

# **Iowa Office of the State Long-Term Care Ombudsman**

## **Annual Report 2013**

*The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.*



January 27, 2014

The Honorable Terry E. Branstad

Members of the General Assembly

Dear Governor Branstad and Members of the General Assembly:

I am pleased to present this annual report of the Office of the State Long-Term Care Ombudsman for federal fiscal year 2013. This report is produced pursuant to Iowa Code 231.42, which requires that this Office annually report to the governor and general assembly on:

1. The activities of this Office and
2. Recommendations for improving the health, safety, welfare, and rights of residents and tenants of long-term care facilities, assisted living programs, and elder group homes.

This report reflects the efforts of the Long-Term Care Ombudsmen by sharing program highlights and discussing issues encountered by the Office in carrying out its mandate to act as an advocate for the residents of long-term care facilities.

Respectfully submitted,

A handwritten signature in black ink that reads "Deanna Clingan-Fischer". The signature is written in a cursive, flowing style.

Deanna Clingan-Fischer, JD  
State Long-Term Care Ombudsman



# Office of the State Long-Term Care Ombudsman

Deanna Clingan-Fischer  
State Long-Term Care Ombudsman

Katie Mulford  
Administrative Assistant

Tonya Amos  
Local Long-Term Care Ombudsman  
South Central Iowa

Sarah Hinzman  
Volunteer Coordinator  
Statewide

Merea Bentrott  
Volunteer Coordinator  
Statewide

Melanie Kempf  
Local Long-Term Care Ombudsman  
Central Iowa

Kim Cooper  
Local Long-Term Care Ombudsman  
East and South East Iowa

Julie Pollock  
Local Long-Term Care Ombudsman  
South West Iowa

Carol DeBoom  
Local Long-Term Care Ombudsman  
North East Iowa

Pam Railsback  
Local Long-Term Care Ombudsman  
East Central Iowa

Jennifer Golle  
Local Long-Term Care Ombudsman  
North Central Iowa

Kim Weaver  
Local Long-Term Care Ombudsman  
North West Iowa



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## Executive Summary

Federal Fiscal Year 2013

October 1, 2012 through September 30, 2013

The focus of the Office of the State Long-Term Care Ombudsman is to advocate for the rights and wishes of residents and tenants as well as to serve as a resource for persons residing in long-term care facilities, assisted living programs and elder group homes. The efforts of the Office can be summarized into three categories: advocacy, outreach, and administrative.

### Advocacy Efforts:

- Ensuring that residents and tenants voices are heard and rights maintained in the **408** Assisted Living Programs, Elder Group Homes and Residential Care Facilities within the state;
- Visiting the **22,641** beds (or people) within those 408 programs and facilities;
- Ensuring that residents voices are heard and rights maintained in the **447** nursing facilities within the state;
- Visiting the **31,482** beds (or people) within those 447 nursing facilities;
- Receiving **1,174** complaints by or on behalf of residents and tenants;
- Opening **731** cases on behalf of residents and tenants;
- Serving **3,226** residents and tenants;
- Providing **4,445** hours of advocacy services, beyond complaint handling;
- Assisting impacted residents and tenants through involuntary discharges/evictions and facility closures;
- Advocating for passage of legislation regarding residents rights, the Certified Volunteer Long-Term Care Ombudsman Program and the Older Americans Act;

- Advocating for the addition of Local Long-Term Care Ombudsmen as well as an additional Volunteer Ombudsman Program Coordinator;
- Monitoring proposed administrative rules and providing comment; and
- Monitoring proposed legislation and participating in the legislative process on issues that impact the health, safety, welfare, and rights of residents and tenants.

### Outreach Efforts:

Providing a total of **5,360** program activities which included:

- Consulting with 805 facilities and providers of service;
- Consulting with 1,523 individuals;
- Visiting 680 facilities on non-complaint related visits;
- Visiting 1,072 residents and tenants on complaint-related issues;
- Providing education, training, and technical assistance to 944 individuals including volunteers, ombudsmen, facility staff, media, and the community;
- Participating in 82 facility surveys;
- Assisting residents and their families through participation in and development of 27 resident and family council meetings; and
- Collaborating with other organizations by serving on 21 committees, task forces, and workgroups.

### Administrative Efforts:

- Collaborating with federal, state, aging and disability network partners;
- Writing a grant and receiving funding to produce educational materials;
- Developing internal communication tools to provide updates on issues, laws, rules and interpretative guidance;

- Revising the case management software utilized by the Office;
- Providing monthly listserv messages (15) to communicate with administrators and directors to highlight the Long-Term Care Ombudsman Program and issues faced by residents/tenants;
- Issuing press releases and providing follow up discussion with media on relevant topics; and
- Developing informational fact sheets.

### **Recommendations:**

Despite the positive efforts and outcomes listed above, there are barriers that exist when attempting to protect the rights, health, safety and welfare of persons residing in long-term care. The following issues are of particular concern and need to be addressed through system changes.

#### **1. Residents and Tenants Rights—Dignity and Choices.**

*Ensure individual rights, dignity, and autonomy to make choices.*

Individuals residing in long-term care settings suffer many losses, but their individual rights, dignity, and autonomy to make choices should not be a loss that is experienced. Residents and tenants are entitled to their civil rights, to understand their rights, to participate fully in their care, and to feel at home wherever they live. During this reporting period, 226 concerns were brought forth regarding lack of or disregard of these core person-centered rights.

#### *Solutions:*

- An ongoing dialogue needs to occur between regulators, facilities, programs, residents, tenants, and the Office of the State Long-Term Care Ombudsman to ensure rights are respected.

- Develop a protocol for allowing a facility to follow residents' and tenants' wishes without concern of violating their duty of providing for safety.

#### **2. Substitute Decision Makers—Guardianship, Conservatorship, and Powers of Attorney.**

*Ensure residents and tenants in need of substitute decision making assistance have a trusted source available.*

The ability to make decisions for oneself is of concern for residents and tenants of long-term care facilities. The concerns relate to residents/tenants who do have capacity, but are not listened to because they have signed a power of attorney; those residents/tenants who do not have capacity and do have a substitute decision maker who is abusing, neglecting or exploiting them; and those residents/tenants who do need a substitute decision maker, but have no one willing or able to serve. Many of the concerns brought forth regard problems with or lack of someone to serve as a substitute decision maker.

*Solution:* To alleviate some of these concerns, re-establish and adequately fund the Office of Substitute Decision Maker under Iowa Code 231E.

#### **3. Financial Exploitation—Involuntary Discharges, Transfers, and Evictions.**

*Ensure each resident and tenant is protected from financial exploitation.*

Residents/tenants should be free from abuse, neglect and financial exploitation. Financial exploitation literally deprives an individual of

their resources and income and is more devastating than the mere loss of assets. It impacts choice, shelter, and the well-being of the victim. When funds are not used for the benefit of the resident/tenant and the costs for providing care are not paid, the resident/tenant faces discharge/transfer from their home. The focus should be on the protection of residents/tenants rather than imposing an involuntary discharge, transfer or eviction process upon them. An involuntary discharge, transfer or eviction punishes the victim; it does not provide an adequate penalty against the individual who financially exploits residents/tenants.

*Solutions:*

- a. Develop an elder abuse law which provides residents and tenants protection from involuntary discharges, transfers or evictions due to financial exploitation.
- b. Create an oversight system to ensure financial powers of attorney are utilized properly and develop a streamlined approach to reporting the misuse of legal instruments.
- c. Create and fund a position within the Office of the State Long-Term Care Ombudsman to specialize in involuntary discharges, transfers, and evictions.

### ***Issues to Watch***

1. *Placement of sexual offenders and ensuring the rights of all residents and tenants;*
2. *Informal dispute resolution to ensure the new independent reviewer process does not negatively impact residents;*
3. *Closures, whether voluntary or involuntary, of long-term care facilities to ensure notice is given, communication is ongoing, and a safe transition is made for impacted residents and tenants;*
4. *Access to electronic resident/tenant records is available in a private location;*
5. *Staffing levels to ensure sufficiency to meet the specific level of care needs of residents and tenants;*
6. *Training to staff to ensure sufficient education and oversight in meeting the specific level of care needs of residents and tenants;*
7. *Ensure that the rebalancing of long-term care system efforts addresses the needs of residents and tenants;*
8. *Licensure and training requirements for assisted living program directors and staff;*
9. *Ensure appeal rights through a fair hearing process for tenants of assisted living programs and elder group homes; and*
10. *Ensure that mental health service needs are met once identified through the pre-admission screening process.*

## Mission and Structure

The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.

Iowa's Long-Term Care Ombudsman program is responsible, through federal and state law, for advocating for residents and tenants of long-term care facilities including nursing facilities, residential care facilities, assisted living programs, and elder group homes. The Office strives to fulfill this responsibility every day by working to resolve complaints that impact the health, safety, and welfare of residents and tenants as well as by informing residents and tenants of their rights.

The Office of State Long-Term Care Ombudsman consists of the State Long-Term Care Ombudsman; Local Long-Term Care Ombudsmen Volunteer Coordinators, Volunteers, and an Administrative Assistant. To assist in fulfilling the duties outlined by law, the State Long-Term Care Ombudsman has designated eight (8) Local Long-Term Care Ombudsmen to serve residents and tenants in specific areas of the state. In addition, two (2) Volunteer Coordinators are dedicated to implementing a certified volunteer program to recruit, train, and monitor certified volunteer long-term care ombudsmen.

## Authority and Mandates

The Long-Term Care Ombudsman Program is authorized by the federal Older Americans Act<sup>1</sup>

and the state Older Iowans Act<sup>2</sup> The Office of the State Long-Term Care Ombudsman operates as an independent entity within the Iowa Department on Aging and advocates for residents of nursing facilities and residential care facilities as well as for tenants of assisted living programs and elder group homes.

The functions of the Long-Term Care Ombudsman Program are to:

- *Identify, investigate, and resolve complaints made by or on behalf of residents or tenants that adversely affect the health, safety, welfare, or rights;*
- *Make referrals to appropriate licensing, certifying, and enforcement agencies to assure appropriate investigation of abuse complaints and corrective actions;*
- *Provide services to assist the resident or tenant in protecting the health, safety, welfare, and rights of the resident/tenant;*
- *Inform residents and tenants about means of obtaining services provided by providers or agencies;*
- *Ensure that residents and tenants have regular and timely access to the services provided through the Office and that the residents, tenants, and complainants receive timely responses;*
- *Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;*
- *Provide administrative and technical assistance to local long-term care ombudsmen;*

<sup>1</sup> Older Americans Act, 42 U.S.C. 3058g

<sup>2</sup> Iowa Code 231

- *Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the residents and tenants;*
- *Provide for training representatives of the Office, promote the development of citizen organizations to participate in the program; and provide technical support for the development of resident and family councils to protect the well-being and rights of residents and tenants;*
- *Establish and implement a statewide confidential uniform reporting system;*
- *Publicize the Office and provide information and education to consumers, the public, and other agencies about the issues related to long-term care in Iowa;*
- *Annually report on the activities of the Office and make recommendations for improving the health, safety, welfare, and rights of residents and tenants of long-term care facilities, assisted living programs, and elder group homes;*
- *Participate in inquiries, meetings, or studies that may lead to improvements in the health, safety, welfare, and rights of residents and tenants;*
- *Recruit, train, educate, support, and monitor volunteers associated with the Office;*
- *Coordinate ombudsman services with the protection and advocacy system for individuals with developmental disabilities and mental illness;*
- *Coordinate ombudsman services with the Older Americans Act legal assistance and elder abuse awareness and prevention programs;*
- *Coordinate services with state and local law enforcement agencies and courts of competent jurisdiction; and*
- *Ensure confidentiality and a program free of conflicts of interest.*

## Activities of the Office

The program activities of the Office are divided into the following specific categories: Advocacy; Cases and Complaints; Community Education; Consultation; Other; Resident and Family Councils; Resident and Tenant Visitation; Participation in Surveys; and Training and Technical Assistance. The efforts within each activity are discussed in more detail below.

### Advocacy

The primary role of Long-Term Care Ombudsmen is advocacy—this entails serving as the voice for residents and tenants residing in long-term care settings. Advocacy comes in the form of speaking up for a single individual who is adversely impacted, to working for systemic change to ensure that all individuals are treated with dignity and respect. Advocacy can encompass reviewing and commenting on rules, regulations and laws; recommending policy changes when the health, safety, welfare, and rights of residents and tenants are impacted; as well as educating residents, family, providers, policy makers, and the general public on issues of concern and rights guaranteed to individuals residing in long-term care facilities, assisted living programs, and elder group homes.

*Representatives of the Office spent 4,445 hours providing advocacy beyond complaint handling.*

The State Long-Term Care Ombudsman monitored proposed legislation and rules and provided 89 declarations or comments relating to proposed laws that impacted the health, safety, welfare, and rights of residents and tenants.

For a complete listing of all complaints, see table located in Appendix C.

### Cases and Complaints

The Long-Term Care Ombudsman's Office is mandated to identify, investigate, and resolve complaints made by or on behalf of residents or tenants that adversely affect health, safety, welfare, or rights. A complaint is a concern brought to, or initiated by, the Long-Term Care Ombudsman for investigation and action on behalf of one or more residents or tenants. A case is each inquiry brought to, or initiated by, the Long-Term Care Ombudsman on behalf of a resident/tenant or group of residents or tenants involving one or more complaints which requires investigation, strategy to resolve and follow-up.

*Representatives of the Office handled: 1,174  
new complaints*

*Representatives of the Office opened:  
731 new cases*

The most frequent complaints received are:

1. Issues related to Autonomy, Choice, Exercise of Rights, and Privacy—226 complaints
2. Issues related to Resident and Tenant Care—198 complaints
3. Issues related to Admission, Transfers, Discharges, and Eviction—157 complaints
4. Issues related to the System and Concerns Apart from the Facility—99 complaints
5. Issues related to Environment/Safety—88 complaints



Complaint Category	Issues Addressed through this Category	
Admission, Transfers, Discharges, and Eviction	<ul style="list-style-type: none"> <li>• Admission contract &amp; procedures</li> <li>• Appeal process</li> <li>• Refusal to readmit</li> </ul>	<ul style="list-style-type: none"> <li>• Discharge/eviction-lack of planning, or appropriate notice</li> <li>• Discrimination in admission</li> <li>• Room changes or assignments</li> </ul>
Autonomy, Choice, Exercise of Rights and Privacy	<ul style="list-style-type: none"> <li>• Choice of personal physician, hospice, or pharmacy</li> <li>• Confinement in facility</li> <li>• Dignity, respect-staff attitudes</li> <li>• Exercise choice and/or civil rights</li> <li>• Exercise right to refuse care</li> </ul>	<ul style="list-style-type: none"> <li>• Language barriers</li> <li>• Participation in care planning</li> <li>• Privacy—telephone, mail, visitors and for couples</li> <li>• Response to complaints</li> <li>• Reprisal, retaliation</li> </ul>
Resident and Tenant Care	<ul style="list-style-type: none"> <li>• Injury or falls, improper handling</li> <li>• Failure to respond to requests</li> <li>• Concerns over personal hygiene, adequacy of dressing, grooming</li> <li>• Physician services</li> <li>• Pressure sores</li> </ul>	<ul style="list-style-type: none"> <li>• Toileting, incontinent care</li> <li>• Inadequate care plan or failure to follow plan</li> <li>• Unattended symptoms such as pain</li> <li>• Neglect of catheter or tubes</li> <li>• Failure to monitor wandering</li> <li>• Administration of medications</li> </ul>
Environment/Safety	<ul style="list-style-type: none"> <li>• Air, temperature and quality</li> <li>• Cleanliness</li> <li>• Equipment/building disrepair</li> <li>• Furnishings</li> <li>• Infection control</li> </ul>	<ul style="list-style-type: none"> <li>• Laundry</li> <li>• Odors</li> <li>• Space for activities</li> <li>• Supplies and linens</li> <li>• Accessibility</li> </ul>
System/Other	<ul style="list-style-type: none"> <li>• Abuse, neglect, abandonment by non-staff</li> <li>• Bed shortage-placement</li> <li>• Operating without a license</li> <li>• Family conflict</li> <li>• Financial exploitation by family or friends</li> <li>• Medicare</li> <li>• Mental health, disabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Problem with residents physician</li> <li>• Protective services agency</li> <li>• SSA, SSI, VA, or other benefits</li> <li>• Request for less restrictive placement</li> <li>• Legal-guardianship, conservatorship, powers of attorney and wills</li> </ul>

## Community Education

The Long-Term Care Ombudsman's Office presents relevant and timely information to the community on such topics as the role of the Long-Term Care Ombudsman; the Rights of Residents and Tenants; How to advocate for or empower residents and tenants and on such subject matter topics as powers of attorney, guardianship, conservatorship, visitation, admissions, discharges, and evictions from long-term care facilities.

*Representatives of the Office provided:  
120 community education sessions*

*The State Long-Term Care  
Ombudsman provided:  
17 interviews with media*

*Total community education:  
137 sessions and interviews*

## Consultation

The Long-Term Care Ombudsman's Office provides information and assistance to individuals, facilities, and providers. A number of consultations conducted by the Office concerned resident's rights; abuse, neglect, and financial exploitation of a resident or tenant; the role of long-term care ombudsman and ability to intervene; nursing facility and assisted living services and care issues; and involvement of family and friends. Consultation does not involve investigating or working to resolve a complaint.

*Representatives of the  
Office consulted with:  
1,523 individuals*

*Representatives of the  
Office consulted with:  
805 facilities or providers*

*Total: 2,328 consultations*

## Other

1. The Long-Term Care Ombudsman's Office participates in federal, state and local efforts to ensure that the rights of and issues impacting residents and tenants in long-term care facilities, assisted living programs and elder group homes are communicated. Several of the activities listed below highlight the involvement of the State and Local Long-Term Care Ombudsmen. Through these efforts, Long-Term Care Ombudsmen share systemic issues and day to day concerns that adversely impact the health, safety, welfare, and rights of residents/tenants as well as work toward resolution of these very issues.

In an attempt to serve as a visible advocate, the Office is involved in the following efforts:

- Iowa Direct Care Worker Advisory Council;
- Direct Care Workforce Initiative—Ambassador;
- Iowa State Bar Association Elder Law Council and Section;
- Iowa Person-Directed Care Coalition;
- Long-Term Care Social Workers Board;
- DMACC's Aging Services Management Advisory Council;
- Substitute Decision Making Task Force;
- Johnson County Quality Long-Term Care Committee;
- Johnson County Elderly Consortium;
- Linn County Elderly Consortium;
- Elder Abuse Task Force 2012 & 2013;
- LEAN event(s) Participants;
- National Consumer Voice Leadership Council;
- National Association of State Long-Term Care Ombudsman Programs (NASOP);
- NASOP Appropriations Workgroup;



- National Association of Local Long-Term Care Ombudsman;
- National Association of Local Long-Term Care Ombudsman Executive Board;
- Workgroup to Improve National Ombudsman Reporting System Consistency;
- Iowa Caregivers Conference Planning Committee;
- Partnership to Improve Dementia Care;
- Dementia Care-University of Iowa Committee;
- Health Care Fraud Task Force;
- MDSQ Grant Implementation Committee;
- Legal Integration Grant Advisory Council;
- Meetings with the Linn County MHDD Planning Committee;
- Meetings for the Mental Health Redesign Transition Committee;
- Meetings with Department of Inspections and Appeals;
- Meetings with Disability Rights Iowa Advocates;
- Meetings with the Legal Assistance Developer and the Title VII legal assistance providers, including the Legal Hotline for Older Iowans;
- Meetings with the Elder Abuse Prevention Committee;
- Meetings with the Elder Abuse Prevention and Awareness Director;
- Meetings with the Administration on Aging; and
- Meetings with the National Ombudsman Resource Center.

2. In addition to participating in meetings, committees, and workgroups, effort has continued regarding the review and update of Iowa's Long-Term Care Ombudsman Program,

including the development of the Volunteer Ombudsman Program, policies and procedures. Some of the efforts to fulfill this initiative include:

- Developing and implementing program protocols through policy memorandum. Policy memos are sent to Local Long-Term Care Ombudsmen to share up-to-date information on laws, rules, regulations and issues of interest;
- Developing and implementing policies and procedures in relation to handling cases and complaints within nursing facilities, residential care facilities, assisted living programs, and elder group homes;
- Refining case management software systems for the State, Local and Certified Volunteer Ombudsmen and Coordinators to enter data on complaints, cases, consultation, education, trainings, and other work done on behalf of residents and tenants in long-term care facilities;
- Implementing a listserv to share information from the Long-Term Care Ombudsman's Office to administrators of nursing facilities and residential care facilities as well as to directors of assisted living programs and elder group homes;
- Developing and implementing a listserv to share Volunteer Ombudsman Program information from the Long-Term Care Ombudsman's Office to administrators of nursing facilities and residential care facilities; and
- Developing regular press releases to inform and educate the general public on the efforts of the Office of the State Long-Term Care Ombudsman and bring attention to the Office as a resource for residents, tenants, and their families.

## Resident and Family Councils

The Long-Term Care Ombudsman's Office assists resident and family councils by attending meetings, when requested, and by providing technical assistance in the development and continuation of these councils. The resident and family councils are separate meetings which give residents and their families' opportunities to reach out to similarly situated individuals to discuss issues, care needs, frustrations and personal experiences, as well as to receive support and encouragement.

*Representatives of the Office worked with:*

*23 Resident Councils*

*Representatives of the Office worked with:*

*4 Family Councils*

*Total Resident and Family Councils:*

*27 Councils assisted*

## Resident and Tenant Visitation

The Long-Term Care Ombudsman's Office responds to inquiries, calls, e-mails, and reported concerns by visiting with residents and tenants. These visits allow the Local and Volunteer Long-Term Care Ombudsmen to assess the situation, provide education and information, help empower residents or tenants to take action for themselves, as well as to obtain additional information to pursue as a complaint or case, if needed.

*Representatives of the Office  
made 1,072 complaint related visits*

*Representatives of the Office  
made 680 non-complaint visits*

*Total visits: 1,752*

## Participation in Surveys

The Long-Term Care Ombudsman's Office participates, as needed, in surveys conducted by the regulatory entity, the Department of Inspections and Appeals. The Long-Term Care Ombudsman's Office role is to provide comment, to share concerns on behalf of residents, tenants, family, and volunteers, and to ensure that residents and tenants voices are heard. Surveys are inspections performed by the regulatory entity to ensure compliance with federal and state laws. Participation can include pre-survey briefing and attending the resident group interview or exit interview.

*Representatives of the Office participated in  
82 facility surveys*

## Training and Technical Assistance

The Long-Term Care Ombudsman's Office provides education, training and technical assistance to ombudsmen, volunteers, and facility/program staff. Training and education is needed to ensure staff and volunteers can retain their certifications and remain on the cutting edge of issues and the laws and regulations surrounding long-term care. Technical assistance is provided to Local Long-Term Care Ombudsmen and to Volunteer Ombudsmen in an effort to ensure consistent and uniform interpretations and implementation of laws, rules, and regulations statewide.

*Training to the Long-Term Care Ombudsmen  
and Volunteers: 48 sessions*

*Technical Assistance to Long-Term Care  
Ombudsmen and Volunteers:  
958 contacts*

*Trainings to Facility Staff:  
29 sessions*

*Total Training and Technical Assistance activities: 1035 activities*

## Recommendations

### 1. Resident and Tenant Rights—Dignity and Choices.

*Ensure individual rights, dignity, and autonomy to make choices.*

Residents and tenants enjoy the same fundamental rights and liberties as all citizens. The mere fact that an individual now resides in a long-term care facility does not diminish those wishes. In addition, federal and state laws guarantee additional rights for long-term care residents/tenants. The protection of these rights should be the focus of all efforts taken on behalf of residents/tenants. In some situations, assumptions are made that residents/tenants are unable to make decisions for themselves. While in some cases this might be true, many residents/tenants continue to know what they want for their own health care as well as for their personal care and can voice those wishes in some way or another. The key is listening with an ear for understanding. A primary role of the long-term care ombudsman is to listen and gather information to effectively advocate for the wishes and wants of persons residing in long term care facilities. This advocacy entails sharing decisions and wishes of the residents/tenants with family, staff, and others involved in the provision of care as well as working together to honor those wishes. When residents/tenants have capacity, and Iowa law presumes capacity, it is their right to determine how decisions that impact their life are to be carried out. Those decisions can defy the suggestions, recommendations, and wishes of others. This becomes a difficult dilemma. How are rights of

residents/tenants respected, in the midst of concerns for ensuring quality care and safety? While both are equally important, when one is listening and working to implement the wishes of residents/tenants, rights should be the priority. When one is looking to follow protocol and regulations, safety will prevail. The right to choice and self-determination should not cease to exist simply because someone becomes a resident or tenant of a long-term care facility.

*Solution: Establish an ongoing dialogue between regulators, facilities, programs, residents, tenants, and the Office of the State Long-Term Care Ombudsman to ensure residents/tenants rights are respected.*

*Develop a protocol for allowing a facility to follow residents' and tenants' wishes without concern of violating their duty of providing for safety.*

### 2. Substitute Decision Makers—Guardianship, Conservatorship, and Powers of Attorney.

*Ensure residents/tenants in need of substitute decision making assistance have a trusted source available.*

A substitute decision maker is an individual or entity who is appointed or nominated to assist an individual who lacks the capacity to make financial management or personal care decisions. The ability to make these decisions for oneself is presumed under Iowa law, unless there is an incapacity statement issued by a doctor or an order by the court. The ability to make decisions for oneself is of concern for residents and tenants of long-term care facilities. The concerns relate to residents/tenants who do have capacity but are not listened to because they have signed a power of attorney; those residents/tenants who

do not have capacity and do have a substitute decision maker who is abusing, neglecting or exploiting them; and those residents/tenants who do need a substitute decision maker but have no one willing or able to serve. Many of the concerns brought forth to the Office of the State Long-Term Care Ombudsman regard problems with or lack of someone to serve as a substitute decision maker.

*Solution: Re-establish and adequately fund the Office of Substitute Decision Maker under Iowa Code 231E.*

### **3. Financial Exploitation— Involuntary Discharges, Transfers, and Evictions.**

*Ensure each resident and tenant is protected from financial exploitation.*

Financial exploitation is the taking of property, income or other resources for one's own profit or purposes to the detriment of the individual to whom the resources belong. When funds are not used for the benefit of residents/tenants and the costs for providing care are not paid, residents/tenants face discharge, transfer, or eviction from their home. Involuntary discharge, transfer, and eviction is a legal process which gives notice to the impacted residents/tenants that they must leave the facility or program. Approximately 350 involuntary discharge notices were received by the Office of the State Long-Term Care Ombudsman, many of which relate to non-payment of the long-term care facility bill. In addition to these notices, concerned residents, tenants, family, legal representatives, and staff regularly contact local long-term care ombudsmen seeking guidance, support, and options on how to proceed when financial resources have dwindled due to misuse. The focus when addressing non-payment due to

financial exploitation should be on protection of residents/tenants rather than imposing an involuntary discharge, transfer, or eviction proceeding upon them.

*Solution: Develop an elder abuse law which provides residents and tenants protections from involuntary discharge due to financial exploitation.*

*Create an oversight system to ensure financial powers of attorney are utilized properly and develop a streamlined approach to reporting the misuse of legal instruments.*

*Create and fund a position within the Office of the State Long-Term Care Ombudsman to specialize in involuntary discharges, transfers, and evictions.*

### ***Issues to Watch***

1. *Placement of sexual offenders and ensuring the rights of all residents and tenants;*
2. *Informal dispute resolution to ensure the new independent reviewer process does not negatively impact residents;*
3. *Closures, whether voluntary or involuntary, of long-term care facilities to ensure notice is given, communication is ongoing, and a safe transition is made for impacted residents and tenants;*
4. *Access to electronic resident/tenant records is available in a private location;*
5. *Staffing levels to ensure sufficiency to meet the specific level of care needs of residents and tenants;*
6. *Training to staff to ensure sufficient education and oversight in meeting the specific level of care needs of residents and tenants;*
7. *Ensure that the rebalancing of long-term care system efforts addresses the needs of residents and tenants;*
8. *Licensure and training requirements for assisted living program directors and staff;*
9. *Ensure appeal rights through a fair hearing process for tenants of assisted living programs and elder group homes; and*
10. *Ensure that mental health service needs are met once identified through the pre-admission screening process.*



# Appendices





# **Appendix A1**

## **Press Releases**





**For Immediate Release:  
March 21, 2013**

Contact:  
Deanna Clingan-Fischer  
State Long-Term Care Ombudsman  
1-866-236-1430

## **Long Term Care Ombudsman's Office Reminds Iowans About Safe Visiting with Facility Residents During Times of Sickness**

(Des Moines, IA) Today, State Long Term Care Ombudsman, Deanna Clingan-Fischer, reminded Iowans that for most of us a cold, or even the flu, poses nothing more than a minor inconvenience. However, for residents and tenants in long-term care settings, coming down with the flu can be life threatening. Compromised immune systems and respiratory or cardiac issues can become more than just a challenge.

According to the Centers for Disease Control (CDC), the best way to avoid getting the flu and transmitting it to others is to be immunized every year. The CDC cautions that individuals should be immunized as soon as the vaccines are released and reminds people that they are not fully effective until approximately two weeks after the immunization.

"Besides being immunized, one very basic way to help keep people in long-term care safe is to refrain from visiting if you or anyone in your immediate home environment is ill and has flu-like symptoms, Clingan-Fischer stated."

Symptoms include, but are not limited to:

- fever (often high)
- headache
- extreme tiredness
- dry cough
- sore throat
- runny or stuffy nose
- muscle aches

- stomach symptoms, including nausea, vomiting, and diarrhea

If you must visit, practice the following universal precautions:

- Cover your mouth or nose when coughing or sneezing
- Wash your hands often
- Don't touch your eyes, nose or mouth
- Avoid shaking hands with others
- Wear a mask if you have any doubts about your own health as well as to avoid exposure to others while in the facility

While it is impossible to avoid exposure to colds and the flu, these simple steps can help keep others safe.

For questions please contact the Office of the State Long Term Care Ombudsman toll-free: 1-866-236-1430.

To find more information about the State Long Term Care Ombudsman's Office, check out their web page at: <http://www.aging.iowa.gov/advocacy/ombudsman.html> .

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*The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.*



Deanna Clingan-Fischer  
State Long-Term Care Ombudsman  
1-866-236-1430

**For Immediate Release:  
December 21, 2012**

## **Celebrating Holidays with Family and Friends Encouraged and Important to Long Term Care Residents Wellbeing**

*There are approximately 53,000 Iowans Residing in Long Term Care Facilities*

(Des Moines, IA.) – Today, Iowa’s State Long-Term Care Ombudsman Deanna Clingan-Fischer reminded residents in long-term care facilities, and their families, of the rights residents have in leaving the facilities they reside in to participate in holiday celebrations with family and friends.

“With the holidays fast approaching questions inevitably arise concerning a resident’s rights and ability to leave a nursing facility. Visits away from the facility can contribute to a resident’s wellbeing and over-all quality of life and should be supported. Residents can choose to participate in family events of their choice, and should be encouraged to do so,” State Long -Term Care Ombudsman Clingan-Fischer stated.

Residents may want to join in family festivities but they, and their families, may believe that leaving a nursing facility for a period of time is not an option because they may lose their room or their source of payment from Medicare, Medicaid, or a long term care insurance policy.

It is important to know that nursing facilities are allowed to bill residents to hold their beds while they are out of the facility for a certain length of time. **It is important to check with the facility as to what their policy pertains regarding the resident’s time away from the facility.**

“Celebrating with a loved one residing in a long-term care facility, not only during the holidays, but any time of the year, is an important way to show them that they are thought of and cared for,” State Long-Term Care Ombudsman Clingan-Fischer concluded.

For more information or questions regarding overnight visits, please contact the Office of the State Long Term Care Ombudsman toll-free at: 1-866-236-1430.

# Iowa Office of the State Long-Term Care Ombudsman

Deanna Clingan-Fischer  
State Long-Term Care Ombudsman

For Immediate Release:  
October 25, 2012

Machelle Shaffer  
Phone: (o) 515/725-3312  
(c) 515/745-3442  
Email: [machelle.shaffer@iowa.gov](mailto:machelle.shaffer@iowa.gov)

## **Iowa's Long-Term Care Ombudsman's Office Reminds Residents in Assisted Living and Elder Group Homes of Their Rights**

*October is National Resident's Rights Month*

(Des Moines, IA) The month of October is a time to honor and reflect on the individual rights of residents in nursing facilities, assisted living and other long-term care settings. Resident's Rights Month allows us a specific opportunity to focus on rights and to increase awareness of the rights of individuals residing in long-term care settings. In this final, of a series of four releases focusing on Residents Rights Month, the rights of tenants residing in assisted living and elder group home is our focus.

Generally, assisted living and elder group homes provide a combination of housing and supportive services for individuals who do not need nursing home level of care but do require more personal care and health services than independent living. It is important to explore your options when deciding what type of care and living arrangement is best for you. It is also important to know your rights. In Iowa, the law governing assisted living facilities and elder group homes is the landlord tenant law. This is very different than the rights set out in federal and state law for residents in nursing facilities.

"Once you decide on a place that is right for you, make sure you or your legal representative understand what you are agreeing to by reviewing all forms and agreements before signing. Take time to read and review the written information on resident choice and independence, ability to remain in the residence, the costs for the initial services and for any additional services that might be needed as well as your rights as a tenant. If you have questions, they need to be answered and explained in an understandable manner." Iowa's State Long-Term Care Ombudsman, Deanna Clingan-Fischer, stated.

All tenants that live in assisted living facilities and elder group homes have the right to:

- Be treated with consideration, respect, and full recognition of personal dignity and autonomy.
- Receive care, treatment and services which are adequate and appropriate
- Receive respect and privacy in the tenant's medical care program. Written consent of the tenant shall be obtained before information about the tenant is shared with anyone.
- Be free from mental and physical abuse
- Receive a reasonable response (from the manager and staff) to all requests
- Associate and communicate privately with persons and groups of the tenant's choice
- Manage, if able, their own financial affairs
- Present grievances and recommend changes in program policies and services without fear of reprisal or interference.

Individuals with concerns or questions regarding Assisted Living Facilities and Elder Group Homes may contact their local Long-Term Care Ombudsman **by calling toll-free: 1-866/236-1430 or by visiting [www.iowaaging.gov](http://www.iowaaging.gov).**

*\*This is the final in a series of four releases on National Resident Rights Month (October)\**

# Iowa Office of the State Long-Term Care Ombudsman

Deanna Clingan-Fischer  
State Long-Term Care Ombudsman

For Immediate Release:  
October 16, 2012

Machelle Shaffer  
Phone: (o) 515/725-3312  
(c) 515/745-3442  
Email: [machelle.shaffer@iowa.gov](mailto:machelle.shaffer@iowa.gov)

## Iowa Long-Term Care Ombudsman Reminds Iowans That Long-Term Care Residents Have Visitation and Access Rights

*October is National Resident's Rights Month*

(Des Moines, IA) Today, Long-Term Care Ombudsman Deanna Clingan-Fischer shared with Iowans that Resident Rights Month is a time to focus on specific issues relating to the rights of our citizens residing in long-term care settings. One of those issues is visitation and access rights.

The right to visit with people is among our most valued personal rights. Even the U.S. Constitution guarantees a right to visit by preventing the federal or state governments from curtailing our freedom to associate. At times visitors to long-term care facilities may feel they need to defer to the facilities rules regarding visitation, because they may believe long-term care facilities have the authority to make their own rules. However, visitation rules are only enforceable if they honor the basic rights of the residents.

"A person living in a long-term care setting maintains the same rights as an individual in the larger community. Visitation is one of those important rights and is crucial to those living in long-term care settings. Regular visits improve the quality of life for residents overall and can help them from feeling depressed and isolated. In addition, regular visitation may improve the quality of care a resident receives as visitors can observe the care given and serve as informal advocates for residents," Long-Term Care Ombudsman Clingan-Fischer stated.

The Centers for Medicare and Medicaid Services (CMS) have guidelines about residents' rights in long-term care facilities, including visitation and access. CMS explains that the resident has a right to visit and be visited by others in and outside the long-term care setting. This means that, in addition to receiving visitors at the facility, residents have the right to leave the facility temporarily to spend time with their visitors such as going out to lunch or dinner or some other event with their family and friends.

Long-Term Care Ombudsman Clingan-Fischer also pointed out that, along with the right to visitors, the resident has the right to refuse any visitor and the power-of-attorney for the resident cannot restrict who can or can't visit.

"Whether someone lives in a long-term care nursing facility, assisted living or elder group home they have the same rights as the rest of us to make decisions about whom we choose to visit with and for how long. Make a point to visit often with family and friends who live in long-term care settings. Your visits will add to their quality of life in more ways than you can imagine," Clingan-Fischer concluded.

To find out more about resident rights and how Iowans who reside in long-term care facilities can be helped to maintain their dignity and autonomy, contact the State Long-Term Care Ombudsman's Office at: [www.iowaaging.gov](http://www.iowaaging.gov) or call toll-free: 866/236-1430.

*\*This is the third in a series of four releases on National Resident Rights Month\**

# Iowa Office of the State Long-Term Care Ombudsman

Deanna Clingan-Fischer  
State Long-Term Care Ombudsman

For Immediate Release:  
October 09, 2012

Machelle Shaffer  
Phone: (o) 515/725-3312  
(c) 515/745-3442  
Email: [machelle.shaffer@iowa.gov](mailto:machelle.shaffer@iowa.gov)

## Residents' Rights Month Reminds Iowans that Long-Term Care Residents Have Choices

*Offering choice and honoring preferences are key points for a resident's quality of life*

(Des Moines, IA) As we celebrate October as *National Resident's Rights Month*, we have the opportunity to focus on specific issues relating to the rights of our citizens residing in long-term care settings. One of those issues is personal choice. Residents have the right to participate in all decisions that impact them.

"Personal choice in everyday living helps residents in long-term care settings feel more independent and satisfied," Iowa's Long-Term Care Ombudsman Deanna Clingan-Fischer stated.

Residents have the right to the following choices:

- All residents are free to practice their religion and religious beliefs.
- All residents are free to associate, visit with and communicate in private with persons of the resident's choice. Residents must be permitted to participate in social, familial, religious, and community group activities of their choice either on or off of the facility grounds.
- All residents shall be allowed to rise at any time of their choice, provided the resident does not interfere with the rights of others.
- All residents are free to enter and leave the facility grounds as the resident chooses. If the facility desires, as stated in its written policies, it may require a resident to inform the facility at the times he/she is leaving and re-entering the facility grounds.
- All residents are allowed to form and participate in a resident council.
- All residents are permitted to voice complaints and recommend changes in policies, procedures, and services to the administrator, his or her designee, or to the residents' council.

"We all want to make choices in how we live our daily lives. Individuals residing in nursing facilities, assisted living and elder group homes are no exception. National Residents' Rights Month is an excellent opportunity to re-affirm our commitment to residents' rights and to honor and advocate for all of Iowa's long-term care residents," Iowa Long-Term Care Ombudsman Clingan-Fischer concluded.

To find out more about resident rights and how Iowans who reside in long-term care facilities can be helped to maintain their dignity and autonomy, contact the State Long-Term Care Ombudsman's Office at: [www.iowaaging.gov](http://www.iowaaging.gov) or call toll-free: 866/236-1430.

*\*This is the second in a series of four releases on National Resident Rights Month\**



# Iowa Office of the State Long-Term Care Ombudsman

Deanna Clingan-Fischer  
State Long-Term Care Ombudsman

For Immediate Release:  
October 1, 2012

Machelle Shaffer  
Phone: (o) 515/725-3312  
(c) 515/745-3442  
Email: [machelle.shaffer@iowa.gov](mailto:machelle.shaffer@iowa.gov)

## **Iowa's Long Term Care Ombudsman's Office Announces October is Residents' Rights Month and Reminds Long-Term Care Residents of Their Right to Vote**

*2012 National Resident's Rights Month Theme: My Voice, My Vote, My Right*

(Des Moines, IA) The month of October is a time to honor and reflect on the individual rights of residents in nursing facilities, assisted living and other long-term care settings. Resident's Rights Month allows us a specific opportunity to focus on rights and to increase awareness of the rights of individuals residing in long-term care settings.

Resident's Rights are guaranteed by the federal Nursing Home Reform Law and Iowa law. The law requires long-term care facilities to promote and protect the rights of each resident and places a strong emphasis on individual dignity and self-determination. A person living in a long-term care facility maintains the same rights as an individual in the larger community.

Under federal and state law, Residents have the following rights:

1. The Right to Be Fully Informed
2. The Right to Complain
3. The Right to Participate in One's Own Care
4. The Right to Privacy and Confidentiality
5. The Right to Due Process during Transfers and Discharges
6. The Right to Dignity, Respect, and Freedom
7. The Right to Visit
8. The Right to Make Independent Choices

In addition, residents maintain their rights guaranteed under the constitution. One of those rights is the right to vote. With the elections nearing it is a good reminder that every adult citizen may vote unless that person has been either 1. Declared mentally incompetent to vote; or 2. Convicted of an infamous crime.

"One of the basic rights we have in this country is the right to vote. Residents in long-term care facilities should be encouraged to exercise that right and participate in the process if they are able and so choose," stated Iowa's Long-Term Care Ombudsman Deanna Clingan-Fischer. "If a resident believes that his/her rights are being violated, I would encourage a call to our office. The Long-Term Care Ombudsman's Office serves as an advocate for residents and works to ensure that their rights are understood and carried out. To find out more about resident rights and how Iowans who reside in long-term care facilities can be helped to maintain their dignity and autonomy, contact the State Long-Term Care Ombudsman's Office at: [www.iowaaging.gov](http://www.iowaaging.gov) or call toll-free: 866/236-1430.

"Residents' Rights Month is an excellent opportunity to re-affirm our commitment to residents' rights and to honor and advocate for all of Iowa's long-term care residents," Iowa Long-Term Care Ombudsman Clingan-Fischer concluded.



# **Appendix A2**

## **Fact Sheets**



## **Holiday Visits and Gifts**

With the holidays fast approaching questions inevitably arise concerning a resident's right and ability to leave a nursing facility. The Office of the State Long Term Care Ombudsman supports the rights of residents to be able to participate in family events of their choice and believes that these types of visits away from the facility can contribute to their positive wellbeing and quality of life and should be supported and encouraged. Residents often want to join in family festivities but may believe that leaving a nursing facility for a period of time is not an option because they may lose their source of payment from Medicare, Medicaid, or a long term care insurance policy or lose their room all together. These are excellent concerns to check into ahead of time.

It is important to understand that nursing facilities are allowed to bill residents to hold their beds while they are out of the facility. Before proceeding, all residents should review the payment systems rules and their admission contract agreement.

**Medicare payment:** The Medicare Benefit Policy Manual recognizes that although most beneficiaries are unable to leave their facility, an outside pass or short leave of absence for the purpose of attending a special religious service, holiday meal, family occasion or a trial visit home is not, by itself evidence, that the individual no longer needs to be in a skilled nursing facility.

**Medicaid payment:** The Department of Human Services (DHS) Medicaid Income Maintenance Manual states that facilities "will be paid to hold the bed while the resident is visiting away from the facility for a period not to exceed 18 days in any calendar year. These 18 days may be taken at any time. There is no restriction as to the amount of days taken in any one month or on any one visit, as long as the days taken in the calendar year do not exceed 18".

It goes on to state that "Additional days will be allowed if the resident's physician recommends in the plan of care that additional days would be rehabilitative. The physician's recommendation should be available at the facility for audits. Visit days cannot be used to extend payments for hospital stays".

**Private payment:** Residents who are paying privately for their stay and care should refer to the facility's written bed hold policy as well as their admission agreement. The facility is required to provide the resident with the written policy prior to their leaving the facility for an overnight visit so that there are no questions concerning possible billing for the time away from the facility.

**Long term care insurance:** For residents receiving long term care insurance or other benefits, their individual policies should be referred to concerning the entities agreement to pay the facility during a leave. It should be understood that not all policies will pay for such leave and the resident or responsible party may be billed personally for the time away from the facility depending upon the facilities bed hold policy.

Gifts: Another issue that can cause some questions revolves around the issue of gifts received by residents and if they count as reportable income under Medicaid. According to the DHS Medicaid Income Maintenance Manual (Chapter 8), cash gifts are excluded if they are considered "infrequent or irregular". This means that the gift is "irregular income" if the quarterly amount does not exceed \$30 for earned income or \$60 for unearned income. Additionally "The value of any noncash item (other than food, clothing, or shelter) is not considered income if it will be partially or totally excluded as a resource the month after the receipt of the gift".

For more information or questions regarding overnight visits please contact your local Long Term Care Ombudsman or the Office of the State Long Term Care Ombudsman at 1-866-236-1430.

## **Long Term Care: an Emotional Journey for Family Members**

Many times, moving a loved one into a long-term care facility is a true act of love and unselfishness. If the caregiver and the care recipient cannot leave the house, you have both become very isolated. Imagine mom being able to go outside her door to find someone to talk with. There are activities, meals to be shared with friends, and a barrier free area where she can roam.

When a person is no longer safe living at home, or when a caregiver can no longer provide the care needed, many feelings arise. There is no right or wrong way to feel. Each person is unique and each situation is unlike any other. When you move a loved one into long-term care, what are some common emotions that a caregiver might feel? How can you deal with these emotions?

### **Anxiety**

What should I expect? What if my family member hates it there? What do I do if I need help or advice?

- You will be faced with a lot of paperwork the first day. Don't be afraid to ask to have each document explained to you. If you are feeling overwhelmed, you can ask to take the paperwork home to read it through.
- Visit the facility at unexpected times to get a clear picture of the routine. You will be able to identify when something is out of the ordinary.
- Get to know the staff. It's normal to ask a lot of questions about procedures and routines.
- If the facility doesn't seem to be a good fit for your family member, you may want to consider moving to another facility. While moving is hard, finding the right fit can make the difference between continual anxiety and a happy, successful living environment.
- If you need help or advice about long-term care facilities, contact the Long-Term Care Ombudsman to discuss the situation and/or request assistance resolving an issue.

### **Anger and Resentment**

This is not the way you planned this part of your life to go. Long-term care is expensive. You may be angry about the money being spent on your family member's care. You may resent the facility staff for not doing the things you always did at home: like making sure your family member had his newspaper and coffee first thing in the morning. You may feel like a failure and angry with yourself.

- Talk with the social worker about available payment programs, like long-term care insurance, veteran's benefits, and Medicaid, and how to qualify. Medicaid can pay for the nursing facility stay when someone runs out of money. The Department of Veterans Affairs may be able to provide financial assistance to veterans and dependents who qualify.
- Talk with the director of nursing about the routine you had at home. The staff can make sure your family member gets his newspaper and coffee first thing in the morning. Provide feedback about what is or is not working. Staff can only fix the issues if they are aware of the problems. The Long-Term Care Ombudsman can help to get issues resolved if you are not satisfied with the facility's efforts.

- Attend care plan meetings to get an update on the provision of care for your family member and provide feedback and suggestions. You do not need to wait for these meetings to express concerns. Visit with staff as concerns arise, so your anger and resentment will not build.
- Write down questions as they arise. Talk with the social worker or the director of nursing to learn the answers to your questions. Share successes with the staff at the care plan meetings.

### **Guilt and Regret**

It is very important not to confuse guilt with regret. Guilt is what we feel when we do something that is wrong or hurtful towards another person. Regret is sorrow over something that has happened. Let's use the example of a daughter faced with moving her dad into the nursing home because his Alzheimer's disease has progressed and it is no longer safe for him to be at home. Family and friends may not see the day to day challenges. As the primary caregiver, you do see what is happening day after day and know when assistance is needed. Or, as a caregiver, your stress level or health has deteriorated to the point where it's time to return to being a family member and not the primary caregiver. It is important to make your health a priority. Family and friends can only make you feel guilty if you let them.

- Is there a support group available in your area? Contact the Iowa Family Caregiver Support Program to talk about how you are feeling, or to find a support group near you.
- Become a volunteer at the facility. Enriching others' lives can be very rewarding.
- Attend the facility's family council meetings. If there is no family council, help create one. The Long-Term Care Ombudsman's Office can provide you with information.

### **Depression and Grief**

Caregiving is hard work. It can take over your life. Even though you may be exhausted, when the move is finally complete, it is not uncommon to feel depressed for a short while. Your life has just taken a serious change in direction and it takes time to adjust. Allow yourself to be sad for a while each day.

- Don't be afraid to reach out to others or talk to a professional to work through your feelings.
- Do one thing for yourself each day: read a book, go on a walk, go out to lunch with friends, go to a movie, or focus on hobbies you enjoy.
- Remember that your caregiving duties haven't ended, they have just changed. You still have a very important role.
- Find little ways to move forward with your life now that you have time for yourself.

### **Relief**

If you have been the primary caregiver, you will probably feel a sense of relief-mixed with anxiety, guilt and fear. You are now able to be home alone, to sleep all night, to relax and read a book in your favorite chair or go out to eat with friends. These are pleasures every caregiver needs to enjoy.

Turning over the daily tasks of caregiving to a professional allows you to once again focus on yourself and maintain your health and strength. Relationships can improve and flourish when you can focus on each other and not caregiving tasks.

### **Resources**

- Office of the Long-Term Care Ombudsman: 1-866-236-1430
- Family Caregiver Support Program: 1-800-532-3213



# Contacts for Mental Health Redesign Concerns

February 12, 2013

Disability Rights Iowa: Assisting persons who contact them

Disability Rights IOWA is a federally funded program that will protect and advocate for the human and legal rights of individuals with disabilities and/or mental illness. Disability Rights IOWA will support people with disabilities to secure their rights and full participation as citizens through a program of self-advocacy education, information and referral, non-legal advocacy, and legal and systems advocacy.

Toll Free: (800) 779-2502

Local: (515) 278-2502

Iowa Department of Human Services (DHS), Division of Mental Health and Disability Services (MHDS):

MHDS is responsible for planning, coordinating, monitoring, improving and partially funding mental health and disability services for the State of Iowa. This division also distributes and oversees the use of federal and state funding through contracts with providers and other agencies. Rick Shults is the Division Administrator.

Local: (515) 281-7277

IDAction: Tracking personal stories

Iowans with Disabilities in Action (ID Action) is a nonpartisan project that was launched because Iowans with disabilities have been too long overlooked and underrepresented as a group. ID Action is designed to increase the active participation of Iowans with disabilities in political and civic opportunities that promote positive change.

Toll Free: (866) 432-2846

Iowa Citizen's Aide Ombudsman:

The Iowa Citizen's Aide Ombudsman investigates complaints against agencies or officials of state and local governments in Iowa. This office works with agencies to attempt to rectify problems.

Toll Free: (888) 281-3592

Local: (515) 281-3592

## Safe Visiting

For most of us a cold, or even the flu, poses nothing more than a minor inconvenience, some time at home in bed, and maybe a trip to see your physician. For residents and tenants in long-term care settings, however, coming down with the flu can be life threatening. Compromised immune systems and respiratory or cardiac issues can become more than just a challenge. Because of this, it is important to think about how a safe environment can be maintained while at the same time allowing for visitors and social activities.

According to the Centers for Disease Control (CDC), the best way to avoid getting the flu and transmitting it to others is to be immunized every year. The CDC cautions that individuals should be immunized as soon as the vaccines are released and reminds people that they are not fully effective until approximately two weeks after the immunization.

What you can do.

Besides being immunized, one very basic way to help keep people in long-term care safe is to refrain from visiting if you or anyone in your immediate home environment is ill and has flu-like symptoms. These symptoms include, but are not limited to:

- fever (often high)
- headache
- extreme tiredness
- dry cough
- sore throat
- runny or stuffy nose
- muscle aches
- stomach symptoms, including nausea, vomiting, and diarrhea

If you must visit, practice the following universal precautions:

- Cover your mouth or nose when coughing or sneezing
- Wash your hands often
- Don't touch your eyes, nose or mouth
- Avoid shaking hands with others
- Wear a mask if you have any doubts about your own health as well as to avoid exposure to others while in the facility

While it is impossible to avoid exposure to colds and the flu, these simple steps can help keep others safe.

*The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.*

## **Certified Volunteer Long Term Care (LTC) Ombudsman Program (VOP)**

The Volunteer LTC Ombudsman will assist the Office of State Long Term Care Ombudsman in carrying out the duties described in the Older Americans Act. Volunteers must be over the age of 18 and will be required to pass criminal history and abuse registry checks conducted by the State prior to acceptance into the VOP. Volunteers will be assigned to a facility and monitored by the VOP Coordinator.

### **The Volunteer LTCO:**

- Spends three to five hours per month in unannounced and varied visits to residents on any day of the week.
- Observes, listens, and interacts with persons living in the facility and identifies concerns.
- Aids and empowers residents in resolving concerns and complaints.
- Observes general conditions of the facility and keeps a log of observations.
- Refers all concerns, questions, or unresolved complaints to the VOP Program Coordinator.
- Seeks to establish a positive working relationship with facility staff.
- Conducts initial inquiries regarding complaints made to the Office.
- Provides follow-up visits on cases investigated by Local LTC Ombudsman and monitors facility progress.
- Attends Resident and Family Council meetings at the request of council members.
- Provides general information to residents and families.

### **The Volunteer LTCO DOES NOT:**

- Volunteer for the facility or participate in the facility's social activities with residents.
- Establish personal friendships with residents that will affect their advocacy role. While all volunteer LTCO will be *friendly*, their relationship with residents is through advocacy. The relationship is deliberately planned, objective, purposeful, and controlled.
- Act as a Local LTC Ombudsman.
- Receive a paycheck or accept gifts from families, residents, or facility staff. This includes free meals on a routine basis.
- Discuss issues of confidentiality.
- Disclose issues or resident concerns to administrators or facility staff, unless resident permission has been given.
- Interpret medical, health, or financial information for residents.
- Become involved with or make medical, legal, or financial recommendations.
- Perform any type of hands-on personal care, activity, or treatment for residents, including: offering a resident a drink/snack, transferring them from one location to another (e.g., from bed to chair).
- Have regulatory authority.
- Volunteer at any facility other than those assigned through the VOP.

### **Twenty-four hours of training are required for certification, including a combination of the following:**

- Eight hours of classroom training
- Phone screening/interview
- One-on-one visit and Q&A session with the VOP Coordinator



## **Frequently Asked Questions Regarding the Volunteer Ombudsman Program (VOP)**

### **What does the VOP Volunteer do?**

VOP volunteers serve as the eyes and ears of the Local Long-Term Care Ombudsmen by conducting monitoring visits to their assigned long-term care (LTC) facility. Volunteers will be given a list of important items, developed by the Local LTC Ombudsmen, they will check on each visit. Additionally, they will talk with many of the facility's residents to identify concerns or issues and bring them to the attention of the facility and/or Local LTC Ombudsman.

### **What does the VOP 24 hour training requirement consist of?**

A combination of the following items makes up the 24 hour training process:

- **Telephone Screening.** In this initial conversation the VOP Coordinator will ask applicants a series of questions pertaining to the volunteer role.
- **Eight hours of classroom training in your community or a nearby community.** Information on the volunteer role, interaction with residents, completion of monthly reports, and more will be provided at this training.
- **Post-training Question & Answer consultation with the VOP Coordinator (via phone, online, or face-to-face).** This is an opportunity for applicants to ask questions, and voice comments or concerns to the VOP Coordinator.

### **Where is the training conducted?**

The VOP Coordinator will come to your community or a nearby community to conduct the required eight hour training session.

### **I've served as a Resident Advocate Committee (RAC) member, Care Review Committee member, or facility volunteer for a number of years. Why do I have to go through the VOP training and certification process if I already know what I'm doing?**

The training requirement is mandated by law. Currently, there are many volunteers who are effective in their role, and we are incredibly grateful for their services. The purpose of requiring everyone to go through the VOP training is to make certain that all persons who represent the State of Iowa through the VOP are consistent in their knowledge, actions, and advocacy skills. To ensure this, all volunteers must be presented the same information through the same method of training. Consistency throughout our volunteer network will be most beneficial to the residents.

**Why do I have to complete continuing education and what types of events count towards it?**

It is important for volunteers to remain current in their knowledge of advocacy for long-term care residents. Certification will initially be granted for one year, with recertification possible following the volunteer's completion of a minimum of ten hours of approved continuing education in the first year. Ten hours of continuing education are also required in the second year, and six hours each year after.

Examples of continuing education may include, but are not limited to: Scheduled telephone conference calls with representatives from the Office of the State Long-Term Care Ombudsman, materials posted on the VOP website, conferences related to long-term care facilities or the volunteer role, courses related to aging conducted by a local community college or university or via the Internet, and other events **as approved in advance by the VOP Coordinator**. The Office of the State Long-Term Care Ombudsman offers several free continuing education opportunities throughout the year and will not cover costs of continuing education events that require payment. Volunteers are required to report continuing education hours to the VOP Coordinator within 30 days following completion of the event.

**How are facilities assigned?**

On the VOP application, volunteers are asked to indicate the facility at which they would like to volunteer. As long as a conflict of interest is not identified at this particular facility, the volunteer will be assigned to the facility. If a conflict of interest is identified, the volunteer will be asked to volunteer at a facility where a conflict of interest does not exist.

**Will I be assigned more than one facility?**

No. Each volunteer will be asked to volunteer in one facility only.

**What if there are multiple people who want to volunteer at the facility?**

The goal of the VOP is to have two volunteers assigned to each facility. If multiple people would like to complete the certification process to volunteer at one particular facility, we will not prevent them from doing so. If there is a "volunteer-less" facility nearby a facility at which there are multiple volunteers, we will ask if any of these volunteers are willing to be assigned to the facility where there is a need for a volunteer. If the offer is declined, the volunteer may continue their services at the facility they initially requested.

**Why can't I volunteer for the facility AND the VOP?**

Certified LTC Ombudsmen serve as advocates on behalf of LTC residents, not LTC facilities. Sometimes a conflict exists between these two parties; therefore, serving both parties would prove difficult and is considered a conflict of interest. As an extension of the Office of State Long-Term Care Ombudsman, VOP volunteers are expected to serve as advocates for residents only.

### **What is an Ombudsman?**

The Office of State Long-Term Care Ombudsman often finds that residents have not heard of an ombudsman and have no idea what an ombudsman does; there are times nursing staff struggle with this too.

The focus of the Long-Term Care Ombudsman's Office is to advocate for the rights and wishes of residents and tenants in long-term care. In fact, resident's rights are guaranteed by the federal 1987 Nursing Home Reform Law. This law requires nursing facilities to promote and protect the rights of each resident and places a strong emphasis on individual dignity and self-determination. Iowa has incorporated these rights into state law for residential care and nursing facility residents, assisted living and elder group home tenants.

### **These rights include:**

- Being treated with respect and dignity
- Being free from chemical and physical restraints
- Managing their own finances
- Being free to voice grievances without fear of retaliation
- Being able to associate and communicate privately with any person of their choice
- Being able to send and receive personal mail
- Being able to apply for State and Federal assistance without discrimination
- Being fully informed prior to admission of their rights, services available, and all charges
- Being given advance notice of a transfer or discharge

**The Long-Term Ombudsman helps residents, tenants, and their families and friends understand and exercise these guaranteed rights. The Long-Term Care Ombudsman's responsibilities are outlined in Title VII of the Older Americans Act and include:**

- Identifying, investigating, and resolving complaints made by or on behalf of resident/tenants
- Providing information to resident/tenants about long-term care services
- Representing the interests of residents/tenants
- Educating and informing consumers and the general public regarding issues and concerns related to long term care
- Providing technical support for the development of resident and family councils to protect the well-being and rights of residents, AND advocating for changes to improve residents' quality of life and care

The Long-Term Care Ombudsmen offer in-services on residents' rights to educate residents, family, facility staff, or a combination of audiences on how to exercise those rights.

The Office of the State Long-Term Care Ombudsman also places volunteers in long-term care facilities through a Volunteer Ombudsman Program (VOP). VOP volunteers serve as the eyes and ears of residents by conducting monitoring visits to assigned long-term care facilities.

**The Long-Term Care Ombudsman Program may be reached through the state office or through one of the Local Ombudsmen by calling 1-866-236-1430.**

## **Health Care Power of Attorney FAQ's**

You see these documents daily, but do you know what they mean? Who is the attorney-in-fact and what is their role? What's the procedure to revoke a healthcare power of attorney? How do you know if the document is effective? You will find answers to these questions and more through this FAQ.

Q. Who is the attorney-in-fact and who is the principal?

A. The attorney-in-fact is the individual who has been authorized to make health care decisions on another person's behalf. The principal is an individual (18 years or older) who has put the health care power of attorney into place and has authorized the attorney-in-fact to act on his/her behalf at a point in time when he/she can no longer make health care decisions.

Q. What are the responsibilities of the attorney-in-fact?

A. The goal of the attorney-in-fact should be to empower the principal to the fullest extent possible and to carry out the wishes of the individual (principal), even if the attorney-in-fact does not agree with those decisions.

Q. What are the terms of a health care power of attorney?

A. There is no court supervision. The document can be modified or terminated. The document can be revoked at any time, and the principal is presumed to have capacity to revoke the document (per Iowa Code Chapter 144B). The document also terminates upon disability or incapacity, unless it is a durable power. The document terminates upon the principal's death.

Q. When is a health care power of attorney document in effect?

A. It will say in the document. A health care power of attorney usually takes effect when the principal is unable, in the judgment of the principal's attending physician, to make health care decisions.

Q. Who determines when the principal is no longer able to make their own health care decisions?

A. A physician. The attorney in fact has authority to make a particular health care decision only if the principal is unable, in the judgment of the attending physician, to make the health care decision. However, the principal may object to a decision to withhold or withdraw a life-sustaining procedure, without regard to mental or physical condition.

Q. How does the principal revoke a health care power of attorney document?

A. The document can be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition. Revocation may be by notifying the attorney in fact orally or in writing. A revocation is only effective as to a health care provider upon its communication to the provider by the principal or by another to whom the principal has communicated revocation.

As a reference, we have included a few helpful websites. The Iowa State Bar Association's [ISBA website](http://www.iowabar.org/displaycommon.cfm?an=1&subarticlenbr=171) (<http://www.iowabar.org/displaycommon.cfm?an=1&subarticlenbr=171>) provides forms that can be utilized to create a durable power of attorney for health care and a living will.

It may be helpful to review the laws when you have questions pertaining to Durable Powers of Attorney for Health Care. The Iowa Code pertaining to Durable Powers of Attorney for Health Care can be found at the [Iowa Legislature website](https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/2013.Chapter.144B.PDF). (<https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/2013.Chapter.144B.PDF>)

## **Capacity v. Competency**

“Capacity” and “competency” are terms often used interchangeably. However, in Iowa law and specifically in the context of one’s right to make decisions, the difference is very important. So what is the difference?

**Capacity.** The ability to understand the nature and effect of one’s acts. Capacity is a fluid concept; an individual may have the requisite capacity in one moment and lack capacity in another. The determination to be made is whether an individual has the ability to understand the nature and effect of his or her acts in a specific moment in time. The level of capacity needed to enter into legal documents, such as a durable power of attorney, contract, or a will, differs based upon the type of transaction.

Capacity to consent to medical procedures is determined by the criteria of informed consent. Does the patient have the ability to:

1. Understand the medical procedure and specifically understand a description of the procedure, its risks, its benefits, and its alternatives?
2. Voluntarily consent?
3. Give consent because he or she is competent (meaning, he/she does not have a guardian)?

**Competency.** Competency is a *legal* finding. Competency proceedings, including guardianship and conservatorship hearings, are conducted to allow the court to determine the individual’s mental capacity.

**Incompetency.** The lack of ability to discharge or understand either health care or financial management decisions. An individual is incompetent when declared by the court to be in need of a guardian or conservator. This determination is made only after the individual meets the proper “standards” under Iowa law.

- **Guardianship Standard:** to have decision-making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur. Iowa Code § 633.3(23)(a).

**Conservatorship Standard:** to have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person’s financial affairs. Iowa Code § 633.3(23)(b).



## MEMORANDUM

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**TO:** Long-Term Care Partners  
**FROM:** Deanna Clingan-Fischer, JD  
State Long-Term Care Ombudsman  
**SUBJECT:** Visitation and Powers of Attorney  
**DATE:** February 25, 2013

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The focus of the Long-Term Care Ombudsman's Office is to advocate for the rights and wishes of residents and tenants in long-term care. In fact, resident's rights are guaranteed by the federal 1987 Nursing Home Reform Law.<sup>1</sup> This law requires nursing facilities to promote and protect the rights of each resident and places a strong emphasis on individual dignity and self-determination. Iowa has incorporated these rights into state law for nursing facility residents, assisted living and elder group home tenants.<sup>2</sup>

The Office of State Long-Term Care Ombudsman receives inquiries on a regular basis as to whether an attorney-in-fact, under a durable power of attorney for health care, can limit or deny visitation to a resident or tenant. For the following reasons, the position of the Office is that an attorney-in-fact acting under a durable power of attorney for health care cannot limit visitation or access to a resident or tenant.

### 1. Resident's and Tenant's Rights

All residents and tenants are guaranteed access and visitation rights. These rights are essential to a meaningful quality of life.

- a. The *resident* has the right and the facility must provide immediate access to any resident by immediate family, other relatives, or other visitors, subject to the resident's right to withdraw consent at any time.<sup>3</sup>
- b. The *tenant* has the right to associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.<sup>4</sup>
- c. *Limitations* to access are provided for in Iowa law.<sup>5</sup> A visitor may be restricted *by the facility* for the following reasons:
  1. The resident refuses to see the visitor;
  2. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health;
  3. The visitor's behavior is unreasonably disruptive to the functioning of the facility.

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<sup>1</sup> 42 U.S.C. 1396r; 42 C.F.R. 483.10

<sup>2</sup> Iowa Code 135C.14(8) (2013); 481 IAC 67.3

<sup>3</sup> 42 C.F.R. 483.10(j)

<sup>4</sup> 481 IAC 67.3(6)

<sup>5</sup> 481 IAC 58.47(2)

As discussed below, an attorney-in-fact is appointed only for the purpose of making health care decisions, and the decision to allow access to a resident is not a “health care decision” as defined by law.<sup>6</sup> Therefore, the resident’s right to receive or refuse a visitor does not transfer to an attorney-in-fact pursuant to a durable power of attorney for health care.<sup>7</sup>

## 2. Durable Power of Attorney for Health Care

- a. A durable power of attorney for health care is a document which authorizes an attorney-in-fact to make health care decisions for the principal, if the principal is unable, in the judgment of the attending physician, to make health care decisions.
- b. An attorney-in-fact is the individual who is designated by a durable power of attorney for health care to act as agent to make health care decisions on behalf of the principal and has consented to act in that capacity. The attorney-in-fact must act consistently with the principal’s desires as stated in the document or otherwise made known. If the principal has not refused visits in the past, a presumption should be made that he/she would not now want to limit visits.
- c. A principal is the person age 18 or older who has executed a durable power of attorney for health care.
- d. Since an attorney-in-fact is designated to make health care decisions, it is important to understand the definition of “health care decisions”. This is defined under Iowa law<sup>8</sup> as:
  - *Health Care Decision* means the consent, refusal of consent, or withdrawal of consent to health care.
  - *Health care* is defined as any care, treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition.

The attorney-in-fact’s authority is over health care decisions and visitation and access to a resident is not a health care decision. The law does not specifically set out restrictions on visitation as a right that the attorney-in-fact can exercise. Therefore, it is the position of the Office of State Long-Term Care Ombudsman that the attorney-in-fact does not have authority to determine visitation. As such, that right remains with the resident.

For more information on the Long-Term Care Ombudsman Program or to reach a Local Long-Term Care Ombudsman, please call 866-236-1430.

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<sup>6</sup> Iowa Code 144B (2013)

<sup>7</sup> 42 C.F.R. 483.10(a) (4). This states that in the case of a resident who has not been adjudged incompetent by the state court, any legal surrogate designated in accordance with state law may exercise the resident’s rights to the extent provided by State Law.

<sup>8</sup> Iowa Code 144B.1 (2013)

## MEMORANDUM

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**TO:** Administrators and Directors of Long Term Care Health Facilities, Assisted Living Programs and Elder Group Homes

**FROM:** State Long-Term Care Ombudsman's Office

**SUBJECT:** Email Distribution Lists (listserv), New Website, Volunteer Ombudsman Program (VOP), Office of Substitute Decision Maker

**DATE:** July 31, 2013

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The Office of State Long-Term Care Ombudsman would like to share the following:

1. **Listserv:** Our Office sends out monthly emails to communicate with you and share information via a listserv or email distribution list. These e-mails come in the form of a communique from the Office of the State Long-Term Care Ombudsman. We hope you are receiving these messages, but if not, you can still be added. To ensure you receive these communiqués contact Katie Mulford, Administrative Assistant, at 866-236-1430 or [Katie.Mulford@iowa.gov](mailto:Katie.Mulford@iowa.gov) to be added to our list.
2. **Revised website:** The Department on Aging and the Long-Term Care Ombudsman's Office have a new website. Check out the new [Iowa Department on Aging website](#) and the [Long-Term Care Ombudsman's Office website](#).
3. **Volunteers:** Due to legislation passed in 2012, the Long-Term Care Ombudsman's Office began the transition from the current Resident Advocate Committee (RAC) volunteer program structure to a Certified Volunteer Long-Term Care Ombudsman Program (VOP). The goal of the volunteer program has not changed. These volunteers serve as an advocate for the resident and are representatives of the Long-Term Care Ombudsman's Office. Visit the [Volunteer Ombudsman Program \(VOP\) website](#) for more information. For more details regarding VOP, you may contact the Volunteer Ombudsman Program Coordinator, Merea Bentrott at 515-344-0052 or [Merea.Bentrott@iowa.gov](mailto:Merea.Bentrott@iowa.gov).

As of July 1, 2013, Resident Advocate Committees (RAC) are no longer permitted to act as representatives of the Long-Term Care Ombudsman's Office. This is due to a change in Iowa law. Our office is currently working with the former RAC members to offer an opportunity to volunteer under VOP.

4. **Substitute Decision Maker:** Our office is compiling examples of situations encountered in long term care to illustrate the need for an Office of Substitute Decision Maker, which would serve as an attorney-in-fact under power of attorney, guardianship, or conservatorship for those in need. Please share specific substitute decision maker challenges you have encountered by e-mailing a brief summary of the situation to either: [Pamela.Railsback@iowa.gov](mailto:Pamela.Railsback@iowa.gov) or [Jennifer.Golle@iowa.gov](mailto:Jennifer.Golle@iowa.gov).

## **Can my mom have a private nursing home room even though she depends on Medicaid funding?**

Until recently, once on Medicaid, a resident had little option but to live in a shared room.

This not only meant less space to have personal items that made a “room a home” but could be extremely difficult when an elderly person suddenly must share space with a stranger, especially if the stranger did not have the same interests or habits.

A revision to Iowa law allows nursing facilities to collect additional payment above the Medicaid payment from residents and families who desire a private room. Iowa Code section 249A.4 (10) makes this allowable when certain conditions are met. Due to the changes in the Iowa Code, administrative rules were amended, filed, and adopted after comment in an effort to implement this new policy. These amendments became effective July 1, 2013 and update Chapter 81, “Nursing Facilities” of the Iowa Administrative Code. The amendments can be found at 81.10(5)(e)(4).

If a nursing facility provides for supplementation for provision of a private room, the facility shall inform all residents, prospective residents, and their legal representatives of the following:

That if the resident desires a private room, the resident or resident’s family may provide supplementation by directly paying the facility the amount of supplementation.

The nursing facility’s policy if a resident residing in a private room converts from private pay to payment under the medical assistance program but the resident or resident’s family is not willing or able to pay supplementation for the private room.

The private rooms for which supplementation is available, including a description and identification of such rooms; and

The process for an individual to take legal responsibility for providing supplementation, including identification of the individual and the extent of the legal responsibility.

Supplementation shall not be required as a precondition of admission, expedited admission, or continued stay in a facility.

*The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.*

**Can I still qualify for Medicaid nursing facility eligibility  
if my income is more than the allowed \$2,130 per month?**

To qualify for Medicaid nursing facility eligibility in 2013, an individual's monthly income must be \$2,130 or less. Does this mean that if a person earns more than \$2,130 per month that that person will not qualify for Medicaid, even if he/she cannot afford the facility's private pay rate? No. If an individual meets the resource/asset limit for eligibility but has an income above the \$2,130 and up to or below \$4,642, that person may be able to establish a Medical Assistance Income Trust, more commonly known as a Miller Trust, to become eligible for Medicaid nursing facility care.

A Miller Trust is an irrevocable trust established on or before August 10, 1993, for the benefit of an individual and is used to help pay the cost of nursing facility care. The person residing in the nursing facility is designated as the beneficiary, and after the beneficiary's death, all remaining amounts, up to the amount of Medicaid paid for the beneficiary, are paid to the State, the residuary beneficiary. Once a trust is established, a bank account for monies associated with the trust can be opened. Only certain funds, including the beneficiary's earned and unearned income, can be deposited into the Miller Trust account. A trustee, usually a spouse or family member, is the person who administers the trust and pays out money.

It is important to note that a Miller Trust can also be established by an individual to aid in qualifying for in-home care under Medicaid's Elderly Waiver program. Anyone interested in and needing to establish a Miller Trust to become eligible for Medicaid should contact an attorney.

For more information on the Long-Term Care Ombudsman Program or to reach a Local Long-Term Care Ombudsman, please call 866-236-1430.

References:

[http://www.dhs.state.ia.us/Consumers/Find\\_Help/County\\_Offices/CFEU.html](http://www.dhs.state.ia.us/Consumers/Find_Help/County_Offices/CFEU.html)

<http://www.iowalegalaid.org/resource/miller-trusts-helping-pay-for-nursing-home-ca>

[http://www.dhs.iowa.gov/policyanalysis/policymanualpages/manual\\_documents/master/8-l.pdf](http://www.dhs.iowa.gov/policyanalysis/policymanualpages/manual_documents/master/8-l.pdf)

<http://www.iowa-MedicaidTrusts.com>

*The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolution to problems, and providing advocacy with the goal of enhancing quality of life and care.*



# **Appendix B**

## **Legislative Declarations**





### Legislative Declarations by Office of the State Long-Term Care Ombudsman

Bill	Topic	Explanations	Declaration	Date
HF262	Administrative Hearings	An Act establishing an office of administrative hearings within the department of management.	Undecided	February 25, 2013
HF197 (successor to HF102)	Adult Day Services	An Act relating to certification of adult day services programs.	Undecided	February 16, 2013
SF109	Aging	An Act relating to IDA and making an appropriation.	For	February 3, 2013
HF115	Aging	An Act relating to the department on aging, and making an appropriation.	For	February 7, 2013
HF146	Alert Program- Cognitively Impaired Persons	An Act creating a silver alert program within the department of public safety for missing cognitively impaired persons.	For	February 7, 2013
HF232	Alzheimer's	An Act relating to the state comprehensive Alzheimer's disease response strategy.	Undecided	February 21, 2013
SF199	Alzheimer's Disease	An Act relating to the state comprehensive Alzheimer's disease response strategy.	Undecided	February 21, 2013
SF269 (successor to SF199)	Alzheimer's Disease	An Act relating to the state comprehensive Alzheimer's disease response strategy.	Undecided	March 21, 2013
SSB1251	Appropriations	An Act relating to appropriations for health and human services and including other related provisions and appropriations, providing penalties, and including effective, retroactive, and applicability date provisions.	For	April 12, 2013
SF446 (successor to SSB1251)	Appropriations	An Act relating to appropriations for health and human services and including other related provisions and appropriations, providing penalties, and including effective, retroactive, and applicability date provisions.	For	April 17, 2013
SF90	Assisted Living	An Act relating to assisted living programs.	For	February 3, 2013
SSB1131	Background Checks	An Act relating to record checks of prospective and current health care employees and certain students.	Undecided	February 12, 2013
SF347 (successor to SSB1131)	Background Checks	An Act relating to record checks of prospective and current health care employees and certain students.	Undecided	March 18, 2013
HF550 (successor to HSB152)	Background Checks	An Act relating to record checks of prospective and current health care employees and certain students.	Undecided	March 18, 2013

### Legislative Declarations by Office of the State Long-Term Care Ombudsman

Bill	Topic	Explanations	Declaration	Date
HF116	Certified Volunteers	An Act relating to the long-term care resident's advocate program and making appropriations.	For	February 7, 2013
SF36	Certified Volunteers	An Act relating to the long-term care resident's advocate program and making appropriations.	For	January 29, 2013
SF258 (successor to SF36)	Certified Volunteers	An Act relating to the long-term care resident's advocate program and making appropriations.	For	February 27, 2013
HSB39	Citizens' Aide Ombudsman	An Act relating to the title of the office of citizens' aide.	For	January 30, 2013
SSB1014	Citizens' Aide Ombudsman	An Act relating to the title of the office of citizens' aide.	For	January 22, 2013
SF153 (formally SSB1014)	Citizens' Aide Ombudsman	An Act relating to the title of the office of citizens' aide.	For	February 12, 2013
HF185 (formally HSB39)	Citizens' Aide Ombudsman	An Act relating to the title of the office of citizens' aide.	For	February 16, 2013
HF185	Citizens' Aide Ombudsman	An Act relating to the title of the office of citizens' aide.	For	February 16, 2013
HSB175	Conservatorship (access to medical info) Estates & Trusts	An Act relating to estates and trusts.	Undecided	February 27, 2013
HF591 (successor to HSB175)	Conservatorship (access to medical info) Estates & Trusts	An Act relating to estates and trusts.	Undecided	March 18, 2013
SF 361	Conservatorship (access to medical info) Estates & Trusts	An Act relating to estates and trusts.	Undecided	March 18, 2013
SF178	Dependent Adult Reporters	An Act relating to mandatory child abuse and dependent adult abuse reporter training.	For	February 16, 2013
SF350 (successor to SF178)	Dependent Adult Reporters	An Act relating to mandatory child abuse and dependent adult abuse reporter training.	For	March 18, 2013
SF232	Direct Care Professionals	An Act relating to direct care professionals, including the establishment of a board of direct care professionals, providing for implementation, making penalties applicable.	For	February 21, 2013
HF416	Financial Exploitation Protections	An Act establishing provisions to protect the rights of certain individuals, including protections against fraud and financial exploitation.	For	March 5, 2013

### Legislative Declarations by Office of the State Long-Term Care Ombudsman

Bill	Topic	Explanations	Declaration	Date
SF118	Grandparent Visitation	An Act relating to grandparent and great grandparent visitation.	Undecided	February 3, 2013
HF114	HCBS Waiver	An Act relating to reimbursement for services provided under a medical assistance home and community-based services waiver for the elderly.	For	February 7, 2013
SF34	HCBS Waiver	An Act relating to reimbursement for services provided under a medical assistance home and community-based services waiver for the elderly.	For	January 30, 2013
HSB119	HCBS Waiver	An Act relating to service providers under Medicaid home and community-based services waivers.	Undecided	February 21, 2013
HF554 (successor to HSB119)	HCBS Waiver	An Act relating to service providers under Medicaid home and community-based services waivers.	Undecided	March 14, 2013
SF351 (formerly SSB1133)	HCBS Waiver	An Act relating to service providers under Medicaid home and community-based services waivers.	Undecided	March 21, 2013
SSB1133	HCBS waivers	An Act relating to service providers under Medicaid home and community-based services waivers.	Undecided	February 12, 2013
HF83	Health Care Models	An Act relating to integrated care models for the delivery of health care, including but not limited to required utilization of a medical home, ACO's and ACA.	Undecided	February 3, 2013
SF71	Health Care Models	An Act relating to integrated care models for the delivery of health care, including but not limited to required utilization of a medical home, ACO's and ACA.	Undecided	February 3, 2013
SF296 (successor to SF71)	Health Care Models	An Act relating to integrated care models for the delivery of health care, including but not limited to required utilization of a medical home, ACOs and ACA.	Undecided	March 5, 2013
SSB1105	IDRs	An Act relating to informal conferences on contested citations or regulatory insufficiencies in health care facilities or assisted living programs.	Undecided	February 26, 2013
SF394 (successor to SSB1105)	IDRs	An Act relating to informal conferences on contested citations or regulatory insufficiencies in health care facilities or assisted living programs.	Undecided	March 14, 2013
HSB96	IDRs in Long Term Care	An Act relating to informal conferences on contested citations or regulatory insufficiencies in health care facilities or assisted living programs.	Undecided	February 3, 2013

### Legislative Declarations by Office of the State Long-Term Care Ombudsman

Bill	Topic	Explanations	Declaration	Date
HF570 (successor to HSB96)	IDRs in Long Term Care	An Act relating to informal conferences on contested citations or regulatory insufficiencies in health care facilities or assisted living programs.	Undecided	March 18, 2013
HF87	Intergovernmental agreements	An Act requiring that certain intergovernmental (28E) agreements include mediation and arbitration provisions.	Undecided	February 3, 2013
HF495 (successor to HSB28)	Landlord/Tenant	An Act relating to the residential landlord and tenant laws.	Undecided	March 14, 2013
HSB28	Landlord/Tenant	An Act relating to the residential landlord and tenant laws.	Undecided	March 5, 2013
SF38	LTC Insurance Policies	An Act providing for standardized provisions and format and a consumer guide for long-term care insurance policies.	For	January 30, 2013
HF71	LTC Insurance Policies	An Act providing for standardized provisions and format and a consumer guide for long-term care insurance policies.	For	February 3, 2013
HSB110	Medicaid Integrity	An Act relating to Medicaid program integrity, and providing penalties.	Undecided	February 12, 2013
HF553 (successor to HSB110)	Medicaid Integrity	An Act relating to Medicaid program integrity, and providing penalties.	Undecided	March 14, 2013
SSB1127	Medicaid Integrity	An Act relating to Medicaid program integrity, and providing penalties.	Undecided	February 12, 2013
HF101	Medicaid-cost reporting (HCBS)	An Act relating to cost report and rate setting procedures for home and community-based services providers under the Medicaid program.	Undecided	February 3, 2013
HF100	Medicaid-training costs (HCBS)	An Act to allow for reasonable training costs in the direct costs reimbursable under Medicaid HCBS.	Undecided	February 3, 2013
HF217	MH Advocate	An Act relating to the creation of a mental health advocate division in the department of inspections and appeals.	Undecided	February 21, 2013

### Legislative Declarations by Office of the State Long-Term Care Ombudsman

Bill	Topic	Explanations	Declaration	Date
SSB1192	MH Advocate	An Act relating to involuntary commitments for persons with substance-related disorders, mental illness, and intellectual disabilities, and providing for the creation of a mental health advocate division in the department of inspections and appeals.	Undecided	February 26, 2013
SF406 (successor to SSB1192)	MH Advocate	An Act relating to involuntary commitments for persons with substance-related disorders, mental illness, and intellectual disabilities, and providing for the creation of a mental health advocate division in the department of inspections and appeals.	Undecided	March 14, 2013
HF180	Music Therapists	An Act providing for the licensure of music therapists and providing for fees.	Undecided	February 16, 2013
SF313	Music Therapists	An Act providing for the licensure of music therapists.	Undecided	March 5, 2013
HF31	Patient/Resident Safety	An Act relating to patient safety (resident safety) by establishing a collaborative nurse staffing committee, a patient safety committee, and reporting for nurses.	Undecided	January 22, 2013
HF86	Power of Attorney	An Act relating to the validity of a power of attorney.	For	January 30, 2013
SF32	Property Assessment	An Act relating to a property assessment adjustment for certain persons, applying income and age limitations, providing a penalty.	For	January 30, 2013
SF39	Property Assessment	An Act providing a property assessment adjustment for certain property of persons who have attained the age of sixty-five.	For	February 7, 2013
HF124	Property Tax Exemption	An Act establishing a property tax exemption for a principal residence owned by a totally disabled individual or certain elderly individuals.	For	February 7, 2013
HSB149	Psychologist's Prescription Authority	An Act relating to prescription authority for certain psychologists and making penalties.	Undecided	February 21, 2013
SSB1162	Psychologist's Prescriptions Authority	An Act relating to prescription authority for certain psychologists.	Undecided	February 21, 2013
HF218	Record Checks for Health Care Workers	An Act relating to criminal and abuse registry background checks for health-related employment and the requirements for requesting Iowa criminal history data.	Undecided	February 21, 2013

### Legislative Declarations by Office of the State Long-Term Care Ombudsman

Bill	Topic	Explanations	Declaration	Date
HF53	Sex Offenders	An Act relating to notification of the placement of sex offenders in nursing facilities, residential care facilities, and assisted living programs, and the prohibition of certain placements of sexually violent predators in such facilities and programs.	Undecided	January 30, 2013
HF552 (successor to HF53)	Sex Offenders	An Act relating to notification of the placement of sex offenders in nursing facilities, residential care facilities, and assisted living programs, and the prohibition of certain placements of sexually violent predators in such facilities and programs.	Undecided	March 14, 2013
SF35	Sexually Aggressive	An Act relating to elderly persons with aggressive or psychiatric behaviors in long-term care facilities.	For	January 30, 2013
HF137	Sexually Aggressive	An Act relating to elderly persons with aggressive or psychiatric behaviors in long-term care facilities	For	February 7, 2013
HF206 (similar to SF35)	Sexually Aggressive	An Act relating to the establishment of one or more facilities for the housing of certain sex offenders in need of medical and personal care.	Undecided	February 16, 2013
SF198 (formerly SF35)	Sexually Aggressive	An Act relating to elderly persons with aggressive or psychiatric behaviors in long-term care facilities.	For	February 18, 2013
HSB46	Technical Bill	An Act relating to programs and services under the purview of the department on aging.	For	January 30, 2013
SSB1056	Technical Bill	An Act relating to programs and services under the purview of the department on aging.	For	January 23, 2013
SF184 (successor to SSB1056)	Technical Bill	An Act relating to programs and services under the purview of the department on aging.	For	February 16, 2013
HF278 (Successor to HSB46)	Technical Bill	An Act relating to programs and services under the purview of the department on aging.	For	February 21, 2013
HSB47	Transfer of Assets	An Act relating to the transfer of assets under the Medicaid program.	Undecided	January 30, 2013
HF476 (formerly HSB47)	Transfer of Assets	An Act relating to the transfer of assets under the Medicaid program.	Undecided	March 14, 2013
SSB1119	Transfer of Assets	An Act relating to the transfer of assets under the Medicaid program.	Undecided	February 7, 2013
HSB130	Veterans Home	An Act relating to the Iowa veterans home and providing for the consideration of contributions to support as repayment receipts.	Undecided	February 16, 2013

**Legislative Declarations by Office of the State Long-Term Care Ombudsman**

<b>Bill</b>	<b>Topic</b>	<b>Explanations</b>	<b>Declaration</b>	<b>Date</b>
HF544 (successor to HSB130)	Veterans Home	An Act relating to the Iowa veterans home and providing for the consideration of contributions to support as repayment receipts.	Undecided	March 14, 2013
SF301 (successor to SSB1157)	Veterans Home	An Act relating to the Iowa veterans home and providing for the consideration of contributions to support as repayment receipts.	Undecided	March 5, 2013
SSB1157	Veterans Home	An Act relating to the Iowa veterans home and providing for the consideration of contributions to support as repayment receipts.	Undecided	February 16, 2013
HF61	Voting-absentee ongoing	An Act providing for ongoing absentee voter status.	Undecided	January 30, 2013
HF64	Voting-County Registered	An Act relating to voting by persons in certain health care facilities and hospitals.	For	January 30, 2013
HF63	Voting-NF	An Act relating to delivery of absentee ballots to certain health care facilities and hospitals.	For	January 30, 2013
HF62	Voting-Veterans	An Act relating to delivery of absentee ballots to veterans who are residents or patients of certain health care facilities and hospitals.	For	January 30, 2013





# **Appendix C**

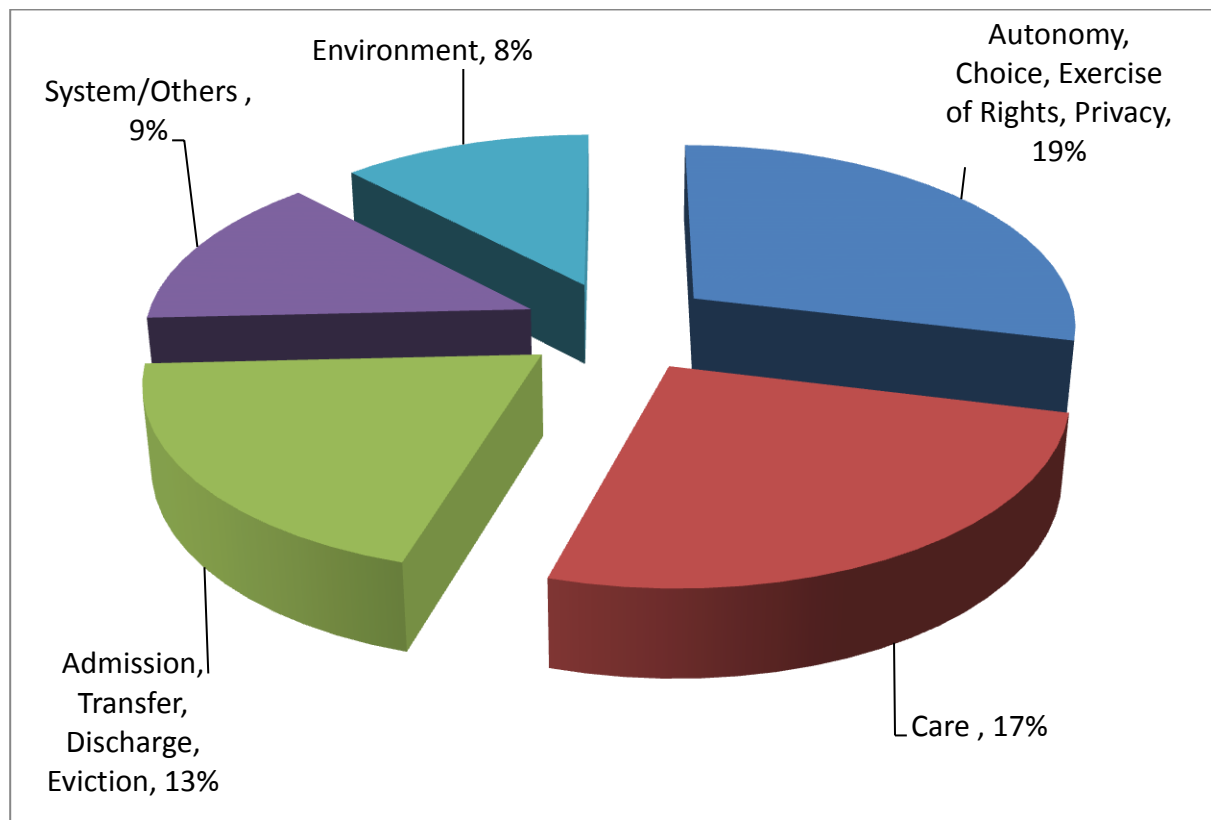
## **Cases and Complaint Data**



## Cases and Complaints

Category	FFY 13	FFY 13	Issues addressed through this category
<b>Number of New Cases Opened</b>	<b>731</b>		
<b>Number of New Complaints</b>	<b>1,174</b>		
Abuse, Gross Neglect, Exploitation	15	1%	Physical, sexual, verbal, seclusion, financial and resident to resident willful deprivation
Access to Information	42	4%	Access to records, to visitors, information on services/benefits/medical/advance directives/rights
Admission, Transfer, Discharge, Eviction	157	13%	Admission contract & procedure, appeal process, bed hold, discharge/eviction notice & procedure, discrimination due to disability, Medicaid status, room assignment
Autonomy, Choice, Exercise of Rights, Privacy	226	19%	Physician, pharmacy, hospice, other health care provider, confinement, treated with dignity & respect, smoking, refuse care, language barrier, participate in care plan, privacy to visitors/telephone/mail/couples/treatment/confidentiality, response to complaints/retaliation
Financial, Property Lost, Missing or Stolen	73	6%	Billing/charges, personal funds, personal property
Resident and Tenant Care	198	17%	Injuries, response to requests for assistance, care plan/resident assessment, contracture, medications, personal hygiene, physician services, pressure sores, symptoms unattended, incontinent care, tubes, wandering
Rehabilitation or Maintenance of Function	61	5%	Assistive devices, bowel/bladder training, dental & mental health services, ambulation, therapies, vision & hearing
Restraints-Chemical and Physical	6	1%	Physical restraint and psychoactive drugs-assessment use, monitoring, evaluation
Activities and Social Services	41	4%	Choice, community interaction, resident conflict, social services availability/ appropriateness,
Dietary	87	7%	Assistance in eating, hydration, food service, snacks, temperature, therapeutic diet, weight loss
Environment/Safety	88	8%	Air temperature/quality, noise, housekeeping, equipment/buildings, furnishings, infection control, laundry, odors, space for activities/dining, supplies, ADA accessibility
Policies, Procedures, Attitudes, Resources	13	1%	Abuse investigation/reporting, administrator unresponsive, grievance procedure, inappropriate or illegal policies, insufficient funds to operate, operator inadequately trained, offering inappropriate level of care, resident or family council interfered with
Staffing	38	3%	Communication barrier, shortage of staff, staff training/turn-over/unresponsive, supervision, eating assistants
Certification/Licensing Agency	5	0%	Access to information including survey, response to complaint, decertification/closure, sanction, survey process/ombudsman participation, transfer/eviction hearing
State Medicaid Agency	25	2%	Access to information application, denial of eligibility, non-covered services, personal needs allowance, services
System/Others	99	9%	Abuse by family member/friend/guardian, bed shortage, facilities operating without a license, family conflict, legal, Medicare, mental health/developmental disabilities/PASRR, physician/assistant, protective service agency, SSA/SSI/VA/other health benefits/agencies, request for less restrictive placement
Services Other than NF/RCF/ALP	0	0%	Home care, hospital/hospice, congregate housing not providing care, services from outside provider

### Top Five Complaints by Major Reporting Category



## Top Five Program Activities

Percentages are of time spent completing activities.

