedies on behalf of residents**

In 29 states and the District of Columbia, the authority to pursue administrative and legal remedies on behalf of residents, specified in the OAA, is also specified in:

- state statute (23 states)
- policy and procedures (13 programs)
- program regulations (7 programs).

Information was not collected on the specific language used in statute, policy and procedures or regulations.

## **Establishing working relationships with legal counsel**

Ombudsman programs have established effective working relationships with their legal counsel through cross-training, education, regular meetings and written agreements.

- Most frequently, ombudsman programs invite their legal counsel to both conduct and attend training as a way to promote understanding of the different roles legal counsel to the ombudsman program play and ensure that legal counsel can appropriately assist the program.
- State and/or local ombudsman programs in 15 states (AL, CA, CO, FL, GA, IN, ME, MI, NJ, NY, ND, SC, TX, WA, WV) meet with their legal counsel on a regular basis.<sup>3</sup>
- Eleven programs (AL, AZ, CA, CO, ID, KY, MI, NC, OK, SC, WA) have written agreements with their legal counsel at the state and/or local level.

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<sup>3</sup> The frequency of regular meetings varied by program from daily to yearly.

## **How ombudsman programs assist residents who need legal assistance**

Thirty-five (35) ombudsman programs assist residents who need legal intervention to handle situations such as public benefits eligibility and appeals, transfer and discharge, billing problems, and guardianship/advance directives. Ombudsman programs assist residents to access legal counsel in a variety of ways including:

- referring residents to legal assistance / services (33 programs)
- discussing case situations with the program's legal counsel (14 programs)
- arranging for legal counsel (9 programs).

In eleven (11) states (FL, LA, ME, MI, MT, NJ, NY, TX, WA, WV, WI) and the District of Columbia the program's legal counsel may become actively involved on behalf of residents in certain instances. The criteria used to determine when or how the legal counsel becomes involved in a case varies by program and is generally determined on a case-by-case basis. However, some programs have identified specific types of cases in which their legal counsel is likely to be involved. For example:

- The Florida and Texas ombudsman programs involve their legal counsel in discharge situations.
- In Maine, the program's legal counsel assists residents in non-court hearings and in situations involving persons under 60 when no pro bono attorney is available.
- The ombudsman program's legal counsel in New Jersey petitions the court for injunctive relief on behalf of residents whose rights have been violated.

## **Lawsuits Against the Ombudsman Program**

In five states (GA, KY, NJ, OH, WA), the ombudsman program has been named in lawsuits brought by long-term care providers. A detailed description of these legal actions is beyond the scope of this paper. However, the nature of these complaints can be described as challenges to the ombudsman program's immunity for "good faith" actions in the performance of official duties (e.g., referring complaint information to other agencies such as licensure and certification, assisting residents to appeal discharges, etc.). All of these suits were either dismissed or settled in favor of the ombudsman program.

## **Summary**

Thirty-nine (39) state ombudsman programs responded to a questionnaire about legal counsel and representation of the ombudsman program at both the state and local levels. Responses revealed that the most frequently used sources of legal counsel are the Office of the Attorney General and in-house legal counsel (other than a legal assistance developer); 92% of the responding programs use one or both for legal counsel and representation. Other entities that provide legal counsel to the program at the state and/or local levels include private attorneys under contract, Title III legal assistance providers, legal assistance developers in the SUA, city and county attorneys, Legal Aid and other

legal providers. Twenty-three (23) of 31 programs with local ombudsman programs reported that legal counsel is statewide, meaning the same entity provides legal counsel to both the state ombudsman and local ombudsman programs. However, the functions performed by legal counsel vary by state and in some programs also differ at the state and local level. Several ombudsman programs have developed qualifications and job descriptions for their legal counsel. Examples of these are included in the Appendix.

Ombudsman programs have established effective working relationships with their legal counsel through cross-training, education, regular meetings and written agreements. Thirty-five (35) of the 39 programs responding can access legal counsel directly by phone or email, and 13 programs have authority to obtain legal advice or support from an outside entity such as a private attorney in special circumstances. Thirty (30) ombudsman programs have authority through state statute, policy or regulations to pursue administrative and legal remedies on behalf of residents. Additionally, 35 ombudsman programs provide referrals and other types of assistance to residents who need legal intervention to handle situations such as public benefits eligibility, appeals and billing problems.

## **APPENDIX A**

### **Questionnaire**

National Long-Term Care Ombudsman Resource Center  
Program Questionnaire  
2003

State: \_\_\_\_\_

Contact Information

Person completing this questionnaire: \_\_\_\_\_

State Ombudsman: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

Website [if available]: \_\_\_\_\_

**Part II**

**Legal Counsel and Representation of the Ombudsman Program**

*According to the Older Americans Act, the requirements for providing the Ombudsman Program with adequate legal representation in Sec. 712(g) Legal Counsel state that: "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.*

1. What entity is responsible for providing legal counsel to the Office of the State Ombudsman?

(✓all that apply)

- \_\_\_ Attorney General's Office
- \_\_\_ Title III Legal Assistance Provider
- \_\_\_ Legal Assistance Developer (LAD)
- \_\_\_ In-house Counsel (not a LAD)
- \_\_\_ Private attorney on contract
- \_\_\_ County or local Counsel
- \_\_\_ Other (specify) \_\_\_\_\_

2. A. Does the legal counsel for the State Ombudsman provide legal counsel to the statewide program (including all local and regional programs)?
- yes (skip to question 3)  
 no (please answer questions 2.B and 2.C below)
- B. If no, how is legal counsel provided at the local/regional level? (✓ all that apply)
- Title III legal assistance provider  
 In-house counsel  
 Private attorney  
 County or city counsel  
 Other (please specify) \_\_\_\_\_
- C. Is the requirement for legal counsel at the local/regional level included in? (✓ all that apply)
- the area plan  
 a separate ombudsman contract  
 ombudsman program policies and procedures  
 state statute  
 state regulations  
 other (specify) \_\_\_\_\_
3. What is the authority for the provision of legal counsel to the state ombudsman? (✓ all that apply)
- state statute  
 regulation  
 program policy  
 operating policy of the State Unit on Aging or entity housing the ombudsman program  
 budget proviso or directive  
 other (please specify) \_\_\_\_\_

Please answer questions 4 and 5 in the chart below (✓ all that apply)

Questions 4 – 5	Yes	No	If yes, at what level?		
			State	Local	Both
<b>4. What functions does the legal counsel perform for the ombudsman program?</b>					
Legal advice/consultation					
Case consultation/review					
Review of program regulations and policies					
Legal representation in court					
Review of Freedom of Information requests					
Training on legal issues for program staff					
Review/recommendations re: subpoenas					
Problems with program access to residents, Residents' records and ltc facilities					
Other (specify)					
<b>5. How does the ombudsman program access Legal counsel?</b>					
Direct contact (phone, email, etc.)					
In writing (e.g., formal letter or Memorandum)					
Contact must be made through the SUA or Entity housing the ombudsman program					
Other (specify)					

6. A. In addition to the official entity providing legal counsel, is the ombudsman program authorized to obtain legal advice or support by an outside legal entity (e.g., private attorney)?  
 yes       no (if no, skip to question 7.)

B. Please name the entity that provides outside legal advice or support.

C. Please describe the circumstances under which outside legal counsel was used, if any.

7. A. Have any qualifications been set for the legal counsel of the ombudsman program (e.g., training of legal counsel, years of experience, specific expertise, etc)?  
 yes       no (if no, skip to question 8.)

B. Qualifications for legal counsel have been set at the:  
 state level  
 local level  
 both

C. Are qualifications for legal counsel specified in:  
 state statute  
 regulation  
 policy  
 other (specify) \_\_\_\_\_

D. If yes, please specify the qualifications.

8. A. Has the ombudsman program (state or local) ever been sued?

Yes

No

B. If yes, please describe the issue(s) of the suit and the outcome.

9. How does the ombudsman program respond to residents' need for legal counsel (i.e., help with benefit eligibility and appeals, transfer/discharge issues, billing issues, guardianship/advance directives, and other issues)? (✓ all that apply)

referral to legal assistance/services

arrange for legal counsel

discuss situation with ombudsman's legal counsel

in some cases, the ombudsman program's legal counsel gets involved

please provide criteria used to determine legal counsel's involvement.

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other (please describe) \_\_\_\_\_

10. Under what authority (in addition to the Older Americans Act) does the ombudsman program pursue administrative and legal remedies on behalf of long-term care residents / service recipients?

state statute

regulation

policy

other (specify) \_\_\_\_\_

no additional authority

11. What efforts has the ombudsman program made to develop a working relationship with legal counsel? (✓ all that apply)

invites to ombudsman training  
if yes, at what level?  
 state  local  both

use legal counsel as a trainer  
if yes, at what level?  
 state  local  both

ombudsman program participates in ongoing legal education for the legal  
counsel  
if yes, at what level?  
 state  local  both

ombudsman program meets regularly with legal counsel  
if yes, at what level?  
 state  local  both

if yes, specify how often at each level

developed a written agreement specifying the relationship between the  
ombudsman program and legal counsel  
if yes, at what level?  
 state  local  both

other (specify) \_\_\_\_\_  
\_\_\_\_\_  
at what level?  
 state  local  both

12. Please send a copy of the relevant state statute, regulation or policy that specifies how legal counsel is provided to the ombudsman program.

not applicable  
 will send via U.S. mail  
 attached to this questionnaire

**Send all applicable materials to:**

**NASUA  
Attention: Mark Miller  
1201 15<sup>th</sup> Street, NW, Suite 350  
Washington, DC 20016**

Please respond to **Part II** of this questionnaire by **February 28, 2003**. Return this questionnaire to:

Mark Miller  
Via email: [mmiller@nasua.org](mailto:mmiller@nasua.org)  
or  
Via fax: (202) 898-2583

## **APPENDIX B**

### **Chart of Programs' Responses**

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Alabama	Alaska
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General	Office of the Attorney General
Specific authority for the provision of legal counsel to the SLTCO	Specified in LTCOP regulations	Specified in state statute
Entity(ies) that provide legal counsel to local ombudsman programs	Title III legal assistance providers	No local programs
Specific requirement for legal counsel at the local level	Specified in state regulations and area plan	No local programs
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of subpoenas</li> </ul> <p>Functions not specified for local level.</p>	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training of LTCOP staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Through the SUA (state ombudsman)	Direct contact or in writing
Authority for the SLTCO to obtain outside counsel in particular circumstances	Not specified	Yes, if Office of the Attorney General has a conflict of interest
Specific authority to pursue legal remedies on behalf of residents	Not specified	Yes (authority not specified)
Materials on file at NASUA	No materials on file	State statute re: legal counsel for the LTCOP

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State	Arizona	Arkansas
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General, Legal Assistance Developer, private attorney on contract	
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute, LTCOP policies, operating policy of the SUA	
Entity(ies) that provide legal counsel to local ombudsman programs	In-house counsel	
Specific requirement for legal counsel at the local level	Specified in LTCOP regulations	
Required qualifications for legal counsel	Not specified	
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Representation in court</li> </ul> <p>Functions specified at state &amp; local levels:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	
Process for accessing legal counsel	Direct contact or in writing (state ombudsman and local programs)	
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	
Materials on file at NASUA	No materials on file	

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2004**

State	California	Colorado
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General, Title III Legal Assistance Provider, Legal Assistance Developer, in-house counsel (not a LAD)	Office of the Attorney General, Legal Assistance Developer
Specific authority for the provision of legal counsel to the SLTCO	Specified in LTCOP policy	Specified in state statute, LTCOP regulations, LTCOP policy, operating policy of the SUA
Entity(ies) that provide legal counsel to local ombudsman programs	Title III Legal Assistance Provider, in-house counsel, county or city counsel	Private attorney, county or city counsel
Specific requirement for legal counsel at the local level	Specified in LTCOP policies & procedures	Specified in state statute, LTCOP regulations, LTCOP policies and procedures
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified as state level only:</p> <ul style="list-style-type: none"> <li>▪ Training on legal issues for program staff</li> </ul> <p>Functions specified at state &amp; local levels:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	<p>Functions specified at state &amp; local levels:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	In writing or through the SUA (state ombudsman)	Direct contact or through the SUA (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified
Specific authority to pursue legal remedies on behalf of residents	Yes, in LTCOP policy	Yes, in state statute, LTCOP regulations, LTCOP policy
Materials on file at NASUA	No materials on file	No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Connecticut	Delaware
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General, in-house counsel (not a LAD)	Office of the Attorney General
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute, LTCOP regulation, LTCOP policy	Specified in LTCOP policy
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	No local programs
Specific requirement for legal counsel at the local level	Not specified	No local programs
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	Functions specified as state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact or in writing (state ombudsman)	Direct contact or in writing
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified
Specific authority to pursue legal remedies on behalf of residents	Not specified	Yes, in LTCOP regulations, LTCOP policy
Materials on file at NASUA	State statute; letter from Assist. AG concerning representation of the LTCOP	No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	District of Columbia	Florida
Entity that provides legal counsel to the Office of the SLTCO	In-house counsel (not a LAD)	Office of the Attorney General, in-house counsel (not a LAD), county/local attorney, LTCOP council members
Specific authority for the provision of legal counsel to the SLTCO	Specified in District statute, LTCOP policy	Specified in state statute
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is district-wide	Office of the Attorney General, in-house counsel (not a LAD), county/local attorney, LTCOP council members
Specific requirement for legal counsel at the local level	Not specified	Not specified
Required qualifications for legal counsel	Qualifications specified in job description and HR policies mandated by the DC LTCOP	Not specified
Functions performed by the legal counsel at the state and/or local level	Functions specified for entire program: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> <li>▪ Represents residents in court hearings</li> <li>▪ Can file suit against local government</li> </ul>	Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact or in writing (state ombudsman and local programs)	Direct contact or in writing (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Yes. Legal Council for the Elderly and pro bono firms may be used to support the LTCOP in mandamus actions against local government agencies	Not specified
Specific authority to pursue legal remedies on behalf of residents	Yes, in District statute, LTCOP policy	Yes, in state statute
Materials on file at NASUA	District statute (Chapter 35 - Long-Term Care Ombudsman Program)	State statute; job description of general counsel to the LTCOP

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Georgia	Guam
Entity that provides legal counsel to the Office of the SLTCO	Depending on the circumstances, one or more of the following: Office of the Attorney General, Title III legal assistance provider, legal assist. Developer (LAD), in-house counsel (not a LAD), private attorney on contract	
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute, SUA policy, LTCOP policy	
Entity(ies) that provide legal counsel to local ombudsman programs	Title III legal assistance provider, in-house counsel, private attorney	
Specific requirement for legal counsel at the local level	Specified in LTCOP policies & procedures	
Required qualifications for legal counsel	Not specified	
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Review of FOI requests</li> <li>▪ Review of subpoenas</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Handles program access problems</li> </ul>	
Process for accessing legal counsel	Direct contact (state ombudsman and local programs)	
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Yes. LTCOP may use a private attorney if the Office of the Attorney General has a conflict of interest	
Specific authority to pursue legal remedies on behalf of residents	Yes, in LTCOP policy	
Materials on file at NASUA	LTCOP policy & procedures for adequate legal counsel for the LTCOP	

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Hawaii	Idaho
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General	Office of the Attorney General
Specific authority for the provision of legal counsel to the SLTCO	Not specified	Specified in SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs	No local programs	Contract for services or Memorandum of Agreement with legal services provider for advice on ombudsman complaint issues
Specific requirement for legal counsel at the local level	No local programs	Specified in LTCOP policies & procedures
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> </ul> Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact or in writing	Direct contact or in writing (state ombudsman); through the SUA (local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified
Specific authority to pursue legal remedies on behalf of residents	Not specified	Yes, in state statute; LTCOP regulation; LTCOP policy
Materials on file at NASUA	No material on file	LTCOP administrative requirements (regulations) re: legal counsel

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Illinois	Indiana
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General; Title III legal assistance provider; Legal Assistance Developer (LAD); in-house counsel (not a LAD); private attorney on contract	Office of the Attorney General; Title III legal assistance provider; in-house counsel (not a LAD); private attorney on case-by-case basis for local ombudsman programs only
Specific authority for the provision of legal counsel to the SLTCO	Specified in LTCOP policy	Specified in state administrative code, LTCOP policy
Entity(ies) that provide legal counsel to local ombudsman programs	Title III legal assistance provider; in-house counsel; private attorney; county or city counsel	Title III legal assistance provider; private attorney
Specific requirement for legal counsel at the local level	Specified in LTCOP policies & procedures	Specified in state statute; state administrative code, LTCOP policies & procedures
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	Not specified	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Review of subpoenas</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Handles program access problems</li> </ul> <p>Functions specified at the local level only:</p> <ul style="list-style-type: none"> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> </ul>
Process for accessing legal counsel	Direct contact or in writing (state ombudsman)	Through the SUA (state ombudsman)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Yes. Varies by area, to assist local ombudsmen with discharge appeals
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	Yes, in state administrative code
Materials on file at NASUA	LTCOP policy & procedures re: standards for legal counsel	State statute and administrative code (regulations) for the LTCOP

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Iowa	Kansas
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General	
Specific authority for the provision of legal counsel to the SLTCO	Specified in SUA policy	
Entity(ies) that provide legal counsel to local ombudsman programs	No local programs	
Specific requirement for legal counsel at the local level	No local programs	
Required qualifications for legal counsel	Not specified	
Functions performed by the legal counsel at the state and/or local level	Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	
Process for accessing legal counsel	Direct contact	
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	
Materials on file at NASUA	No materials on file	

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Kentucky	Louisiana
Entity that provides legal counsel to the Office of the SLTCO	In-house counsel (not a LAD)	In-house counsel (not a LAD); contract with full-time attorney with P&A agency for advice and consultation re: nursing home law and direct representation of residents
Specific authority for the provision of legal counsel to the SLTCO	Not specified (state employees performing in good faith are represented by the state)	Specified in SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs	Title III legal assistance providers	Legal counsel is statewide
Specific requirement for legal counsel at the local level	Specified in area plan	Not specified
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Representation in court</li> </ul> <p>Functions not specified for local level</p>	<p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact or in writing (state ombudsman)	Direct contact or through the SUA (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Yes. P&A attorney available via contract per SUA policy (circumstances not specified)
Specific authority to pursue legal remedies on behalf of residents	Not specified (informally use legal services)	Not specified
Materials on file at NASUA	Administrative regulations for the LTCOP	No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Maine	Maryland
Entity that provides legal counsel to the Office of the SLTCO	In-house counsel (not a LAD)	
Specific authority for the provision of legal counsel to the SLTCO	Specified in contract with SUA	
Entity(ies) that provide legal counsel to local ombudsman programs	No local programs	
Specific requirement for legal counsel at the local level	No local programs	
Required qualifications for legal counsel	Not specified	
Functions performed by the legal counsel at the state and/or local level	Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> <li>▪ Registered lobbyist</li> </ul>	
Process for accessing legal counsel	Direct contact	
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Yes. May use private attorney to handle issues for consumers under 60.	
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	
Materials on file at NASUA	State statute; legal counsel job description for the LTCOP	

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Massachusetts	Michigan
Entity that provides legal counsel to the Office of the SLTCO		Office of the Attorney General; Michigan Poverty Law Program (MPLP) (under contract)
Specific authority for the provision of legal counsel to the SLTCO		State statute for Office of the Attorney General representation and contract for services from Michigan Poverty Law Program
Entity(ies) that provide legal counsel to local ombudsman programs		Legal counsel is statewide
Specific requirement for legal counsel at the local level		Not specified
Required qualifications for legal counsel		Not specified
Functions performed by the legal counsel at the state and/or local level		Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel		Through the SUA (state ombudsman and local programs) (for AG representation only)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		Yes. Program uses the MPLP for case level counsel and ombudsman policy development.
Specific authority to pursue legal remedies on behalf of residents		Yes, in state statute
Materials on file at NASUA		No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Minnesota	Mississippi
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General	
Specific authority for the provision of legal counsel to the SLTCO	Specified in SUA policy	
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	
Specific requirement for legal counsel at the local level	Not specified	
Required qualifications for legal counsel	Not specified	
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Review of program regulations &amp; policies</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	
Process for accessing legal counsel	Direct contact (state ombudsman)	
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	
Specific authority to pursue legal remedies on behalf of residents	Not specified	
Materials on file at NASUA	No materials on file	

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Missouri	Montana
Entity that provides legal counsel to the Office of the SLTCO	In-house counsel (not a LAD)	In-house counsel (not a LAD)
Specific authority for the provision of legal counsel to the SLTCO	Not specified	Specified in LTCOP regulation; LTCOP policy (pending approval); SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs	In-house counsel; private attorneys	Private attorneys
Specific requirement for legal counsel at the local level	Not specified	Specified in LTCOP policies & procedures
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Review of FOI requests</li> <li>▪ Handles program access problems</li> </ul>	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> </ul> <p>Functions not specified for local level</p>
Process for accessing legal counsel	Direct contact or in writing (state ombudsman)	Direct contact (state ombudsman)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified (in development)
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	Yes, in LTCOP policy
Materials on file at NASUA	No materials on file	LTCOP policy & procedures

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Nebraska	Nevada
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General	Office of the Attorney General
Specific authority for the provision of legal counsel to the SLTCO	Specified in SUA policy	Specified in state statute; LTCOP policy; SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	No local programs
Specific requirement for legal counsel at the local level	Not specified	No local programs
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Review of FOI requests</li> </ul> Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact or in writing (state ombudsman)	Direct contact or in writing or through the SUA
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	Yes, in LTCOP policy
Materials on file at NASUA	No materials on file	State administrative regulations re: Advocates for Residents of Facilities for Long-Term Care

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	New Hampshire	New Jersey
Entity that provides legal counsel to the Office of the SLTCO		In-house counsel (not a LAD)
Specific authority for the provision of legal counsel to the SLTCO		Specified in state statute
Entity(ies) that provide legal counsel to local ombudsman programs		No local programs
Specific requirement for legal counsel at the local level		No local programs
Required qualifications for legal counsel		Not specified
Functions performed by the legal counsel at the state and/or local level		Functions specified at state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> <li>▪ End of life consultations</li> </ul>
Process for accessing legal counsel		Direct contact
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		Yes. May use a private law firm for litigation defense.
Specific authority to pursue legal remedies on behalf of residents		Yes, in state statute
Materials on file at NASUA	No materials on file	State statute re: authority to obtain legal counsel

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	New Mexico	New York
Entity that provides legal counsel to the Office of the SLTCO	In-house counsel (not a LAD)	In-house counsel (not a LAD)
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute	Specified in SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	Legal counsel is statewide
Specific requirement for legal counsel at the local level	Not specified	Not specified
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact (state ombudsman)	Direct contact (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute, rules and regulations	Yes, in LTCOP policy
Materials on file at NASUA	State regulations re: the LTCOP	No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	North Carolina	North Dakota
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General	Office of the Attorney General; In-house counsel (not a LAD)
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute; LTCOP regulations; LTCOP policy	Specified in state statute; LTCOP policy
Entity(ies) that provide legal counsel to local ombudsman programs	Private attorneys	Legal counsel is statewide
Specific requirement for legal counsel at the local level	Specified in area plan; LTCOP policy & procedures	Not specified
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at the state level only:</p> <ul style="list-style-type: none"> <li>▪ Review of program regulations and policies</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Handles program access problems</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Representation in court</li> <li>▪ Review of subpoenas</li> </ul>	<p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact (state ombudsman and local programs) or in writing (state ombudsman) or through the SUA (local programs)	Direct contact (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Not specified
Specific authority to pursue legal remedies on behalf of residents	Not specified	Yes, in state statute; LTCOP regulation; LTCOP policy
Materials on file at NASUA	State statute re: LTCOP legal representation; regulations re: the LTCOP	State statute re: the LTCOP; regulations re: legal counsel to the LTCOP

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Ohio	Oklahoma
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General; In-house counsel (not a LAD)	Dept. of Human Services Legal Division
Specific authority for the provision of legal counsel to the SLTCO	Specified in SUA policy	Specified in state statute; SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	Legal counsel is statewide
Specific requirement for legal counsel at the local level	Not specified	Not specified
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at the state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Program designation/certification issues</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	<p>Functions specified at the state level only:</p> <ul style="list-style-type: none"> <li>▪ Review of program regulations and policies</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Representation in court</li> <li>▪ Review of subpoenas</li> </ul>
Process for accessing legal counsel	Direct contact (state ombudsman)	Direct contact (state ombudsman); through the SUA (local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Yes. LTCOP has used a trial attorney to consult on advocacy strategy on long-term care liability bill.	Yes. May use if conflict of interest exists for DHS attorney.
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	Yes, in state statute; LTCOP regulation
Materials on file at NASUA	State statute re: the LTCOP	No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Oregon	Pennsylvania
Entity that provides legal counsel to the Office of the SLTCO		In-house counsel (not a LAD)
Specific authority for the provision of legal counsel to the SLTCO		Specified in SUA policy
Entity(ies) that provide legal counsel to local ombudsman programs		Legal counsel is statewide
Specific requirement for legal counsel at the local level		Not specified
Required qualifications for legal counsel		Not specified
Functions performed by the legal counsel at the state and/or local level		<p>Functions specified at the state level only:</p> <ul style="list-style-type: none"> <li>▪ Representation in court</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel		Direct contact or in writing (state ombudsman and local programs); through the SUA (local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		Not specified
Specific authority to pursue legal remedies on behalf of residents		Yes, in state statute
Materials on file at NASUA		No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Puerto Rico	Rhode Island
Entity that provides legal counsel to the Office of the SLTCO		Office of the Attorney General; private attorney on contract
Specific authority for the provision of legal counsel to the SLTCO		Specified in state statute; LTCOP policy; budget proviso or directive
Entity(ies) that provide legal counsel to local ombudsman programs		No local programs
Specific requirement for legal counsel at the local level		No local programs
Required qualifications for legal counsel		Not specified
Functions performed by the legal counsel at the state and/or local level		Functions specified at the state level only: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> </ul>
Process for accessing legal counsel		Direct contact
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		Not specified
Specific authority to pursue legal remedies on behalf of residents		Not specified
Materials on file at NASUA		No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	South Carolina	South Dakota
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General; in-house counsel (not a LAD)	
Specific authority for the provision of legal counsel to the SLTCO	Specified in SUA policy	
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	
Specific requirement for legal counsel at the local level	Not specified	
Required qualifications for legal counsel	Not specified	
Functions performed by the legal counsel at the state and/or local level	Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>	
Process for accessing legal counsel	Direct contact or in writing (state ombudsman and local programs)	
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	
Specific authority to pursue legal remedies on behalf of residents	Yes, in LTCOP policy	
Materials on file at NASUA	No materials on file	

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Tennessee	Texas
Entity that provides legal counsel to the Office of the SLTCO	Private attorney on contract	Office of the Attorney General; Texas Legal Services (for consultation on individual cases)
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute	Specified in state statute
Entity(ies) that provide legal counsel to local ombudsman programs	Legal counsel is statewide	Legal counsel is statewide
Specific requirement for legal counsel at the local level	Not specified	Specified in ombudsman contract
Required qualifications for legal counsel	Not specified	Not specified
Functions performed by the legal counsel at the state and/or local level	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Review of program regulations and policies</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> </ul>	<p>Functions specified at state level only:</p> <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul> <p>Functions specified at state &amp; local level:</p> <ul style="list-style-type: none"> <li>▪ Case consultation</li> <li>▪ Representation in court</li> <li>▪ Training on legal issues for program staff</li> </ul>
Process for accessing legal counsel	Direct contact (state ombudsman); through the SUA (local programs)	Direct contact (state ombudsman)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Yes. Texas Legal Center for case specific expertise (e.g., a housing issue involving assisted living).
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	Yes, in state statute; LTCOP regulation
Materials on file at NASUA	No materials on file	No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Utah	Vermont
Entity that provides legal counsel to the Office of the SLTCO		
Specific authority for the provision of legal counsel to the SLTCO		
Entity(ies) that provide legal counsel to local ombudsman programs		
Specific requirement for legal counsel at the local level		
Required qualifications for legal counsel		
Functions performed by the legal counsel at the state and/or local level		
Process for accessing legal counsel		
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		
Specific authority to pursue legal remedies on behalf of residents		
Materials on file at NASUA		

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Virginia	Washington
Entity that provides legal counsel to the Office of the SLTCO		Private attorney on contract
Specific authority for the provision of legal counsel to the SLTCO		Specified in state statute; LTCOP regulation
Entity(ies) that provide legal counsel to local ombudsman programs		Title III legal assistance provider; private attorney; one local program receives legal counsel from a university law school
Specific requirement for legal counsel at the local level		Not specified
Required qualifications for legal counsel		Set at state level: Long-term care knowledge; policy & regulatory experience; policy analysis; registered lobbyist; ability to train
Functions performed by the legal counsel at the state and/or local level		Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Representation in court</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel		Direct contact (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		Yes. May choose outside legal counsel (circumstances not specified).
Specific authority to pursue legal remedies on behalf of residents		Yes, in state statute; LTCOP regulation; LTCOP policy
Materials on file at NASUA		No materials on file

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	West Virginia	Wisconsin
Entity that provides legal counsel to the Office of the SLTCO	Office of the Attorney General; Legal Aid of WV	In-house counsel (not a LAD)
Specific authority for the provision of legal counsel to the SLTCO	Specified in state statute	Specified in state statute; LTCOP policy
Entity(ies) that provide legal counsel to local ombudsman programs	In-house counsel	Legal counsel is statewide
Specific requirement for legal counsel at the local level	Specified in state statute; regulation; ombudsman contract	Not specified
Required qualifications for legal counsel	Not specified	Set at state level by LTCOP policy (requirements not specified)
Functions performed by the legal counsel at the state and/or local level	Not specified	Functions specified at state & local level: <ul style="list-style-type: none"> <li>▪ Advice/consultation</li> <li>▪ Case consultation</li> <li>▪ Review of program regulations and policies</li> <li>▪ Review of FOI requests</li> <li>▪ Training on legal issues for program staff</li> <li>▪ Review of subpoenas</li> <li>▪ Handles program access problems</li> </ul>
Process for accessing legal counsel	Direct contact	Direct contact or in writing (state ombudsman and local programs)
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances	Not specified	Yes (circumstances not specified)
Specific authority to pursue legal remedies on behalf of residents	Yes, in state statute	Yes, in state statute; LTCOP policy
Materials on file at NASUA	State statute re: legal counsel to the LTCOP	State statute re: the LTCOP; LTCOP policy & procedures for legal counsel; legal counsel job description

**Legal Counsel and Representation of  
The Long-Term Care Ombudsman Program  
2004**

State	Wyoming	
Entity that provides legal counsel to the Office of the SLTCO		
Specific authority for the provision of legal counsel to the SLTCO		
Entity(ies) that provide legal counsel to local ombudsman programs		
Specific requirement for legal counsel at the local level		
Required qualifications for legal counsel		
Functions performed by the legal counsel at the state and/or local level		
Process for accessing legal counsel		
Specific authority available to the SLTCO to obtain outside counsel in particular circumstances		
Specific authority to pursue legal remedies on behalf of residents		
Materials on file at NASUA		

## **APPENDIX C**

### **List of Materials on File at NASUA**

**Materials on File at NASUA Related to the Provision of Legal Counsel  
to State Long-Term Care Ombudsman Programs**

Alaska: state statute regarding legal counsel for the ombudsman program.

Connecticut: state statute and letter from Assistant Attorney General explaining conditions for representation of the ombudsman program.

District of Columbia: District statute regarding the ombudsman program.

Florida: state statute and job description for general counsel to the ombudsman program (see Appendix E).

Georgia: ombudsman program policy and procedures for accessing legal counsel.

Idaho: administrative requirements (regulations) for legal counsel to the ombudsman program.

Illinois: policy and procedures (standards) for the provision of legal counsel to the ombudsman program.

Indiana: state statute and administrative code (regulations) for the ombudsman program.

Kentucky: administrative regulations for the ombudsman program.

Maine: state statute and job description for legal counsel to the ombudsman program (see Appendix F).

Montana: ombudsman program policy & procedures.

Nevada: state administrative regulations regarding Advocates for Residents of Facilities for Long-Term Care.

New Jersey: state statute regarding authority to obtain legal counsel.

New Mexico: state regulations regarding the ombudsman program.

North Carolina: state statute and regulations regarding legal representation for the ombudsman program.

North Dakota: state statute regarding the ombudsman program and regulations concerning the legal counsel to the program.

West Virginia: state statute regarding legal counsel for the ombudsman program.

Wisconsin: state statute, program policy & procedures concerning legal counsel, and job description of legal counsel (see Appendix G).

## **APPENDIX D**

### **Chart of Entities that Provide Legal Counsel and Representation To the Office of the State Long-Term Care Ombudsman**

## Legal Counsel and Representation of the Office of the State Long-Term Care Ombudsman

State	Entity providing Legal Counsel and Representation to the Office of the State Long-Term Care Ombudsman						
	Office of the Attorney General	Legal Assistance Developer (LAD)	Title III Legal Assistance Provider	In-house Counsel (not a LAD)	Private Attorney	County or City Counsel	Other
Alabama	◆		◆				
Alaska	◆						
Arizona	◆	◆		◆	◆		
Arkansas							
California	◆	◆	◆	◆		◆	
Colorado	◆	◆			◆	◆	
Connecticut	◆(1)			◆			
Delaware	◆						
DC				◆			
Florida	◆			◆		◆	◆
Georgia	◆	◆	◆	◆	◆		
Guam							
Hawaii	◆						
Idaho	◆						◆
Illinois	◆	◆	◆	◆	◆	◆	
Indiana	◆		◆	◆	◆		
Iowa	◆						
Kansas							
Kentucky			◆	◆			
Louisiana				◆			◆
Maine				◆			
Maryland							
Massachusetts							
Michigan	◆						◆
Minnesota	◆						
Mississippi							
Missouri				◆	◆		
Montana				◆	◆		
Nebraska	◆						
Nevada	◆						
New Hampshire							
New Jersey				◆			
New Mexico				◆			
New York				◆			
N. Carolina	◆				◆		
N. Dakota	◆			◆			
Ohio	◆			◆			
Oklahoma							◆
Oregon							
Pennsylvania				◆			
Puerto Rico							
Rhode Island	◆				◆		
S. Carolina	◆			◆			
S. Dakota							
Tennessee					◆		
Texas	◆						◆
Utah							
Vermont							
Virginia							
Washington			◆		◆		◆
W. Virginia	◆			◆			◆
Wisconsin				◆			
Wyoming							
Totals	25	5	7	22	11	4	8

This chart includes the responses to items 1 and 2B. of the questionnaire: Legal Counsel and Representation of the Ombudsman Program. "Office of the State Long-Term Care Ombudsman" includes both the state ombudsman and local or regional ombudsman programs/representatives.

(1) The LTCOP is assigned an Assistant AG that does not represent the SUA or any other program or department.

Other: FL: LTCOP council members  
 ID: Legal Aid (contracted through the area agencies on aging)  
 LA: Protection & Advocacy Agency attorney  
 MI: Michigan Poverty Law Program  
 OK: Dept. of Human Services, Legal Division  
 TX: Texas Legal Services  
 WA: university law school (for one local program)  
 WV: Legal Aid of West Virginia

## **APPENDIX E**

### **Florida: Position Description for General Counsel to the Office of the State Long-Term Care Ombudsman**

## **APPENDIX F**

**Maine: Position Description for Legal Counsel to the LTC  
Ombudsman 's Board of Directors and Ombudsman Program Staff**

## **APPENDIX G**

**Wisconsin: Policy and Procedure and Position Description for  
Legal Counsel to the Board on Aging and Long-Term Care, the  
State Ombudsman and Ombudsman Program Staff**