

Understanding the Uniqueness of the Long-Term Care Ombudsman Program within the Aging Services Network

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In establishing the Long-Term Care Ombudsman program (LTCOP or Ombudsman program), the Older Americans Act (OAA or the Act) delineates provisions that are uncharacteristic of other OAA programs that are administered by state or territorial units on aging (SUAs) and area agencies on aging (AAAs). These provisions relate to independence, impartiality, and confidentiality and unify the LTCOP with essential standards of practice for ombudsmen in any field (such as in government, education, and business). At the same time, the OAA also mandates that the Ombudsman program, as well as SUAs and AAAs, share responsibility for engaging in systems advocacy on behalf of older adults. These programmatic similarities and differences create a distinctive dynamic between the LTCOP and SUAs, AAAs, and other entities with which the program coordinates to fulfill its functions. At the same time, these characteristics also frequently cause confusion among program partners about the LTCOP's implementation and role in the long-term care system. To help clarify OAA provisions that are uniquely applied to the Ombudsman program, this research brief frames the Ombudsman program in the context of ombudsman roles more broadly, and describes its implications for program operations within the aging services network.

OMBUDSMAN PROGRAM RESPONSIBILITIES

In 1978, Congress established the Long-Term Care Ombudsman program (LTCOP or Ombudsman program)¹ nationwide under the Older Americans Act (OAA, or the Act) to serve as a unique advocacy program for residents of long-term care facilities. Today the Ombudsman program is administered by the Administration on Aging (AoA), within the Administration for Community Living (ACL) of the Department of Health and Human Services (DHHS). Envisioned as an independent, person-centered consumer protection service, the program aims to provide a voice for long-term care residents. To fully represent residents' interests and promote and protect their health, safety, welfare, and rights, the OAA delineates Ombudsman program responsibilities at both the individual and systems levels. At the individual level, Ombudsmen conduct visits to long-term care facilities and investigate and resolve complaints made by, or on behalf of,

residents. At the systems level, Ombudsmen advocate for improvements in the long-term care system that benefit residents' care and quality of life. These activities are not limited to legislative advocacy, but include coalition-building, speaking to the media, and other strategies that broadly advance residents' rights and well-being. To help build capacity for both individual and systems advocacy efforts, the program also carries out education and outreach activities. These activities include providing information and consultation to facility staff, residents and their families, collaborating with other agencies, supporting family and resident councils, developing citizen organizations, and empowering residents as well as their families and caregivers to be effective advocates.

Ombudsman program functions are performed by a State Long-Term Care Ombudsman who heads an Office of the State Long-Term Care Ombudsman (Office or Office of the STLCO) in coordination with the state or territorial unit on aging (SUA) in all 50 states, as well as the District of Columbia, Puerto Rico, and Guam. The

¹ Note that the "O" in Ombudsman is always capitalized when referring to the Ombudsman program. References to ombudsmen in *any* field (which is touched upon in this brief) use the lower case "o."

State Ombudsman is responsible for statewide program administration and oversight of designated representatives of the Office, including paid staff and volunteers. In federal fiscal year (FFY) 2017, 1,319 full-time equivalent staff (FTEs) and 6,625 designated volunteer Ombudsmen supported the program.

The remainder of this brief describes how the same standards of practice that unify the LTCOP with effective ombudsman programs – independence, impartiality, and confidentiality – simultaneously distinguish it from other OAA programs and services. It then describes mandates that apply to LTCOPs, as well as SUAs, and area agencies on aging (AAAs), and the implications of these coexisting similarities and differences for Ombudsman program operations.

DISTINGUISHING PROGRAM CHARACTERISTICS

Fundamental to the creation of a credible and effective ombudsman office in any field or sector is adherence to three interrelated principles: independence, impartiality, and confidentiality.² Exhibit 1 highlights these features of the Ombudsman program, as outlined in the OAA and clarified in the State Long-Term Care Ombudsman Programs Final Rule (made effective July 1, 2016). The table presents the OAA's Titles (Title III, VI, and VII) and relevant Chapter (2, 3), their corresponding programs, and the state and local agencies (SUAs and AAAs) that administer these programs and services. An "X" indicates that a program or agency has a given characteristic or responsibility. A slash mark ("/") indicates that the program or agency partially meets or fulfills a given characteristic or responsibility. For example, SUAs and AAAs serve residents of long-term

care facilities insofar as these agencies are responsible for delivering home and community-based services (HCBS). HCBS recipients may reside in their home or community or in a residential setting such as an assisted living facility.

As shown in Exhibit 1, the unique characteristics of the LTCOP are largely not present in – nor relevant to – other OAA programs. Title III authorizes funds for nutrition and supportive services (such as transportation and information and assistance), family caregiving support, and disease prevention and health promotion activities, while Title VI similarly authorizes grants for supportive and nutrition services but with a focus on serving older Native Americans. The types of social services and activities funded under these Titles intend to help older adults remain independent in their homes and communities for as long as possible. However, delivery of these services does not require similar protections of independence or impartiality.

Title VII funds vulnerable elder rights protection activities under two chapters and includes the LTCOP (Title VII, Chapter 2) and programs aimed at preventing elder abuse, neglect, and exploitation (Title VII, Chapter 3). While both programs focus on elder rights, the goals of elder abuse prevention programs are to increase public awareness of elder abuse and coordinate activities between AAAs and state adult protective services (APS) programs. Like Title III and VI programs, however, the OAA does not require special provisions for independence, impartiality, or confidentiality to implement elder abuse prevention programs under Title VII, Chapter 3.

Under certain conditions, however, confidentiality provisions apply to Title III programs, Title VII (Chapter 3) programs, and AAAs, which will be discussed further in the brief.

² The American Bar Association delineated three necessary commonalities of effective ombudsman work across types and sectors, including independence, impartiality, and confidentiality (See https://www.americanbar.org/content/dam/aba/events/dispute_resolution/Newsletter%20articles/Howard_Smith_Types_of_Ombudsman_checkdam.pdf). Other membership organizations have outlined their own standards of practice for particular types of ombudsmen, such as the United States Ombudsman Association (traditional ombudsman), the International Ombudsman Association (organizational ombudsman), and the Coalition of Federal Ombudsman (federal sector ombudsman). For example, the International Ombudsman Association set forth four pillars for organizational ombudsmen, including independence, neutrality and impartiality, confidentiality, and informality (See https://www.ombudsassociation.org/assets/docs/IOA_Standards_of_Practice_Oct09.pdf).

Exhibit 1: Characteristics and Responsibilities of OAA Programs and Agencies

	Title, Chapter			Agency	
	Title III/VI*	Title VII, Chapter 3 Elder Abuse	Title VII, Chapter 2 LTCOP	SUA	AAA
Characteristics					
Independence					
Separate entity			X		
Protection from willful interference			X		
Impartiality					
Individual and organizational conflicts of interest (COI) are removed or remedied			X		
Legal counsel is without COI			X		
Confidentiality					
Stringent confidentiality provisions (not mandated reporters)	/	/	X		/
Designated health oversight agency			X		
Responsibilities					
Serve long-term care facility residents			X	/	/
Represent residents' interests			X	/	/
Engage in systems advocacy			X	X	X
Coordinate with specified entities			X	X	X

* Title III authorizes funds for nutrition and supportive services (such as transportation and information and assistance), family caregiving support, and disease prevention and health promotion activities, while Title VI similarly authorizes grants for supportive and nutrition services but with a focus on serving older Native Americans.

Note that an "X" indicates that a given program or agency has a given characteristic or responsibility. A slash mark ("/") indicates that the program or agency partially meets, or fulfills a given characteristic or responsibility.

Independence

To ensure that Ombudsman programs have autonomy, the OAA designs certain features to support programs' ability to act independently. This includes creating the Office of the SLTCO as a separate entity from its host agency using a bifurcated structure and including protections from willful interference. First, the Final Rule clarified the OAA's vision of program independence by describing the Office of the State Long-Term Care Ombudsman as "a distinct entity, separately identifiable, and located within or connected to the State agency." Whereas other OAA programs and services are administered by SUAs and delivered by designated AAAs (or by the SUA when deemed a single planning and service area) in an integrated fashion, the Ombudsman program is established as a distinct entity that is independent from SUAs. Under this bifurcated structure, the State Ombudsman is responsible for overseeing the statewide program, designating representatives of the Office, and managing the program's fiscal resources while the SUA is responsible

for ensuring that the LTCOP has sufficient resources and protections to carry out its functions. SUA functions include:

- ensuring or establishing policies and procedures;
- ensuring Ombudsmen have private and unimpeded access to residents;
- providing disclosure of information provisions;
- ensuring mechanisms to prohibit willful interference;
- ensuring freedom from individual and organizational conflicts of interest; and
- assigning adequate legal counsel.

This separation of responsibilities is designed to ensure that the Ombudsman program has the independence to address and represent the needs of long-term care residents, while allowing the program to leverage important resources of the aging services infrastructure established by the OAA. The resultant arrangement, however, can also appear disjointed within typical bureaucratic agency structures that rely on internal coordination and consistency to perform their functions.

It should be noted that while the separation of the Office from the SUA applies to all Ombudsman programs, additional provisions apply to programs that are characterized by a decentralized structure. The OAA affords states broad flexibility in how to structure their Ombudsman programs, which can be described as either *centralized* or *decentralized*. In a centralized structure, all program staff are employees of the agency housing the Office of the SLTCO (or central State Office). Under this structure, staff typically report to the State Ombudsman, regardless of their physical location (e.g. the central State Office, or elsewhere in the state). In a decentralized structure, the Office of the SLTCO is housed in a state agency or contracted entity, but local Ombudsman staff are employed by another contracted entity designated by the State Ombudsman as a local Ombudsman entity.

For decentralized Ombudsman programs, SUAs, in coordination with the State Ombudsman, are responsible for ensuring the monitoring of local Ombudsman entities. This oversight includes contractual obligations as well as an evaluation of fulfillment of designation requirements of a local Ombudsman entity and the representatives of the Office, i.e. adherence to conflict of interest provisions; firewalls to protect confidentiality, etc. The divided authority for programmatic oversight and personnel management, however, can obscure lines of reporting and accountability for program staff as well as other entities with which the program coordinates or shares personnel. With respect to the latter, representatives of the Office (or local Ombudsmen staff) may assume other roles within the agencies that house their programs.³ In these instances, an Ombudsmen's dual reporting duties can create confusion. Fully and freely representing residents, however, hinges on assuring program independence and clarifying role ambiguity.

In addition to the program's autonomy that derives from its unique operational structure, the OAA requires the SUA to provide for sanctions for willful interference and retaliation that aim to safeguard the Ombudsman program's authority to carry out its functions and responsibilities. States and territories are required to create these provisions not only to enable Ombudsmen

to carry out their duties without obstruction, but also to protect complainants and others who work with Ombudsmen from retaliation and reprisal. To preserve the independence afforded by this unusual structure as well as the program's additional safeguards, Ombudsmen must maintain clear communication and working relationships with SUAs and other agencies about the Ombudsman program's mandates.

Impartiality

The second essential element of ombudsman programs concerns their impartiality in carrying out complaint investigations and inquiries. Impartiality, however, does not imply that an ombudsman cannot act in an advocacy role. Of the three main types of ombudsmen recognized by the American Bar Association,⁴ the Long-Term Care Ombudsman is an advocate ombudsman. By impartiality, Long-Term Care Ombudsmen act without bias when gathering the facts in a complaint investigation. Ombudsman programs must also act without conflicts of interest (COI).

To maintain impartiality, the OAA includes stringent provisions for identifying and remedying or removing perceived or actual COI with respect to (1) Ombudsmen and representatives of the Office, (2) host agencies that house the State Office or local Ombudsman entities, and (3) assigned legal counsel.⁵ Indeed, the OAA and the Final Rule outline a long list of potential COI with respect to the individual (as well as members of an immediate family of the individual) involved in the appointment of an Ombudsman or designation of a representative of the Office as well as the organization that hosts the Ombudsman program. With respect to individual COI, the OAA prohibits designating individuals to represent the Office who have:

- direct involvement in the licensing or certification of a long-term care facility or provider of a long-term care service;
- an ownership or investment interest in a long-term care facility or service;
- employment or participation in the management of a long-term care facility or related organization, and for the State Ombudsman have been employed by such

³ According to data from the process evaluation, approximately 11 percent of local Ombudsmen reported sharing their time with another agency. All State Ombudsmen, however, work on a full-time basis.

⁴ The American Bar Association recognizes three main types of ombudsmen: classical, organizational, and advocate.

⁵ COI with respect to assigned legal counsel is defined by the State ethical standards governing the legal profession.

a facility or organization within one year before the date of determination involved;

- direct or indirect receipt of remuneration under a compensation with an owner or operator of a long-term care facility;
- management responsibility for, or operation under the supervision of an individual with management responsibility for APS; and
- responsibility as a guardian or other fiduciary capacity for residents of long-term care facilities in which the Ombudsman or representative of the Office provides services.

With respect to organizational COI, the OAA and Final Rule stipulate that the SUA shall consider organizational COI that may impact the effectiveness and credibility of the work of the Office and to identify programs and functions that may affect the loyalty, autonomy, and perceptions of the Ombudsman program. These programs and functions include:

- licensing, certifying, or surveying long-term care facilities;
- an association of long-term care facilities, or any other residential facilities for older adults;
- providing long-term care services;
- providing long-term care case management;
- long-term care facility rate settings;
- providing APS services;
- responsibility for Medicaid eligibility determinations;
- conducting preadmission screening for facility placement; or
- making decisions regarding admission or discharge of individuals to or from such facilities.

Should any of these programs, departments, or agencies reside in the same host agency as the Office of the SLTCO or local Ombudsman entity, the Final Rule requires that the SUA and the State Ombudsman remedy or remove the COI and report the COI to the Assistant Secretary through the National Ombudsman Reporting System (NORS), the program’s administrative reporting system. These requirements are vital for the program’s credibility and aim to ensure that the State Ombudsman is able to “independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the State agency or other agency in which the Office is organizationally located” [45 CFR §1324.11].

With respect to legal counsel, the OAA requires that the SUA ensure that adequate legal counsel is available and able – without COI – to provide the advice and consultation that are needed to protect the health, safety, welfare, and rights of residents and assist the Ombudsman program in performing its official duties. The Final Rule clarifies these requirements, stating that the SUA must ensure that provision of legal counsel to the Ombudsman program is “adequate, available, has competencies relevant to the legal needs of the program and of residents, and is without conflict of interest” as defined by the State ethical standards governing the legal profession [45 CFR § 1324.13(j)(1)(i)]. In the event of COI, the Final Rule specifies that “legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest. However, at a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long term care facilities” [45 CFR § 1324.13(j)(2)].

Identifying, removing, or remedying COI, however, is becoming increasingly challenging as more states move to redesign their long-term care systems by adding or consolidating responsibilities for home and community-based services to balance or maximize resources. When an agency oversees all or most long-term care resources, it increases opportunities for possible or actual COI with the Ombudsman program. For example, if an AAA hosts a local Ombudsman entity and provides long-term care case management services, a COI arises if a resident presents a grievance to an Ombudsman about an AAA case manager upon whom the resident depends to arrange in-home services.

Turning to potential COI related to legal counsel, the SUA may assign the Office of the Attorney General (AG) as the primary legal counsel to all the agencies it houses. Under this arrangement, COI may occur in a dispute if the AG represents both the Ombudsman program and another agency (e.g., APS, licensing and certification) that is co-located within the state agency. Given the AG’s competing allegiances, a conflict may result when legal counsel is constrained from fully representing the Ombudsman program because of its multiple responsibilities or interests to the state or other agencies. However, the OAA is clear on this matter. It stipulates that adequate legal counsel must “provide advice and consultation needed to protect the health, safety, welfare, and rights of residents” and to “assist the

Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives” [Section 712 (g)(1)(A)(i)(ii)].

Confidentiality and Disclosure

Provisions regarding resident-identifying information. The Ombudsman program is designed to represent the interests of the resident (and not necessarily the interests of the State) and to support residents’ informed decision making about disclosure of his or her confidential information. These disclosure provisions must be followed for Ombudsman programs to effectively support the resident and their wishes as they relate to handling sensitive information. For these reasons, the OAA and Final Rule outline stringent disclosure provisions that prohibit the Ombudsman program from sharing identifying information about residents or complainants to any individual or entity unless the resident’s consent is obtained (see text box). Other agencies may routinely share information about beneficiaries that they serve, sometimes creating expectations that the LTCOP can or should do the same. As a result, Ombudsmen must explain to others that the Ombudsman program’s confidentiality provisions prevent disclosure of identifying information.

For other OAA programs, stringent confidentiality provisions apply to in-home services for frail older individuals as well as programs for preventing elder abuse, neglect, and exploitation. To protect the rights of frail older adults and victims of abuse, neglect, and exploitation who receive services, the Act preserves the confidentiality of their records, limiting the disclosure of information, as needed. In addition, the Act requires AAAs to ensure that service providers protect the privacy and confidentiality of service recipients with respect to the declaration or non-declaration of their income as well as any contributions.

Access to facilities, residents, and resident records. The OAA grants authority to the Ombudsman program to have “private and unimpeded access to long-term care facilities and residents” as well as access to “files, records, and other information concerning a resident” [Section 712 (b)(1)(A-B)]. To facilitate Ombudsmen’s access to residents’ individually identifiable health information, the OAA considers the LTCOP to be a health oversight agency. This designation precludes long-term care facilities from withholding resident information that is necessary for an Ombudsman’s investigation. Without its commitment to confidentiality,

the LTCOP would not be able to gain the trust that is necessary for residents to safely voice concerns, nor would the program be able to obtain vital information for the investigation and resolution of complaints.

The OAA prohibits disclosure of the identity of the complainant or resident unless the complainant or resident or legal representative consents or disclosure is required by court order. The Ombudsman “may disclose information as needed in order to best serve residents with limited or no decision making capacity, who have no known legal representatives and are unable to communicate consent, in order for the Ombudsman to carry out the functions and duties described” [Section 712 (d)(2)(C)].

The Final Rule prohibits the Ombudsman or representatives of the Office from reporting suspected abuse, neglect or exploitation of a resident without informed consent, *notwithstanding* State laws to the contrary [45 CFR 1324.19(b)(3)(iii)]. The regulation’s preamble also addresses the Congressional intent “for the Ombudsman program to be a safe place for the concerns of residents to be brought, knowing that their information will not be disclosed without their consent...” Fed. Reg. Vol. 80, No.28 / 7732.

SIMILAR PROGRAM RESPONSIBILITIES

In the following section, we discuss key functions of the Ombudsman program that are similar to those carried out by SUAs and AAAs (while also noting key differences from other OAA programs). We also discuss how the populations and interests served by the Ombudsman program affect the responsibilities that it shares with SUAs and AAAs.

Serve Long-Term Care Facility Residents

As shown in Exhibit 1, the Ombudsman program is the only OAA program that focuses solely on addressing the

needs of residents of long-term care facilities.⁶ All other programs and services funded under the OAA target older adults in their homes and communities. Furthermore, because of the size of the population that Title III programs serve, they typically receive the largest share of OAA funding, compared to other programs. In FFY 2019, the OAA allocated 72.9% of funds to Title III programs while Title VI programs received 2.2 percent, and Title VII programs were funded at 1.1 percent (78% of which was directed to the LTCOP). The Ombudsman program's small size relative to other OAA programs as well as its unique target population can create challenges in communicating the program's role in the long-term care system.

In terms of the distribution of federal funding, ACL allocates federal funds authorized under OAA statutory funding formulas to SUAs. Funds for Titles III & VII are allocated to states based on a state's share of the adult population that is 60 years of age or older. For Title VI programs, tribes can define their age group to include those under 60 years of age and must apply for funding. Whereas OAA programs are funded based on age of the population that their programs serve, the Ombudsman program serves all residents of long-term care facilities, regardless of age. Consequently, current formulas for distributing funds can underestimate the funds needed for the LTCOP to serve their target population.

With respect to service population, SUAs and AAAs serve long-term care residents to the extent that their states participate in and deliver HCBS programs. The array of HCBS that states provide includes supports and services for individuals living in their own homes and communities outside of facilities as well as for services (such as transportation or case management) in residential settings – some of which are included under board and care homes to which the Ombudsman program provides advocacy services. Overlap with the population that the Ombudsman program serves can create COI linked to organizational location that were described earlier in this brief.

Represent Residents' Interests

As delineated in the OAA, the Ombudsman program represents the interests of long-term care residents, not

the State or the aging services network. In this role, the Ombudsman program is the only OAA program that has direct, unimpeded access to residents. Insofar as SUAs and AAAs support or coordinate with the LTCOP, these agencies also represent residents' interests. However, serving as the voice of residents and advocating on their behalf can create vulnerabilities and tension when Ombudsmen take a public policy position that does not align with the SUA, AAA, or other state agency. This is particularly true with respect to the program's public policy advocacy function (discussed below).

Engage in Systems Advocacy

The OAA established clear mandates for the aging services network to advocate on behalf of older adults, but it does not apply these mandates across all programs. Instead, the OAA empowers SUAs, AAAs, and the Ombudsman program to engage in systems advocacy. SUAs are charged with reviewing and commenting on State plans, budgets, and policies which affect older individuals and providing technical assistance to any entity or individual representing their needs. AAAs are mandated to advocate for older adults in the community by monitoring, evaluating, and commenting upon policies, programs, hearings, levies, and community actions which will affect them. The only OAA program that is also responsible for systems advocacy is the Ombudsman program. This charge is consistent with ombudsman programs of all types which have historically functioned under a dual mandate: investigate and resolve complaints, and identify trends and address systemic issues to prevent issues from recurring.⁷ The Ombudsman program shares this micro/macro focus in carrying out individual and systems advocacy. By contrast, other OAA programs provide, or are responsible for providing, direct services to individuals but they lack additional responsibilities to promote system-level improvements in the services they deliver. Although SUAs and AAAs have a general mandate to advocate on behalf of older adults, their overarching responsibility is the provision of services.

Whereas systems advocacy is one of many functions of SUAs and AAAs, systems advocacy is a primary charge of Ombudsman programs. According to the Act, Ombudsman programs are required to (1) represent

⁶ In 16 states and DC, LTCOPs have the ability to provide in-home services, but these mandates are funded at the state rather than federal level.

⁷ Gadlin, Howard and Samantha Levine. 2008. "Stranger in a Strange World: The Ombudsman in the Federal Government." *ACResolution*, Spring.

residents' interests before governmental agencies and pursue administrative, legal, and other appropriate remedies; (2) analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions relating to the adequacy of long-term care facilities and services; (3) make recommendations regarding these laws, regulations, policies, and actions; and (4) facilitate public comment on the laws, regulations, policies, and actions that pertain to residents' health, safety, welfare, and rights.

Tensions may arise when the Ombudsman program advocates for a policy or action that may support resident care, rights or consumer protections that may in some way be contrary to the position of their host agency. For example, Ombudsman advocacy for increased caregiver training hours may strain the budget of the state and AAAs. By advocating for the development and implementation of laws, regulations, and administrative action on behalf of residents' interests – even when they differ from the policies and positions of the agency where the program is located – the Ombudsman program is fulfilling its mandated advocacy function. This inherent tension can create misunderstandings among agencies, state and local government, and the LTCOP. Such misperceptions are less common when there is a clear understanding and acceptance by all parties of the program's mandate to serve as the independent voice of long-term care residents.

Coordinate with Specified Entities

As administrators of OAA programs, SUAs and AAAs are charged with coordinating with an array of providers to deliver services to older adults. The coordination requirement of SUAs and AAAs is also shared by the Ombudsman program.⁸ The OAA identified four entities with which the Ombudsman program is required to coordinate services: protection and advocacy (P&A) systems, legal assistance, State and local law enforcement agencies, and courts of competent jurisdiction. More recently, the Final Rule enumerated six additional entities with which coordination is mandated given their relevance to the health, safety, well-being, and rights of long-term care residents. These entities

include AAAs, Aging and Disability Resource Centers (ADRCs), APS programs, facility and long-term care provider licensure and certification programs, the State Medicaid fraud control unit, and victim assistance programs.

The Ombudsman program's coordination with other entities is intended to enhance the program's capacity to conduct individual and systems advocacy. While the program engages with a wide and diverse range of entities to perform these functions – often well beyond those enumerated in the OAA and Final Rule – the program's relationship with monitoring and enforcement agencies is noteworthy. The Ombudsman program's approach is distinct from, and designed to complement the work of facility and long-term care provider licensure and certification programs. In contrast to the work of federal and state surveyors, the Ombudsman program does not have enforcement or regulatory oversight authority and consequently, is unable to sanction facilities for poor performance. Instead, the program complements the work of surveyors to address quality of care in long-term care facilities through complaint resolution on an informal level and providing a regular and unannounced presence in nursing homes and board and care homes. As an alternative dispute resolution method, the Ombudsman program supplements formal channels that are already in place. By offering informal options for addressing concerns, complainants who are hesitant to use formal mechanisms (for fear of reprisals or other reasons) may be more likely to come forward. These complaints may otherwise go unreported and their successful resolution can ultimately prevent problems from rising to the need for formal intervention.

Summary

In establishing the Ombudsman program within the aging services network, the OAA envisioned that the program would have the same characteristics as effective ombudsman offices in any field (whether it be government, education, or business, etc.). The typical characteristics necessary for the credibility, conduct, and effective functioning of ombudsman programs – independence, impartiality, and confidentiality – however, make the LTCOP unique in the context of its

⁸ On behalf of Title VII's elder abuse prevention programs, SUAs are charged with working with eight specified entities to foster a coordinated, multidisciplinary response to elder abuse, neglect, and exploitation. The program itself, however, is not tasked with this function.

role as an aging services program.⁹ At the same time, the Ombudsman program shares similar mandates with SUAs and AAAs to the extent that they all engage in systems advocacy and collaborate with other entities on behalf of older adults. Confusion about the LTCOP's implementation and responsibilities have long persisted because of its differences from other OAA programs as well as its similarities with SUAs and AAAs. While the LTCOP's distinctiveness from other OAA programs is a recurring source of confusion for stakeholders in the aging services network, the similarities of the program's responsibilities with SUAs and AAAs (e.g., systems advocacy mandate) can create tension. Clear communication about the program's unique role and value to the aging services network – particularly as a

vigorous complement to enforcement mechanisms that address quality of care in long-term care facilities – is needed to minimize misunderstandings and tension about the program's function and mandated responsibilities. Part of that effort means understanding the LTCOP within the framework of ombudsman programs more broadly. That is, as in any field wherein an ombudsman operates, only with independence, impartiality, and confidentiality can Long-Term Care Ombudsman programs effectively address individual resident concerns, but also the larger long-term care system that gives rise to it.

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⁹ Although other OAA programs and services also have unique characteristics, those characteristics do not necessarily pertain to stringent provisions that create interagency misunderstandings and tension in carrying out mandated functions.