

New Jersey Office of the
Long-Term Care Ombudsman

Mandatory Reporting Presentation & Legislative Update

James W. McCracken, LTC Ombudsman

Pursuant to N.J.S.A 2A:18-61.7



Long-Term Care Ombudsman

1-877-582-6995

Guidance. Support. Advocacy.

Chris Christie, Governor



Kim Guadagno, Lt. Governor

James W. McCracken, Ombudsman

www.state.nj.us/ooie



Mission

The New Jersey Office of the Long-Term Care Ombudsman is part of a national **resident-focused advocacy program** that seeks to protect the health, safety, welfare, and civil and human rights of older individuals in long-term care communities. Staff and volunteers work with individual residents to help them address challenges they face; in addition, LTCO 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

Federal Law, Older Americans Act (cont.)

- Train and provide administrative and technical assistance to LTCO staff and volunteers
- Identify and work to resolve problems affecting large numbers of older people in LTCF or receiving LTC
- Promote the development of citizens' organizations to advocate for quality LTC services
- Compile and analyze data relating to complaints and conditions in LTCF and LTC services

Roles & Responsibilities of Ombudsman

State Law

- Receive and investigate reports and complaints of abuse and exploitation of long-term care residents 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 LTCO findings require referral
- Review certain decisions regarding withholding or withdrawing life-sustaining medical treatment

Confidentiality & Consent Requirements

One of the major foundations of the Ombudsman's resident-focused advocacy work is confidentiality. Federal and state laws provide strong protections for residents and complainants, and state law provides additional protections for witnesses.

Information about a resident cannot be disclosed unless:

- the individual /legal representative has consented; or
- a court orders disclosure.

Constituents

Individuals 60 years and older in long-term care and other certain community settings, including but not limited to:

- Nursing Homes
(including state veterans' homes)
- Intermediate Care Facilities
- Assisted Living
(including ALs, ALRs, ALPs, and CPCHs)
- Residential Health Care Facilities
- Class "C" and "D" Boarding Homes
- Psychiatric Hospitals
- Adult Medical and Social Day Care
- Independent Living section of Continuing Care Retirement Communities
- Special Hospitals
(including CRHs, LACHs, and CRU in general acute care hospitals)
- Adult Family Care Homes
- Developmental Centers



Mandatory Reporting

What Must Be Reported?

1. Abuse
2. Exploitation
3. Crime
4. Serious Bodily Injury



1. ABUSE

Willful infliction of physical pain, injury, or mental anguish (by staff or other residents);

Unreasonable confinement;

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

Abuse Examples



- Physical abuse (hitting, pushing, etc. by staff members, other resident, and family/friends)
- Verbal abuse – “you make my life hell,” “I can’t stand you!” “I hate you!”
- Neglect – failure to perform one’s duties according to an accepted professional standard.
- Confinement – locking resident in a closet/restricted area
- Sexual abuse – staff sexual assault against residents, resident on resident abuse, etc.



2. EXPLOITATION

The Act or practice of using a person or his/her resources for another person's profit or advantage without legal entitlement (permission) to do so

Financial exploitation

Examples



- Taken advantage of by family, friends, etc. (most common) For instance, son keeps resident's SSA check without her knowledge, PoA sells mother's home against her wishes and keeps part of the proceeds, niece liquidates aunt's bank account, etc.
- Scams and exploitation by unknown persons (less common, but on the rise, especially in the community – lottery scams, international bank scams, etc.)
- Unscrupulous/fraudulent business practices by long-term care facilities – having people sign over large parts of their income, give permission to empty accounts, get consent from individuals who lack capacity, etc.



3. CRIME

Crime is defined by the law of the applicable political subdivision where a LTC provider is located. LTC providers must coordinate with local law enforcement entities to determine what actions are considered a crime.

4. Serious Bodily Injury

An injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

For more information regarding New Jersey's laws on criminal offenses and serious bodily harm, please refer to NJ Rev Stat § Title 2C—The New Jersey Code of Criminal Justice.

Mandatory Reports

Who Must Report?

Caretakers, Social Workers, Physicians, Registered or Licensed practical nurses, other Professionals or staff members employed at a facility and any representative of a managed care entity.

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



Time Period for Individual Reporting

N.J.S.A. 52:27G-11 establishes two time limits for the reporting of reasonable suspicion of a crime. Depending on the seriousness of the event that leads to the reasonable suspicion.

Time Period for Individual Reporting

Abuse and Exploitation

Report to the LTCO within 24hours

Crime

Reported to local law enforcement and the LTCO

immediately but not later than 24 hours

Serious Bodily Injury

Reported to local law enforcement and the LTCO

immediately but not later than 2 hours

Failure to Notify the LTCO

Failure to report in accordance with the dictates of the *Mandatory Adult Abuse Reporting Act* can result in a fine from this Office in an amount up to \$500 per individual and up to \$2500 per facility (N.J.S.A. 52:27G-7.1(f)). Please note that these fines are assessed against the *individual professional* and the *facility employing the individual* who had the duty to report and failed to do so.

Other Reports Accepted

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



- The LTCO shall prepare and distribute to each facility written notices, in English and Spanish, which set forth the address and telephone number of the office, a brief explanation of the function of the office, the procedure to follow in filing a complaint and other pertinent information. The notice shall also indicate the option to call 9-1-1.
- The administrator of each facility shall ensure that such written notice is given to every patient, resident or client or the patient's, resident's, or client's guardian upon admission to the facility and to every person already in residence or the person's guardian. The administrator shall also post such written notice in a conspicuous, public place in the facility in the number and manner set forth in the guidelines adopted by the office.
- The facility shall inform patients, residents or clients, and their guardians, resident representatives, or families, of their rights and entitlements under State and federal laws and rules and regulations in a format and language that the recipient understands, by means of the distribution of educational materials.

LTCO has prepared posters in several languages and they are available on request.

Freedom from abuse, neglect and exploitation is not a privilege...



IT'S A RIGHT!

See It! Report It! Prevent It!



The New Jersey Office of the Long-Term Care Ombudsman (LTCO) investigates allegations of abuse, neglect, exploitation, crime and serious bodily injury in long-term care facilities and advocates for residents age 60 and over.

The LTCO is not a first response agency.

*In an Emergency, or if someone is in immediate danger,
Please DIAL 911!*

ANYONE can file a confidential complaint.
Call Toll Free: 1-877-582-6995
Email: ombudsman@ltco.nj.gov
Write: The NJ Office of the LTC Ombudsman
P.O. Box 852
Trenton, NJ 08625-0852
Fax: 609-943-3479
www.nj.gov/ltco

Liberarse de abuso, negligencia y explotación no es un privilegio...



¡ES UN DERECHO!


¡Míralo! ¡Denúncialo! ¡Prevénlo!



El Defensor del Pueblo (Ombudsman) investiga las denuncias de abuso, negligencia, explotación, crimen y heridas graves en establecimientos de atención a largo plazo y aboga por los residentes mayores de 60 años.

*El Defensor del Pueblo (Ombudsman) de Atención a Largo
Plazo no es una agencia de emergencia.
¡En caso de emergencia, o si alguien está en
peligro inmediato, llama al 911!*

CUALQUIER PERSONA puede presentar una queja.
Llama gratis al 1-877-582-6995
Correo electrónico: ombudsman@ltco.nj.gov
Escribe: The NJ Office of the LTC Ombudsman
P.O. Box 852
Trenton, NJ 08625-0852
Fax: 609-943-3479
www.nj.gov/ltco



The administrator of each facility shall annually provide all caretakers, social workers, physicians, registered or licensed practical nurses, and other professionals, and other staff members employed at the facility with a notice explaining the requirements of section 2 of P.L.1983, c.43 (C.52:27G-7.1) concerning the reporting of suspected abuse or exploitation of a long-term care resident, and require, as a condition of employment at the facility, that the professional employee acknowledge in writing receipt of the notice. The signed acknowledgement shall be retained in the employee's personnel file.



MANDATORY REPORTING

Reports may be made to the LTCO via
 Phone: 1-877-582-6995
 Email: ombudsman@ltco.nj.gov
 Fax: 609-943-3479

*If a licensed LTC facility is reporting, please use the
 "Reportable Event Record/ Report" located on our website.
 Please include a face sheet for the resident.*

*Facilities continue to be required to notify DOH of mandatory reportable events.
 In certain circumstances local law enforcement must be also contacted.*

Under New Jersey law, certain individuals are legally mandated to report known or suspected instances of abuse, exploitation, crime and serious bodily injury of residents age 60 or older, living in long-term care communities. Any caretaker, social worker, physician, registered or licensed practical nurse, managed care representative, staff or other professional, who, as a result of information obtained in the course of his/her employment, has reasonable cause to suspect or believe that an institutionalized elderly person is being or has been abused or exploited, shall report such information.

Please note: The Office of the State Long Term Care Ombudsman is not a First Responder.

Mandatory Reports*

Abuse Reported to the LTCO within 24 hours	willful infliction of pain, injury, mental anguish (by staff or other residents); unreasonable confinement; or willful deprivation of services
Exploitation Reported to the LTCO within 24 hours	residents' resources used for another person's profit or advantage
Crime Reported to local law enforcement and the LTCO Immediately but not later than 24 hours	defined by the law of the applicable political subdivision where a LTC facility is located. LTC facilities must coordinate with local law enforcement entities to determine what actions are considered a crime.**
Serious Bodily Injury Reported to local law enforcement and the LTCO Immediately but not later than 2 hours	an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation**

*Failure to report in accordance with the dictates of the *Mandatory Adult Abuse Reporting Act* can result in a fine from this Office in an amount up to \$500 per individual and up to \$2500 per facility (N.J.S.A. 52:27G-7.1(f)). Please note that these fines are assessed against the *individual professional* and the *facility employing the individual* who had the duty to report and failed to do so.

** For more information regarding New Jersey's laws on criminal offenses and serious bodily harm, please refer to: NJ Rev Stat § Title 2C—The New Jersey Code of Criminal Justice.

Transfer/Discharge

Copies of all facility-initiated (non-resident driven) discharge notices shall be provided to the LTCO.

Other Reports Accepted

Any person may report to the LTCO any concern regarding health, safety, welfare, or rights of a resident.

Pursuant to N.J.S.A 52:27G-1 et seq; N.J.A.C 17:41-1 et seq; 42 U.S.C. 1301 section 1150B; and 42 CFR Part 483.15
 (Please note, there may be additional mandatory report requirements or fines under other state and federal laws.)

NJ Office of the Long-Term Care Ombudsman | P.O. Box 852, Trenton, NJ 08625-0852



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Long-Term Care Ombudsman Advocacy and Investigation

Welcome to the New Jersey Long-Term Care Ombudsman Website





CERTAIN END OF LIFE CIRCUMSTANCES

End of Life – Notification Requirement

Duty to Report

Who Shall Report?

- Any person who believes that withholding or withdrawing life-sustaining medical treatment (LSMT) from an elderly, incapacitated resident would effectuate the resident's wishes or would be in resident's best interest shall notify the LTCO;
- Any caregiver, SW, MD, RN/LPN or other healthcare professional who has reasonable cause to suspect that withholding or withdrawing LSMT would be abuse of the elderly, incapacitated, long-term care resident shall notify the LTCO.

Other Reports Accepted

Any person may (but is not required by law) notify LTCO if he/she has reasonable cause to suspect that such proposed action would be an abuse of the resident.

End of Life

- No duty to report to LTCO if:
 - Resident is under 60 years of age;
 - Resident is fully informed, has capacity and chooses to withhold/withdraw life sustaining medical treatment (LSMT);
 - Resident has fully executed a valid Advanced Directive/POLST;
 - Proposed treatment is not medically indicated;
 - Proposal to withhold/withdraw LSMT is being reviewed by or has been reviewed by a court;
 - Ethical case consultation convened with REC, “acting under the auspices of and with the approval of the Ombudsman.”

End of Life

What Will Happen When You Notify LTCO?

1. Information will be obtained about the resident and any ethical dilemmas/issues related to the case;
2. Next step:
 - Referred to the REC in the geographic area in which the facility is located; or
 - Entered into the LTCO database and assigned to a representative of the office if abuse or exploitation are alleged.

End of Life

Case Consultation Process

1. In the event that a dilemma occurs, a case consultation will likely be convened to address the impasse.
 - LTC REC will provide caller with a consultation request form to complete and return to the LTC REC prior to consultation.
 - Case consultation will be scheduled.
2. Process
 - A meeting is convened at the facility,
 - Team members meet with resident and with all interested parties,
 - The LTCO approved methodology is used during this conference.
3. Outcome
 - The LTC REC case consultation team makes a non-binding recommendation regarding the dilemma and reports it to the interested parties.
 - The consult team completes a consultation summary form that is provided to the facility for the resident's medical record.
 - LTC REC provides a copy of the summary form to the LTCO for its records.

Office of the Long-Term Care Ombudsman

James W. McCracken, M.H.A., State LTC Ombudsman

28 West State Street

Post Office Box 852

Trenton, NJ 08625-0852

Email: ombudsman@ltco.nj.gov

Toll Free: 1-877-582-6995

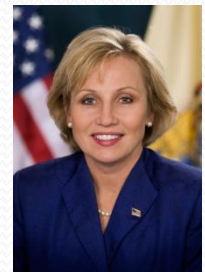
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