HOW THE LONG-TERM CARE OMBUDSMAN PROGRAM BEGAN

Precipitating Events

The advent of Medicare and Medicaid in 1965 laid the groundwork for the nursing home “industry” as we know it today. These programs brought about tremendous growth in the number of nursing homes in the United States. Before that, there was no public money to provide an incentive for private owners to build facilities.

In the late 1960’s and early 1970’s, many publications were written about abuse, neglect and substandard conditions in nursing homes. Several congressional committees convened to hear testimonies, compile data and propose reforms for the nursing home industry.

One notable report, Old Age: The Last Segregation, issued by consumer advocate Ralph Nader in 1970 was a catalyst for public action. Gerontologist Robert Butler illustrates this neglect with the following two items:

• Hearings before the United States Senate on February 26, 1970 brought out the fact that the carpeting in a Marietta, Ohio, nursing home spread the flames in a January fire that resulted in the deaths of 32 of 46 patients from asphyxiation from the acrid smoke. Other stories of poor care resulting in the death of residents continue to make headlines.

• Twenty-five residents in a Baltimore nursing home died in a salmonella food poisoning epidemic in August, 1970, after delays in seeking medical help. After 12 residents died, the Washington Post stated, “…in a telephone interview, Gould [the owner] complained about the focus of the news media on the 12 deaths over the weekend, saying is it really that big?”

Ample publicity attesting to poor care and personal profit for owners created a climate in which more specific federal regulations for standards of care were enacted in the early 1970’s.

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1 Unless otherwise indicated this section is adapted from the Arkansas LTCOP Annual Report, 1996-1997, prepared by Raymon Harvey, State LTCO; the Georgia LTCO Training Manual, Chapter A.I. History of the LTCOP, developed by Leigh Ann Clark, 1998, and the Virginia LTCO Training Curriculum.
Presidential Directive Includes Ombudsman

President Nixon formulated an eight-point nursing home program, announced in 1971. The eight points were:

1. Training of 2,000 state nursing-home inspectors;
2. Complete (100 percent) federal support of state inspections under Medicaid;
3. Consolidation of enforcement activities;
4. Strengthening of federal enforcement of standards;
5. Short-term training for 41,000 professional and paraprofessional nursing home personnel;
6. Assistance for state investigative “Ombudsman” units;
7. Comprehensive review of long-term care; and
8. Crackdown on substandard nursing homes: cut-off of federal funds to them.

As a result of a 1971 directive by President Nixon, the Health, Education and Welfare Department (HEW, now the Department of Health and Human Services) established a new office, the Office of Nursing Home Affairs (ONHA, without current equivalent) to oversee all HEW programs relating to nursing homes. ONHA was to be responsible for coordinating efforts by different agencies in the department to upgrade standards nationwide for the benefit of nursing home residents. Establishment of ONHA and the appointment of Mrs. Marie Callender as its head presumably meant that for the first time a single official was responsible for pulling together different HEW nursing home efforts into a single coordinated program. Two hundred twenty-seven new personnel were added to federal enforcement.

The idea for the ombudsman program was developed by Dr. Arthur S. Flemming, Counselor on Aging to President Nixon. He envisioned the program as an advocacy program for residents and personally wrote the first guidelines for it. In summary, the rapid growth of nursing homes and a concern for the quality of care and quality of life experienced by the residents of these facilities were in part responsible for the creation of the LTCOPs that exist today.

4 Holder, op.cit.
The Genesis of the Long-Term Care Ombudsman

The Long-Term Care Ombudsman Program was initiated to improve the quality of care in America’s nursing homes and to respond to complaints submitted to the White House and to the Department of HEW about abuse and neglect of nursing home residents. President Nixon directed HEW “to assist the States in establishing investigative units which would respond in a responsible and constructive way to complaints made by or on behalf of individual nursing home patients.”

An interdepartmental task force was formed under the direction of the Health Services and Mental Health Administration to develop models for investigative/ombudsman units. In the Supplemental Appropriations Act of December 1971, Congress made funds available for the establishment of nursing home ombudsman demonstration projects. On June 30, 1972, five contracts were awarded. Four were with state governments to establish a state level office linked to a local unit: Idaho, Pennsylvania, South Carolina, and Wisconsin. A fifth contract was awarded to the National Council of Senior Citizens to test the effectiveness of an independent nursing home ombudsman project operating outside government jurisdiction and to assess the feasibility of linking of a national voluntary organization to state and local units. The National Council selected Michigan’s Citizens for Better Care, a citizen advocacy group, as the site of their demonstration. Additional projects were started in Massachusetts and Oregon in July of 1973, increasing the total number to seven projects.

In 1973 the Health Services and Mental Health Administration was reorganized, and the Nursing Home Ombudsman Program was transferred to the Administration on Aging (AoA). Assignment of the program to AoA was consonant with the Commissioner on Aging’s responsibility for serving as an advocate for older persons.

In May of 1975, Commissioner on Aging Arthur S. Flemming invited all State Agencies on Aging to submit proposals for grants to enable the State Agencies to develop the capabilities of the Area Agencies on Aging to promote, coordinate, monitor and assess nursing home ombudsman activities within their service areas. (AoA-PI-75-30) The primary goal of the program was to inaugurate, in as many areas as possible, community action programs dedicated to identifying and dealing with the complaints of older persons, or their relatives, regarding the operation of nursing homes.

One year grants ranging from $18,000 in most states to $57,900 in the state with the largest elderly population (New York) were made to the State Agencies on Aging which submitted proposals designed to meet this goal. All states except Nebraska and Oklahoma received grants the first year and hired a Nursing Home Ombudsman Developmental Specialist, who frequently worked out of the State Office on Aging.
Formative Intent and Structure

In a technical assistance memorandum dated January 13, 1976, the Administration on Aging recommended approaches to State and Area Agencies on how to develop the State and sub-state programs. This memorandum stated, “The success of this effort in the first year will be judged solely on the basis of the number of community action programs [community-based ombudsman programs] that are launched and the effectiveness of these programs in receiving complaints and then resolving them in an effective and constructive manner.” (AoA-TAM-76-24.)

“Our nation has been conducting investigations, passing new laws and issuing new regulations relative to nursing homes at a rapid rate during the past few years. All of this activity will be of little avail unless our communities are organized in such a manner that new laws and new regulations are utilized to deal with the individual complaints of older persons who are living in nursing homes. The individual in the nursing home is powerless. If the laws and regulations are not being applied to her or him, they might as well not have been passed or issued.”

Commissioner Flemming, (AoA-TAM- 76-24.)

The LTCOP from 1975 through 1978 was a departure from the demonstration program in two particularly significant ways.

1. Where the demonstration program had focused on complaint resolution from one to three central points in a state, the 1975-78 program stressed development of local/area programs throughout the state.

2. Where the directors of the demonstration projects had been called ombudsmen and had worked directly on complaints, the individuals hired under the 1975-78 grants were designated “ombudsman developmental specialists,” and were charged by AoA with developing sub-state programs, rather than working directly on complaints.

In addition, the early nationwide program stressed reliance on volunteer, rather than paid, ombudsmen.

These changes in approach were made because the Administration on Aging believed that locally-based complaint resolution and resident advocacy programs would provide the most effective services to those who needed them. The demonstrations had indicated that a small staff operating an ombudsman program out of one central location in a state would have great difficulty in responding to the volume and variety of needs of individuals throughout the state. Given the limited funding available, the
“developmental” approach was seen as the only means by which the goal of statewide ombudsman coverage could be attained. This approach was to have a significant impact on the direction of the program after passage of the ombudsman legislative mandate in 1978.

During this same time period, 1975 – 1978, there was simultaneous development in the citizen advocacy network. The National Citizens’ Coalition for Nursing Home Reform (NCCNHR) was established in 1975 as an outgrowth of Elma Holder’s work with Ralph Nader and with the National Gray Panthers.

In 1977 AoA funded the National Paralegal Institute to provide the first training program for state ombudsmen, who were called “ombudsman developmental specialists.” This training was developed and conducted by Elma Holder, employed by the National Paralegal Institute, with assistance and guidance from the NCCNHR Board comprised of citizen advocacy organizations. Thus, the growth and development of national networks of citizen advocates and of LTCO were simultaneous, spurred on by conditions in nursing homes.⁵

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⁵ The Long-Term Care Ombudsman Program, 1972-2003, Program Milestones. AoA, included in the Appendix and Holder, E. op.cit.