



# Protecting Residents' Rights

## 2019 Annual Report

State Long-Term Care Ombudsman Program

A Report on State Fiscal Year 2019 to the Texas Governor, Lieutenant Governor, and Speaker of the House of Representatives

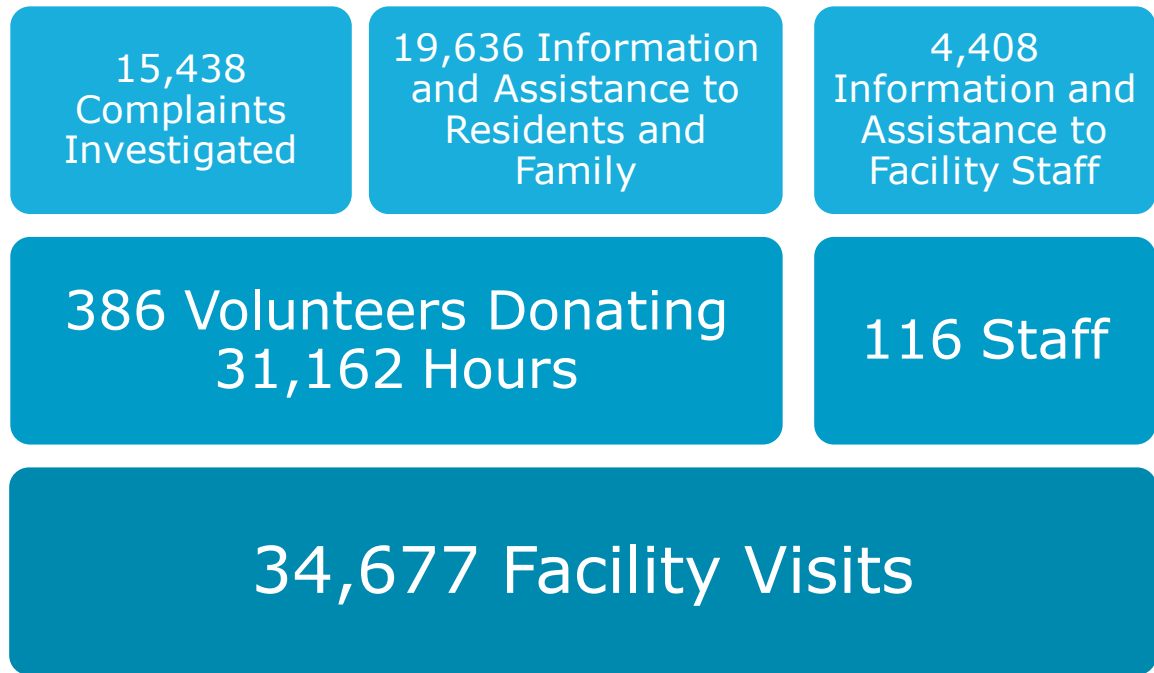
November 2019

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## Overview and Highlights

The Office of the State Long-Term Care Ombudsman is independent within the Texas Health and Human Services (HHS). Long-term care ombudsmen visit nursing facilities and assisted living facilities to advocate for residents. This report describes ombudsman services provided in state fiscal year 2019, including recommendations to ensure the highest quality of life and care for residents.



Changes to the statewide ombudsman database were made at the end of the fiscal year, so information in this report may not reflect all work completed through August 2019.

## Mission

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

# Ombudsmen in Nursing Facilities

## Nursing Facility Visits

Ombudsmen conducted 21,298 visits to 1,230 nursing facilities. This includes unannounced, routine monitoring visits and visits made in response to a complaint. We visited 1,192 facilities at least every three months. The reason for an ombudsman not visiting every three months was typically that the facility was not in operation for the full year.

## Most Frequent Nursing Facility Complaints

Staff and volunteers investigated a total of 12,553 nursing facility complaints. The five most frequent complaints are shown below.



1,203 reports of failure to respond to requests for help, including call lights

860 reports of building cleanliness, pests, or housekeeping problems

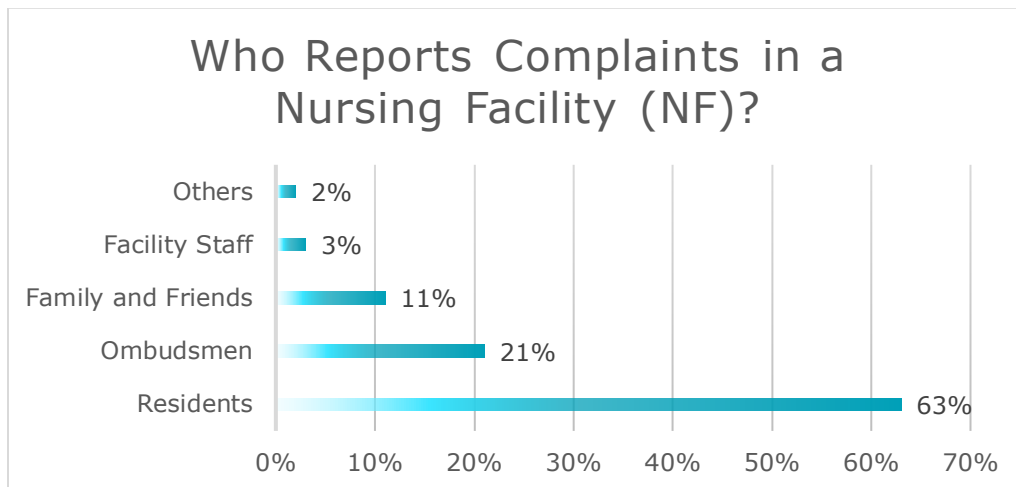


811 reports of problems with food quantity, quality, variation, or choice

692 reports of failure to follow discharge planning, notice, or procedure

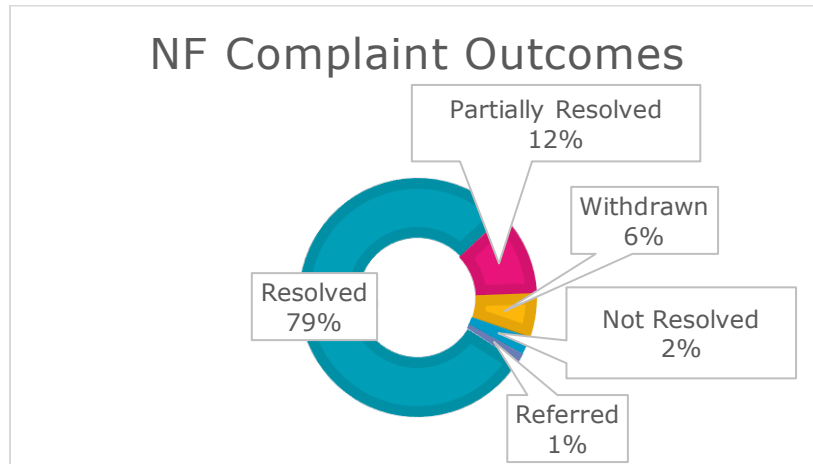


644 reports of dignity and respect not shown to residents



## Nursing Facility Investigations: Verification and Outcomes

93 percent of complaints investigated by an ombudsman were verified through observation, interview, or record review. Most nursing facility complaints are resolved, as shown in the chart below.



## Nursing Facility Complaint Themes

The most frequent complaints involved resident quality of life (35 percent of all complaints were in this category), which includes problems with activities and social services, food services, and cleanliness of the facility. The next category with the most frequent complaints involves resident care (33 percent), which includes not responding to residents' requests for help, medications, and bathing. The third most frequent category (26 percent) involved problems with residents' rights, which includes discharge planning and not treating residents with dignity and respect.

# Ombudsmen in Assisted Living Facilities (ALFs)

## ALF Visits

Ombudsmen conducted 13,379 visits to 2,050 ALFs. This includes unannounced, routine monitoring visits and visits made in response to a complaint. We visited 1,883 facilities at least every three months. The reason for an ombudsman not visiting every three months was typically that the facility was not in operation for the full year.

## Most Frequent ALF Complaints

Staff and volunteers investigated a total of 2,885 ALF complaints. The five most frequent complaints are shown below.



253 reports of building cleanliness, pests, or housekeeping problems

238 reports of problems with food quantity, quality, variation, or choice

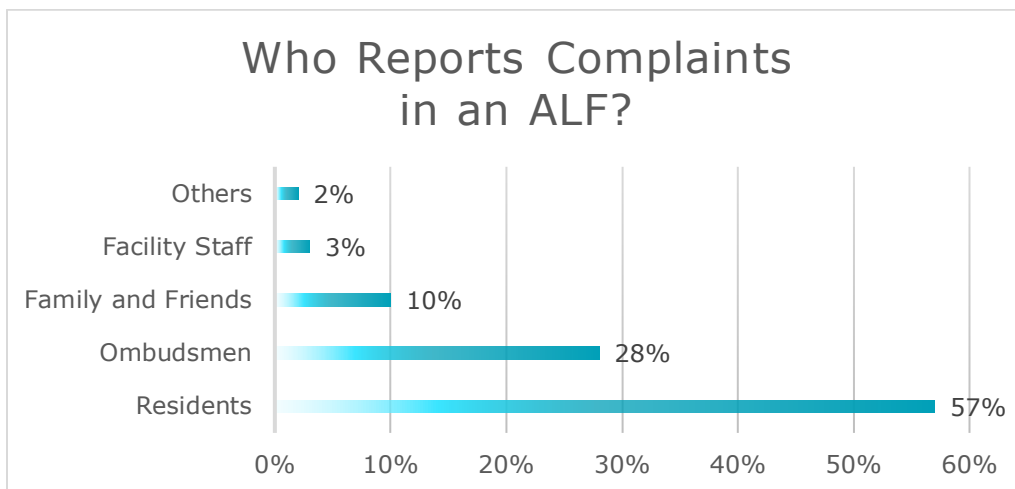


197 reports of building or equipment disrepair

129 reports of dignity and respect not shown to residents

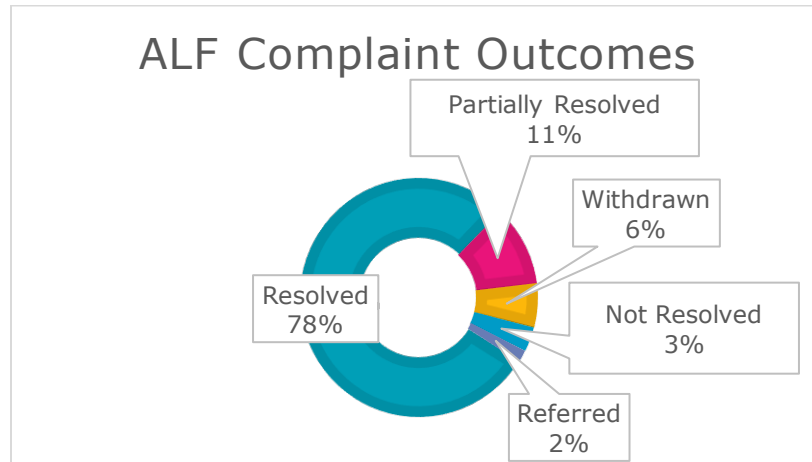


140 reports of problems with medication administration



## ALF Investigations: Verification and Outcomes

91 percent of complaints investigated by an ombudsman were verified through observation, interview, or record review. Most ALF complaints are resolved, as shown in the chart below.



## ALF Complaint Themes

The most frequent complaints involved resident quality of life (44 percent of all complaints were in this category), which includes problems with activities and social services, food services, and cleanliness of the facility. The next category with the most frequent complaints involves residents' rights (26 percent), including not treating residents with dignity and respect and not providing residents with information about their rights, benefits, and services. The third most frequent category (19 percent) involved problems with resident care, which includes problems with medications and not responding to residents' requests for help.

## Legislative Work and Recommendations

During the 86<sup>th</sup> Texas Legislature, the program dedicated time to informing legislators about the most urgent needs of residents living in long-term care facilities. The program was successful in getting two bills filed in the House of Representatives by Representative Sarah Davis of Harris County. The filed bills were assigned to the Human Services Committee as House Bill 2285, relating to administrative penalties assessed against certain nursing facilities for the improper discharge or transfer of a resident; and House Bill 1878, relating to a report on the quality of care provided to and quality of life of assisted living facility residents. While both bills died in committee, in the Human Services Committee hearing for House Bill 2285, the State Long-Term Care Ombudsman and a staff ombudsman of the Capital area testified

to members. Sixteen staff ombudsmen submitted written testimony with examples of residents who were improperly discharged.

## **Recommendations to the Texas Legislature**

For the 86<sup>th</sup> Texas Legislature, Interim Session, the Office of the State Long-Term Care Ombudsman Program recommends four areas that would benefit from legislative investigation and public input.

1. Examine the frequency and impact of involuntary discharges in long-term care facilities, including the effect discharge has on residents, caregivers, and statewide systems. Examine the number of complaints received by HHS related to discharges from long-term care facilities.
2. Examine the data the HHS collects and has access to regarding quality of care in ALFs, services available in ALFs, and specializations of ALFs across the state.
3. Study the facility-based services available for Texans with dementia. Specifically, staffing and training requirements, use of secured (locked) units, advertising practices of long-term care facilities that serve people with dementia, and the quality of life of persons with dementia in these facilities.
4. Examine the impact managed care has on nursing facility quality in Texas. Examine trends in quality measure scores, managed care organization quality incentive programs, and other quality measure programs.

## **Recommendations to Congress**

Through the reauthorization of the federal law that authorizes the program, the Older Americans Act, the program recommends the following to improve the operation of state long-term care ombudsman programs.

1. In sections 306(a)(9) and 712(a)(5), update the reference year from 2000 to 2019, on which federal funding is protected from being reduced or supplanted. The demand for ombudsman services is high and we are in the middle of the aging boom which is dramatically increasing the number of people living in long-term care facilities. Insulating funding for the program from budget cuts is essential to protecting residents' rights and ensuring that ombudsmen respond quickly to complaints.
2. Codify the program's use of funds toward volunteer management and the appropriate reimbursement of volunteer expenses. Because the program is improved by the contributions of hundreds of Texas volunteers, we need Congress to recognize the costs associated with volunteer management and to confirm that volunteer expenses are



allowable costs for the operation of a state long-term care ombudsman program.

3. Authorize federal funds for ombudsman services to residents of ALFs. Although Congress requires programs to investigate and resolve complaints in ALFs, it has not authorized funds to cover the cost of providing ombudsman services in this setting. This has meant that programs are overly reliant on state funding for the cost of operating the program in ALFs.

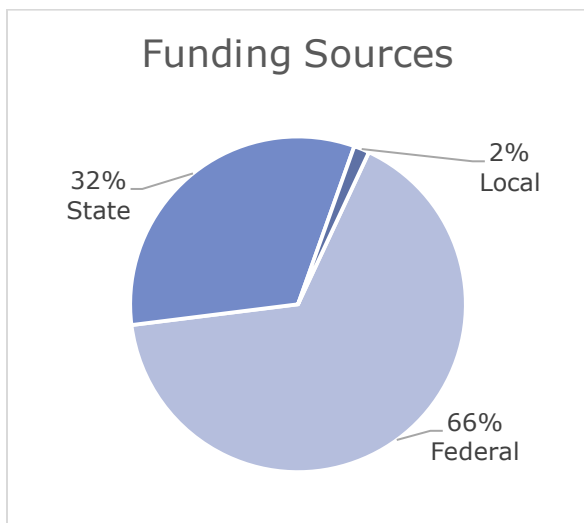
### State Ombudsman Testifies to Congress, May 2019

Federal legislation that authorizes the Ombudsman Program must be periodically reauthorized by Congress. On May 15, 2019, the U.S. House of Representatives Education and Labor Committee, Civil Rights and Human Services Subcommittee convened a hearing on the Older Americans Act. The Texas State Long-Term Care Ombudsman was one of four experts selected to testify. The hearing was titled, "Examining the Older Americans Act: Promoting Independence and Dignity for Older Americans," and Ms. Ducayet provided testimony on the Texas program and national trends related to state long-term care ombudsman programs. Ms. Ducayet submitted detailed written testimony and answered questions from congressional members.



Figure 1: Patty Ducayet, the Texas State Long-Term Care Ombudsman

### Program Expenditures



| Funding Source                     | Amount             |
|------------------------------------|--------------------|
| Federal Title III-B                | \$3,205,505        |
| Federal Title VII                  | \$1,256,468        |
| State ALF Services General Revenue | \$1,859,368        |
| State Other General Revenue        | \$330,142          |
| Local Cash                         | \$100,854          |
| <b>Total Expenditures</b>          | <b>\$6,752,337</b> |

## **Information and Assistance to Residents, Family Members, and Facility Staff**

Ombudsmen respond to inquiries and offer information to residents, their family members and friends, and to facility staff. Requests for information are most often related to the role of an ombudsman, residents' rights and care, and discharge procedures. Ombudsmen responded to 4,408 inquiries from facility staff. Ombudsmen responded to 19,636 inquiries from residents and their family and friends. These inquiries included questions related to nursing facilities, ALFs, and other settings.

Staff and volunteers also supported residents by attending 894 care plan meetings in nursing facilities and 88 service plan meetings in ALFs.

When a resident is notified that a facility plans to discharge the resident and the resident wishes to appeal the facility's decision, an ombudsman helps with information about residents' rights at discharge and support during a fair hearing. Ombudsmen represented the resident or served as a witness in 167 fair hearings.

## **Work with Resident and Family Councils**

At the invitation of the council, an ombudsman will attend a meeting to provide information to the group and support a council's efforts. Ombudsmen attended 64 family councils in nursing facilities and 12 in ALFs. Ombudsmen attended 710 resident councils in nursing facilities and 109 in ALFs.

## **Participation in Long-Term Care Regulatory Surveys**

HHS Long-Term Care Regulatory is required to notify an ombudsman when the surveyor enters a nursing facility or ALF. When ombudsmen have information to share about conditions in a facility, they speak with the surveyor and may provide evidence regarding an investigation of a complaint. Ombudsmen participated in 1,610 surveys in nursing facilities and 379 surveys in ALFs.

## **Training to Facility Staff**

Ombudsmen trained staff in 70 nursing facilities and 47 ALFs. Topics included training on residents' rights, dementia, and the role of an ombudsman.

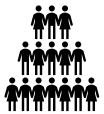
## Training and Retention of Ombudsmen

Ombudsman certification requires a 36-hour training course that includes classroom learning and facility-based practice. Twenty new staff were certified last year, while 78 volunteers left the program and were replaced with 59 new volunteers. After several years of losing more volunteers than we certify, volunteer recruitment and retention is a priority for next year. For 2020, HHS included this issue as one of its 12 initiatives in the inaugural HHS Business Plan: Blueprint for a Healthy Texas.



**116 staff served,  
including seven state  
office staff**

Other than state office staff, staff positions are provided by contract with governmental entities and nonprofit organizations that house an area agency on aging.



**386 volunteers served,  
donating 31,162 hours**

Over 40 percent of volunteers stay with the program for five years or longer.

## Thanks to Ombudsmen

"She was there for us 100 percent. She always returned my calls and her advice was clear and concise. I have so much respect and appreciation for my ombudsman. We are so grateful for the Ombudsman organization." -- From a family member regarding Rosie Vega, Dallas area

"I cannot tell you how professional he was and so very helpful. He met with my brother, he spoke to me many times on the phone and he led us through the entire appeal process with care and concern." -- From a family member regarding Frank Conigliaro, Houston-Galveston area

"I commend the ombudsmen for all the hard work they've done." -- From a resident regarding Stephanie Willms, North Central Texas area, and Suzanne Mitchell, state office

"We would be lost without you." -- From a guardian of a resident regarding state office staff

## Story: A Resident's Fight to Return to His Nursing Facility



*Mr. George Barnes's persistence not only earned him a national advocacy award but also improved the system for all Texas nursing facility residents facing discharge.*

Mr. Barnes lived in a nursing facility that he considered his home with many friends and involvement in the resident council. In response to a price increase in the vending machines, he voiced a grievance and campaigned to get it changed.

The facility objected to his protests and called in a physician's assistant (PA) to offer services to which Mr. Barnes declined and instructed the PA to leave. The facility responded by obtaining an emergency detention order. Police handcuffed him, rolled him in a blanket, sedated him, and took him to a behavioral hospital. Mr. Barnes was quickly cleared to return home, but the facility refused to take him back. Instead, he was taken to a facility over an hour away.

He asked his ombudsman to help him appeal the discharge through a fair hearing. The hearings officer found that the facility had not followed the law and ordered the facility to take him back. Still, the facility refused to readmit him.

Mr. Barnes and his ombudsman spent the next nine months advocating for his return. Mr. Barnes spent hours on the phone consulting with his ombudsman, pleading with the facility, filing complaints with state agencies, and contacting his elected officials. After hundreds of hours spent by Mr. Barnes and his ombudsman, two HHS LTC Regulatory complaint investigations, and the departure of the facility administrator and corporate staff who refused the hearing officer's order, Mr. Barnes was finally readmitted.

After his case was brought to the State Long-Term Care Ombudsman, she raised concerns with HHS Regulatory leadership who instructed surveyors to cite facilities that refused to enforce a hearing officer's order for readmission. Mr. Barnes' experience also inspired a state legislator to file a bill that would penalize a nursing facility that improperly discharged a resident.

Mr. Barnes says it was his duty to not only speak up for himself, for others whose voices might not be heard. For these efforts, he was awarded the 2019 national Janet Tulloch Award for advocacy. Mr. Barnes reports being very happy to be back in his home with his friends.

## Contact Information



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