The Who, What, When, Where and How of Ombudsman Services for Home Care Consumers

Becky A. Kurtz, Director, Office of Long-Term Care Ombudsman Programs
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Brief History of LTC Ombudsman Program

• Congress:
  • Created as demonstration projects for services to nursing home residents (1972)
  • Required every State accepting OAA funds to operate a Nursing Home Ombudsman Program (1978)
  • Changed name to “Long-Term Care Ombudsman” and expanded population served to residents of “board and care” and “any other adult care home” (1981)
  • Clarified that the definition of “any other adult care home” includes “assisted living” (2006)

• As of 2013, Congress has NOT authorized services through the OAA to individuals receiving LTSS in their own private homes
Population served by LTCO under OAA

Residents of:

- nursing facilities
- board and care homes
- assisted living facilities and
- any other adult care facility.

- But NOT in-home services
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
LTC Ombudsman Functions (continued)

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.
LTC Ombudsman Functions (continued)

Facilitate public comment on 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.
The essential characteristics of an ombuds: 

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

Adopted by the American Bar Association (2004)
State expansion of LTC Ombudsman Program

- Some states have expanded the scope to in-home settings with State or other funding
- See strengths of LTC Ombudsman model:
  - Focus is on resident/consumer
  - Flexibility in working towards resolution
  - Residents’ individual complaints and interests are translated into systems advocacy
LTC Ombudsman Programs which provide services to individuals in their homes

14 programs are authorized under state/district law to expand ombudsman services to in-home settings:
- Alaska
- District of Columbia
- Idaho
- Indiana
- Illinois
- Maine
- Minnesota
- Ohio
- Pennsylvania
- Rhode Island
- Vermont
- Virginia
- Wisconsin
- Wyoming

Federal (CMS) initiatives: expansion of ombudsman services to home care recipients – and beyond

1. Nursing Home Transition:
   - Money Follows the Person
   - MDS 3.0, Section Q

2. Medicaid Managed LTSS

3. Financial Alignment Initiatives (i.e. Duals Demonstration Projects (beyond LTSS)
Money Follows the Person

• Authorized by Congress in the Deficit Reduction Act of 2005

• Assists States to balance their long-term care systems and help Medicaid enrollees transition from institutions to the community

• Available to residents who have lived in a nursing home with Medicaid benefits for at least 90 days

• Up to one year of funding for transition needs

• At least 2 states (GA, DE) provide ombudsman services to individuals in their own homes for year after transition

• NOTE: Other states (e.g., TX, OK, MI) use MFP funds for LTCO services for residents who indicate their desire to transition through MDS 3.0, Section Q.
Managed LTSS

• What is it?
  Managed Long Term Services and Supports (MLTSS) – the delivery of long term services and supports through capitated Medicaid managed care program

• Growing rapidly:
  • 8 States in 2004 to
  • 16 in 2012
  • Estimated that 26 states will have MLTSS program by 2014

• CMS requirements include support for beneficiaries, including:
  • Enrollment/disenrollment services, including choice counseling and education on additional opportunities for disenrollment, and
  • An advocate or ombudsman to help understand a beneficiary’s rights, responsibilities and how to handle a dispute with the managed care plan or state.
Managed LTSS

• Some States have long experience with managed Medicaid LTSS (e.g., NM, WI, VT)

• Some States have expanded LTCO program to provide services to participants in their own homes (e.g. WI, VT)

• OR . . . they may create a new model for ombudsman services (e.g., KS)
Duals Demonstration Projects

• Federal Coordinated Health Care Office (Medicare-Medicaid Coordination Office) created by Affordable Care Act.

• Goal: to make sure Medicare-Medicaid enrollees have full access to seamless, high quality health care and to make the system as cost-effective as possible.

• Created “Financial Alignment Initiative” to test improved service delivery to individuals who are dually eligible for Medicare and Medicaid.

• Depending on State proposal, may include acute care, primary care, behavioral health care, and long-term services and supports.
Duals Demos and Ombudsman Programs

• CMS: “Meaningful engagement with stakeholders and ensuring beneficiary protections will be a crucial part of developing and testing these models.”
  • Requires an independent ombudsman program in participating States.

• CMS providing funding opportunity for States to support Dual Demonstration Ombudsman Programs (announced June 2013).

• Some states propose expanding LTCO program (e.g., VA, OH) – will serve individuals regardless of setting (e.g., facility or home) or service (e.g., acute, primary, behavioral health, or LTSS)

• Some states propose using other entities (e.g., CA, NY, MA)
On the horizon . . . Older Americans Act Reauthorization

- S. 1562 introduced in October 2013 by HELP Committee Senators Harkin, Alexander, and Sanders
  • Contains revisions related to long-term care ombudsman program, including:
    “when feasible, continue to carry out the functions . . . On behalf of residents transitioning from a long-term care facility to a home care setting “
    (revises Section 712(a)(3) – Functions of the Ombudsman)

- No bill in House to date
## Mechanisms for Providing In-Home Ombudsman Services

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Population Served</th>
<th>Resources Available</th>
<th>Federal Share</th>
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</thead>
<tbody>
<tr>
<td>State authorized</td>
<td>Depends on State law</td>
<td>State funds</td>
<td>0%</td>
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<tr>
<td>Money Follows the Person</td>
<td>Residents transitioning from nursing home (up to 1 year of service after transition)</td>
<td>Money Follows the Person • CMS grants to States • ends FFY 16 • Nov 2010 CMS/AoA letter to States</td>
<td>100%</td>
</tr>
<tr>
<td>Medicaid Managed LTSS</td>
<td>Medicaid Managed LTSS recipients, regardless of location</td>
<td>Medicaid administrative claiming • Through State Medicaid Plan or Waiver • June 2013 CMS Information Memo</td>
<td>50%</td>
</tr>
<tr>
<td>Dual Demonstration Ombudsman Programs</td>
<td>Participants in Financial Alignment Initiative (not limited to location or to LTSS)</td>
<td>CMS grants to participating states • June 2013 Funding Opportunity Announcement</td>
<td>100%</td>
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<tr>
<td>Older Americans Act Reauthorization (proposed)</td>
<td>Residents transitioning from any long-term care facility</td>
<td>• TBD -- No new funds unless Congress appropriates</td>
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<td>• Would clarify access to OAA funds (Title III and Title VII) for</td>
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Considerations for States/LTCO Programs

Population served -- do you have experience/credibility with this population and their needs?

- Clearly define service population, including:
  - funding source (e.g., Medicaid waiver, all sources, OAA funded)
  - types of services (e.g., home health, adult day services)
- Are you easily accessible to them (including to people with varying disabilities)?
- Is your program culturally competent (e.g., language, tribal/ethnic customs, sensitive to LGBT needs)?
Considerations

Expertise – do you have the needed expertise on the anticipated issues?

- nursing home transition (MFP)
- knowledge of and relationships with:
  - service providers (e.g., home health, private home care providers)
  - regulators
  - managed care entities (MLTSS, Duals Demos)
  - other stakeholders (e.g., consumer advocacy groups)
- managed care insurance contracts (MLTSS, Duals Demos)
Considerations

Adequate resources – do you have access to needed resources?

• sufficient funds to provide this service
• without compromising services to long-term care facility residents
• would you use volunteers in these settings/issues?
• adequate legal counsel (e.g., to assist with managed care contracting issues, policy advocacy, etc.)
• do you use current staff/volunteers or designate experts?
  • need for training for staff and/or volunteers
Considerations

Information technology capacity  -- Do you have the ability to:

- collect data on complaints and activities?
- analyze data to capture trends?
- report trends to relevant policymakers and stakeholders?
- utilize information to make systemic improvements?
Considerations

Legal Authority -- Do you have legal authority to:

• access to individuals in their own home?
• access individuals’ medical and personal records?
• access the needed records of the provider, managed care company, regulatory agency?
• protect the confidentiality of identity and information received from individuals and complainants?
• provide independent ombudsman services, including systems advocacy?
Considerations

Conflicts of interest – Are you able to represent the interests of the individual and population without conflict?

• challenges within agencies with various roles:
  • in-home service provider,
  • abuse investigator,
  • regulator,
  • public guardian,
  • care coordinator,
  • consumer advocate
The reason that LTC Ombudsman is being stretched – or replicated:

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
Resource Links

National Ombudsman Resource Center
(including “Home Care Ombudsman Programs Status Report: 2007;” federal letters, memos regarding use of resources):
http://www.ltcombudsman.org/

Administration for Community Living LTCO Page:
http://aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Ombudsman/index.aspx

American Bar Association Report on Ombuds Standards:
http://www.americanbar.org/content/dam/aba/directories/policy/2004_my_115.authcheckdam.pdf

CMS guidance on Managed LTSS:
http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Medicaid-Managed-Long-Term-Services-and-Supports-MLTSS.html

Older Americans Act S. 1562 (113th Congress):
www.thomas.gov