Iowa Department on Aging

Office of the State Long-Term Care Ombudsman Annual Report 2010

(Federal Fiscal Year October 1, 2009 through September 30, 2010)

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The staff of the Office of the State Long-Term Care Ombudsman dedicates this report to Shirley Taylor who was our secretary and friend. Shirley lives on in our hearts and her constant smile, gentle spirit and kind heart will never be forgotten. Her legacy lives on and continues to inspire each of us.

The staff in the Office of the State Long-Term Care Ombudsman offer a heartfelt thank you to Director Ro Foege for his leadership, compassion and dedication to this office, the Iowa Department on Aging and older Iowans. We appreciate all of his assistance and support t as we worked to complete the tasks stated in Governor Culver's Executive Order 24 and moved to our new location.

IOWA DEPARTMENT ON AGING
OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

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SUMMARY

2010 was a time of unparalleled success and significant change for the Iowa Office of the State Long-Term Care Ombudsman Program. Governor Culver signed Executive Order 24 on May 28, 2010 and ordered:

1. The Office be relocated to a space separate from the Iowa Department on Aging.
2. Budgets and funds be separated from the Iowa Department on Aging.
3. A 28 E agreement executed to provide for the independence of the Office in a manner that fully complies with the Federal Older Americans Act and that ensures its autonomy.
4. Legislation be developed to ensure the independence of the Office
5. The State Long-Term Care Ombudsman designated as a lobbyist before both the Executive and Legislative branches of Iowa government.

As a result of Executive Order 24 the Office of the State Long-Term Care Ombudsman relocated to the Iowa Building (formerly Mercy Capitol) to a private office.

A 28E agreement has been successfully negotiated and signed, and all budgets and funds have been separated.

Legislation has been introduced in an attempt to assure the independence and autonomy of the Office as mandated in the Older Americans Act. This legislation is a priority for this Office and for the Department on Aging.

For the first time in history, Iowa has eight local long-term care ombudsmen. The local ombudsmen work out of Adair, Buchanan, Dallas, Floyd, Johnson, O'Brien, Scott, and Warren counties. Using local offices allows a quick response time to complaints and minimizes driving time while maximizing time spent with the people who live in long-term care facilities.

The mission of the Office of the State Long-Term Care Ombudsman is to seek resolution of problems and advocate for the rights of people living in long-term care facilities with the goal of improving and enhancing the quality of life and quality of care for all. While Iowa is still far behind in the recommended number of ombudsmen to residents, the local ombudsmen work tirelessly to respond to concerns and provide information and assistance to people living in nursing homes, assisted living facilities, elder group homes and residential care facilities.

The local ombudsmen spend the majority of the time working to resolve concerns brought by, or on behalf of, a person living in a nursing home, residential care facility, elder group home or assisted living facility. Working with the facility staff, the local ombudsman offers suggestions for resolution as defined by the resident. Complaints range from food likes and dislikes, daily schedule not acceptable to the resident to care concerns, care plans not meeting the needs of the residents, failure to follow physician

orders, a resident not being treated with dignity and respect or confidentiality or privacy issues.

All employees of the Long-Term Care Ombudsman program offer information and assistance for people living in long-term care facilities, facility staff, long-term care professionals, consumers and the public. Requests for information include: how to choose a facility, clarifying resident rights, facility protocols, state and federal rules and regulations, and questions about care, therapy or physician orders. In addition to providing information, local ombudsmen work to promote the ombudsman program by attending health fairs and community events in the assigned districts and meeting with local health care agencies.

In October 2009 Governor Culver required department budgets to be trimmed as a result, funding for the Resident Advocate Committee Program was cut. While approximately 2,000 volunteers are still working in facilities, this office is no longer able to provide orientation, training, process applications or maintain the database of volunteers.

Volunteers are crucial to the success of the long-term care ombudsman program; however, both staff and resources are needed to make the program work effectively and efficiently. Iowa is one of only four states in the nation that does not use volunteer ombudsmen. The current Resident Advocate Volunteer Program needs a lift to accommodate changes in long-term care. When the volunteer program started in the 1970's, most of the people in nursing homes were alert, oriented and able to communicate. With the increase of in-home and community based services, people are able to stay in their own homes much longer and those who move to nursing homes tend to be much more acute and frail. The number of people diagnosed with dementia has also increased significantly, causing communication barriers between volunteers and residents.

Increased orientation, continued training and technical support are needed so that volunteers can successfully resolve complaints. Changing from a friendly visitor program to a volunteer ombudsman program would provide assistance to local ombudsmen in responding to concerns. More importantly, volunteers would be able to monitor facilities on a routine basis, meet with residents and resolve concerns as quickly as possible at the facility level which would eliminate more costly visits and investigations from the Department of Inspections and Appeals

During the 2010 legislative session, legislation was successfully passed to state the duties of the ombudsman's office, including penalties for interference, retaliation, and confidentiality.

Despite having minimal paid staff, the Iowa ombudsman program is successful and takes great pride in the fact that 78% of all concerns are resolved or partially resolved to the satisfaction of the resident. Routine monitoring of the over 850 facilities is not a

possibility with only 8 staff, but ombudsmen work hard to become familiar with facilities in the assigned districts.

Building relationships with facility staff and other health care professionals has made the ombudsman program a trusted resource. Because the ombudsman program is designed to be consultative in nature and not regulatory local ombudsmen can work with residents and facility staff to resolve problems and work to improve and enhance the quality of life and quality of care for all residents.

As the Federal Fiscal Year 2010 comes to a close, the Iowa Department on Aging and the Office of the State Long-Term Care Ombudsman are in negotiations with the Department of Human Services to perform work as the Local Contact Agency (LCA) related to the new MDS Q assessment. During each assessment, a resident will be asked "Would you like to speak with someone about the possibility of moving back into the community?" If a resident answers "yes" then a referral will be made to the LCA. In conjunction with the Aging and Disability Resource Center Options Counselors, members of the ombudsman program will provide information and resources to people. This work will be included in ombudsman visits to facilities and will not create an additional burden to the staff.

The biggest barrier to optimal operations is lack of paid staff. Each local ombudsman is responsible for an average of 105 facilities and 6,555 residents. Priorities have had to be established and some of the mandates of the Older Americans Act such as routine monitoring and education are lesser priorities while response to complaints remains the number one priority.

During 2010 restrictions placed on the office created significant difficulties in completing tasks. The inability to talk with legislators or represent long-term care residents in any way was a disservice to people living in long-term care facilities. That barrier has been lifted and the freedom of speech has been restored. We are very appreciative to Governor Culver for issuing Executive Order 24 to help ensure the independence and autonomy afforded the Long-Term Care Ombudsman program through the Older Americans Act.

Despite working with minimal staff and no certified volunteers, the local ombudsmen strive to provide advocacy services across the state. Local ombudsmen take pride in helping others, and do whatever is necessary to find resolution to concerns.

Statistics can quantify the work of the Office of the State Long-Term Care Ombudsman, but it is the lives touched that make the work memorable. Providing information and assistance or investigating a complaint to resolve the issues improve the quality of life and quality of care for the person living in a long-term care facility and also can help alleviate caregiver stress.

The passion and dedication of eight local long-term care ombudsmen helps to improve the quality of life and quality of care for people living in nursing facilities, assisted living

facilities, residential care or elder group homes. Offering consumer and provider education, information and assistance creates a strong team to work together in a consultative approach to resolving concerns at the facility level as quickly as possible. Working to resolve one complaint at a time slowly starts to change the system.

RECOMMENDATIONS

RECOMMENDATION #1: Increase the number of local long-term care ombudsmen in Iowa. The federal recommendation continues to be one long-term care ombudsman for each 2,000 beds to meet the mandates in the Older Americans Act, which means Iowa should have 25 local ombudsmen however we believe that the Iowa Long-Term Care Ombudsman program could meet all mandates with 15 full time paid long-term care ombudsmen.

RATIONALE: With eight local long-term care ombudsmen we have not had to refuse service to anyone regarding a long-term care facility; however, monitoring, education and building community relationships have been sidetracked.

RECOMMENDATION #2: Develop a Volunteer Long-Term Care Ombudsman Program to assist local ombudsmen with preliminary investigations and follow up. Volunteer ombudsmen would also provide routine monitoring of facilities to help meet the mandate in the Older Americans Act.

RATIONALE: Establishing a Volunteer Long-Term Care Ombudsman Program would allow current federal funds to help support the program. Volunteer ombudsmen would offer an intimate knowledge of a facility would increase response time and would be able to provide additional follow up after concerns have been resolved.

RECOMMENDATON #3: Clarify the definition of assisted living to eliminate providers being able to decertify from the program yet continue business.

RATIONALE: During the past year four assisted living facilities chose to decertify as assisted living. These facilities continue to stay in business providing both housing and services to seniors. Promises were made that there would be absolutely no changes in the lives of the people who live there, yet staff was cut and services were eliminated while costs stayed the same or increased.

RECOMMENDATION #4: Consumers receiving home and community based services need access to long-term care ombudsman services.

RATIONALE: Using the example from recommendation #3, once a facility decertifies there is no agency to which people can report concerns. The housing falls under landlord-tenant law so legal remedies can be used, but home health agencies that are not Medicare certified haves no oversight. As people stay in their own homes longer receiving services and people move out of nursing homes back into the community to take advantage of the increased home and community based services, Iowa must ensure that advocacy services are available to maintain the health, safety and welfare of consumers.

RECOMMENDATION #5: Reinstate the Iowa Office of Substitute Decision Maker

RATIONALE: This office averages one or two calls each week regarding an un-befriended older Iowan in need of a substitute decision maker, or a call regarding a person whose family has committed financial or physical abuse against the older Iowan and there is no one else to assist with decision making. Iowa is one of only two states in the nation without an Office of Substitute Decision Maker.

IOWA DEPARTMENT ON AGING
OFFICE OF THE STATE
LONG-TERM CARE OMBUDSMAN
FACT SHEET FFY 2009

This fact sheet contains information from the Administration on Aging (AoA) National Ombudsman Reporting System for Federal Fiscal Year 2009 Please note this information is not for the recently completed federal fiscal year so it will not match information included in this annual report. Federal reporting is one year behind so that statistics can be compiled on the national level.

- ✓ Iowa ranks 21/52 in the number of facilities and number of beds

- ✓ Iowa ranks 38/52 in the number of paid ombudsman per long-term care beds.
  - During FFY 2008 Iowa had 1 full time state ombudsman and 7 full time local ombudsmen. The unit secretary retired and the position was not filled. An administrative assistant provides ombudsman support.
  - It is recommended that each state have 1 ombudsman per 2,000 beds.
  - Iowa would need 25 ombudsmen to meet that mandate The national average is 1 ombudsman to 2,200 beds.

- ✓ 36/52 in number of community education presentations given.

- ✓ Iowa ranks 3/52 in number of regulatory agency surveys in which an ombudsman participated.

- ✓ Local ombudsmen offer assistance to resident, tenant and family councils but the council system lacks coordination and strength in Iowa.

- ✓ Iowa ranks 34/52 in the number of cases.

- ✓ Iowa is one of only 4 states that do not use certified volunteer ombudsmen.

Source: 2009 Ombudsman Reporting System (ORT), Administration on Aging

OLDER AMERICANS ACT

Duties of all long-term care ombudsmen are mandated by the Older Americans Act. Duties of the State Long-Term Care Ombudsman include the following tasks, by doing them either personally or designating the work to the local program.

A. *Identify, investigate, and resolve complaints that*
   - ❖ *are made by or on behalf of residents and*
     - ▪ *relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), or*
       - *providers, or representatives of providers, of long-term care services;*
       - *public agencies; or*
       - *health and social service agencies;*

B. *Provide services to assist the residents in protecting the health, safety, welfare and rights of the residents;*
C. *Inform the residents about means of obtaining services provided by providers or agencies described above;*
D. *Ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;*
E. *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;*
F. *Provide administrative and technical assistance to regional long-term care ombudsmen;*
G. *Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions,*
   a. *that pertain to the health, safety, welfare, and rights of the residents, and with respect to the adequacy of long term care facilities and services in the State;*
   b. *recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and*
   c. *facilitate public comment on the laws, regulations, policies, and actions;*
H. *Provide for training representatives of the Office*
   a. *promote the development of citizen organizations to participate in the program; and*
   b. *provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and*
I. *Carry out such other activities as the Commissioner determines to be appropriate.*

Table 1

PROGRAM ACTIVITIES

CATEGORY	FFY 10	FFY 09	FFY 08	FFY 07	FFY 06
Training for Ombudsmen/Volunteers	15	98	99	149	55
Technical Assistance for Ombudsmen/Volunteers	690	2318	2331	2668	713
Training for Facility Staff	28	55	43	29	28
Consultations to Facilities/Providers	698	552	609	770	362
Consultations to Individuals	1075	850	961	1385	908
Resident Visitation-Non Complaint Related*	1*	4*	5	422	146
Resident Visitation-Complaint Related	1140	827	814	567	571
Participation in Facility Surveys	1192	1185	1392	1016	63
Work with Resident Councils	13	22	27	3	0
Work with Family Councils	4	10	15	2	1
Community Education	44	57	104	26	9
Media Interviews		12	5	9	21
Monitoring Laws	.5%	1%	4%	4%	4%

*In past years, all non-complaint related visits have been reported, however the Administration on Aging has defined this activity as “the number of facilities receiving at least one visit per quarter, not in response to a complaint.” It is not the number of visits made. Iowa local long-term care ombudsmen made 738 visits to facilities during the past year but only 4 of those visits meet the AoA definition.

PROGRAM ACTIVITIES OVERVIEW

In addition to working to resolve issues in long-term care facilities, local ombudsmen provide training, education and information to volunteers, residents and family council members.

Table 1 on the previous page shows program activities that must be reported to the Administration on Aging each year. The Iowa Long-Term Care Ombudsman program continues to grow and change which makes it difficult to compare statistics from year to year.

Program activities were prioritized this year. Visits to facilities and consultations to individuals rank at the top. Consultations to health care providers are also a priority for this office. This office has an excellent working relationship with the Department of Inspections and Appeals. It is a federal requirement for ombudsmen and surveyors to work together and share certain information.

Education for health care professionals and the community along with work with resident or family councils remains a low priority. Most of the work of the local ombudsmen is complaint driven and when time allows, other activities are scheduled.

TABLE 2

CASES AND COMPLAINTS

	FFY 10	FFY 09	FFY 08	FFY 07
Number of New Cases Opened	**1072**	**924**	**889**	**698**
Number of New Complaints	**2232**	**1878**	**2336**	**1687**
Abuse, Gross Neglect, Exploitation	11	20	24	15
Access to Information	75	62	87	51
Admission, Transfer, Discharge, Eviction	324	287	281	224
Autonomy, Choice, Exercise of Rights, Privacy	446	378	449	327
Financial, Property Lost, Missing or Stolen	111	97	98	72
Care	353	307	392	353
Rehabilitation of Maintenance of Function	81	68	60	34
Restraints-Chemical or Physical	11	9	8	8
Activities and Social Services	83	61	103	55
Dietary	164	115	156	108
Environment	182	124	173	137
Policies, Procedures, Attitudes, Resources	46	52	86	34
Staffing	84	123	156	123
Certification/Licensing Agency	18	9	16	10
State Medicaid Agency	28	13	22	6
System/Others	207	153	221	105
Other than NF/RCF/ALP	8	0	4	25

CASES AND COMPLAINTS OVERVIEW

Local ombudsmen work with people who live or work in long-term care facilities including nursing facilities, assisted living, elder group homes and residential care facilities to resolve complaints about services. Local long-term care ombudsmen offer advocacy services and assistance but self-advocacy is the key to empowerment. Providing information and resources so a resident can work through the system by his/herself is the foundation for resident rights in long-term care facilities.

Long-term care has changed significantly in recent years with the building of assisted living facilities and the increase in home and community based services. In order for long-term care facilities to survive, changes must be made to ensure residents have a strong voice in daily life, daily schedules, treatments and services. Many models have been introduced such as the Eden Alternative, Pioneer or Well Spring. Transforming an institution into a home can be as simple as talking with resident and working to create individualized plans.

Complaints have become much more complex over the years. Many calls today include alleged physical or financial abuse (usually be a family member), family disagreements over care, and calls to assist a person with a diagnosis of mental illness or dementia.

Complaints referred to this office continue to rise and cased opened increased by 16% however this office does not believe care is declining. Consumers are no longer satisfied with the status quo and are much savvier than in the past. People who live in long-term care facilities are demanding services and care to meet their expectations.

Statistics show a continued increase in the number of residents who call for assistance. In the past, the majority of calls have come from family members. This can be attributed to the shift on long-term care facility populations including a rise in calls for assistance with people diagnosed with mental health or dementia.

Involuntary discharges continue to rise. These discharges now account for 27% of new cases opened and have more than doubled in the last four years. Discharges from nursing homes are split between non-payment of bills and behavior problems. Often times it is a family member who appears to use the funds for personal gain and not for the purpose which the money is intended. Adult Protective Services rarely accepts these complaints as possible financial abuse unless we can offer positive proof of inappropriate expenditures so the alleged abuser remains in control of the money. In many instances, the resident is discharged to the home of the person allegedly misusing the funds, which alarms the ombudsmen but this program remains powerless to advocate or investigate once the person is discharged.

It is frustrating that a person can be involuntarily discharged because the facility can't handle the behaviors, yet the resident is discharged to another facility with the same license offering the same care. Oftentimes it appears a person is set up to fail—once challenging behaviors are identified, staff labels many incidents as "problematic" or

"difficult." Lack of staff training to deal with people with dementia or mental health issues continues to exacerbate the use of involuntary discharges.

Involuntary discharges in assisted living facilities continue to be difficult. If an involuntary discharge is initiated by the Department of Inspections and Appeals, an appeal can be initiated to an administrative law judge. However when the regulatory agency is telling a tenant and program that the person must leave, usually due to level of care or behaviors, it is a difficult argument to win. If the involuntary discharge is issued by the facility, the tenant's appeal goes to the director of the assisted living program, who is usually the person who wrote the letter. Local ombudsmen have had little success in negotiating arrangements so the tenant can stay. However directors that have been willing to negotiate and tenants that are willing to compromise have resulted in successful continued stays in the facility.

Other increases include complaints about the environment. Especially during the change of seasons reports are received that it is too hot or too cold in individual rooms or common areas. Many nursing homes have older heating and cooling systems and the changeover can take time. Concerns can usually be resolved when the ombudsman and facility staff work together on creative solutions.

Complaints about dietary and activities have also risen. Local ombudsmen report educated consumers are demanding meals and activities that meet individual needs, wants and desires. Most nursing facilities tend to respond to the requests and revamp programs to make people happy. Some administrative staff are still stuck in old models of care that no longer work and don't allow individual choice.

Complaints in the certification/licensing category represent facilities that have been decertified or have closed in the past year. DIA and the ombudsman program work closely when de-certifications or closures happen to maintain a calm, normal atmosphere and reduce transfer trauma.

Building relationships with residents has alerted state officials to several situations. Because of a relationship between a resident and long-term care ombudsman this office learned that an assisted living facility was changing from assisted living to independent living with services. In another instance, it was the local ombudsman who learned a facility was planning to close within 30 days. In yet another part of the state it was the local ombudsman who discovered a licensed residential care facility was advertising as, and providing care as and assisted living facility. With local ombudsmen averaging 105 facilities and 6,555 beds in the assigned districts we must depend on residents to keep us informed. Local ombudsmen have done an outstanding job of building these relationships and alerting state officials to potential problems.