

Supporting Statement for the State Annual Long Term Care Ombudsman Report for FFY 2019-2021

A. Justification

1. Circumstances Making the Collection of Information Necessary

The State Annual Long-Term Care Ombudsman Report is needed to:

- Comply with Administration for Community Living/Administration on Aging (ACL/AoA) reporting requirements in the Older Americans Act (OAA); and 45 CFR §1324.21(b) (1) and (b)(2)(v)¹
- Measure the services and strategies that are provided to assist residents in the protection of their health, safety, welfare or rights
- Advocate at the state and federal levels for changes needed to improve the quality of life and care in long-term care facilities; and
- Effectively manage the Long-Term Care Ombudsman Program at the state and federal level.

The National Ombudsman Reporting System (NORS) was developed in response to these needs and directives and was approved by the Office of Management and Budget for use in FFY 1995-96. It has been extended for use since that time with slight modifications. A recent modification was approved on February 1, 2017 for FFY 2016-2020 to include organizational conflict of interest reporting as required by the reauthorized Older Americans Act and the LTC Ombudsman program rule 45 CFR 1324.21. This current request is to acquire approval for a revised modification of instructions and data collection elements for FFY 2019-2021.

The proposed templates, definitions, reporting tips (Tables 1-3) and a crosswalk from the current NORS to the proposed NORS are attached and posted at: _

<https://www.acl.gov/about-acl/public-input>

Section 712(c) of the OAA requires the state agency to establish a statewide uniform reporting system to:

- (1) Collect and analyze data relating to resident complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.
and

¹ The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System. Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(2) Submit the data on a regular basis to the state licensing/certifying agency, other state and federal entities that the Ombudsman determines to be appropriate, the Assistant Secretary for Aging, and the National Long-Term Care Ombudsman Resource Center.

Section 712(h)(1) requires the state agency to require the Office of the State Long-Term Care Ombudsman to prepare an annual report describing the activities carried out by the Ombudsman office in the year for which the report is prepared. The report is to contain:

- The data and an analysis of the data collected under Section 712(c);
- Evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
- Contain recommendations for improving the quality of the care and lives of the residents; and protecting the health, safety, welfare, and rights of the residents;
- Analysis of the success of the program, including success in providing services to residents of board and care facilities and other similar adult care facilities; and
- Identification of barriers that prevent the optimal operation of the program; and
- 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 barriers;

Section (712(h) (2) also requires the Ombudsman to analyze and comment on 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.

Section 712(h)(3)(A) requires the state agency to ensure that the Office of the Ombudsman provides such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding the problems and concerns of older individuals residing in long-term care facilities, and recommendations related to the problems and concerns.

Section 712(h)(B) requires the state agency to require the Office of the Ombudsman to make the annual report available to the public, and submit it 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.

Older Americans Act – Ombudsman Reporting Requirements for ACL

Title II of the OAA requires the Assistant Secretary to compile an annual national Ombudsman report. The report must:

- Summarize and analyze the data collected by the states under Section 712(c) and (h) for the most recently concluded fiscal year;
- Identify significant problems and issues revealed by such data (with special emphasis on problems relating to quality of care and residents' rights);
- Discuss current issues concerning the Long-Term Care Ombudsman programs of the states; and
- Make recommendations regarding legislation and administrative actions to resolve such problems.

The Assistant Secretary is required to submit the report to the congressional committees of jurisdiction for the OAA and to the Director of the Centers for Medicare and Medicaid Services, the Office of the Inspector General of the Department of Health and Human Services, the Administrator of the Veterans' Administration, and agencies which house the state Ombudsman office.

Consultation with State and Local Ombudsman programs and State Agencies on Aging

From the beginning of the NORS development and redesign, ACL has worked with state and local Ombudsman programs to develop and improve the reporting system. ACL staff and the National Ombudsman Resource Center continue to provide training and technical assistance on the NORS definitions, codes and effective uses of data.

A notice was published in the August 8, 2016 *Federal Register*, Vol. 81, No. 152, announcing that ACL was requesting comments on proposed revisions to the NORS template and instructions directing readers to the ACL website where these documents are posted, and providing an opportunity for public comment.

2. Purpose and Use of Information Collection

The information will be provided to the legislative and executive branch officials cited in the OAA, state directors on aging, state Ombudsmen, national organizations involved in residential long-term care issues, and private citizens who request it. Data sets will be posted on ACL's website, in the Aging Integrated Database (AGID) and the National Ombudsman Resource Center's website.

Information from the national reports issued to date has been used:

- by ACL to advocate within the Department on specific issues affecting institutionalized elders, for monitoring purposes and to identify areas where technical assistance and program direction to the states are indicated, and to prepare planning and reporting documents, including budgets;
- by ACL, the states and local Ombudsman programs to determine program objectives and outcome measures and to assist the state and local programs to use their data to develop their own objectives, targets and outcomes;
- by state and local Ombudsman programs to determine problems that residents in their state and other states are experiencing and to plan systems advocacy activities, training, technical assistance and public education programs to address these problems; and
- by other agencies, researchers and the general public in all manner of inquiry related to residential long-term services and supports.

3. Use of Improved Information Technology and Burden Reduction

Improved Technology: The NORs Reporting tool (part of the ACL “Older Americans Act Performance System” (OAAPS)) will build on the success of the National Adult Maltreatment Reporting System (NAMRS) (OMB # 0085-0054) and will employ modern methodologies for data submission, which are efficient, effective, and improve data quality. These methodologies reduce the burden on the states and ACL in collecting this essential data.

States and vendors will be provided with an upload template, a sample file, documents that cross walk the old data collection to the new, and the data element definitions to assist with software transition. This package of information will define the business rules and their restrictions, such as amount, order, boundaries and relationship; it will enable state IT units and vendors to prepare the data for submission with assurance that the basic file structure is correct.

The Case and Complaint components (Tables 1 & 2) are non-identifiable data about residents who received complaint investigation services from the State Ombudsman program during the reporting period (federal fiscal year). These data are extracted from the state system into a Comma Separated Values (CSV) format. This type of data schema is currently available to states in ACL’s current NORs reporting tool and will function in a similar manner in the new reporting system. The website will assist states and ACL in managing their data files and data submission documentation, thus further reducing their reporting burden from year to year.

Once the Case Component file is ready, the state uploads the file through the OAAPS secured website. Automatically, additional validation is conducted by the system and the state receives electronic validation and summary data reports. The state can review the results, determine if corrections are needed, and upload a corrected file until satisfied. When ready, the state submits the file to ACL for final validation that includes human review. The online validation lessens the number of resubmissions and the burden on the state and ACL.

The State Program Component sections (Table 3) includes such things as, narratives, funds expended data, program activities, number of facilities and beds, etc. This data can be manually entered or provided through an upload file. The NORS reporting tool will instantly validate the data to identify errors and allow states to correct the errors before submitting them to ACL. The reporting tool will display helpful instructions for each data element as it is entered. This helps to improve the consistency and accuracy of the answers. It provides immediate feedback before the file is submitted to ACL; thus, lessening the number of resubmissions.

States can begin entering the data, save it, and return to complete the data multiple times. When satisfied with the data and having passed all validation checks, the state can submit it to ACL. For archival purposes, a state may download their data in Excel format. The final report is securely saved and only accessible through the Titles website by the submitting state and ACL. The data from the previous reporting period is accessible to the same online form for the next reporting period, making them easily updatable (when appropriate, such as with organizational conflicts of interest) from the prior year, thereby reducing the level of effort in subsequent years.

Reduction of data collection elements:

The level of burden is greatly reduced because of the streamlining of required data collection elements. The revised data collection eliminated 82 data elements and added only 8 new or revised data elements, for a total reduction of 74 data elements. For example, complaint codes are reduced from 119 codes to 59 codes. This reduction of 60 complaint codes addresses long-standing criticism expressed by the Assistant Secretary for Planning & Evaluation (ASPE) in 2010 and from the Office of Inspector General Report “*State Long-Term Care Ombudsman Data: Nursing Home Complaints*,” HHS Office of Inspector General, OEI-09-02-00160, July 2003². Disposition codes are reduced from 8 to 3, providing for a clear measure of the outcome of the complaint. Activity codes are reduced by 10.

4. Efforts to Identify Duplication and Use of Similar Information

² Ombudsman programs do not always use the same NORS categories to classify complaints. Thirty-nine of the 46 surveyed ombudsmen told us that they do not consistently follow the NORS categories in reporting complaints. AoA provides definitions of complaint categories and instructions to ombudsmen for reporting NORS data. However, it is sometimes difficult for ombudsmen to categorize complaints when several definitions apply. Despite AoA’s instructions, ombudsmen sometimes report a single complaint in several different categories.

All information in the Ombudsman report is unique to the Ombudsman Program. Although the number of nursing facilities certified by Medicare and Medicaid is available from the Centers for Medicare and Medicaid Services, states may also have licensed only nursing homes. Therefore, NORS requires Ombudsman programs to report a count of all nursing homes and beds licensed or certified in their state. While sporadic studies have provided estimates on the number of residential care community³ facilities and beds, the annual ACL Ombudsman report provides the only consistent national data on the number of nursing homes and beds classified as residential care communities.

ACL/AoA has recently begun collecting data from states' adult protective services (APS) agencies. The National Adult Maltreatment Reporting System (NAMRS) addresses the requirements of the Elder Justice Act of 2009, which amends title XX of the Social Security Act (42.U.S.C. 13976 et seq.) and requires that the Secretary of the U.S. Department of Health and Human Services "collects and disseminates data annually relating to the abuse, exploitation, and neglect of elders" (Sec. 2041 (a)(1)(B) and "conducts research related to the provision of adult protective services" (Sec. 2041 (a)(1) (D).

NAMRS differs in several ways from NORS. NAMRS collects data on investigations by APS agencies into allegations of abuse, neglect, or exploitation of older persons and adults with disabilities, regardless of residence type. The state programs that respond and collect NAMRS data are different from state Ombudsman programs. NORS collects complaint data concerning the health, safety, welfare and rights of residents in long term care facilities, which includes complaints related to abuse, neglect and exploitation, but is not limited to those types of issues. NORS also collects other information relevant to the Ombudsman program, such as providing facility visits, instances of information and assistance, participation in surveys, etc. The definitions in NAMRS have been closely aligned with definitions in NORS, wherever applicable. No duplication of effort will result from the revised NORS data collection.

5. Impact on Small Businesses or Other Small Entities

No small businesses or other small entities will be involved in this study.

6. Consequences of Collecting the Information Less Frequently

If collection were less frequent than annual, neither the states nor ACL would be able to meet reporting requirements in the OAA; and both advocacy and program management functions dependent on the information in the NORS would suffer from lack of current data.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

³ ² Previously called "Board and Care, Assisted living and similar facilities"

None of the listed circumstances apply to this submission.

8. Comments in Response to the Federal Register Notice/Outside Consultation

A notice was published in Federal Register/Vol. 81, No.152/Monday, August 8, 2016, Page 52438 announcing that ACL/AoA was requesting comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL/AoA's functions, including whether the information will have practical utility; (2) the accuracy of ACL/AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Readers were directed to the ACL/AoA website where the documents were posted and provided an opportunity for public comment. ACL received comments from 18 individuals and groups. A list of specific comments received during the 60-day public comment period, along with ACL's responses, is attached. Comments were received by the following groups and individuals: National Association of State Ombudsman Programs (NASOP); National Association of Local LTC Ombudsman (NALLTCO); one software vendor, Peer Place; one local LTC Ombudsman in California; the California Association of Local LTC Ombudsmen; one researcher with expertise in dementia and abuse and neglect; the Consumer Voice for Quality LTC Care; and the following State Ombudsman programs: California; Florida; Maryland; New York; Iowa; Pennsylvania; Arizona; New Hampshire; Texas; Alaska; and Virginia. Many of the state Ombudsman comments were identical to NASOP's comments.

Globally, there was not significant comment on the data elements to be collected, but rather on ways to enhance the quality, utility, and clarity of the information to be collected. These comments were very helpful and many of the proposed edits and language suggestions were adopted.

Concerns regarding burden included: Disagreement about the burden hours because of changes in data collection requirements and added structured requirements of narrative complaint examples, systems issues and conflicts of interest reporting, as discussed above the new reporting system will streamline these current reporting activities, allowing for flexibility and the ability to import data from the previous year for use in the next year, where appropriate. Many responders expressed concern about burden with a data collection item to indicate if a complaint was a complaint on behalf of more than one resident, i.e. a "group complaint" (Table 1, code C5 on the 60 day submission.) ACL agreed and removed this data element. State Ombudsmen expressed concern about the undue burden of a name change from "board and care" to "residential care community." However there was no specific estimate of hours or justification. Many State Ombudsmen expressed concerns that adoption of this term would require change to state

reporting systems and training to every representative of the Office, with no added value and that it implied that it expanded the jurisdiction of the types of facilities that the program should serve. In response to their concerns about expanding jurisdiction the definition was revised while keeping the term “residential care community.” ACL does not believe that a change in definition and title will cause confusion at the state and local level because there will not be a change in state level practice. Currently, state Ombudsman programs use their state licensing terms (i.e. assisted living, adult foster home, and personal care home, etc.) States’ data collection software allows for their residential care data to be entered by state license type which is then combined and reported in NORS as one facility type, currently called board & care. ACL also believes the term “residential care community” reflects current nomenclature. The Assistant Secretary for Planning & Evaluation (ASPE) Compendium of Residential Care and Assisted Living Regulations and Policy: 2015 Edition notes that until the mid-1990s, the most frequently used terms were board and care or residential care. However the popularity of the new assisted living model led many residential care settings to change their name to assisted living. Currently 23 states have more than one licensure category. Most states (44) use the term assisted living as a licensing or certification category. The word that follows "assisted living" varies, and includes facility, residence, program, home, and community. The next most commonly used licensure term is residential care, used by 20 states. Additional concerns about the wording in proposed definitions and requests to add additional data collection elements are addressed in the response to comments tables.

Many commenters expressed concerns about the cost to update and revise their reporting systems. One State, California, who has developed their own software utilizing in-house IT services, estimates a range from 9-52 days of work for software changes and 5-55 days to update training materials, update their in-house reference guide, provide training, etc. Another state, Florida, estimate that the changes required will cost around \$10,000. One vendor, PeerPlace, commented that they see “no issue” with the proposed changes and that they are committed to keeping all of their customers using PeerPlace Ombudsman product up to date with any NORS reporting changes.

Many commenters expressed concerns about training needs and time to adapt their software. ACL anticipates that states will not need to develop training materials or host training to meet the federal reporting requirements. ACL is working with the contractor developing the reporting software to develop training modules on how to use the new reporting system.. Training will be offered as webinars and in person at national conferences when possible. User support materials and recorded webinars will also be available on the reporting website. The National Ombudsman Resource Center will develop modules on how to interpret the new definitions and codes similar to past training; they will host webinars and provide in-person training at their annual spring training for state LTC Ombudsmen and will host all tools and modules on their website. The contractor is also holding meetings with vendors and state information technology staff on the technical requirements of the new system and will provide data templates in various formats; and detailed crosswalks of the current data collection to the new data

collection.

Despite the concerns addressed, there was an overall positive tone to the comments: “NASOP largely supports the changes made by ACL to NORS. We appreciate ACL’s efforts to incorporate many of the revisions previously recommended by NASOP. We believe that these changes will result in more accurate and consistent reporting as well as more precise identification of trends and the systems advocacy needed to address common complaints.”

9. Explanation of any Payment/Gift to Respondents

Not applicable.

10. Assurance of Confidentiality Provided to Respondents

Individuals are not identified in the report and, since no individual is identified in the data collection process, no assurance of confidentiality will be needed. Ombudsman data collection programs are designed to guarantee the confidentiality of residents and complainants, which are requirements of the Ombudsman federal rule at 1324.11(e) (3.) and the Ombudsman provisions of the OAA.

11. Justification for Sensitive Questions

The data collection instruments will not collect any data of a sensitive nature.

12. Estimates of Annualized Burden Hours (Total Hours & Costs)

12A. Estimated Annualized Burden Hours

The hour burden is based on the number of cases managed by the nationwide Long-Term Care Ombudsman Program (LTCOP), consisting of the 50 states plus the District of Columbia and Puerto Rico, in the most recent year for which data is available. Closed cases reported by the 52 state Ombudsman programs for FFY 2015 was 129,559. Based on average time required by early pilot states to document a case by computer (10 minutes), total documentation time is calculated by multiplying total cases by 10 minutes, totaling 1,295,590 minutes, divided by 60 = 21,593 hours of paid ombudsman program time. Previous estimates determined that about, about two-thirds of the information entered for a typical case is for use at the state level and is not required for the AoA report. However, in light of changes to the case and complaint data collection, we will assume that half of the estimate of 10 minutes is needed to document data needed for the AoA report. It should be noted that, while the proposed data collection adds 8 new data elements, 14 data elements were eliminated from the old form. In addition, a large number of NORS complaint codes (60) were eliminated or consolidated. Detailed crosswalks showing the changes are attached to this summary. New data collection includes, items such as if a complaint was referred and to what type of agency. This will

better inform ACL on what other entities Ombudsman programs use to achieve satisfactory complaint resolution. In the current NORS if a complaint was referred it was counted as a disposition, with no certainty as to what type of entity received the referral and the outcome of the complaint. States will also report on the organizational location of their program, thereby eliminating the need for grantees, such as the National Ombudsman Resource Center to separately collect this information in a survey.

Estimates on completion of other parts of the report are based on past experiences from state Ombudsman programs obtained in 1995 and 2005. For example, states estimate that they spend anywhere from 4 hours to 4 days checking and verifying data from the local programs and compiling their annual report to AoA; the current burden estimate is 17 hours per state Office. Improved technology, which either allows for or requires the uploading of data files will populate the case and complaint data and increase the consistency and reliability of data, thereby reducing burden associated with manually entering data. Thus, a fair estimate of the average burden for a state is 16 hours of staff time at the Office of the State Ombudsman.

The annual burden estimates are shown below.

Instrument	No. of Respondents	No. Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
Annual State Ombudsman Report	52	1	223.6	11,628.6

12B. Costs to Respondents

Type of Respondent	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
Local level	207.6	\$22.70	\$4713.12
State Ombudsman Staff	16	\$34.08 ⁴	\$545.28
Sub-total program cost	223.6		\$5258.4
Benefits & overhead			\$5258.474
Total State Program cost			\$10,516.81

13. Estimates of Other Total Annual Cost Burden to Respondents and Record keepers/Capital Costs

⁴ Based on the Bureau of Labor Statistics (BLS) mean hourly wage for Other Community and Social Service Specialist for staff Ombudsmen (occupation code 21-1000) Social and Community Services Managers (occupation code 11-9151) for State LTC Ombudsmen

There are no capital or other costs to respondents or record keepers.

14. Annualized Cost to Federal Government

The table below describes the annualized cost to the federal government. It is based on the General Schedule Locality Pay Table for the Seattle, Washington area, which is the location of the Ombudsman Program Specialist.

GS Grade/Step	Percent Time	Estimated Cost
GS 13-5	15%	\$15,700
	Contract Cost	\$386,512
	Training cost	\$1,500
Total	Annualized Cost to Federal Government	\$403,712

15. Explanation for Program Changes or Adjustments

Not applicable.

16. Plans for Tabulation and Publication and Project Time Schedule

The highlights of the typical annual data collection schedule are as follows:

- September 30 - federal fiscal year closes
- Early October – training schedule and reminder of NORS reporting due date sent to all states
- October – December training sessions provided
- January 31 final due date to submit report
- February –May data analysis and approval of reports
- June-August- data analysis.
- August –September – post data

ACL prepares reports, a fact sheet, and other information based on the data and posts the data tables on its website at: <https://www.acl.gov/node/68>, in the Aging Integrated Database (AGID) and on the National Ombudsman Resource Center (NORC) website.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

The expiration date will be displayed on all of the data collection instructions and instruments.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods. If statistical methods will not be used to select respondents and item 17 on Form 83-I is checked “No” use this section to describe data collection procedures.

These collections do not employ statistical methods. The Older Americans Act requires all states to submit an annual Ombudsman report to ACL and ACL to submit an annual report to Congress and others.

Attachments:

Tables 1, 2, and 3 submission for approval
Crosswalk from current NORS to new
Tables 1, 2 and 3 – response to comments