Long-Term Care Ombudsmen in Assisted Living Facilities

2018 REPORT

Office of the State Long-Term Care Ombudsman
Overview

The Office of the State Long-Term Care Ombudsman (Office) is independent within Texas Health and Human Services Commission (HHSC). Long-term care ombudsmen regularly visit assisted living facilities (ALFs) and advocate for residents. This report describes ombudsman services in ALFs in state fiscal year 2018, including recommendations to ensure the highest quality of life and care for residents.

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Assisted Living Facilities in Texas

- 1,957 ALFs are regulated and licensed by the state with a total capacity of 73,812\(^1\).
- The largest facility in Texas is licensed for 270 residents.\(^2\)
- Rates vary from $700 to more than $9,000 a month. Some ALF costs may be covered by an insurance plan, such as a long-term care insurance plan or STAR+PLUS (Medicaid).
- 4,170 residents living in ALFs are on STAR+PLUS.\(^3\)

Based on the number of beds and residents' abilities, the state licenses facilities as Type A, B, or C, classified as small or large, and Alzheimer’s certified, if applicable. Small facilities are typically single-story homes in residential neighborhoods. Large facilities may be multi-story, apartment complexes or resemble a hotel structure. People living in an ALF may need assistance with movement, bathing, dressing, or medications; have hearing or speech impairments or incontinence; use self-help devices; or exhibit symptoms of mental or emotional disturbances.

- **Type A**: Care for residents who can evacuate the facility unassisted, do not require routine attendance during sleeping hours, and can follow directions during an emergency.
- **Type B**: Care for residents who may need assistance to evacuate, cannot follow directions during an emergency, require staff attendance during sleeping hours, and need assistance transferring to and from a wheelchair.
- **Type C**: Four-bed facilities with live-in caregivers that provide care for residents with similar capabilities as Type A residents. Residents are typically receiving community services such as adult foster care.
- **Small**: Licensed to care for 16 or fewer residents.
- **Large**: Licensed to care for 17 or more residents.
- **Alzheimer’s certified**: Type B facility certified to provide specialized services to residents with Alzheimer’s or a related condition.\(^4\)

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\(^1\) Source: HHS LTC Regulatory Services, July 2018

\(^2\) Source: HHS LTC Regulatory Services, September 2018

\(^3\) Source: HHS Medicaid/CHIP, October 2018 regarding FY 2017

\(^4\) Other facilities may serve a group of residents with similar conditions, such as intellectual and development disabilities, traumatic brain injuries, or people living with mental illness. However, a separate certification is not required.
The State Long-Term Care Ombudsman Program

The mission of the State Long-Term Care Ombudsman Program is to improve the quality of life and care for residents of nursing facilities and ALFs by providing prompt, informal complaint resolution, and promoting systemic change on behalf of residents’ interests.

Facility Visits

The State Long-Term Care Ombudsman Program receives funding from the state legislature to ensure all ALF residents have consistent access to an ombudsman. Ombudsmen are expected to make frequent, unannounced visits to facilities. Based on the type and licensed capacity of the facility, ombudsmen are required to visit between four and seven times each year (see chart). Ombudsmen make additional visits to investigate, resolve, and follow up on concerns.

Before entering a building, ombudsmen observe the outside and inside of the facility looking for any unsafe conditions. Once inside, they spend the majority of their time talking with residents, asking about residents’ experience at the ALF, and investigating any complaints.

Ombudsmen made a total of 13,669 visits to ALFs in 2018. This number includes 858 visits to residents in day activity and health service settings.

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Licensed Capacity</th>
<th>Required Visits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type A</td>
<td>All sizes</td>
<td>4</td>
</tr>
<tr>
<td>Type B</td>
<td>1-49 beds</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>50-99 beds</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>100+ beds</td>
<td>7</td>
</tr>
<tr>
<td>Type C</td>
<td>All sizes</td>
<td>4</td>
</tr>
</tbody>
</table>

* Due to reduced state funding for the 2018-2019 biennium, required visits to Type B facilities with 50-99 beds were reduced from 6 to 5 each year and Type B facilities with 100+ beds reduced to 7 from 10 visits. Changes to visit requirements began in September 2017.
Residents Left Vulnerable

During a visit to a small residential ALF, a resident named Mr. Rodgers* confided in the ombudsman that the owner of the facility was abusive. Mr. Rodgers explained that he frequently did not get dinner or have his basic hygiene needs met, and there often was no caregiver in the facility. If he had an incontinent episode, he was punished by not being allowed to have a cigarette. The owner repeatedly yelled at him. At one point, the owner even tried to hit him. Mr. Rodgers feared for his safety and wanted to move out. He asked the ombudsman to file a complaint with HHSC Long-Term Care Regulatory (LTC Regulatory), the entity that investigates allegations of abuse, on his behalf while he worked with his daughter to move out of the facility. The ombudsman helped Mr. Rodgers file the complaint that day and he moved out shortly thereafter.

A month passed and LTC Regulatory had not investigated Mr. Rodgers’ complaint when the ombudsman received a request for a visit from Ms. Salvador, a new resident in the facility. The owner had previously told Ms. Salvador not to complain to anyone outside of the facility and she feared retaliation but said she was ready to tell the ombudsman about the abuse and neglect she experienced.

Ms. Salvador told the ombudsman that she had not had a shower in three weeks. She said that she and the other residents were restricted to their bedrooms and shared bathroom and were not allowed to enter the living room or kitchen. Ms. Salvador also told the ombudsman that she fell a week ago but the owner refused to take her to hospital and she had to call a taxi to take her. Ms. Salvador said she wanted to move out immediately.

Ms. Salvador and the ombudsman called LTC Regulatory together to report these new complaints. LTC Regulatory was unable to come to the facility that day so the ombudsman worked to help Ms. Salvador move to a new ALF. After moving that evening, Ms. Salvador was very relieved to be in a safe place.

* To protect anonymity, the names and pictures used in this story do not represent the actual residents.
The day after Ms. Salvador moved out, and 53 days after Mr. Rodgers’ original complaint of abuse and neglect was filed, LTC Regulatory came to the facility to investigate. LTC Regulatory plays an important role in enforcing the regulations that protect residents living in ALFs. Without a timely response, residents were left vulnerable and subject to abuse and neglect.

The State Long-Term Care Ombudsman Program believes, Ms. Salvador’s abuse and neglect could have been avoided if the complaints were investigated more quickly. Ombudsmen continue to advocate for stronger protections for residents and for more LTC Regulatory staff to ensure residents remain safe. See Recommendations on page 13.

Complaints

In 2018, ombudsmen received 3,210 complaints. Complaint numbers peaked at their highest in 2016, and since then numbers have decreased by 11 percent. The Office analyzed possible factors that contributed to the decrease of complaints and determined that ombudsman turnover, which was 20 percent, contributed to the decrease in reported complaints. A new ombudsman spends the first few visits to a facility building rapport with residents. Until that rapport is established, a resident is less likely to report a problem to an ombudsman.

A complaint is closed after the ombudsman investigates and takes steps to resolve the issue. Overall, it takes an average of 37 days to close a complaint in an ALF.
### 20 Most Frequent Assisted Living Facility Complaints

**Total Complaints: 3,221**

<table>
<thead>
<tr>
<th>Complaint</th>
<th>Type A</th>
<th>Type B</th>
<th>Type C</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Dietary: Food quantity, quality, variety, or choice</td>
<td>43</td>
<td>220</td>
<td></td>
<td>263</td>
</tr>
<tr>
<td>2. Environment and Safety: Equipment or building in disrepair, hazard, or fire safety</td>
<td>47</td>
<td>181</td>
<td></td>
<td>228</td>
</tr>
<tr>
<td>3. Environment and Safety: Building cleanliness, pests, or housekeeping</td>
<td>39</td>
<td>178</td>
<td></td>
<td>217</td>
</tr>
<tr>
<td>4. Care: Medication administration or organization</td>
<td>33</td>
<td>123</td>
<td></td>
<td>156</td>
</tr>
<tr>
<td>5. Autonomy and Choice: Dignity, respect, or poor staff attitudes</td>
<td>28</td>
<td>118</td>
<td></td>
<td>146</td>
</tr>
<tr>
<td>6. Care: Failure to respond to requests for help, including call light</td>
<td>15</td>
<td>120</td>
<td>1</td>
<td>136</td>
</tr>
<tr>
<td>7. Autonomy and Choice: Information not provided about rights, benefits, services, or complaints</td>
<td>49</td>
<td>74</td>
<td></td>
<td>123</td>
</tr>
<tr>
<td>8. Environment and Safety: Air or water temperature, or noise</td>
<td>19</td>
<td>97</td>
<td></td>
<td>116</td>
</tr>
<tr>
<td>10. Social Services: Resident conflict</td>
<td>10</td>
<td>86</td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>11. Care: Symptoms unattended or unnoticed, including pain not managed</td>
<td>7</td>
<td>83</td>
<td></td>
<td>90</td>
</tr>
<tr>
<td>12. Activities: Availability, choice, or appropriateness</td>
<td>16</td>
<td>66</td>
<td></td>
<td>82</td>
</tr>
<tr>
<td>13. Staffing: Staff are unresponsive or unavailable</td>
<td>9</td>
<td>66</td>
<td></td>
<td>75</td>
</tr>
<tr>
<td>14. Environment and Safety: Infection Control</td>
<td>4</td>
<td>52</td>
<td></td>
<td>56</td>
</tr>
<tr>
<td>15. Admissions and Discharge Rights: Discharge planning, notification, or procedure</td>
<td>16</td>
<td>37</td>
<td></td>
<td>53</td>
</tr>
<tr>
<td>15. Dietary: Improper food temperature</td>
<td>17</td>
<td>35</td>
<td></td>
<td>52</td>
</tr>
<tr>
<td>17. Staffing: Shortage of staff</td>
<td>3</td>
<td>46</td>
<td></td>
<td>49</td>
</tr>
<tr>
<td>18. Care: Bathing, nail and oral care, dressing, or grooming</td>
<td>11</td>
<td>37</td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>19. Autonomy and Choice: Resident unable to exercise choice, rights, or preferences</td>
<td>9</td>
<td>35</td>
<td></td>
<td>44</td>
</tr>
<tr>
<td>20. Rehabilitation: Assistive devices or equipment</td>
<td>5</td>
<td>38</td>
<td></td>
<td>43</td>
</tr>
</tbody>
</table>

**Subtotal of 20 most frequent complaints**

<table>
<thead>
<tr>
<th>Complaint</th>
<th>Type A</th>
<th>Type B</th>
<th>Type C</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal of 20 most frequent complaints</td>
<td>398</td>
<td>1,773</td>
<td>1</td>
<td>2,172</td>
</tr>
</tbody>
</table>

**Total of all complaints received**

<table>
<thead>
<tr>
<th>Complaint</th>
<th>Type A</th>
<th>Type B</th>
<th>Type C</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total of all complaints received</td>
<td>608</td>
<td>2,599</td>
<td>3</td>
<td>3,210</td>
</tr>
</tbody>
</table>
A Closer Look at Complaints

The most frequent complaints involved environmental and safety concerns (25 percent of all complaints were in this category), resident care (18 percent), dietary issues (13 percent), autonomy and choice (10 percent), and access to information (six percent). These percentages, resolution rates, and the average days to close a complaint described in this section are similar to the previous year.

MOST OMBUDSMAN COMPLAINTS ARE RESOLVED IN ALFS

The outcome of a complaint is based on the feedback an ombudsman receives from the resident or complainant about how satisfied the person is with the solution. Access to information (91 percent rate of resolution) and environmental (88 percent) are among the most likely complaints to be resolved. Environmental complaints are addressed on average in 30 days. Complaints about access to information and the facility environment may have a higher resolution rate because there are clear regulations that an ombudsman can use to address the situation.

Complaints regarding dietary issues and access to information take on average 49 days to investigate and determine an outcome. Dietary complaints are less likely to be resolved at a 63 percent rate of resolution. A resolution rate of less than 70 percent may be an indication of a systemic problem, such as ineffective ALF regulations to resolve the issue. Page 14 of this report includes Rule Recommendations to improve ALF regulations.

Similar to complaints in nursing facilities, complaints about discharge rights are among the most difficult complaints to resolve by ombudsmen. These complaints are closed with a 66 percent rate of resolution. One of the reasons for difficulties in resolving these complaints is that ALF residents do not have appeal rights and a fair hearing to evaluate the merits of a facility’s decision to discharge a resident. See Recommendations related to this problem on page 13.
Consultation to Residents, Family Members, and Facilities

In addition to resolving complaints, ombudsmen work with residents, family members, and friends to respond to questions. Requests are most frequently related to the role of the ombudsman, residents’ rights, resident care, how to select a facility, and how to pay for care. Ombudsmen provided consultations to 6,317 residents and families and 1,071 facility staff.

Compared to the previous year, consultations decreased by 19 percent in ALFs, and 10 percent in both ALFs and nursing facilities. The Office analyzed possible factors and determined the decrease is related to staff turnover and a decline in staff and volunteer ombudsmen statewide. The staff turnover rate was 20 percent overall and program managers turned over at a rate of 29 percent.

Consultations Year by Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Consultations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>664</td>
</tr>
<tr>
<td>2014</td>
<td>1,679</td>
</tr>
<tr>
<td>2015</td>
<td>2,497</td>
</tr>
<tr>
<td>2016</td>
<td>8,672</td>
</tr>
<tr>
<td>2017</td>
<td>9,129</td>
</tr>
<tr>
<td>2018</td>
<td>7,388</td>
</tr>
</tbody>
</table>

Ombudsmen also provide support and consultation by attending service plan meetings. This meeting includes the resident, members of the interdisciplinary care team, and sometimes family members. During a meeting, the team reviews the service plan and makes changes to ensure resident’s needs are met. At the request of the resident, ombudsmen attend to bring the resident’s interests to the heart of the discussion and empower residents and families to participate in the process. In 2018, ombudsmen attended 31 service plan meetings and an additional 31 for the purpose of resolving a complaint on behalf of a resident.
Work with Resident and Family Councils

Resident council meetings allow residents to discuss topics and issues related to their homes. Residents can request ombudsmen share information at their council meetings about the role of the ombudsman, residents’ rights, and other topics. Similar to resident council meetings, family council meetings allow family members of residents to discuss topics and issues related to residents’ care in the facility. Ombudsmen attend only at the invitation of the council and, in 2018, attended 129 resident council meetings and 6 family council meetings.

Ombudsmen Support Family Councils

Ms. Campbell*, the daughter and guardian of an ALF resident, called the ombudsman. Several residents’ family members had concerns about the care being provided and wanted to start a family council. Many family members already expressed interest in being part of the council, but Ms. Campbell reported that the facility was unwilling to provide them a space to meet and isn’t required to by law.

The ombudsman spoke with the facility director about a meeting space for the family council and explained how it provides a place for families to support one another, residents, and the facility. It also creates a way for families to express concerns to the facility before filing a regulatory complaint; this can help the facility identify and address problems before they escalate. The director was concerned that the council would not be productive and only worsen families’ dissatisfaction. If the families agreed to a procedure for sharing concerns with management, the director agreed to host the family council at the ALF.

Now the family council meets monthly in the facility’s conference room. After each meeting, Ms. Campbell, representing the council, meets with the director to explain their concerns. Ms. Campbell reports she’s already seen improvement.

* For anonymity, names have been changed and do not reflect actual names.
Representing Residents’ Interests

As directed by §712(a)(3)(G) of the Older Americans Act and §101A.260(a) of the Texas Human Resources Code, a long-term care ombudsman recommends improvements in the long-term care system to improve the lives of nursing and assisted living facility residents.

Ombudsmen fulfill this mandate in a variety of ways, including working with facility owners, facility staff, legislators, regulatory services, and governmental agencies to represent the interests of ALF residents.

The Office facilitates a collaboration of ALF stakeholders to improve the quality of care for residents in ALFs and encourage stakeholders to discuss policy questions or concerns, share best practices, and consider policy initiatives.

Trends to Watch: Admissions Policies

Admission agreements outline ALF policies and expectations for residents. Ombudsmen discovered that some of these documents contain provisions that infringe on residents’ rights, such as:

1. **Fee for using pharmacy of choice:** Often facilities have a specific pharmacy they prefer residents to use. If the resident chooses a different pharmacy, the facility charges the resident a monthly fee, which could be hundreds of dollars.

2. **Waiving liability:** Residents are required to sign an agreement not to hold a facility responsible for injury sustained while in the facility, such as if a resident falls or is otherwise injured in the building. Sometimes these waivers are called “negotiated risk agreements” and used as a condition of the resident’s stay.

3. **Limiting use of medical equipment:** Residents are restricted from using their own electric wheelchair or scooter, unless a large deposit or fee is paid.

Ombudsmen recommend strengthening protections for residents by prohibiting facility policies from infringing on residents’ rights. For more information, see Protect ALF Residents with Ombudsman Services on page 13.
Ombudsmen in Assisted Living Facilities

Recommendations

The State Long-Term Care Ombudsman Program makes the following recommendations to improve the lives of ALF residents. For nursing facility recommendations, refer to the State Long-Term Care Ombudsman’s annual report.

Statutory Recommendations

Fund HHCS Exceptional Items:

*Protect ALF Residents with Ombudsman Services*

The number of ALFs and residents is steadily increasing, including a net growth rate of 3 percent in 2018. Long-term care ombudsman funding is insufficient to sustain regular visits and services to all vulnerable ALF residents. ALFs tend to open and close more rapidly than nursing facilities, and this volatility places residents at risk of sudden relocation and without access to the protection of an ombudsman.

This HHSC exceptional item requests a modest increase of $364,000 each year of the biennium to support the costs of the State Long-Term Care Ombudsman Program as it seeks to maintain regular onsite visits and prompt complaint responses to all residents in long-term care facilities. The Office recommends that the 86th Texas Legislature approve the exceptional item titled “Protect Assisted Living Facility Residents with Ombudsman Services”, which requests $728,000 in general revenue in the HHSC legislative appropriations request.

Fund Additional Regulatory Services FTEs for Protection of Vulnerable Texans

HHSC Long-Term Care Regulatory Services lost approximately 81 positions or full-time equivalents (FTEs) that were responsible for inspecting and certifying long-term care facilities. Restoration of these positions is vital to enforcing the requirements of ALFs and ensure a good standard of care for residents. The Office recommends that the 86th Texas Legislature approve the exceptional item titled “Additional FTEs for Protection of Vulnerable Texans”. This request is for general revenue funds, which would draw down additional federal funding, for 151 FTEs to ensure regulatory services are effectively delivered, including to ALF residents.

Conduct a Comprehensive Quality Review of ALFs

The State of Texas does not have adequate information about the quality of ALF care in Texas. ALFs are the fastest growing type of long-term care and outnumber nursing facilities by over 700 facilities. ALF residents have diverse and sometimes complex care needs. However, there is no review of quality measures, adverse outcomes, or preventable occurrences, including medication errors,
misuse of antipsychotic drugs, falls with injury, inappropriate placement in a locked unit, and restraint use. This lack of information leaves consumers unable to make informed choices and limits HHSC’s policy decisions about the long-term care system. A comprehensive quality review of ALFs will study residents’ quality of care and quality of life; report on costs, services provided, and violations; and assess the scope of RN delegation and who administers medications. The Office recommends that the 86th Texas Legislature allocate $140,000 in general revenue for HHSC Quality Monitoring Program to oversee the study.

**Strengthen Protections for ALF Residents Facing Discharge**

Unlike nursing facility residents who live in a Medicaid certified facility, ALF residents on STAR+PLUS have no right to appeal their discharge to a state agency. This leaves approximately 4,000 residents in the STAR+PLUS program without access to due process in situations in which they might have been retaliated or discriminated against. This issue would be addressed by adding language in Health and Safety Code (HSC) §247.064(b), providing residents the right to a state fair hearing if they wish to appeal a facility’s decision to discharge the resident.

**Deter Resident’s Rights Violations**

Most ALF violations can be corrected by a facility, which results in no administrative penalty being assessed. Nursing facility state law excludes a violation of a resident’s right from the right to correct, which protects resident’s interests and holds nursing facilities accountable for rights violations. No such exclusion exists to protect an ALF resident. This problem can be remedied by excluding such violations by amending HSC §247.0452(b) to include “a violation of a resident right, including the rights described in §247.064”.

**Rule Recommendations**

Title 40 of the Texas Administrative Code (TAC) §92 Licensing Standards for Assisted Living Facilities Handbook was first issued in 1991 and has not been comprehensively updated to reflect changes in residents. ALF residents have increasingly complex needs which require detailed rules to protect them. The Office recommends the following changes to strengthen resident protections and improve the quality of care.

- **Ensure that residents’ rights are the cornerstone of ALF regulation** by clarifying the rights in 40 TAC §92.125 (a) Resident’s bill of rights, making them clear and measurable.
- **Direct facility owners to report closures 60 days prior to ceasing to operate** by adding language to 40 TAC §92.125. Sixty day notice must be provided to residents, HHSC LTC Regulatory Services, and the State Long-Term Care Ombudsman Program.
- **Require facilities to notify residents and residents’ representatives 60 days prior to the effective date of any policy changes** by revising language in 40 TAC §92.41 (d) Resident Policies and (e) Admission Policies.
- **Include food preferences in the resident assessment and call for person-centered meal options** by adding language in 40 TAC §92.41(c) Resident Assessment and (m) Food and nutrition services. Food should be prepared to meet residents’ needs, including allergies, intolerances, and religious, cultural and ethnic preferences.
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