Department of Health and Human Services

ADMINISTRATION ON AGING
AND
OFFICE OF
INSPECTOR GENERAL

STATE IMPLEMENTATION OF THE OMBUDSMAN REQUIREMENTS OF THE OLDER AMERICANS ACT

APRIL 1993

ADMINISTRATION ON AGING

The Administration on Aging (AoA) is the principal Federal agency designed to carry out the provisions of the Older Americans Act (OAA). It advises the Secretary of Health and Human Services and other Federal agencies on the characteristics, circumstances and needs of older individuals. Further, it develops policies, plans, and programs designed to promote their welfare.

AoA administers three grant programs under the Older Americans Act. The largest program -- Title III of the Act -- consist of formula grants to States to establish State and community-based programs for older individuals with the purpose of preventing the premature institutionalization of older individuals. The second program -- Title VI -- consists of discretionary grants with the same purpose as Title III, but to meet the unique needs of older Native Americans. The third program -- Title IV -- is also discretionary. Its purpose is to fund research, demonstration, and training activities to elicit knowledge and techniques to improve the circumstances of older Americans. (The 1992 Amendments to the OAA created a fourth program -- Title VII -- which provides funds for State activities to protect the rights of vulnerable older people. Prior to the 1992 Amendments, Title III of the OAA provided the funds for these activities.)

OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services' (HHS) programs as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by three OIG operating components: the Office of Audit Services, the Office of Investigations, and the Office of Evaluation and Inspections. The OIG also informs the Secretary of HHS of program and management problems and recommends courses to correct them.

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the Department, the Congress, and the public. The findings and recommendations contained in these inspection reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs.

THIS REPORT

This report is the result of a joint effort between AoA and OIG/OEI to assess the implementation of Title III of the Older Americans Act. OIG staff in the New York and Dallas regional offices provided technical support to the joint project. AoA staff in New York and Dallas directed the project with all regional offices participating in the development of instruments and data collection.

For additional information, please contact:

AoA	John Diaz, Regional Program Director-Dallas	214-767-2971
OIG	Jack Molnar, Project Leader-New York	212-264-1998

Department of Health and Human Services

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STATE IMPLEMENTATION OF THE OMBUDSMAN REQUIREMENTS OF THE OLDER AMERICANS ACT

APRIL 1993 OEI-02-91-01516

EXECUTIVE SUMMARY

PURPOSE

To review State Units' on Aging (SUA) implementation of the ombudsman requirements of Title III of the Older Americans Act (OAA).

BACKGROUND

In an effort to strengthen its stewardship of the OAA, the Commissioner of Administration on Aging (AoA) requested technical assistance from the Office of Inspector General (OIG) in designing a review of their primary Title III grantees -- SUAs. After reviewing traditional and current ombudsman activities and discussing potential approaches for future efforts, we agreed that a review of individual States would be instituted in such a way as to provide the Commissioner with an overview of how States are implementing key components of Title III. Since this review was conducted, the Long-Term Care Ombudsman Program has been moved from Title III to Title VII of the OAA. All references in this report are to the program as it was defined under Title III, prior to the enactment of the 1992 Amendments of the OAA. In order to conserve limited travel funds the reviews would be conducted on a sample of States and would focus on only five programmatic areas -- stewardship, targeting, ombudsman, nutrition, and financial management.

This report on Ombudsmen addresses the requirement that States establish an Office of Ombudsman to investigate and resolve complaints regarding older individuals residing in long-term care facility. It focuses on issuing guidance on and monitoring implementation of the key ombudsman requirements of Title III of the OAA, including the area planning process.

METHODOLOGY

The reviews were conducted in a stratified, random sample of 20 States based upon the population of individuals over 60 years of age in each State. In the first step of the sampling process, States were divided into four strata based upon the number of older individuals in each State. In the second step, five States were selected from each stratum. This stratified, random sample permits us to generalize findings from the 20 sample States to the Nation.

FINDINGS

While The Organization Of State Offices Of Ombudsman Varies Only Slightly, Staffing Varies Greatly

- Most Ombudsmen are located in the State agency, use sub-State offices, and have laws establishing their authority
- Professional staffing is directly proportional to the population of older Americans

Coordination Between Ombudsmen And Other State Agencies Exists, But With A Few Problems

- Most Ombudsman use joint meetings, referrals, and written agreements to coordinate activities with other agencies
- One-quarter report coordination problems, usually with adult protection services or the legal services developer

While Ombudsman Authorities To Perform Their Jobs Are Based In State Law, Regulation, Or Procedure; There Are Some Problems

- Some Ombudsmen lacking a State law, rely on the Older Americans Act for authority to perform their duties
- Half of the Ombudsmen have reported difficulty with gaining access to LTC facilities

Long-Term Care Facility Visitation Varies Significantly, Possibly Due To Staffing Concentrations

- Only half of the Ombudsmen visit all of their nursing homes annually
- Most Ombudsman include licensed board and care facilities in their visitation program

Ombudsmen Have Many Methods To Increase Their Visibility

- Virtually all Ombudsmen use posters in LTC facilities and the media to increase their visibility
- Complaints usually come to Ombudsmen from family and friends, or during visits

Some States Cite Problems With Legal Counsel

- One-third of Ombudsmen report problems with availability of legal counsel
- Ombudsmen must compete with other State agencies for State attorneys or contract out for legal services

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INTRODUCTION

PURPOSE

To review State Units' on Aging (SUA) implementation of the ombudsman requirements of Title III of the Older Americans Act (OAA). (Since this report was conducted, the 1992 Amendments to the OAA have moved the Ombudsman program from Title III to Title VII of the OAA.) In this report, the term "ombudsman" refers to the requirement that States establish an Office of Ombudsman to investigate and resolve complaints regarding older individuals residing in long-term care facilities.

BACKGROUND

Under the OAA, the Administration on Aging (AoA) serves as the principal Federal advocate for older individuals, providing national leadership in the development of programs to address their needs. Through Title III of OAA (Grants for State and Community Programs on Aging), AoA encourages and assists SUAs and area agencies on aging (AAAs) to implement a system of coordinated community-based services to prevent the premature institutionalization of older individuals by allowing them to remain in their own community.

Under Title III, AoA distributes approximately $765 million in formula grants to States based on the age 60+ population within each State. The SUAs use about 5 percent of the grant on administration and then fund AAAs, who then contract for the supportive services, nutrition services and multipurpose senior centers. The single largest component of Title III, the nutrition program, provides approximately $450 million for congregate and home-delivered meals. Other key program components include supportive services (i.e., access services, in-home services and legal assistance) and the Ombudsman Program which serves as an advocate for residents in long term care facilities.

One of AoA's major administrative responsibilities is to provide stewardship over the States' implementation of the Title III program. However, AoA's capacity to carry out its stewardship responsibilities declined substantially during the 1980's due to a significant reduction in resources. More specifically, AoA sustained a 47 percent reduction in staff and 75 percent reduction in travel funds. Each regional office had only $2,000 annually for travel. Because they could not monitor SUAs, AoA became further and further removed from the activities of the SUAs and their area agencies on aging.

In efforts to strengthen its stewardship of the OAA, the Commissioner of AoA requested technical assistance from the Office of Inspector General (OIG) in designing a review of their primary Title III grantees -- SUAs. In response to the Commissioner's request, OIG staff met with key AoA headquarters and regional staff to identify traditional and current stewardship activities and to discuss potential

approaches for future efforts. As a result, we agreed that the review of individual States would be instituted in such a way as to provide the Commissioner with an overview of how States are implementing key components of Title III. The OIG agreed to assist AoA in developing national, standardized review instruments for key components of Title III and in writing a report summarizing States' implementation of the Act. We also agreed that in order to conserve limited travel funds the reviews would be conducted on a sample of States and would focus on only five programmatic areas -- stewardship, targeting, ombudsman, nutrition, and financial management.

Designing the review began with the meeting of a review team of OIG and selected AoA regional staff. They brainstormed approaches, identified Federal reporting and operating requirements for SUAs and AAAs, and drafted instruments containing the review questions and criteria. The draft instruments were shared with AoA headquarters staff and each regional office for comments, and then revised to reflect comments.

The OIG/AoA review teams pre-tested the instruments and data collection methodology by conducting reviews for each of the five instruments in six States located in four different Federal regions. The pre-test identified that a great deal of time was lost explaining criteria (interpreting law and regulation) and searching for documentation. Accordingly, the review team modified each of the instruments and changed the data collection methodology. The most significant change to the methodology required the sharing of the review instruments with the States prior to the site visit in the belief that if States are aware of and understand the review criteria being used during the review, they will be better prepared to provide required documentation and to discuss specific issues.

METHODOLOGY

The reviews were conducted in a stratified, random sample of 20 States based upon the population of individuals over 60 years of age in each State. These are the same data used to allocate Title III funds among States. In the first step of the sampling process, States were divided into four strata based upon the number of older individuals in each State. In the second step, we selected five States from each stratum. This stratified, random sample permits us to generalize findings from the 20 sample States to the Nation. Table I indicates those States selected for the review process (See Table I).

TABLE I

SAMPLE STATES			
Stratum 1	**Stratum 2**	**Stratum 3**	**Stratum 4**
California Pennsylvania New York Texas Florida	Michigan Indiana Massachusetts Georgia North Carolina	Wisconsin Colorado Oklahoma Maine Oregon	New Hampshire North Dakota Nevada District of Columbia Montana

The data collection was conducted in two phases -- an AoA regional office desk review and an on-site review at the SUA. During the desk review phase, we looked at program instructions. Following the desk review, each State was sent a proposed agenda for the site visit, copy of the ombudsman review instrument (Appendix A), and the findings from the desk review to be discussed during the site visit. The review instrument focused on the nature and operation of the Office of Ombudsman and on key requirements of Title III. The instruments also focus on the issues of SUA operating procedures and on training and technical assistance activities.

We entered data from the ombudsman review instruments into one database that contained the responses to the open- and closed-ended questions on the instrument. The percentages cited in this report are based on the responses to specific questions contained in the review instrument. The responses are weighted to reflect the sampling plan and are projected to the Nation. The precision at the 90-percent confidence intervals vary for each question from plus or minus 6 to 21 percent based upon the nature of the question (categorical or continuous) and the number of respondents to each question.

FINDINGS

WHILE THE ORGANIZATION OF STATE OFFICES OF OMBUDSMAN VARIES ONLY SLIGHTLY, STAFFING VARIES GREATLY

States have taken similar approaches in setting-up their Offices of Ombudsman. Most Ombudsman offices are located in the SUA, while 18 percent are located in either independent agencies or in other agencies with their relationship to the State Agency established in a contract or memorandum of understanding. Most Ombudsman offices are not located in the agency responsible for licensing long-term care (LTC) facilities. Only four percent of States are in a licensing agency. In these instances, the licensing agency is an umbrella human service agency.

States (76 percent) that utilize sub-State Ombudsmen have different organizational approaches in establishing these offices. Half of the State Ombudsmen who use sub-State Ombudsmen contract out to the area agencies on aging (AAAs) to act as the sub-State Ombudsman. Twenty-nine percent of the time they contract with other community-based organizations. Some States (18 percent) do not contract out. For these, State employees act as the sub-State Ombudsmen.

All Offices of Ombudsman have State laws that outline their responsibilities and authorities. Also, all of the State Ombudsmen work full-time as the Ombudsman. However, in one instance, two part-time employees share the full-time position. The staffing levels for each State differ greatly. Total statewide staffing (professional, support and volunteer) ranges from 3 to 1323, for an average of 216. The median number of staff is 58, which indicates most are smaller than the average. Full-time professional staff range from 1 to 65, with an average of 14. Each State has an average of 16 part-time professional staff, with a range from 1 to 131. On the whole, Ombudsman offices do not have many support personnel. They average only 2.5 clerical or support staff. Lastly, 45 percent of Ombudsmen rely on full-time staff and 55 percent on part-time staff.

Staffing Levels Vary By Population

The number of professional statewide staff tends to correlate with the 60-plus population of the State, with a few exceptions. Generally, States with a smaller number of older individuals have a lower number of professional staff. States whose 60-plus population is under half a million have six or less full-time professional staff members. Those with an older population of over a million employ at least ten full-time professionals. One State, with one of the largest older populations, has 65 full-time professionals. However, two States are an exception to this pattern. They show three and four professional staff members respectively but have older populations of 2.4 and .9 million.

The number of volunteers statewide does not, however, correlate with the 60-plus population of a State. Unlike the relationship between professional staff and 60-plus population, some States that have older populations under half a million have more volunteers than States with older populations of over 1.5 million. One State, with a 60-plus population of slightly over a million has the most volunteers (1323). Another State which has a 60-plus population of 3.2 million has only 455 volunteers. One State has 50 volunteers and a 60-plus population of 102,984, while another State has 59 volunteers and an older population of 1.5 million.

Staffing Levels Do Not Effect Visitation Rates

The size of a State's staff does not insure that all its nursing homes will be visited annually. States that visited 100 percent of the nursing homes in their States varied greatly in the amount of professional staff and volunteers. One, which visited all nursing homes, has 22 professional staff (full and part-time included) and 1,300 volunteers. Another, with three professional staff members and no volunteers, also visited all its nursing homes. This State contracts with its AAA's to provide sub-State Ombudsman programs; these programs visit the nursing homes. Some States with large staffs do not visit all of their nursing homes annually. One only visited half of its nursing homes although it has 57 professionals and 455 volunteers.

As with nursing homes, the size of the staff does not insure that all of a State's licensed board and care facilities will be visited. States are not currently required to visit these facilities (unless a complaint against a facility is received by the Ombudsman), but most make some visits. The States that visited all their board and care facilities had some of the smaller professional staffing levels (3 to 54 members). In contrast, some States with larger staffs did not visit any board and care facilities.

Volunteers

Eighty percent of the States use volunteers in their Ombudsman program. The number of volunteers range from 3 to 1,300, for an average of 246. While all States that use volunteers train them, nineteen percent do not formally certify them. Generally, volunteers are certified after they received training and after it has been determined that they do not present a conflict of interest. Some must pass a written exam, while others sign contracts stating that they understand their responsibilities.

Ombudsmen who use volunteers would like more volunteers and believe a more active recruitment and screening process is needed. The States also mention the need for better supervision over and better retention tactics for volunteers. They feel that more training may help to improve retention. Also, having funds for administrative support and for reimbursement of expenses that the volunteers incur (i.e., mileage to and from the LTCs, lunch) would help. Finally, some of the States that do not certify volunteers believe a certification process would improve the quality of volunteers.

The use of volunteers has helped Ombudsman programs. Most States indicate that volunteers allow for more visits to LTCs. They help to handle more resident complaints in a cost effective, timely manner. The increased visitation to the LTCs has helped give the Ombudsman programs greater visibility with the residents and staff. This, in turn, has helped both groups to better understand residents' rights.

The States that do not use volunteers (20 percent) offer three reasons: their State legislatures prohibit the use of volunteers; their AAAs are not convinced that volunteers can do the job; or they believe it is too difficult to train and manage volunteers.

COORDINATION BETWEEN OMBUDSMEN AND OTHER STATE AGENCIES EXISTS, BUT WITH A FEW PROBLEMS

Coordination

The Older Americans Act requires the Ombudsman Program to coordinate activities with other agencies and individuals. These include protection and advocacy agencies for individuals with developmental disabilities and mental illness, adult protective services, long term care licensing agencies, and the Legal Service Developer. The Ombudsmen rely on a few approaches to meet these requirements; in many situations they use more than one of these approaches to facilitate coordination. Some of the more common approaches for coordination are joint meetings, joint training, memoranda of understanding (MOU), and referrals.

Joint meetings (37 percent) and MOUs (33 percent) are the most often used methods of coordination between the Ombudsmen and the protection and advocacy agency for individuals with developmental disabilities and mental illness. Joint training between the agencies is used about a quarter of the time. Eighteen percent of the Ombudsman offices report that they refer cases to the protection and advocacy agency. (Thirteen percent of the Ombudsmen are actually located within the same agency that houses the protection and advocacy agency).

Most Ombudsmen (58 percent) report using referrals in their coordination with adult protective services. Almost half (46 percent) use joint training to accomplish coordination, and 27 percent have MOUs that establish the relationship between the two agencies.

Sixty-four percent of the Ombudsmen use joint meetings to coordinate operations with long term care (LTC) licensing agencies. Other methods are referrals (26 percent), MOUs (23 percent), and joint training (19 percent).

The Ombudsmen use a few methods to coordinate with the Legal Service Developer (LSD). For 10 percent of the States the LSD is the Ombudsman's attorney, and for 28 percent the Ombudsman and the LSD are co-located in the Ombudsman programs.

For those Ombudsmen not co-located with the LSD, joint training is frequently used (32 percent) to achieve coordination.

State Ombudsmen also coordinate with citizen advocacy groups. This coordination is achieved mostly by public education by the Ombudsmen (43 percent). The Ombudsmen also hold joint meetings with such groups (32 percent). Citizen groups serve as advisory committees to 30 percent of the States. Often these two groups meet to discuss nursing home reforms. This type of coordination on legislative matters has reportedly helped form a good working relationship between the two groups.

Problems

One quarter of all Ombudsmen report problems with coordination. They tend not to have formal agreements with the developmental disabilities protection and advocacy systems and, therefore, find coordination difficult. Some report making referrals by phone and then not receiving return calls. One State is particularly frustrated. Its Ombudsman feels that the protection and advocacy agency has the funds to actively work in the nursing homes, but chooses not to since the agency feels there are not many developmentally disabled and mentally ill residents.

Some Ombudsmen (14 percent) report problems with coordination with adult protective services. A common complaint is that adult protective services in some of these States do not have enough funds to conduct investigations in nursing homes. Nursing homes are not a priority because adult protective services focuses on family abuse. Since these States lack formal agreements with adult protection services, it is hard to make LTC facilities a priority. One Ombudsman believes that the adult protective service program in its State does not consider nursing homes to be part of its domain. Protective Services believes that the nursing homes should deal with questions of abuse.

Twenty-three percent of the Ombudsmen report they have no LSD in their State. They consider the lack of a LSD a problem.

WHILE OMBUDSMAN AUTHORITIES TO PERFORM THEIR JOBS ARE BASED IN STATE LAW, REGULATION, OR PROCEDURE; THERE ARE SOME PROBLEMS

The OAA requires the Ombudsmen to have certain authorities. These authorities help them to perform their duties by resolving conflicts of interest, protecting staff from law suits, and by giving staff access to LTC facilities and LTC residents' files. Ombudsmen tend to use State laws, procedures and regulations to meet the requirements of the OAA. However, some report problems in meeting these obligations.

The OAA requires that the State ensure that "no individual involved in the designation of the LTC ombudsman" or "that no officer, employee, or other representative of the

(Ombudsman) Office is subject to a conflict of interest." To guarantee no conflict, the Ombudsmen use State procedures, which may include employees filing forms stating they have no conflict of interest (43 percent of the time). The remaining States have passed State regulations (31 percent) and State laws (17 percent) to cover this provision.

A representative of the Ombudsman office cannot be held liable for actions while acting in good faith in performing their official duties. Most States (80 percent) have passed laws to protect employees from liability. However, seven percent lack such protection and use insurance policies to protect Ombudsman staff. Thirteen percent of the Offices report problems with this issue, mainly the lack of a State statute specifically protecting Ombudsmen. Some of these States report State employees are covered simply because they are State employees, but the status of volunteers is questionable.

Seventy-three percent of the States have laws that make it unlawful for any person to willfully interfere with a representative of an Ombudsman office. However, five percent of the States don't have a State law and rely on the OAA to protect staff from interference. Many States (22 percent) have had problems with this provision. Some States simply do not have laws or regulations that would prevent willful interference. Other States use community access laws that do not provide as much protection as the OAA requires.

Ombudsman representatives are required to have full access to facilities and files to perform their duties. Eighty percent of the States have laws that specifically ensure access. Other States use State regulations to guarantee access. The laws and the regulations have not guaranteed easy access for Ombudsmen. Forty-eight percent of the States reported incidents where they have had difficulty with gaining access to a LTC facility. In a few cases, Ombudsmen used their sanction authority which resulted in fines for the facility. Fines ranged from $500 to $1,000. Following the fine, the Ombudsman was allowed into the facility. The local law enforcement agency has had to be brought in to gain access in some States. Ombudsmen have also talked to the administrator and, after explaining the Ombudsman's authority, gained access.

Both residents and the staff of LTC facilities need to be protected from retaliation for reporting a case to an Ombudsman. State laws (70 percent) and State regulations (18 percent) prohibit retaliation on residents and staff of LTC facilities who report violations to the Ombudsman. Further, Ombudsmen do not identify any complainant without their permission (and without due cause). State laws (46 percent), State procedures (26 percent), and State regulations (11 percent) guarantee a complainant's confidentiality. There have been instances when complainants have been identified. Thirty-seven percent of the States report incidents where they have identified complainants due to abuse, fraud, or court cases.

A resident's and Ombudsman's files are also confidential information. Fifty-seven percent of the States protect the confidentiality of files through State law. Other States use State procedures (22 percent) and State regulations (11 percent).

The OAA requires the State to provide Ombudsmen with sanction authority if any of these provisions are violated. Eighteen percent of the Ombudsmen report they do not have State authorized sanction authority. They consider this as a significant problem and feel they have no muscle backing them up if necessary. For those who have this authority, the authority is either legislated (58 percent) or regulated (18 percent). Thirty percent of Ombudsmen do report using their sanction authority.

LTC VISITATION VARIES SIGNIFICANTLY, POSSIBLY DUE TO STAFFING CONCENTRATIONS

Some Ombudsmen do not visit all of their LTC facilities. Only half of the Ombudsmen report visiting all of their nursing homes annually. Regarding these States, 38 percent visit at least annually and 53 percent visit at least quarterly. Another 9 percent manage to visit all facilities, but only because all facilities had residents who issued complaints that the Ombudsmen had to respond to. Among the States which do not visit all of their nursing homes annually, most (69 percent) visit at least 70 percent of them. The remaining States visit from a quarter to half of their facilities.

Some Ombudsmen say that visitation rates are a function of staffing and that staffing varies across their State. Accordingly, there are States that do not visit 100 percent of their nursing homes, but the homes they do visit are visited frequently. One large State only visits half its nursing homes at least annually, but they visit these half weekly. Another visits 70 percent of its nursing homes weekly, but does not visit the remaining 30 percent at all. Ombudsmen report that variation of staff across a State (i.e., some areas of the State are fully staffed while other parts are partially staffed) makes it possible for some areas to get weekly visits while other areas are not visited.

While Ombudsmen are not currently required (unless a complaint is brought against a facility) to visit licensed board and care facilities, many do make such visits. Eighty-nine percent include licensed board and care facilities in their visitation programs. Of those who include these facilities in their visits, 29 percent visit all of them and 13 percent visit at least 90 percent. Most of the remaining Ombudsmen visit less than a third of their board and care facilities.

Some Ombudsman patterns of visitation to licensed board and care facilities mirror their patterns of visitation to nursing homes. Some visit some of their licensed board and care facilities frequently, while not visiting others at all. One Ombudsman office visits 28 percent of these facilities weekly, but does not visit the remaining 72 percent at all. Another visits 20 percent weekly, while not visiting the other 80 percent. Like nursing homes, some Ombudsmen attribute this pattern of visitation to the various staffing levels across a State. Most of a State's Ombudsman staff may be concentrated

around certain key cities, so certain areas of a State have a 100 percent visitation rate and other areas are not visited at all.

OMBUDSMEN HAVE MANY METHODS TO INCREASE THEIR VISIBILITY

Many methods are used to make residents and staff of LTC facilities aware of Ombudsman programs. The most commonly used method is the placement of posters in facilities (91 percent). Half of the Ombudsmen use the media to make facility staff and residents aware of their programs. Site visits by Ombudsmen (20 percent) and hotlines (11 percent), a phone line to a Ombudsman office, are other ways. Other frequently mentioned methods include pamphlets, Residents' Bill of Rights, and attending LTC conferences.

Complaints are most often brought to the attention of the Ombudsman from family and friends (50 percent) of the residents of LTC facilities and through site visits by a representative of an Ombudsman (51 percent). Residents also bring forth complaints (45 percent). Many complaints come over the phone (27 percent), often over hotlines.

Seventy-seven percent of the Ombudsmen prioritized complaints. In these States, all use "life threatening" as a criterion. Fifteen percent also list "threat of discharge".

SOME STATES CITE PROBLEMS WITH LEGAL COUNSEL

Thirty percent of the Ombudsman report problems with the availability of legal counsel. Many of these States mention a lack of funds for an attorney as a major barrier to legal counsel. The high price for legal services puts a strain on budgets. Another problem cited is the competition for limited legal staff. For the Ombudsman programs that use their State attorney general or an attorney in an umbrella agency, they must often compete with other agencies and concerns. They do not have a lawyer they can count on. They must follow the schedules or workloads of people outside of their office. In these instances, the bare minimum of litigation is handled. Also, attorneys from outside the Ombudsman programs often do not understand the Ombudsman program and its problems.

Legal counsel for the Ombudsman most often (44 percent) comes from an attorney in their agency. In some cases the attorney is the Legal Service Developer. Thirty-four percent use their State Attorney General. Others contract out for legal services or accept pro bono counsel.

APPENDIX A

Review Instrument For Ombudsman

OMBUDSMAN COMPLIANCE REVIEW

Department of Health and Human Services
Administration on Aging

State ______________________________ **Date** ______________________

Primary Respondent ____________________ **Telephone** ________________

Review Team Leader ____________________ **Telephone** ________________

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1. Is the Office of the Long-Term Care Ombudsman located in the State Agency on Aging? ***(Hereafter the State Agency on Aging will be referred to as the State Agency)***

   a. _____ Yes ***(If Yes, go to question 2)***
   b. _____ No ***(If No):***

      (1) Where is it located?

      ____

      ____

      (2) Is there a contract between this agency and the State Agency?

         (a) _____ Yes ***(If Yes, get copy)***
         (b) _____ No
         (c) _____ Don't Know ***(Check if applicable)***

2. Is the agency that sponsors (houses) the Ombudsman responsible for licensing long-term care (LTC) facilities or an association affiliated with LTC facilities?

   a. _____ Yes ***(If Yes, discuss)***:

      ____

      ____

      ____

      ____

      ____

      ____

      ____

      ____

      ____

   b. _____ No

3. Is there a State law governing the Ombudsman Program?

   a. _____ Yes ***(If Yes, get copy)***
   b. _____ No
   c. _____ Don't Know ***(Check if applicable)***

4. Does the Office of the Long-Term Care Ombudsman utilize sub-State ombudsmen?

   a. _____ Yes ***(If Yes, go to question 5)***
   b. _____ No ***(If No, go to question 7)***

5. Describe the organizational relationship between the sub-State ombudsmen and the State Office of the Ombudsman.

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6. Are there any reporting or operations problems with sub-State ombudsman? ***(Probe both)***

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3. Is there a State law governing the Ombudsman Program?

   a. _____ Yes ***(If Yes, get copy)***
   b. _____ No
   c. _____ Don't Know ***(Check if applicable)***

4. Does the Office of the Long-Term Care Ombudsman utilize sub-State ombudsmen?

   a. _____ Yes ***(If Yes, go to question 5)***
   b. _____ No ***(If No, go to question 7)***

5. Describe the organizational relationship between the sub-State ombudsmen and the State Office of the Ombudsman.

6. Are there any reporting or operations problems with sub-State ombudsman? ***(Probe both)***

7. How does the State Agency solicit comments and recommendations from area agencies, older individuals, and provider agencies regarding the planning and operation of the ombudsman program? [Sec. 307(a)(12)(E)]

8. Does the State Ombudsman (Do you) work full-time on ombudsman responsibilities as outlined in the Older Americans Act? [Sec. 307(a)(12)(A)]

a. _____ Yes
b. _____ No, Why not?

c. _____ Don't Know ***(Check if applicable)***

9. What is the total number of staff in the State Office of the Ombudsman, including any sub-State program? Include in the total number, clerical and administrative personnel as well as full-time, part-time, and volunteer staff.

a. __________ ***(Indicate total number)***
b. _____ Don't Know ***(Check if applicable)***

10. Of that total *(number provided in question 9)*, how many professional and support staff are: *(Complete question using a, b, and c)*

	PROFESSIONAL *(Indicate Number)*	**SUPPORT** *(Indicate Number)*	**DON'T KNOW** *(Check if Applicable)*
a. Full-time employees?			
b. Part-time employees?			
c. Volunteers?			

If the respondent indicates no volunteers are used, ask question 11. Otherwise skip to question 12.

11. Why aren't volunteers used to meet the requirements of the Older American's Act? ***(Probe for full explanation. For example, if the respondent indicates no volunteers are used because a state law prohibits use of volunteers, get an explanation of that state law.)***

12. What procedures are in place to assure that Ombudsman employees and volunteers, if any, are qualified and trained prior to investigating complaints? [Sec. 307(a)(12)(K)] ***(Probe for standards for both employees and volunteers, where appropriate)***

13. Does the Ombudsman program formally certify volunteers?

a. _____ Yes *(If Yes, go to question 14)*
b. _____ No *(If No, go to question 15)*

14. What are the requirements for certification?

15. What are the most significant accomplishment(s) of your use of volunteers?

16. What improvements, if any, are needed in the use of volunteers?

17. Did staff training, **conducted in the last year,** include topics such as:

	Yes	No	Don't Know	*(Check applicable response)*
a.	_____	_____	_____	Federal laws, regulations, and policies regarding LTC facilities, *(If No):* When was the last time training was conducted? ______________________________
b.	_____	_____	_____	State laws, regulations, and policies regarding LTC facilities, *(If No):* When was the last time training was conducted? ______________________________
c.	_____	_____	_____	Local laws, regulations, and policies regarding LTC facilities, *(If No):* When was the last time training was conducted? ______________________________
d.	_____	_____	_____	Investigative techniques, *(If No):* When was the last time training was conducted? ______________________________

18. Is there a formal (written) in-service training curriculum for employees?

a. _____ Yes ***(If Yes, get copy)***
b. _____ No

19. What are examples of the types of training provided in the last year to: ***(Complete question using a, b, and c)***

a. paid full-time staff? ________________________________

b. paid part-time staff? ________________________________

c. volunteers? ________________________________

20. How do you coordinate activities with the protection and advocacy systems for individuals with developmental disabilities and mental illness? [Sec. 307(a)(12)(H)(v)] ***(Get examples)***

____

21. How do you coordinate activities with adult protective services? ***(Get examples)***

____

22. How do you coordinate with the State agency responsible for licensing and certifying LTC

facilities?

23. How do you coordinate activities with the legal services developer?

24. How do you encourage the participation by citizen organizations in the Ombudsman program? [307(A)(12)(A)(ii)]

25. How does the State Agency identify and resolve any potential conflicts of interest affecting the Ombudsman, or any employee or representative of the Office of the Ombudsman? [Sec. 307(a)(12)(F)(i),(ii),(iii)]

26. How does the **State** ensure that no representative of the Office of the Ombudsman will be held liable for the performance of official duties? [Sec. 307(a)(12)(I)]

27. How does the **State** ensure that willful interference with representatives of the Office of the Ombudsman in carrying out their duties shall be considered unlawful? [Sec. 307(a)(12)(J)(i)]

28. What steps has the **State** undertaken to prohibit retaliation and reprisals by a LTC facility on any resident or employee for filing a complaint or for providing information to the Office of the Ombudsman? [Sec. 307(a)(12)(J)(ii)]

____
____
____
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____

29. What **State** sanction authority is in place regarding interference, retaliation, and reprisals? [Sec. 307(a)(12(J)(iii)]

____
____
____
____
____
____
____

30. Have any sanctions ever been applied to any individual or entity?

a. _____ Yes *(If Yes):*

Describe the circumstances, the sanction applied, and the results of the sanction.

	CIRCUMSTANCES	**SANCTION APPLIED**	**RESULTS OF SANCTION**
(1)			
(2)			
(3)			
(4)			

(If additional space is required, use the back of the previous page)

b. _____ No

31. How do you ensure residents of LTC facilities, throughout the State, are made aware of the Office of the Ombudsman?

____
____
____
____
____
____
____
____

32. What percent of the nursing homes in the State are visited annually?

a. __________ *(Indicate percentage)*
b. _____ Don't Know *(Check if applicable)*

33. How often are nursing homes visited?

a. _____ regularly; How many times per year? ________
b. _____ in response to a complaint only
c. _____ other *(Specify and obtain frequency)*

____
____
____
____

34. What percent of the licensed board and care facilities in the State are visited annually?

a. __________ *(Indicate percentage)*

(If more than 5%): How often are licensed board and care facilities visited?

(1) _____ regularly; How many times per year? ________
(2) _____ in response to a complaint only
(3) _____ other *(Specify and obtain frequency)*

____
____
____
____

b. _____ Don't know *(Check if applicable)*

35. Who routinely performs the annual visits to licensed board and care facilities?

____

36. List, in order, the most prevalent ways in which complaints are brought to the attention of the Office of the Ombudsman.

____
____
____
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____

37. Do you prioritize complaints?

a. _____ Yes *(If Yes),* How are complaints prioritized? ***(Probe for process, definitions used, etc.)***

____
____
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____
____
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b. _____ No

38. How do you ensure your staff's access to LTC facilities, residents, and residents' records? [Sec. 307(a)(12)(B),(K)]

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____

39. Have any incidents occurred when the Ombudsman has attempted to gain access to a facility or to obtain residents' records?

a. _____ Yes ***(If Yes),*** What were the incidents which occurred and what actions did the Office of the Ombudsman take?

	INCIDENT	**ACTION TAKEN**
(1)		
(2)		
(3)		
(4)		

(If additional space is required, use the back of the previous page)

b. _____ No

40. How do you protect the confidentiality of residents' records and Ombudsman files? [Sec. 307(a)(12)(B),(D)]

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41. How do you ensure that the identity of any complainant or resident of a facility will not be disclosed? [Sec. 307(a)(12)(D)]

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____

42. Has your Office had to identify the complainant or resident of a facility without his or her permission?

a. _____ Yes ***(If Yes),*** Please discuss the circumstances and under what grounds the Office disclosed this information.

____
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____

b. _____ No

43. How is legal counsel made available to the Office of the Ombudsman?

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____

44. In the past year, have there been any problems with the availability of legal counsel?

a. _____ Yes ***(If Yes):*** What were these obstacles, and how were they overcome?

____
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____

b. _____ No

45. In the past year, what type of issues and cases required legal counsel?

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46. Describe your statewide uniform reporting system. ***(Probe data elements and procedures)***

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____

47. What was the date of your last annual report?[Sec. 307(a)(12)(H)]

_______/_______/_______

(The "annual report" pertains to Ombudsman report as per Sec. 307(a)(12)(H)

48. Were policy, regulatory, and legislative recommendations made in this report?

a. _____ Yes
b. _____ No

49. Was the annual report submitted to the State agency responsible for licensing or certifying LTC facilities?

a. _____ Yes
b. _____ No

50. Was it submitted to the State legislature?

a. _____ Yes
b. _____ No

51. In general, who else routinely receives the report?

____
____
____
____
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____
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____
____

52. What has the State Agency done to ensure that the Ombudsman has the **ability** to pursue administrative, legal, and other remedies on behalf of LTC residents?
[Sec. 307(a)(12)(G)(ii)]

53. Are there any Federal requirements causing you operational or financial problems? ***(Probe both)***

[INTERVIEW COMPLETED]

Department of Health and Human Services

ADMINISTRATION ON AGING AND OFFICE OF INSPECTOR GENERAL

STATE IMPLEMENTATION OF THE OMBUDSMAN REQUIREMENTS OF THE OLDER AMERICANS ACT

APRIL 1993

ADMINISTRATION ON AGING

The Administration on Aging (AoA) is the principal Federal agency designed to carry out the provisions of the Older Americans Act (OAA). It advises the Secretary of Health and Human Services and other Federal agencies on the characteristics, circumstances and needs of older individuals. Further, it develops policies, plans, and programs designed to promote their welfare.

AoA administers three grant programs under the Older Americans Act. The largest program -- Title III of the Act -- consist of formula grants to States to establish State and community-based programs for older individuals with the purpose of preventing the premature institutionalization of older individuals. The second program -- Title VI -- consists of discretionary grants with the same purpose as Title III, but to meet the unique needs of older Native Americans. The third program -- Title IV -- is also discretionary. Its purpose is to fund research, demonstration, and training activities to elicit knowledge and techniques to improve the circumstances of older Americans. (The 1992 Amendments to the OAA created a fourth program -- Title VII -- which provides funds for State activities to protect the rights of vulnerable older people. Prior to the 1992 Amendments, Title III of the OAA provided the funds for these activities.)

OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services' (HHS) programs as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by three OIG operating components: the Office of Audit Services, the Office of Investigations, and the Office of Evaluation and Inspections. The OIG also informs the Secretary of HHS of program and management problems and recommends courses to correct them.

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the Department, the Congress, and the public. The findings and recommendations contained in these inspection reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs.

THIS REPORT

This report is the result of a joint effort between AoA and OIG/OEI to assess the implementation of Title III of the Older Americans Act. OIG staff in the New York and Dallas regional offices provided technical support to the joint project. AoA staff in New York and Dallas directed the project with all regional offices participating in the development of instruments and data collection.

For additional information, please contact:

AoA	John Diaz, Regional Program Director-Dallas	214-767-2971
OIG	Jack Molnar, Project Leader-New York	212-264-1998