Navigating Effective Systems Advocacy for States and the State Long-Term Care Ombudsman

December 5, 2023
Agenda

Welcome and Introductions
Overview of Systems Advocacy
Challenges Overview
Panel Discussion
Q & A
Speakers

**Edwin Walker**, Deputy Assistant Secretary for Aging, U.S. Department of Health and Human Services

**Carol Scott**, Manager, LTC Ombudsman Program & Policy, National Ombudsman Resource Center

**Amy Porter**, Commissioner, Connecticut Department for Aging and Disability Services

**Mairead Painter**, Connecticut Long Term Care Ombudsman

**Joel Schwartz**, Ombudsman, Texas Department of Health and Human Services

**Patty Ducayet**, Texas Long Term Care Ombudsman
History and Unique Characteristics

• Created *in response to quality problems* in nursing homes
• *Distinct from* other programs administered by State agencies
• Statewide
• *Full-time Ombudsman* heads the Office of the State LTC Ombudsman
• Specific functions requiring *independence and autonomy*
• Duties require *good working relationships* among agencies
• 2015 regulation to create *greater alignment and consistency* across the country
Statutory Support for Systems Advocacy
Older Americans Act Section 712 – Functions of the Ombudsman

712(a)(3)(G)

(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;
Statutory Support for Systems Advocacy (2)
712(a)(5)(B)(v) – Duties of designated representatives

– *review*, and if necessary, *comment on* any existing and proposed *laws, regulations, and other government policies and actions*, that pertain to the *rights and well-being* of residents; and

– facilitate the *ability of the public to comment* on the laws, regulations, policies, and actions;
712(h) – The State agency shall require the Office to—

Prepare an **Annual Report**—

– (a) *describing the activities* carried out by the Office in the year for which the report is prepared;

– (b) *containing and analyzing* the *data collected*;

– (c) *evaluating the problems* experienced by, and the *complaints* made by or on behalf of, residents;

– (d) containing recommendations for—
  
  ▪ (i) *improving quality of the care and life* of the residents; and
  
  ▪ (ii) *protecting the health, safety, welfare, and rights* of the residents;
712(h) – The State agency shall require the Office to—

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions... and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

   (i) the problems and concerns of individuals residing in long-term care facilities; and

   (ii) recommendations related to the problems and concerns;
Regulatory Support for Systems Advocacy

• 45 CFR 1324.11(e)(5)
  – Requires *policies and procedures* developed by the State Ombudsman or by the agency housing the Office *based on Ombudsman recommendations*

  – Must assure that the Office is required and has *sufficient authority* to carry out responsibility to *analyze, comment on, and monitor laws, regulations, and government policies and actions*
Regulatory Support for Systems Advocacy (2)

• 45 CFR 1324.11(e)(5)
  – Exclude Ombudsman and representatives from State lobbying prohibitions

  – (ii) *Nothing shall prohibit* the Ombudsman or the State agency or other agency in which the Office is organizationally located *from establishing policies which promote consultation* regarding the determinations of the Office related to *recommended changes* in laws, regulations, and policies.

  ‣ However, such a policy *shall not require a right to review or pre-approve* positions or communications of the Office.
Additional responsibilities

– Provide *leadership to statewide systems advocacy* including coordination of efforts by representatives

– Provide *information to public and private agencies, legislators, the media, and other persons*, regarding the problems and concerns of residents and recommendations

– Determinations and positions *shall be those of the Office* and *shall not necessarily represent* the determinations or position of the State agency or other agency
The Ombudsman shall independently develop and provide final approval of an annual report that contains policy, regulatory, and/or legislative recommendations for improving quality. The Ombudsman shall make the report available to the public and submit it to ACL, the governor, state legislature, survey agency, and others.
Remedies

• Technical assistance
  – FAQ
  – ACL reviews
  – Ombudsman Resource Center/ADvancing States Primer
  – On-going discussions as needed

• Corrective action plans

• Final rule to be a catalyst for additional reviews and TA
Challenges

- Providing testimony
- Comments on other state agencies
- Meeting with legislators
- Speaking to representatives of other state agencies
- Limited staff and resources
- Speaking to the media
- Publishing the annual report
Panel Discussion