

Office of the State  
Long-term Care Ombudsman

# Annual Report

*State fiscal years 2011 – 2012*



A Report to the Texas Governor, Lieutenant Governor  
and Speaker of the House of Representatives

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# Texas Long-term Care Ombudsman Program

## Annual Report

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### A long-term care ombudsman

- **Advocates** for increased consumer protections in state and federal laws and regulations.
- **Educates** residents about their rights.
- **Empowers** and supports residents and families to discuss concerns with facility staff.
- **Identifies** and seeks to remedy gaps in facility, government, or community services.
- **Protects** the health, safety, welfare, and rights of individuals living in nursing homes and assisted living facilities.
- **Provides** information and assistance regarding long-term services and supports.
- **Receives** and investigates complaints, and assists residents to resolve problems.
- **Represents** residents' interests before governmental agencies.
- **Respects** the privacy and confidentiality of residents and complainants.

# Highlights September 2010 – August 2012

## Long-term care ombudsmen

- Opened 27,851 cases and investigated 35,707 complaints on behalf of residents in nursing homes and assisted living facilities (see pages 5 – 8)
- Responded to complaints ranging from unresponsive staff to involuntary discharge
- Resolved or partially resolved 86 percent of nursing home complaints and 73 percent of assisted living facility complaints (see pages 6 and 8)
- Cases were open an average of 13 days in 2011 and 16 days in 2012

## Ombudsman activities

- Facility visits – 79,425 visits (see pages 5 and 7)
- Consultations to facility management – 19,014 consultations (see page 9)
- Information and assistance to residents and families – 37,876 responses (see page 9)
- Council meetings – 2,494 resident and 672 family council meetings (see page 9)
- Training to facility staff – 387 sessions provided to 11,146 staff (see page 9)
- Community education – 991 sessions

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*The mission of the Texas Long-term Care Ombudsman Program is to improve the quality of life and care for individuals living in nursing homes and assisted living facilities by providing prompt complaint resolution services and promoting systemic change on behalf of residents' interests.*

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# Ombudsmen in Nursing Homes

## Visits

**2011** 37,626

**2012** 30,493

Although the percentage of nursing homes visited quarterly by certified ombudsman increased from 2011 to 2012 – 82 percent in 2011 as compared to 86 percent in 2012 – the overall number of visits decreased. This could be attributed to a number of factors, including a decrease in overall funding (see page 10), as well as an increase in reliance on volunteers who also maintain full-time jobs.

## Most frequent nursing home complaints

Complaint	2011 and 2012	Percentage
1. Failure to respond to requests for help, including call light	2,682	8%
2. Food service: quantity, quality, variation, or choice	2,036	6%
3. Dignity, respect, or poor staff attitudes	1,549	5%
4. Building cleanliness, pests, or housekeeping	1,442	4%
5. Personal hygiene: nail and oral care, dressing and grooming	1,299	4%
6. Equipment or building: disrepair, hazard, fire safety	1,291	4%
7. Symptoms unattended or unnoticed	1,275	4%
8. Medication: administration or organization	1,229	4%
9. Odors	953	3%
10. Resident unable to exercise choice or preference	939	3%
11. Assistive devices or equipment	762	2%
12. Environment, air or water temperature, or noise	696	2%
13. Toileting, incontinent care	637	2%
14. Infection control	632	2%
15. Fluid availability, hydration	631	2%
<b>Subtotal</b> (of 15 most frequent complaints)	<b>18,046</b>	<b>54%</b>
<b>Total</b> (of complaints received)	<b>33,314</b>	<b>100%</b>

# Ombudsmen in Nursing Homes

## Discussion

Ombudsmen opened 13,612 cases with 18,040 complaints regarding nursing home residents in 2011, and opened 12,231 cases with 15,274 complaints in 2012. In order of frequency, the most common complaints involved resident care; environmental and safety concerns; dietary issues; rights, autonomy and choice; and rehabilitation and maintenance of functioning.

Of the 15 most common nursing home complaints, seven relate to quality of life, which includes complaints regarding diet and hydration, as well as building environment and safety.

Sufficient, well-trained, and well-supervised staff is critical to quality care in a nursing home. In 2011 and 2012, three of the 10 most common complaints related directly to facility staff: call lights not answered in a timely manner; dignity, respect, and staff attitudes; and symptoms unattended or unnoticed. These three staffing complaints made up 17 percent of all nursing home complaints received, some 5,506 complaints over the course of two years.

## Nursing home complainants

2011 and 2012	Percent	Complainant
15,117	59%	Resident
5,760	22%	Ombudsman
3,099	12%	Relative, friend
809	3%	Facility staff
714	3%	Anonymous
344	1%	Other

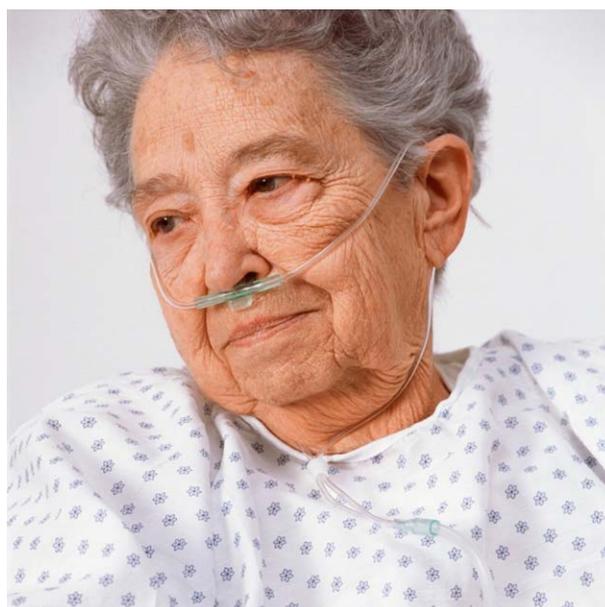
## Complaint outcomes

2011 and 2012	
Resolved	65%
Partially resolved	21%
Referred to another agency	7%
No action needed	3%
Not resolved	3%
Withdrawn	1%

## Verification of complaints

Verification is determined by an ombudsman through observation, interviews, or record inspection. Verification signifies that the circumstances described in the complaint existed and were generally accurate.

In 2011 and 2012, 92 percent of nursing home complaints were verified.



# Ombudsmen in Assisted Living Facilities

## Visits

**2011** 5,859

**2012** 5,446

New assisted living facilities are built and licensed each year. However, ombudsman visits and casework continue to decline since 2005 when 6,794 visits were made. Limited resources, fewer complaints, and a priority given to ombudsman services to nursing home residents explain the amount of service given to residents in assisted living facilities. In 2011, ombudsmen visited 11 percent of assisted living facilities every quarter and 13 percent in 2012.



## Most frequent assisted living facility complaints

Complaint	2011 and 2012	Percentage
1. Equipment or building: disrepair, hazard, fire safety	176	7%
2. Food service: quantity, quality, variation, or choice	172	7%
3. Medication: administration or organization	159	7%
4. Building cleanliness, pests, or housekeeping	134	6%
5. Dignity, respect, or poor staff attitudes	126	5%
6. Personal hygiene: nail and oral care, dressing and grooming	98	4%
7. Involuntary discharge: planning, notice, or procedure	79	3%
8. Resident unable to exercise choice or preference	76	3%
9. Failure to respond to requests for help, including call light	75	3%
10. Environment, air or water temperature, or noise	73	3%
11. Activities: availability, choice, or appropriateness	61	3%
12. Family conflict	55	2%
13. Resident conflict	53	2%
14. Inaccurate billing or charges	47	2%
14. Shortage of staff	47	2%
<b>Subtotal (of 15 most frequent complaints)</b>	<b>1,431</b>	<b>60%</b>
<b>Total (of complaints received)</b>	<b>2,393</b>	<b>100%</b>

# Ombudsmen in Assisted Living Facilities

## Discussion

Ombudsmen opened 2,008 cases with 2,393 complaints in 2011 and 2012. In order of frequency, the most common complaints involved environmental and safety concerns; resident care; autonomy and choice; dietary issues; and activities and social services. Most complaints in the list are consistent with ombudsman complaints investigated in previous years. However, complaint data show a growing number of involuntary discharges, which was not among the most frequent complaints in 2009–10.

## Assisted living complainants

2011 and 2012	Percent	Complainant
950	47%	Resident
485	24%	Ombudsman
313	16%	Relative, friend
110	5%	Facility staff
92	5%	Anonymous
58	3%	Other

## Complaint outcomes

2011 and 2012	
Resolved	53%
Partially resolved	20%
Referred to another agency	10%
No action needed	8%
Not resolved	7%
Withdrawn	2%

## Verification of complaints

Ombudsmen verify complaints through observation, interviews or record inspection. Verification signifies that the circumstances described in the complaint existed and were generally accurate.

In 2011 and 2012, 90 percent of assisted living facility complaints were verified.

On average, ombudsmen closed cases regarding assisted living residents in 24 days – which is 11 days longer than closing average nursing home cases.



# Consultation and Training

## **Resident and family councils**

Ombudsmen attended 2,494 resident council and 672 family council meetings in nursing homes and assisted living facilities. An ombudsman may attend meetings only at the invitation of the group, and are often asked to provide information to councils about the role of the ombudsman, problem-solving techniques, and resident rights. In June 2012, ombudsmen began to offer council training on relocation options using the Money Follows the Person policy. This work will continue through 2016.

## **Consultation to residents and families**

In addition to resolving complaints, ombudsmen work with residents, family members and friends to respond to a variety of questions about life and care. Resident requests are most frequently related to resident care, resident rights, finding and interpreting regulations, and decision-making authority. Family members and friends often consult with ombudsmen about how to select a nursing home or assisted living facility, regulatory compliance history on facilities, paying for care, and facility policies such as restraint use. Ombudsmen provided a total of 37,876 consultations to residents and families.

One of the ways ombudsmen provide support and consultation to a resident is by attending their care or service plan meeting. This meeting includes members of a resident's interdisciplinary team and includes a review of the resident's total plan of care. Preparation for these meetings can bring the resident's interests to the heart of the discussion and empower residents and families to help drive the process. Ombudsmen attended 1,177 care or service plan meetings at the request of a resident or legal representative, and an additional 741 meetings with the purpose of resolving a complaint. Ombudsman consultation activity also includes attendance at HHSC fair hearings to represent a resident in an appeal.

Ombudsmen participated in 60 fair hearings to assist residents facing discharge from a facility or denial of Medicaid benefits. Finally, ombudsmen attended 21 guardianship hearings to support residents retaining as many rights as possible, and in some cases helping residents legally restore their capacity.

## **In-service training to facility staff**

The majority of nursing home and assisted living facility staff receive in-service education where they work. Because at least 12 hours of continuing education is required for most nursing home staff and six hours is required for most assisted living staff, ombudsmen are often requested to provide onsite training. Frequent topics include resident rights, relocation options using Money Follows the Person policy, recognizing and preventing abuse, neglect and exploitation, resident-centered care, the role of the ombudsman, and culture change. Ombudsmen provided 364 training sessions to facilities for a total of 433 hours. A total of 10,801 employees received training from an ombudsman. In June 2012, ombudsmen began to offer training to facilities on resident relocation rights and options using the Money Follows the Person policy. This work will continue through 2016.

## **Consultation to facility staff**

Ombudsmen are resources to staff, particularly management, who encounter complex problems as care and services are provided. Consultation is available on any subject that affects a resident's life in a facility. Common consultation subjects include individualized care, resident rights, appropriate discharge procedures and planning, culture change, power of attorney and guardianship authority, addressing challenging resident behaviors, and family conflict. Ombudsmen provided a total of 19,014 consultations to facility staff.

# Funding and Program Outcomes

*Ombudsmen seek to resolve complaints to the satisfaction of the resident to whom the complaint pertains. In 2011, ombudsmen resolved or partially resolved 85 percent of nursing home and assisted living facility complaints received, and in 2012, ombudsmen resolved or partially resolved 87 percent of complaints in both settings.*

1,001 volunteers actively assisted the Long-term Care Ombudsman Program and contributed 129,113 hours in 2011-12. Local staff ombudsmen recruited, trained and supervised volunteers, while state office staff designed training and issued certification for each ombudsman. A total of 473 new volunteer ombudsmen completed a three-month internship and were certified between Sept. 1, 2011 – Aug. 31, 2012.

Initial certification training includes 12 training modules: The Long-Term Care Ombudsman Program; Aging and Residents; Communications and Consent; Facilities; Resident Rights; Resident and Family Councils; Care Planning; Problem

Solving, including subchapters on Program Communication and Resident Records; Regulators and Resources; Resident-directed Care; Systems Advocacy; and Long-term Care Ombudsman Program Policies and Procedures.

The state office trained 91 certified staff ombudsmen representing all 28 local ombudsman programs. The staff ombudsman position is a challenging one, making ongoing training necessary to sharpen professional skills and maintain integrity of the program. Training included statewide mandatory training provided twice a year, monthly webinar training, and smaller intensive sessions provided by the state office for new staff. Twelve hours of annual continuing education is required for all staff and volunteers to maintain certification.

Expenditures for the Long-term Care Ombudsman Program totaled \$4,040,311 in FY 2011 and \$3,920,888 in FY 2012. Federal dollars (90 percent) are the largest funding source for the Ombudsman Program followed by state dollars (7 percent) and local funds (3 percent). The following chart shows a breakdown of the total budget by source of funding.

## Sources of funding for the Texas Long-term Care Ombudsman Program

Source	2011	2012
Older Americans Act Title III	\$2,254,451	\$2,199,808
Older Americans Act Title VII	\$1,328,350	\$1,319,197
Other Federal Funds	\$15,715	\$21,059
State General Revenue	\$300,501	\$235,418
Local cash	\$141,294	\$145,406
<b>Total</b>	<b>\$4,040,311</b>	<b>\$3,920,888</b>

# Recommendations

*Through casework on behalf of residents, ombudsmen identify systemic issues that indicate a need for change. Ombudsmen develop systemic approaches to improve long-term care for the benefit of residents and work closely with regulatory agencies, advocacy organizations, providers, policymakers and law enforcement to initiate lasting change in the long-term care system.*

*As directed by the Older Americans Act, a long-term care ombudsman recommends improvements in the long-term care system to better the lives of nursing home and assisted living facility residents. The following recommendations are based on collective program experience of the state ombudsman and local ombudsman programs.*



## **Improve consumer protections for assisted living facility (ALF) residents**

ALF residents today would have lived in nursing homes 10–15 years ago. ALF residents may be on hospice, have complex medical needs, and many have cognitive impairments associated with dementia of the Alzheimer's type. While resident needs have increased, the standards for licensure do not require ample training of staff, nor do they provide sufficient consumer protection from discharge or other adverse actions. The following recommendations would substantially improve the standard of care in all types of ALFs.

- **Fund the DADS Legislative Appropriations Request, Exceptional Item #7, \$3 million of which will pay for long-term care ombudsmen to expand services to ALF residents.**

As of Aug. 2012, there were 1,717 assisted living facilities in Texas. When ALFs were added to the long-term care ombudsman program's scope of service in 1999, federal funding did not increase. In addition, Congress did not create a separate appropriation for the long-term care ombudsman program to provide services to ALF residents. The U.S. Department of Health and Human Services requires quarterly visits to ALFs, but in fiscal 2012, the Texas Long-term Care Ombudsman Program only met this requirement with 13 percent of ALFs. Residents in these homes need the services of an independent advocate to resolve serious concerns, such as medication errors, and thousands of other complaints.

# Recommendations

- **Apply the ALF Alzheimer’s licensure standards for manager and staff training, staffing, and activities to all Type B ALFs, regardless of size.**

Research indicates that one-third to two-thirds of ALF residents are diagnosed with dementia. Incorporating Alzheimer’s licensure standards into the basic standards for all Type B ALFs would require managers and staff to complete annual continuing education regarding care for persons with dementia. Furthermore, while many providers of assisted living care consider their operations as a predominately social setting, basic standards for licensure require only one activity per week. The activity standards in the Alzheimer’s license include individualized assessments of each resident, a monthly calendar of activities, and 6.5 hours of activities per week, including activities during the weekend. Staffing standards would ensure that any Type B ALF with 17 or more residents would have two staff members immediately available to respond to resident needs. Portions of the Alzheimer’s standards should also be incorporated into the Type A ALF standards, especially requirements related to activities and staff training. The portions of the Alzheimer’s standards recommended for incorporation in all Type A and Type B ALFs are easily adaptable to older adults and people with disabilities.

- **Require assisted living facility employees who provide direct care to be certified nurse aides.**

In many instances, unlicensed and uncertified ALF employees assist residents with taking

their medications. Ensuring that all employees with direct resident contact have a minimum standard of training regulated by the Texas Department of Aging and Disability Services will help ensure that residents with adverse reactions to drugs, who express a concern or have questions about their medication, receive the help they need. Other benefits of requiring all direct care staff to be CNAs are comprehensive training on resident rights and training on the prevention and identification of abuse, neglect and exploitation.

- **Provide a fair hearing appeal for assisted living residents facing discharge.**

Unlike nursing home residents, ALF residents have no right to appeal their discharge to a state agency to ensure the reason is valid and to determine that the ALF is taking appropriate action. Without a fair hearing, residents have no access to due process in situations in which they were retaliated or discriminated against for their disability. This issue would be addressed by adding language in the Health and Safety Code §247.064(b) providing residents the right to a fair hearing.



## **Minimize the risk of abuse and neglect to nursing home residents**

Nursing homes provide care and services that stress routines and schedules for the convenience of management; residents and direct care staff are often not involved in decision making. For culture change to make a significant difference in Texas, regulations must protect residents from unintentional neglect.

- **Require administrative staffing patterns to reflect the daily needs of residents.**

Residents need the same amount of help on the weekends, but staffing is historically a problem on Saturdays and Sundays. The absence of administrative staff on weekends leaves weekend staff with minimal supervision, and residents may go without baths, activities and food. Imagine the residents who need help to eat, but may not receive staff assistance and may be unable to communicate their needs. Requiring an onsite presence of staff from areas such as administration, nursing, social services, activities and dietary would ensure that care and services are delivered every day of the week.

- **Study the nursing facility direct care staff enhancement program to determine the impact on clinical outcomes for residents.**

The Institute of Medicine, a national research organization that advises on health policy, recommends that nursing home residents receive 4.1 hours of direct care from a licensed nurse or caregiver per day. Texas implemented the nursing facility direct care staff enhancement program to improve direct care staffing in some

nursing homes, but residents' clinical outcomes as a result of enhanced staffing have not been thoroughly studied to determine whether the program positively affects quality of care. Results of this study should be used to drive staffing and reimbursement policy.

- **Require nursing home staff training to reflect the needs of residents living in the home.**

Long-term care ombudsmen indicate that continuing education for facility staff is an important method of protecting resident rights and preventing abuse and neglect. However, nursing homes get little guidance about the content of training. Plans of care, dietary services and activity programs must reflect the needs of residents to be effective; consequently, a staff training program should also reflect the individual needs of residents. For example, if one or more residents have behavioral health needs or are diagnosed with dementia, the nursing home training plan should reflect those needs. This issue would be addressed by adding to the Health and Safety Code §242.037(i) a requirement that initial and continuing education should address the unique needs of residents.

- **Ensure enforcement penalties sufficiently deter discharge violations.**

Being discharged against their wishes is highly disruptive to the resident's care. Federal law creates significant protections for consumers in this area, but the administrative penalty for a state violation is set by state law. The current

# Recommendations

penalty for a nursing home that does not inform a resident of their appeal rights, or that discharges a resident without proper reason or notice, is not a sufficient deterrent, and providers are willing to pay the relatively small fine. If penalties for improper discharge were increased and routinely applied, nursing home residents would be better protected from illegal discharges.

- **Develop incentives for nursing home culture change.**

DADS has delivered training on individualized care practices and other components of culture change to nursing home providers, surveyors, and long-term care ombudsmen for more than five years. In 2010, the agency launched an initiative to support providers to implement culture change. This initiative increased educational opportunities, including multiple webinar and multi-location conferences, as well as a comprehensive website dedicated to free and low-cost culture changes. The logical next step is to motivate providers to implement culture change through financial incentives. In the 81st legislative session, the Texas Legislature had the foresight to pass H.B. 1218, which authorized the Texas Health and Human Services Commission to develop an incentive payment system for Medicaid-certified nursing homes. At the time the legislation was passed, it was estimated to cost \$2.5 million to develop an incentive payment system. Development and implementation of this system will improve the quality of care and instill a philosophy of person-centered care in nursing homes.







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