

0985-0005 State Annual Long-Term Care Ombudsman Report for FFY 2021-2023

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

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.