



NJ Office of the Ombudsman for the Institutionalized Elderly

1-877-582-6995

Guidance. Support. Advocacy.

Chris Christie, Governor



Kim Guadagno, Lt. Governor

James W. McCracken, Ombudsman

www.state.nj.us/ooie

New Jersey's Office of the Ombudsman

**HCANJ “Triaging Professional Ethical Dilemmas”
October 2013**

James W. McCracken, M.H.A.

Ombudsman

New Jersey Ombudsman for the Institutionalized Elderly



Mission

The New Jersey Office of the Ombudsman for the Institutionalized Elderly is part of a national **resident-focused advocacy program** that seeks to protect the health, safety, welfare, and civil and human rights of individuals over 60 in institutions. Staff and volunteers work with individual residents to help them address challenges they face; in addition, OOIE seeks opportunities to bring about systems change on local, state, and federal levels.



Roles & Responsibilities of Ombudsman

Federal Law, Older Americans Act

- Investigate and resolve complaints made by or on behalf of residents of LTCF
- Provide services to help residents protect their health, safety, welfare, and rights and to inform residents of how to obtain such services
- Represent residents' interests before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- Conduct legislative and policy advocacy on federal, state, and local levels



Roles & Responsibilities of Ombudsman

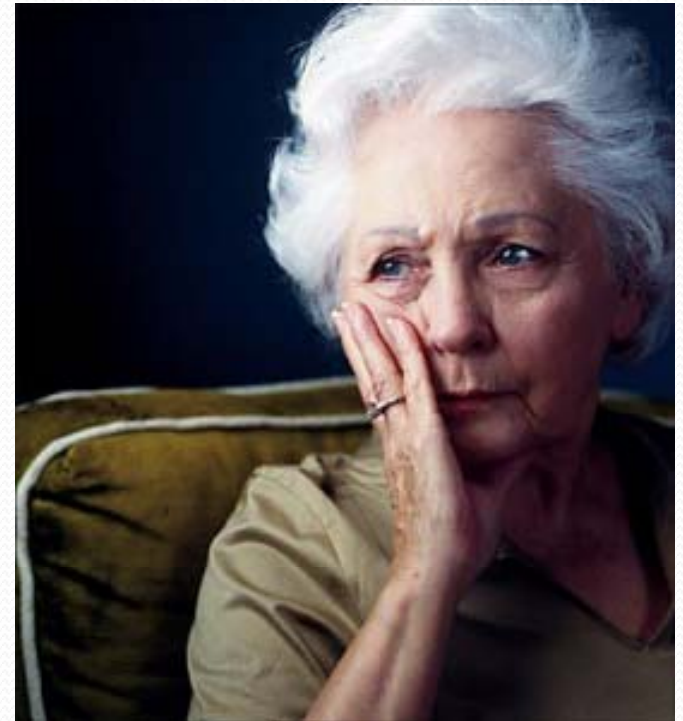
State Law

- Receive and investigate reports of abuse and exploitation of institutionalized elderly from “mandated reporters”
- Receive reports from residents and any other concerned people regarding the health, safety, welfare, and civil and human rights of residents
- Refer cases to appropriate regulatory and law enforcement agencies where OOIE findings require referral
- Review certain decisions regarding withholding or withdrawing life-sustaining medical treatment

Complaints

Most common complaints:

- Physical Abuse
- Verbal Abuse
- Financial Exploitation
- Care/Neglect
- Discharge Issues
- Resident Rights Violations



Reports Accepted

Any person may (but is not required by law) report to OOIE any concern regarding the health, safety, welfare, or rights of a resident.





Mandatory Reports: New Jersey Law

What Must Be Reported?

ABUSE

Willful infliction of physical pain, injury, or mental anguish;

Unreasonable confinement;

Willful deprivation of services necessary to maintain a person's physical and mental health

EXPLOITATION

Using a person or his resources for another person's profit or advantage

Without legal entitlement (permission) to do so



Mandatory Reports

Who Must Report?

Caretakers

Social Workers

Physicians

Registered or licensed practical nurses

or

Other Professionals

Who have a **reasonable suspicion** of abuse or exploitation
based on information obtained through employment.



What happens if you fail to report

- Referral to Nursing Home Licensing Board
- OOIE shall issue fines
- DOH can issue deficiency



When would we act on a failure to report?

- When we become aware from third parties other than the mandated reporter (resident, family member, staff, outside provider)
- When the abuse or exploitation is not disputed based on the information gathered during OOIE's investigation

OOIE exercises discretion in these situations and may opt for in-servicing of staff regarding mandatory reporting



Policies and procedures are important

- Written policies and procedures governing all types of ethical situations protect both the facility, staff and, most importantly, the resident.


Specific areas include:

- Gifting
- Technology/Electronic Monitoring



Gifting

- Everything from families distributing cookies during the holidays to administrators accepting gifts from residents.
- Written policies and procedures
- The unequal power dynamic between and administrator and a vulnerable elderly person in their care



CASE STUDY: (Disclaimer and Confidentiality)

- One: Administrative staffer and resident established a close relationship. No concerns regarding the resident's cognition. As a result of this relationship the two engage in private activities
- Clear ethical violation by the staffer
- Dilemma for OOIE because residents clearly articulated wishes and desires to establish and maintain a relationship with staffer



Technology

- Hot topic today is the use of “Nanny Cams” and other audio and video recording devices/cameras
- Staff utilizing smart phones to videotape residents

Challenges during advocacy for residents :

- Privacy
- Confidentiality
- Consent
- Safety



Technology

- Legislation in New Jersey would have required full disclosure of videotaping devices

Case Study: (Disclaimer and Confidentiality)

- Two: A family installs video recorder device in the resident's room. The activity captured on the video recording purports to show neglect of the resident



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