

Office of the State Long-Term Care Ombudsman



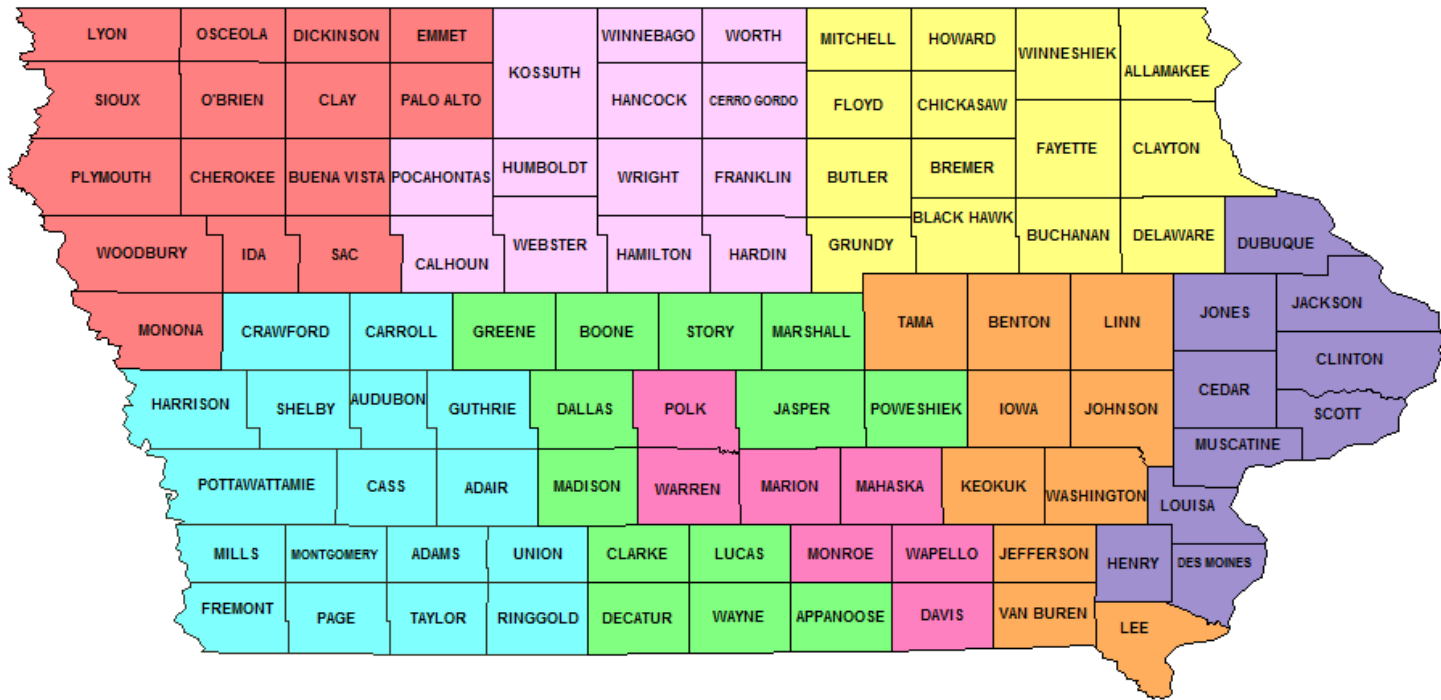
Who are we?

- A long-term care ombudsman (LTCO) is an advocate for residents and tenants of licensed care facilities, elder group homes and assisted living programs.
- A long-term care ombudsman ensures the rights of residents/tenants in long-term care (LTC) settings.

Iowa's Office of the State LTCO Structure

- State LTCO—*Deanna Clingan-Fischer*
- The State LTCO designates Local LTCOs
- Eight Local Long-Term Care Ombudsmen
- Policy Coordinator and Legislative Liaison
- Volunteer Ombudsman Coordinator- *Sarah Hinzman*
- Project Specialist- *Merea Bentrutt*
- Discharge Specialist – *Cindy Pederson*
- Administrative Assistant—*Katie Mulford*
- Secretary—*Pat Wyatt*

Local Long-Term Care Ombudsmen



Kim Weaver
712-541-2641

Melanie Kempf
515-657-1912

Stacia Timmer
712-363-2845

Jennifer Golle
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Julie Pollock
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319-541-0318

Kim Cooper
563-210-7439

Functions of the LTCO

- Identify, investigate and resolve complaints made by or on behalf of residents/tenants
- Provide information to residents/tenants about long-term care services
- Ensure that residents/tenants have regular and timely access to services through our office
- Represent the interests of the residents/tenants before governmental agencies

Functions of the LTCO

- Seek administrative, legal and other remedies to protect health, safety, welfare and rights of the residents/tenants
- Analyze, comment on and monitor the development and implementation of Federal, State and Local laws, regulations and other governmental policies that pertain to health, safety, welfare and rights
- Promote development of citizen organizations and development of resident/tenant and family councils

Functions of the LTCO

- Educate and inform consumers and the general public regarding issues and concerns related to long-term care and facilitate public comment on laws, regulations, policies and actions
- Advocate for changes to improve residents'/tenants' quality of life and care

Mandates—The LTCO shall

- Have access to LTC facilities and residents/tenants
- Have access to review the medical and social records of the resident/tenant
- Have access to the same administrative records, policies, and documents to which the residents/tenants have access of LTC facilities
- Have access to and, on request, copies of all licensing and certification records maintained by the state with respect to LTC facilities

General Program Information

- Identity of complainant or resident/tenant is confidential. (Can remain anonymous)
- Non-interference—the state shall ensure that willful interference with representatives of the office shall be unlawful.
- Prepare an annual report
- Coordinate with the Protection and Advocacy entity—in Iowa that is Disability Rights Iowa

Discharge Specialist

Cynthia Pederson

515-393-1710



Discharge Specialist

- Receives and reviews involuntary discharge notices
- Discusses involuntary discharge with facilities
- Discusses involuntary discharge with resident/tenant and/or resident's/tenant's decision makers
- Attempts to resolve involuntary discharge to satisfaction of resident/tenant

Discharge Specialist

- Assists resident/tenant and/or resident's/tenant's decision maker with alternate placement
- Attends involuntary discharge appeal hearings
- Closures

Volunteer Ombudsman Program



Volunteer Ombudsman Program

Volunteer Ombudsman Program (VOP) Coordinator

Sarah Hinzman

515-657-1479

Volunteer Ombudsman Program

- July 1, 2012—allows the Department to develop a certified volunteer long-term care ombudsman program (VOP)
- New section added to the code—231.45
- Shall establish a certified volunteer LTC Ombudsman program
- Develop and implement a certification process for volunteers, including background checks, on-site training, orientation, and continuing education

Volunteer Ombudsman Program

- Community members over 18 years of age (currently includes college students through retirees)
- Some with professional experience in areas of health, human services or long-term care
- Some with experience as family members or caregivers of a long-term care resident

Volunteer Ombudsman Program

- Have a strong appreciation for older adults
- Are good listeners and objective problem solvers
- Are able to demonstrate an understanding of program practices
- Do not have a conflict of interest, as defined by the Older Americans Act (OAA)

Volunteer Ombudsman Program

A trained, certified Volunteer Ombudsman:

- Advocates for residents' rights in an assigned care facility
- Makes unannounced monitoring visits to facility (3 hours per month minimum)
- Observes physical and cultural conditions of facility
- Receives complaints from residents and visitors about quality of life and care

Volunteer Ombudsman Program

- Communicates complaints to facility staff on behalf of resident with his/her permission
- Monitors progress to resolution
- Reports findings to program

What are resident's rights?

- The right of citizenship—right to vote, to religious freedom, and to associate with whom he/she chooses
- The right to respect and dignity
- The right to privacy-treatment, interpersonal relationships, personal and medical records
- The right to care

What are resident's rights?

- The right to associate with any person of their choice and uncensored communication
- The right to personal property and to manage own finances
- The right to information and to participate in treatment decisions
- The right to residence-due process in discharge

What are resident's rights?

- The right to freedom—free from abuse, neglect, physical and chemical restraints
- The right of expression to voice concerns without fear of retaliation
- The right to apply for state/federal assistance without discrimination
- The right to be fully informed prior to admission of rights, services available and all charges

What are resident's rights-Citizenship?

- Vote—even if a guardian, unless there has been a separate determination of incapacity to vote
- Practice own religious beliefs
- Right to have visitors (to associate)
- Right to refuse visitors

Issues with Citizenship?

- Voting absentee; family or guardian involvement
- Religious freedom to attend service
- Association/Visitation—decide who and when. Are exceptions under law.
- Leave the facility-visits/least restrictive

What are resident's rights—Right to Respect and Dignity?

- To be treated with consideration, respect, dignity
- Be free from mental and physical abuse, punishment, involuntary seclusion, restraints
- To self-determination
- Security of possessions

Issues with Respect and Dignity?

- Attempt to make decisions for the resident
- Act like the resident cannot hear or understand
- Keep body covered and afford privacy
- Allow residents to do what they can for themselves

What are resident's rights—Right to Privacy?

- Private and unrestricted communication with any person of their choice (interpersonal relationships)
- During treatment
- Regarding medical, personal or financial matters or records

Issues with Privacy?

- Using a telephone
- Obtaining medical care
- Medical charts/information
- Lack of confidentiality
- Obtaining releases before disclosure
- Sexual expression

What are resident's rights—Right to Care?

- Choose a physician
- Determine a course of treatment
- Reasonable accommodation of one's needs and preferences
- To meet the individual needs of the resident

Issues with Right to Care?

- Receiving care when needed
- Is the decision that of the resident or someone else? POA, Guardian, or family
- Advance Directives-springing; no signature; no document
- Do-not-resuscitate

What are resident's rights—Communication and Association?

- Receive unopened mail
- Receive/refuse visits from a personal physician
- Receive visits from LTCO and DIA
- Receive visits from family, friends, and others of the residents choosing
- Receive visits from organizations/individuals providing social, health or legal services

Issues with Association?

- Visitation—limitations attempted by POA and Guardians (new law)
- Time—any reasonable hour

Issues with Association?

- Limitations:

- The resident refuses to see the visitor
- The resident's physician documents specific reasons why such a visit would be harmful to the residents health
- The visitor's behavior is unreasonably disruptive to the functioning of the facility

What are resident's rights—Personal Property and to Manage own Finances?

- Decide what to wear
- Manage one's own financial affairs
- Have personal belongings in room
- Security of possession

Issues with Property?

- Access to personal needs funds
- Clothing-lost or destroyed
- Representative Payee
- Misplaced personal property

What are resident's rights—Information and to Participate in Treatment Decisions?

- Available services and charges
- Facility rules—written copy of rights
- Contact the LTCO
- Survey reports/plans of corrections
- Plans to change rooms/room-mates
- Receive in a language the resident understands

Issues with Information?

- Receive upon admission—confusing time and lots of information
- Is it understood?
- Is it provided to the resident or family?
- Is a family member requested to be a “responsible party”?

Issues with Treatment Decisions?

- Be informed of medical conditions
- Participate in own assessment, care planning, treatment and discharge
- Refuse medication and treatment
- Refuse restraints
- Review own medical record

Issues with Treatment Decisions?

- Who decides? Resident, family, facility staff, legal decision maker
- Involve resident even if there is a decision maker
- Medical advice or order? (Go against medical advice)
- Capacity vs. competency confusion

What are resident's rights—Right of Residence and Due Process in Discharge?

- Remain in the facility unless:
 - Necessary to meet resident's welfare
 - Health has improved
 - Protect the health and safety of others
 - Resident has failed, after notice, to pay the facility

Issues with Discharge?

- If discharge meets one of these criteria, Due process is afforded
 - 30 day notice of transfer or discharge
 - Right to appeal
 - Contact information of OSLTCO
 - Safe transfer or discharge

Issues with Residence?

- Transfer to hospital—emergency discharges
- Discharges—notice provisions not fulfilled
- Discharges –attempts when criteria not met
- Evictions-assisted living
- Closures

What are Residents Right to be Free from Abuse?

- Free from abuse, neglect, physical and chemical restraints
- Receive adequate and appropriate care
- Be free of charges for services covered by Medicare and Medicaid
- Free from financial exploitation/theft

Issues with Abuse?

- From staff and family
- Financial exploitation-non payment of bills
- Financial exploitation-misuse of funds by fiduciary
- Neglect-not meeting needs
- Sexual abuse

What are Residents Right to be Free from Abuse?

- If suspect abuse, neglect, or exploitation, report it! (mandatory reporters)
- Reportable incidents of abuse in Iowa:
 - Physical abuse
 - Sexual abuse
 - Exploitation and
 - Denial of critical care (neglect)-can include mental/verbal

Residents Rights to be Free from Abuse (continued)

Physical and Sexual Abuse

- Physical injury
- Unreasonable confinement
- Unreasonable punishment
- Assault
- Sexual exploitation

Residents Rights to be Free from Abuse (continued)

Exploitation—Iowa Code 235B (DHS)

The act or process of taking unfair advantage of a dependent adult or the adults physical or financial resources for one's own profit without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation or false pretenses.

Residents Rights to be Free from Abuse (continued)

Exploitation—Iowa Code 235E (DIA)

A caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates a dependent adult's funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit or possession of the funds, medication or property for the benefit of someone other than the dependent adult.

Residents Rights to be Free from Abuse (continued)

Denial of Critical Care (Neglect)

Deprivation of:

- Food
- Shelter
- Clothing
- Supervision
- Physical or mental health care
- Other care necessary to maintain life or health

Residents Right to be Free from Abuse

Iowa Abuse laws-relate to a Dependent Adult with a caretaker perpetrating the abuse

- Iowa Code 235B—abuse in the community or if a family member commits abuse while visiting in a facility (DHS)

800-362-2178

- Iowa Code 235E—abuse in a facility perpetrated by a facility staff member (DIA)

877-686-0027

Iowa Abuse Laws

Can also be *criminal* in nature—contact law enforcement and/or county attorney

Example: theft, sexual abuse, forgery

Iowa Code 726.7—Wanton Neglect of a Resident of a health care facility

Iowa Code 726.8—Wanton Neglect or nonsupport of a dependent adult

Can also be *civil* in nature—contact an attorney to pursue

Example: breach of contract, breach of fiduciary duty or to have property returned

Iowa Abuse Laws

Iowa Code 235F—Elder Abuse

A vulnerable elder or a substitute petitioner may seek relief from elder abuse by filing a petition in the district court and state the desired relief. (can involve someone who stands in a position of trust)

Includes: physical, sexual, neglect and/or financial exploitation

Reports of Exploitation

Misuse or abuse of a benefit check, contact:

- SSA 1-800-772-1213
- Veterans Affairs 1-800-827-1000 or local VA
- Railroad Retirement Board 312-751-7139
- Office of Personnel Management 202-606-1800
- Department of Defense 1-800-321-1080

Residents Rights to be Free from Abuse (continued)

What about an attorney-in-fact or agent (power of attorney), Guardian, Conservator or Representative Payee?

- Substitute Decision Makers are fiduciaries
- Legal relationship between two or more parties that requires a strict standard of behavior and highest standard of care
- Make decisions on behalf of the principal or ward
- Act in the best interests of the principal or ward
- If does not act as a fiduciary—report as abuse

What are Residents Rights—Voice Concerns?

- Present grievances to staff or any other person, without fear of reprisal
- Prompt efforts by facility to resolve concerns
- To complain to LTCO
- To file a complaint with DIA
- Right to form a resident council

Issues with Concern/Retaliation?

- Intimidation
- Fear of not receiving care when needed
- Fear of being labeled a complainer
- Fear of Discharge or Eviction
- Proof-lack of documentation—he said vs. she said

What are Residents Rights—Apply for Assistance?

- Not require a minimum entrance fee if stay paid for by Medicaid or Medicare
- Inform how to apply for and use Medicare and Medicaid benefits
- How to obtain a refund
- Not require a responsible party

Issues with Applying for Assistance?

- Medicaid applications and processing
- Responsible party—asking others to pay for care if the resident cannot
- Fiduciaries role-only sign as attorney in fact/agent or Guardian, not personally responsible

What are Residents Rights—To be Informed?

- Available services and charges
- Facility rules-written copy of rights and rules
- Contact information of OSLTCO
- Survey reports/plan of correction
- Plans to change room or room-mates
- Receive in a language the resident understands

Issues with Being Informed at Admission?

- Understanding admission or occupancy agreements
- Arbitration clauses
- What happens if higher level of care is needed
- Pre-admission screening—receiving specialized services

Tenant's Rights-AL; EGH

- To be fully treated with consideration, respect, and full recognition of personal dignity and autonomy
- To receive care, treatment, and services which are adequate and appropriate
- To receive respect and privacy in the tenant's medical care program:
 1. Records are confidential
 2. Written consent of tenant to release

Tenant's Rights-AL; EGH

- To be free from mental and physical abuse
- To receive from the manager and staff of the program a reasonable response to all requests
- To associate and communicate privately without restriction with persons and groups of the tenant's choice-including Ombudsman, on the tenant's initiative or on the initiative of the person/group at any reasonable hour

Tenant's Rights-AL; EGH

- To manage own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing tenant's financial affairs
- To receive from the manager and staff of the program a reasonable response to all requests
- To associate and communicate privately without restriction with persons and groups of the tenant's choice-including Ombudsman, on the tenant's initiative or on the initiative of the person/group at any reasonable hour

Iowa LTCO Facts—FFY14

Provided a total of 5,604 program activities (7,990 hours of service), which included:

- Consulting with 877 facilities and providers of service;
- Consulting with 8,253 individuals;
- Making 1,732 complaint-related visits;
- Making 741 non-complaint-related visits;
- Visiting 2,206 residents and tenants on complaint-related issues;

Iowa LTCO Facts—FFY14

- Providing education, training and technical assistance to 1,095 individuals, including volunteers, ombudsmen, facility staff, media and the community;
- Participating in 71 facility surveys;
- Assisting residents and their families through participation in and development of 72 resident and family council meetings.

Top Five Complaints

- Issues related to resident/tenant care (205)
- Issues related to autonomy, choice, exercise of rights, privacy (185)
- Issues related to admission, transfer, discharge and eviction (157)
- Issues related to the system and concerns apart from the facility (113)
- Issues related to financial concerns or property lost, missing or stolen (67)

Further Resources to Assist

- Listserv messages, fact sheets to facilities/programs – The Advocate
- Volunteer newsletter – The Voice
- CMP grant-developing educational resources
- Informational kiosks provided to all nursing homes
- Webinars on www.iowaaging.gov
- MDS-Section Q –assist with options for community placement
- Office of Elder Rights Memos

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OMBUDSMAN

Established within the Iowa Department on Aging
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