



Eric Holcomb, Governor
State of Indiana

Office of the State Long-Term Care Ombudsman
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The Honorable Eric Holcomb
Members of the General Assembly

Dear Governor Holcomb and Members of the General Assembly:

I am pleased to present this annual report of Indiana's Office of the State Long Term Care Ombudsman for Federal Fiscal Year 2019. This report is submitted pursuant to Indiana Code 12-10-13-19, which requires that this Office annually report to the Governor and the General Assembly on the operations of the Office. This report reflects the efforts of the State Long Term Care Ombudsman Program by sharing program highlights and discussing issues encountered by the Office in carrying out its mandate to act as an advocate for Hoosiers residing in long-term care.

Respectfully submitted,

Lynn Clough
State Long Term Care Ombudsman



Executive Summary

Representatives of Indiana's State Long Term Care Ombudsman Program (the "Program") worked to protect the rights of nearly 57,000 Hoosier long-term care residents during 2019. Providing access to an Ombudsman ensures long-term care residents have a federally-mandated advocate who can provide education, empowerment, and resident-directed complaint investigation and resolution to address a wide range of issues. This annual report discusses accomplishments and challenges the Program encountered during the year.

Indiana's Program has an infrastructure in place that has positive attributes. Its local Ombudsmen have longevity, are experienced, and have a heart for what they do. The Office of the State Long Term Care Ombudsman (the "State Office") was able to check a variety of important items off its to-do list during the year: developing and/or revising policies and procedures with respect to resident confidentiality; designing a new logo and designated Ombudsman Program letterhead stationery; providing education to Ombudsmen, facility staff, and residents; and providing public comment on both federal and state-level policymaking issues.

However, significant programmatic challenges with the Ombudsman Program remain:

- Organization of Indiana's Program itself continues to be fragmented, making program management somewhat challenging. Indiana currently has 18 certified local Ombudsmen located around the state: four are employed by the Area Agencies on Aging in their areas; eight Ombudsmen work for Indiana Legal Services, Inc.; three Ombudsmen work out of Center for Independent Living nonprofit agencies; and two more work in standalone nonprofit agencies. We recommend the State Office continue to seek other options for allocating program funding, and explore the formation of an Ombudsman Program Advisory Council to provide guidance and further stability.
- State Office staff consists of the State Ombudsman, a Deputy Director, and an administrative assistant. As certified Ombudsmen, the State Ombudsmen and Deputy Director provide coverage via telephone, email, and sometimes in person when necessary, for local Ombudsmen who are on vacation, medical leave, left for retirement, or in areas in which a vacancy exists. We recommend the State Office add a third certified Ombudsman to its staff; a staff member to function as a Training Coordinator and assist with providing necessary coverage, allowing Ombudsman program leadership to work proactively rather than reactively.
- Less than 70% (11) of Indiana's local Ombudsman work full-time. Because of funding constraints, another 25% (4) work roughly half-time hours, and three local Ombudsmen work approximately ten hours a week. Two local Ombudsmen retired during FFY2019; one left for another opportunity. We recommend the State Office investigate developing a statewide volunteer program to reinforce Indiana's corps of Ombudsmen.

Finally, in a trend the State Office continues to monitor, just over seven percent of nearly 140,000 nursing home complaints nationally were regarding discharges in 2018. During the same time period, *over 22%* of complaints received by Indiana's Ombudsman Program were about discharges or evictions. Not only are these issues stressful for residents and their family members, but complex and time-consuming for Ombudsmen. We plan to work with our partner agency, the Indiana State Department of

Health (ISDH), on developing a facility closure/relocation team who can focus on transfers and discharges, and relocations when they occur.

Overview

The primary purpose of the Long Term Care Ombudsman Program (Ombudsman program) is to promote and protect rights guaranteed to long-term care residents under federal and state laws (CFR 45, §1321 and §1324, and IC 12-10-13). Under the federal Older Americans Act, every state is required to have an Ombudsman program that addresses complaints and advocates for improvements in the long-term care system.

Indiana’s Long Term Care Ombudsmen (Ombudsmen) are advocates for residents of licensed long-term care facilities such as nursing homes, licensed assisted living facilities, and other licensed residential care facilities. Ombudsmen provide information about how to find a facility and what to do to improve the quality of care. They are trained to assist residents with complaints and resolve problems. Ombudsmen are resident-directed, meaning that they act only upon permission of the resident. All Ombudsman program services are free and confidential. Other Ombudsmen responsibilities include:

“Can’t say enough about the efforts and assistance rendered by this local Ombudsperson. All means and methods of assistance must be afforded and expanded to maintain this program. Received more valuable assistance in 40 odd minute conversation than in my three years of often futile search.”

■ *Facility resident, Area 10*

- Educating residents, their family and facility staff about residents’ rights, good care practices, and similar long-term services and supports resources;
- Ensuring residents have regular and timely access to ombudsman services;
- Providing technical support for the development of resident and family councils;
- Advocating for changes to improve residents’ quality of life and care;
- Providing information to the public regarding long-term care facilities and services, residents’ rights, and legislative and policy issues;
- Representing resident interests before governmental agencies; and
- Seeking legal, administrative and other remedies to protect residents.

Indiana’s Ombudsman Program Structure

In accordance with the [CFR 45, Title 45, Part 1324.13](#), Indiana’s State Long Term Care Ombudsman (State Ombudsman), as head of the Office (the “State Office”), has responsibility for the leadership and management of the State Office in coordination with the Division of Aging, within the Family and Social Services Administration (FSSA). To comply with this federal law, Indiana’s State Ombudsman *certifies* representatives of the State Office, or “local” Ombudsmen, to carry out the responsibilities on behalf of the State Office throughout the state. Certification occurs only after a training period consisting of both independent and field study, as well as structured facility tours and shadowing experienced Ombudsmen.

In Indiana, the Program’s organizational structure is decentralized, meaning the State Ombudsman and State Office staff are state employees, and are physically located in state government within FSSA’s Office of General Counsel. Organization of Indiana’s Ombudsman program continues to be fragmented:

Long-Term Care Ombudsman Area Contact Map



As of September 30, 2019, Indiana’s Ombudsman program had 17 local certified Ombudsmen, located within the state’s planning and service areas that correspond to the map of Area Agencies on Aging (AAAs). Two of the state employees, the State Ombudsman and Deputy Director, are also certified Ombudsmen.

Five of Indiana’s AAAs (Areas 1, 2, 5, 13, and 14) acted as the host agency for Ombudsmen to provide services directly in their own areas. Each area had its own Ombudsman, but the Ombudsman for Area 5 retired in July 2019, and the position had not yet been filled.

Seven AAAs (Areas 4, 6, 8, 9, 10, 11, and 16) subcontracted with Indiana Legal Services, Inc. (ILS), a non-profit law firm that

provides free civil legal assistance to eligible low-income Hoosiers. ILS employed seven Ombudsmen in its local offices located throughout the state. Three AAAs (Areas 7, 12, and 15) subcontracted with local Centers for Independent Living (CILs) to host their local Ombudsmen. Finally, Areas 3 and 16 had three local Ombudsmen working out of two standalone nonprofit organizations.

Indiana is fortunate in that many of its local Ombudsmen have been with the program a number of years. Most have a social services or paralegal background. Many have master’s degrees; one is an attorney. Their combined experience and expertise are what affords this program the ability to protect

Hoosier long-term care residents' rights, ranging from reasonably simple matters such as meal preferences to complex issues such as care planning concerns or involuntary discharges.

It should be noted that federal regulations and standards for the Ombudsman program changed considerably in July 2015, requiring even more rigorous compliance. These requirements impact State Office operations and any agency with which the state contracts to deliver Ombudsman services within Indiana.

Ombudsman Program by the Numbers

At this point, there are very few reliable field data for much of FFY19 due to longstanding issues with the Program's previous software. Local Ombudsmen were forced to manually track their work from May 2018 through mid-June 2019. While many of those manual reports have been submitted to the State

"The local Ombudsman has helped me a lot. It's been a challenge living here but she has helped me. I think the State needs to check on facilities more often. The Ombudsman gets back to me right away when I call her and she puts people at ease."

■ *Facility resident, Area 1*

Ombudsman, it takes a considerable amount of time to organize and tabulate manual data from numerous sources.

A new software designed specifically for Ombudsmen to track cases, investigations, and resolution of residents' complaints, among other important data, was purchased by the Program in early 2019. While running queries and reports on relevant data points for monitoring purposes can occur

quickly once the software is in use consistently, it will still take time to compile and integrate FFY19 data from the manual tracking reports with the software reporting. Those data will be compiled for uploading into the national database by the end of January 2020.

During FFY19, State Office staff provided nearly 1,100 consultations via telephone or email to residents, families and/or facilities. Additionally, the State Office handled approximately 32 complaints and six cases from or about persons residing in nursing homes, assisted living settings, and residential care facilities. State Office staff also fielded approximately 85-90 telephone calls per month from those requesting information and assistance.

Year in review

The Ombudsman Program had a number of successes over the past year. During FFY19, Indiana's Program accomplished the following:

Policies and Procedures

- Procured a secured electronic storage drive accessible only by State Office staff
- Obtained a secured fax line so incoming fax documents are emailed directly to the State Office email inbox
- Developed a resident consent form now being used statewide

- Developed confidentiality agreement all certified local Ombudsmen in Indiana are required to sign annually
- Developed a formal policy for persons requesting access to ombudsman records that can be approved only by the State Ombudsman, and a consent to disclose form for residents to sign allowing an Ombudsman to access and share information to resolve the resident's issue
- Revised and updated grievance and decertification policies

“Mom was diagnosed with dementia in June 2016 and you are honestly the first organization that has shown us compassion and made me feel like you care about our needs. This disease is horrible enough but we have found very few people in healthcare that are willing to listen and guide us. Thank you again.”

Communications/Marketing

- Designed an updated Ombudsman Program logo for use in marketing materials such as business cards, and updated and modernized the program brochure (with new contact information) to be used in all marketing materials
- Gained approval for, and design of, State Office letterhead

■ *Daughter of a resident, Area 3*

Education

- Issued guidance letters to providers for submission of facility-initiated discharges to State Office
- Provided bi-annual training sessions to local Ombudsmen on a variety of aging and long-term care issues

Systems Advocacy/Legislative

- Submitted comment (September 2019) on behalf of Indiana's Ombudsman program to CMS Administrator Seema Verma, regarding changes CMS proposed making to federal nursing facility regulations
- Provided comment to Indiana Representative Terri Jo Austin's HB House Bill 1367, regarding

[The Ombudsman]...“gave us several potential solutions to a problem that was bringing us to the ends of our ropes. Thanks to her, we have hope on a good outcome instead of the despair we were close to.”

■ *Family Member, Areas 10/11*

health facility requirements concerning long-term care residents, including requiring health facilities to disclose to each prospective resident in writing: (1) information concerning the long term care ombudsman, including contact information for the long

- term care ombudsman and the state department of health
- Continuing revision of the Final Rule to bring Indiana's Program into compliance with federal regulations

- Drafting ISDH and Legal Assistance Developer (LAD) Memoranda of Understanding (MOUs) to promote sharing of information among agencies, and to provide opportunities for collaboration by and between the Ombudsman Program and legal services

“If it was not for [the Ombudsman] and her work, I would not be able to spend my time with my dad...and let his last wish come true – to pass away in my home with us. I’m so happy I worked with her and got him home.”

■ *Family Member, Area 1*

Program challenges

The Program has gone through numerous transitions and challenges during the past year. With so many changes in such a short span of time, it is important to understand the principal role of the Program and its responsibilities to the citizens of Indiana have

remained the same. Mandated by the Older Americans Act, the Ombudsman Program continues to advocate for Indiana’s long-term care facility residents.

Changes in program leadership

Indiana had a history of consistent Ombudsman Program management until 2015 when the State Ombudsman retired at the age of 82. Upon her retirement, a Division of Aging Deputy Director very experienced with Indiana’s aging network stepped into the position, and then retired herself in 2018. Another highly qualified State Ombudsman was hired in September 2018, but left state government after five months (February 2019). The second (and current) State Ombudsman in less than a year was hired and brought aboard in May 2019.

New Ombudsman software

New software allows Indiana’s Ombudsman Program to report activities such as facility visits, complaints received and investigated, information and assistance provided and to whom, community education, and more.

These data are not only for Indiana’s use in program evaluation, but are intended for the Administration for Community Living and Administration on Aging. The data are uploaded and summarized in the National Ombudsman Reporting System (NORS), which is required annual reporting at the federal level every January.

[The Ombudsman]...“was extremely helpful and knowledgeable in regards to assisting me with dealing with the staff at his senior living place. The case was frustrating and complicated as the staff were unaware and ignorant of how to deal with my father’s issues appropriately.”

■ *Family Member, Area 1*

Local Ombudsmen began using the new software system June 17, 2019. However, consistent use of the new program throughout the state has been slow to occur due to the numerous changes in tracking Ombudsman activities in the last three years, and also because of recent modifications to the federal complaint

coding system. The State Office has held software trainings and webinars for local Ombudsmen, and will continue offering assistance in person and via phone.

Cancellation of RFP

Based on the outcome of a Request for Information (RFI) issued in 2017, the State Office released a Request for Proposals (RFP) during 2018 to identify alternatives for allocating local Ombudsmen program funds.

SUCCESS STORY

"I attended a care planning conference for a resident whose guardian was not allowing the resident's sister to visit her. We persuaded the guardian to follow national guardianship standards, and allow the resident to have visits from her sister up to once a week for one hour of supervised visits on a trial basis. It was reported that since the weekly visits, the resident appears happier and has fewer outbursts."

■ *Ombudsman, Area 16*

The RFP's purpose was to procure a single contractor to host local Ombudsmen throughout the state rather than continuing the current system of managing sixteen separate contracts. The cancellation of the RFP in July 2019 meant the State Ombudsman will continue searching for other options to program funding allocations.

State Office understaffing

As previously mentioned, the State Office staff fields numerous telephone calls and emails per month from those

requesting information and assistance. As of November 28, 2016, it became mandatory that all nursing facilities send copies of written notices to the State Office when a resident is transferred or discharged, resulting in the receipt of approximately 400-600 notices monthly via fax or email.

This discharge and transfer paperwork requires individual review by State Office staff, which includes an administrative assistant. But in many cases an immediate and considered response is necessary in order to protect residents' rights. Those records must be reviewed by someone proficient in Ombudsman program regulations. Consequently, the Deputy Director of the Ombudsman program spends 65-70% of her time managing the bulk of the emails, voice mails, and faxes the program receives, leaving her little time to focus on more pressing management responsibilities.

"... you are always quick to respond, available when I need you, and knowledgeable. When the POA and HCR information becomes confusing...you are always supportive and help us to navigate through those situations."

■ *Facility staff member, Area 6*

Additionally, as local Ombudsman vacancies occur, it falls to the State Ombudsman and the Deputy Director to fill in, often for months at a time, resulting in a bench that is not deep. When State Office staff must stand in for long periods of time when a local Ombudsman is not available, it leads to time away from providing necessary technical assistance for other Ombudsmen, assuring newly hired Ombudsmen complete required trainings, and

certification and designation requirements mandated in federal and state law, among other management responsibilities.

It is critical that all Ombudsmen have a baseline competency of both knowledge and skills (subject matter knowledge of resident rights, facility regulatory standards, the resident experience, complaint investigation, as well as Ombudsman program policies and procedures) necessary to support effective and credible program services. To do that, consistency in education and training for all Ombudsmen – both initial training for certification and ongoing education – is essential to a successful Ombudsman program. The State Office recommends hiring a Training Coordinator, who would be responsible for ensuring initial and ongoing training are provided according to the final training standards, which fulfill the Older Americans Act requirement for the Office of Long Term Care Ombudsman Programs. The person filling this position should be skilled in adult learning principles, and shall develop teaching goals and objectives that align with the new federal training standards.

Local Ombudsman vacancies and minimum staffing

Most areas within the state have one full-time or only a part-time Ombudsman covering multiple counties to fulfill ombudsman duties. Less than 70% (11) of the local Ombudsman work full-time. Because of funding constraints, another 25% (4) work roughly half-time hours, and three local Ombudsmen work approximately ten hours a week. Two local Ombudsman retired during FFY2019; one left for another opportunity.

"I just want to say thank you for coming to the care plan meeting. I believe it helped with you being there and we were happy with the new hospice service we picked out. Dad is still hanging on. Thank you for your time."

■ *Daughter of a Resident, Area 3*

The fact that Indiana's Ombudsman program is currently tied to AAA geographical regions has led to a staffing inequality. According to a 1995 Institute of Medicine report (a recommendation still in use), an essential resource standard is one full-time equivalent (FTE) paid ombudsman staff per 2,000 licensed long-term care beds.

Northwest Indiana (Area 1) has 74 facilities (as of 1/1/19) with over 5,200 residents but funding for that area provides for only one FTE in Ombudsman staffing. Conversely, another local Ombudsman provides services to five rural counties in her area (southwestern Area 16). Those five counties contain only 27 facilities, with nearly 1,300 residents. This Ombudsman is budgeted to work only ten hours a week, but travel from one end of her area to the other is considerable. While telephone assistance can be a very useful tool, Ombudsmen are often required to make observations, review records, and interview others onsite in a nursing facility during a complaint investigation for a resident(s). Those are critical tasks that cannot be accomplished over a phone line.

With the help of volunteers, the Ombudsman program can have a regular presence in facilities and stay in touch with residents. In order to develop a robust volunteer program throughout the state, there is much work to be done before any active volunteer recruitment begins. Program needs must be

evaluated, and volunteer program policies and procedures developed and in place prior to screening and selecting applicants. Detailed position descriptions must be established and utilized in recruiting efforts, along with initial and ongoing training. One area in Indiana (Area 3) has a small volunteer program already in place, and much of this preparatory work can be established with the assistance of that local Ombudsman. The State Office now has an administrative volunteer, a retired accountant. She is not in the field but instead, is available to assist the State Office with Program fiscal oversight.

Nursing home discharges – a concerning trend

Complaints about nursing home discharges have been the most common complaint received by Ombudsman programs nationally for the last eight years. In 2018, over 10,000 (7.3%) of nearly 140,000 nursing home complaints *nationally* were regarding discharges.

In 2018, nearly one-quarter of complaints received by Indiana's Ombudsman program were about nursing home discharges or evictions.

In Indiana during the same time period, over 22% (235 of 1,044) of complaints received were about discharges or evictions. These complaints can be complex and extremely time-consuming, particularly when involving the closure of an entire facility.

As mentioned earlier, the number of facility closures and notice of discharges continue to increase. The threat of transfer or discharge from a long-term care facility can be traumatic for both residents and their family members, particularly when faced with a full facility closure. It would be helpful to have one Ombudsman who is trained in advocating for residents who are faced with a facility-initiated discharge or facility closures, and dedicated to working on transfers, discharges, and relocations. During FFY 2020, the Ombudsman Program also plans to work with our Indiana State Department of Health (ISDH) partners to develop a facility closure team.

The year ahead

In order to provide consistency and uniformity throughout the state, and strengthen the foundation of Indiana's Ombudsman program, we plan to use FFY20 as a time to lay the groundwork for developing the program further. Next steps include:

- Exploring the formation of an Ombudsman program Advisory Council to provide guidance and stability;
- Continuing to revise and update Ombudsman program policies/procedures and Indiana's administrative code to align with federal regulations, and developing Memoranda of Understanding (MOUs) with ISDH/Legal Assistance Developer;
- Beginning the preparatory work that must be completed before developing a robust volunteer program;
- Implementing an annual TB risk assessment for local Ombudsmen, according to Centers for Disease Control (CDC) recommendations;

SUCCESS STORY

“I provided information to a resident who had been homeless and was terrified of getting kicked out of the nursing home and sent back to the streets. I assured him that being “discharged” from therapy did not mean he would have to leave the nursing home. And if he did have to leave because his health improved and he didn’t need the care provided in a nursing home, he had rights such as a 30-day written advance notice, a right to appeal with my help, and to be discharged to an appropriate place. The streets are not an appropriate place to be discharged.

The resident has been discharged from therapy and was approved for long-term care. Based on my suggestion, he worked with the business office manager to help him apply for Medicaid.”

■ Local Ombudsman, Area 16

- Working with other agencies to determine how Ombudsmen can step out of their geographical boundaries to assist other Ombudsmen when necessary;
 - Becoming proficient as a group with the new Ombudsman program software and using the data as a tool to find program deficiencies and make improvements;
 - Refining existing training standards to be in alignment with newly released federal training standards;
 - Developing quality assurance and program outcomes for evaluation purposes;
 - Continuing to seek alternative means of funding or ways to reallocate current funding sources;
 - Working with ISDH to develop a facility closure team; and
- Continuing to find ways – including social media – to provide Ombudsman Program education to consumers and increase public awareness of the program, keeping in mind that publicizing may lead to a volume of business the current infrastructure of the State Office could not withstand.