



*Improving the Lives of Older Adults and People with Disabilities
Through Services, Research, and Education*

Date: April 28, 2022

To: State Long-Term Care Ombudsmen

From: Edwin L. Walker, Deputy Assistant Secretary for Aging
Director, Office of Long-Term Care Ombudsman Programs

Beverley L. Laubert, National Ombudsman Program Coordinator

Re: Ombudsman Role in State Evaluations of Settings for the CMS Home & Community-Based Settings Rule

The Centers for Medicare and Medicaid Services (CMS) published a rule in 2014, requiring that home and community-based settings (HCBS) must exhibit specific qualities to be eligible sites for delivery of HCBS. Implementation of the rule requires states to evaluate such settings for compliance. CMS published a toolkit that allowed Ombudsman representatives and other advocates to conduct site-specific evaluations. However, in 2015 ACL's Office of Long-Term Care Ombudsman Programs responded to an inquiry about the Ombudsman role, stating that it would be consistent with the Ombudsman duty to provide information to state personnel to assist with their evaluation of settings' compliance – even though Ombudsman programs do not perform regulatory functions and cannot determine whether a particular setting meets the settings rule requirements.

As the March 2023 deadline nears for states to comply with the rule, we are providing more specific recommendations for Ombudsman program advocacy and examples of Ombudsman integration in state transition plans. The guidance also includes electronic links to resources that should be helpful. As always, if you have questions, please contact Bev at 202-740-0801 or Beverley.Laubert@acl.hhs.gov.

Your dedication to assuring the rights of residents in long-term care settings is appreciated by all of us at ACL.

Attachment: Long-Term Care Ombudsman Role – HCBS Rule

Long-Term Care Ombudsman Role

Home and Community-Based Services (HCBS) Settings Rule

Guidance from ACL's Office of Long-Term Care Ombudsman Programs

Recommendations for Ombudsman program advocacy related to states' work on the [HCBS Settings Rule](#)

Background

In 2014, the Centers for Medicare and Medicaid Services (CMS) published a rule that established that home and community-based settings (HCBS) must exhibit specific qualities to be eligible sites for delivery of HCBS. Implementation of the rule required states to evaluate such settings for compliance. Then, CMS published a toolkit that allowed Ombudsman representatives to conduct site-specific evaluations.

In 2015, ACL's Office of Long-Term Care Ombudsman Programs responded to an inquiry about the Ombudsman role, stating that it would be consistent with the Ombudsman duty to provide information to state personnel to assist with their evaluation of settings' compliance – even though Ombudsman programs do not perform regulatory functions and cannot determine whether a particular setting meets the settings rule requirements. The following guidance builds on the 2015 letter by providing specific actions Ombudsman programs can take.

Ombudsman Actions

- Identify state agency lead.
- Educate state agency about the Ombudsman role and data.
- Read the approved [State Transition Plan](#).
- Respond to opportunities for public comment on the State Transition Plan.
- Develop/adapt educational materials about residents' rights and rights of HCBS waiver consumers.
- Define the Ombudsman role in the case of facility non-compliance leading to resident disenrollment or transition to a compliant setting.
- Request a list of affected providers and their compliance status, if known.
- Train Ombudsman representatives on the state's evaluation process and key observations to make during regular visits.
- Facilitate local educational meetings between Ombudsman representatives and local entities such as case managers for residents of waiver facilities.
- When scheduling regular presence visits, consider prioritizing visits to waiver providers.
- Collaborate with the Protection & Advocacy (P&A) system when both the P&A and Ombudsman program have visited a setting.
- Respond to opportunities for public comment on Heightened Scrutiny packages.

Examples from State Transition Plans

Excerpts from State Plans

- **Alaska:** Request and encourage Ombudsman to volunteer for training due to presence in HCBS settings in regular course of duties.
- **Arizona:** Planning meetings include information about Ombudsman.
- **Arkansas:** Providers required to cooperate with Ombudsman on transition; on-site visit prior to termination.
- **District of Columbia:** Training on rights, risks in transitions; participation in review group.
- **Maine:** Member of stakeholder advisory committee.
- **Minnesota:** Ombudsman information included in consumer letters about transition; member of advisory group.
- **New Hampshire:** Member of advisory task force; assistance with participant surveys; complaint process; Ombudsman role included in training; process for analyzing complaint data.
- **North Dakota:** Quarterly visits; trained in criteria; help educate and advocate for consumers rights; report systemic issues.
- **Ohio:** Adapt resident satisfaction survey; facilitate transition team.
- **Oregon:** Input to selection of Heightened Scrutiny facilities; assign volunteers to facilities determined to need additional oversight; received HCBS 101 training.
- **Rhode Island:** Administer HCBS survey questions to residents; share information with state team regularly.
- **South Carolina:** Stakeholder review; invited to webinar.
- **South Dakota:** Ongoing monitoring by Ombudsman after transition plan period.
- **Tennessee:** Support for resident transition.
- **Vermont:** Ombudsman information in handbook.
- **Wisconsin:** Assist consumers with appeals.

Resources

- [Final Rule Fact Sheet](#)
- [Medicaid Letter Extending Timeline](#)
- [Requirements Compliance Toolkit](#)
- [CMS HCBS Training Series](#)
- [HCBS Advocacy Coalition](#)
- [Autistic Self Advocacy Network's Plain Language Toolkit](#)
- [HCBS Technical Assistance for States](#)