

THE LTCOP UNDER THE OLDER AMERICANS ACT¹

Salient Provisions and Expanding Responsibilities

The 1978 Amendments to the Older Americans Act (OAA) elevated the Nursing Home Ombudsman Program to a statutory level. The statute and subsequent amendments *required* all state agencies on aging to establish an ombudsman program that would carry out the following activities.

- Investigate and resolve long-term care facility residents' complaints;
- Promote the development of citizens' organizations and train volunteers;
- Identify significant problems by establishing a statewide reporting system for complaints, and work to resolve these problems by bringing them to the attention of appropriate public agencies;
- Monitor the development and implementation of federal, state, and local long-term care laws and policies;
- Gain access to long-term care facilities and to residents' records; and
- Protect the confidentiality of residents' records, complainants' identities, and ombudsman files.

These statutory provisions set the framework for development of state programs that encompassed both the sub-state (regional) program focus of the early nationwide program and the complaint investigation focus of the demonstration projects. Thus, states were able to build on their early ombudsman initiatives as they began implementing the legislative requirements. Many states developed and worked for enactment of state ombudsman legislation. Such legislation is necessary to comply with some specific requirements in the Act such as providing for access to facilities and to residents' records and providing for appropriate sanctions for interference, retaliation, and reprisals associated with LTCO services.

The 1981 reauthorization of the OAA resulted in a further expansion of ombudsman duties. In addition to nursing homes, board and care homes were included in the ombudsman responsibilities. The name was changed from Nursing Home Ombudsman to Long-Term Care Ombudsman (LTCO) to reflect this change. Other

¹ Adapted from the Arkansas LTCOP Annual Report, op.cit.

duties remained substantially the same.

The 1987 Amendments to the OAA made substantive changes related to the Long-Term Care Ombudsman Program resulting in a significant improvement in the program's ability to advocate on behalf of residents of LTC facilities. The changes required states to provide for:

- Ombudsman access to residents and residents' records;
- Immunity to ombudsmen for the good faith performance of their duties; and
- Prohibition of willful interference with the official duties of an ombudsman and/or retaliation against an ombudsman, resident, or other individual for assisting the ombudsman program in the performance of their duties.

Subsequent amendments to the OAA have added specificity to the responsibilities of the LTCOP. A timeline depicting milestones in the growth and development of the LTCOP is in the Appendix. It provides a quick summary of the narrative in Sections II and III of this paper.

Summary of Responsibilities, Structure, and Approach

The preceding bulleted list shows the steadily expanding responsibilities of the LTCOP. It also shows the addition of specific provisions that direct the way the program is structured and approaches its work. All ombudsmen should study the text of the OAA for a complete understanding of this program that is uniquely positioned to resolve resident complaints and to represent resident interests.

Another way of viewing the federal scope of the LTCOP is to think of it in terms of program responsibilities, program structure, and approach to ombudsman work as conceptualized in the following lists.

Responsibilities

Prevention

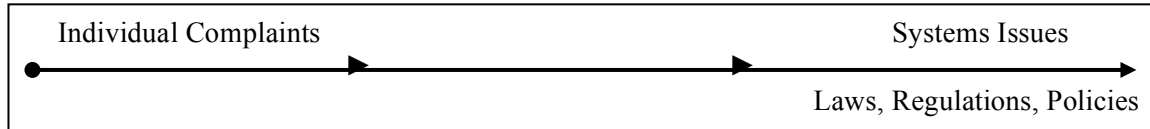
- Provide information to residents
- Promote the development of citizen organizations to participate in the LTCOP
- Provide technical support for the development of resident and family councils
- Recommend changes in laws, regulations, and policies pertinent to the health, safety, welfare, and rights of residents

Intervention

- Provide residents with regular and timely access to LTCOP services

- Assist residents in asserting their rights and expressing their grievance on issues pertaining to their health, safety, welfare and rights within the long-term care facility
- Identify, investigate, and resolve complaints made by, or on behalf of, residents
- Seek administrative, legal, and other remedies to protect the health, safety, welfare and rights of residents
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, on behalf of residents
- Facilitate public comment on laws, regulations, policies, and actions pertinent to residents
- Prepare an annual report describing the problems of residents and containing recommendations for improving their quality of care and quality of life. This report is submitted to the Assistant Secretary of AoA, the Governor, State Legislators, and others. It is also to be made available to the public.

The OAA connects the individual advocacy services ombudsmen provide with the program’s responsibility to publicly represent the needs of residents and work to effect change in laws, regulations, and policies. In essence, the individual complaint cases provide the basis for changing systems. The federal mandate is broad.²



In the words of local LTCO,

“We work individually, in groups and systemically to promote and protect the rights of residents before, during and after their placement in a long term care facility. The ombudsman advocacy is like making a snow cone on an iceberg with an ice pick. One chip at a time.”

—Debi, Lee, Cindy Kincaid, Linda Miller, Local Long-Term Care Ombudsmen, North Carolina

In addition to the LTCOP’s responsibilities for advocating on behalf of residents, the OAA also prescribes *how* the program is to be structured and is to approach its work in specific areas. These requirements allow for some flexibility among states but there is a *bottom line* in key provisions. This *bottom line* forms a foundation of consistency for the nationwide program.

² For information regarding the LTCOP’s role in addressing systems issues, refer to *Ombudsman Best Practices: Using Systems Advocacy to Improve Life for Residents*. Hunt, S. National Long-Term Care Ombudsman Resource Center. June 2002, PO 752. www.ltcombudsman.org.

Structure of the LTCOP

- The Office of the SLTCO is headed by a full-time SLTCO.
- The SLTCO may designate local entities [programs] *and* individuals to carry out the delegated responsibilities of the OAA.
- Procedures for ombudsman access to facilities and residents must be established.
- Uniform program data must be maintained and submitted to AoA; an annual report must be submitted as specified.

Approach to Work

The OAA contains:

- Guidance for access to resident records.
- Provisions regarding confidentiality of information identifying a resident.
- Prohibitions against individuals serving as representatives of the LTCOP until they have been trained and approved by the SLTCO.
- Requirements that the disclosure of LTCOP files and records is subject to approval by the SLTCO and certain types of disclosure are prohibited.
- Prohibitions and sanctions for willful interference with ombudsman duties are required to be established by the state.
- Conflicts of interest for the Office of the SLTCO, entities, and individuals participating in the LTCOP are prohibited.

Status of the Current LTCOP

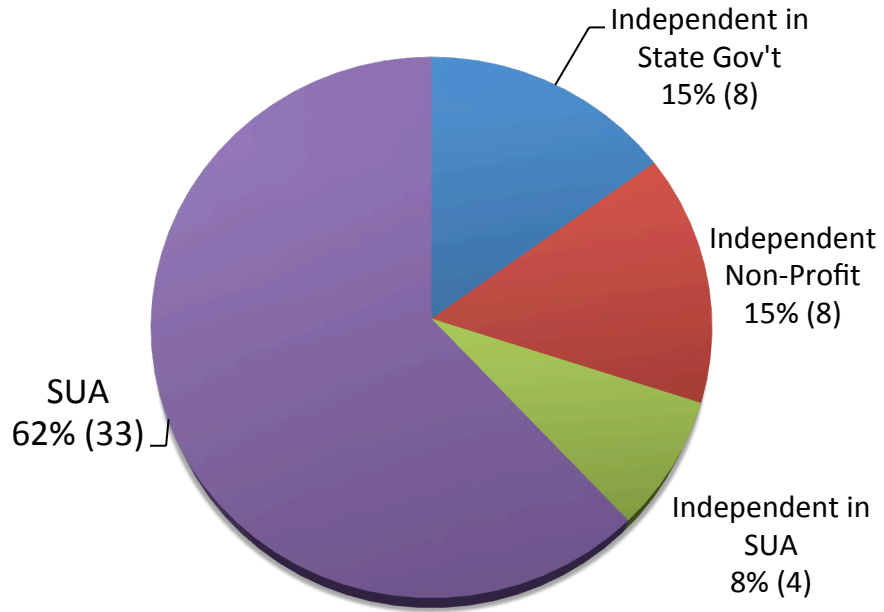
Today, the LTCOP operates in all 50 states, the District of Columbia, Puerto Rico, and Guam. No single model can accurately describe these multifaceted programs. Variability in organizational placement, program operation, funding, and utilization of human resources has given rise to distinct approaches to implementing the program. One illustration of these differences is an analysis of the organizational placement of LTCOPs.

One illustration of this variability is an analysis of the organizational placement of LTCOPs.³ As shown in Chart 1 (next page), states have chosen a variety of organizations to be the “home” of the SLTCOP.⁴ Changes in the placement of the SLTCOP typically occur as states face governmental reorganization or review ways to improve the program’s ability to fulfill its responsibilities. Similarly, as illustrated in Chart 2 (next page), there are variations among states regarding the placement and structure of local LTCOPs.

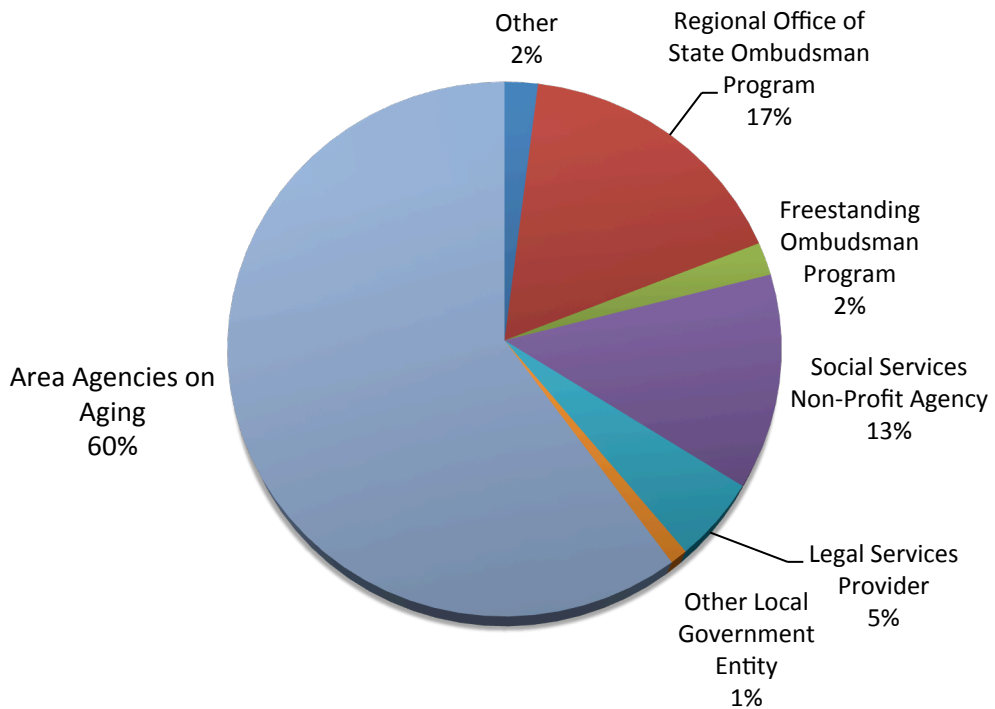
³ The data is based on 2006 information from the Administration on Aging.

⁴ Federal funding for the LTCOP goes to each state agency (state unit on aging) which may directly operate the LTCOP or may contract with another agency or organization to operate the program.

State LTCOP Placement 2012



Local LTCOP Placement 2010



Another important variation among programs is their use of volunteers as local ombudsmen. The history of the LTCOP clearly cites the importance of volunteers in shaping this program. In order to make ombudsman services more accessible to residents, over three-fourths of the states use volunteers as LTCO in addition to paid staff ombudsmen. The functions of volunteers with the program differ among states according to state laws and policies. Despite variations in the role of volunteers, they, too, serve residents through the delegated functions of the SLTCO and as part of the statewide LTCOP.⁵

Even with these differences, many commonalities do exist among these various approaches. The strongest connection among programs is the common responsibilities delineated in the federal law and discussed in this sub-section on the OAA. Additional information regarding commonalities among all LTCOPs, regardless of placement, is discussed in Section IV, “Unique Aspects of the LTCOP.”

⁵ For more information on volunteer LTCO refer to, *Volunteers In Long-Term Care Ombudsman Programs: Training, Certification, and Insurance Coverage*. MacInnes, G. & Hedt, A. National Long-Term Care Ombudsman Resource Center. Dec. 1999. www.ltcombudsman.org