

# Office of the State Long-term Care Ombudsman Annual Report



**State fiscal years 2013-2014**

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

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**November 2014**

# Texas Long-term Care Ombudsman 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 residents of nursing homes and assisted living facilities.
- **Provides** information and assistance about long-term services and supports.
- **Receives** and investigates complaints, and helps residents resolve problems.
- **Represents** residents' interests before governmental agencies.
- **Respects** the privacy and confidentiality of residents and complainants.

## Long-term care ombudsman accomplishments

Accomplishment	2013	2014
Nursing home complaints	12,073 cases with 14,841 complaints	11,995 cases with 13,837 complaints
Assisted living facility (ALF) complaints	711 cases with 881 complaints	1,238 cases with 1,450 complaints
Nursing home visits	28,392 visits	26,264 visits
ALF visits	5,157 visits	10,343 visits to ALFs and 281 visits to ALF residents in Adult Day
Volunteers	720 volunteers donated 54,278 hours	638 volunteers donated 44,986 hours
Consultations to residents/representatives	9,081 consultations	10,177 consultations
Councils attended	1,456 resident and 245 family	1,397 resident and 235 family
Consultations to facility staff	4,968 consultations	3,964 consultations
Training to facilities	437 sessions	291 sessions
Input provided to DADS surveyors	1,245 surveys	907 surveys

## Ombudsmen also

- Responded to complaints ranging from unresponsive staff to involuntary discharge.
- Resolved or partially resolved 91 percent of complaints in nursing homes and 80 percent of complaints in ALFs.
- Provided 841 community education sessions.

The mission of the Texas Long-term Care Ombudsman Program is to improve the quality of life and care for residents of nursing homes and ALFs by providing prompt, informal complaint resolution and promoting systemic change on behalf of residents' interests.



# Ombudsmen in Nursing Homes

## Visits

<b>2013</b>	<b>28,392 visits</b>
<b>2014</b>	<b>26,264 visits</b>

Certified ombudsmen visited 82 percent of all nursing homes quarterly in 2013 and 86 percent in 2014, while the overall number of visits decreased slightly. The decline may be due to fewer volunteers. The increase in regular frequency of visits is likely the result of training and monitoring.



## Most frequent nursing home complaints

Complaint	2013	2014	Total
1. Failure to respond to requests for help, including call light	1,309	1,471	2,780
2. Food service: quantity, quality, variation, choice	763	776	1,539
3. Building: cleanliness, pests, housekeeping	708	732	1,440
4. Dignity, respect, poor staff attitudes	685	669	1,354
5. Equipment or building: disrepair, hazard, fire safety	758	595	1,353
6. Symptoms unattended or unnoticed	659	606	1,265
7. Personal hygiene: nail and oral care, dressing, grooming	563	527	1,090
8. Medication: administration or organization	547	512	1,059
9. Involuntary discharge: planning, notice, procedure	497	463	960
10. Odors	393	404	797
11. Infection control	392	328	720
12. Assistive devices or equipment	374	332	706
13. Toileting, incontinent care	351	297	648
14. Resident unable to exercise choice, rights, preference	338	278	616
15. Personal property: lost, stolen, used by others, destroyed	314	291	605
<b>Subtotal (of 15 most frequent complaints)</b>	<b>8,651</b>	<b>8,281</b>	<b>16,932</b>
<b>Total (of all complaints received)</b>	<b>14,841</b>	<b>13,837</b>	<b>28,678</b>

Ombudsmen closed 12,073 cases with 14,841 complaints in 2013, and closed 11,995 cases with 13,837 complaints in 2014. In order of frequency, the most common complaint categories involved resident care; environment and safety concerns; rights, autonomy and choice; dietary issues; and rehabilitation.

Sufficient, well-trained and well-supervised staff is critical to quality care in a nursing home. In 2013 and 2014, three of the 10 most common complaints related directly to facility staff: call lights not answered in a timely manner; dignity, respect, and poor staff attitudes; and symptoms unattended or unnoticed. These three staffing complaints made up 19 percent of all nursing home complaints received, which is 5,399 complaints over two years.

### Nursing home complainants

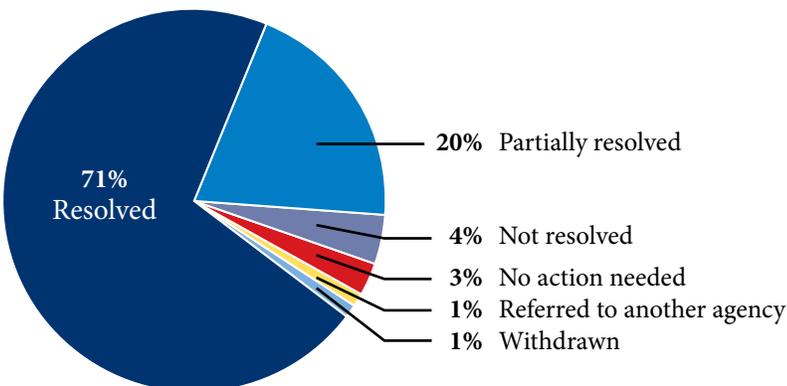
2013 and 2014	Percent	Complainant
13,505	56%	Resident
6,643	28%	Ombudsman
2,368	10%	Relative, friend
861	3%	Facility staff
534	2%	Anonymous
157	1%	Other

### Verification of complaints

Ombudsmen verify complaints through observation, interviews or record review. Verification indicates that the circumstances described in the complaint existed or were generally accurate. In 2013 and 2014, 94 percent of nursing home complaints were verified.



### Complaint outcomes (2013 and 2014)



# Ombudsmen in Assisted Living Facilities

## Visits

**2013**      **5,157 visits**

**2014**      **10,343 visits**

The 83rd Texas Legislature provided additional funding for the long-term care ombudsman program, making it possible for local programs to hire ombudsmen to regularly visit ALF residents. As a result, ombudsman visits and casework increased dramatically between 2013 and 2014. For

example, in 2013 ombudsmen visited quarterly just 10 percent of ALFs, but in 2014 ombudsmen visited quarterly 56 percent of ALFs. Total visits more than doubled, from 5,157 in 2013 to 10,343 in 2014. This regular contact serves as the basis for building trust with residents and a productive working relationship with facility staff.

Because some ALFs use adult day services to provide weekday services to residents, ombudsmen also made 281 visits to residents in adult day settings.

## Most frequent assisted living facility complaints

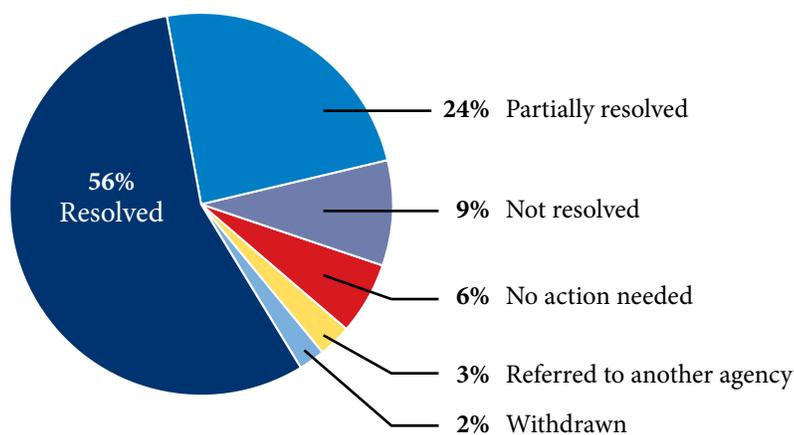
Complaint	2013	2014	Total
1. Food service: quantity, quality, variety, choice	87	159	246
2. Equipment or building: disrepair, hazard, fire safety	55	112	167
3. Building: cleanliness, pests, housekeeping	36	98	134
4. Medication: administration or organization	52	80	132
5. Dignity, respect, poor staff attitudes	35	56	91
6. Odors	19	68	87
7. Information not provided: rights, benefits, services, complaints	38	45	83
8. Activities: availability, choice or appropriateness	40	42	82
9. Involuntary discharge: planning, notice, procedure	42	34	76
10. Environment: air or water temperature, noise	19	44	63
11. Personal property: lost, stolen, used by others, destroyed	23	30	53
12. Inaccurate billing or charges	27	23	50
12. Failure to respond to requests for help, including call light	20	30	50
14. Shortage of staff	18	31	49
15. Resident unable to exercise choice, rights, preference	18	24	42
<b>Subtotal (of 15 most frequent complaints)</b>	<b>529</b>	<b>876</b>	<b>1,405</b>
<b>Total (of all complaints received)</b>	<b>881</b>	<b>1,450</b>	<b>2,331</b>

Ombudsmen closed 711 cases with 881 complaints in 2013 and closed 1,238 cases with 1,450 complaints in 2014. In order of frequency, the most common complaints involved environmental and safety concerns; resident care; dietary issues; autonomy and choice; and activities and social services. The majority of the most frequent 15 complaints are consistent with complaints investigated in previous years.

### Assisted living complainants

2013 and 2014	Percent	Complainant
829	43%	Resident
709	36%	Ombudsman
213	11%	Relative, friend
94	5%	Anonymous
85	4%	Facility staff
19	1%	Other

### Complaint outcomes (2013 and 2014)



### Verification of complaints

Ombudsmen verify complaints through observation, interviews or record review. Verification indicates that the circumstances described in the complaint existed or were generally accurate. In 2013 and 2014, 89 percent of ALF complaints were verified.

On average, ombudsmen closed ALF cases in 25 days, which is eight days longer than an average nursing home case was closed.



# Consultation and Training

## Resident and family councils

Ombudsmen attended 2,853 resident council and 480 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, facility rules and regulations, and residents' rights. Since 2012, ombudsmen have trained councils 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. Resident requests are most frequently related to resident care, residents' rights, finding and interpreting regulations, and decision-making authority. Family members and friends often consult with ombudsmen about the role of the ombudsman, how to select a nursing home or assisted living facility, paying for care, relocation options and residents' rights. Ombudsmen provided a total of 18,254 consultations to residents and families.

One way 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 care 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 1,004 care or service plan meetings at the request of a resident or legal representative and an additional 633 meetings with

the purpose of resolving a complaint. Ombudsman consultation also includes attendance at HHSC fair hearings to represent a resident in an appeal. Ombudsmen participated in 60 fair hearings to help residents facing discharge from a facility or denial of Medicaid benefits. Ombudsmen also attended seven 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 relocation options using Money Follows the Person policy; residents' rights; person-centered dementia care; recognizing and preventing abuse, neglect and exploitation; and the role of the ombudsman. Ombudsmen provided 728 training sessions to facilities for a total of 1,189 hours. A total of 11,831 employees received training from an ombudsman.

## 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 residents' rights, Money Follows the Person policy, discharge procedures and planning, the ombudsman role, and interpretation of regulations. Ombudsmen provided a total of 8,932 consultations to facility staff.

# Funding and Program Outcomes

*Ombudsmen seek to resolve complaints to a resident's satisfaction. In 2013, ombudsmen resolved or partially resolved 89 percent of nursing home and assisted living facility complaints received, and in 2014, ombudsmen resolved or partially resolved 90 percent of complaints in both settings.*

More than 800 (835) volunteers actively served in the Long-term Care Ombudsman Program and contributed 99,265 hours in 2013-14. Local staff ombudsmen recruited, trained and supervised volunteers, while state office staff approved training and issued certification for each ombudsman. A total of 269 new volunteer ombudsmen completed a three-month internship and were certified between Sept. 1, 2012 – Aug. 31, 2014.

The state office trained 116 certified staff ombudsmen. 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 in-person and 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 \$4,422,969 in FY 2013 and \$4,893,446 in fiscal 2014. Federal dollars (89 percent in 2013 and 75 percent in 2014) are the largest funding source for the Ombudsman Program followed by state dollars (8 percent in 2013 and 23 percent in 2014)\* and local funds (3 percent in 2013 and 2 percent in 2014). The following chart shows a breakdown of the total budget by source of funding.

*\*The increase in state dollars from 2013 to 2014 was due to the 83rd Texas Legislature funding long-term care ombudsmen to regularly visit ALF residents.*



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

Source	2013	2014
Older Americans Act Title III	\$2,257,120	\$2,057,755
Older Americans Act Title VII	\$1,226,862	\$1,228,407
Other federal funds	\$457,536	\$355,059
State General Revenue	\$339,317	\$1,136,379
Local cash	\$142,134	\$115,846
<b>Total</b>	<b>\$4,422,969</b>	<b>\$4,893,446</b>

# Recommendations

*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 ALF residents. The following recommendations are based on collective program experience of the state and local ombudsmen.*



## **1. Remedy interference with the Office of the Texas Long-term Care Ombudsman.**

The enabling state statute for the Office of the State Long-term Care Ombudsman does not clearly address and deter interference by providers with ombudsmen performing official duties. Interference wastes state resources and impedes advocacy on behalf of residents who have a right to access their ombudsman. To remedy interference, include a representative of the long-term care ombudsman program in the list of interference actions prohibited by Health and Safety Code §247.0451(a) for ALFs and §242.066(a) for nursing homes.

## **2. Ensure independence of the Office of the Texas Long-term Care Ombudsman.**

The Office of the State Long-term Care Ombudsman needs clear independence from its host agency to comply with federal law and address conflicts of interest. The program's independence should be addressed in Human Resources Code §101.052 and §101.054.

## **3. Fund the DADS Legislative Appropriations Request, Protecting Vulnerable Texans Exceptional Item, which funds long-term care ombudsmen to regularly visit and resolve complaints on behalf**

## **of ALF residents and funds DADS Regulatory Services to survey ALFs on a regular basis.**

With 1,773 ALFs in Texas, residents need the services of an independent advocate to resolve concerns including medication errors, environmental and safety issues, and involuntary discharge. State funding is needed to fully address the cost of staff ombudsmen and their travel to ALFs. Another concern addressed by the Protecting Vulnerable Texans Exceptional Item is regulatory surveys. ALFs are surveyed once every two years, unlike nursing homes which are surveyed annually. Additional positions are needed for surveyors to license and regulate ALFs and formally investigate complaints such as abuse and neglect. Funding both requests will ensure residents are protected by both formal and informal long-term care oversight functions.

## **4. Develop ALF specialization standards.**

ALFs currently serve residents with complex needs such as dementia, traumatic brain injuries (TBI), intellectual and developmental disabilities (IDD), and mental illness. Like specialized Alzheimer's facilities, residents with complex needs are often concentrated in a particular facility, but unlike the Alzheimer's specialization, ALF rules are generic for other specializations. Residents deserve licensing rules specific to their needs. Creating

more specialized licenses would inform the public on the services provided and support residents choosing the right level of care. Defining facilities with specializations would provide DADS and other state agencies more information about the services and people in a facility. Separate ALF specializations should be created in Chapter 247 of the Health and Safety Code for facilities that predominantly serve people with TBI, IDD and mental illness.

**5. Require ALF employees who provide direct care to be certified nurse aides.**

In many instances, unlicensed and uncertified ALF employees help residents take their medications. Ensuring that all employees who provide direct care have a minimum standard of training regulated by DADS will help ensure that residents get the help they need, including recognizing adverse reactions to drugs and other changes in their condition. Another benefit of requiring all direct care staff to be CNAs is comprehensive training on residents' rights and identification and prevention of abuse, neglect and exploitation. This requirement would be addressed in Chapter 247 of the Health and Safety Code.

**6. Provide a state fair hearing for ALF 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 where they were retaliated or discriminated against for their disability. This issue would be addressed by adding language in Health and Safety Code §247.064(b) providing residents the right to a state fair hearing.

**7. Prevent unnecessary discharge from an ALF.**

If an ALF discharges a resident without proper reason or notice, the current penalty is not a

sufficient deterrent. Providers are willing to pay the small penalty, which is subject to the right to correct with a potential for no fine. Elevating the penalty communicates that the state takes involuntary discharge seriously and creates a better deterrent of unnecessary discharge. Elevate the administrative penalty for violations of discharge procedures to no less than \$1,000, and make any violations not subject to the right to correct in Health and Safety Code §247.0452.

**8. Expand the nursing facility direct care staff enhancement program.**

Even the best caregivers cannot do their job without enough staff to care 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 averages 20 minutes less than the national average of 4.1 hours per day. In 2000, Texas implemented the nursing facility direct care staff enhancement program to improve direct care staffing in nursing homes, but due to limited funds not all facilities can participate. Nursing home providers continue to say they cannot increase staffing at current Medicaid reimbursement rates. Fully funding the enhancement program is a practical way to raise quality of care to national standards.

**9. Require nursing home staff training to reflect the needs of residents.**

Continuing education is an important method of protecting residents' rights and preventing abuse and neglect. However, nursing homes get little guidance about the content of their training to staff. Plans of care, dietary services and activity programs must reflect the needs of residents to be effective; accordingly, 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 and DADS surveyors should review training records to monitor compliance. This issue would be addressed by adding to the Health and Safety Code §242.037(i) a requirement that initial and continuing education must address the needs of residents.

#### **10. Increase enforcement penalties to deter nursing home discharge violations.**

Involuntary discharge disrupts a resident's continuity of care and can distance the person from family and friends who could visit and advocate for them. Discharge rights are protected by federal law, but the penalty amount is set by the state. The current amount is not a sufficient deterrent, and providers are willing to pay the relatively small fine. Citations are subject to the right to correct, which results in no fine. The right to correct in a discharge case means that after improperly discharging a person, a facility could theoretically correct facility practices but not allow the resident to return to the facility and still face no fine. If penalties for illegal discharge were increased and applied, and not subject to the right to correct, nursing home residents would be protected from illegal discharge. Increase penalties in Health and Safety Code §242.066 and add violations related to transfer or discharge procedures as ineligible to the right to correct in §242.0665(b).

#### **11. Require nursing homes with locked units to be Alzheimer's certified.**

Ombudsmen identified more than 200 nursing homes in Texas with locked units that are not certified as such but market themselves to and



care for residents with Alzheimer's disease and other forms of dementia. This results in many residents with dementia not getting care that addresses their individual needs, and the practice violates the spirit of existing law. Alzheimer's certification ensures adequate staffing, training and activities. When at least 50 percent of residents in a locked unit have a diagnosis of dementia, the unit should be Alzheimer's certified. This recommendation would be addressed by adding language about locked units as a trigger for Alzheimer's certification in Health and Safety Code §242.040.

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