



Ombuds Services in Dual Demonstration Projects

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“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*



What would Arthur Fleming have said about the creation of Duals Demonstration Projects?



Our nation has been creating demonstration projects to improve coordination of care and services for individuals dually eligible for Medicaid and Medicare.

If the demonstrations aren't successfully providing for the needs of the individual, they might just as well not have been funded or implemented.

LTC Ombudsman program: origins

- **1960s** – Congress creates the Older Americans Act (1965);
 - grants to States for social services and protection of rights for older Americans;
- **1970s** – Reports on nursing home abuses result in Nursing Home Ombudsman Program
 - **started as public health demonstration grants**
 - evolved into OAA grants for “Nursing Home Ombudsman Programs ”

ACL Work on Duals Demo Ombuds Design

Goals:

- Help CMS develop its consumer assistance model for duals demos
- Develop specialized “ombuds” consumer assistance
 - Not just generic consumer assistance
 - A professional discipline with standards and distinctive approaches
 - Incorporate core of ombuds services
- Technical assistance to support implementation in States

Flexibility in State approaches

- State flexibility to determine WHERE the program is housed
- Potential candidates for housing the duals demo ombuds programs:
 - Consumer Assistance programs, established under ACA
 - Long-Term Care Ombudsman programs
 - Protection and Advocacy Systems
 - Legal services entities
 - Other consumer advocacy entities
- Build on the proven strengths of the LTC Ombudsman model

Strengths of the LTC Ombudsman Model

- Person-centered: focus is on resident's goal and perspective
- Flexibility in working towards resolution
- Resolution at lowest level often without additional intervention:
 - can result in quicker outcome for the resident
 - can save regulatory and legal resources
- Engagement of local community: use of volunteers and local Ombudsman entities
NOTE: use of volunteers and/or local Ombudsman entities varies by state
- Residents' individual complaints and interests are translated into systems advocacy and policy-level solutions



A successful LTC Ombudsman has: credibility

- An ombudsman's most valuable asset
 - cannot enforce regulations or withhold funds
- Knowledgeable
- Protects the confidentiality of identity and information of individual residents and complainants
- Fair (though OAA makes it clear that role is not as neutral, but as resident advocate)
- Develop relationships of respect with providers and other agencies, and
- Has no conflicts that compromise a focus on the resident's rights and interests

The essential characteristics of an ombuds:

- independence,
- impartiality in conducting inquiries and investigations, and
- confidentiality.

Adopted by the American Bar Association (2004)



Envisioning the Duals Demo Ombuds

Based on ACL experience administering the DD network and LTC Ombudsman programs, ACL envisioned:

- Individual Consumer Empowerment and Problem-Solving
- Systems Level Engagement, Information Sharing and Consumer Advocacy
- Independent Entity
- Financial Considerations
- Ombudsman Entity Capacity
- Consumer Access
- Legal Authority
- Data Collection and Reporting

LTC Ombudsman Program Expansions -- OAA

- Not an assumption that the LTC Ombudsman program would expand to serve individuals in the duals demos
- But. . .
 - Expansion of the program is not without precedent:
 - **1980s** – OAA amendments expand scope of “**Long-Term Care Ombudsman**” to services to residents of “board and care” and other similar adult care homes
 - **2006** – OAA amendments clarify inclusion of LTCO services to residents of “**assisted living**”

LTC Ombudsman Program Expansions -- States

14 States:

LTCO programs are authorized under State authority to expand services to individuals receiving long-term services and supports in:



- In their own home settings,
- Through Medicaid waivers, and/or
- Through Medicaid/Medicare demonstration projects for dually eligible beneficiaries

Duals Demo Work is an Unprecedented Expansion for LTC Ombudsman Programs

- Beyond nursing homes, assisted living, and board and care
 - Beyond long-term services and supports
 - Requires expertise in dealing with managed care organizations and includes complaints related to:
 - Primary care providers (e.g., MDs, advance practice nurses)
 - Specialists (e.g., cardiologists, orthopedic surgeons, oncologists)
 - Acute care (i.e. hospitals)
 - Behavioral health
 - Durable medical equipment
- ... ANYTHING and EVERYTHING that Medicaid and/or Medicare cover for these beneficiaries

Engagement with Duals Demo Ombuds: opportunities and challenges

If the LTC Ombudsman performs the duals demo ombuds functions:

– Challenges:

- Caution to not undercut ombuds services to long-term care facility residents
- Find ways for sustain the work after demo ends
- Training needs

– Opportunities:

- Develop new expertise, new energy, fresh approaches while using existing problem-solving skills
- Access to new funding stream
- Fresh look at ways to use ombuds information to:
 - promote consumer advocacy and
 - support systems improvements.
- Develop new partnerships to help problem-solve for consumers
- Integrate health and LTSS problem-solving
- Serve individual regardless of health or LTSS setting (ombuds follows the person!)

Engagement with Duals Demo Ombuds: opportunities and challenges

If the Duals Demo Ombuds is housed elsewhere:

- Need for coordination to clarify who does what when dually eligible individual lives in long-term care facility
 - Avoid duplication
 - Utilize each others' expertise
- Need for development of referral protocols
- Continue uncompromised focus on (the too-often-forgotten) LTC facility residents
- There is MORE than enough demand for service by LTC facility residents

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.”

Will the same be said one day about the Duals Demo Ombuds programs?

- Institute of Medicine, 1995

Questions?

