

**A Plan for Excellence  
for the  
Maryland Long-Term Care  
Ombudsman Program**

**An Assessment and Strategic Plan  
for the Maryland Department of  
Aging**

**Submitted by  
Health Benefits ABCs  
Silver Spring, MD**

**Final Report**

**March 2009**

## Acknowledgements

Health Benefits ABCs is grateful for the opportunity to have conducted this review and assessment, and to formulate a strategic plan for the Maryland Department of Aging regarding Maryland's Long-Term Care Ombudsman Program. Far too many individuals contributed to our work throughout the course of our examination of Maryland's Ombudsman Program to recognize by name. All with whom we dealt during the course of this study were forthright, cooperative, gracious, and helpful in every way. The list includes MDoA's leadership, the State Ombudsman, Program Managers and local Ombudsmen, the volunteer ombudsmen, members of the regulatory and legislative communities, consumer groups, and all others associated with the program at the community level.

We would also like to acknowledge the invaluable survey design, administration, and analysis provided by Dr. Daniel Agle, EdD, Associate Professor, Department of Health Science, Towson University, Towson, Md., and Dr. Wayne Nelson, PhD, research associate with the Towson University Center for Productive Aging.

Ann Rasenberger with Care Management Strategies LLC, Ellicott City, Md., provided important assistance with analysis of federal and state law. Theresa Sachs, a Principal of Health Management Associates, Inc., Washington, D.C., provided strategic guidance.

Our acknowledgements would not be complete without a significant tip of the hat to our key consultants Jim Kautz and Sara Hunt for their tremendous expertise in the long-term care ombudsman program. Nancy Aldrich provided not only invaluable overall coordination of this effort but contributed her extraordinary writing and editing skills. Vanessa Monds of HBABCs provided crucial administrative support for this project.

William F. Benson, Principal  
Health Benefits ABCs  
Silver Spring, MD

## Table of Contents

Executive Summary .....	1
Summary of Recommendations .....	14
Introduction .....	21
Comparable State Programs and Benchmark Programs .....	25
Findings.....	28
Organization of the Maryland Long-Term Care Ombudsman Program .....	29
Governance of the Program .....	36
Human Resources of the Program .....	43
Financing of the Program .....	63
Activities of the Program.....	77
Advocacy .....	77
Public Awareness.....	107
Ombudsman Volunteer Development.....	114
Training.....	121
Accountability and Quality Improvement .....	134
Data: Collection, Reporting, and Other Uses .....	142
Ideals and Distinctions of the Long-Term Care Ombudsman Program .....	150
Recommendations .....	155
Organization of the Program .....	156
Governance of the Program .....	159
Human Resources of the Program .....	162
Financing of the Program .....	168
Activities of the Program.....	178
Advocacy .....	178
Public Awareness.....	185
Ombudsman Volunteer Development.....	187
Training.....	193
Accountability and Quality Improvement .....	197
Data: Collection, Reporting, and Other Uses .....	203
Effectiveness.....	207

Strategic Plan and Action Steps .....	208
Stakeholder Implementation Ideas .....	209
Strategic Plan .....	212
Process to Develop Strategic Action Plan .....	224
Actions To Be Initiated within the Next Three Months .....	225
Appendices.....	227
Appendix A: Resources & Tools.....	228
Appendix B: Comparison of the Maryland and Federal Long-Term Care Ombudsman Statutes (analysis by Ann Rasenberger).....	233
List of Supplemental Appendices (available on CD presented to MDoA) .....	244

## **Abbreviations**

**Throughout the report, we have used the following abbreviations:**

AAA: Area Agency on Aging

AoA: Administration on Aging (Federal)

CQI: Continuous Quality Improvement

FTE: Full-Time Equivalent

HBABCs: Health Benefits ABCs

IOM: Institute of Medicine

LTCO: Long-Term Care Ombudsman

LTCOP: Long-Term Care Ombudsman Program

MDoA: Maryland Department of Aging

NCCNHR: The National Consumer Voice for Quality Long-Term Care

NORC: National Long-Term Care Ombudsman Resource Center

NORS: National Ombudsman Reporting System

OAA: Older Americans Act

SLTCO: State Long-Term Care Ombudsman

SLTCOP: State Long-Term Care Ombudsman Program

## **Executive Summary**

In September 2008, the Maryland Department of Aging (MDoA) issued a Request for Proposals for assistance in conducting an assessment and review of Maryland's Long-Term Care Ombudsman Program (LTCOP) and developing a strategic plan that identifies how programmatic processes and systems could be strengthened, including timelines and benchmarks for achieving LTCOP goals and appropriate outcome measures, and for improving the overall quality of the LTCOP.

Health Benefits ABCs (HBABCs) was selected as the contractor to perform this work, which began in October 2008. We have taken our charge seriously. While recognizing many of the noteworthy features of Maryland's Long-Term Care Ombudsman Program, this report identifies a number of key areas in which the program could be improved to better meet the needs of Maryland's long-term care facility residents, as well as to meet legislative intent.

We used a variety of methods to conduct this project. They included: Town Hall meetings; focus groups; conversations, and interviews with staff of the Maryland LTCOP; structured interviews with key stakeholders in the program; three surveys, administered to staff and volunteer ombudsmen and area agency on aging directors; and analyses of program materials, statistics, and reports.

Throughout our work, we used comparisons from other states. When we know of better ombudsman practices in other states, we have provided them as guidance. We also compared the Maryland program's resources and performance with national data published by the U.S. Administration on Aging in its National Ombudsman Reporting System (NORS). In order to observe Maryland's data in the light of the most comparable programs, we frequently compared Maryland's Office of the State Long-Term Care Ombudsman Program (SLTCOP) with the three

sets of other states. Two sets of states are similar to Maryland in terms of numbers of the long-term care beds and the size of their expenditures. One set is comprised of “Benchmark States”—programs that are widely recognized as exemplary.

We applaud the decision of the MDoA and the Office of the SLTCO to open themselves to external scrutiny and for the integrity and willingness to ask for guidance in improving the program. Along the way, staff of the Maryland LTCOP assisted the project immeasurably, answering questions, providing insights and ideas, providing documents, and assisting in the scheduling of fact-finding meetings. They candidly expressed their concerns and enthusiastically generated ideas for improvement. We are also immensely appreciative of the MDoA staff and leadership who were candid and helpful during this phase of our work. The same must be said for the various stakeholders with whom we interacted as part of our study. Their candor and their desire to strengthen Maryland’s long-term care ombudsman program is laudable.

We hope we have done justice to the openness, commitment and creativity of all those who participated in this effort.

## **Observations and Recommendations**

### **Organization**

The Office of SLTCO is located in the Eldercare Affairs Unit of the Maryland Department of Aging (MDoA). The Administrator of this unit reports to the Deputy Secretary who, in turn, reports to the Secretary. The State Long-Term Care Ombudsman is, therefore, organizationally separated from the Department Secretary by two hierarchical layers. We believe this placement constrains the full potential effectiveness of the program.

Nineteen local ombudsman programs report to the SLTCO. This large number of “direct reports” significantly reduces the time and energy the SLTCO may devote to her full array of core duties. Area agencies on aging (AAAs) sponsor these programs.

The number of local programs may hamper the operation of the SLTCO program, both in the number that the SLTCO must assist, oversee, and communicate with and in the cost-effectiveness of the program, due to a low economy of scale.

We offer two recommendations.

- Ensure the SLTCO has unimpeded access throughout the Department; and
- Consider reducing the number of local programs by merging some smaller ones.

### **Governance**

The Maryland statutory provision that the Secretary may delegate responsibility of the program may conflict with the Older Americans Act.<sup>1</sup> This, and other factors, creates a situation in which the SLTCO has very limited authority to govern the program in the scope and manner envisioned by the Older Americans Act (OAA). Four factors undermine the SLTCO’s authority:

- a lack of up-to-date regulations for the program;
- the absence of an unambiguous written agreement or other document that clearly details mutual expectations and obligations for ombudsman services between MDoA, the State Ombudsman and the AAA;
- the absence of standards and a process for designating local entities; and
- the lack of a process for designating or certifying ombudsmen based on their qualifications and absence of conflicts of interest.

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<sup>1</sup> Ann Rasenberger, an attorney practicing in Maryland and a member of the HBABCs team, has analyzed Maryland’s Ombudsman statute and has recommended complete revision to be consistent with the federal Older Americans Act and to provide additional guidance to the MDoA and the Office of the SLTCO. Her analysis is found in the appendix to this report.

Consequently, the sponsoring agencies (AAAs) determine the staffing, expenditures, and practices of the local ombudsmen who, according to the OAA, are representatives of the SLTCO.

As a result of virtually no central program governance, the program is seen by knowledgeable observers as “uneven,” “inconsistent,” “erratic,” and “unsystematic.”

To move the program toward the cohesion that it must have to carry out the requirements of the Older Americans Act, we have recommended:

- standards and a process for designating entities that sponsor local programs as representatives of the Office of SLTCO;
- certification of ombudsmen (including the establishment of standards and the promulgation of a process); and
- a role for the SLTCO in selecting program managers.

### **Human Resources**

We found that the Office of the SLTCO is severely understaffed. When compared with other states, using several standards, the current staff of one person is not inadequate. Based on the number of long-term care residents in the State, we believe the program should have two (2) additional professionals at the State office to match the average of all states and the Benchmark States. The need is greater yet when the number of local programs is viewed; to assist and oversee its 19 local entities, the program would have from six (6) to seven (7) additional staff to match the benchmark and the average of all states.

The State Ombudsman’s salary is far below those of other states from whom salary data are available, especially when relative costs of living are factored into the equation.

We recommend a step-by-step enhancement of the office’s state staff and increases in salaries of state-level staff.



Maryland ombudsmen consider themselves stretched thin. Some of the data may support this: They resolve fewer complaints per resident than do their counterparts in other states and make approximately the same number of visits to facilities as ombudsmen in other states. On the other hand, the Statewide average of the number of long-term care beds per local program staff [measured in “full-time-equivalents” (FTEs)] in Maryland is 1,057 (1:1,057), 2.1 times better than the average in most other states, which have one FTE to 2,582 beds (1:2,582). This workload is not evenly distributed across the local programs.

The perception of overworking may be related to the fact that the State’s ombudsmen spend considerably more time with group activities than do their counterparts in other states. (Such activities are resident and family councils, community education, and training for facilities’ staffs.) An undetermined (but apparently significant) portion of local ombudsmen’s time is given to Elder Abuse Prevention in the communities.

We recommend that the MDoA and the Office of the SLTCO:

- require no less than one (1) full-time ombudsman in each program, whose duties are not divided with other services or programs;
- carefully study the workloads of local ombudsmen, with special attention to the division of their duties with other programs; and
- place strong emphasis on the recruitment and management of volunteers.

## **Finance**

On its face, by several measures, the amount of money spent by the Maryland State Ombudsman Program is above the national average. This is true even when the State’s high cost of living is factored. Thanks to increases in state funds in the early years of the decade, total expenditures, including federal, state, and local funds, have increased 214% since Federal FY 2000. Meanwhile, over the decade, funding for all programs in the nation increased 43%. When

we calculated the expenditures for all states in “national average dollars,”<sup>2</sup> we found that Maryland spent \$41.13 dollars per resident (bed). This amount is \$12.44 higher per bed than the national average and \$13.81 above the average expenditures of the States with similar budgets.

Salaries are low for the State Long-Term Care Ombudsman and ombudsmen in many regions, however, and local programs struggle to maintain coverage of long-term care facilities.

We attempted to understand the difference between published financial sums and the virtually unanimous perception that the program is underfunded. Part of the explanation may be that funds have, over the past five years, been distributed without use of a comprehensive allocation formula.

Distribution of funds across the State must be addressed and we applaud the MDoA for making it a priority area of focus for this study. An allocation formula, agreed upon by the State Ombudsman, the MDoA, and the sponsoring local agencies is urgently needed. The MDoA has announced plans to rebalance its allocations to the local agencies.

We recommend that the MDoA and the SLTCO:

- review expenditures and increase funding where necessary; and
- distribute funds to local agencies using a needs-based methodology.

We have provided four alternative funding formulae for consideration.

## **Advocacy**

### ***Individual advocacy***

The long-term care ombudsman program is an advocacy-based ombudsman program that receives and resolves complaints made by or on behalf of individual residents; represents the interests of residents before governmental officials; and seeks legal, administrative, and other

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<sup>2</sup> The dollar is worth 27.5% less in Maryland than the national average. Missouri Department of Economic Development: Missouri Economic Research and Information Center, [www.ded.mo.gov/researchandplanning/indicators/cost\\_of\\_living/index.stm](http://www.ded.mo.gov/researchandplanning/indicators/cost_of_living/index.stm).

remedies on behalf of residents. Its advocacy activities range from helping individuals to changing systems.

Individual Cases  $\implies$  Changing Systems

With regard to individual case advocacy, Maryland is well below the national average as well as below that of the Benchmark States in several areas related to receiving and resolving complaints, as indicated by:

- the percent of complaints verified,
- the percent of complaints with a positive outcome,
- the percent of complaints resolved to the satisfaction of the resident or complainant, and
- the percent of facilities visited on a regular (quarterly) basis.

These differences are hard to explain by saying that states may code their data variously.

Large differences are also seen when the sources of complaints (“complainants”) are analyzed. In Maryland, 50% of complaints come from facility staffs; other states’ ombudsmen receive only 16% from facility personnel. On the other hand, residents and their families or other representatives present Maryland ombudsmen with fewer than a third (32%) of the complaints received, compared with 55% in other states. We found wide variation in these statistics between the various local programs. Indeed, a small handful of local programs may skew the data. We must raise the question, “Who is the primary ‘client’ of some programs: individual residents or facilities?”

Finally, the Maryland program appears to not actively seek to provide administrative and legal remedies on behalf of residents.

We recommend that:

- the MDoA and SLTCO promulgate revised regulations and revise the Procedures Manual in order to more effectively guide ombudsmen in the conduct of their core duties; and

- the Office of the State Ombudsman, including the local programs, with the support of the MDoA, pursues administrative and legal remedies on behalf of residents.

### *Systems advocacy*

A major responsibility of a state's long-term care ombudsman program is to engage in systems advocacy to ameliorate less than optimal practices and policies affecting the welfare and rights of long-term care facility residents. (Systems advocacy includes analyzing, commenting on and monitoring laws, regulations, and policies; recommending changes in laws, regulations, policies, and actions; representing residents before governmental agencies; and seeking remedies to protect residents.) The Older Americans Act requires such activity.

We found that in recent years the Maryland State Ombudsman and most local ombudsmen have engaged in limited systems advocacy work and have seldom entered the legislative and rule-making arena on behalf of residents' concerns and problems.

Among our several recommendations concerning advocacy, we propose that:

- the MDoA and SLTCO work to change Maryland policies, rules, or laws, or program structure to enable the LTCOP (state and local) to fulfill its mandated responsibilities for systems advocacy;
- the SLTCOP use its statistical data to identify systems advocacy goals and to develop positions for the Statewide program and the local programs;
- the SLTCO use the annual report as a tool for education and advocacy; and
- the SLTCOP work to strengthen its relationships with other organizations to pursue common advocacy goals.

### **Public Awareness**

Creating public awareness of the ombudsman program and ensuring access to it are important roles for any ombudsman program. Without it, many persons in need of advocacy will

not know that they may turn to an ombudsman for help. In addition, potential volunteers will not be reached for service.

Based on the NORS data for 2007, the 19 local ombudsman programs engaged in 345 community education activities and 14 interviews/discussions with the media, and issued 26 press releases. We note that many of the community education activities did not, however, concern long-term care but dealt with elder abuse prevention. The SLTCO has done little of this activity but has produced a brochure for the public and a video that it distributes to all local ombudsman programs to use as a volunteer recruitment tool. The program has not distributed its annual report in recent years.

We recommend that the program aggressively increase public awareness through media contacts and public appearances, and that it actively make legislators aware of the work and benefits of the program. Statewide, the program's printed offerings should be uniform and advertise the State program. Above all, the program's annual report should be as attractive as possible, convey information about the program and long-term care issues, and be widely distributed.

## **Volunteers**

Advocacy for many long-term care residents is not possible without a volunteer corps. In Maryland, 11 local long-term care ombudsman programs report a volunteer component. In 2007, there were 103 volunteers in Maryland. Two local programs host the majority of these workers, however, and several local programs report having three or less volunteers.

Support for these volunteers has not been adequate. Improvement is needed in the methods used for recruiting, recognizing, and retaining volunteers. We found a lack of consistent, statewide guidance, support, and identifiable resources from the SLTCOP regarding

volunteer management and variation in policies and approaches to volunteer management among local programs.

Among our several recommendations regarding volunteers, we propose that the program employ a full-time, well-qualified, volunteer management expert to guide, support, and assist with volunteer management throughout the State. Under this person's leadership, the program would expect enhancement of recruitment practices and leadership for volunteer ombudsman recognition and retention activities.

### **Training**

Training for service as a long-term care ombudsman is essential to the development of skills to effectively represent residents. The Older Americans Act recognizes the importance of training content and requires certain topics.

Twice each year, the SLTCO provides training for new ombudsmen. In addition, she offers ongoing training bi-monthly.

The Maryland provisions for training are not consistent with the federal responsibility to assure that representatives of the State Ombudsman have the specified training and have been approved as qualified before serving as ombudsmen. (Some ombudsmen serve in their positions for months before being trained.)

Orientation training is a stand-alone event without the additional components that many states use as part of a certification process. Other than attending the required hours of training, no other indicator was identified as a basis for approval as qualified by the State Ombudsman. Areas for improvement in training content, materials, and methodology were identified. A number of innovations in training content and delivery that are employed in leading ombudsman programs are missing in Maryland.

Ombudsmen offered numerous suggestions for improving training. Their suggestions ranged from content, to the quality and expertise of presenters, to the quality of the materials handed out at the training events.

Among our recommendations are:

- totally revise the orientation and certification process and manual;
- use various training approaches for the bi-monthly ongoing training sessions; and
- conduct an Annual Statewide Conference.

### **Accountability and Quality Improvement**

Accountability and quality improvement, while different in scope and responsibility, both relate to the task of assuring that activities are conducted properly and with the maximum benefit to consumers. The Maryland ombudsman program seeks to assure quality casework and to hold ombudsmen and local programs accountable for performance. The foundation for accountability needs strengthening: the program does not use ombudsman-specific written agreements that promote accountability to the SLTCO, lacks a formal process for designating and de-designating local programs, and lacks certification standards for ombudsmen. Methods for reviewing performance and expenditures could be enhanced.

Prominent among our several recommendations are:

- initiate ombudsman program-specific agreements, explicitly describing expectations and responsibilities between the MDoA and the sponsoring agencies;
- improve monitoring tools and processes; and
- begin a process of using Continuous Quality Improvement.

### **Data Collection and Reporting**

We found that the Maryland Office of the SLTCOP has an effective system for collecting and analyzing data. Consistency and accuracy of data have been addressed, but need constant

monitoring and improvement. The use of data for advocacy, management, training, and other functions is severely limited, however. In addition, ombudsmen find themselves using an extraordinary amount of time in data entry and reporting.

We recommend that the MDoA and SLTCO:

- develop a culture that includes the use of statistical information, with the SLTCO modeling good uses of data and training the local ombudsmen in the use of statistics;
- work to improve data accuracy and consistency; and
- reduce the effects of data entry and reporting on ombudsmen's workload, if possible.

### **Effectiveness**

We have explored carefully, looking for evidence of the effectiveness of the Office of SLTCO in Maryland. We found examples of effective work from the Eastern Shore to the western mountains. Missing in the program is consistency and the assurance that every resident, in each facility in the State, can expect equally useful, assertive representation. We cannot say, unequivocally, that the program is effective and that all of its representatives are doing the best possible work on behalf of residents.

We have explained our findings and recommendations throughout this report. Our most wide-ranging and essential recommendations for program effectiveness are:

- enhance and reorganize the State office of the SLTCOP;
- establish in Maryland law the expectation for the program to conduct systems advocacy that is provided in the federal law and implement a thoroughgoing process of systems advocacy;
- assure adequate funding of the program as a whole and distribute funds to local agencies using a needs-based formula;
- consider the effectiveness and efficiency of the number of local programs and reduce their number if sufficient funding is not available;



- assure the authority of the SLTCO and the MDoA to govern and be accountable for the program statewide;
- evaluate and strengthen local ombudsman human resources, including the addition of staff to the State office;
- improve the accuracy of data and develop a culture that includes the use of statistical information for advocacy, management, and program improvement; and
- institute a process of Continuous Quality Improvement.

## Summary of Recommendations

We make recommendations in the following areas:

### Organization of the Program

- Recommendation 1:**  
Ensure the SLTCO Has Complete Access throughout the Department
- A primary step in achieving this goal is the placement of the SLTCO directly under the Secretary or Deputy Secretary. If this placement is not acceptable, the SLTCO should have regular as well as topic-generated conversations with the Secretary and other Departmental leaders without proceeding through intermediate layers of the Department's hierarchy.
- Recommendation 2:**  
Reduce the Number of Local Programs
- Unless the State is able to significantly increase the funding for the program, it should reduce the number of local programs to no more than ten (10) local entities.

### Governance of the Program

- Recommendation 3:**  
Designation of Local Programs
- We recommend that the SLTCO and the MDoA begin immediately to enact a process for designating local entities and develop and use a formal written agreement that clearly states the responsibilities of the State and the local sponsoring entities and enables the SLTCO to assure cohesion and hold local entities accountable.
- Recommendation 4:**  
Certification
- We recommend that the SLTCO begin immediately to certify ombudsmen. The process would begin by the establishment of standards and the promulgation of a process. Certification should be related to training.
- Recommendation 5:**  
Selection of Program Managers
- We recommend that the SLTCO have a defined role in the selection of local program managers.
- Recommendation 6:**  
Other Key Roles of the Ombudsmen
- **Budget development.** We recommend that the SLTCO have a defined, meaningful role in the establishment of the budget of the Office of the SLTCOP, including the determination of program needs and the statewide allocation of funds.
  - **Accountability.** We recommend that the SLTCO have the responsibility for assuring that the program, in all of its expressions across the State, operates within its legal and regulatory limits and performs at its optimal level.

## Human Resources of the Program

### Recommendation 7: Enhance State Office Staff

- Maryland could meet the level of staffing of the Benchmark States by employing three persons at the State office. We recommend that the MDoA add professional and clerical staff to the State office. We suggest that at least one professional person and one clerical assistant be added in the coming year. During the following year, at least one more professional should be added.
- **Enhance the Salary Level of the SLTCO.** The State should pay the SLTCO a salary that will attract and retain the best and brightest persons available.
- **Legal support.** We also recommend that the Office of the SLTCO be supported by an attorney whose time and role are dedicated to the legal issues of the program and the residents it represents and who provides counsel, training of ombudsmen, assistance to local legal support, and representation.

### Recommendation 8: Evaluate and Strengthen Local Ombudsman Human Resources

- We recommend at least one full-time ombudsman per area, who is certified by the SLTCO. If an agency cannot provide a full-time ombudsman, local programs should be merged to accomplish this.
- **Division of Time.** The program should charge a work group with the task of examining the amount of time that the ombudsmen spend in all of their tasks.
- **Continuity of Service.** The Office of the SLTCO should address issues related to job vacancies in the local program.
- **Volunteer Service.** Volunteers could be used to a fuller advantage in Maryland's program. We recommend that the Office of SLTCO place a stronger emphasis on the recruitment, maintenance, and management of volunteers.

## Financing of the Program

### Recommendation 9: Review Expenditures and Increase Funding Where Necessary

- The program needs additional funds to enhance the office of the SLTCO. We calculate that, in the first year of enhancement, this will cost approximately \$125,000 more than was spent in FY 2007 at the State office.
- We recommend that the MDoA carefully review expenditures, including line items, at the AAA level and document them. MDoA and the SLTCO should use the

comparisons that we have provided to ascertain the appropriate level of funding needed.

- Older Americans Act Title III-B could be considered as a source for increased funding.
- Due to the effects of recent methods of determining intrastate allocations for the program, funds are not allotted equitably. We have outlined four methodologies for statewide distribution of funds.

**Recommendation 10:**  
Distribute Funds to Local Agencies Using a Needs-Based Methodology.

### Activities of the Program: Advocacy

**Recommendation 11:**  
Promulgate Revised Regulations for the LTCOP

- This should be done within the next 12 months. Included in these regulations should be conflict of interest provisions that ensure the credibility of the program and of individual ombudsmen. Then MDoA and the Office of the SLTCO should develop procedures to ensure that the conflict of interest provisions are applied consistently and are renewed annually.

**Recommendation 12:**  
Revise the Procedures Manual

- We recommend that the SLTCO revise the Procedures Manual to provide clear and consistent guidance for the ombudsmen.

**Recommendation 13:**  
Increase the Capacity and Skills of the LTCOP to pursue Administrative and Legal Remedies on Behalf of Residents

- MDoA should take steps that will enable the LTCOP to provide strong, available legal counsel with expertise in long-term care and residents' rights to assist the LTCOP in this type of advocacy.

**Recommendation 14:**  
End Mandated Reporter Status of Ombudsmen

- State law that requires ombudsmen to be mandated reporters is not consistent with federal law. We recommend that the Office of SLTCO and MDoA seek the legal authority to remove ombudsmen from the list, or categories, of mandated reporters of alleged abuse, neglect, or exploitation in Maryland law.

**Recommendation 15:**  
Assure Legal Authority for Systems Advocacy

- We recommend that the MDoA and SLTCO work to change Maryland policies, rules, or laws, or program structure to enable the LTCOP (state and local) to fulfill its responsibilities for systems advocacy.

**Recommendation 16:**  
Support Systems Advocacy with Data

- We recommend that the SLTCOP use its statistical data to identify systems advocacy goals and to develop positions for the Statewide program and the local programs.

**Recommendation 17:**  
Strengthen Relationships with Other Organizations

- We recommend that the LTCOP work to strengthen its relationships with other organizations to pursue common advocacy goals.

**Recommendation 18:**  
Use the Annual Report  
as a Tool For Advocacy

- We recommend that the Maryland LTCOP use its annual report as a tool for education and advocacy. The report should be distributed to the individuals listed in the OAA.

### **Activities of the Program: Public Awareness**

**Recommendation 19:**  
Increase Public Outreach

- Ombudsman programs should leave no stone unturned in their efforts to keep the rights of residents of long-term care facilities in the minds of the public, legislators, and the media. The State LTCOP should: (1) have access to the media, (2) keep legislators aware of the needs and problems of residents; and (3) be prominently visible by speaking at meetings attended by health care and social services professionals, caregivers, citizens groups, civic organizations, as well as all the entities associated with the aging services network, to make the role and services of the ombudsman program known to others.

**Recommendation 20:**  
Produce an Annual  
Report and Use It to  
Increase Visibility

- The state LTCOP should produce a high-quality annual report and use it as the centerpiece of its outreach, public education, and advocacy efforts.

**Recommendation 21:**  
Statewide Materials  
Should Create a Uniform  
Identity

- The State LTCOP should take the lead in creating templates of useful brochures, pamphlets, handouts, business cards, public service announcements (PSAs), press releases, and other materials for local ombudsmen to adapt. This would give the Statewide program a more uniform feel and identity, help increase its visibility, and provide an economy of scale.

**Recommendation 22:**  
Local Programs Should  
Continue Outreach  
Innovations

- Where outreach funding is limited, local programs can enlist a student or others to help design outreach materials, develop a mission statement, or perform other important tasks. A local business might sponsor the cost of printing materials.
- Local ombudsman programs also need to continue to educate their AAA/host agency and other entities that they work with about the advocacy role of ombudsmen.

### **Activities of the Program: Ombudsman Volunteer Development**

**Recommendation 23:**  
Employ a Volunteer  
Management Expert at  
the State Level

- We recommend that the State Ombudsman Program employ a full time, well-qualified, volunteer management expert to lead recruitment activities throughout the State and to guide, support, and assist with volunteer management in local programs.

**Recommendation 24:**  
Track All Personnel of  
the SLTCOP

- We recommend that the SLTCO develop a consistent tracking system for all individuals in the LTCOP at the State and the local level.

**Recommendation 25:**  
Enhance Recruitment  
Practices

- We recommend that the State Long-Term Care Ombudsman develop consistent position descriptions, conflict of interest screens, interview tools, and general processes for all volunteer ombudsmen throughout the State.

**Recommendation 26:**  
Provide a Range of  
Roles for Volunteers

- We recommend that the LTCOP consider a range of roles for volunteers, develop position descriptions and training requirements for these roles, and eliminate the role of “friendly visitors.”

**Recommendation 27:**  
Process for Analyzing  
Effectiveness of  
Recruitment Efforts

- We recommend that the SLTCOP have a regular process of analyzing the effectiveness of statewide volunteer recruitment efforts.

**Recommendation 28:**  
Recognize Volunteers

- We recommend that the State Ombudsman provide consistent, statewide leadership for volunteer ombudsman recognition and retention activities, including assessing volunteer retention; identifying “best practices” from local programs; contacting volunteers who are beginning their service; implement a role for the State Ombudsman in recognizing the contributions of volunteers; and consider the development of “career ladders” for volunteers to offer different levels of responsibilities, to refine skills and to assist with retention.

## **Activities of the Program: Training**

**Recommendation 29:**  
Overhaul the Certification  
Process and Manual

- We recommend that the SLTCO develop a certification training process and a resource manual for LTCO [modeled on National Long-Term Care Ombudsman Resource Center (NORC) curriculum] that uses adult learning methodology and focuses on the application of content to the LTCO role.
- If necessary, revise the regulations to be consistent with the changes.

**Recommendation 30:**  
Use various training  
approaches for the Bi-  
Monthly Sessions

- The program should use teleconferences or webinars for some of the sessions and for ongoing networking; choose training methods that are appropriate for the content to be delivered; include more time for sharing of practices; and offer sessions that bring a facilitated focus and dialogue.

**Recommendation 31:**  
Conduct an Annual  
Statewide Conference

- We recommend that the SLTCO conduct an annual statewide conference for in-depth LTCO skills and knowledge building for staff and volunteers.

**Recommendation 32:**  
Share Training Materials  
with All Local Programs

- We recommend that the program enable more sharing of training modules and other materials developed by a local LTCOP with all programs. It should encourage and promote the sharing of newly developed or revised materials and successful practices among programs.

## **Accountability and Quality Improvement**

**Recommendation 33:**  
Initiate Ombudsman  
Program-Specific  
Agreements

- We recommend that the SLTCO and the MDoA promulgate updated regulations, begin using program-specific agreements or other formal documents with the sponsoring local entities, and initiate a process that designates (and can de-designate for cause) local representatives of the SLTCO.

**Recommendation 34:**  
Improve Monitoring Tools  
and Processes

- We recommend that the SLTCO and local programs use the self-evaluation tools available from NORC. We also recommend that, as part of the monitoring, the local programs set measurable objectives, based on State standards that are incorporated in the designation process and agreements.

**Recommendation 35:**  
Institute Continuous  
Quality Improvement

- Continuous Quality Improvement is a way for the program to hold itself accountable while working for changes in its advocacy and other processes.

## **Data Collection, Reporting, and Other Uses**

**Recommendation 36:**  
Develop a Culture that  
Includes the Use of  
Statistical Information

- We recommend, as a first step, that the Office of the SLTCO begin to use statistical data for setting objectives and for monitoring performance and expenditures.
- The State Ombudsman and the Department of Aging can demonstrate models for use of data and lead the local programs to follow their example.

**Recommendation 37:**  
Improve Data Accuracy  
and Consistency

- We recommend that the program continue to include within its training regimen workshops on appropriate coding.

**Recommendation 38:**  
Reduce the Effects of  
Data Entry and Reporting  
on Ombudsmen's  
Workload, If Possible

- It was not within the scope of this project to examine the time spent in recording and reporting activities. We recommend, therefore, that the Office of SLTCO charter a work group of local ombudsmen and the State office of the program to examine the issues listed in the report and

recommend any changes that they find necessary and feasible to reduce the proportion of ombudsmen's time spent in data entry and other documentation.



## Introduction

In September 2008, the Maryland Department of Aging (MDoA) issued a Request for Proposals for assistance in conducting an assessment and review of Maryland's Long-Term Care Ombudsman Program (LTCOP) and developing a strategic plan that identifies how programmatic processes and systems could be strengthened, including timelines and benchmarks for achieving LTCOP goals and appropriate outcome measures, and for improving the overall quality of the LTCOP.

Health Benefits ABCs (HBABCs) was selected to receive the contract and began work on October 1, 2008. Health Benefits ABCs is an independent consulting business established in 2002 and located in Silver Spring, Maryland, that specializes in aging and health policy and services, program development, assessment and strategic planning, and training and facilitation services.

HBABCs' first task was to request data and information from MDoA and the local ombudsman programs, including relevant Maryland statute, regulations, policies and procedures, reports, mission statement, state and local NORS data for the most recent five years, MDoA organizational chart, employment data on state and local staff and volunteers, job descriptions, salaries, hiring procedures, training, funding formula, expenditures and budgets. It also sought information on LTCOP advocacy, outreach and public relations, volunteer management, coordination and communication, accountability and quality improvement, collecting and using data, and administrative processes. The Department collected that information during the period of October through January and provided it to HBABCs.

HBABCs convened two day-long meetings to gather input from stakeholders and obtain their ideas and understanding about the mission, goals, purposes, activities, outcomes, successes,

and problems of Maryland's Long-Term Care Ombudsman Program. Attendees included ombudsmen, program managers, regulators, legislators; disability, consumer, and citizen advocacy organizations; and other interested parties selected by MDoA. Knowledge, comments, and insights from these meetings were distilled and analyzed by the HBABCs team. More in-depth interviews were held with two dozen stakeholders to obtain additional details and insights not provided in the group settings. Interviewees included representatives of long-term care facility organizations, nursing home residents and family council members, regulatory and other governmental agencies that interface with the LTCOP, legislators, area agencies on aging, citizen advocacy groups, national LTCOP support centers, former ombudsmen, and ombudsmen in other states. All discussions were pledged to be kept confidential.

HBABCs then conducted several surveys, both online and via paper, of ombudsmen, program managers, volunteer ombudsmen, and area agency on aging directors to ferret out perceptions on such topics as program quality, performance levels, and effectiveness. We pledged to keep all responses confidential.

HBABCs also met with state staff, including the contract manager, the acting ombudsman, and the Secretary and other leadership of the MDoA to obtain their assessment and views on the program. We also attended ombudsman training sessions and reviewed training materials.

Our next task was to collect and analyze data and other information, compare the Maryland LTCOP to appropriate states (listed and explained below), and formulate findings and recommendations.

Throughout our work, we used information from other states. When we know of noteworthy or exemplary ombudsman practices in other states, we have characterized them

and/or provided them as guidance. We also compared the Maryland program's resources and performance with national data published by the U.S. Administration on Aging in its National Ombudsman Reporting System (NORS). For our Maryland statistics, we have used the following:

- a spreadsheet of FY 2007 expenditure data provided by the MDoA;
- individual AAAs' reports that the MDoA used to compile data for the 2007 NORS report (provided in PDF by the MDoA); and
- a spreadsheet from the Deputy for Operations that detailed expenditures for the State office of the SLTCO.

We have used a wide range of data for comparisons. For example, we used data from three sets of states and compared them to Maryland on topics and issues that are appropriate to each of the sets. (See below for details on the comparable states.) Because the cost of living in Maryland is 27.5% higher than in the average of all states, we have used a calculation of "national average dollars" when we compare expenditures. A dollar is worth approximately \$0.725 in Maryland when compared with its purchasing value in the average of all the states. A dollar is worth \$1.11 in Georgia, compared with its value nationwide.<sup>3</sup>

Wherever possible, we have based our conclusions and recommendations on multiple trajectories, not merely a single observation or data point.

We have examined all of the issues that the MDoA requested of us and have offered recommendations on these. In addition, we have considered several other issues that, based on our experience and expertise, we find necessary to help the MDoA and the Office of the SLTCO move Maryland's LTCOP toward excellence.

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<sup>3</sup>Missouri Department of Economic Development: Missouri Economic Research and Information Center, [www.ded.mo.gov/researchandplanning/indicators/cost\\_of\\_living/index.stm](http://www.ded.mo.gov/researchandplanning/indicators/cost_of_living/index.stm).

We should note, however, that certain aspects of the LTCOP were not within our scope of work. Most notably among these are the quality of ombudsman casework, the appropriateness of outcomes from the LTCOP's investigation and resolution of complaints, and the consistency of performance among individual local ombudsman programs. We believe these to be appropriate and necessary areas of examination for any state's LTCOP, including Maryland's, and encourage the MDoA to consider these as future areas of inquiry.

We sincerely applaud the decision of the MDoA to open itself to external scrutiny and for its openness and willingness to ask for guidance in improving the program. Along the way, staff and volunteers of the LTCOP assisted the project immeasurably, answering questions, providing insights and ideas, providing documents, and meetings with us on numerous occasions. We are very impressed by the desire to address program challenges and to move toward excellence for the ombudsman program.

### **Caveats**

Some data that we needed were not available, namely, audited, detailed, line-item expenditure reports from the AAAs.

## Comparable State Programs and Benchmark Programs

In order to give the MDoA and its Office of the State Ombudsman bases for comparisons and benchmarking, we have provided throughout the report information on ombudsman programs in other states. We use these states to make comparisons when relevant to the program aspect being measured. We have grouped these into three categories:

### Benchmark States

Georgia, Oklahoma, Washington, and Wisconsin were selected from among those that are considered by most ombudsmen as leaders in systems and individual advocacy activities as well as in other important program aspects. They are the programs that other states frequently turn to for model processes, policies, practices, and forms. Other states also have exemplary programs but have budgets and numbers of facilities and beds that are far different from Maryland's or use completely different program structures; we did not consider these to be benchmarks for Maryland.

Table 1 shows the expenditures and resident responsibilities (beds) of these four states, compared with Maryland in "national average dollars." Table 2 shows the placement of their local programs.

**Table 1: Benchmark States**

State	Expenditures in National Average Dollars	All LTC beds
Georgia	\$ 3,127,541	70,813
Oklahoma	\$ 1,892,489	41,958
Washington	\$ 1,543,215	42,201
Wisconsin	\$ 1,527,041	74,848
Maryland	\$ 1,963,223	47,727

**Table 2: Placement of Local Programs in Benchmark States**

State	Area Agencies on Aging	Other Local Government Entity	Legal Services Provider	Social Services Non-profit Agency	Freestanding Ombudsman Program	Regional Office of State Ombudsman Program	Other
Georgia	2	0	4	5	2	0	0
Oklahoma	11	0	0	0	0	0	0
Washington	6	0	0	7	0	0	0
Wisconsin	0	0	0	0	0	1	0
Maryland	16	0	0	3	0	0	0

**Expenditure-Comparable States**

Colorado, Massachusetts, New York, Oklahoma, and Virginia expended between \$1,881,378 and \$1,929,041 in 2007, when adjusted to the average value of the dollar in the U.S. Maryland reported expending \$1,963,223. (See Table 3.)

**Table 3: Expenditure Comparable States**

State	Reported Total Program Expenditures	Expenditures in National Average Dollars	LTC Beds
Colorado	\$2,047,814	\$1,929,041	34,575
Massachusetts	\$2,340,600	\$1,900,567	52,135
New York	\$2,707,018	\$1,881,378	155,577
Oklahoma	\$1,701,879	\$1,892,489	41,958
Virginia	\$1,892,484	\$1,896,269	63,437
Maryland*	\$2,784,831	\$1,963,223	47,727

\* NORS 2007 plus expenditure at state office

**Resident-Size States**

Three states (Arizona, Iowa, and Massachusetts) are most similar to Maryland in the number of residents they serve, as measured by the number of long-term care beds (nursing facilities, board and care, assisted living). They are important to this study because they can demonstrate similarities and differences in terms of scale of responsibility. (See Table 4.)

**Table 4: Resident Size**

State	Beds	Expenditures in national average dollars
Arizona	42,202	\$1,221,180
Iowa	48,902	\$581,271
Massachusetts	52,135	\$1,900,567
Maryland	47,727	\$1,963,223

# Findings



## Organization of the Maryland Long-Term Care Ombudsman Program

### Principles for the Organization of the Office

Federal law (the Older Americans Act) sets standards for the organization of state programs. Title 42, Chapter 35, Subchapter XI, Part A, subpart ii, Section 3058g(a)(1) provides that “a State agency shall . . . (A) establish and operate an Office of the State Long-Term Care Ombudsman; and (B) carry out through the Office a State Long-Term Care Ombudsman program. (2) Ombudsman. The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall, personally or through representatives of the Office” conduct a full range of duties. Section 3058g(a)(4)(A) states that “. . . the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.”

The OAA also allows that, “In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.” (5)(A)

Maryland law establishing the Long-Term Care Ombudsman Program is straightforward and simple:

- (1) The Secretary shall designate a Maryland Long-Term Care Ombudsman.
- (2) The Secretary may delegate the Secretary's authority under § 10-212 of this subtitle to:
  - (i) the Maryland Long-Term Care Ombudsman; and
  - (ii) the director of an area agency in accordance with a local long-term care ombudsman program established under regulations that the Secretary adopts. (Section 10-213).

The Code of Maryland Regulations (COMAR), Title 32, Subtitle 03, Chapter 02, follows and adds definitions and guidance to these provisions.

The 1995 Institute of Medicine (IOM) report, *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, proposes

the following “Essential” and “Exemplary” practices for programs.<sup>4</sup> These statements set important parameters for organizational structure.

Essential Practices	Unacceptable Practices
<p>The state ombudsman is the head of the Office of the State LTC Ombudsman program and controls the administrative, advocacy, and budget decisions of the Office. The state ombudsman is independent in all actions but reports and consults with the head of the SUA or their designee to ensure identification and resolution of agency-wide issues, programmatic and fiscal integrity, and coordination of efforts.</p>	<p>The state ombudsman’s independent authority and discretion to take significant administrative, advocacy, or other actions related to the program is materially limited by the agency’s hierarchy, policies, or procedures.</p> <p>The state ombudsman has no control over the budget of the Office; decisions are made by others.</p>

### Maryland’s Organization

Two principal components comprise the Maryland Long-Term Care Ombudsman Program:

- the State Office; and
- local ombudsman programs.

#### State Office

***Placement within the Department.*** According to the organizational chart provided during our review, the State Long-Term Care Ombudsman (SLTCO) serves within the Eldercare Affairs Unit of the MDoA. The “Administrator”<sup>5</sup> of this unit reports to the Deputy Secretary who, in turn, reports to the Secretary. The State Ombudsman is, therefore, organizationally separated from the Department Secretary by two hierarchical layers.

The effects of this placement of the SLTCO have been noted by consumers and others

<sup>4</sup> *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act.* Division of Health Care Services, Institute of Medicine. 1995, p. 163. [www.nap.edu/catalog.php?record\\_id=9059#toc](http://www.nap.edu/catalog.php?record_id=9059#toc)

<sup>5</sup> We note that other sections of the Department are termed “Divisions” and their leaders are called “Chiefs.” The head of the Eldercare Affairs Unit is labeled “Administrator.”

familiar with the organization and with mandated ombudsman duties. All have commented negatively. One observer from within the Department observed, “The organizational separation of the Maryland State Ombudsman may constrain her ability to act effectively in influencing policy related to the well-being of residents and may place her at a disadvantage when the ombudsman’s unique role is considered.”

***Communication within the Department.*** In the course of our work with the Department, it became clear that lines of communication also separate the SLTCO from important functions in the agency. Rather than working as teams, various divisions and sections of the Department appear to require chain-of-command communication. Two persons with experience working in the MDoA told us that if the ombudsman wants to get information or ask for assistance from a fiscal specialist, for example, she<sup>6</sup> has first to talk to her unit administrator, who goes to the Deputy Secretary, who proceeds to the Deputy of Operations, who then talks to the Chief Fiscal Officer, who takes the issue to the appropriate fiscal specialist. The information returns via the same path.

Bureaucratic and administrative processes, such as multiple levels of approvals required by MDOA, appear to constrain her actions. One person from the organization said, “The layers on top of the SLTCO can prohibit her from doing things, such as advocacy protocol, in her own style.” There also are delays in getting the monitoring reports of the local LTCOPs back out to the local program, because internal processes require that the reports go from the SLTCO to her superior and then to the Deputy Secretary for reviews.

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<sup>6</sup> When speaking of incumbents, we use the pronoun appropriate to gender of the current occupant of the office. We do not imply by such usage to suggest the gender of past or future incumbents.

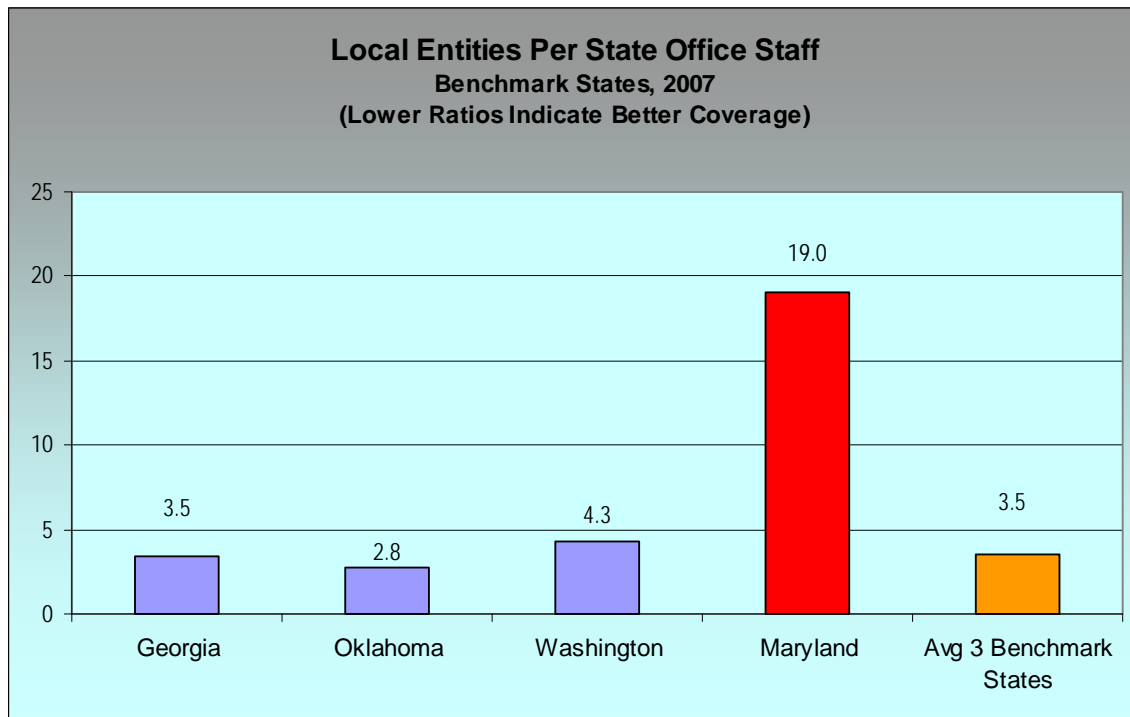
## Local Programs

Nineteen local ombudsman programs operate across the State. Most serve a single county. Because a) state law provides that area agency directors may be delegated authority to operate the program; and b) the local programs consider themselves to be autonomous, the authority of the SLTCO over the local ombudsman programs and therefore over the entire program is limited, as discussed in the section “Findings: Governance.”

*Number of Programs.* The number of local programs is noteworthy, given our observations and comparisons with other states’ programs. The Maryland SLTCO relates to eight times as many local programs as her counterparts in comparable<sup>7</sup> benchmark states. (See Figure 1.) For more observations on this issue, see “Findings: Human Resources.”

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<sup>7</sup> For this measure, we could not use comparisons with all four of the Benchmark States. This is a result of the fact that Wisconsin has all state employees and reports its entities as “one.” In addition, a national comparison is skewed by the number of states where all local ombudsmen are state employees and that do not report having any local entities.

**Figure 1**

Due to the number of local entities, program operations at the State and local levels may be hampered, as follows:

- The SLTCO is faced with assisting, overseeing, and training 19 separate entities, a span of control that few administrators would covet.
- The opportunity for maintaining any consistency between programs diminishes as their number increases.
- Economies of scale of the AAAs are impacted in at least two ways:
  - Approximately half of the ombudsmen have multiple jobs—likely due to limited resources of their agencies. In larger programs, ombudsmen are far more likely to devote all of their time to LTCOP duties.
  - Although most AAAs do not report expending funds for overhead (indirect costs),<sup>8</sup> it seems unlikely that operation of the programs does not impact the time and resources of the agencies.
- The economy of the State office of the SLTCO is also impacted. The state office would need approximately 7 more staff to match the ratio of state staff to local entities of the average of the benchmark states and 6 more to meet the average of all states.
- As ombudsmen try to manage two or more sets of duties, they find themselves stretched thin. The quality of their work may suffer. In addition, the pairing of

<sup>8</sup> According to MDoA, the State agency does not receive line-item details of expenditures from the local programs. Absent such data, we have not been able to determine whether or not AAAs use some LTCO funds for general administration or other agency costs.

ombudsmen with guardianship duties, as happens in many local agencies, raises conflicts of interest questions. Ombudsmen and their supervisors work to minimize the effects of these conflicts but this effort is, in itself, time-consuming and thus, counterproductive.

### **Auspices of Local Programs**

In Maryland, area agencies on aging (AAAs) host and administer all of the local programs. Two non-county government-based AAAs operate programs in multiple counties.

Contracting with AAAs for LTCOP operations is permitted by federal or state law; it is not, however, mandated by either.

The Older Americans Act provides:

no supportive services, nutrition services, or in-home services will be directly provided by the State agency or an area agency on aging in the State, unless, in the judgment of the State agency—

- (i) provision of such services by the State agency or the area agency on aging is necessary to assure an adequate supply of such services;
- (ii) such services are directly related to such State agency's or area agency on aging's administrative functions; or
- (iii) such services can be provided more economically, and with comparable quality, by such State agency or area agency on aging.

Most states, including benchmark states, contract or have grant arrangements with AAAs. Georgia, in contrast, has agreements with AAAs for only two (15%) of its 13 regional programs. Both are AAAs that are not part of a government agency. Legal services providers, social services non-profit agencies, and freestanding ombudsman programs operate the remainder.

Whatever the decision of the SLTCO regarding the housing and administration of local programs, a designated agency must meet the requirements of the Older Americans Act (Section 712 (a)(5)(C)). "Entities and individuals eligible to be designated to participate in the program shall have demonstrated capability to carry out the responsibilities of the Office, be free of

conflicts of interest; in the case of the entities, be public or non-profit private entities; and meet such additional requirements as the Ombudsman shall specify.”<sup>9</sup>

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<sup>9</sup> William F. Benson, Deputy Assistant Secretary for Aging, U.S. Department of Health and Human Services. Letter to Christine M. Lewis, Director, Community Services, Connecticut Department of Social Services. November 14, 1996.

## **Governance of the Program**

Our section: “Findings: Organization” (above) has outlined considerations important to understanding the governance of the State LTCOP. We will not repeat these in this section, but do reiterate that the authority and responsibility for the SLTCOP is, by federal law, vested in the State Long-Term Care Ombudsman and the state unit on aging – in Maryland, the MDoA.

### **Statewide Cohesiveness of the Program**

Clearly, the Older Americans Act views the Office of the State Ombudsman uniquely among the programs and services that it establishes. Unlike other programs, it is to be directly administered by the State and may be operated locally. It is a statewide, unitary program. The Act does not mandate a “State Nutrition Program Director,” who is responsible for the direct provision of the meals program but who may delegate responsibility for local provision of home-delivered meals. Nor does it require a “State Case Management Director” or a State Senior Centers Director.” The OAA does, however, explicitly and in great detail prescribe that each state have a SLTCO.

Cohesiveness of the Office of the SLTCO and its various organizational subdivisions is imperative for effectiveness. Based upon the requirements of the Act and following the experience of ombudsmen across the nation, the IOM report lays out three levels of practices relative to governance. (See below.)<sup>10</sup>

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<sup>10</sup> IOM, *op. cit.*, p. 177.



Exemplary Practices	Essential Practices	Unacceptable Practices
The Office operates as a whole, unified, integrated, and cohesive program focused on serving the advocacy needs of LTC facility residents and others as assigned and separately funded.	There is a functioning Office of the State Long-Term Care Ombudsman because all essential elements of the infrastructure—structure, qualifications of representatives, legal authority, and financial, information management, legal, and human resources—are in place.	There is no Office of the State Long-Term Care Ombudsman because of incapacities in the essential elements of infrastructure—structure, qualifications of representatives, legal authority, and financial, information management, legal, and human resources.

We note that the IOM report proposes as an “Essential” practice:

The state ombudsman is the head of the Office of the State LTC Ombudsman program and controls the administrative, advocacy, and budget decisions of the Office. The state ombudsman is independent in all actions but reports and consults with the head of the SUA or their designee to ensure identification and resolution of agency-wide issues, programmatic and fiscal integrity, and coordination of efforts.<sup>11</sup>

The authors of the IOM report further understand the OAA to set parameters for a statewide program that operates under the leadership of the State Ombudsman who:

- assures the qualifications of ombudsmen across the State,
- has appropriate legal authority to act,
- has oversight over financial affairs of the program, and
- is able to manage the information of the program.

In one of the most thorough analyses of the OAA with reference to the responsibilities of the SLTCO and the AAAs, Daniel Degnan, Counsel for the New York State Office for the Aging, and Lenore Daly, Assistant Counsel, wrote that, under the OAA, “area agencies have no program responsibility for a substate LTCOP in their service area . . . even when an area agency has been designated the substate LTCOP sponsor. . . .” They go on: “Area agencies that accept

<sup>11</sup> IOM, *op. cit.*, p. 163.

the role of being substate sponsors accept that their role in the LTCOP differs from their role as providers of community services under Title III of the OAA . . . .”<sup>12</sup>

Degnan and Daly also conclude that “area agencies who become substate LTCOP entities enter into a legally distinct relationship with the Office of the State Ombudsman, separate from their contractual responsibilities as an area agency.” “Congress wanted a statewide advocacy program that uniformly applies to all residents of long-term care facilities regardless of where located. It wanted an independent program free from any outside influences that may conflict with its mission.”

### **Maryland’s Culture of Diverse Governance**

Maryland’s statute reflects the federal provisions but modifies the SLTCO’s authority to operate the program. Section 10-213 allows the Secretary of the Department of Aging to delegate responsibility for the program to

*(i) the Maryland Long-Term Care Ombudsman; and (ii) the director of an area agency in accordance with a local long-term care ombudsman program established under regulations that the Secretary adopts. (Emphasis added)*

The Maryland provision that the Secretary may delegate responsibility of the program may conflict with the Older Americans Act.<sup>13</sup>

Our research found that, under these provisions, the Maryland program has developed a culture of diverse control and that the State Ombudsman has little of the authority provided by the OAA. The Maryland State Ombudsman has limited ability to conduct the cohesive program prescribed by the Act and elaborated by the IOM report. Arguably, it more nearly conforms to

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<sup>12</sup> Daniel Degnan and Lenore Daly, Letter to Ms Kimberly Toot, Chairman, Subcommittee on Long Term Care Ombudsman Program, New York State Office for the Aging, February 16, 2000.

<sup>13</sup> Ann Rasenberger, an attorney practicing in Maryland and a member of the HBABCs team, has analyzed Maryland’s Ombudsman statute and has recommended complete revision to be consistent with the federal Older Americans Act and to provide additional guidance to the MDoA and the Office of the SLTCO. Her analysis is found in Appendix B of this report.

the “Unacceptable Practices” listed in the IOM report rather than the “Essential” or “Exemplary” practices.

Division of leadership of the program and lack of unambiguous leadership from the State office result in notable variation in quality across the State. During the course of our investigation, we have heard observations from several sources that are mirrored in the response of one AAA director to our online survey: “There is a great lack of consistency in local programs. There is virtually no statewide LTCOP, merely a patchwork of local programs, all of which differ in nature.”

In a focus group of external stakeholders, a participant said, “The entire program needs to be consistent.” Another focus group member, who is familiar with programs across the State and has studied programs in other states, told the group: “There is NO state structure. Power should come from the State Ombudsman down to local ombudsman; but that isn’t happening here.” Said another, “We see that the State Ombudsman has no authority and it is being diverted in many cases. Some of the people it is diverted to know what they are doing, and some of them do not. . . . When we go to the State Ombudsman about a local problem, the State tells us they have no authority over them.”

Long-term care consumers and consumer representatives in a focus group, when asked, “What one word captures your experience with Maryland Ombudsmen?” included in their responses the words “uneven,” “erratic,” “unsystematic,” and “poorly organized.”

Several facts that support these observations became clear in the course of our review.

1. The SLTCO has no role in the selection of local program managers or ombudsmen. In the absence of the authority to certify ombudsmen, she does not have the authority to require minimum standards for ombudsmen in the local agencies. It goes without saying that the

quality of the persons in these local positions is vital to the effectiveness and integrity of the program.

When AAA directors were asked in a survey: “Who participates in the selection and hiring of the ombudsmen who work in your program? (Check all that apply),” none marked “State Ombudsman.” Ninety-three percent (93%) said that they never check with the State Ombudsman concerning the qualifications of potential hires. One director commented “We have our own criteria and interviewing process; we don't think state involvement is needed.”

2. The SLTCO oversees activities of local programs only by conducting annual reviews.
3. The SLTCO does not control expenditures or assure that ombudsman funds are spent only for appropriate activities.
4. The SLTCO does not control information vital to the integrity and cohesion of the program.

For example, to have the name, position title, job description, and geographic areas covered by local ombudsmen and volunteers, she had to request local programs to complete a questionnaire. When requested to provide us with basic information, she had to query the local programs to learn:

- a. how the local programs spent their funds;
- b. the date ombudsmen were employed or volunteers began their services;
- c. the date ombudsmen and volunteers completed training;
- d. geographic assignments of ombudsmen and volunteers;
- e. ombudsmen’s salaries; and
- f. the e-mail addresses of volunteers.

5. The SLTCO has no influence on amounts and items in budgets or expenditures. (Although they receive allocations of funds from the State, it appears the AAAs determine their budgets and expenditures without oversight from the SLTCO or the Department.)
6. Some AAA directors and local ombudsmen appear to disregard requests for information that come from the SLTCO.
  - a. The SLTCO asked all local programs to send basic information. (See above.) Almost two months later, nine of them (47%) had not responded.
  - b. When asked to complete an online survey, only 11 of 19 AAA directors (56%) responded within the requested two weeks.
  - c. Five of the 19 AAAs responded to the SLTCO's request for financial details more than two weeks after the request for the data, and only after five reminders.
  - d. When asked in our survey, "Does your AAA consult with the State Long-Term Care Ombudsman concerning the qualifications of new ombudsmen before you hire them?" one AAA director responded: "We are home ruled" (a response also received when we interviewed directors). Another said, "It is counter to county policies to discuss hiring with *those not directly involved in the process.*" (Emphasis added.)

This minimal regard for the State office is reflected in comments by some ombudsmen. One program manager told us in an interview, "We don't rely much on the State office because we have an excellent program and know what we are doing."

For detailed observations on inconsistencies between the local programs, see section "Findings: Activities: Advocacy."

### **Recent Efforts**

We do note that recently the Department has taken steps to improve the opportunities for the SLTCO to influence consistency and quality across the State. It has made a priority of publishing changes in the program's regulations and manual. Initial major revisions are expected to address certification and training of ombudsmen.

### **Summary**

Supported by Maryland statute and tradition, the State Long-Term Care Ombudsman Program does not appear to operate as a statewide "Office," as envisioned by the Older Americans Act and the IOM report. The State Ombudsman has little authority to govern the program and it operates as a loose confederation of local entities.

## **Human Resources of the Program**

The Older Americans Act gives the State Long-term Care Ombudsman (SLTCO) responsibility to conduct and oversee a number of functions, including advocacy, public education, and training of staff and volunteers. As discussed in “Findings: Governance,” it is a position with statewide authority and implications.

Maryland’s statute (§10-212) requires the SLTCO, under the delegation from the Secretary of the Department, to “receive, investigate, and seek to resolve complaints about the operation” of long-term care facilities. The SLTCO must prevent conflicts of interest within the program, assure training of ombudsmen, review ombudsman activities annually, maintain “complaint review, investigation, and resolution procedures, including provisions to ensure the confidentiality of complaints and the right of privacy of a complainant or resident of a related institution,” maintain “recordkeeping or information systems by the local ombudsman that ensure the confidentiality of records,” and establish “a process for assisting individuals with organizing and operating a family council in a nursing home.”

### **State Office**

To carry out her responsibilities, the SLTCO performs a number of tasks. Most prominent of these are:

- transmitting information to local ombudsmen;
- planning, arranging, and providing bi-monthly training sessions for ombudsmen;
- maintaining program quality through annual monitoring visits; and
- counseling local ombudsmen concerning casework and program logistics.

Most local ombudsmen interviewed were positive about the SLTCO’s training programs and responses to their questions. They said that she helps them resolve complaints and provides assistance with program operations and the development and maintenance of relationships with facility staffs and state agencies. Some indicate, however, that they seldom turn to her for

logistical assistance. One interviewed AAA director said, “There is no real support or guidance from the SLTCO if the ombudsmen have a complicated issue.”

Ombudsmen across the State credit the SLTCO with keeping them informed on a variety of issues which include:

- changes in laws and rules;
- legislation under consideration;
- policies of related State agencies; and
- best practices from across the State and nation.

No employees report directly to the State Ombudsman and, aside from a shared-time clerical assistant, whom the SLTCO does not supervise, no other staff members in the Department assist in the conduct of her core daily duties. She does, however, receive valuable legal support from the Department’s legal counsel, to whom she can go directly, without proceeding through hierarchical layers. Other divisions of the Department provide data management (IT support), budgeting, equipment, and supplies.

### *Staffing Comparisons*

Measured by several criteria, Maryland’s state office appears to be understaffed. Fifteen other states have one FTE ombudsman at the State level. The average number of beds in these states is 28,991, compared with Maryland’s 47,727 beds.<sup>14</sup>

Several comparisons with other states demonstrate the limits of Maryland’s program in this regard.

- Only five state ombudsman programs in the nation have fewer FTE paid staff per resident<sup>15</sup> at the State level than does Maryland.
- Only three of the States that employ a single state-level FTE have more beds than Maryland.
- Maryland’s State Ombudsman is responsible for advocating for twice as many residents per paid staff in the state office as her counterparts in the state with the most comparable expenditures (New York).

<sup>14</sup> National Ombudsman Reporting System (NORS), 2007.

<sup>15</sup> Numbers of residents are estimated using the number of long-term care beds.



- Maryland’s SLTCO must advocate for 2.7 times more residents than the average of the Expenditure-Comparable States (Figure 2).
- Maryland’s SLTCO represents 3.4 times more residents than the average of all states. (See Table 5 and Figure 2.)

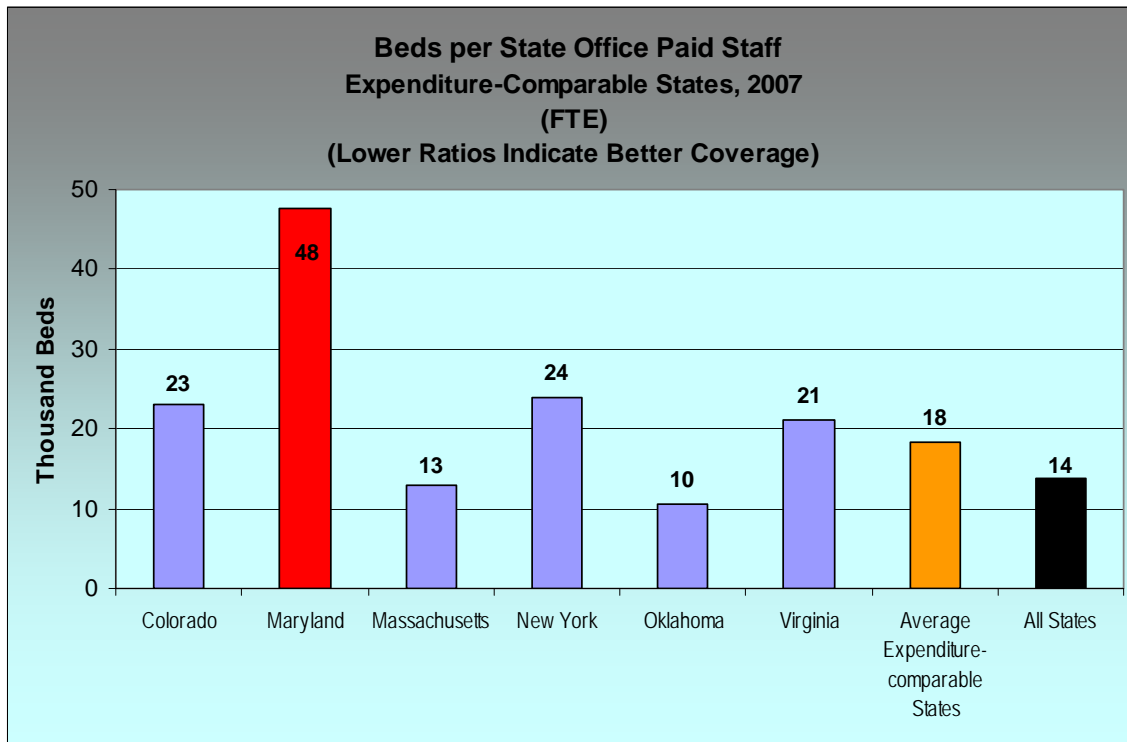
Comparisons with Benchmark states show similar patterns. (See Figure 3.)

**Table 5**

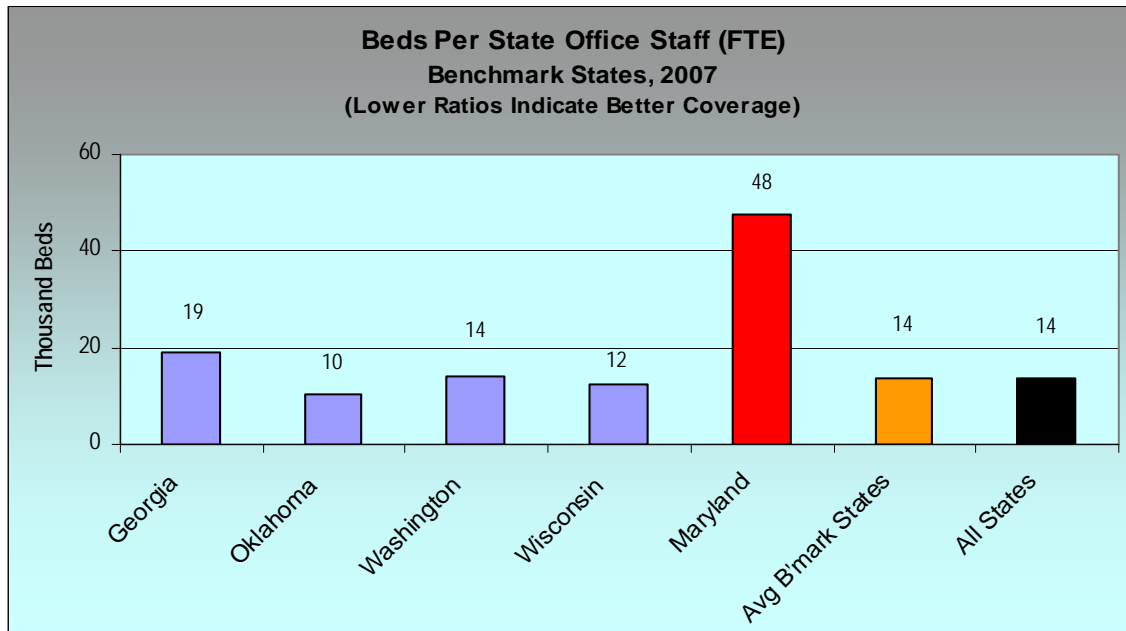
	<b>Beds per State Staff</b>	<b>Local Entities per State Staff (FTE)</b>	<b>Beds per Local Staff</b>
Maryland	47727	19.0	1107
Average Benchmark States	13721	2.3	2052
All States	13791	2.8	2582

Source: NORS 2007

**Figure 2**



Source: NORS 2007

**Figure 3**

*Source: NORS 2007*

State-level staffing responsibilities may also be measured by the number of local entities that the SLTCO relates to. In addition to certain state-level duties (e.g., developing and distributing an annual report and systems advocacy), Maryland's SLTCO is responsible for overseeing, training, and assessing 19 local ombudsman programs. Nationally, the average ratio of state office staff is approximately one for every five local programs (1:5). Maryland has the highest ratio of local programs to FTE staff in the State office (1:19), compared with all programs in the nation. The states that are most similar in numbers of local programs show the following ratios:

- Indiana 1:17
- North Carolina 3:17
- Florida 6:17
- Virginia 3:20
- Oregon 6:21

Thirty-six percent (36%) of the AAA directors responding to our survey agreed that the SLTCOP does not have sufficient staff at the State office; 29% thought that state staff is

sufficient; and 36% marked “don’t know.” Sixty percent (60%) of those wanting more state staff favored adding two persons.

In meetings with ombudsmen, consumers, and officers of other state agencies, we often heard comments about the staffing of the State office. Some of these are:

- “They need more than one person in state ombudsman office.”
- “We need a state volunteer manager.”
- “Having a second person in the past really made a huge difference.”
- “The fact that we only have one person focused on this program is a huge problem.”

As a result of insufficient staffing, program effectiveness is not optimal in several critical areas. This seems to be particularly noteworthy with respect to the lack of time staff may devote to systems advocacy. (See below: “Findings: Activities: Systems Advocacy.”) In addition, the program has inadequate staff for such important core functions as assuring that representation of residents (including casework) meets high standards. (See below: “Findings: Accountability and Quality Improvement,” and “Findings: Activities: Individual Advocacy.”)

Too little state staff time is also given to recruitment, training, and recognition of volunteers (vital to the human resources of the program). It appears that, aside from occasional training to improve consistency of data entry, the SLTCO devotes no efforts to data management or to using statistical data to improve advocacy and program performance. She also has a very limited role in planning the budget of the program across the State and does not monitor expenditures.

### ***Grade and Salary***

The current grade level of the SLTCO is HSS IV/15, which many observers of the State of Maryland’s employment practices consider too low. The recent announcement for the position placed the salary range at \$38,594 to \$61,427. We note that the average LTCO salary reported to

us by the State’s local programs is \$49,389; the range is \$26,854 to \$94,305. (Benefits for local LTCOs add as much as 47% to the total cost of their remuneration.)

Table 6 shows salary ranges and salaries of several SLTCOs in states whose data were available. We converted salary data to approximate Maryland’s cost of living.<sup>16</sup>

**Table 6**

<b>State Ombudsman Salary Comparisons</b>				
<b>State</b>	<b>Published Range</b>		<b>Range Converted to Maryland Cost of Living</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
<b>Maryland</b> (Cost of Living is 128% of National Average)	\$38,594	\$61,427	\$38,594	\$61,427
<b>A (Benchmark State)</b> (Cost of Living is 91% of National Average)	\$50,653	\$88,483	\$69,192	\$120,868
<b>B (Nearby State)</b> (Cost of Living is 137% of National Average)	\$66,000	\$142,500	\$59,466	\$128,393
<b>C (Benchmark State)</b> (Cost of Living is 104% of National Average)	\$65,000	\$85,000	\$80,275	\$104,975
	<b>Published Salary</b>		<b>Salary Converted to Maryland Cost of Living</b>	
<b>D (Benchmark State)</b> (Cost of Living is 89% of National Average)	\$51,631		\$65,210	
<b>E (Benchmark State)</b> (Cost of Living is 95% of National Average)	\$55,884		\$66,390	
<b>F (Resident-size State)</b> (Cost of Living is 119% of National Average)	\$88,095		\$95,759	

In the opinions of stakeholders with knowledge of Maryland state practices, the salary range is inadequate.

- “The grade level is too low. It is hard to know what to expect from a person in that position when it doesn’t look like the job was created at that level. It’s set up for failure if it is not at a grade of pay and with the administrative support

<sup>16</sup> Missouri Department of Economic Development: Missouri Economic Research and Information Center, [www.ded.mo.gov/researchandplanning/indicators/cost\\_of\\_living/index.stm](http://www.ded.mo.gov/researchandplanning/indicators/cost_of_living/index.stm).

that would enable someone to do it.” (Employee of another state agency, who was a participant in a focus group; others in the group, also familiar with state employment policies, agreed strongly.)

- “Some people that would be good ombudsmen can’t afford to be an ombudsman because it would be a cut in pay.” (Member of a focus group.)
- “If the State wants someone who’ll be a liaison between MDoA and others, a facilitator and coordinator role, perhaps the salary is sufficient. If the State wants a strong leader who will represent the program (and residents) in public and with the General Assembly, will fight for more funding and increase the program’s visibility, and be the voice of residents, then the funding needs to be higher for the SLTCO salary.” (AAA director, in an interview.)

Because the official Position Description for the SLTCO does not recognize many duties that the office performs or should perform, the Maryland Department of Budget and Management’s Personnel and Services division, which evaluates pay grades, may have rated the position too low. If so, this would result in a lower pay scale. For example, while the position description indicates that the incumbent does not “supervise” or “lead” employees, she does have responsibility to lead and oversee the work of 19 local program managers. Based on monitoring and other performance reviews, she could recommend the dismissal of an ombudsman. Most significant, the position description does not recognize the importance that the Older Americans Act gives to systems advocacy (representing the interests of residents in the legislative and rule-making arenas and speaking to media) by the SLTCO.

### **Local Programs**

Program managers<sup>17</sup> appointed by the area agencies on aging oversee and conduct daily operations of the local programs. Their activities usually include:

- receiving complaints and assigning cases to ombudsmen;
- recruiting and maintaining volunteers;
- participating with agency executives in hiring new ombudsmen;
- recognizing volunteers for their service;

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<sup>17</sup> Local agencies use many job titles to describe their top-level, ombudsman supervisory staff. We use the generic term “program manager” to speak of these persons.

- representing the program to the public through presentations, health fairs, and other public forums, including news media;
- providing training of ombudsmen and volunteers;
- reporting activities, including statistics, to the State Ombudsman;
- receiving, recording on computer, and assigning complaints;
- organizing and maintaining complaint records and investigation results;
- drafting letters to complainants, facility administrators, and others;
- compiling statistical summaries of complaint activities;
- maintaining a facility data base that tracks cases and complaints and other data;
- providing information to the public;
- referring families and residents to appropriate agencies for assistance;
- providing technical assistance to local ombudsmen;
- coordinating with other agencies; and
- preparing an annual report.

In 12 local programs, other ombudsmen assist the program managers by visiting facilities, investigating and resolving complaints, and conducting group training and consultations.

### *Staffing Levels*

Funding constraints have limited expansion of the number of staff ombudsmen. The ratio of residents (beds) per paid staff in all states decreased 17% between 2002 and 2007, while the Maryland ratio has increased almost 2%.

One program manager told us: “Until 2006, (our local program) was a program of nine ombudsmen (10 would be great). Cuts came with budget decreases and salary increases. As salaries increased, the program could not afford as many positions.”

In 11 (58%) of the agencies, local ombudsmen divide their time between the LTCOP and other services. Program managers say that this division of duties is a result of fiscal constraints. In order to offer a full time position, or to pay an attractive salary, cover mandated and other important duties, and stay within budget, they must assign some staff to two or more programs.

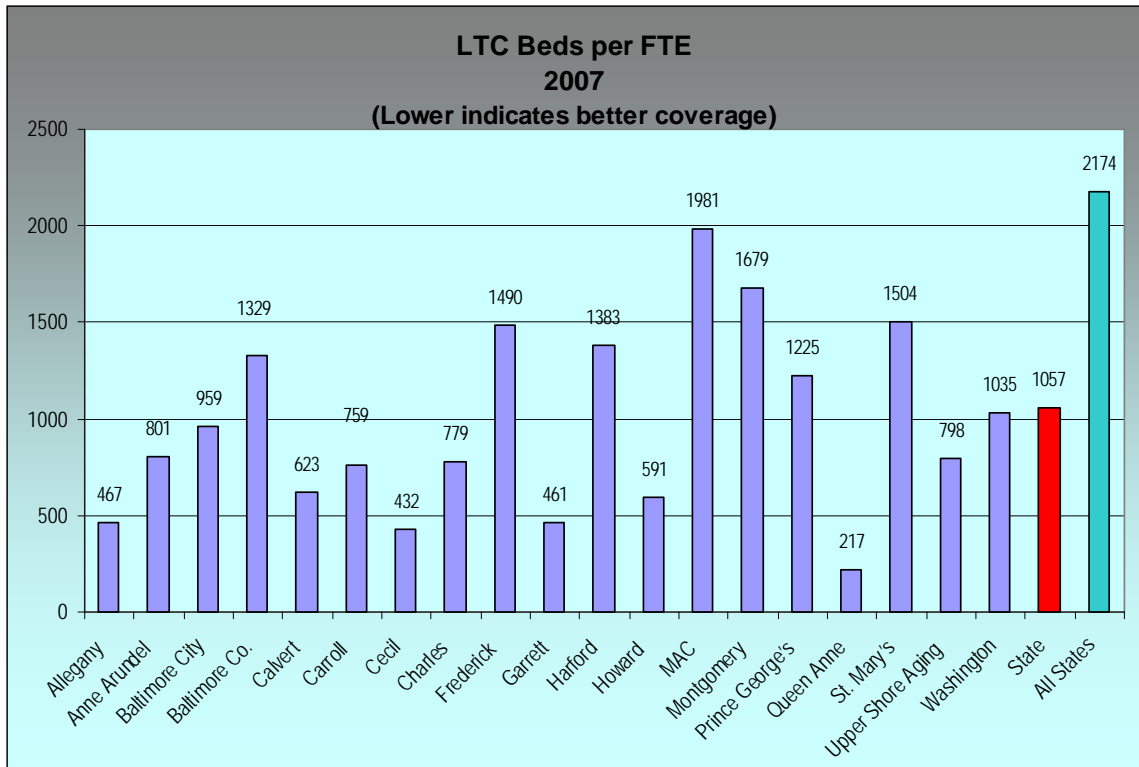
We note that a number of other states have reduced the number of local programs in order to have a full-time LTCO in every designated local or regional program. They believe that this arrangement gives them higher quality service for their expenditures.

While the average ombudsman in Maryland has fewer beds than do their counterparts in other states, most local ombudsmen perceive that they have workloads that are too heavy.

The number of beds per FTE varies considerably from area to area. (The standard deviation is 484.) MAC has 1,981 beds per ombudsman, while Queen Anne's County has only 217. The statewide average of the number of long-term care beds per local program FTE in Maryland is 1,057 (1:1,057), 2.1 times better than the average in most other states, which have one FTE to 2,174 beds (1:2,174). (See Figure 4.)

Nevertheless, almost every program manager interviewed thought that they needed more ombudsmen in their local programs. They cited the heavy workload of documenting activities and filing reports.

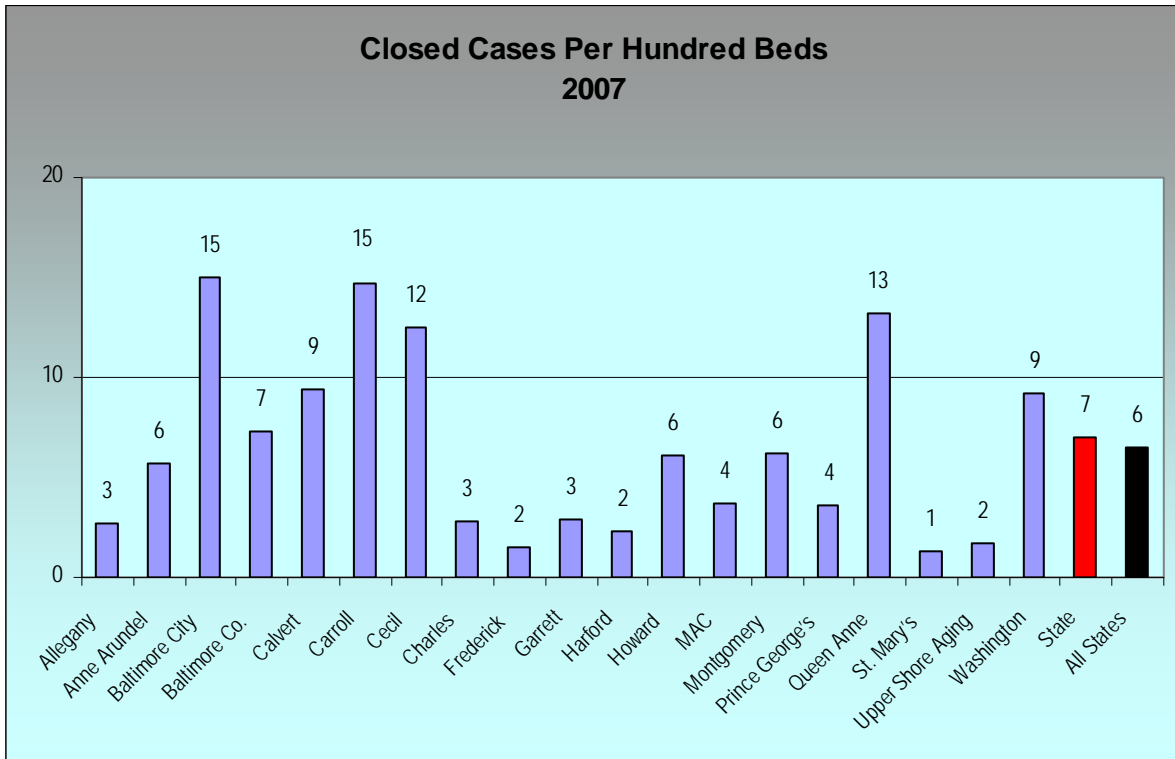
To understand their perceptions, we analyzed their workloads by activities.

**Figure 4**

*Source: local area NORS reports provided by MDoA*

**Cases.** Central to ombudsman work is the representation of residents. These activities may be measured by the number of cases opened and closed. Such activity consumes ombudsman time in contact with complainants and alleged sources of grievances; it also requires considerable time for investigation, resolution efforts, and documentation and reporting. We compared the number of closed cases with the number of beds (residents) in each area. We found wide variation across the State and a slight difference between the State as a whole but only a slight variation compared with the average of other states. (See Figure 5.)



**Figure 5**

*Source: local area NORS reports provided by MDoA and AoA: NORS 2007*

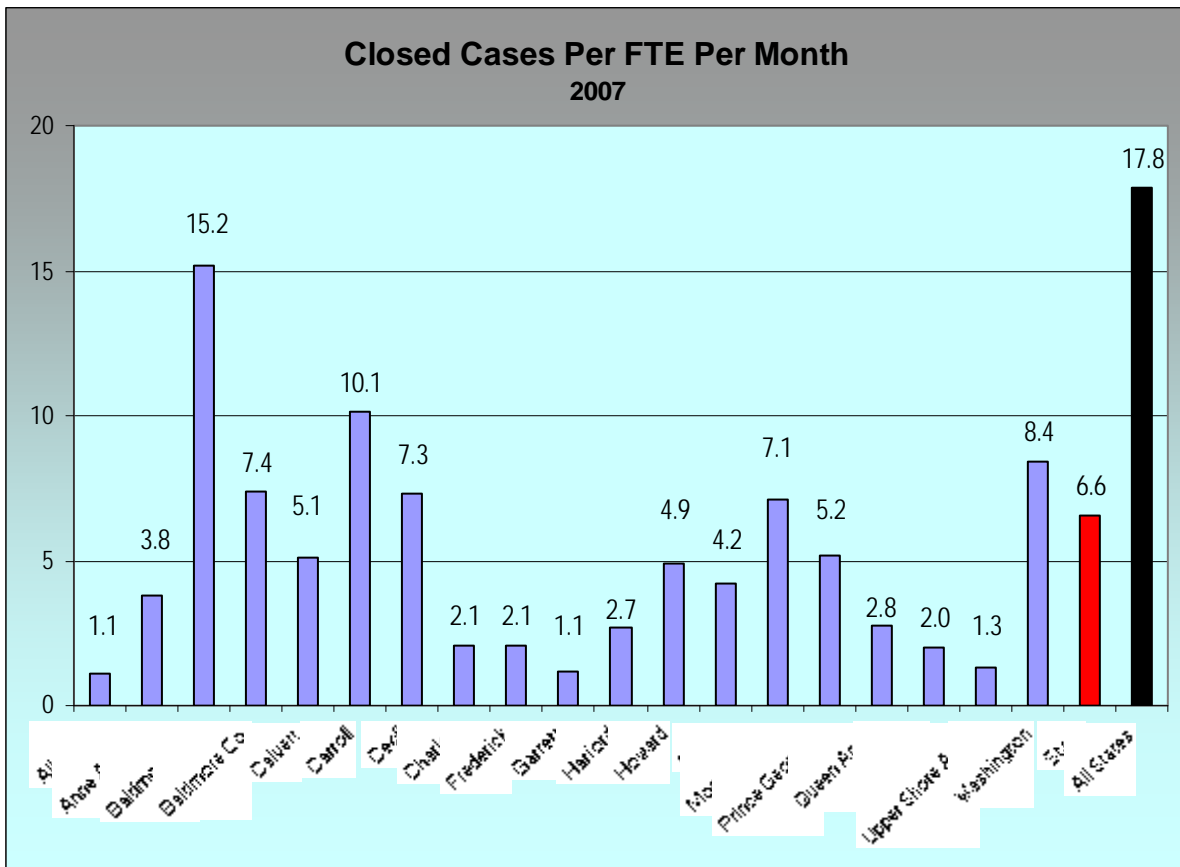
When we calculated the number of closed cases versus the number of ombudsman FTEs, we found similar variation. Nine (47%) of local programs had significantly lower case rates than the State average.

Maryland's ombudsmen do not appear to carry heavy case workloads when compared with the national average. The average ombudsman, nationwide, closes approximately 18 cases per month. In Maryland, the average ombudsman closes approximately 8 cases. Some in Maryland, however, close fewer than 2 cases per month. Only Baltimore City's ombudsmen close a number (15.2) that approaches the national average.<sup>18</sup> (See Figure 6.)

Based on this observation, local ombudsmen's case loads in most areas (measured by ombudsman FTEs and the number of cases they close) compare favorably with other states.

<sup>18</sup> In 2007, the Baltimore City program made a concerted effort to close old cases. Its closure rate is probably an anomaly.

Figure 6



Source: local area NORS reports provided by MDoA and AoA: NORS 2007

**Other Ombudsman Work.** A local ombudsman's workload involves activities besides investigating and resolving complaints. He or she may work with resident and family councils, give public presentations, answer inquiries, and refer cases to other agencies, to name the most frequent tasks. The Maryland program appears to give an unusually heavy emphasis to activities that are directed toward group audiences rather than to individual advocacy.

Observers of the program, including ombudsmen, point out that the LTCOP serves as the Elder Abuse Prevention Program (under Title VII of the Older Americans Act). Most AAAs allocated Title VII funds to their LTCOPs. (Prince George's County, which has a separate Elder Abuse program, is the exception.) The ombudsmen are the only employees doing Elder Abuse

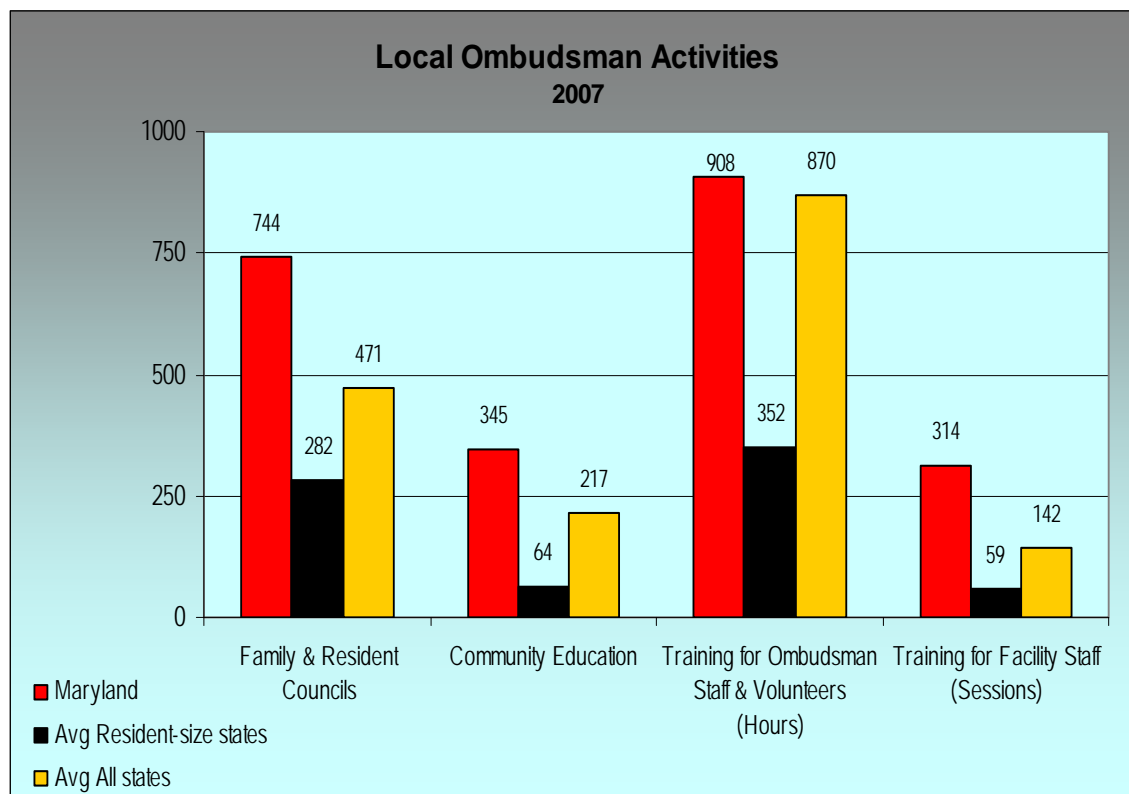
Prevention tasks, providing community education on Elder Abuse that is not limited to long-term care facility-related abuse.

Our findings corroborate these observations. We have reviewed community education material from the local programs and recognize a relatively heavy emphasis on elder abuse. Further, when we compared Maryland's record on four time-consuming activities with the four comparable Resident-Size States<sup>19</sup> (states that serve approximately the same number of residents), we observed that the local Maryland ombudsmen participate in 164% more family and resident councils, participate in 437% more community education sessions, invest 158% more hours in ombudsman training, and offer 430% more training sessions for facility staff. (See Figure 7.)

Local ombudsmen complain that documentation and reporting take an inordinate amount of time from their activities. If this is so, it may be related to the time consumed by reporting other activities, not in reporting casework. All state programs have similar reporting requirements and most use software similar to Maryland's.

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<sup>19</sup> Arizona, Iowa, Massachusetts, and Oregon serve between 42,201 and 52,135 residents, when measured in total long-term care beds. Maryland serves 47,727.

**Figure 7**

*Source: NORS 2007*

We do not ignore that the distribution of ombudsman hours across the State is uneven; the ombudsmen in some programs have responsibility for far more residents than do others.

Local ombudsmen's perception of understaffing may be related to frustration that they devote so much time to facility and public education and to consultations with facilities, and thus cannot spend enough time visiting residents and doing complaint-based casework.

On the other hand, our survey of ombudsmen found that program managers want to spend more time "educating individual residents and family members" and "assisting resident family councils" and less time investigating and resolving complaints. Staff LTCOs see their current time investigating and resolving complaints as about the same as the ideal time. They want to spend approximately the same amount of time educating individual residents and family members as they do now and considerably less assisting resident family councils.

### *Certification*

Certification is a process used by states to assure that those who represent the Office of the State Long-term Care Ombudsman are qualified and trained to perform their responsibilities and operate under the delegated authority of the State Ombudsman.

The Older Americans Act supports certification if the State Ombudsman opts to designate local ombudsman programs and local ombudsmen (paid and volunteer).

It provides that the State Ombudsman may “designate entities to perform the duties of the Office and may designate an employee or volunteer to represent the entity.” Title 42, Chapter 35, Subchapter XI, Part A, subpart ii requires that

individuals eligible to be designated as representatives of such entities, shall - (i) have demonstrated capability to carry out the responsibilities of the Office; (ii) be free of conflicts of interest; (iii) in the case of the entities, be public or nonprofit private entities; and (iv) meet such additional requirements as the Ombudsman may specify.(a)(5)(C)  
*42 U.S.C. § 3058(g) (2006)*

The Act also provides that ombudsmen must be trained in specific content areas before they function as ombudsmen.

Most states certify their ombudsmen and have standards for becoming certified. Some require examinations and other evaluations of potential ombudsmen prior to certification.

For some years, the Maryland Ombudsman Program has favored establishing, maintaining, and enforcing standards and a process for certifying ombudsmen. It has discussed and planned for such standards. In the absence of regulations, these activities have not been implemented. Recently, the SLTCO and legal counsel for MDoA said that certification standards are currently on a “fast track” for promulgation into regulation.

A large majority of the program managers that we talked with favored certification. One said, “If it is to give us better tools for beginning the job, then certification would be great.” Some said that they thought their volunteers also wanted to be certified.

We heard reservations, however. Only 13% of the AAA directors said that the State’s assuring of the quality of ombudsmen hired by local programs would lead to major improvements. One program manager said, “What difference would it [certification] make? It doesn’t mean much in our county. The people here know us because of our work.” A barrier to certification might be resistance to the role of the SLTCO in refusing to certify or moving to decertify employees whom the AAAs have hired.

Virtually everyone we spoke with about certification was concerned more with the cost than with the concept or process. Most said that they would need the State to pay for travel incurred in training. They were also concerned with the time that certification might require.

### ***Turnover***

Longevity of service is an issue. Skills build with experience, as do relationships with residents, facility staffs, community resources, and representatives of related agencies such as the Maryland Office of Health Care Quality and Adult Protective Services. In addition, the training of new ombudsmen requires investments of time by the SLTCO, local ombudsmen, and AAA staff.

For the purposes of this study, the SLTCO requested personnel data from all of the local programs. Analyses of the reports showed that:

- of the 47 persons currently employed as ombudsmen (full-time or part-time) by the local programs, 30 (64%) have been hired within the past five years;
- in 7 of the programs (39%), the entire current staff has served as ombudsman for less than five years; and
- the average time in LTCO positions is five years.

### *Volunteers*

Maryland's LTCOP Procedures Manual (1990)<sup>20</sup> implies that volunteers may perform all duties conducted by ombudsmen ("patient advocates"). The manual advises that volunteers should be selected carefully and trained well.

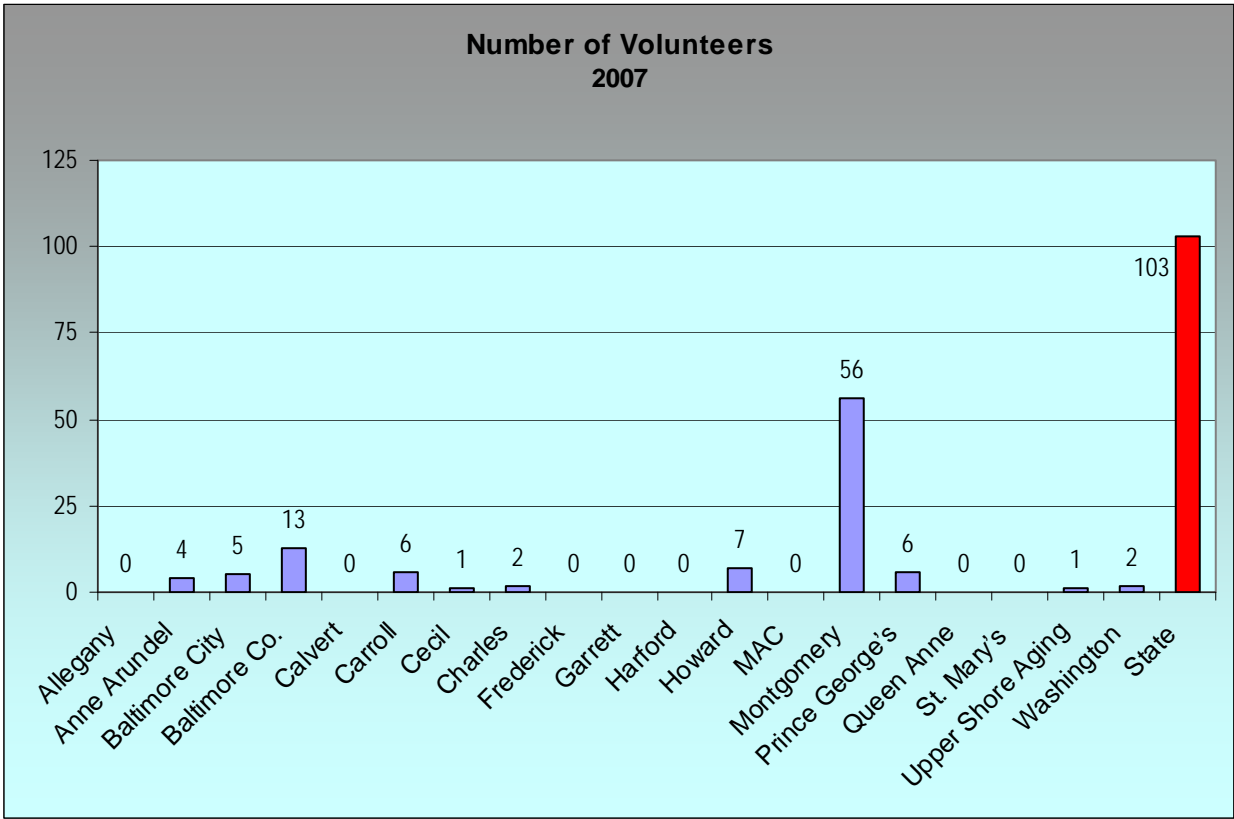
The number of volunteers varies from year-to-year and during each year. The state's 2007 NORS report showed 103 volunteers; in the fall of 2008, we found 118 volunteers in service.

Eleven local programs have volunteers; eight programs have none. As seen in Figure 8, Montgomery County has invested heavily in volunteers. Across the State, when the number of volunteers is compared with the number of residents (beds), Anne Arundel, Baltimore County, Prince George's, Upper Shore, and Washington have coverage above the State's average (Figure 9). Statewide, the number of beds per volunteer is slightly more than 460. When we compare this to the number of beds per volunteer nationwide (225), it appears that the State is not maximizing its opportunity to provide ombudsman services through volunteers.

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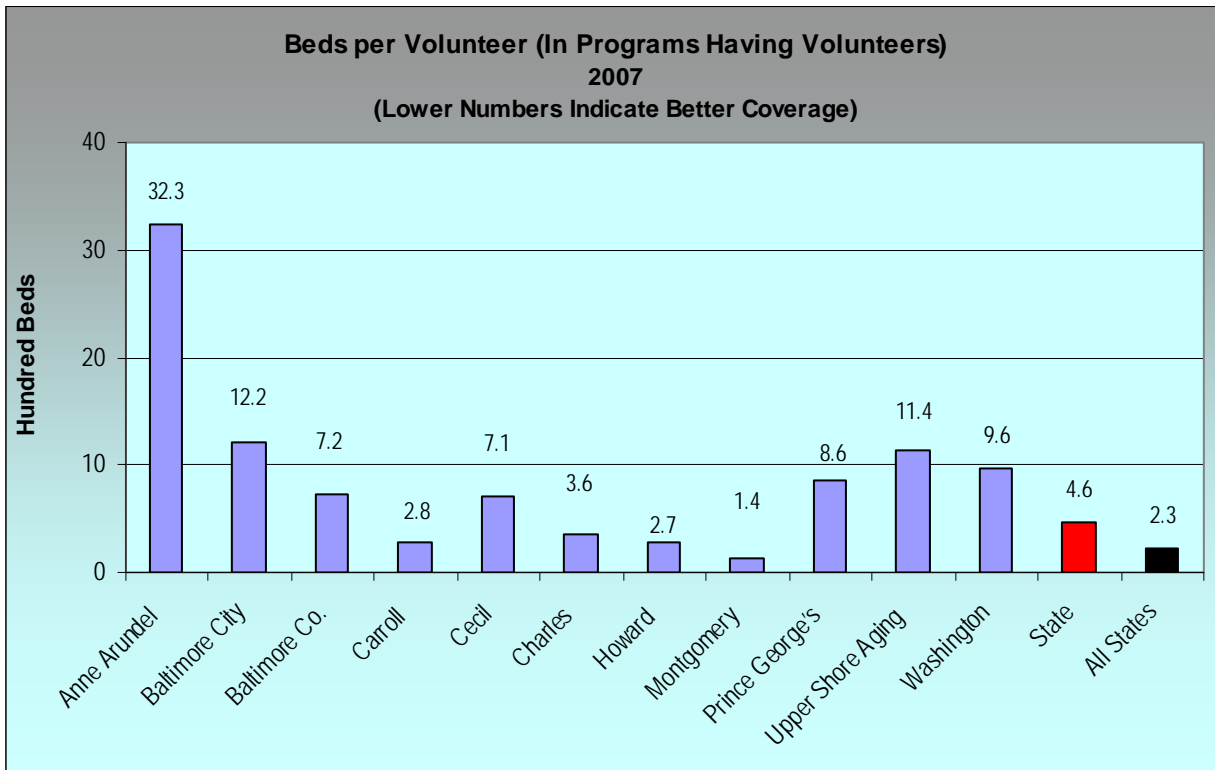
<sup>20</sup> Maryland's LTCOP *Procedures Manual*, 1990, p. 84.

Figure 8



Source: local area NORS reports provided by MDoA



**Figure 9**

*Source: local area NORS reports provided by MDoA*

## Summary

Maryland's state-level staffing is appreciably lower than other similar states and the average of all state programs.

Although not adequate for optimal conduct of all duties, Maryland's Long-term Care Ombudsman program enjoys above-average staffing at the local level. The program appears, however, to have chosen to place a higher priority on activities other than receiving, investigating and resolving complaints of individuals and engaging in systems advocacy. This pattern can be expected to drain time of local ombudsmen from the important tasks of investigating and resolving complaints and may frustrate conscientious ombudsmen. In addition, the division of many local ombudsmen's time in performing the duties of several programs may

lead to their perception that they are overworked. Exacerbating this deficit in coverage is the relatively low level of volunteer involvement.

## Financing of the Program

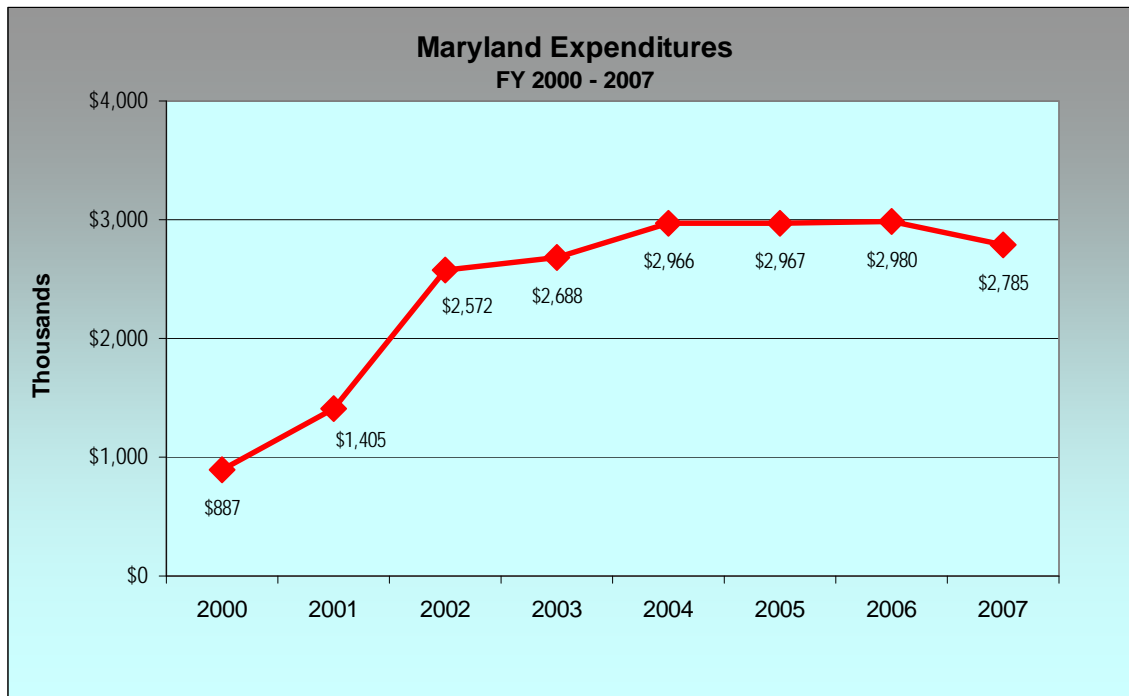
On its face, by several measures, the amount of money spent by the Maryland State Long-Term Care Ombudsman Program is above the national average. This is true even when the State's high cost of living is factored. Salaries are low for the State Long-Term Care Ombudsman and ombudsmen in many regions, however, and local programs struggle to maintain coverage of long-term care facilities. (See "Findings: Human Resources.")

We have attempted to understand this difference between published financial sums and the virtually unanimous perception that the program is underfunded.

### History of Funding

The level of funding of the Maryland Office of LTCOP and the distribution of funds to local programs have received considerable attention over the past decade.

Total expenditures, including federal, state, and local funds, have increased 214% since Federal FY 2000. Maryland's expenditures declined, however, by 16% from 2006 to 2007. (See Figure 10.) Meanwhile, over the decade, funding for all programs in the nation increased 43%.

**Figure 10**

*Source: NORS, 2000 – 2007 (funds for operation of the State office added to NORS for 2007)*

Prior to 1998, the MDoA allotted \$125,000 from Federal Title III B Supportive Services plus Federal Title VII Ombudsman/Elder Abuse (Vulnerable Elder Rights Protection Activity) and awarded funds to AAAs for ombudsman services. To distribute the funds, the Department totaled the number of long-term care beds, statewide, and divided this sum by the number of beds in each area to determine the share of federal funds that the Department would allocate to each local program.

In 1998, the Maryland Commission on Aging recommended using general funding to provide additional support to the Long-Term Care Ombudsman Program. The Governor and General Assembly approved support in the supplemental budget through the Vulnerable Elderly Programs Initiative (VEPI) and appropriated for FY 2000 the amount of \$500,000. VEPI funds afforded the AAAs' the ability to provide additional funding towards Ombudsman/Elder Abuse, Public Guardianship, and Senior Health Insurance

Counseling and Advocacy Program (SHIP).<sup>21</sup> AAAs had latitude in how they would expend the VEPI funds. Some chose to use the money for LTCOP operations; others made different choices, and continue to do so.

The General Assembly passed HB 865 and SB 764, effective July 1, 2000, and appropriated \$500,000 (State Ombudsman Initiative Funds) for FY 2001. Included in the legislation was a requirement that the State provide “at least a half-time Ombudsman in every county in the State, or 10 hours per week of Ombudsman time for each nursing home, or a full-time Ombudsman for every 1,000 long-term care beds in a county, whichever is larger.”

The MDoA applied this formula using the principle “10 ombudsman hours per week per nursing home for each AAA office.”

According to the MDoA’s Deputy for Operations, the funding requirement was phased in over three fiscal years. The first increment was approximately \$500,000 for FY 2001 (of which, \$450,000 was specifically for AAAs for ombudsman services).

The MDoA distributed the \$450,000 to three AAAs through a competitive grant process in FY 2001. In FY 2002, the three AAAs which received FY 2001 grants were funded at the full-annualized amounts and new grants were awarded to some other AAAs at 75% of their annualized amounts. This strategy assumed that the new awardees would not need a full year of funding, due to project start-up timeframes.

These funds were approved with the intent that a certain number of AAAs would be funded each year over three years, rather than MDoA spreading the funding out over the entire network each year. Due to budget constraints, however, the third year phase-in failed to occur as the funds were not provided by the legislature.

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<sup>21</sup> MDoA Deputy for Operations, communication January 12, 2009.

This funding allocation assumed that AAAs receiving the State Ombudsman Initiative Funds would maintain the funds forthcoming per the formula prior to the State Ombudsman Initiative Funds, and AAAs not receiving the State Ombudsman Initiative funds would only maintain funds as stated per the formula prior to the State Ombudsman Initiative Funds.<sup>22</sup>

Although each year the Secretary of Aging submits to the Legislature a LTCOP budget that would give full funding to the program, in the past six years no new state funds have been added. The full amount of funding expected under the State Ombudsman Initiative has never been appropriated. Some local programs actually sustained cuts in funding as a result of aging network decreases in funding.

### **Distress over Intrastate Allocations**

The allocation processes of the past eight years have resulted in palpable distress among many AAA directors. Those whom we interviewed frequently brought up their concern over inequities of state allocations. As one said, “We need some rhyme or reason in terms of the funding formula. They [MDoA] need to look at the number of beds, facilities, and unlicensed facilities.”

When asked in our survey, “What should the Maryland Ombudsman Program do better? (Mark all that apply),” 67% marked “Allocate funds based on an understood formula.”

### **Expenditures**

Maryland reported spending \$2,707,894 on its ombudsman program in Federal Fiscal Year 2007.<sup>23</sup> To this amount must be added \$76,937, the amount used for funding the State

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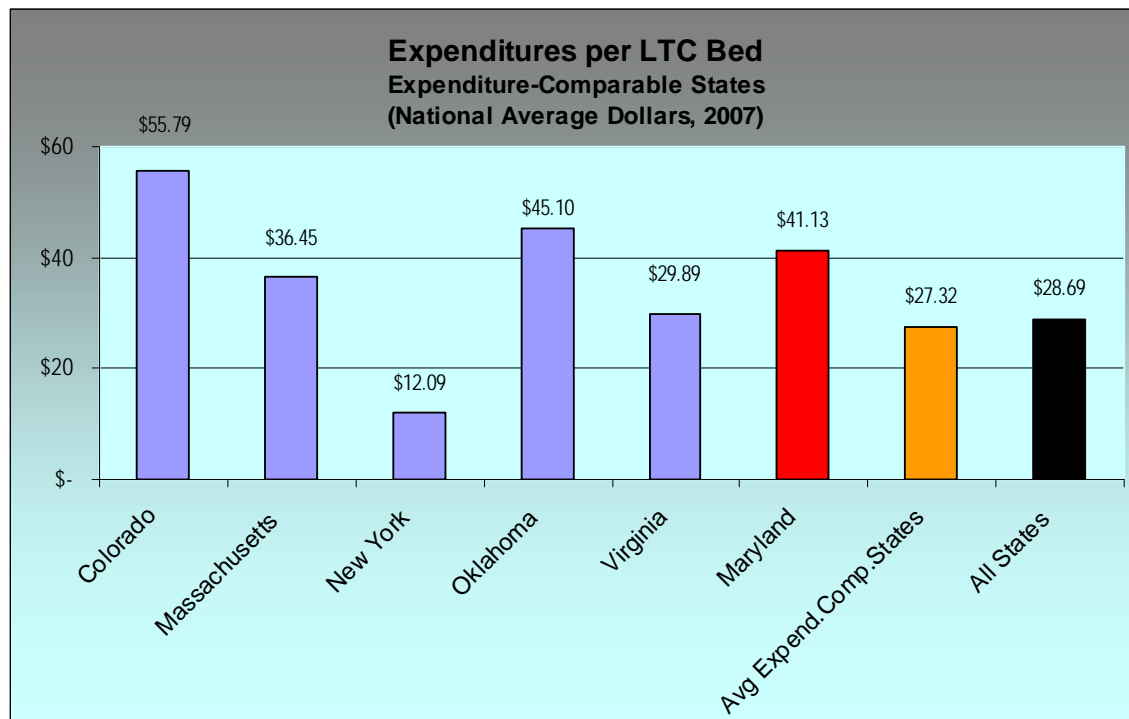
<sup>22</sup> MDoA Deputy for Operations, communication January 8, 2009.

<sup>23</sup> NORS, 2007.

office but not reported to the U.S. Administration on Aging in the National Ombudsman Reporting System (NORS) report. Total spending was, therefore, \$2,784,831.<sup>24</sup>

To ascertain and compare the true level of spending, given the high cost-of-living in Maryland, we calculated the expenditures for all states in “national average dollars.”<sup>25</sup> Maryland spent \$41.13 dollars per resident (bed) when the totals were converted to a national average dollar. As displayed in Figure 11, this amount is \$12.44 higher per bed than the national average and \$13.81 above the average expenditures of the Expenditure-Comparable States (Figure 3).

**Figure 11**



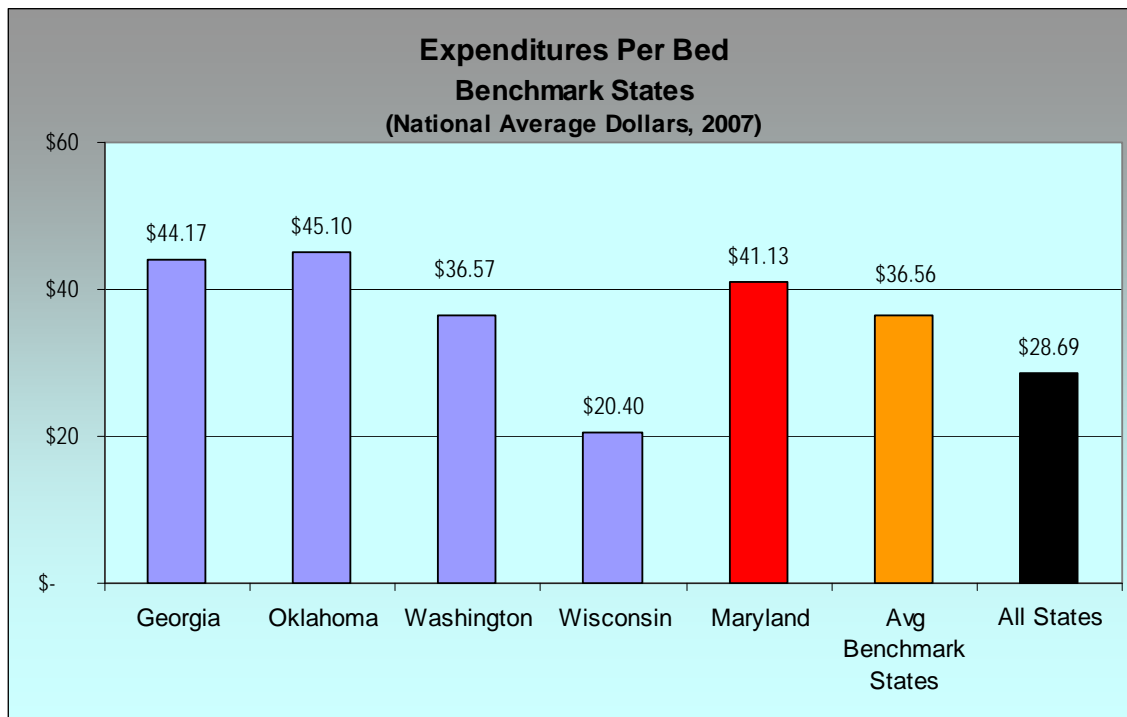
Source: NORS 2007 (funds for operation of the State office added to NORS total)

<sup>24</sup> Additional funds may be expended but not reported. Following its review of HBABCs’ preliminary report, Montgomery County reported that it has “traditionally . . . not reported in-kind support for the annual NORS submission.” We do not know how widespread this practice is. However, if Montgomery County contributes and expends the sum that it anticipates for FY 2009 (\$300,000), a sizeable amount may be underreported.

<sup>25</sup> The dollar is worth 27.5% less in Maryland than the national average. Missouri Department of Economic Development: Missouri Economic Research and Information Center, [www.ded.mo.gov/researchandplanning/indicators/cost\\_of\\_living/index.stm](http://www.ded.mo.gov/researchandplanning/indicators/cost_of_living/index.stm).

When we compared Maryland's cost-of-living-adjusted expenditures with those of the Benchmark States, we observed that Maryland's per-bed expenditures were \$4.57 above the average expenditures of the Benchmark States. (See Figure 12.)

**Figure 12**



Source: NORS 2007 (funds for operation of the State office added to NORS total)

### ***Expenditures by Local Programs***

Local programs reported spending \$2,707,894 in 2007.<sup>26</sup> Of this amount, \$2,277,306 were state and federal funds. Sixteen programs reported spending a total of \$430,588 in local funds and in-kind. (See Table 7.)

Expenditures per resident (bed) vary widely from local agency to agency. The average for the State was \$56.74. The range was \$13 to \$300.<sup>27</sup>

<sup>26</sup> For in-state comparisons, we have used reported dollars, not calculated to national average dollars.

<sup>27</sup> We report these in actual dollars, not national average (cost-of-living-adjusted) dollars. Therefore, the expenditures do not match those observed in Figures 2 and 3.



Despite this apparent high level of funding, most ombudsmen and AAA directors consider the program underfunded. One AAA director told us in an interview, “Both state and local funding are entirely inadequate; the program is almost an unfunded mandate.” Asked in our survey, “What would make the biggest impact to strengthen the Maryland LTCOP?”, 71% of the respondents marked “More funds.”

Program managers indicate that they have difficulty hiring qualified staff. “Everybody we interviewed last year would not take the job because of the salary. It’s not worth their time.”

We could not determine the items or objects of expenditures at the AAA level. Expenditure data, showing line-item details, is not available.

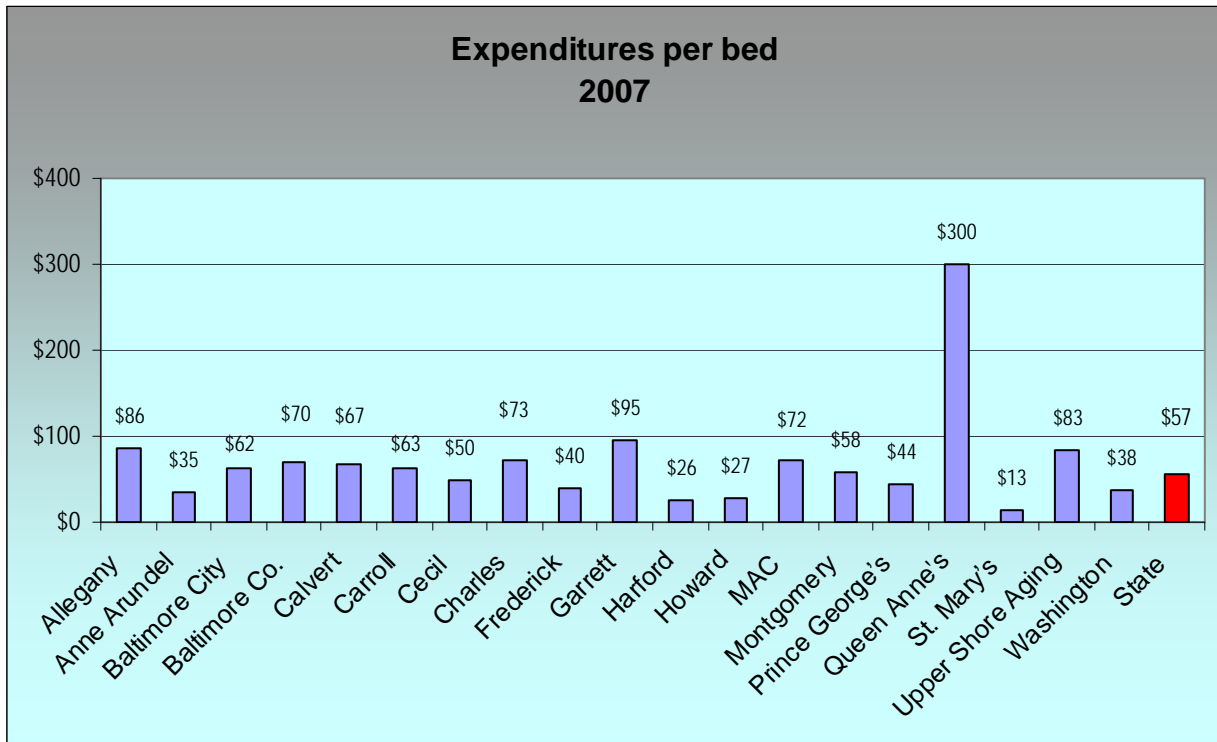
**Table 7**

<b>Expenditures by Local Programs Reported in NORS 2007</b>			
	<b>Total</b>	<b>Federal and State</b>	<b>Local (cash and in-kind)</b>
Allegany	\$95,037	\$89,878	\$5,159
Anne Arundel	\$113,541	\$85,865	\$27,676
Baltimore City	\$379,742	\$379,742	\$0
Baltimore Co.	\$658,002	\$442,715	\$215,287
Calvert	\$28,211	\$21,391	\$6,820
Carroll	\$103,647	\$89,640	\$14,007
Cecil	\$35,161	\$7,696	\$27,465
Charles	\$52,059	\$38,850	\$13,209
Frederick	\$78,788	\$71,120	\$7,668
Garrett	\$35,843	\$35,843	\$0
Harford	\$35,124	\$32,649	\$2,475
Howard	\$50,995	\$21,120	\$29,875
MAC <sup>28</sup>	\$137,663	\$129,988	\$7,675
Montgomery <sup>29</sup>	\$438,293	\$438,293	\$0
Prince George's	\$228,936	\$215,059	\$13,877
Queen Anne's	\$56,718	\$25,321	\$31,397
St. Mary's	\$12,012	\$11,146	\$866
Upper Shore Aging	\$95,112	\$84,175	\$10,937
Washington	\$73,010	\$56,815	\$16,195
State	\$2,707,894	\$2,277,306	\$430,588

*Source: NORS 2007 data reported by MDoA.*

<sup>28</sup> Maintenance of the Aged in the Community, Inc.

<sup>29</sup> Montgomery County reported that FY 2007 was an unusual year. The AAA said that it "had a significant loss in program operations and no county funds went toward salaries. Just as an example for the more normal consideration of operational costs, FY09 has over \$300,000 county general funds approved plus in-kind/indirect support costs."

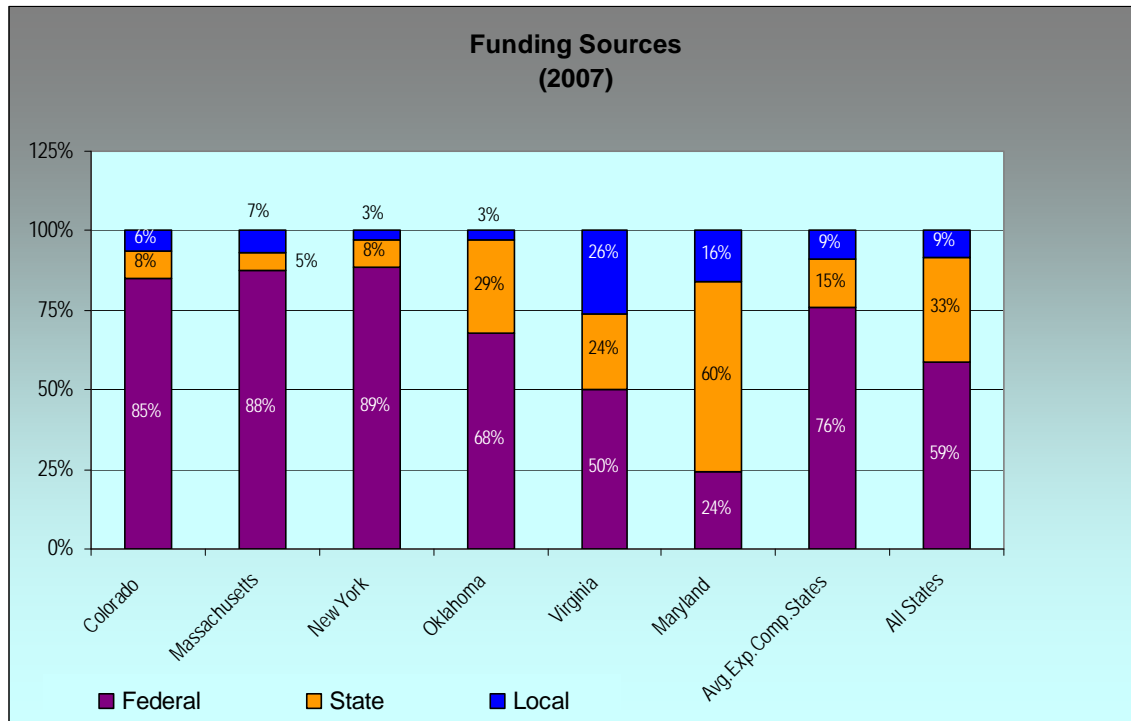
**Figure 13**

Source: NORS 2007 data reported by MDoA

### Sources of Funds

Compared with other states having similar levels of funding (the Expenditure-Comparable States, Table 3), Maryland's funds come far less from federal sources and more from state appropriations. On average, the Expenditure-Comparable States fund their programs using 76% federal funds (vs. Maryland's 24%) and 15% state funds (vs. Maryland's 60%). (See Figure 14.) While these comparisons may indicate that Maryland has been generous with its support (the VEPI and Ombudsman Initiative), it also may reflect the State's decision not to use an appreciable amount from Title III funds to support the program.

Figure 14

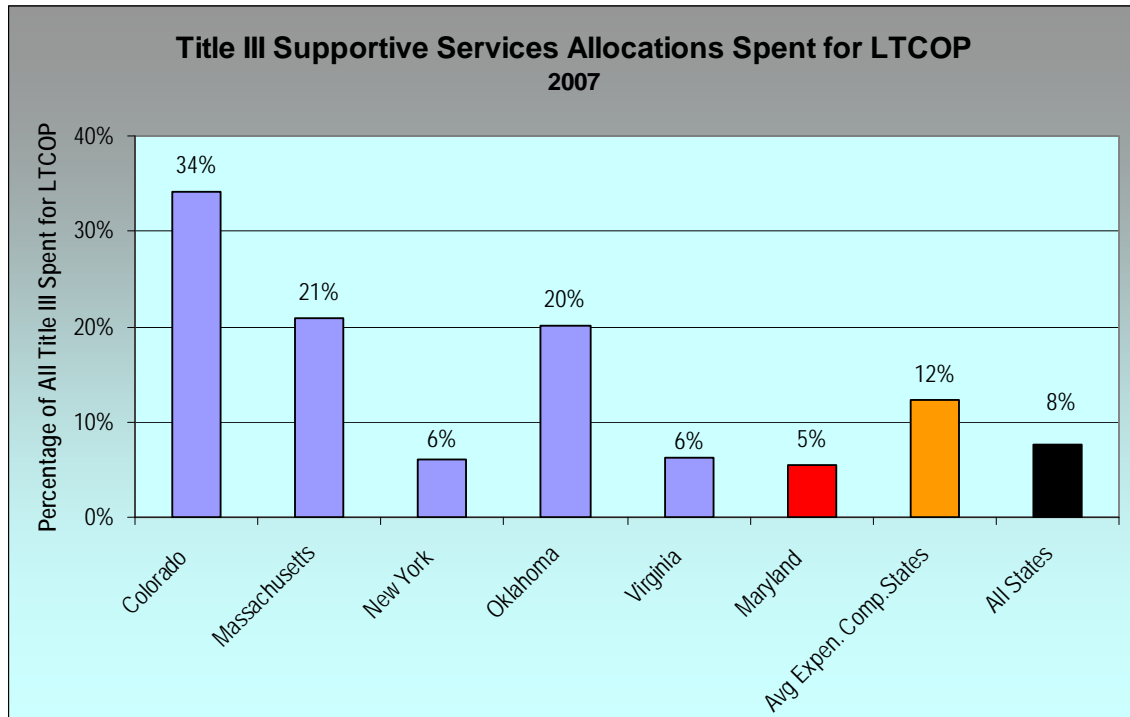


*Source: NORS 2007*

When considered as a proportion of the Federal Title III<sup>30</sup> allocations that states receive from the Administration on Aging, Maryland spends significantly fewer Title III dollars on its ombudsman program. As seen in Figure 15, in Federal FY 2005, Maryland's Title III expenditures for ombudsman services were 5% of the amount of Title III funds the State received. The average across all states was 8%; the average of the "Expenditure Comparable States," was 12%.

If Maryland's program were to receive a proportion of Title III funds equal to that granted its sister programs in "Expenditure Comparable States," it would receive \$715,720 (compare with the 2007 sum of \$315,202).

<sup>30</sup> Older Americans Act Title III funds State and Community Programs on Aging.

**Figure 15**

*Source: NORS 2007*

### **Maintenance of Effort**

The Administration on Aging's Program Instruction AoA-PI-04-01, issued April 5, 2004, requires, based on the OAA, that

States must expend on their statewide ombudsman programs no less than they expended in Title III-B and Title VII funds for FY 2000. This amount must be expended annually on ombudsman services to residents of long-term care facilities. In addition, a state may not use ombudsman Title VII funds to supplant, replace, or in substitution for any other federal or state funding.

All of the Title VII ombudsman funding appropriated by Congress and allotted to a state for a specific year must be expended on direct costs of the Ombudsman Program.

In compliance with Section 306(a)(9): Each area agency must expend on activities of the Ombudsman Program not less than the amount of Title III funds expended by the area agency in FY 2000.

We applied the provision of paragraph one (“ . . . programs no less than they expended in Title III-B and Title VII funds for FY 2000”) to the Maryland LTCOP’s expenditures and found that the State spent in 2007 enough of its Title III funds to be in compliance.

We did not have data from the AAA level; therefore, we could not ascertain whether the State complies with the third paragraph. Because Maryland AAAs have reported freezing positions to reduce costs, the MDoA must maintain vigilance to assure that AAAs meet these requirements.

### **State-Mandated Coverage**

As noted above, in 2000, the Maryland General Assembly required that the State provide at least “a half-time ombudsman in every county in the State, or ten hours per week of ombudsman time for each nursing home, or a full-time Ombudsman for every 1,000 long-term care beds in a county, whichever is larger.” This is a complex mandate, requiring careful analysis. Conspicuously missing from the statutory requirement is the value of a “full-time ombudsman” in terms of the number of hours considered “full-time,” salary, benefits, equipment, travel and publicity costs, and other costs associated with conducting a program.

It appears, however, that, due to the curtailment of additional state funds since the legislature first appropriated the State Ombudsman Initiative Funds, the requirement is not met in most, if any, counties. In addition, local agencies have occasionally reduced their staffing levels for the program and may be faced, in the current economic environment, with even more cuts. An ombudsman at a Town Hall meeting said that “Our budget director says we can’t replace an ombudsman who recently resigned. We have six vacancies, crucial positions that will not be filled.”

The SLTCO has no control over staffing decisions. The MDoA may, therefore, be faced with difficulty enforcing the mandated coverage levels and performing the LTCOP services required under federal law.

The MDoA has recognized the inequities of the current allocation plan and has announced plans to rebalance funding in the upcoming year. MDoA has made it a major priority of our work to identify options for a more equitable allocation plan.

### **Policies and Practices**

At least three sets of policies and practices may influence the perception that the SLTCOP is not sufficiently funded.

#### ***Multiplicity of Local Programs***

As we discussed in the sections “Findings: Organization” and “Findings: Human Resources,” the delegation of the SLTCO’s authority to 19 local agencies likely affects the efficiency of the program. Some AAAs must spend an inordinate amount of time administering a program that serves few consumers and employs one person, or fewer. The numerous ombudsmen who split their duties due to financial constraints experience difficulty in fulfilling all of their requirements.

#### ***Emphasis on Community Elder Abuse Prevention***

In our section “Findings: Human Resources” and “Findings: Activities: Public Awareness,” we noted that ombudsmen in most areas devote a large proportion of their time to Elder Abuse Prevention activities. These duties are not considered separate from ombudsman activity, yet they may drain resources from the core activities of the LTCOP (namely, advocacy for individual residents and systems advocacy).

### ***Financial Accountability***

Because the MDoA does not require line-item reports of expenditures from the AAAs and does not audit at this level, the Office of the SLTCO cannot know where funds are being expended.

### **Summary**

The Maryland SLTCOP appears to have sufficient funds when compared to other states including Benchmark and Expenditure-Comparable States. It expends more per bed than its peers across the nation (even when its expenditures are converted to allow for the State's high cost of living). Nevertheless, the program's stakeholders, including its workers, complain that it is underfunded. We have discussed several reasons for this dissonance. They are:

- inequities in the distribution of funds to the local agencies;
- the multiplicity of local programs; and
- the inclusion of community Elder Abuse Prevention activities within LTCOP funding and duties.

Until state and local expenditures are carefully documented and fully accounted for, no conclusion can be drawn concerning whether the program has adequate funds.

It is clear, however, that distribution of funds across the State must be addressed. This is a major priority for MDoA. An allocation formula, agreed upon by the State Ombudsman, the MDoA, and the sponsoring local agencies is urgently needed.



## Activities of the Program

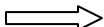
The federal Older Americans Act and Maryland law delineate the activities that are the responsibility of the State Long-Term Care Ombudsman Program. In the federal statute, the Office of the SLTCOP has the primary responsibility for fulfilling program activities. In carrying out the responsibilities of the Office, the State Ombudsman has the authority to designate local programs and individuals as ombudsmen to carry out the delegated and specified activities of the program. (See above: “Findings: Organization.”)

Ombudsmen are advocates for long-term care residents. For its advocacy to be effective, the program must be accessible to residents and must represent the needs and interests of residents in a range of specified actions. Caregivers and potential consumers also need to be aware of the program. To increase the program’s accessibility and service to residents, ombudsman volunteers are recruited and trained. An effective volunteer corps requires ongoing recruiting, training, and retaining activities. The following essential areas of activity for the long-term care ombudsman program are addressed in this section of the report:

- Advocacy
- Public Awareness
- Ombudsman Volunteer Development
- Training

### **Activities: Advocacy**

The long-term care ombudsman program is an advocacy-based ombudsman program that receives and resolves complaints made by or on behalf of individual residents; represents the interests of residents before governmental officials; and seeks legal, administrative, and other remedies on behalf of residents. Its advocacy activities range from helping individuals to changing systems.

Individual Cases  Changing Systems

The IOM report included the following in its description of exemplary individual resident advocacy services.<sup>31</sup>

The program is able to maintain a presence in facilities such that it helps residents and facilities identify items that can be improved even though these items are ‘accepted’ by residents or the facility.

Each individual resident concern is analyzed for systemic concerns (both in each facility and across the State). Where appropriate, resolution is sought on a global basis as well as an individual one.

The MDoA’s annual report and website state the advocacy mission of the Long-Term Care Ombudsman Program. The website states, “The Maryland Long-Term Care Ombudsman Program helps residents in long-term care facilities maintain their legal rights, control over their own lives, and personal dignity.” The major responsibilities of the program are listed:<sup>32</sup>

- **Receives** and resolves complaints made by or for residents of long-term care facilities.
- **Educates** consumers and long-term care providers about residents’ rights and good care practices.
- **Promotes** community involvement through volunteer opportunities.
- **Provides** information to the public on nursing homes and other long-term care facilities and services, residents’ rights, and legislative and policy issues.

### *Individual Advocacy*

Individual advocacy is work that advances the rights and care of a resident. It normally is based on a complaint received by the Long-Term Care Ombudsman Program. The LTCOP regulations and the Procedures Manual (1990) direct ombudsmen to include personal contact with the resident in the complaint investigation and resolution process. Timeframes are stipulated for initial contact or beginning work on a complaint and for follow-up.

One potential impediment to effective advocacy is Maryland’s regulatory provision that restricts ombudsman visits to between the hours of 9 a.m. and 5 p.m. and during regular visiting

<sup>31</sup> IOM, op. cit., Table 5.7, p. 178.

<sup>32</sup> [www.mdoa.state.md.us/senior.html](http://www.mdoa.state.md.us/senior.html).

hours except when the nature of the complaint requires visitation at other hours.<sup>33</sup> Feedback from ombudsmen indicates that they go in as needed and that many facilities do not have set visiting hours. The potential remains for limiting the accessibility of ombudsman services to family members who may visit at night and on weekends unless the ombudsman has a complaint to justify being in the facility.

The number of residents' complaints received by Maryland's LTCOs is lower than the national average and, in most categories, is lower than the comparable data from the four Benchmark states (Georgia, Oklahoma, Washington, and Wisconsin).

Although Maryland's ombudsmen received slightly more (1%) complaints than the national average, Maryland resolved 4% fewer complaints than the national average. (Figure 16.) (The data in Figure 16 are based on complaints received and resolved per 1,000 beds which is a different type of analysis than is typically displayed, and promotes more accurate comparison.) Without the ratio of complaints per 1,000 beds, Maryland is well below the national average as well as below that of the Benchmark States in several areas related to receiving and resolving complaints,<sup>34</sup> as indicated by:

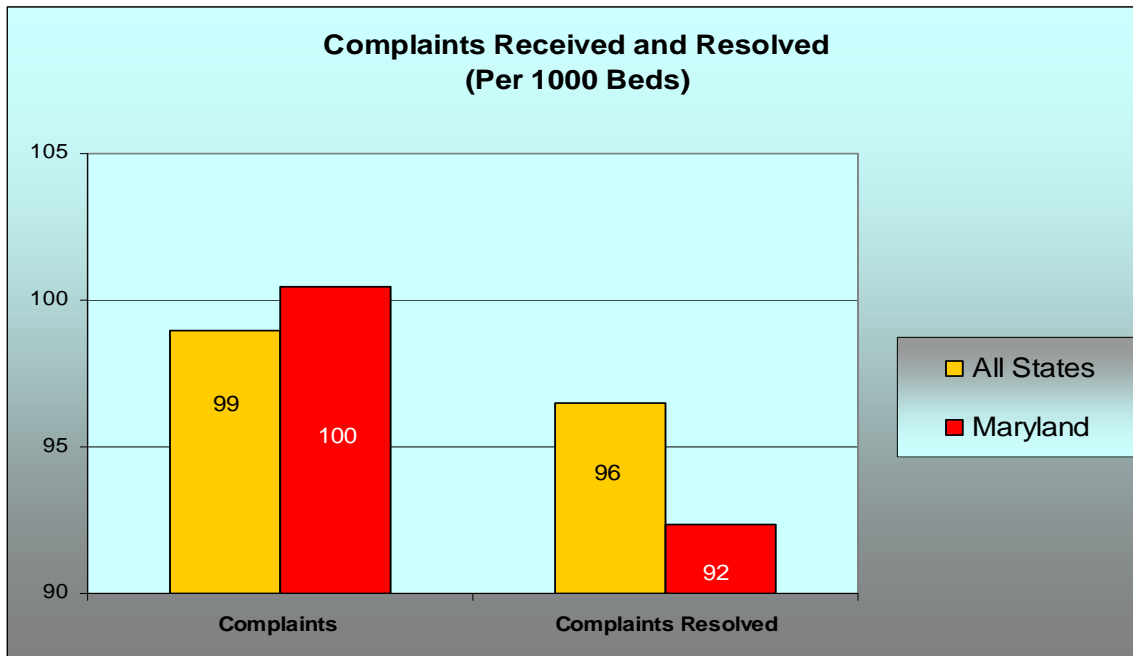
- the percent of complaints verified,
- the percent of complaints with a positive outcome,
- the percent of complaints resolved to the satisfaction of the resident or complainant, and
- the percent of facilities visited on a regular basis (quarterly).

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<sup>33</sup> Title 32, Subtitle 03, Chapter 02, Section .04 C., p. 177.

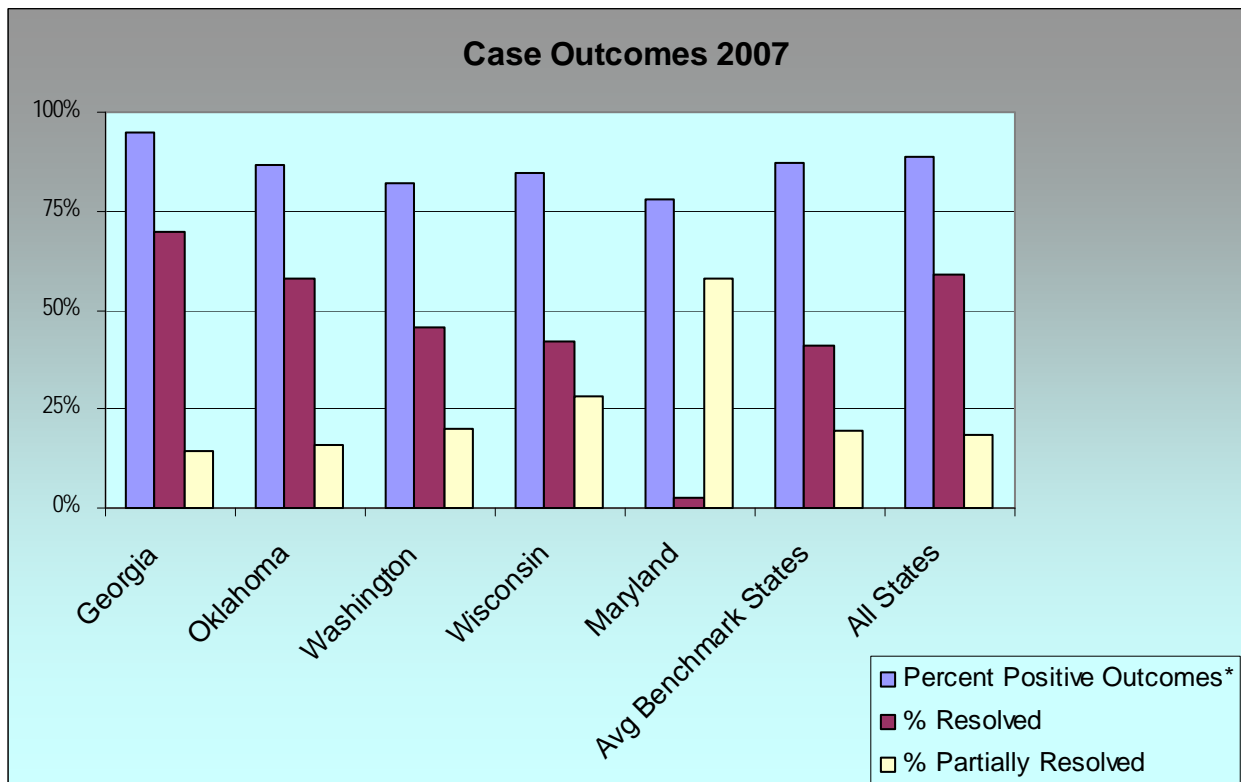
<sup>34</sup> NORS, 2007.

Figure 16



Source: NORS, 2006-2007

Figure 17



Source: NORS, 2006-2007

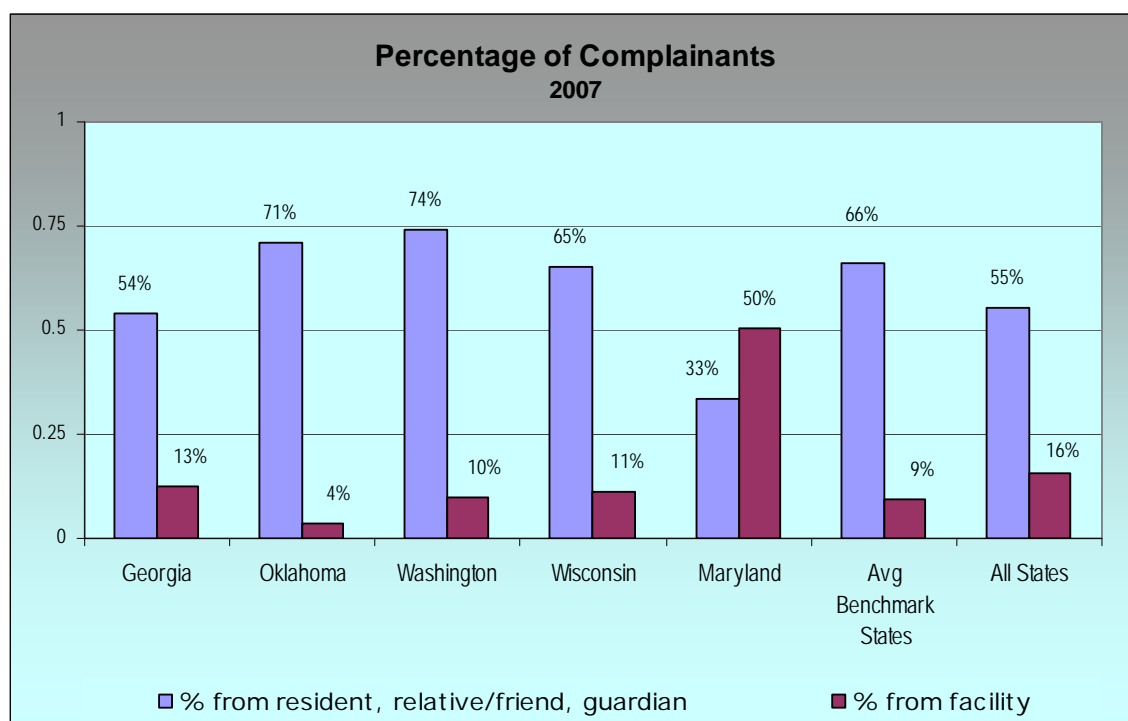
Figure 17 includes “percent positive outcomes,” a measure based on a standard from the Georgia LTCOP. The percent positive outcomes measure is derived from a combination of five types of resolution: the resident or complainant was satisfied or partially satisfied, the complaint was explained or withdrawn, or no action was needed or appropriate. This measure is used to compensate for any questions about NORS definitions or coding and to look at favorable outcomes for residents in the most positive way possible. Maryland has 78% positive outcomes; the average for the Benchmark states is 87%; and, for all states, the national average is 89%. (“Resolved” and “partially resolved” mean resolved to the satisfaction or partial satisfaction of the resident.)

Feedback from stakeholders, ombudsmen, and ombudsman program managers acknowledged differences in ombudsman approaches and in basic decisions such as whether to open a case. Typical comments were, “Some counties open a case for [involuntary] discharge, others don’t. Some will open it in our software as a case from the very first report of involuntary discharge; others would not until we are going to actively be representing them [the resident] in mediation. Or some people just make a phone call.” A few ombudsmen admitted that they do not open a case and provide documentation every time that they should according to the guidance on documentation. Their rationale is that they believe it is more important to handle another complaint than to capture every case in the data base when they are understaffed. All groups, including stakeholders, told us that there were inconsistencies in how ombudsmen investigate and resolve complaints across the State. They also reported differences in how responsive ombudsmen are to callers.

Another indicator of a program’s accessibility and responsiveness to residents is the source of the complaints registered with the LTCOP. Many argue, including this study team, that

the primary source of complaints indicates whom the program serves and responds to most frequently. Figure 18 shows how Maryland compares to the Benchmark States and to the average for all states. We grouped the sources of complaints (complainants) into two categories. One category includes the three classifications “resident,” “resident representative” (relative, friend), and “guardian” classifications. The other category captures complaints initiated by facility personnel. One-half (50%) of the complainants to the Maryland LTCOP are facility personnel, compared to the national average of 16% and 9% in the Benchmark States.

**Figure 18**

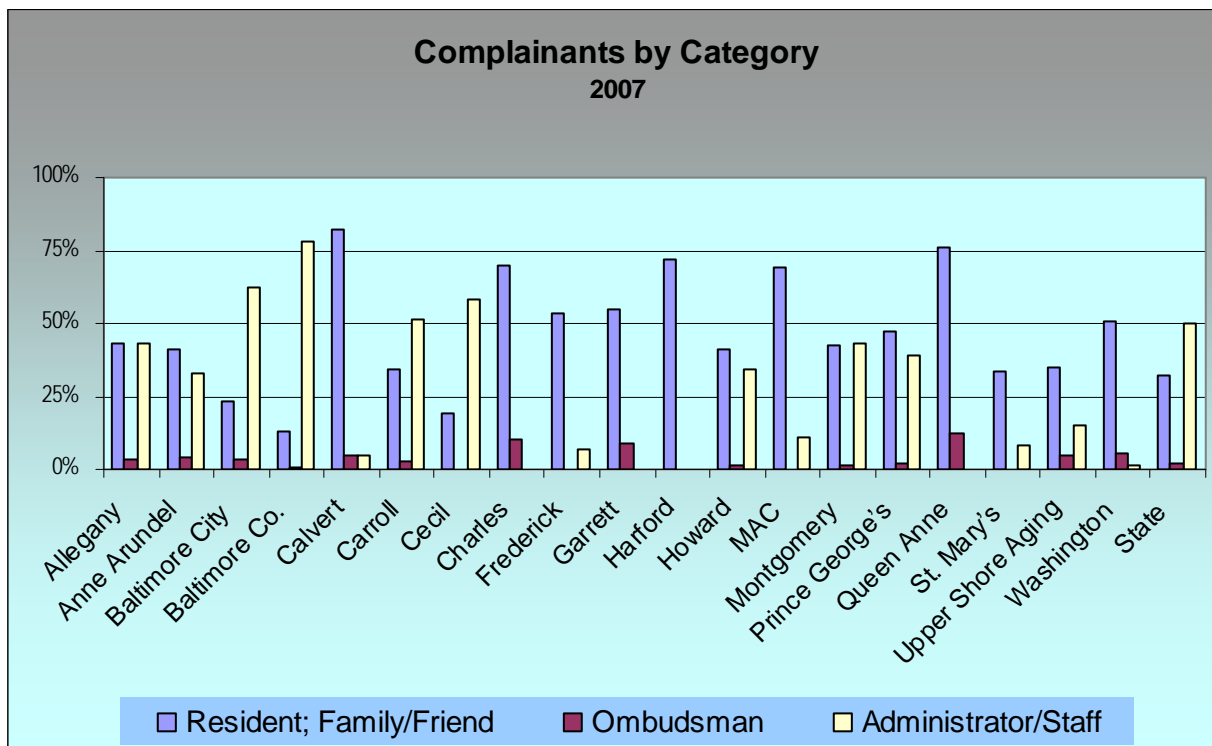


*Source: NORS 2007*

Figure 19 displays the variation across the local programs in resident complainants compared with facility and ombudsman complainants. There is a stark contrast among local programs when the source of complaints (complainants) is examined. Eight of the 19 programs report administrators as the complainant in 39% or more of their closed cases. Baltimore County

reports the highest percentage (78%) of complaints from facilities, while Charles, Garrett, Harford and Queen Anne’s report 0%.

**Figure 19**



*Source: NORS 2007 data provided by the MDoA*

This observation raises questions concerning who Maryland ombudsmen represent in actual practice. If they are seen by residents and family members as responding too frequently to the concerns of the facilities, will the residents and family members turn to the ombudsmen as their advocates? Why do not more residents and family members take their concerns to the ombudsman? This also raises questions about access to ombudsmen: Do residents and family members know how to reach the ombudsman? Are they unable to reach the ombudsman (who may infrequently be in their facility)?

In Maryland, ombudsmen receive reports of law enforcement investigations of the alleged abuse of residents in “related institutions.”<sup>35</sup> We heard different accounts about how ombudsmen dealt with such investigation reports, whether the ombudsman opened a case or provided follow-up on every report. The majority of other LTCOPs in other states do not receive such reports on a routine basis. This Maryland requirement may add to the number of facility complainants reported by the Maryland program. We could not make that determination. Nevertheless, the fact that Maryland’s complainant data is such a stark contrast from other states gives the perception that the Maryland program is more responsive to facilities than to consumers. In the town hall meetings we heard ombudsmen saying that facilities call them if they think someone is about to file a complaint. When ombudsmen more frequently intervene because the facility has called them, it may be perceived that the program acts on behalf of providers.

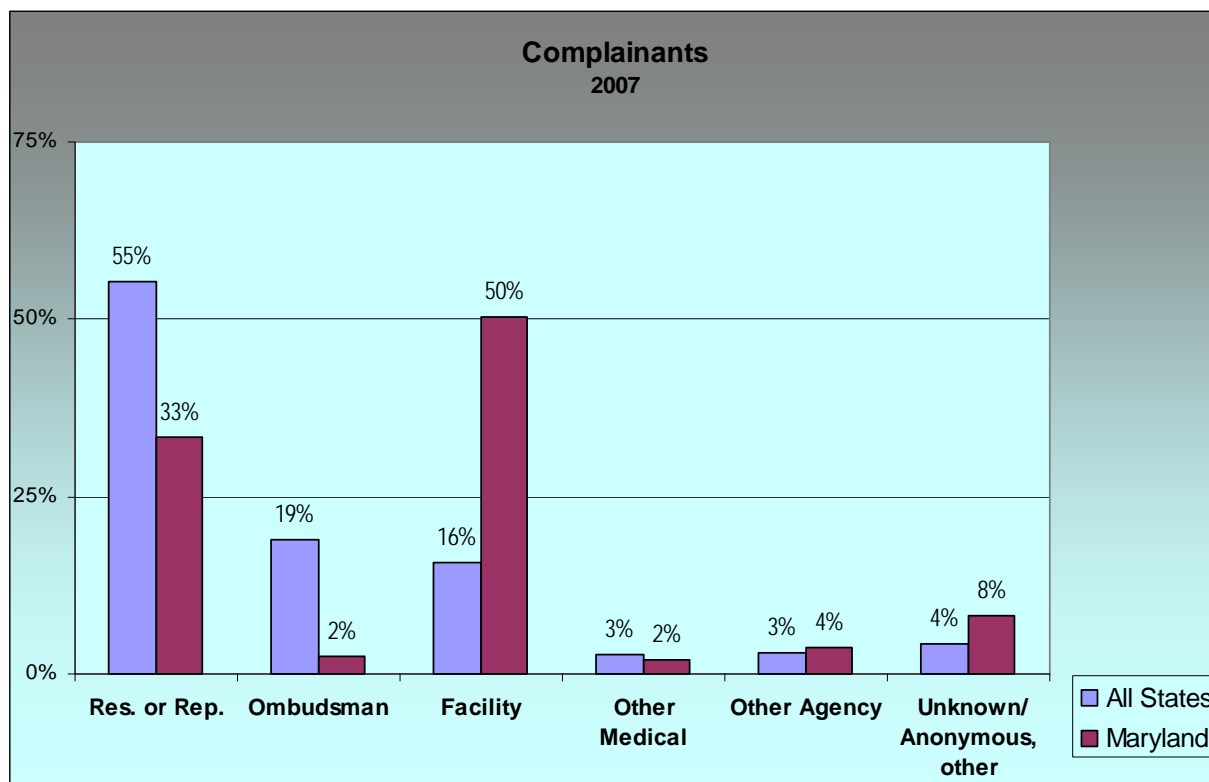
Figure 20 shows the further breakdown of complainants, comparing Maryland to the average of all states. In Maryland, ombudsmen initiate fewer complaints (2%) than the national average (19%). One reason that ombudsmen initiate a complaint is to deal with an issue on behalf of a resident who cannot make his or her wishes known, who does not have family or a legal representative that can be reached, and who has a problem needing resolution.

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<sup>35</sup> MGA Statutes, Sec. 19-347. (Article-Health-General).



Figure 20



*Source: NORS 2007*

### ***Regular Visits***

Two activities, regular visits to facilities and attending resident or family council meetings, are principal ways that long-term care ombudsman programs identify and receive complaints. Due to many factors, including the characteristics of long-term care facilities and the frailty of residents, many residents and family members will not initiate a complaint with an ombudsman unless the ombudsman is present and known in a facility.

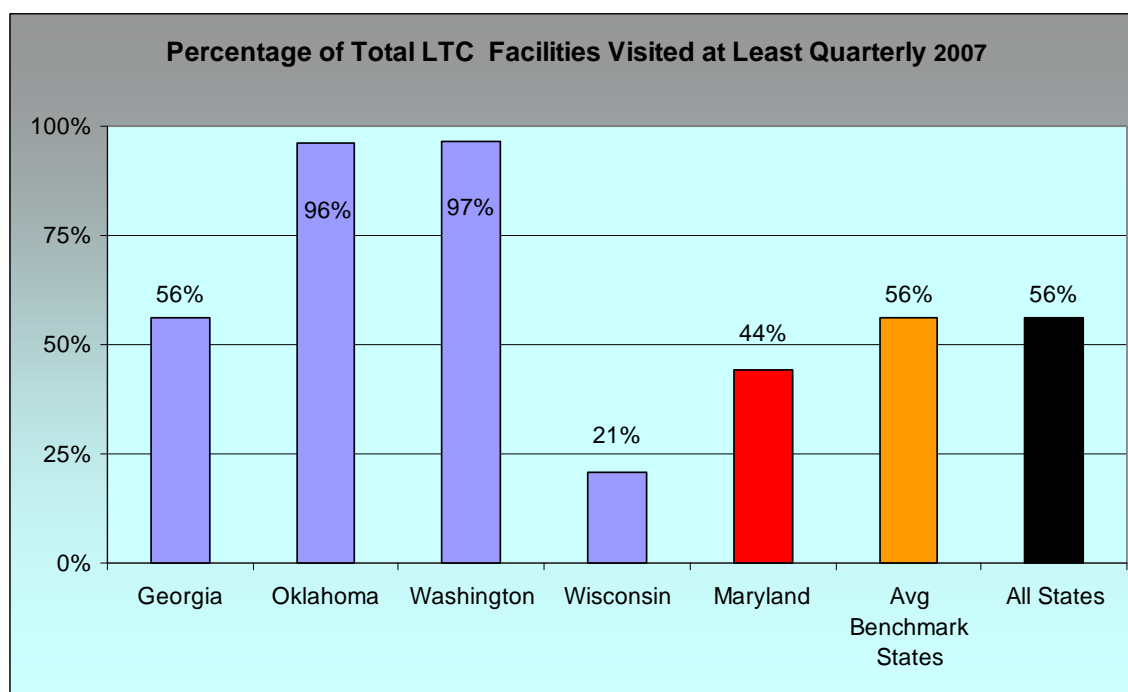
The Maryland standards for facility visitation are provided in the Procedures Manual (1990).<sup>36</sup> The requirement for nursing home visitation is at least quarterly; for domiciliary care homes, quarterly when possible. There is a provision for more frequent visits in facilities where serious problems have been identified. As the numbers of domiciliary care homes, or other

<sup>36</sup> Maryland LTCOP *Procedures Manual*, 1990, p. 12.

classifications of non-nursing home long-term care facilities, has increased since 1990, it appears that the ombudsman visitation standard has not changed to better serve all residents.

We note that the data show that ombudsmen in Maryland made significantly fewer regular (quarterly) visits to facilities than did their counterparts in the Benchmark States or the national average among all states' long-term care ombudsman programs (Figure 21).

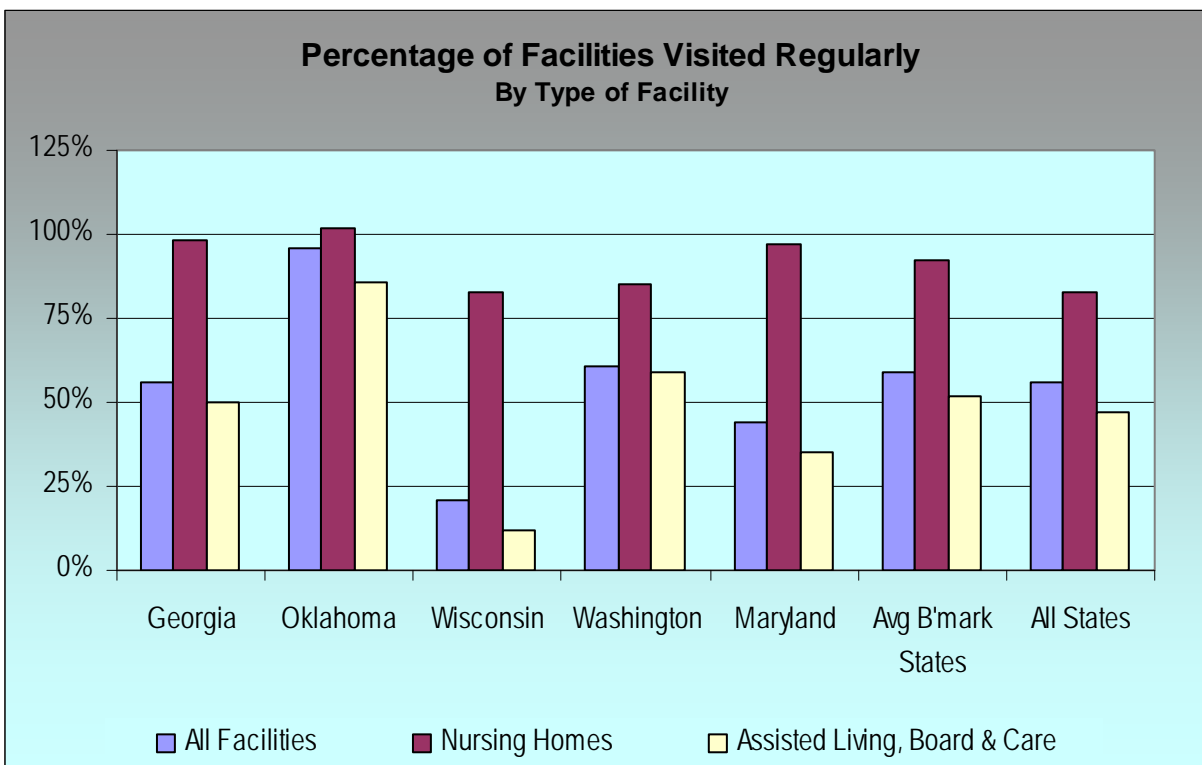
**Figure 21**



*Source: NORS, 2007*

When regular visits are examined by type of facility, it is clear that ombudsmen make regular visits to a higher percentage of nursing homes than to assisted living or board and care facilities (Figure 22). All but one of the benchmark states and the national average show more of a balance in types of facilities receiving regular visits than Maryland does. Nursing homes receive a clear majority of the ombudsman visits unrelated to a complaint in Maryland (97% of nursing homes, 35% of assisted living facilities) and Wisconsin (83% of nursing homes, 12% of assisted living facilities).

Figure 22



*Source: NORS, 2007*

The variation in regular visits among local programs in Maryland ranges from 19% to more than seven programs visiting 100% or more of their facilities each quarter. Four local programs made regular visits to fewer than half of the facilities in their areas.

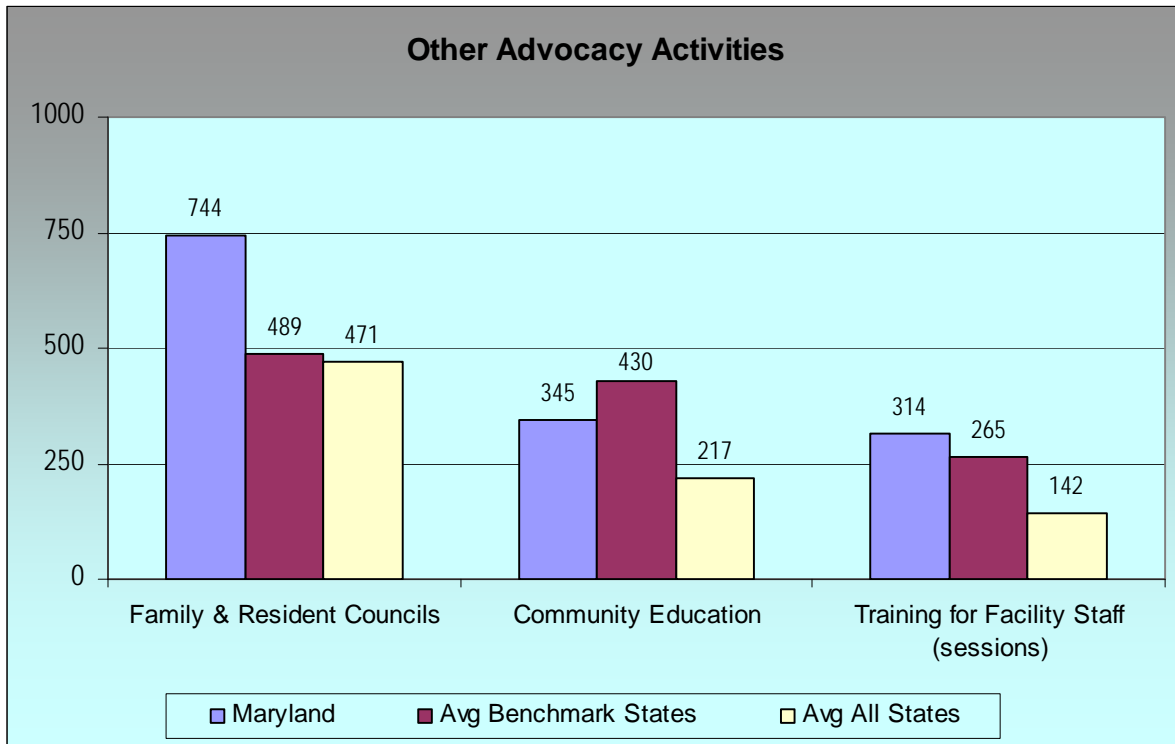
The focus groups and town hall meetings attributed the lack of regular visits to facilities and the variation in ombudsman complaint handling to having insufficient funding for enough staff. (See “Findings: Organization” and “Findings: Human Resources” for more information.) The following two comments describe the impact that the lack of staff has on facility visits and individual advocacy. One ombudsman said, “You can handle 10 things on the phone in the time it takes to get to a facility. I’ll just call the administrator and get their attention, rather than driving there. [The issue] Doesn’t necessarily involve investigations; just makes the administrator aware that this resident is having a problem, or just that the ombudsman is aware

that this resident is having a problem.” This process raises questions regarding obtaining the resident’s perspective and permission to act, confidentiality, and scope of investigation to understand the issue and the contributing dynamics, and the role of the ombudsman. It is inconsistent with the investigation process in the Procedures Manual.

Another ombudsman commented, “We are just not getting out and visiting the facilities like we did in the past. We’re just responding to complaints and concerns that come into our office. So being a presence and going out to the nursing home on a regular basis, and engaging people—we are not able to do that much, and that is an important piece.”

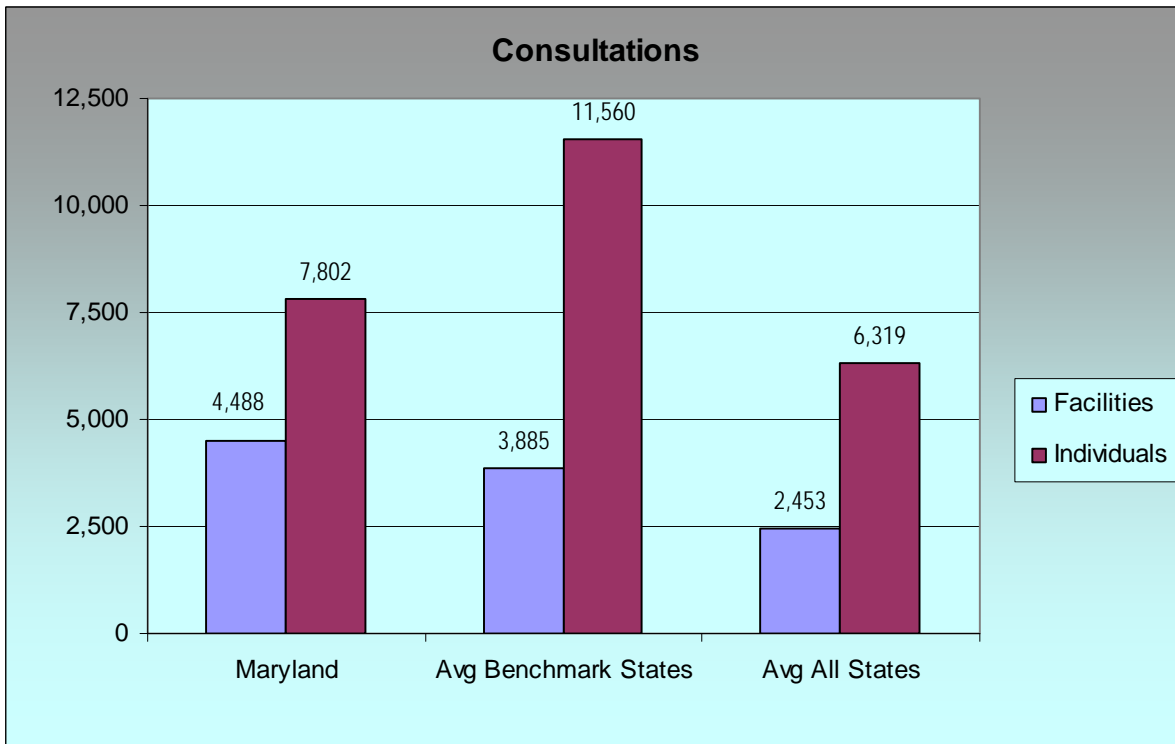
Other LTCOP activities are related to advocacy. For example, resident or family council meetings are another primary source of complaints. Various educational activities, such as conducting community education or facility staff training sessions or providing consultation to facilities or individuals may be proactive. They may prevent issues that lead to complaints or assist others in addressing issues without ombudsman intervention. In all of these activities, the Maryland LTCOP exceeds the national average of all states. (Figures 23 and 24.)

**Figure 23**



Source: NORS 2007

**Figure 24**



Source: NORS 2007

## Conflicts of Interest

We learned of job responsibilities that may present a conflict of interest with the ombudsman program. Some local programs with part-time ombudsmen add other positions and duties to the ombudsman job to achieve a full-time position for an employee. Several ombudsmen, program managers, and area agency on aging directors told us that combining the ombudsman position with being a guardian is a conflict of interest. A minority of ombudsmen and agency directors disagreed. Feedback from stakeholders identified the same example as compromising the credibility of the ombudsman as a resident advocate and as being a conflict of interest within the program. One program manager said, “[Ombudsmen] shouldn’t have to be [a] guardian in order to have a full-time job. Those two jobs are put together and we don’t have a choice.” Another person did note that the State ombudsman provided assistance in one county in keeping the ombudsman position from being combined with a guardianship role.

At least two national studies support the view that combining guardianship with ombudsman duties is a conflict of interest.<sup>37</sup> They argue against having the LTCOP placed in an agency that also is responsible for guardianship services. The IOM study talks about conflict of interest including conflicts of commitment which include time and attention when the LTCO position is less than full time. The IOM also discusses the deleterious impact on ombudsman credibility that the perception of a conflict of interest has. The proceedings from the National Association of State Long-Term Care Ombudsman Programs,<sup>38</sup> a comprehensive review of the program, distill the essence of conflicts of interest:

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<sup>37</sup> IOM, op.cit., and *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003.

<sup>38</sup> “Independence: The LTCOP’s Ability to Fully Represent Residents.” *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003. p. 18. <http://nasop.org/papers/Bader.pdf>.

...the ombudsman's 'stock-in-trade' is his or her credibility or word. Since ombudsmen have no enforcement power, they can neither compel action by any parties nor sanction them for failure to act in some way. The ombudsman's only power is the power to convince others to 'do right' for the complainant or residents in general. Thus, it is imperative that the ombudsman and the program be perceived as free of conflicts of interest.

The Older Americans Act has conflict of interest prohibitions related to program location and to individual ombudsmen. (See "Findings: Activities."). Maryland's Long-Term Care Ombudsman Program statute (§10-213(d)(1)) directs the Secretary to adopt regulations to govern conflict of interest within the program. Our review of the LTCOP regulations and the Procedures Manual (1990) did not identify any provisions addressing conflict of interest.

**Summary.** Long-Term Care Ombudsmen engage in a range of activities related to advocacy for residents. Overall, the Maryland program is above average in consultations to facilities and individuals, attending resident or family council meetings, and conducting educational sessions for the community or for facility staff. With receiving and resolving complaints, Maryland ranks higher than average in the number of facility complainants and lower in the number of complaints received from residents, resident representatives (e.g., family members), or initiated by ombudsmen. Maryland is also below the national average in the percent of facilities receiving regular visits by ombudsmen, which is a key indicator of the accessibility of ombudsman services to residents. Among the local ombudsman programs there is much variation in program activities. Questions were raised about conflict of interest for many ombudsmen and local programs. In addition, it has been suggested by some informants that some ombudsmen may be less advocates for residents and may be more aligned with the facilities' perspectives. A former Maryland nursing home administrator said that her perspective as an administrator was that the ombudsman's role was primarily to help facilities deal with difficult

residents and family members and that she thinks that was a view shared by other facility administrators.

### *Systems Advocacy*

The responsibilities of the Office of the State Long-Term Care Ombudsman in the Older Americans Act includes the following (Title 42, Chapter 35, Subchapter XI, Part A, subpart ii, Section 3058g). These responsibilities are also among those that the State Ombudsman may delegate to local ombudsmen. Collectively, these responsibilities are known as “systems advocacy” activities because they are intended to influence systems (e.g., Medicaid, the regulatory system, industry practices) on behalf of residents.

#### (a)(3) Functions

(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;

...

(G)(i) 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, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

...

#### (b)(1)(g) Legal counsel

The State agency shall ensure that -

(2) the Office [of the State LTCO] pursues administrative, legal, and other appropriate remedies on behalf of residents.

#### (h) Administration The State agency shall require the Office to -

(1) prepare an annual report -

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c) of this section;

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for - (i) improving quality of the care and life of the residents; and (ii) protecting the health, safety, welfare, and rights of the residents;



(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and (ii) identifying barriers that prevent the optimal operation of the program; and

(F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding - (i) the problems and concerns of older individuals residing in long-term care facilities; and (ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

*42 U.S.C. § 3058(g) (2006)*

In contrast to the federal law, Maryland's Ombudsman statute does not include the systems advocacy responsibilities of the LTCOP. The federal responsibilities are not included in Maryland's regulations nor in the program's Procedures Manual (1990). The job description of the Maryland State Long-Term Care Ombudsman has provisions for systems advocacy. The State Ombudsman's responsibilities include:

- Prepare and present testimony to the legislature regarding Federal, State and local laws, rules, or regulations which may affect the program or client population.
- Review and analyze Federal, State and local laws, regulations and policies which impact on the program or client population.
- Prepare annual and other program reports for the program as required or necessary. (Procedures Manual, page 18)

Systems advocacy encompasses a broad range of activities. The ultimate goal of these is to represent the needs and interests of residents in arenas that affect residents' care and well-being because of conditions of laws, regulations, policies and practices.

One of the basic components of systems advocacy is analyzing program data and information to determine trends that need a systemic intervention. We found some evidence that local programs and the State LTCOP identify trends and develop or propose a systemic response. For example, the Baltimore City ombudsman program used grant funds to develop and conduct a series of training sessions for facility staff on a number of topics (e.g., reducing stress, abuse prevention, residents' rights, etc.). The LTCOP conducted a train-the-trainer session on these modules for the Statewide ombudsman program giving all local programs additional tools to use in training facility staff. Many other local programs provide training for facility staff. The ultimate goal of such sessions is to benefit residents by addressing systemic issues through educating staff. (See "Findings: Data: Collection, Reporting, and Other Uses" for more information related to the extent of this use of program data.)

In addition to the actions targeting systemic practices within a facility or a group of facilities, monitoring laws, policies, proposed regulations, and government actions is another cluster of systems activities. These responsibilities may also involve working with media to articulate the needs and interests of residents. Comparing LTCOP activities among states gives a very rough indication of a program's abilities and priorities related to systems advocacy. Many external factors such as current issues and legislative initiatives influence the extent of systems advocacy.

Looking at Maryland's activities compared to the Benchmark States (Table 8) shows that the activities of the local LTCOPs are somewhat similar. The activities attributed to the Maryland State LTCO are, however, noticeably fewer than in the Benchmark states. In working with the media, the Maryland SLTCO has no (0) reported actions and a lower percentage of overall time related to monitoring or working on laws, regulations, and related tasks. One

distinction between Maryland and the Benchmark States is that Maryland has only one individual working in the State office of the SLTCOP. The Benchmark States have additional ombudsman personnel working in the Office of the SLTCO on a full-time basis.

**Table 8**

State	All LTC Beds	Work with Media				Monitoring/Work on Laws, Regulations, Government Policies & Actions	
		No. of interviews/discussions		No. of press releases		% of total paid staff time	
		State	Local	State	Local	State	Local
Georgia	70,813	17	15	1	8	15%	4%
Oklahoma	41,958	3	25	26	830	86%	2%
Washington	42,201	12	18	0	1	64%	29%
Wisconsin	74,848	60	56	10	1	30%	3%
Maryland	47,727	0	14	0	26	10%	5%
Avg Benchmark States	57,455	23	29	9	210	49%	10%

We asked LTCOP supervisors and staff ombudsmen how they view the effectiveness of the Statewide Ombudsman Program and their own effectiveness related to monitoring federal, state, and local laws. Their view of the effectiveness of the Statewide program is similar. In rating their own effectiveness, their views differed a bit, with supervisors having a more positive view of their effectiveness. (Table 9)

**Table 9**

<b>LTCOP Staff Responses to Survey</b>				
<b>Statewide LTCOP: Monitoring Federal, State, &amp; Local Laws</b>				
	Effective or Somewhat Effective	Neutral	Somewhat or Very Ineffective	Don't Know
LTCOP Supervisors	50%	33.3%	16.7%	0
Ombudsmen	50%	25%	12.5%	12.5%

**Table 10**

<b>LTCOP Staff Responses to Survey</b>					
<b>Your LTCOP: Monitoring Federal, State, &amp; Local Laws</b>					
	Effective	Somewhat Effective	Neutral	Somewhat or Very Ineffective	Don't Know
LTCOP Supervisors	50%	41.7%	8.3%	0	0
Ombudsmen	29.1%	29.2%	41.6%	0	0

In general, ombudsmen said that the State LTCO keeps them informed about pending federal and state laws. She sends information to them and encourages them to read it and make comments. Some of the ombudsmen also receive information related to laws, policies, and regulations from their Area Agency on Aging director or program manager. Others receive additional information and Action Alerts from NCCNHR: The National Consumer Voice for Quality Long-Term Care. In town hall meetings, ombudsmen said they would like to have more information from the SLTCO and to be kept informed about outcomes. A program manager told us:

I need more communication about different polices, how a bill went. That is really important.

Monitoring laws, regulations, and policies provides information that may impact residents. A pivotal aspect of systems advocacy is taking action to influence the development, revision, and/or implementation of such provisions. The ombudsman perception is that the LTCOP (statewide and local) is less effective in legislative and administrative policy advocacy than in monitoring laws, regulations, and policies. Engaging in advocacy includes serving on task forces, work groups, or committees that may provide oversight or recommend changes in laws, policies, or regulations. This systems advocacy step also means working with legislators and their staff, providing testimony, being public about the potential impact of proposed changes

on residents, encouraging others to comment, and talking with media if appropriate to the issue.

The survey responses show that LTCOP staff give a higher rating of effectiveness to the SLTCO than to the local program. (Tables 11 and 12.)

**Table 11**

<b>LTCOP Staff Responses to Survey</b>				
<b>Statewide LTCOP: Legislative &amp; Administrative Policy Advocacy</b>				
	Effective or Somewhat Effective	Neutral	Somewhat or Very Ineffective	Don't Know
LTCOP				
Supervisors	50%	17%	33%	
Ombudsmen	38%	29%	21%	13%

**Table 12**

<b>LTCOP Staff Responses to Survey</b>				
<b>Your LTCOP: Legislative &amp; Administrative Policy Advocacy</b>				
	Effective or Somewhat Effective	Neutral	Somewhat or Very Ineffective	Don't Know
LTCOP				
Supervisors	25%	50%	17%	
Ombudsmen	17%	29%	50%	4%

A few examples of LTCO systemic advocacy in monitoring laws, policies, and regulations, and in legislative and administrative advocacy follow. Comments about the LTCO role and barriers to fulfilling these duties provide additional perspective.

### ***State Long-Term Care Ombudsman***

The State Ombudsman provided examples of the following types of activities:

- Analysis and position statements on several legislative bills prepared by the SLTCO and disseminated on Department letterhead or given to the Department's Legislative Liaison.
- Providing testimony on a bill (infrequent).
- Providing information to Maryland's congressional delegates and to state legislators upon request and responding to their referrals of constituents' concerns.

- Participation in numerous state level committees, work groups and task forces related to long-term care such as: a work group to develop regulations on disclosure information requirements on provider applications for licensure; the Local Area Network for Excellence, part of the Advancing Excellence Campaign; and work groups that were mandated by the legislature to revise both the nursing home and assisted living regulations as well as develop regulations for disaster preparedness in long-term care facilities. The SLTCO served as an ad hoc delegate to the White House Conference on Aging in 2005, representing the interests of long-term care residents.
- Collaboration with other departments and programs to tackle systemic advocacy issues such as working with the Office of Health Care Quality and Adult Protective Services related to ongoing issues with assisted living facilities to address quality of care and licensure issues.

Stakeholders affirmed the need for the SLTCO to be a strong advocate on behalf of residents in various public arenas. They acknowledged the existence of some barriers to fulfilling this role but were unequivocal in their desire to have strong, visible systems advocacy leadership from the State ombudsman. One commented that the Legislature hears more from the Alzheimer's Association and the Disability Law Center than from the Ombudsman Program.

A current reality that was acknowledged by multiple individuals in different settings cuts to the heart of legislative advocacy. We heard from several sources that structural (procedural) barriers in Maryland limit the State ombudsman's ability to provide information, including testimony, to legislators. There are ways to issue an invitation to the State ombudsman to participate in a hearing or to provide testimony on a bill, but it takes time, advance planning, and is easy to overlook. Because the SLTCO's visible participation in the legislative arena is infrequent, legislators or other officials may not realize how beneficial it could be to have the perspective of the residents' advocate. Therefore, they seldom, if ever, call on the SLTCO to testify.

Other processes and practices restrict the ability of the SLTCO to engage in legislative advocacy. The Department of Aging does not support a bill unless it is approved by the

Governor. This applies to the State LTCOP as well as to all other programs. The Department's Legislative Liaison provides the SLTCO with copies of relevant bills. He also takes the SLTCO's position papers and presents them in Annapolis. When the SLTCO sends information about legislation to local LTCOs and encourages them to comment, there is a reminder to follow the Area Agency on Aging's (AAA) policies/procedures for commenting.

In contrast to the preceding information about limitations on legislative advocacy, AAA directors affirmed the need for more activity in this area. (Table 13.)

**Table 13**

<b>AAA Directors Responses to Survey</b>		
What should the Maryland Ombudsman Program do better? (Mark all that apply.)		
	Response Frequency	Response Total
Participate in Legislative hearings, meetings, etc.	54.5%	6
Educate state and local officials and Legislature on role of LTCO	90.9%	10

The State LTCO should be more visible, vocal, and present on statewide committees, work groups, and task forces. Stakeholders and individuals interviewed did cite examples of SLTCO participation; stating, however, that more visibility is needed. They express a strong desire for the LTCOP to be vocal in expressing the needs and interests of residents. One example was the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities. Although the MDoA Secretary chairs this committee, the SLTCO does not have a designated slot as a standing member. There is a designation for a local ombudsman to be a member of this committee. One stakeholder comment captures a sentiment that was heard numerous times: "The state ombudsman should be on the human services task force; [that] would strengthen cooperation that ombudsmen receive from other agencies like mental health and ones that oversee adult protective services, and the Office of Health Care Quality." (See "Findings: Human Resources" for related factors.)

### ***Annual Report***

The OAA specifies the minimum content and distribution for an annual report prepared by the Office of the SLTCO. (See “Findings: Advocacy: Systems Advocacy.”) The Administration on Aging requires each SLTCOP to submit an annual State Long Term Care Ombudsman Reporting Form for The National Ombudsman Reporting System (NORS Report). The information in this form is an “annual report” of the program. Reporting on the most pressing needs for systems change is one section of the report (Major Long-Term Care Issues). We found no evidence that this report goes to anyone other than the Administration on Aging. Stakeholders said that the SLTCOP needs an annual report which would be broadly distributed, including to the Oversight Committee on Nursing Homes. Most of the stakeholders were not aware of the NORS report or that it is posted on the Administration on Aging’s website.

Many State LTCOPs use this report information as a public information and an advocacy tool for the program. They extract key sections of information, add information about local programs and volunteers, make recommendations for changes to improve conditions for residents, and disseminate the report in a visually appealing format. They also distribute the report to Legislators, other state agencies, the Governor, the State’s Congressional delegation, and everyone specified in the OAA. Some states go a step farther and develop a one-page document or a bi-fold pamphlet that provides a quick overview of the program and of the needs of residents. This digest version is most useful with Legislators and others who need to take in a lot of information in a glance. The annual report of the SLTCOP could be used in multiple ways to highlight the needs of residents and the value of the LTCOP. Many stakeholders agreed with the Statement voiced by one in the focus group: “The State Ombudsman ought to have their own annual report. [It should] go to Governor, committees, General Assembly and so on.”



### ***Administrative, Legal, and Other Remedies***

The potential for the Office of the State LTCO to pursue administrative, legal, and other appropriate remedies on behalf of residents is an important provision for systems advocacy. Nationwide, this provision is not routinely used by all programs; however, it is used when necessary. For example, some SLTCOPs have petitioned a court on behalf of residents, filed an *amicus* brief on a case related to quality of care or joined in a mandamus suit, issued white papers calling for significant change in care or oversight of nursing homes or assisted living facilities, and co-sponsored an initiative included on an election ballot. State ombudsman use these measures as a last resort after other avenues to effect change have failed. This aspect of systems advocacy typically requires the support and expertise of legal counsel working with the State Ombudsman. We did not find evidence that the Maryland SLTCOP had pursued administrative, legal, or other types of remedies on behalf of residents.

The legal counsel (one of two lawyers assigned by the Attorney General to MDoA) for the LTCOP provides information and assistance as requested by the State ombudsman. The most typical issue is responding to subpoenas of local LTCOP records. The SLTCO and the legal counsel developed a memorandum to address this type of request. MDoA's legal counsel also assists the program in other ways as he can, given his work load for MDoA. For example, he assisted the SLTCO in understanding roles and the details of fulfilling the responsibilities of a court appointed monitor in bankruptcy proceedings for a long-term care facility. He also developed a model Memorandum of Understanding Regarding Joint Investigations of Maltreatment of Vulnerable Adults and Nursing Home and Assisted Living Residents to add clarity to the role of the LTCOP and other programs and agencies. This legal counsel provides guidance to the legal counsel for local LTCOPs, as needed.

### *Local Ombudsmen*

The responsibilities for a range of systems advocacy activities also extend to the local programs and ombudsmen. Monitoring and commenting on proposed policies, regulations, and bills are the most prevalent legislative activities reported by ombudsman. The degree of engaging in this activity varies among the programs but most programs have some involvement. Some ombudsmen said that they do not have time for this. Others said they read the information but do not comment. A few programs stated that they have participated on state-level work groups or committees. In some counties, the LTCOP has been a member of a task force, work group or committee that has tackled a systemic issue.

When we asked what actions ombudsmen take after they review proposed policies, regulations, or bills, we received various responses:

The ombudsman program can share information, policy, or bills with the facility and individuals that we are aware of but that is the extent [They cannot offer an opinion about the impact of the proposal or urge action].

The LTCO program manager is assigned the task of reviewing and composing a written response to legislation related to long term care facilities. Interested LTCO provide input when interest and time permits.

Most recently there were proposed changes to the assisted living regulations. Each ombudsman reviewed the proposed changes and we made suggestions as a program and submitted our comments via our Office on Aging Administrator. A letter was generated from the office to the Office of Health Care Quality.

The Montgomery County Long Term Care Ombudsman Program has had a member of a variety of task forces reviewing the development and implementation of laws regarding assisted living facilities in Maryland. This program has worked very closely with family councils to adopt a county law which strengthened the governance available under the Older Americans Act. This county law was the basis for statewide legislation which adopted similar, but even more viability for family councils in long term care settings. This program also has ombudsmen who work on national legislative initiatives and policy work groups.

The State Ombudsman reported that one local ombudsman testified before a congressional subcommittee on the proposed nursing home transparency legislation.

In spite of the ability of some local ombudsmen to review and comment on, or share information regarding proposed regulations, policies, or bills, many others encounter restrictions on how their comments are used. Ombudsmen told us, “Any legislation concerns or possible suggestions must go through the county process of corresponding with any public official.” In going through the county’s designated process, ombudsmen may encounter obstacles in representing the resident’s perspective. Some examples are that the comments are returned to the ombudsman for revising, “You can’t say that because of ...” or “You can’t support legislation this way.” “Tone that [comment] down a little bit.”

The same sort of restriction is encountered regarding interactions with legislators. “Being government employees, it’s hard to lobby against your own government.” One ombudsman contacted her congressional delegates via email about an issue; later her agency told her not to do that without first informing the LTCO’s supervisor. “Some things that we want to pursue get stopped because of political pressure. Our comments go through agency channels, then to the other government office.” Others reported similar processes with comments going to the Board of Commissioners after review by the AAA director. Sometimes the policies may be unwritten but do exist. “[The] agency hasn’t said it; it is generally a known thing that we don’t speak out.” One ombudsman statement sums it up, “We are prohibited from legislative advocacy.”

In contrast to the preceding discussion, at least two LTCOPs reported sending their comments to federal and state senators and representatives. Ombudsman comments regarding interacting with the media were similar to the preceding comments about commenting on proposed regulations, policies, and laws: There is an agency protocol that must be followed.

Feedback from Area Agency on Aging directors and stakeholders confirmed the ombudsmen's comments about systems advocacy activities. AAA directors made the following comments. "As a local government employee, the LTCO must follow county policy regarding legislative advocacy." "County employees are not permitted to lobby or testify without the express consent of the Commissioners." "Legislative Advocacy is MY PURVIEW— not that of any other employee, and this won't change." From the stakeholders we heard, "I was informed that an ombudsman cannot speak to a local Legislator without permission of AAA director for what they are going to say [to] them, which is contrary to the federal regs."

The protocol for ombudsmen representing the needs and interests of residents with the media was similar to that for contacting legislators and making perspectives known about proposed administrative or legislative initiatives. "As a local government employee, the LTCO must adhere to county policy regarding media relations." Although various county policies were explained, they had similarities. The following is a typical process. "County policy requires that all media contacts go through the County's Public Information Office [PIO]. If the PIO approves the media request, then personnel may operate within the PIO's parameters. However, due to the confidential nature of the LTCO program, any contact between the LTCO and the media is generally discouraged." Another individual reported that the AAA Director is the only person who talks with the media.

### ***Relationships with other Agencies***

Ombudsmen credited the State Ombudsman's working relationship with the Office of Health Care Quality (OHCQ) for establishing better responsiveness and collaboration between the LTCOP and OHCQ. Most ombudsmen reported that working with their OHCQ counterparts had improved in recent years as had receiving reports and feedback from that office. There were

some areas of the State where this is not the case. “I would like to see improvement on follow-up. I don’t always get follow-up from OHCQ.” In some programs ombudsmen conduct joint investigations with OHCQ when it is appropriate to the complaint. We heard mixed responses when we asked ombudsmen about their working relationships with other agencies or programs. One example demonstrates how LTCOPs work with various agencies.

If there is an allegation of abuse we immediately refer the case to OHCQ, Adult Protective Services (if in an Assisted Living Facility) and determine if the police department has been contacted. If they have not been notified then we will make contact with the police. It is common practice to have the Ombudsman Program work collaboratively with both agencies on a case; often conducting joint investigations.

Ombudsmen use a variety of methods to refer cases to other agencies, usually by fax or telephone, sometimes via email.

The perspective of stakeholders is that their communication with ombudsmen is varied and inconsistent. One commented, “[There] is [a] lack of information sharing. If there is a severe issue they are facing, they won’t tell us about it in the beginning, so we can process it with them.” The implication was that resolution sometimes could be expedited if the LTCO had contacted another entity earlier in the complaint handling process. Another person said, “[We] only hear from them when they want something from us.” Fragmented coordination between the State and local LTCOPs and between the LTCOP and other agencies and organizations was a theme from one stakeholder group. This theme was iterated during several interviews with key informants. Several stakeholders attributed many of the issues in working with LTCO to ombudsmen receiving “mixed messages at the State and local level; AAA [ombudsman] has two bosses. The federal law says one thing, but you are working in an environment where you are accountable to bureaucracy” Everyone agreed that there are some “heroic individual efforts on the part of ombudsmen.”

*Summary of Advocacy Findings.* We found evidence of systems advocacy activities conducted by the State Ombudsman; however, these were limited. These activities appear to be constrained by the policy and practices of the agency and the fact that there is only one professional person in the Office of the State Long-Term Care Ombudsman: the State Ombudsman. Other sections of this report deal with this issue (Findings: Organization, Governance, Human Resources, Financing, and Public Awareness), since several aspects of the program are intertwined with the program's ability to engage in systems advocacy. One fundamental shortcoming is that the Maryland statute and regulations do not contain the systems advocacy provisions of the federal Older Americans Act, much less build upon them.

Two major factors impact the State and local Ombudsmen's ability to engage in systems advocacy: (1) agency or administration policies; and (2) resources, including time and staff. Every key informant we interviewed said that the Ombudsman Program is not a presence in working with the General Assembly or in publicly commenting on rules proposed by another agency. They also said they would like to have more direct interaction with the State Ombudsman because they need to hear the perspective of residents and consumers.

Our findings indicate that, although some ombudsmen are reviewing and commenting on proposed regulations, policies, and bills, the results are strongly shaped by agency policy. On the State and local level, much of the activity is directed toward providing information for someone else within the Department to use within the agency, rather than directly by the State Ombudsman or the Statewide Ombudsman Program in its advocacy. For example, when ombudsmen do comment about the impact upon residents of a proposed law those comments are often given to others within the Department to decide whether to share the ombudsman's views

or what actions, if any, to take. As a result, when this occurs, the ombudsman very often is not the one speaking directly on behalf of residents and their concerns.

### **Activities: Public Awareness**

Creating public awareness of the ombudsman program and ensuring access to it are important roles for any ombudsman program. Common methods used by ombudsmen across the nation for public awareness include community education, newspaper articles, television and radio appearances, brochures, speeches, and workshops.<sup>39</sup>

The Older Americans Act requires the State LTCO to prepare an annual report and make it available to the public. (See “Findings: Advocacy: Systems Advocacy.”) It requires the State Ombudsman to make publicly available its information on the problems and concerns of older individuals residing in long-term care facilities and the ombudsman’s recommendations related to these problems and concerns.

The National Association of State Long-Term Care Ombudsman Programs (NASOP) has identified the need to increase public awareness as essential to heighten the visibility of the LTCOP and the people it serves.<sup>40</sup>

#### ***State Ombudsman Role in Public Awareness***

The State’s job description for the Maryland SLTCO states that the ombudsman should disseminate “educational materials to aging network, other agencies and the public.” The job duties for the SLTCO state that the ombudsman should provide training and education to the public about LTC issues. The Department’s ombudsman brochure states that the program

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<sup>39</sup> *Family Education & Outreach Final Report*, NCCNHR/AARP, 1998, [www.ltombudsman.org/PDF/REPORT598.pdf](http://www.ltombudsman.org/PDF/REPORT598.pdf).

<sup>40</sup> “Independence: The LTCOP’s Ability to Fully Represent Residents.” *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, National Association of State Long-Term Care Ombudsman Program Proceedings and Recommendations, 2003, p. 18, <http://nasop.org/papers/Bader.pdf>.

“educates consumers and long term care providers about resident rights and good care practices” and “provides information to the public on nursing homes and other long term care facilities and services, resident rights, and legislative and policy issues.”

However, Maryland’s NORS data for 2007 indicate that the SLTCOP engaged in no community education activities and no media interviews or discussions in that year. Our understanding is that 2007 was an unusual year due to extenuating staffing circumstances. (In 2006, the State Office of the LTCO engaged in one community education activity and two media interviews/discussions.) The data do not show that the SLTCO issued any press releases in either year.

All of Maryland’s public outreach activities in 2007 appear to have been conducted by local programs. As seen in Table 14, the State Ombudsman did none of the reported outreach activities. Their counterparts in the Benchmark States were active in these arenas.

**Table 14**

<b>Outreach Activities by State Offices (2007)</b>			
	<b>Community education sessions</b>	<b>Media interviews</b>	<b>Press releases</b>
Maryland	<b>0</b>	<b>0</b>	<b>0</b>
Georgia	20	17	1
Missouri	9	2	5
Oklahoma	2	3	26
Wash	2	12	0
Wisconsin	162	60	10

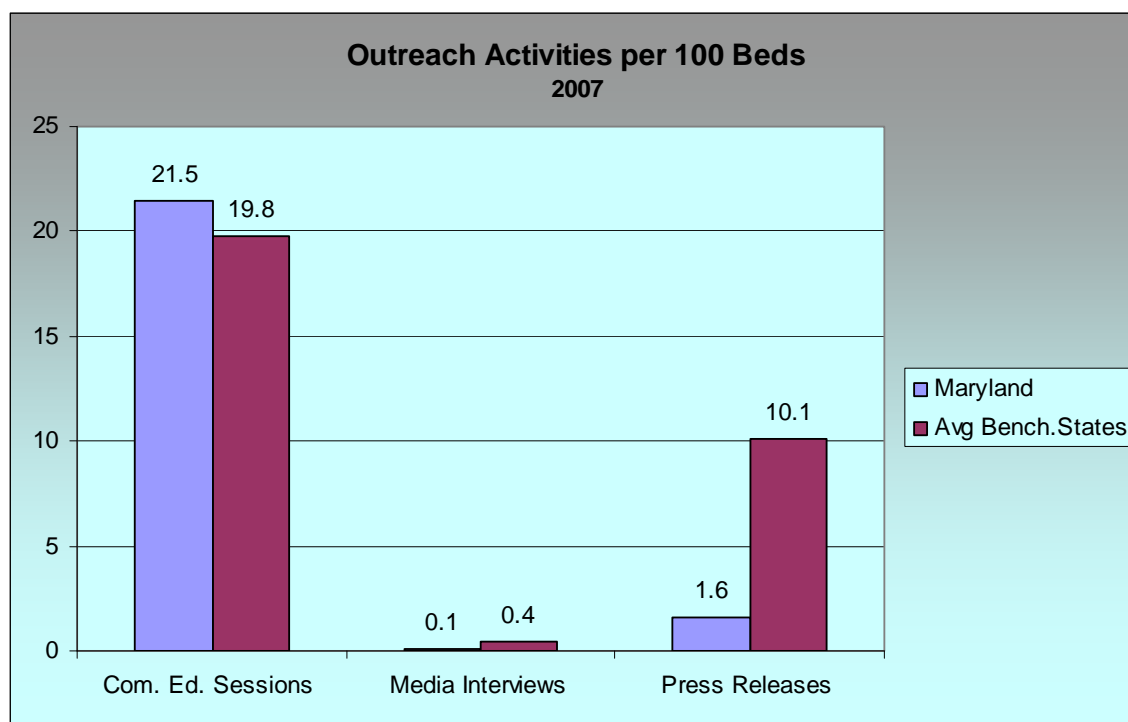
The SLTCO has a colorful brochure on the ombudsman program that includes telephone numbers for local ombudsman programs. The brochure identifies the role of the ombudsman as receiving and resolving complaints by LTC residents, educating consumers and LTC providers about residents’ rights, providing information to the public about LTC, promoting community involvement through volunteer opportunities, and protecting the identity of residents who make complaints. Several local ombudsman programs said they use the brochure.



The SLTCO also has produced a video, *Long Term Care Ombudsman* (9-1/2 minutes), which was created for a volunteer recognition event. The video describes the ombudsman program. It was distributed to all local ombudsman programs to use as a volunteer recruitment tool.

Looking at our four comparable states, Maryland reported fewer media interviews and press releases than Georgia, Oklahoma, Washington, or Wisconsin did in their NORS data for 2007. The following figure shows community outreach activities per 100 beds by the SLTCO and the local programs in Maryland and in our average benchmark states.

**Figure 25**



Source: NORS 2007

### ***Local Ombudsmen's Role in Public Awareness***

In Maryland, local ombudsmen attending our focus group meetings said their job should include educating individuals, facilities, and the public about the role of ombudsmen and resident

rights. Several ombudsman supervisors (program managers) attending the focus groups said that the ombudsman program should issue publications and do marketing as part of its public relations role.

One ombudsman commented, “We’re very good at educating. People call constantly on the phone and we have the opportunity to educate them when we are talking to them on the phone, in facilities, in the public, with everybody.” We note that when people have reached the ombudsman by phone, they are obviously aware of the program. Unknown is the number who do not call the ombudsman due to insufficient public awareness.

However, ombudsmen in the focus groups said that they might be less successful at educating AAAs and host agencies about the advocacy role of ombudsmen. They also said they needed to do a better job of educating other agencies and entities about what an ombudsman is supposed to do.

A survey of ombudsman supervisors found that one-quarter said they spend more than 20% of their time educating individual residents and family members about resident rights, Medicaid rules, and other matters; and 10% of their time on community or public education about the LTCOP or long-term care topics.

A similar survey of staff ombudsman found that half said they spend more than 10% of their time educating individuals and families. Almost 30% said they spend more than 10% of their time providing community or public education.

Half of the ombudsman supervisors said the Statewide LTCOP was “very” or “somewhat” effective at educating residents and family. More than 90% said their own local program was “very” or “somewhat” effective at resident/family education.

Asked how the public learns about the ombudsman program, focus group attendees cited referrals from a AAA or access point, information posted in nursing facilities, ombudsman volunteers visiting facilities, and the Internet.

Focus group members also said if they had more money they would use it for publicity about the program. One focus group attendee said state and local ombudsmen should do a better job of publicizing the program. But another said, “It is very time consuming and costly for each jurisdiction to do publicity. If the State would publicize the program, there would be more bang for the buck.”

Based on the NORS data for 2007, the 19 local ombudsman programs engaged in 345 community education activities and 14 interviews/discussions with the media, and issued 26 press releases.

In Maryland, community education also includes Elder Abuse Prevention, which focuses more on community abuse prevention issues than abuse prevention in facilities. In other states, community education focuses on LTC facility issues. Our review of public awareness materials provided by local ombudsman programs revealed that a majority deal with elder abuse prevention rather than education about nursing homes, resident rights, family councils, resident councils, and other similar issues.

NORS data for individual counties revealed that 74% of the 345 community education sessions occurred in only five counties (which conducted between 24 and 115 education sessions in 2007). Two counties reported no community education activities. The other 12 ombudsman programs reported community education activities ranging from one to 19 sessions in 2007.

No media interviews/discussions were reported by 13 of the local ombudsman programs in their NORS data. The other six local ombudsmen reported between one and six media contacts that year.

Eight ombudsman programs reported that they issued press releases in 2007; however, it was not clear whether those press releases were issued by the AAA or if they addressed topics related to the ombudsman program. The eight local programs that issued press releases that year indicated that they prepared between one and 9. One program manager said she usually issues a press release about Residents Rights Week. In some cases, the number of press releases reported exceeded the number of press releases posted on their AAA's website. None of those releases on the websites were about ombudsman programs.

### ***Local Ombudsman Activities***

There is a wide range in the scope and sophistication of ombudsman activities and materials throughout the State that could be identified as a form of public awareness. Most local programs did not respond to our survey question about outreach budgets, but those that did indicated amounts ranging from "no budget for outreach" to \$900. One program said there is no budget cost associated with outreach other than the salary of the staff.

Several ombudsmen said they write a monthly article in a local senior newspaper or a nursing home newsletter. One committed program manager uses her own money to produce an attractive handout about the program. Other public awareness activities reported by local ombudsmen programs are conducted through:

- telephone inquiries and walk-ins to office
- friendly visits to nursing homes
- relationship building with facility administrators and staff to encourage residents and families to contact the ombudsman program
- calling cards or door hangers
- admission packets for nursing homes

- attendance at resident and family councils
- fliers, posters, brochures about the ombudsman program
- handouts at events, such as health or senior fairs, conferences and community events
- website for the AAA or host agency
- public service announcements or advertisements
- county resource guide
- press releases on recruiting volunteers
- media interviews
- volunteer recruitment materials
- public presentations on ombudsmen, nursing facilities, elder abuse, or other LTC issues at local senior centers, colleges, adult day care centers and other community groups
- speaking at conferences
- education and in-service trainings on the topics of resident's rights, elder abuse awareness, the role of the ombudsman and sensitivity training
- attendance at senior informational events
- Older Americans Month or Residents' Week activities
- letters to community organizations explaining the ombudsman program and seeking volunteers
- "word of mouth"
- working with Voices for Quality Care on Culture Change seminars held around the State
- Medicaid waiver case managers
- participating on committees, task forces and other groups, including hospice, hospitals, mental health agencies, community colleges, sheriffs' departments, social services, aging councils and commissions
- receiving an award, such as from Voices for Quality Care, that recognizes the accomplishments of the ombudsman program
- seminars organized by ombudsmen on elder abuse, depression, elder abuse, etc. held at community colleges

Several innovative formats for local ombudsman program materials included:

- a post card-size handout that shows a human eye, with the label "You are our second pair of eyes," and instructions to report violations of residents rights and abuse to the local LTCOP
- a cardboard fan with residents' rights printed on it
- banquets to honor ombudsman volunteers that are attended by invited local and state political representations and community leaders
- materials that combine volunteer recruitment with public awareness

Effective outreach methods used by other states include public service announcements, press releases, media interviews, an informative state website, brochures, posters, and "freebies" such as pens and business cards with the program's contact information.

Widespread distribution of the State LTCO program's annual report can keep data, successes, and concern for residents in the public mind. In Florida, encouraging media coverage of the ombudsman program resulted in the recruitment of more volunteers. States such as Ohio have a webpage just for the ombudsman program, with links to useful information for the public and professionals (<http://aging.ohio.gov/services/ombudsman/>). Georgia has a website dedicated to the ombudsman program alone ([www.georgiaombudsman.org/](http://www.georgiaombudsman.org/)).

### **Activities: Ombudsman Volunteer Development**

Volunteers have been an integral part of the Long-Term Care Ombudsman Program since its initiation through several pilot projects. Arthur Flemming, who conceived the Long-Term Care Ombudsman Program (LTCOP) and nurtured it into a nationwide program, spoke eloquently of the need for ombudsman volunteers who are willing to make a difference to the lives of nursing home residents.<sup>41</sup> “The IOM found that programs that include ombudsman volunteers are able to make more routine visits and handle more complaints. The study found that volunteers add a level of authenticity to the program because they represent the community’s interest in protecting vulnerable older adults. The volunteer’s presence represents the grassroots approach that was the intention of the program by design. The standards developed by the IOM outline the importance of this resource and ensuring the effectiveness of volunteer programs.”<sup>42</sup>

Although there are some long-term care ombudsman programs with volunteers who do not resolve complaints, research supports the “value added” by a well trained and supported

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<sup>41</sup> *Advocates for Residents' Rights: The Older Americans Act Long Term Care Ombudsman Program*. Available on DVD from the National Long-Term Care Ombudsman Resource Center. NCCNHR. Washington, DC. 202-332-3375. [www.ltombudsman.org](http://www.ltombudsman.org)

<sup>42</sup> Ombudsman Compendium. Chapter 1, Recruitment. Julia Meashey. National Long-Term Care Ombudsman Resource Center. NCCNHR. Washington, DC. p. 7. [www.ltombudsman.org/ombpublic/468\\_2580\\_19130.cfm#compendium](http://www.ltombudsman.org/ombpublic/468_2580_19130.cfm#compendium).

cadre of volunteers. Wayne Nelson, Ph.D., nationally recognized expert in adult education and management of volunteer ombudsman programs, clearly makes a case for the contributions of volunteers. “Evidence confirms that volunteers are crucial to the LTCOP’s visibility, complaint identification, and problem resolution processes. Programs that effectively train and manage volunteers appear to be the best programs . . . and state ombudsmen clearly attribute the number of volunteers they field as critical to their overall effectiveness.”<sup>43</sup>

The foundation and guidance for volunteer ombudsmen are present, but sparse, for the Maryland Long-Term Care Ombudsman Program. The Maryland LTCOP regulations include volunteers in the definition of “patient advocate.”<sup>44</sup> The LTCOP Procedures Manual (1990) includes the following in the job description of local long-term care ombudsmen: “Recruit and train volunteer Resident Advocates.”<sup>45</sup> The Manual also provides one page of brief guidance on volunteer selection, recruitment, screening, interviewing, and training.<sup>46</sup>

There is public endorsement of using volunteers in the Maryland Ombudsman Program. A recommendation of the Report of the Task Force on Quality of Care in Maryland Nursing Facilities was, “Promote use of ombudsman volunteers, friendly visitors, and consumer advocates.”<sup>47</sup> After the Legislature appropriated additional funds for the Ombudsman Program (2000), the Department invited local LTCOPs to submit proposals to obtain these funds. The instructions for the “Ombudsman Program Initiative Proposals” included a section on the implementation of the Ombudsman Program Initiative. The plan “should include a volunteer component, either expanding current volunteer ombudsman programs, or initiating them where

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<sup>43</sup> *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003, p. 39. (Helen Bader Report) <http://nasop.org/papers/Bader.pdf>. See *Ombudsman Training and Certification: Toward a Standard of Best Practice*. Appendix VI. Wayne Nelson.

<sup>44</sup> Title 32, subpart 03, Chapter 02, Section .01 B (3), p. 175.

<sup>45</sup> Maryland LTCOP *Procedures Manual*, p. 15.

<sup>46</sup> Maryland LTCOP *Procedures Manual*, p. 84.

<sup>47</sup> Recommendation 6.2, Maryland Department of Aging. December 1999.

they do not exist.” (APD-00-03) These instructions indicate the Department’s support of volunteer ombudsmen and some effort to improve the capacity of local programs to develop and/or manage volunteers.

Apparently there was a statewide emphasis on volunteer ombudsmen a few years ago. The SLTCOP developed a manual, “Developing and Managing Volunteer Programs for Long-Term Care Ombudsman,” as a resource for local LTCOPs.<sup>48</sup> The SLTCO reported that during this time, training was provided on volunteer development and management, which was open to all local programs. The SLTCOP also connected with AARP to assist local programs in recruiting volunteer ombudsmen. However, during the time period of our study, there was almost no reference made to this manual. One local program reported using the manual that the ombudsman received during orientation training to teach volunteers. Another ombudsman in a town hall meeting said that the volunteer manual needed to be strengthened.

The State Ombudsman seeks to identify new funding sources and opportunities for local programs. The Carroll County LTCOP received a one-time grant to begin a P.E.E.R.<sup>49</sup> volunteer component as a result of applying for funding identified by the SLTCO.

In Maryland, 11 local long-term care ombudsman programs report using volunteers. When area agencies on aging directors were asked about the strengths of the Maryland LTCOP, five of the 11 respondents (45.5%) listed volunteer support. In 2007, there were 103 volunteers in Maryland. The Montgomery County Program has the largest volunteer corps and Baltimore County has the second largest number of volunteers. Several local programs report having three or less volunteers.

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<sup>48</sup> The version of the manual that HBABCs received has a file creation date of 2005.

<sup>49</sup> P.E.E.R: Prepared Empowered Expert Residents.



Recruitment and retention are the program's primary responsibilities in volunteer management.

### ***Recruitment***

The State Ombudsman reports that she assists with volunteer recruitment by working with AARP to target specific areas of the State for volunteer solicitation. Some programs, such as Montgomery County, work with RSVP to attract and retain volunteers. Other programs say that volunteer recruitment is conducted by the volunteer coordinator for the Area Agency on Aging. One program said that the AAA volunteer coordinator also works with the Volunteer Center in the county to extend the recruitment effort. In a few counties, recruitment flyers, articles in a newspaper targeted to seniors, an ombudsman newsletter, and outreach at county fairs, educational programs, and health events are primary recruitment tools.

A website posting from the Baltimore County LTCOP illustrates one practice.

The Baltimore County Department of Aging Long-Term Care Ombudsman Program is announcing a unique opportunity for caring, compassionate people to reach out and make a difference in the lives of Baltimore County nursing home residents. Volunteers provide friendly visitation and serve as advocates for residents. As a Volunteer Ombudsman, you will be trained to advocate, help to promote residents' rights and enhance the quality of life of long-term care residents.

Volunteers must be at least 21 years of age and able to make a six-month commitment. Training sessions are required. Volunteers are asked to visit a nursing home one to two hours a week.

The Baltimore County LTCOP has three different roles that volunteer ombudsmen may fill. Each has a different focus, with training and time responsibilities adapted for the level of responsibility. This approach permits flexibility for the ombudsman program in using a range of individual skills and personal preferences. It may require more staff time in tracking individuals,

training, providing technical assistance for different functions, and more varied supervision skills.

The two most frequently stated barriers to volunteer recruitment were limited ombudsman staff time and being located in a rural area or a small community where everyone knows everyone else. The survey of ombudsman staff and ombudsman program managers asked for estimates of time spent recruiting ombudsmen, paid or volunteer. Another question asked for the amount of time (percent) each person thought he or she should spend on recruitment. (Table 15.) Both staff and supervisors think that they should spend more time on recruitment activities.

**Table 15**

<b>Position</b>	<b>Percent Time</b>	<b><u>Do Spend on Recruitment</u></b>	<b><u>Should Spend on Recruitment</u></b>
Staff	< 10%	91.7%	54.2%
Supervisor	< 10%	83.4%	50%
Staff	11% – 20%	4.2%	12.5%
Supervisor	11% – 20%	8.3%	50%

Comments from Area Agencies on Aging directors and from Ombudsmen staff reflect the time demands of managing a volunteer program. A frequently articulated perspective is that insufficient funding for the LTCOP means that local programs cannot commit enough staff time to volunteer management for the volunteers to have a substantive impact in the local program. The significance of devoting sufficient resources to LTCO volunteer management was noted in the Report of the Task Force on Quality of Care in Maryland Nursing Facilities (December 1999). “Volunteers, however, are not ‘free’; for a volunteer program to operate effectively; it needs supervision, training, backup, and recognition.” The IOM study also noted that using volunteers takes a commitment of resources.

...some of the most successful ombudsman volunteer programs employ one person to serve as full-time coordinator or director of volunteers if the program has a volunteer staff of 20 or more. The Task force emphasizes the importance

of the coordinator not taking on other responsibilities. Well-trained and supervised volunteers in most circumstances can deliver the same ombudsman services as paid staff, provided volunteers have equal authority and receive similar support from those with whom the ombudsman works on behalf of residents.<sup>50</sup>

The IOM study recommended “a ratio of staff to volunteers be in the range of 1 paid FTE manager for every 20 to 40 volunteers.”<sup>51</sup>

In addition to the issue of insufficient staff to recruit and manage volunteers, stakeholders and Area Agency on Aging directors identified other problems.

- There is a lack of uniformity across the State; every jurisdiction operates its own way. Examples that were provided were that some local LTCOPs have a lot of volunteers; others have few, or none.
- The duties of the volunteer ombudsmen vary, with some programs enabling volunteers to resolve complaints and others limiting the role to a “friendly visitor,” which lead to turnover because the volunteers have little responsibility. “Trying to level the playing field so everybody is playing under the same rules, would be of value.”
- Some local LTCOPs say that because of the cost of insurance the program cannot use volunteers. “The state should have policies to support the counties with their volunteer force, especially liability issues. That’s why they can’t open cases, why they can’t drive county cars (gas prices!). If state would put in place a policy regarding volunteers, they could do more. We can’t because of liability issues.” “So on [the] state level, something has to be done to define what [the] volunteer is and what they are exempted from in terms of liability.”

### ***Retention***

Once volunteers are recruited, maintaining them is essential to their satisfaction and to serve residents. The State Ombudsman reports participating in volunteer recognition events, attending volunteer “graduation” ceremonies, and offering Certificates of Appreciation for volunteer service. These actions underscore that volunteers make important contributions to the statewide LTCOP. Training is addressed in the section “Findings: Training.” Sufficient staff time is fundamental to retaining volunteers. One local program stated, [It is] “Very time consuming to

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<sup>50</sup> IOM, op.cit., p.147.

<sup>51</sup> Ibid, p.160.

keep volunteers engaged and feeling a part of the larger LTCO Program umbrella.” Retention practices that Maryland programs use include periodic meetings with the volunteer at the assigned facility; email and phone contact; monthly mailings; and regular training sessions. Three programs (Baltimore County, Montgomery County, and Prince George’s County) host ombudsman volunteer recognition events on an annual basis and may host an additional holiday celebration event.

The Montgomery County Program described a close supervision and mentor relationship that is used for training and retention. Each ombudsman volunteer is assigned to a staff ombudsman. “The staff member will complete the initial introductions at the facility, followed by joint visits with the volunteers once a month for the first three months, and then develop a plan of supervision to follow. The ombudsman representatives will receive an annual evaluation from the staff member responsible for the oversight of their advocacy activities.” Other local programs have similar procedures for mentoring volunteers and oversight of ombudsman volunteer cases.

Ombudsman volunteers reported overall satisfaction with the support they received from their local program supervisor. One respondent said, “No complaints re: communication. Rapport is presently excellent.” Another volunteer commented, “I have an outstanding ‘manager’. Our communication is excellent. We discuss often matters concerning the facility I am assigned to.”

A majority also indicated that they did not have much knowledge of the Statewide LTCOP.<sup>52</sup> “I know very little about the State Ombudsman Program. Perhaps a newsletter would be helpful.” Someone else said, “I have little contact with the State LTCOP.” The lack of contact

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<sup>52</sup> Based on the volunteer survey results that used “neutral” or “don’t know” when responding to questions about the State LTCOP.

with the State LTCOP is not surprising since volunteers are recruited and supervised locally. Many are also trained locally. The lack of knowledge about the Statewide program could result in a feeling of isolation or a missed opportunity to realize the significance of contributing to a statewide endeavor on behalf of residents, or developing a statewide *esprit de corps*.

**Summary.** At least two local LTCOPs have strong, well-developed, systems for ombudsman volunteer management. Other programs have some consistent components for volunteers. However, for several local LTCOPs, volunteer management is fledgling or nonexistent. There is a lack of consistent statewide guidance, support, and identifiable resources from the State LTCOP regarding volunteer management. Variation in policies and approaches to volunteer management exist, resulting in the inconsistencies noted by the stakeholders. When AAA directors were asked to rank their top priorities if there were additional funds for the operation of the LTCOP, six (6) of the eleven (11) respondents included “better recruitment and support for volunteers” in their top five priorities. Overall, the local LTCOPs indicate a willingness to have volunteers in the LTCOP. The reality is that fundamental procedures, processes, leadership, and resources (support) are lacking to sustain a viable, statewide volunteer presence.

### **Activities: Training**

Training for service as a long-term care ombudsman is essential to acquiring the skills and knowledge necessary to effectively represent residents. The Older Americans Act recognizes the importance of training content and requires certain topics. Specific recommendations

regarding training were one of six areas addressed in *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future: Proceedings and Recommendations*.<sup>53</sup>

The OAA stipulates that initial ombudsman training must include laws, regulations, and policies relating to long-term care facilities and investigative techniques. It also says that the State LTCO must prohibit any representative of the Office of the SLTCO from performing the activities of the program until the representative has received the specified training and has been approved by the SLTCO as qualified to carry out the activities.<sup>54</sup>

The IOM report on the Long-Term Care Ombudsman Program contains a set of practice standards to guide programs toward effectiveness. A few of these address training.

#### **Qualifications of Representatives of the Office**<sup>55</sup>

<b>Exemplary Practices</b>	<b>Essential Practices</b>
The program maintains a reputation as one staffed by well-prepared, knowledgeable workers familiar with the latest developments and trends and generously able to help others learn its knowledge and skills. Training is conducted in a manner developed to foster and encourage the ongoing improvement and skills of every representative of the Office.	Representatives have in-depth initial training prior to performing any duties, are assessed for competence prior to acting directly without direct supervision, and receive ongoing training and supervision to improve skills and to stay abreast of program and LTC developments.

In Maryland, the Ombudsman statute requires the Secretary to adopt regulations for minimum training requirements for all program staff and volunteers. (§10-213(d)(2)). The regulations contain the following training requirements and list subject areas to be covered in training. (COMAR 32.03.02.03)

<sup>53</sup> National Association of State Long-Term Care Ombudsman Programs. 2003. <http://nasop.org/papers/Bader.pdf>.

<sup>54</sup> §3058g (h)(4)and (h)(5).

<sup>55</sup> IOM, op.cit., Table 5.3, p. 165.

The <b>State</b> ombudsman shall provide and the local ombudsman shall participate in:	The <b>local</b> ombudsman shall provide, and the patient advocates <sup>56</sup> shall participate in, the following training for patient advocates:
At least 14 hours of orientation to provide a working knowledge of the long-term care system and the Statewide Ombudsman Program	At least 20 hours of initial training to provide a working knowledge of the long-term care system and the Statewide Ombudsman Program
At least quarterly in-service meetings, each at least 1 day in duration	At least quarterly in-service meetings, each at least 3 hours in duration
Technical assistance on a continuing, as-needed basis	Technical assistance on a continuing, as-needed basis.

In the Procedures Manual (1990), providing training for patient advocates and others is included in the job descriptions for local ombudsmen and for the State Ombudsman. The job qualifications for local ombudsmen state: “All ombudsmen will be certified as a LTCO by meeting the State certification requirements.”<sup>57</sup> Apart from the required hours of training and the content list, there is no process for certification or designation as included in the OAA or recommended by IOM. It is our understanding that the State Ombudsman Program is currently working with the MDoA to promulgate revised training regulations which include a certification process.

### ***Orientation Training***

Long Term Care Ombudsman Program Orientation Training for Maryland ombudsmen is conducted by the State Ombudsman and is open to any staff or volunteers who wish to attend. The training is four days, includes the required hours, and covers the stipulated topics. It usually is conducted twice a year in Baltimore. The following excerpt from a Memorandum #08-11 from the Office of SLTCO to Area Agency on Aging Directors and Long Term Care Ombudsmen is a

<sup>56</sup> “Patient advocate” means the director of the local nursing home ombudsman program, the Director of the State Nursing Home Ombudsman Program, or the professional staff and volunteers working in these programs. (COMAR 32.03.03.01(B)(3)).

<sup>57</sup> Maryland’s LTCOP *Procedures Manual*, 1990, p. 14.

typical announcement. This excerpt contains a statement about the anticipation of a certification process, which has not been implemented to date. This memo is dated September 22, 2008.

References to certification training were identified in other memos announcing orientation training dating back through 2006.<sup>58</sup>

The Maryland Department of Aging, in accordance with the Older Americans Act and Maryland Law, has scheduled Orientation Training for New Long Term Care Ombudsmen. The training session will provide new staff persons with basic information regarding the Ombudsman Program and the long term care system. The training will consist of 28 hours of classroom training. The orientation training is the first component of the process that all Ombudsmen must complete in anticipation of certification through the Department of Aging.

During the orientation training, participants receive numerous printed materials, including copies of relevant laws and regulations and the Ombudsman Procedures Manual (1999). The basic training curriculum for local LTCO developed by the National Long-Term Care Ombudsman Resource Center is included in the orientation materials. Training content is provided by numerous individuals from different agencies and programs. An experienced Maryland ombudsman provides the training on the complaint process and sometimes provides training on ombudsman documentation for the National Ombudsman Reporting System or using OmbudsManager. Speakers from the National Long-Term Care Ombudsman Resource Center and from the Administration on Aging often present a section of the training (a huge advantage Maryland has, due to its proximity to Washington, D.C.). The State LTCO said that the orientation trainers are asked to use the national curriculum modules as the basis for their presentations. A review of several agendas from the orientation training demonstrates an overall consistency in the content. This training offers core information and resources for all staff and volunteers who complete it.

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<sup>58</sup> Orientation announcements from 2006 to present were reviewed during this study.



Although staff ombudsmen occasionally report waiting for several months before an orientation training is offered, most report being trained within a couple of months of being employed as an ombudsman. Two long delays identified were a period of seven months, and eight months. During the interim time, the ombudsman staff had phone contact with the State Ombudsman and with ombudsmen in other programs. One of these ombudsmen reported being told by the State Ombudsman that the Procedures Manual was to be their tool and provide the necessary guidance until the orientation training was conducted. In programs where there are at least two trained ombudsmen, when a new person is employed there is someone else to provide some guidance and early assistance. This is not available in all local programs.

Ombudsmen commented on the materials received during the orientation training. “I have not yet [in six years] read all the materials [in the plastic bags] they gave us.” We heard other comments about the poor quality copies of the orientation materials, the quantity of the documents, and the distribution of stacks of materials in plastic bags. These factors are a deterrent to using the information after the orientation session and send a message that the information is not vitally important to the work of the ombudsman. To improve the orientation training, several ombudsmen strongly suggested having an updated training manual. One person asked that certification training be at the top of the list of improvements. Another ombudsman said that “we have been waiting for eight years” to get certification training.

### **Ongoing Training**

In addition to the semi-annual orientation training for new staff ombudsmen, the State Ombudsman provides bi-monthly training for ombudsmen. These day-long sessions are held in Baltimore City, and in Anne Arundel, Baltimore, and Howard counties. The ongoing sessions and the orientation training sessions mean the State Ombudsman conducts eight training sessions

a year that are open to all ombudsmen, staff or volunteers. These sessions may expose ombudsmen to new initiatives by other departments such as the January 2009 training conducted by the Office of Health Care Quality. Other training sessions may focus on a specific aspect of advocacy, such as the day of training on legislative advocacy in January 2008. The State Ombudsman informs local ombudsmen of additional training opportunities such as teleconferences sponsored by the National Long-Term Care Ombudsman Resource Center or by other agencies or programs in Maryland.

We heard various perspectives on the State LTCOP training from ombudsmen, volunteers, and AAA directors. Ombudsmen identified aspects of the training that are helpful to them. “I like the bi-monthly meetings because I am new and learn a lot. It is useful to hear other ombudsmen discuss issues.” There was general acknowledgment of the value of training on using the National Ombudsman Reporting System to document complaint work and ombudsman activities.

We heard numerous suggestions for improving the training. Areas of general agreement are highlighted below.

- **Speakers:** Increase the variety of individuals used and primarily invite speakers who understand the role of the ombudsman and can apply the content to ombudsman work. “Some of the presenters are not tailored to the LTC residents, so it doesn’t fit what we need to know.” “We get better training when we bring in professionals in their fields.”
- **Content and Methodology:** Increase the variety of topics presented, avoid focusing on the same topics such as monitoring and investigating complaints. One person commented, “The AAA has not been impressed with training, which appears to be

repetitive and primarily targeted to the ‘new’ ombudsmen; it offers little substance or innovation to the more experienced LTCO.” Most of the training is other agencies or organizations giving us information in a lecture style. Ombudsmen need more interactive training. Many individuals asked for more time for ombudsmen to share their best practices or to contribute to a facilitated discussion about tough case issues, particularly in “gray” areas of ombudsman practice. Tailor the content and length of training to the role with the ombudsman program. One example is that information that program managers need to know, add an extra session to provide that information. Do not make everyone sit through that session. Use some hands-on training, especially for new staff so that they gain field experience with another ombudsman.

- **Location:** Move the training location to other parts of the State or rotate the location. Consider de-centralized training that could be offered on the local level.
- **Count other training sessions:** Create a way for ombudsmen to attend a seminar or training session pertinent to ombudsman work that is offered through another organization and let it count toward the required in-service training hours.
- **Offer more multi-state training conferences** such as the one in Pennsylvania or some of the ones held with adjacent states in the Baltimore or District of Columbia area. The cross-fertilization with other LTCO programs is helpful and energizing.
- **Conduct an annual statewide ombudsman conference** that has more in-depth training sessions and is not the orientation training.

## **Training for Ombudsman Volunteers**

The State regulations and the Procedures Manual state that training ombudsman volunteers is the responsibility of the local ombudsman. Based upon the information that we received from local programs, there are varied approaches to volunteer training. Some programs have their volunteers attend the State Ombudsman's orientation training and provide some initial orientation and on-going training at the local level. Other programs (Montgomery, Baltimore County, Carroll, and Washington) conduct their own orientation training that complies with the requirements. Almost all programs report a local training component of having new ombudsmen begin facility visitation with an experienced ombudsman. The local programs provide on-going training for volunteers and sometimes for ombudsman staff as well.

Ombudsman volunteers offered suggestions for improving the training they receive. They asked that initial and ongoing training be "focusing on skills, rather than regulations." They also want more training, especially regarding procedures and laws, and on better outcomes for resolving problems at the nursing home. One person asked for regular meetings that can accommodate volunteers who have full-time jobs.

Staff ombudsmen stated a need for more assistance with training materials from the State Ombudsman. The "State could give us more support in training volunteers. [There was] supposed to be [a] manual and standard training, that we could all use instead of us just each inventing our own. It never came out." The State LTCO did mail each program manager a CD containing the Investigation Module of the basic ombudsman curriculum produced by the National Long-Term Care Ombudsman Resource Center. The module includes teaching notes and other materials. The link to all of the curriculum modules on the NORC website was provided in the cover memo with the CD (June 1, 2006). The State LTCO reported giving each local program a CD of the entire national curriculum after it was completed in January of 2007.

Program managers, staff ombudsmen, and ombudsman volunteers were asked what topics they wanted more training on, less training on, or about the same amount of training. There were some differences of opinion among the different positions. (Figures 26 and 27.) The following are examples of such differences:

Program managers indicated that more training on ethical dilemmas was the area of greatest need. The volunteer ombudsmen indicated that conflict resolution was their greatest need for additional training. For staff ombudsmen two topics were highly rated for more training: complaint resolution and working with non-elderly residents.

**Figure 26**

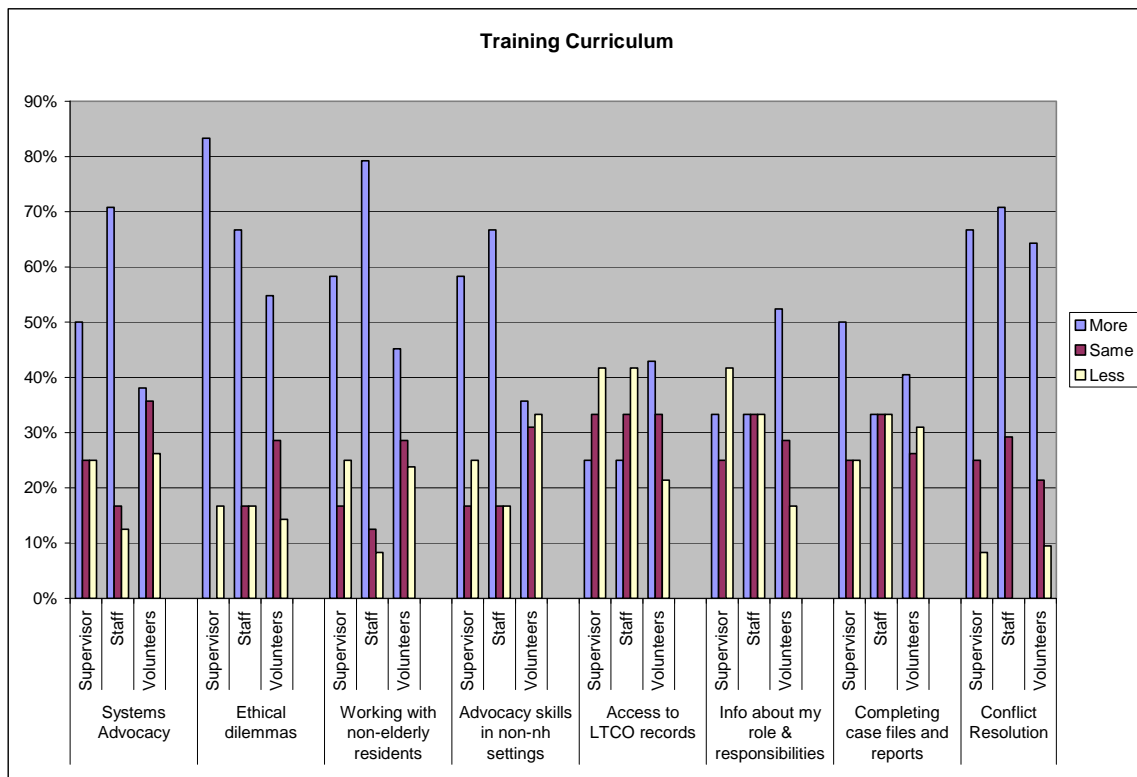
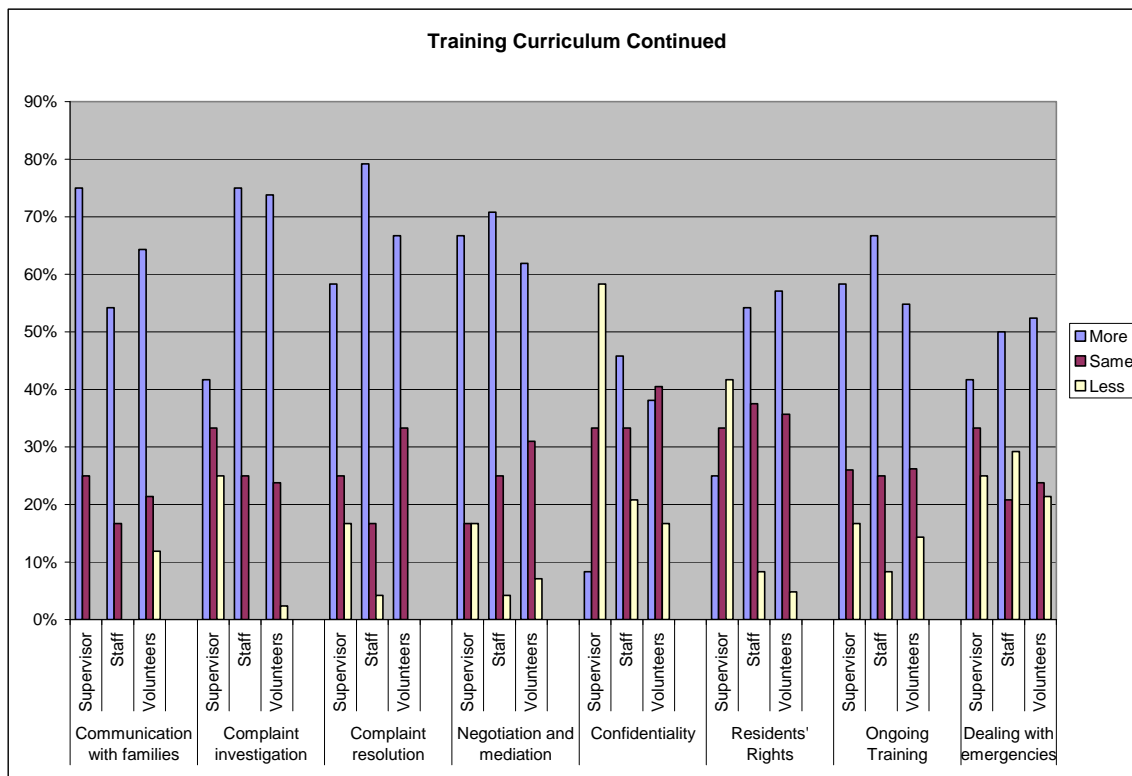


Figure 27



### Certification Training

The OAA states that the Office of the LTCO may designate representatives of the Office. Individuals who have not complied with the State's LTCOP training standards or have not been designated by the State LTCO as qualified to carry out ombudsman responsibilities cannot do so. These provisions support a State LTCOP having an official process for designation by which an individual is deemed qualified to fulfill LTCOP responsibilities delegated by the SLTCO. Many states use the term *designation* for this conferring or delegating of responsibilities.<sup>59</sup>

*Certification* is one primary component of the designation requirements. Certification is the process for completing basic training to equip a person to be an ombudsman. Certification often has several components. It includes classroom training, other training requirements, an

<sup>59</sup> Ombudsman Best Practices: Training for Long Term Care Ombudsmen. Hunt, Sara. June 2000. p. 5. National Long-Term Care Ombudsman Resource Center. NCCNHR. Washington, DC. [www.ltombudsman.org](http://www.ltombudsman.org).

examination or objective assessment of knowledge and skills, and a practice-based component such as an internship or working with a mentor. Because certification for Maryland ombudsmen has been previously mentioned in this section, it is instructive to see how Maryland's training compares with that of other states.

The most recent national survey of ombudsman training reveals that the average number of *classroom* hours required for certification is 34.<sup>60</sup> This training includes volunteer and paid staff requirements. Most states supplement the classroom training with other elements such as facility visits with experienced local ombudsmen. The National Long-Term Care Ombudsman Resource Center has a curriculum for basic ombudsman training covering the history, skills, and ethical aspects of the long-term care ombudsman role. Many states are using this curriculum, which is application-based and introduces laws, regulations, policies, and documentation as they relate to resolving resident complaints. The curriculum minimizes lecture and provides an opportunity for students to practice before they work with residents. Although the State LTCO asks orientation trainers to use this curriculum as the basis of their presentations, we did not hear comments that indicated that orientation training was a unified, hands-on approach to learning the ombudsman role. Some states, such as California and Tennessee, have made the national curriculum state-specific and have added state components.

Almost half of the States responding to the 2003 nationwide survey have a pre-training orientation. More than one-third have a probationary or trial period for the prospective ombudsman and the program to determine if the person is a good fit for the ombudsman role. A few of the local LTCO programs in Maryland include a role orientation exercise or discussion as part of their training.

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<sup>60</sup> Survey conducted by the National Association of State Long-Term Care Ombudsman Programs Training Committee, 33 states responded. Results distributed to State Ombudsmen in hard copy in April 2003.

Many states build in one or more cases for students to tackle during training to reinforce ombudsman process and principles. We did not, however, find evidence that practice in working a case through from initial referral to resolution, including documentation, was part of Maryland's training. The national survey of certification components reveals that 18 states use written examinations and six states use both written and oral examinations. Nineteen states use internships, visits with mentors, field training, or job shadowing. Twelve of the 33 states use probationary periods for potential ombudsmen. Maryland's requirements for orientation training do not include such additional components.

The national survey found an average of 14 hours of ongoing training required for volunteers with a range of six to 35 hours. Maryland's requirement for annual in-service training hours is within this range.

### **Summary**

The Maryland State LTCOP offers orientation training on a regular basis for staff and volunteers. On-going training sessions are conducted bi-monthly. Volunteers may attend these sessions on a space-available basis. The program provides information intended to keep ombudsman up-to-date with changes in regulations or new initiatives or programs applicable to ombudsman work. Ombudsmen are exposed to individuals from other agencies and programs during the training sessions. Resources and information about other training opportunities and tools are shared with the ombudsman staff. Training events are held in Baltimore City, and Anne Arundel, Baltimore, and Howard counties.

Local programs are responsible for training staff ombudsmen and volunteers. A local program may use the training conducted by the State Ombudsman to meet its training responsibilities. Programs with volunteers conduct their own in-service training even if the



orientation training is the training offered by the State. A number of the programs with volunteers include an initial orientation to the program and some supervised visits to a facility for the new ombudsman.

The Maryland provisions for training are not consistent with the OAA's requirement to assure that representatives of the State Ombudsman have the specified training and have been approved as qualified before serving as ombudsmen. The orientation training is a stand-alone event without the additional components that many states use as part of a certification process. Other than attending the required hours of training, no other indicator was identified as a basis for approval as qualified by the State Ombudsman. Areas for improvement in training content, materials, and methodology were identified.

## Accountability and Quality Improvement

Accountability and quality improvement, while different in scope and responsibility, both relate to the task of assuring that activities are conducted properly and with the maximum benefit to consumers. Accountability focuses on the responsibility of workers to follow the laws, policies, and instructions related to their jobs. It is normally a task performed by higher authorities. Quality improvement looks beyond minimum standards, finding ways to enhance services and products to meet the needs of consumers. It may be conducted not only by superior officers in an organization but also by workers at every level. Because of the affinity of accountability and quality improvement, we will discuss these functions in a single section.

### Accountability

The organization of the program, including relationships of the area agencies on aging (AAAs) with the Office of the SLTCO, diminishes the potential for the accountability of the local programs. These factors are discussed in the sections “Findings: Organization” and “Findings: Governance,” which deal with the Older Americans Act’s requirement of the unique, statewide authority of the SLTCO.

This is not to imply that ombudsmen are not accountable. All indications point to the AAAs’ roles in monitoring the work of these employees. Here, we present findings concerning the role of the MDoA and the Office of the SLTCO in assuring the highest levels of performance and quality and the consistency of the program across the State.

Ombudsmen and other stakeholders perceive that the local programs are not held accountable and that this results in unevenness and sub-standard work in some areas. A program manager, speaking in a Town Hall meeting, said, “The *State* needs to hold locals accountable to meet the standards.” (Emphasis added.)

A stakeholder (not from within the program), observed that the program has a “conflict of expectations.” Others supported the idea of standards to which the ombudsmen would be held accountable, statewide.

### ***Contracts or Similar Binding Agreements***

MDoA does not contract with local ombudsman programs apart from its process of area plan submission and approval. Consequently, the basis for accountability of designated Ombudsman programs is the area plan with the AAAs. Each year, the AAAs submit an area plan or an update to the plan. These plans include narrative descriptions of the activities of the program. They also contain statements of issues that the AAA and the program are encountering and offer remedies to these issues.

Area plans include an assurance that “all funds are to be expended for the purposes set forth herein and in accordance with all applicable laws, regulations, policies, and procedures of the U.S. Administration on Aging and the State of Maryland.”

Although regulations and Aging Program Directives of the ombudsman program are binding on the local programs, at no place in the area plan are they specifically cited. The existing regulations are more than 10 years old. A task force, working with an external consultant in 1999, recommended a thorough revision and offered an extensive draft of new “Regulations/Policy and Procedures.” Due to frequent changes in leadership positions and to other exigencies in the intervening years, however, the Department has not promulgated these or other new regulations, policies, and procedures. The program’s Procedures Manual was issued in 1990.

Each area plan includes Service Needs Form E, which contains several statistics related to performance. The “Facilities Visitation Data” section of this form lists the number of nursing

homes and assisted living facilities and a proposed number of visits to these homes. It does not, however, report the programs' performance in prior years in conducting such visits. The "Cases and Complaints Data" section of Form E displays the prior year's performance in opening cases and in opening and closing complaints, followed by projections for upcoming years.

Following these statistics, the AAA is asked to "Indicate how the AAA will respond to complaints of possible abuse of vulnerable adults in" nursing homes and assisted living settings.

Finally, the AAA lists its numbers of volunteers and certain activities (training sessions for facility staff, consults to facilities, information, and consultations to individuals, surveys attended, sessions with resident councils, sessions with family councils, and community education sessions). For each of these parameters, the AAA states its performance over the past year and projections for the upcoming two years. Some areas project increases in the number of visits to facilities. In a few of the area plans, however, the AAA actually projects a decrease in the number of some activities. One AAA projected a decrease in cases opened from 53 in 2007 to 10 in 2009.

Aside from the assurances, which are general and reference the Older Americans Act, area plans express no agreement concerning significant LTCO issues (e.g., confidentiality, conflicts of interest, or timeliness of responses).

### ***Monitoring***

On an annual schedule, the State LTCO monitors local program performance.  
(Monitoring occurred less than once a year when staff shortages occurred.)

The monitoring process begins with a pre-monitoring report written by the local program manager. It is a form-based narrative in which the manager responds to questions under seven rubrics:

- Complaint Resolution
- Facility Visitation
- Resource Utilization
- Volunteer Activity
- Service Outcomes/Systems Advocacy
- Fiscal/Program Management/Supervision
- Needs Assessment

In her monitoring visit to the local office, the SLTCO discusses these areas, makes observations, and offers advice for program improvement. Dominating these discussions are complaints by the local LTCOs concerning their working relationships with facilities and collaborating agencies (usually Adult Protective Services and the Office of Health Care Quality).

The SLTCO also reviews between 10 and 20 randomly selected cases during almost all monitoring visits. In these reviews of case files, she scans records to determine whether ombudsmen have followed proper procedures (e.g., obtaining a resident's permission to investigate a complaint) and the timeliness of investigations and resolutions. She offers caveats and suggestions for improvement.

Now that OmbudsManager is online, these reviews could be conducted in the office of the SLTCO.

The SLTCO does not, as part of monitoring, visit facilities with LTCOs to determine the ombudsmen's observation skills or relationships with residents and staff.

Reports of the monitoring contain observations and suggestions. The SLTCO related to us that she has had discussions with program managers about the requirements for volunteers and pointed out that that any person participating under the auspices of the Ombudsman Program had to meet program requirements, especially for training, monitoring, and supervision.

She may pursue issues not remedied in previous monitoring visits. For example, during one monitoring period, she found that the ombudsman shared an office with staff from another

program. She pointed out that this situation compromised the ombudsman's confidentiality. When she returned, she found that the ombudsman had been moved to a cubicle on another floor that was shared with five staff from other programs and noted that there is public access in that area.

Because agreements with the sponsoring agencies (i.e., area plans) contain no specific language concerning the provision for confidentiality in the ombudsmen's work space, the SLTCO cannot require the AAA to provide an office for the local ombudsman.

Monitoring reports do not reflect reviews of program performance measures. Although the SLTCO lists "action steps," she does not work with the local program to set measurable goals with performance indicators.

Some ombudsmen indicate that the monitoring process is useful. "Specific case reviews give me an idea of what to look for," said one. Another indicated that the effort to prepare the pre-monitoring report is worthwhile. "I think about our highs and lows. [The SLTCO] focuses on these." One program manager recalled that, in her first year on the job, the monitoring visit provided an opportunity to "ask questions about cases...how to resolve them." The SLTCO gave her useful pointers.

Suggestions for improving monitoring included the statement from a program manager: "I would like to see them spend a day, go out, interview a resident or two. Just coming down once a year can't actually capture the picture."

Some ombudsmen in Town Hall meetings demeaned the effectiveness of monitoring. One said that monitoring is "unrealistic, because there is only one person to look at records. I'm pretty sure no one is going to look at my records for at least another 18 months."

## Quality Improvement

Quality improvement (or “continuous quality improvement”) embeds within the operation of an organization processes for improving performance and results. Employees and supervisors work together, using statistical measures, to track processes, and measure inputs, outputs, and outcomes. They set measurable objectives and action plans. Several state ombudsman programs utilize some form of these methods, which are often built into not only monitoring but also annual contracting and designation of entities that represent the SLTCO in local areas. These will be described briefly in “Recommendations: Accountability and Quality Improvement.”

The area plans reflect attempts at managing quality and occasionally show projected improvements in outputs (e.g., visits to facilities). Rarely, however, does a AAA suggest concrete strategic or tactical plans or measurable goals for improvement. For example, AAAs may say that they have no volunteers and that they plan to recruit some. They do not proceed to list the steps they plan to take to recruit and train volunteers nor do they set goals for volunteer recruitment.

Independently, but not as a part of a statewide process, some AAA directors and program managers describe their use of data to improve their programs. (See “Findings: Data: Collection, Reporting, and Other Uses.”)

No measures of results are apparent. Indeed, there is little agreement within the program as to what would be appropriate, measurable results. Most ombudsmen interviewed felt that client satisfaction is the best measure, reflecting the statement by one program manager, “The best measure of results is the satisfaction of residents. Thank you calls, letters.”

Asked directly, no program manager said, however, that he or she uses any routine method to obtain client satisfaction.

We have discussed the use of statistical objectives in the State's "Managing for Results" (MFR) report in the section "Findings: Data: Collection, Reporting, and Other Uses." We find no evidence that the Office of the SLTCO or MDoA uses these numeric measures to actually manage the program or its operations.

### **Program Responsibility Concerning Advocacy**

Systems advocacy poses a particular issue with regard to accountability. State and local agencies may be concerned that ombudsmen will violate laws and policy when they address issues with the legislature, other State agencies, or the media. They are concerned that such advocacy be founded in fact and conducted appropriately.

By law, State Agencies on Aging have the responsibility to establish and administer ombudsman programs. These duties include assuring that the ombudsman program operates appropriately and effectively. At the same time, federal law requires the State to ensure that the SLTCO carries out all of his or her duties as provided in the Older Americans Act.

We found that the SLTCO and other representatives of the Office of the SLTCO are limited by state and county rules and practices in the fulfillment of their obligation, under the OAA, to represent the interests of the residents of long-term care facilities with other government agencies, the General Assembly, Congress, or the media, regarding problems and conditions that affect residents or the ombudsman program (systems advocacy).

Administrators of the MDoA, while aware of the need for ombudsman independence in its advocacy, expressed concern that the program be responsible to the Department and the State's Administration.



Such concern is reasonable, given the Department's responsibility for the Office of the SLTCO. Except in a small percentage of the local programs, we found no procedures, however, for ombudsmen to carry out their systems advocacy responsibility while remaining accountable to the State Ombudsman or the MDoA.

### **Summary**

Accountability in the Maryland Office of the SLTCO is limited by the insufficiency of ombudsman-specific agreements between the MDoA and the sponsoring agencies (AAAs). Contributing to this limit is the fact that regulations for the program are out of date.

Monitoring of local programs is conducted regularly, but not frequently. Monitoring is general in nature; it does not make use of available statistics either for assessment of performance or for setting measurable objectives. Reviews of cases during monitoring appear to be specific and useful.

The Office of the SLTCO does not have a systematic process for "continuous quality improvement."

## **Data: Collection, Reporting, and Other Uses**

For many ombudsman programs, statistical data have evolved from “necessary evil” (such as reporting to funding sources) to a valued tool of the trade. Once the province of researchers, well-documented numbers now provide support for advocacy positions, bases for priorities, keys to improved processes, and rationales for training programs. Further, as the public becomes aware of ombudsmen’s information resources, individuals, advocacy groups, legislators, and reporters turn to them for understanding the quality of care in the world of long-term care.

The Older Americans Act requires state agencies on aging to establish “statewide uniform reporting” systems and to submit reports annually to the Administration on Aging and other entities. Maryland law has a similar requirement, as do other funding sources.

The Administration on Aging specifies protocols for the National Ombudsman Reporting System (NORS). States have modeled their data systems to provide the required data in a format that meet NORS standards.

The Maryland Ombudsman Program amasses and communicates data to:

- report statistics to the MDoA, AAAs, and the U.S. Administration on Aging;
- track cases;
- keep records of complaints;
- keep records of complainants; and
- administer the program.

For several years, the program has used OmbudsManager, a data package also employed by other programs across the nation. In 2007, the Department invested \$66,800 in information technology improvements that allowed it to convert its data management and reporting system to a web-based function. The system was launched in October 2008.

OmbudsManager accommodates most, if not all, of the program's data needs. Among the standard reports available using this application are:

- required NORS reports;
- types of complaints received from residents and other complainants, reported by facility;
- cases opened and closed within each district (including all details on the cases); and
- lists of open cases.

The State Ombudsman and local program managers can perform important administrative functions using these and other standardized reports. In addition, ombudsmen at the State and local offices may use data managed by the system to support systems advocacy.

### **Documentation (“Paperwork”)**

In all of the local programs, ombudsmen enter data from their own activities (in one program, a clerical assistant provides limited help).

Responses to our survey noted considerable unrest among ombudsmen concerning the amount of documentation they are required to complete and submit. They spoke of “too much paperwork” and considered it a distraction from their core responsibilities. According to a program manager, speaking in a Town Hall meeting, “Unfortunately I see that much of the ombudsman time that I wish they could spend in the facilities they are spending at the computer inputting their notes and other data. I need to spend two hours of my own time to do documentation if I’m out all day.”

We observed in our sections “Findings: Human Resources” and “Findings: Activities: Public Awareness” that ombudsmen in most areas devote a large proportion of their time to Elder Abuse Prevention activities. These duties are not considered separate from ombudsman activity and are reported in OmbudsManager. This additional, unrelated, activity adds to the data entry workload.

Several AAA directors surveyed and program managers interviewed complained of redundancies in data reported. They think some data could be entered once rather than multiple times.

One program maintains a separate set of records, which they use for program management in place of using OmbudsManager.

Frequently, ombudsmen advocate for having laptop or notebook computers so that they may more rapidly—often, on the spot—enter data. At least one local program (Prince George’s County) has purchased laptops. Others say that they would do so if they had the funds.

### **Accuracy of Data**

Data accuracy is a concern, due largely to the potential for inconsistencies in data coding. One ombudsman stated in a Town Hall meeting: “We’ve used OmbudsManager for years, but a couple months ago we found out that everybody is using it differently, or not using it, making up different things for different stuff, complete chaos, and so when the NORS report comes out, no wonder it looks like a . . . circus, because everybody is doing something completely different. Even within agencies, even within the same program.”

Another illustrated: “Some will open it [a case] in our software as a case from the very first report of involuntary discharge; others would not until we are going to actively be representing (the resident).” One AAA director said, “The data is difficult to use because I think some of it is very subjective, like a complainant’s expectation of how a complaint will be resolved, what satisfaction is.”

The State Ombudsman and local ombudsmen have recently participated in intensive training to improve the consistency of data coding and data entry. One local program with

several staff discusses their data in monthly meetings. “We challenge each other on coding. We may turn to [the SLTCO] for advice,” the program manager told us.

We also found inconsistencies in reporting financial data. While some AAAs report in-kind contributions to the LTCOP, Montgomery County told us that it has “traditionally . . . not reported in-kind support for the annual NORS submission.”

### **Uses of Data**

Besides reporting and answering questions of legislators, reporters, and others, several state ombudsman programs use their statistics intensively as part of their planning and quality improvement efforts. Details on two of these programs are included in the section “Recommendations: Activities: Accountability and Quality Improvement.”

State programs have also used numeric data to support advocacy in the legislature and to issue public statements on conditions of individual facilities, facilities owned by certain companies, or all facilities in their states.<sup>61</sup>

#### ***Statistics Seldom Used***

Although ombudsmen at the State and local levels in Maryland possess a formidable arsenal of statistics, aside from reporting, statistical data appears to serve little purpose in the Maryland program. “Data is not used for program management. They just give it to the feds,” a stakeholder in the consumer focus group said.

Our observations match the Statement, with a few exceptions. Twenty percent (20%) of the responding AAA directors said that they often use program reports and data to set goals for improvement and 60% say they use it annually for this purpose. Thirteen percent (13%) said they never use it for goal setting. Two said that data are used “to help determine staff and volunteer

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<sup>61</sup> “LTCOP Data and Information.” Kautz, Jim. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, Appendix VII. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003. <http://nasop.org/papers/Bader.pdf>

assignments;” another said that the AAA used data to make the case for increasing the number of staff. Most of the program managers we interviewed admitted to making very little use of statistical data except to file an annual report. “Data is just numbers; we don’t use them,” said one program manager.

On the other hand, we found a few directors and managers who make use of data. “It’s a wonderful tool,” according to one local manager. “I can get all kinds of wonderful reports; it keeps them [the ombudsmen she supervises] focused on tasks.” Another listed her uses of data as: determining training needs, a basis for giving “kudos to individuals and the staff as a whole,” and tracking trends at facilities. In one area, statistics help the manager decide who she assigns facilities to: “When something is troubling in a facility, I reassign LTCOs to fit their skill sets. (I change LTCO assignments every 6 months so they do not become overly familiar with staff.)”

An area agency director said that his or her agency uses data:

to focus on what is happening. Are issues widespread? Are we missing something? I sit down with (the ombudsman manager) and talk about what can be done. Reviewing data focuses our energy and educational efforts. Our trainer uses this information as well. This guides us and also helps with writing our goals and strategic planning. I look at [NORS data in OmbudsManager] fairly often although not every month. I have monthly meetings with educator coordinator. I take my talking points from what is happening in the field. We may be called from a legislator who is sponsoring a bill or has issues of questions, we pull this for them.

A program manager told a Town Hall meeting that she used statistical data to set goals for reducing the number of open cases in her area.

“[OmbudsManager] keeps me abreast of what is going on in facilities,” said the manager of a large local program. She added, “I can provide information to surveyors.”

These anecdotes of efforts to use data for management and advocacy are rare. They came from a small number of agencies. Other than these few local AAA directors and program managers, little attention is given to the data.

The Department may have set an example for infrequent use of data. We found no example of the State Ombudsman's using data to manage the program. For example, although the annual monitoring by the State Long-Term Care Ombudsman looks at certain performance levels, the monitoring reports do not include statistical targets or objectives.

As noted in "Findings: Data: Collection, Reporting and Other Uses," the Maryland LTCOP has not issued a report to the State entities or the public required by the Older Americans Act.

In addition, the measures required of the AAAs do not track the Department's performance measures. Comparison of the ombudsman goals in the Maryland "Managing for Results" (MFR) report of 2007 showed five (5) performance measures:

<b>Inputs:</b>	Ombudsman FTEs monitoring long-term care facilities Ombudsman Volunteers monitoring long-term care facilities
<b>Outcomes:</b>	Complaints investigated and closed by Ombudsmen Abuse complaints investigated and closed by Ombudsmen
<b>Quality:</b>	Number of advocacy educational training presentations to the general public

The "Ombudsman Program Data" section required in the area plans submitted by the AAAs as the basis for an agreement between the Department and the agencies prescribes the following measures:

- number of cases opened
- number of complaint issues opened
- number of complaint issues closed
- number of volunteers
- number of training sessions for facility staff
- number of consults to facilities
- number of information and consults to individuals

- number of surveys attended
- number of sessions with resident councils
- number of sessions with family councils
- number of community education sessions

We note that

- area plans include only three of the five MFR measures (conspicuously absent is the measure of number of FTEs);
- no actual results measures (such as satisfactory outcomes for complaints) are seen in the MFR; and
- important issues in the area plans are not measured in the MFR.

## Reports

The Older Americans Act (Title 42, Chapter 35, Subchapter XI, Part A, subpart ii, Section 3058g (h)) requires state agencies (e.g., the MDoA) to require the Office of the SLTCO to prepare an annual report. (See “Findings: Activities: Systems Advocacy.”) The report is expected to describe the Office’s activities for the year and include an analysis of data, evaluation of problems experienced by residents, and recommendations.

The Office of the SLTCO must make this report “available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities. . . .”

Many state programs have made these requirements into an opportunity for advocating for changes in long-term care and for publicizing their services. They publish free-standing reports (that is, not simply portions of a state agency report) that range from five photocopied pages to more than 30 pages printed on fine stock.

These other programs give wide circulation to their reports, sending them to governors, legislators, officials of appropriate agencies, advocacy groups, and the general public.



Ombudsmen across these states review the data contained in them and use them to stimulate program improvement.

We learned, however, that in Maryland, the annual report is not only uncirculated, it is minimal. The only annual report produced by the SLTCO in the past two years is the NORS report.

### **Summary**

The Maryland Long-term Care Ombudsman program has invested funds and time in improving its capacity to manage data. It has taken steps to improve the accuracy and consistency of these data.

It cannot be demonstrated, however, that the program has trained its ombudsmen in the effective use of data, that it expects them to use statistical information for all of its potential, or that the program makes full use of its statistical resources. Without productive use of data that are known to be reliable, collecting data is a burden without a reward.

## Ideals and Distinctions of the Long-Term Care Ombudsman Program<sup>62</sup>

We have based our recommendations upon our understanding of the statutory foundations of the Long-Term Care Ombudsman Program (LTCOP) and the experience of state programs that have progressed toward optimal effectiveness. Because we consider it imperative that the Maryland LTCOP, the Maryland Department of Aging, other high-level decision-makers, and other interested parties in Maryland have a clear understanding of these ideals and benchmarks, we provide the following summary.

### Long-Term Care Ombudsman as Resident Advocate

Since its inception, the LTCOP has had significant distinctions from the classic model of the ombudsman.<sup>63</sup> The traditional purpose of the ombudsman was to be an impartial party who receives complaints, determines the pertinent facts, and seeks resolution. As ombudsman positions have proliferated, variations on the original ombudsman model have emerged. The American Bar Association's Standards for the Establishment and Operation of Ombuds Office recognizes three types of ombudsmen: classical, organizational, and advocate.<sup>64</sup>

The LTCO is an *advocate ombudsman*. The LTCO is impartial in investigation, determining the facts pertinent to a case. Ombudsmen must gather sufficient information to gain an accurate understanding of the problem in order to develop a resolution plan. Then the LTCO becomes an *advocate*, seeking a resolution that the resident wants. In many cases, the institutional long-term care system is not working as it was designed to work, not meeting the needs that it is intended to meet, and requires reform. Long-Term Care Ombudsmen represent

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<sup>62</sup> This content is adapted from "The LTCOP Unique Characteristics." Hunt, S. National LTCO Resource Center, National Consumer Voice for Quality Long-Term Care. Washington, DC. October 2002.

<sup>63</sup> *Ombudsman* is a Swedish term. In 1809, the office of *riksdagens justitieombudsman* was created to act as an agent of justice, that is, to see after the interests of justice in affairs between the government and its citizens. Excerpted from *The American Heritage® Dictionary of the English Language, Third Edition* 1996 by Houghton Mifflin Company.

<sup>64</sup> Recommendations, Standards, and Report approved by the American Bar Association's House of Delegates at its 2001 Annual Meeting. [www.abanet.org/dch/committee.cfm?com=AL322500](http://www.abanet.org/dch/committee.cfm?com=AL322500).

residents and resident concerns by seeking resolution for both individual issues and systemic issues.

### **Unique Elements of the LTCOP<sup>65</sup>**

While many types of ombudsman programs wrestle with ethical issues, confidentiality issues, and other topics similar to those of the LTCOP, this program has several unique elements including the following:

- **Jurisdiction**: The jurisdiction of the LTCOP is the *interest* of the resident.
- **Resolution Standard**: At the end of the investigation and resolution process, the key question for a LTCOP is: *Has this complaint/issue been resolved to the satisfaction of the resident?*
- **Works on Issues Apart from a Specific Complaint**: The LTCOP has a mandate to advocate on behalf of the needs of a resident, or residents, separate from individual complaints. Therefore, the LTCOP is to be involved in broader long-term care issues. The LTCOP is expected to be involved in public policy work affecting residents in general.
- **Promotes Development of Groups**: The LTCOP promotes the development of citizen organizations to participate in the program and provides technical support for the development of resident and family councils to protect the well-being and rights of residents.

### **Distinctions from Other Programs and Services within the Aging Network**

Within the network of services provided under the Older Americans Act (OAA), the LTCOP has some mandates that are not typical of other programs. Much of the structure of the program and operational guidelines are specified in federal law. These federal provisions also mean that the LTCOP does not easily fit within a typical bureaucratic agency or structure.<sup>66</sup> As a result of these mandated distinctions, LTCOPs sometimes have different policies and procedures from other programs in matters such as opening mail, handling files, and sharing case information. Some of the key distinctions for the LTCOP are listed below and briefly discussed.

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<sup>65</sup> Based on a conversation with Becky Kurtz, Georgia State LTCOP, and NASOP representative to the ABA Ombudsman Standards Committee. October 2002.

<sup>66</sup> IOM, *op.cit.*, "Conflict of Interest," Chapter 7

1. *The LTCOP is established as a separate program within the Office of the SLTCO, headed by a State Long-Term Care Ombudsman (SLTCO), responsible for the Statewide program.*

The SLTCO may delegate some responsibilities of the Office to other individuals only after assuring that these individuals are free of conflict of interest, have the necessary training, and meet any other qualifications established by the Office. Likewise, the SLTCO may choose to designate local entities (programs) to carry out the activities of the program. Designation is contingent upon compliance with conflict of interest provisions and other criteria.

2. *The LTCOP is able to pursue administrative, legal, and other appropriate remedies on behalf of residents.*

The ombudsman role establishes a different loyalty requirement than is traditional in the workplace. The OAA clearly directs the LTCOP to represent *residents*. Other programs serve individuals. While some, such as protective services or legal services, represent an individual's needs, the LTCOP has the additional responsibility of engaging in more broad-based actions on behalf of residents.

Local ombudsmen, by delegated authority, can also represent resident interests. These activities range from engaging in administrative remedies such as representing and/or assisting a resident with an administrative hearing to legal actions, such as initiating a lawsuit or seeking injunctive relief for residents. Fulfilling the representative aspects of the ombudsman role may be different from the policies of the agency where the LTCOP is located.

The OAA provisions clearly require ombudsmen to advocate in relation to the development and implementation of laws, regulations, and administrative action that affect residents. As an employee, the SLTCO has a "function," an assigned role within the government system, which requires a loyalty not to the agency, but to those residents potentially adversely affected by the actions of the agency or government. By law, the ombudsman is a surrogate voice

for residents of long-term care facilities. The ombudsman fulfills his or her loyalty to the employing entity by serving as an agent of residents.<sup>67</sup> Thus, the LTCO must view his or her *primary* role as one of being the resident's voice within a system, *instead of* viewing the primary role as being an employee within a larger agency.

3. *The LTCOP is subject to specific conflict of interest provisions.*

The organizational placement of the LTCOP, both state and local, *and* the individuals working with the program must comply with conflict of interest provisions. This includes individuals who make decisions about the selection of ombudsmen and program entities. These requirements underscore the importance of maximizing the ability of the ombudsman to adequately and freely represent residents on all levels – individual to system-wide. In a specific residential setting, an ombudsman can resolve an individual's problem or achieve a change in the facility's practice, thus affecting many residents. There are also times when ombudsmen need to speak honestly and publicly about conditions experienced by residents and about the impact of actions, policies, and laws upon residents.

4. *The LTCOP is responsible for upholding strict confidentiality provisions.*<sup>68</sup>

Although confidentiality is important in the human services field, the LTCOP has specific and strict confidentiality provisions stipulated in the Older Americans Act and often in state law. The LTCOP is not allowed to share identifying information with other state or provider agencies about residents or complainants without the resident's consent. Ombudsmen find themselves explaining this provision to others who expect the LTCO to share information about a case.

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<sup>67</sup> Excerpted and adapted from "Ethical Dilemmas as a State Long-Term Care Ombudsman," unpublished and submitted to the Kennedy School of Government. Frank, B. May 1998.

<sup>68</sup> For more information on confidentiality, refer to *Ombudsman Best Practices: Confidentiality*. Grant, R. National Long-Term Care Ombudsman Resource Center. December 2000. [www.ltcombudsman.org](http://www.ltcombudsman.org).

5. *The LTCOP is protected from willful interference while fulfilling the duties of the program.*

States are directed to create provisions for sanctions for willful interference with the work of the ombudsman and also for retaliation or reprisals against anyone who files a complaint with or cooperates with the ombudsman. The LTCOP is to pursue complaint resolution and other program functions without intentional obstructions. Sanctions also protect individuals who work with an ombudsman either as a complainant or as a source of information. Individuals are to be free to use or to assist with LTCOP services.

6. *The LTCOP has legal counsel that is available and is free of conflict of interest.*

The State is required to ensure that the LTCOP has adequate legal counsel for advice, consultation, and assistance to the program and representation of ombudsmen. The stipulation that legal counsel for the program be free of conflict of interest frequently creates another aberration from standard practice in the agency/organizational “host” of the program.

### **Accountability**

The position paper *Long-Term Care Ombudsman Program Core Principles:*

*Effectiveness in Representing Residents*<sup>69</sup> discusses accountability as follows:

State Long-Term Care Ombudsmen and the LTCOP they lead and manage are accountable to two primary groups: residents and citizens. The OAA is clear that the LTCOP’s advocacy is to be on behalf of residents and determined by representing their interests. The LTCOP must account for its actions in an annual report required by the Administration on Aging and in other reports required by the State and/or other funding sources. Ombudsmen are responsible for the good faith performance of their duties as specified in the OAA and in state enabling legislation. (p. 3)

The credibility of the LTCOP rests upon fulfilling its primary responsibility – acting on behalf of residents. If the program acts without being grounded in what residents want, its credibility and effectiveness will be lost.

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<sup>69</sup> A position paper adopted by the National Association of State Long-Term Care Ombudsman Programs in March 1998 (amended in 2005). [www.nasop.org](http://www.nasop.org).

# **Recommendations**

## Organization of the Program

Structural changes are needed to move the Maryland Office of the State Ombudsman toward excellence. Although we recognize that alterations in organizational patterns will require deliberation and difficult decisions, we propose two that we consider essential to the program's excellence.

Paramount among the principles that have guided our recommendations are the requirements of the Older Americans Act (OAA). (See "Findings: Organization" and "Findings: Governance.") The Act mandates the unity of state ombudsman programs under the leadership of the State Long-Term Care Ombudsman (SLTCO). In addition, we have considered the economy of the program.

### **Recommendation 1: Ensure the SLTCO Has Complete Access throughout the Department<sup>70</sup>**

Due to the unique status of the Office of the SLTCO, as envisioned in the OAA, the SLTCO must have unimpeded access to others in the Department for purposes of decision-making and information sharing.

A primary step in achieving this goal is the placement of the SLTCO directly under the Secretary or Deputy Secretary. If this placement is not acceptable, the SLTCO should have regular as well as topic-generated conversations with the Secretary and other departmental leaders without proceeding through intermediate layers of the Department's hierarchy. If, for example, the SLTCO supports legislation that will improve conditions for residents, she would discuss the ramifications with the Secretary. She would alert the Secretary when she has given information to the media.

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<sup>70</sup> Models for such communication are the Georgia and Oklahoma Offices of the State LTCOPs. The appendix includes a useful discussion, conducted by the National Association of State Units on Aging, between the Georgia SLTCO and the Director of the Georgia Division of Aging Services. <http://nasua.org/pdf/Developing%20Synergy%20highlights%20and%20transcript.pdf>.



The SLTCO and other divisions would work as teams rather than working in “silos.” Budget planning and financial accountability would be conducted by such a team, as would other functions, such as information technology development and remediation. In addition, the SLTCO should be able to discuss issues and get information directly from other sections of the agency.

**Recommendation 2: Reduce the Number of Local Programs**

Unless the State is able to significantly increase the funding for the program, it should reduce the number of local programs to no more than ten (10) local entities.

Currently, the SLTCO and the MDoA delegates 19 local entities to represent the SLTCO. The average number for other states is 11. Those states having more local entities than Maryland are generally larger, geographically and in terms of population, than Maryland (e.g. Texas, Pennsylvania, New York, and California).

By reducing the number of programs, the Office of the SLTCO and MDoA will limit the number of entities that the SLTCO must assist and oversee. The economy of scale generated by reconfiguration may give local programs the ability to offer salaries that will attract highly-skilled persons as ombudsmen. In addition, as the duties of the local ombudsmen become focused on ombudsman tasks only, dividing of job responsibilities will be reduced and ombudsmen will be able to conduct all duties of the ombudsman program.

Obviously, the merging of smaller jurisdictions into larger, more regional programs will require deliberation with respect to auspices, as area agencies on aging (AAAs) are likely to not operate programs outside of their boundaries. (See “Findings: Organization.”)

Other considerations for planning for the configuration of local programs are:

- responsibilities for numbers of residents (beds) and facilities; and
- geographic and social factors.

We recommend that the Office of the SLTCO and the MDoA form a work group to explore the feasibility of reducing the number of local programs and to determine the optimal configuration of local programs. This group would do well to learn from the experiences of other states that have reduced the number of local programs. Minnesota and Louisiana could be used as benchmarks.

Reconfiguring the Statewide Office of the LTTCO is a long-range project. However, if it is to be achieved, the SLTCO and MDoA must begin immediately to engage in dialog and planning.

## Governance of the Program

Major issues of concern to MDoA have been the cohesion of the ombudsman program, statewide, including the consistency of the local programs and the quality of those delegated to be ombudsmen. These matters relate to the governance of the program.

The ombudsman program must be unified in its approach to advocacy and other ombudsman efforts. It is vital that all participants in the ombudsman program recognize that, according to the OAA, they work on behalf of the State Long-Term Care Ombudsman and that they have a clear understanding of the implications of this relationship.

We suggest a number of key steps that will lead to the improvement of the governance of the Office of the State Long-Term Care Ombudsman. As with the organization of the program, we have been guided by the OAA as well as by the practices outlined in the IOM report on the ombudsman program<sup>71</sup> and other sources of ombudsman best practices.

We recall the recommendations of the IOM:

<b>Exemplary Practices</b>	<b>Essential Practices</b>
The Office operates as a whole, unified, integrated, and cohesive program focused on serving the advocacy needs of LTC facility residents and others as assigned and separately funded.	There is a functioning Office of the State Long-Term Care Ombudsman because all essential elements of the infrastructure—structure, qualifications of representatives, legal authority, and financial, information management, legal, and human resources—are in place.

The SLTCO and MDoA will be assisted in the planning and implementation of these steps by referring to the “Regulations/Policies and Procedures,” a report drafted by a task force from within MDoA in 1999.

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<sup>71</sup> IOM, *op. cit.*

### **Recommendation 3: Designation of Local Programs**

The OAA requires designation. Most state ombudsman programs use a conscious, clear, and transparent process to designate local representatives of the SLTCO. They include standards for designation and processes for de-designating.

Central to the designation of entities is some form of written binding agreement. Although the MDoA currently formally agrees with the AAAs to administer the programs at the county or regional level by use of area plans, these plans omit several vital obligations of the local programs and the SLTCO. (See “Findings: Governance.”)

We recommend that the SLTCO and the MDoA begin immediately to enact a process for designating local entities and develop and use a model agreement that will clearly state the responsibilities of the State and the local sponsoring entities and enable the SLTCO to assure cohesion and hold local entities accountable.

We have provided in the Appendix examples of designation processes and contracts used by successful state ombudsman programs.

### **Recommendation 4: Certification**

Certification is the method used to assure that all representatives of the SLTCO (local ombudsmen and other members of the State’s ombudsman office) are qualified to perform the duties expected of them by law. It establishes the relationship between the local ombudsmen and the SLTCO. Standards for certification define the skills and behaviors expected from them. They also assure the public that the ombudsmen are qualified.

Certification should be related to training. Most states use examinations and several also require internships, followed by one or more visits with residents in long-term care facilities during which time staff of the State ombudsman office observe the prospective ombudsman. (See “Findings: Activities: Training.”)

We recommend that the SLTCO begin immediately to certify ombudsmen. The process would begin by the establishment of standards and the promulgation of a process. We understand that the MDoA is currently proceeding with these steps.

**Recommendation 5: Selection of Program Managers**

Because the program managers perform duties that are vital not only to the operation of their local programs but also provide an essential link to the State Ombudsman, their selection is important to the cohesion of the SLTCO.

We recommend that the SLTCO have a defined role in the selection of local program managers.

**Recommendation 6: Other Key Roles of the Ombudsmen**

***Budget development.***

We recommend that the SLTCO have a defined, meaningful role in the establishment of the budget of the Office of the SLTCOP, including the determination of program needs and the statewide allocation of funds.

***Accountability.***

We recommend that the SLTCO have the responsibility for assuring that the program, in all of its expressions across the State, operates within its legal and regulatory limits and performs at its optimal level.

## Human Resources

Staffing and volunteer data present a mixed picture of the Maryland Office of SLTCO.

The Office’s state-level staffing is appreciably lower than that of other similar states and the average of all state programs. On the other hand, the program appears to enjoy above-average staffing at the local level. Except in a few areas, ombudsman coverage is not adequately supported by volunteers.

### **Recommendation 7: Enhance State Office Staff**

The State Ombudsman, operating as an office of one, is faced with the impossible situation of assisting, training, and overseeing the performance of 19 local entities, a dimension unmatched across the nation.

Table 16 shows the number of state office staff needed to meet the levels of state office staff in other states. Judged by the number of residents (beds) in the State, Maryland could meet the level of staffing of the Benchmark States by employing three persons at the State office. When considered in terms of the number of local entities for which the Maryland SLTCO is responsible, however, the State needs seven or eight persons in the State office.

**Table 16**

<b>Maryland State Office Staff Needed</b>			
Total FTEs to Match Benchmark States Per Local Entity	Total FTEs to Match Benchmark States Per Beds	Total FTEs to Match Average All States Per Entity	Total FTEs to Match Average All States Per Beds
8	3	7	3

We found modest support from local ombudsmen and AAA directors for the enhancement of the State office. We suspect, however, that the fact that the program has long

operated with a single (occasionally, two) State Long-Term Care Ombudsman may have distracted them from recognizing the potential values of the State office. Based on our experience and that of other programs in the nation, we strongly support the recommendation of many stakeholders that the staff of the office be increased.

***Professional ombudsmen and clerical support.*** We recommend that the MDoA add professional and clerical staff to the State office. We suggest that at least one professional person and one clerical assistant be added in the coming year. During the following year, at least one more professional should be added.

These persons should assist the SLTCO in carrying out the numerous responsibilities of the job (volunteer development, training, technical assistance, data management, accountability, and quality improvement).

***Enhance the Salary Level of the SLTCO.*** The State should pay the SLTCO a salary that will attract and retain the best and brightest persons available. Currently, the salary is well below those of other SLTCOs. The Maryland SLTCO's salary is even lower, by comparison, when the relative costs of living are considered. This salary is equal to or lower than many of the local ombudsmen in Maryland for whom she has responsibility and to whom she delegates authority.

Support for increasing the salary is strong among the State's local ombudsmen and external stakeholders. We talked with qualified, excellent ombudsmen who said they considered applying for the recently advertised position but did not because the salary was not feasible for them.

We recommend that Maryland pay its SLTCO at the highest level possible with the State's merit system. If the SLTCO's position description captured all of the responsibilities

faced by an SLTCO under the OAA, the Department of Budget and Management’s Personnel and Services division would likely rate the position higher.

Certainly, the SLTCO should be paid on a scale above that of those who report to him or her. Those professionals hired to assist the SLTCO within the State office should be paid on a scale appropriate to that of the SLTCO.

**Legal support.** We also recommend that the Office of the SLTCO be supported by an attorney whose time and role is dedicated to the legal issues of the program and the residents it represents. This person would provide counsel, training of ombudsmen, assistance to local legal support, and representation. (See “Findings: Advocacy.”) As the program increases its legal presence by more aggressively pursuing representation of residents, the demands of local ombudsmen for legal assistance is likely to grow.

If, due to financial and other constraints, the employment of legal support is not feasible, the MDoA should contract with an attorney (as is done in Washington and Louisiana) until such time as hiring one becomes possible. Alternately, an appropriate amount of the time of the MDoA general counsel could be devoted to the types and levels of legal support described in “Recommendations: Activities: Advocacy.”

**Recommendation 8: Evaluate and Strengthen Local Ombudsman Human Resources**

Maryland’s local LTCOPs are, on average, adequately staffed when judged by national statistics. As seen in Table 17, the local programs need fewer FTEs than at present, whether measured against all states or the benchmark states. (Maryland reported 44.1 FTEs in NORS 2007.)

Nevertheless, according to local ombudsmen, their time is stretched thin. This may be due to three or more factors

- some programs are small and have a low economy of scale;



- LTCOs frequently perform duties that are in the arena of community elder abuse prevention, not in core LTCO work; and
- many programs have few volunteers.

**Table 17**

<b>Maryland Local Staff Needed</b>	
Total FTEs to Match Benchmark States Per Beds	Total FTEs to Match Average All States Per Beds
23	18

*At Least One Full-Time Ombudsman per Area.* The “Bader Report” recommended that “each local program should have at least one full-time paid ombudsman (not FTE).”<sup>72</sup> We recommend that, under standards for designation, each local program have no less than one (1) LTCO who serves in the role of an ombudsman 40 hours per week. These ombudsmen will all be certified by the SLTCO. Standards should specify a minimum for the time that ombudsmen spend visiting with residents on routine (not complaint-driven) visits to facilities. If an agency cannot provide a full-time ombudsman, local programs should be merged to accomplish this. (See “Recommendations: Organization.”)

*Division of Time.* Further, the program should charge a work group with the task of examining the amount of time that the ombudsmen spend in all of their tasks. Particularly, this group should consider the time used by local ombudsmen in non-facility-oriented elder abuse prevention activities. It should recommend appropriate use of time, based on the requirements of the OAA. It should also recommend means to separate community-focused work from the OAA-mandated central role of ombudsmen to represent residents. The driving question for this group

<sup>72</sup> *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future.* National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003, p. 39. <http://nasop.org/papers/Bader.pdf>.

should be: “does OAA elder abuse money enhance or increase ombudsman services or dilute it by being an additional duty, albeit one that is very attractive to perform?”

***Continuity of Service.*** Residents deserve, and the LTCOP is required to provide, continuous access to ombudsmen. Access is not possible in many areas, however, when positions remain vacant.

The Office of the SLTCO should address issues related to job vacancies in the local programs. Vacancies occur when LTCOs resign or go on extended leaves. Recently, local programs have frozen positions; that is, they do not hire replacements when an ombudsman resigns. We heard of circumstances in which a position was vacant and no ombudsman was available in a jurisdiction.

The primary, most basic axiom for remedying turnover is to assure that salaries are competitive and attractive. The Office of the SLTCO should issue standards for salaries.

When vacancies occur, the sponsoring agency should be required, under provisions in the designation agreement, to utilize the services of a certified ombudsman to respond to complaints. The SLTCO should assist in this temporary placement. California, Georgia, and Ohio have policies that cover the provision of services if an ombudsman position is vacant due to a termination or leave. In some states, the State ombudsman program fills gaps in service.

***Volunteer Service.*** Volunteers could be used to a fuller advantage in Maryland’s program.

We recommend that the Office of SLTCO place a stronger emphasis on the recruitment, maintenance, and management of volunteers. In our Town Hall meeting and Focus Groups, representatives of several local programs and external stakeholders recommended that the Office of the SLTCO employ a person to be the lead volunteer manager for the program. Volunteer

development should be one of the high level priorities of the State office if additional staffing of the State office is forthcoming. Training in volunteer management should be offered periodically for local ombudsmen.

We note that the Bader report recommended “one full-time staff ombudsman to 40 volunteers.”<sup>73</sup>

Local programs, in conjunction with the Office of the SLTCO, should set measurable objectives for development of volunteer services and attach action steps to these objectives.

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<sup>73</sup> *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003. p. 39. <http://nasop.org/papers/Bader.pdf>.

## Financing of the Program

Funding for the Office of the SLTCOP has received the attention of program personnel, other stakeholders, and AAA directors. Many AAA directors advocated to us that more funds are needed. They were particularly interested in more support for the local programs, though some indicated the need for more positions (and, therefore, dollars) at the State office. We also heard expressions of unrest concerning the distribution formula for allocating ombudsman funds across the 19 local entities that sponsor the local representatives of the SLTCO.

### **Recommendation 9: Review Expenditures and Increase Funding Where Necessary**

As we discussed in “Findings: Financing,” we were not able to determine with confidence the total amounts expended in FY 2007 (the latest year for which data were available). Nor are we certain about the local entities’ expenditures at the line-item level.

One issue is clear, however. The program needs additional funds to enhance the State office of the SLTCO. (See “Recommendations: Human Resources.”) We calculate that, in the first year of enhancement, this will cost approximately \$125,000 more than was spent in FY 2007 at the State office.

We recommend that the MDoA carefully review expenditures at the AAA level and document them. These must include line-item expenditures so that the MDoA will know how much was spent for salaries and benefits, travel, other expenses, and indirect costs. Following this review, the Department and SLTCO may use the comparisons that we have provided to ascertain the appropriate level of funding needed. Pending the results of this review, funding of the program should continue at the rate of the current year, plus the cost of enhancements to move the State office of the SLTCO toward excellence.

Our review of Maryland's use of federal funds under Title III-B of the OAA showed that the State uses far fewer of these funds than do other states. Title III-B could be considered as a source for increased funding.

**Recommendation 10: Distribute Funds to Local Agencies Using a Needs-Based Methodology**

Due to the effects of recent methods of determining intrastate allocations for the program, funds are not allotted equitably. These inequities are true whether we measure by the legislatively mandated formula or the numbers of beds, facilities, and geographic areas of the local entities.

We have considered several methodologies for statewide distribution of funds. Four are outlined in detail below. Two of these scenarios use the mandated ombudsman coverage targets established in statute; two use a process of weighting, based on numbers of facilities, numbers of beds, and the square miles that each program covers.<sup>74</sup>

We recommend that the SLTCO and MDoA, in consultation with AAAs, review these alternative scenarios and determine which to use or develop its own methodology from the other permutations that might be considered.

We note that, in the allocation tables, the FY 2007 expenditures are based on the expenditure table that the MDoA provided us. Because we are dealing here with allocations, we have deducted the local funds from the amount to be distributed by the State.

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<sup>74</sup> We can, at the request of the MDoA, provide the digital worksheets that we used to calculate these distributions.

**Office of the Maryland State Ombudsman**  
**Intrastate Funding Option One**  
**(Statutory Formula; Total Equals Expenditures for Program, FY 2007**  
**Adjusting for Cost of Living)**

Option One distributes state and federal funds to the local programs using the following principles and assumptions:

- **The statutory formula.**
  - at least a half-time Ombudsman in every county in the State, or
  - ten hours per week of Ombudsman time for each nursing home, or
  - a full-time Ombudsman for every 1,000 long term care beds in a county, whichever is larger.
- **Constant expenditures.** Statewide, according to the NORS report, in federal fiscal year 2007 the local programs spent \$2,277,306 in state and federal funds. In addition, expenditures for the State office of the ombudsman were \$76,937. Total expenditures for the program were \$2,354,243.
- **State Office Enhancement.** We recommend employing a minimum of two professional staff and one clerical assistant. Estimated cost of the State office would be \$200,000.
- **Cost of living differential.** In order to distribute funds equitably, we have calculated allocations based on the percentages above or below the average cost of living in Maryland. (Based on Maryland Department of Business and Economic Development “Cost of Living Index for Maryland Counties – 2005”) Allegany’s cost of living is 27% less than the Statewide average; Montgomery’s is 26% more.<sup>75</sup>

### Explanation of table

Columns C through E show the allocations for the local programs without regard to cost of living differences.

- Column C shows an allocation for Queen Anne’s County, the only local program for which the mandated principle “whichever is larger” yields an amount based on having a half-time LTCO in every county.
- Column D shows the allocation for the counties for which the mandated principle “whichever is larger” yields an amount based on ten hours per week of LTCO time for each nursing home.
- Column E shows the allocation for Howard County, the only local program for which the mandated principle “whichever is larger” yields an amount based on having a full-time LTCO for every thousand long-term care beds.
- Column F shows the variation from the State average cost of living as a percentage.
- Column G multiplies the “whichever is greater” allocation by the cost of living factor. This calculation results in the final allocation figure.
- Column H shows the amount expended by each local program in FY 2007. (NORS report.)
- Column I calculates the difference between the FY 2007 reported expenditure and the final allocation.
- Column J shows the final allocation per long-term care bed.

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<sup>75</sup> [www.choosemaryland.org/factsandfigures/qualityoflife/costoflivingoverview.html](http://www.choosemaryland.org/factsandfigures/qualityoflife/costoflivingoverview.html).

Option One									
	Allocations Based on the Principle: "Whichever is larger"				Allocations Adjusted for Cost of Living				
	"Whichever is larger"				Adjusted for cost of living				
A	B	C	D	E	F	G	H	I	J
Entity	Recom- mended	Half time LTCO for every county	Ten hours for each nursing home	Full time ombuds- man for every 1,000 LTC beds	% differ- ence from state average	"Whichever is larger"	Reported to NORS 2007 and by Deputy for Operations*	Difference	Allocation per Bed
State Office	\$ 200,000					\$200,000	\$76,937	\$123,063	
Allegany			\$68,855		-27%	\$50,327	\$89,878	(\$39,551)	\$46
Anne Arundel			\$120,496		12%	\$135,066	\$85,865	\$49,201	\$42
Baltimore City			\$284,027		-6%	\$266,108	\$379,742	(\$113,634)	\$44
Baltimore Co.			\$404,523		0%	\$403,679	\$442,715	(\$39,036)	\$43
Calvert			\$34,428		9%	\$37,523	\$21,391	\$16,132	\$88
Carroll			\$68,855		4%	\$71,672	\$89,640	(\$17,968)	\$43
Cecil			\$25,821		-4%	\$24,708	\$7,696	\$17,012	\$35
Charles			\$25,821		7%	\$27,600	\$38,850	(\$11,250)	\$39
Frederick			\$111,889		-12%	\$98,341	\$71,120	\$27,221	\$50
Garrett			\$34,428		6%	\$36,593	\$35,843	\$750	\$97
Harford			\$51,641		-7%	\$47,815	\$32,649	\$15,166	\$35
Howard				\$ 65,550	-1%	\$65,151	\$21,120	\$44,031	\$34
MAC			\$103,283		-11%	\$91,499	\$129,988	(\$38,489)	\$48
Montgomery			\$284,027		26%	\$357,565	\$438,293	(\$80,728)	\$47
Prince George's			\$180,745		11%	\$200,611	\$215,059	(\$14,448)	\$39
Queen Anne		\$ 17,214			5%	\$18,039	\$25,321	(\$7,282)	\$95
St. Mary's			\$25,821		0%	\$25,767	\$11,146	\$14,621	\$28
Upper Shore Aging			\$68,855		-3%	\$66,554	\$84,175	(\$17,621)	\$58
Washington			\$86,069		-7%	\$79,864	\$56,815	\$23,049	\$42
<b>Total (all local programs, all options)</b>			<b>2,262,347</b>				<b>\$ 2,354,243</b>	<b>\$ (49,760)</b>	<b>\$2,404,003</b>
<b>Total for program</b>						<b>\$ 2,304,483</b>	<b>\$ 2,354,243</b>		

\* NORS report excluded expenditures for the State office; MDoA Deputy for Operations provided state office expenditure data.

**Office of the Maryland State Ombudsman**  
**Intrastate Funding Option Two**  
**(Statutory Formula; Using Expenditures per FTE, FY 2007 Adjusting for Cost of Living)**

Option Two distributes state and federal funds to the local programs using the following principles and assumptions:

- **The statutory formula.**
  - at least a half-time Ombudsman in every county in the State, or
  - ten hours per week of Ombudsman time for each nursing home, or
  - a full-time Ombudsman for every 1,000 long term care beds in a county, whichever is larger.
- **Expenditures based on 2007 average cost per LTCO FTE.** Statewide, according to the NORS report, in federal fiscal year 2007 the local programs spent \$54,157 in state and federal funds per FTE ombudsman (FTE). In addition, expenditures for the State office of the ombudsman were \$76,937. Total expenditures for the program were \$2,354,243.
- **State Office Enhancement.** We recommend employing a minimum of two professional staff and one clerical assistant. Estimated cost of the State office would be \$200,000.
- **Cost of living differential.** In order to distribute funds equitably, we have calculated allocations based on the percentages above or below the average cost of living in Maryland. (Based on Maryland Department of Business and Economic Development “Cost of Living Index for Maryland Counties – 2005”) Allegany’s cost of living is 27% less than the Statewide average; Montgomery’s is 26% more.<sup>76</sup>

#### **Explanation of table**

In the table for Option Two, Columns C through E show the allocations for the local programs without regard to cost of living differences. Numbers of LTCOs and FTEs are multiplied by the average cost per FTE (\$54,157).

- Column C shows an allocation for Queen Anne’s County, the only local program for which the mandated principle “whichever is larger” yields an amount based on having a half-time LTCO in every county.
- Column D shows the allocation for the counties for which the mandated principle “whichever is larger” yields an amount based on ten hours per week of LTCO time for each nursing home.
- Column E shows the allocation for Howard County, the only local program for which the mandated principle “whichever is larger” yields an amount based on having a full-time LTCO for every thousand long-term care beds.
- Column F shows the variation from the State average cost of living as a percentage.
- Column G multiplies the “whichever is greater” allocation by the cost of living factor. This calculation results in the final allocation figure.
- Column H shows the amount expended by each local program in FY 2007. (NORS report.)
- Column I calculates the difference between the FY 2007 reported expenditure and the final allocation.
- Column J shows the final allocation per long-term care bed.

<sup>76</sup> [www.choosemaryland.org/factsandfigures/qualityoflife/costoflivingoverview.html](http://www.choosemaryland.org/factsandfigures/qualityoflife/costoflivingoverview.html).



Option Two									
	Allocations Based on the Principle: "Whichever is larger"				Allocations Adjusted for Cost of Living				
A	B	C	D	E	F	G	H	I	J
	State Office	"Whichever is larger"							
Entity	Recom- mended	Half time LTCO for every county	Ten hours for each nursing home	Full time LTCO for every 1,000 LTC beds	% differ- ence from state average	"Whichever is larger"	Reported to NORS 2007 and by Deputy for Operations*	Difference	Allocations per Bed
State Office	\$200,000								
Allegany			\$108,314		-27%	\$79,168	\$89,878	(\$10,710)	\$72
Anne Arundel			\$189,550		12%	\$212,469	\$85,865	\$126,604	\$66
Baltimore City			\$446,796		-6%	\$418,609	\$379,742	\$38,867	\$69
Baltimore Co.			\$636,346		0%	\$635,017	\$442,715	\$192,302	\$68
Calvert			\$54,157		9%	\$59,026	\$21,391	\$37,635	\$139
Carroll			\$108,314		4%	\$112,746	\$89,640	\$23,106	\$68
Cecil			\$40,618		-4%	\$38,868	\$7,696	\$31,172	\$55
Charles			\$40,618		7%	\$43,417	\$38,850	\$4,567	\$61
Frederick			\$176,011		-12%	\$154,698	\$71,120	\$83,578	\$79
Garrett			\$54,157		6%	\$57,564	\$35,843	\$21,721	\$152
Harford			\$81,236		-7%	\$75,217	\$32,649	\$42,568	\$55
Howard				\$103,115	-1%	\$102,487	\$21,120	\$81,367	\$54
MAC			\$162,471		-11%	\$143,935	\$129,988	\$13,947	\$76
Montgomery			\$446,796		26%	\$562,477	\$438,293	\$124,184	\$74
Prince George's			\$284,325		11%	\$315,576	\$215,059	\$100,517	\$61
Queen Anne		\$27,079			5%	\$28,376	\$25,321	\$3,055	\$150
St. Mary's			\$40,618		0%	\$40,533	\$11,146	\$29,387	\$44
Upper Shore Aging			\$108,314		-3%	\$104,694	\$84,175	\$20,519	\$92
Washington			\$135,393		-7%	\$125,633	\$56,815	\$68,818	\$66
Total (all local programs, all options)			\$ 3,114,033			\$3,310,510	\$2,277,306	\$1,033,204	
Total for Program						\$3,310,510	\$2,277,306	\$1,033,204	

\* NORS report excluded expenditures for the State office; MDoA Deputy for Operations provided state office expenditure data.

**Office of the Maryland State Ombudsman  
Intrastate Funding Option Three  
(Weighted Formula; FY 2007, Adjusting for Cost of Living)**

Option Three distributes state and federal funds to the local programs using the following principles and assumptions:

- **Weights.** We have assigned weights to the dimensions of local ombudsman work that influence costs. These are shown in the following table. *We note that these weights are based on our best judgment and recommend that the State Long-term Care Ombudsman, the Department, the ombudsmen, and the Area Agencies on Aging develop their own weights based on their experience.*

	Number of Nursing Facilities	Number of LTC beds	Square miles
<b>Weight</b>	2	7	1

- **Expenditures based on 2007 NORS report.** Statewide, according to the NORS report, in federal fiscal year 2007 the local programs spent \$2,277,306 in state and federal funds.<sup>77</sup> In addition, expenditures for the State office of the ombudsman were \$76,937. Total expenditures for the program were \$2,354,243.
- **State Office Enhancement.** We recommend employing a minimum of two professional staff and one clerical assistant. Estimated cost of the State office would be \$200,000.
- **Cost of living differential.** In order to distribute funds equitably, we have calculated allocations based on the percentages above or below the average cost of living in Maryland. (Based on Maryland Department of Business and Economic Development “Cost of Living Index for Maryland Counties – 2005”) Allegany’s cost of living is 27% less than the Statewide average; Montgomery’s is 26% more.<sup>78</sup>

**Explanation of table**

In the table for Option Three:

- Column A displays the percentage of state and federal funds based on the weights shown above. We multiplied the numbers of nursing homes, long-term care beds, and the square miles covered by the local programs by the weights. We then added the weighted values for each program and divided each program’s weighted values by the total of all programs’ weighted values. This resulted in a percentage of state and federal funds that would be allocated to each program.
- Column B contains the results of multiplying \$2,277,306 by the percentage in Column A. This is the allocation for the programs, ignoring cost of living differences.
- Column C shows the variation from the State average cost of living as a percentage.
- Column D multiplies the weighted allocation (Column B) by the cost of living factor. This calculation results in the final allocation figure. (The sum of this column exceeds the sum of Column B because areas with larger numbers of beds also have higher costs of living.)
- Column E shows the amount of state and federal funds reported as expended by each local program in FY 2007. (From NORS report and the Deputy for Operations.)
- Column F calculates the difference between the FY 2007 reported expenditure and the allocations.
- Column G calculates the weighted allocation, including cost of living adjustment, per LTC bed.

Row “State Office” shows in Column B the proposed amount to be expended at the State office, in Column E, the amount spent at the State office in FY 2007, and in Column F, the difference between Columns D and E.

<sup>77</sup> NORS reported expenditures may vary from those reported by the AAAs in December 2008 and January 2009. The NORS data are considered official and reliable for this calculation.

<sup>78</sup> [www.choosemaryland.org/factsandfigures/qualityoflife/costoflivingoverview.html](http://www.choosemaryland.org/factsandfigures/qualityoflife/costoflivingoverview.html).

Option Three							
Allocations Based on Weighted Values (Adjusting for Cost of Living)							
	A	B	C	D	E	F	G
Entity	Share of total allocation	Allocation Based on Formula	Cost of living factor (% difference from state average)	Weighted allocation adjusted for cost of living	Expenditures reported to NORS 2007 and by Deputy for Operations*	Difference (weighted allocation adjusted for cost of living) vs. 2007)	Allocation per Bed
State Office		\$200,000		\$200,000	\$76,937	\$123,063	
Allegany	2%	\$54,046	-27%	\$39,503	\$89,878	(\$35,832)	\$49
Anne Arundel	7%	\$152,478	12%	\$170,914	\$85,865	\$66,613	\$47
Baltimore City	12%	\$282,501	-6%	\$264,678	\$379,742	(\$97,241)	\$46
Baltimore Co.	19%	\$439,451	0%	\$438,533	\$442,715	(\$3,264)	\$47
Calvert	1%	\$21,111	9%	\$23,010	\$21,391	(\$280)	\$50
Carroll	3%	\$78,789	4%	\$82,013	\$89,640	(\$10,851)	\$48
Cecil	2%	\$35,038	-4%	\$33,528	\$7,696	\$27,342	\$50
Charles	2%	\$36,063	7%	\$38,549	\$38,850	(\$2,787)	\$51
Frederick	4%	\$95,739	-12%	\$84,146	\$71,120	\$24,619	\$49
Garrett	1%	\$21,846	6%	\$23,220	\$35,843	(\$13,997)	\$58
Harford	3%	\$66,159	-7%	\$61,258	\$32,649	\$33,510	\$49
Howard	4%	\$89,884	-1%	\$89,337	\$21,120	\$68,764	\$47
MAC	4%	\$99,815	-11%	\$88,427	\$129,988	(\$30,173)	\$52
Montgomery	16%	\$354,528	26%	\$446,320	\$438,293	(\$83,765)	\$47
Prince George's	11%	\$242,779	11%	\$269,463	\$215,059	\$27,720	\$47
Queen Anne	0%	\$11,227	5%	\$11,765	\$25,321	(\$14,094)	\$59
St. Mary's	2%	\$45,127	0%	\$45,033	\$11,146	\$33,981	\$49
Upper Shore Aging	3%	\$58,783	-3%	\$56,818	\$84,175	(\$25,392)	\$51
Washington	4%	\$91,942	-7%	\$85,314	\$56,815	\$35,127	\$48
Total for local programs	100%	\$2,277,306		\$2,351,829	\$2,277,306		\$49
Total for Program		\$2,477,306		\$2,552,545	\$2,354,241	\$123,063	

\* NORS report excluded expenditures for the State office; MDoA Deputy for Operations provided state office expenditure data.

**Office of the Maryland State Ombudsman  
Intrastate Funding Option Four  
(Weighted Formula; FY 2007, Not Adjusting for Cost of Living)**

Option Four distributes state and federal funds to the local programs using the following principles and assumptions:

- **Weights.** We have assigned weights to the dimensions of local ombudsman work that influence costs. These are shown in the following table. *We note that these weights are based on our best judgment and recommend that the State Long-term Care Ombudsman, the Department, the ombudsmen, and the Area Agencies on Aging develop their own weights based on their experience.*

<b>Weight</b>	<b>Number of Nursing Facilities</b>	<b>Number of LTC beds</b>	<b>Square miles</b>
2	7	1	

- **Expenditures based on 2007 NORS report.** Statewide, according to the NORS report, in federal fiscal year 2007 the local programs spent \$2,277,306 in state and federal funds.<sup>79</sup> In addition, expenditures for the State office of the ombudsman were \$76,937.
- **State Office Enhancement.** We recommend employing a minimum of two professional staff and one clerical assistant. Estimated cost of the State office would be \$200,000.

**Explanation of table**

In the table for Option Three:

- Column B displays the percentage of state and federal funds based on the weights shown above. We multiplied the numbers of nursing homes, long-term care beds, and the square miles covered by the local programs by the weights. We then added the weighted values for each program and divided each program’s weighted values by the total of all programs’ weighted values. This resulted in a percentage of state and federal funds that would be allocated.
- Column C contains the results of multiplying \$2,277,306 by the percentage in Column B. This is the allocation for the programs.
- Column D shows the amount of state and federal funds reported as expended by each local program in FY 2007. (From NORS report and the Deputy for Operations.)
- Column E calculates the difference between the FY 2007 reported expenditure and the allocations.
- Column F calculates the weighted allocation per LTC bed.

Row “State Office” shows in Column C the proposed amount to be expended at the State office, in Column D, the amount spent at the State office in FY 2007, and in Column E, the difference between Columns C and D.

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<sup>79</sup> NORS reported expenditures may vary from those reported by the AAAs in December 2008 and January 2009. The NORS data are considered official and reliable for this calculation.

<b>Option Four</b>					
<b>Allocations Based on Weighted Values</b>					
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Entity</b>	<b>Share of total allocation</b>	<b>Allocation Based on Formula</b>	<b>Expenditures reported to NORS 2007 and by Deputy for Operations*</b>	<b>Difference (allocation vs. 2007)</b>	<b>Allocation per Bed</b>
State Office		\$200,000	\$76,937	\$123,063	
Allegany	2%	\$54,046	\$89,878	(\$35,832)	\$49
Anne Arundel	7%	\$152,478	\$85,865	\$66,613	\$47
Baltimore City	12%	\$282,501	\$379,742	(\$97,241)	\$46
Baltimore Co.	19%	\$439,451	\$442,715	(\$3,264)	\$47
Calvert	1%	\$21,111	\$21,391	(\$280)	\$50
Carroll	3%	\$78,789	\$89,640	(\$10,851)	\$48
Cecil	2%	\$35,038	\$7,696	\$27,342	\$50
Charles	2%	\$36,063	\$38,850	(\$2,787)	\$51
Frederick	4%	\$95,739	\$71,120	\$24,619	\$49
Garrett	1%	\$21,846	\$35,843	(\$13,997)	\$58
Harford	3%	\$66,159	\$32,649	\$33,510	\$49
Howard	4%	\$89,884	\$21,120	\$68,764	\$47
MAC	4%	\$99,815	\$129,988	(\$30,173)	\$52
Montgomery	16%	\$354,528	\$438,293	(\$83,765)	\$47
Prince George's	11%	\$242,779	\$215,059	\$27,720	\$47
Queen Anne	0%	\$11,227	\$25,321	(\$14,094)	\$59
St. Mary's	2%	\$45,127	\$11,146	\$33,981	\$49
Upper Shore Aging	3%	\$58,783	\$84,175	(\$25,392)	\$51
Washington	4%	\$91,942	\$56,815	\$35,127	\$48
Total for local programs	100%	\$2,277,306	\$2,277,306	(\$0)	\$48
Total for Program		\$2,477,306	\$2,354,243	\$123,063	

\* NORS report excluded expenditures for the State office; MDoA Deputy for Operations provided state office expenditure data.

## Activities of the Program

As discussed in our findings on “Activities,” we examined four primary categories of activities:

- Resident Advocacy
- Public Awareness
- Ombudsman Volunteer Development
- Training

### Recommendations: Advocacy

Advocacy activities are the central focus of the Long-Term Care Ombudsman Program. To advocate on behalf of long-term care residents is the reason the program exists. Specifically, the program is required to investigate and resolve issues on behalf of individual residents, to represent the needs of residents before governmental agencies and to seek a range of remedies on behalf of residents. There are two primary advocacy activities, individual and systems.

#### *Individual Advocacy*

The OAA lists the responsibilities of the ombudsman program, including provisions regarding conflict of interest, confidentiality, and release of records. To provide consistent services to long-term care residents across the State, the program needs clear direction and guidance provided in policies and procedures. A solid foundation based on regulations and state law adds strength to ombudsman advocacy.

“Findings: Individual Advocacy” identified issues of inconsistency in complaint handling and reporting. Our review of the data raised issues regarding who is the primary “client” of some programs: individual residents or facilities. It also identified the lack of guidance from the State Ombudsman due to a lack of detail and clarity in the Maryland Long Term Care Ombudsman statute and regulations. These provisions and the LTCOP’s Procedures Manual have not been updated to reflect changes in the OAA or knowledge about successful practices. At the core of

issues with individual advocacy is a need for improving the infrastructure of the Statewide program.

In 1999, a work group presented to the MDoA draft regulations/policies and procedures for the Statewide Long-Term Care Ombudsman Program. The draft was a consensus document developed by a work group representing ombudsmen, ombudsman program managers, AAA directors, and the legal counsel for the State program. A national consultant facilitated the project. The MDoA has not extracted proposed regulations from this document to begin the rule-making process, however. Without the revised regulations, the Procedures Manual (1990) was not updated using the policies and procedures from the work product.

The National Long-Term Care Ombudsman Resource Center has numerous examples from other states of the infrastructure elements contained in the following recommendations.

**Recommendation 11: Promulgate Revised Regulations for the LTCOP**

We recommend that MDoA promulgate revised regulations for the LTCOP within the next 12 months. Included in these regulations should be conflict of interest provisions that ensure the credibility of the program and of individual ombudsmen. Once the regulations are promulgated, the MDoA and the Office of the SLTCO should develop procedures to ensure that the conflict of interest provisions are applied consistently and are renewed annually.

**Recommendation 12: Revise the Procedures Manual**

We recommend that the SLTCO revise the Procedures Manual to provide clear and consistent guidance for the ombudsmen.

- Include guidance for local ombudsmen on case priorities and complaint handling if the number of complaints exceeds the number that the LTCOs can manage.

- Use provisions of formal agreements and standards for local programs to focus LTCO services on being accessible to residents.
  - As discussed in the Findings, some programs need to shift their focus to a clear focus on resident directed advocacy and consultations with individuals.
  - Examine the differences in regular visits to nursing homes and to assisted living facilities. Make adjustments so that ombudsman services are more accessible to residents in both classifications of facilities.
- Establish accountability and quality assurance standards for advocacy. Tools and resources as well as state models are available to assist Maryland in developing such standards.

**Recommendation 13: Increase the Capacity and Skills of the LTCOP to Pursue Administrative and Legal Remedies on Behalf of Residents**

We recommend that the MDoA take steps that will enable the LTCOP to provide strong, available legal counsel with expertise in long-term care and residents’ rights to assist the LTCOP in this type of advocacy. The current provision for legal counsel for the State Ombudsman Program may be adequate to pursue this type of advocacy when necessary. Agency protocols, job descriptions, or other regulations may need to be changed in order to accomplish this. (See “Ideals and Distinctions,” #2.)

**Recommendation 14: End Mandated Reporter Status of Ombudsmen**

State law that requires ombudsmen to be mandated reporters of alleged abuse, neglect, or exploitation conflicts with federal law. While this was not a topic on our survey and in our meetings with ombudsman and stakeholders, we believe that to move toward excellence, the Maryland LTCOP needs to operate in a way that is consistent with the letter and spirit of the Older Americans Act. If ombudsmen are mandated reporters, they are in a position that is inconsistent with the federal provisions for the LTCOP. In Maryland, if a person who is



mandated to report alleged illegal activities does not report, that individual could incur a financial penalty. Long-Term Care Ombudsman must adhere to strict, federal provisions for confidentiality. Placing individual ombudsmen in a position where they may be forced to choose which law to violate is untenable. Therefore, Maryland needs to align state law with federal law.

We recommend that the Office of SLTCO and MDoA seek the legal authority to remove ombudsmen from the list, or categories, of mandated reporters of alleged abuse, neglect, or exploitation in Maryland law. Correspondence from AoA, clarification from the authors of the confidentiality provisions governing ombudsman actions in the federal OAA, and legal opinions from general counsel in other states support this recommendation. (Refer to AoA letter to MDoA on the “Supplemental Appendices CD” submitted to MDoA.)

### ***Systems Advocacy***

Impacting systems to improve the quality of care and quality of life for many residents is a result of analyzing and acting on data from individual advocacy activities. The two types of advocacy, individual and systems, are connected. Solid, reliable individual advocacy provides the justification and evidence for changing systems. Successful systems advocacy improves the lives of numerous individuals. As discussed in the subsection “Findings: Systems Advocacy,” ombudsmen encounter limitations on their ability to directly engage in systems advocacy. These constraints are experienced at the State as well as on the local levels.

The National Long-Term Care Ombudsman Resource Center’s website contains numerous resources to assist the State Ombudsman and the Department of Aging in working through issues and current barriers to achieve the following recommendations. One salient document is the transcript of a dialogue about roles and responsibilities between a State Unit on Aging Director, Maria Greene, and the State Long-Term Care Ombudsman, Becky Kurtz. They give examples of dealing with other departments, agencies, and networks to clarify the

uniqueness of the State ombudsman program’s authority and role. The document, “Time and Leadership: Keys to Building Synergy Between State Ombudsmen and State Aging Directors,” is available as discussion highlights or as a transcript of the entire dialogue. (See: [www.ltombudsman.org/ombpublic/49\\_507\\_1796.CFM](http://www.ltombudsman.org/ombpublic/49_507_1796.CFM) or [www.ltombudsman.org/uploads/DevelopingSynergyhighlts.pdf](http://www.ltombudsman.org/uploads/DevelopingSynergyhighlts.pdf).)

**Recommendation 15: Assure Legal Authority for Systems Advocacy**

We recommend that the MDoA and SLTCO work to change Maryland policies, rules, or laws, or program structure to enable the LTCOP (state and local) to fulfill its responsibilities for systems advocacy.

Specific actions that need to be addressed include commenting on proposed laws, regulations, or policies, in a way that clearly identifies the impact on residents. Ombudsmen should be empowered to interact with legislators without going through several steps to obtain an invitation, to gain approval for the ombudsman’s message, or permission to provide testimony or to speak during a hearing or legislative committee meeting.

The Louisiana Attorney General issued an opinion in response to a question about a potential conflict between state prohibitions on lobbying by state employees and the federal and state statutory responsibilities of the State Long-Term Care Ombudsman. The opinion states, “To effectively carry out the functions of a state ombudsman as mandated by Congress, and intended by the State legislature, it is the opinion of this office that 24:56 [prohibition on lobbying] is made inapplicable to the State ombudsman, as the official functions of the office are clearly defined under 42 USC 3058g and LSA-R.S. 40:2010.4(D).” [Louisiana State Ombudsman Provisions] Opinion Number 05-0086.

In addition, the MDoA should clarify that the State Ombudsman may seek an appointment to state level or national work groups or committees, as appropriate, in order to

represent residents. It should enable all ombudsmen to be accessible to the media without delay and without prior approval of the content of their message. When necessary, ombudsmen can issue press releases. At a minimum, the LTCOP should issue press releases jointly with MDoA or the local sponsoring organization for the local LTCOP. The content of press releases should reflect the work of the LTCOP and be based on LTCOP data or be used to promote the effective work of an ombudsman or of the program. A press release could draw attention to the annual report of the LTCOP which discusses the most pressing issues affecting residents and recommends actions for change. In carrying out these changes, the MDoA should develop accountability measures and guidance for systems activities. Such measures are not to be restrictive in constraining ombudsman advocacy but are to ensure the soundness of the message and the appropriateness of the action.

One example of using ombudsman complaint data to support systems advocacy comes from the Washington State Ombudsman Louise Ryan. The Washington LTCOP uses the same data management program that Maryland recently implemented. Ryan notes that OmbudsManager is relational, “so we can slice and dice data. We can separate activities and outcomes by facility types. We were able to show the number of deaths that followed evictions [illegal discharges]. This became testimony [in the legislation that the LTCOP introduced and supported.]”<sup>80</sup>

Washington State offers an example of systems advocacy work with the media that is grounded in ombudsman program data. Ryan compiles a one-page fact sheet using statistics and other information each year and sends it to state legislators. “We had a lot of media attention to our discharge issues and one reporter wanted to do a ‘special investigation’. Part of what sold her on the story was the increase in our complaint numbers, which also was affirmed by the number

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<sup>80</sup> Telephone conversation with Jim Kautz, December 4, 2008.

of complaints that our state licensing agency received. When the report aired, she actually briefly showed this [LTCOP] spread sheet as she was sifting through the data and complaints!”<sup>81</sup>

### **Recommendation 16: Support Systems Advocacy with Data**

We recommend that the SLTCOP use its statistical data to identify systems advocacy goals and to develop positions for the Statewide program and the local programs.

The preceding anecdote from the Washington State LTCOP is one of numerous examples demonstrating how LTCOPs use their data to address systems advocacy issues. The paper, “Ombudsman Best Practices: Using Systems Advocacy to Improve Life for Residents,”<sup>82</sup> contains guidance on setting priorities, selecting an issue, maintaining focus, and specific examples from state and local ombudsman programs.

### **Recommendation 17: Strengthen Relationships with Other Organizations**

We recommend that the LTCOP work to strengthen its relationships with other organizations to pursue common advocacy goals. Other organizations include the Alzheimer’s Association, disability rights organizations, citizen advocacy groups, and others who may be stakeholders or partners related to an issue affecting long-term care residents.

### **Recommendation 18: Use the Annual Report as a Tool For Advocacy**

We recommend that the Maryland LTCOP use its annual report as a tool for education and advocacy. This will require some reformatting and distribution to the individuals listed in the OAA. The program may also find that distribution to additional interested parties will increase its effectiveness in systems advocacy.

Please refer to the “Findings: Activities: Systems Advocacy” section for examples of how other programs are developing and using their reports for advocacy, public education, and

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<sup>81</sup> Ibid.

<sup>82</sup> Sara S. Hunt. National Long-Term Care Ombudsman Resource Center. NCCNHR. Washington, DC. [www.ltombudsman.org/ombpublic/49\\_352\\_1015.CFM](http://www.ltombudsman.org/ombpublic/49_352_1015.CFM).

outreach. Also refer to the “Findings: Public Awareness” section for additional guidance. The National Long-Term Care Ombudsman Resource Center has examples from many states and references that will be helpful in implementing this recommendation.

### **Recommendations: Public Awareness**

Public knowledge about long-term care facilities and the rights of residents is limited, but the role and services of long-term care ombudsmen are even less known. Therefore, an ombudsman program that strives for excellence should adopt a variety of approaches to make its services known to the public. Leadership for those efforts should come from the State LTCOP.

Sample materials and best practices for producing annual reports, brochures, newsletters, videos, and other documents are on the National Long Term Care Ombudsman Resource Center website ([www.ltcombudsman.org/ombpublic/49\\_508\\_1806.CFM](http://www.ltcombudsman.org/ombpublic/49_508_1806.CFM)).

### **Recommendation 19: Increase Public Outreach**

Public education is an essential role for an ombudsman program. Ombudsman programs should leave no stone unturned in their efforts to keep the rights of residents of long-term care facilities in the minds of the public, legislators, and the media. The State LTCOP should

- have access to the media, providing them with stories and information about the ombudsman program’s purpose and accomplishments;
- keep legislators aware of the needs and problems of residents and offer assistance in dealing with their constituents’ problems in long-term care facility settings;
- be prominently visible by speaking at meetings attended by health care and social services professionals, caregivers, citizens groups, civic organizations, as well as all

the entities associated with the aging services network, to make the role and services of the ombudsman program known to others.

**Recommendation 20: Produce an Annual Report and Use It to Increase Visibility**

The state LTCOP should produce a high-quality annual report and use it as the centerpiece of its outreach, public education, and advocacy efforts. The OAA [Section 712 (h)(1)] requires the annual report to discuss the activities of the SLTCOP; analysis of data collected; evaluation of resident problems and complaints; recommendations for improving resident quality of care; analysis of program successes; and policy, regulatory, and legislative recommendations to address identified problems.

At least half of the States produce annual reports, which can be used as models for the Maryland report. These reports usually include a few, brief examples of outstanding ombudsman work, which recognizes staff and/or volunteers who provide extraordinary service, and educates the public and legislatures about what ombudsmen do. If cost is an issue, the State could issue a biannual report with annual updates.

**Recommendation 21: Statewide Materials Should Create a Uniform Identity**

The State LTCOP should take the lead in creating templates of useful brochures, pamphlets, handouts, business cards, public service announcements (PSAs), press releases, and other materials for local ombudsmen to adapt. This would give the Statewide program a more uniform feel and identity, help increase its visibility, and provide an economy of scale.

The state LTCOP should conduct more statewide publicity for the program. PSAs produced by the State LTCOP and made available to local programs would be more cost-effective than every local program producing its own PSAs.

The MDoA should upgrade its website to provide more information on the ombudsman program and make it easier to find. Materials, such as the “Maryland Long Term Care Ombudsman” brochure, should be available electronically on the website without an individual having to call to obtain a paper copy.

### **Recommendation 22: Local Programs Should Continue Outreach Innovations**

Many local ombudsman programs in Maryland have shown real innovation in working with limited resources. Where outreach funding is limited, local programs may enlist a student or others to help design outreach materials, develop a mission statement, or perform other important tasks. A local business might sponsor the cost of printing materials.

Local ombudsman programs also need to continue to educate their AAA/host agency and other entities that they work with about the advocacy role of ombudsmen.

### **Recommendations: Ombudsman Volunteer Development**

More than 100 individuals in the Maryland Ombudsman Program give their time and expertise to work on behalf of residents. This volunteer corps extends the program’s advocacy to many long-term care residents. The Ombudsman Program must continually recruit, train, and retain volunteers to make ombudsman services accessible to more residents.

Ombudsman programs that use large numbers of volunteers have staff whose expertise and focus is volunteer recruitment and management. Oregon and New Hampshire, programs that rely upon volunteer ombudsmen for most of their states’ individual advocacy work, each has a full-time position in the State Ombudsman Office whose focus is recruiting and retaining volunteers. Numerous local ombudsman programs have someone with expertise in volunteer management whose sole focus is ombudsman volunteers. In Maryland, however, volunteer

recruitment is largely the responsibility of local programs with some support from the State LTCO. Managing ombudsman volunteers is the sole responsibility of each local program. Programs with one staff ombudsman, who may be part-time, cannot devote the time that is necessary to develop and manage a volunteer program. Limited resources are the primary reason stated by local programs for not having volunteer ombudsmen.

**Recommendation 23: Employ a Volunteer Management Expert at the State Level**

We recommend that the State Ombudsman Program employ a full time, well-qualified, volunteer management expert to lead recruitment activities throughout the State and to guide, support, and assist with volunteer management in local programs.

- Use a work group of ombudsmen and others who assist with ombudsman volunteer management to identify what is needed in such a position to strengthen the volunteer component of the Statewide program.
- Use the successful practices of the local programs with strong volunteer management as a basis for statewide practices.
- If adding a position to the Office of the SLTCO is not possible, consider a part-time position or a contract position, even one that is funded by grant support.

**Recommendation 24: Track All Personnel of the SLTCOP**

Information on volunteers, their training, and length of service had to be acquired from each local LTCOP for this study. The information was not available in the State Ombudsman’s office. However, according to the OAA all who function as a long-term care ombudsman do so as a delegated extension of the authority and responsibilities of the State Ombudsman.

We recommend that the SLTCO develop a consistent tracking system for all individuals in the LTCOP at the State and the local level.



## **Recommendation 25: Enhance Recruitment Practices**

### ***Recruitment***

We recommend that the State Long-Term Care Ombudsman develop consistent position descriptions, conflict of interest screens, interview tools, and general processes for all volunteer ombudsmen throughout the State.

The “Ombudsman Compendium,<sup>83</sup>” recently completed by the National Long-Term Care Ombudsman Resource Center, contains a major examination of best practices in managing ombudsman volunteers nationwide. It’s Chapter 1, “Recruitment,” states,

The first step in finding and keeping effective ombudsmen is evaluating and strengthening our recruitment processes. . . . Accurate and consistent communication leads to recruitment and retention of appropriate individuals. Recruitment is a continuous process that requires strategizing and periodic evaluation of successes and failures. (p. 3)

Ombudsman programs that successfully recruit volunteers have clear, specific position descriptions and are continually recruiting through personal contacts as well as through other means such as speaking to community groups and using targeted mailings. Many times, volunteers who are committed to their work recruit other volunteers through their friendship and social networks. The local programs in Maryland with the most specific screening tools, training agendas, follow-up, and recognition events, also have clear position descriptions for volunteers.

As a prototype, the program should begin with the tools already used by the Maryland local LTCOPs who have strong volunteer corps and any that have been developed by the State LTCO. It should examine the resources and prototype tools available through the “Ombudsman Compendium” and the National Long-Term Care Ombudsman Resource Center, which are being used in LTCOPs in other states. Tools that the program develops should be used as a minimum, with flexibility for local programs to adapt the tools as long as the core elements are preserved.

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<sup>83</sup> [www.ltcombudsman.org/ombpublic/251\\_2009\\_13111.cfm](http://www.ltcombudsman.org/ombpublic/251_2009_13111.cfm).

In some states, ombudsman programs have a variety of roles for volunteers to support the work of the program. New Mexico and West Virginia use professionals (e.g., physicians, pharmacists) as volunteer consultants to the program. State and local ombudsman programs that have roles for volunteers other than responding to residents' complaints have volunteers for occasional, specialized assistance with some specific aspect of complaint investigation, to conduct training, and to assist with promotion of the program. Some ombudsman programs use graduate or undergraduate student interns for specialized projects such as analyzing survey reports or contract provisions. Typically, programs rely on community networking with other agencies and on using community education activities as opportunities for recruiting volunteers.<sup>84</sup> Programs that have a variety of ways to utilize volunteers have flexibility in using someone's expertise and desire to serve residents even when an individual may not be able or willing to commit to individual resident advocacy services on an ongoing basis.

**Recommendation 26: Provide a Range of Roles for Volunteers**

We recommend that the LTCOP consider a range of roles for volunteers and develop position descriptions and training requirements for these roles and eliminate the role of “friendly visitor.”

For each potential role for volunteers, the program should determine if the role carries the complaint handling responsibilities of the LTCO. If not, carefully consider how to name the role to avoid confusing consumers, providers, and others who expect all ombudsmen to deal with complaints and to have a specific knowledge base. Elimination of the friendly visitor role would be consistent with the advocacy mission of the ombudsman program. Friendly visitors are often associated with church or community organizations or even a facility sponsored visitation

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<sup>84</sup> *Volunteer Consultants: Extending the Reach of Ombudsman Programs*. National Long-Term Care Ombudsman Resource Center. Prepared by the National Association of State Units on Aging. May 2003.

program. Thus, there is the potential for confusion about the purpose and role of the friendly visitors associated with the ombudsman program. Training and supporting friendly visitors through the ombudsman program absorbs staff time and resources that could be invested in more direct advocacy activities including training individuals who are equipped to resolve problems that residents ask them to address.

**Recommendation 27: Process for Analyzing Effectiveness of Recruitment Efforts**

We recommend that the SLTCOP have a regular process of analyzing the effectiveness of statewide volunteer recruitment efforts.

***Retention***

The ability to retain volunteers is essential to program stability and to effectiveness in working on behalf of residents. A few state ombudsman programs, California and Ohio for example, have surveyed their volunteers to determine factors that influence recruitment and retention. The “Ombudsman Compendium,” in its “Retention” section, identifies key factors related to retention. Best practice materials and guidance are available. The “Ombudsman Compendium” states:

Research on volunteer ombudsmen has revealed that one of the top three reasons that volunteers give for leaving the program is the need for more support or contact with the lead agency (or ombudsman program manager). Regular contact between the ombudsman program manager and volunteer creates opportunities for technical assistance and is a way to reassure volunteers that they are important to the program. . . . Another important aspect of retention is providing recognition and feedback, especially when an ombudsman has been successful. (p. 2)

Nelson made the following recommendation for volunteer ombudsmen to a national gathering examining the Long-Term Care Ombudsman Program and ways to increase its effectiveness:

To promote retention, motivation, and personal growth, LTCOPs should develop distinct career tracks with titled grades of advancement within specific volunteer roles. The LTCOP should support these career ladders with continuing service courses, and testing for the highest grade.<sup>85</sup>

The Ohio Ombudsman Program is one example where ombudsmen, paid and volunteer, have career ladders, with different levels of required training and responsibility. Other programs have these as well; some use volunteer ombudsmen to supervise and support a small group of ombudsmen when there are large numbers of volunteers and travel time within the district is burdensome.

### **Recommendation 28: Recognize Volunteers**

We recommend that the State Ombudsman provide consistent, statewide leadership for volunteer ombudsman recognition and retention activities.

- Conduct an assessment of volunteer retention and recognition activities in Maryland.
- Identify “best practices” from local programs and share these with all programs.
- Involve the State Ombudsman in contacting volunteers who are beginning their service with the program. It is strongly recommended that no one serves as an ombudsman volunteer without the designation of the State Ombudsman. (See “Recommendations: Governance” and “Recommendations: Human Resources.”)
- Identify and implement a consistent role for the State Ombudsman in recognizing the importance of the contributions of volunteer ombudsmen.
- With advice from local programs, the State Ombudsman should consider the development of “career ladders” for volunteers to offer different levels of responsibilities, to refine skills and to assist with retention.

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<sup>85</sup> “Ombudsman Training and Certification: Toward a Standard of Best Practice,” *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, National Association of State Long-Term Care Ombudsman Programs, *Proceedings and Recommendations*, Appendix VI. Wayne Nelson. April 2003.

## Recommendations: Training

Training is essential to equipping ombudsmen to fulfill their mandated responsibilities to residents and to assure the public of quality ombudsman services. The “Findings: Training” section discusses the rationale for implementing a certification and a designation process. Training, initial and on-going, is a keystone for both processes. The Maryland Ombudsman Program currently is using a work group of ombudsmen to review potential regulations for certification as an ombudsman. MDoA intends to move the certification regulations through the rule-making process. Some of the recommendations in this section will be timely for the work group and the program as the proposed regulations progress. This report’s Findings and Recommendations are based on the existing training because the proposed regulations are not final.

At a time when many ombudsman programs are revising their classroom training to be more application-based and interactive, with required pre-class reading, Maryland is following a model that has not changed in many years. In response to our survey, Ombudsmen, Ombudsman Supervisors, and Volunteers expressed a need for more training and asked for different approaches to training. (See “Findings: Activities: Training.”)

An earlier section of this report (“Findings: Activities: Training”) discusses best practices in training in other ombudsman programs. The average standard for initial training consists of significantly more classroom hours than Maryland requires. Among Nelson’s recommendations for initial ombudsman training<sup>86</sup> are the following:

- Ombudsman programs should mandate a minimum 60 hours basic certification training covering core concepts and attributes critical to the success of an investigative advocate. A minimum of 36 hours of this training should be in the classroom. Another 24 hours can be home study, including reading assignments and mini-workbooks exercises to check understanding. Students should log their home study time.

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<sup>86</sup> Nelson, W. op. cit.

- Communication-based education (including problem resolution) should have strong modeling components (mentor modeling, film), intense practice sessions (role play, triads, simulations) and feedback mechanisms (triads with coaches, video feedback, instructor critiques), and periodic practice refresher courses.
- Problem identification instruction training should rely on case study, prepared film presentations, and practice-based simulations employing mock records checks, mock interviews, and so forth.

*Equipping Long-Term Care Ombudsmen for Effective Advocacy: A Basic Curriculum*, developed by the National Long-Term Care Ombudsman Resource Center incorporates many of the techniques recommended by Nelson. Although this curriculum has been distributed in Maryland and ombudsman trainers are encouraged to use it, the feedback on training did not indicate that it is being used to unify the orientation content and to focus on the application of ombudsman skills.

### **Recommendation 29: Overhaul the Certification Process and Manual**

We recommend that the SLTCO develop a certification training process and a resource manual for LTCO (modeled on NORC curriculum) that uses adult learning methodology and focuses on the application of content to the LTCO role. If necessary, revise the regulations to be consistent with the changes.

Steps to enable this recommendation are:

- Examine the current, and proposed, requirements and process for orientation training.
  - Use the NORC curriculum overview and curriculum and other resources available through NORC as part of this assessment of Maryland’s process.
  - Assess the value of using many individuals from different programs as speakers during the orientation training. Refer to the training resources from NORC, including Nelson’s materials, in making this assessment.
- Use a consistent, professional layout for the manual.
  - Provide the manual in hard copy as well as on CD to LTCO.
  - Digitize the reference laws, regulations, policies, and provide on CD.
  - Post the manual on LTCOPs website.

- Place the regulations, applicable laws, policies, and other similar documents in a separate binder to encourage the use of the resource manual as a guide to ombudsman understanding of job related techniques and processes.
- Reduce the time lag for training of new LTCO by developing self-study components for some of the training.
- Include some type of examination or objective measure of competency, and an internship or structured mentor experience.
- Analyze the requirements for ongoing LTCO training and consider including a provision for limited hours of credit from participation in training offered by others with prior approval by SLTCO based on an objective set of criteria.

The “Findings: Training” section discusses many issues that were identified related to attending bi-monthly ombudsman training sessions in Baltimore or in another centralized location. Conducting in-person training has definite benefits and is better suited for some content and methodology. When an ombudsman program is operated with individuals who may be the only ombudsman in their county, being with other ombudsmen for a day of training is important. The physical presence of ombudsmen from across the State reinforces the unity in the program, offers encouragement and support in addition to the training content. Teleconferences and webinars are not equal replacements.

**Recommendation 30: Use Various Training Approaches for the Bi-Monthly Sessions**

- Use teleconferences or webinars for some of the sessions and for ongoing networking.
- Choose training methods that are appropriate for the content to be delivered. For example, teleconferences or webinars are better suited for training that is content based instead of skill building or values based.
- Include more time for sharing of practices among LTCOP as part of the ongoing training.
- Offer sessions that bring a facilitated focus and dialogue about difficult cases.

- Retain the current practice of information sharing from other agencies about new initiatives or changes impacting ombudsman work.

**Recommendation 31: Conduct an Annual Statewide Conference**

We recommend that the SLTCO conduct an annual statewide conference for in-depth LTCO skills and knowledge building for staff and volunteers.

- Consider decreasing the number of day-long training programs in order to conduct a statewide conference.
- If a statewide conference is not feasible, conduct regional conferences in a couple of areas of the State.
- Encourage and enable volunteer ombudsmen to attend.

Currently, ombudsmen share information and innovations with each other on an ad hoc basis. The bi-monthly training sessions and materials sent from the State Ombudsman occasionally share successful practices or resources that are developed by one program with all of the other programs. The statewide program could be strengthened and local program resources conserved, if more sharing occurred among all programs.

**Recommendation 32: Share Training Materials with All Local Programs**

We recommend that the program enable more sharing of training modules and other materials developed by a local LTCOP with all programs. It should encourage and promote the sharing of newly developed or revised materials and successful practices among programs.



## **Accountability and Quality Improvement**

Accountability and quality improvement intertwine. An agency may excel in holding a program accountable but fail in improving services. Alternatively, it may use quality improvement methods as part of its system of accountability. Although MDoA and the Office of the State Long-Term Care Ombudsman (SLTCO) have a responsibility to hold workers in all programs accountable for performance and results, we suggest that processes and instruments that continuously improve those services are paramount.

Several steps would start the Maryland Office of the SLTCO on the road toward excellence.

### **Recommendation 33: Initiate Ombudsman Program-Specific Agreements**

We recommend that the SLTCO and the MDoA promulgate updated regulations, begin using program-specific agreements with the sponsoring local entities, and initiate a process that designates (and can de-designate for cause) local representatives of the SLTCO. These recommendations are more fully discussed in “Recommendations: Governance.”

### **Recommendation 34: Improve Monitoring Tools and Processes**

Currently, the State Long-Term Care Ombudsman (SLTCO) monitors local programs annually, as required by State law. The local program reviews its own operations and achievements and sends a pre-monitoring statement to the SLTCO who then reviews the program based on the self-assessment. This process is sound, but can be improved.

Both the pre-monitoring tool and the monitoring protocol lack specificity. They omit measurable indicators of performance. We recommend that the SLTCO and local programs use the self-evaluation tools available from the National Long-Term Care Ombudsman Resource

Center.<sup>87</sup> We also recommend that, as part of the monitoring, the local programs set measurable objectives, based on State standards that are incorporated in the designation process and formal agreements. (See below.)

Case reviews are a vital aspect of the current monitoring process. We recommend that they continue and note that desk reviews using the new online functions of OmbudsManager can expedite this activity.

Financial accountability should also be improved. We found that the MDoA does not require line-item expenditure reports from the sponsoring AAAs. We recommend that, at least twice a year, the MDoA receive statements of expenditures, and that it review these to assure that funds are being spent appropriately. Such data will also aid in financial planning for the program. (See “Recommendations: Financing.”)

### **Recommendation 35: Institute Continuous Quality Improvement**

Continuous Quality Improvement (CQI) is a way for the program to hold itself accountable while working for changes in its advocacy and other processes. Rather than depending on top-down control, the program would develop means for involving all members of the program in assuring the highest levels of performance. This approach does not relieve administrators and managers from holding the program accountable. Rather, it enables the program to find its weaknesses while they are relatively small and correct them before they become serious lapses. Central to this method are dual principles:

- The program must know its results, or outcomes; and
- The program must have effective procedures to improve processes that deliver results.

By adopting the recommended way of doing business, the program will:

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<sup>87</sup> “A Self-Evaluation and Continuous Quality Improvement Tool For State Long-Term Care Ombudsman Programs.” National Long-Term Care Ombudsman Resource Center. Robyn Grant. 2004 and “A Self-Evaluation and Continuous Quality Improvement Tool For Local Long-Term Care Ombudsman Programs.” National Long-Term Care Ombudsman Resource Center, 2005

- set goals, objectives, and measures at all levels of operation, which may be incorporated in state and local plans;
- collect and use data to measure progress toward program objectives;
- expect local workers and the State Long-Term Care Ombudsman to identify causes of weak performance;
- expect local workers and the State Long-Term Care Ombudsman to suggest means to improve processes; and
- use work groups at the State and local entities to improve practices.

This process involves the CQI “Plan-Do-Check-Act” way of working.<sup>88</sup> The organization sees itself as never finished in the work of improving itself; it continuously progresses.

Performance data are not used as clubs but as indicators and stimuli for upgrading.

We recommend, therefore, that the SLTCO and local programs work together to:

- train appropriate staff and volunteers in the precepts and methods of CQI;
- set goals and objectives for a few key activities. We suggest that the following activities be included in the objectives:
  - number and percentage of complaints with positive outcomes<sup>89</sup>
  - number of complaints received, per bed,
  - number and percent of resolved complaints,
  - number of resident councils visited,
  - number of family councils visited, and
  - number of volunteers recruited.
- establish measures for objectives;
- provide local programs and work groups with data to measure the objectives;
- set up a process for the State office and the local programs to undertake periodic reviews of progress in meeting these objectives;
- create and practice collaborative systems (work groups that include staff and volunteers from the State Office and the local programs) for improving the processes that influence lagging indicators; and
- recognize the achievement of those workers and offices that meet or exceed their objectives.<sup>90</sup>

We consider it important that stakeholders participate in formulating such a plan. A work group comprised of program staff (state and local), an appropriate policy person from the

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<sup>88</sup> See the Appendix to this report for a diagram of the Plan-Do-Check-Act process.

<sup>89</sup> Washington State’s SLTCOP defines “positive outcomes” as “fully and partially resolved.” The Georgia program defines them as “a total of the following resolution categories: Resolved, Partially Resolved, Explained, Withdrawn and No Action Needed or Appropriate.” The Maryland program should define what it considers “positive outcomes.”

<sup>90</sup> Ombudsman programs in other states use similar methods. The Maryland Office of the SLTCO should research the objectives used by these programs to find the most useful key objectives and measures.

MDoA, and one or more external stakeholders, should be chartered for this effort. Measures and indicators should be established by the consensus of this team and the leadership of the SLTCOP and MDoA.

We recommend that the State and the local programs consider their measures as a whole, not basing determinations of effectiveness on a single indicator. Also, while a particular indicator may not demonstrate the effectiveness of a program, it may be used to spot functions that need improvement. The data are not cudgels; they are tools for improvement.

Under such a protocol, the MDoA and the SLTCO do not give up their role of oversight; they continue to have responsibility for performance. They must continue to assure that statutory requirements, policies, and regulations are met. Using the CQI process, they should, however, find fewer issues to deal with from “the top-down.”

Time and practice will be necessary to recognize the benefits of this system. Change will not take place overnight.

Several state programs have initiated such a system. We have used Georgia and Washington to illustrate.<sup>91</sup>

In 1998, the Georgia Division of Aging Services instituted a long-term project to “Manage the Aging Network Using Data.” This effort was Division-wide; it included all programs, services, and subsections of the division and the aging network. The Division provided training on how employees and leaders can bring about changes in processes and performance. All programs developed measures and quality indicators, which were sanctioned by the division’s leadership. These included measures of inputs, outputs, and outcomes (results).

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<sup>91</sup> See the Appendix to this report to find specific examples.

The Georgia SLTCO worked actively and vigorously in this effort and enlisted the participation of local programs. Considering the IOM’s recommendations and the accountability tools used by other states, the program developed a process for evaluation of all of its entities.

The process, which has continued until the present, is summarized below:

- The SLTCO sets measurable objectives, indicators, and targets for performance and sends them to the local programs (See Table 18 for an example)
- Community LTCOPs, coordinating with their local agency, use these measures to develop an annual plan
  - Plan must at least meet minimum standards
  - Plan can set goals which exceed minimum standards
- Community LTCOP submits the plan to the AAA
- AAA submits the plan with its area plan to the State Office
- State office approves Plan (within 30 days after receipt)
- State Office sets targets for MAPs (Management Analysis Plans) annually

**Table 18**

<b>Example of a Standard from the Georgia Plan</b>
<p>B. Applicable standards:</p> <p>1. Five (5) community outreach and education activities annually per full-time equivalent LTCO staff.</p> <p>Reference: Georgia Long-term Care Ombudsman Policies and Procedures Manual § III-103.</p>

In both Washington State and Georgia, the State ombudsman offices monitor performance data throughout the year. The Washington SLTCO looks at key indicators, such as the number of complaints and volunteer hours. (She says that she has learned that a decrease in volunteer hours indicates that “a program is in trouble.”) When data showed a low resolution rate on health and safety complaints, she and the regional LTCOs used an action plan to improve performance. If a volunteer keeps too many cases open, the regional staff ombudsman prints out their cases from OmbudsManager and asks the volunteer to write an update on each open case.

SLTCOs using this process receive monthly reports from the local programs. In these, the local programs respond to goals in their plans. The SLTCOs review the outcomes and other performance statistics with the local ombudsmen. When needed, based on the statistics, they may provide over-the-phone training for the regional program.

Although repeated poor performance (determined by both anecdotal and statistical information) can result in de-designation of a local entity, this step has never been necessary in these states.

## **Data Collection, Reporting, and Other Uses**

Maryland's ombudsman program has recently deployed an online application of OmbudsManager. With this enhancement, it has at its disposal, at all levels, the basic tools to collect and use statistical data for advocacy, reporting, program improvement, management, and support of funding recommendations.

We offer several specific recommendations for improving collection and use of data.

### **Recommendation 36: Develop a Culture that Includes the Use of Statistical Information**

Although a handful of AAAs and program managers refer to their data and use them to make program decisions and to support advocacy, such practices are not embedded in the culture and practices of the program, statewide.

We recommend, as a first step, that the Office of the SLTCO begin to use statistical data for setting objectives and for monitoring performance and expenditures. (For more specific guidance, see "Recommendations: Accountability and Quality Improvement.") The State Ombudsman and the Maryland Department of Aging can demonstrate models for use of data and lead the local programs to follow their example.

Strongly recommended is the development and distribution of an annual report that shows and interprets analyses of types of complaints received and program performance. At least half of the other states use such reports.

In addition, the program should assure that data used for state reports (for example, the Managing for Results report) include the most significant measures and that the same measures are required to be submitted by the sponsoring entities statewide.

The program should provide training on productive use of data to advocate, manage, and promote their programs.

Observation of recurrent patterns of complaints and questions from the public, shown in analyses of data, assists ombudsmen in determining topics for training program and provider staff as well as the general public. We recommend that the program use the data system functions that support decisions on the needs of the ombudsmen for training.

Ombudsmen have the opportunity to meet with regulatory surveyors from the Office of Health Care Quality prior to their surveys of long-term care facilities and to provide them information. Because surveyors may allot a small amount of time to this task, some state programs use their electronic systems to retrieve complaint data quickly and provide it to the surveyors. We recommend that the program managers use the functions of OmbudsManager that afford rapid retrieval of data to share with surveyors.

Persons seeking quality long-term care increasingly turn to ombudsmen for counsel in selecting residences. Across the nation, ombudsmen have responded in various ways to this public demand. Some provide detailed information, based on their analyses of the most frequently asked questions and complaints. Others are reluctant to provide complaint data to consumers citing various reasons:

- concern that the information is not accurate, up-to-date or consistently reported;
- concern that mitigating circumstances are not explained by mere lists of complaints;
- concern about breaching confidentiality; and
- time constraints.

We recommend that the program carefully weigh the needs of consumers and the issues involved in releasing ombudsman information to the public, craft policies and procedures governing these issues, and use data from OmbudsManager that will support its policies.

The IOM recommended as an “exemplary” practice: “Information from the Office’s work, integrated with comparable data from other sources, determines policy decisions about



advocacy issues affecting residents and program planning for the office.”<sup>92</sup> Other state ombudsmen use data to identify patterns within states and regions, and about long-term care providers and corporations. These analyses are used to advocate for improvements within facilities and within provider corporations and for changes in laws, regulations, provider payment, enforcement, or other matters. Many state programs publish complaint data in their annual reports to bring systems issues to the attention of the legislature and the public. We recommend that the Maryland LTCOP use its statistics in its systems advocacy.

Ombudsman programs use performance and needs assessment data to support appeals for state and local funds. One program analyzed its record of resource development and found that, since developing standards and reporting relevant data, it had received nearly one-half million dollars in new funds. They demonstrated Osborne and Gaebler’s tenet: “If you can demonstrate results, you can win public support.”<sup>93</sup> We recommend that the SLTCOP use its data system functions to strengthen its appeals for funding.

### **Recommendation 37: Improve Data Accuracy and Consistency**

The State Ombudsman has shown sensitivity to the accuracy and consistency of the data entered and submitted by the local programs. She has offered training and technical assistance to improve consistency. Consistent coding of data remains a concern of the State Ombudsman and local ombudsmen, however.

We recommend that the program continue to include within its training regimen workshops on appropriate coding.

In addition, continuous monitoring of data is needed to screen it for possible coding and interpretational errors. We recommend that the SLTCO form a work group of program managers

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<sup>92</sup> IOM, *op.cit.*, p. 171.

<sup>93</sup> David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*. New York: Plume, 1992, p. 3.

and the SLTCO or one of her assistants that will review data for accuracy and consistency. The findings of this peer review group will be used to inform training and technical assistance.

Florida commissioned such a work group recently. This group discovered errors from across the State. As a result, the SLTCOP revamped its processes of case review and data entry.

**Recommendation 38: Reduce the Effects of Data Entry and Reporting on Ombudsmen's Workload, If Possible.**

Ombudsmen complain that they spend too much time documenting their activities and entering data into OmbudsManager. This is not an unusual phenomenon in any ombudsman program, or, for that matter, any profession that requires extensive documentation. (Nursing home staffs, for example, make similar static.)

Local ombudsmen say that OmbudsManager requires certain information that is not necessary. In addition, they allege that OmbudsManager requires redundant entry of data. Also, we found that ombudsmen in the local programs perform time-consuming tasks that may not qualify as ombudsman-specific duties. If ombudsmen are reporting education on elder abuse in the community in NORS, for example, they are using ombudsman resources for an activity that is not a part of the ombudsman program.

It was not within the scope of this project to examine the time spent in recording and reporting activities. We recommend, therefore, that the Office of SLTCO charter a work group of local ombudsmen and the State office of the program to examine the issues listed above and recommend any changes that they find necessary and feasible to reduce the proportion of ombudsmen's time spent in data entry and other documentation.

This group should also explore the feasibility and cost-effectiveness of providing ombudsmen with laptop or notebook computers. Some local ombudsmen are already using this technology. The work group could use their experience as a pilot study.

## Effectiveness

Throughout this report we have discussed the status of the Maryland State Long-Term Care Ombudsman Program (SLTCOP) and have offered recommendations to guide the Maryland Department of Aging (MDoA) and the LTCOP in moving toward excellence. The following is a summary of recommendations that we consider essential. Details are discussed in the section above.

- Enhance and reorganize the State office of the SLTCOP, ensuring that the SLTCO has unimpeded access to other functions within the MDoA.
- Establish the legal authority for the program to conduct systems advocacy and implement a thoroughgoing process of systems advocacy.
- Assure adequate funding of the program as a whole and distribute funds to local agencies using a needs-based formula.
- Consider the effectiveness and efficiency of the number of local programs and reduce the number if sufficient funding is not available.
- Assure the authority of the SLTCO and the MDoA to govern the program, including:
  - Revise the regulations and procedures manual for the LTCOP
  - A clear process for the designation of local programs
  - Specific ombudsman program agreements
  - Certification of ombudsmen
  - An improved system of accountability
- Evaluate and strengthen local ombudsman human resources
  - Add staff to the State office and pay a salary that attracts and retains excellent leaders
  - Employ no less than one full-time ombudsman per area
  - Eliminate the division of ombudsman duties between more than the ombudsman program
  - Enhance volunteer involvement and manage the volunteer program
  - Improve the training of staff and volunteer ombudsmen
- Improve the accuracy of data and develop a culture that includes the use of statistical information for advocacy, management, and program improvement.
- Institute a process of Continuous Quality Improvement.

**Strategic Plan**  
**and**  
**Action Steps**

## Stakeholder Implementation Ideas

HBABCs conducted a day-long meeting with 18 stakeholders (ombudsmen, ombudsman program managers, AAA directors, regulators, and consumers) to generate implementation ideas based upon selected key recommendations for developing a Strategic Plan and Actions Steps for MDoA.

HBABCs described our findings and recommendations, and then facilitated three roundtables of six stakeholders each to discuss six key recommendations. We limited the number of recommendations due to time constraints. This stakeholder group had the opportunity to discuss a list of only a few of the 36 recommendations in our report.

Participants were asked to consider barriers and solutions for implementing each recommendation. Each roundtable then voted on its top three solutions for each recommendation. The roundtables presented their top solutions to the entire group. The group then voted to prioritize the recommendations.

Among the topics discussed, the following five implementation recommendations received the highest number of votes.

1. **Volunteers.** To increase and strengthen volunteer presence:
  - a. Standardize ombudsman position descriptions and **make the volunteer ombudsman role closer to staff ombudsman.**
  - b. **Create a Volunteer Coordinator position at the State level** (The person needs skills and expertise in volunteer management and recruitment, etc.).
2. **Agreements.** To designate local entities and individuals, develop a model contract-like agreement that states the responsibilities of the State and the local sponsoring entities, assures cohesion, and holds local entities accountable:
  - a. **Tie the agreements to the Older Americans Act Long-Term Care Ombudsman Program provisions,**
  - b. **Make clear that we [Maryland LTCOP and MDoA] will implement the vision of the OAA.**

3. **Regulations.** To assure that the SLTCO has responsibility for assuring that the program, in all of its expressions across the State, operates within its legal and regulatory limits and performs at its optimal level, **adopt regulations consistent with federal law.**
4. **Outreach.** To increase and enhance public outreach, develop a strategic plan for expansion of outreach.

We emphasize that the group did not discuss all 38 recommendations. Therefore, if one of the recommendations in the report did not receive a high priority from this group, it cannot be concluded that this group would not have given it higher importance if they had the opportunity to consider it.

The following is an overview of the wide variety of implementation recommendations offered by our 18 stakeholders:

### **Designate and Certify Ombudsmen**

**Goal 1:** Enact a process for designating local entities and individuals through model contract-like agreement that states the responsibilities of the State and the local sponsoring entities, assures cohesion, and holds local entities accountable

#### **Strategies:**

- 1) Tie agreements to the Older Americans Act and make clear we will implement its vision.
- 2) Use data from HBABCs study to make the case regarding unevenness within Maryland and deviation from comparable states.
- 3) Look to successful models (e.g., Georgia) in similar states and how they make it work.

**Goal 2:** Designate ombudsmen as representatives of the SLTCO and certify them based on standards.

#### **Strategies:**

- 1) Grandfather in existing ombudsman based upon clear standards and at the discretion of the SLTCO.
- 2) Develop measures for performance.
- 3) Take methods from other states, no need to start from scratch.

### **Full-time Ombudsman**

**Goal:** Each local program should have at least one certified, full-time ombudsman.

#### **Strategies:**

- 1) Create regional programs where too few beds/facilities to justify FTE LTCO [make program more efficient].

- 2) Seek additional money (CMPs, federal dollars) [look for other sources of funding].
- 3) Re-allocate existing money equitably.

## **Volunteers**

**Goal:** Increase and strengthen volunteer presence, with a stronger emphasis on recruitment, maintenance and management; and employing a full-time, well-qualified volunteer management expert to lead recruitment activities throughout the State and to guide, support, and assist with volunteer management in local programs.

### **Strategies:**

- 1) Standardize ombudsman position descriptions and make volunteer ombudsman role closer to staff ombudsman.
- 2) [Create] Volunteer Coordinator: Person needs skills and expertise in volunteer management and recruitment, etc.

## **Ombudsman Regulations**

**Goal:** SLTCO has responsibility for assuring that the program, in all of its expressions across the State, operates within its legal and regulatory limits and performs at its optimal level through regulations, procedures manual, contracts, monitoring tools and processes.

### **Strategies:**

- 1) Adopt regulations consistent with federal law.
- 2) Need strong central leadership (MDoA, Governor, SLTCO).
- 3) Need stakeholder advocacy to leaders.

## **Outreach**

**Goal:** Increase and enhance public outreach.

### **Strategy:**

- 1) Develop strategic plan for expansion of outreach.
- 2) Find more money and staff.
- 3) Educate facilities and families through town hall meetings and other means.

## Strategic Plan

Implementation of the changes in the State Long-Term Care Ombudsman Program will require a systematic, step-by-step plan. To be effective, the Maryland State Long-Term Care Ombudsman (SLTCO) and the Maryland Department of Aging (MDoA) must develop an implementation plan to address the issues raised in this report and to move the program toward excellence. Based on our analysis of the Maryland LTCOP, we recommend an initial plan as a basis for refinement by the SLTCO and the Department.

We present our recommended plan in three sections:

- **A strategic plan**
- **Processes** to develop the Office of the SLTCO/MDoA plan
- A list of **actions that can be initiated within the next three months** while the Office of the SLTCO and MDoA complete the master plan

We recognize that not all of the tasks that may be desirable and even vital can be done as quickly as the program and its stakeholders would like. Ombudsmen and other leaders in the aging network have limited time and many responsibilities. We suggest that the following goals, objectives, and action steps, as well as the list of “actions that can be initiated within the next three months,” be used as a menu and a challenge to action.

Because the area agencies on aging (AAAs) participate in the implementation of the LTCOP, we suggest consultation with their leaders in the development of the plan.



## Recommended Strategic Plan

Recom- mendation	Objective	Actions	Dates	Measures
<b>Goal 1: Reorganize the program to improve effectiveness, efficiency, and accountability.</b>				
1	Ensure that the SLTCO has complete access throughout the department	Place the SLTCO directly under the Secretary or Deputy Secretary <sup>94</sup>	July 1 – Sept. 30, 2009	Organizational chart reflects change
				SLTCO and Secretary discuss issues as needed
		Form teams that include the SLTCO and appropriate members of relevant MDoA divisions (e.g., finance, IT, legislative liaison)	June 17, 2009 – ongoing	Team charters developed
				Teams make decisions
Issues are resolved quickly and seldom require managers' decisions				
2, 8 & 9	Evaluate the number of local programs and merge programs, if necessary	Determine the actual, historical expenditures of the local programs, by line items	Aug. 1, 2009 – Sept. 30, 2010	All local programs are adequately staffed and funded
		Determine essential costs of supporting the programs at the recommended levels		
		Determine adequate funding levels for local programs and the statewide Office of the SLTCO		
		If adequate funding is not available to support 19 programs, reduce the programs to a manageable number and allocate funds accordingly		

<sup>94</sup> If this placement is not acceptable, the SLTCO should have regular as well as topic-generated conversations with the Secretary and other departmental leaders without proceeding through intermediate layers of the Department's hierarchy.

<b>Goal 2: Assure the coherence, continuity, and consistency of the program across the state.</b>				
3; 5; 11; 33	Designate local entities by use of a formal written agreement	Promulgate regulations that include conflict of interest provisions	By Oct. 31, 2009	All local programs are formally designated based on understood criteria
	<p>Note: the following statements were in the top 5 priorities in the Stakeholder Strategic Plan Meeting:<sup>95</sup></p> <p><i>To designate local entities and individuals, develop a model contract-like agreement that states the responsibilities of the State and the local sponsoring entities, assures cohesion, and holds local entities accountable.</i></p> <p>a. <i>Tie the agreements to the Older Americans Act,</i></p> <p>b. <i>Make clear that we will implement the vision of the OAA.</i></p> <p><i>To assure that the SLTCO has responsibility for assuring that the program, in all of its expressions across the State, operates within its legal and regulatory limits and performs at its optimal level, adopt regulations (consistent with federal law).</i></p>	Develop a model written agreement with the AAAs or other sponsoring agencies.	By Nov. 30, 2009	
		Enact designation and formal agreements	By June 30, 2010	
4	Certify local ombudsmen (staff and volunteer)	Promulgate standards for certification, including standards for maintaining certification	By Oct. 31, 2009	No one represents him/her self as an ombudsman unless certified
		Provide training to bring all ombudsmen into compliance with standards	By Jan. 31, 2010	

<sup>95</sup> After the completion of the Preliminary Plan, HBABCs convened a group of 18 stakeholders. After a presentation of basic findings and recommendations, this group considered several recommendations and selected several priorities for the Strategic Plan. Their votes on the topics ranged from 0 to 15.

		Certify qualified ombudsmen	By March 30, 2010	
6 & 34	SLTCO has a defined, meaningful role in the establishment of the budget of the Office of the SLTCOP across the state and has responsibility for assuring that the program operates within its legal and regulatory limits and performs at its optimal level	Establish a process for budget development	By Sept. 30, 2009	SLTCO has final sign-off on state and local budgets
		Revise monitoring and other mechanisms for determining program effectiveness and adherence to standards	Oct. 31 – Dec. 31, 2009	SLTCO has effective tools for determining program operations
<b>Goal 3: Enhance the human resources of the program across the state.</b>				
7; 23 -28	Enhance staffing of the State Office of the SLTCO	Employ one additional professional staff whose specialty is volunteer development and one full-time clerical staff in the state office  Note: the following statement was in the top 5 priorities in the Stakeholder Meeting: <i>To increase and strengthen volunteer presence, create a Volunteer Coordinator position at the State level (Person needs skills and expertise in volunteer management and recruitment, etc.)</i>	By Nov. 30, 2009	Staff of state-level office is two professionals and one clerical
		Employ one additional professional staff in the state office	By Aug. 31, 2010	Staff of state-level office is three professionals and one clerical

	Enhance the salary level of the SLTCO	Increase pay grade of SLTCO and subordinates	By Oct. 1, 2009	Salaries of state office staff are commensurate with salaries of ombudsmen in comparable states and the SLTCO's salary exceeds the salaries of local ombudsmen, adjusting for the cost of living differences
	Assure legal support dedicated to the SLTCOP and LTC residents	Hire or contract with an attorney whose time and role are dedicated to the legal issues of the program and the residents it represents	By March 30, 2010	The program has dedicated legal support
	Employ a minimum of one full-time, certified ombudsman in each area	Include in forthcoming regulations a provision that all agencies that host a local LTCO program must employ a minimum of one full-time, certified LTCO whose duties are solely LTCO services	By Oct. 31, 2009	Each local program has one full-time LTCO. Some programs employ more than one full-time LTCO to provide residents with accessible LTCO services and to fulfill the other responsibilities of the program
	Assure commitment of human resources to LTCO tasks	Charge a work group of ombudsmen and AAA leaders with the task of examining the amount of time that the ombudsmen spend in their tasks	Aug. 31 – Oct. 31, 2009	Survey of LTCOs finds at least 75% satisfaction with their ability to perform their duties
		Based on the conclusions of this work group, develop program guidance that will assure that LTCOs can devote adequate time to the priorities of the program	By Nov. 30, 2009	
	Assure that residents are served timely and well when local programs experience staff vacancies	Develop a policy that addresses continuity of service. Include this policy in the program's regulations and in agreements with local programs if applicable	By Oct. 31, 2009	Policy is distributed

	The SLTCO knows relevant data about all LTCOs	Develop a tracking system that will enable the SLTCO to know the names, dates of employment, training, and salaries of all staff and volunteers in the LTCOP	By Sept. 30, 2009	SLTCO knows all relevant information re: LTCOs
	<p>Volunteers will be a valued, integral part of the program</p> <p>Note: the following statement received the highest priority in the Stakeholder Conference:</p> <p><i>To increase and strengthen volunteer presence, standardize ombudsman position descriptions and make volunteer ombudsman role closer to staff ombudsman</i></p>	SLTCO and AAA leaders develop a range of roles for volunteers and develop position descriptions and training requirements for these roles	By Dec. 31, 2009	Staff and volunteers know the skills, knowledge, and responsibilities expected of them
		SLTCO and AAA leaders develop "career ladders" for volunteers	By Dec. 31, 2009	
		SLTCO and AAA leaders develop consistent position descriptions, conflict of interest screens, interview tools, and general processes for all volunteer ombudsmen throughout the State	By Dec. 31, 2009	
		Train and certify all volunteers in the program as ombudsmen and cease deploying volunteers as "friendly visitors"	By Dec. 31, 2009	All LTCOs are trained and certified
		Establish a regular process of analyzing the effectiveness of statewide volunteer recruitment efforts	By Dec. 31, 2009	Process in use
		Develop a process for volunteer ombudsman recognition and retention activities	By Dec. 31, 2009	Process in use

<b>Goal 4: Adequately fund the Office of the SLTCO.</b>				
9 - 10	Determine levels of funding necessary to conduct the business of the Office of the SLTCO and initiate appropriate funding	Increase funding of the state office of the program to enable adequate staffing	By Sept. 30, 2009	Staffing of the state office is increased and salaries are adequate
		MDoA and AAA leaders review expenditures, including line items, at the AAA level and document them	By Aug. 31, 2009	MDoA knows the precise uses of LTCO funds in every area
		Ascertain the appropriate level of funding needed	By Sept. 30, 2009	MDoA has determined the funds required to operate the program
		Distribute funds to local agencies using a needs-based methodology	By Oct. 1, 2009	Funds are allocated based on a defined formula
		Review the effects of the new allocation formula and revise if necessary	Jan. 1, 2010 – June 30, 2010	Funds are allocated based on a defined formula
<b>Goal 5: Assure that the program effectively advocates for individual residents and for systems that affect residents.</b>				
11 - 12	Develop procedures based on the revised regulations and best practices	Develop procedures to ensure that the conflict of interest provisions are applied consistently and are renewed annually	By Jan. 31, 2010	Revised procedures are understood by all LTCOs
		Revise the Procedures Manual to provide clear and consistent guidance for the ombudsmen and train ombudsmen to follow these procedures		
		Give attention to the priority of serving residents by increasing number of routine visits and number of complaints filed by residents		
13	Increase the capacity and skills of the LTCOP to pursue administrative and legal remedies on behalf of residents	Hire or contract with an attorney whose time and role are dedicated to the legal issues of the program and the residents it represents	By Jan. 31, 2010	The program has dedicated legal support
14	Work to end mandated reporter status of ombudsmen	Eliminate through legal authority the requirement that LTCOs must report alleged abuse	By July 1, 2010	LTCOs are not mandatory reporters

15 – 18; 20	Assure that the Office of the SLTCO can and does fulfill its federally mandated responsibilities for systems advocacy at the state and local levels	Analyze existing policies, rules, or laws, and program structure to determine impediments to systems advocacy	By Sept. 30, 2009	State and local ombudsmen advocate for residents' needs and rights in legislative and public forums
		Take actions necessary to remove statutory or regulatory impediments	By July 1, 2010	
		Maintain close communication within the executive and legislative branches to assure that all participants understand the unique responsibilities of the Office of the SLTCO in systems advocacy	July 1, 2009 – ongoing	
		Use statistical data to identify systems advocacy goals and to develop positions	Jan. 31, 2010 – ongoing	Ombudsmen use statistical data in advocacy statements and position papers
		Take steps to strengthen the LTCOP's relationships with other organizations to pursue common advocacy goals	July 1, 2009 – ongoing	SLTCO represents the program in meetings with other advocacy organizations
		The LTCOP develops an Annual Report that communicates policy concerns and distributes it to the individuals listed in the OAA and to others as appropriate	Dec. 31, 2009 – annually	An advocacy-oriented report is distributed before the beginning of the 2010 session of the general assembly

<b>Goal 6: Keep the public aware of the needs of residents and the services of the program.</b>				
19 - 22	<p>The State LTCOP will keep the general public, the media, legislators, and government officials aware of its services and the needs of residents.</p> <p>Note: the following statement was in the top 5 priorities in the Stakeholder Meeting:</p> <p><i>To increase and enhance public outreach, develop a strategic plan for expansion of outreach.</i></p>	State and local LTCOs maintain contact with appropriate representatives of print and broadcast media	July 1, 2009 – ongoing	Frequency of news stories about ombudsmen and residents
		State and local LTCOs maintain contact with legislators and leaders of appropriate public agencies	July 1, 2009 – ongoing	Number of contacts
		State and local LTCOs speak at meetings attended by health care and social services professionals, caregivers, citizens groups, civic organizations, as well as all the entities associated with the aging services network	July 1, 2009 – ongoing	Number of public presentations
		State and local LTCOs use the Annual Report as the centerpiece of their public outreach	Jan. 1, 2010 – ongoing	Number of copies of Annual Report distributed
		State LTCOP creates templates of useful materials for local ombudsmen to adapt	Dec. 31, 2009 – ongoing	Number of templates generated
		All LTCOP materials bear the same logo and/or tagline, demonstrating the statewide unity of the program	Dec. 31, 2009 – ongoing	All distributions show SLTCOP identity



<b>Goal 7: Ombudsmen will be trained using state-of-the-art materials, methods, and technologies.</b>				
29	Implement certification training	Improve the training process and a resource manual for LTCO (modeled on NORC curriculum)	Dec. 31, 2009 – ongoing	Training content and methodology are up-to-date
		Use adult learning methodology consistently throughout the certification process		
		Apply training content to the LTCO role		A survey of ombudsmen indicates the usefulness of the training
		Examine program regulations and revise to be consistent with the changes if necessary		
30	Use various training approaches for the ongoing (bi-monthly) sessions	Choose content that is appropriate for the way that the training is delivered	Dec. 31, 2009 – ongoing	A survey of ombudsmen indicates the usefulness of the training
		Provide more time for sharing of practices between LTCOs		
		Offer sessions that bring a facilitated focus and dialogue		
		Use teleconferences or webinars for some of the sessions and for ongoing networking		
31	Sponsor an annual statewide conference for staff and volunteers for in-depth training in LTCO skills and knowledge	Plan, fund, and institute an annual training conference	Dec. 31, 2010 – ongoing	A survey of ombudsmen indicates the usefulness of the training
		Offset costs by reducing the number of training sessions throughout the year or using teleconferences or webinars		
32	Encourage and facilitate sharing of ideas, skills, and materials between local programs	Implement a process for sharing of training modules, practices, and materials developed by a local LTCOP with all programs	Nov. 30, 2009 – ongoing	Number of items used by local programs that were developed by other programs

<b>Goal 8: Improve accountability of the LTCOP.</b>				
34	Improve monitoring tools and processes	Institute a process through which the SLTCO and local programs use the self-evaluation tools available from the National Long-Term Care Ombudsman Resource Center	Dec. 31, 2009 – ongoing	NORC tools are modified for the Maryland program and used consistently
		As part of the monitoring, the local programs set measurable objectives, based on standards that are incorporated in the designation process and agreements		Pre-monitoring and monitoring include review of indicators and statistical measures
35	Institute Continuous Quality Improvement (CQI)	Locate and reach an agreement with a qualified trainer in CQI to coach the program in the value and use of CQI methods	By Nov. 30, 2009	A suitable CQI coach is identified
		Train all LTCOs in CQI and use of CQI	Dec. 31, 2009 – ongoing	Number of meetings held using CQI methods
		Incorporate CQI in the annual review and re-designation of local programs	July 1, 2010 – ongoing	Annual monitoring and designation reviews incorporate CQI-based objectives and measures
3; 5; 11; 33	Assure that all activities in all local programs meet the requirements of regulations and Procedures Manual	Use written agreements and monitoring to hold local programs accountable	July 1, 2010 – ongoing	Annual reviews of performance

<b>Goal 9: Develop a culture that includes the use of statistical information.</b>				
36	MDoA and the SLTCO lead by example in productive use of data	SLTCO uses statistical data for setting objectives and for monitoring performance and expenditures	Dec. 31, 2009 – ongoing	Data are used to set objectives and make program decisions
		Train local programs in how to use data to manage and advocate	By Feb. 28, 2010	Number of local programs meeting or exceeding targets for performance
		Local programs use data to manage for improvement (per CQI)	March 1, 2010 – ongoing	
		SLTCO uses statistical data for advocacy	Oct. 1, 2009 – ongoing	Reports, presentations use data
37	Improve data accuracy and consistency	Continue to include within its training regimen workshops on appropriate coding	Nov. 31, 2009 – ongoing	Training sessions on coding
		Institute a peer review process to develop consistency in coding	Nov. 31, 2009 – ongoing	Peer teams are instituted
38	Reduce the effects of data entry and reporting on ombudsmen's workload, if possible	Charter a work group of AAA leaders, local ombudsmen and the State office to examine the issues listed in the report and recommend changes to reduce the proportion of ombudsmen's time spent in data entry and other documentation	By Sept. 30, 2009 (repeat annually)	Efforts are made to reduce data entry time while maintaining data completeness and integrity
		If necessary, discuss data entry workload with Harmony and seek to reduce data entry time		

## Processes to Develop the Strategic Action Plan

We suggest that the MDoA and the Office of the SLTCO use the following plan to refine and implement the Strategic Action Plan.

1. The Secretary of MDoA initiates **dialog on the contents of the report**.
  - 1.1. Inform the AAA directors in a meeting or by teleconference.
  - 1.2. Inform the General Assembly of its plans to improve the LTCOP.
  - 1.3. Form an e-mail group to inform other interested parties of the general public.
2. MDoA hosts an **Ombudsman Strategic Plan Summit** to review and discuss the report no later than April 30, 2009.
  - 2.1. The Secretary issues the invitation to the meeting.
  - 2.2. Attendees will be:
    - 2.2.1. AAA directors
    - 2.2.2. Ombudsman program managers
    - 2.2.3. Leaders of MDoA divisions
3. Before May 31, MDoA **charters work groups** to develop the Strategic Action Plan.
  - 3.1. The SLTCO chairs an Ombudsman Plan Coordination Team that oversees and guides plan development, coordinating the work of the individual work groups.
  - 3.2. Each team will work on a cluster of recommendations and identify ways and means to implement them.
  - 3.3. Members of each group will be selected based on individuals' interest and participation in the Summit. Members will be:
    - 3.3.1. Relevant to the subject assigned them, based on their experience and positions. The SLTCO or the Administrator of the Eldercare Affairs unit will be an ex-officio member of each group.
    - 3.3.2. Neither negative nor naïve about the subject and the difficulties of its implementation.
  - 3.4. Charters for the groups will include:
    - 3.4.1. Goals of the group
    - 3.4.2. Objectives of the group
    - 3.4.3. Deliverables (final and interim)
    - 3.4.4. Time frames
    - 3.4.5. Resources available for the work
      - 3.4.5.1. Funds
      - 3.4.5.2. Consultants or specialists available to assist them
      - 3.4.5.3. Other resources (e.g. conference call capacity; support staff)
    - 3.4.6. A commitment of time by the group members for doing the assigned work.
  - 3.5. The groups will report to the State Ombudsman, who will formulate a Strategic Action Plan based on the results of the teams' work.

## **Actions To Be Initiated within the Next Three Months**

We recommend that the State Long-Term Care Ombudsman and the MDoA begin implementation immediately through the following steps. Most of these will incur no costs; a few may have minimal costs.

1. **Fund allocation:** Complete and implement a formula for allocation of funds across the local programs
2. **Regulations:** Assure that the new regulations are on track for early promulgation
3. **Certification**
  - 3.1. Define the process and components of the act of certification, designation of representatives of the SLTCO, and withdrawal of certification
  - 3.2. Begin the rulemaking process
4. **Orientation Training**
  - 4.1. Revise the curriculum
  - 4.2. Select methods of training appropriate to learning objectives (e.g., classroom, on-line learning, internships, and others)
  - 4.3. Identify trainers
5. **Ongoing Training**
  - 5.1. Determine training calendar for the upcoming year
    - 5.1.1. Frequency
    - 5.1.2. Content (including time for sharing ideas and materials between/among programs)
    - 5.1.3. Methods
      - 5.1.3.1. Teleconferences or webinars
      - 5.1.3.2. Meetings including statewide ombudsman conference
    - 5.1.4. Locations
6. **Public Awareness**
  - 6.1. Engage a workgroup of ombudsmen to plan
  - 6.2. Produce PSAs, brochures, posters
  - 6.3. Assure that posters are displayed in all facilities
  - 6.4. Produce uniform badges for all ombudsmen
  - 6.5. Plan for an annual report for distribution within Maryland (even if it must be minimal, due to cost constraints)
  - 6.6. Make the most of Older Americans Month (May)
7. **Systems Advocacy**
  - 7.1. Analyze NORS data to identify one or two areas for potential systems intervention
    - 7.1.1. Collect additional information as needed
    - 7.1.2. Work with local ombudsmen in developing an advocacy strategy and time frame for implementation
  - 7.2. Establish relationships with media
  - 7.3. Offer a press release outlining new directions for the program based on the current project

- 7.4. Meet with legislators after the end of the current session to provide information about the LTCOP and the needs of residents.
8. **Monitoring:** Revise the monitoring tool, using the NORC self-evaluation tools and input from local ombudsmen.

# Appendices

**Appendix A:** Resources & Tools .....Page 228

**Appendix B:** Comparison of the Maryland and Federal Long-Term Care  
Ombudsman Statutes (analysis by Ann Rasenberger) .....Page 233

**List of Supplemental Appendices** (available on *Supplemental Appendices CD*  
presented to MDoA) .....Page 244

# Appendix A

## Resources & Tools

*Note: The National Long-Term Care Ombudsman Resource Center (NORC) has an abundance of tools available to assist with ombudsman program management, training, and advocacy. NORC staff will help states determine which ones are most applicable and will send tools that are not available online to the state. Visit: [www.ltcombudsman.org/](http://www.ltcombudsman.org/).*

There are numerous tools and references available to assist Maryland in moving toward excellence in the Long-Term Care Ombudsman Program. Appendix A contains a list of tools and resources by topic category. (Some items may appear in more than one category.) The list includes web links to information on a range of outstanding resources and sample documents and tools.

### **Accountability**

“Independence: The LTCOP’s Ability to Fully Represent Residents.” Estes, C. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, Appendix IV. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations, 2003. <http://nasop.org/papers/Bader.pdf>

*Long-Term Care Ombudsman Program Core Principles: Effectiveness in Representing Residents.* A position paper adopted by the National Association of State Long-Term Care Ombudsman Programs in March 1998 (amended in 2005). [www.nasop.org/papers/6.pdf](http://www.nasop.org/papers/6.pdf)

*Office of the Long-Term Care Ombudsman Annual Performance Progress Report (APPR) for Federal Fiscal Year 2006-07.* January 2008. [www.oregon.gov/LTCO/Jan2008report.pdf](http://www.oregon.gov/LTCO/Jan2008report.pdf)

### **Annual Reports from Selected States:**

**Delaware:** *State of Delaware Office of the State Long Term Care Ombudsman, Annual Report, Federal Fiscal year, 2007.*  
[http://dhss.delaware.gov/dhss/dsaapd/files/ombudsman\\_annual\\_report\\_07.pdf](http://dhss.delaware.gov/dhss/dsaapd/files/ombudsman_annual_report_07.pdf)

**Iowa:** *Office of the State Long-Term Care Ombudsman Annual Report 2007.* Jan. 15, 2008.  
[http://publications.iowa.gov/6212/1/2007\\_Annual\\_STLCO\\_Report.pdf](http://publications.iowa.gov/6212/1/2007_Annual_STLCO_Report.pdf) (see p. 10 of this document for a list of OAA responsibilities and how the SLTCO fulfills them)

**North Carolina:** *North Carolina State: Long Term Care Ombudsman Program. 2007 Annual Report.* [www.dhhs.state.nc.us/aging//ombud/AnnualOmbudsmanReport2007.pdf](http://www.dhhs.state.nc.us/aging//ombud/AnnualOmbudsmanReport2007.pdf)

**Ohio:** *Ohio Office of the State Long-Term Care Ombudsman, Report of the State Ombudsman. Calendar Year, 2007.*  
[www.ltcombudsman.org/uploads/File/OH\\_SLTCO\\_Report\\_2007\\_Final.pdf](http://www.ltcombudsman.org/uploads/File/OH_SLTCO_Report_2007_Final.pdf)



**Oregon:** *Office of the Long-Term Care Ombudsman Annual Performance Progress Report (APPR) for Federal Fiscal Year 2006-07.* January 2008.  
[www.oregon.gov/LTCO/Jan2008report.pdf](http://www.oregon.gov/LTCO/Jan2008report.pdf)

### **Confidentiality**

*Ombudsman Best Practices: Confidentiality.* Grant, R. National Long-Term Care Ombudsman Resource Center. December 2000. [www.ltcombudsman.org/uploads/Confidentiality.pdf](http://www.ltcombudsman.org/uploads/Confidentiality.pdf). This paper discusses LTCOP best practices related to confidentiality. Examples of LTCOP policies and procedures from various states are included to illustrate how programs operationalize these concepts. (Appendices not included. Contact the Center for a copy of the appendices.)

*Release of Confidential Information.* Forms and procedures from the Washington State Ombudsman Program. [www.ltcombudsman.org/ombpublic/251\\_1341\\_14192.cfm](http://www.ltcombudsman.org/ombpublic/251_1341_14192.cfm)

### **Conflict of Interest**

Oklahoma Conflict of Interest Policy. Revised June 2007.  
[www.okdhs.org/library/policy/oac340/105/11/0235000.htm](http://www.okdhs.org/library/policy/oac340/105/11/0235000.htm)

Oklahoma *Remedies in Conflict of Interest Situations.* Revised May 2002.  
[www.okdhs.org/library/policy/oac340/105/11/0236000.htm](http://www.okdhs.org/library/policy/oac340/105/11/0236000.htm)

Oklahoma Assurance of Freedom from Conflict of Interest (see Appendix H on “Supplemental Appendices CD” submitted to MDoA)

### **Data**

“LTCOP Data and Information.” Kautz, J. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, Appendix VII. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003.  
<http://nasop.org/papers/Bader.pdf>

*Ombudsman Program Outcome Measures Final Report.*  
[www.ltcombudsman.org/uploads/OutcomeMeasRprt2006.pdf](http://www.ltcombudsman.org/uploads/OutcomeMeasRprt2006.pdf). This report by the National Association of State Units on Aging presents the results of a three-year information gathering project conducted between 2000 and 2004 and guided by the Ombudsman Outcomes Work Group. The project was designed to identify possible outcome measures to describe ombudsman program impact on residents’ lives in addition to those used by and reported to NORS.

### **Designation**

*The California Long-Term Care Ombudsman Program Designation Standards for Approved Organizations.* December 2008. [www.aging.ca.gov/PM/PM08-29\(P\)/PM\\_08-29\\_ombi\\_Designation\\_Standards.pdf](http://www.aging.ca.gov/PM/PM08-29(P)/PM_08-29_ombi_Designation_Standards.pdf)

Louisiana State Long-Term Care Ombudsman Program Contract with Local Ombudsman Entity. 2004 (see Appendix I on “Supplemental Appendices CD” submitted to MDoA)

Washington State Long-Term Care Ombudsman Program, Statement of Work [agreement] between the local ombudsman program entity and the State Ombudsman Program (see Appendix F on “Supplemental Appendices CD” submitted to MDoA)

### **Effectiveness**

*A Self-evaluation and Continuous Quality Improvement Tool for Local Long-Term Care Ombudsman Programs.* Grant, R. November 2005. National Long-Term Care Ombudsman Resource Center. Obtain a copy from NORC, 202-332-2275. [www.ltcombudsman.org](http://www.ltcombudsman.org)

*A Self-evaluation and Continuous Quality Improvement Tool for State Long-Term Care Ombudsman Programs.* Robyn Grant. October 2004. National Long-Term Care Ombudsman Resource Center. Obtain a copy from NORC, 202-332-2275. [www.ltcombudsman.org](http://www.ltcombudsman.org)

*Local Program Performance: Planning and Evaluating Our Work.* Georgia Long-Term Care Ombudsman Program. 2006. [www.ltcombudsman.org/ombpublic/251\\_1341\\_13042.cfm](http://www.ltcombudsman.org/ombpublic/251_1341_13042.cfm). (For more specific points about this process, see: *Georgia Community LTCO Program Evaluation Process.* Georgia Long-Term Care Ombudsman Program in Appendix J on “Supplemental Appendices CD” submitted to MDoA)

*LTC Ombudsman Core Elements: Self-Assessment for the Office of the State Long Term Care Ombudsman.* June 2000. [www.ltcombudsman.org/includes/CaSelfAssState.pdf](http://www.ltcombudsman.org/includes/CaSelfAssState.pdf)

“LTCOP Effectiveness: Building Strong Advocacy.” Grant, R. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*, Appendix VIII. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003. <http://nasop.org/papers/Bader.pdf>

### **Outreach**

*Family Education & Outreach Final Report.* NCCNHR/AARP. 1998. [www.ltcombudsman.org/PDF/REPORT598.pdf](http://www.ltcombudsman.org/PDF/REPORT598.pdf)

*Strategy Brief: Ombudsman Program Responses to Diversity.* September 2005. This report presents promising practices and strategies used by ombudsmen serving diverse resident populations. This is from a forum on challenging issues facing State Long-term Care Ombudsmen. [www.ltcombudsman.org/uploads/DiversityDialogue0905.pdf](http://www.ltcombudsman.org/uploads/DiversityDialogue0905.pdf)

*Additional outreach materials are included in the Promotional Materials category below*

### **Promotional Materials**

*Program Promotion.* National Long Term Care Ombudsman Resource Center. [www.ltcombudsman.org](http://www.ltcombudsman.org) ([www.ltcombudsman.org/ombpublic/49\\_508\\_1806.CFM](http://www.ltcombudsman.org/ombpublic/49_508_1806.CFM)). Provides links to sample materials and best practices for producing annual reports, brochures, newsletters, videos, and other documents

## Recruitment

*Advocates for Residents' Rights: The Older Americans Act Long Term Care Ombudsman Program.* Available on DVD from the National Long-Term Care Ombudsman Resource Center. NCCNHR. [www.ltcombudsman.org/ombpublic/49\\_781\\_2743.cfm](http://www.ltcombudsman.org/ombpublic/49_781_2743.cfm)

*Ombudsman Compendium.* Chapter 1, Recruitment. Meashey, J. National Long-Term Care Ombudsman Resource Center. NCCNHR. Discusses successful approaches and contains sample procedures, forms, and tools from many programs.  
[www.ltcombudsman.org/ombpublic/468\\_2580\\_19130.cfm#compendium](http://www.ltcombudsman.org/ombpublic/468_2580_19130.cfm#compendium)

## Reporting Conflict

Letter from U.S. Administration on Aging to Sue Ward, Secretary of the MDoA, regarding the mandated reporting conflict between Maryland law and the OAA (see Appendix E on “Supplemental Appendices CD” submitted to MDoA)

*Best Practice NOTES on Delivery of Legal Assistance to Older Persons.* Center for Social Gerontology (see Appendix E on “Supplemental Appendices CD” submitted to MDoA)

## State and Local Ombudsman Websites

These are a *sample* of websites. The lists of LTCOPs, state and local, on the NORC site contains links to all of the programs' websites that have been submitted to NORC. Access the lists via “Find your State ombudsman” or local regional ombudsman on home page, [www.ltcombudsman.org](http://www.ltcombudsman.org)

### State LTCOP sites:

District of Columbia: [www.aarp.org/family/caregiving/articles/lce\\_longtermcare.html](http://www.aarp.org/family/caregiving/articles/lce_longtermcare.html)  
 Florida: <http://ombudsman.myflorida.com/>  
 Georgia: [www.georgiaombudsman.org/](http://www.georgiaombudsman.org/)  
 Kansas: <http://armada.websiteswelcome.com/~kansasom/>  
 Ohio: <http://aging.ohio.gov/services/ombudsman/>  
 Oregon: [www.oregon.gov/LTCO/VolunteerOp.shtml](http://www.oregon.gov/LTCO/VolunteerOp.shtml)  
 Wisconsin: <http://longtermcare.state.wi.us/home/Default.htm> (see press releases, consumer guides and white papers)

### Local LTCOP sites:

San Mateo, CA: [www.ossmc.org/html/index.htm](http://www.ossmc.org/html/index.htm)  
 Cleveland, OH, ProSeniors: [www.proseniors.org/ombudsman.html](http://www.proseniors.org/ombudsman.html)  
 Lexington, KY: <http://ombuddy.org/>  
 Louisville, KY: [www.nursinghomeconcerns.com/](http://www.nursinghomeconcerns.com/)

## Systems Advocacy

Louisiana Attorney General Opinion on conflict in state and federal law. April 26, 2005  
 Opinion Number 05-0086. [www.ag.state.la.us/Shared/ViewDoc.aspx?Type=4&Doc=18254](http://www.ag.state.la.us/Shared/ViewDoc.aspx?Type=4&Doc=18254)

“Systems Advocacy in the LTCOP.” Houser, E. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future.* Appendix V. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations.  
<http://nasop.org/papers/Bader/pdf>

*Time and Leadership: Keys to Building Synergy Between State Ombudsmen and State Aging Directors.* [www.ltombudsman.org/uploads/DevelopingSyntranscript.pdf](http://www.ltombudsman.org/uploads/DevelopingSyntranscript.pdf). This is an excellent document for new SLTCO. It highlights the relationship between the state ombudsman program and the state unit on aging. Georgia State Aging Director Maria Greene and Georgia State Ombudsman Becky Kurtz offered their perspectives on the topic.

*Wisconsin Long-Term Care Ombudsman Program* has press releases, consumer guides and white papers related to specific systems advocacy issues on its website.  
<http://longtermcare.state.wi.us/home/Default.htm>

## **Training**

*Equipping Long-Term Care Ombudsmen for Effective Advocacy: A Basic Curriculum.* Hunt, S. Contains five modules with teaching notes and one overview module. It is a national curriculum for states to adapt. [www.ltombudsman.org/ombpublic/251\\_1508\\_8733.cfm](http://www.ltombudsman.org/ombpublic/251_1508_8733.cfm)

*Ombudsman Best Practices: Training for Long Term Care Ombudsmen.* Hunt, S. June 2000. National Long-Term Care Ombudsman Resource Center. NCCNHR.  
[www.ltombudsman.org/ombpublic/49\\_781\\_2743.cfm](http://www.ltombudsman.org/ombpublic/49_781_2743.cfm) (see p. 5)

*Ombudsman Compendium.* Chapter II, Training. Meashey, J. National Long-Term Care Ombudsman Resource Center. NCCNHR. Discusses successful approaches and contains sample procedures, forms, and tools from many programs.  
[www.ltombudsman.org/ombpublic/251\\_2009\\_13111.cfm](http://www.ltombudsman.org/ombpublic/251_2009_13111.cfm)

“Training and Qualifications for the LTCOP.” Nelson, W. *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future.* Appendix VI. National Association of State Long-Term Care Ombudsman Programs Proceedings and Recommendations. 2003.  
<http://nasop.org/papers/Bader.pdf>

Training materials for ombudsman use are posted on the National Long-Term Care Ombudsman Resource Center website. The materials cover a range of topics, different target audiences, and are updated periodically. [www.ltombudsman.org/ombpublic/49\\_506\\_1786.CFM#nors](http://www.ltombudsman.org/ombpublic/49_506_1786.CFM#nors)

# Appendix B

## Comparison of the Maryland and Federal Long-Term Care Ombudsman Statutes

### MEMORANDUM

**TO:** Bill Benson  
**FROM:** Ann Rasenberger  
**DATE:** December 23, 2008  
**RE:** Comparison of the Maryland and Federal Long Term Care Ombudsman Statutes

You requested that I compare the Maryland and federal long term care (LTC) ombudsman statutes in conjunction with the contract with the Maryland Department of Aging (MDoA) to evaluate the Maryland LTC Ombudsman Program. In this memo, I discuss the key requirements in the federal statute that are not addressed in Maryland's law and provide a side-by-side comparison of the two statutes (see the attached table).

The Maryland statute establishing the LTC ombudsman program can be found in the Maryland Code at Human Services (HS) §10-213. The citation for the federal LTC ombudsman law is section 712 of the Older Americans Act (OAA) of 1965 as amended, 42 U.S.C. §3058g.

Maryland's ombudsman law is very short, with most of the statute comprising a list of the subject areas about which the Secretary of the Maryland Department of Aging (MDoA) is to promulgate regulations. The statute does not define or prescribe the content of those regulations, leaving that to the discretion of the Secretary.

By contrast, section 712 of the OAA is quite long, detailed and prescriptive. It includes a number of duties that state and local LTC ombudsmen are obligated to perform that are not included in the Maryland statute.

Based on my analysis below, which identifies significant inconsistencies between the Maryland and federal LTC ombudsman statutes with respect to mandatory responsibilities of state and local ombudsmen, I recommend a complete revision of the Maryland law to conform it to the federal law.

The major areas in which the Maryland statute is not aligned with the OAA are as follows:

#### Qualification and oversight of local ombudsmen programs and representatives

Section 712 prescribes the qualifications for a local ombudsman. These include (1) being free of conflict of interest, and (2) demonstrating the capability to carry out the responsibilities required of a local ombudsman. 42 U.S.C. §3058g(a)(5)(C). Maryland's LTC ombudsman law does not require a AAA to meet any standards in order to be designated a local LTC ombudsman. Under Maryland law, the Secretary of MDOA can appoint any AAA as the local LTC Ombudsman as long as the AAA complies with MDOA's ombudsman program regulations. HS §10-213(c)(2)(ii).

The federal statute also requires the state ombudsman to adopt policies and procedures to monitor the local ombudsman. 42.U.S.C. §3058g(a)(5)(C)(i). These are to be developed in

conjunction with the AAAs if they are serving as local ombudsmen. 42.U.S.C. §3058g(a)(5)(C)(ii). Local ombudsman staff and volunteers may serve as ombudsman representatives only if they have (1) received the required training, and (2) been approved by the State ombudsman as qualified to “carry out the activity” on behalf of the State ombudsman. 42.U.S.C. §3058g(h)(5). Maryland’s statute does not require the State ombudsman to approve individual local staff or volunteers before they are permitted to perform ombudsman duties.

The OAA also requires state agencies to “establish policies and procedures for monitoring local ombudsmen.” 42.U.S.C. §3058g(a)(5)(C)(i). If the local ombudsman is an area agency on aging (AAA), the policies must be developed in consultation with the AAA. 42.U.S.C. §3058g(a)(5)(C)(ii). Maryland’s statute does not address the monitoring of local ombudsmen or holding them accountable for compliance with State and federal laws, regulations and policies.

#### Timely access and responses

The OAA requires both the State and local ombudsmen to “ensure residents have regular, timely access to ombudsman services” and receive timely responses from ombudsman representatives 42.U.S.C. §§3058g(a)(3)(D); 3058g(a)(5)(B)(ii). Timely access and timely responses are not addressed in HS §10-213.

#### State ombudsman assistance to local ombudsman and residents of LTC facilities

The federal and Maryland statutes differ in the degree of assistance that the State ombudsman is expected to provide to the local ombudsmen. The OAA requires that the State ombudsman “provide administrative and technical assistance” to the local ombudsman representatives. 42.U.S.C. §3058g(a)(3)(F). The State ombudsman is also obligated to provide services to assist residents of LTC facilities in protecting the health safety welfare and rights of the residents. 42.U.S.C. §3058g(a)(3)(B). The Maryland statute is silent on assistance by the State ombudsman to local ombudsmen and to LTC facility residents.

#### The role of the State and local ombudsmen in representing the interests of residents in the government decision making process and in facilitating the participation of residents and families in the public process

The OAA imposes a responsibility on both state and local ombudsmen to participate in the public process on behalf of residents and to assist the public to become involved as well. Both State and local ombudsmen are required to “represent interests of residents before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of residents.” 42.U.S.C. §§ 3058g(a)(3)(D), 3058g(a)(5)(B)(iv).

The State ombudsman is required to “analyze, comment on and monitor the development and implementation of federal, state and local laws, regulations and policies that pertain to the health, safety, welfare and rights of residents with respect to the adequacy of long-term facilities and services in the State.” 42.U.S.C. §3058g(a)(3)(G)(i). The State agency must ensure that the State ombudsman carries out this function. 42.U.S.C. §3058g(h)(2). The State ombudsman must also recommend changes and facilitate public comment on laws, regulations and policies in these areas. 42.U.S.C. §§3058g(a)(3)(G)(ii), (iii). Finally, the State ombudsman is to “promote development of citizen organizations to participate in the program.” 42.U.S.C. §3058g(a)(3)(H)(ii).

Local ombudsmen share the State ombudsman’s obligation to “facilitate the ability of the public to comment on the laws, regulations, policies and actions.” (42.U.S.C. §3058g(a)(5)(B)(v)(II)).

The local ombudsman is also to “review, and if necessary, comment on existing and proposed laws, regulations and policies pertaining to the rights and well-being of residents.” 42.U.S.C. §3058g(a)(5)(B)(v)(I)

The Maryland statute makes no mention of the duties of the State and local ombudsmen to participate in and contribute to the public dialogue about laws, regulations and policies that might impact residents of long-term facilities, or to assist residents and their families to make their voices heard.

### Reporting

The federal ombudsman statute mandates that the State agency collect and report certain information related to the ombudsman program. First, the State agency is to establish “a statewide uniform reporting system” to (1) collect and analyze data relating to complaints and conditions in LTC facilities and to residents for the purpose of identifying and resolving significant problems; and (2) submit the data to the licensing and certification agency, other State and federal entities the State ombudsman determines appropriate, the Assistant Secretary of the U.S. Administration on Aging, and the National Long-Term Care Ombudsman Resource Center. 42.U.S.C. §3058g(c).

Second, under 42.U.S.C. §3058g(h)(1), the State Agency must require the State ombudsman to prepare an annual report that:

- 1) Describes the activities of the State ombudsman program;
- 2) Analyzes the data collected;
- 3) Evaluates the problems experienced by and complaints made by residents;
- 4) Contains recommendations for improving quality of care and life of residents and protecting the health, safety, welfare, and rights of residents;
- 5) Analyzes the success of the program; and
- 6) Provides policy, regulatory and legislative recommendations.

Third, the State agency shall require the State ombudsman to provide certain information to public and private agencies, legislators and other persons regarding (1) the problems and concerns of older individuals residing in LTC facilities and (2) recommendations related to the problems and concerns.

Finally, the State ombudsman shall make its annual report available to the Assistant Secretary and various state and local government agencies. 42.U.S.C. §3058g(h)(3).

HS §10-213 requires only that the Secretary adopt regulations governing “an annual review by the Department of all ombudsman activities.”

### Conflict of interest and confidentiality

While Maryland’s LTC ombudsman statute requires MDOA to promulgate regulations on “conflict of interest within the program” and “the right of privacy of a complainant or resident of a

related institution,” it does not incorporate the following mandatory provisions in 42 U.S. C. §3058g(f), which require a state agency to:

- 1) Ensure that no individual or member of the immediate family of an individual involved in the designation of an ombudsman is subject to a conflict of interest;
- 2) Ensure that no officer or employee of the offices of the State or local ombudsman or member of their immediate family is subject to a conflict of interest;
- 3) Ensure that the ombudsman does not have certain relationships with long-term facilities; and
- 4) Establish in writing mechanisms to identify and remove conflicts of interest.

Section 3058g(d)(1) of the OAA requires state agencies to establish procedures for the disclosure by State and local ombudsmen of files maintained by the program. These procedures must provide that the files and records may be disclosed only at the discretion of the State or local ombudsman (or designee) and prohibit the disclosure of the identity of any complainant or resident with respect to whom the State ombudsman maintains such files or records unless the complainant or resident or legal representative consents to the disclosure in writing (or if orally, consent is documented contemporaneously), or the disclosure is required by court order. 42.U.S.C. §3058g(d)(2).

Section 3058g(a)(5)(D)(iii) of the OAA provides that state agencies must develop policies and procedures in accordance with the statute regarding confidentiality and conflict of interest. Maryland’s statute requires the Secretary of MDOA to issue regulations on conflict of interest and confidentiality, but makes no reference to the federal standards.

#### Consultation with AAAs, older individuals and LTC providers

Section 3058g(e) requires state agencies to consider the views of area agencies on aging (AAA), older individuals and providers of long-term care in planning and operating the state’s ombudsman program. MDOA may already be involving these stakeholders in the planning and operation of Maryland’s ombudsman program, (indeed, this contract is an opportunity for stakeholders to provide intensive input to MDOA), but Maryland’s statute imposes no mandatory, ongoing process to assure that this consultation occurs.

#### Coordination with other entities/government agencies

The federal ombudsman statute provides that state agencies shall require the State ombudsman to coordinate ombudsman services with several public and private agencies and entities. These include:

- 1) Protection and advocacy systems for individuals with developmental disabilities and mental illnesses (42.U.S.C. §3058g(h)(6));
- 2) Legal assistance (42.U.S.C. §3058g(h)(7)), and
- 3) State and local law enforcement agencies and courts of competent jurisdiction (42.U.S.C. §3058g(h)(8)).

Maryland’s statute requires the adoption of regulations regarding “cooperation with the Department of Health and Mental Hygiene and the Department of Human Resources,” but is silent about relationships with these other agencies.



### Comparison of Federal and Maryland LTC Ombudsman Statutes

Function/Category	Federal Statutory Provision	Maryland Statutory Provision
Qualifications of State LTC ombudsman	State LTC ombudsman (“ombudsman”) shall have expertise and experience in the fields of long-term and advocacy - §3058g(a)(2)	No qualifications specified
State ombudsman functions	State ombudsman shall serve on a full-time basis - §3058g(a)(3)	Not addressed
“	Shall identify, investigate and resolve complaints that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of residents (including residents’ welfare and rights with respect to the appointment and activities of guardians and rep payees) - §3058g(a)(3)(A)(ii)	The Secretary shall adopt regulations to govern “complaint review, investigation, and resolution procedures,” but the Maryland statute not restrict the subject matter of the complaints - HS §10-213 (d)(5),(7)
“	Provide services to assist the residents in protecting the health safety welfare and rights of residents - §3058g(a)(3)(B)	The only mention of assisting residents is with respect to help in organizing and operating a family council in a nursing home - HS §10-213 (d)(8).
“	Inform the residents about means of obtaining services provided by providers or agencies - §3058g(a)(3)(C)	Not addressed
“	Ensure residents have regular and timely access to Ombudsman services and receive timely responses from Ombudsman reps - §3058g(a)(3)(D)	Not addressed
“	Represent interests of residents before governmental agencies and seek administrative, legal and other remedies to protect health, safety, welfare and rights of residents - §3058g(a)(3)(E)	Not addressed
“	Provide administrative and technical assistance to local Ombudsmen - §3058g(a)(3)(F)	Only assistance required under Maryland statute is the adoption of “minimum training requirements” - HS §10-213 (d)(2)
“	Analyze, comment on and monitor the development and implementation of federal, state and local laws, regulations and policies pertaining to the health, safety, welfare and rights of residents with respect to the adequacy of LTC facilities and services in the state - §3058g(a)(3)(G)	Not addressed
“	Provide training for local ombudsmen - §3058g(a)(3)(H)(i)	Only reference in statute is to establishing training requirements, not providing training. However, the ombudsmen regulations require State ombudsman to provide

Function/Category	Federal Statutory Provision	Maryland Statutory Provision
		training – COMAR 32.03.02.04
“	Promote development of citizen organizations to participate in the program - §3058g(a)(3)(H)(ii)	Not addressed
“	Provide technical support for the development of resident and family councils to protect well-being and rights of residents - §3058g(a)(3)(H)(iii)	The Secretary shall adopt regulations to govern a process to assist individuals in organizing and operating a family council in a nursing home. HS §10-213 (d)(8). Statute doesn't mention resident councils, but MDOA regulations adopted in 2007 include resident as well as family councils. COMAR 32.03.02.10
Designation of local LTC ombudsman entities and representatives	State ombudsman may “designate” an entity as a local ombudsman entity. Does not appear to authorize complete delegation of State ombudsman duties to the local ombudsman - §3058g(a)(5)(A)	MD statute provides that the Secretary of MDOA may “delegate” the Secretary’s authority under HS §10-212 (to receive, investigate and seek to resolve complaints about the operation of related institutions) to <u>both</u> the State LTC ombudsman and the local LTC ombudsman, implying that the State and local ombudsmen are equal with regard to authority they can be delegated. HS §10-213 (a)(2)
Duties of local LTC ombudsmen entities and reps	In accordance with policies and procedures established by the state ombudsman and state agency, provide services to protect the health, safety, welfare and rights of residents - §3058g(a)(5)(B)(i)	MD statute appears to limit functions of local ombudsmen to complaint review, investigation and resolution and assisting individuals to organize and operate family councils - HS §10-213 (d)(5) & (7)
“	Ensure residents in service area have regular, timely access to the local ombudsman services and receive timely responses to complaints and requests for assistance - §3058g(a)(5)(B)(ii)	Not addressed
“	Identify, investigate and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare or rights of resident - §3058g(a)(5)(B)(iii)	The Secretary shall adopt regulations to govern “complaint review, investigation, and resolution procedures,” but statute does not specify the subject matter of the complaints - HS §10-213 (d)(5),(7)
“	Represent interests of residents before governmental agencies and seek administrative, legal and other remedies to protect health, safety, welfare and rights of	Not addressed

Function/Category	Federal Statutory Provision	Maryland Statutory Provision
	residents - §3058g(a)(5)(B)(iv)	
“	Review, and if necessary, comment on existing and proposed laws, regulations and policies pertaining to the rights and well-being of residents - §3058g(a)(5)(B)(v)(I)	Not addressed
“	Facilitate the ability of the public to comment on the laws, regulations, policies and actions - §3058g(a)(5)(B)(v)(II)	Not addressed
“	Support the development of resident and family councils - §3058g(a)(5)(B)(vi)	The Secretary shall adopt regulations to govern a process to assist individuals in organizing and operating a family council in a nursing home. HS §10-213 (d)(8). Statute doesn't mention resident councils, but MDOA regulations adopted in 2007 include resident as well as family councils. COMAR 32.03.02.10
Eligibility for designation as a local LTC ombudsman	<p>Entities eligible to be designated as a local ombudsman shall:</p> <ul style="list-style-type: none"> <li>(i) Have demonstrated capability to carry out ombudsman;</li> <li>(ii) Be free of conflict of interest;</li> <li>(iii) Be public or nonprofit private entities; and</li> <li>(iv) Meet such other requirements as the state ombudsman may specify</li> </ul> <p>§3058g(a)(5)(C)(i)-(iv)</p>	An AAA may qualify as a local ombudsman so long as the program is operated in accordance with the Secretary's regulations - HS §10-213 (c)(2)(ii)
Monitoring local LTC ombudsmen	The State agency shall establish policies and procedures for monitoring local ombudsmen. If the local ombudsman is an area agency on aging (AAA), the policies shall be developed in consultation with the AAA - §3058g(a)(5)(C)(i)-(ii)	Not addressed
Confidentiality and conflict interest	The State agency shall develop policies and procedures in accordance with the statute regarding confidentiality and conflict of interest consistent with this statute - §3058g(a)(5)(D)(iii)	The Secretary shall adopt regulations to govern conflicts of interest, the confidentiality of complaints and the right of privacy of a complainant. Statute does not incorporate federal standards - HS §10-213 (d)(1), (5) & (6). MDOA has not adopted conflict of interest regulations.
Access	The State agency shall establish procedures for ensuring:	The Secretary shall adopt regulations to govern “access, review, and copying of medical

Function/Category	Federal Statutory Provision	Maryland Statutory Provision
	(i) Access to LTC facilities and residents; (ii) Appropriate access to review the medical and social records of a resident; (iii) Access to the administrative records, policies and documents to which the residents or general public have access; and (iv) Access to, and on request, copies of all licensing and certification records maintained by the State for LTC facilities §3058g(b)(1)-(2)	records to the extent authorized by Health-General §4-305(b)(3) or as otherwise provided by law - HS §10-213 (d)(7). This may be broad enough to track with federal law.
Statewide Uniform Reporting System	The State agency shall establish a statewide uniform reporting system to: (i) Collect and analyze data relating to complaints and conditions in LTC facilities and to residents for the purpose of identifying and resolving significant problems; and (ii) Submit the data to the licensing and certification agency, other State and federal entities the State ombudsman determines appropriate, the Assistant Secretary, and the National Long-Term Care Ombudsman Resource Center §3058g(c)	Not addressed
Disclosure of files maintained by the program and identify of complainants	Prohibits disclosure of files maintained by the program. Also prohibits disclosure of the identify of complainants unless the complainant or resident or legal representative consents to the disclosure in writing (or if orally, consent is documented contemporaneously) or the disclosure is required by court order - §3058g(d)	The Secretary shall adopt regulations to govern the confidentiality of complaints and the right of privacy of a complainant, but statute does not incorporate federal standards - HS §10-213 (d)(5) & (6)
Consultation with AAAs, older individuals & LTC providers	Requires the State Agency to consider the views of AAAs, older individuals and providers of long-term care in planning and operating the program - §3058g(e)	Not addressed
Conflict of Interest	Requires the State agency to: (i) Ensure that no individual or member of the immediate family of an individual involved in the designation of an ombudsman; (ii) Ensure that no officer or employee of the State or local ombudsman offices are	The Secretary shall adopt regulations to govern conflicts of interest within the program, but statute does not incorporate federal standards - HS §10-213 (d)(1). MDOA has not adopted conflict of interest regulations.

Function/Category	Federal Statutory Provision	Maryland Statutory Provision
	<p>subject to a conflict of interest;</p> <p>(iii) Ensure that the ombudsman does not have certain relationships with long-term facilities;</p> <p>(iv) Establish in writing mechanisms to identify and remove conflicts of interest</p> <p>§3058g(f)</p>	
Legal counsel	<p>The State agency shall ensure that adequate legal counsel is available to provide advice and consultation as needed to protect the health, safety, welfare and rights of residents and to assist the ombudsman and representatives of the State ombudsman in performance of official duties, including legal representation when a legal action is brought - §3058g(g)</p>	Not addressed
Administration: Annual Report	<p>The State Agency shall require the State ombudsman to prepare an annual report:</p> <p>(i) Describing the activities of the State ombudsman;</p> <p>(ii) Analyzing the data collected;</p> <p>(iii) Evaluating the problems experienced by and complaints made by residents;</p> <p>(iv) Containing recommendations for improving quality of care and life of residents and protecting the health, safety, welfare, and rights of residents;</p> <p>(v) Analyzing the success of the program; and</p> <p>(vi) Providing policy, regulatory and legislative recommendations.</p> <p>§3058g(h)(1)</p>	<p>The Secretary shall adopt regulations to govern an “annual review of all ombudsman activities.”- HS §10-213 (d)(4)</p>
Administration: Analyzing, commenting on and monitoring government laws and regulations	<p>The State Agency shall require the State ombudsman to analyze, comment on, and monitor the development and implementation of federal, state and local laws, regulations and other government policies and actions that pertain to LTC - §3058g(h)(2)</p>	Not addressed
Administration: Providing certain information to government	<p>The State Agency shall require the State ombudsman to provide certain information to public and private agencies, legislators and other persons regarding the problems and</p>	Not addressed

Function/Category	Federal Statutory Provision	Maryland Statutory Provision
agencies	concerns of older individuals residing in LTC facilities and recommendations related to the problems and concerns and submit the State ombudsman's annual report to various agencies - §3058g(h)(3)	
Administration: Training	The State Agency shall require the State ombudsman to establish procedures for the training of ombudsman representatives, including unpaid volunteers, specifying a minimum number of training hours and the content of the training - §3058g(h)(4)	The Secretary shall adopt regulations to govern minimum training requirements - HS §10-213 (d)(2). The Secretary has adopted such regulations. See COMAR 32.03.02.03
Administration: Required approval of representatives by ombudsman office	The State Agency shall require the State ombudsman to prohibit any representative of the ombudsman program to carry out any of the functions of the State ombudsman unless: (i) He/she has received the required training; and  (ii) He/she has been approved by the State ombudsman as qualified to carry out the activity  §3058g(h)(5)	Statute addresses minimum training requirements (see above), but qualification of representatives of the ombudsman program.
Administration: Coordination with protection and advocacy systems for individuals with developmental disabilities and mental illnesses	The State Agency shall require the State ombudsman to coordinate ombudsman services with protection and advocacy systems for individuals with developmental disabilities and mental illnesses - §3058g(h)(6)	Not addressed
Administration: Coordination with legal assistance	The State Agency shall require the State ombudsman to coordinate with legal assistance - §3058g(h)(7)	Not addressed
Administration: Coordination with State and local law enforcement agencies and courts	The State Agency shall require the State ombudsman to coordinate services with State and local law enforcement agencies and courts of competent jurisdiction - §3058g(h)(8)	Not addressed
Liability	The State Agency shall ensure that no representative of the ombudsman shall be liable under State law for good faith performance of official duties - §3058g(i)	MD statute is nearly identical - HS §10-213(f)
Noninterference	The State Agency shall ensure that: (i) Willful interference with representatives of the ombudsman shall be unlawful;  (ii) Prohibit retaliation and reprisal by a LTC	MD statute is nearly identical - HS §10-213(g)

<b>Function/Category</b>	<b>Federal Statutory Provision</b>	<b>Maryland Statutory Provision</b>
	facility or other entity; and  (iii) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals - §3058g(j)	

## Supplemental Appendices

*Note: These Appendices are available on the CD presented to MDoA.*

**Appendix C:** State Long-Term Care Ombudsman Provisions in the Older Americans Act, as Amended in 2000

**Appendix D:** Basic Plan-Do-Check-Act Diagram with Examples

**Appendix E:** Reporting Conflict

- 1) Aug. 28, 1998 letter from U.S. Administration on Aging to Sue Ward, Secretary of the MDoA, regarding the mandated reporting conflict between Maryland law and the OAA
- 2) *Best Practice NOTES on Delivery of Legal Assistance to Older Persons*, Vol. 2, No. 4, November 1988, Question 3, Center for Social Gerontology

**Appendix F:** Scope of Work

- 1) Sample Scope of Work
- 2) Washington State Statement of Work

**Appendix G:** Georgia Community Long-Term Care Ombudsman Program Annual Plan

**Appendix H:** Conflict of Interest (State of Oklahoma Department of Human Services Long-Term Care Ombudsman Program Area Ombudsman Program Assurance)

**Appendix I:** Sample Contract (Louisiana Governor's Office of Elderly Affairs)

**Appendix J:** Sample Evaluation Process and Monitoring Tool

- 1) Georgia Community LTCO Program Evaluation Process
- 2) Georgia Long-Term Care Ombudsman Program Measurement and Analysis Plans (MAPs)
- 3) Washington LTCO Program Standards Regional Monitoring Tool