

APPENDIX E.6.

OAPS AND LTC OMBUDSMAN DISCUSSION

(Based on a resource developed by the National Association of State Long Term Care Ombudsman Programs)

OLDER ADULTS PROTECTIVE SERVICES and the LTC OMBUDSMAN PROGRAM

Introduction

The Long-Term Care Ombudsman Program and Older Adults Protective Services Programs each began in response to the needs of individuals. These programs are fundamentally different but complementary missions and separate legal mandates as defined in the Older Americans Act and local statutes which require coordination in order to effectively serve clients.

Because of these inherent differences, the two missions may not be combined into one role or used to supplant the responsibilities of the other.

Purpose

The purpose of this paper is to promote a discussion which will result in better understanding and coordination between these two programs. This paper seeks to describe how each program views its mission and functions.

The National Association of State Long Term Care Ombudsman Programs developed this paper (revised) in collaboration with the National Older Adult Protective Services Association which provided the description of the older adult protective services program model.

Although the growth and development of these programs varies from state to state, there are some fundamental principles which shape them. Both programs share a concern for vulnerable older adults and a responsibility for: client confidentiality, information and referral, investigation, and intervention, among other functions. Both programs must cultivate and maintain relationships with a number of other agencies in order to increase their visibility and serve their clients.

Despite some commonalities, there are also some distinctions. The LTC Ombudsman Program, for example, can represent one consumer, several individuals, all residents of a facility, or raise an issue even when no resident feels safe being the client, while older adult protective services works on behalf of an individual consumer.

Ombudsmen must have a regular, on-going presence in facilities, visiting with individual residents whether or not there is a problem or a *client/consumer* in immediate need. The Ombudsman Program works to change systems, policies, or facility practices where necessary to benefit consumers and may work to get others to develop and implement service plans for consumers.

Older adult protective services works to develop service plans and/or arrange for services on behalf of individual consumers. The Ombudsman Program is established in federal law, the Older

Americans Act, (OAA), and since 1978 all states are required to have one.

Background

In 1987, elder abuse prevention funds were made available through the OAA to assist states in educational and other activities focused on prevention. In some states, these changes resulted in a closer working relationship between the Long-Term Care Ombudsman Program and Older Adult Protective Services.

By design, Long Term Care Ombudsman Programs have engaged in elder abuse prevention activities as a fundamental part of their on-going work. Ombudsmen do this by their regular presence and availability to residents; by empowering residents and families and educating facility staff; and by addressing facility practices and systemic issues.

With the implementation of the LTC Ombudsman Federal Final Rule in 2016, there is increasing emphasis upon coordination among several programs including ombudsman and older adult protective services. This has led to discussion about the similarities and differences in these two programs and how to structure them to be most helpful to consumers.

Protective Services

Mission

- To detect and deter the on-going maltreatment of impaired older adults; and
- To prevent maltreatment from recurring through the provision of protective services which may range from information and referral to a court ordered guardianship or conservatorship.

LTC Ombudsman Program

Mission

- To empower residents and advocate for the protection of LTC residents' health, safety, welfare, and rights;
- To promote or support resident councils, family councils, and community groups;
- To represent the interests of residents before governmental agencies; and
- To analyze, comment on, and monitor laws, regulations, and policies pertinent to LTC residents.

Protective Services

Relationship/Approach to Consumers

The OAPS program is consumer focused, individualized, and based on the social work model of problem-solving. The following principles define its philosophy regarding consumers.

- The vulnerable older adult is the primary consumer not the community or the family.
- The consumer is presumed to be mentally competent and in control of decision-making until facts prove otherwise.
- The consumer participates in defining the problem(s) and deciding the most appropriate outcome and course of action.
- The consumer exercises freedom of choice and the right to refuse services so long as the consumer has the capacity to understand the consequences of his or her actions.
- Services will be the least restrictive possible for the consumer; more intrusive remedies, such as guardianship or institutionalization will be a last resort and will include due process.
- When legal remedies are unavoidable, APS ensures that the consumer's right to an attorney ad litem is enforced.

Functions or Duties

On a routine basis, OAPS staff are expected to:

- Ensure a mechanism by which reports of abuse, neglect, and exploitation of elderly persons and older adults who are disabled may be made;

LTC Ombudsman

Relationship/Approach to Consumers

The LTC Ombudsman Program focuses on individual consumers and works on their behalf to effect change in facilities and systems. It is guided by the following principles.

- Residents of LTC facilities are the primary consumers, regardless of age.
- The consumer is in control of decision-making to the extent of their capabilities.
- The consumer participates in defining the problem(s), determining what outcome is desired, and deciding on a course of action.
- The program seeks to empower consumers to act on their own behalf and to teach others to respect the consumer's perspective and decisions.
- The consumer exercises freedom of choice and the right to refuse services.
- Ombudsmen may act on behalf of residents without having *one* resident as the consumer.
- Ombudsmen may provide information or support to family members or other advocates who are working on behalf of residents.
- Administrative, legal, and other remedies may be sought to protect the health, safety, welfare, or rights of consumers.

Functions or Duties

LTC Ombudsmen are expected to:

- Ensure that consumers receive regular and timely access to their services, thus ombudsmen are to be proactive in working with consumers and identifying problems.

Protective Services

- Receive and investigate all reports in a timely and thorough manner.
- Assess the older adult's capacity to understand the situation and evaluate the degree of danger and continued risk present.
- Provide directly or arrange for the services needed to prevent or alleviate further maltreatment.
- Honor the individual's right to self-determination and use the least restrictive alternative in the provision of protective services.
- Seek legal remedies such as emergency removal or court ordered services when there is a risk to life and the consumer lacks decision-making capacity.
- Respect the consumer's right to have all aspects of the case kept confidential unless otherwise ordered by the court.
- Release of information necessary in initiation of services shall be disclosed following §15.105 (voluntary reports) and §15.157 (mandatory reports)
- Coordinate with other agencies, conduct public awareness activities, and maximize community resources for OAPS consumers.

LTC Ombudsman

- Identify, investigate, and resolve complaints made by, or on behalf of, residents and provide a timely response to complaints or requests for assistance.
- Assess the consumer's capacity to understand the situation, the rights involved, and the resolution strategies, to understand the consumer's ability to make decisions and use that information to assist the consumer in picking and implementing resolution strategies.
- Work with the consumer's legal representative to enhance their advocacy ability if a consumer does not have the capacity to understand the situation and resolution strategies.
- Initiate problem resolution on behalf of consumers who do not have decision-making capacity and who have no one else to represent them.
- Provide information to consumers about obtaining services from agencies or programs.
- Work to get others to provide, or arrange for, the services needed by consumer.
- Maintain confidentiality unless the consumer, or his/her legal representative gives permission to disclose identifying information or a court orders the disclosure.
- Provide technical support for the development of resident and family councils.
- Promote the development of citizen organizations to participate advocacy.

Protective Services

Relationships with Other Agencies/Entities

OAPS must have sound working relationships with other agencies and professional organizations for a number of reasons. This includes the Ombudsman program.

- Most reports of abuse and neglect come from other agencies it is important that these entities know what referrals are appropriate.
- OAPS often turns to these entities for services to remedy the consumer's problems so a partnership is essential.
- OAPS may be providing the investigatory function for the licensing or regulatory agency so close and timely communication is essential.
- OAPS relies upon a sound working relationship with the legal and judicial system, the medical profession, the inter-faith community, and other organizations.

Legal Mandate and Funding

- Established by state law.
- May receive federal funds such as Social Services Block grant, Title XIX targeted case management funds and/or Title VII.
- Receives state funds for program.

LTC Ombudsman

- Analyze, comment on, and monitor laws, regulations, and policies pertinent to LTC residents and recommend appropriate changes
- Facilitate public comment on laws, regulations, and policies.

Relationships with Other Agencies/Entities

The Ombudsman Program's relationships with other agencies, organizations, and facilities, are typically advocacy for services to meet consumers' needs and support for agencies that do. This includes PS program.

- Referrals are made to other entities by ombudsmen and referrals are received from these entities.
- Ombudsmen may call upon these entities to fulfill their responsibilities to consumers and monitor them to see that they do their job.
- Ombudsmen work with others to: prevent problems, address systemic issues, and exchange technical assistance and resources.

Legal Mandate and Funding

- Established by federal law.
- Receives federal funding which may be supplemented by state dollars.
- Local programs also receive local funds

Conclusion

Separate and important missions exist for LTC Ombudsman Programs and Older Adults Protective Services.

These need to be acknowledged and used as a springboard for creative collaboration in order to better serve vulnerable older adults but cannot be comingled.

Each state needs to work to make both programs fulfill their missions and to look at ways of working together when each program might have distinct responsibilities for consumers.

Examples of distinctions include:

- (1) when abuse, neglect, or exploitation occurs to an older person living in a nursing facility;
- (2) when an older person leaving a nursing facility may be going to a home situation which puts him/her at risk; or
- (3) when an older adult protective services worker serves as guardian or conservator for someone living in a nursing facility.

The Protective Services Office and Ombudsman Office at PDA agree there is a need for more communication about role clarification, working relationships, and mutual expectations. Other agencies or systems should be brought into the discussion about abuse and neglect such as: licensing and certification, law enforcement, and legal systems.

On-going coordination and collaboration among programs and agencies are essential for effective implementation of each program's mission and role.