



Trends in the State Long-Term Care Ombudsman Program

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Agenda

- Introduction
- Overview of the SLTCOP
- Impact of Federal Rules
- Medicaid Managed Care
- Data from the NASUAD 2017 *State of the States* Survey

NASUAD: Who We Are

- **State Association:** 56 members, representing state and territorial agencies on aging and disabilities
- **Our Mission:** To design, improve, and sustain state systems delivering home and community based services and supports for people who are older or have a disability, and their caregivers.



Overview of the SLTCOP

The Older Americans Act (OAA) promotes maximum independence of older adults in their homes and communities and it enables a wide array of care for vulnerable older adults.

OAA programs include:

- Nutrition Programs
 - *Such as Meals on Wheels
- Disease Prevention Programs
- National Family Caregiver Support Program
- Elder Rights Protections
 - *Such as the Long-Term Care Ombudsman Program

The Aging Network

U.S. Department of Health and Human Services

Administration for Community Living

State Aging & Disability Agencies

Local Service Providers

Consumer

The State Long-Term Care Ombudsman Program (LTCOP) started as a demonstration project in 5 states in 1972

LTCOP demos start in 5 states

Nationwide Ombudsman program raised to statutory level

Good faith immunity created, states required to all ombudsman access to residents and their records

Ombudsman regulation providing guidance to states becomes effective

1965

1972

1975

1978

1981

1987

1992

2016

Creation of Medicaid increases access to Nursing Homes

All but 2 states have LTCOP

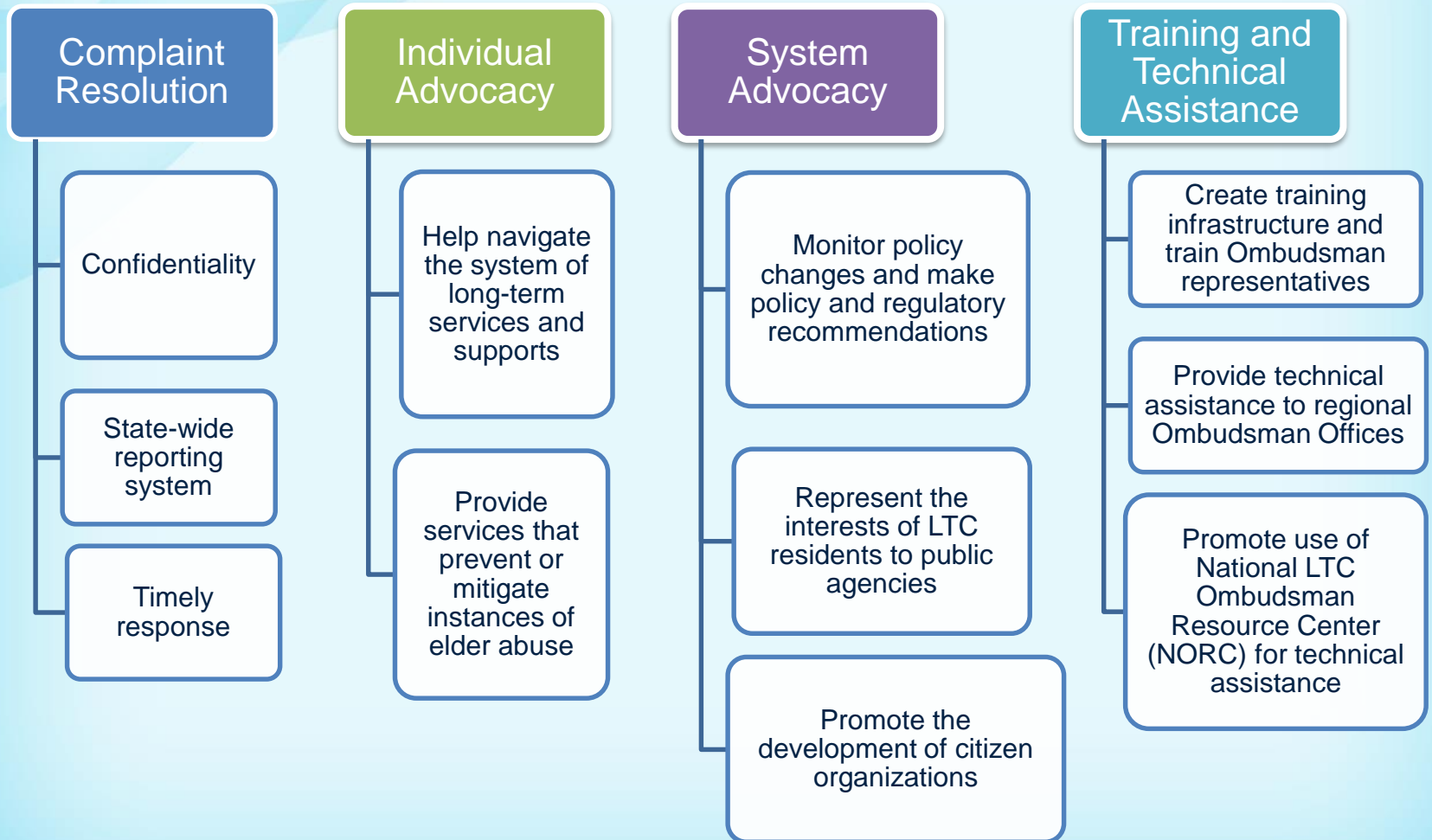
Changed name from Nursing Home Ombudsman Program to SLTCOP to reflect expanded scope

Created OAA Title VII – Vulnerable Elder Rights title, where the program requirements are found

The Long-Term Care Ombudsman program is responsible for addressing problems pertaining to the health, safety, welfare and rights of residents of LTC facilities*

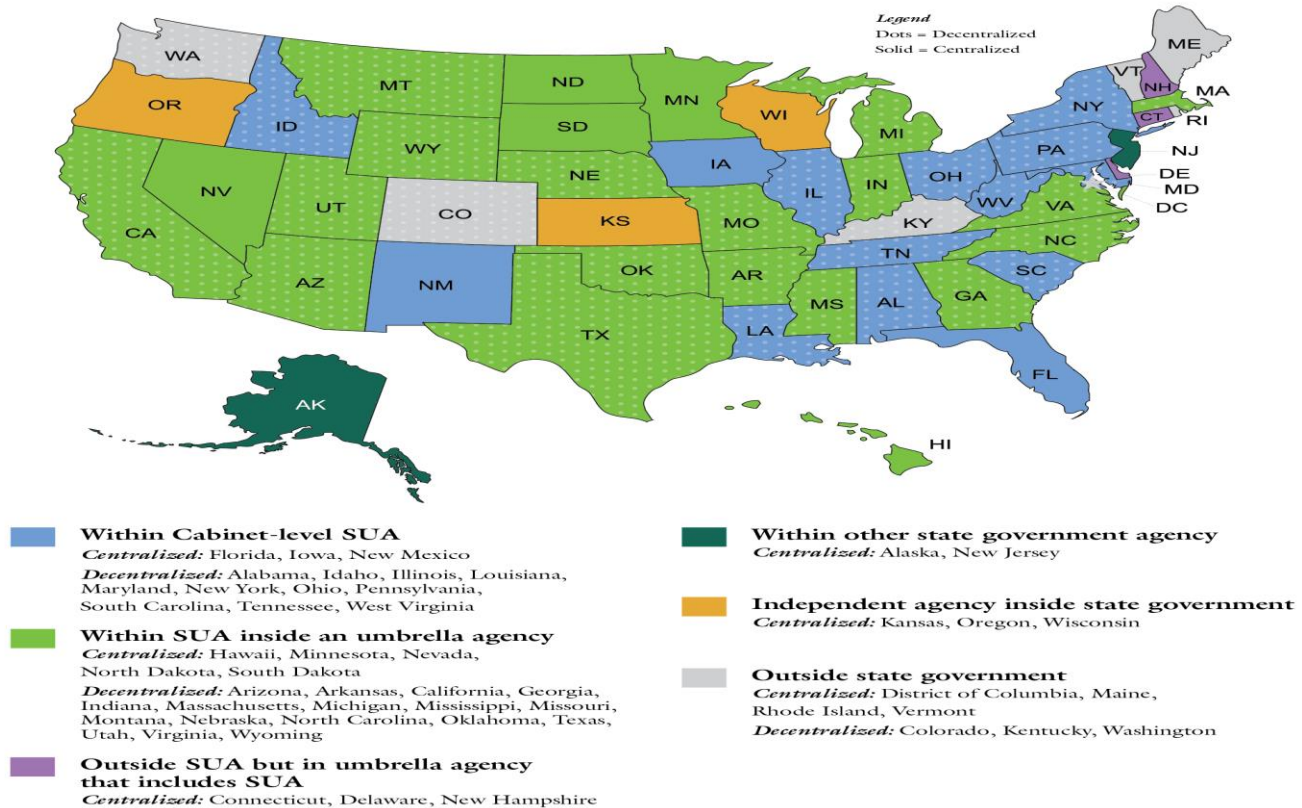
*Such as nursing facilities, assisted living, and board and care facilities

SLTC Ombudsmen and the SLTCOP representatives fill many roles, but these roles can be divided into four categories.



State Aging & Disability Agencies are tasked with deciding where the SLTC Ombudsman Program will be located in their state.

Location of Long-Term Care Ombudsman Programs in States*



* Information from *Long-Term Care Ombudsman Program: Structure, Responses, Quality and Funding, 2000* and revised through direct telephone survey by NASUAD staff January–March, 2015

Impact of Federal Rules

- Long-Term Care Ombudsman Regulation
- HCBS Settings Rule
- Nursing Home Regulations

Long-Term Care Ombudsman Final Rule

WHO	WHAT	WHEN
Administration for Community Living	Since its inception in the 1970s, the LTCOPs functions have been outlined in the OAA. However, the LTCO regulation is the first specific regulation focused on the program and aimed to create greater alignment and consistency between state programs. The rule also provided clarification and delineation around the <u>functions and responsibility of the LTCO</u> , <u>conflict of interest provisions</u> , exemption from <u>mandatory reporting requirements</u> , among others.	Became effective July 1, 2016

HCBS Settings Final Rule

WHO	WHAT	WHEN
Centers for Medicare & Medicaid Services	The Medicaid home and community-based regulation establishes new criteria and requirements for Medicaid-funded HCBS, with an emphasis on ensuring that services are provided in an integrated and community-based setting. The rule has posed significant challenges for states working to come into compliance, particularly for settings that received Medicaid LTSS funding such as assisted living, board and care, and other settings.	Issued in 2014; States have until 2022 to come into compliance

Nursing Home Regulations

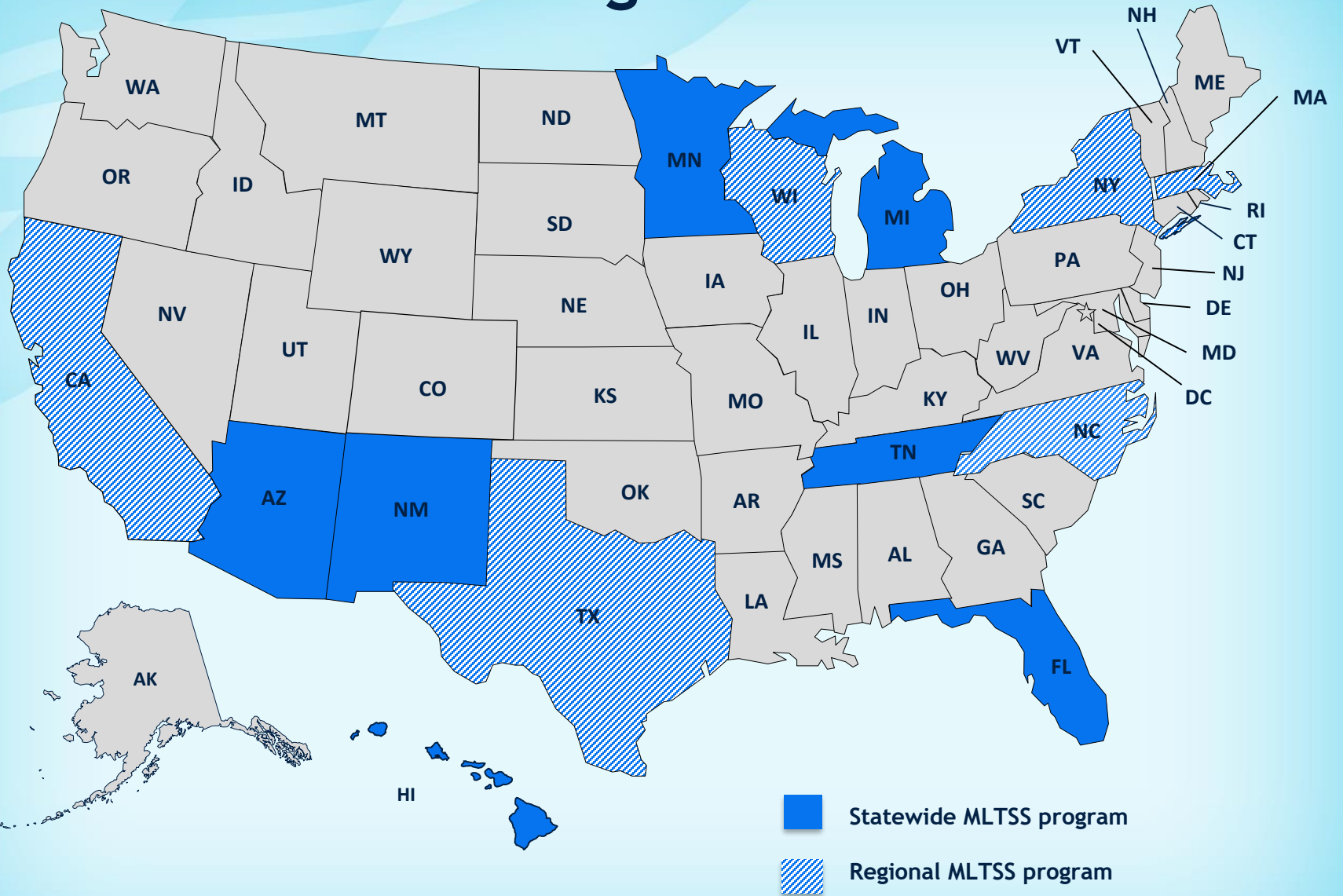
WHO	WHAT	WHEN
Centers for Medicare & Medicaid Services	Published on October 4, 2016, the “nursing home” regulation, as it is colloquially referred to, marked the first major update to regulations governing nursing facilities (NF) since 1991. The final rule is voluminous, and includes provisions regarding resident rights, person-centered care planning, and freedom from abuse, neglect and exploitation. The rule also contained a new requirement that NF’s send involuntary discharge notices to SLTCO programs.	Became effective November 28, 2016, but certain provisions phased in over time

Medicaid Managed Care

Managed Long-Term Services and Supports (MLTSS)

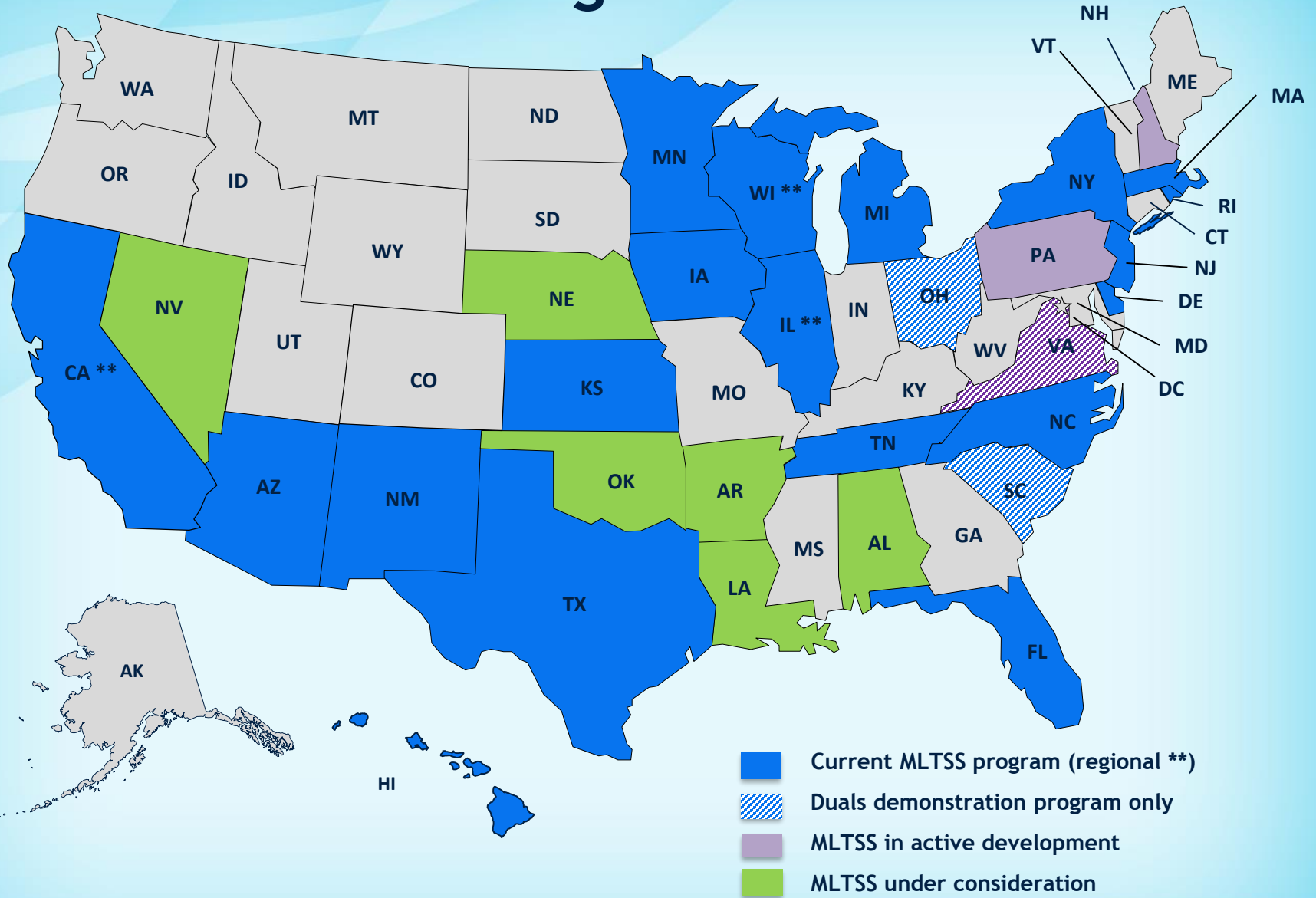
- MLTSS is the delivery of long term services and supports (either state plan or waiver services) through capitated Medicaid managed care plans
- Long term services and supports can include nursing facility services as well as home and community-based services (personal assistance, meals, etc.)
- In many cases, health plans are covering medical services as well, which provides a comprehensive delivery system for beneficiaries

MLTSS Programs - 2010



Source: Truven Health Analytics, 2012

MLTSS Programs - 2016



Source: NASUAD 2015 survey; CMS data

CMS Requirements for MLTSS Programs

- Guidance issued in 2013 with 10 key ‘elements’ for successful MLTSS programs; now incorporated into Medicaid managed care regulations (May 2016)
- Principles:
 - Consumers need support and education throughout their experience in the MLTSS program.
 - Support is more readily accepted and trusted from an independent and conflict-free source.
- States must create an advocate (or ombudsman) for consumers receiving LTSS; states have option to extend assistance to other managed care enrollees.

LTSS “Ombudsman” Program

- System design options
 - State-managed (ideally outside Medicaid agency)
 - *Embed function within State Long Term Care Ombudsman Office*
 - Contracted to non-profit
- Identification of trends, patterns critical part of MCO monitoring
 - What MCOs are getting most complaints?
 - What topic(s) are most frequently asked about?
 - Are there regional/county-based differences?

Current Status of MLTSS ‘Ombudsman’

	State	Authority	Provider
1	Arizona *		
2	California	FAD	Legal Aid of San Diego with partners d/b/a/ Health Consumer Alliance
3	Delaware	1115	DE Dept. of Health and Human Services/LTCO
4	Florida	1915(b)	FL Dept of Aging/LTCO
5	Hawaii	1115	Hilopa‘a Family to Family Health Information Center
6	Illinois	FAD	IL Dept. of Aging/LTCO
7	Iowa	1915(b)	IA Dept. of Aging/LTCO
8	Kansas	1115	KS Dept. of Aging and Disability Services
9	Massachusetts	FAD	Disability Policy Consortium/Health Care for all d/b/a/ OneCare Ombudsman
10	Michigan	FAD	MI Office of Aging Services/LTCO
11	Minnesota *		
12	New Jersey *		
13	New Mexico	1115	Decentralized – no formal state office
14	New York	1115/FAD	Community Services Society of NY d/b/a/ Independent Consumer Advocacy Network (ICAN)
15	North Carolina *		
16	Ohio	FAD	OH Dept. of Aging/LTCO
17	Rhode Island	FAD	RI Parent Information Network d/b/a Healthcare Advocate
18	South Carolina	FAD	SC Office on Aging/LTCO
19	Tennessee *		
20	Texas	1115/FAD	TX Health and Human Services Commission
21	Virginia	FAD	VA Dept. of Aging and Rehabilitative Services/LTCO
22	Wisconsin *		BOALTC/LTCO (for elderly)/Disability Rights Wisconsin (for people with disabilities)

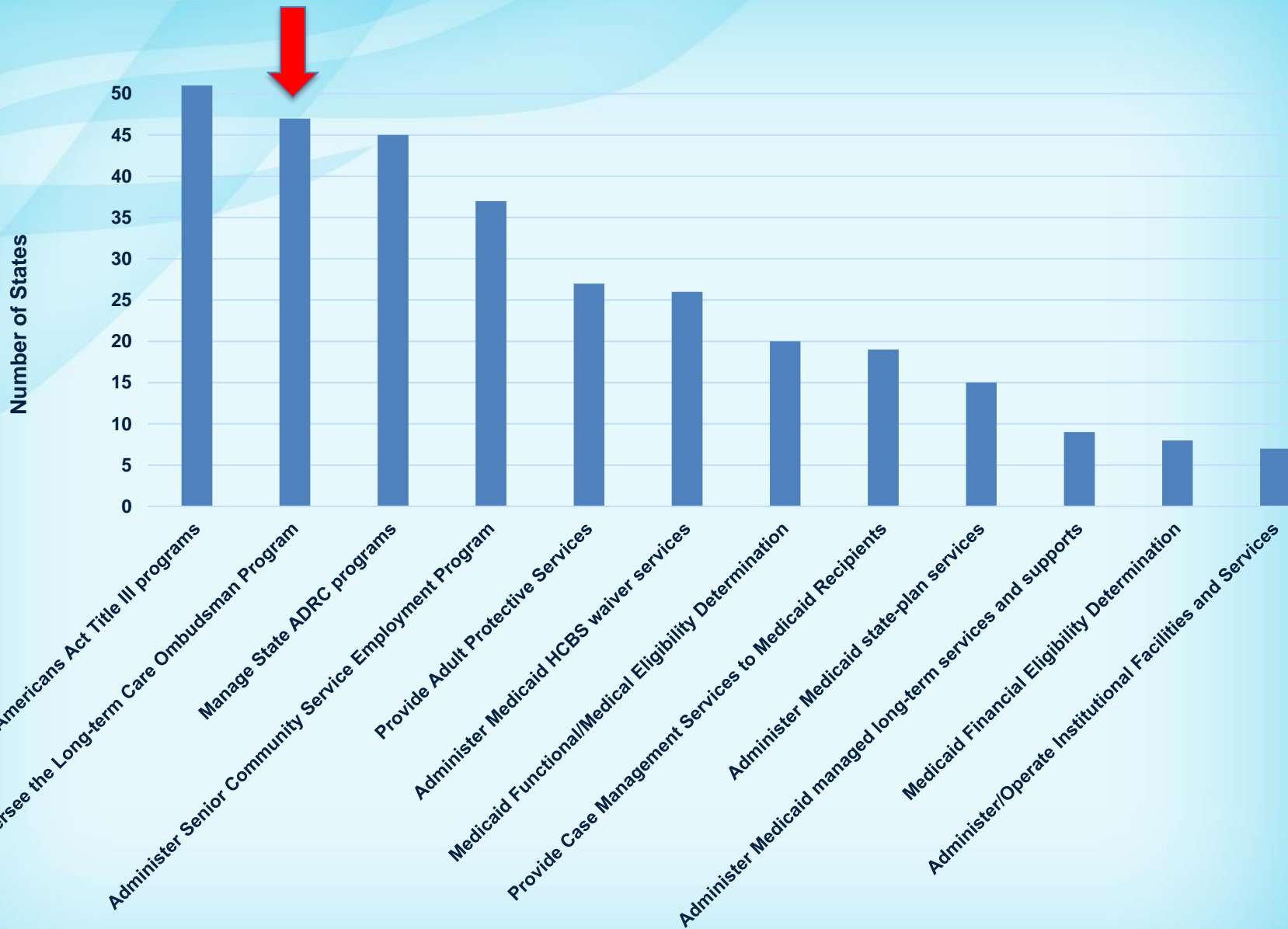
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These states had MLTSS programs in existence prior to the issuance of CMS guidance in 2013; will have to come into compliance by 7/1/18



Data from the NASUAD 2017
State of the States in Aging
and Disability Survey

Programmatic Responsibilities of the State Agency



Top Priorities for Aging and Disability Agency Leadership

- Ensuring Compliance with the Medicaid Home and Community-based Services Regulation
- Adult Protective Services and Elder Justice
- Improving Quality Across Programs
- Managed Long-Term Services and Supports
- Implementing the Long-term Care Ombudsman Regulation
- Addressing Senior Hunger, Nutrition, and Food Insecurity
- Services for Individuals with Alzheimer's and Related Dementia



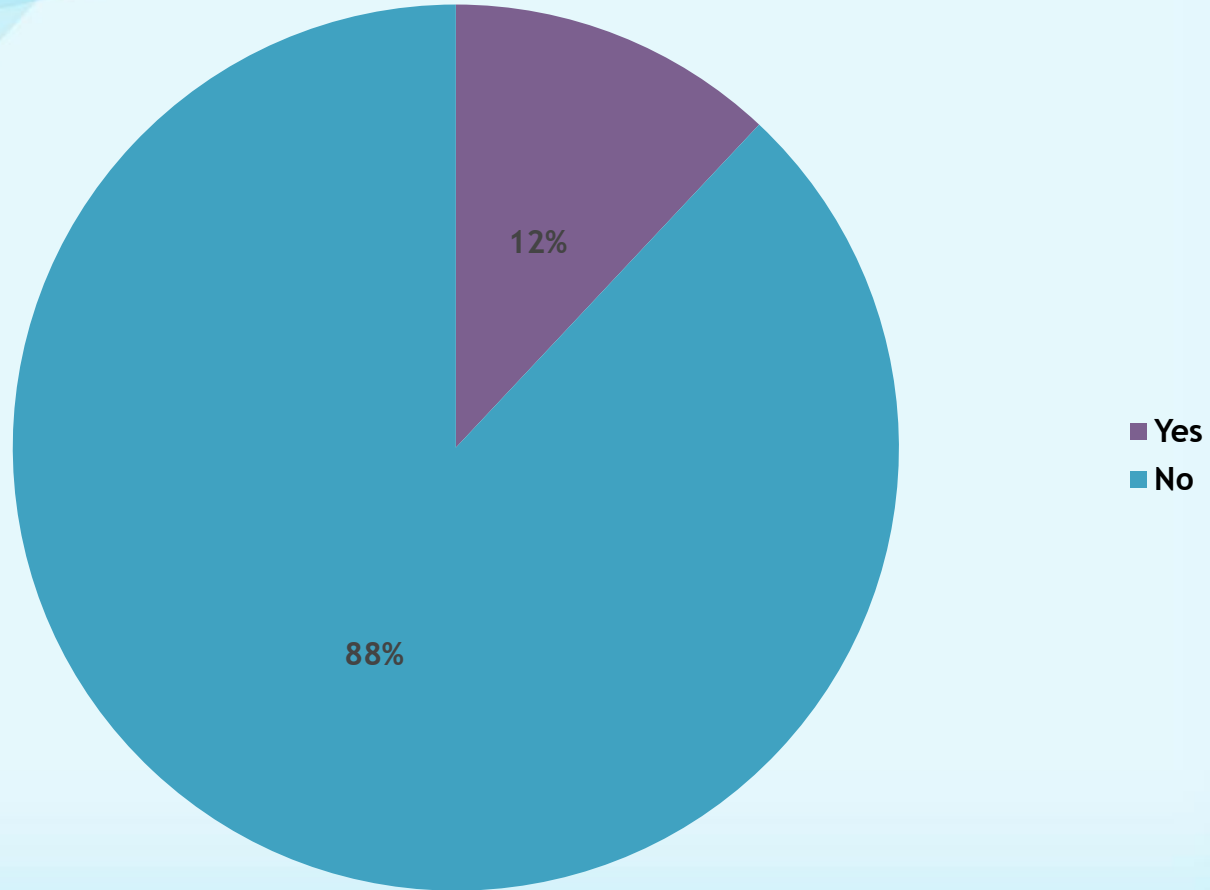
Implementing the Long-Term Care Ombudsman Regulation

- 7 states reported potentially having to restructure their SLTCO program due to provisions in the LTCO final rule
 - Of these, 2 states reported already undergoing a reorganization
 - Other possible reorganizations included transitioning the program out of the aging agency and
 - Working with AAAs to establish firewalls to avoid COI

Implementing the Long-Term Care Ombudsman Regulation

- 8 states reported possible challenges in implementing sections of the rule, including:
 - Responsibility for certain LTCO staff but lacking formal control measures
 - Provisions related to access to legal counsel for the program
 - Ensuring proper firewalls between the LTCOP and APS
 - Updating state laws to reflect LTCO being exempt from mandatory reporting policies

Does your SLTCOP utilize Medicaid administrative match as a funding source?





For more information, please visit: www.nasuad.org

Or call us at: **202-898-2583**

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Trends in State Long-Term Care Ombudsman Programs:

Louise Ryan, MPA,
Ombudsman Program Specialist, Administration for Community Living
August 31, 2017



Program Description

Each State has one State Long-Term Care Ombudsman who heads the “Office of the State Long-Term Care Ombudsman”

- The State LTC Ombudsman has the authority to designate representatives of the Office (staff and volunteers)
- Nationally, there are:
 - 1,300 FTE** State LTC Ombudsman and staff
 - 7734** volunteers who are designated as representatives of the Office and
 - 3760** other volunteers
- Serving residents living in 16,403 nursing homes and 58,404 board and care & similar homes (potentially over 3 million Individuals based on bed capacity)

Source: ACL/Administration on Aging, FFY 2015



Complaint Processing

- Completed work on 129,559 cases
 - regarding 199,238 complaints (specific issues)
 - 74% were partially or fully resolved to the satisfaction of the resident
- Nursing facility-related: 72%
- Board and care/assisted living-related: 26%
- Other settings: 2%



Preventative service

In addition to working to resolve individual-level complaints, LTC Ombudsman programs work to prevent problems from occurring. Their approaches include:

- unannounced visits to facilities by staff and volunteers - **27,559** nursing facilities and board and care settings received **quarterly visits**;
 - **67%** of all nursing homes and
 - **27%** of all board & care homes;
- support the work of resident councils and family councils - attending **22,281 resident council** meetings and
- **2,073 family council** meetings;

Preventative service

- serve as a credible source of information related to long-term services and supports for residents, their families and other representatives, as well as for facility staff - providing over **520,270** instances of information and assistance;
- Trained long-term care facility staff - **5,054** sessions;
- Educated the community - **10,821** sessions.

The National Ombudsman Reporting System (NORS) data can be found on <http://www.agid.acl.gov/> and http://ltcombudsman.org/omb_support/training/nors

A successful ombudsman program 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

LTC Ombudsman Program as an Elder Justice Service

- LTC Ombudsman programs investigate and work to resolve abuse, neglect, and financial exploitation complaints for/with the consumer
 - worked to resolve over 15,933 abuse, neglect, exploitation complaints for/with abuse survivors (FY 15)

- Person-centered complaint resolution for abuse survivor



- not the official abuse investigators (i.e. determining whether abuse occurred for criminal, protective or regulatory action)
- OAA disclosure limitations: LTC ombudsman programs are not mandated abuse reporters (if resident does not want issue reported)
- LTCOP rule provides guidance when a resident is not able to consent and has no representative
- coordinate with official abuse investigators for person-centered resolution as permitted (e.g., law enforcement, licensing and survey, adult protective services)

Some Key Distinctions between LTCO and APS

	LTC Ombudsman Program	Adult Protective Services
Mission	<ul style="list-style-type: none"> -Resolve complaints to satisfaction of the resident -Improve the quality of care and quality of life of residents 	<ul style="list-style-type: none"> -Stop abuse, neglect and exploitation; -Protect the victim
Role of individual self-determination	Resident-directed advocate; represents resident interests	Stress victim self-determination, but protect victim even if not consistent with individual wishes
Abuse, neglect, exploitation	<ul style="list-style-type: none"> -Respond to any resident-related complaint (ACL provides 119 complaint types) -8% abuse/neglect/exploitation, 2014 	Respond to reports of abuse, neglect, exploitation (and self-neglect in some states)
Purpose of “investigation”	<p>RESOLVE:</p> <ul style="list-style-type: none"> -<u>Not</u> the official finder of fact; do not “substantiate” abuse -“Verify” to determine whether sufficient information to continue toward resolution -Gather information in order to resolve the problem, not for any legal proceeding 	<p>DETERMINE:</p> <ul style="list-style-type: none"> -Official finder of fact -Determine whether reported allegation occurred -Many states use the term “substantiate” -If determined, case often referred to law enforcement for prosecution
Systems-level advocacy	Older Americans Act requires.	Not a responsibility (may be prohibited by state law)

The case of the missing guardian

- Nursing facility unable to reach the private, professional guardian for 15 residents
- The Ombudsman program visited the residents, several of whom were able to be interviewed.
- The guardian had moved hundreds of miles away and was failing to fulfill her duty to meet resident needs.
 - Some residents **owned no shoes**; some **could not access their personal funds or had missing funds**; and the **guardian was not participating in resident care plans**.
 - The Ombudsman program **identified similar situations with the same guardian** while visiting another nursing facility.
 - Residents in both facilities were at **risk of losing Medicaid eligibility** and of discharge for non-payment.
 - The Ombudsman program notified the judge who had appointed the guardian and filed complaints with the Judicial Branch Certification Commission (JBCC), which certifies private, professional guardians.

The case of the missing guardian

- The Ombudsman program provided needed evidence as the investigation proceeded and persistently followed up to ensure the investigation did not slip through the cracks as the compliance investigator changed.
- **Assuring facility management that the Ombudsman program was tracking the case was essential to protecting the residents from discharge**, for which the facilities had a valid reason to give 30 day notice.
- Upon request of the judge, the Ombudsman program convened a meeting of stakeholders to develop options for the residents.
- Ultimately, the court, **based largely on Ombudsman program evidence, replaced the guardian, put in place more limited guardianship orders, and/or fully restored the rights of each resident.** The JBCC imposed a **penalty on the guardian and refused to renew the guardian's certification.** Referral was made to the district attorney for consideration of criminal prosecution of the guardian.
- **After ten months of intensive work, the residents' financial and personal situations were stabilized.** Residents had their basic needs met and were able to access their own money; and the facilities were being paid, resolving the risk of discharge.

Top Five Complaints FY 2015

Nursing Homes

- ✓ Discharge/eviction
- ✓ Failure to respond to request for assistance
- ✓ Not being treated with dignity or respect
- ✓ Medications – administration, organization of
- ✓ Resident conflict



Board & Care

- ✓ Medications– administration, organization of
- ✓ Food service
- ✓ Discharge/eviction
- ✓ Not being treated with dignity or respect
- ✓ Equipment/building issues

Troubling problem of eviction

Causes:

- Increased complexity of residents' needs, especially with regards to supporting individuals with dementia or persons with other behavioral health needs, which require additional staff training to learn best approaches.
- Inappropriate placement in institutional settings, rather than community based settings with supportive services.
- The lack of affordable housing along with limited waiver benefits for mental or behavioral health needs continues to challenge many states. The inappropriate placement and subsequent eviction often leads to a lengthy hospital stay in spite of the hospital's efforts to find appropriate housing, services and supports.
- Family and resident lack of understanding of Medicaid requirements which has made some nursing home residents ineligible and therefore lacking a payment source; or
- Financial exploitation, where a responsible party chooses to not pay the bill.

Media attention - evictions

“What if you had to go to the hospital, and when it came time to return home, your landlord said you couldn’t move back in? Across the country, thousands of nursing home residents face that situation every year.”

Lead in a recent National Public Radio story of a California man who stayed in a hospital for many months because his nursing home refused to readmit him (Jaffe 2016).

- NPR “This is not just a California issue. Nationwide, between 8,000 and 9,000 people complain to the government about nursing home evictions every year. It's the leading category of all nursing home complaints, according to the federal Administration for Community Living.”

<https://www.nytimes.com/2017/01/27/health/nursing-home-regulations.html? r=0>

- Excerpts: “. . . Long-term-care ombudsmen report frequent complaints of “dumping”:
A nursing home sends a resident, often someone whose dementia causes problematic behavior, to a hospital. Then, after she is discharged, the home won’t readmit her...”

Systems level strategies to combat evictions

- In response to these complaints, Ombudsman programs undertake strategies to prevent involuntary discharges, including:
 - seeking legislative and regulatory changes,
 - promoting coordination among agencies responsible for serving people who need LTSS and behavioral health services,
 - working with the state Medicaid agency to reduce barriers for individuals applying for Medicaid, and
 - referring complaints to the state licensing and certification agency regarding improper discharge planning.
 - training hospital discharge planners.
 - One Ombudsman successfully requested the state legislature to create a “discharge specialist” to thoroughly address each discharge notice received, enabling focused attention to residents and their families and assisting with appeals and other remedies.

Revised Nursing Home Requirements

- The revised nursing home regulation at 42 CFR 483.15(c)(3)(i) requires, in part, that before a facility transfers or discharges a resident, the facility must “notify the resident and the resident’s representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand....”

Revised NH Requirements (continued)

- The facility must also “...send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.” Sending a copy of the notice to a representative of the Office of the State Long-Term Care (LTC) Ombudsman provides added protection to residents and ensures the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges.

Revised NH Requirements (continued)

- Reinforces the requirement that when a nursing facility decides to discharge the resident while the resident is still hospitalized, the facility must send a notice of discharge to the resident and resident representative and send a copy of the discharge notice to a representative of the Office of the State LTC Ombudsman (at the same time they send a notice to the resident and resident representative).

Impact of this new requirement

- State Ombudsman programs are developing processes to handle the volume of notices
- Typically includes a triage approach
- Guidance from CMS has provided some clarification, i.e. facilities do not need to send notice of a voluntary discharge, if a resident transfers to a hospital and is not discharged, the facility can send a list of resident names
- Data on the impact will not be available until next year; anticipate an increase in complaints.

LTC Ombudsmen as Partners

Ombudsmen recognize that systems change requires partnerships:

Common Partners include:

- ✓ Protection & Advocacy Systems to address improvements to laws & regulations, develop reports and participate on task forces on abuse and neglect, facility closures, conduct joint investigations.
- ✓ Regulatory and providers - often partner on training and to promote initiatives such as reducing inappropriate use of antipsychotic medications in nursing homes. May work with regulatory to improve laws and regulations.
- ✓ Centers for Independent Living to coordinate nursing home transitions, sometimes as part of Money Follows the Person

LTC Ombudsmen as Partners (continued)

Common Partners include:

- ✓ “Senior Lobby” or “Silver Haired Legislature” associations – partner on legislative and policy issues that impact older adults, including long-term care services and supports
- ✓ Statewide Resident Council Associations (in a few states) – quality of facilities, especially nursing homes, increase of personal needs allowance
- ✓ Developmental Disability Councils – addressing systems issues such as closures of state operated Intermediate Care Facilities for IADD, guardianship and health care decision making policy, access to community supports and services

Systems Advocacy - Partnerships

- Participation in multi-disciplinary task forces to develop comprehensive strategies to prevent and respond to abuse, neglect and exploitation.
- Recommending laws and government actions to improve on the services provided in long-term care facilities, including consumer protections such as the development model disclosure standards to assist individuals to compare services prior to admission to a facility.
- Training of facility staff on abuse and neglect prevention, resident rights and chemical and physical restraint reduction practices.

Partnership example

Often we receive calls from the facilities regarding residents receiving mental health services who are having behavioral health incidents. The facility staff frequently lack appropriate training to de-escalate the behavior and as a last resort will initiate discharge paperwork. We have worked with the regulatory agency to establish a Resident Care Committee to discuss and address issues related to the residents and facility staff. We have used this forum to speak to inadequate staff training. This has resulted in strengthened regulations on the required training for staff, dialogue with mental health on training needs, as well as training provided by mental health professionals. This is slowly resulting in decreased calls related to discharge due to behavior health incidents.

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*

Additional Resources

National Ombudsman Resource Center – www.ltcombudsman.org

Videos on the LTC Ombudsman Program –

Connecticut – Voices Speak Out Against Retaliation

http://www.youtube.com/watch?v=feoQjIW3_bc

Washington State LTC Ombudsman Program

<http://www.youtube.com/watch?v=20rzmCSDXU0>

Ohio – the LTC Ombudsman Stepped Up for Me

http://www.youtube.com/watch?v=UI0G-G6U_ac

New York

<http://www.youtube.com/watch?v=Ylb9LrKtYZQ>

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