



NATIONAL ASSOCIATION OF STATE OMBUDSMAN PROGRAMS

October 5, 2024

Beverly Laubert
Administration for Community Living
330 C Street SW
Washington, DC 20201

Re: Proposed Collection; Public Comment Request for the State Annual Long-Term Care Ombudsman Report (OMB Control Number 0985-0005)

Dear Ms. Laubert,

The National Association of State Long-Term Care Ombudsman Programs (NASOP) appreciates the opportunity to provide comments to the Administration for Community Living/Administration on Aging (ACL) on information collection activities for the State Annual Long-Term Care Ombudsman Report. NASOP reviewed the notice published in the Federal Register on August 1, 2024, regarding the currently used instruments of data collection consisting of NORS Table 1, NORS Table 2, and NORS Table 3. NASOP offers the following comments and recommendations in response to the notice.

ACL requested comment on whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility. NASOP largely supports the previous changes made by ACL to NORS. We appreciate ACL's efforts to incorporate many of the revisions previously recommended by NASOP. We believe that these changes have resulted in more accurate and consistent reporting as well as more precise identification of trends and the systems advocacy needed to address common complaints.

ACL requested comments on the accuracy of its estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used. ACL estimates the burden of this additional collection of information as follows: Approximately 11,153 hours, with 52 state Long-Term Ombudsman programs responding annually. As no new changes to the data collection has been proposed, NASOP agrees with the burden estimate by ACL.

ACL requested comment on ways to enhance the quality, utility, and clarity of the information to be collected. See the recommendations specific to each table in the comments that follow.

ACL requested comment on ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. Should ACL implement any future changes in the collection of information, NASOP recommends that:

- ACL develop a national training curriculum on data collection with the new NORS data elements and conduct train-the-trainer sessions nationwide.
- Implementation of these changes begin with collection of data in Federal Fiscal Year 2026. This would allow state programs to change their data collection systems, train representatives of the Office, and collect data accurately after training is complete.
- NASOP recommends that ACL develop one-time grants to states, using the Title VII funding allocation formula for distribution of funds, to compensate states for the cost of implementation.

Comments and Recommendations for Each of the Tables

Table 1: Case and Complaint Data Components

CA-03 Date Case Closed

Issue: The example and reporting tip is not clear.

Recommendation: In the Examples and Reporting Tips, make the following change: ~~Year of case closure reported must be in the associated reporting period.~~ Report only cases closed in the reporting year, regardless of whether they were opened in the reporting year or in a prior reporting year.

CA-05 Complainant

Issue 2: Ombudsmen frequently receive referrals from legislators on behalf of their constituents. Additionally, the list provided in the definition would be more appropriately included in Examples and Reporting Tips.

Recommendation: Change Definition of 05 = Representative as follows. Representative of other agency or individual program: Any entity ~~or individual~~ that refers a complaint to the Ombudsman program regarding one or more residents.

Add the following to Examples and Reporting Tips for the definition of 05- Representative of other agency or program: Includes medical personnel not associated with the facility, adult protective services, licensing and certification, law enforcement,

other social services agencies, faith-based communities, and bank employees, and legislator or elected official

CD-07 Complaint Verification

Issue: This metric is frequently misunderstood by those outside of the Long-Term Care Ombudsman Program. Whether a complaint is verified or not does not have much bearing on how concerns are address.

Recommendation: Remove complaint verification from the list of data elements reportable to ACL through OAAPS.

CD-08 Complaint Disposition

Issue: There is no instruction regarding how to code the death of a resident before there is an outcome of the ombudsman resolution.

Recommendation: Add to Examples and Reporting Tips: Use 2 for Withdrawn when the resident dies before a final outcome has been obtained.

Table 2: Complaint Codes and Definitions

General comments:

- Expand or add Examples and Reporting Tips for all blank sections of this Table.

A01 – Abuse: physical

Issue: The inclusion of resident-to-resident abuse causes residents to be labeled as “perpetrators”, causing distress among residents and family members, specifically when the abuse has a root cause in dementia. The term “perpetrator” has an implication of willful intent to cause harm, which does not fit many resident-to-resident altercations.

Recommendation: Specifically related to resident-to-resident abuse, change the term “perpetrator” to “aggressor” or another less severe term.

A03 – Abuse: psychological

Issue: Examples and Reporting Tips includes posting photos to social media but does not include social media posts which do not include photos but do include disparaging and derogatory terms used against residents.

Recommendation: Add language to Examples and Reporting Tips about postings to social media that includes disparaging and derogatory terms used against residents.

D03 – Dignity and respect

Issue: With staffing shortages and the increased acceptance of artificial intelligence, there is a need to address using technology to monitor residents.

Recommendation: Change the Examples and Reporting Tips to include: Facility staff fails to knock before entering room, posts signs relating to individual’s care, no consent to record a resident or inappropriate electronic monitoring usage, and similar problems.

F01 – Accidents and falls

Issue: In the Examples and Reporting Tips, the use of “A resident who self-propels” is confusing and not common language

Recommendation: Under Examples and Reporting Tips change “A resident who self-propels” to a resident independently using a wheelchair.

F10 – Rehabilitation services

Issue: Add a reference to A5 to clarify when to use F10 or A5.

Recommendation: Under Examples and Reporting Tips, add Use A5 for contractures due to gross neglect.

J03 – Staffing

Issue 1: Definition needs to be broadened to include concerns regarding facilities’ adherence to the new CMS SNF staffing standards.

Recommendation: Change definition to read: Problems with shortage of staff, turn over, staffing vacancies, over-use of temporary agencies, etc. Use for complaints about the skills or training of staff and similar complaints.”

Issue 2: In the Examples and Reporting Tips, clarification is needed regarding when to list J03 as a secondary complaint code to increase consistency in reporting.

Recommendation: Under Examples and Reporting Tips, add an example of when to list as a secondary code, such as “staff not answering call lights due to staffing shortages should list both complaint codes F02 and J03”

New complaint category needed: M – Discrimination

Issue: There is not a way to capture complaints that have a root in discrimination. Currently, such complaints would probably be recorded under D03 Dignity and Respect. Many states are wanting to track specific complaints related to discrimination.

Recommendation: Create a new major complaint code “M – Discrimination” with the following minor complaint codes under the new category, including definitions and examples for each:

1. Gender/Gender Identity
2. Sexual orientation
3. Race/Country of Origin/Ethnicity
4. Religion
5. Financial/Insurance/Payor Source
6. Age
7. Disability
8. HIV status

Table 3: State Program Data Elements

S1 – S6: Case Examples

Issue: The use of both “case example” and “complaint example” are used throughout this section which causes confusion as to what should be reported. Cases often have more than one complaint so it is not clear if the intent is to describe two to three complaint narratives or if the intent is to describe two to three cases.

Recommendation:

Option 1: If the intent is to request data on two complaints then throughout this section of Table 3 (Pgs. 1-2) change “case” to complaint.

Option 2: If the intent is to request data on all complaints for each case, then change “Elements included for each case example” to Complete data elements S1 through S6 for all complaints in each case example.

S19, S21, S24 & S26 – Total number of volunteers

Issue: Reporting only the number of volunteers a state has on September 30th discounts the work to recruit volunteers throughout the year.

Recommendation: Add an element to report the highest number of volunteers serving in various capacities in a given year in addition to the current element of the year-end number of volunteers a state retained on September 30th.

S20 & S25 – Hours donated by volunteers

Issue: Current definition requires clarification regarding when volunteer hours are to be counted.

Recommendation: Add to the Examples and Reporting Tips clarification as to whether volunteer travel time should be counted if the volunteer receives travel reimbursement.

S27 – Conflict of Interest Type

Issue: There is a lack of clarification about conflict-of-interest reporting.

Recommendation: NASOP recommends that examples and reporting tips for S27 include the following:

- Clarification on the difference between remedying and removing a conflict.
- Add explanation about whether Codes and Values #7, “provides long-term care coordination or case management”, includes common area agency on aging activities such as care coordination, legal assistance, and benefits counseling.

S30 – S40 – Funds Expended

Issue: The reporting of funds expended each year via OAAPS seems redundant since there already exists the requirement to certify minimum expenditures each year. Reporting funds expended in two different reports at two different times leads to additional burden for those reporting.

Recommendation: Eliminate the Funds Expended portion of the OAAPS report and report expenditures in the annual Certification of Minimum Expenditures report.

Alternative recommendation: If ACL elects to keep the funds expended measure, NASOP recommends adding clarifying instructions for Part F stating that funds should be reported in the FFY when the expense was incurred (obligated) and not when the expense was cleared (liquidated).

S35 – Identification of Other Federal Sources

Issue: Codes and Values, Potential New Code 7: Some states receive funds from their state’s Money Follows the Person program. Is this another funding source that needs to be tracked?

Recommendation: Consider adding Code 7=Money Follows the Person.

S39 – Identification of funds expended at the local level

Issue: The Element Description and Codes and Values use different language that is not clear. The Elements uses “funds expended.” The Codes and Values include identification of funding “obtained.”

Recommendation: In Codes and Values for #04 change the word “obtained” to expended for consistent instruction.

S58 & S61 – Routine access: nursing facility/residential care community

Issue 1: The definition of “routine access” is limiting and does not give a thorough picture of visitation and access.

Recommendation: Revise the data element, eliminating the phrase “not in response to a complaint”. Total number of nursing facilities visited, to provide access to the ombudsman program, in all four quarters by representatives of the Office.

Issue 2: The instructions are vague regarding how to report facilities that open or close during the reporting period.

Recommendation: Add the following to the Element Description: Facilities opened or closed during the reporting period should only be counted for the quarters in which the facilities were in operation.

S68-Community education

Issue: Not counting newsletters, blogs and other forms of media in this element fails to capture important modern ways in which ombudsman provide education and information to the community.

Recommendation: Change the Examples and Reporting Tips so that that newsletters, blogs, and other forms of media be counted here or add an element in order to give a full picture of ombudsman work.

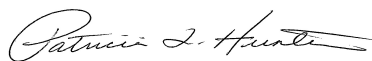
New element needed: Facility closures

Issue: Currently there is not a way to capture all the calls with the survey agency about facility closures. The only items counted are the facility visits or Information and Assistance activities. There’s a lot of behind-the-scenes work happening for closures that is not being counted. As closures are becoming more common, there needs to be a way for Ombudsman to show the time involved.

Recommendation: Add a new element to Table 3 to track involvement with facility closures, including definitions, metrics, and examples.

Thank you for considering NASOP’s comments and recommendations. We appreciate this opportunity to provide feedback.

Sincerely,



Patricia L. Hunter, MSW
NASOP President