

ADVANCING STATES



Leadership, innovation, collaboration
for state Aging and Disability agencies

Navigating Effective Systems Advocacy for States and the State Long-Term Care Ombudsman

December 5, 2023

Agenda



Welcome and Introductions



Overview of Systems Advocacy



Challenges Overview



Panel Discussion



Q & A

Speakers

Edwin Walker, Deputy Assistant Secretary for Aging, U.S. Department of Health and Human Services

Carol Scott, Manager, LTC Ombudsman Program & Policy, National Ombudsman Resource Center

Amy Porter, Commissioner, Connecticut Department for Aging and Disability Services

Mairead Painter, Connecticut Long Term Care Ombudsman

Joel Schwartz, Ombudsman, Texas Department of Health and Human Services

Patty Ducayet, Texas Long Term Care Ombudsman

History and Unique Characteristics

- Created in response to quality problems in nursing homes
- Distinct from other programs administered by State agencies
- Statewide
- Full-time Ombudsman heads the Office of the State LTC Ombudsman
- Specific functions requiring independence and autonomy
- Duties require good working relationships among agencies
- 2015 regulation to create greater alignment and consistency across the country

Statutory Support for Systems Advocacy

Older Americans Act Section 712 – Functions of the Ombudsman

712(a)(3)(G)

- (i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;
- (ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and
- (iii) facilitate public comment on the laws, regulations, policies, and actions;

Statutory Support for Systems Advocacy (2)

712(a)(5)(B)(v) – Duties of designated representatives

- review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
- facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

Statutory Support for Systems Advocacy (3)

712(h) – The State agency shall require the Office to—

Prepare an **Annual Report**—

- (a) describing the activities carried out by the Office in the year for which the report is prepared;
- (b) containing and analyzing the data collected;
- (c) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;
- (d) containing recommendations for—
 - (i) improving quality of the care and life of the residents; and
 - (ii) protecting the health, safety, welfare, and rights of the residents;

Statutory Support for Systems Advocacy (4)

712(h) – The State agency shall require the Office to—

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions... and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns;

Regulatory Support for Systems Advocacy

- 45 CFR 1324.11(e)(5)
 - Requires policies and procedures developed by the State Ombudsman or by the agency housing the Office based on Ombudsman recommendations
 - Must assure that the Office is required and has sufficient authority to carry out responsibility to analyze, comment on, and monitor laws, regulations, and government policies and actions

Regulatory Support for Systems Advocacy (2)

- 45 CFR 1324.11(e)(5)
 - Exclude Ombudsman and representatives from State lobbying prohibitions
 - (ii) Nothing shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the determinations of the Office related to recommended changes in laws, regulations, and policies.
 - However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

Regulatory Support for Systems Advocacy (3)

45 CFR 1324.13(a)(7) – Functions and responsibilities

Additional responsibilities

- Provide leadership to statewide systems advocacy including coordination of efforts by representatives
- Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations
- Determinations and positions shall be those of the Office and shall not necessarily represent the determinations or position of the State agency or other agency

Regulatory Support for Systems Advocacy (4)

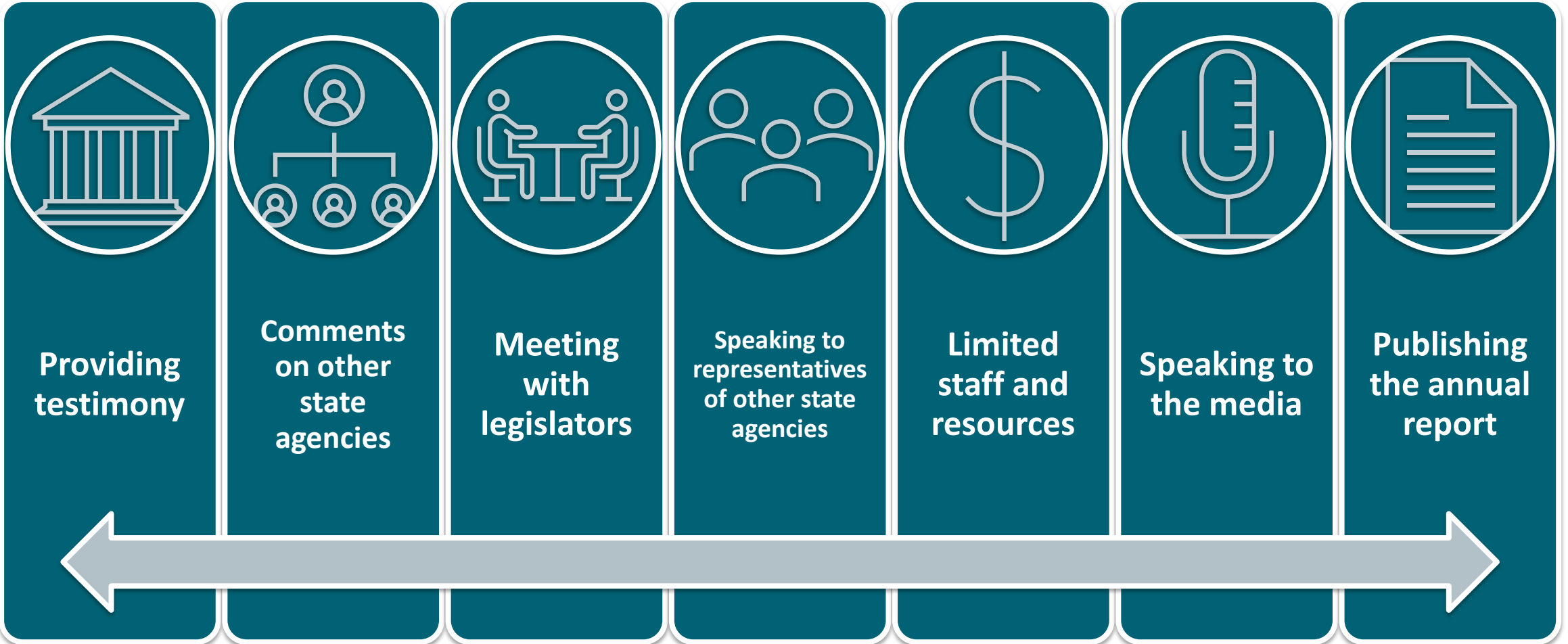
45 CFR 1324.13(g) – Annual report

- The Ombudsman shall independently develop and provide final approval of an annual report
- Contain policy, regulatory, and/or legislative recommendations for improving quality...
- Shall make report available to the public and submit it to ACL, governor, state legislature, survey agency, and others

Remedies

- Technical assistance
 - FAQ
 - ACL reviews
 - Ombudsman Resource Center/ADvancing States Primer
 - On-going discussions as needed
- Corrective action plans
- Final rule to be a catalyst for additional reviews and TA

Challenges



Panel Discussion

