

KANSAS LONG-TERM CARE OMBUDSMAN ANNUAL REPORT



**State Fiscal
Year 2018**



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Overview of Accomplishments

In 2018, the Kansas Long-Term Care Ombudsman Program:

- Investigated 1,384 complaints made by or on behalf of long-term care facility residents.
- Resolved or partially resolved 88 percent of these complaints to the satisfaction of the resident.
- Made 3,478 facility visits to adult care homes to meet with residents and to be available to assist residents.
- Assisted 144 residents impacted by involuntary discharges/evictions.
- Supported resident and family self-advocacy by attending and providing support to 136 resident and family council meetings.
- Provided 1,057 consultations to facility staff on topics such as residents rights, resident care, family conflict, power of attorney, and the role and responsibilities of the Ombudsman program.
- Provided 1,439 consultations to consumers on topics such as residents rights, resident care, how to choose a facility, and regulations.
- Supported resident directed care by participating in 16 PEAK site visits to nursing facilities across the state.
- Conducted 26 training sessions for facility staff on topics such as resident rights, elder abuse prevention, communication, and the role of the Ombudsman in adult care homes.
- Participated in 67 facility surveys conducted by the State licensing agency (KDADS) to provide information to surveyors and advocate for residents.
- Provided information and technical assistance to 1,216 individuals, and 876 long-term care facilities.
- Provided 28 community education sessions on long-term care issues at senior care events, health fairs, and in other public settings.



What is an Ombudsman?

An ombudsman is an independent consumer advocate. Ombudsmen investigate complaints concerning the health, safety, welfare and rights of long-term care consumers; and work to resolve these complaints to the satisfaction of the residents of long-term care services.

Ombudsmen also offer information and consultation about the rights residents and the regulations pertaining to nursing home, assisted living, home plus, residential health care facilities and boarding care home. Additionally, ombudsmen work with providers of long-term care services to promote a culture of person-centered living and respect for resident rights.

The word “ombudsman” is Swedish and means “one who speaks on behalf of another”. The Ombudsman is an advocate for residents of long-term care facilities

Authority

The Kansas Long-Term Care Ombudsman Program is authorized by the federal Older Americans Act (OAA) of 1975; 42 U.S. Code, Section 3058g and the Kansas Long-Term Care Ombudsman Act K.S.A. 73-7301 *et seq.*

Mission

The mission of the office of the Long-Term Care Ombudsman is to enhance the quality of life and the quality of services for long-term care residents living in Kansas’s adult care homes through advocacy, education, and empowerment. The office promotes person-directed living which respects individual values and preserves individual rights.

Kansas’s Long-Term Care Ombudsman program is responsible, through federal and state law, for advocating for residents of long-term care facilities, including nursing homes, assisted living facilities, home pluses, residential care facilities, and boarding care homes. The Office strives to fulfill this responsibility every day by working to resolve complaints that impact the health, safety, and welfare of residents, as well as informing residents of their rights.

Our Responsibilities

Federal and state law sets forth the responsibilities of the Office and ombudsmen. Among the responsibilities are to:

- Identify, investigate and resolve complaints made by, or on behalf, of individuals receiving long-term care in a facility.
- Provide services to individuals receiving long-term care to assist in protecting the health, safety, welfare and rights of those individuals.
- Represent the interest of individuals before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of those individuals.
- Provide information to the public regarding problems and concerns of individuals receiving long-term Care, including recommendations related to such problems and concerns.
- Analyze, comment on, and monitor the development and implementation of laws, regulations or policies pertaining to the health, safety, welfare and rights of individuals receiving long-term care services.

Structure

Kansas's Long-Term Care Ombudsman program is responsible, through federal and state law, for advocating for residents of long-term care facilities, including nursing homes, assisted living facilities, home pluses, residential care facilities, and boarding care homes. The Office strives to fulfill this responsibility every day by working to resolve complaints that impact the health, safety, and welfare of residents, as well as informing residents of their rights.

The Office of the State Long-Term Care Ombudsman operates as a separate agency within the Kansas Department of Administration. Appointed by the governor, the State Ombudsman coordinates ombudsman services provided by the office across the state. A Senior Administrative Assistant provides administrative support to the program. Additionally, there are seven Regional Long-Term Care Ombudsmen in offices across the state: Wichita, South Hutchinson, Topeka, Hays, Overland Park, Parsons, and Dodge City. From these locations, the regional ombudsmen visit all long-term care facilities in Kansas, and investigate and work to resolve complaints. In addition, the staff also provides support and guidance to certified ombudsmen volunteers, consults with facility staff, provides community education and conducts in-service training for facility staff.

Complaint Investigation

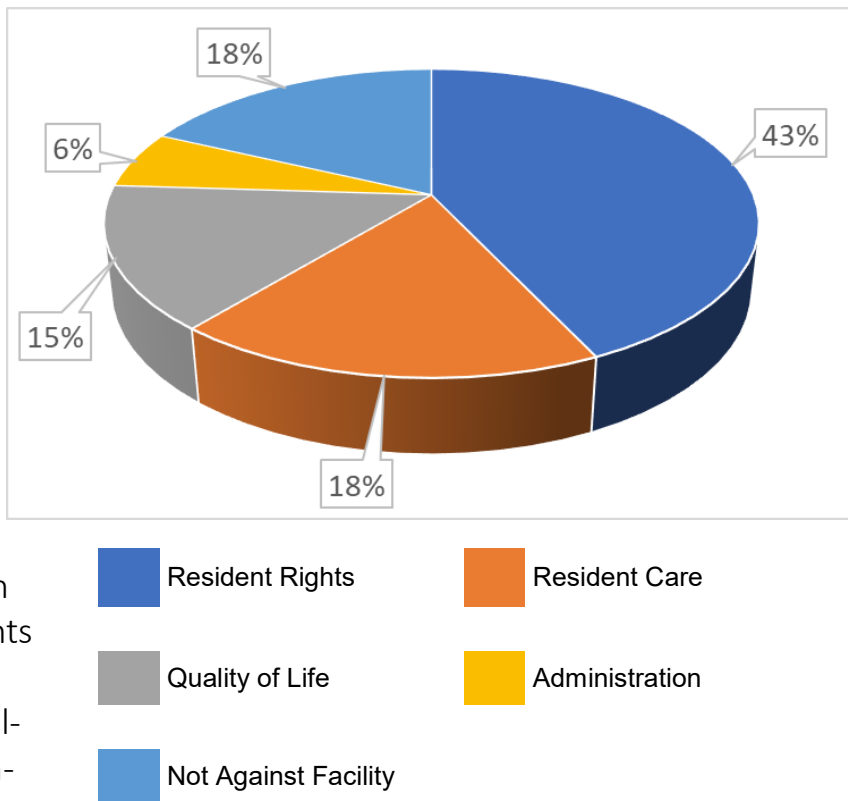
Ombudsmen across Kansas investigate complaints about violations of resident rights or quality of care on behalf of residents of adult care homes. Ombudsmen work directly with the resident to identify solutions and implement needed changes for their care, rights, or quality of life.

The goal of the ombudsman’s work is to resolve the concern to the satisfaction of the resident. Ombudsmen protect the confidentiality of the resident's information and do not take action on behalf of the resident without permission from the resident. Ombudsmen investigation focuses on fully identifying the problem and developing potential solutions. With the resident’s permission, the Ombudsman will review medical records, gather information from all parties, and observe the long-term care environment.

Following an investigation, the ombudsman meets with the resident to discuss the results of the investigation and to develop viable solutions to the resident’s concerns. The ombudsman works collaboratively with residents, family, and providers to reach a productive resolution for all parties whenever possible, but is at all times an advocate for the resident.

In SFY 2018, Kansas Office of the Long-Term Care Ombudsman received and handled 1,384 complaints. Ombudsmen are trained to handle many different types of complaints in long-term care settings, from the right to refuse medication to the right to be served by well trained, competent staff. The Ombudsman program defines 133 types of complaints grouped into five categories: Resident Rights, Resident Care, Quality of Life, Administration and Problems outside of Facility.

The chart to the right shows these five categories and the percentage of each to the total number of complaints handled in SFY 2018. The largest number of complaints handled during this reporting year concerned resident rights (43%) and the smallest number were complaints about administration (6%).



The table on the following page shows a detailed breakdown of complaints investigated by the ombudsman program by each major category.

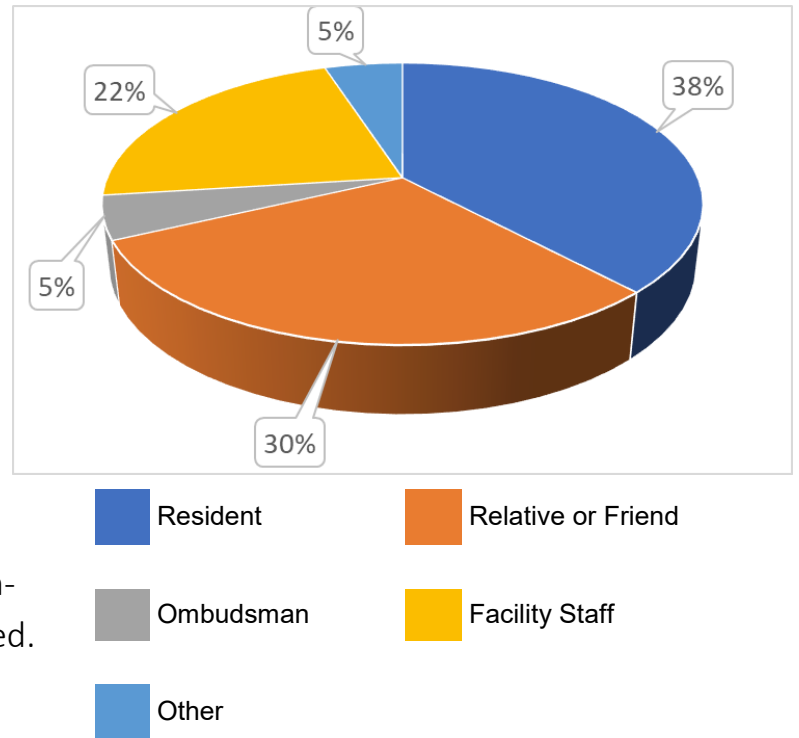
Numbers of Complaints Investigated by Category and Type of Complaint

Category and type of complaint	Number of complaints
Resident Rights: Abuse, neglect, exploitation	49
Resident Rights: Access to information	44
Resident Rights: Admission, transfer, discharge	172
Resident Rights: Autonomy, choice preference, privacy	228
Resident Rights: Financial, property	96
Total Resident Rights Complaints	589
Resident Care: Care	202
Resident Care: Rehabilitation, Maintenance of Function	50
Resident Care: Restraints	3
Total Resident Care Complaints	255
Quality of Life: Activities and Social Services	62
Quality of Life: Dietary	64
Quality of Life: Environment	76
Total Quality of Life Complaints	202
Administration: Policy, Procedures, Attitudes, Resources	8
Administration: Staffing	74
Total Administration Complaints	82
Not Against Facility: State Medicaid Agency	21
Not Against Facility: Systems/Others	235
Total Not Against Facility Complaints	256
Total Complaints all Categories	1384

Who are the complainants

Most complaints are made by residents themselves or their friends or relatives. However, many providers contact us because they recognize that residents need an independent advocate to make sure their concerns are heard and addressed. No matter who initiates the complaint, the program will respect the resident and the complainant’s confidentiality and will focus complaint resolution on the resident’s wishes.

The chart to the right shows who made the complaints across settings for cases that were opened.

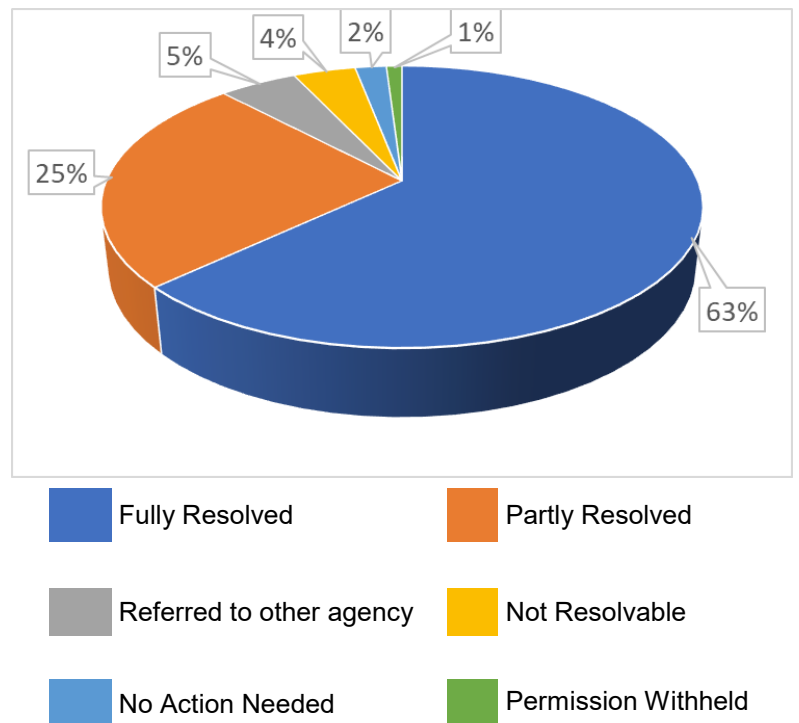


Complaint Resolution

A complaint is closed when there is no further action needed on the part of the ombudsman. Each complaint is then assigned a disposition. A complaint is “resolved” when the complaint/problem is addressed to the satisfaction of the resident or complainant if the resident is not able to make their wishes known.

In SFY 2018, the Long Term Care Ombudsman Program resolved 88 percent of complaints to the resident’s satisfaction. Not all complaints can be resolved to the satisfaction of a resident; for example, some complaints are referred to another agency for resolution and others do not require any action to be taken.

The chart to the right shows what types of disposition codes were assigned to closed cases during the year.



Complaint Investigation

Consultation

The Long-Term Care Ombudsman’s Office provides information to residents, facilities, and providers. Requests for information are most frequently related to resident rights; choosing a nursing home; interpreting regulations; the abuse, neglect or exploitation of a resident; and admission and discharge procedures. Consultation does not involve investigating or working to resolve a complaint.

In SFY 2018, representatives of the Office **consulted with 1,239 consumers and 1,057 facilities or providers** about long-term care issues.

Resident and Family Councils

The Long-Term Care Ombudsman’s Office assist resident and family councils by attending meetings upon request, and by providing assistance in the development and continuation of resident and family councils. Resident and family councils are meetings that give residents and their families opportunities to discuss issues, care needs, and frustrations as well as to receive support and encouragement.

In SFY 2018, representatives of the Office **worked with 128 resident councils and 8 family councils** across the state.

Community Outreach and Education

The Long-Term Care Ombudsman’s Office conducts community outreach throughout the state through presentations at local senior centers, church and civic groups, and involvement in various community events. Ombudsmen provided education at these events on the rights of residents, how to advocate on behalf of or empower residents, the services of the ombudsman program, resident care practices, and elder abuse.

In SFY 2018, representatives of the Office **provided 28 community education sessions and 6 media articles** about issues pertaining to long-term care across the state.

Survey Participation

The Long-Term Care Ombudsman’s Office participates in surveys conducted by the Department for Aging and Disability Services, which serves as the regulatory agency for long-term care facilities in Kansas to ensure their compliance with federal and state laws. The role of the Office is to provide comment; share concerns on behalf of residents, and family members; and to ensure the residents’ voices are heard. Participation by the Office may include pre-survey briefings and attending resident interviews or the exit interview.

In SFY 2018, representatives of the Office **participated in 67 facility surveys** across the state.

The Volunteer Program



Our agency relies on volunteers to help us with all our activities. Eighty-three volunteers actively served in the Long-Term Care Ombudsman program during SFY 2018; and contributed 4,932 hours to our program.

After they have completed training, each Certified Ombudsman is assigned to one facility near his or her home. We ask these volunteers visit the facility once a week to meet with residents. Every ombudsman encourages self-advocacy and interaction among residents, staff and community. The Certified Ombudsman works to ensure that the legal rights of the residents are being honored; and receives, investigates, and resolves concern made by or on behalf of residents.

In 2018,
Ombudsman
Volunteers provided
4,932 hours of
service worth over
\$152,000 to our
agency.

We provide new volunteers with 30 hours of classroom and on-site training regarding elder rights, the regulatory process, plans of care, advocacy, the aging process, communication, problem-solving and facility staff structure. Once a volunteer has successfully completed training, the newly certified Ombudsman volunteer and the regional staff match the Certified Ombudsman with a facility. Following placement, regional staff provide ongoing support and training.



The volunteers extend the reach of the program by being a regular presence in assigned facilities. Ombudsmen Volunteers build relationships and trust with the consumers. They identify issues and assist with problems. Ombudsmen Volunteers work closely with their Regional Ombudsmen and report what is happening in facilities on a monthly basis. They enhance the work of the Regional Ombudsmen — the work they do it vital to the program.

Issues Facing Residents

Despite the positive efforts and outcomes listed in this report, there are barriers that exist when attempting to protect the rights, health, safety and welfare of persons residing in long-term care. The following are some of the issues of particular concern.

Issue: Staffing shortages are diminishing the quality of long-term care services

Workforce shortages are a known issue across the state and are becoming increasingly intense. When there are insufficient staff numbers, or staff that do not know the people they serve due to turnover, quality of care and quality of life suffer for the long-term care consumer. Even the best caregivers cannot do their job without enough staff to care for residents. In the last year, our program has experienced a 70% increase in complaints directly related to staffing: staff shortages, staff unresponsive, symptoms unattended, and failure to respond to call lights.

An aging population coupled with a shrinking labor pool, low wages, insufficient staffing levels, inadequate training and limited on the job support results in providers who can neither recruit nor retain qualified nursing staff. Not only is turnover high, but it is increasingly difficult to fill vacant positions. Growing and stabilizing the workforce requires paying competitive wages, while also providing health coverage and consistent shifts with full-time hours. Additionally, to stem the cycle of turnover, workers need better training, support, and opportunities for professional growth.

Issue: Consumers being discharged involuntarily or not being permitted to return to their long-term care facility home following hospitalization

Complaints about involuntary discharge and eviction is the largest category of complaint received by the Kansas Long-term Care Ombudsman program. A large number of these complaints involve the provider refusing to readmit the resident following hospitalization or otherwise violating resident rights by refusing to provide notice and due process for the discharge or eviction. Residents of nursing homes and people living in assisted living settings cannot be discharged or evicted, without notice and applicable due process rights, but some providers ignore or do not understand these rights, resulting in refusal to allow people to return to their homes. While it is important that a provider be able and willing to meet a person's needs, involuntary discharge should be the last resort for providers who care for vulnerable adults. When such steps are necessary, providers should follow applicable laws and regulation and respect clients' due process rights. In many cases, this problem is a symptom of a larger and more complex problem: lack of staff, training, and capacity to care for people with complex behavior or mental health needs.

Issue: Misuse of Antipsychotic Medications

Instead of using person-centered strategies to address behaviors related to dementia, facility staff and families have often asked physicians to prescribe drugs to manage agitation and other behaviors. When prescribed for residents with dementia, antipsychotic drugs may have serious implications, including loss of independence, over-sedation, confusion, falls, or even death. Across the United States, organized efforts by residents, families, advocates, health care providers and others are targeting the alarmingly high rates of antipsychotic drugs prescribed for residents in SNFs, and are working to eliminate the problem. Facility staff and prescribers need education and training to become more aware of alternatives to antipsychotic medication. Residents and families also need to understand the dangers of these drugs and that there are alternatives available.

Since the national effort to reduce the use of these medications for residents with dementia began, there has been a 38.9% reduction in the national prevalence of antipsychotics in nursing home residents. Kansas has seen a 33.5% decrease. However other states have made much more improvement resulted in Kansas moving from 45th to 44th in terms of states with the highest usage of these potentially dangerous drugs.

The misuse of antipsychotic drugs is a complicated, many-pronged issue that will need to involve residents, family members, physicians, regulators, and facility staff. Approaches should include: establishing minimum care standards for dementia care units, mandating dementia training for all adult care staff, educating doctors and other prescribers as well as residents, requiring informed consent before antipsychotics can be given to a nursing home resident and promoting interventions know to be successful, such as the Music and Memory Program.

Issue: Large number of adult care homes were taken into receiverships by KDADS in the past year.

In the past year, Kansas has taken control of 22 facilities through receivership. The receiverships were necessary to protect the residents in these facilities. But they also created uncertainty and are upsetting to the residents, their families, the staff and the communities where they are located. There are numerous factors contributing to the unprecedented situation. One challenge has been the change in how Kansas processes Medicaid applications and the backlog that followed that change. It should also be noted, that most of the facilities taken into receivership in 2018 have been owned by out of state businesses with limited or poor track records in other states. Kansas should develop, implement, and enforce better policies and procedures for reviewing operating licenses to make sure existing operators with a history of providing poor care cannot expand their operations and that new operators are thoroughly vetted. Lastly, these problems didn't materialize overnight and may have been noted sooner if the required annual inspections had been occurring timely. According to the CMS QCOR website, the average interval between surveys in these facilities prior to the receiverships was 21.3 months, well past the required 12-month average.

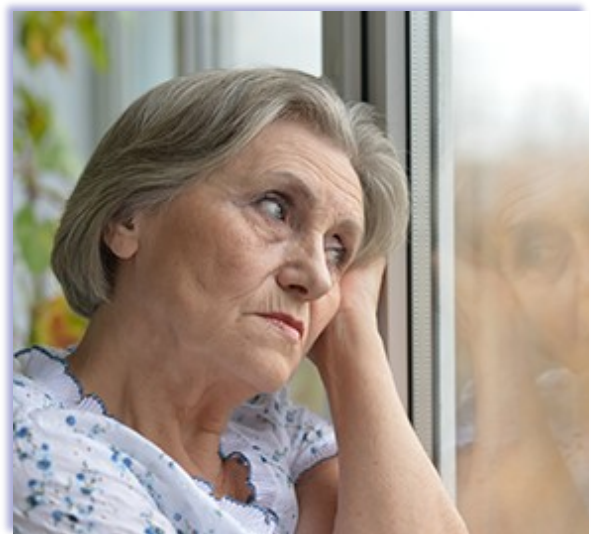
Issue: Consumer rights are sometimes restricted unnecessarily under a guardianships

Legal guardianship is one of the most intrusive acts a court may impose upon a person. While guardianship is sometimes necessary to protect a vulnerable adult, alternatives to guardianship should be explored and eliminated as viable options before the court grants a guardianship to allow for the maximum amount of self-determination possible. With such a major deprivation of fundamental liberties, it is important to have a rigorous process to evaluate whether a guardianship is needed, and how to limit its reach. Once a guardianship is created, it can be almost impossible to undo. Even though guardianship has serious, life-long consequences, it is often imposed as a matter of course.

Complaints related to guardianship and other substitute decision-making instruments fall into the 10th most common complaint category in Ombudsman data. Common complaints from people under guardianship include:

- The desire to live in their community of choice, rather than where the guardian has placed them,
- Restriction of visitors and friends by the guardian,
- Restriction on the ability to go places they want to go (guardian restricts the ability to leave the premises), and
- The guardian does not know the person, never visits, and makes choices without including the person in the process

Guardianship should be the last resort to protect someone's health and safety. People denied the ability to control their lives can experience significant harms. Research suggests those denied self-determination experience low self-esteem, passivity, and feelings of inadequacy. Persons under guardianship are at increased risk for institutionalization and mortality. Supported Decision-Making is an alternative model, where people with disabilities keep their rights and their decision-making capacity. Instead of having a guardian make choices for them, people with disabilities have supporters who help them make their own choices. A person using supported decision-making appoints trusted advisors, such as friends, family, or professionals, to serve as supporters. The supporters help the person with a disability understand, make, and communicate her own choices.



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