

Protecting Rights and Preventing Abuse: Systems Advocacy and Long-Term Care Ombudsman Program Organizational Placement

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This research brief explores the relationship between Long-Term Care Ombudsman programs' organizational placements and their ability to make improvements to the long-term care system. The brief begins by describing the program's systems advocacy mandate and the legislative and regulatory prohibitions against organizational conflicts of interest (COI) that arise from program location. It then describes how organizational location intersects with program autonomy to pursue systems-level changes. Finally, the brief describes the role of organizational placement in programs' ability to access resources and exercise their authority to effectively engage in systems advocacy activities. Findings suggest that, despite the organizational COI provisions outlined in the OAA and Final Rule, the extent to which Ombudsmen are able to engage in systems advocacy varies considerably between and within programs. Data used in this brief were collected as part of the *Process Evaluation and Special Studies Related to the Long-Term Care Ombudsman Program* conducted by NORC at the University of Chicago (NORC) on behalf of the Administration for Community Living (ACL).

BACKGROUND

In 1978, the Older Americans Act (OAA) established the Long-Term Care Ombudsman program (Ombudsman program or LTCOP) to protect and promote the health, safety, welfare, and rights of residents living in long-term care facilities. To advance this goal, the OAA charges the program with the responsibility to advocate for residents by identifying, investigating, and resolving individual complaints; making systemic improvements to the long-term care system; and providing outreach and education to residents and other stakeholders. These key 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 SLTCO) in coordination with a state or territorial unit on aging (SUA) in all 50 states, as well as the District of Columbia, Puerto Rico, and Guam.

Under the OAA, the State Ombudsman is responsible for overseeing the statewide program while the SUA is responsible for the program's organizational placement, and ensuring that the program has sufficient resources and protections to carry out mandated activities.

DATA COLLECTION

As part of the *Process Evaluation and Special Studies Related to the Long-Term Care Ombudsman Program*, NORC collected qualitative and quantitative data from program staff and stakeholders in two phases. Interview data were collected from federal staff, national stakeholders, and State Ombudsmen in 2017. Survey data were collected from State Ombudsmen and a sample of local Ombudsmen and volunteers in 2018. For local data collection, a multistage stratified sampling approach was used. The sampling began with stratifying programs by the 10 ACL regions. To ensure that the diversity of programs was captured, a sample of 27 states was identified, and in these states, all local Ombudsman entities were included. Within each local Ombudsman entity, all local Ombudsmen were invited to participate, and half of volunteer Ombudsmen were randomly sampled and invited to participate. In centralized programs, staff who serve at the local level were included. More information about the study methods can be found in the Final Report that is available on ACL's website (<https://acl.gov>).

States and territories are afforded broad flexibility in how to administer their Ombudsman programs and this administration is defined by both program *structure* and *organizational placement*. A program’s structure can be described as either *centralized* or *decentralized* and this program characteristic can interact in important ways with organizational placement. In a centralized structure, all program staff are employees of the agency housing the Office of the SLTCO (Office or State Office) and staff typically report to the State Ombudsman, regardless of their physical location (e.g. 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. One such local entity may be the area agency on aging (AAA), which are agencies that are responsible for providing information and services to older adults and their caregivers within their service area. There are 21 State Ombudsman programs that have a centralized structure, and 32 that have a decentralized structure.

Organizational placement refers to the location of the Office of the SLTCO and local Ombudsman entities. At both the state and local levels, programs can be free-standing or they can be “hosted” by (or housed within) another agency or entity that is contracted by the SUA to administer the Ombudsman program. These include placement within other state or local government agencies, in independent agencies within state government,¹ or within nonprofit organizations. According to the National Ombudsman Reporting System (NORS; the program’s administrative reporting system), most Offices were located within their SUAs in federal fiscal year (FFY) 2017 (Exhibit 1).

At the local level, nearly three quarters of local Ombudsman entities were housed within AAAs in FFY 2017 (Exhibit 2). A smaller number of host agencies include local government agencies, non-profit social services agencies, and legal services agencies. Six percent of local Ombudsman entities are free-standing. It should be noted that within decentralized programs, there may be a mix of local host entities. Ombudsman programs that are characterized by a centralized structure do not have local Ombudsman entities and are not reported here. These programs may have staff working in the Central Office or off-site throughout the state, in what is referred to as “Regional Offices of the State Ombudsman Program.” There are 74 of these regional offices.

Exhibit 1: Office of the SLTCO Organizational Placement (N=53)

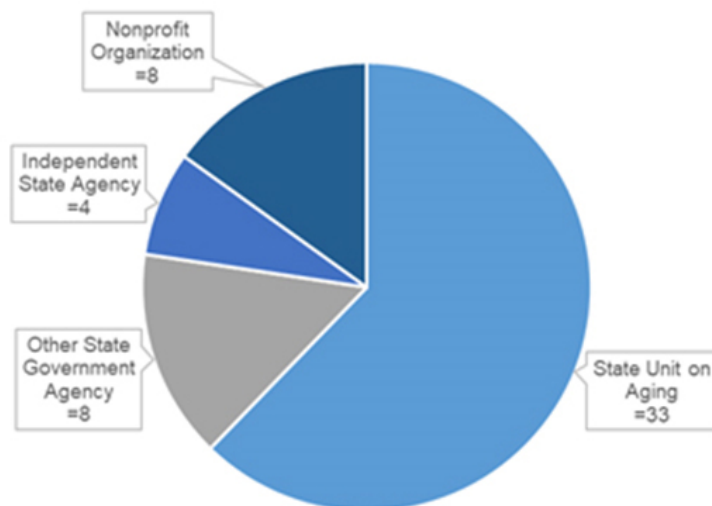
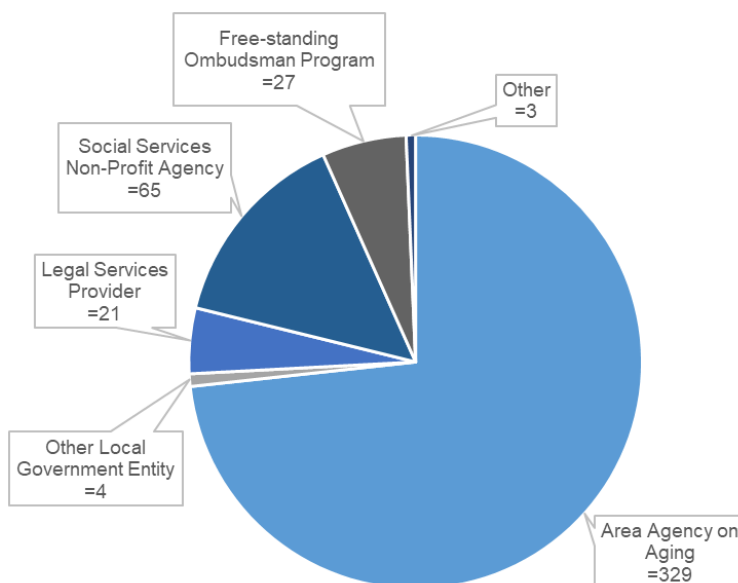


Exhibit 2: Local Ombudsman Entity Organizational Placement (NORS 2017; N=449)



¹The agency is standalone and provides advocacy, information, and referral services, including operation of the LTCOP.

SYSTEMS ADVOCACY AND ORGANIZATIONAL CONFLICT OF INTEREST REQUIREMENTS UNDER THE OAA AND FINAL RULE

Within its systems advocacy mandate, the Ombudsman program “must address and attempt to rectify the broader or underlying causes of problems for residents of LTC facilities.”² Advocating for these systemic changes involves a broad and multifaceted set of activities. According to the OAA, systems advocacy efforts include, but are not limited to:

- representing resident interests before government agencies and seeking administrative, legal, or other remedies;
- analyzing, commenting on, and recommending system changes that benefit long-term care residents;
- facilitating public comment on laws, regulations, policies, and actions;
- promoting the development of citizen organizations; and
- providing technical support for the development of resident and family councils [Section 712(a)(3)].

In this role, the OAA envisions the Ombudsman program as an independent entity representing the interests of long-term care residents – not the interests of the state or the aging network. This priority is critical because systems advocacy efforts may require the Office of the SLTCO to take public positions that are at odds with those of the SUA and/or other agencies that host it. As a result, independence is essential for the Ombudsman program to advocate in the interests of long-term care residents. Underscoring the OAA’s vision, the Long-Term Care Ombudsman Programs Final Rule (hereafter, Final Rule) describes the Office of the SLTCO as “a distinct entity, separately identifiable, and located within or connected to the State agency” [45 CFR §1324.11].

To ensure that programs have the independence to engage in mandated systems advocacy efforts, the OAA and Final Rule set forth requirements and clarifications concerning conflict of interest (COI) and organizational placement, as well as the scope of systems advocacy activities. Taken together, these requirements and

clarifications aim to enable the program to freely and fully represent residents. With respect to organizational COI, the OAA stipulates that the SUA may not operate the Office of the SLTCO or carry out the program (either directly, or by contract with any public agency or nonprofit organization) if the program is located in an agency that also is responsible for licensing, certifying, or surveying long-term care services in the state [45 CFR §712(a)(4)(B)]. The State agency must disclose any COI to the Assistant Secretary for Aging, and either remove the conflict or establish a plan to ensure the Ombudsman will be “unencumbered in fulfilling all of the functions” required of them. Remedying COI may involve relocating the State Office or establishing a memorandum of understanding (MOU) that clearly defines agencies’ roles and responsibilities.

The Final Rule placed further emphasis on sheltering programs from perceived and actual organizational COI by identifying programs and functions carried out by host agencies (both for the State Office and local Ombudsman entities) that may affect the loyalty, autonomy, and perceptions of the Ombudsman program. These programs and functions include the following:

- licensing or regulatory services for long-term care facilities;
- long-term care pre-admission screening or decisions regarding eligibility, discharge, or admission for residents;
- care coordination or case management for residents of long-term care facilities;
- Adult Protective Services (APS);
- guardianship or other fiduciary or surrogate decision-making services for long-term care residents;
- an association or affiliate of long-term care facilities or other residential facilities for older individuals or individuals with disabilities;
- provides long-term care to residents;
- state long-term care facility rate setting; and
- receives funds from long-term care facilities.

Should any of these programs, departments, or agencies reside in the same host agency as the Ombudsman program, 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 NORS, the program’s administrative reporting system. These

² Institute of Medicine. (1995). Real people real problems: An evaluation of the long-term care ombudsman programs of the Older Americans Act. J. Harris-Whelg, J. Feasley, C. Estes, (Ed.). Washington, DC: National Academy of Sciences. p.72.

requirements 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].

The Final Rule also offered an important clarification concerning the program’s system advocacy activities. It states that, “the provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies by the Ombudsman or representatives of the Office do not constitute lobbying activities” [45 CFR §1324.13]. Because employees of government agencies are prohibited from lobbying in many states, this clarification ensures that Ombudsmen who are state employees can engage in a wide variety of systems advocacy activities.

Despite this authority, as well as the organizational COI provisions outlined in the OAA and Final Rule, the extent to which Ombudsmen are able to engage in systems advocacy varies considerably between and within programs. According to 2017 NORS data, at the state/territory level, the estimated percentage of paid staff time spent on systems advocacy efforts such as monitoring/working on laws, regulations, government policies, and actions ranged between two percent and 65% (with an average of 27%). At the local level, the estimated percentage of paid staff time spent on these systems advocacy activities ranged between zero percent to 25% (with an average of seven percent). The remainder of this brief explores the extent to which State Ombudsmen report that their programs’ organizational placement facilitates or hinders systems advocacy

activities. Particular attention is paid to the interrelationships between organizational placement, program independence, and access to resources.

ORGANIZATIONAL PLACEMENT AND SYSTEMS ADVOCACY

Program Independence

Although the OAA and Final Rule set forth requirements concerning program independence and organizational COI to ensure that Ombudsmen can advocate freely on behalf of long-term care residents, our findings suggest there are persistent barriers to program autonomy, particularly for programs that are part of their state or territory’s SUA. When asked about program challenges broadly, 22% of State Ombudsmen whose State Offices are housed in SUAs reported insufficient autonomy as a challenge faced by their statewide program. It is notable that no State Ombudsman whose Offices had other placements reported that program autonomy was insufficient (data not shown in exhibits).

The relationship between a program’s organizational placement and its autonomy to engage specifically in systems advocacy is shown in Exhibit 3. The data show that State Ombudsmen whose Offices are housed within independent state agencies or nonprofits reported having the authority to carry out systems advocacy. These State Ombudsmen reported no restrictions with respect to four dimensions of autonomy under study.

Findings on systems advocacy were mixed for the eight State Offices that are housed in state government (those not located in SUAs, independent state agencies, or non-profits). Whereas State Ombudsmen reported

Exhibit 3: Autonomy to Engage in Systems Advocacy of Statewide Ombudsman Program by State Office Organizational Placement

Statements about Autonomy of Statewide Ombudsman Program	State Office in SUA N=32	State Office in State Government N=8	State Office in Independent State Agency N=4	State Office in Nonprofit N=8
My statewide program has been unable to fulfill some program duties due to legislative or regulatory restrictions.	23%*	25%	0%	0%
My statewide program has the autonomy to carry out systems advocacy work.	84%	100%	100%	100%
My statewide program is free to speak to the media.	69%	100%	100%	100%
My statewide program is able to represent the interests of residents to state agencies involved in long-term care without political interference.	75%	88%	100%	100%

*Missing=1

having full autonomy to carry out systems advocacy work and being able to speak freely to the media, a quarter of them also reported being unable to fulfill some program duties due to legislative or regulatory restrictions and being unable to represent the interests of residents without political interference.

By contrast, State Ombudsmen whose Offices are hosted by their SUAs were less likely to report freedom to speak to the media, publicly represent resident interests, and to carry out systems advocacy activities, compared to State Ombudsmen whose Offices have other organizational locations. Notably, State Ombudsman whose Offices are located within SUAs were the only group that reported not having the autonomy to carry out systems advocacy or the ability to freely speak to the media.

State Ombudsmen described a number of ways in which organizational placement can constrain programs from fulfilling mandated systems advocacy activities. With respect to the former, States that require state employees to register as lobbyists before they can speak to legislators or the media about long-term care issues or proposed legislation can place significant limitations on the number of program staff that are able to engage in these activities, despite the fact that the Final Rule clarified that these activities do not constitute lobbying. To a lesser extent, restrictions against lobbying also exist for programs that are housed in legal entities funded by Legal Services Corporation (LSC),³ although this may affect local Ombudsman entities more than State Offices.

Other restrictions on systems advocacy that are linked to organizational placement may be implied. For example, the SUA Director may strongly encourage the State Ombudsman to share their positions or statements prior to making them public. These requests can create tension if the positions or statements conflict with the SUA's position on the same issues. In other cases, the SUA Director may require that a communications department or legislative director or liaison review the Ombudsman program's public statements internally prior to their release. These requirements can influence how and when State Ombudsmen speak out on key issues, as well as which issues they choose to comment on altogether.

To avoid conflicts that arise from being employed in a state agency, some State Ombudsmen turn to local Ombudsmen whose local Ombudsman entities are located in nonprofits or other independent agencies to carry out systems advocacy activities. As described earlier, organizational placement may differ at the state and local level. In a decentralized structure, for example, a State Ombudsman may work out of a state agency while their local Ombudsmen work out of a variety of host agencies, such as nonprofits. Under this arrangement, State Ombudsmen have reported that their local Ombudsmen are better positioned to comment on laws and policies, and encourage them to speak on behalf of residents when they cannot. For example, whereas State Ombudsmen employed by the state may not be able to actively pursue state general funds during the legislative process, Ombudsmen housed in a local entity may be better positioned to make the request.

By contrast, State Ombudsmen whose Offices are housed in nonprofits or an independent agency within state government reported that their organizational separation from the State host agency was an important factor supporting their ability to exercise their independence. They also reported that their organizational separation helped protect them from political or bureaucratic pressures that might restrict their programs' efforts.

Other impediments to program autonomy concern organizational conflict of interest (COI) that result when the host agency offers multiple programs and services identified in the Final Rule or OAA as a conflict requiring a remedy or removal. Whereas State Offices that are housed in nonprofits are largely free from COI because the host agency does not engage in conflicting activities, placement within various state agencies can introduce challenges for a program's independence if the Office is co-located with an agency that regulates or provides services to long-term care residents, among other conflicts. Although the Final Rule prohibits this type of co-location, our data were collected during a period when programs were not yet in full compliance with the regulation. Ombudsman programs were still working toward meeting the requirements of the Final Rule, including addressing provisions related to organizational COI and identifying new "homes" for their programs at both the state and local levels.

³Established by Congress in 1974, Legal Services Corporation (LSC) is an independent nonprofit that provides financial support for civil legal aid to low-income Americans. LSC awards grants to legal aid organizations, some of which host local Ombudsman entities.

State Ombudsmen also reported complications that can arise when State Offices are located in umbrella organizations that also host agencies that share legal counsel. For example, State Offices that are housed in SUAs (and to a lesser extent in a state government agency) may share legal counsel with agencies such as licensing and certification and APS, which can compromise the Ombudsman program's ability to obtain impartial counsel when seeking to analyze, and publicly comment on legislation or policy affecting long-term care residents. Legal counsel that is shared between agencies may also have different philosophical approaches and priorities. For example, State Ombudsmen reported that when legal services are shared, assigned legal counsel may prioritize the host agency's position over the Ombudsman program's focus on resident rights.

To comply with the Final Rule's requirements, a few State Ombudsmen reported needing to relocate State Offices and local Ombudsman entities to remove COI. For example, one Ombudsman program relocated to another host agency because its SUA is responsible for setting nursing home rates and reimbursements and determining eligibility for providers. Similarly, local Ombudsman entities housed in AAAs that provide direct services and determine eligibility for settings in which the Ombudsman is involved, were relocated to other agencies to eliminate COI.

Identifying, removing, or remedying organizational COI, however, is becoming more challenging as Ombudsman programs expand their advocacy services to the community at a time when states are redesigning their long-term care systems. The latter efforts often involve adding or consolidating responsibilities for home and community-based services to balance or optimize resources. When a single state agency oversees all long-term care resources, and the Ombudsman program covers long-term care facilities as well as community and in-home settings, the expansion of duties presents increased opportunities for actual or perceived COI between the Ombudsman program's systems advocacy work and host agency activities. Although State Ombudsmen reported addressing organizational COI was a positive development, they also reported that

compliance with the Final Rule also introduced challenges in identifying a host agency that would be free of COI resulting from co-location.

Program Resources

In addition to program autonomy, the availability of sufficient resources is a critical factor that affects the ability of Ombudsman programs to fulfill their systems advocacy responsibilities. However, three-quarters of State Ombudsmen reported having insufficient funding to carry out their programmatic mandates. With respect to pursuing systems advocacy, 48% of State Ombudsmen reported that facilitating public comments on proposed legislation, laws, regulations, policies, and actions are not fully carried out due to a lack of resources.

Exhibit 4 shows the extent to which Ombudsman programs' organizational placement supports access to various types of resources, and the data reveal important differences in resource availability across program placement categories. Overall, State Ombudsmen with Offices housed in SUAs were more likely to report having sufficient resources to meet their federal mandates than their counterparts housed in other agencies. These resources included legal counsel, volunteer hours, communications methods to share information with consumers and stakeholders, as well as training and technical assistance. Although their numbers are relatively smaller, State Ombudsmen with Offices housed in nonprofits were most likely to report having sufficient numbers of paid staff and volunteers and administrative support, compared to State Ombudsmen with other Office locations.

In interviews, State Ombudsmen whose Offices are hosted by SUAs often described the "built-in" resources they enjoyed as a result of their program's placement. Because SUAs are responsible for administering a number of other programs for the aging and long-term care communities, they often have infrastructure that supports many of the Ombudsman program's activities. That infrastructure includes dedicated departments to support information technology systems and human resources. It also includes data management and software systems, and office space.

Exhibit 4: Sufficiency of Program’s Resources to Meet Federal Mandates by State Office Organizational Placement

Resources that are Sufficient to Meet Federal Mandates	State Office in SUA N=32	State Office in State Government N=8	State Office in Independent Agency N=4	State Office in Nonprofit N=8
Fiscal resources	25%	25%	0%	25%
Legal counsel	66%	50%	50%	25%
# of paid staff	28%	13%	0%	50%
# of volunteers	19%	0%	0%	25%
# of volunteer hours	19%	0%	0%	13%
Data/information systems	66%	75%	75%	38%
Administrative support	47%	38%	25%	63%
Communication methods to share information with consumers and stakeholders	53%	38%	25%	50%
Training and technical assistance	59%	38%	50%	38%

Host agencies whose missions overlap with the LTCOP, or agencies that have unique programmatic strengths may also support the Ombudsman program in important ways. For example, one State Office is located within a nonprofit that specializes in civil rights and discrimination issues among older adults and people with disabilities. The State Ombudsman reported that this placement is particularly helpful for systems advocacy because of the overlap in missions between the Ombudsman program and its host organization. Lead local Ombudsmen whose local Ombudsman entities are housed in legal services agencies also described their organizational placement as facilitating their ability to obtain legal support for systems advocacy efforts.

In addition to the tangible resources (e.g. office space, staff) that program location offers, organizational placement can also affect a program’s ability to access and leverage partnerships that facilitate the ability of the program to carry out its responsibilities. Many State Ombudsmen with Offices housed in SUAs described the benefits of being co-located with other relevant agencies in the aging network despite the potential COI that arise from residing in the same host agency. These benefits included greater opportunities for communication and increased awareness of current issues in long-term care. It should be noted that it was not clear whether these activities related specifically to systems advocacy activities.

By contrast, although State Ombudsmen with Offices housed outside SUAs reported a greater sense of

autonomy, they also reported more challenges taking advantage of certain resources or partnerships to which State Ombudsmen within the SUA seem to have greater access or stronger connections. They also reported lower program visibility among agencies or organizations they might partner with in order to serve residents and carry out other program activities. Similarly, lead local Ombudsmen with local Ombudsman entities housed within AAAs and SUAs office often attributed facilitated communication with relevant partners or agencies located within the same host agency to their program’s placement. As described earlier, AAAs are responsible for delivering services to the long-term care community and their physical proximity to Ombudsmen may offer opportunities for more frequent communication. Similarly, lead local Ombudsmen who work out of SUAs and government agencies were less likely to report feeling isolated as a result of their organizational placement.

Exhibit 5 shows the extent to which adequacy of resources facilitates Ombudsman programs’ ability to pursue systems advocacy activities. In general, State Ombudsmen with Offices that are part of SUAs or nonprofits were less likely to report being unable to carry out systems advocacy activities due to a lack of resources than their counterparts in state government and independent agencies. Notably, State Ombudsmen housed in independent state agencies seem to be most hampered in their ability to fully carry out these activities because of a lack of resources, particularly as it relates to resident and family council development and support.

Exhibit 5: Systems Advocacy Activities Not Fully Carried Out due to a Lack of Resources by State Office Organizational Placement

Systems Advocacy Activities Not Fully Carried Out due to a Lack of Resources	State Office in SUA N=32	State Office in State Government N=8	State Office in Independent Agency N=4	State Office in Nonprofit N=8
Resident and family council development and support	50%	75%	100%	63%
Analyzing and monitoring federal, state, and local law, regulations, and other government policies and actions	38%	50%	50%	25%
Research and policy analysis to inform systems advocacy work	47%	38%	50%	25%
Facilitating public comments on proposed legislation, laws, regulations, policies, and actions	44%	75%	75%	25%

Support from SUA Director

Many State Ombudsmen discussed the importance of their SUA Director’s role in recognizing the program’s independence and advancing its mission for carrying out systems advocacy, regardless of organizational placement. Support can take the multiple forms, including providing the Ombudsman program with a “seat at the table,” facilitating partnerships, and supporting State Ombudsmen’s freedom to speak directly to decision makers about important issues related to long-term care without representing the SUA or state government. Several State Ombudsmen reported that the most important way their SUA supports their program is to allow the State Ombudsman to operate without interference or restriction. Helping the program make changes to program policies and state statutes to come into compliance with the Final Rule was also reported as a major form of support. Additionally, having a SUA Director who is knowledgeable about the Ombudsman program and long-term care, as well as someone who is communicative and generally supportive of the

program’s purpose and mission were reported as major strengths.

One State Ombudsman whose program is part of the SUA only understood the importance of the SUA Director’s support – beyond organizational location – when the SUA Director’s position became vacant. The previous SUA Director recognized the value and independence of the Ombudsman program and played a critical role in supporting the program’s autonomy and ensuring relevant stakeholders understood that the program and SUA are separate entities. With the SUA Director’s departure, the State Ombudsman reported less frequent inclusion in management meetings where decisions are made that affect older adults.

Regardless of organizational placement, State Ombudsmen across program location categories reported relatively high support from their SUA Directors (Exhibit 6).

Exhibit 6: Support from SUA Director by State Office Organizational Placement

Overall, how would you describe the support your Office of the SLTCO receives from the SUA Director?	State Office in SUA N=32	State Office in State Government N=8	State Office in Independent Agency N=4	State Office in Nonprofit N=8
Fully supportive	50%	38%	50%	75%
Very supportive	28%	50%	0%	13%
Somewhat supportive	16%	13%	25%	0%
Not supportive	0%	0%	0%	0%
Indifferent	6%	0%	25%	13%

The especially high level of support from SUA Directors reported by State Ombudsmen whose Offices are located in nonprofits may result from their belief that SUA Directors in their states perceive their programs to have a higher degree of independence. In these states, the State Ombudsman programs are clearly separate and distinct entities from the SUA and state government.

While State Office organizational placement alone does not appear to affect whether or not State Ombudsmen reported feeling supported by their SUA, having that support appeared to be particularly valued by State Ombudsmen whose Offices are housed within SUAs. In interviews, State Ombudsmen within SUAs provided concrete examples of how the SUA Director supports them. These included sending letters to stakeholders emphasizing the independence of the LTCOP, referring complaints or issues to the Ombudsman program, and establishing connections between the State Ombudsman and key stakeholders (e.g., governor, legislators). One State Ombudsman found it particularly helpful to have the SUA communicate the importance of the Ombudsman program's independence to the AAAs operating their local Ombudsman entities.

DISCUSSION

Since its establishment, the Ombudsman program has been charged with making improvements to the long-term care system that will benefit the care and quality of life of long-term care facility residents. To support implementation of this broad mandate, the OAA and more recently, the Final Rule, included provisions to address organizational COI to ensure that Ombudsmen can freely engage in systems change. However, restrictions that are linked to organizational placement continues to affect the extent to which Ombudsman programs fulfill their systems advocacy mandate.

Our findings highlight the continued importance of Ombudsman programs' organizational placement for carrying out systems advocacy activities. Programs with organizational placements that are consistent with the requirements of the OAA and Final Rule are more likely to have the autonomy to pursue systemic changes in long-term care without constraints, compared to programs that are part of their SUAs. Placement of a State Office in a state umbrella agency increases the likelihood that the agency also hosts other programs or carries out functions that affect long-term care residents. The Final Rule recognizes that this type of co-location

introduces the potential for perceived or actual COI, thereby potentially impeding the Ombudsman program's ability to freely engage in systems advocacy. Among State Ombudsmen whose Offices are part of their SUAs, between 16% and 31% (Exhibit 3) reported some type of restriction in carrying out mandated systems advocacy work. By contrast, all State Ombudsmen whose Offices are housed within independent state agencies or nonprofits reported having the authority to undertake systems advocacy efforts and reported no restrictions or political interference with respect to regulations, program autonomy, freedom to speak to the media, and representing resident interests.

On the other hand, a program's organizational placement also affects its ability to access much needed resources that can facilitate the program's ability to carry out systems advocacy efforts. Our data showed that State Ombudsmen whose Offices are housed within SUAs were more likely to report benefitting from access to resources than their counterparts in other organizations. This was particularly true concerning access to legal counsel, training and technical assistance, and communication methods to share information with consumers and stakeholders. The importance of these resources is not trivial, as each is crucial for carrying out systems advocacy. Adequate training and technical assistance support Ombudsmen's understanding of resident needs and the resources and strategies available to address them. Legal counsel is important for analyzing and commenting on legislation, regulations, and policies that may impact the lives of long-term care residents. Communicating information to consumers and stakeholders about issues in long-term care is a major component of systems advocacy. Having the methods to deliver that information is not only beneficial, but necessary.

Taken as a whole, organizational placement presents the LTCOP's systems advocacy mandate with a difficult tradeoff between program independence and access to resources. Whereas State Ombudsmen whose Offices are housed in SUAs reported greater access to resources to support Ombudsman program operations, they also reported less independence than those that are housed in independent state agencies or nonprofits that benefit from organizational and administrative separation from the SUA. This enhanced independence was reported to provide greater freedom among State Ombudsmen to take positions on important issues related to long-term care residents, even when those

positions conflict with those of elected, appointed, or career officials with direct or indirect authority over the Ombudsman program. Yet, without sufficient resources – many of which are offered by the SUA or other state host agency – State Ombudsmen in independent agencies and nonprofits perceive limitations in the extent to which they can carry out systems advocacy as fully as they would like.

Beyond Ombudsman programs' organizational placement is the role of the SUA Director in advancing program mandates. State Ombudsmen described the importance of having the SUA Director's support, regardless of where their programs are located. Chief among the ways the SUA Director can support the Ombudsman program is providing the program with a "seat at the table," facilitating partnerships, and supporting State Ombudsmen to operate their programs without restriction, including the freedom to speak directly to decision makers about important issues related to long-term care without representing the SUA or state government.

Conclusion

Our data show that the extent to which Ombudsman programs are able to fulfill their systems advocacy mandate continues to depend in part on their organizational placement, independence, and the

availability of resources that is often linked to program location. The authority and resources that are tied to a program's location represent an important tradeoff in programs' efforts to fulfill their systems advocacy mandate. Whereas organizational placement in a nonprofit or independent state agency supports autonomy, location in an SUA or related government agency often facilitates access to resources and relationships with coordinating entities. At the same time, as the responsibilities of SUAs, AAAs, and the Ombudsman program expands, the potential for COI grows between the Ombudsman program and the state and local agencies that house them. Remediating COI, however, also then becomes increasingly challenging for programs to identify new homes that are free from COI resulting from co-location.

Findings also show that the SUA Director's support is valuable for advancing the Ombudsman program's mission regardless of organizational placement. Over-reliance on an individual SUA Director's support, however, may introduce risk should the Director leave the position because support for the program may also be diminished or lost. Legislative and regulatory requirements with respect to organizational COI help ensure that support for the independence of the Ombudsman program will endure.

ABOUT NORC

NORC at the University of Chicago is an independent research organization headquartered in downtown Chicago with additional offices on the University of Chicago's campus, the DC Metro area, Atlanta, Boston, and San Francisco. NORC also supports a nationwide field staff as well as international research operations. With clients throughout the world, NORC collaborates with government agencies, foundations, educational institutions, nonprofit organizations, and businesses to provide data and analysis that support informed decision-making in key areas, including health care, education, economics, crime, justice, and energy. NORC's decades of leadership and experience in data collection, analysis, and dissemination—coupled with deep subject matter expertise—provide the foundation for effective solutions.