

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.¹ 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.² 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 on-going as the health care system evolves.

¹ *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.

² 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:³ (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? ⁴*
- ❑ 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?⁵*
 - ❑ 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?

³ 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.

⁴ 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.

⁵ In this paper, *covered services* means those services included in the expanded role of the LTCOP.

- ❑ 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 Astart 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?