

Disability Ombudsman Program

H.B. 378, 2020 General Session

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Report to the Health and Human Services Committee

utah department of
human services
SERVICES FOR PEOPLE WITH DISABILITIES

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Preface

The Division of Services for People with Disabilities (DSPD) researched and authored this report in compliance with H.B. 378, 2020 General Session.

(1) As used in this section, “rights and privileges of an individual with a disability” means the rights and privileges of an individual with a disability described in:

- (a) Subsections 62A-5b-103 (1) through (3);
- (b) 42 U.S.C. 12181 through 12189 of the Americans with Disabilities Act of 1990; or
- (c) 28 C.F.R. Part 36 of the Code of Federal Regulations.

(2) The department shall:

- (a) identify and evaluate barriers an individual with a disability experiences in obtaining access to services in the community that are intended to protect the rights and privileges of an individual with a disability;
- (b) determine the duties and role of an ombudsman program in protecting the rights and privileges of an individual with a disability and addressing the barriers identified in Subsection (2)(a);
- (c) based on the information described in Subsections (2)(a) and (b), develop a proposal for an ombudsman program to promote and advocate for the rights and privileges of an individual with a disability; and
- (d) before November 30, 2021, report to the Health and Human Services Interim Committee regarding the proposal described in Subsection (2)(c) and any recommendations for implementation of the proposal.

(3) In developing the proposal described in Subsection (2)(c), the department shall:

- (a) review statutes, policies, and programs in other states relating to an ombudsman who provides services to an individual with a disability; and
- (b) consult with:
 - (i) the Department of Health; and
 - (ii) other stakeholders, as determined by the department.

Executive Summary

At the request of the State of Utah Legislature, the Division of Services for People with Disabilities (DSPD) conducted a study over the period December 2020–November 2021. This study consisted of the following activities:

- A review of the Ombudsman’s history, roles, and standards.
- A review of existing programs including:
 - Interviews with Ombudsman programs in seven states and an additional two states with Americans with Disabilities Act of 1990 (ADA) compliance programs.
 - Review of two existing Ombudsman within the Department of Human Services.
- Collecting community input on disability barriers through the development, collection, and analysis

of a survey of 835 respondents in the Utah disability community regarding barriers that people with disabilities experience.

- Development of the survey questions was achieved by conducting three focus groups for self-advocates.
- Survey results indicate that the most frequent barriers that people with disabilities face include:
 - knowing who to contact, 77.0%;
 - navigating public infrastructure, 75.3%; and
 - communicating a problem to an entity, 69.5%.
- 56.4% of all participants said “yes” when asked if creating an Ombudsman would be helpful, 42.0% responded “maybe/I don’t know” and 1.6% said “no”.
- Survey results were released and reviewed through a public meeting and soliciting public input (May 2021).

DSPD created a proposal that includes the following:

- A Disability Ombudsman Office in Utah would cost an estimated \$1,857,000 ongoing with an additional \$250,000 one time. The three components to this cost include staff, software, and miscellaneous expenses which could include: training, travel, contracting with subject matter experts, or other expenses.
- Broad jurisdiction over all governmental agencies, including state and local, that impact people with disabilities.
- The three options for the location of a Disability Ombudsman Office are the:
 - Legislative Branch;
 - Governor’s Office; or
 - Department of Health and Human Services, with assurances that independence will be maintained.

DSPD consulted with stakeholders and engaged the public on a draft version of this study.

- DSPD convened a monthly stakeholder Ombudsman Steering Committee and gathered input from the steering committee in August 2021. See Appendix B for a full list of stakeholder groups.
- DSPD held three public meetings in September 2021 and solicited input from the disability community.

Types of Ombudsman

The Ombudsman¹ title and concept has existed for over 200 years. The following is a brief history of the use of this term. This section also explains the role of the Ombudsman in government. The types of Ombudsman for this discussion include: governmental, organizational, and advocacy. This section concludes with a brief discussion on authority and enforcement and a summary of the varying standards.

1 Ombudsman is a gender-neutral term. Some prefer to use the term ‘Ombuds’ as an alternative title.

In 1809, Sweden created the first Ombudsman. The literal translation of the Swedish word is “representative” or “agent”. Swedish Parliament appointed an Ombudsman to protect individual rights against government actions. Parliament gave the Ombudsman the power to investigate the activities of public officials in order to prevent abuse. The Ombudsman idea spread across the world and can be found in many countries, including the United States.

The original Swedish model stood the test of time. The modern day Ombudsman continues to use standards and definitions created then. An Ombudsman is “a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government”; and, furthermore, “a neutral, independent intermediary between the complainant and the agency, who investigates complaints and objectively determines if an agency acted in a mistaken, unfair, arbitrary or illegal manner.”² An Ombudsman is neither the complainant’s advocate in the legal sense, nor a political actor. The Ombudsman swears allegiance to the larger promise of good government not to the individual complainant or the governmental action.

Not all Ombudsman are created equal. As the public and private need for problem-solvers grows, so does use of the Ombudsman title. Three types of Ombudsman are generally recognized: governmental, organizational, and advocate. Each of the types adheres to different standards, roles, and responsibilities. Generally, the degree of independence and neutrality the Ombudsman has determines whether the created office is an Ombudsman or merely uses the Ombudsman title.³

Governmental Ombudsman

The United States Ombudsman Association (USOA) defines a governmental Ombudsman as:

an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports.⁴

USOA put forth standards for the Ombudsman and organized the standards into four categories: independence, impartiality, confidentiality, and credible review process. The following descriptions of the four categories of standards are quoted from the USOA Governmental Ombudsman Standards of 2003 and abridged.

Independence

Independence is a core defining principle of an effective and credible Ombudsman. The Ombudsman should be independent to the greatest degree practicable. Authoritativeness and permanency are two criteria by which to measure this standard.

1. The Ombudsman’s authority should be established by law.
2. The Ombudsman should be appointed by an entity not subject to the Ombudsman’s jurisdiction and which does not have operational or administrative authority over the program(s) or agency(ies) that

2 United States Ombudsman Association, [usombudsman.org](https://www.usombudsman.org), About, History of the Public Sector Ombudsman, last visited June 4, 2021; United States Ombudsman Association, [usombudsman.org](https://www.usombudsman.org), Resources, Ombudsman Library, The Ombudsman, last visited July 16, 2021.

3 *Supra*, USOA, The Ombudsman, note 1.

4 United States Ombudsman Association, GOVERNMENTAL OMBUDSMAN STANDARDS (2003), *available at* <https://www.usombudsman.org/ombudsman-library/>.

are subject to the Ombudsman's jurisdiction.

3. Prior to expiration of term, the Ombudsman may be removed from office for cause only.
4. The Ombudsman should be afforded sufficient compensation, status, budget, resources, and staff.
5. The Ombudsman should retain sole authority to select, direct, and discharge staff.
6. The Ombudsman should have discretion to accept or reject matters for investigation, including the ability to initiate on the Ombudsman's own motion, subject only to the legally defined limits of jurisdiction.
7. The Ombudsman should have discretion to prescribe how complaints are to be made, received, and acted upon, including the scope and manner of investigations.
8. The Ombudsman should have discretion to determine which conclusions and recommendations are reached, and freedom to determine what to publish.
9. The Ombudsman should be immune from discovery and prosecution for claims arising out of the lawful performance of duty.
10. The findings and recommendations of the Ombudsman are not appealable to any other authority.

Impartiality

Impartiality is at the heart of the Ombudsman concept. Both the complainant and the agency are able to place confidence in the Ombudsman knowing that the Ombudsman has no vested interest in the outcome of a complaint investigation. If the Ombudsman is not perceived to be impartial by the complainant, the complainant will not seek the Ombudsman's assistance. If the Ombudsman is not perceived to be impartial by the agency, the agency will be resistant to the investigation and unlikely to accept the Ombudsman's criticism and recommendations. It is not sufficient for the Ombudsman to avoid actual conflict of interest but also to avoid the appearance of such a conflict to instill the utmost confidence. Members of staff acting under delegated power should also be subject to the same high standards.

1. The Ombudsman refrains from partisan and political activities, and employment and business relationships and transactions that may create a conflict of interest, or may create the appearance of a conflict of interest.
2. The Ombudsman holds no other public office that has the potential of creating a conflict of interest or the appearance of a conflict of interest.
3. The Ombudsman absents themselves from involvement in complaints where a conflict of interest or the appearance of a conflict of interest may exist.
4. The Ombudsman does not allow personal views regarding the subject matter or the parties involved to affect decisions as to what complaints to accept or how they are investigated.
5. The Ombudsman is not predisposed as an advocate for the complainant nor an apologist for the government, however the Ombudsman may, based on investigation, support the government's actions or advocate for the recommended changes.

Confidentiality

Confidentiality is an Ombudsman's tool. It may be offered, at the Ombudsman's discretion, to complainants, agency employees, and witnesses when such an offer is necessary to elicit needed information or to protect the source of needed information. The Ombudsman must take care, however, that more is not offered than can be delivered. Each Ombudsman must carefully review the legislation establishing the office to determine what, if any, confidentiality protections are afforded. These may vary greatly from jurisdiction to jurisdiction. An Ombudsman located in the legislative branch may have more protections than one located in the executive branch. An Ombudsman established by law may have more protections than one established by executive order. An Ombudsman created by state law or local ordinance also needs to determine if the protections the Ombudsman has within their political jurisdiction would be honored or sustained by federal courts.

1. The Ombudsman should not reveal information when confidentiality has been promised.
2. The Ombudsman should not release information where confidentiality is required by law, or where unnecessary harm would result.
3. The Ombudsman should not be compelled to testify or to release records.

Credible Review Process

The concept of a credible review process encompasses the authority granted to the Ombudsman and the Ombudsman's responsibilities towards the complainant, the subject of a complaint, the appointing entity, and the public. If the process the Ombudsman uses to investigate complaints is flawed, the resulting recommendations are more likely to be ignored.

1. The Ombudsman should be qualified to analyze issues and matters of law, administration, and policy.
2. The Ombudsman should have the discretion to act informally to resolve a complaint.
3. The Ombudsman should have the authority to delegate power to a deputy or acting Ombudsman.
4. The Ombudsman provides for sufficient access for any person to make a complaint known to the Ombudsman directly without a fee.
5. The Ombudsman's jurisdiction should be clearly defined and the Ombudsman should not act outside of that jurisdiction.
6. The grounds for Ombudsman review should be stated broadly.
7. The Ombudsman should have sufficient powers to conduct thorough investigations.
8. The Ombudsman should have the authority and responsibility to publish findings, recommendations, and reports.
9. The subjects of the Ombudsman's reports should be consulted and afforded the opportunity to respond to the report prior to its being published.
10. The process for how complaints are to be made, received, and acted upon, including the scope and manner of investigations, should be defined and transparent.

11. The Ombudsman should state the reason a complaint is not accepted for investigation.
12. The Ombudsman should keep both complainants and subjects apprised of the status of the investigation.
13. The Ombudsman should complete investigations in a timely manner.
14. The Ombudsman should, at least annually, report generally on the activities of the office to the Ombudsman's appointing authority, other policy makers, and the public.
15. The Ombudsman should, in practice and appearance, uphold the highest standards of public service.

Organizational Ombudsman

An organizational Ombudsman is created within public and private organizations to assist with internal problem-solving. Experts define the organizational Ombudsman as:

a designated neutral who is appointed or employed by an organization to facilitate the informal resolution of concerns of employees, managers, students, and, sometimes, external clients of the organization.⁵

Principles of an Organizational Ombudsman are similar to the standards of a Governmental Ombudsman: independence, informality, impartiality, and confidentiality. An Organizational Ombudsman is more like a mediator or facilitator than a Governmental Ombudsman; offering perspective to all parties through information and constructive communication. According to the International Ombudsman Association, the activities and functions most frequently undertaken by an organizational Ombudsman include:

- Listens and understands issues while remaining neutral with respect to the facts. The ombudsman doesn't listen to judge or to decide who is right or wrong. The ombudsman listens to understand the issue from the perspective of the individual. This is a critical step in developing options for resolution.
- Assists in reframing issues and developing and helping individuals evaluate options. This helps individuals identify the interests of various parties to the issues and helps focus efforts on potential options to meet those interests.
- Guides or coaches individuals to deal directly with other parties, including the use of formal resolution resources of the organization. An ombudsman often seeks to help individuals improve their skill and their confidence in giving voice to their concerns directly.
- Refers individuals to appropriate resolution resources. An ombudsman may refer individuals to one or more formal organizational resources that can potentially resolve the issue.
- Assists in surfacing issues to formal resolution channels. When an individual is unable or unwilling to surface a concern directly, the ombudsman can assist by helping give voice to the concern and /or creating an awareness of the issue among appropriate decision-makers in the organization.
- Facilitates informal resolution processes. An ombudsman may help to resolve issues between parties through various types of informal mediation.

⁵ Margo Wesley, *The Compleat Ombuds: A Spectrum of Resolution Services*, 166 CPER Journal 6 (2004); International Ombudsman Association, ombudsassociation.org, About Ombuds, What is an Organizational Ombudsman?, last visited July 27, 2021.

- Identifies new issues and opportunities for systemic change for the organization. The unique positioning of the ombudsman serves to provide unfiltered information that can produce insight to issues and resolutions. The ombudsman is a source of detection and early warning of new issues and a source of suggestions of systemic change to improve existing processes.⁶

Advocate Ombudsman

Another type of Ombudsman is the Advocate Ombudsman that advocates on behalf of a designated population.⁷ The Long-Term Care Ombudsman is the best known example of an Advocate Ombudsman. The Older Americans Act requires that a Long-Term Care Ombudsman program:

- identify, investigate, and resolve complaints made by or on behalf of residents;
- provide information to residents about LTSS⁸;
- ensure that residents have regular and timely access to ombudsman services;
- represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect residents; and
- analyze, comment on, and recommend changes in laws and regulations pertaining to the health, safety, welfare, and rights of residents.⁹

No organization thoroughly defines the Advocate Ombudsman or establishes standards. Removing neutrality in favor of advocacy may complicate the Ombudsman’s perceived authority, and effectiveness.¹⁰ If an advocate Ombudsman has statutory authority similar to an Organizational or Governmental Ombudsman, those permissions may not be as robust. For example, the Long-Term Care Ombudsman may inspect premises, request public records, and request protected health information with the person’s consent; but cannot subpoena.¹¹

Authority and Enforcement

Ultimately, the Ombudsman’s only power is the power to investigate. Ombudsman findings are not legally binding, and the Ombudsman cannot take agency action. A lack of an internal enforcement mechanism, however, clears the way for investigative depth and breadth that elicits truth and equity. To quote Justice Brandeis, “sunlight is said to be the best of disinfectants”.

The Ombudsman’s effectiveness relies on reasoned persuasion. Garnering public trust is crucial for success. Constituents and agencies must have reason to trust that the Ombudsman investigates thoroughly and acts with integrity. Aligning the Ombudsman’s scope of jurisdiction with the office’s location in government hierarchy ensures that the Ombudsman has enough clout to act as a persuasive authority. The Ombudsman must also avoid any appearance of partiality or undue influence; and produce sound, fair, and reasonable

⁶ International Ombudsman Association, ombudsassociation.org, About Ombuds, What is an Organizational Ombudsman?, last visited July 27, 2021.

⁷ *Id.*

⁸ LTSS means Long-Term Services and Supports provided through Medicaid.

⁹ Administration for Community Living, acl.gov, Home, Program Areas, Protecting Rights and Preventing Abuse, Long-Term Care Ombudsman, last visited June 29, 2021; 42 U.S.C. § 3058g; 45 C.F.R. § 1327.

¹⁰ NORC, PROCESS EVALUATION OF THE LONG-TERM CARE OMBUDSMAN PROGRAM (LTCOP) (2019), available at https://acl.gov/sites/default/files/programs/2020-10/LTCOPProcessEvaluationFinalReport_2.pdf.

¹¹ 45 C.F.R. § 1327.

findings firmly grounded in fact and law.

TABLE 1: Ombudsman Types and Standards

Type of Ombudsman	Ombudsman Standards					Source
	Impartiality	Independence	Informality	Confidentiality	Credible Review Process	
Governmental Ombudsman	X	X		X	X	National
Organizational Ombudsman	X	X	X	X		International
Advocate Ombudsman	Not possible			Varies		Defined in statute

Review of Existing Ombudsman

DSPD reviewed existing disability Ombudsman in other states as well as other Ombudsman within Utah. This review revealed four types of Ombudsman: (1) Governmental Ombudsman: Classical, (2) Governmental Ombudsman: Executive, (3) Organizational Ombudsman, and (4) Advocate Ombudsman. Each state’s Ombudsman is categorized and summarized by type below.

DSPD interviewed Ombudsman in seven states: Alaska, Arizona, Indiana, Iowa, Minnesota, Texas, and Washington. Searching the internet for ‘disability ombudsman’ identified five states with an Ombudsman program that specifically serves disability populations: Georgia, Indiana, Minnesota, Texas, and Washington.¹² Ombudsman for the disability programs recommended interviewing the Ombudsman in Alaska, Arizona, and Iowa.

TABLE 2: State Ombudsman by Type

Governmental Ombudsman: Classical	Governmental Ombudsman: Executive	Organizational Ombudsman	Advocate Ombudsman
Alaska	Minnesota	Indiana	Utah Long-Term Care
Arizona	Texas	Utah Child Protection	Washington
Iowa			

¹² DSPD was unable to schedule an interview with Georgia.

Governmental Ombudsman: Classical

Alaska, Arizona, and Iowa¹³ created a classical Ombudsman housed in the legislative branch. The three offices have more similarities than differences. The structure and conduct of each office closely aligns with USOA standards.

- Ombudsman appointed by the legislature for a fixed term.
- Office independent from the executive branch with discretion to manage its own personnel, process, and investigation.
- Office granted general jurisdiction for formal and informal, state and local government action.
- Office publishes an annual report to the legislature.
- Office granted the power to publish investigative reports.
- Office granted subpoena power and rights to records.
- Office retains its own legal counsel rather than use an attorney general.
- Office allowed to recommend legislative and policy changes.

Ombudsman review, generally, examines whether the agency action is contrary to law, reasonable, timely, or not explained well enough. Jurisdiction does not include the legislature, the attorney general's office, the governor's office, or judges. With one exception, Alaska's Ombudsman investigates actions of the attorney general's office, because the attorney general is appointed rather than elected. Alaska's Ombudsman also looks beyond issues of compliance and is not required to defer to the agency's interpretation of agency rule and statute. All three offices carefully coordinate with other agencies to refer complainants back to available administrative processes, avoid duplicating an investigation, and preserve confidentiality.

Ombudsman offices provide far more education and coaching than conduct investigations. An Ombudsman's purpose is not to lead a constituent through a service system like a case manager does; the Ombudsman uses education and coaching to facilitate full use of existing administrative processes. Education and coaching presents the Ombudsman with opportunities to uncover an actionable complaint, and develop recommendations for system improvement. For example, a recommendation for consistent website design and navigation to contact information.

Alaska receives approximately 2,000 contacts a year. Arizona receives approximately 6,000 contacts in a fiscal year. Iowa receives over 5,000 contacts a year. All three offices noted that a large portion of complaints relate to child welfare and criminal justice systems.

With a \$1.2 million operating budget, Alaska employs 10 full time employees: the Ombudsman, three intake specialists, five investigators, and one research analyst. Iowa's \$1.9 million operating budget employs 16 full time employees: the Ombudsman, one in-house legal counsel, 12 assistant ombudsman, and two administrative support specialists. Iowa's 12 assistant ombudsman conduct investigations, manage intake, and provide subject matter expertise.

13 Five states have a classical Ombudsman: Alaska, Arizona, Hawaii, Iowa, and Nebraska.

Governmental Ombudsman: Executive

Minnesota and Texas created a disability Ombudsman within the executive branch. An executive Ombudsman falls into the Governmental Ombudsman category, but deviates from the classical Ombudsman structure and jurisdiction. When the Ombudsman operates from the executive branch, additional safeguards are necessary to implement the USOA standards to the greatest degree practicable. Safeguards often focus on preserving and increasing the independence of the Ombudsman, but are not limited to that purpose. Ideally, the office is an independent agency. An executive Ombudsman not created with similar autonomy and influence afforded a classical Ombudsman may be better characterized as an organizational Ombudsman.

Safeguards recommended by the Ombudsman include:

- a chain of command separate from the agency (i.e. department) executive director;
- in-house legal counsel;
- a governing board that appoints the Ombudsman;
- removal only for cause outlined in statute;
- power to propose a program budget separately from the agency;
- insulation from political influence;
- setting an appointment term that is longer than the governor's term in office; and
- allowing reappointment.

Minnesota

Minnesota's Office of Ombudsman for Mental Health and Developmental Disabilities (OMHDD) was established in 1987 as an independent state office. The governor appoints the Ombudsman. OMHDD uses a regional structure for intake and investigation of complaints. In Minnesota, a regional system helps the Ombudsman get a better sense of the issue and the best course of action.

OMHDD has four main responsibilities:

- investigate complaints from or on behalf of any person receiving services or treatment for mental illness, developmental disabilities, chemical dependency, or emotional disturbance disability from an agency, facility, or program defined in MN. Stat. 245.91 subd 2 and 4;
- monitor the treatment of individuals participating in a University of Minnesota Department of Psychiatry clinical drug trial and investigate complaints;
- review reported deaths and serious injuries of persons receiving services or treatment for mental illness, developmental disabilities, chemical dependency, or emotional disturbance; and
- provide the services of the Civil Commitment Training and Resource Center.

Statute grants the Ombudsman subpoena power, the authority to request records and inspect premises. The Ombudsman may initiate an investigation without a constituent complaint and publish investigative findings. Although the Ombudsman has the authority to publish critical findings to the public, the Ombudsman prefers to reserve that action for egregious practices that cannot be resolved collaboratively through recommendations to the agency.

In addition to investigation, the Ombudsman provides education and referral to agency administrative processes. The office maintains collaborative relationships with agencies in order to prevent and remediate issues as they arise. It is not uncommon for an agency to consult with the Ombudsman outside of an investigation in order to preemptively remediate an issue.

OMHDD employs 19 full time employees: the Ombudsman, a Deputy Ombudsman, a Regional Ombudsman Supervisor, 10 Regional Ombudsman, three support staff, and a three person Medical Review Unit. The state's information technology department assigns one full time employee and one part time employee to the office.

To assist the Ombudsman with promoting the highest attainable standards of treatment, competence, efficiency and justice, the office has a volunteer Advisory Committee and Medical Review Subcommittee. The governor appoints the 15 member Advisory Committee, and five members make-up the Medical Review Subcommittee. Committee members provide important oversight, perspective, and advice.

Texas

Texas created the Health and Human Services Ombudsman within the Health and Human Services (HHS) agency. The Ombudsman investigates complaints from any person enrolled in the state Medicaid program. The Ombudsman does not investigate fatalities or abuse and neglect claims, but does participate in those investigations when asked.

The Texas government uses a commission system. The governor appoints the HHS commissioner. To increase autonomy from HHS, the Ombudsman escalates an issue through a separate chain of command. The Ombudsman reports to the Chief Public Affairs Officer instead of the Chief Program Officer.

A complaint goes through an intake and escalation system. The office begins by identifying opportunities for education and completion of program processes. Many complaints are resolved by providing education to each party, and requesting that the program complete any outstanding grievance or appeal processes. If the complaint cannot be resolved through education or liaising with the program, the office investigates whether application of the program policy at issue was within the vision and mission of the agency. The office puts forward recommendations to the program at the conclusion of an investigation. If the program declines to take up a recommendation, the Ombudsman publishes that decision to the public. Public reporting is done to further good government, so the Ombudsman also acknowledges any barriers that may influence the program's decision.

The Texas Ombudsman adheres to a confidential and credible review process, and maintains a relationship with each program. A program is made aware of the purpose of an investigation and recommendations, but the relationship does not influence the outcome of an investigation. An investigation goes where the facts lead; the scope of an inquiry can shift to include any issue found during the course of the investigation, even if the issue was not raised in the complaint.

To identify any systemic issues not captured by complaints filed with the Ombudsman, the office also reviews data collected by each program's internal grievance or appeal system. The office looks for trends and issues that may need further investigation by the Ombudsman. The Ombudsman has the discretion to investigate and make recommendations about any issues identified through the data review.

The HHS Office of the Ombudsman employs 98 full time employees, and manages an operating budget of \$5 million. During fiscal year 2020, the office responded to 85,000 inquiries and complaints. Case resolution averages 45 days depending on the complexity of the complaint, and the case management standard is 90

percent of inquiries and complaints resolved within 10 business days.

Organizational Ombudsman

Indiana and Utah created an Ombudsman within a state agency in the executive branch. Both Ombudsmen have a narrow scope of investigation related to the state agency. Statutes associated with each Ombudsman reflect the authority and autonomy associated with an Organizational Ombudsman. An Organizational Ombudsman is more like a mediator or facilitator than a Governmental Ombudsman. The Ombudsman listens to all parties without judgement and offers perspective through information and constructive communication.

Indiana

Indiana locates the Disabilities Ombudsman within the Department of Family and Social Services Division of Disability and Rehabilitation Services. The department director appoints the Ombudsman. The Ombudsman's jurisdiction covers only the home and community-based services waiver for people with intellectual disability. The waiver serves approximately 38,000 people. Complaint issues must relate to waiver services and may include: intermediate care facilities¹⁴, guardianship, case management, and intake.

The Disabilities Ombudsman primarily provides education about services; mediation and conflict resolution; and assistance navigating the service system. The office employs only one Ombudsman, who receives complaints informally through email and phone calls. The Ombudsman offers subject matter expertise with the goal of helping in some way. In lieu of a formal investigation, the Ombudsman meets with program directors to facilitate a resolution of the complaint. Annual reporting publishes various statistics that outline the work engaged in that year.

Utah

Utah created a Child Protection Ombudsman within the Department of Human Services (DHS).¹⁵ In 2018, the Ombudsman moved into the DHS Office of Quality and Design.¹⁶ The DHS executive director appoints the Ombudsman. The Ombudsman investigates complaints related to the Division of Child and Family Services (DCFS). Much like Indiana's Disabilities Ombudsman, Utah's Child Protection Ombudsman works within DHS to resolve DCFS complaints and identify system improvements. After the close of each fiscal year, the Ombudsman publishes various statistics that outline the work engaged in that year. The office employs 3 full-time employees (FTE) and has operating costs of approximately \$318,700. Operating costs are funded by state general funds, the Social Services Block Grant (SSBG), and DHS division transfers from DCFS and the Division of Juvenile Justice Services.

Advocate Ombudsman

The Advocate Ombudsman advocates on behalf of a designated population. Both Utah and Washington operate a Long-Term Care Ombudsman, but DSPD did not review Washington's Long-Term Care Ombudsman. Statute indicates that the Washington Legislature modeled the Developmental Disabilities Ombuds after a Long-Term Care Ombudsman.¹⁷

14 Indiana uses the term 'group home' when referring to intermediate care facilities.

15 Utah Code Annotated § 62A-4a-208 (2017).

16 Department of Human Services, Office of Child Protection Ombudsman Annual Report FY18, *available at* <https://hs.utah.gov/services/care-concerns>.

17 See RCW 43.382.005(5).

Utah

Utah created the Long-Term Care Ombudsman within the DHS Division of Aging and Adult Services (DAAS). The Long-Term Care Ombudsman is an advocate ombudsman required by the Federal government and implemented by the states.¹⁸ The Ombudsman advocates on behalf of long-term care residents. This office employs one FTE as a state employee. Additionally, 7-9 FTEs (27-30 staff with part-time ombudsman duties) function similarly as ombudsman at the local level. These positions are employed by various Area Agencies on Aging (AAA) and a mix of Federal and State funding is distributed through DAAS. Total (Federal and State) funding for DAAS ombudsman activities is currently \$947,800.

Washington

The Washington Office of Developmental Disabilities Ombuds is located in the state's protection and advocacy nonprofit, Disability Rights Washington. Jurisdiction includes any administrative action affecting a person receiving a state developmental disability service. The office uses a regional structure to manage intake and investigation of complaints; provide information about and referral to service systems; and monitor service settings.

Statute grants the Ombuds discretion to choose which claims to investigate and initiate a complaint. Unlike a Governmental Ombudsman, the Developmental Disabilities Ombuds is not neutral. The Ombuds takes a person-centered approach to investigations and advocacy. To help decide the direction and focus of the Ombuds, the office consults with an advisory committee primarily made of individuals with developmental disabilities who previously or currently live in a residential facility, a supported living setting, or an adult family home. Currently, the Ombuds focuses on investigating and monitoring abuse, neglect, and exploitation.

Locating an Ombudsman outside of the government impacts the work. Separation supports independence. The Ombuds can engage in monitoring not only to fulfil their mandate, but also to engage in outreach that may identify a new investigation. Separation can limit access to records. The Ombuds must submit a records request to conduct a thorough investigation. Separation, however, helps the advocate Ombudsman make apolitical legislative and policy recommendations. Washington's statute grants the Ombuds the power to recommend policy changes to the legislature, the state, and service providers.

The Office of Developmental Disabilities Ombuds employs five full time employees: the Ombuds, three regional Ombuds, and a self-advocacy educator. In fiscal year 2020, the state appropriated \$643,000 for the office's operating budget.

ADA Related Programs

In addition to the Ombudsman programs, the Ombudsman Steering Committee recommended a discussion with New Mexico's Governor's Commission on Disability and the Alaska ADA Compliance Program. The Commission and ADA Compliance Program address state compliance with Title II of the Americans with Disabilities Act through education, advocacy, and training. Alaska's ADA Compliance Program investigates and resolves complaints filed against any executive branch agency; this mandate allows for some overlap with the Ombudsman that is addressed collaboratively. The Compliance Program employs one person to resolve complaints across the state. While neither the Commission nor ADA Compliance Program are an Ombudsman, the Director and Coordinator offered valuable insight into the types of complaints that can be expected, the volume of complaints, and the staff necessary to fulfill the obligations of an Ombudsman office.

18 42 U.S.C. § 3058g; 45 C.F.R. § 1327; Utah Code Annotated § 62A-3-2 (2018); Utah Admin. Code § R510-200 (2021).

Community Input on Disability Barriers

In addition to reviewing existing programs, DSPD administered a survey within the Utah disability community. By engaging Utahns with disabilities, this study revealed their top three barriers are: knowing who to contact, navigating public infrastructure, and communicating a problem to an entity. This study also found broad support for establishing a disability ombudsman office in Utah with only one percent of survey respondents with disabilities opposing its creation. This section explains the Division's process for surveying the Utah disability community through mixed methods that included focus groups and survey questionnaires.

The purpose of this study was to understand common barriers facing the disability community and to gauge levels of support regarding creating a Disability Ombudsman Office in Utah. This information was used to help inform the Ombudsman Steering Committee:

- of the disability community's needs; and
- provide pertinent information for making decisions related to the scope and mission of a potential Ombudsman Office.

Focus groups were conducted to help create a survey questionnaire. Then the survey was widely distributed to three groups of people in Utah: individuals with disabilities, family members of people with disabilities, and professionals serving people with disabilities. Results for each group are summarized and reported below.

Methods

DSPD conducted three focus groups in early February 2021 through the Google Meet online platform. The goal of the focus group was to understand common barriers experienced by people with disabilities and to ask the disability community about what an Ombudsman's responsibilities and expectations should be to protect the rights and privileges of people with disabilities. Self-advocates and persons working with people with disabilities were invited to attend by email, through word of mouth, and via the Utah Developmental Disability Center and Independent Living Centers. All meetings lasted approximately one hour and were recorded for future analysis.

In an effort to obtain diverse opinions from the disability community, DSPD used Google Forms to distribute an online survey to DSPD's listserv that consisted of the open ended questions which had been asked in the focus groups, such as "What barriers do people with disabilities experience?" and "What types of tasks should an Ombudsman have?". See Appendix C for a copy of the focus group survey. The survey was completely voluntary and open for 30 days between February and March 2021. It collected 31 responses, of which 41.9% identified as having a disability.

Responses obtained in the online meeting and through the online survey were consolidated by DSPD into a list of common barriers facing the disability community. This barriers list was included in a subsequent survey aimed at quantifying the prevalence of each barrier among a larger, statewide population of people with disabilities, their caregivers/guardians, and professionals serving the disability community.

Survey Population & Recruitment

All people with disabilities, their caregivers/guardians, and professionals serving the disability community in the state of Utah could participate in the survey. DSPD, in conjunction with the Ombudsman Steering Committee partners, recruited survey participants by sending out invitation emails via DSPD's listserv, posting on social media, and word of mouth. Participation was voluntary and participants could choose to be anonymous or provide their email address if they wished to receive updates in the future regarding the

Ombudsman project. The survey was open for 30 days during March and April 2021.

Survey Items

The survey used branching logic to divide participants into three groups: individuals with a disability, family members of a person with a disability, and professionals serving people with disabilities. Individuals were asked their age group, county of residence, and disability type. Family members were asked their age group, county of residence, their relationship to their loved one with a disability, and the age and disability type of their loved one with a disability. Professionals were asked their age group, county of residence, their professional title, and the disability types of their service population.

All three surveyed groups were asked about the following 13 barriers which were identified during the focus groups:

- Knowing who to contact
- Navigating public infrastructure
- Communicating a problem to an entity
- Accessing outdoor recreation
- Communicating needs
- Accessing buildings
- Joining school clubs or sports
- Affordable housing
- Keeping a job
- Enrolling in school classes
- Complaints about disability services provider
- Getting on/off public transportation
- Having enough public transportation options

See appendix C for the complete survey. Each group had slightly different wording to capture how they perceive each barrier impacts the disability community. For example:

- Individuals were asked, “In the past year, have you had problems getting on or off public transportation?”
- Family members were asked, “In the past year, has your family member had difficulties getting on or off public transportation?”
- Professionals were asked, “In the past year, have individuals that you serve had difficulties getting on or off public transportation?”

One barrier question was worded opposite the others (denoted with an asterisk in the results figures). Meaning that answering ‘yes’ to this question would indicate that the barrier is not present and answering ‘no’ would indicate that the barrier is present. Again, each group had slightly different wording.

- Individuals were asked, “In the past year, have you had enough options for accessible public transportation?”
- Family members were asked, “In the past year, has your family member had enough options for

accessible public transportation?”

- Professionals were asked, “In the past year, have individuals that you serve had enough options for accessible public transportation?”

Finally, all groups were asked about their opinions related to creating a Disability Ombudsman in Utah. For example: “Do you think it would be helpful to create an Ombudsman in Utah?” and “If you were filing a complaint to the Ombudsman, which of the following would you like to access?”

Survey Response

The survey collected 835 responses: 104 (12.5%) identified themselves as a person with a disability; 404 (48.4%) identified themselves as a family member of a person with a disability; and 327 (39.2%) identified as being employed in the field of disabilities. The survey response rate is not able to be calculated due to the unknown survey population size statewide and unknown exposure rate of recruitment materials statewide. The number of responses and demographic indicators suggest, however, that our survey sample is representative of the State’s geographic population distribution.

Analysis

Survey data was analyzed using Microsoft Excel. Counts and percentages were calculated for categorical variables and averages and standard deviations were calculated for continuous variables. Open-ended questions were summarized using qualitative thematic analysis.

Age and Relationship/Profession

The majority (87.5%) of respondents did not identify as having a disability (family members or professionals) and were over the age of 40 (299; 74.0% and 214; 65.4%, respectively). Individuals’ ages were more evenly distributed with the most respondents being 31-40 years old (30; 28.9%). The least represented age group for all participants was those under 21 years old. However, family members and professionals may serve this population and be answering the survey questions with younger people with disabilities in mind.

In fact, most family members were a parent of a person with a disability (78.0%) and the average age of the person with a disability for this subgroup was 21.5 years with a large standard deviation of 11.8 years. Among all family members, the average age of the person with a disability was 26.0 (SD 17.4 years) and 176 family members responded that their loved one was under the age of 21 years (43.6%) (data not shown in Table). Among professionals, most were Support Coordinators (101; 30.9%), Administrators (89; 27.2%), or Direct Care Staff (61; 18.7%).

TABLE 3: Age Group of Survey Respondents

Age Group of Survey Respondent	Individual (n=104)	Family Member (n=404)	Professional (n=327)
Under 21 years	6 (5.8%)	15 (3.7%)	2 (0.6%)
21-30 years	20 (19.2%)	28 (6.9%)	53 (16.2%)
31-40 years	30 (28.9%)	62 (15.4%)	58 (17.7%)
41-50 years	26 (25.0%)	108 (26.7%)	108 (33.0%)
51 years or older	22 (21.2%)	191 (47.3%)	106 (32.4%)

TABLE 4: Relationship to Individual with Disability (Family Members only)

Relationship ¹⁹	Family Member (n=404)
Parent	315 (78.0%)
Spouse	12 (3.0%)
Sibling	20 (5.0%)
Child	24 (5.9%)
Other (e.g. aunt, uncle, grandparent)	33 (8.2%)
Average age of Person with a Disability	26.0 years (SD 17.4)

TABLE 5: Profession in the Disability Community (Professionals only)

Profession ²⁰	Professional (n=327)
Government	5 (1.5%)
Medical	16 (4.9%)
Other	20 (6.1%)
Educator	35 (10.7%)
Direct Care Staff	61 (18.7%)
Administrator	89 (27.2%)
Support Coordinator	101 (30.9%)

County

Approximately 77.4% of all participants were from Wasatch Front counties—Davis, Weber, Morgan, Salt Lake, and Utah—which is consistent with the most recent census data report which calculated approximately 75.4% of Utahns live in Wasatch Front counties²¹. Other county regions closely matched the percentages in this census data report as well. See Appendix C for county groupings. The most prevalent county for individuals and professionals was Utah County and the most prevalent county for family members was Salt Lake County.

19 Applicable to the Family Member group only.

20 Applicable to the Professional group only.

21 Harris, Emily. (December 2019). Research Brief: State and County Population Estimates of Utah: 2019. Ken C. Gardner Policy Institute, David Eccles School of Business, The University of Utah.

<https://gardner.utah.edu/wp-content/uploads/StateCountyPopEst-Dec2019.pdf>

TABLE 6: County of Residence for Survey Respondents

County Grouping ²²	Individual (n=104)	Family Member (n=404)	Professional (n=327)
Bear River-Tooele	< 5 (-%)	25 (6.2%)	22 (6.7%)
Central-Southeast	< 5 (-%)	17 (4.2%)	14 (4.3%)
Davis-Weber-Morgan	22 (21.2%)	93 (23.0%)	66 (20.2%)
Salt Lake	41 (39.4%)	138 (34.2%)	78 (23.9%)
Southwest-San Juan	6 (5.8%)	38 (9.4%)	22 (6.7%)
TriCounty-Summit-Wasatch	< 5 (-%)	13 (3.2%)	16 (4.9%)
Utah	28 (26.92%)	74 (18.32%)	106 (32.42%)

Disability Type

The most prevalent disability type was intellectual disabilities (ID) or developmental disabilities (DD), followed by autism, and physical disabilities (PD). The majority of individuals reported a PD (50, 48.1%), however approximately 35% of individuals responded PD only. The majority of family members and professionals reported their loved ones or clients having an ID or DD (268, 66.3% and 284, 86.9%, respectively). It is hypothesized that ID/DD and autism are over-represented in the family members group; conditions related to aging and substance use disorders are likely under-represented in the family members and individuals groups; and visual disabilities, ID/DD, and autism are likely under-represented in the individuals group. The disability type question allowed people to designate multiple disabilities as seen in the Table 7 counts.

²² County groupings: Bear River-Tooele=Box Elder, Cache, Rich; Central-Southeast=Juab, Millard, Piute, Sevier, Wayne, Sanpete, Carbon, Emery, Grand; Southwest-San Juan=Garfield, Iron, Kane, Washington, Beaver, San Juan; TriCounty-Summit-Wasatch=Daggett, Duchesne, Uintah, Summit, Wasatch (2 Individuals (1.92%) and 3 Professionals (0.92%) did not indicate a County of residence.)

TABLE 7: Disability Type

Disability Type	Individual (n=104)	Family Member (n=404)	Professional (n=327)
Autism	13(12.5%)	171 (42.3%)	254 (77.7%)
Conditions related to Aging	5 (4.8%)	13 (3.2%)	132 (40.4%)
Hard of Hearing or Deaf	19 (18.3%)	28 (6.9%)	181 (55.4%)
ID or DD	12 (11.5%)	268 (66.3%)	284 (86.9%)
Mental or Emotional Health Condition	32 (30.8%)	91 (22.5%)	253 (77.4%)
Other (e.g. speech impairment)	10 (9.6%)	46 (11.4%)	14 (4.3%)
Physical Disability	50 (48.1%)	147 (36.4%)	238 (72.8%)
Substance Use Disorder	0 (0%)	5 (1.2%)	116 (35.5%)
Visually Impaired or Blind	10 (9.6%)	50 (12.4%)	189 (57.8%)

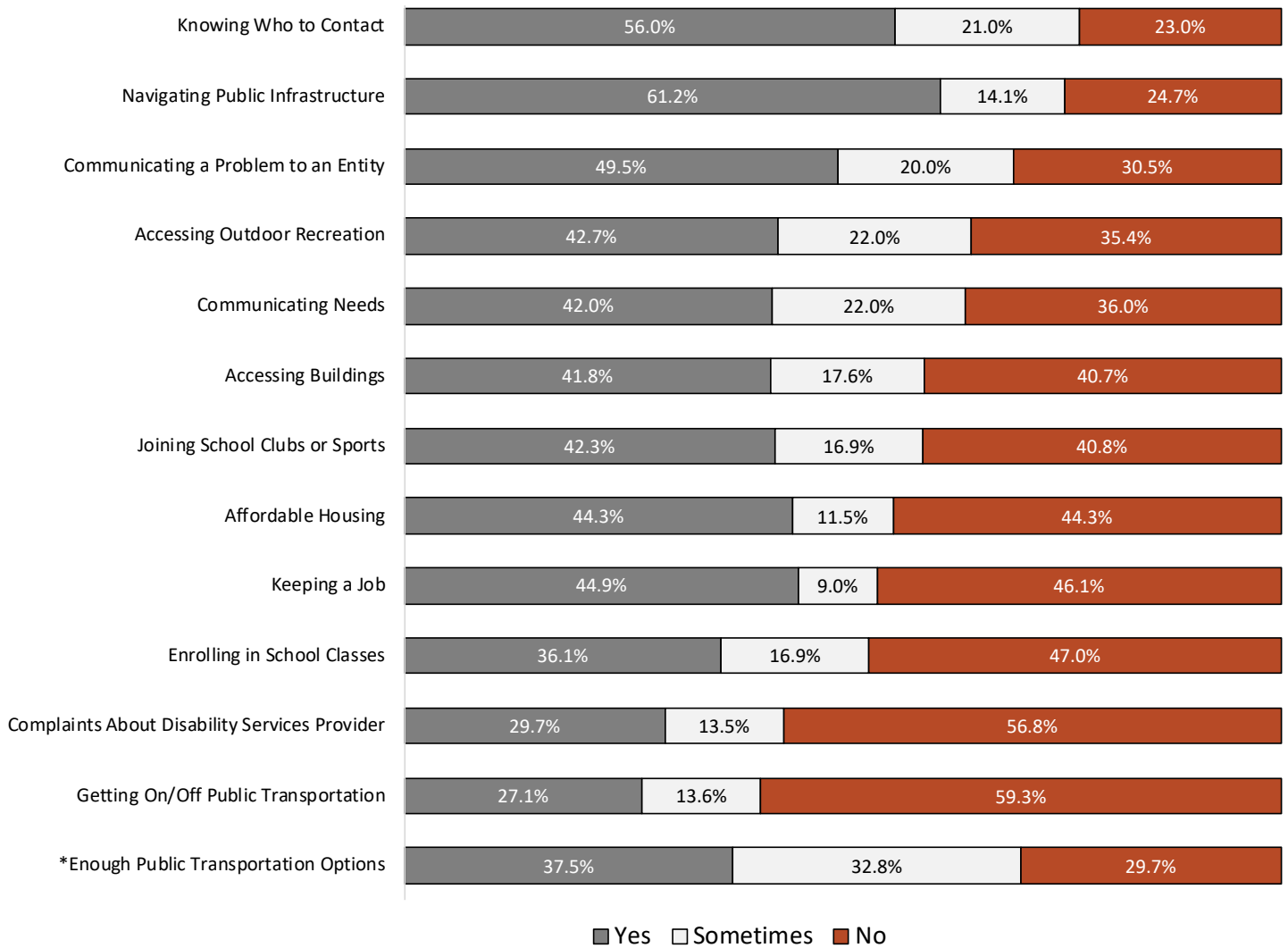
Barriers

Individuals with disabilities identified the following major barriers as the most prevalent barriers experienced by a person with a disability:

1. Knowing who to contact. (In the past year, have you had problems knowing who to contact when you have a problem?, 77.0%)
1. Navigating public infrastructure. (In the past year, have you had problems like uneven surfaces, blockages, or other unmaintained areas on sidewalks, curbs, parking lots, streets, or other public walkways?, 75.3%)
2. Communicating a problem to an entity. (In the past year, have you had problems communicating a problem to an entity? An entity could be the government, a private business, or a non-profit agency., 69.5%)

See Figure 1 for a comprehensive analysis of barrier responses. Individuals entered other barriers in a free-response space, such as closed captions or written directions are needed in more places, issues navigating care/services (e.g. healthcare/insurance, government systems, job training), limited workplace accommodations, limited mental health services, limited funding, and stigma.

FIGURE 1: Individuals with Disabilities Barriers



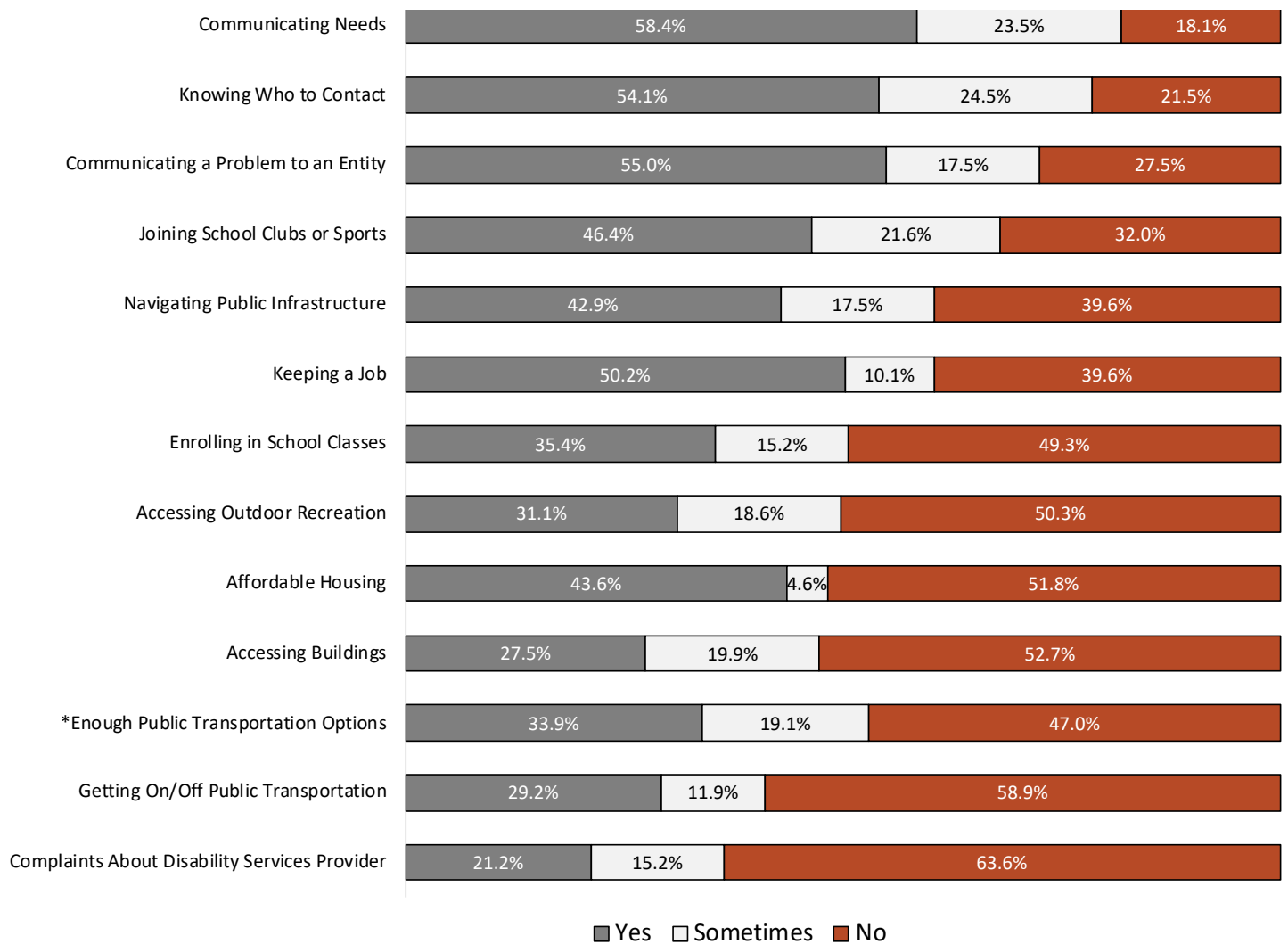
*opposite wording

Family members identified the following major barriers as the most prevalent barriers experienced by their family member with a disability:

1. Communicating needs. (In the past year, has your family member had difficulties communicating their needs to anyone?, 81.9%)
3. Knowing who to contact. (In the past year, has your family member had difficulties knowing who to contact when they had a problem?, 78.6%)
4. Communicating a problem to an entity. (In the past year, has your family member had difficulties communicating a problem to an entity? An entity could be the government, a private business, or a non-profit agency., 72.5%)

See Figure 2 for a comprehensive analysis of barrier responses. Family members entered other barriers in a free-response space, such as lack of accessible/available services (e.g. day programs, transportation, therapy) and lack of accessible/available equipment (e.g. insurance coverage).

FIGURE 2: Family Member Barriers



*opposite wording

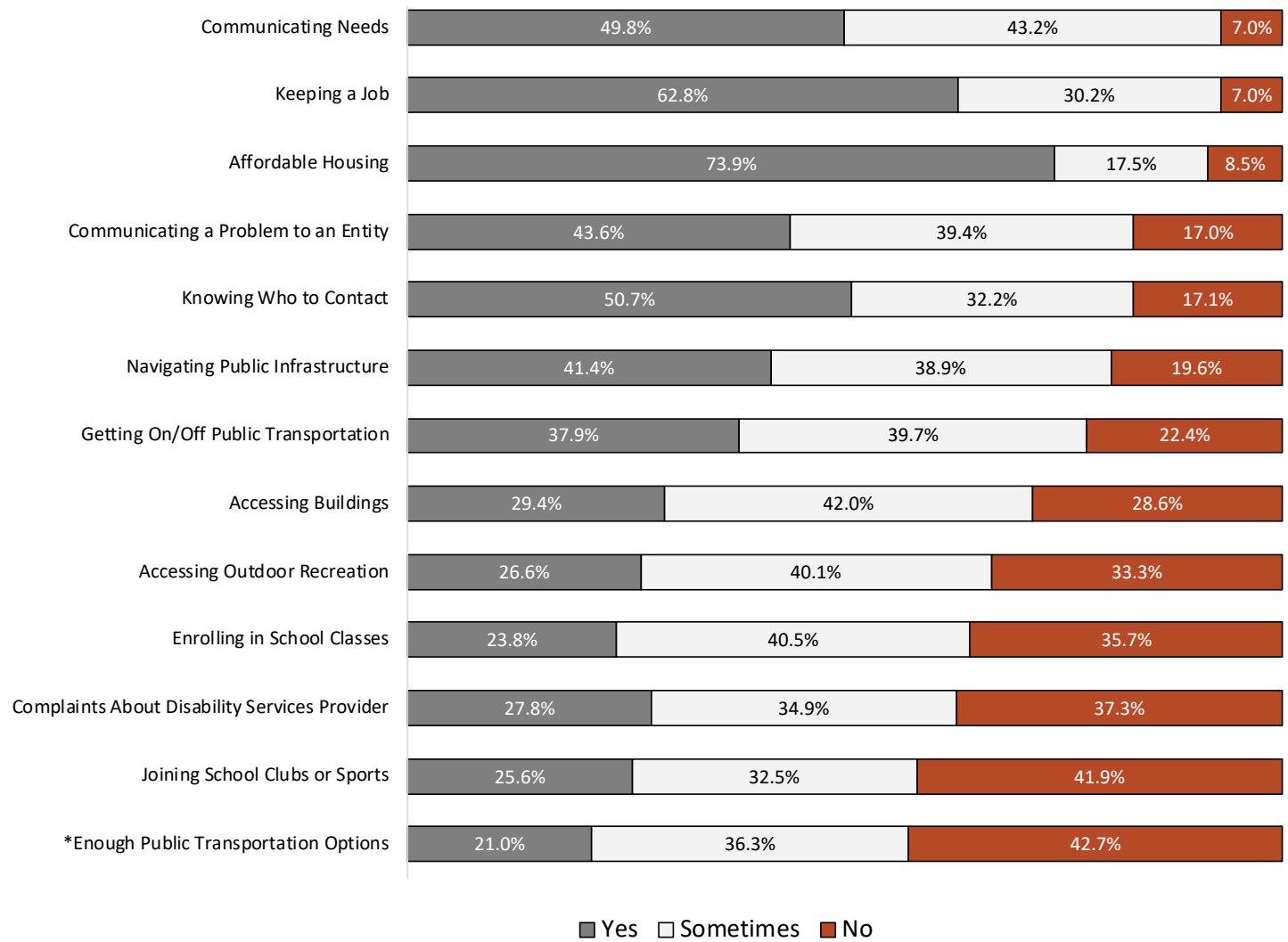
Professionals identified the following major barriers as the most prevalent barriers experienced by a client with a disability:

1. Communicating needs. (In the past year, have individuals that you serve had difficulties communicating their needs to anyone?, 93.0%)
2. Keeping a job. (In the past five years, have individuals that you serve had difficulties finding or keeping a job?, 93.0%)
3. Affordable housing. (In the past year, have individuals that you serve had difficulties finding accessible housing they can afford?, 91.4%)

See Figure 3 for a comprehensive analysis of barrier responses. Professionals entered other barriers in a free-response space, such as language barriers (e.g. ASL/non-English interpreters), limited information about accessibility available so individuals can make decisions about how/when/if they want to visit somewhere, lack of affordable healthcare and dental care, lack of accessibility/availability of social services, issues navigating care/services (e.g. healthcare/insurance, government systems), inadequate staffing ratios/inability

to find appropriate services and professionals (especially in rural areas).

FIGURE 3: Professional Barriers

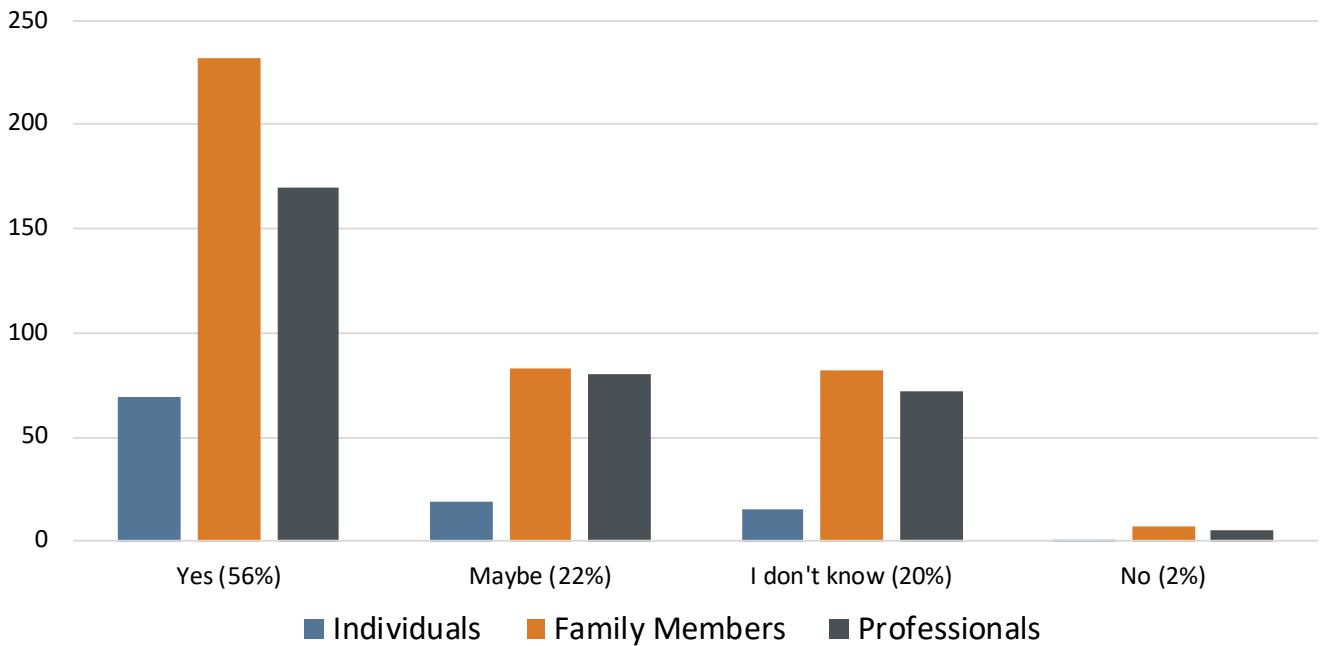


*opposite wording

Ombudsman Support

Overall, 56.4% of all participants said “yes” when asked if creating an Ombudsman would be helpful while only 1.6% of participants said “no”; the remaining 42.0% responded “maybe/I don’t know”. Individuals with disabilities were the group with the largest percentage of responders in support of the creation of an Ombudsman, however the majority of all groups were supportive.

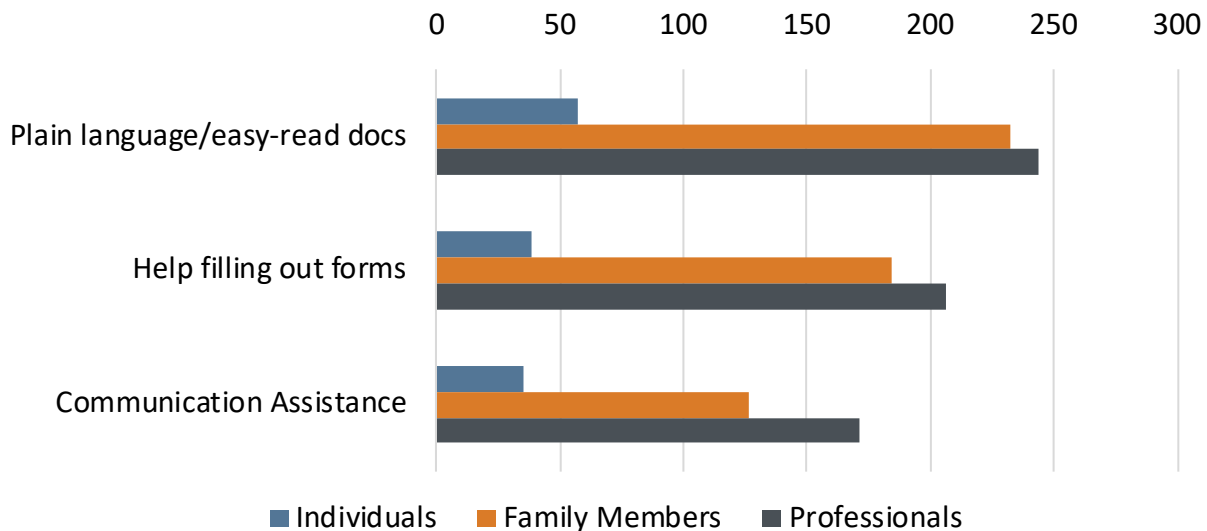
FIGURE 4: Ombudsman Support



Assistance to File Complaints

When asked about filing complaints to a potential Ombudsman Office, nearly two-thirds of participants wanted an easy-to-understand filing process with plain language and easy to read documents. See Figure 5. Participants also asked for in-person help and communication assistance (e.g. translation service, text-to-speech, braille). Participants also reported other ideas that would help people with disabilities file a complaint such as providing awareness/education about services and the Ombudsman Office, offer peer support or a regional representative—to ensure rural areas are served, and utilizing a notification system for following-up about a complaint. Lastly, participants were candid about an Ombudsman Office not using an automated answering system.

FIGURE 5. Assistance to File Complaints



Although it would have been ideal to have more people with disabilities respond to the survey, there was high participation, as compared to previous studies conducted by DSPD, with over 800 respondents from three groups (individuals, family members, and professionals). However, the different groups may be answering the survey regarding different disability types meaning that group comparisons could be misleading and generalization could be inaccurate. Overall most survey participants thought an Disability Ombudsman Office would be helpful and every barrier in the survey was identified as problematic by at least one third of respondents. Thus, improving all 13 barriers would positively impact the disability community in Utah.

Survey results were released and reviewed during the Ombudsman Steering Committee public meeting in May 2021. Committee members and the public were solicited to provide input and discussion.

Location Options for the Disability Ombudsman Office

H.B 378 requested an Ombudsman that protects the rights and privileges of a person with a disability as defined by the Americans with Disabilities Act. The ADA defines disability as “a physical or mental impairment that substantially limits one or more major life activities” and interprets this definition in the broadest sense possible.²³ Further into the text, the ADA defines the scope of rights and privileges as “[...] the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation”.²⁴ Based on the literature reviewed and interviews with Ombudsman in other states, DSPD identified three possible locations for a Disability Ombudsman Office in Utah.

The first option locates the Disability Ombudsman Office in the legislative branch. Creating a classical Ombudsman would allow for the broadest scope and jurisdiction over any state and local government action affecting a person with a disability as defined by the ADA. A well-developed classical Ombudsman incorporates the USOA standards to the greatest degree practicable. Alaska, Arizona, and Iowa statutes provide examples of how the USOA model legislation can be adapted to a state government.

A second option locates a Governmental Ombudsman office in the executive branch. This office reports directly to the Governor’s Office, and is independent of any agency subject to investigation. Reporting to the Governor impacts the office’s independence, and may need safeguards included in statute. Location of the Ombudsman within the executive branch may require a narrower definition of disability or agency subject to investigation. For example, Minnesota limits the Ombudsman’s oversight to any agency, facility or program that provides services or treatment for mental illness, developmental disabilities, chemical dependency, or emotional disturbance disability. The independence afforded Minnesota’s executive Ombudsman also allows the office to closely align with USOA standards.

The third option locates the office within the Department of Health and Human Services (DHHS)²⁵. Depending on the powers and privileges granted to the office in statute, creation of an Ombudsman within DHHS could result in a Governmental Ombudsman similar to Texas, or an Organizational Ombudsman similar to Indiana. An effective Ombudsman within DHHS would have a scope limited to actions taken by DHHS. All of the interviewed Ombudsman agreed that placing an Ombudsman within an agency subject to investigation

23 42 U.S.C. § 12102.

24 42 U.S.C. § 12182.

25 The Department of Health and Human Services will be established July 1, 2022, according to H.B. 365 State Agency Realignment, 2021 General Session.

requires clear statutory safeguards to ensure that the Ombudsman is, both in practice and in perception, neutral and impartial.

If choosing an executive or Organizational Ombudsman, DSPD recommends also creating an advisory board that participates in the office’s mandate and appoints the Ombudsman. Advisory board membership should include a variety of non-governmental stakeholders including organizations and people with disabilities. Putting safeguards, like the advisory board, in place protects the Ombudsman from political influence and undue agency influence.

An Ombudsman located within the executive branch needs a carefully crafted statute that aligns the office’s duties, jurisdiction, and powers to ensure effectiveness. The Ombudsman’s ability to persuade hinges on the public perception of respectability, impartiality, and neutrality; any perception of bias or overreach could render the office ineffective. Acting without enforcement power, the ability to positively impact some of the most vulnerable individuals in our state relies on the Ombudsman’s ability to cultivate and maintain trust with the public, and any entity that serves people with disabilities.

Projection of Costs

DSPD gathered data from several states on the location, structure, and the budgetary needs of each type of Ombudsman office. Throughout the research process, DSPD determined that there are three main components which make up the budget of an Ombudsman program: (1) staff; (2) software; and (3) miscellaneous items including travel, contracting with other subject matter experts, and other costs. Staffing costs consist of the majority of Ombudsman budgets. Below in Table 8, a cross state comparison of budgets, FTEs, and basic Ombudsman information can be found.

TABLE 8: State Comparison of Budgets, FTEs, and Ombudsman Information

Comparison Category	State Population	Operating Budget	FTEs	Type of Ombudsman	Location of Office
Alaska	734K	\$1.2M	10	Classical Governmental	Legislative Branch
Arizona	7.2M	\$904K	9	Classical Governmental	Legislative Branch
Indiana	6.8M	\$85K	1	Organizational	Dept. of Family and Social Services
Iowa	3.21M	\$1.9M	16	Classical Governmental	Legislative Branch
Minnesota	5.7M	\$5M	19	Executive Governmental	Executive Branch

Comparison Category	State Population	Operating Budget	FTEs	Type of Ombudsman	Location of Office
Texas	29.2M	\$5M	98	Executive Governmental	Executive Branch
Washington	7.8M	\$643K	5.5	Advocate	Protection and Advocacy Organization

Based on a comparison of population sizes from other states and anticipated volume of complaints in Utah, an estimate of the ongoing and one-time costs for an Ombudsman are laid out in Table 9, followed by a more detailed description of each of the costs. Additionally, the options for the organizational structure are discussed in terms of where this office would be housed, and some of the protections that need to be put in place to ensure impartiality and neutrality. The proposed budget reflects the cost of a classical Ombudsman or a robust executive branch Ombudsman. The scope of this proposed Ombudsman would have broad jurisdiction over all government agencies (State and local) affecting people with disabilities. This proposed cost would provide the staff necessary to manage the volume of requests associated with this broad jurisdiction.

TABLE 9: Summary of Proposed Utah Ombudsman Office Budget

Budget Item	Ongoing	One-Time
Staff	\$1,607,000	-\$831,000
Software	\$50,000	\$250,000
Miscellaneous	\$200,000	-\$100,000
Total	\$1,857,000	-\$681,000

Staff

Estimated Ongoing Staff Cost: \$1,607,000

Estimated One-Time Staff Reduction: -\$831,000

In discussions with the Ombudsman, several gave data on how many staff their Disability Ombudsman Office employs, the positions that those individuals hold, and the budget of their offices. DSPD used this information from similar states to estimate the fiscal impact of implementing this office in Utah. The Table below shows the states that gave information on the types of staff their office employs.

TABLE 10: State Comparison of Ombudsman Staff

Position Category	Alaska	Iowa	Minnesota	Washington	Arizona	Indiana
Ombudsman	X	X	X	X	X	X
Assistant Ombudsman		X	X		X	
Investigator	X	X	X	X	X	
Legal Staff		X		X	X	
Caseworker/ Intake	X	X			X	
Researcher	X					
IT Staff/IT Consultants		X	X		X	

DSPD used the data gathered from other states, in addition to their recommendations for what staff is critical, to analyze the best use of resources in Utah. Based on this analysis, DSPD estimates a need for the following FTEs:

- Ombudsman (1)
- Assistant Ombudsman (1)
- Information Technology Architect (1)
- Legal Staff (1)
- Research Consultant(1)
- Intake staff (6)
- Investigator (9)

Since this would be a new program being built from the ground up, not all staff would be required in year one. Staffing could be accomplished in three phases.

Phase one would primarily be focused on building and deploying the case management system, as well as getting policies and procedures in place. Phase two would be focused on increasing public awareness, and hiring limited staff to begin taking calls and initiating investigations. Both of these phases could conceivably be completed in the first year. By the start of year two (FY2023), the primary focus would shift to phase three, where a full workforce would be hired to direct calls and complaints, as well as conduct investigations when needed. The Table below shows how the final costs were calculated, and is one option for how to phase in the staffing necessary for the office. A total of 20 staff are estimated to be needed to effectively run this office.

TABLE 11: Ombudsman Timeline and Phases of Implementation

Phase	Dates	Position	Number of Staff
Phase 1	Jul. - Dec. 2022	Ombudsman	1
		Assistant Ombudsman	1
		Legal Staff	1
		Research Consultant	1
		IT Architect	1
Phase 2	Jan. - Jun. 2023	Intake Staff	2
		Investigator	3
Phase 3	FY24 and beyond	Intake Staff	4
		Investigator	6

Each of the positions listed above have a specific role in this organization. The following is a brief description of what each position would contribute.

Ombudsman: The Ombudsman is responsible for investigation and resolution of complaints that cannot be resolved through existing administrative processes; leadership in the development of rules, policies, handbooks and special projects; representation of the program/agency on inter/intra-agency workgroups and committees; and the review and comment on proposed legislation. Ombudsman handles case-specific complaints, responds to the complainant/inquirer in a timely manner and prepares written documentation of the findings of the complaint. Work involves the examination of facts and interpretation of policy for final disposition/resolution, offering alternative solutions to resolve issues, and administrative tasks such as budgeting, legislative reporting, and supervising staff.

Assistant Ombudsman: Handle cases that have been assigned by the Ombudsman, including: identify the factual and legal issues, obtain relevant information and records, make informal inquiries or conduct sworn interviews, research applicable law and public policy, analyze information gathered, and communicate findings, conclusions and any recommendations to complainants and agencies. Formulate investigative plans as appropriate or as directed by the Ombudsman. Make accurate, complete, and timely entries and notes in the case management system. The Assistant Ombudsman will also help the Ombudsman complete a variety of administrative tasks as needed.

Legal Staff: This position will assist the Ombudsman by interpreting the law. They will be responsible for providing fair and impartial guidance throughout investigations. They will also be responsible for proposing new statute to the Utah State Legislature which would better protect the rights of individuals with disabilities throughout the state.

In addition to the duties explained above, these three positions (Ombudsman, Assistant Ombudsman, and legal staff) would be responsible for occasional in-depth reporting. One tool which many states infrequently utilize is the ability to write high-profile reports and submit them to media outlets, the Governor’s Office or other high ranking officials. These reports would be reserved for the most egregious cases where no resolution could be found, and there is ongoing risk for harm. Other states report only one or two of these cases every couple of years, but when this does occur, there is a dramatic increase in workload, as these

types of investigations can take months or years.

Research Consultant: The research consultant will be responsible for the submission of the legislative reporting requirements. These requirements include, but are not limited to: an annual report of counts and trends, and a report to the Legislature on any proposed legislative changes. This position will assist legal staff in any fiscal changes, or impacts to the individuals served by this office, due to the proposed legislative changes. Additionally, this position will assist in analyzing data from organizations under investigation and provide pertinent information and data to investigators when applicable to a report, or other stakeholders upon request. The research consultant will have access to the case management database.

Intake staff: This position will be the first point of contact for individuals trying to submit a complaint. They will log each case in the case management system, assign an investigator when necessary, or direct the person to the appropriate resource, if possible, among other administrative duties. This position will also be responsible for directing complainants to the appropriate person, if the Ombudsman is unable to assist them. Many states noted that a large piece of the workload for their intake staff is directing callers to the correct person or agency.

Investigator: This position will be primarily focused on conducting impartial investigations into complaints. They will be responsible for communicating to all parties involved as to the findings of the investigation, as well as coming to a resolution. Investigators will also be responsible for writing a summary report for each investigation and filing it in an organized manner. This will ensure complaints and reports are easy to access for future comprehensive reports or audits.

IT Architect: This person will be responsible for building the case management system in the first year of operation, and subsequently maintaining that system. The case management system will be the sole location for all documentation of each case or complaint filed with the office.

This office could be run primarily remotely, offering several benefits. First, the Disability Ombudsman would not require the use of office space, which reduces the cost of running the organization. Second, during the Focus Groups and through the survey, DSPD heard many individuals desire to have this office truly represent everyone with disabilities. By utilizing the remote working agreement, individuals from across the state, including rural areas, would be able to access these jobs and have a better understanding of some of the complaints the office will hear. Remote work is also in line with the Governor's priorities to reduce the number of employees in offices, and ensure representation from rural areas. There could be occasions, however, where some individuals may need to meet in person. In these cases, flex space in Health and Human Services buildings across the state could be used.

Software

Estimated Ongoing Software Cost: \$50,000

Estimated One-Time Software Cost: \$250,000

The majority of the software cost would be an upfront cost to get the case management system in place, with a much smaller ongoing maintenance cost. The case management software would be used to track all complaints or questions coming into the office, how that complaint or question was resolved, and any follow-up that may be necessary. This would be a critical piece to fulfill the rigorous reporting requirements the Ombudsman Office should be subject to.

Miscellaneous Costs

Estimated Ongoing Miscellaneous Cost: \$200,000

The miscellaneous costs cover a variety of things. Throughout DSPD's conversations with other states, some of the expenses that the Ombudsman Offices incurred included training for staff, travel costs for staff, contracting with subject matter experts, and other legal or administrative costs. Several of the states recommended having between \$200,000 and \$300,000 set aside for these types of expenses each year.

Summary of Public Input

DSPD convened a monthly study steering committee (membership can be found in Appendix B). The group met virtually each month December 2020–May 2021. The group reconvened in August 2021 to review a draft version of this study. [PLACEHOLDER. THIS PARAGRAPH WILL BE COMPLETED AFTER STAKEHOLDER REVIEW]

Three public meetings were held in September 2021 including: a virtual and in-person option for people with disabilities and a virtual meeting for family members and professionals. These public meetings were held to solicit public feedback on a draft version of this study. [PLACEHOLDER. THIS PARAGRAPH WILL BE COMPLETED AFTER THE REPORT IS RELEASED PUBLICLY AND WILL SUMMARIZE THE PUBLIC INPUT RECEIVED. SEPTEMBER 2021]

Conclusion

DSPD endeavored to produce a report and proposal that adheres to the requirements outlined in H.B. 378, 2020 General Session. The report includes a summary of Ombudsman history, roles, types, and standards; and a review of statutes, policies, and programs in other states. After gathering input from the Utah disability community on barriers through a survey, analysis found the most common barriers among people with disabilities are items that an Ombudsman could assist with: navigating public infrastructure, knowing who to contact, and communicating a problem to an entity.

Utah could establish a robust Ombudsman office within the legislative or executive branch of government. The creation of an Ombudsman office in Utah would have broad support among people with disabilities with only one percent of those surveyed opposing its creation. The cost to fund this new agency is \$1.9 million state general fund and would be staffed by 20 FTEs. This agency would have broad jurisdiction over all government actions affecting people with disabilities. If the Legislature chooses to pursue the establishment of a Utah Disability Ombudsman, model statute language from USOA can be found in Appendix A. The legislature must make a determination of where to house this agency either within: the legislative branch, the Governor's Office, or the Department of Health and Human Services.

Appendix A: Resources

- [Subsections 62A-5b-103\(1\) through\(3\)](#)
- [Americans with Disabilities Act](#)
- [28 C.F.R. Part 36](#)
- [United States Ombudsman Association: USOA](#)
 - [USOA Governmental Ombudsman Standards](#)
 - [USOA Model Ombudsman Act](#)

State Ombudsman Program Websites and Statutes

- [Alaska Ombudsman](#)
 - [Alaska Statutes 24.55.010-340](#)
- [Arizona Ombudsman Citizens Aide Office](#)
 - [A.R.S. § 41](#)
 - [Arizona Administrative Code 2-16](#)
- [Georgia Office of Disability Services Ombudsman](#)
 - [O.C.G.A. § 37-2](#)
- [Indiana Disabilities Ombudsman](#)
 - [IC 12-11-13](#)
- [Iowa Office of Ombudsman](#)
 - [Iowa Code chapter 2C](#)
 - [Administrative Rule](#)
- [Minnesota Office of Ombudsman for Mental Health and Developmental Disabilities](#)
 - [MS Chapter 245.91-245.97](#)
- [Texas IDD Ombudsman](#)
 - [Texas Government Code § 531.0171](#)
 - [26 Tex. Admin. Code § 87](#)
- [Washington Developmental Disabilities Ombuds](#)
 - [Chapter 43.382 RCW](#)

Other State Program Websites

- [Alaska ADA Compliance Program](#)
- [New Mexico Governor's Commission on Disability](#)

Appendix B: Stakeholder Agencies

DSPD convened an Ombudsman Steering Committee that included the following agencies:

- Utah Parent Center
- Utah Developmental Disability Council
- Independent Living Centers
- Utah Transit Authority
- Disability Law Center
- Disability Advisory Council
- Disabled Rights Action Committee
- Division of Services for the Blind and Visually Impaired
- Division of Services of the Deaf and Hard of Hearing
- Office of Public Guardian
- Division of Substance Abuse and Mental Health
- Division of Adult and Aging Services
- Department of Workforce Services
- Department of Education
- Department of Health
- Department of Human Services

Appendix C: Supplemental Materials

- Ombudsman Focus Group
- Ombudsman Survey
- Utah County Groupings