

Advocacy 'Smarts'

United States Ombudsman Association
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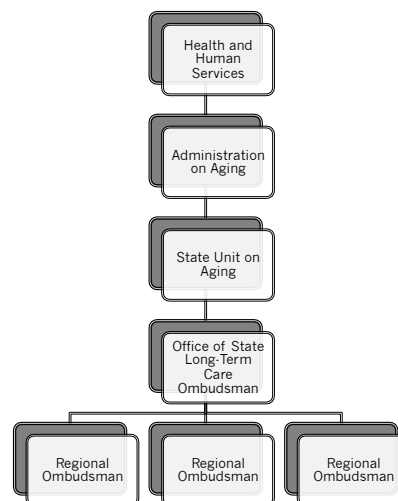
Objectives

- Outline key concepts of the Long-Term Care Ombudsman Program
- Overview of an unfolding case study in advocacy
- Define ombudsman risk management tips

What is the Long-Term Care Ombudsman Program?

- Created in 1965 as part of the Older Americans Act
- Fifty-three ombudsman programs
- Although every state has a long-term care ombudsman office, each share overarching similarities, but can be vastly different (e.g., adult protective service investigators, administrative inspections)

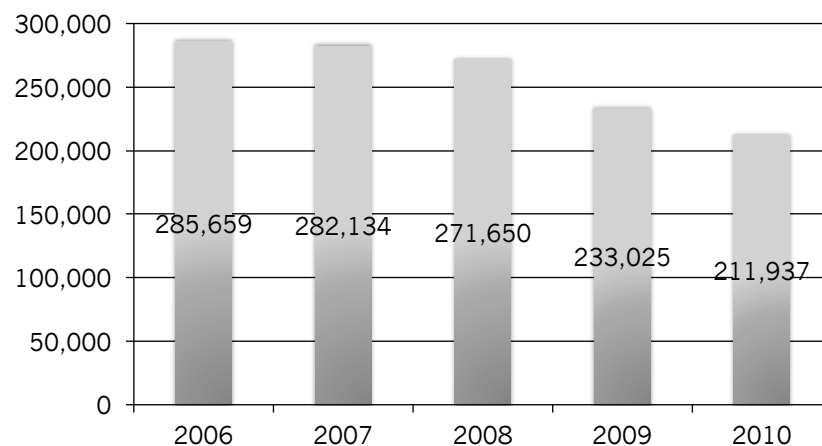
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- Long-term care ombudsmen conduct **individual** and **systems advocacy**
 - Visit residents who live nursing homes and other long-term care settings to identify, investigate and resolve their concerns
 - Analyze, comment on, and monitor the implementation of laws, rules, policies and government actions or inactions that effect the health, safety, and welfare of residents
- Long-term care ombudsmen, while objective in their investigations, are **resident-centric** in their advocacy

National ombudsman complaints



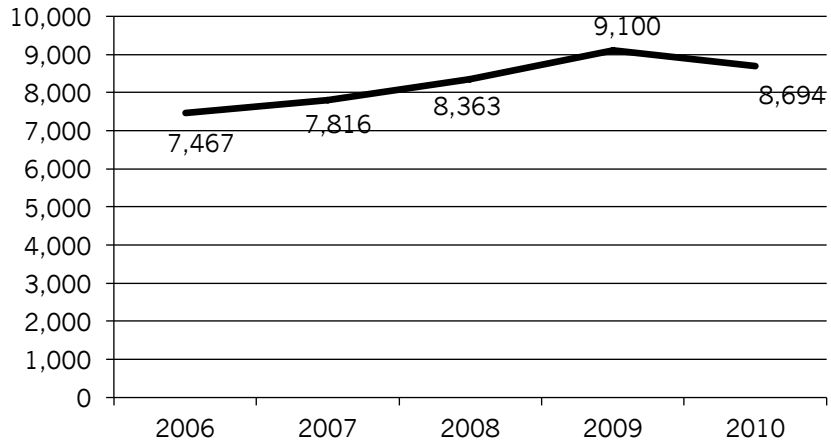
Florida's Long-Term Care Ombudsman Program

- Volunteer-based program
- 17 designated entities (councils)
- State advisory council, one elected volunteer representative from each local council
- \$2.3 million annual budget

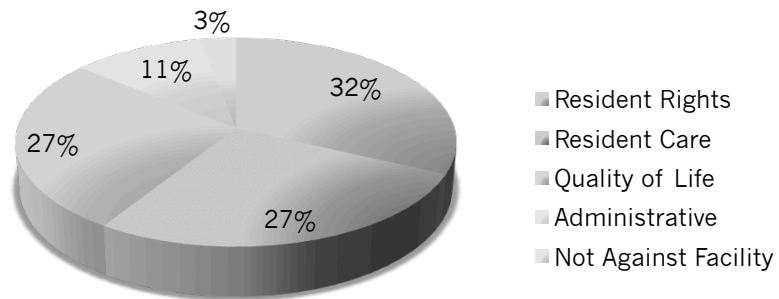
Florida Ombudsman Program Hallmark Moments

- **1975**-Florida ombudsman program created
- **1982**-Legislature enacted administrative inspection
- **2002**-Program organizationally restructured under auspices of State Unit on Aging (Department of Elder Affairs)
- **2006**-Technical amendments to ombudsman statute
- **2006**-Comprehensive strategic plan (**142 recommendations**)
 - Placement of the Office should be highest priority; *“the Department, the Governor, and Legislature consider the independence of the Office from the Department.”*
- **2010**-All rules adopted except administrative assessment

Florida Long-Term Care Ombudsman Program Complaints



Types of Florida Ombudsman Complaints (2010)



Fast facts about Florida Ombudsman Program

- In 2009, ombudsmen investigated record number of complaints
- Traveled **405,336 miles** in 67 counties to conduct ombudsman activities
- Contributed more than **20,000 hours** to advocating for residents
- **Saved** the State of Florida over **\$1.8 million** in salaries and administrative costs for long-term care residents
- Completed **100 percent** administrative assessments
- **Ninety-eight percent** of residents surveyed **satisfied** with way ombudsman handled their concerns

Systems advocacy



- Safeguard assisted living facility residents from inappropriate relocations and provide due process
- Require heating and air conditioning units be used in assisted living facilities, especially in cases of extreme heat or cold
- Increase nursing home residents' personal needs allowance, unchanged since 1988 (\$35)

Overview of an unfolding case study in advocacy

Unbeknownst to us, 2006 would be a landmark year that changed the program's trajectory

- New statutes required promulgation of the administrative assessment
- Rulemaking became laborious, heated and contentious
- Various attempts made by the nursing home industry to repeal the assessment provisions, calling them "*duplicative*"
 - Legislative attempts defeated
- Ended in rule challenge

Offset long-term care industry attacks

- Ramped up promotion of ombudsman services
 - Developed PR toolkits and distributed DVD to array of organizations calling for more volunteer assistance
- Implemented grassroots advocacy campaign spearheaded by our dedicated volunteers

New administration, new problems

- Election of health care industry-friendly Governor
- Nursing home associations lobbied legislative and gubernatorial candidates extensively
 - Ombudsman assessment process came up numerous times with Governor-elect
- Received word from two associations that they were actively seeking appointment of new State Ombudsman after election
- Governor's transition team dominated by provider representatives
 - Operators candid with volunteers that **"Your State Ombudsman is in trouble"**
- Reported this information to the Administration on Aging and the Department of Elder Affairs, classified as **"intimidation and willful interference"**

Federal and State laws protect ombudsman advocacy

- Older Americans Act and Florida Statutes prohibit willful interference, coercion, intimidation, or reprisal by anyone against an ombudsman who acts in **"good faith"**
- In Florida, these are criminal violations punishable by **second degree misdemeanor**

Nursing home ownership request

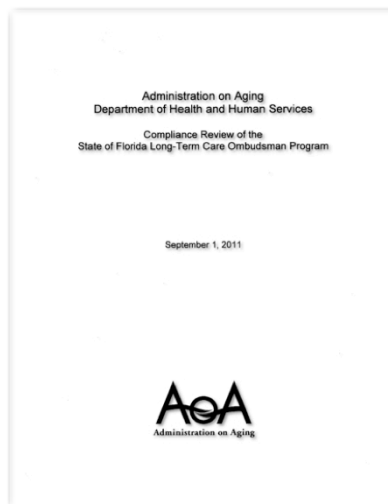
- Pursuant to Affordable Care Act, requested ownership information from Florida's 677 nursing homes
 - Nursing homes receive 80 percent of their funding from taxpayers
 - GAO reports information is concealed through vast, complex corporate structures
- The proverbial "nail in the coffin"
- Removed from office within days of request

Advocacy shifts gears

- Sought assistance from media contacts to expose unlawful interference and corruption
- State Long-Term Care Ombudsman Council rallied and demanded investigation in collaboration with several national organizations
- Contacted legislators to seek their intervention
- Relentless, ever-present advocacy

Positive outcomes

- Administration on Aging completed compliance review of Department of Elder Affairs calling for independent ombudsman office
- Senate hearing probed Department of Elder Affairs' actions in wake of report
- Legislative call for stronger, independent ombudsman office



AoA Compliance Review

Overall, the report concluded that the *“State of Florida, as openly asserted by Department of Elder Affairs leadership, does not support the spirit of the Older Americans Act that the State Long-Term Care Ombudsman has the independence to take positions representing the interests of long-term care facility residents which may be contrary to the positions of DOEA, sister agencies or the Governor.”*

Negative outcomes

- Outspoken volunteers and staff fired or resigned
- Volunteer ranks dropped
- Appointment of new State Ombudsman recommended by trade associations and favorable to provider interests

Risk management 101 for ombudsmen

*“An ounce of prevention is
worth a pound of cure”*

- **The three “R’s” of advocacy**
 - Relationships (Internal)
 - Relationships (External)
 - Relationships (The “Fourth Estate”)

Internal relationships

- Educate those around you about the role and responsibility of an ombudsman
- Ombudsmen are going to write, report and comment on issues that may be toxic and controversial
- Brief superiors, colleagues, and subordinates for possible challenges
- Establish clear lines of organizational demarcation

External relationships

- Befriend policymakers
- Partner with national, state, and local organizations that share similar goals
 - Identify advocates who can speak for you when you can't
 - Keep them in the loop, especially about challenges on the horizon

The “Fourth Estate” relationship

- Get the press on your side, pick up the phone and introduce yourself to a reporter who is interested in your issues
- Ask the reporter to write a story on the folks you represent
- Write guest columns and letters to the editor
 - *Follow-up is key*

Advocacy ‘smarts’

Amidst an ombudsman email scandal in Australia, Senator Bob Brown (Greens Leader) said the following about the abrupt Ombudsman resignation:

"The message is out there for future applicants for the job of ombudsman: forget the public interest, keep your head down, make no waves and listen carefully for the dog whistle of political obedience."

Keep your Band-Aids handy

- This is a tough job, but if you are doing it well, **expect bumps and bruises**
- Be prepared to compromise, know what to sacrifice short-term to advance long-term goals
- Utilize relationships to advance your goals
- Never compromise your ombudsman principles

Comments or questions

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