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Ombuds Programs: How Alternative Dispute Resolution Improves the Lives of Native Long-Term Care Residents

Brett Newberry*

I. INTRODUCTION

Many Americans will spend at least some time in a long-term care facility.¹ During their stay, every resident should receive competent care and maintain the highest possible quality of life. Long-term care ombuds programs exist to help achieve these goals. Long-term care ombuds (“LTCOs”) advocate for individuals living in long-term care facilities and for improvements to the long-term care system.² Tribal long-term care ombuds are a subset of LTCOs who connect with and advocate for Native residents living in long-term care facilities.³ LTCOs help facilitate dispute resolution between residents, facilities, and family members, and work to improve resident care. The success of LTCO programs exemplifies how alternative dispute resolution can and should be utilized in the long-term care setting to promote resident health, ensure culturally competent care, and improve resident quality of life.

This Note will examine the Long-Term Care Ombudsman Program administered by the Administration for Community Living, discuss the role of tribal ombuds within the program, survey the benefits that inure to Native long-term care residents as a result of tribal ombud services, and analyze challenges and recommendations for the development of future tribal ombuds programs.⁴

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1. See *Talk with a New York Life Agent: AARP Long-Term Care Options from New York Life*, AARP, <https://www.nylaarp.com/LongTermCare?tnp> (last visited Feb. 27, 2024).

2. *The Long-Term Care Ombudsman Program*, THE NAT’L LONG-TERM CARE OMBUDSMAN RES. CTR. [hereinafter “*The Long-Term Care Ombudsman Program*”], <https://ltcombudsman.org/uploads/files/library/program-promo.pdf> (last visited Feb. 27, 2024).

3. Tiffany Yazzie, *Long Term Care Ombudsman Program for Tribal Residents*, 38 IHS PRIMARY CARE PROVIDER 91, 94 (2013), https://www.ihs.gov/sites/provider/themes/responsive2017/display_objects/documents/2010_2019/PROV0513.pdf.

4. *Administration on Aging*, ADMIN. FOR CMTY. LIVING, <https://acl.gov/about-acl/administration-aging> (Sept. 3, 2023).

II. LONG-TERM CARE OMBUDS PROGRAMS

A. Ombuds Programs - Generally

The term “ombudsman” is a Scandinavian word meaning “representative” or “proxy,”⁵ and is defined by Merriam-Webster as “a person who investigates, reports on, and helps settle complaints.”⁶ In keeping with the terminology utilized by the International Ombuds Association, this Note will utilize the term “ombud” when referring to general ombuds programs and individuals who work in this profession.⁷ Ombuds are individuals trained to resolve problems,⁸ and utilize techniques such as counseling and mediation to help parties resolve conflict.⁹ There are several types of ombuds, including organizational, classical, and advocate ombuds.¹⁰ Ombud type may be determined by a combination of factors, including role, authority, source of authority, type of organization the ombud operates in, and other factors.¹¹ LTCOs are often advocate ombuds.¹²

It is important to note that ombuds are not mediators.¹³ An ombud’s role is to help resolve conflict, whereas mediation is a specific alternative dispute resolution process.¹⁴ Although ombuds may have training in mediation and utilize mediation techniques in their work, the two are not the same.¹⁵ Similarly, ombuds are not arbitrators who impose their decisions on the parties; rather, they help parties work through conflict and accept proposed solutions.¹⁶ Notably, utilization of an ombud in a dispute does not affect either party’s respective ability to pursue a remedy in an alternate forum.¹⁷

5. *Frequently Asked Questions About Ombuds*, INT’L OMBUDS ASS’N, <https://www.ombudsassociation.org/ombuds-faq#> (last visited Feb. 27, 2024).

6. *Ombudsman*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ombudsman> (last visited Mar. 28, 2024).

7. INTERNATIONAL OMBUDS ASSOCIATION, *supra* note 5 (“The word ‘ombudsman’ is Scandinavian and means ‘representative’ or ‘proxy.’ The alternative term ‘Ombuds’ is used by the International Ombuds Association (IOA) to communicate to the widest possible community. Variations of the term exist (e.g., ombud, ombudsperson) and are commonly used.”).

8. *About the Ombudsman Program*, THE NAT’L LONG-TERM CARE OMBUDSMAN RES. CTR. [hereinafter “*About the Ombudsman Program*”], <https://ltcombudsman.org/about/about-ombudsman> (last visited Feb. 27, 2024).

9. *Ombuds*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/federal-sector/ombuds#> (last visited Feb. 27, 2024).

10. INTERNATIONAL OMBUDS ASSOCIATION, *supra* note 5.

11. *See id.*

12. *See id.* (“An advocate ombuds may be located in either the public or private sector. They evaluate claims objectively but are authorized or required to advocate on behalf of individuals or groups found to be aggrieved. Advocate ombuds are often found in organizations such as long-term care facilities or agencies, and organizations that work with juvenile offenders.”).

13. *See id.*

14. *Id.*

15. *Id.*

16. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *supra* note 9.

17. *Id.*

B. Long-Term Care Ombuds Programs

As one LTCO put it, “We are there for the resident and only the resident.”¹⁸ “Resident” in this context refers to an individual living in a long-term care facility. The Older Americans Act defines “long-term care facility” as “any skilled nursing facility. . . ; any nursing facility. . . ; a board and care facility; and any other adult care home, including an assisted living facility, similar to a facility or institution described [above].”¹⁹ LTCOs provide information about long-term care and advocate for long-term care facility residents.²⁰ LTCOs help to resolve complaints made by or on behalf of residents, teach facility staff about ways to improve resident care and respect resident rights, and promote the formation of family and resident councils.²¹ LTCOs help ensure long-term care residents and their families are aware of and understand the rights afforded to residents, and, if requested, support residents when they wish to exercise their rights.²² LTCOs also work to affect systemic change at all levels of the long-term care system in order to improve quality of life and quality of care for all residents.²³

The Older Americans Act authorizes each state to operate a Long-Term Care Ombudsman program.²⁴ The program is administered at the federal level by the Administration for Community Living.²⁵ Today, the District of Columbia, Puerto Rico, Guam, and all fifty states have their own Office of the State Long-Term Care Ombudsman,²⁶ most of which are contained in their state’s Unit on Aging.²⁷ Each office is headed by a State Long-Term Care Ombudsman who is responsible for administering the program statewide.²⁸ More than half of the funding for the LTCO program is provided by the federal government via the Older Americans Act, with the remaining funding supplied mostly by states and rounded out by other non-federal entities.²⁹

Ombuds in the LTCO program “investigate[] and resolve[] complaints that ‘relate to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of the residents,’ including ‘complaints about abuse, neglect, and exploitation.’”³⁰ Ombuds investigate and handle complaints not just about the facilities in which residents live, but also about external agencies and individuals.³¹ The LTCO program mandates that ombuds support and aid long-term care residents *at*

18. Ronda Giger & Rebecca Baker, Class Presentation at the University of Missouri School of Law (Nov. 8, 2023).

19. 42 U.S.C.A. § 3002(35) (West).

20. *About the Ombudsman Program*, *supra* note 8.

21. *Id.*

22. *Long-Term Care Ombudsman Program Fact Sheet What You Must Know*, THE NAT’L LONG-TERM CARE OMBUDSMAN RES. CTR. [hereinafter “*Long-Term Care Ombudsman Fact Sheet*”], <https://ltcombudsman.org/uploads/files/library/long-term-care-ombudsman-program-what-you-must-know.pdf> (last visited Feb. 27, 2024).

23. *The Long-Term Care Ombudsman Program*, *supra* note 2.

24. *Long-Term Care Ombudsman Program*, ADMIN. FOR CMTY. LIVING [hereinafter “*Long-Term Care Ombudsman Program*”], <https://acl.gov/programs/Protecting-Rights-and-Preventing-Abuse/Long-term-Care-Ombudsman-Program#:~:> (July 5, 2023).

25. *About the Ombudsman Program*, *supra* note 8.

26. *Long-Term Care Ombudsman Program*, *supra* note 24.

27. *About the Ombudsman Program*, *supra* note 8.

28. *Long-Term Care Ombudsman Program*, *supra* note 24.

29. Yazzie, *supra* note 3.

30. *Long-Term Care Ombudsman Fact Sheet*, *supra* note 22.

31. *Id.*

*the resident's direction.*³² Accordingly, resident consent is necessary before an ombud is able to investigate or refer complaints made by or on behalf of a resident.³³ This is one way in which the LTCO program's role differs from that of state agencies such as Adult Protective Services, as its ombuds are not mandated reporters of suspected or alleged abuse.³⁴ The law strictly guards the disclosure of information obtained via the LTCO program, and under most circumstances requires any disclosure of personally-identifying information to either be approved by the resident or their representative, or authorized by a court order.³⁵ This distinction and limitation in the role of ombuds in the LTCO program is in service of the program's goal of resolving problems "to the resident's satisfaction."³⁶

III. TRIBAL LONG-TERM CARE OMBUDS PROGRAMS

A. *The Purpose and Role of Tribal Ombuds*

Thirty-five states have at least one federally recognized Native nation³⁷ with which they share geography.³⁸ However, only a small number of long-term care facilities exist on the land of Native nations.³⁹ As a result, long-term care facilities located off-nation are frequently utilized to meet the health care needs of Native individuals.⁴⁰ The move to an off-nation facility is not always an easy one, however, and Native residents may experience loneliness and depression as a result of being distanced from their homes, families, and communities.⁴¹ In such situations, LTCOs are well-positioned to help.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Long-Term Care Ombudsman Fact Sheet*, *supra* note 22.

37. *Tribal Elders and Ombudsman Services*, THE NAT'L LONG-TERM CARE OMBUDSMAN RES. CTR. [hereinafter "*Tribal Elders and Ombudsman Services*"], <https://ltcombudsman.org/issues/tribal-elders-and-ombudsman-services> (last visited Feb. 28, 2024) ("Thirty-five states have federally recognized tribes living within their borders.").

38. In keeping with recommendations from the Native Governance Center, this Note will utilize the phrase "share geography with" to refer to the location of Native nations in relation to a state or to the United States. *How to Talk About Native Nations: A Guide*, NATIVE GOVERNANCE CTR. (May 27, 2021), <https://nativegov.org/news/how-to-talk-about-native-nations-a-guide/> ("Avoid possessive language when talking about geography. For example, don't say 'Minnesota's 11 Native nations.' The nations are separate from Minnesota (because they are independent nations), so this is confusing. At Native Governance Center, we say, 'the eleven Native nations that share geography with Minnesota.'").

39. *Tribal Elders and Ombudsman Services*, *supra* note 37. In keeping with recommendations from the Native Governance Center, this Note will utilize the terms "Native nation" and "member of a Native nation" as often as possible. NATIVE GOVERNANCE CENTER, *supra* note 38 ("Use Nation instead of tribe. Native nations are independent nations within a nation. The term nation shows respect for sovereignty and the fact that Native nations each have their own systems of government . . . We don't recommend using Tribe or Tribes to talk about Native nations. Some phrases and even names of Native nations contain the word Tribe or a derivative (Tribal colleges, for example). It's ok to use Tribe in these cases."). However, many program titles and much of the literature discussing long-term care ombuds programs utilize the term "tribal ombud." For clarity and consistency with source authority, this Note will utilize that term when using formal program titles, when referencing members of a Native nation who serve as ombuds for Native long-term care residents, and when discussing long-term care ombuds programs designed to serve Native long-term care residents by training Native individuals to serve as ombuds.

40. Yazzie, *supra* note 3, at 93.

41. *Id.* at 92.

LTCOs are tasked with serving everyone who receives long-term care, which includes members of Native nations.⁴² It is important that all LTCOs are prepared and able to serve a diverse resident population effectively.⁴³ However, “most ombudsmen are non-tribal personnel or volunteers unfamiliar of the culture and language spoken by most tribal elders,”⁴⁴ which can compromise care for Native residents. Tribal long-term care ombuds fill this gap, utilizing their knowledge and lived experiences to serve Native residents more effectively.⁴⁵ The roles tribal ombuds take on include the typical duties of an LTCO: making facility visits, advocating for residents, mediating disputes, and referring resident complaints to external agencies.⁴⁶ However, tribal LTCOs are also uniquely able to provide additional services.⁴⁷ Tribal LTCOs can help Native residents maintain a cultural connection to their home community and assist with language translation.⁴⁸ Tribal LTCOs are also a valuable educational resource for facility staff and other non-tribal LTCOs on culturally competent care practices.⁴⁹

The United States currently has only one tribal ombuds program.⁵⁰ In Arizona, Inter Tribal Council of Arizona (“ITCA”), a designated Area Agency on Aging, administers the Tribal Ombudsman Program.⁵¹ ITCA “works with the tribes to recruit, screen, select, and train tribal workers or volunteers from the community.”⁵² As required by the Older Americans Act, those individuals are then designated as representatives of the State Long-Term Care Ombudsman.⁵³ Typically, “tribal ombuds are members of their respective tribal communities and speak their native languages.”⁵⁴ Because of their similar lived experiences to the residents they serve, these ombuds can help provide for the specific cultural needs of Native residents.⁵⁵ Their unique ability to connect to residents allows tribal ombuds to “identify and resolve commonly overlooked concerns of residents through education, mediation, and interpretation.”⁵⁶

In a case study that surveyed ITCA’s Tribal Ombudsman Program, interviewees reported that, although helpful, “it was less important for the Tribal Ombudsman

42. *Long-Term Care Ombudsman Services to Tribal Elders*, THE NAT’L LONG-TERM CARE OMBUDSMAN RES. CTR. [hereinafter “*Long-Term Care Ombudsman Services to Tribal Elders*”], [https://ltcombudsman.org/uploads/files/issues/LTCO_Services_toTribal_EldersTA_Brief-FINAL_\(1\).pdf#](https://ltcombudsman.org/uploads/files/issues/LTCO_Services_toTribal_EldersTA_Brief-FINAL_(1).pdf#) (last visited Feb. 27, 2024).

43. *Id.*

44. Yazzie, *supra* note 3, at 92.

45. See generally THE LEWIN GROUP, TRIBAL OMBUDSMAN PROGRAM IN ARIZONA: A CASE STUDY (2020), https://acl.gov/sites/default/files/programs/2020-11/ACL_OPE_Tribal_Ombudsman_Report_Final_2_508a.pdf.

46. Yazzie, *supra* note 3, at 91.

47. See Louise Ryan, Ombudsman Program Specialist, Office of LTCO Programs, The Long-Term Care Ombudsman Program: Opportunities for Services for American Indians Tribal LTSS Webinar (Feb. 27, 2013).

48. *Id.*

49. *Id.*

50. Isabella Neal, *Arizona Leads the Way for Tribal Ombudsmen*, ARIZ. DEP’T ECON. SEC. (Oct. 17, 2019), <https://des.az.gov/es/node/9546>.

51. *Id.*

52. Yazzie, *supra* note 3, at 92.

53. *Id.* at 94.

54. *Id.* at 92.

55. *Id.*

56. *Id.*

to be from the exact same tribe as the resident than to have the general understanding and respect for cultural preferences a member of any tribe can have.”⁵⁷ This exemplifies the distinct impact that contact with any tribal LTCO can have on residents, even if resource, structural, or geographical limitations prevent the resident from connecting with an ombud from their own Native nation. ITCA has trained ombuds from four of its twenty-one member tribes: Tohono O’odham Nation, Gila River Indian Community, Pascua Yaqui Tribe, and White Mountain Apache Tribe.⁵⁸ Along with Spanish, the four Tribal languages spoken by ombuds within the program are Tohono O’odham, Pascua Yaqui, White Mountain Apache, and Hopi.⁵⁹ However, ITCA also provides tribal LTCO services to its remaining member tribes and “to any tribal member in Arizona, regardless of tribe or long-term care facility of residence.”⁶⁰ If the necessary language is not spoken, an ombud will assist in finding someone to provide language services.⁶¹ Recognizing the value tribal LTCOs provide, the Administration for Community Living encourages members of Native nations to take part in the Long-Term Care Ombudsman program.⁶²

B. Funding and Administration of Tribal Ombuds Programs

Funds from Title VI of the Older Americans Act, “provide[] grants to tribes for nutrition and health promotion services, home and community-based services, and family caregiver services.”⁶³ Native nations can utilize federal funds from Title VI to provide tribal ombuds services, as long as the ombuds services provided are “substantially in compliance” with Title III of the Act.⁶⁴ Approximately thirty-six percent of funding for the State Long-Term Care Ombudsman program comes from the states themselves, but whether these funds are available to Native nations may depend on their relationship to the state they share geography with.⁶⁵ Notably, all Medicaid or Medicare-certified nursing facilities are required to supply and allow residents access to a long-term care ombud,⁶⁶ including facilities located on the land of Native nations.⁶⁷

57. THE LEWIN GROUP, *supra* note 45, at 7.

58. Neal, *supra* note 50.

59. *Tribal Ombudsman Program*, INTER TRIBAL COUNCIL ARIZ., <https://itcaonline.com/programs/aging/elder-rights/> (last visited Mar. 2, 2024).

60. THE LEWIN GROUP, *supra* note 45, at 3.

61. INTER TRIBAL COUNCIL OF ARIZONA, *supra* note 59.

62. See Yazzie, *supra* note 3, at 94–95.

63. THE LEWIN GROUP, *supra* note 45, at 2.

64. Ryan, *supra* note 47, at 13.

65. *Id.*

66. Yazzie, *supra* note 3, at 95 (“When a nursing facility is certified to receive Medicaid and/or Medicare funding, it is required by federal law to provide residents with access to a long-term care ombudsman. At least one tribal facility has been cited by the federal government for failure to provide residents with access to a long-term care ombudsman.”).

67. *Id.*

IV. ANALYSIS

A. Impact of the Long-Term Care Ombudsman and Tribal Ombudsman Programs

According to recent metrics, the Long-Term Care Ombudsman program is effective and successful. In 2021, long-term care ombuds “provided information and assistance to 377,662 individuals . . . , provided 1,434 training sessions for long-term care facility staff . . . , attended 1,132 family council meetings,” and visited 35,202 long-term care facilities at least once.⁶⁸ Of all complaints made to the program, seventy-one percent were “resolved or partially resolved . . . to the satisfaction of the resident or complainant.”⁶⁹ ITCA’s Tribal Ombudsman Program has been similarly successful. A publication by the Indian Health Service declared “[t]raining and certifying tribal community members to become ombudsmen was a successful approach to meeting tribal residents’ culturally specific and sensitive concerns that facilities or non-tribal staff may overlook or misinterpret.”⁷⁰ Research demonstrates there are several specific areas in which the impact of a tribal LTCO program is particularly apparent. The remainder of the Analysis section will discuss the positive impact of tribal LTCOs on culturally competent care and resident quality of life, and end with an examination of potential obstacles in the development of additional tribal LTCO programs.

B. Impact of Tribal Ombuds on Culturally Competent Care

Culturally competent care is one area in which the positive impact of a tribal LTCO program has been demonstrated. An Indian Health Service publication found that “[w]here culturally competent tribal ombudsmen exist, they provide a valuable service to tribal residents of long-term care facilities.”⁷¹ The similar backgrounds of Native residents and tribal ombuds can increase relatability and lead to more transparency from residents.⁷² This allows tribal ombuds to gain better insight into concerns of Native residents and then act to help resolve those concerns through standard ombud functions like education, advocacy, and mediation.⁷³ Interviews with ITCA ombuds reveal that many complaints made by Native residents are the result of “cultural misunderstandings” which are remediable through inclusive and culturally appropriate solutions.⁷⁴

Discussion with the Program Director of the Mid-Missouri Ombudsman Program highlighted that much of the time, long-term care residents who are viewed by facility staff as behaviorally difficult often have problems, concerns, or requests that facility staff are missing or misunderstanding.⁷⁵ One example given was of a long-term care resident who communicated only in sign language.⁷⁶ As a presumed

68. *The Long-Term Care Ombudsman Program*, *supra* note 2.

69. *Id.*

70. Yazzie, *supra* note 3, at 93.

71. *Id.* at 95.

72. *See id.* at 92.

73. *Id.*

74. THE LEWIN GROUP, *supra* note 45, at 7.

75. Giger & Baker, *supra* note 18.

76. *Id.*

solution to the communication barrier, the resident's nurses would write questions on a whiteboard in order to communicate with him.⁷⁷ However, the resident often responded in anger.⁷⁸ Once the LTCO became involved, she learned that the resident could only read certain words in English, and so could not respond to much of what the nurses wrote on the whiteboard.⁷⁹ Thus, his anger was not a "behavioral problem," as staff perceived, but rather expressions of frustration at his inability to effectively communicate with those caring for him.⁸⁰ The Indian Health Service Primary Care Provider journal specifically acknowledged that this lack of understanding between staff and Native residents can occur in the context of cultural practices, noting that resident concerns relating to familiarities of home "can be overlooked or misinterpreted as behavioral problems by facility staff, and cause further discomfort for residents."⁸¹

Concerns frequently voiced by Native residents living in long-term care facilities include culture, community, food, and drinks.⁸² Given the number and diversity of Native nations,⁸³ there exists a wide range of cultural and religious practices with which facility staff may be unfamiliar.⁸⁴ One situation in which a tribal ombud may be helpful is when routine cleaning by facility staff interferes with a resident's sacred items.⁸⁵ The ombud "will often mediate the situation with facility staff and explain why residents find this act offensive and disrespectful."⁸⁶ A second situation in which tribal ombuds have been able to assist is when cultural differences lead to misunderstandings regarding what areas of the body are private or intimate, and facility staff touch a resident in such an area as part of a routine task.⁸⁷ This touching can lead to discomfort for the resident, and in some cases can result in facility staff believing a resident is making advances toward them when the resident is actually responding to perceived advances by the staff member.⁸⁸ Tribal ombuds can help mediate and resolve these concerns and others like them.⁸⁹

In addition to mediating in instances of cultural difference, there are a variety of examples in which an ITCA tribal ombud was able to advocate for individual modifications for a resident that resulted in more culturally competent care. One instance was when an ombud successfully aided a Native resident in satisfying their wish to move "back to tribal lands" for the end of their life, even though it meant less access to care than the resident had been receiving in the long-term care facility.⁹⁰ A second instance was recounted by an ITCA employee:

A resident in a long-term care facility was very upset that staff were requiring her to sleep in her bed. She often wanted to be on the floor of the room, rather than in her bed. The resident had been a basket weaver and had worked sitting

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Yazzie, *supra* note 3, at 92.

82. *Id.*

83. NATIVE GOVERNANCE CENTER, *supra* note 38 ("574 federally-recognized Native nations with unique histories, cultures, and languages share geography with the United States.").

84. Yazzie, *supra* note 3, at 92.

85. *Id.*

86. *Id.*

87. *See id.* at 92–93.

88. *Id.* at 93.

89. *Id.* at 92.

90. Yazzie, *supra* note 3, at 95.

on the floor and, as a result, felt most comfortable being on the floor . . . After the intervention by the Tribal Ombudsman, the long-term care facility made an accommodation for this elder to sleep on the floor of her room with appropriate pillows and blankets.⁹¹

Though all LTCOs can advocate for modifications to a resident's care, tribal ombuds may be most able to recognize when an individual modification based on cultural preferences would be beneficial.

Community is another an aspect of culturally-competent care,⁹² and is important to many Native residents.⁹³ Long-term care facility residents have a right to "participate in social and community activities of their choice."⁹⁴ However, facility staff may not know how to find information about events happening in a Native resident's home community.⁹⁵ Tribal ombuds can help gather this information and provide it to residents who otherwise might be unable to enjoy their right to participate in community activities.⁹⁶ Food and drink can be similarly important to Native residents, many of whom desire access to traditional foods or socially significant drinks while in long-term care.⁹⁷ LTCOs often report that residents express concerns over lack of these items, indicating another area in which tribal ombuds may be able to assist.⁹⁸

C. Impact of Tribal Ombuds on Resident Quality of Life

Quality of life is a second area in which the positive impact of a tribal LTCO program has been demonstrated. The Executive Director of ITCA concluded that "[s]peaking to our elders in tribal languages that represent their communities . . . has led to improved outcomes and an enhanced quality of life for thousands of tribal elders in Arizona."⁹⁹ Native residents, particularly those who are elderly, may not speak or understand English.¹⁰⁰ When language barriers exist between Native residents and staff, it can impede the provision of individually appropriate care.¹⁰¹ It may also mean the rights of Native residents are not preserved, as "access to effective and on-going communication, in a language a resident understands, is a resident right."¹⁰² Finally, Native residents may consider language to be an important personal link to their home and loved ones and a component of their overall health.¹⁰³

91. THE LEWIN GROUP, *supra* note 45, at 7.

92. See Yazzie, *supra* note 3, at 92 ("The facilities may provide appropriate care to the tribal elders but the experience of feeling disconnected from the familiar – food, language, spiritual ceremonies, and community – may lead to loneliness and depression.").

93. See *id.* at 93.

94. *Id.* at 93; accord 42 C.F.R. § 483.10(f)(3) (2017) ("The resident has a right to interact with members of the community and participate in community activities both inside and outside the facility.").

95. Yazzie, *supra* note 3, at 93.

96. *Id.*

97. *Id.*

98. *Id.*

99. Neal, *supra* note 50.

100. Yazzie, *supra* note 3, at 92.

101. *Id.*

102. *Id.*; accord 42 C.F.R. § 483.10(g)(3) (2017) ("[T]he facility must ensure that information is provided to each resident in a form and manner the resident can access and understand, including in an alternative format or in a language that the resident can understand . . . The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands.").

103. *Id.*

Tribal ombuds can be part of the solution to each of these problems through their assistance in language translation.¹⁰⁴ They may also be able to connect with Native residents who are more willing to speak with an ombud from their community than with facility staff.¹⁰⁵ As a result, tribal LTCOs can improve Native residents' quality of life in a multifaceted way—by improving their care, preserving their rights, and allowing them to reap the cognitive, social, and emotional benefits of speaking the language of their home community.

D. Actual and Potential Problems in Administration of Tribal Ombuds Programs

A case study commissioned by the Administration for Community Living discussed challenges faced by and recommendations for Inter Tribal Council of Arizona's Tribal Ombudsman Program.¹⁰⁶ The case study explained the contractual structure of the Tribal Ombudsman Program and analyzed the various relationships that impact its success and effectiveness.¹⁰⁷ Since it is the United States' sole tribal long-term care ombuds program,¹⁰⁸ the items identified in the case study provide a useful guide when considering the development and administration of additional tribal LTCO programs.

One issue noted in the case study was the inconsistent identification of a long-term care resident as a member of a Native nation.¹⁰⁹ Lack of identification occurred in multiple ways. First, when local ombuds received a complaint from a resident or a resident's family, no standard set of questions was asked in order to determine whether the resident was a member of a Native nation.¹¹⁰ Second, there is no standardized process in Arizona for ombuds to identify residents as members of a Native nation during facility visits.¹¹¹ As a result, the case study found it likely that there were "complaints handled by local non-tribal Ombudsmen for tribal members because tribal identification [wa]s never made" at any point in the complaint and resolution process.¹¹²

A responsive recommendation, applicable to both ITCA's Tribal Ombudsman Program and potential future tribal ombuds programs, was the creation of a "screening question" that all LTCOs would use to identify potential members of Native nations during their initial intake of a resident.¹¹³ In states that share geography with Native nations, development of screening question(s) could be an effort undertaken by the Office of the State Long-Term Care Ombudsman and then disseminated to local ombuds to use. A second recommendation was that LTCOs could be instructed

104. *Id.* ("Having a specific tribal ombudsman has many benefits in addition to language proficiency"); Ryan, *supra* note 47 ("Tribal ombudsman can additionally help tribal members in facilities off tribal lands with . . . language translation.")

105. Yazzie, *supra* note 3, at 92.

106. THE LEWIN GROUP, *supra* note 45, at 1.

107. *See generally id.*

108. Neal, *supra* note 50.

109. THE LEWIN GROUP, *supra* note 45, at 4.

110. *Id.*

111. *Id.* at 7.

112. *Id.* at 4.

113. *Id.* at 7–8.

about how to review other information available to them, such as resident records, to determine if a resident is likely a member of a Native nation.¹¹⁴

A second notable issue faced by potential tribal LTCO programs is difficulty finding individuals to serve as tribal ombuds. An Indian Health Service publication found that “the task of recruiting volunteers in tribal communities is difficult because part of the job is to travel off the reservation to make facility visits. If any volunteers are eligible, most do not have the funds or transportation to travel on their own.”¹¹⁵ ITCA currently does not utilize volunteers as a result of training and retention difficulties.¹¹⁶ Other states investigating the possibility of tribal ombuds programs have confirmed lack of volunteers is a major hurdle, as is finding agencies like ITCA which could administer a tribal ombuds program.¹¹⁷ A related difficulty in the creation and maintenance of tribal ombuds programs is the shrinking number of speakers of many Tribal languages.¹¹⁸ Tribal languages around the nation are disappearing, often with rates of young fluent speakers seeing particular decline.¹¹⁹ The likely need for tribal LTCOs to communicate with residents who speak only their Tribal language¹²⁰ may make potential volunteers who are unfamiliar with their Tribal language hesitant to take on the ombud role.

Though not a direct solution to resource and language barriers which may face tribal ombuds programs, a case study recommendation that could help is to improve the coordination of ombud services.¹²¹ Given that one challenge to the development of more tribal ombuds programs is finding agencies to administer them,¹²² the case study suggests the State Long-Term Care Ombudsman program collaborate with regional intertribal organizations like Inter Tribal Council of Arizona, where they exist.¹²³ In Arizona, ITCA’s designated Ombudsman works with the ombuds from each member tribe, oversees and helps coordinate the provision of tribal ombuds services, and assists in educating other LTCOs who are part of the State Long-Term Care Ombudsman program about the Tribal Ombudsman Program.¹²⁴

This collaboration between ITCA and its member tribes and ITCA and the State Long-Term Care Ombudsman program is an example of existing coordination, which could be built upon through efforts aimed at increasing awareness and access. The case study suggests a two-way educational strategy made up of recurrent educational meetings. Members of Native nations would educate non-tribal LTCOs about “cultural competence, tribal sovereignty, and creative problem solving when working with tribal residents of long-term facilities,” and LTCOs would provide

114. *Id.* at 8; *see generally* 42 U.S.C.A. § 3058g(b) (West) (describing procedures for ombud access to resident “files, records, and other information concerning a resident.”).

115. Yazzie, *supra* note 3, at 92.

116. THE LEWIN GROUP, *supra* note 45, at 9.

117. Neal, *supra* note 50.

118. *See generally* Preston Parish, *Tribal Language Preservation Strengthens Communities but Needs Consistent Funding*, MONT. BUDGET & POL’Y CTR. (Dec. 14, 2020), https://montanabudget.org/post/tribal_languages_2020 (noting the decrease in tribal languages spoken within the United States over time).

119. *See generally id.*

120. Yazzie, *supra* note 3, at 92.

121. THE LEWIN GROUP, *supra* note 45, at 8.

122. Neal, *supra* note 50.

123. THE LEWIN GROUP, *supra* note 45, at 8.

124. *Id.*

information to Native nations about the State Long-Term Care Ombudsman program and work to build pathways that help facilitate referrals to the program.¹²⁵ Facilitation of referrals could also come through building relationships and collaborating with other state agencies and service providers, such as Adult Protective Services and Area Agencies on Aging.¹²⁶ Finally, connection and collaboration with other programs that serve members of Native nations, such as the Urban Indian Health Institute and the Indian Health Service, may also be beneficial.¹²⁷ These organizations can be valuable resources, providing LTCOs with “communication tips, information on specific tribal culture and practices, implications of the tribal holistic view of health, applicable resources, and suggested approaches.”¹²⁸

V. CONCLUSION

Long-term care ombuds programs are an effective use of alternative dispute resolution in a setting where individuals often feel isolated, powerless, and unheard. The complex and varied nature of patient care in long-term care facilities coupled with factors like resource constraints and staffing shortages can leave many residents experiencing culturally incompetent care, decreased quality of life, and even violations of their rights. Ombuds can be a vital resource to both facilities and residents, as they are able to connect with residents over time, learn and understand their concerns, and help formulate and implement solutions. Ombuds provide residents with an often much-needed advocate and can decrease the burden on facilities and family members when resident complaints and disputes arise. As a result of ombud involvement, residents often experience improvements in their quality of life and in the quality of care they receive.

Tribal long-term care ombuds programs capitalize on these benefits by providing culturally competent individuals to serve a minority group already affected by many systemic disadvantages.¹²⁹ Long-term care facilities and their staff may be unable to avoid violation of the rights of Native residents or provide them with competent care without the assistance of individuals who speak Tribal languages or are familiar with the unique cultural and care needs of Native residents.¹³⁰ As a result of tribal ombud involvement, Native residents may have their rights preserved and receive more culturally competent care, both of which contribute to improved quality of life. The success of Inter Tribal Council of Arizona’s Tribal Ombudsman Program demonstrates the clear benefit that inures to Native residents from tribal

125. *Id.*

126. *Id.* at 5.

127. *Long-Term Care Ombudsman Services to Tribal Elders*, *supra* note 42.

128. *Id.*

129. *See Tribal and Native American Issues*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/tribal-and-native-american-issues> (last visited Mar. 2, 2024) (“In 2018, the U.S. Commission on Civil Rights reported that—due to a variety of reasons such as historical discriminatory policies, insufficient resources, and inefficient federal program delivery—American Indians and Alaska Natives continue to rank near the bottom of all Americans in terms of health, education, and employment.”).

130. *See generally* 42 C.F.R. § 483.10 (2017); Yazzie, *supra* note 3, at 92 (“[M]ost ombudsmen are non-tribal personnel or volunteers unfamiliar of the culture and language spoken by most tribal elders . . . The access to effective and on-going communication, in a language a resident understands, is a resident right and a common concern for tribal residents.”).

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ombuds programs and provides an excellent roadmap for other states in the development and administration of such programs in the future.

Long-term care ombuds programs demonstrate the applicability of alternative dispute resolution to the long-term care context and the positive impact alternative dispute resolution can have on the lives of individuals poorly situated to advocate for themselves. Development of additional specific ombuds programs designed to serve other resident groups who face compromised care due to language barriers or cultural differences could further expand its positive impact.