INTRODUCTIONS
Our Vision for Elder Justice

A comprehensive, multidisciplinary approach that effectively supports older adults and adults with disabilities so they can make their own choices and exercise their right to live where they choose, with the people they choose, and fully participate in their communities without threat of abuse, neglect, or financial exploitation.

ACL’s Elder Justice Portfolio
ACL’S FIVE PILLARS

ASA Lance Robertson’s vision for ACL focuses on five pillars, key areas of focus that are critically important across both aging and disability:

1. Supporting families and caregivers
2. Protecting rights and preventing abuse
3. Connecting people to resources
4. Expanded employment opportunities
5. Strengthening the aging and disability networks

LET'S SEE WHAT'S RESOURCES ARE AVAILABLE...
National Center on Elder Abuse
and related projects

- Increases the number of professionals, caregivers and community members who receive high-quality training on elder abuse.
- Designed to support officers in identifying, intervening, and resolving cases of elder abuse.
- Materials designed to engage and educate your community about the role everyone can play in preventing elder abuse.
- Actionable communications strategy to put elder abuse on the public agenda and boost support for systemic solutions to prevent and address it.

NCEA National Partnerships

Resource materials on special topic areas for many target audiences:

- Adult Protective Services
- Cultural Issues
- Law and Legislation
- Lesbian, Gay, Bisexual, and Transgender
- Multidisciplinary Approaches
- Long-Term Care Abuse
- Persons with Disabilities
- Public Awareness
- Public Policy
- Research Briefs
- Risk Factors
- Statistics, Incidence, and Prevalence
WEAAD: Around the World

World Elder Abuse Awareness Day

June 15th

Virtual Art Gallery    Archived Webinars    Social Media
Reframing Elder Abuse Project

Many aging organizations struggle to communicate about elder abuse.

**Short-term Goal:**
1. Understand
2. Devise and disseminate

**Long-term goal:**
To build a society that makes informed choices on policies and practices that address elder abuse based on valid and reliable information

Reframing Elder Abuse Resources

- **Talking Elder Abuse Toolkit**
  - Swamp of Elder Abuse and Swamp Glossary
  - Quick Start Guide to Talking Elder Abuse

- **Video Lecture Series**
  - (Coupon code: WEAAD2020)

Elder Abuse Awareness

- Strengthening the Structure of Justice to Prevent Elder Abuse PSA Videos [Short](#) and [Long](#)
- Red Flags of Abuse
- Facts About Elder Abuse
- 12 Things Everyone Can Do to Prevent Elder Abuse
EAGLE

The EAGLE has landed!

Elder Abuse Guide for Law Enforcement
Designed to support Law Enforcement officers in quickly identifying, intervening, and resolving elder abuse situations
- Tools to assist in documenting a case for prosecution
- ZIP code-based community resources locator
- State-by-state penal codes relating to elder abuse

Contact Us
- eagle wsp@usc.edu
- eagle.ftea.usc.edu

Keck School of Medicine of USC

Customizable & ready-to-use outreach tools nceausc.tk/STEAP

Fact sheets and brochure

Presentation template & evaluation form

Outreach calendar for year-round elder abuse prevention programming
Customizable & ready-to-use outreach tools
nceausc.tk/STEAP

Add your own logo, contact information, and local elder abuse reporting numbers.

nceausc.tk/STEAP

Connect with the NCEA

National Center on Elder Abuse
1-855-500-3537 (ELDR)
ncea-info@aoa.hhs.gov
https://ncea.acl.gov/

USC Center on Elder Mistreatment website:
http://eldermistreatment.usc.edu/

Training Resources on Elder Abuse (TREA):
www.trea.usc.edu

Elder Abuse Guide for Law Enforcement (EAGLE):
http://eagle.trea.usc.edu/
National Center on Law & Elder Rights

Sarah Galvan, Justice in Aging
July 18, 2019
NCLER’s Role in Legal and Aging Services

• National focus on elder justice and elder rights
• Unifies legal services resources into one, easy to find center
• Trains the new cohort of legal services attorney and front-line aging and disability networks to understand legal issues impacting older adults
• Addresses need for technical assistance on systemic legal challenges, capacity building, and improvements to the legal services delivery system

NCLER Organizations

• Justice in Aging:
  • Administers NCLER under a contract from the Administration on Community Living
• NCLER Experts:
  • Justice in Aging
  • ABA Commission on Law and Aging
  • National Consumer Law Center
NCLER Offers

Trainings

Case Consultation

Technical Assistance on Legal Services Capacity Building

National Legal Training Curriculum

Training Topics:

• Health/LTSS
• Economic Security
• Consumer Protection
• Housing
• Advance Care Planning
• Elder Abuse
• Supported Decision Making
• Guardianship
Case Consultations

- NCLER provides free case consultation assistance for attorneys and professionals seeking more information to help older adults.

Legal Services Capacity Building

- Technical assistance to states and programs working to improve legal services development.
  - Outreach
  - Intake Systems
  - Partnerships
  - Reaching Rural/Isolated Older Adults
- Resource support designed to enhance the quality, cost effectiveness, and accessibility of legal assistance and elder rights programs
What’s new with NCLER?

• More resources:
  • Enhanced Elder Justice resources
  • New Practice and Decision Guides

• Bringing together legal services network:
  • Senior Helpline Training Curriculum

• Integrating training and assistance on substance and systems

Role of Civil Legal Aid
Legal Needs of Older Adults

56% Had at least one legal problem in a year period

10% Had 6+ legal problems in a year period

Legal services is critical to help older adults age at home and in the community:

“[It is] clear that access to justice helps individuals and families secure basic necessities, like health care, housing, employment and education while also enhancing stability and increasing public safety.”

2016 White House Legal Aid Interagency Roundtable Report
Legal Services Advance Access to Justice & Safety Net Programs

• When legal services are available they can be life saving
• Too many older adults do not receive the legal help they need
  • Do not realize their problem has a legal solution
  • Unaware that they may be eligible for help

Civil Legal Aid & Elder Abuse

• Particularly when the perpetrator is a family member or friend, older adults may be reluctant to seek criminal penalties
  • Even if litigation remedies are not a desired or viable option for a client, there may be opportunities for ensuring safety and access to programs and supports to assist in the recovery process and protection of remaining assets.
Legal Remedies & Actions

- Safety
  - Protective orders
  - Guardianship Termination
  - Revocation of POA
  - Ejectment/Eviction

- Recovery of Funds
  - Undue Influence
  - Breach of Fiduciary Duty
  - Conversion
  - Fraud
  - Request for an Accounting

Non-Litigation Tools

- Protecting Funds
  - Changing bank account information
  - Changing Rep Payees/VA Benefit Fiduciaries

- Supportive Services
  - Shelter Networks
  - Crime Victim Compensation
  - Restorative Justice
Associated Legal Issues

- Additional legal issues emerge during and after financial exploitation:
  - Medicaid
  - Consumer
  - Income Maintenance
  - Benefits
  - Housing

New & Upcoming Elder Justice Resources
Resource: Elder Justice Toolkit

• The Elder Justice Toolkit is a practice-oriented resource that provides practical information on pursuing civil legal remedies, practice tips, and sample pleadings for attorneys seeking protection and redress for their clients who have experienced elder abuse.
  • Multiple states’ perspectives are considered in the drafting and used as examples, but the Toolkit is designed for national use
  • Available electronically through the NCLER website

Toolkit Contents

Screening & Intake
  Client-Centered Advocacy (goal planning, interviewing, cultural competency)
  Navigating Ethical Issues & Complex Situations (capacity, mandatory reporting, third parties)

Responses & Remedies
  o Case Study Examples & Action Plans
  o Protective Orders & Family Offense Petitions
  o Shelter Options & Essential Supportive Services
  o Credit Card Charges & Unauthorized Accounts
  o Drafting & Revoking Advanced Planning Documents
  o Eviction & Ejectment of the Perpetrator
  o State Elder Abuse Statutes & Causes of Action
  o Gathering Information
  o Property Transfers
  o Recovering Funds: Non-Litigation Strategies, Fiduciary Relationships, Hired Caretakers, Injunctions
  o Preserving Client Privacy

Guardianship & Elder Abuse
  Utilizing Partnerships & Federal Agency Interventions
  Addressing Associated Legal Issues (consumer, housing, Medicaid, benefits)
  Criminal Prosecution & Restitution
  Legal Remedies for Victims of Scams
  Litigation Skills
Other Toolkit Resources

• Financial Exploitation of Older Adults: A Guide for Civil Legal Aid Attorneys
  • Customizable, state-specific attorney practice guide
  • Several states are completed or near completed: CT, PA, VT, VA, MA, CA, LA, FL, IA
  • Request template and technical assistance: ConsultNCLER@acl.hhs.gov

• Elder Justice Compendium
  • Curated national resource collection with commentary

Financial Exploitation of Older Adults: A Guide for Civil Legal Aid Attorneys

• One of NCLER’s elder justice resources is a template that can be customized to add state-specific information
  • Many legal remedies and options are state-specific
• Quick resource for attorneys to locate legal strategies and statutes for protection & redress
Customizing the Guide

• Available in Word format for simple editing
• Highlighted portions indicate where state information should be added & where to locate it

Using the Guide

• Training attorneys in your state
• Conference materials
• Resource for attorneys new to this work, pro bono attorneys, helplines & hotlines
• Great opportunity for collaboration
Visit Our Website: ncler.acl.gov

Search for resources
Read practice tips
Sign up for the email list
Request a case consultation
Learn about upcoming trainings

ncler.acl.gov
THE OMBUDSMAN PROGRAM AND ELDER JUSTICE

What is NORC?

- Funded by the Administration on Aging/Administration for Community Living grant
- Operated by the National Consumer Voice for Quality Long-Term Care (Consumer Voice) in cooperation with the National Association of States United for Aging and Disabilities (NASUAD)
- Provides support, technical assistance, and training for state long-term care ombudsman programs and their program representatives:
  - Information, consultation, and referral for Ombudsman programs
  - Training and resources for state ombudsman programs and program representatives
  - Promotes awareness of the role of the Ombudsman program
  - Works to improve ombudsman skills, knowledge, and effectiveness in both program management and advocacy
What is the Long-Term Care Ombudsman Program?

- Ombudsman programs are resident-directed advocates.

- Ombudsman programs advocate for the quality of care and quality of life of residents in long-term care (nursing homes, board and care/assisted living, other similar adult care facilities).

- Ombudsman program provisions in the Older Americans Act (OAA) include:
  - Investigate and resolve complaints;
  - Provide information to residents, families, staff (e.g. residents’ rights);
  - Provide technical support and assistance to resident and family councils;
  - Advocate for changes to improve residents’ quality of life and care;
  - Represent resident interests before governmental agencies;
  - Seek legal, administrative, and other remedies to protect residents; and
  - Ensure residents have regular and timely access to the LTCOP.

Who Does the LTCOP Serve?

- Individuals, regardless of age, living in long-term care facilities (e.g., nursing homes, assisted living/board and care, similar adult care facilities).
  - In accordance with federal law, facilities must provide the LTCOP with access to residents.
  - In a small number of states, LTCOPs also visit individuals that receive long-term care services in their own home.

- As resident advocates, the Ombudsman program:
  - Needs resident consent prior to taking any action on a complaint or sharing resident information.*
  - Seeks to resolve complaints to the residents’ satisfaction.
  - Represents residents’ interests, both individually and systemically.
  - Empowers residents and promotes self-advocacy.

*If the resident cannot provide consent, the LTCO will work with the resident’s legal representative or follow their state procedure if the resident doesn’t have a legal representative.
### Long-Term Care Ombudsman Program Responsibilities

**Do not conduct licensing and regulatory inspections or investigations**
- LTCOPs are knowledgeable of federal and state regulations and will refer to relevant regulations as they advocate for the highest quality of care and life for residents.
- If necessary, with resident consent, a LTCOP representative will file a complaint with licensing and regulatory.

**Are not Adult Protective Services (APS) investigators**
- LTCOPs provide information regarding preventing and reporting abuse, neglect, and exploitation.
- LTCOPs do not have the same standard of evidence requirement as APS and are not the “official finder of fact.” LTCOPs attempt to resolve complaints to the residents’ satisfaction (including those regarding abuse), not gather evidence to substantiate that abuse occurred.
- If necessary, with resident consent or permission of the State LTCO if the resident can’t consent and does not have a legal representative, the LTCOP representative will file a complaint about alleged abuse.
- APS is not required to provide systems advocacy, but the LTCOP is required to do so by the OAA.

**Do not provide**
- LTCOPs share information about quality care practices and ways to

### 1324.19 Duties of the representatives-reporting abuse

**Disclosure:**
- The final rule prohibits programs from disclosing information regarding suspected abuse, neglect or exploitation of a resident without informed consent (if resident able and/or has resident representative).
  - Regardless of state mandatory reporting laws (b)(3)(iii)

**Ombudsman or representative:**
- must assist resident with referral and/or disclose information if goals of resident or resident representative are for regulatory, protective services, or law enforcement action. (b)(3)(i)
- may assist with referral, provide referral information, and/or disclose information to other entities to assist with resident goals. (b)(3)(ii)
1324.19 Duties of the representatives - reporting abuse when resident can’t communicate

- Ombudsman/representative may refer and disclose resident-identifying information to appropriate agencies, IF:
  - Resident unable to communicate informed consent (and no resident representative);
  - Reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident;
  - No evidence that resident would not want referral;
  - Reasonable cause to believe that it is in the best interest of the resident to refer, AND
  - Representative of the Office obtains Ombudsman approval (or follows Office policies and procedures). (b)(6)

1324.19 Duties of the representatives - when LTCO witnesses abuse, gross neglect, or exploitation

- Shall seek resident consent and follow direction.
- If “unbefriended” resident, shall:
  - Open a case with Ombudsman/representative as the complainant,
  - Follow complaint resolution procedures, AND
  - Refer and disclose information to facility management and/or appropriate agency if:
    - No evidence that resident would not want referral
    - Reasonable cause to believe that disclosure would be in best interest of resident, AND
    - Representative obtains Ombudsman approval (or follows program policies).
2017 Abuse Complaints
National Ombudsman Reporting System (NORS)

Nursing Facilities
144,003 total complaints
- 11,778 complaints of willful mistreatment of residents by facility staff or other residents (Category A)
  - 8% of total complaints
- 1,404 complaints of financial exploitation (FE) or neglect by family member or other
  - More complaints of FE by family than staff
- 625 complaints of abuse/neglect/abandonment by family member/friend/other

Board and Care/Assisted Living
53,984 total complaints
- 5,022 complaints of willful mistreatment of residents by facility staff or other residents (Category A)
  - 9% of total complaints
- 752 complaints of financial exploitation or neglect by family member or other
  - More complaints of FE by facility staff than family/other
- 228 complaints of abuse/neglect/abandonment by family member/friend/other

2017 Abuse Complaints
National Ombudsman Reporting System (NORS) – Category A

Complaints of Willful Mistreatment of Residents by Facility Staff or Residents

- Physical Abuse
- Sexual Abuse
- Verbal/Threatening Abuse
- Financial Exploitation
- Gross Neglect
- Residents-Resident Abuse

- Nursing Home
- Board and Care (Assisted Living)
**Administration for Community Living (ACL)**

**Frequently Asked Questions (FAQs)**

**Question:** Does the Rule prohibit an Ombudsman or representatives of the Office from being mandated reporters under state abuse reporting laws?

**Answer:** Yes. Both the Older Americans Act and the Rule prohibit reporting of resident-identifying information without the resident’s consent. By logical extension, this precludes mandated reporting of suspected abuse which discloses such information. Through the strict disclosure limitations within the Act, Congress has indicated its intent for the Ombudsman program to be a safe, person-centered place for residents to bring their concerns. Residents can be assured that their information will not be disclosed without their consent, the consent of the resident representative, or court order. (OAA Section 712(d)(2)(B)). Despite numerous Congressional reauthorizations of the Act, Congress has never provided an exception for abuse reporting in the Act.


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**Administration for Community Living (ACL)**

**Frequently Asked Questions (FAQs)**

**Question:** Does the Rule prohibit Ombudsman programs from investigating abuse complaints?

**Answer:** No. Both the Older Americans Act and the Rule require the Ombudsman program to “identify, investigate, and resolve complaints that … relate to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of the residents.” Abuse, neglect and exploitation of residents are among the complaints that fall within this purview. However, Ombudsman programs are *not the official entity to substantiate (or, finder of fact)* for abuse complaints on behalf of the state or other governmental entity. Ombudsman programs represent the interests of residents, rather than the interests of the state or other governmental entity. (See OAA Section 712(a)(3)(E), (a)(5)(B)(iv); 45 CFR 1324.13(a)(5), 1324.19(a)(4)).

Resources

NORC

- Abuse, Neglect, and Exploitation Issue page

- Training Materials regarding Abuse
  https://ltcombudsman.org/omb_support/training/materials-created-by-norc#abuse

- Ombudsman Program Examples
  https://ltcombudsman.org/omb_support/program-examples#abuse

Consumer Voice

- Resources for Consumers
  https://theconsumervoice.org/issues/recipients
Get to Know the LTCOP

• Contact the LTCOP if you know a resident that may benefit from a visit with a LTCO.

• Contact the LTCOP if you, or someone you know, needs information about long-term care services and supports.

• Share information about the LTCOP with residents, family members, and your colleagues.

• Visit the NORC website for information to share with residents.

Working with the LTCOP

• Systems Advocacy and Community Education
  • LTCOPs collaborate with other organizations for systems advocacy and/or community education on topics of shared interest.

• Individual Advocacy
  • Federal law grants LTCOP access to resident information (with resident permission) and LTCO are required to keep that information confidential.
  
  • Respect the residents’ right to complain and their right to contact the LTCOP.

  • LTCOPs cannot share resident information without their consent. Some residents may choose to remain anonymous during the complaint process.
How to Find a Long-Term Care Ombudsman Program

NORC website:
www.ltcombudsman.org

Resources on the Revised Nursing Facility Regulations

Get our app! Search for “LTC Ombudsman Resource Center” in the Apple Store or Google Play

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Stay Connected with ACL

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Thank You!