



# Annual Report

State Long-Term Care Ombudsman Program

## 2020: A Disruptive Year to Residents' Rights

A Report on State Fiscal Year 2020 to the Texas Governor,  
Lieutenant Governor, and Speaker of the House of  
Representatives

November 2020



*The Office of the State Long-Term Care Ombudsman is independent within the Texas Health and Human Services system.*

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## Overview

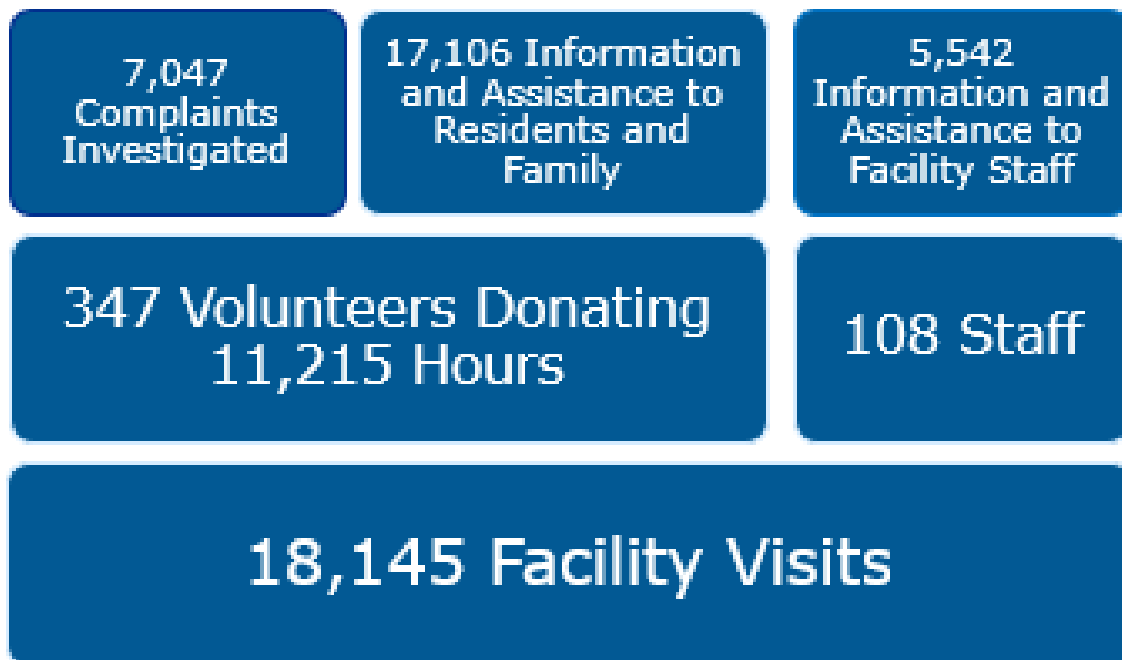
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The Office of the State Long-Term Care Ombudsman is independent within the Texas Health and Human Services (HHS). Long-term care ombudsmen visit nursing facilities and assisted living facilities to advocate for residents. This report describes services provided by the Texas Long-Term Care Ombudsman Program (Ombudsman Program) in state fiscal year 2020. As directed by state and federal law, this report includes recommendations to ensure the highest quality of life and care for residents.

On October 1, 2019, the U.S. Administration for Community Living made changes to reporting by state long-term care ombudsman programs, including how complaints are reported. In March 2020, ombudsmen stopped making facility visits to reduce the risk of spreading COVID-19. Facility visits resumed slowly, beginning in August 2020. These factors had a significant effect on activities reported by the Ombudsman Program in 2020.

## Highlights

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## **Mission**

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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.

## **Changes in 2020**

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### **Temporary Visitation Protocols**

In March 2020, cases of COVID-19 in other states' long-term care facilities reached alarming numbers and residents were dying at equally alarming rates. On March 16, in consultation with our federal agency, the U.S. Administration for Community Living, and based on information from the U.S. Centers for Medicare and Medicaid Services (CMS), the Ombudsman Program stopped onsite visitation to nursing and assisted living facilities. In lieu of in-person visitation, we distributed promotional posters for contacting ombudsmen by phone and email. We made phone calls to residents who had personal phones numbers listed. We contacted management staff in every facility. We also arranged some virtual meetings with resident councils and individual facility staff and residents.

In July, we implemented a plan for ombudsmen to return to onsite visiting while maximizing safety of residents, ombudsmen, and others in the facility. Our plan included training on infection control, the proper use of personal protective equipment (PPE), education on current state emergency rules, and preparation for encountering grief and stress experienced by residents and facility staff. Onsite visits resumed on August 3 with outdoor visiting. On September 1, we added the option to visit indoors. Ombudsmen are required to wear PPE and to maintain physical distance of at least six feet from residents and others in the facility. When making a visit, an ombudsman is required to be screened by a facility staff member for COVID-19 symptoms and exposure.

## Volunteers

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*My dad passed away on May 8th. He died alone. He had dementia and couldn't understand why we couldn't visit him. We were allowed one visit by myself and my brother only the day before he died. Both of his rings he wore everyday were stolen. One that he was wearing when he died. We had no calls from doctors notifying of his rapidly declining health. He still knew who we were when we saw him last. It was a horrible experience.*

*Windy, Plano, TX*

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Volunteers helped during visit restrictions by making phone calls to residents and management in their assigned facility. Volunteers also responded to complaints received by email or telephone from residents and their family members. Some remarkable volunteers completed additional required training and agreed to follow new precautions and wear PPE to make outdoor and indoor visits. Volunteers may only visit with permission from their Ombudsman Program manager and if they meet screening requirements and follow PPE and physical distancing requirements. Several volunteers decided to leave the program due to our operational changes and personal or family members' health concerns.

## Ombudsmen in Nursing Facilities (NFs)

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### NF Visits

There are 1,208 nursing facilities in Texas. Ombudsmen made 10,798 visits to nursing facilities throughout the year. Prior to the pandemic, visits were made without advanced notice for purposes of routine monitoring or made in response to a complaint. During the pandemic, visits were made through a combination of announced outdoor, window, and indoor visits.

## **Ombudsman Example: Person-Centered Care from Hospice**

Due to the COVID-19 pandemic and direction from state and federal government, nursing facilities restricted who could enter a facility. One facility told a resident that her long-time hospice nurse could not enter the building to provide help with bathing and eating; facility staff would now help her with these activities. The resident's family was concerned that the resident's quality of care would suffer and explained that the hospice caregiver had worked with their mother for several months and was highly skilled. This caregiver knew how to successfully encourage their Mother to eat and knew how to keep her comfortable during baths that could be traumatic for their Mother.

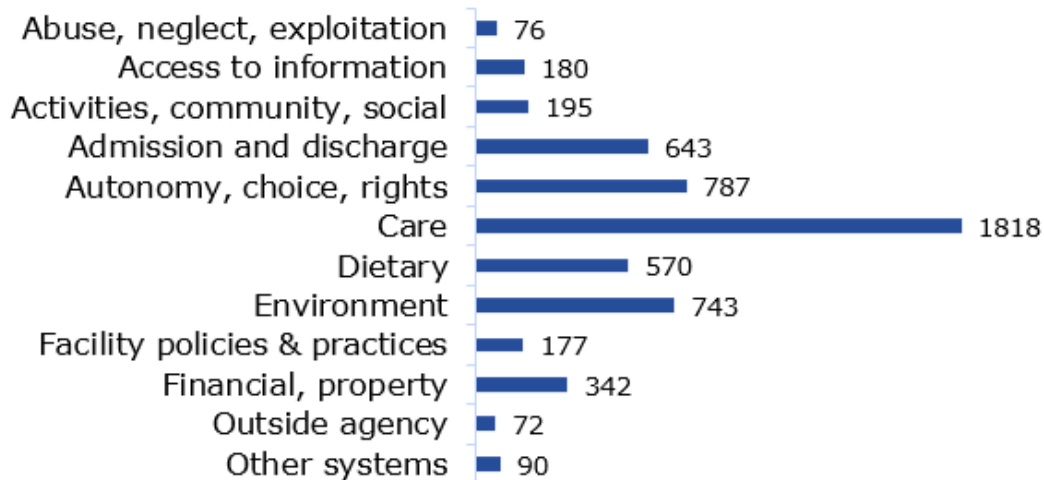
The ombudsman requested a care plan meeting so that family members could share their concerns to facility staff. The ombudsman advocated for consistent staff to work with the resident and encouraged the family to provide detailed examples to add to the care plan on how to care for their mother in a way she would best respond. The facility agreed to assign the same nurse aides to work with the resident five days a week. The facility also agreed to train their nurse aides with the tips provided by her family members. This plan meant the resident could form a bond with her nurse aides. Both the facility and the resident's family members said the plan was a success and were thankful for a win-win with help from the ombudsman.

*Federal and state law affords a resident the right to select her own healthcare provider, including hospice care. This right is weakened by ongoing federal and state restrictions on who can enter a nursing facility. The decision to grant a facility authority to decide who may enter a facility for care has meant that thousands of nursing facility residents do not have real choice in their healthcare provider. The Ombudsman Program urges the state of Texas to fully restore a resident's right to free choice, including choice of physician, pharmacy, and other service providers like hospice.*

## **Most Frequent NF Complaints**

Staff and volunteers investigated 5,693 complaints related to nursing facility residents. Complaints fall into 12 categories as shown in the following chart, with a clear majority of complaints in the category of *Care*; followed far behind by *Autonomy, rights, and choice*; and *Environment*.

## Nursing Facility Complaint Categories

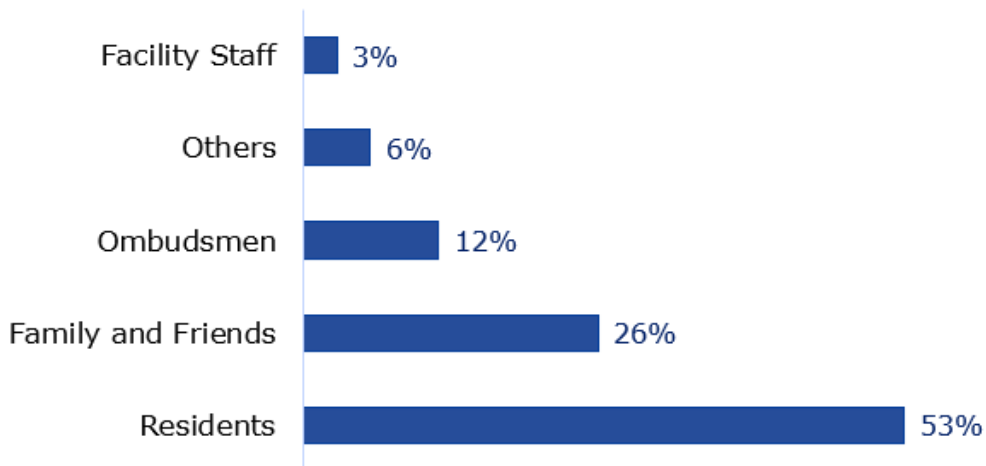


The 10 most frequent complaints, in order of frequency, are described below.

1. Respond to requests for assistance: Failure to promptly respond to call light or call bell or requests for assistance go unanswered.
2. Discharge or eviction: Resident received a discharge notice and does not want to leave; resident was transferred or discharged without notice or due process; resident was transferred to the hospital and not advised of bed hold policy or was not readmitted post hospitalization. *This was the 4<sup>th</sup> most common nursing facility complaint in 2019.*
3. Food services: Food quantity, quality, variation, choice, temperature, and timing of meals and snacks are substandard or do not meet resident expectations.
4. Infection control, housekeeping, laundry, and pest abatement: Housekeeping services are inadequate or absent. Resident and common rooms not clean, or linens are not changed. Laundry is not washed. Residents lack clean clothes. Problems with pest control and infection control.
5. Dignity and respect: Resident is treated with rudeness, indifference, or insensitivity.
6. Personal hygiene: Failure to provide hygiene services such as not bathed in a timely manner or at all; left in soiled clothing or incontinent briefs; hands and face not washed; teeth or dentures not cleaned.
7. Medications: Medication given in error, or not given on time or at all. Medication administration not documented or incorrectly documented.

8. Personal property: Loss or mismanagement of resident property including a resident's money or trust fund.
9. Environment: The building environment including the room or water temperature is too hot or cold or ventilation is inadequate.
10. Symptoms unattended: Failure to accommodate, identify, or provide services related to a change in a resident's condition.

### Who Reports Complaints in a Nursing Facility?



### Comparison of NF Complainants from 2019 to 2020

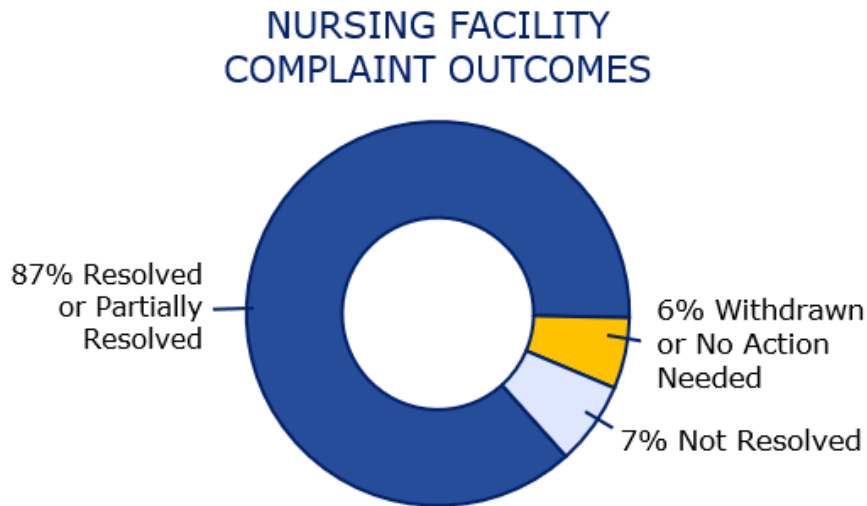
In 2019, residents made up 63% of complainants, followed by ombudsmen at 21%, and family and friends at 11%. COVID-19 conditions contributed to changes in who traditionally reports a complaint to an ombudsman. For example, during months that an ombudsman was not onsite in facilities, ombudsmen were unable to observe problems and less likely to initiate an investigation themselves. The increase in complaints made by family members and friends of residents is significant and likely attributed to family and friends observing conditions through window visits or an electronic monitoring device and receiving communications from residents or facility staff that raised concerns.

A 10 percent decline in complaints received from a resident signals that most residents who can voice a concern are able to exercise their right to complain and communicate with an ombudsman by phone or other virtual means. But this decline, and the significantly fewer complaints identified by ombudsmen in 2020, indicates that significant numbers of residents need an in-person visit and the help of an ombudsman to file a complaint on the resident's behalf.



## NF Investigations: Verification and Outcomes

91 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.



### Ombudsman Example: Facemasks Not Properly Worn

A resident's son contacted an ombudsman about infection control in his mother's nursing facility. Knowing that all facility staff were required to wear masks during the COVID-19 pandemic he saw staff not wearing masks at all or wearing them below their nose or mouth when he visited at his mother's window. The son complained about this problem to the facility administrator, director of nursing, and the facility's corporate office. Still, the son saw staff not wearing masks. He called his ombudsman.

The ombudsman explained to the administrator the importance of following infection control procedures, including ensuring staff wear masks, and the need to monitor staff for compliance. The ombudsman referred to HHS training and guidance from the Centers for Disease Control and Prevention. The administrator agreed to hold a training for all nursing and housekeeping staff about the proper use and disposal of a facemask. The administrator also agreed to actively correct any staff not following infection control requirements, to train staff to communicate with their coworkers when they were not following protocols, and to proactively monitor the staff's compliance with wearing facemasks. One month later, the son said that staff always wear masks over their mouths and noses, and he was thankful for the ombudsman's intervention. As the ombudsman returned to make a first

indoor visit to the building since restrictions were in place, the ombudsman closely observed facility staff's mask wearing and hand hygiene practices and provided the administrator with positive feedback and constructive criticism about what was observed.

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*Mom is 80 years old, in the late stages of Alzheimer's where touch is her only form of communication. Since the visitation ban in Texas, she is forbidden from communicating with the only family member known to her. Mom is coherent enough to smile, reach my hand on the glass, and tries to touch my face, nose, and glasses - her favorite trick - to try and remove them. The heart wrenching separation between us leaves us hollow shells of what we have been throughout her journey with this disease since 2011. Prior to the visitation ban, I helped feed my mom lunch and dinner, brushed her teeth, and kept her company. My absence from being beside her physically is confusing her, at time feeling like she is impatient and uninterested in this game of looking at one another through a glass. Family members with Alzheimer's become a lifeline - a connection to that one person's needs to comfort and intervene when necessary. That bond is broken, and my Mom knows the difference between a daughter's hug and a window through which touch is not possible.*

*Genny, Rockwall, Tx*

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# Ombudsmen in Assisted Living Facilities (ALFs)

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## ALF Visits

There are 2,019 ALFs in Texas. Ombudsmen made 7,347 visits to ALFs throughout the year. Prior to the pandemic, visits were made without advanced notice for purposes of routine monitoring or made in response to a complaint. During the pandemic, visits were made through a combination of announced outdoor, window, and indoor visits.

## Ombudsman Example: A Resident's Right to Leave

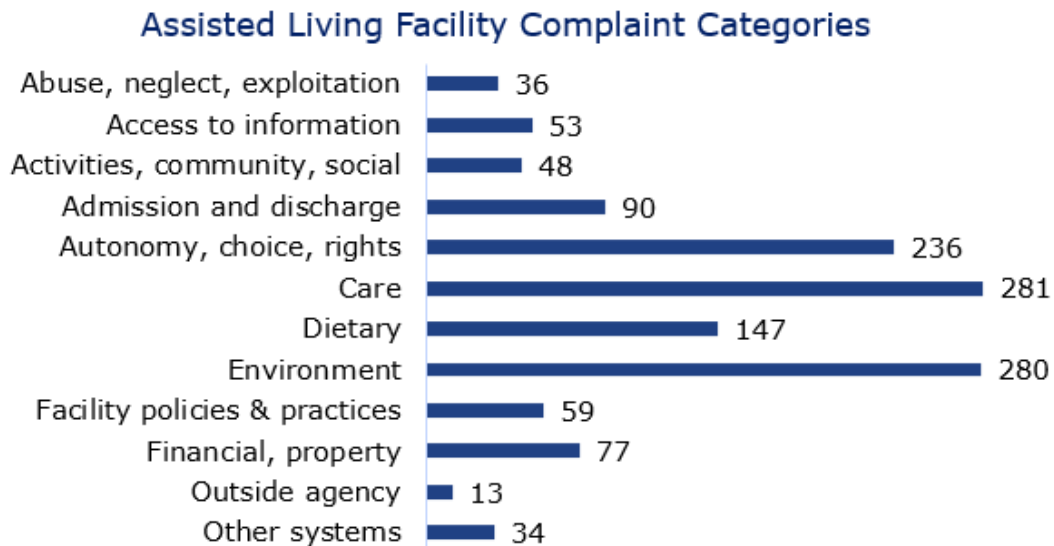
A resident of an ALF contacted the ombudsman because the facility changed the door code and refused to allow him to go the store to pick up personal items. The director of the facility confirmed to the ombudsman that she changed the door code without informing residents and was restricting residents from leaving to prevent potential exposure to COVID-19. The ombudsman explained that all residents have a right to leave the facility and their access to the security code was necessary to ensure residents' rights were not violated. The ombudsman also suggested that the facility offer to pick up items for residents to temporarily accommodate their needs.

The director agreed to allow residents to leave and explained residents who were exposed to COVID-19 would have to quarantine for 14 days after their return. The facility also worked with residents to buy personal items for them. The ombudsman informed the resident of CDC and HHS quarantine procedures when someone leaves the facility. The resident preferred to pick up his items himself but was pleased that he would be allowed to leave the facility and agreed to follow necessary quarantine procedures.

*Quarantine protocols are based on guidance from the Centers for Disease Control and Prevention (CDC), but considerable discretion has been granted by state rules for a facility to determine when a situation requires a resident to be quarantined. This discretion has led to entire buildings operating in prolonged "lockdown" with residents confined to their rooms. It has also led to some residents being continuously quarantined after necessary medical appointments or attending a funeral. The Ombudsman Program is concerned about the wide discretion left to nursing and assisted living facility businesses on this and other issues.*

## Most Frequent ALF Complaints

Staff and volunteers investigated 1,354 complaints related to ALF residents. Complaints fall into 12 categories as shown in the chart below, with most complaints in the categories of care; environment; and autonomy, choice, and rights.



The 10 most frequent complaints, in order of frequency, are described below.

1. Food services: Food quantity, quality, variation, choice, temperature and timing of meals and snacks are substandard or do not meet resident expectations.
2. Housekeeping, infection control, laundry and pest abatement: Housekeeping services are inadequate or absent. Resident and common rooms not clean, and linens are not changed. Laundry is not washed. Residents lack clean clothes. Problems with pest control and similar problems.
3. Medications: Medication given in error, or not given on time or at all. Medication administration not documented or incorrectly documented.
4. Discharge or eviction: Resident received a discharge notice and does not want to leave. Resident was transferred or discharged without notice or due process; resident was transferred to the hospital and not advised of bed hold policy or was not readmitted post hospitalization and similar problems.
5. Other rights and preferences: The deprivation of any right.
6. Environment: The building environment including the room or water temperature is too hot or cold or ventilation is inadequate.

7. Respond to requests for assistance: Failure to promptly respond to call light or call bell or requests for assistance goes unanswered.
8. Building structure: Building interior or exterior is not maintained, or there are building hazards such as poor lighting, building not secure and similar complaints.
9. Dignity and respect: Resident is treated with rudeness, indifference or insensitivity.
10. Access to information and records: Access to information or access to resident records is denied or delayed.

### **Ombudsman Example: Visitation and School Needs of a Younger Resident**

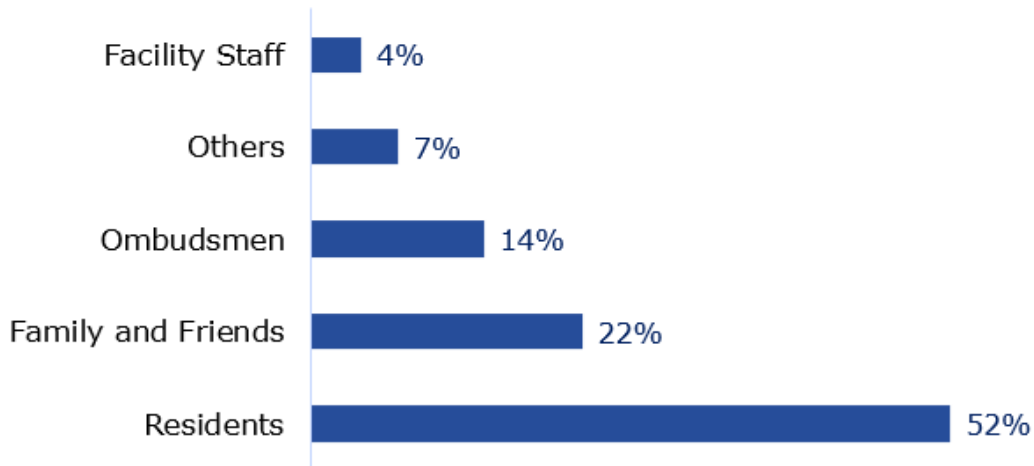
The mother of a school-aged ALF resident reached out to the ombudsman for help. Since the pandemic, she hadn't been allowed to take her son out of the facility and he hadn't been able to attend school in-person. The facility is a small facility that serves children with intellectual and developmental disabilities. The ombudsman scheduled a video meeting with the resident and his parents to discuss his wishes, and to get consent to help resolve the issues. The resident confirmed he would like to be back in class with his classmates and leave the facility to visit family.

The ombudsman reached out to the facility director to convey the resident's wishes and discuss options to meet his needs that comply with state emergency rules and COVID-19 guidance. The director agreed to comply with COVID-19 guidance and not prevent the resident from exercising his right to visit family members. Visits began immediately. However, the director explained that since the beginning of COVID-19 restrictions, the resident received in-home learning from his same teachers that provide instruction at the school and they were awaiting further guidance from the Texas Education Association (TEA) about returning to in-person learning. The ombudsman researched TEA guidance, found that students would be returning to in-classroom learning for the upcoming school year, and notified the facility, family, and resident. Soon after, the resident was attending classes in-person at school.

*State law affords a resident the right to visitors and privacy. These rights are weakened by ongoing state restrictions on visitors and requirements of a facility to monitor visits other than essential caregiver visits. At the time this report was released, visiting is by appointment only and must be continuously monitored by a facility staff person. The Ombudsman Program*

*urges the state of Texas to fully restore a resident's right to visitors and privacy when visiting.*

### Who Reports Complaints in an Assisted Living Facility?



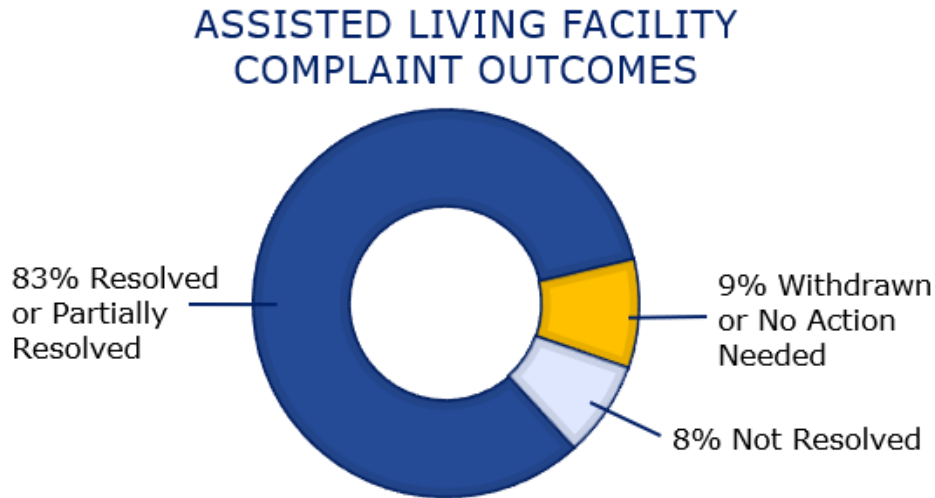
### Comparison of ALF Complainants from 2019 to 2020

In 2019, residents made up 57% of complainants, followed by ombudsmen at 28%, and family and friends at 10%. The increase in complaints made by family members and friends of residents is significant and likely attributed to family and friends observing conditions through window visits or an electronic monitoring device and receiving communications from residents or facility staff that raised concerns.

The significantly fewer complaints identified by ombudsmen in 2020 indicates that many residents need an in-person visit and the help of an ombudsman to protect their anonymity and file a complaint on behalf of a resident. With the prevalence of assisted living facilities providing “Memory Care”, a term used to describe long-term care for people with memory impairment like Alzheimer’s disease and other dementias, the onsite monitoring visits of an ombudsman and visits by family and friends are crucial to identifying problems.

## ALF Investigations: Verification and Outcomes

89 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.



### Ombudsman Example: Married Couple Restricted from Visiting

A resident in an ALF was unable to see his wife living in the same facility but in the Alzheimer's certified care unit. She moved out of their shared apartment and into the unit after a hospital stay two weeks prior. Since then, the couple had been unable to visit in-person. The ombudsman spoke to the facility director to advocate for the residents to be able to visit one another in-person and brainstormed options to reduce the risk of COVID-19 spread. The director was concerned about the husband entering the unit due to recent trips off campus. The director agreed to allow the residents to visit after 14 days had passed since the husband left the facility. The husband agreed and was able to visit with his wife.

*This example again illustrates the effects of quarantine protocols on residents, this time affecting a husband seeing his wife when they are both residents in the same facility.*

## Systemic Work and Recommendations

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During the 86<sup>th</sup> Texas Legislature, Interim Session, the program informed legislators about the ongoing, urgent needs of residents living in long-term care facilities. Prior to March 2020, this included information about the frequency and impact of involuntary discharges on nursing facility residents; access to and quality of care in ALFs, and dementia care in nursing and assisted living facilities.

After March 2020, legislative inquiries to and from our office were singularly focused on the state and federal response to COVID-19. As an independent voice on the interests of residents, the Office of the State Long-Term Care Ombudsman participated in over 60 interviews with local, state, and national media outlets on the COVID-19 pandemic and response.

### Recommendations to the Governor and the Texas Legislature

The Office of the State Long-Term Care Ombudsman recommends 10 actions based on lessons learned from the COVID-19 pandemic.

- 1. Fully restore a resident's right to visitors in nursing and assisted living facilities.** We must ensure that residents' rights are not permanently eroded by our emergency response to a crisis. The COVID-19 pandemic led to severe restrictions on residents. Due to these restrictions, residents said they felt like they had been incarcerated and were suffering without visits from loved ones. Residents and their loved ones alike shared the devastating effects social isolation had on their health and well-being. Restrictions including time limits and scheduling of all visits must be removed as soon as safely possible to ensure residents have meaningful access to visitors.
- 2. Add to residents' rights that each long-term care resident has a right to designate essential caregivers as support people for the resident.** Many family members provide extensive care to a loved one in a long-term care facility, such as daily support with eating, moving or walking, and intellectual stimulation. A person with a disability has a right to select people to support them in these activities, and the access of a support person is crucial to a resident's health and well-being. The status of this role should be added in state statute and rule to ensure a resident retains access to these supports.



**3. Require a facility to offer rapid COVID-19 testing of essential caregivers at no cost to the essential caregiver.** As long as COVID-19 is a severe threat to the health and safety of long-term care facility residents, testing will be crucial to identifying the virus and containing its spread. To ensure residents have access to their essential caregivers, the state's testing strategy must include free testing of essential caregivers.

**4. Restore visitation rights to include physical touch between a resident and a visitor, using appropriate PPE as needed.** Visiting without a hug or holding hands doesn't give residents needed comfort and support. During the COVID-19 pandemic, physical touch must be permitted with PPE used as needed to minimize the risk of transmission of COVID-19.

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*My mother in law has dementia. She has become depressed. She doesn't understand why we can't come in when we visit her through the window. She has macular degeneration and can't see us, she is hard of hearing, so someone must tell her what we say. She cries through our meetings. She is 96 and is in an assisted living with loving attendants but this is hurting what little life she has left. Please let us in. Safely, but let us in.*

*Yolanda, Uvalde, TX*

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**5. Broaden requirements for end-of-life visits to allow visitation in the final weeks and days, not hours, of dying.** Family members and friends of residents dying during the COVID-19 pandemic have experienced severe limitations on their access to the resident. Current guidance from HHS says that a resident is only entitled to an end-of-life visit when the resident is *actively dying*. It is up to the facility to make this determination and notify the resident's loved ones. In some cases, the determination of a resident actively dying wasn't made in time for loved ones to say goodbye in person. In other cases, a facility wrongly restricted family, friends, or clergy from access to the resident. Survivors of these losses are needlessly suffering from rigid or inconsistent decisions about when a person was actively dying. A change in state emergency rules is urgently needed to specify a facility's obligation to allow end-of-life visiting, rather than restrict it.

- 6. Prohibit nursing and assisted living facilities from restricting a resident's right to choose a health care provider, including hospice or home health.** A facility should be required to allow any healthcare provider of a resident's choice into the facility, if the provider meets screening criteria. A resident's right to choose his or her healthcare provider has been severely limited by rules that permit facility discretion on this issue during the public health emergency. For example, facilities have denied a resident their choice of a hospice provider and told the resident she must use the facility's hospice staff. The state emergency rule should be updated to enforce residents' right to choose their provider.
- 7. Do not extend the emergency waiver related to nursing or assisted living facility visitation, *Suspension of Resident Right to Receive Visitors*, THSC §242.501(a)(16), THSC §247.064(b)(7)-(8), 40 TAC §19.413(a)(8)-(9), and 26 TAC §553.125(a)(3)(j)-(k).** The waiver of the right to receive visitors has resulted in the mental and physical suffering of residents. These blanket waivers should not be extended. Instead, HHS should require individualized visitation policies to ensure that all residents have meaningful access to visitors to prevent decline in health.
- 8. Do not extend the emergency waiver related to ALF resident policies, *Suspension of ALF Requirement Related to Resident Policies*, 26 TAC §553.41(d)(5).** The waiver of the rule at 26 TAC §553.41(d)(5) meant that residents were not notified prior to an ALF changing a policy and were not provided a copy of policies when the resident moved in. As a result, ALFs implemented unwritten policies and did not provide them to residents upon request.
- 9. Codify the Attorney General's ruling that required public release of facility information related to infectious diseases like COVID-19.** In the first several months of the pandemic, residents and their family members and friends were denied information about which nursing and assisted living facilities had outbreaks of COVID-19. Without this information, the public had no way to know the status of cases in a specific facility. The Office of the Attorney General's letter ruling issued on July 6, 2020 should be codified in Title 4 of the Health and Safety Code, Chapter 242 and Chapter 247, to avoid delays of critical information to the public when another public health emergency occurs.

**10. Provide opportunity for public comment on emergency rules and waivers by amending Texas Government Code §2001.034 to require a formal, public comment period.** HHS promulgated several emergency rules related to long-term care facilities in response to COVID-19. Texas Government Code §2001.034, authorizes state agencies with rule-making authority to adopt an emergency rule without prior notice or hearing if it finds there is an imminent peril to the public health, safety, or welfare. However, the law does not include an opportunity for public comment. Comments on emergency rules – even if collected after a rule is published – would help HHS and other agencies identify problems that need correction, avoid confusing rules, improve planning for future emergency rules, and improve the public’s perception of state action during an emergency.

## **Success in Changes to HHS Visitation Restrictions**

The Office of the State Long-Term Care Ombudsman made recommendations to HHS regarding emergency rules issued during the COVID-19 pandemic. Recommendations were based on questions and complaints received, and knowledge of facility operations and resident and family member interests. Our office is thankful for the responsiveness of HHS and its efforts to incorporate feedback from resident advocates.

## **Success in CMS Changes Requiring Visitors in Nursing Facilities**

The Texas State Long-Term Care Ombudsman (Texas Ombudsman) provided feedback about the effects of COVID-19 on nursing facilities to CMS Administrator Seema Verma during a meeting the Administrator organized with nursing facility providers at the Dallas CMS office. The Texas Ombudsman then submitted written comments to CMS urging the agency to require nursing facilities to permit visitation again. CMS responded by inviting the Texas Ombudsman to present her recommendations at a CMS meeting with long-term care ombudsmen across the U.S. The Texas Ombudsman worked with other advocates for nursing facility residents to recommend visitation changes and infection control procedures to CMS, some of which were modeled after Texas requirements. Days after these recommendations were shared, CMS issued guidance to nursing facilities, including requiring all nursing facilities to allow visitation. This CMS guidance influenced guidance to Texas nursing and assisted living facilities.

## Success in Federal Changes to the Older Americans Act

The State Long-Term Care Ombudsman testified to the U.S. House of Representatives Education and Labor Committee, Civil Rights and Human Services Subcommittee in May 2019 and recommended changes to the Older Americans Act to help the Ombudsman Program. After this testimony, two changes were adopted by Congress in the 2020 reauthorization of the Act. The first change protects the Ombudsman Program from budget cuts by requiring a minimum amount of funding for the program based on the year 2019. The second change added volunteer management and other expenses as allowable program costs.

## Program Expenditures

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Source	Total
Federal Title III-B	\$3,159,041
Federal Title VII	\$1,303,311
Federal CARES Act	\$144,990
Federal Civil Money Penalty Grants	\$65,585
State ALF General Revenue	\$1,700,812
State Other General Revenue	\$354,879
Local Cash	\$51,879
<b>Total Expenditures</b>	<b>\$6,780,497</b>

To respond to the COVID-19 pandemic, Texas received \$1.35 million in CARES Act funds for the Ombudsman Program. Funds are available until Sept. 30, 2021. Expenses must support the program's response to the pandemic, which includes personal protective equipment, other infection control costs, staff costs and technology to facilitate remote program operations.

2020 marked the final year of two Civil Money Penalty (CMP) projects for the Ombudsman Program. First, the resident advocacy project *Our Lives Our Voices* identified nursing facility residents in the greater Austin area who were interested in learning about their rights, communication and leadership

skills, and the state legislative process. A goal of the project was to inspire residents to engage with their elected officials and share nursing facility residents' perspectives. The project ended with the outbreak of the coronavirus in Texas, but the materials and information gained will be developed into training available to ombudsmen and resident councils across the state.

The second CMP project was the *What Matters to Me* video series, which included seven brief videos demonstrating person-centered principles in a nursing facility. The target audience is direct care staff who can watch the videos – all of which are under two minutes – on their phones. A training manual accompanies the videos and is available for free. Ombudsmen were virtually trained, and copies of the videos and training materials will be personally distributed by ombudsmen to presidents of resident councils and to each nursing facility in 2021.

## **Information and Assistance to the Public**

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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 5,542 inquiries from facility staff. Ombudsmen responded to 17,106 inquiries from residents and their family and friends. These inquiries included questions related to nursing facilities, ALFs, and other settings. Since March 2020, inquiries almost always also related to the long-term care facility rules and practices in place in response to the COVID-19 pandemic.

Staff and volunteers also supported residents by attending 711 care plan meetings in nursing facilities and 89 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 203 fair hearings.

Ombudsmen provided 122 education sessions to the public. These are presentations made outside of a facility setting and are typically for a broad audience. These presentations included weekly Facebook Live sessions by the

Office that began the first week of May 2020. During these sessions, we provided updates on the number of COVID-19 cases in long-term care facilities, policy changes that affected residents and visitors, and answered questions from the public. Each of these sessions received between 500 and 2,000 views on Facebook.

On June 15, 2020 – World Elder Abuse Awareness Day (WEADD) – our office hosted a virtual educational event featuring the Texas Ombudsman and managing local ombudsmen Shazia Sultan, Brazos Valley; Amanda Sedeño, Concho Valley; Tonya Jackson, Deep East Texas; and Iris Gutierrez, South Texas. Their presentations brought attention to the ongoing issues with elder abuse, neglect, and exploitation and recommended how viewers can protect residents from abuse and neglect in long-term care facilities.

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

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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 38 family councils in nursing facilities and 2 in ALFs. Ombudsmen attended 488 resident councils in nursing facilities and 92 in ALFs.

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

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HHS Long-Term Care Regulation is required to notify an ombudsman when a surveyor enters a nursing facility or ALF. When ombudsmen have information to share about conditions in a facility, they speak with the surveyor and provide evidence regarding an investigation of a complaint. Ombudsmen participated in 1,464 surveys in nursing facilities and 517 surveys in ALFs. This includes ombudsman participation in informal dispute resolution and administrative hearings when a facility disputes a violation issued by HHS.

## Training to Facility Staff

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Ombudsmen trained staff in 104 nursing facilities and 26 ALFs. Topics included training on residents' rights and the role of an ombudsman.

The Ombudsman Program released a Person-Centered Care Video Series, a collection of seven brief videos that illustrate concepts of person-centered care, including language, walking rounds, consistent staff assignment, care plans, medication administration, health care schedules, and personalized music for residents with dementia. Plans for ombudsmen to train facility staff and residents in person were delayed until late 2021 and will be modified to be provided virtually when feasible.

## Training and Retention of Ombudsmen

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Ombudsman certification requires a 36-hour training course that includes classroom learning and facility-based practice. Seventeen new staff were certified last year. Seventy-eight new volunteers were trained and certified, while 54 volunteers left the program. After several years of losing more volunteers than we certify, volunteer recruitment and retention was prioritized in 2020. HHS included our volunteer recruitment and certification as one of 12 initiatives in the *2020 HHS Business Plan: Blueprint for a Healthy Texas*. We exceeded our recruitment goal by recruiting 36 more volunteers than in the previous year. And, even during the COVID-19 pandemic in 2020, we certified 19 more volunteers than in 2019.

### **108 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.

### **347 volunteers served, donating 11,215 hours**

Volunteer service was affected by COVID-19 with some volunteers feeling unsafe to visit in-person in a long-term care facility. Moreover, the disruption of our program operations meant that volunteers had to be on stand-by status from March through August and must now wear PPE and

follow new infection control procedures. The uncertainty and disruption of 2020 on ombudsman services will likely require us to reimagine the role of a volunteer ombudsman for the short- and long-term.

Of the volunteers who left the program last year, they had an average length of service of five years and nine months.



## Thanks to Ombudsmen

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"I want to thank **Allison Harvey** with all my heart for advocating for us. My mother was moved back into her original 'home' room with her roommate who she calls 'sister' yesterday afternoon, which made both ladies extremely happy and more at peace!"

-- From a family member in the Houston area after a COVID-19 outbreak separated roommates

"**Cindy Boyum** has been a tremendous help to me in the past several months. The rules are not easy for some elderly people to understand because news coverage does not elaborate on such items. My wife has been in a memory care home for more than two years and we have been married for 67 years; the past six months have been very difficult for us. Cindy is extremely knowledgeable about the visitor rules, and today that helped me a lot."

-- From a husband of a resident in the San Antonio area after months of separation

"I commend **Frank Conigliaro**. His assistance in the matter of my ward being wrongly discharged was exceptional."

-- From a guardian in the Houston-Galveston area

"I encourage all families if you are not getting a response from the facility, be the squeaky wheel, contact your Ombudsman! Our Ombudsman, **Vanessa Conway**, has been phenomenal in getting results and answers for my family."

-- From a family member in the Texarkana area after months of separation

"I would like to congratulate you on the tremendous job you are doing keeping the rest of us informed during the pandemic. I do watch with awe at your ability to take command of some very tough issues and questions."

-- From an Activity Professional and educator in the Dallas-Ft. Worth area

# Contact Information

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