

# **Supporting Statement for the State Annual Long Term Care Ombudsman Report for FFY 2021-2023**

## **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)<sup>1</sup>
- 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. The most recent modification was approved on February 1, 2017 for FFY 2016-2020 to include organizational conflict of interest reporting as required by the 2016 reauthorization of the 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) 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.

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<sup>1</sup> 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.

and

(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;
- 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;
- 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 for Aging, 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 for Aging 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 Administrator of the Centers for Medicare & Medicaid Services, the Office of the Inspector General of the Department of Health and Human Services, the Office of Civil Rights of the Department of Health and Human Services, the Secretary of the Department of Veterans Affairs, 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 March 10, 2021 *Federal Register*, Vol. 86, No. 45, 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 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 persons living in long-term care facility settings, 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 ) employs 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 have upload templates, which allows a streamlined ability to upload data and prevent data entry errors. The OAAPS has set business rules and restrictions, such as amount, order, boundaries and relationship which enables state IT staff 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 that describes complaint investigation services provided by the State Ombudsman program during the reporting period (federal fiscal 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. State Ombudsmen reported that in their first year of using the new OAAPS that the submission, review of variance and other data quality checks was much improved over the previous system.

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 instantly validates the data to identify errors and allow states to correct the errors before submitting them to ACL. The reporting tool displays 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 submits 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 OAAPS 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.

#### **4. Efforts to Identify Duplication and Use of Similar Information**

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 & 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 community<sup>2</sup> 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 collects 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 amended title XX of the Social Security Act

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<sup>2</sup> Previously called "Board and Care, Assisted living and similar facilities"

(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**

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 the *Federal Register* on March 10, 2021 (86 FR 13720). There were four public comments received during the 60-day FRN, please see ACLs response to comments listed below. A 30-day notice published in the *Federal Register* on July 29, 2021 (86 FR 40848).

Readers were directed to the ACL website where the documents were posted and provided an opportunity for public comment. ACL received comments from four individuals and groups: the National Association of State Ombudsman Programs (NASOP); the Maryland State Ombudsman, the Iowa state Ombudsman program and an assistant professor in Family Medicine & Gerontology.

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 ACL adopted some of the proposed edits and language suggestions.

Two of the four respondents (Maryland Ombudsman program and the National Association of State Ombudsman Programs (NASOP)) recommended adding a new complaint code “infection control.”

Response: ACL agrees to add one complaint code “infection control” and corresponding definition, examples and reporting tips. The Iowa Ombudsman program recommended adding clarifying information to the Code I05 (Housekeeping) to be inclusive of infection control, ACL will incorporate its suggestion into the new “Infection control” code.

Two of the four respondents (Maryland Ombudsman program and NASOP) recommended changes to the “examples and reporting tips” under complaint code J01.

Response: ACL agrees to modify the “examples and reporting tips” on Complaint Code J01 “Administrative oversight” to incorporate problems with a facility planning and responding to an emergency.

ACL received the following comments and did not accept them for inclusion in NORS.

The Maryland Ombudsman proposed adding more detail and examples in the description fields in the following cells: S02, S06, S08, S09, S12.1, and S13 stating that this would give the State Ombudsman more guidance on how to approach the narratives and to help ensure greater consistency across the country.

Response: ACL in coordination with ACL’s grantee, the National Ombudsman Resource Center (NORC) created in-depth training and training manuals on all aspects of NORS reporting, including examples of narratives for both complaint examples and systems issues and does not believe that additional guidance is necessary. See

[https://ltombudsman.org/omb\\_support/nors](https://ltombudsman.org/omb_support/nors)

The Maryland Ombudsman program also recommended the addition of a new complaint code in Facility Policies, Procedures and Practices (Code J) for emergency planning complaints. The Maryland Ombudsman program noted that there have been many instances of facilities needing to temporarily or permanently relocate residents for a variety of reasons from disasters to lack of appropriate staff in the building, facility closure, or the facility did not have an appropriate plan or did not have a plan at all.

Response: ACL will not add a new complaint code, but will modify complaint code J01 “Administrative Oversight” to be inclusive of emergency planning.

One recommendation was to include the addition of a county field (e.g., Federal Information Processing Standard code). The commenter noted that although looking at

differences/variation between states is important and valuable, having the ability to look at differences/variation within each state would be immensely beneficial for the conduct of ACL's functions and would allow for analytics to be shared with state ombudsmen and other programs nationwide.

Response: ACL does not accept this recommendation because of the level of burden necessary to gather and report this level of data.

NASOP made recommendations to broaden the types of activities reported on systems issues work performed by the State Long-Term Ombudsman, the Office and local Ombudsman entities. NASOP asserts that this reporting element would provide needed depth and clarity about whether a State Long-Term Care Ombudsman has the necessary independence and resources to perform systems advocacy as required by the Older Americans Act. NASOP proposes that data collected as narrative examples of Systems Issues is insufficient and does not have practical utility without additional data collection to explain the scope of a state's work on systems advocacy. "By only collecting two examples of a systems issue from each state, ACL has no objective means of determining a state's compliance with the Act nor the independence of the Office. With our proposed addition data collection in Table 3, ACL will collect and provide the public with a more accurate picture of whether a state program is fulfilling the requirements of the Act."

Response: ACL does not agree with NASOP's assessment of the current data collection on systems advocacy for several reasons. First, the FY 2020 data is not yet final and ACL has not been able to share systems advocacy data. Additionally, while NORS is one part of measuring program effectiveness it is not the only way that ACL determines compliance with the Older Americans Act. ACL provides continuous technical assistance on matters of compliance, conducted in-depth review of states compliance with the Ombudsman program regulation, and worked with states to develop compliance plans. ACL also has an on-going project to evaluate the effectiveness of the Ombudsman program and has gathered in-depth data on both state and local level Ombudsman program's ability to conduct systemic advocacy. See <https://acl.gov/programs/program-evaluations-and-reports>. In addition, the proposed data collection would be very burdensome on state and local programs to collect and report because the two recommended data elements include a sub-set of 10 possible elements to select and to keep track of the number of instances of each sub-set ultimately resulting in 20 new data elements. This type of data would not add meaningful information that would benefit ACL considering the level of effort required of states to train on this type of data collection, adapt software and report.



**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 2019 was 123,815. 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 1,238,630 minutes, divided by 60 = 20,644 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 ACL report. However, based on state Ombudsman feedback, ACL assumes that half of the estimate of 10 minutes is needed to document data needed for the ACL report.

Estimates on completion of other parts of the report are based on experiences from state Ombudsman programs. 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. 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.

<b>Instrument</b>	<b>No. of Respondents</b>	<b>No. Responses per Respondent</b>	<b>Average Burden per Response (in hours)</b>	<b>Total Burden Hours</b>
Annual State Ombudsman Report	52	1	214.5	11,153.9

12B. Costs to Respondents

<b>Type of Respondent</b>	<b>Total Burden Hours</b>	<b>Hourly Wage Rate</b>	<b>Total Respondent Costs</b>
Local level	198.50	\$25.06	\$4974.37
State Ombudsman Staff	16	\$36.13 <sup>3</sup>	\$578.08
Sub-total program cost	198.5		\$5,552.45
Benefits & overhead			\$5,552.45
Total State Program cost			\$11,104.90

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

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.

<b>GS Grade/Step</b>	<b>Percent Time</b>	<b>Estimated Cost</b>
GS 14-3	15%	\$19,019.52
	Contract Cost	\$200,000

<sup>3</sup> 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

	Training cost	\$1,500
<b>Total</b>	Annualized Cost to Federal Government	\$220,519.52

**15. Explanation for Program Changes or Adjustments**

There is a program change decrease of -475 annual burden hours.

**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 on <https://agid.acl.gov/> The Aging, Independence and Disability Program Data Portal (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