



Charting the Long-Term Care Ombudsman Program's Role in a Modernized Long-Term Care System



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Long-Term Care Ombudsman Program Strategic Directions Work Group Meeting Report

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Supported by the U.S. Administration on Aging

Acknowledgements

A big thank you goes to the following individuals who contributed to this dialogue and report.

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ABOUT THIS DIALOGUE AND DOCUMENT

This work group dialogue and report was supported, in part, by a grant, No. 90AM2690 from the Administration on Aging, Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration on Aging policy.

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Charting the Ombudsman Program's Role in a Modernized Long-Term Care System

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Purpose

The overall goal of this report is to help long-term care ombudsmen define their role and develop coordination efforts in a new long-term care system.

A work group was convened on January 23, 2008 to begin a national dialogue about a strategic role for the Long-Term Care Ombudsman Program in a changing and emerging long-term care system. This report began as a write-up of proceeding from the work group. It was discussed and refined at the 2008 Annual Spring Training Conference for State Long-Term Care Ombudsmen. Prior to the conference, the report was sent to all state ombudsmen and feedback was solicited. The final version of this report reflects revisions based upon the dialogue with state ombudsmen and the Washington State local ombudsmen who attended the conference.

The end result is a set of recommendations to provide essential information to long-term care ombudsman programs as they consider their role in a changing system. The recommendations call for concrete analysis and data to inform LTCOP decision making as programs move forward with efforts to rebalance the long-term care system.

Background

Long-term care services, consumer options, and the health care delivery system are in transition. Several federal and state initiatives are providing the impetus for change. In this time of developing and implementing new opportunities for consumers, questions arise regarding the role of the Long-Term Care Ombudsman Program.

The National Association of State Units on Aging, in collaboration with the National Ombudsman Resource Center and the Administration on Aging, convened a work group as an opportunity to explore and identify opportunities for Ombudsman Program involvement in a modernized long-term care system. The Ombudsman Program roles and advocacy functions were discussed related to nursing home diversion and transition initiatives and quality assurance in the home and community based services arena. Work group participants were state ombuds-

men, state unit on aging directors or their designees, an area agency on aging director, Administration on Aging staff, the National Association of State Units on Aging, NCNCHR, and staff and a consultant from the National Long-Term Care Ombudsman Resource Center.

Overview

Long-term care ombudsmen are important in planning a modernized long-term care system. The individuals ombudsmen serve, residents (or potential residents) of long-term care facilities, are moving into home care settings. The people are the same but the settings are different. The role of the ombudsman has always been to hold systems accountable to fulfill their responsibilities to residents. In thinking about a potential role for ombudsmen in a modernized long-term care system, the role would be the same, making sure that the systems that are in place work for consumers.

There are a number of different issues that surface when thinking about the role of the long-term care ombudsman in a modernized long-term care system. For some consumers, the ombudsman might be the first, or only, point of contact to learn about options in the long-term care system. To focus discussion the work group meeting covered three areas of service options: home and community based care, diversion from nursing homes, and nursing home transition. States are viewing these various initiatives steps in a process of changing the long-term care system that will take years. Six topics were discussed under each of the three areas. This report consists of notes from the dialogue for each of the three topic areas.

Exploring the Long-Term Care Ombudsman Program roles and functions in:

1. Home and community based care,
2. Diversion of people from institutional care,
3. Transition of facility-based residents to less restrictive settings, including transitions resulting from facility closures and emergency relocations.

For each of the three areas listed above, discussion focused on six topics.

Due to time constraints all six topics were not consistently addressed in each area.

1. Systemic advocacy and programmatic roles and functions that ombudsman programs can and/or do play or carry out.
2. Resources that ombudsman programs need to carry out the identified roles and functions.
3. Potential sources of funding and how funding can be obtained from these sources.
4. The interface of the ombudsman program with Aging and Disability Resource Centers and other programs.

5. Potential conflicts of interest for ombudsmen in carrying out each of these roles and related functions.
6. Other challenges to successful ombudsman advocacy in each of these roles.

Regardless of the role of the LTCOP, local ombudsmen need education and information from their state ombudsman about the issues and changes. Local ombudsmen want to have a voice in the decisions that are made about the role of the LTCOP and interactive communication about issues and roles. If the ombudsman role changes, local ombudsmen also need a protocol to follow and resolution, with SLTCOP assistance and support, of any conflict of interest issues of program placement that may arise.¹

Home and Community Based Care

Long-term care ombudsmen have been discussing the need for advocacy on behalf of individuals receiving home and community based care for more than ten years. There are twelve LTCOPs with responsibility for serving recipients of home and community based care. Of these, nine handle only care complaints, the other three handle all types of issues.² Historically, the national position has been for the LTCOP to not expand beyond its current Older Americans Act responsibility to serve residents in long-term care facilities unless there are additional resources and conflict of interest is avoided.³ The Institute of Medicine study recommended no further expansion of the program until the recommended standard of one full time ombudsman to every 2,000 beds is met.⁴

In recent years growth has accelerated in home and community based services as alternatives to nursing homes. Federal and state initiatives and consumer demand have fueled this growth. Ombudsmen are seeing the individuals they serve move from one setting into another. Individuals with similar needs may live in the community or in other settings such as assisted living or nursing homes. The need for consumer advocacy and the role of the LTCOP continues to be a relevant dialogue.

¹ A summary of remarks from local ombudsmen who participated in the session, "Charting The Role of the LTCOP in a Modernized Long-Term Care System," during the Annual SLTCOP Training Conference, April 14, 2008, Tacoma, WA.

² Home Care Ombudsman Programs Status Report: 2007, Mark Miller, NASUA, NORC, http://www.ltombudsman.org/uploads/Home_Care_Ombudsman_Programs_Status_Report_2007.pdf; The Role of the Long-Term Care Ombudsman Program in Home Care Advocacy, June 2001, Bridges, Miller, & Dize, NASUA, NORC, <http://www.ltombudsman.org/uploads/PMhomecareadvocacy.pdf>

³ Future Directions for the Long-Term Care Ombudsman Program, 1993, the National Association of State Long-Term Care Ombudsman Programs. <http://nasop.org/papers/8.pdf>; The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future, 2003. <http://nasop.org/papers/Bader.pdf>

⁴ Real People, Real Problems, an Institute of Medicine study of the Long-Term Care Ombudsman Program, 1995. <http://www.nap.edu/books/NI000028/html/>.

Home and community based care: Systemic and individual advocacy and programmatic roles and functions that LTCOPs can or do play/carry out.

SYSTEMS ADVOCACY	INDIVIDUAL ADVOCACY
<p>Systems advocacy coalition work: defining quality, advocating for additional funds for services and additional services to meet the needs of individuals receiving in-home care.</p> <p>Develop a memorandum of understanding between the LTCOP and the Medicaid Waiver program and any other programs that clarifies roles, complaint intake procedures, and decisions about who responds.</p> <p>Hold providers accountable for fulfilling their mandated responsibilities.</p> <p>Hold state waiver programs and home care programs accountable for fulfilling their responsibilities.</p> <p>Protect and uphold rights, being sure that protections are in place and requiring providers to inform recipients of their rights.</p> <p>Identify issues patterns in the community, at the individual advocacy level, and then take those issues to the systems level.</p>	<p>Help consumers know what quality care is and what to expect from service providers.</p> <p>Help consumers clarify issues of concern.</p> <p>Be prepared to handle a range of complaint issues in addition to care, such as housing, transportation, frequency of services, caregiver assignments, and workers who do not report to work in a client's home.</p> <p>Expand the range of information and assistance content areas and resources utilized by LTCO.</p> <p>Empower consumers and provide education about rights, including the consumer's right to choose.</p> <p>Assist consumers in knowing how to talk with care providers, who to involve, offer support and guidance in resolving issues.</p> <p>Make referrals to adult protective services and remind providers of their reporting responsibilities.</p> <p>Avoid taking on the adult protective services role in the process of handling consumer complaints.</p>

SYSTEMS ADVOCACY	INDIVIDUAL ADVOCACY
<p>Be involved in regulatory and corporate decisions, such as the ability of providers with histories of non-compliance in nursing homes to become providers of home care services.</p> <p>Advocate for adequate nursing home funding for residents who are not in transition.</p> <p>Promote mental health ombudsman program and other ombudsman programs.</p>	<p>Be vigilant regarding financial exploitation or abuse that may involve the service provider as well as the home care client.</p> <p>Relate to area agencies on aging (AAA) in a different way when they are gatekeepers for eligibility and services and sometimes are also responsible for service delivery. In representing clients, the LTCO may be required to take issue with a service provided by a AAA.</p> <p>Be aware of issues of personal safety for individual LTCO who may go into someone's home. This is a different setting than a board and care facility.</p>

Home and community based care: Programs/partners the LTCOP should interface with related to ensuring adequate quality home and community based care.

The LTCOP needs to work with many programs, agencies, and service providers.

- Area Agencies on Aging gatekeeper programs
- Regulatory services for home care providers
- Medicaid agency
- Adult Protective Services
- Aging and Disability Resource Centers (ADRCs)
- Quality Improvement Organizations: The 9th scope of work will have a focus on transitioning people out of hospitals as well as other factors relevant to hospitalization.
- County Department of Social Services
- Mental health organizations

- Legal counsel with elder and disability expertise
- Provider associations
- Public housing for seniors
- Senior centers
- Citizen advocacy organizations
- Centers for Independent Living
- Disability advocates such as ADAPT and others

Home and community based services: Resources and potential funding sources ombudsman programs need to carry out the identified roles and functions.

The following are some factors that make it difficult to determine the financial and human resources necessary for LTCO to be advocates for clients of home and community based services.

- Within a short time span (days or weeks) home care clients may change where they live or their services. These factors make it difficult to estimate how many LTCO are needed to serve home care clients. Traditionally, LTCO programs have estimated the number of ombudsmen needed based on the number of beds in nursing homes or board and care or assisted living. There is not a fixed number to use as a base in home care.
- LTCOPs that are engaged in home care advocacy can track time per case and obtain an average amount of time; however, this number is not associated with the potential need for ombudsman services.
- The twelve LTCOPs that are in home care have state statutes and non-Older Americans Act funding that enable the expansion of the program. There are some differences in how they operate which also complicates identifying a way to determine resource needs for other states.⁵

Resources and potential funding sources include the following:

- Expansion of Title VII of the Older Americans Act and funds,
- Discreet funding under the Older Americans Act to support home care LTCOPs,
- Money Follows the Person initiatives,
- Quality Improvement Organization funding for Medicare recipients.

⁵ Home Care Ombudsman Programs Status Report, op. cit.

Home and community services: Possible conflicts of interest for LTCO in carrying out each of the identified roles and related functions.

There was much discussion about conflicts of interest, real and perceived, for LTCOPs that expand into home and community services. (The Older Americans Act conflict of interest provisions for the LTCOP is in the appendix.) There was consensus that the following language from a proposed rule published by the Administration on Aging⁶ clearly summarizes the significance for a LTCOP to be without conflict of interest and interference.

“...as a general principle, that in the conduct of all aspects of the statewide Long-Term Care Ombudsman Program the integrity of the work of the Ombudsman and ombudsman representatives must be maintained; and there must be no inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease or negatively impact on the objectivity of the investigation or outcome of complaints; the Ombudsman’s primary role as advocate for the rights and interests of the resident; the Ombudsman’s work to resolve issues related to the rights, quality of care and quality of life of the residents of long-term care facilities; or the Ombudsman’s statutory responsibility to provide such information as the Office of the Ombudsman determines to be necessary to public and private agencies, legislators and other persons regarding the problems and concerns of residents and recommendations related to residents’ problems and concerns.”

Several potential conflicts of interests were identified.

■ Placement

- ◆ Within the Administration on Aging a conflict exists if the LTCOP expands into home care and is under the administrative position that also oversees home and community based services.
- ◆ LTCOP placement issues must be re-examined if the scope of the LTCOP expands.
- ◆ State and local agencies responsible for waiver and service programs and/or provider certification have a conflict if they also operate the LTCOP.
- ◆ LTCOP supervisors who also supervise any aspect of home care services, regulatory functions, or licensing of providers.
- ◆ Individuals with conflicts of interest serve on the governing boards of state units on aging and/or area agencies on aging which operate a LTCOP, such as individuals who own or operate home care services. Even if such individuals recuse themselves from voting, their presence can exert an influence.
- ◆ Deterrents to the LTCOP’s ability to speak out about issues or to comment on proposed laws, rules, policies or regulations because the program would be criticizing another division within the agency where the LTCOP is located or criticizing another state agency or department.

⁶ *Federal Register*, November 15, 1994. Excerpts from Preamble, 1327.29(a)Noninterference, contained on a handout for the work group meeting.

- Relationships
 - ◆ Agreements between the LTCOP and other agencies or programs must be examined for conflicts of interest if the LTCOP covers home care. An annual review of all such agreements is a recommended practice.
- Funding
 - ◆ Specific conflicts of interest in funding sources for LTCOPs in home care need to be identified, such as funding that comes through a provision that also funds home care services. It is essential for the LTCOP to continue to be free of conflict of interest, including funding sources which could be perceived as biasing the ombudsman's work.
- Individual Conflicts
 - ◆ The list of what constitutes individual conflicts of interest expands as the scope of the LTCOP expands and includes other employment and roles, financial interests, familial employment, financial interests, and responsibilities, other roles related to home and community based services.

Conflicts of interest for LTCOPs in home care need increased scrutiny beyond the screens that most programs already have in place. While some conflicts of interest must be prohibited, others can be managed. There was consensus that more work needs to be done in this area to delineate possible conflicts at the state level and the local level related to placement, relationships, funding, and individuals.

Home and community services: Other challenges to successful LTCO advocacy in each of these roles.

- Building the case and support for an in-home ombudsman, advocating for the need for this service.
- Adult Protective Services and the LTCOP: role clarification, conflicts of interest due to program location, supervision, or individual roles
- Clients fear loss of services if they complain, which would result in moving into a nursing home.
- LTCOP location at the state and the local level may present new conflict of interest issues if the aging network expands into home and community service assessment of clients, care management and delivery of services.
- Disclosure of conflicts of interests within the LTCOP and for individual LTCO, as well as disclosure of conflicts or of perceived conflicts to clients.
- Determining the resources needed to serve home care clients.
- Securing funding sources to support home care advocacy.
- Involving law enforcement, to add to partners and resources, and bankruptcy monitors is a challenge as well as an opportunity.

Diversion of People from Institutional Care

Diversion: Systemic and individual advocacy and programmatic roles and functions that ombudsman programs can or do play/carry out.

SYSTEMS ADVOCACY	INDIVIDUAL ADVOCACY
<p>Training for Aging and Disability Resource Centers (ADRC) by Long-Term Care Ombudsman Program (LTCOP).</p> <p>Providing information to the aging network website.</p> <p>LTCOPs are involved in speaking up for systems change to address gaps in long-term care (LTC) services or delivery. Examples: In Oklahoma local LTCO are required to participate in meetings about LTC issues/planning or work groups to examine resource development. In Michigan, the State LTCO has been involved in appropriations/budget process to try to increase funding for home and community based services. Michigan also has the policy/provision that if someone gets diverted from nursing home admission or is transitioned out, the funds for this do not come from the regular Medicaid budget. This was done with a work group with support and leadership with the state Medicaid director.</p> <p>Payment issues: paying for care (community or in nursing home) for individuals with serious mental health needs. The source of payment influences where the person goes.</p>	<p>Referral to other options such as to the Gateway Program in Georgia, or to ADRCs.</p> <p>Long-Term Care Ombudsmen (LTCO) routinely provide information about options other than nursing homes or assisted living.</p> <p>The LTCOP and the aging network do not discriminate against someone who has money. Services are not dependent upon financial eligibility. The network has expertise that is beneficial to everyone. One state is working with the Centers for Medicare and Medicaid Services (CMS) on the Own Your Future initiative. Georgia has lifelong planning to help people with financial planning for long-term care.</p> <p>LTCO continually go to health fairs and other similar events to provide public education and give out LTCOP literature.</p>

Diversion: Program or partners, including ADRCs, that the LTCOP should interface with related to nursing home diversion.

The LTCOP routinely works with numerous partners in addressing the needs of older residents in long-term care facilities. As nursing home diversion activities become more widespread, the LTCOP needs to work **more** with:

- Hospital discharge planners,
- The Quality Improvement Organization (QIO): Example: In Michigan the LTCOP has used the QIO process frequently when someone receives a discharge notice from the hospital. Even if the consumer loses the appeal, more often than not, the hospital changes its behavior.
- Adult Protective Services,
- Probate courts that handle guardianship and emergency admissions or commitments,
- Younger adults (with serious mental health illness and physical disabilities): An entire systems change is needed to address their needs with other agencies, such as housing and other services.
- The PASAR process and mental health systems,
- Medicaid agencies,
- Centers for Independent Living,
- Assisted living providers
- Nursing home providers,
- Veterans' programs,
- Waiver programs.

Diversion: Resources LTCOPs need to carry out the identified roles and functions.

- Staffing,
- Training about community resources and options.

When the staffing level for LTCOPs is re-examined, job functions need to be included in the equation. One example is that working with individuals on long-term care options, such as nursing home diversion, takes a lot of time.

Diversion: Potential conflicts of interest for LTCO in carrying out each of the identified roles and related functions.

The following issues of the LTCO role in working with others were identified.

- Conflicts in role, jobs, and turf: Who is doing what?
- Difference in philosophy and in whose interests are being represented: Advocacy for increased options for some consumers may endanger the service needed or choice by the current clientele or for others who may need that service in the future. If a nursing home closes or loses so many occupants that the facility must close, there may be people who need that service and who don't have the option in their area, particularly in rural areas.
- How consumer choice is promoted and implemented: Diversion systems may elevate unrealistic expectations. Examples: Assessing someone for non-nursing home placement, determining that they can stay at home, and then finding that the needed services are not available in their community. The opposite also occurs: an individual is assessed and it is determined that they can stay in the community; yet this individual really wants to go to a nursing home.

Diversion: Other challenges to successful LTCO advocacy in each of these roles.

Other systemic issues pose challenges to LTCO advocacy related to nursing home diversion.

- The nursing home industry: policy positions, practices, and resistance to change
- Shortage of nurses in home care
- Staffing issues with paraprofessionals in home care
- Establishing Medicaid eligibility.
- Corporate policies in assisted living facilities or home care: Example: One chain does not accept people until after they have been approved for Medicaid.
- Long waiting lists for services: In some states, the waiting list for aging services is very long; in other states, the waiting list for disability services is long. In both situations, an individual's ability to live in the community can change while the person is on the waiting list.
- The capacity or development of the ADRC to provide a full range of counseling and information: Some states are making referrals and the ADRC is not able to provide timely information about the full range of services and resources. The intake process is very important. Once intake is completed, the next steps are based upon the intake information.
- Vouchers for respite services and other support for family caregivers are insufficient to support diversions.

Nursing Home Transition

Working with individual residents who want to move out of a facility is not new to LTCO. Until recently there was not a specific focus or identified funding and services to assist residents in moving out of a facility. In April 2007, the National Long-Term Care Ombudsman Resource Center, NASUA, hosted a conference call on the role of the LTCOP in working with other agencies and some of the challenges encountered in nursing facility closures and relocation. Information was collected on the federally funded long-term care system rebalancing programs, Money Follows the Person, Nursing Home Diversion, Aging and Disability Resource Centers, and the role of the LTCOP. Prior to this NORC hosted a national dialogue call on the involvement of LTCOPs in nursing home transition activities.⁷ Mark Miller, NASUA, NORC, who conducted the work on the LTCOP in transitions and in home care, identified a key dilemma that surfaced through the dialogue.

Dilemma: Is the ombudsman role proactive or reactive in talking with residents about the possibility of moving out of nursing home? Do ombudsmen provide information about transition options to all residents, or to residents who seem like they might be able to move out, or to residents who say they want to leave the facility? Defining the role creates even more uncertainty when the LTCO knows that it is highly unlikely that services are available to make it possible for a particular resident to leave. Ombudsmen want to avoid creating false expectations.

Points of consensus from discussing the role of the ombudsman:

- It is not the role of the LTCO to judge the soundness of a resident's plan.
- Individuals are free to leave a facility unless a guardian has the authority to determine their living arrangements or a court ordered the placement. The LTCO can give information about who to call and contact information, and leave it up to the resident to make the call.

A few states shared their experience with individuals who transition. Sarah Slocum, Michigan State LTCO, shared how the LTCOP has defined its role in working with residents. Local LTCO are taught to be alert for individuals who might be appropriate for living in another setting and to make referrals to the assessment organization, with the resident's permission, if the resident wants to pursue this option. The LTCO does not make any judgment about whether a person will qualify. The SLTCOP is finding that when a facility closes, only about five percent of residents can go anywhere except into another nursing home; this includes those who

⁷ Strategy Brief: Ombudsman Involvement in Nursing Home Transition Activities, December 2004, Mark Miller, NASUA, NORC. <http://www.ltcombudsman.org/uploads/OmbInNursingHomeTrans.pdf>

go into assisted living. The Money Follows the Person (MFP) individuals are likely to have higher needs for supportive care than individuals who move out under the nursing home transition. Esther Houser, Oklahoma State LTCO, agreed that the individuals who are transitioning out under MFP are more vulnerable than the individuals with whom the LTCOP has experience in assisting in moving. In Georgia, they are finding that facilities want their older residents to remain in the nursing home, preferring that younger residents access transition options.

When an individual is engaged in the transition process, what is the obligation of the LTCOP to monitor the process once plans are in place? Three states indicated that the LTCO follows the person transitioning out of the nursing home. In one state, the LTCO starts by working with the nursing home social worker and the discharge planning process from the facility. A first clue about how things might go is whether the assessment group keeps their appointment with a resident to conduct the assessment. In another state the LTCO follows the person only if the individual is moving into an assisted living facility or into a board and care facility. A third state is proposing that the LTCO will follow the resident who transitions out for a period of one year.

Transition: Systemic advocacy and programmatic roles and functions that LTCOPs can or do play/carry out.

- Participate in transition work groups, advisory groups or other planning and monitoring activities at the state level.
- Advocate for a policy that allows people to use their Medicaid patient pay amount for the first six months for housing. Medicaid pays the difference to the facility.
- Advocate for a policy to exempt people who transition out on a Medicaid waiver from the Medicare co-pay.
- Advocate for accessible housing options.
- Divert individuals to other options if possible before they enter a nursing home.
- Assist individuals to connect with transition options early in their nursing home stay.
- Clarify the role of the LTCO in following residents who transition out of a nursing home.

Transition: Programs/partners the ombudsman program should interface with related to nursing home transition.

- Medicaid
- Resident assessment organizations
- Hospital and nursing home discharge planners
- Aging network, particularly home and community based services
- Home health agencies

- Mental health system
- Disability network
- Aging and Disability Resource Centers
- Senior housing authorities
- Transportation providers
- Department of Energy and other energy assistance programs
- Housing assistance
- Veterans Administration
- Social Security Administration
- Provider organizations: nursing homes, hospitals, medical society and others

Transition: Resources LTCOPs need to carry out the identified roles and functions.

- Funding to reach the Institute of Medicine recommended LTCO staff to bed ratio and to support routine visits to residents. The local LTCO participating in the 2008 spring training conference asked, “How far can you stretch an ombudsman?”
- Resources to increase the LTCOP staff at the state and the local level to engage in transition activities and also fulfill the other responsibilities of the program.
- Enough LTCO staff to have different ombudsmen assigned to facilities for complaint work and regular visits and other ombudsmen who serve as transition coordinator for residents in the facility. If LTCO are not transition coordinators, more staff in the LTCOP are needed for routine visits, advocacy and time to deal with consumer education and outreach related to transition options and accessing the assessment or point of entry.
- Training for ombudsmen on a range of topics, applicable to the LTCO role, such as: housing options, using housing experts; Social Security, helping residents get their full Supplemental Security Income restored; Medicare Part D, working out co-payment if a person moves into community from facility; ADRCs resources including databases; using online resources such as Benefits Checkup to see what assistance may benefit a resident.
- Coordination with the Senior Health Insurance Programs (SHIPs) on providing education, information, and resources.
- Coordination with the Veterans Administration.
- Affordable housing for individuals who could transition into the community and other systems in place to make transition a reality.

Transition: Potential sources of funding and resources and how they can be obtained from these sources.

- Older Americans Act programs including caregivers support funding
- Civil Monetary Penalty funding
- State-funded financial streams or programs
- Medicaid funding: administrative and service dollars

Transition: Possible conflicts of interest for LTCO in carrying out each of the identified roles and related functions.

- Potential for providers and consumers to be confused about the role of the LTCO: Is the LTCO a resident advocate in resolving complaints or an outreach and referral person who seeks to help identify people to move out of the facility? Does the LTCO come in to make visits and resolve complaints or to try to help people leave?
- Does working on the transition initiative divert the LTCO from other responsibilities to residents?
- Does the LTCOP stand to gain financially by taking on a specific role in transitioning residents? Does the conflict of interest provision in Section 712(a)(5)(C)(ii) of the Older Americans Act apply only to individual representatives of the program or to local/regional programs (entities) as well? Do consumers, providers, or anyone else perceive any payments to the LTCOP for transition work as a conflict of interest?

Transition: Other challenges to successful LTCO advocacy in each of these roles

- Transition emphasis is on younger residents in some states while the LTCOP's federal mandate is to serve seniors.
- Perspective of the licensing and certification agency staff: Some surveyors want to protect the resident and are certain that harm will follow them if the resident goes home. There is a need for information, education, and collaboration.
- Before new roles are taken on, the basic LTCOP infrastructure must be in place for fulfilling the OAA functions: state enabling statutes that comply with the federal law, consistent training, policies and procedures or regulations, clarity about conflict of interest, clarity about the role of the LTCO, effectiveness in data management, ability to designate or withdraw designation of individuals or programs, and the ability to engage in systems advocacy.

Summary and Recommendations

Long-Term Care Ombudsman Programs have a history of working with individuals who are making decisions about long-term care options, who live in facilities and want to move back home, and who go from one care setting to another. The current federal and state long-term care initiatives are making more community options available for more consumers. Long-term care ombudsmen have a knowledge base and skill set that can be helpful to consumers in resolving issues for individuals and in representing consumers in shaping policies. As Alice Hedt, Executive Director of NCCNHR pointed out, the issues and value perspective remain the same for LTCO: taking direction from the resident, being the voice for residents, respecting and advocating for resident choices, working for quality care for individuals.⁸ When considering the role of the LTCO in a modernized long-term care system, the core issues and values are unchanging.

The federal Older Americans Act directs the Long-Term Care Ombudsman Program to serve seniors who are residents of long-term care facilities. There are strict conflict of interest safeguards for individual ombudsmen and for the state and local ombudsman programs. Confidentiality provisions make it clear that the ombudsman serves the resident. Federal funds through the OAA may be used to support only the responsibilities listed in the act. State long-term care ombudsman programs are continually working to improve their accessibility to residents and consistency in training, service delivery, and reporting.

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

1. What can the long-term care ombudsman program do within its current federal responsibilities relevant to home and community based services, nursing home diversions, and nursing home transitions?
2. If the long-term care ombudsman program responsibilities are expanded to more direct work with individuals who are transitioning or who need an independent (outside the service determination and delivery systems), what changes are necessary, e.g. staffing, funding, protections against conflict of interest?

The National Association of State Long-Term Care Ombudsman Programs adopted a paper that lists salient questions that a LTCOP needs to consider before the program expands or changes its role. The paper, “Guidance to Long-Term Care Ombudsman Program Participation in Developing Consumer Advocacy Programs”, distinguishes baseline issues that must be addressed from other issues important for decision-making. The content delineates

⁸ Comments during the 2008 Spring Training Conference for SLTCO session on the role of the LTCO in a modernized long-term care system, April 14.

many of the topics discussed during this work group meeting and the 2008 Spring Training Conference for SLTCO regarding the role of the LTCOP in a modernized long-term care system. The paper is included in the appendix of this report.

Recommendations

The work group recommended the following areas for action in order to assist in further clarifying the role of the long-term care ombudsman program in a changing long-term care system.

- Study the need for a home care consumer advocate ombudsman program. Can a compelling case be made? What data or evidence supports the need for such a program? Is there a demand or a perceived need that will support the creation of a home care ombudsman program or the expansion of the LTCOP, including establishing a mandate and providing resources?
- Analyze the LTCOP's conflict of interest provisions in federal and state LTCOP laws and regulations (or policies). Identify the types of conflicts of interest that need to be addressed if a program expands beyond the current federal mandate. Include program placement conflicts as well as individual conflicts.
- Study the staffing needs if a long-term care ombudsman program expands its services and make recommendations about essential staffing in order to expand.
- Study the financial resources needed to support an expanded long-term care ombudsman program and make recommendations about essential funding and potential sources of such funds.

APPENDIX

Older Americans Act Language

Title 42—The Health and Welfare

Chapter 35—Programs for Older Americans

Subchapter XI—Allotments for Vulnerable Elder Rights Protection Activities

Part A—State Provisions

Subpart ii—ombudsman programs

Section 3058g State Long-Term Care Ombudsman Program

Older Americans Act, Section 712

- (a)(4)(A) In general.—Except as provided in subparagraph (B), the state agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.
- (B) Licensing and certification organizations; associations.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—
 - (i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or
 - (ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

Conflict-of-Interest

- (a)(5)(C)—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall
 - (ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
- (f) Conflict of Interest.—The State agency shall—
 - (1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;

- (2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;
- (3) ensure that the Ombudsman—
 - (A) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;
 - (B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
 - (C) is not employed by, or participating in the management of, a long-term care facility; and
 - (D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; and
- (4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—
 - (A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and
 - (B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

Annual State Long-Term Care Ombudsman Training Conference

CHARTING THE OMBUDSMAN ROLE IN A MODERNIZED LTC SYSTEM

APRIL 14, 2008

Long-Term Care Ombudsman Programs can play an important role in states' efforts to rebalance their long-term care systems and ensure quality care across settings. This session will share the draft report of the workgroup convened by the Ombudsman Resource Center. The report identifies options, opportunities, and challenges for ombudsman program involvement in individual and systems advocacy in a changing long term care system. Attendee comments and feedback will be encouraged to help further refine the report and its recommendations.

Questions for Discussion and Dialogue

1. How do you decide when to take on new programs and responsibilities?
2. What should the role of the LTCO be as states take on new initiatives for "changing" or "modernizing" the long-term care systems?
3. What should the nature of the communication be between the state and local ombudsmen that is both timely and productive?
4. What do local ombudsmen need from their state ombudsman to help them understand and participate in the changing system?

National Association of State Long Term Care Ombudsman Programs

Guidance for Long Term Care Ombudsman Program Participation in Developing Consumer Advocacy Programs

PAPER ADOPTED: OCTOBER 2000

The National Association of State Long Term Care Ombudsman Programs recognizes that the frail elderly have a great need for advocacy services and quality assurance, regardless of where they are living. Individuals living in the community move from one setting to another: apartment, assisted living, hospital, nursing home. Following a stay in a nursing home, they may return to their home or to an assisted living facility. Advocacy during these transitions is especially critical to support elders' rights to self determination and maintain continuity of care.

State Long Term Care Ombudsman Programs have struggled for many years to meet the requirements of the Older Americans Act to investigate complaints about nursing homes and board and care homes. Because of a lack of funding, many state programs have not fulfilled the current requirements under federal law.⁹ This is particularly true in the area of advocacy for residents of board and care homes. The problem has been further exacerbated by the rapid growth in "assisted living type" facilities in most states.

During the past few years, the health care system has been constantly changing. Home and community based services have expanded while the nursing home census has declined. There has been much discussion about consumer protections, appeals, and advocacy. Proposals for developing an advocacy system for health care consumers have been contained in various pieces of legislation. The term "ombudsman" has been widely used with various meanings.

Several states have created ombudsman programs for various constituencies such as children, mental health clients or residents in assisted living facilities. In almost half the states the role of the Long Term Care Ombudsman Program (LTCOP) has been expanded to serve other arenas such as: managed care, acute care, or home and community based services.¹⁰ States with expanded responsibilities for the LTCOP have laws authorizing the expansion and have grant funding or additional state or federal funding to support these activities. Discussions regarding consumer protections and the role of the Long Term Care Ombudsman Program will be ongoing as the health care system evolves.

⁹ *Long Term Care Ombudsman Program: Overall Capacity*. Department of Health and Human Services. Office of Inspector General. OEI-O2-98-00351; *Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, Institute of Medicine.1995.

¹⁰ From *Results of a Survey of State Long Term Care Ombudsman Programs, April 1998 – March 1999*. National Long Term Care Ombudsman Resource Center. Prepared by the National Association of State Units on Aging. 1225 I Street, N.W., Ste 725, Washington, DC 20005. (202)898-2578.

The National Association of State Long Term Care Ombudsman Programs offers the guidance in this paper to assist states as well as the national organization in participating in discussions about consumer protections and ombudsman services. Critical factors to consider in making decisions about appropriate roles for the LTCOP are listed under six major topics:¹¹ (1) Structure of the Office of State Long Term Care Ombudsman and Elements of the Host(s) Agency for State and Local Entities; (2) Qualifications of Representatives; (3) Legal Authority; (4) Resources; (5) Individual Client Advocacy Services; (6) Systemic Advocacy Work. **Under each topic, questions that are followed by an * are baseline issues.** If these questions cannot be affirmatively answered, these issues can seriously undermine the operation of the LTCOP embodied in the Older Americans Act. Unless the factors that prevent an affirmative answer are changed, the LTCOP should not expand its role. A related paper, *The Long Term Care Ombudsman Program and Managed Care: A Working Paper*, Ideas Gleaned from Conversations with LTC Ombudsmen & Others, 1997, contains supplemental information regarding ways the LTCOP can more fully serve managed care consumers within its Older Americans Act (OAA) mandates.

1. Structure of the Office of State Long Term Care Ombudsman and Elements of the Host(s) Agency for State and Local Entities

- ☐ Will client interests and a client driven philosophy continue to be the primary focus of the LTCOP?*
- ☐ Will program representatives continue to serve as *client* representatives—as advocates, not as extensions of another entity’s responsibilities such as: regulatory agencies, adult protective services, guardianship?^{12*}
- ☐ Is the LTCOP structure independent from the management, regulation, payment, provision of, or eligibility determination for services covered by an expanded ombudsman role?*
- ☐ Is the LTCOP structured in a way that provides independence from conflicts of interest and provides access to directors of the management, regulatory, payment, eligibility functions of covered services?^{13*}

¹¹ These topics are those used in Table 5.2 of *Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, Institute of Medicine.1995, pp. 162-183.

¹² For more information about role distinctions, refer to the following papers adopted by NASOP: *Licensing & Certification For Nursing Facilities And The Long Term Care Ombudsman Program*, October 1996; *Adult Protective Services and the Long Term Care Ombudsman Program*, November 1994.

¹³ In this paper, *covered services* means those services included in the expanded role of the LTCOP.

- ☐ Will the structure of local entities of the LTCOP need to change to avoid conflicts of interests? An expanded role for the LTCOP could present conflict of interest issues with the aging network and other entities directly or indirectly providing: housing with supportive services; case management; home and community based services; guardianship; adult protective services; assessment, screening, or eligibility determinations prior to nursing home or community placement; or licensing or monitoring of housing or services.
- ☐ If the current structure of the LTCOP must change, what will be the new structure?
 - ☐ How can this be created?
 - ☐ Is there an existing host agency that can house the expanded program?
 - ☐ How will the structure accommodate client access to the program=s services and a timely response?
- ☐ Will the expanded role cover the entire state?
- ☐ Who will be responsible for the expanded role of the program since the OAA requires a full time State LTCO?
- ☐ Will all representatives and services be part of the LTCOP?
 - ☐ Will representatives working in the area of expanded responsibilities be identified by a distinct title, e.g. community services ombudsmen, hospital ombudsmen?
 - ☐ Will representatives be generalists, able to handle all complaints or specialists who deal with certain types of issues or services?
- ☐ Will the LTCOP have responsibility for managing the budget for the expanded role?
 - ☐ Are there negotiated agreements regarding the funding flow that will avoid having ombudsman programs, or an ombudsman program serving more than one client group, from competing for fiscal resources?
 - ☐ Is there a unified budget for the LTCOP and the expanded ombudsman services?

2. Qualifications of Representatives

- ☐ Will program representatives continue to be free from conflicts of interest?*
- ☐ Will the conflict of interest criteria or screens need to be revised?
- ☐ Will changes be necessary to avoid the *perception* of conflict of interest, e.g. prior or current employment of representatives?
- ☐ What skills and knowledge will be necessary to handle the expanded role?
- ☐ Will program representatives have necessary skills to perform new tasks?
- ☐ What initial and on going training will be needed?
 - ☐ Is there money to provide training?
 - ☐ How will this be developed?
 - ☐ How will this be provided?
 - ☐ What “start up” time will be needed before representatives can provide services?
- ☐ Will the current designation procedures for representatives of the LTCOP work or will modifications be needed?

3. Legal Authority

- ☐ Will the immunity protections for representatives of the LTCOP cover this new area of work?*
- ☐ Are there state laws that would restrict the authority of the office from performing comprehensive ombudsman services (complaint investigation and resolution, representation of clients, education and systemic advocacy) to this new clientele?*
- ☐ Is the legal framework for the expansion compatible with that of the OAA for the LTCOP, i.e. the functions and responsibilities do not conflict?*
- ☐ Are the confidentiality provisions regarding access to program records and information consistent with those of the LTCOP under the OAA?*
- ☐ What authorizes the expansion of the program, e.g. state law? regulation? contract?
- ☐ What is the legal basis and support for the program=s expansion?
- ☐ What is necessary to assure access to clients and records to perform the job?

4. Resources

- ☐ Are there sufficient resources to assure that federal funds remain dedicated to long term care residents at the level stipulated by the OAA?*
- ☐ Is there assurance that federal funds committed to the LTCOP, will not be used to support expanded role?*
- ☐ What fiscal resources are necessary to develop and sustain an expanded role?
- ☐ How will the resources be acquired?
- ☐ Will the fiscal resources for expansion be on-going or will they be short term and necessitate continual fund-raising or applications?
- ☐ What type of data and information management systems are needed to handle the expanded functions?
- ☐ What human resources are necessary to expand the role?
 - ☐ What resources will be needed to maintain the current LTCOP during the transition to, or development of, an expanded role?
 - ☐ What staffing standard will be used for the expanded service?
 - ☐ What will be needed for planning?
 - ☐ What will be needed to provide the services?
 - ☐ What will be needed for management?
 - ☐ What will be needed to generate visibility and credibility for the expanded role with other agencies, clients, and the public?
- ☐ If volunteers will be used in the expanded role, will recruitment efforts compete with those of the existing LTCOP?
- ☐ Will legal resources be adequate to support the expanded role?

5. Individual Client Advocacy Services

- ☐ Will an emphasis continue to be placed on empowering the client and working with citizen organizations?*
- ☐ Will the expansion decrease the availability and accessibility of client services under the existing LTCOP? *
- ☐ How will the program reach out and become visible to new clients?
- ☐ Will volunteers be an appropriate resource for advocacy for this new clientele?

- ☐ Will the complaint handling and advocacy strategies be compatible with the current program?
- ☐ What new relationships are needed with regulatory, provider and payer groups?
- ☐ How will outcomes and client satisfaction be determined?
- ☐ What types of educational resources and training will be needed for new clientele?

6. Systemic Advocacy

- ☐ Will the program be a public voice to make the needs of clients known to agencies and public officials?*
- ☐ Will the program be free to issue public reports regarding client issues and recommending changes?*
- ☐ What are the current systemic issues for this new population?
 - ☐ Is there a potential conflict between advocating for systemic changes for the new clientele and changes on behalf of long term care residents currently served?
 - ☐ If so, how will these conflicts be addressed?
- ☐ Who is currently working on these issues in your state?
- ☐ What new relationships or coalition partners will you need to work with to resolve these issues?
- ☐ Are these issues and stakeholders compatible with the issues and stakeholders working on long term care resident issues or will they create potential conflicts for the program down the road?



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