

An Introduction to Long-Term Care Ombudsman Services

State of Wisconsin Board on Aging and Long Term Care
Long Term Care Ombudsman Program



State of Wisconsin Board on Aging and Long Term Care

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Volunteer Ombudsman Program: 1-800-815-0015

Website: longtermcare.wi.gov



Learning Objectives

- Gain knowledge in resident rights along with understanding the role of an Ombudsman
- Understand the roles, responsibilities, and limitations, of surrogate decision makers, along with how to better navigate through situations that are more difficult or may involve choices that include risk
- Who and what are your resources and tools to guide you in these areas

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Medigap Helpline

- Medicare Supplemental & Advantage Plans
- Medicare Supplement Policies (Medigap)
- Long Term Care Insurance Options
- Medicare Part D benefits & enrollment
- COBRA & Continuation Options
- SeniorCare Drug Assistance Program
- WI Medical Assistance
- Military/Veteran Health Benefits

Volunteer Ombudsman Program

- VOs receive criminal background checks, thorough orientation and continuing education
- VOs are resident spokespersons, always acting only with consent
- VOs are assigned to specific nursing homes, visiting regularly, usually weekly; a new assisted living program is slated for summer 2023
- VOs communicate concerns in need of follow-up to assigned Regional Ombudsman
- VOs are alert to both challenges & successes, & can be a source of stability in homes where there are many changes in staff, leadership, policy, performance

Ombudsman

- A Scandinavian term meaning “voice of the people”- Ombudsmen are advocates
- Focus on the rights of long-term care consumers, to ensure highest quality of life and best quality of care. Our clients are persons 60 years-old and above, residing in licensed or certified long-term care settings, and recipients of Family Care, PACE, Family Care Partnership or IRIS services
- Investigate complaints of rights violations, inadequate care and services
- Work towards a resolution with the goal of achieving a positive outcome for the client. Our client is always and only the resident, tenant or enrollee, though anyone may bring forward a concern on a client’s behalf

Long Term Care Advocacy

- In 1970 Congressional hearings were held in response to nursing home complaints about abuse, neglect, substandard care, accidents/fires resulting in deaths. President Nixon authorized the Nursing Home Ombudsman Demonstration Project. WI was one of 5 states chosen for this Demonstration.
- By 1978 all states and US territories were required to operate NH ombudsman programs, authorized under the Older Americans Act, and expanding to assisted living in 1981 as LTC Ombudsman Programs.

Ombudsman Program Authorization

- Client identity & concerns are held confidential, unless permission is granted for disclosure.
- Providers must ensure “private & unrestricted communication” between a client and an ombudsman.
- Independent advocate for clients in resolving concerns relating to providers, individuals, regulators or other parties.
- Work with the state’s regulatory agency to coordinate complaints, with consent, some shared survey activities. Ombudsmen assist clients in filing their own complaints to DQA, or will file on the client’s behalf, if unwilling or unable.

Who Can Call an Ombudsman

- Residents who live in a licensed long term care setting or members and participants who receive Family Care, Pace, Partnership, IRIS
- Family members, friends, or legal decision makers of residents
- Staff working in long term care communities
- Anyone who has questions or concerns about the care, treatment, services of a resident/member/participant

Responsibilities of the Ombudsman

- Discuss care options, refer to ADRC for options counseling
- Resolve challenges
- Consultation services to providers, MCOs, ICAs/FEAs, individuals
- Provider and Community Education
- Resident/Tenant & Family Councils
- Systems Advocacy (local, state and federal)
- Build collaborations & partnerships vs. adversaries

Resident Rights

Dignity

You have the right to:

- Be valued as an individual, to maintain and enhance your self-worth
- Be treated with courtesy, respect and dignity, free from humiliation, harassment or threats
- Be free from physical, sexual, mental, verbal and financial abuse
- Be free from chemical and physical restraints and involuntary seclusion

Privacy

You have the right to:

- Personal privacy during care and treatment
- Confidentiality concerning your personal and medical information
- Private and unrestricted visits with any person of your choice, in person and by telephone
- Send and receive mail without interference

Grievances

You have the right to:

- Voice grievances about care or services without discrimination or reprisal
- Expect the facility to promptly investigate and try to resolve your concerns
- Contact the Ombudsman to advocate on your behalf, free from discrimination or reprisal, if you feel any of your rights have been violated

Access

You have the right to:

- Be fully informed, both orally and in writing, of your rights and the facility's rules before admission and during your stay in the facility
- Be fully informed of the services available and related costs
- Not provide a third party guarantee of payment
- Be informed of and to receive assistance in obtaining the full range of available government benefits
- Quality care
- Be told in advance about available care and treatment options, including all potential benefits and risks
- Look at your records and receive copies at a reasonable cost
- Have access to any personal funds held for you by the facility
- Keep and use your personal possessions
- Receive notice in advance of any plans to change your room or roommate
- Organize and participate in a Resident/Tenant Council and for your family to organize and participate in a Family Council
- Participate in social, religious and community activities, including the right to vote
- Read the results of the most recent State or Federal inspection survey and the facility's plan to correct any violations
- Contact and speak with your Ombudsman, the State survey agency, your attorney, any State or local government official, or any advocate or agency of your choosing

Transfer or Discharge

You have the right to:

- Remain in the facility unless there is a valid, legal reason for your transfer or discharge
- Receive a discharge notice and planning according to the licensing requirements of the facility
- Receive information about your right to appeal including contact information for your Long Term Care Ombudsman
- Receive planning and assistance to assure a safe transfer
- Be offered to hold your bed if your transfer is temporary, such as for hospitalization or therapeutic leave

Self-Determination

You have the right to:

- Be offered choices and allowed to make decisions important to you
- Expect the facility to accommodate individual needs and preferences
- Participate in the planning of your care and services
- Self-administer medications
- Accept or refuse care and treatment
- Choose your health care providers, including your doctor and pharmacy
- Manage your own personal finances, or to be kept informed of your finances if you choose to let someone else manage them for you
- Refuse to perform work for the facility

Most Common Complaints: A Rights Perspective

- Right to receive care that is personalized, skillful, timely and respectful
- Right to exercise individual liberties and to lead a dignified existence, including choice with risk
- Right to be free from verbal, sexual, physical and mental exploitation and abuse
- Rights regarding health care and lifestyle risks and benefits, including right to self-determination
- Right to information and to manage own personal and financial affairs
- Rights to privacy in medical and personal care, in correspondence and visits, in treatment of personal records and belongings

Most Common Complaints: A Rights Perspective

- Rights regarding free association and participation in or refusal of activities of choice
- Right to keep and use personal possessions and to be secure from theft or loss
- Right to be transferred or discharged only after notice, for clearly specified reasons, and with full participation and choice in discharge planning
- Right to express and receive a prompt and respectful response to grievances, and resolution without retaliation
- Right to receive all due process protections, including advocacy, whether related to allegations of abuse, involuntary discharge or accusations of misconduct

Examples of Rights Issues Related to Decision Makers

- Attempts to restrict or ban preferred foods, control hours of sleep and activity, restrict smoking, restrict alcohol, dictate how personal money is spent
- Attempts to restrict or ban intimate and/or sexual relationships regardless of the resident's assessed ability to consent
- Threats of further restrictions, denial of choice, and association with people
- Attempts to restrict information pertaining to medications or medical treatments

Root Causes of Rights Violations

Systemic

Paternalistic view of society toward aging and older adults

Stigma

Medical model of care(giving) vs. person-directed or person-centered

Emerging systems stressors related to staff who are not plentiful, well-prepared or supported

Individual

Education

Life experience

Family dynamics

Care & Treatment Trends: Demographics & Gaps

Staffing complaints: toileting, pressure injuries, food service, social programs; staff short-tempered and seemingly uninterested in grievances. Covid-related, though now enduring staffing complaints of residents not getting out of bed or dressed, not bathed, call lights not responded to, little attention to psychosocial needs.

Community and LTC capacity largely unprepared or unwilling to care for older adults with chronic **mental illness**. Concerns relative to initiatives to minimize NH and ALC use in favor of less formal, less expensive (and potentially less qualified) community supports.

Care & Treatment Trends: Demographics & Gaps

- Increased response to complaints and cites about **relationships**: failure to assess for capacity to consent to sexual relationships; attempts by decision-makers to restrict access to visitors.
- Guardian and other **decision-maker over-reach**.
- Increased allegations of **abuse**.
- Trends noted in **involuntary discharges** related to hospitalization with inability to return, moves related to rate disputes between MCOs and providers.

Current Formal Tools for People Who Need Help with Decisions

Release forms

- Person signs release forms authorizing a specific person(s) access to certain kinds of records (health, financial, etc.).
- Some release forms may allow a person to select certain records to be released while retaining privacy over others.
- Some release forms may provide one-time or time-limited access to records, others releases may remain in effect in perpetuity.

Supported Decision-Making agreements

- Person makes all their own decisions. Person identifies area in which they want support, identifies a Supporter(s) to help them gather information, compare options, and communicate their decisions to others.
- The Supported Decision-Making agreement outlines what types of decisions the Person wants support and the role of the Supporter.
- Agreement can be changed or stopped at any time by the Person or Supporter.

Current Formal Tools for People Who Need Help with Decisions (cont.)

Representative payee

- The Social Security Administration (SSA) appoints an individual/organization to receive SSI/SSDI benefits for a person who cannot manage or direct the management of their own benefits.
- To change a Representative Payee, the Person must complete an application process with the SSA

Power of Attorney

- Formal legal arrangements that permit others to act on the Person's behalf.
- Powers of Attorney (POA) designate another (agent) individual to make certain decisions (generally health care or financial) on the Person's behalf. POAs can be set up in different ways. Some POAs are activated only when a person is incapacitated.

Limited or Full Guardianship

- Transfers some or all decision-making authority from the Person to a court-appointed Guardian.
- Once guardianship is granted by the courts it is difficult (and costly) to modify or reverse the guardianship; any changes must be made through a formal court process.
- No least restrictive alternatives

Capacity & Consent

Capacity is the ability to both understand information relevant to a decision and to appreciate the consequences of a decision.

Consent occurs when one person voluntarily agrees to the proposal or desires of another.

Source: "Assessment of decision-making capacity in adults;" Jason Karlawish, MD; September 2017.

Negotiating Risk

- Premise that persons have a right to choose and refuse, to take risks, and to live in accordance with other values besides optimal health and safety.
- Some of the toughest choices are those in which the individual would decide to choose freedom over safety. Appropriately negotiated risk could accomplish both.

Consider

Younger individuals: risk may be assessed and negotiated on the basis of current skills and potential to learn new skills, goals for future, often leading to higher degrees of acceptable risk with good wrap-around of supports

Older individuals: risk may be assessed and negotiated on the basis of history and deficits, often leading to denial of request for risk, and at most extreme, imposition of guardianship in order to “protect”

Point of View

Older adults in institutional care seem to defer most decisions, and sometimes even expressions of self-determination relative to quality of life and end-of-life care, to an adult child, trusted friend, facility staff.

Some that do attempt to actively self-direct are sometimes labeled as “challenging,” “unrealistic,” or “lacking insight,” particularly in facilities or within MCO/health care structures that have a paternalistic view of their roles.

Ombudsman: Balance Rights, Risk, Quality of Care & Quality of Life



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- Recognize and respect resident's life history, life choices, expectations for the present and the future
- Create resolution by emphasis on strengths vs. threats of losses
- Encourage change by consensus, mediation, conciliation vs. by order or mandate
- Success is best ensured by building relationships and trust vs. by mandates and rules

It is the philosophy of the Ombudsman Program of the Board on Aging and Long Term Care that all clients, including those with activated powers of attorney and/or guardians, have the right to participate, to whatever extent they may be capable, in all decisions impacting their choices, care, safety and well-being.

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