

Exploring the Role of LTC Ombudsman

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If you have ever been to a long-term care facility or nursing home and seen the residents who reside there, you have noticed they find themselves in a position where their medical care, physical well-being, and daily activities all revolve around the integrity and competency of others. In this position, it is easy to lose the freedom to make one's own decisions and the dignity we all deserve. Thus, the role of the Long-Term Care (LTC) Ombudsman was created, and this paper will shine on the role and how its advocacy responsibilities to these residents.

### **What is an Ombudsman**

An Ombudsman is a person who assists others in resolving conflicts within organizations in the public and private sector, companies, and particular areas like long-term care facilities, nursing homes, hospitals, and schools. There are varying duties and responsibilities inherent in the role of the Ombudsman, but they are assigned depending upon the practice area.

Different standards of practice define the Ombud's function- Advocate, Organizational, and Classical Ombuds, just to name a few. The Classical Ombudsman handles complaints concerning governmental agencies, policies, and processes. They can investigate the issues and make recommendations to affect change in those areas. Organizational Ombuds is assigned as a neutral party within an organization that assists with conflict resolution internally for employees and management and externally for clients with issues regarding the organization. (UConn, 2022)

Advocate Ombuds work in the private and public sectors but usually act as an advocate for a person and group of people who would otherwise have no ability to advocate for themselves. These Ombuds assess a conflict or complaint in a neutral capacity to achieve the

most beneficial outcome for the person they are actively advocating for. They can be found serving residents in Long-Term Care facilities.

### *The Long-Term Care Ombudsman*

Long-Term Care (LTC) Ombudsmen investigate complaints and report their findings to the facility administrator or, when necessary, the state agency that has regulatory authority over the facility. They can work with an individual resident on an issue that directly and uniquely impacts them, or they may work on issues that affect several residents or the entire facility community.

The Ombuds will work with residents and family members to resolve complaints ranging from food service and offering to room assignment and finances. Another essential function of the LTC Ombuds is their duty to educate residents on their rights as a resident, how they can get their needs met, and basic actions that can be taken to correct simple concerns. An Ombudsman can also assist families in searching for the right facility for their loved ones.

### **How Long-Term Care Ombudsman Programs Began**

Initially, the government did not provide any financial support to the nursing home and long-term care industry, but this changed with Title XVIII- Medicare and Title XIX- Medicaid was added to the Social Security Act in 1965. With this financial incentive, individuals saw the benefit of opening privately held nursing homes and created businesses and corporations that increased the number of facilities available to serve an ever-increasing number of older-aged individuals.

### *Notable Milestones in the Field*

As with any burgeoning field comes growing pains, but influential policies, procedures, and regulatory agencies emerge. Some notable milestones and advancements in the field include

creating the first training program for state ombudspersons in the area of nursing home care established in 1977. The Administration on Aging's grant award programs were formed around 1979 to expand the citizen involvement in their local nursing home through ombudsman programs. 1981 saw the expansion of the Older Americans Act to add the nursing home and care facilities that board residents to the Ombuds' duties, thus creating the name Long-Term Care Ombudsman. In 1987 Ombudsman were finally given access to the resident records and prohibited interfering with an Ombuds and making it unlawful to retaliate against a resident, Ombudsman, or regulatory representative for performing their duties. (National Consumer Voice, 2022)

The early 2000s saw many initiatives to create, establish and restructure the Ombudsmen's reporting and record-keeping systems. In 2016, Amendments to the Older Americans Act further clarified the Long-Term Care Ombudsman Program's duties, responsibilities, and protections.

### **Why LTC Ombudsman Are Important to Resident Advocacy**

The Long-Term Care Ombudsman's Philosophy is "People who are unable to care for themselves are entitled to dependable and consistent care." (Seegers, 2021) These LTC Ombudsmen are essential and ensuring that the residents of the facilities and private care homes are offered a quality of life and quality of care that applies to the human rights afforded to every other citizen.

A resident with immobility, non-verbal, intellectually disabled, or any other impairment should still be treated with dignity and respect. They should still be afforded self-determination when possible and should have the right to practice their religion and engage in social and community activities without interference, retaliation, or exploitation. Those residents should

also be assured of the best possible health care while living and a clean and safe environment. The LTC Ombudsman is vital in ensuring that this is the resident's reality.

### *The Importance of Consent*

Informed consent is critical in this role. The Ombudsman should always explain their role to the resident, make sure the resident is aware of their rights and understand actions that can be taken to resolve disputes and concerns and discuss the possible outcomes or consequences of any actions taken. The Ombudsman serves at the pleasure of the resident and should not act without consent from the resident.

When working with a resident, the LTC Ombudsman becomes privy to private information and details regarding the resident. It does matter if that information comes from the resident's family, the facility, or the resident themselves; the Ombudsman should not act on it—meaning they should not discuss the information with anyone, should not report on it, or attempt to address it without the consent of the resident.

Trust is a crucial tenant of the LTC Ombuds and resident relationship. Acting without the resident's consent breaches confidentiality and their anonymity. Though prohibited, this breach can result in retaliation toward the resident by members of the staff, family members, or other residents.

### **LTC Ombudsmen Complaint Process**

Complaints can come to the Ombudsman directly from the resident, from their family, the facility, or directly to the state office from an anonymous source. The Ombudsman should listen objectively to the information to determine if there is cause for investigation. The next steps should depend on the information reported to the Ombuds, clarifying questions for information gathering, and consent.

The Ombuds should gain the resident's consent before acting on any complaint, even if the complainant is not the resident and requested to remain anonymous. The resident should always be involved in any complaint resolution directly related to them. After determining whether an investigation is needed and gaining consent from the resident, the Ombudsman would begin gathering evidence. This is done through observation- for instance, if a resident complains that the nursing staff is taking answers to answer their call buttons, the Ombudsman can spend time in the facility observing call button response time.

The Ombudsman may collect evidence by conducting interviews with the resident, any witnesses to the issues, direct care staff, supervisors, or the facilities Administrator. Lastly, an Ombudsman may gather evidence by reviewing records. This can include care/service plans, facilities policies and procedures, resident personal care logs, and incident reports, to name a few.

#### *Documentation is Important*

Each state will have a recording instrument to document the Ombudsman's activity, which can include a record of visits, assistance given, complaints and investigations, etc. In Texas, the forms are Form 8619, Long-Term Care Ombudsmen Case Record for documenting complaints, and Form 8620, Long Term Care Ombudsmen Activity Report. (Texas Health and Human Services, 2022)

#### **Maladministration in Long-Term Care**

The nursing home and long-term care industry are rife with maladministration primarily because it is still mostly privately held and is a very lucrative industry. The industry has grown immensely with demand, but the regulatory agencies and advocacy areas have been unable to keep up with that growth. As a result, many unsavory practices like abuse, neglect, and

exploitation are not checked, unsafe living conditions and financial malfeasance go unreported or undetected.

### **The Future is Bright for Long-Term Care Programs**

The Covid-19 Pandemic shined a light on vulnerabilities in the LTC field. Facilities have already adapted by keeping more open beds, having infection preventionists on staff, and keeping a ready supply of personal protective equipment in stock.

In light of the Country's 3-year battle with a pandemic, those steps are relevant and impactful, but what else? Well, many research efforts are underway right now to leverage technology in the Long-Term Care industry. There is an effort to create electronic pets for Alzheimer's patients, smart homes specifically designed to assist the aging population, intelligent pill boxes for patients with cognitive disabilities, and so much more. (The National Library of Medicine, 2022)

### **Dispute Resolution Professionals in the LTC Ombuds Role**

Recently, I became a State Certified Long-Term Care Ombudsman through the Cizik School of Nursing in Houston, Texas, and I volunteer at two Long-Term Care facilities that I visit once weekly. I find my participation in the lives of residents who cannot advocate for themselves, to be one of my most important assignments. Individuals working in the Dispute Resolution field have tailored skills learned through their mediation and arbitration practice that can be invaluable in the role of Ombuds. Negotiation expertise, critical thinking, and a firm grasp of the importance of confidentiality are needed in this field that is deficient in representation and advocacy.

## References

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