

Administration for Community Living/Administration on Aging- Office of Long-Term Care Ombudsman Programs

National Ombudsman Reporting System (NORS)

OMB Control Number 0985-XXXX

Table 1: NORS Parts 1 and 2 – Case/Complaint codes, values and definitions

Expiration Date: XX/XX/XXXX

ACL Response to 60 Day Notice Comments

Case Data Components

Each case must contain a complainant, complaint code (s), a setting, verification, resolution, and information regarding whether a complaint was referred to another agency. Case and complaint data reported is only for those cases and complaints which were closed within the fiscal year.

| Element Number | Data Element | Definition | Comment | ACL Response |
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| C1 | Date Case Opened | Month, day, and year that the case was opened | <p>Element numbers</p> <p>Issue: C1 through C4 are also used in Table 2: Complaint codes and definitions</p> <p>Recommendation: Change Element Numbers in Table 1 to CA1 through CA5 for case data and CO1 through CO7 for complaint data.</p> | Table 1 Code number is now CA 01-CA-05 and Complaint Data Components are CD-01-CD-07 |
| C2 | Date Case Closed | Month, day, and year that the case was closed | <p>Recommends: Report only cases closed in the reporting year, regardless of whether they were opened in the reporting year or in a prior reporting year.</p> | Because case and complaint data will be submitted in an electronic file format, the business rules instruct that all cases and complaints must be closed in the fiscal year, regardless of date opened. We will clarify in the business rules |

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| C3 | Facility/ Setting Type | Facility/setting type for the case | <p>13 commenters recommend changing the term “Residential Care Community” back to the current Board and Care terminology as defined in the OAA and add the term “residential care community” to the definition. The concerns were best described as follows.</p> <p>Issue 1: Changing “board and care” to “residential care community” is an unnecessary change in nomenclature that strays from the Older Americans Act language and would burden state programs and representatives of the Office. Adoption of this term would require change to state reporting systems and training to every representative of the Office, with no added value. A change to basic terminology is likely to cause confusion among states and representatives of the Office.</p> <p>Issue 2: The reference to licensed and unlicensed in the definition of “residential care community” is misleading and inconsistent with the Older Americans Act (OAA) definitions of “long-term care facility” and “board and care”. The OAA definition for “board and care” refers to the Social Security Act definition and describes state authority to regulate. The Social Security Act describes institutions on which state and local authorities enforce standards. Referring to an unlicensed facility in this definition implies the State Long-Term Care Ombudsman Program has a responsibility to cover</p> | <p>There is general concern that the proposed definition somehow expands they type of settings that LTC Ombudsmen have jurisdiction over. This is not ACL’s intent and the definition has been revised; the term Residential Care Community remains unchanged.</p> <p>ACL believes the term Residential Care Community reflects current nomenclature. The Assistant Secretary for Planning & Evaluation (ASPE) <i>Compendium of Residential Care and Assisted Living Regulations and Policy: 2015 Edition</i> 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.</p> <p>ACL does not believe that a change in definition</p> |

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| | | | <p>unlicensed homes, which would create more strain on an underfunded program and could result in an unfunded mandate.</p> <p>By changing the definition of board and care to residential care community, is it the implications that ombudsmen should go into all settings that apply to that definition or will ombudsman continue to serve the residents in the same types of facilities that they have been serving? If this is the case, why change the definition. If states are expected to expand serves, how will this be paid for?</p> <p>Another area is in defining the types of facilities our residents reside in we focus on NH's, ALF's and Adult Family Care Homes. While AOA gives us the ability to expand we could not do so without reducing services to those we already serve.</p> <p>One commenter Does not agree, and the program offers complaint resolution services in these settings.</p> | <p>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.</p> <p>In response to concerns expressed that the definition expanded the service jurisdiction the definition has been revised.</p> <p>The new definition is:</p> <p><i>Residential Care Community - A type of long-term care facility as described in the Older Americans Act that, regardless of setting, provides at a minimum, room and board, around-the-clock on-site supervision, and help with personal care such as bathing and dressing or health-related services such as medication management.</i></p> <p><i>Facility types include but are not limited to:</i></p> |

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| | | | | <i>assisted living; board and care home; congregate care; enriched housing programs; homes for the aged; personal care homes; adult foster/ family homes and shared housing establishments that are licensed, registered, listed, certified, or otherwise regulated by a state.</i> |
| | | | <p>Issue 3: Ombudsmen are increasingly receiving complaints that have an element of managed care involved and clarification would be helpful.</p> <p>Recommendation: Add to Examples and Reporting Tips, “If the consumer is a member of a managed long-term services and supports plan, select the setting where the consumer resides at the time of the complaint</p> | <p>Did not accept. Not all states have managed care programs and the focus of the LTCOP is persons in long-term care facilities. One state One commenter – specifically did not agree with the recommendation.</p> |
| | | | <p>Issue 3: Clarify what types of settings are acceptable under “99 = Other”. Recommendation: Add examples under Examples and Reporting Tips for “Other” such as hospital, psychiatric facilities, etc.</p> | <p>Accepted</p> |
| | | | <p>“Helpful to have rudimentary breakdown of other settings so that additional individual reading and tabulation of cases will not be required to gather needed data on other settings.”</p> | <p>The “Other setting” code is an optional code for those states that have expanded their Ombudsman services to settings outside of long-term care facility settings. ACL does not need that level of detail on services for which the OAA has not authorized.</p> |

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| C4 | Complainant Type | Complainant - an individual (i.e., resident, resident representative, family) who requests Ombudsman program complaint investigation services regarding one or more complaints made by, or on behalf of, residents. | <p>Recommendation: Add to Codes and Values, 06 = Other and add to Definition, "Other" includes individuals who do not have a relationship with the resident such as a neighbor to the facility, family member of another resident, visiting pastor and change 06 to 07 = Unknown.</p> <p>Recommendation: Change Definition of 05 = Representative as follows. Representative of other agency or (individual delete) program: Any entity or (individual delete) that refers a complaint to the Ombudsman program regarding one or more residents.</p> <p>Recommendation: Under Code and Values for C4 add a new code "Other" and in Examples and Reporting Tips add "Select other when the complainant does not work for an agency and has no personal relationship with the resident such as community member, or family member of another resident". Also clarify under Examples and Reporting Tips that "Resident Representative, Friend, Family" refers to a complainant that has a personal relationship with the resident. Also change "Unknown" to 07.</p> | <p>Accepted</p> <p>Based on recommendations a new code 06- "Other" was added:</p> <p>Other: a neighbor to the facility, family member of another resident, visiting clergy, bank teller, etc.</p> |
| | | | Element #C4: 05-Representative of other agency or program. A resident's neighbor is frequently a friend and would not be considered a representative of other | <p>Based on recommendations a new code 06- "Other" was added:</p> <p>Other: a neighbor to the facility, family member</p> |

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| | | | <p>agency or program.</p> <p>Recommendation: Remove the term “neighbor” from the examples given for 05=Representative of other agency or program, and either remove “neighbor” from all descriptions or add it to C02, Resident Representative Friend, Family.</p> | <p>of another resident, visiting clergy, bank teller, etc.</p> |
| | | | <p>Anonymous should be included since many of the complaints we receive are anonymous.</p> | <p>Anonymous and unknown have basically the same meaning. If the Ombudsman program receives a complaint and they do not know the source of the complainant that would be considered “unknown.” If a resident is a complainant but says that she wants to be “anonymous” to the facility staff or others; that is considered direction from the resident on how to conduct the complaint investigation.</p> |
| | | | <p>C4 needs further explanation on allowing only one selection of complainant as it relates to C5 when there is more than one complainant per case.</p> | <p>Complainant Group was eliminated.</p> |
| | | | <p>Omits value of “other medical staff,” which is useful to LTCOP’s. Rather than unknown we prefer anonymous which encompasses additional aspects...When</p> | <p>Nationwide, less than 3400 (2.5%) of complaints per year are referred by “other medical staff” to the Ombudsman program.</p> |

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| | | | <p>complainant requests anonymity should not be documented under role of ...current use of unknown/anonymous also is better than merely "unknown" Do not agree and the current numbers do not support</p> | <p>This has been consistent for the past five years. We are seeking to simplify data collection by merging codes that are not highly used and have similar overlap (i.e. current code of Other medical: physician/ staff with Representative of other health or social service agency or program.)</p> <p>As noted above, the definition of unknown and anonymous is similar. Over the past 5 years, "unknown/anonymous" complaints averaged around 3.5% of all complaints. The complainant role should be accurately identified so that we have a true picture of the complainant concerns via the complaint resolution process. Indicating the type of complainant in a data system does not violate disclosure requirements of the OAA or the Ombudsman federal rule. Both the OAA and the federal rule (see 1324.11(e) (3) Disclosure and 1324.19 Duties of the representatives of the Office. (b) Complaint processing. Describe when a resident or complainant's identifying information can be disclosed.</p> |

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| C5 | Complainant Group | Whether there is more than one complainant as part of the case. | <p>Issue: This would be difficult to code and collect consistent data from ombudsmen, as well as add an additional burden to reporting. Recommendation: Delete C5.</p> <p>Issue: This is a new data element and it is not clear if it is to be used for group complaints by resident or family councils or if it is to be used when several individuals file complaints about the same incident.</p> <p>Recommendation: Clarify language under the definition and give examples in the Examples and Reporting Tips. It is also important to ensure the system allows for several complaints to be recorded for the same incident.</p> <p>Requires additional explanation regarding how it relates to C4. In addition if one documents “yes” where does one document (and collect data on) the additional information regarding the role and type of complainant.</p> | This data element was eliminated. In order to capture some information on group complaints a complainant code of “resident or family council” was added to the complainant type. |

Complaint Data Components

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| CD4 | Allegedly Responsible Person | The type of person(s) allegedly responsible for the abuse/neglect or exploitation (i.e. perpetrator). | <p>Use of the term “allegedly responsible person” is confusing. Responsible person may be confused with a power of attorney or the nursing facility terms “responsible party” and “responsible person.” Other commenters agree.</p> <p>Recommendation: Change the Data Element to Person Complaint is Against.</p> | After much deliberation the data element label was changed to “perpetrator.” This is the most frequently used and understood word to describe a person who has been accused of causing abuse, neglect or exploitation. |
| | | | <p>Issue 2: Codes and Values options are not inclusive of outside providers of services.</p> <p>Recommendation: Add to Codes and Values, 4 = Outside Providers of Services and add to Examples and Reporting Tips, Use 4 for Outside Providers of Services, for individuals or entities such as laboratory staff, social workers not employed by the facility, and financial advisors. Also change 04 05 = Other.</p> | No change, outside providers of services, not associated with the facility fit in the “other” |
| | | | <p>Recommendation: Under Codes and Values change number 4 to “Outside Providers of Services” and change “Other” to number 5. Under Examples and Reporting Tips add examples for the new code recommended above as well as for “Other”. Clarify that</p> | No change- the terms are self-explanatory. |

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| | | | <p>“Family, Residents Representative, and Friend” are individuals that the resident has a relationship with.</p> | |
| | | | <p>The addition of CD4-Allegedly Responsible Person in ombudsman reporting, coupled with the CD6 Complaint Verification Data Element would appear to verify (or not) whether the allegedly responsible person did, in fact, cause the abuse, neglect, or exploitation. This may confuse the public who reviews Ombudsman program data and confuse Ombudsmen about their role in responding to a complaint involving abuse, neglect, and exploitation.</p> | <p>The Ombudsman program rule at 1324.19(b) Complaint processing along with states policies and procedures on complaint processing should support credible and effective complaint resolution. The ability to analyze disaggregated data and associate the types of complaints, the perpetrator (for abuse related complaints) and other variables will inform ACL and states on complaint outcomes. ACL and the National Ombudsman Resource Center will assist states in their interpretation of their data and how to educate the public on the data.</p> |
| CD5 | Referral Agency Type | <p>The type of agency/agencies to which a complaint was referred to as part of the Ombudsman program’s plan of action for complaint resolution.</p> | <p>Several commenters: Issue: Ombudsmen often refer complaints to the state Medicaid Fraud Control Unit and to the Home and Community Based Waiver Quality Assurance agency. There does not appear to be an option for these agencies.</p> <p>Recommendation: Add under Examples and</p> | <p>Medicaid Fraud Control Unit is a law enforcement agency and is included in law enforcement definition.</p> <p>Not all states have similar processes for “Home and Community Based Waiver Quality Assurance agency.” The definition is broad enough to capture all types of</p> |

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| | | | Reporting Tips, Use 1 for Licensing, Regulatory, Certification Agency, and for referrals to the state Medicaid Fraud Control Unit and to the Home and Community Based Waiver Quality Assurance agency. | government entities that have a quality oversight responsibility. |
| CD6 | Complaint Verification | Verified: A confirmation that most or all facts alleged by the complainant are likely to be true. An ombudsman conducts an investigation of the complaint to determine verification | Proposed changes in definition is less clear. Use of word 'fact' does not seem appropriate as a fact is something that is true. Ombudsmen investigate to determine the facts. We recommend that the current definition of verified be unaltered. In addition CD6 should note that Not Verified has several meanings: not true, unable to determine, etc. | The definition was slightly modified. Verified: A confirmation that most or all facts alleged by the complainant are likely to be true. |
| CD7 | Complaint disposition | Final resolution or outcome of the complaint | Several commenters - Issue: There is no instruction regarding how to code the death of a resident before there is an outcome of the ombudsman resolution. Recommendation: Add to Examples and Reporting Tips, Use 2 for Withdrawn when the resident dies before a final outcome has been obtained. | There are a number of variables that may impact the final disposition of a complaint if a resident dies before the complaint is finally resolved. This will be addressed in NORS consistency training. |

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| | | | <p>Recommendation: Under Examples and Reporting Tips add “When a resident dies before a complaint is resolved use code 3.”</p> <p>Add a reporting tip that lists an order of preference for determining who to rely on to determine disposition. For example, first contact the resident if they are able to state their satisfaction, then contact the resident representative, then complainant, then SLTCO.</p> | <p>There are a number of variables that may impact the final disposition of a complaint if a resident dies before the complaint is finally resolved. This will be addressed in NORS consistency training.</p> |
| | | | <p>Element #CD7: Complaint Disposition, Item 2 (“Withdrawn or no action needed...”) There is a distinct difference between a complaint that is withdrawn and one where no action was needed.</p> <p>Recommendation: Separate “Withdrawn” and “No Action Needed” and continuing to provide both options as a complaint disposition in NORS.</p> | <p>If a complaint is withdrawn by the resident or complainant it means that no further action shall be taken. Years of experience of training on these two definitions indicates that Ombudsman programs do not have clear agreement on the definitions and differences between these two terms. Eliminating duplicative definitions reduces the states’ reporting burden.</p> |
| | | | <p>Concerns about reducing the number of dispositions primarily because of cost to change software and re-training.</p> | <p>The new codes reflect the most commonly used NORS disposition codes. The simplification from 9 disposition codes to 3 reduces reporting burden. The NORC</p> |

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| | | | | <p>will provide a set of training materials offering both live webinars and recorded session's available on-demand.</p> <p>We are aware of state Ombudsman programs' cost concerns. NORS reporting has not significantly changed over the past 20 years and we understand that this will require states to modify their software programs.</p> |
| | | | <p>Issue 2: Codes and Values 1, 2, and 3 refer to the resident, resident representative, or complainant. It is unclear how an ombudsman should report disposition when a resident and complainant disagree about satisfaction, such as how to report a situation when a resident does not wish the ombudsman to take any action and the complainant is not satisfied. As a resident-directed advocate, ombudsmen are trained to follow the resident's direction. The resident's wishes should supersede the complainant's.</p> <p>Recommendation: Add to Examples and Reporting Tips, "If the complainant is not the resident, but is complaining on behalf of a</p> | <p>This is a helpful suggestion that lends itself to training examples to be developed by NORC.</p> |

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| | | | <p>resident who is able to state his or her satisfaction or otherwise direct the ombudsman, the resident's direction supersedes the complainant's.</p> | |
| | | | <p>Concerns about removal of for which government policy or regulatory change or legislative action is required to resolve, and referred to other agency – final disposition not retained or failed to act may be useful to retain.</p> | <p>The disposition code “for which government policy or regulatory change or legislative action is required to resolve,” has not proven to be helpful at the federal level with an average disposition of less than 1%. It is our expectation that with disaggregated data we will have the ability to analyze the types of complaints that are unresolved which may indicate that resolution requires policy or systems level changes. We also anticipate that with a structured systems advocacy narrative this will better inform of the types of complaints that require policy, government action, etc.</p> <p>“Referred to other agency dispositions” imply that the Ombudsman program is no longer active in the complaint resolution. The referral codes are also confusing to many Ombudsman programs and have created data inconsistencies. Removing referral codes clarifies that the</p> |

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| | | | | Ombudsman program is to determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable). |