



Protecting Residents' Rights

Ombudsmen in Assisted Living Facilities

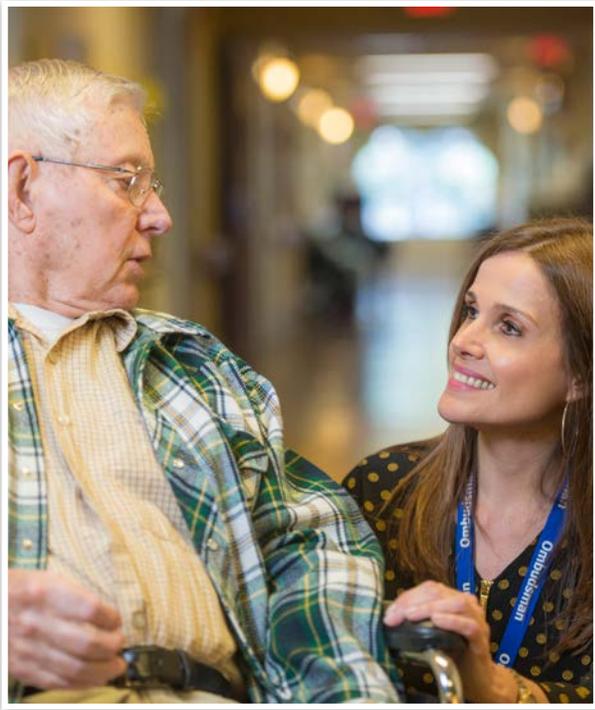




Overview

Long-term care ombudsmen regularly visit ALFs and advocate for residents. This report describes ombudsman services in ALFs and recommendations to ensure the highest quality of life and care for residents.

An Ombudsman's Story:



During a visit to an assisted living facility (ALF), a volunteer ombudsman named Margaret* noticed that the facility did not provide residents with basic personal items such as towels, soap or bath tissue. Instead, the facility required residents to buy their own. Conversations with several residents about their difficulties obtaining these items concerned her.

After speaking to a number of residents, she reviewed state ALF licensing rules and discovered that ALFs must supply these goods to residents free of charge. She sought further clarification from the Office of the State Long-term Care Ombudsman and the Texas Department of Aging and Disability Services (DADS) Regulatory Services, who confirmed that ALFs are indeed responsible for providing personal items.

Margaret met with the facility director about her concerns. The director showed her the resident agreement and offered to keep personal items available in her office in case a resident should need something. In light of state licensing rules requiring ALFs to supply these items, this seemed like a partial solution at best.

As an ombudsman, Margaret seeks the highest quality of care and services for residents, and this resolution did not seem to meet that standard.

Margaret identified this situation as a problem with the system and brought the case to the attention of the Office of the State Long-term Care Ombudsman, which in turn contacted corporate management of the facility. The ombudsman's office and corporate management discussed the situation at length but reached an impasse.

As a resident advocate, the ombudsman recommends changes to ALF rules to clarify that facilities must provide these items at no charge and with no barriers to residents. Margaret and the office continue to work for a statewide change.

** Throughout this report, names have been changed to protect anonymity.*



Quick facts on ALFs in Texas:

- 1,824 assisted living facilities regulated and licensed by the state.¹
- 63,521 assisted living beds.
- Rates vary from \$700 to more than \$9,000 a month. Long-term care insurance plans may cover the cost of assisted living. There are also a limited number of contracted assisted living beds for residents on STAR+PLUS (Medicaid).
- The largest facility in Texas is licensed for 300 residents.²

Based on the number of beds and residents' abilities, the state licenses facilities as Type A, B or C, classified as small or large, and Alzheimer's certified, if applicable. These facilities may be multi-story, apartment complexes, or resemble a hotel. Residents may need assistance with movement, bathing, dressing or medications; have hearing or speech impairments or incontinence; use self-help devices; or exhibit symptoms of mental or emotional disturbances.

- **Type A:** Care for residents who can evacuate the facility unassisted, do not require routine attendance during sleeping hours, and can follow directions during an emergency; 31 percent of ALFs.
- **Type B:** Care for residents who may need assistance to evacuate, cannot follow directions during an emergency, require staff attendance during sleeping hours, and need assistance transferring to and from a wheelchair; 67 percent of ALFs.³
- **Type C:** Four-bed facilities that provide adult foster care; two percent of ALFs.
- **Small:** Licensed to care for 16 or fewer residents.
- **Large:** Licensed to care for 17 or more residents.
- **Alzheimer's facility:** Type B facility certified to provide specialized services to residents with Alzheimer's or a related condition;⁴ 24% of all ALFs.

¹DADS Regulatory Services, August 2015

²Long-term Care Quality Reporting Systems, <http://facilityquality.dads.state.tx.us/qrs/public/qrs.do>

³Since 2003, the number of Type B facilities has increased by 98 percent. This increase in Type B ALFs illustrates a demand for a higher level of care.

⁴Other facilities may serve a group of residents with similar conditions, such as intellectual and development disabilities, traumatic brain injuries, or people with mental illness. However, a separate license is not required.

Long-term Care Ombudsman Services



History

In 1972, the Older Americans Act (Title VII, Chapter 2) established the Long-term Care Ombudsman Program and its presence in nursing homes. With the growth of ALFs, the act was amended in 1981 to expand ombudsman services to these facilities. In 2013, the 83rd Texas Legislature increased funds to long-term care ombudsmen to support ombudsmen in ALFs. Additional funds made it possible for ombudsmen to regularly visit and serve ALF residents. The 84th Texas Legislature doubled funds for long-term care ombudsman services to ALF residents in 2015, allowing further expansion of ombudsman services to ALF residents.

Mandates

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.

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.
- Helps residents resolve problems.
- Represents residents' interests before governmental agencies.
- Respects the privacy and confidentiality of residents and complainants.



Training

Ombudsmen navigate ALF policy, state regulations, community resources and government agencies to advocate for residents with different abilities and needs. Due to the varying factors in a complaint, the work of investigating and resolving complaints can be challenging. To ensure ombudsmen provide the best service to ALF residents, ombudsmen are trained and certified by the Office of the State Long-term Care Ombudsman.

Staff and volunteers must complete 30 hours of training to be certified as ombudsmen. To remain active, ombudsmen must complete 12 hours of continuing education each year, either in person or

via webinar. Topics include ALF regulations; abuse, neglect and exploitation; legal resources; locked units; managed care; resident rights; guardianships and powers of attorney; and veteran benefits and services.

A Resident's story...

Yogurt and ice cream are two of Ms. Decker's favorite foods, but she is lactose-intolerant. When she first moved into her long-term care facility, a large type-B facility, she made her condition clear to the director of the facility. Despite the director's assurances, the menu hasn't included any foods that cater to her dietary needs.

She reached out to an ombudsman to complain about the food choices and asked the ombudsman

to speak to facility staff about making lactose-free items available to her. The ombudsman met with the facility director and Ms. Decker to discuss her dietary needs.

The director agreed to make both items available for Ms. Decker at every meal. Ms. Decker now enjoys her yogurt every morning and ice cream every night.

The Work of an Ombudsman

Protecting ALF Residents' Rights

Regular Visits

Ombudsmen are expected to make frequent, unannounced visits to facilities. The ombudsman program receives funding from the state legislature to ensure all assisted living residents have equal access to an ombudsman. On a first visit to the facility, ombudsmen use observation skills to examine the outside and inside of the facility for any unsafe conditions, greet and notify staff of their presence and explain their role to staff and residents. The majority of time during a visit is spent talking with the residents, asking about their experience at the ALF and exploring any complaints.

Based on the type and size of the facility, ombudsmen are required to visit between two and six times each year (see chart). Ombudsmen may make additional visits to investigate, resolve and follow up on concerns. Ombudsmen strive to resolve concerns and build relationships with residents and facility staff. An expected outcome of ongoing contact by an ombudsman is that residents and facility staff will view the ombudsman as a resource when questions and concerns arise.

Ombudsman made a total of 11,861 visits to assisted living facilities in 2015 — 1,518 more than 2014.

Ombudsman Visits by Year

	2013	2014	2015
Facility Visits	5,157	10,343	11,861

2015 Ombudsman Visits

Facility Type	Facility Size	Required Visits
Type A	Small (16 or fewer beds)	2
	Large (17+ beds)	4
Type B	Small (16 or fewer beds)	4
	Large (17+ beds)	6
Type C	(4 beds)	2



A Resident's Story...

Since Mr. Aldridge was diagnosed with Alzheimer's disease four years ago, Mrs. Aldridge, his wife of 56 years, has been his primary caregiver. When his condition worsened last year, she decided to move him into a large Type B ALF near their home. Since the move, the ALF has offered the safety and security he needed, but lately his wife had noticed gaps in his care.

Mrs. Aldridge called the ombudsman for help resolving her complaints. She explained to the ombudsman that her husband has always been a night owl and dislikes being idle. The door to his room locked when he left, which had prevented him from coming and going as he pleases. He had become increasingly disoriented at night and had difficulty finding the bathroom. As a result, the carpet in his room was stained and had an odor.

The ombudsman set up a meeting with Mr. and Mrs. Aldridge at the facility. Before their meeting, the ombudsman observed the facility environment to witness interactions between staff and residents and to review the cleanliness of the facility. Mrs. Aldridge, Mr. Aldridge and the ombudsman met privately in the resident's room to discuss the concerns. Mr. Aldridge was unable to answer questions directly. The ombudsman offered ideas to accommodate Mr. Aldridge's needs and protect his rights as a resident while maintaining his safety. She suggested creating a schedule with facility staff to check on him at night. They discussed disabling the lock on his door to allow him to enter and exit his room as he pleases. The ombudsman also suggested his carpet be cleaned, and that the bathroom light be left on at night to make it easier for him to find his way in the dark.

Mrs. Aldridge was pleased with the ombudsman's ideas and wanted help implementing them. As her husband's legal representative, Mrs. Aldridge gave the ombudsman permission to advocate on his behalf and organize a service plan meeting with Mr. and Mrs. Aldridge, the director and herself. In addition to keeping the bathroom light on, the director also agreed to have staff check on Mr. Aldridge regularly during sleeping hours and to offer to help him to the bathroom. The director also devised a check-off sheet to note each time staff checked on him. The sheet included a space for staff to make notes.

Mrs. Aldridge was very happy with the changes in her husband's care. When the ombudsman followed up with her, she reported that the facility was monitoring him at night. His room is much cleaner, his overall care has improved, and he is happier now that he can come and go as he pleases.

Advocating for Residents

Resolving Complaints

Ombudsmen open a case when a complaint is made. Ombudsmen opened 1,675 cases in 2015, an increase of 437 cases (26 percent) from 2014. Each case may have one or more complaints. Ombudsmen gather complaints in person, by phone and email. Complaints can come from any source, such as residents, facility staff, resident's family members or friends, or ombudsmen. In 2015, ombudsmen received 1,915 complaints, 465 (24 percent) more than 2014.

In 2015, 42 percent of complaints were reported by ombudsmen, and 39 percent by residents.

Cases and Complaints by Year

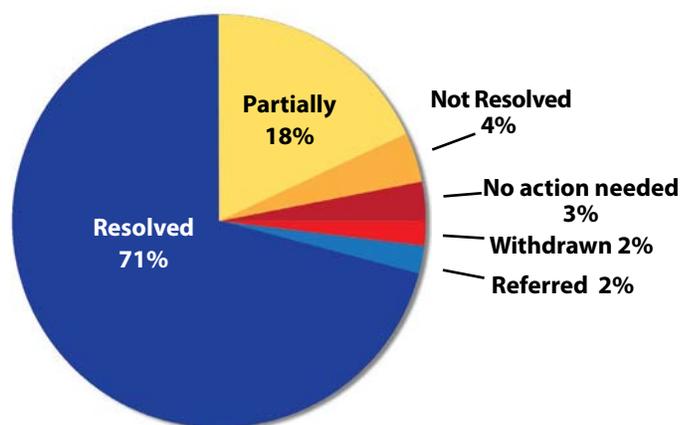
	2013	2014	2015
Cases	711	1,238	1,675
Complaints	881	1,450	1,915

Once a complaint is received, ombudsmen ask the resident's permission to take steps to resolve the issue. With the resident's permission, ombudsmen use problem-solving skills to advocate for the resident's rights and reach a solution. In order of frequency, the most common complaints in 2015 involved food service, cleanliness, environmental and safety concerns, medication issues and odors. The 10 most frequent complaints account for 52 percent of all complaints received. Before a case is closed, complaints may be resolved, partially resolved, not resolved, withdrawn, referred to another agency or may require no action. On average, cases are closed in 30 days.

Most Frequent Assisted Living Complaints in 2015 Total Complaints: 1,915

Complaint	Total
Food service: quantity, quality, variety, choice	208
Building cleanliness, pests, housekeeping	186
Equipment or building: disrepair, hazard, fire safety	144
Medications: administration or organization	93
Odors	78
Information regarding rights, benefits, services, the resident's right to complain	70
Activities: availability, choice, appropriateness	60
Dignity, respect, poor staff attitudes	58
Personal property lost, stolen, used by others, destroyed	49
Environment, air temperature, water temperature, noise	39
Total (of 10 most frequent complaints)	985

Complaint Outcomes





Educating on Residents' Rights

Provide Information

Ombudsmen are resources for residents, family members and facility staff. In 2015, ombudsmen provided 1,684 consultations to residents and families and 813 to facility staff. The most common topics ombudsmen provide information on, in order of frequency, are the ombudsman program and their role; questions about care; resident rights; outside services, such as legal aid or home health; and discharge procedures and planning.

Consultations by Year

	2013	2014	2015
Consultations	664	1,679	2,497

Ombudsmen also provide support and consultation by attending service plan meetings with residents that include members of the interdisciplinary team and sometimes family members. During a meeting, the team reviews service plans, discusses issues and makes changes to the plan to ensure a resident's needs are met. Ombudsmen attend only at the request of the resident, and in 2015, attended 47.

Resident council meetings allow residents to discuss topics and issues related to their homes. Resident councils can request ombudsmen to share information at their meetings about the role of the ombudsman, residents' rights and other topics. Ombudsmen attend only at the invitation of the council, and in 2015, attended 145 resident council meetings and six family council meetings.

Representing Residents' Interests

Affecting Systems

The Office of the State Long-term Care Ombudsman represents the interests of approximately 63,000 assisted living facility residents. Long-term care ombudsmen are independent within DADS and do not represent DADS or the Texas Health and Human Services Commission. Ombudsmen are part of long-term care services, and work with facility owners, facility staff, legislators, regulatory services and other governmental agencies to serve residents of assisted living facilities.

Stakeholders

Ombudsmen represent residents' interests in long-term care. As resident representatives, ombudsmen connect with other stakeholders to advocate for residents and to provide information and assistance about long-term services and supports. In 2015, ombudsmen presented at eight assisted living manager's trainings and two provider association conferences, outlining the ombudsman's purpose and role in ALFs and residents' rights.

Governmental Agencies

Ombudsmen also represent residents' interests before governmental agencies. This requires them to stay informed of bills during legislative sessions, assisted living facility rules, Medicare or Medicaid benefits and requirements, and any policy changes that may affect ALF residents.

During the 84th Texas legislative session, ombudsman staff testified on, analyzed and provided feedback on several bills. The State Long-term Care Ombudsman successfully advocated for



changes in Alzheimer's certification. With this new law, a definition of Alzheimer's disease and related disorders is being added to ALF rules in addition to a requirement for facilities, whether Alzheimer's certified or not, to disclose their certification to all prospective and current residents. The State Long-term Care Ombudsman also testified against a bill allowing some ALFs to receive an initial license without a health inspection. This bill passed and takes effect in 2016. The ombudsman's office will continue to work with regulatory and external stakeholders to advocate on behalf of resident's best interests as the bill is implemented. The ombudsman's office also supported a bill that passed requiring ALFs to maintain guardianship documents for residents with guardians and requires DADS Regulatory Services to review guardianship documents during investigations of abuse, neglect or exploitation.



Promoting Quality Care

With the support of the 84th Texas Legislature approving additional funds for ombudsman services in ALFs, the program continues to promote quality care. Long-term care ombudsmen strive to improve all services, including ombudsman services, to older adults. Since September 2015, ombudsmen are required to complete six additional hours of training for certification, increasing training hours from 30 to 36. Also beginning in September 2015, the ombudsman visit schedule for ALFs was changed to ensure all residents have equal and consistent access to an ombudsman. The new visit strategy is as follows:

2016 Ombudsman Visits

Facility Type	Facility Size	Required Visits
Type A	All sizes	4
Type B	Small (1–49 beds)	4
	Medium (50–99 beds)	6
	Large (100+ beds)	10
Type C	(4 beds)	4

Recommendations*

Ombudsmen are directed by the Older Americans Act to recommend improvements to the long-term care system to better the lives of residents. The following recommendations are based on collective program experience of state and local ombudsmen.

Remedy interference with the Office of the State 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 Texas Health and Safety Code §247.0451(a).

Fund DADS Regulatory Services to survey ALFs on a regular basis

Unlike nursing homes, which are surveyed annually, ALFs are surveyed once every two years. Additional positions are needed for surveyors to license and regulate ALFs and formally investigate complaints. More surveyors will help ensure residents are protected by formal long-term care oversight functions.

Develop ALF specialization standards

ALFs serve residents with complex needs such as dementia, traumatic brain injuries (TBI), intellectual



and developmental disabilities (IDD), and mental illness. Some ALFs specialize in providing care to residents with dementia, and can obtain an Alzheimer's certification from the state to do so. But some facilities are home to large concentrations of residents with other special needs, such as TBI, IDD, or mental illness. There are no certifications specific to the needs of these residents. Licensing rules that are specific to these populations would better serve residents, inform the public on the services provided, and help residents choose the appropriate level of care. Defining facilities with specializations would provide DADS and other state agencies with more information about the residents of and services provided by a facility. Three ALF specializations should be created in Chapter 247 of the Texas Health and Safety Code for facilities that primarily serve people with TBI, IDD and mental illness.

*For nursing home recommendations from the Office of the State Long-term Care Ombudsman, refer to the annual report for state fiscal years 2013–14.



Study ALF employees who administer or supervise medications

The medical needs of ALF residents are increasingly complex. However, state regulations make it permissible for unlicensed and uncertified employees, by delegation of a registered nurse, to administer medications and supervise residents taking their medications.

Ensuring proper training for all employees who administer or supervise medications will help ensure the safety and well-being of residents. The ombudsman's office recommends a study of the scope of RN delegation in ALFs, a review of ALF violations involving medications, and an evaluation of the number of ALFs using licensed or certified professionals to administer or supervise medications.

Create a state fair hearing process 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. This leaves residents without access to due process in situations in which they were retaliated or discriminated against. This issue would be addressed by adding language in Texas Health and Safety Code §247.064(b) providing residents the right to a state fair hearing.

Prevent unnecessary discharge from an ALF

While ALFs can be fined for discharging residents without proper reason or notice, the penalty for doing so is not a strong deterrent. It is a nominal fine and providers are often willing to pay the small

penalty. Additionally, providers can appeal penalties and potentially avoid paying anything. To create a stronger deterrent, the administrative penalty for violations of discharge procedures should be increased to no less than \$1,000, and the Right to Correct in Texas Health and Safety Code §247.0452 should be removed.

Provide personalized food options to residents in ALFs

For the past three years, food services in ALFs have been the primary complaint heard by ombudsmen. These include complaints about the quantity, quality, variety, choice and menu of the foods provided in ALFs. Residents have a right to be treated with respect, consideration and recognition of their dignity and individuality. Personalized food options that meet dietary needs and specific food preferences respect this right. Food is not only a basic necessity but a vital part of a person's quality of life. The ombudsman's office recommends adding language to ALF rules that would require facilities to include food preferences in the resident assessment and provide person-centered meal options based on the residents' assessments.

Create more affordable ALF options

ALFs offer a residential option that many find preferable to nursing homes. Additionally, the state's Medicaid managed care program, STAR+PLUS, is a less expensive option and can save the state money. The ombudsman's office recommends a study to collect information about the cost of ALF services, analyze the location and availability of ALF STAR+PLUS beds, and make recommendations to increase ALF participation in the STAR+PLUS program.

Mandate owners to report a facility closure to DADS Regulatory Services and the Office of the State Long-term Care Ombudsman 60 days prior to closing.

ALFs are required to notify residents 30 days prior to ceasing to operate. However, there is no requirement for facilities to notify DADS Regulatory Services and the Office of the State Long-term Care Ombudsman. Surveyors often remain unaware of the closure until they visit the facility, which may be months after closure. Without notification, ombudsman and regulatory visits to closed facilities waste resources, and the DADS data used to inform residents and the public of ALF options becomes inaccurate. Additionally, moving to a new facility can be traumatic and challenging for residents. By including the Office of Long-term Care Ombudsman in the process, residents are ensured an advocate to protect their rights and help in choosing a new facility. The ombudsman office recommends adding language to ALF rules in Texas Administrative Code §92.125 requiring facility owners to report closures to DADS Regulatory Services and the Office of the State Long-term Care Ombudsman 60 days prior to ceasing to operate.





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