Assuring Nursing Home Quality:
Continuing Challenges to Oversight and Enforcement of Nursing Home Reform

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“As mandated by the Older Americans Act, the mission of the Long-Term Care Ombudsman Program is to seek resolution of problems and advocate for the rights of residents of long-term care facilities with the goal of enhancing the quality of life and care of residents.”

- National Association of State LTC Ombudsman Programs, 2006
“Our nation has been conducting investigations, passing new laws and issuing new regulations relative to nursing homes . . . .

If the laws and regulations are not being applied to [the individual], they might just as well not have been passed or issued.”

- U.S. Commissioner on Aging
  Arthur S. Flemming, 1976
Long-Term Care Ombudsman History

1972 -- demonstration projects in 5 states

1978 -- Older Americans Act required every state to have an Nursing Home Ombudsman Program

1981 -- Older Americans Act amendments expanded coverage to include board and care homes. Nursing Home Ombudsman became Long-Term Care Ombudsman.

1992 -- Reauthorization created Title VII – Vulnerable Elder Rights Protection Activities, including LTCO
LTCO Functions under the Older Americans Act

Identify, investigate, and resolve complaints that—
• are made by, or on behalf of, residents; and
• relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents . . . of—
  (I) providers, or representatives of providers, of long-term care services;
  (II) public agencies; or
  (III) health and social service agencies

Inform the residents about means of obtaining services

Ensure that the residents have regular and timely access to the services . . . and that the residents and complainants receive timely responses . . . to complaints
LTCO Functions (cont’d)

Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

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.

Recommend . . . changes in such laws, regulations, policies, and actions.

Facilitate public comment on the laws, regulations, policies, and actions.

Promote the development of citizen organizations, to participate in the program.

Provide technical support for the development of resident and family councils.
A Successful LTCO:

Listens to and focuses on the resident
- What does the resident want?
- Not assuming we know the resident’s goals

Asks hard questions

Creatively strategizes

Negotiates
A successful ombudsman

Credibility:
• Our most valuable asset
  • we cannot enforce regulations or withhold funds
• Knowledgeable
• Fair (though clear that role is as resident advocate)
• Develop good relationships with providers and other agencies whenever possible, and
• Has no conflicts that compromise our focus on the resident
National Perspective

- 271,000 complaints investigated (nearly 209,000 related to nursing homes)
- Resolved or partially resolved 77 percent of complaints to the satisfaction of the resident or complainant.
- Provided information to 327,000 people
- Regular presence in 79% of nursing homes and 46% of board and care, assisted living and similar homes
  - Source: Administration on Aging, FFY 2008
• 7,257 training sessions for facility staff
• 128,400 consultations to long-term care facility staff
• Participated in 21,000 resident council and 4,900 family council meetings.

Accomplished by:
• 1,300 FTE staff ombudsmen
• 9,000 certified ombudsmen volunteers (plus 3,000 other volunteers)

– Source: Administration on Aging, FFY 2008
“Complaint” same word, different process

- Not protective service worker:
  LTCOs investigate to verify whether an issue exists to resolve, not to substantiate for purposes of regulatory or law enforcement action

- Not a regulator:
  Goal is resolution for resident, not compliance of facility
Role in abuse investigations

Depending on state agency structures and circumstances of incident, abuse situations are investigated by:

- APS,
- licensing and certification,
- Medicaid fraud control unit, and/or
- law enforcement

Ombudsman serves as the victim advocate throughout the process: what are the resident’s goals?

Investigate for resolution for resident, not for purpose of determining whether abuse occurred.

Not mandated reporters due to OAA confidentiality provisions, information subject to resident consent.
Most common nursing home complaints

- unanswered requests for assistance;
- inadequate discharge/eviction notice or planning;
- lack of respect for residents, poor staff attitudes;
- food -- quality, quantity, variation, choice;
- medications -- administration, organization.

– Source: Administration on Aging, FFY 2008
Challenges

- Difficulty in fulfilling some mandates, particularly in the area of politically sensitive systems advocacy work
- Confusion about “ombudsman” role
- Reliance on Volunteers
- Challenge to be seen as team player and not adversarial
  - critics of state agencies
  - focus on facility complaints
  - confidentiality constraints
Challenges (cont’d)

Resources

• Unfunded mandate since 1981 to serve assisted living/board and care residents (more than 1.1 million residents)

• State and local budget challenges

Recommended ratio: 1 staff ombudsman to 2000 long-term care facility beds. *(Institute of Medicine, 1995)*

15 years later, more than 50% of states (27 states) still do not meet this ratio
Strengths

- Focus is solely on resident, not representing state agencies
- Flexibility in working towards resolution, rather than a strict protocol
- Residents’ individual complaints and concerns translated into systems advocacy
Strengths (cont’d)

• Leveraging state and local resources (a bargain for the federal government)
  – $15,577,000 -- appropriations designated for LTCO (FFY 2008)
  – $86,363,495 -- total program expenditures from all federal, state and local sources
  – Volunteers (donated 800,000 hours)

• Prevention strategies that reduce need for complaint investigations
  – Education of facility staff and consumers
  – Empower consumers to do self-advocacy (including resident and family councils)
  – Facility consultation
  – Regular presence – provides access as well as opportunity to monitor resident well-being
Strengths (cont’d)

• Coordination with other agencies (especially with licensure and certification):
  – Complaint referrals
  – Cross-training
  – During survey
  – Development of regulations
  – Ombudsman work prevents referrals to regulators
  – Participate in relocation efforts
  – Systems advocacy
The Long-Term Care Ombudsman Program “serves a vital public purpose. Every year the Long-Term Care Ombudsman Program helps many thousands of individual residents ...[and] the program can justly claim to have improved the system of long-term care services.”

- Institute of Medicine, 1995