

QUALITY IN MEDICAID WAIVER ASSISTED LIVING: THE OMBUDSMAN PROGRAM'S ROLE AND PERSPECTIVE

Prepared by the National Association of State Units on Aging

National Long-Term Care
Ombudsman Resource Center

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The National Association of State Units on Aging (NASUA) is a private, nonprofit organization whose membership is comprised of the 56 state and territorial offices on aging.

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QUALITY IN MEDICAID WAIVER ASSISTED LIVING: THE OMBUDSMAN PROGRAM'S ROLE AND PERSPECTIVE

The National Association of State Units on Aging (NASUA) convened a teleconference for state ombudsmen to discuss their role and perspectives on quality in Medicaid waiver assisted living. The call was held on April 26, 2005. This paper presents the highlights of that discussion which focused on:

- How assisted living waivers work in different states (e.g., who uses the services, how consumers access the assisted living benefit).
- Ombudsman program activities in assisted living (e.g., consultation and information sharing with waiver agencies, consumer education).
- Quality of care in assisted living.

Thirteen state ombudsmen and program staff from 10 states (Alaska, Arkansas, Arizona, Georgia, Illinois, Louisiana, Ohio, Pennsylvania, Virginia, Wisconsin) and the District of Columbia, and the Director of the National Ombudsman Resource Center participated in the teleconference.

Background on Assisted Living

Assisted living presents an attractive alternative to a nursing home for many older adults. Its popularity and marketability is reflected by the steady increase in the number of licensed board & care beds (including assisted living) reported by states on the National Ombudsman Reporting System (NORS). According to the NORS reports, the number of board & care beds rose from 797,036 in FFY 1998 to 1,031,781 in FFY 2003 -- an increase of almost 30%. During the same period nursing facility beds declined slightly, from 1,827,212 beds to 1,752,913 beds nationwide.

Virtually all states use one or more Medicaid Home and Community Based Services Waivers (1915(c)) to help older persons and persons with disabilities continue to live independently in their own homes and communities. Waiver services are designed to assist individuals who otherwise would receive care in a nursing home to remain in their homes and communities. Forty-four (44) states have the option of using Medicaid funds to provide services for individuals in residential care settings, including assisted living facilities. The majority of these states (30) cover assisted living services through a Medicaid waiver, six (6) use the Medicaid state plan, and eight (8) states use a combination of waivers and the state plan to fund assisted living.¹ The sources of public funding that each state uses to cover services in residential care settings can be found in Appendix B.

¹ Mollica, Robert and Johnson-Lamarque, Heather. *State Residential Care and Assisted Living Policy: 2004*. National Academy for State Health Policy. March 2005.

Under the waiver, persons must meet the state’s functional criteria for nursing home care, whereas the Medicaid state plan does not necessarily require recipients to meet that criterion. Waivers may also use more generous financial eligibility criteria (e.g., up to 300% of SSI).

States may use an assisted living waiver as part of a larger initiative (e.g., New Freedom Initiative, Systems Change Grants, state Olmstead initiatives) to transition individuals out of nursing facilities or to provide persons at risk of institutionalization with options for remaining in their communities. In either case, assisted living waivers are designed to provide an alternative to more costly nursing home care.

It is important to note that waivers may not be used to pay for “room and board” in assisted living. Whether or not a person’s care needs can be adequately met in an assisted living setting is handled on a case-by-case basis. Persons who are eligible for waiver services typically have a case manager assigned to assist them with accessing needed services.

Examples of Assisted Living Waivers

The **Arkansas** Home and Community Based Services Living Choices Assisted Living Waiver currently has 421 slots (beds) in 8 assisted living facilities. These facilities must comply with additional regulations concerning medication administration, periodic nursing evaluations and direct assistance with activities of daily living in order to serve persons eligible for nursing home admission. If the prospective assisted living resident is not already eligible for Medicaid and nursing home care, she/he may receive conditional admission from the assisted living facility pending determination of eligibility. The Department of Health and Human Services determines financial eligibility and the Division of Aging and Adult Services must conduct an assessment to determine functional eligibility.

In **Georgia** assisted living facilities are licensed as “personal care homes.” The Medicaid waiver is administered under the Community Care Services Program (CCSP). To provide waiver services in a personal care home the home must be registered or enrolled with the CCSP and the agency that provides the services and case management must be certified by the CCSP. Persons in nursing homes and those at imminent risk of entering a nursing home are given priority for assisted living waiver services. Approximately 2,500 personal care home residents received waiver services in 2004.

The assisted living waiver in **Illinois** is administered by the Department of Public Aid, which is the state Medicaid agency, and is funded through the state’s nursing home budget instead of a separate appropriation as most states do. This enables Medicaid eligible individuals to choose whether they

We are starting to see a shift. Nursing homes want to convert some of their beds to supportive living facilities.

Sally Petrone
State Ombudsman, Illinois

want to be served in a supportive living facility (the term for facilities offering waiver services) or a nursing home. The Department of Aging has received \$2 million from the Department of Public Aid to help transition persons out of nursing homes and back to the community and will help residents access supportive living facilities when appropriate.

Wisconsin's residential care apartment complexes (RCAC), regulated by the Department of Health and Family Services, have the option of being certified to offer waiver services. However, most are not certified. A program proposed by the governor would create a Community Relocation Initiative using waiver funds to assist persons in nursing homes to relocate back into the community. Certified RCACs, where available, would provide an additional option for these persons.

Ombudsman Program Activities in Assisted Living Facilities

Ombudsman program advocacy on behalf of residents in assisted living facilities ranges from consumer education initiatives to complaint investigations. The ombudsmen that participated in the discussion indicated that many programs inform consumers of waiver services within the context of providing information about long-term care options. Ombudsman programs also coordinate with agencies that administer Medicaid waivers.

Through a regular presence in assisted living facilities the ombudsman program provides both a quality monitoring system and a voice through which residents can address individual concerns about quality of care and quality of life. In this role the ombudsman program is strategically positioned to provide Waiver Programs with valuable information about the quality of care in these facilities.

Concerns about quality have been raised as growth in assisted living has outpaced states' efforts to define and regulate the industry in many states. Increasingly, ombudsmen are called upon to resolve complaints about quality of care and residents' rights on behalf of assisted living residents. In FFY 2004, the ombudsman program nationwide handled 57,190 complaints on behalf of residents in assisted living and similar type facilities, compared to 37,953 complaints in FFY 1999, an increase of more than 50%. In comparison, complaints against nursing homes rose by about 31%, from 172,662 to 227,721 during the same period. The top five categories of complaints reported to the long-term care ombudsman program about assisted living and similar type facilities in FFY 2004 related to food quantity/quality, medication management, discharge issues, residents' rights, and building/equipment safety.²

The **District of Columbia** Ombudsman Program coordinates with the Department of Health, the Department of Mental Health and local aging organizations to provide consumer education forums several times a year about home and community based services, including those currently covered under a waiver. When the DC assisted living waiver is implemented, information about this service will also be provided in these educational forums.

² National Ombudsman Reporting System annual report for FFY 2004, Administration on Aging.

In **Georgia** the Community Care Services Program (CCSP) seeks information from the ombudsman program regarding personal care homes that apply to be Medicaid certified community care providers. The information provided by the program typically includes the facility's complaint history for the previous year.

In **Illinois**, the state ombudsman meets routinely with the Department of Public Aid to discuss complaints and concerns about supportive living facilities (SLFs), the name given to assisted living waiver services. The ombudsman program provides the surveyors in the Department of Public Aid with information about quality of care issues it has identified.

The **Ohio** Department of Aging will administer the proposed assisted living waiver program. There is also a proposal for additional funds to expand the Long-Term Care Consumer Guide to include residential care facilities (Ohio's term for assisted living). The ombudsman program will be a primary source of information about these facilities. Because the ombudsman program has state authority to handle complaints about home and community based services, local ombudsman programs are required to have a memorandum of understanding with the case management agencies (the area agencies on aging) to make referrals, discuss case issues and share information. This arrangement will most likely expand to include assisted living when the waiver is formally approved.

In **Wisconsin**, ombudsmen present information about the assisted living waiver program during community education presentations on long-term care. The ombudsman program has state authority to advocate on behalf of waiver clients. Therefore, the program only has jurisdiction in residential care apartment complexes (RCACs) that are certified to provide waiver services. County agencies often contact the ombudsman program for a complaint history on facilities before contracting with them to provide waiver services.

Quality of Care in Assisted Living

Ombudsmen identified and briefly discussed two closely related questions that may significantly impact the quality of care provided under an assisted living waiver:

- What type of providers are accepting residents with an assisted living waiver?
- Will persons eligible for waiver services receive the level of care they need in assisted living?

Assisted living providers may be required to meet additional regulatory requirements in order to care for residents whose care is paid for under the waiver. However, ombudsmen expressed concern that not all states have assisted living regulations that adequately address the potentially higher level of care needs presented by these residents or devote the necessary resources to closely monitor the care provided by these facilities. Some ombudsmen expressed concern about the capacity of some assisted

living facilities to provide quality care to residents served under a waiver. In addition, reimbursement rates that are significantly lower than the private pay market may dissuade some facilities from accepting residents under a Medicaid waiver. Several state ombudsmen participating in the discussion agreed that it is primarily the small “mom and pop” type homes that are accepting waiver residents in their states.

According to the state ombudsman in **Arizona**, some facilities are reluctant to participate in the waiver program because of the additional regulatory and reporting requirements. The facilities that are accepting waiver clients are those that have difficulty keeping their beds full. Unfortunately some of those facilities have a history of not providing good care.

There are not enough licensing agency personnel to adequately monitor the 1800 assisted living facilities in the state. This puts residents at a greater risk regardless of whether or not they are waiver clients.

Robert Nixon
State Ombudsman, Arizona

There has always been a class differential between Medicaid and private pay. That is particularly true of assisted living facilities in the District.

Jerry Kasunic
State Ombudsman, District of Columbia

The state ombudsman for the **District of Columbia** expressed what he sees as the “gentrification” of assisted living, that is, most assisted living facilities cater to moderate and upper income residents and charge monthly fees that are significantly higher than the waiver rate.

The **Georgia** Ombudsman Program is currently working on separating out complaint data specific to those personal care homes that have a community care provider contract to serve persons under the Medicaid waiver. The program wants to determine if there is a difference in the number and types of complaints received against homes that care for waiver clients versus those that do not. The ombudsman program routinely communicates with the waiver agency about facility-wide problems it identifies at personal care homes serving waiver clients.

Too often we’ve seen facilities that are not providing quality care applying to receive this extra source of payment (waiver funds) for taking an even more vulnerable population.

Andrea Nash
Ombudsman Services Coordinator, Georgia

The **Wisconsin** Ombudsman Program receives a significant number of complaints on behalf of persons who are receiving services in residential care apartment complexes (RCACs) under the assisted living waiver. When it is determined that the person is a waiver client, the ombudsman program works to ensure that the case manager is monitoring the resident’s care and that an appropriate care plan is in place. This is critical since most persons eligible for waiver services will have a case manager assigned to them. The program may also use the opportunity to provide the facility with training on residents’ rights and care related issues.

Summary

Waivers permit states to use Medicaid funds to pay for home and community based services for persons who are eligible for nursing home care. This allows older persons and those with disabilities to remain in their homes and communities, maintaining more independence while receiving the services they need. Currently, forty-four states can use Medicaid funds for assisted living services, giving people another alternative to nursing home care.

This paper presents highlights of a teleconference discussion by state ombudsmen and ombudsman program staff from 10 states and the District of Columbia about the ombudsman's role and perspective on quality in Medicaid waiver assisted living. Participants talked about how assisted living waivers work in their respective states, ombudsman programs' activities on behalf of residents in assisted living, and potential factors influencing the quality of care received by individuals served under an assisted living waiver. Some of the primary points from the discussion include:

- Assisted living waivers work differently in each state.
- In states with Medicaid assisted living waivers, some ombudsman programs provide complaint data about assisted living facilities to waiver administration agencies.
- Smaller “mom& pop” homes, rather than larger upscale assisted living facilities, most often serve residents under the Medicaid assisted living waivers.
- Based on Wisconsin's experience, ombudsman programs working to resolve quality of care complaints on behalf of assisted living residents should coordinate with the resident's waiver case manager.

Resources on Assisted Living

State Residential Care and Assisted Living Policy: 2004. National Academy for State Health Policy (2005). Robert Mollica and Heather Johnson-Lamarche. A compendium of summaries and comparisons of selected regulatory provisions and Medicaid policy for residential care settings (assisted living) in all 50 states and the District of Columbia. Available online at:
<http://aspe.hhs.gov/daltcp/reports/04alcom.htm>, (in HTML or PDF format).

Uses of Mediation in Assisted Living --- And Some Advice Thrown In. NASUA (2001). An ombudsman training module. Includes an opening short talk, key messages, wrap up debriefing points, two scripted role-plays with leader's notes, questions for group discussion, handouts, and overheads. Available online at:
<http://www.ltombudsman.org/uploads/MediationInAL.pdf>.

Ombudsman Advocacy Challenges in Assisted Living: Outreach and Discharge. NASUA (2001). This paper describes the challenges ombudsman programs face in doing assisted living outreach and includes practical steps ombudsmen have identified to more effectively reach consumers and providers. There is also a section that focuses on ombudsman program intervention in assisted living discharges that includes a number of case examples. This publication (minus appendices) is available online at:

<http://www.ltombudsman.org/uploads/SachallengesinALdischarge.pdf>.

Appendices are available from NASUA.

Advocacy Practices in Assisted Living: A Manual for Ombudsman Programs. NASUA (1999). Developed under a grant from the Bader Foundation, this technical assistance manual is designed to help ombudsman programs develop an advocacy response suited to the issues and consumer concerns they encounter. It includes both background materials on assisted living and a self-assessment tool that ombudsman programs can use to improve their advocacy efforts in assisted living. Copies available from NASUA.

Translating Nursing Home Ombudsman Skills to Assisted Living: Something Old, Something New. NORC (2003). This paper examines the commonalities and differences between ombudsman program practice in assisted living and nursing homes and presents a range of strategies for advocacy in assisted living. This publication is available at the National Ombudsman Resource Center website (www.ltombudsman.org).

A Dialogue on Assisted Living. NASUA (1999). A summary of a discussion between state ombudsmen and representatives of the Assisted Living Association of America at the 1998 National Ombudsman Training Conference. Copies available from NASUA.

APPENDIX A

Teleconference Participants

Quality in Medicaid Waiver Assisted Living: The Ombudsman Program's Role and Perspective

Teleconference Participants

Alaska

Bob Dreyer
State Ombudsman

Janice Olsen
Ombudsman Program

Arizona

Robert Nixon
State Ombudsman

Arkansas

Kathie Gately
State Ombudsman

District of Columbia

Jerry Kasunic
State Ombudsman

Georgia

Andrea Nash
Ombudsman Services Coordinator
Division for Aging Services

Illinois

Sally Petrone
State Ombudsman

Louisiana

Linda Sadden
State Ombudsman

Ohio

Beverley Laubert
State Ombudsman

Pennsylvania

Dorrie Taylor
Regional Volunteer Ombudsman
Coordinator

Virginia

Joani Latimer
State Ombudsman

Wisconsin

Heather Bruemmer
Ombudsman Program Supervisor

Bill Donaldson
Ombudsman Program Legal Counsel

National Ombudsman Resource Center

Lori Smetanka
Director

APPENDIX B

Sources of Public Funding for Services in Residential Care Settings

This table was reproduced from the report
*State Residential Care and Assisted Living
Policy: 2004*. National Academy for State
Health Policy. March 2005.

Available online at:

<http://aspe.hhs.gov/daltcp/reports/04alcom.htm>.

TABLE 1-9. Sources of Public Funding for Services in Residential Care Settings

State	Source of Funding			State	Source of Funding		
	Medicaid Waiver	Medicaid State Plan	State Funds		Medicaid Waiver	Medicaid State Plan	State Funds
Alabama	1915 (c)			Missouri		X	
Alaska	1915 (c)			Montana	1915 (c)		
Arizona	1115			Nebraska	1915 (c)		
Arkansas	1915 (c)	X		Nevada	1915 (c)		
California	Planned			New Hampshire	1915 (c)		
Colorado	1915 (c)		X	New Jersey	1915 (c)		
Connecticut	1915 (c)		X	New Mexico	1915 (c)		
Delaware	1915 (c)			New York		X	
District of Columbia	1915 (c)			North Carolina		X	
Florida	1915 (c)	X		North Dakota	1915 (c)		
Georgia	1915 (c)			Oregon	1915 (c)		
Hawaii	1915 (c)	X		Pennsylvania	1915 (c)		
Idaho	1915 (c)	X	X	Rhode Island	1915 (c)		
Illinois	1915 (c)			South Carolina		X	
Indiana	1915 (c)		X	South Dakota	1915 (c)		X
Iowa	1915 (c)			Texas	1915 (c)		
Kansas	1915 (c)			Utah		X	
Maine	1915 (c)	X	X	Vermont	1915 (c)		
Maryland	1915 (c)		X	Virginia			X
Massachusetts		X		Washington	1915 (c)		
Michigan	1915 (c)	X		West Virginia	1915 (c)		
Minnesota	1915 (c)	X	X	Wisconsin	1915 (c)	X	X
Mississippi	1915 (c)			Wyoming	1915 (c)		
				Total	39	14	10