

MONTANA LONG-TERM CARE OMBUDSMAN PROGRAM



October 2020

MT Ombudsman Policy Procedures

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CHAPTER 1 PURPOSE AND LEGAL AUTHORITY

Section 1.1 Purpose

This manual outlines the policies and procedures for governing the administration, management, funding and implementation of the State Long-Term Care Ombudsman Program funded under the Older Americans Act, Titles III and VII. These policies and procedures govern the actions of the Office of the State Long-Term Care Ombudsman (Office), designated representatives of the Office, Agency Providers (Area Agencies on Aging, local Ombudsman entities), the Aging Services Bureau of the Montana Department of Public Health and Human Services and other parties involved in the operation of the Program.

Section 1.2 Legal Authority

The Montana Long-Term Care Program (LTCO Program, Program) is authorized under the federal Older Americans Act (P. L. 116-131) as amended in 2020, Titles III and VII, Final Rule: 45 CFR Parts 1321 and 1324 State Long-Term Care Ombudsman Programs (February 2015), and under Montana Code Annotated (MCA) 52-3-601, *et seq.*; and MCA 50-5-51104 (2)(e).

CHAPTER 2 DEFINITIONS

Section 2.1 Definitions

Abuse

- A. The infliction of physical or mental injury; or
- B. The deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority. {MCA 52-3-803(1)}

Administration on Aging (AoA)/Administration for Community Living (ACL)

The Federal funding agency for the Older Americans Act (P.L. 116-131) as amended in 2020 and the Final Rule: 45 CFR Parts 1321 and 1324 State Long-Term Care Ombudsman Programs (February 2015).

Area Agency on Aging

An agency designated by the Aging Services Bureau to arrange for the provision of aging services in its planning and service area.

Area Plan

A plan developed by an Area Agency on Aging for its relevant planning and service area as set forth in the Older Americans Act.

Case

A case is each inquiry brought to or initiated by the ombudsman on behalf of a resident or group of residents involving one or more complaints which requires opening a case and includes ombudsman investigation, strategy to resolve and follow-up.

- If the ombudsman and another agency are both actively involved in a complaint investigation and resolution, it is also an ombudsman case.
- The number of cases is equivalent to the number of complainants. One or more people jointly filing a complaint count as one complainant.

Certification

Certification is the process by which an individual demonstrates basic knowledge and skills as required by the State Long-Term Care Ombudsman Program. Certification is accomplished by successfully completing the prescribed training curriculum established by the Program. Certification is a prerequisite to designation of the individual as a representative of the Program in the capacity of ombudsman.

Community Education

Information and educational presentations made by an Ombudsman to community groups, students, churches, etc. regarding the long-term care system, aging issues, the rights and benefits of residents of long-term care facilities, and services available to residents. This includes attendance at community and health fairs and similar gatherings where the Ombudsman has a display and is available to provide information to attendees.

Complaint

A complaint is a concern brought to, or initiated by, the ombudsman for investigation and action. A complaint includes information regarding action, inaction or decisions that may adversely affect the health, safety, welfare or rights of residents which is brought to the attention of a Long-Term Care Ombudsman and to which the ombudsman responds in order to address the adverse effect on residents:

- A. On behalf of one or more residents; and
- B. Relating to the health, safety, welfare or rights of a resident.
 - One or more complaints constitute a case.
 - You cannot have a case without a complaint.

Complaint processing

A systematic approach to resolve issues and concerns of residents of Long-Term care facilities, with permission, to the satisfaction of the resident. This function is the primary responsibility of the Program. It requires opening a case. Components of this approach consist of:

Stage 1:

- A. Receive complaint
- B. Gather information
- C. Verify problem

Stage 2:

- D. Analyze the situation
- E. Consider solutions
- F. Identify Obstacles

Stage 3:

- G. Choose approach
- H. Act
- I. Evaluate outcomes
- J. Document (NORS)
- K. Record case (NORS)

Conflict of Interest

A situation in which the concerns or aims of two different parties are incompatible. Or a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity. Reports shall be updated/submitted when a conflict arises, which includes COI remedies and removal. Please see Attachments 1 and Attachment 2, the NORC developed LTCOP Organizational Conflicts of Interest – Examples of Identification, Remedies, and Removal, Local Ombudsman Entities (LOE) and Office of the State Long-Term Care Ombudsman (OSLTCO).

Consultation

Providing information and assistance to an individual or a facility regarding long-term care facilities and residents. It does not involve investigating and working to resolve complaints (i.e., a consultation is not a case). Also, if the ombudsman refers someone with a concern to another agency and is not actively involved in investigating and working to resolve a problem, it is documented as a consultation.

Designation

The act of the State Long-Term Care Ombudsman, recognizing that an individual or host provider entity, having met basic criteria, is authorized to provide advocacy services on behalf of the Office. Basic criteria are met when an individual has met minimum qualifications, has successfully completed training and other criteria stipulated in the Certification Requirements for Local Ombudsmen and is free of un-remedied conflicts of interest. Designation authorizes the individual to act as a representative of the Long-Term Care Ombudsman Program.

Elder Rights

Elder rights are the rights of the older adults, who in the United States are not recognized as a constitutionally protected class.

Emergency

Any occasion or instance – such as a pandemic, tornado, storm, flood, earthquake, volcanic eruption, landslide, mudslide, snowstorm, fire, explosion, nuclear accident, or any other natural or man-made catastrophe – that warrants action to save lives and to protect property, public health and safety.

Exploitation

- A. The unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;
- B. An act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;
- C. The unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property. The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain. [MCA 52-3-803 (3)]

Family Council Activities

A self-led, self-determining group of families and friends of nursing home residents that work to improve the quality of care and quality of life of the facility's residents and provides families a voice in decision-making that affects them and their loved ones.

First Responder

Federal, state and local emergency public safety, law enforcement, emergency response, Emergency Medical System, hospital emergency facilities, and related personal, agencies, and authorities.

Good Faith

Evidence of Good Faith includes, but is not limited to:

- A. Making reasonable efforts to follow procedures set forth in applicable laws and this manual.
- B. Seeking and making reasonable efforts to follow direction from the Office of the SLTCO (for volunteers' direction could also be given by the local ombudsmen).

Guardian

Person or entity appointed by a court to exercise the legal rights and powers of another individual.

- A. The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control, as required by the court or by court rule [MCA 72-5-321 (1)].
- B. A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an un-emancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship [MCA 72-5-321 (2)].

Identification Badge

A badge that serves to identify the person wearing it. The identification badge shall be provided by the Aging Services Bureau and shall only be worn for official work duties. The Ombudsman shall only wear the ID provided by the Aging Services Bureau.

Immediate Family

Pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

Information and Assistance

Services which provide information to individuals on long-term care or the needs/rights of long-term care residents.

Informed consent

Permission received after disclosure of pertinent facts that may affect the individual. The communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, such unwritten consent should be documented in the record by the ombudsman or a representative of the Office, in accordance with the procedures established by the Office.

In-service education

Presentations to long-term care facility staff on long-term care issues.

Interagency coordination

Activities which involve meeting or coordinating with other agencies to learn about and improve conditions for one or more residents of long-term care facilities.

Issues advocacy

Activities supporting and promoting issues which benefit residents of long-term care facilities.

Legal representative

An agent under a valid power of attorney, provided that the agent is acting within the scope of his or her agency; an agent under a durable power of attorney for health care; or an executor or administrator of the estate of a deceased resident.

Local Long-Term Care Ombudsman (LLTCO, Representatives of the Office)

An employee or volunteer designated by the Ombudsman to represent the State Long-Term Care Ombudsman Program at the local level. The LLTCO will be an employee of the host provider agency with programmatic authority held by the Program.

Memorandum of Understanding or Memorandum of Agreement

Document describing an agreement between parties expressing an agreed upon course of action.

Provider Agency (Local Ombudsman Entity)

Entity designated by the Ombudsman to carry out responsibilities and program components of the Long-Term Care Ombudsman Program at a local level. A public or private entity that has entered into a contractual agreement with the Aging Services Bureau to provide oversight and accommodations to representatives of the State Long-Term Ombudsman Program. The State Long-Term Care Ombudsman has the responsibility and authority of designation of an entity as a host provider agency for the Program. Designation is based on criteria stated in the policies and procedures of the Program. Personnel authority is vested in the host provider agency while programmatic authority is retained by the Program.

Long-Term Care Facility

Long-term care facility means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, rooming houses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections [MCA 50-5-101(36) (a) and (b)]. Any nursing home or personal care/assisted living home providing long-term care services and subject to regulation and facility licensure by the Department of Public Health and Human Services.

Long-Term Care services

A set of health, personal care, and social services delivered over a sustained period of time to persons who have lost or never acquired some degree of functional mental or physical capacity.

Neglect

Neglect means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for a person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability [MCA 52-3-803(7)].

Office of the State Long-Term Care Ombudsman

As used in section 712 of the Act, means the organizational unit in a state or territory which is headed by a State Long-Term Care Ombudsman.

Montana Ombudsman Data System (MODS)

The statewide reporting system used to collect data relating to complaints, consultations, trainings provided, and other activities of the ombudsman program. This data is used when submitting the National Ombudsman Reporting System (NORS) annual report to the Administration on Community Living (ACL). It is due to ACL by January 30 each year for the previous federal fiscal year, October 1 through September 30.

Ombudsman Intern/Volunteer

An individual designated by the State Long-Term Care Ombudsman Program as a representative of the Program with a limited scope of authority. The Ombudsman Intern/ Volunteer acts under the supervision of the local ombudsman or regional ombudsman. The individual in this position is not authorized to open or investigate cases. The Ombudsman Intern/Volunteer may serve on a volunteer, paid or stipend basis depending on the agreement with the host agency. An Ombudsman Volunteer may earn certification and advance to ombudsman status if a vacancy exists within the host agency.

Ombudsman Program Components

Services of the Long-Term Care Ombudsman Program performed with the goal of protecting the health, safety, welfare and rights of long-term care residents.

Regional Long-Term Care Ombudsman (RLTCO)

Employee designated by the State Long-Term Care Ombudsman to represent the Long-Term Care Ombudsman Program, working with providers, ombudsmen, volunteers and facilities within their service area, to provide oversight and guidance of the program.

Representative of the Office of the State Long-Term Care Ombudsman

As used in section 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in Chapter 6, Section 6.1 and Chapter 7, Section 7.1, whether personnel supervision is provided by the Ombudsman, as his/her designees, or by an agency hosting a Provider Agency designated by the Ombudsman pursuant to section 712 (a)(5) of the Act.

Regional Long-Term Care Ombudsman Annual Plan

A plan submitted or revised by the Regional Ombudsman annually, with input from providers and local ombudsmen, for approval by the State Ombudsman and AAA Directors, which sets forth a strategic plan including goals and objectives for the local Long-Term Care Ombudsman program.

Resident – An individual who resides in a long-term care facility.

Resident Council Activities

An independent, organized group of people living in a long-term care facility that meets on a regular basis to discuss concerns and develop suggestions on improving services or resolve differences in the facility. The council has the right to privately meet.

Resident Representative

- A. An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
- B. A person authorized by State or federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
- C. Legal representative, as used in section 712 of the Older Americans Act;
- D. The court appointed guardian or conservator of a resident. 45 CFR §1324.1

Routine Visit

Visits to a nursing facility or personal care/assisted living home for the purpose of monitoring and assessing the general condition of residents and the physical plant of the facility.

Service Area

Designated area of a provider agency and a RLTCO in which they provide services for the Long-Term Care Ombudsman Program (i.e., county, area).

State Long-Term Ombudsman (Ombudsman)

As used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties in this manual. In this document, Ombudsman refers to the State Long-Term Care Ombudsman who heads the Office of the State Long-Term Care Ombudsman as stipulated in the OAA.

State Long-Term Care Ombudsman Program (Ombudsman Program, Program)

As used in section 711 and 712 of the Act means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

Systems Advocacy

To analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate. Activities supporting and promoting issues which benefit residents of long-term care facilities.

Volunteer Management

Recruiting, training, managing and providing technical assistance to volunteers assisting the community Long-Term Care Ombudsman program in carrying out its responsibilities.

Willful Interference

Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in this manual or the Ombudsman or a representative of the Office from performing any of the duties set forth in this manual.

CHAPTER 3 PROGRAM ADMINISTRATION AND MANAGEMENT

Section 3.1 Administrative and Management Functions

The State Aging Services Bureau (State Unit on Aging, SUA), Senior and Long-Term Care Division (SLTCD) of the Montana Department of Public Health and Human Services (DPHHS) has established the Office of the State Long-Term Care Ombudsman which will develop, administer, and implement the Long-Term Care Ombudsman Program in Montana.

Section 3.2 Program Structure

The State Aging Services Bureau (State Unit on Aging, SUA), Senior and Long-Term Care Division (SLTCD) of the Montana Department Public Health and Human Services (DPHHS) shall define roles for components of the Long-Term Care Ombudsman to meet requirements delineated in the Older Americans Act.

Section 3.3 Program Implementation

The Aging Services Bureau, Senior and Long-Term Care Division of DPHHS shall establish and operate the Office of Long-Term Care Ombudsman (Office) as follows:

- A. The Office is a distinct entity, separately identifiable and located within, or connected to, the State Agency; or
- B. The State Agency enters into a contract or other arrangement with any public agency or non-profit organization which shall establish a separately identifiable, distinct entity as the Office.

Section 3.4 General Authority and Mission

The Office of the State Long-Term Care Ombudsman Program is authorized by and in accord with the Federal Older Americans Act, 42 U.S.C. Section 3001 et seq. and the Montana Code Annotated (MCA) 52-3-601, *et seq.*; and MCA 50-5-51104 (2)(e). The Long-Term Care Ombudsman (LTCO) program protects and improves the quality of care and quality of life for residents of long-term care facilities in Montana through: Individual and systemic advocacy for and on behalf of residents, including representing the interests of residents before government agencies, reviewing and commenting on existing and proposed laws, seeking out and responding to media requests, the promotion and cultivation of best practices within long-term care services, and through the promotion of family/community and resident involvement in long-term care facilities.

The LTCO program is a resident advocacy program. The resident is the client, regardless of the source of the complaint or request for service. The Ombudsman will make every reasonable effort to empower, assist, represent, and advocate on behalf of the resident. Processing complaints made by or on behalf of residents of long-term care facilities and resolving the problems and questions of the residents is the highest priority of the LTCO program. The principles and techniques of empowerment and self-advocacy are to be used whenever possible when addressing resident complaints and problems. The goal is to resolve the issue at the facility level whenever possible. If this can't be accomplished then other agencies may be involved, to include the regulatory agency (Department of Health) as necessary.

Section 3.5 Contract Management

3.5a Contracts for Ombudsman Services

The local LTCO Program in each service area shall be operated through a contract with the Aging Services Bureau as follows:

- A. Contracts shall exist in each service area between the Aging Services Bureau and the Area Agency on Aging (AAA) and an entity or entities meeting the criteria for designation as defined in this manual.
- B. An AAA or Provider Agency may directly provide Long-Term Care Ombudsman (LTCO) services, if not otherwise prohibited from directly delivering services, or may subcontract with another entity meeting the criteria for designation as specified in this manual.
 - 1. Where a AAA or other entity provides LTCO services directly, it must also fulfill the responsibilities of a Provider Agency.

Section 3.6 General Record Maintenance, Retention & Destruction

The Ombudsman program is operated by Montana pursuant to grants of the Department of Health and Human Services (HHS) so the Federal requirements related to retention of records maintained pursuant to HHS grants apply. Thus, the following must be retained for a period of three (3) years from the date the final Financial Status Report is submitted by the state to HHS: financial and programmatic records, supportive documents, statistical records, and all other records that are required by the terms of a grant or may reasonably be considered pertinent to a grant.

Section 3.7 Aging Services Bureau Role

The Aging Services Bureau, Senior and Long-Term Care Division of DPHHS shall establish and operate the Office of Long-Term Care Ombudsman (Office) as follows:

- A. The Office is a distinct entity, separately identifiable and located within, or connected to, the State Agency; or
- B. The State Agency enters into a contract or other arrangement with any public agency or non-profit organization which shall establish a separately identifiable, distinct entity as the Office.
 - a. The Office shall be headed by the State Long-Term Care Ombudsman. The Ombudsman shall be employed by the State Agency or other entity that meets the qualifications set forth by the Older Americans Act. The State Agency must ensure the Ombudsman conforms to the following requirements:
 - i. The Ombudsman shall serve on a full-time basis in providing leadership and management of the Office, the functions, responsibilities, and duties, as set forth in this manual are to constitute the entirety of the Ombudsman's work. The State agency or other agency carrying out the Office shall not require or request the Ombudsman to be responsible for leading, managing or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.
 - ii. This provision does not limit the authority of the Ombudsman program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.
 - iii. The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:
 - 1. Long-term services and supports or other direct services for older persons or individuals with disabilities;
 - 2. Consumer-oriented public policy advocacy;
 - 3. Leadership and program management skills; and
 - 4. Negotiation and problem resolution.

Section 3.8 Aging Services Bureau Responsibilities Policy and Procedures

The Aging Services Bureau, Senior and Long-Term Care Division shall establish and operate an Office of the State Long-Term Care Ombudsman and carry out through that Office the statewide Long-Term Care Ombudsman Program.

Aging Services Bureau Responsibilities

- A. The Department of Public Health and Human Services, Senior & Long-Term Care Division, Aging Services Bureau shall:
 - a. Provide for a full-time State Long-Term Care Ombudsman;
 - b. Provide funding for a statewide Long-Term Care Ombudsman (LTCO) program in accordance with allocation formula and maintenance of effort requirements;
 - c. Provide legal representation for the Office of the State Long-Term Care Ombudsman (SLTCO, Office) and Local Long-Term Care Ombudsmen;
 - d. Provide support, including training opportunities, to the Office to enable it to fulfill its responsibilities consistent with all applicable federal and state laws, regulations and policies;
 - e. Administer the contracts between the Aging Services Bureau and local Ombudsman entities;
 - f. Provide technical assistance for and monitor performance of Provider Agencies;
 - g. Provide administration of the statewide LTCO Program in accordance with all applicable federal and state laws, regulations and policies; and
 - h. Provide Identification Badges to representatives of the Office.
 - i. DPHHS, Senior & Long-Term Care Division shall provide monitoring, as required by 45 CFR 1321.11(b), including but not limited to fiscal monitoring, where the Office and Local Ombudsman Entity (LOE) is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in 45 CFR 1324.13 and 45 CFR 1324.19. The State agency may make reasonable requests of reports, including aggregated data regarding Ombudsman program activities using a monitoring and assessment tool developed by the State agency.

CHAPTER 4 THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM

Section 4.1 State Long-Term Care Ombudsman

The State Long-Term Care Ombudsman shall assure that all residents of long-term care facilities in the State have access to the services of the Montana Long-Term Care Ombudsman Program and that each service area in the State has a designated LTCO Program. The State Long-Term Care Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program.

Section 4.2 Minimum Qualifications for State Long-Term Care Ombudsmen

§ 1324.11 (d) The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in: (1) Long-term services and supports or other direct services for older persons or individuals with disabilities; (2) Consumer-oriented public policy advocacy; (3) Leadership and program management skills; and (4) Negotiation and problem resolution skills.

Section 4.3 State Long-Term Care Ombudsman (SLTCO) Responsibilities and Functions: Leadership and Management of the Office

- A. The State Long-Term Care Ombudsman shall be the head of a unified statewide program and shall:
 - a. Establish or recommend policies, procedures and standards for administration of the Ombudsman program pursuant to this manual.
 - b. Require representatives of the Office to fulfill the duties set forth in this manual in accordance with Ombudsman program policies and procedures.
- B. Monitor, on a regular basis, the Ombudsman program performance of local and regional Ombudsman entities.
- C. Identification, investigation, and resolution of complaints made by or on behalf of residents of LTC facilities.
- D. Provision of services to protect the health, safety, welfare and rights of the residents and advocacy for quality of life and quality of care.
- E. Informing residents how to obtain services provided by other agencies.
- F. Ensuring that residents have regular and timely access to the services provided through the Office and that residents and complainants receive timely responses about complaints from the representatives of the Office.
- G. Representing the interests of residents before governmental agencies and seeking administrative, legal and other remedies to protect the health, safety, welfare and rights of residents.
- H. Provision of administrative and technical assistance to representatives of the Office.
- I. Systems advocacy.
- J. Analyzing, commenting on and monitoring the development and implementation of federal, state, and local laws, regulations and other governmental policies and actions, pertaining to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state. Facilitating public comment may also be a part of this.
- K. Recommending changes in such laws, regulations, policies, and actions as the Office determines to be appropriate.
- L. Providing technical support to resident and family councils as requested to protect the well-being and rights of residents.
- M. Determining certification or removal of certification of representatives of the Office.
- N. Receiving grievances and investigating allegations of misconduct by representatives of the Office in the performance of ombudsman duties.

- O. The State LTC Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies and procedures governing the Ombudsman program.
- P. The State LTC Ombudsman shall independently develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and as otherwise required by the Assistant Secretary.
 - a. Such report shall:
 - i. Describe the activities carried out by the Office in the year for which the report is prepared;
 - ii. Contain analysis of Ombudsman program data;
 - iii. Describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
 - iv. Contain policy, regulatory, and legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;
 - v. Contain analysis of the success of the Ombudsman program, including success in providing services to residents of, assisted living, board and care facilities and other similar adult care facilities; and
 - vi. Describe barriers that prevent the optimal operation of the Ombudsman program.
 - vii. The State LTC Ombudsman shall make such report available to the public and submit it to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities.
- Q. The State Long-Term Care Ombudsman shall determine designation, and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act and the policies and procedures set forth in this manual.
 - a. Where the Office of the state Ombudsman chooses to designate local Ombudsman Entities, the Ombudsman shall:
 - i. Designate local Ombudsman entities to be organizationally located within public or non-profit private entities;
 - ii. Review and approve plans or contracts governing Provider Agency operations including, where applicable, through Area Agency on Aging area plans, in coordination with the Aging Services Bureau.
- R. The State Long-Term Care Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the act, in consultation with residents, resident representatives, citizen organizations, long-term care providers and the State agency, that –
 - a. Specify a minimum number of hours of initial training;
 - b. Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate; and
 - c. Specify an annual number of hours of in-service training for all representatives of the Office.
 - a. Prohibit any representative of the Office from carrying out the duties described in this manual unless the representative –

- b. Has received the training required under these policies and procedures or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and
 - c. Has been approved by the Ombudsman as qualified to carry out the activities on behalf of the Office.
- S. The State Long-Term Care Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman program duties and, as applicable, coordinate such investigations with the State agency in which the Office is organizationally located, agency hosting the Provider Agency and the Provider Agency.
- T. Policies, procedures, or practices which the Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman program shall be sufficient grounds for refusal, suspension, or removal of designation of the representative of the Office and the Provider Agency.
- U. The State LTC Ombudsman shall manage the files, records, and other information of the Ombudsman program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such files, records, and other information are the property of the Office. Nothing in this provision shall prohibit a representative of the Office or a Provider Agency from maintaining such information in accordance with Ombudsman program requirements.
- V. Disclosure - In making determinations regarding the disclosure of files, records and other information maintained by the Ombudsman program, the State LTC Ombudsman shall:
 - a. Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act in responding to requests for disclosure of files, records, and other information, regardless of the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;
 - b. Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records or other information of the Office; and
 - c. Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including:
 - i. Classification of at least the following types of files, records, and information: medical, social and other records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the Ombudsman program reporting system; and
 - ii. Identification of the appropriate individual designee or category of designee, if other than the Ombudsman, authorized to determine the disclosure of specific categories of information in accordance with the criteria described in paragraph (e) of this section.
- W. Coordination - Through adoption of memoranda of understanding and other means, the State LTC Ombudsman shall lead state-level coordination, and support appropriate Provider Agency coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being or rights of residents of long-term care facilities including, but not limited to:
 - a. Area Agency on Aging programs;
 - b. Aging and disability resource centers;
 - c. Adult protective services programs;
 - d. Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
 - e. Facility and long-term care provider licensure and certification programs;

- f. The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
 - g. Victim assistance programs;
 - h. State and local law enforcement agencies;
 - i. Courts of competent jurisdiction; and
 - j. The State legal assistance developer and legal assistance programs, including those provided under section 306(a)(2)(C) of the Act.
 - k. The Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.
- X. The State Long-Term Care Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.
- Y. The responsibilities of the Office of the State Long-Term Care Ombudsman according to the party which is being served: Guidance for using this Section 1) to long-term care residents, 3) to Long-Term Care Ombudsmen, and 4) to Provider Agencies.
- a. State Long-Term Care Ombudsman responsibilities to long-term care residents:
 - i. The SLTCO shall, personally or through representatives of the Office:
 - 1. Identify, investigate and resolve complaints that are made by or on behalf of residents, and relating to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of
 - a. Providers, or representatives of providers, of long-term care services;
 - b. Public agencies; or
 - c. Health and social service agencies.
 - 2. Provide services to assist residents in protecting their health, safety, welfare and rights;
 - 3. Inform residents about means of obtaining services provided by long-term care service providers, public agencies or health and social service agencies or other services to assist residents in protecting their health, safety, welfare and rights;
 - 4. Provide regular and timely access to LTCO services for residents and timely response to complaints;
 - 5. Represent the interests of residents before governmental agencies and pursue administrative, legal and other remedies to protect health, safety, welfare and rights of residents;
 - 6. Provide analysis, comment on and monitor the development and implementation of federal, state and local laws, regulations and other governmental policies and actions pertaining to the health, safety, welfare and rights of residents, with respect to the adequacy of long-term care facilities and services in the state.
 - 7. Recommend changes in such laws, regulations, policies and actions as the Office determines appropriate;
 - 8. Facilitate public comment on laws, regulations, policies and actions;
 - 9. Provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and
 - 10. Prevent inappropriate disclosure of the identity of any complainant or resident with respect to LTCO files or records.
- Z. State Ombudsman responsibilities to local Long-Term Care Ombudsmen
- a. The State Long-Term Care Ombudsman shall provide to the Local Long-Term Care Ombudsmen:
 - i. certification training and ongoing training in accordance with the certification requirements for Ombudsmen articulated in this manual;

- ii. program management and development to enable the local LTCO Program to fulfill the Program Components as spelled out in this manual;
- iii. technical assistance and oversight as needed related to complaint handling and other LTCO services;
- iv. timely review, comment and approval of the Regional Ombudsman Area Plan; and
- v. monitoring and evaluation of the statewide LTCO Program
 - 1. including assurance that the local Long-Term Care Ombudsmen are wearing the State issued identification badge.

AA. State Ombudsman responsibilities to Provider Agencies:

- a. The SLTCO shall provide to the Provider Agency:
 - i. administrative and technical assistance to assist local entities in participating in the LTCO Program, including:
 - 1. assistance with screening LTCO applicants for certification requirements, including:
 - a. providing a conflict of interest screening tool;
 - b. timely response to requests for review of applications and for minimum qualification substitutions; and
 - c. participation in interviews of applicants as members of an interviewing team at the Provider Agency's request.
 - 2. information and resources to assist the Provider Agencies in promoting the LTCO Program within its service area;
 - 3. statewide LTCO Program data and data analysis;
 - 4. assistance with monitoring the local LTCO Program;
 - 5. review and comment on relevant sections of area plans, if provider agency is an Area Agency on Aging;
 - 6. assistance with job performance review as requested by the Provider Agency; and
 - 7. assistance with arrangements of temporary provision of LTCO services when LTCO staff of the provider agency are unavailable or the staff position is vacant.

CHAPTER 5 PROVIDER AGENCIES

Section 5.1 Provider Agency Policy

The Provider Agency is designated by the State Ombudsman to house the local Long-Term Care Ombudsman program and to assure the provision of ombudsman services in the service area designated by contract with the Area Agency on Aging or the Aging Services Bureau.

Section 5.2 Provider Agency Responsibility Procedures

- A. The Provider Agency shall:
- a. Be responsible for the personnel management, but **not** the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.
 - b. Not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality and disclosure requirements of section 712 of the Act, as implemented through this rule and the policies and procedures of the Office.
 - i. Policies, procedures and practices, including personnel management practices of the Provider Agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.¹
 - ii. Nothing in this provision shall prohibit the Provider Agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.²
 - c. Be the sole provider of LTCO services in the service area designated through contract with the AAA or the Aging Services Bureau;
 - d. To employ, with consultation of the SLTCO or designee, a full-time Regional Ombudsman (if applicable), who:
 - i. meets the applicable minimum qualification specified in this policy and procedure manual; and
 - ii. has no duties in the agency outside the scope of the LTCO Program.
 - e. To also employ LTCO staff, in consultation with the Regional Ombudsman the Office of the State Long-Term Care Ombudsman to carry out the duties as outlined in the policy and procedure manual.
 - f. Assure the provision of staff support as needed or appropriate for the operation of the LTCO Program such as custodial, fiscal management, information technology, telephones, clerical and telephone coverage.
 - g. In consultation with the Office, the Provider Agency will arrange for temporary provision of LTCO services in the service area when LTCO staff of the Provider Agency are unavailable or the staff position is vacant.
 - h. Prohibit access to LTCO records, program information, located with the Provider Agency as specified in this manual.
 - i. Assure LTCO attendance at certification training, re-certification training and other appropriate LTCO trainings, as well as providing professional development opportunities.
 - j. When/if questionable personnel issues arise that affect programmatic performance, be in consultation with the Office of the State Long-Term Care Ombudsman regarding potential actions to be taken.

¹ 45 CFR 1324.17(b)(2)

² 45 CFR 1324.17(b)(1)

- k. Request a waiver from the Aging Services Bureau and Office if, due to demonstrable and unusual circumstances, it anticipates will be unable to comply with any of these responsibilities.
- l. Perform each of its responsibilities in administering the LTCO Program in accordance with all applicable federal and state law, regulation and policies.

Section 5.3 Long-Term Care Ombudsman Program Evaluation

- A. The Regional Ombudsman shall evaluate the performance of the local LTCO Program at least annually as a part of the Ombudsman Area Plan. This review shall include a review of activities and complaint data for the LTCO Program and a comparison of the LTCO Program with activities and complaint data statewide.
- B. The Office shall maintain activities and complaint data for the statewide LTCO Program regarding program components.
- C. The Office shall make complaint and activities numbers available in the Long-Term Care Annual Report and at other times as the Ombudsman deems appropriate.
- D. The Office shall provide information regarding these numbers to Regional Ombudsmen, AAAs, local Ombudsman entities, and other interested parties at least annually and at other times upon request.
- E. The Office shall review the activities and complaint data of the statewide program and each local Program, together with the LTCO Program Annual Plan, to evaluate program performance.
- F. The Office shall make periodic site visits to evaluate local LTCO Program as deemed necessary by the Ombudsman.
 - a. Including assurance that the local Long-Term Care Ombudsmen are wearing the State issued identification badge.

Section 6.1 Local Long-Term Care Ombudsman Responsibilities Policy and Procedures

A local ombudsman (representative of the Office) is designated by the State Ombudsman to provide ombudsman services in the service area designated in the provider agency contract for ombudsman services. A local ombudsman may be employed by the Provider Agency or serve as a volunteer.

PROCEDURES

Local Ombudsman general responsibilities

- A. Local Long-Term Care Ombudsman (LLTCO) are responsible for:
 - a. providing LTCO services to protect the health, safety, welfare and rights of residents in accordance with the provisions of the federal and state laws governing the LLTCO and with the provisions of the Provider Agency contract for LTCO services;
 - b. fulfilling the Program components specified in this manual;
 - c. documenting LLTCO activities and case work as required by the Office through the Montana Ombudsman Data System (MODS) as follows:
 - i. Case logs/notes by the last day of the month.
 - ii. Activities by the 10th day of the following month.
Example: Activities/Facility Visits for January will be entered into MODs no later than February 10.
 - d. adhering to the Montana Ombudsman Program Code of Ethics;
 - e. preventing inappropriate access to LTCO records in the possession of the LTCO Program as specified in this manual;
 - f. carrying out other activities, approved by the Provider Agency, that the Office deems appropriate; and
 - g. performing each responsibility in accordance with all applicable federal and state law, regulations and policies.

- B. In carrying out the duties of the Office, the Ombudsman may designate an Entity as a Provider Agency and may designate an employee or volunteer of the Provider Agency as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.
 - a. **Duties.** An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:
 - b. Local ombudsman shall conduct regular and timely visits to long-term care facilities to ensure the safety, welfare, and rights of residents are maintained.
 - i. All Representatives of the Office shall only wear the identification badge which is issued by the Aging Services Bureau each time they enter a facility and show the badge to anyone that asks the reason for their presence. The titles listed on the identification badge shall not be altered.
 - c. Provide services to protect the health, safety, welfare, and rights of residents.
 - d. Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints.
 - e. Represent the interests of residents before government agencies and assure that individual residents have access to and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

- f. Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents.
- g. Facilitate the ability of the public to comment on the laws, regulations, promote, provide technical support for the development of, provide ongoing support as requested by resident and family councils; and carry out other activities that the Ombudsman determines to be appropriate.

CHAPTER 7 REGIONAL OMBUDSMAN

Section 7.1 Regional Ombudsman Responsibilities

- In addition to the local long-term care ombudsman responsibilities set forth in Section 6.1 above and within the relevant service areas of the LTCO Program, the Regional Ombudsman is responsible for:
- A. Overall management and development of the local LTCO Program, under direction of the Provider Agency and the Office.
 - B. Oversight, as it relates to ombudsman program components, of other LTCO staff and volunteers and Ombudsman Volunteers.
 - C. Assuring that non-certified staff and volunteers work under the direct supervision of a certified and designated LTCO.
 - D. Submitting to the Office, and Provider Agency, a LTCO Program Annual Plan for each fiscal year indicating program goals and objectives relating to the program components and other program activities;
 - E. Assuring that the LTCO Program satisfactorily accomplishes program component goals and objectives in the LTCO Program Annual Plan;
 - F. Arranging, in consultation with the Office, the Provider Agency and the AAA, if applicable, for provision of LTCO services in the service area when the LTCO Program is temporarily unable to provide coverage;
 - G. Developing, in conjunction with the Office and local Ombudsman entities, procedures for operations of the LTCO Program in their service area, including procedures for documenting and filing documents related to complaint investigations.
 - H. If applicable, Regional Ombudsman conduct regular and timely visits to long-term care facilities to ensure the safety, welfare, and rights of residents are maintained.
 - I. Ensure that local ombudsman conduct regular and timely visits to long-term care facilities to ensure the safety, welfare, and rights of residents are maintained.
 - J. Ensure local ombudsman shall only wear the identification badge which is issued by the Aging Services Bureau each time they enter a facility and show the badge to anyone that asks the reason for their presence. The titles listed on the identification badge shall not be altered.

Section 7.2 Regional Ombudsman Annual Plan

The Regional Ombudsman Annual Plan shall be the instrument used to make strategic planning decisions and recommendations for contractual amendments for the Program in each area. Thorough analysis and regular monitoring of the efficacy of the Program is essential to provide for continuous quality improvement to provide maximum advocacy to residents of long-term care facilities.

PROCEDURES

- A. The Regional Ombudsman shall prepare a Regional Ombudsman Annual Plan for submission to the SLTCO and the provider agencies, setting long-term goals and objectives for the Program. Such Plan shall be based on results of an assessment tool developed by the State Office that indicates areas for potential improvement. The tool will be based on the results of the Annual Ombudsman report submitted by the State Office, specific to the Provider Agency (Area Agency on Aging or other designated entity). The Plan will address all nine (9) components of the State Long-Term Ombudsman Program (State Program) listed in order of priority as follows:
 1. Complaint Processing
 2. Routine Visits
 3. Resident Councils and Family Councils
 4. In-service Education
 5. Information Dissemination and Consultation
 6. Community Education
 7. Volunteer Management

8. Interagency Coordination
 9. Issues Advocacy
- B. The annual plan shall be submitted to the State Office and to the Provider Agency by April 1st of the year following the analysis of the data from the Office gathered from the previous federal fiscal year (October 1st through September 30). The due date for submission of the Plan may be adjusted at the discretion of the State Office in collaboration with the appropriate Provider Agency/entities. All plans will be utilized to make recommended contractual revisions with the Provider Agency to ensure adequate advocacy to residents of long-term care facilities.
- a. Contents of the Annual Plan shall include:
 - i. Goals and objectives for each of the nine (9) program components. Each goal and objective shall be measurable and specify the time frame in which it shall be accomplished;
 - ii. Provide for complaint processing to be the highest priority program component;
 - iii. Include a plan for staff and telephone coverage for the LTCO Program in order to assure prompt responses to complaints and other requests for assistance;
 - iv. Improved plans for performance of the LTCO Program over previous years; and
 - v. Monitor all program components and address necessary issues of each.
- C. SLTCO responsibilities for the Annual Plan include:
- a. The Representatives of the Office shall be responsible to provide pertinent data and analysis regarding data collected for the State Ombudsman Annual Report during the previous federal fiscal year. The analysis will compare data on a statewide basis, as well as on a basis adjusted to areas with common characteristics.
 - b. The SLTCO, in conjunction with the AAA Director/Administrator of the Provider Agency, shall inform each Regional LTCO of Plan, or progress reports acceptance within 30 days after receipt of the plan. If changes must be made to a Plan, the SLTCO shall provide assistance to the Regional Ombudsman to develop an acceptable Plan.
 - c. Each Provider Agency and the SLTCO are encouraged to provide comment regarding the Plan submitted by the LTCO Program in its service area within 30 days after receipt of the Plan.
 - d. In determining whether a Plan is acceptable, the SLTCO Provider Agency shall consider the following:
 - i. The standards set forth in these policies and procedures for each Program component. Where a standard for a particular Program Component is not met in the Plan, the SLTCO & provider agency may approve a modified standard in a LTCO Program Annual Plan for a particular LTCO Program only where the Plan describes one or more of the following:
 1. specific efforts to improve performance related to that program component over previous years and specific plans to work toward meeting the standard related to the program component;
 2. specific efforts taken to improve performance of another program component. A plan to minimize the negative impact on other program components is required;
 3. initiation of a time-limited project which is consistent with the purpose of the LTCO Program and which may require significant staff time or other resources. A plan to minimize the negative impact on other program components is required;
 - e. Limitations in staff or other resources which make compliance with a particular program component standard a hardship for the LTCO Program.
 - i. the Plan's anticipated benefit to residents;
 - ii. the Plan's anticipated impact on the provision of ombudsman services to long-term care residents; and

- iii. the performance history of the LTCO Program determined by a review of data relating to performance of program components.

CHAPTER 8 VOLUNTEER OMBUDSMAN (IF APPLICABLE)

Section 8.1 Ombudsman Volunteer Management Policy and Procedures

POLICY

The Long-Term Care Ombudsman Program shall utilize Ombudsman Volunteers to maximize its resources to benefitting residents of long-term care facilities.

PROCEDURES

- A. Local LTCO Program role
 - a. The local LTCO Program shall propose its procedures for recruitment, training and use of volunteers in the Local LTCO Program Annual Plan.
 - b. Such proposal shall be consistent with policies and procedures, including training and designation requirements, set forth by the SLTCO.
- B. SLTCO role
 - a. The SLTCO shall provide resources and technical assistance to the RLTCO and local LTCO Program to develop and maintain the volunteer program.
 - b. The SLTCO shall provide the curriculum and supervision of training provided by the RLTCO to Ombudsman Volunteers.
- C. RLTCO role
 - a. The RLTCO shall work with the local Ombudsman entities to recruit, train, monitor and evaluate the volunteers.
 - b. The RLTCO shall work with Provider Agency to provide an annual recognition program for the Ombudsman Volunteer program.
- D. LLTCO role
 - a. The LLTCO will provide orientation to facilities and staff that the ombudsman volunteer will be visiting.
 - b. The LLTCO will be the local contact for the ombudsman volunteer.
- E. Ombudsman Volunteer (OV) Role: A volunteer who is not certified but who visits LTC residents in coordination with the local LTCO Program is called an Ombudsman Volunteer.
 - a. The OV shall take the training required and offered by the Ombudsman program.
 - b. The OV shall visit (on a routine basis established by the RLTCO) residents in the LTC facilities in order to:
 - i. build relationships with the residents, and
 - ii. provide an independent presence in the facility.
 - c. The OV shall assist the LLTCO (to the extent determined appropriate by the RLTCO) in;
 - i. providing information dissemination and consultation;
 - ii. making routine visits;
 - iii. systems advocacy activities;
 - iv. resident and family council activities; and
 - v. advisory council activities.
 - d. Shall not process or take action on complaints, but shall;
 - i. refer any complaints received or observed to a designated LLTCO for investigation.
 - e. Reporting volunteer activities by OV may be reported as local LTCO Program activities if:
 - i. all the requirements of that program component are met; and
 - ii. the OV provides information to the RLTCO or designated LLTCO after each activity, indicating that all the requirements have been met. Every OV shall

refer to the RLTCO or designated LLTCO any complaints received or observed by the volunteer for LTCO investigation.

CHAPTER 9 DESIGNATION

Section 9.1 Designation Requirements

- A. All candidates for designation as a certified ombudsman, whether regional or local, will attend the 47-hour certification training course provided by the SLTCO Program and complete the certification exam with a passing grade.
- a. This initial certification training shall consist of:
 - i. 10 hours of on-line training through NORC;
 - ii. 10 hours in the field which may include structured tours and shadowing with and certified local/regional ombudsman, meeting with resident councils, etc.; and
 - iii. 27 hours of classroom training at the certification training held in Helena.
 - b. In addition, each local ombudsman candidate will complete a three-month mentoring program provided by the RLTCO (or SLTCO in the absence of a RLCTO). If an urgent situation presents, the Ombudsman, at her/his discretion, may allow the mentoring program to run concurrently with working in the role of a local ombudsman. The certification training must be completed before designation.
 - c. Each regional ombudsman candidate will complete a three-month mentoring program provided by the SLTCO Program. If an urgent situation presents, the Ombudsman, at her/his discretion, may allow the mentoring program to run concurrently with working in the role of regional ombudsman. Certification training must be completed before designation.
 - d. Each LTTCO will complete 18 hours of training on an annual basis to retain their certification. A minimum of 8 hours of this training will be provided by the Office.
 - i. Annual basis October 1 of the year of initial certification – September 30 of the following year.
 - ii. Thereafter annual basis is from October 1 – September 30 each year.
 - e. Each RLTCO will complete 20 hours of training on an annual basis to retain their certification. A minimum of 8 hours of this training will be provided by the Office, or other trainer with specific approval from the Office.
 - f. Each representative of the Office shall visit his/her assigned long-term care facilities at a minimum of one time per month. Valid exceptions may be made at the discretion of the Office.

Section 9.2 Responsibilities and limitations of staff and volunteers not designated as Ombudsmen

- A. Persons who are either hired or have volunteered as a LLTCO but who have not completed the requirements for designation as a LLTCO may provide LLTCO services as follows:
- a. Staff and volunteers not designated as LLTCO may assist in the provision of LLTCO services other than complaint processing under the direct supervision of a designated LLTCO. They may not have sole responsibility for the provision of any LLTCO service as specified in this manual.
 - b. Only designated LLTCO may process complaints.
 - c. Where the Regional Ombudsman is the staff person not yet designated, he/she shall work towards the completion of certification and, until certified as a LLTCO, is responsible to request Office supervision for the processing of all complaints.

Section 9.3 Designation, Refusal to Designate, Suspension of Designation and De-designation

- A. This section sets forth procedures for designation and refusal to designate, suspension of designation and de-designation by the Office of the State Long-Term Care Ombudsman as follows:
- a. Designation of ombudsman programs (Provider Agencies);

- b. Refusal to designate, suspension of designation and de-designation of ombudsman programs,
 - c. Designation of representatives of the office (including minimum qualifications); and
 - d. Refusal to designate an individual as a representative of the office (regional, local or volunteer ombudsman), suspension of designation and de-designation of representatives of the Office.
- B. Each section includes;
- a. Criteria used in designating (or refusing to designate, suspending designation, de-designating; and the processes used in designation (or refusal to designate, suspending designation and designating).
 - b. For designation (or refusal to designate, suspension of designation and de-designation) of ombudsman programs, the process is described separately for the possible placement of the Provider Agency:
 - i. Area Agency on Aging or other designated entity serves as a Provider Agency; and
 - ii. Provider Agency contracts directly with the Aging Services Bureau.

9.3a Designation of Long-Term Care Ombudsman Programs Policy

The State Ombudsman shall designate local Ombudsman entities to provide ombudsman/advocacy services throughout Montana.

9.3b Criteria for Designation as a Provider Agency

- A. In order to be eligible for designation by the Office of the State Long-Term Care Ombudsman (SLTCO, Ombudsman) as a Provider Agency, an entity must:
- a. Be a public or nonprofit entity;
 - b. Not be an agency or organization responsible for licensing, surveying or certifying long-term care services/facilities.
 - c. Not be an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
 - d. Have no ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;
 - e. Have no governing board members with any ownership, investment or employment interest in long-term care facilities;
 - f. Not provide long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
 - g. Not provides long-term care coordination or case management for residents of long-term care facilities;
 - h. Not set reimbursement rates for long-term care facilities;
 - i. Not provide adult protective services;
 - j. Not be responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
 - k. Not conduct preadmission screening for long-term care facility placements;
 - l. Not make decisions regarding admission or discharge of individuals to or from long-term care facilities;
 - m. Not provide guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities;
 - n. Meet all contractual requirements of the Department of Public Health and Human Services;
 - o. Have demonstrated capability to carry out the responsibilities of the Provider Agency; and
 - p. Have no un-remedied conflict of interest as specified in this manual.

9.3c De-designation of Ombudsman Programs Policy

The State Ombudsman may de-designate or suspend designation of an entity as a Provider Agency for cause.

9.3d Criteria for De-designation

- A. The State Ombudsman may refuse to designate, suspend designation or may de-designate an entity as a Provider Agency for one or more of the following reasons:
 - a. failure of the entity to continue to meet the criteria for designation;
 - b. existence in the entity of an **un-remedied** conflict of interest with the Program;
 - c. deliberate failure of the entity to disclose any conflict of interest;
 - d. violation of LTCO confidentiality requirements by any person employed by, supervised by, or otherwise acting as an agent of the entity;
 - e. failure of the entity to provide adequate services as representative of the Office, including but not limited to failure to perform enumerated responsibilities failure to fill a vacant representative position within a reasonable time, failure to submit a LTCO Program Annual Plan for approval by the State Ombudsman, or failure to use funds designated for the LTCO Program for LTCO services;
 - f. failure of the entity to adhere to the provisions of the contract for the provision of services of representatives of the Office; or
 - g. failure of the entity to adhere to applicable federal and state laws, regulations and policies.
 - h. Policies, procedures and practices, including personnel management practices of the Provider Agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.³

9.3e Voluntary withdrawal/relinquishment of a Provider Agency

- A. A Provider Agency may voluntarily relinquish its designation by providing notice to the Ombudsman and to the AAA in the relevant service area. Such notice shall be provided sixty (60) days in advance of the date of the relinquishment of designation.
- B. Once a Provider Agency terminates designation, the SLTCO program shall discontinue both Title III-B Ombudsman and Title VII Ombudsman funding from the allocation to that Provider Agency. The SLTCO will also review the amount of state general funds and local funds the Provider Agency has used to support the program in their area, for the past three years. The average of that amount will be withheld in general fund to be used for the provision of ombudsman services to cover that area.

9.3f Continuation of Ombudsman Services

Where a Provider Agency is in the process of appealing its de-designation, suspension of designation or has relinquished designation:

- A. Where a Provider Agency is in the process of appealing its de-designation, suspension of designation or has relinquished designation:
 - a. The Provider Agency and the State Ombudsman shall arrange for the provision of services of representative of the Office until a new Provider Agency is designated;
 - b. The Provider Agency shall surrender intact to the State Ombudsman or designee all LTCO case records, documentation of all LTCO activities and complaint processing as required by the Ombudsman reporting system, and identification cards/badges of all local LTCO associated with the Provider Agency;

³ 45 CFR 1324.17(b)(2)

- c. The Provider Agency shall at the discretion of the Aging Services Bureau, surrender any equipment purchase with funds designated for the LTCO services; and
- d. The Provider Agency shall surrender the balance of any advanced State or Federal money to the Aging Services Bureau.

9.3g Criteria for Designation of Representatives of the Office Policy

The State Ombudsman shall designate individuals as representatives of the Office to represent the Office of the State Long-Term Care Ombudsman. Representatives of the Office will serve as Ombudsman Volunteers, Ombudsman Interns, local ombudsmen, regional ombudsmen or other roles at the discretion of the State Ombudsman, or designee.

9.3h Criteria for designation as an Ombudsman Intern/Volunteer

- A. The following criteria must be met to qualify to serve as an ombudsman intern/volunteer:
 - a. Be free of un-remedied conflicts of interest;
 - b. Be employed by or volunteer for a designated Provider Agency;
 - c. Receive adequate training/mentoring to be recommended by a Regional Ombudsman, staff of the Office or designee of the Office.
- B. The Ombudsman Intern/Volunteer will work under the direction of a local Ombudsman, Regional Ombudsman or staff/designee of the Office;
- C. The Ombudsman Intern/Volunteer does not have the authority to open cases or investigate complaints. They must communicate resident concerns to a supervising Ombudsman.

9.3i Criteria for designation as a Local Ombudsman

- A. To be designated as a LLTCO, an individual must:
 - a. Be free of **un-remedied** conflicts of interest specified in this manual;
 - b. Be employed by or volunteer for a designated Provider Agency;
 - c. Meet the minimum qualifications for the applicable LTCO position;
 - d. Satisfactorily complete the applicable certification training requirements as specified in the Certification Requirements for Ombudsmen;
 - e. Be awarded his or her designation certificate signed by the SLTCO and identification badge;
 - f. Satisfactorily fulfill LTCO responsibilities as specified in this manual; and
 - g. Receive notice from the SLTCO of his or her renewed certification/designation on an annual basis.

9.3j Minimum qualifications for Regional Ombudsmen

- A. In order to qualify as a Regional Ombudsman, an individual must have;
 - a. An undergraduate degree in nursing, social work, social sciences, psychology or another related field; and
 - b. The equivalent of two (2) years of full-time work experience with at least one year in aging, long-term care or related fields.
 - c. At least one year in a supervisory capacity is desirable.
 - d. Comparable experience may be substituted at the discretion of the Office SLTCO. Graduate experience may be substituted for one year of experience.

9.3k Minimum qualifications for local Ombudsmen

- A. In order to qualify for a LLTCO staff position, an individual must have;
 - a. Completed two years of undergraduate education; and
 - b. Two years of professional experience with at least one year in aging, long-term care or related fields; and

- c. Comparable education and experience may be substituted at the discretion of the Office of the SLTCO and the provider agency.

9.3l Requests for substitutions or variances

- A. Requests for substitutions or variances related to minimum requirements must be made in writing to the SLTCO and approved prior to the hiring or promotion of the employee in question.

9.3m Notification of designation

- A. The Office shall send written notification of designation as a representative of the Office to the designated individual, and the Provider Agency in the relevant service area within thirty (30) days of the designation.
- B. The Office will maintain a list of representatives of the Office indicating initial designation and renewal information for each role in the Program.
- C. The Office will inform each representative of the Office ninety (90) days before expiration of the current designation.
- D. It will be the responsibility of the individual representative of the Office to submit verification of completion of applicable training hours (including applicable re-certification) required for renewal of designation as a representative of the Office
- E. Renewal of designation is dependent on maintaining certification requirements for each role as a representative of the Office (including appropriate recertification courses).
- F. A certificate of designation will be issued to all representatives of the Office when the State Office determines all requirements are met for designation.
- G. A certificate of renewal of designation will be issued when the State Office determines all requirements for designation are met (including certification/recertification).
- H. The State Office will maintain a record for each representative of the Office with pertinent information for that representative.

9.3n Policy and Criteria Refusal to Designate, Suspension of Designation and De-designation of an Individual as a Representative of the Office

POLICY

The State Ombudsman may refuse to designate, suspend designation or may de-designate an individual as a representative of the Office for cause.

Criteria for refusal of designation, suspension of designation or de-designation of a representative of the Office.

- A. The State Ombudsman may refuse to designate, suspend designation or may de-designate a local Ombudsman, Regional Ombudsman or an Ombudsman Volunteer for any of the following reasons:
 - a. failure of the individual to meet and maintain the criteria for designation;
 - b. existence of un-remedied conflict of interest;
 - c. deliberate failure of the individual to disclose any conflict of interest;
 - d. violation of confidentiality requirements;
 - e. failure to provide adequate and appropriate services to long-term care residents;
 - f. falsifying records;
 - g. failure to follow direction of the State Ombudsman and Provider Agency regarding Program policies, procedures and practices;
 - h. a change in employment duties which is incompatible with LTCO duties;

- i. a separation from the LTCO Program. Examples include but are not limited to voluntary or involuntary removal from employment/volunteer status by the Provider Agency/Office staff, an extended absence of the LLTCO preventing fulfillment of job responsibilities, provider agency's contract for provision of LLTCO services is not renewed;
- j. breach of the code of ethics for the Long-Term Care Ombudsman Program; or
- k. a failure to act in accordance with applicable federal and state laws, regulation and policies.

9.3o Process for refusal to designate, suspension of designation, or de-designation of an individual as a representative of the Office

- A. Prior to refusing to designate, suspending designation or de-designation, the Office shall consult with the relevant Provider Agency to consider remedial actions which could be taken to avoid the refusal to designate, suspension or the de-designation.
 - a. If remedial actions are unsuccessful.
 - i. The Office will proceed with the following resolution of the matter;
 - 1. Refusal to designate an individual as a representative of the Office, the Office shall execute the action of refusal to designate an individual as a representative of the Office by providing written notice of such refusal to the individual, Provider Agency and the Bureau Chief of the Aging Services Bureau. Such notice shall;
 - 2. Specify the reasons for the refusal to designate, establish the effective date of such refusal, provide notice of due process.
 - b. Suspension of designation of a representative of the Office;
 - i. The Office shall execute the action of suspension of the designation of a representative of the Office by providing written notice of such suspension to the individual, Provider Agency and the Bureau Chief of the Aging Services Bureau. Such notice shall;
 - ii. specify the reason for suspension of designation
 - iii. Indicate the status of the suspension (i.e., revocable or irrevocable; finite or infinite)
 - iv. establish the effective date of the suspension
 - v. establish (if known) the lifting date of the suspension
 - vi. provide notice of due process
 - c. De-designation of a representative of the Office
 - i. The SLTCO shall provide written notice of the intent to de-designate the representative of the Office to be de-designated, the relevant Provider Agency and the Bureau Chief of the Aging Services Bureau. Such notice shall:
 - 1. specify the reasons for the intended de-designation;
 - 2. indicate status for re-designation;
 - 3. establish the effective date of the de-designation; and
 - 4. provide notice of due process.
 - d. If the refusal to designate, suspension of designation or the de-designation of a representative of the Office results in the absence of ombudsman services in the relevant service area, the Provider Agency and the Office shall arrange for the provision of ombudsman services until an appropriate replacement is designated.
 - e. Any individual who has her/his designation refused or suspended, or who has been de-designated has a right to due process as is outlined in the grievance policy.
 - f. Notice of the right to due process will be provided with the written notice of impending action.
 - g. The State Ombudsman will review and respond to requests for reconsideration of an Ombudsman decision to refuse, suspend, or remove designation of a Provider Agency or representative of the Office. The State Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a Provider Agency or representative of the Office.

CHAPTER 10 INTERAGENCY COORDINATION

Section 10.1 Interagency Coordination Policy

The Long-Term Care Ombudsman Program (LTCO Program) coordinates with other agencies to improve conditions for residents of long-term care facilities and to make appropriate referrals.

Section 10.2 Interagency Coordination Procedures

- A. The Regional LTCO Program (*Regional LTCO, Program Managers & LLTCO*) shall develop relationships with other programs and agencies with resources, services, and interests which could benefit residents, including, but not limited to:
 - a. Montana State Auditor's Office
 - b. Adult Protective Services
 - c. Montana Legal Services
 - d. local community mental health organization
 - e. the City/County Health Department
 - f. local community care services programs (i.e. home and community-based services offered through state and private agencies)
 - g. the Social Security Administration
 - h. the Department of Health and Human Services
 - i. State and local law enforcement
 - j. Independent Living Centers
 - k. Montana Advocacy Program

CHAPTER 11 SYSTEMS ADVOCACY

Section 11.1 Systems Advocacy Policy

The Long-Term Care Ombudsman Program (LTCO Program) shall assure that the interests of residents are represented to governmental agencies and policymakers.

Section 11.2 Systems Advocacy Procedures

- A. Examples of systems advocacy
 - a. Systems advocacy activities include, but are not limited to:
 - i. educating advocacy groups, governmental agencies, and policymakers regarding the impact of laws, policies, or practices on long-term care residents;
 - ii. seeking modifications of laws, regulations, and other government policies and actions pertaining to the rights and well-being of residents;
 - iii. facilitating the ability of the public to comment on such laws, regulations, policies, and actions;
 - iv. developing a task force to study a long-term care issue;
 - v. participating in a public hearing relating to a long-term care issue;
 - vi. providing community education or information on a long-term care issue; and
 - vii. educating other aging services providers on a long-term care issue.
- B. The Long-Term Care Ombudsman may seek to resolve resident complaints through issue advocacy where:
 - a. a complaint cannot be resolved due to a current law, policy, or practice;
 - b. many residents share a similar complaint or are affected by a policy or practice; or
 - c. other strategies to reach resolution with particular facilities or agency staff have been unsuccessful.
- C. Guidelines for issues advocacy:
 - a. Each Regional LTCO Program shall:
 - i. determine which issue advocacy activity to use by considering:
 1. the potential impact of the activity on residents;
 2. the most appropriate and effective method of addressing the issue;
 3. the potential impact of the activity on the Program; and
 4. the possibility of joint efforts by the Provider Agency the State Long-Term Care Ombudsman, and residents in:
 - a. the activity;
 - b. with prior approval from Provider Agency and the SLTCO, participate in the planning and implementation of issues advocacy activities; and
 - c. attempt to involve residents and families in the activity whenever possible.
- D. The Office shall:
 - a. link areas or advocacy groups with mutual concerns;
 - b. coordinate issues advocacy activities within the Program;
 - c. develop advocacy strategies;
 - d. provide a clearinghouse on state and national issues;
 - e. identify and meet resources and training needs related to issues advocacy; and
 - f. provide training and technical assistance to Regional LTCO, local LTCO, AAAs, local Ombudsman entities and others in the aging network regarding the LTCO Program role in issues advocacy.

CHAPTER 12 CONFLICT OF INTEREST

Section 12.1 Conflicts of Interest Policy

The organizational placement of the Long-Term Care Ombudsman Program and the individuals who carry out the duties of the Program must be free from conflicts of interest.

Section 12.2 Conflicts of Interest Procedures

12.2a Definition of conflict of interest

- A. A situation in which the concerns or aims of two different parties are incompatible. Or a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity. A conflict of interest exists in the Long-Term Care Ombudsman Program when individual or organizational interests impact the effectiveness or credibility of the Program to advocate on behalf of long-term care facility residents. Conflicts of interest may be actual, potential or perceived. Types of conflict of interest include:
- a. **conflicts of loyalty**—incentives, often related to financial or employment considerations, that shape one’s judgment or behavior in ways that are contrary to the interest of residents;
 - b. **conflicts of commitment**—goals or obligations that direct one’s time and attention away from the interest of residents; and
 - c. **conflicts of control**—limitations or restrictions that effectively foreclose one’s ability to take actions to advocate for the interest of residents.

12.2b Organizational Conflicts

- A. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:
- a. Is responsible for licensing, surveying, or certifying long-term care facilities;
 - b. Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
 - c. Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;
 - d. Has governing board members with any ownership, investment or employment interest in long-term care facilities;
 - e. Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
 - f. Provides long-term care coordination or case management for residents of long-term care facilities;
 - g. Sets reimbursement rates for long-term care facilities;
 - h. Provides adult protective services;
 - i. Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
 - j. Conducts preadmission screening for long-term care facility placements;
 - k. Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
 - l. Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

12.2c Identifying Organizational Conflicts of Interest

- A. The Office shall attempt to identify all actual, potential and perceived conflicts that could impact the effectiveness or credibility of the Program to advocate on behalf of long-term care residents as follows:

- a. Prior to initial designation of, or the annual renewal of the designation, of a Provider Agency by the Ombudsman, the Office will provide the Provider Agency Director with a conflict of interest questionnaire for the agency. The questionnaire will identify actual, potential or perceived conflicts of interest by the agency or a member of the governing board of the agency that would impact the effectiveness or credibility of the Program;
- b. If a conflict of interest develops during the period of the current designation, it will be the responsibility of the Provider Agency to inform the Office of that conflict of interest.

12.2d Individual Ombudsman Conflicts

- A. Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:
 - a. Direct involvement in the licensing or certification of a long-term care facility;
 - b. Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility;
- B. Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area within a one-year period (length of this time period may be increased at the discretion of the Office in consultation with the appropriate Provider Agency administrator on a situational basis);
- C. Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind), under a compensation arrangement with an owner or operator of a long-term care facility;
- D. Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual’s role as Ombudsman or representative of the Office).

NOTE: Every representative of the Ombudsman Program shall adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process;

- E. Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval.
- F. Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services;
- G. Serving residents of a facility in which an immediate family member resides;
- H. Provision of services with conflicting responsibilities while serving as a LTCO, such as Adult Protective Services; discharge planning; pre-admission screening or case management for long-term care residents;
- I. Participating in activities which:
 - a. negatively impact on the ability of the Ombudsman representative to serve residents, or
 - b. are likely to create a perception that the Ombudsman representative’s primary interest is other than as a resident advocate.

12.2e Remediating Conflicts of Interest

- A. Notification to the SLTCO:
 - a. Where an actual, potential or perceived conflict of interest within the Program has been identified, the State Ombudsman and Provider Agency shall be notified. All agents of the Department of Public Health and Human Services, provider agencies, and local

representatives of the Office have a duty to notify the State Ombudsman of any actual, potential or perceived conflict of interest of which they have knowledge.

- b. The State Ombudsman shall determine, with input from the Provider Agency, whether appropriate actions may be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the representative of the Program and where the conflict is not likely to alter the perception of the representative of the Program as an independent advocate for residents.

12.2f Remedying Organizational Conflicts of Interest

- A. Where organizational conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:
 - a. A written remedial plan shall be developed within thirty (30) calendar days of notification of the conflict by the State Ombudsman.
 - b. The remedial plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the Program. Examples of such assurances could include:
 - i. The Program will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution.
 - ii. No agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of a representative of the Office.
 - iii. Governing board members of the Provider Agency or AAA who have a conflict of interest:
 - 1. must disclose the conflict to the governing board and to the Ombudsman;
 - 2. may have no involvement with representative of the Office activities concerning the entity which is the source of the conflict; and
 - 3. must abstain from voting on issues related to the operation of the Program.
 - iv. The agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the representatives of the Program can fulfill their duties without interference.
 - v. A memorandum of agreement exists between the Program and another program which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs.
 - c. The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and the Ombudsman. If either party cannot agree on the plan, the conflict has not been sufficiently remedied.
 - i. If the conflict cannot be removed or effectively remedied, the Ombudsman may be required to use the authority of the Office to de-designate or suspend designation of the entity as a participant in the Program.

12.2g Remedying individual conflicts involving representative of the Office

- A. Where individual conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:
 - a. development of a written remedial plan where the:
 - i. individual is an applicant for a position as a LTCO, a plan shall be developed before the individual is hired for the position.

- ii. individual is an applicant for designation as an Ombudsman Volunteer, a plan shall be developed before the individual takes any actions on behalf of the Program.
 - iii. individual is a current representative of the Office; a plan shall be developed within thirty (30) calendar days of identification of the conflict to the State Ombudsman.
- B. The remedial plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the Program. An example of such an assurance could include:
 - a. Prohibiting the representative of the Office with a conflict of interest from serving the residents of the facility with which he/she has a conflict and arranging for another staff LTCO to serve those residents. Where appropriate, this arrangement could be time limited.
- C. The remedial plan must be mutually agreed upon and signed by the Provider Agency, the representative of the Office or applicant with the conflict of interest, the Regional LTCO (RLTCO), and the State Ombudsman.
- D. Ombudsman Volunteers are not permitted to serve residents in facilities with which they have an un-remedied conflict of interest. The State Ombudsman may delegate to a RLTCO the authority to:
 - a. consider the conflicts of interest of an individual who wishes to serve as an Ombudsman Volunteer; and
 - b. to determine whether conflicts exist which may impede the ability of the Ombudsman Volunteer to fulfill the duties of that position or may alter the perception of the Program as an independent advocate for residents. If such a conflict exists and cannot be remedied, the individual cannot serve as a Friendly Ombudsman Volunteer.

12.2h Procedures to Avoid Conflicts of Interest

- A. Prior to initial designation, or renewal of designation, as a representative of the Office, the Office will provide a conflict of interest questionnaire to each individual seeking designation or renewal of designation as follows:
 - a. Persons seeking designation as Ombudsmen
 - i. Identification of the conflict.
 - ii. The Provider Agency, using a tool recommended by the SLTCO or a tool of similar nature, shall screen all persons seeking designation as representative of the Office to identify any actual, potential or perceived individual conflicts of interest. Upon request by the State Ombudsman, Provider Agency shall submit evidence of such screen to the Office. The Office may periodically request the Provider Agency to perform a conflict of interest screen of currently certified representatives of the Office.
 - iii. All new Ombudsmen will receive a conflict of interest questionnaire at, or before the certification class (certification is required prior to designation as a representative of the Office);
 - iv. Designated regional ombudsmen will receive a conflict of interest questionnaire at the respective annual recertification class (recertification is required before renewal of designation as a representative of the Office);
 - v. Designated local ombudsmen will receive a conflict of interest questionnaire at the respective annual recertification class (recertification is required before renewal of designation as a representative of the Office); and
 - vi. Each representative of the Office is responsible to report to the Office if a conflict of interest develops in any circumstance.

12.2i Disclosure of the conflict

- A. All persons seeking employment or designation as representative of the Office shall disclose, prior to beginning the initial certification course, to the Provider Agency all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of a representative of the Office without conflicting interest.
- B. Persons seeking to become designation Ombudsman Volunteers:
 - a. Identification of the conflict.
 - b. The RLTCO shall screen all persons applying to become Ombudsman Volunteers to identify any actual, potential, or perceived individual conflicts of interest.
 - c. Disclosure of the conflict.
 - d. All persons applying to become Ombudsman Volunteers shall disclose, prior to beginning the initial pre-service training, to the RLTCO all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of an Ombudsman Volunteer without conflicting interest.
 - e. The Office will direct the regional ombudsmen to deliver a conflict of interest questionnaire to each new Ombudsman Volunteer prior to any visits to facilities;
 - f. The Office will direct the regional ombudsman to deliver a questionnaire to each Ombudsman Volunteer prior to the annual renewal of designation for that role as a representative of the Office;
 - g. Each representative of the Office is responsible to report to the Office if a conflict of interest develops in any circumstance.
- C. The Office of the State Ombudsman will report all organizational conflicts of interest and remedies as part of the annual NORS report.

12.2j Ombudsman involvement in activities

- A. In determining whether representative of the Office participation, as a part of their role, in community groups, professional organizations, or other activities constitutes a conflict of interest, the following questions shall be considered:
 - a. Will the Program benefit from representative's involvement in this activity?
 - b. Will the representative be able to represent and assert the views of long-term residents in this activity?
 - c. Will the role of the representative in this activity benefit residents?
 - d. How will participating in this activity affect the public perception and the resident's perspective of the Program?
 - e. Will the representative be put in a position of participating in a decision about any resident without the resident's involvement or permission?

12.2k Failure to Identify or Remedy a Conflict of Interest

- A. Failure on the part of a representative of the Office, RLTCO, Provider Agency, to identify and report to the State Ombudsman a known conflict of interest shall be sufficient grounds for refusal to designate, suspension or de-designation of the entity from participation in the Program.
- B. Existence of an un-remedied conflict of interest shall be sufficient grounds for the de-designation or suspension of the entity as a participant of the Program.
- C. Failure on the part of a representative of the Office to identify and report to the State Ombudsman a known conflict of interest shall be sufficient grounds for the withdrawal or suspension of the designation of the representative.

CHAPTER 13 GRIEVANCE

Section 13.1 Grievance Process Policy and Procedures

To be responsive to individuals or groups having concerns and complaints against the Montana State Long-Term Ombudsman Program. The Program shall establish a process by which grievances may be brought forth and addressed pertaining to the Ombudsman Program and representatives of the Program.

13.1a Timeliness

- A. A grievance form shall be requested within seven (7) days of the incident, or knowledge of the incident, in which the complainant alleges he/she/they were aggrieved. Grievance forms may be obtained by calling Senior and Long-Term Care Division/State Long-Term Care Ombudsman at (406) 444-3285, or by writing the State Ombudsman Program at P.O. Box 4210, Helena, MT 59604-4210. All grievances shall be submitted in writing to the appropriate entity within fourteen (14) days of the request for the grievance form.

13.1b Process for Representatives of the Office

- A. Grievances regarding a representative of the Office (local Long-Term Care Ombudsman, Regional Ombudsman or Ombudsman Volunteer) will be submitted to the State Long-Term Ombudsman, in writing, at P.O. Box 4210, Helena, MT, 59604-4210. The grievance will be processed as follows:
 - a. The State Ombudsman Office will determine if the complaint is an issue involving programmatic or personnel authority.
 - i. If the issue is a personnel issue the State Office will transfer the complaint to the appropriate Provider Agency for resolution. The resident's right to confidentiality will be maintained throughout the process. Unless the resident/legal representative permits disclosure of personal information pertinent to the case the Ombudsman will protect the privacy rights of the resident in all cases. As such, the investigator may contact the resident/legal representative for permission to disclose personal information pertaining to the investigation.
 - b. The State Ombudsman Office, in conjunction with the appropriate regional ombudsman, will investigate programmatic complaints within fifteen (15) working days of receipt of the grievance. If deemed appropriate, the Ombudsman will consult with the Provider Agency and legal services to ensure maximum resolution of the issue. Unless the resident/legal representative permits disclosure of personal information pertinent to the case, the Ombudsman will protect the confidentiality rights of the resident in any consultations. As such, the investigator may contact the resident/legal representative for permission to disclose personal information pertaining to the investigation.
 - c. A response will be sent to the complainant within ten (10) working days of the completion of the investigation.

13.1c State Long-Term Ombudsman Program

- A. Grievances regarding the State Long-Term Care Program or the State Long-Term Care Ombudsman will be submitted, in writing to the Aging Services Bureau Chief, P.O. Box 4210, Helena, MT 59604-4210. Grievance forms can be obtained by writing the above address, or by calling (406) 444-4077. Grievances will be processed as follows:
 - a. Grievances brought against the Ombudsman may include acts or omissions of the Office.
 - b. The Aging Services Bureau Chief will determine, in consultation with legal services, if his/her investigation of the complaint would constitute a conflict of interest due to oversight responsibility of the Office. If no conflict is evident the Aging Services Bureau Chief will investigate the complaint within fifteen (15) working days of receipt of the

complaint. If a conflict of interest exists, the Bureau Chief of Aging Services will recuse herself/himself from the investigation. The Administrator of the Senior and Long-Term Care Division will designate an individual to substitute as the investigator.

- c. The Aging Services Bureau Chief, or designee, will document the nature of the complaint and results of the investigation.
- d. Results of the investigation will be sent to the complainant within twenty (20) working days of the completion of the investigation.

13.1d Reconsideration

- A. The State LTC Ombudsman will review and respond to requests for reconsideration of an Ombudsman decision to refuse, suspend, or remove designation of a Provider Agency or representative of the Office. The State Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a Provider Agency or representative of the Office.

CHAPTER 14 RECORDS MANAGEMENT

Section 14.1 Records Policy and Procedures

Records of the Long-Term Care Ombudsman Program shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and these procedures.

Section 14.2 Access to Long-Term Care Ombudsman Records

14.2a State Ombudsman Access

All Long-Term Care Ombudsman Program (LTCO Program) client records are the property of the Office of the State Long-Term Care Ombudsman (SLTCO). The SLTCO or appropriate designee is granted access to all LTCO Program records at all times for any purpose.

14.2b Ombudsman Access

- A. Each Long-Term Care Ombudsman has access to records of the local Program for which he or she serves.
- B. For the purpose of providing coverage for another Program, a LTCO may be granted access to the LTCO records of the other Program, at the discretion of the Office of the State Long-Term Care Ombudsman, in consultation with the appropriate local Ombudsman entities, to the extent necessary to provide such coverage.

14.2c Aging Services Bureau, Area Agencies on Aging, and Provider Agencies

- A. For purposes of monitoring and supervising the LTCO Program, the Department of Public Health and Human Services, Division of Senior & Long-Term Care and the relevant Provider Agency may review records which reflect the activities of the LTCO Program, including activity reports and complaint summary reports. Neither DPHHS nor the Provider Agency may review records which disclose or imply the identity of any resident or complainant. Requests to review such records must be submitted to the Office of the State Long-Term Care Ombudsman.
- B. No state agency or Provider Agency may require a LTCO to disclose the identity of a complainant or resident except as specifically provided by these procedures.

Section 14.3 Response to Requests for Long-Term Care Ombudsman Records

- A. Where a request is made to any party for LTCO records, the RLTCO and SLTCO shall be contacted. Records maintained by the Program may not be released, disclosed, duplicated, or removed to anyone who is not a designated representative of the Office without the written permission of the Office.
- B. The Office shall determine whether to disclose all or part of the records as follows:
 - a. Written:
 - i. The Office shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Under extenuating circumstances, where the request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be immediately documented, in writing, and filed as a record by the LTCO to whom appropriate informed consent was communicated in order to meet this requirement.
 - b. Resident Wishes/Interest:
 - i. The SLTCO shall review the request with the relevant RLTCO and LTCO to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).
 - ii. Removal of identity of residents or complainants:
 - iii. The Office shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents or complainants who have not provided express consent for the release of their names shall not be

revealed. Such consent must be in writing or made orally and documented, in writing, immediately and filed as a record by the LTCO to whom informed consent was communicated.

c. Source of request:

i. The Office, or designee, shall consider the source of the request as follows:

Section 14.4 RELEASE OF RECORDS TABLE

LTCO RECORDS: SOURCE OF REQUEST

IF the request for LTCO records is made by...	THEN the LTCO or designee shall...
A Resident	Release any records generated by the LTCO which are directly relevant to that resident provided that the identity of other residents or complainants is redacted
A complainant or by the legal representative of a complainant or resident	Release any records generated by the LTCO which are directly relevant to that resident or complainant provided that: <ul style="list-style-type: none"> • The RLTCO and SLTCO have been contacted and determine that the release shall not be in conflict with the wishes or interests of the relevant resident, and • The LTCO, RLTCO and SLTCO have no reason to believe that the release shall be in conflict with the wishes or interest of the relevant resident, and • The identity of other residents or complainants is redacted
Another agency or program	Release the records only if: <ul style="list-style-type: none"> • (A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services; • (B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or • (C) The disclosure is required by court order • The identities of residents or complainants who have not provided consent (outlined above)

	<p>for the release of their names are not revealed</p> <p>NOTE: Where federal requirements conflict with Montana State Law, the federal requirements take precedence.</p>
A judge	<ul style="list-style-type: none"> • Release any records directly responsive to a court order, and • Provide an explanation to the court regarding the importance of not revealing the identity of residents and complainants and requesting the court to seal the LTCO records where the SLTCO determines that the release of records would be inconsistent with the wishes or interests of the residents
Any other party	<p>Release the records only if:</p> <ul style="list-style-type: none"> • (A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services; • (B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or • (C) The disclosure is required by court order; (IF the resident is unable to provide consent, the resident’s legal representative may provide consent), and • The identities of residents or complainants who have not provided consent outlined above) for the release of their names are not revealed

CHAPTER 15 LEGAL COUNSEL

Section 15.1 Legal Counsel for the Long-Term Care Ombudsman Program Policy and Procedures

Ombudsmen shall have access to adequate legal counsel.

Section 15.2 Adequate Legal Counsel

The Department of Public Health and Human Services, Division of Senior and Long-Term Care, Aging Services Bureau shall assure the provision of adequate legal counsel, without conflict of interest, including:

- A. Advice and consultation services needed to protect the health, safety, welfare, and rights of residents and assistance to the representatives of the Office of the State Long-Term Care Ombudsman (SLTCO) in the performance of their official duties; and
- B. Representation in an actual or threatened legal action against any LTCO brought in connection with the performance of their official duties.

Section 15.3 Provision of Legal Counsel

Legal counsel is available as follows:

**TABLE II-B
LEGAL COUNSEL**

Party	Advice/Consultation	Representation
SLTCO	*Resident issues: Montana Legal Service, DPHHS Legal Department, Department of Justice, Legal Services Developer *Program Operations: DPHHS Legal Department, Montana Legal Services, Independent Attorney, Department of Justice, Legal Services Developer (final legal authority determination rests with the DPHHS Legal Department)	* If no conflict of interest exists: DPHHS Legal Department If conflict of interest exists: Independent attorney
LTCO/RLTCO	SLTCO, Montana Legal Services, Legal Services Developer	Independent attorney
Residents	Legal Services Developer, Montana Legal Services, Independent attorney	Montana Legal Services, Independent attorney

Section 15.4 Obtaining Legal Services

15.4a Office of the State Long-Term Care Ombudsman

- A. For the SLTCO to obtain advice and consultation, the Ombudsman, or designee, may:
 - a. Confer with the Legal Services Developer;
 - b. Contact the Department of Public Health and Human Services Legal Services for guidance on DPHHS policy or procedure or other matters for which that office has primary responsibility; or
- B. Request assistance of the State of Montana Department of Justice by following DPHHS procedures for such requests.
- C. For the SLTCO to obtain representation:

- a. The Ombudsman, or designee, shall advise the Aging Services Bureau Chief of the legal action or threatened legal action; and
- b. The Aging Services Bureau Chief shall follow the procedures of the DPHHS to obtain representation from the Legal Department for representation for the SLTCO.
- c. Where a conflict of interest exists, the Ombudsman, or designee, shall arrange for the provision of legal representation of the Office by an independent attorney. A conflict of interest may be identified by the Legal Department, the Aging Services Bureau Chief or the Office.
- d. The Ombudsman, or designee, shall obtain prior approval from the Aging Services Bureau Chief for Aging Services Bureau expenditures for legal representation.

15.4b Regional/Local Ombudsmen

- A. For legal advice and consultation, a Regional or Local LTCO shall request assistance from:
 - a. The SLTCO, which shall assure the provision of advice and consultation for the regional /local LTCO; or
 - b. The Legal Services Developer Program.
- B. For any Representatives of the Office to obtain legal representation;
 - a. The LTCO shall advise the Office SLTCO of the legal action or threatened legal action.

15.4c Area Agencies on Aging and Provider Agencies

- A. With complete understanding of DPHHS, and the SLTC Division responsibility to give advice to and represent the RLTCO and LLTCO individually and enforce the immunity provisions of the appropriate law for the individual LLTCO, any Provider Agency should retain their own legal counsel to protect the agency and work with the legal counsel provided by the department.

Section 15.5 Liability Policy and Procedures

An ombudsman is immune from liability in the good faith performance of his or her official duties.

15.5a Immunity from Liability

- A. Representatives of the Office of the State Long-Term Care Ombudsman shall not incur any civil or criminal liability for performing his or her official duties in good faith.
 - a. “Official duties” are those duties of a representative of the Office set forth in applicable federal and state law and these policies and procedures. They shall include, but not be limited to, making a statement or communication relevant to receiving a complaint or conducting investigative activity.
 - b. Evidence of performing duties in “good faith” includes, but is not limited to:
 - i. Making every reasonable effort to follow procedures set forth in applicable laws and these policies and procedures;
 - ii. Seeking, and making reasonable efforts to follow, direction from the Office;
 - iii. Seeking, and making reasonable efforts to follow, direction from the relevant Regional Long-Term Care Ombudsman; and
 - iv. Performing duties within the scope of authority related to training and designation in the role.

15.5c Liability Insurance

- A. The Department of Public Health and Human Services, Division of Senior and Long-Term Care, Aging Services Bureau does not provide liability insurance for Provider Agencies. Provider Agencies are expected to retain their own liability policies.

CHAPTER 16 INTERFERENCE AND RETALIATION

Section 16.1 Interference and Retaliation Prohibited

- A. No person shall willfully interfere with a Long-Term Care Ombudsman (LTCO) or other representative of the Office in the performance of official duties. “Interference” includes any inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease or negatively impact:
- a. The objectivity of the investigation or outcome of complaints;
 - b. The role of the representative of the Office as advocate for the rights and interests of the resident;
 - c. The LTCO work to resolve issues related to the rights, quality of care and quality of life of residents of long-term care facilities; or
 - d. The LTCO statutory responsibility to provide such information as the Office of the State Long-Term Care Ombudsman determines necessary to public and private agencies, legislators and other persons regarding problems and concerns of residents and recommendations related to residents’ problems and concerns.
- B. No person shall discriminate or retaliate in any manner against any resident, or relative or guardian/legal representative of a resident, any employee of a long-term care facility, or any other person due to filing a complaint with, providing information to, or otherwise cooperating in good faith with a LTCO.

16.1a Procedures for Reporting Interference or Retaliation

- A. Any person who has knowledge of such interference or retaliation may report such information to the Office (406-444-3285, 406-444-7788).
- B. The Office shall review the information provided, and conduct further investigation if necessary, to confirm the occurrence of the interference or retaliation.
- a. If the Office, based on such review, determines that enforcement action is warranted, the Office shall pursue the following course of action:
 - i. Where the entity which has interfered or retaliated is a long-term care facility or its staff or agents:
 1. The Office shall submit a written report of such interference or retaliation to the Quality Assurance Division (QAD);
 2. The QAD shall investigate the report of the Office in accordance with its procedures for complaint investigation; and
 3. If the QAD complaint investigation confirms the occurrence of such interference or retaliation, the QAD has the authority to impose sanctions in accordance with its procedures for the imposition of penalties.
 - ii. Where the entity which has interfered or retaliated is an entity other than a long-term care facility or its staff or agents:
 1. The SLTCO Office shall report such interference or retaliation to DPHHS, Senior & Long-Term Care Services, Aging Services Bureau Chief;
 2. Such interference by an individual who is an official or employee of the DPHHS, or a Provider Agency shall be deemed to be in violation of the Older Americans Act 705(a); and
 3. The Aging Services Bureau Chief shall assist the Office in determining and implementing appropriate sanctions.

CHAPTER 17 ACCESS

Section 17.1 Access to Long-Term Care Residents, Facilities and Records Policy and Procedures

Representatives of the Office shall have access to all residents in long-term care facilities, access to facilities and, with proper informed consent, records of residents.

General

Access is granted to residents of long-term care facilities by representatives of the Office of the State Long-Term Care Ombudsman by federal [42 CFR 483.10 (j) (3); OAA Sec 307 (a) (12)] and State statute [MCA 52-3-604]. Access is granted to records of residents of long-term care facilities by federal [42 CFR 483.10 (j) (3)] with informed consent.

Section 17.2 Access to Residents

Access to residents of long-term care facilities shall be granted to representatives of the Long-Term Care Ombudsman Program as follows:

- A. Access to enter all long-term care facilities at any time during a facility's normal visiting hours, and to the Long-Term Care Ombudsman at any other time when access may be required. A local ombudsman may have access after normal visiting hours with approval, direction, and oversight of the Long-Term Care Ombudsman;
- B. Access to all residents to perform the functions and duties set forth in;
Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties.

Section 17.3 Access to Records

- A. Access shall be granted to review the medical, social and other records relating to a resident, if—
 - a. The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;
 - b. The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures and;
 - c. Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;
 - d. Access to the administrative records, policies, and documents, to which residents have, or the general public has access, of long-term care facilities;
 - e. Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.
- B. Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

Section 17.4 RESIDENT REFUSAL OF CONSENT TABLE

IF the resident...	THEN the LTCO shall...
<ul style="list-style-type: none"> • Refuses to consent to LTCO work on the complaint, or • Withdraws consent before the LTCO has verified the complaint 	<ul style="list-style-type: none"> • Discontinue work on the complaint • Follow the steps outlined below:
<ul style="list-style-type: none"> • Withdraws consent after the LTCO has verified or partially verified the complaint 	<ul style="list-style-type: none"> • Discontinue investigation and resolution activities on the complaint • Determine, during subsequent visits to the facility, whether the type of complaint is recurring. If it is recurring, the LLTCO shall determine whether the circumstances merit other strategies towards resolution which would not involve or disclose the identity of the resident who has withdrawn consent (e.g. filing an ombudsman-generated complaint, presenting the issue to the resident or family council), and • Follow the steps outlined in the following section

Section 17.5 For all complaints in which the resident refuses or withdraws consent, the LLTCO shall:

- a. Attempt to determine why the resident refused or withdrew consent, considering factors such as:
 - i. past response of facility to complaints;
 - ii. the resident’s relationship with the staff;
 - iii. the experience of this resident or other residents in the facility related to this type of complaint;
 - b. inform the resident that he or she may contact the LLTCO regarding the withdrawn complaint or other complaints in the future; and
 - c. provide a business card or brochure informing the resident how to contact the Program.
- B. Resident unable to provide consent:**
- a. The LLTCO shall advocate for a resident’s wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.
 - b. Where a resident is unable to provide or refuse consent to a LLTCO to work on a complaint directly involving the resident, the LLTCO shall:
 - i. Seek evidence to indicate what the resident would have desired and, where such evidence is available, work to effectuate that desire; and
 - ii. Assume that the resident wishes to have his or her health, safety, welfare and rights protected.

CHAPTER 18 COMPLAINT PROCESSING

Section 18.1 Complaint Processing Policy

Processing complaints made by or on behalf of residents of long-term care facilities is the Long-Term Care Ombudsman program's highest priority service.

Section 18.2 Complaint Process Procedures

18.2a General Guidance

The Long-Term Care Ombudsman (LTCO) shall identify, investigate and resolve complaints made by or on behalf of residents. Although the issues and circumstances of the complaints will vary, the following are general guidelines which should apply to all complaint handling. Whenever questions arise regarding appropriate LTCO practice in handling complaints, the Regional Long-Term Care Ombudsman (RLTCO) should first be contacted. If the RLTCO is unable to answer the question or needs additional guidance, the RLTCO will refer the LLTCO to the State Long-Term Care Ombudsman Office (Office) or contact the Office for assistance.

NOTE: If the complaint involves abuse or gross neglect the LTCO will follow the procedure outlined in this manual in this part.

By definition, a complaint will usually require the LLTCO to generate a case. If a resident's concern necessitates any interactions with another entity (e.g. administrator, director of nursing, social services designee), by the ombudsman or accompanied by the ombudsman, a case should be opened. Complaint processing procedures should follow the general process as follows:

Stage 1: Intake and Investigation

- Receive complaint
- Gather information
- Verify problem

Stage 2: Analysis and Planning

- Analyze the situation
- Consider Solutions
- Identify Obstacles

Stage 3 Resolution and Follow Up

- Choose Approach
- Act
- Evaluate Outcomes
 - Document case for entry into NORS
 - Record case statistics for entry into NORS

NOTE: The complaint process, in general, can be initiated only with the informed consent of the resident or her/his legal representative. Communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office. If consent is refused in urgent cases, contact the Regional Ombudsman or the Office of the State Ombudsman for assistance.

NOTE: Complaint resolution is to the satisfaction of the resident. If a resident wants no further investigation/resolution the Ombudsman should not continue to pursue the case.

NOTE: Effective documentation and recording is important to preserve accurate evidence of services provided and to ensure consistency in process if a change in ombudsmen occurs.

18.2b Complaint intake and response

- A. Complaint Intake - When a LLTCO receives information regarding a complaint, the LLTCO shall:
- a. Gather information to determine (through conversation with the complainant):
 - i. the type of complaint
 - ii. what outcome the complainant is seeking;
 - iii. what attempts have already been made to resolve the complaint; and
 - iv. whether the complaint is appropriate for LTCO activity. To be considered appropriate for LTCO activity the complaint must include one or more of the following criteria:
 1. directly impact a resident or former resident of a long-term care facility;
 2. be within the scope of the mission or authority of the LTCO Program;
 3. not place the Program in the position of having an actual, potential or perceived conflict of interest with the interest of a resident or residents; and
 4. other issues approved by the Office after consultation with the LTCO and the regional ombudsman.

NOTE: The LLTCO may seek resolution of complaints in which the rights of one resident and the rights of another resident or residents appear to be in conflict.

- B. Validate the complaint by discussing the following with the complainant:
- a. alternatives for handling the complaint;
 - b. the complainant's ability and willingness to personally take appropriate action, with LLTCO assistance if needed;
 - c. the LLTCO's commitment to act in accordance with resident wishes; and
 - d. the LTCO Program policy of confidentiality.
- C. Source of Complaint
- a. Complaints may be filed with the Program by residents, families and friends of residents, long-term care facility staff, and any other person.
 - b. Complaints may be made anonymously to the Program. Anonymous complaints must remain anonymous. If the LLTCO receiving the complaint is able to communicate directly with the anonymous complainant, the LTCO may explain to the complainant that, in some circumstances, anonymity could limit the ability of the LLTCO to investigate and resolve the complaint.
 - c. ombudsman-generated complaints—A LLTCO shall file a complaint, when appropriate, if the LLTCO has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents and no other person has made a complaint on such action, inaction, or decision. If the LLTCO has a question regarding the appropriateness of the complaint, he/she will contact the regional ombudsman for clarification.

NOTE: Such actions, inactions, or decisions include facility responses to natural disasters, evacuations, relocations, involuntary change of management, or other unusual events.

- D. Timeliness of Responses to Complaints
- a. A LTCO shall use his or her best efforts to initiate responses to complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. A response is considered timely as follows:
- E. Where the LLTCO will be unable to initiate investigations in a timely manner (e.g., due to a planned vacation or extended illness), the RLTCO shall develop a plan for temporary coverage in order to meet the standard of promptness.

NOTE: It is the joint responsibility of the RLTCO, the provider agency and the LLTCO to coordinate coverage to ensure all complaints are responded to in a timely manner. If the LLTCO needs to seek direction or guidance from the RLTCO and the RLTCO is unavailable, the LLTCO should contact the STLCO directly and notify the RLTCO of this contact upon the RLTCO return.

- F. The LLTCO may indicate to the complainant when he or she may expect investigative efforts to begin.
- G. The Program is not designed to serve as an emergency response system; emergency situations should be referred to “911” for immediate response.
- H. Resident Focus
 - a. Regardless of the source of the complaint, the resident of a long-term care facility is the LLTCO client.
 - b. Regardless of the source of a complaint, a LLTCO shall personally discuss the complaint with the resident in order to:
 - i. determine the resident’s perception of the complaint;
 - ii. determine the resident’s wishes with respect to resolution of the complaint;
 - iii. advise the resident of his or her rights; and
 - iv. work with resident in developing a plan of action.

NOTE: Where immediate action must be taken in order to protect resident rights, the LLTCO may take necessary immediate action if it is not possible to first consult with the resident. The LLTCO shall inform the resident of the action taken by the LLTCO as soon as practicably possible and seek to follow resident wishes during the remainder of the complaint process. It is highly recommended that the LLTCO discuss the complaint with the resident even if there is a legal representative/guardian in place.

- I. Where the complaint relates to a nursing facility or assisted living regulatory violation, the LLTCO shall inform the resident and complainant that the Program has opportunity to provide information to surveyors at the Quality Assurance Division and the LLTCO shall seek resident and complainant permission to share the complaint information with surveyors. The LLTCO shall provide the name of the complainant and resident to regulatory and protective agencies only after obtaining resident and complainant consent to do so,
- J. Resident consent refused or withdrawn
 - a. If, at any point during the complaint process, the resident expresses that he or she does not want the LLTCO to take further action on a complaint involving the resident, the LLTCO shall consider the following in making a determination to make further effort in an investigation:

NOTE: The LLTCO/RLTCO is urged to contact the Office for technical assistance on reporting.

18.2c Complaint processing

Complaints will be processed according to a standardized process to assure consistency in record keeping and data analysis.

- A. With respect to identifying, investigating and resolving complaints, and regardless of the source of the complaint (i.e. complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident’s satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate and resolve a complaint impacting multiple residents or all residents of a facility.
- B. Regardless of the source of the complaint (i.e. the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

- a. The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.
- b. The Ombudsman or representative of the Office shall personally discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:
 - i. Determine the perspective of the resident (or resident representative, where applicable) of the complaint; Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;
 - ii. Determine the wishes of the resident (or resident representative where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and appropriate agencies.;
 - iii. Advise the resident (and resident representative, where applicable) of the resident's rights;
 - iv. Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;
 - v. Investigate the complaint to determine whether the complaint can be verified; and
 - vi. Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).
- C. Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:
 - a. Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and
 - b. Determine whether the complaint was resolved to the satisfaction of the complainant.
- D. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.
- E. The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act and the procedures set forth in these policies and procedures:
 - a. Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/ or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.
 - b. Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and referrals to an entity other than those referenced this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and disclose the information for which the resident has

provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.

- c. In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent, notwithstanding State laws to the contrary.
- F. Communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office in accordance with the procedures of the Office.
- G. If a resident is unable to communicate his or her informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication of informed consent and perspective regarding the resolution of the complaint of a resident representative so long as the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.
- H. The procedures for disclosure, as required by these policies and procedures, shall provide that the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and law enforcement action in the following circumstances:
 - a. The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;
 - b. The resident has no resident representative;
 - c. The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident;
 - d. The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
 - e. The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
 - f. The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office
- I. The procedures for disclosure, as required by these policies and procedures shall provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and law enforcement action in the following circumstances:
 - a. The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and has no resident representative, or the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;
 - b. The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
 - c. The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
 - d. The representative of the Office obtains the approval of the Office of the State Ombudsman.

- J. The procedures for disclosure, as required by these policies and procedures shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies;
 - a. Where such resident is able to communicate informed consent or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative; and
 - b. Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program’s complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:
 - i. The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
 - ii. The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and
 - iii. The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office
 - c. In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and law enforcement action.
- K. Prior to disclosing resident- identifying information pursuant to this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.
 - a. Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or disapproval within 10 days of receiving the request in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.
 - b. Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in this section.
 - c. Disclosure of resident-identifying information under this section shall require Ombudsman approval.

18.2d COMPLAINT RESPONSE TABLE

IF a complaint involves...	THEN the standard of promptness for LLTCO response is...
<ul style="list-style-type: none"> • Abuse or gross neglect, and • The LLTCO has reason to believe that a resident may be at risk 	Immediately (same working day that the complaint is received)
<ul style="list-style-type: none"> • Abuse or gross neglect, and • The LLTCO has no reason to believe that a resident is at risk 	Within the next working day

<ul style="list-style-type: none"> Actual or threatened transfer or discharge from a facility 	Whichever occurs first: <ul style="list-style-type: none"> Next working day Last day of the bed hold period (if the resident is hospitalized), or Last day for filing a request and stay with the Office of Fair Hearings
<ul style="list-style-type: none"> Other types of complaints 	Within 5 working days

- A. The LLTCO investigates a complaint in order to verify the accuracy and pertinence of the complaint.
- A complaint is “verified” when the LLTCO determines, after completing an investigation, that the circumstances described in the complaint are confirmed or generally accurate.
 - Because a LLTCO works on behalf of residents, the LLTCO gives the benefit of any doubt to the resident’s perspective. Regardless of the resident’s disability, level of cognitive functioning, or degree of dementia, the resident is considered the “expert” with regard to his or her perception of their situation.
- B. The LLTCO shall seek the following information during the investigation of the complaint:
- what** has occurred or is occurring;
 - when** it occurred and whether the occurrence is on-going;
 - where** it occurred;
 - who** was involved;
 - effect** of the occurrence on resident(s);
 - reason** for occurrence; and
 - what**, if anything, the facility or other interested parties have done in response to the occurrence.
- C. In order to verify a complaint, the LLTCO shall take one or more of the following steps, as appropriate to the nature of the complaint:
- Research relevant laws, rules, regulations, and policies;
 - Personally, observe the evidence;
 - Interview the resident and complainant;
 - Interview staff, administration other residents and families;
 - Identify relevant agencies and interview and obtain information from their staff; and
 - Examine relevant records.

NOTE: Representatives of the Office shall not search a resident’s body for evidence.

NOTE: Representatives of the Office must always obtain either written or verbal permission/consent from the resident to engage in the investigatory process. Without this permission/consent none of the above steps can be taken. This consent/permission and the date it was given must be documented in the case log.

- The **representatives of the Office** are not required to independently verify a complaint in order to seek resolution on behalf of a resident. Resident perception is a sufficient basis upon which a **representative of the Office** can seek resolution.
- Facility visits for purposes of complaint investigation shall be unannounced.

18.3 Plan of action

- Upon verifying or partially verifying a complaint, the representatives of the Office shall determine a plan of action to resolve the complaint.

- B. The plan of action shall be mutually agreed upon by the resident and the representatives of the Office.
- C. The representatives of the Office shall consider the following factors in developing the plan of action, as appropriate to the nature of the complaint:
 - a. the scope of the complaint;
 - b. the history of the facility with respect to resolution of other complaints;
 - c. available remedies and resources for referral;
 - d. who would be best able to resolve the complaint; and
 - e. the likelihood of retaliation against the resident or complainant.
- D. One or more of the following may be an appropriate plan of action in resolving complaints:
 - a. explanation— (i.e. The findings of the investigation do not indicate a need for a change or require representatives of the Office intervention).
 - b. The resident or complainant received an explanation which satisfied the initial problem;
 - c. negotiation/joint problem solving—i.e. the representatives of the Office advocates on behalf of or with the resident or complainant in discussing the complaint with the appropriate facility staff or other relevant party to develop an agreement that resolves the complaint;
 - d. mediation - i.e., the representatives of the Office acts as an impartial referee between parties of equal status (e.g., between residents or between family members) to assist the parties in developing an agreement that resolves the complaint;
 - e. coordination with and referrals to appropriate agencies including Adult Protective Services, the Office of Fair Hearings, Certification, Licensure, or Law Enforcement
 - f. The representatives of the Office shall attempt to resolve the dispute directly with the appropriate staff of the facility unless the representatives of the Office and the resident determine that another strategy would be more advantageous to the resident.

NOTE: a representative of the Office must always obtain written, verbal or by axillary communication permission/consent from the resident to refer his or her case to another agency. Without this permission/consent, the representative of the Office cannot make a referral to another agency. This consent/permission and the date it was given must be documented in the representative of the Office file.

18.4 Complaint Referrals

- A. When a complaint shall be referred a representative of the Office shall make a referral to another agency where:
 - a. the resident gives permission; and
 - b. one or more of the following applies:
 - i. another agency has resources that may benefit the resident (e.g., Adult Protective Services, Information & Assistance)
 - ii. the action to be taken in the complaint is outside of the LTCO authority and expertise;
 - iii. the representative of the Office needs additional assistance in order to achieve resolution of the complaint; or
 - iv. the resident requests the referral be made.
- B. Referrals to regulatory agencies (Quality Assurance Division (QAD) - Certification or Licensure Bureaus)

- a. A representative of the Office may encourage residents or complainants to directly contact the appropriate regulatory agency to file a complaint and offer information and assistance to residents or complainants in making such contact.
- b. Where a representative of the Office refers a complaint to the QAD, the representative of the Office shall:
 - i. submit the complaint in writing; or
 - ii. contact QAD complaint intake personnel by telephone and subsequently document the referral by:
 - 1. submitting a confirming letter to the agency; and
 - 2. recording in LLTCO records.
- c. Joint investigatory activities
- d. Where the representative of the Office is invited by a regulatory agency (Licensing and Certification) to assist in or provide information regarding an investigation of a facility, representative of the Office participation is appropriate only under the following circumstances:
 - i. the representative of the Office is able to fulfill his or her role as a resident advocate;
 - ii. the representative of the Office does not attempt to regulate a facility or take actions which would lead one to assume that the representative of the Office is a regulator (Licensing and Certification); and
 - iii. the representative of the Office explains to facility administration and residents that his or her role is to advocate for the health, safety, welfare and rights of residents, not to enforce regulations.

NOTE: The representative of the Office must recognize and respect the differences between their roles and that of the regulatory agencies'. However, a portion of a representative of the Office advocacy occurs on a facility-wide basis and addresses some of the same issues concerning regulators. Therefore, it is critical that the representative of the Office work with their RLTCO to maintain open and on-going communication with the regulatory agencies.

C. Referrals to legal services:

- a. For a resident who is requesting or in need of (and consents to obtaining) legal advice and representation, the LLTCO shall contact the RLTCO and discuss the resident's options for legal services/representation in his or her community. These services might include the Montana Advocacy Program and Montana Legal Services.
- b. Where free or reduced-cost legal services are unable to be secured, the LLTCO, working in conjunction with the RLTCO and the Legal Services Developer may provide the resident with a list of private attorneys who may provide the service. The LLTCO shall not make referrals to or recommendations of an individual private attorney.

D. Follow-up:

- a. After a complaint has been referred, the LLTCO shall determine:
 - i. resident satisfaction with the outcome of actions taken by the referral agency, and
 - ii. that appropriate action has been taken by the referral agency.
- b. Resident dissatisfaction with referral outcomes and perceived inaction on the part of the agency to which the resident was referred should be reported by the LLTCO to the RLTCO. The RLTCO, in collaboration with the Office will discuss an appropriate course of action.

18.5 Closing a Complaint or Case

- A. Representative of the Office activity on a complaint or case is complete, and, therefore, the complaint or case may be closed, when any of the following occurs:
- a. the complaint has been resolved to the resident's satisfaction;
 - b. the representative of the Office has determined, after investigation, that the complaint:
 - c. cannot be verified; or
 - d. was not made in good faith;
 - e. further activity by the representative of the Office is unlikely to produce satisfaction for the resident;
NOTE: This determination can only be made after discussions with the resident regarding further representative of the Office involvement.
 - f. The complaint is not appropriate for representative of the Office activity;
 - g. the resident requests that the representative of the Office activity end on the complaint (complaint withdrawn).
- B. Follow-up After a complaint has been closed, the representative of the Office shall continue to monitor the circumstances of the complaint to:
- a. assure that the resident is satisfied with the outcome, and
 - b. determine whether further actions on behalf of the resident should be taken by the program.

C. Disposition Codes

Disposition is the final resolution or outcome of a complaint. An ombudsman may perform many activities when resolving and investigating a complaint, but there is only one outcome. Each complaint must have a disposition code, whether the complaint is verified or not:

01. "Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant"
02. "Withdrawn or no action needed by the resident, resident representative or complainant"
03. "Not resolved"

D. Referral Agency Codes

A referral agency is the agency or agencies to which a complaint was referred to as part of the Ombudsman program's plan of action for complaint resolution. An ombudsman must enter at least one of the referral codes listed below in the MODS database for each complaint in a case. You may have more than one referral agency for a complaint.

01. "Licensing, regulatory, or certification agency"
02. "Adult protective services"
03. "Law enforcement or prosecutor"
04. "Protection and advocacy"
05. "Legal services"
06. "No referral was made"
99. "Other"

Section 18.6 Abuse and Gross Neglect Complaints

NOTE: The primary role of the representative of the Office is to seek resolution to the resident's satisfaction, not to verify the suspected abuse or neglect.

- c. Due to the serious nature of these complaints and in order to comply with laws which govern the Long-Term Care Ombudsman Program, specific guidelines are provided with respect to handling and reporting suspected abuse, neglect and exploitation. These guidelines include exemption of the representative of the Office from mandatory reporting requirements and enhanced confidentiality requirements.

- d. Upon receiving an abuse or gross neglect complaint, a representative of the Office shall use his or her best efforts to ensure protection of the resident from further abuse or neglect.
- e. The representative of the Office shall follow complaint investigation steps as in other types of complaints.

The representative of the Office shall report suspected abuse or neglect as follows:

18.6a Table - ABUSE REPORTING-WHEN

IF the resident...	THEN the LTCO shall...
<ul style="list-style-type: none"> • Gives permission: <ul style="list-style-type: none"> (A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services; (B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or (C) The disclosure is required by court order to a representative of the Office to make the report to the appropriate agency. 	<p>Consult with the RLTCO and then, after discussing the case with the RLTCO, either contact the appropriate agency directly or the RLTCO will contact the appropriate agency</p>
<ul style="list-style-type: none"> • Does not give permission to a representative of the Office to make the report; and • The complainant is a Long-Term care service provider, facility staff person, or other mandatory reporter 	<ul style="list-style-type: none"> • Inform the complainant of his or her duty to report to the appropriate agency • Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
<ul style="list-style-type: none"> • Does not give permission to a representative of the Office to make the report; and • The resident acknowledges having been abused 	<ul style="list-style-type: none"> • Determine: <ol style="list-style-type: none"> 1.) whether other residents have experienced similar circumstances 2.) Whether any other such resident wishes the representative of the Office to take any action on his or her behalf; • Immediately contact the RLTCO who, with input from the SLTCO, will determine further action <ul style="list-style-type: none"> • Make repeated visits to the resident who alleged abuse in order to

	encourage the resident to permit the representative of the Office to report the suspected abuse
Is unable to communicate his or her wishes	<ul style="list-style-type: none"> • Encourage and provide assistance to any other person who is aware of the suspected abuse to make the report to the appropriate agency • Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
Does not make the complaint (i.e. the representative of the Office receives a complaint of suspected abuse or neglect from a complainant other than the resident)	<ul style="list-style-type: none"> • Advise the complainant to report the suspected abuse or neglect to the appropriate agency and provide information to assist the complainant in making the report • Visit the resident and follow complaint investigation • Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
<ul style="list-style-type: none"> • Does not make the complaint, and • The representative of the Office personally witnesses abuse of a resident 	<ul style="list-style-type: none"> • Notify the resident of the LLTCO responsibility to report witnessed abuse • Immediately contact the RLTCO who, with input from the SLTCO, will determine further action and, • Report the suspected abuse • File an ombudsman-generated complaint • Follow complaint investigation steps
Requests a representative of the Office assistance in moving from the facility	<ul style="list-style-type: none"> • Immediately contact the RLTCO who, with input from the SLTCO, will determine further action • Take steps to facilitate moving the resident to another facility such as assisting with contact of family members or appropriate agencies

18.6b TABLE WHERE TO REPORT ABUSE

IF suspected abuse occurs in...	THEN a report is to be made to...
A nursing facility	Department of Public Health & Human Services (DPHHS) Certification Bureau Quality Assurance Division PO Box 202953 Helena, MT 59620-2953 (406) 444-2099

An assisted living home	Department of Public Health & Human Services (DPHHS) Health Care Facility Licensure Bureau Quality Assurance Division PO Box 202953 Helena, MT 59620-2953 (406) 444-1575
All other settings	Department of Public Health & Human Services (DPHHS) Adult Protective Services Local or Regional Offices

Section 18.7 Follow-up

The **representatives of the Office** shall continue to monitor:

- a. the safety of the resident at issue;
- b. the involvement and investigation of other agencies
- c. resident satisfaction with the outcome of actions taken in response to the suspected abuse or neglect

The **representative of the Office** will document cases as follows:

- A. Regarding each complaint, the representatives of the Office shall document as follows:
 - a. Representatives of the Office activity as required in the SLTCO Reporting Manual for purposes of preparing National Ombudsman Reporting System (NORS) reports;
 - b. complaint intake information including:
 - i. complainant name,
 - ii. telephone number and address of complainant,
 - iii. complaint category and sub-category,
 - iv. affected resident(s) name(s),
 - v. facility name,
 - vi. name of representative of the Office taking complaint; and
 - vii. date permission was given to investigate the complaint.
 - c. a plan of action for resolution of the complaint;
 - i. description of and dates of steps taken to investigate, verify, resolve, and follow-up on the complaint; and
 - ii. explanation of the resolution or other reason for closing the complaint.
 - d. The representative of the Office should open a case for each complaint, or appropriate group of complaints, that require efforts to follow up on or investigate issue of concern regarding resident rights, health or welfare in the long-term care facility.
 - e. The local Program shall maintain complaint documentation in an organized manner which:
 - i. can be readily understood by another LLTCO, RLTCO or the SLTCO;
 - ii. clearly describes all LTCO activity on the complaint; and
 - iii. permits a ready complaint history of each facility in the service area.
- B. Complaint/Case numbers:
 - a. The RLTCO shall periodically review the number of complaints and resultant cases brought to the local Program to determine whether:
 - b. The number of complaints/cases is so high as to impact the ability of local LTCO Program to adequately fulfill the other program components;
 - c. The number of complaints/cases is significantly inconsistent with the average number of complaints per program statewide; and

- d. The number of complaints/cases is approximately the same as the projection in the Local Program Area Ombudsman Plan.

Documentation: Documentation is very important to allow communication among appropriate staff of the Program, to protect the representative of the Office from tort claims and to verify efforts the representative of the Office makes to ensure high quality advocacy to residents of long-term care facilities.

Section 18.8 COMPLAINT ACTIVITY TABLE

IF complaint numbers are....	THEN the RLTCO shall take the following steps...
low from a particular facility	<ul style="list-style-type: none"> • determine whether residents, families, or staff feel free to make complaints to LTCO PROGRAM • determine whether residents, families and staff are familiar with the existence of and purpose of the LTCO Program • determine whether residents, families and staff are familiar with the existence of and purpose of the LTCO Program • review whether ombudsmen-generated complaints are being accurately recorded by all staff.
IF complaint numbers are...	THEN the RLTCO shall work with the provider agencies to implement the following steps....
<p>Low for the local LTCO Program, indicated by any of the following:</p> <ul style="list-style-type: none"> • more than 20% below the statewide average, *more than 10% below the projected number of complaints in the Local LTCO Program 	<ul style="list-style-type: none"> • review whether residents, families and staff are familiar with the existence of and purpose of the LTCO Program • increase frequency of routine visits • increase involvement with resident and family councils • increase community education and public information regarding the purpose of the LTCO Program • increase the numbers of in-service trainings for facility staff • review whether complaints, including ombudsman-generated complaints, are being accurately recorded by a LTCO
high for a particular facility or company owning/managing facilities	<ul style="list-style-type: none"> • look to systemic approaches to resolve common complaints
high for the local LTCO Program, indicated by:	<ul style="list-style-type: none"> • review whether serious complaints are being given highest priority for resolution

<ul style="list-style-type: none"> • more than 20% above the statewide average • more than 10% above the projected number of complaints in the Local LTCO Program Annual Plan 	<ul style="list-style-type: none"> • review whether LLTCO are providing sufficient resources and information to enable families and residents to personally resolve complaints where appropriate
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18.9 Periodic Review

The RLTCO shall periodically review the resolution status of complaints to monitor resident satisfaction with complaint activity. In developing the Local LTCO Program Annual Plan and in otherwise setting goals and objectives, the RLTCO shall seek to:

- a. improve resident satisfaction with complaint resolution
- b. Improved resident satisfaction is indicated by an increase in the total percentage of the sum of the following resolution categories:
 - i. partially or fully resolved

Some complaints will not be resolved to the resident’s satisfaction regardless of LTCO action. Categories which reflect this circumstance are not considered in determining whether resident satisfaction is increased. These categories are:

- c. withdrawn or no action needed,
- d. referral was made to an agency.

Section 18.10

SATISFACTION WITH COMPLAINT RESOLUTION TABLE

IF the percentage of complaints...	THEN the RLTCO shall take the Following steps...
<p>There is no increase from the previous year in the total percentage of complaints which are:</p> <ul style="list-style-type: none"> • partially or fully resolved, 	<ul style="list-style-type: none"> • review whether a high percentage of residents have withdrawn their cases. If so, identify possible causes for resident withdrawal of complaints (e.g., is the rate higher for a particular staff person or volunteer? Is the rate higher in a particular facility?) and seek to rectify any identified problems; • review whether a high percentage of complaints are not resolved. If so, identify possible causes and seek to rectify; • review whether the percentage of complaints are being referred to other agencies have an impact on resolution; and • review whether a large number of complaints are related to issues that must be resolved through legislative or regulatory action.
<p>The percentage of complaints which are not resolved is increased from the not resolved is increased from the</p>	<p>review adequacy of complaint investigation techniques, including:</p> <ul style="list-style-type: none"> • response times, • thoroughness of investigations, • proper identification of complaints, and • adequate focus on the resident's wishes

CHAPTER 19 ROUTINE VISITS

Section 19.1 Routine Visits Policy and Procedures

The Long-Term Care Ombudsman (LTCO) Program shall have a regular presence in all long-term care facilities in order to monitor the condition of residents, provide information regarding the Ombudsman Program, and ensure resident access to an ombudsman.

- A. The Long-Term Care Ombudsman (LTCO) shall monitor the condition of residents during routine visits.
 - a. Routine visits to facilities shall be unannounced.
 - b. Timing of routine visits shall occur between 9 am and 6 pm and shall be staggered so the facilities have no basis to predict the timing of the visits.
 - c. The representatives of the Office shall document observations during or immediately subsequent to the routine visit and maintain such documentation with LTCO program records.
 - d. Representative of the Office observations of conditions in the facility which adversely affect the health, safety, welfare or rights of residents shall be documented as ombudsman generated complaints if no other person has lodged the complaint.
 - e. Representatives of the Office shall regularly obtain a current resident roster, with contact information for each resident, for each assigned facility.
- B. The representative of the Office shall provide information regarding the LTCO Program during routine visits.
 - a. The representative of the Office shall assure that the facility posts the LTCO Program poster in the facility so that it is readily visible to residents, families, and staff. Depending on the facility floor plan, several posters may need to be posted to meet this requirement.
 - b. The representative of the Office shall assure that the facility has an adequate supply of LTCO program brochures and other ombudsman information to provide all residents and their representatives with information regarding the program.
- C. The representative of the Office shall explain the purpose of the LTCO Program and introduce him or herself to residents in the facility particularly to any residents who have been admitted since the last routine visit.
- D. The representative of the Office shall ensure resident access to an ombudsman.
- E. Representatives of the Office shall have a presence in long-term care facilities, once a month at a minimum, and as frequent as possible in order to assure residents access to an ombudsman.
- F. Representatives of the Office shall have an increased presence in facilities in which there is a history of serious or frequent complaints.
- G. Regional LTCO (along with the appropriate LLTCO) shall at a minimum visit each long-term care facility within his or her area one time per year.
- H. RLTCO will visit facilities, as they deem necessary, in circumstances such as, but not limited to:
 - a. Administrator changes;
 - b. requests by facilities;
 - c. requests by LLTCO; or
 - d. requests by SLTCO.
- I. A visit for the purpose of investigating a complaint may be made simultaneously with a routine visit to maximize efficient use of time and resources.

CHAPTER 20 RESIDENT AND FAMILY COUNCILS

Section 20.1 Resident and Family Councils Policy and Procedures

The Long-Term Care Ombudsman Program (LTCO Program) shall encourage and support the development of resident and family councils in long-term care facilities.

- A. Local Long-Term Care Ombudsman shall endeavor to facilitate and support the establishment and continuation of resident and family councils in long-term care facilities.
- B. Representative of the Office, at the request of the Council, will endeavor to attend meetings on a regular basis to assist members in understanding and exercising their rights as residents and families of residents in long-term care facilities.
- C. Representatives of the Office will advocate for individuals and groups with permission and to the satisfaction of the individual or group when a concern arises.
- D. Representatives of the Office will understand that the Council is self-regulated and that their role is supportive and not participatory.
- E. Number of resident and family council activities.
 - a. Each Long-Term Care Ombudsman is expected to provide annually, at a minimum, attendance at:
 - i. a resident council in each of the nursing facilities in the service area, and
 - ii. family councils in 30% of the active family councils.
- F. The RLTCO shall periodically review the number of resident and family council activities provided by the LTCO to determine whether:
 - a. The number of resident and family council activities is so high as to impact the ability of LLTCO to adequately fulfill the other program components particularly complaint processing;
 - b. the number of resident and family council activities is below the minimum standard; or
 - c. approximately the same as the projection in the Regional LTCO Program Annual Plan.

Section 20.2 TABLE INVOLVEMENT WITH RESIDENT AND FAMILY COUNCILS

IF the number of resident or family council meetings attended is...	THEN the Regional LTCO shall take the following steps...
<p>Low for the LLTCO as indicated by:</p> <ul style="list-style-type: none"> • less than annually for each resident council, or • less than 30% of active family councils 	<ul style="list-style-type: none"> • review whether residents, family members, and facility administration are aware that the LLTCO provides this service • initiate regular contact with resident and family council presidents, and evaluate previous methods of developing resident and family councils • develop and inform resident and family councils of options for presentations topics • explain to the Office why a particular resident council was not receptive to LLTCO involvement

High for the LLTCO indicated by:

1. significantly more than annually for each of the resident councils;
2. more than 30% of the active family councils; or
3. more than 10% above the number of resident or family council activities projected in the Regional LTCO Program Annual Plan; and
4. impacting the ability of the CLO to adequately fulfill the other program components.

- limit the number of meetings that LTCO will attend of a single resident or family council (i.e. one meeting per quarter per council); and
- assign an Ombudsman Volunteer to attend the resident or family council

CHAPTER 21 IN-SERVICE EDUCATION

Section 21.1 In-Service Education Policies and Procedures

The Long-Term Care Ombudsman (LTCO) Program shall provide in-service education to long-term care facility staff regarding resident rights, abuse reporting, and related issues.

- A. Number of in-service education sessions
 - a. Each Regional LTCO Program is expected to provide annually, at a minimum, in-service education sessions:
 - i. For nursing facility staff—sessions equal to 25% of the number of nursing facilities in the service area, and
 - ii. For personal care home staff—a minimum of two (2) sessions, preferably to a large number of staff.
 - iii. Make available to a large number of providers.
 - b. The Regional LTCO shall periodically review the number of in-service education sessions provided by Long-Term Care Ombudsmen (LTCO) to determine whether:
 - i. The number of in-service education sessions is so high as to impact the ability of LLTCO to adequately fulfill the other program components, particularly complaint investigation;
 - ii. The number of in-service education sessions is below the average number of in-service education sessions per program statewide; or
 - iii. The number of in-service education sessions is approximately the same as the projection in the Regional LTCO Program Annual Plan.
- B. Representatives of the Office are not authorized to give medical or legal advice.
 - a. Despite an individual’s level of training, any legal or medical advice is beyond the scope of the Program.
If legal/medical advice is requested the representative of the Office should refer the question to appropriate legal/medical services and assist as needed.

Section 21.2 TABLE IN-SERVICE EDUCATION FOR FACILITY STAFF

IF the number of in-service education session is...	THEN the Regional LTCO shall take the following steps...
<p>Low for the Regional LTCO Program, indicated by:</p> <ul style="list-style-type: none"> • less than 25% of the number of nursing facilities in the service area; • less than two (2) personal care home staff education sessions, or • more than 10% below the projected number of in-service education sessions in the Regional LTCO Program Annual Plan 	<ul style="list-style-type: none"> • review whether facility administration and staff are aware that the LTCO Program provides this service • evaluate content and presentation methods of previous in-service education sessions • consider developing new topics or new presentation methods for in-service education • develop a training for personal care home providers within a particular geographic area

<p>High for the Regional LTCO Program indicated by:</p> <ol style="list-style-type: none">1. more than 10% above the statewide average; or2. more than 10% above the projected number of in-services education sessions in the Regional LTCO Program Annual Plan; and3. impacting the ability of the local LTCO Program to adequately fulfill the other Program components	<ul style="list-style-type: none">• review ability of the LLTCO to respond to all requests for in-service education• limit the number of sessions available per nursing facility (e.g., one (1) per year per facility)• provide sessions to groups of personal care home providers and staff, rather than to staff of individual facilities
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CHAPTER 22 INFORMATION DISSEMINATION AND CONSULTATION

Section 22.1 Information Dissemination and Consultation Policy and Procedures

The Long-Term Care Ombudsman (LTCO) Program shall provide information dissemination and consultation (IDC) regarding long-term care and related issues as requested.

- A. Timely responses:
 - a. The Program shall respond to a request for information dissemination and consultation (IDC) during the same day the request was made whenever possible and, in all cases, within five (5) working days.
 - b. Consultations shall be within the scope of the Ombudsman Program
 - i. Despite the level of training of the individual, the ombudsman is not authorized to provide legal or medical advice as a representative of the Office.
 - ii. Consultations shall not be in direct conflict with the rights of residents of long-term care facilities or with the mission and philosophy of the Program unless approved by the Office.
- B. Number of requests for information dissemination and consultation
 - a. The Regional LTCO shall periodically review the numbers of IDC requests brought to the Program within his or her region to determine whether:
 - i. The number of IDC requests is so high as to impact the ability of LTCO Program to adequately fulfill the other program components, particularly complaint processing;
 - ii. The number of IDC requests is significantly inconsistent with the average number of IDC requests per program statewide; or
 - iii. The number of IDC requests is approximately the same as the projection in the Regional LTCO Program Annual Plan.

Section 22.2 TABLE INFORMATION DISSEMINATION AND CONSULTATION

How to the below table: This table is designed to assist Regional LTCO, the SLTCO, and provider agencies in local LTCO program evaluation and planning. It **suggests** strategies to use in impacting IDC numbers which appear unusually high or unusually low. It also provides guidance in evaluating program performance related to IDC. **The LTCO Program is not required to provide a particular number of IDC activities.**

<p>IF the number of IDC activities is...</p>	<p>THEN the Regional LTCO shall work with provider agencies to implement the following steps...</p>
<p>Low for the LTCO Program indicated by:</p> <ul style="list-style-type: none"> • more than 20% below the statewide average, or • more than 10% below the projected number of IDC requests in the Regional LTCO Program Annual Plan 	<ul style="list-style-type: none"> • review whether residents, families and staff are familiar with the existence of and purpose of the LTCO Program • increase community education and public information regarding the purpose of the LTCO Program • review whether IDC activities are being accurately recorded by all LTCO
<p>High for the community LTCO Program, indicated by:</p> <ol style="list-style-type: none"> 1. more than 20% above the statewide average, 2. impacting the ability of the LTCO Program adequately fulfill the other program components 	

CHAPTER 23 COMMUNITY EDUCATION

Section 23.1 Community Education Policies and Procedures

The Long-Term Care Ombudsman (LTCO) Program shall educate the community about long-term care, the Ombudsman Program, and related issues.

A. Number of community education sessions:

- a. Each local LTCO Program is expected to provide, at a minimum, two (2) community education sessions annually per full-time equivalent ombudsman staff. The community education sessions may be held jointly with other Long-Term Care Ombudsmen and Regional LTCO and SLTCO.
- b. The Regional LTCO shall periodically review the number of community education sessions provided by the LLTCO and Regional LTCO to determine whether:
 - i. the number of community education sessions is so high as to impact the ability of LTCO Program to adequately fulfill the other program components particularly complaint processing;
 - ii. the number of community education sessions is below the average number of community education sessions per program statewide; or
 - iii. the number of community education sessions is approximately the same as the projection in the Regional LTCO Program Annual Plan.

Section 23.2 TABLE COMMUNITY EDUCATION

IF number of community education sessions is...	THEN the Regional LTCO shall take the following steps...
<p>Low for the LTCO PROGRAM indicated by:</p> <ul style="list-style-type: none"> • fewer than two (2) sessions annually per full time equivalent LTCO staff; or • more than 10% below the projected number of community education sessions in the Regional LTCO Program Annual Plan 	<ul style="list-style-type: none"> • seek ways to increase the numbers of community education sessions • request suggestions and opportunities for community education sessions from the AAA, provider agency, SLTCO and other Regional LTCO • increase provision of public information regarding the purpose and services of the LTCO Program
<p>High for the community LTCO Program, indicated by:</p> <ol style="list-style-type: none"> 1. more than 10% above the statewide 2. more than 10% above the projected number of community education sessions in the Regional LTCO Program Annual Plan; and 3. impacting the ability of the community LTCO Program to adequately fulfill the other Program components 	<ul style="list-style-type: none"> • limit the number of community education sessions provided <p>NOTE: if this number is less than the projected number of community education sessions indicated in the Regional LTCO Program Annual Plan or less than 2 per full-time equivalent, the provider agency and RLTCO must request approval of the SLTCO.</p>

CHAPTER 24 ADVISORY COUNCILS

Section 24.1 Advisory Council Development, Policy and Procedures

The Long-Term Care Ombudsman (LTCO) Program shall receive advice in its planning and operation from the community.

- A. The State Long-Term Care Ombudsman Program shall develop its own advisory council.
- B. The State Long-Term Care Ombudsman shall design its advisory council to perform one or more of the following functions:
 - a. Provide advice regarding the planning and operation of the SLTCO Program.
 - b. The advisory council should not make decisions for or otherwise serve as a governing body of the Program.
 - c. Enhance community understanding of Program purpose and services.
 - d. Act as a multidisciplinary team to assist the Office and Regional LTCO in obtaining resources the Program may access to benefit long-term care facility residents.
 - e. Develop an understanding of long-term care issues and assist the Program in issues advocacy efforts.
 - f. Assist the Office and Regional LTCO in special projects.
 - g. Advise on best practices, efficiency and sustainability for the Program.
 - h. Composition of the advisory council:
 - i. The State Long-Term Care Ombudsman may determine the composition of the advisory council.
 - ii. The advisory council shall be multidisciplinary and representative of a variety of parties. Examples include, but are not limited to:
 1. residents;
 2. family members or friends of residents;
 3. older individuals within the state;
 4. Governor's Advisory Council on Aging members;
 5. staff of Area Agencies on Aging;
 6. staff of other agencies;
 7. state representatives/senators;
 8. health care professionals such as pharmacists, physicians, and nurses;
 9. long-term care service providers such as facility administrators and staff;
 10. Home and Community Based Services (state and private agencies);
 11. educators in gerontology or related field; and
 12. Regional and Local Long-Term Care Ombudsman.

CHAPTER 25 CODE OF ETHICS

Section 25.1 Code of Ethics for Long-Term Care Ombudsmen as developed by The National Association of State Long-Term Care Ombudsman Programs

- A. The ombudsman provides services with respect for human dignity and the individuality of the client, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
- B. The ombudsman respects and promotes the client's right to self-determination.
- C. The ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
- D. The ombudsman acts to protect vulnerable individuals from abuse and neglect.
- E. The ombudsman safeguards the client's right to privacy by protecting confidential information.
- F. The ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
- G. The ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect for the policies of the sponsoring organization.
- H. The ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
- I. The ombudsman participates in efforts to promote a quality, long-term care system.
- J. The ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
- K. The ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board, and care services, or other long-term care services that are within their scope of involvement.
- L. The ombudsman shall conduct himself/herself in a manner that will strengthen the statewide and national ombudsman network.

Appendix A Exceptions and Waivers for Program Components

If the activities planned for a specific program component do not meet the applicable standard(s), you must seek approval using the following guidelines.

Where a standard for a particular program component is not met in the plan, the Office, in conjunction with the relevant Provider Agency, may approve a modified standard in a Regional Ombudsman Plan for a particular community LTCO Program only where the plan describes one or more of the following:

1. Specific efforts to improve performance related to that program component over previous years and specific plans to work toward meeting the standard related to the program component;
2. Specific efforts taken to improve performance of another program component. A plan to mitigate the negative impact on other program components is required;
3. Initiation of a time-limited project which is consistent with the purpose of the LTCO Program and which may require significant staff time or other resources. A plan to mitigate the negative impact on other program components is required;
4. Limitations in staff or other resources, which make compliance with a particular program component standard a hardship for the local LTCO Program.

CHAPTER 26 EMERGENCY PREPAREDNESS AND RESPONSE

Section 26.1 Overview

Preparing for and responding to emergencies that affect individuals living in long-term care facilities requires coordinating the work of many. While Long-Term Care Ombudsman programs are not first responders, they play an important role in emergency planning and response. Ombudsman programs can resolve complaints, protect rights, and promote access to services for residents before, during and after emergencies and disasters.

Section 26.2 Principles for Emergency Preparedness and Response Policies and Procedures

Resident-centered focus: The Ombudsman program work with and on behalf of residents, and represents the interests of residents, including when preparing for or responding to an emergency.

System-level representation of residents' interests: The Ombudsman program advocates visibly and effectively with and on behalf of residents, representing the interests of residents, both within the aging network and to other agencies involved in emergency preparedness and management.

Coordination and communication: The Ombudsman program coordinates and communicates with the aging network and other agencies involved in emergency preparedness and management. The Ombudsman and representatives of the office are not first responders, but coordinates with and follow directions of first responders.

Emergency preparedness: At every level, the Ombudsman program – the Ombudsman, the Office, local Ombudsman entities, and representatives of the Office – is organizationally and personally prepared for emergencies. Preparation includes an all-hazards emergency preparedness plan encompassing continuity of operations and an individual preparedness plan that addresses unique needs and functions during an emergency. The Ombudsman program engages and collaborates with the Montana Department of Health and Human Services, Public Health and Safety Division to improve situational awareness, communication, and coordination where appropriate prior to, during and after an emergency or disaster.

Section 26.3 Functions and Responsibilities

Policy: The Ombudsman program works to promote the health, safety, welfare, or rights of the residents before, during and after an emergency.

Procedure:

26.3a State Aging Services Bureau: Functions and Responsibilities

- A. Coordinate activities and develop emergency preparedness plans as required by section 307(a)(29) of the OAA.
- B. Coordinate and communicate with the Ombudsman on relevant emergency preparedness issues.
- C. Support Ombudsman program emergency preparedness including, but not limited to: information sharing, resource sharing, training, participating in exercises, and facilitating relationships with public safety, health care organizations and public health partners for the common goal of making communities safer, healthier and more resilient.

26.3b State Long-Term Care Ombudsman: Functions and Responsibilities

- A. Lead and manage the Office in coordination with the state agency and, where applicable, any other agency carrying out the Ombudsman program.

- B. Assure that the Ombudsman program is fulfilling the requirements of these policies and procedures.

26.3c Provider Agencies: Functions and Responsibilities

- A. Coordinate activities and develop emergency preparedness plans relevant to its service area [and, for area agencies on aging, as required by section 306(a)(17) of the OAA].
- B. Coordinated and communicate with the Ombudsman and representatives of the Office on relevant emergency preparedness issues.
- C. Support the local Ombudsman with emergency preparedness including, but not limited to: information sharing, resource sharing, training, participation in exercises, and facilitation of relationships with local health care coalitions, public health agency, and other relevant agencies prior to, during and after an emergency.

26.3d Representatives of the Office: Functions and Responsibilities

Prior to an emergency:

- A. Develop preparedness plans as required by the Continuity of Operations Policies in this document.
- B. Maintain knowledge of emergency preparedness through training as required by policies in this document.

During and/or after an emergency:

- C. Follow emergency plans of the Ombudsman program and of Provider Agencies.
- D. Follow instructions of public health officials and first responders, including evacuation orders, orders to shelter-in-place, and restrictions on accessing dangerous locations.
- E. To extent possible, continue providing residents with access to Ombudsman program services.
- F. Determine extent of impact on residents and long-term care facilities in service areas, while minimizing disruption to public health, first responders and facility management and staff providing emergency response to residents.
- G. Communicate observations and relevant information to the Office.

26.4 Training

Policy: The Ombudsman ensures that representatives of the Office are knowledgeable about their roles and responsibilities and possess appropriate skills related to emergency preparation and response.

Procedure:

26.4a Training for the Office Representatives

At least annually the Office offers emergency preparedness and response training to representatives of the Office statewide. Training may also be available in an on-demand, web-based format.

26.4b Training Requirements

Emergency preparedness and response training, at a minimum, includes the following topics.

- A. Responsibilities of the Office and representatives of the Office before, during, and after emergencies, as described in these policies, including:

- a. Communication and coordination with residents, families, other resident representatives, and facility staff before, during and after an emergency;
 - b. Complaint handling, including guidance regarding complaints frequently associated with emergencies, and if applicable, changes to complaint handling procedures that may be needed as a result of emergencies as set forth in this manual; and,
 - c. identification of issues for systems level advocacy activities.
- B. Responsibilities and local operations of public health agencies, first responders, emergency management agencies, and appropriate roles and responsibilities of representatives of the Office in coordinating with such entities prior to, during, and after an emergency.
 - C. Responsibilities of nursing facilities, board and care, assisted living, and other similar adult care facilities before, during, and after emergencies, including review of laws and regulations governing facility preparedness and response.
 - D. Responsibilities of state survey and certification and/or licensing agencies before, during, and after emergencies.
 - E. Available federal, state, and local resources, including information clearinghouses and registries, and how and when they can appropriately be accessed.
 - F. Overview of the Federal Emergency Management Agency (FEMA), its resources and tools.
 - G. Personal safety, individual preparedness plans, and preparation guidance.
 - H. Description of emergency types, including:
 - a. all hazards emergency types of natural and human caused disasters including public health emergencies and natural disasters most anticipated in the geographic area; and,
 - b. facility-wide, all hazard emergencies affecting residents, including extreme weather and temperatures, power outages, water contamination, and fires.

26.4c Training Tools

Training tools, at a minimum, comprise the following.

- A. A tool kit including:
 - a. emergency preparedness checklists, including those prepared by the HHS' Centers for Medicare & Medicaid Services (CMS); and,
 - b. resource lists and/or templates for local emergency preparedness and response, and program emergency preparation and response policies and procedures.
- B. A train-the-trainer module to replicate this training as needed to train representatives of the Office, when applicable.

Note: [Emergency Preparedness: Ombudsman Program Advocacy and Facility Responsibilities \(September 2018\)](#)

26.5 Continuity of Operations

Policy: The Ombudsman prepares the Ombudsman program to function as fully as possible during an emergency and remain capable of fulfilling its resident-centered responsibilities.

Procedure:

26.5a State Aging Services Bureau (SUA) (and Provider Agencies)

The Ombudsman coordinates with the State Aging Services Bureau (SUA) and, Provider Agencies of the Office to plan and prepare for an emergency.

26.5b Determining Capacity and Supports

The Ombudsman coordinates with representatives of the Office and, where applicable, with local Ombudsman entities to determine capacity and the support needed to plan and prepare for emergencies.

26.5c Planning and Preparation

Representatives of the Office coordinate with their respective host agency and, where applicable, with the Ombudsman to plan and prepare for an emergency.

26.5d Implementing the Continuity of Operations Plan

The Ombudsman program implements the continuity of operations plan described in this manual to meet operational needs at the state, local and individual level.

26.5f Ombudsman Program Information

The Ombudsman program maintains, and regularly updates, an electronic and hard copy of Ombudsman program-related information, which includes, at minimum:

- A. contact information for the Ombudsman, representatives of the Office (both staff and volunteer), State Ombudsmen from other states;
- B. copy of Ombudsman laws, regulations, program policies and procedures, including emergency preparation and response policies and procedures;
- C. copy of Ombudsman training manual;
- D. business cards;
- E. Ombudsman program brochures and/or other outreach materials; and,
- F. Ombudsman program forms, such as consent to access and disclosure forms.

26.6 Procedure Before an Anticipated Emergency

Before an anticipated emergency, the Ombudsman shall:

- A. implement appropriate emergency plans; including coordination with other entities described in this manual;
- B. monitor the situation for continued decision-making;
- C. work to ensure situational awareness, coordination and collaboration with all relevant agencies i.e., public health and emergency management agencies, healthcare coalitions, etc.
- D. communicate with representatives of the Office to determine their capacity to carry out Ombudsman program services; and,
- E. facilitate coordination among local Ombudsman entities, where applicable.

26.7 Procedure During and After an Emergency (Anticipated or Not)

During and after an emergency, the Ombudsman shall:

- A. obtain information regarding affected facilities and/or geographic areas and impact of the emergency on facility residents;
- B. coordinate with the SUA, or the host agency, if applicable, and other entities engaged in the emergency response;
- C. maintain communications with local Ombudsman entities, if applicable, and representatives of the Office in the impacted geographic area; and
- D. provide technical assistance and support, such as:
 - a. coordination to determine availability of representatives of the Office from other service areas, and
 - b. provision of consultation and other services by telephone or other remote means to residents, families, and other resident representatives by the Office and/or local Ombudsman entities from other service areas, if applicable.

26.8 Coordination

Policy: The Ombudsman program coordinates with relevant entities before, during, and after emergencies and represents the interests of residents.

Procedure:

The Ombudsman analyzes the level of need for involvement of the Ombudsman program in multi-state, state, regional, and local emergency planning. The Office becomes involved in such planning before, during, and after an emergency as determined by the Ombudsman.

26.8a Ombudsman Ongoing Coordination

- A. The Ombudsman communicates and coordinates with relevant state officials and regional representatives of federal agencies regarding ongoing emergency planning, to prepare for anticipated emergencies and to coordinate response during an emergency.
 - a. Relevant state entities may include:
 - State Unit on Aging
 - State survey and certification and/or licensing agencies
 - State Public Health Agencies
 - State Emergency Management Agency
 - Governor's Office
 - State National Guard
 - State Healthcare Coalition
 - b. Relevant federal agencies may include:
 - Department of Health and Human Services (HHS) including but not limited to:
 - Administration for Community Living (ACL)
 - Assistant Secretary for Preparedness and Response (ASPR)
 - Centers for Medicare and Medicaid Services (CMS)
 - Centers for Disease Control and Prevention (CDC)
 - Substance Abuse and Mental Health Services Administration (SAMHSA)
 - Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA)

- B. The Ombudsman participates with non-governmental organizations for emergency planning and assistance.
- a. Relevant organizations may include:
 - National and state and local long-term care provider associations
 - Long-term care facility corporate leaders
 - American Red Cross
 - Association of State and Territorial Public Health Officials
 - National Association of County and City Health Officials (NACCHO)
 - Association of Area Agencies on Aging
- C. The Ombudsman communicates and coordinates by:
- a. Informing agencies of the role, responsibilities, and functions of the Ombudsman program with respect to emergency preparation and response, including, at a minimum, the complaint process and information and consultations to residents, their families, other resident representatives, and facility staff.
 - b. Attending or assisting with development of joint agency planning, trainings, and emergency exercises.
 - c. Participating in the state emergency planning team as part of the public health and emergency management operations center, when appropriate, and serving as a visible advocate of resident's interests.
 - d. Maintaining familiarity with residential facilities registries.
 - e. Maintaining familiarity with state's Central Clearinghouse of Information—used during emergencies to keep track of bed availability through the National Hospital Beds for Emergencies and Disasters (HavBED)---to address residents sheltering in place, and resident transfers to mass care shelters, hospitals, or other congregate care facilities.
 - f. Clarifying the responsibilities and limitations of the Ombudsman program in contributing to and updating information contained in the Central Clearinghouse of Information.
 - g. Developing educational preparedness materials for residents and families and supporting coordinated messaging.
 - h. Discussing systems issues with provider associations related to emergency plans with attention to residents' rights and preferences and collaborating on relevant legislation, regulations, policies, and training opportunities.
 - i. Informing provider associations of available registries, such as a “clearinghouse of information,” and which agency manages them, and the procedures for their utilization.
- D. The Ombudsman is responsible for communicating and coordinating with other State Ombudsman programs as necessary (i.e., nearby states or regions) regarding emergency planning, information sharing, and resource sharing when it is anticipated that residents will be relocated across state lines.

Where applicable:

26.8b Provider Agency Ongoing Coordination

- A. Provider Agency communicate and coordinate by:

- a. Informing local agencies of the role, responsibilities, and functions of the Ombudsman program with respect to emergency preparation and response; include, at a minimum, the complaint process and consultations to residents, their families, other resident representatives, and facility staff.
- b. Attending or assisting with development of joint agency planning, trainings, and emergency exercises.
- c. Participating in the local emergency planning team and serving as a visible advocate of resident's interests.

26.8c Representatives of the Office Coordination During and After an Emergency

- A. The Ombudsman program facilitates resident access to response and recovery efforts and resources when needed, including through providing information and consultation to facility staff.
- B. The Ombudsman program advises the Health Care Coalition and similar organizations on outreach and effective service provision to improve accessibility for residents.
- C. The Ombudsman analyzes strengths, weaknesses, opportunities, and challenges faced in response to the emergency in order to facilitate improvements and to plan for future emergencies. The Ombudsman also shares the findings with appropriate agencies.
- D. The Ombudsman conducts systems-level advocacy to address gaps in resident-centered emergency preparedness including development and maintenance of information clearinghouses and registries.

26.9 Ombudsman Program Services Related to Emergencies

Policy: The Ombudsman program assists residents, their families, other resident representatives, and facilities in preparing for and responding to emergencies. It continues to provide resident centered ombudsman services to the extent possible despite, and in response to, an emergency.

Procedures:

26.9a Adjustments in Response to Emergencies

- A. The Ombudsman assesses Ombudsman program procedures and standards applicable to the delivery of services under normal operating conditions and determines if there is a need to make adjustments in response to emergencies.
- B. Procedures and standards are adjusted in collaboration with the SUA, and are communicated, as relevant, to impacted area agencies on aging, local Ombudsman entities and/or representatives of the Office.
- C. Such adjustments may include temporary changes to procedures or standards, including, but not limited to:
 - a. timely response to complaints;
 - b. facility coverage through visits to residents;
 - c. access by representatives of the Office to residents, and ability to provide ombudsman services, in non-facility settings to which residents may have been relocated, such as emergency shelters, FEMA's Individual Assistance programs and Disaster Recovery Centers;
 - d. coordinating with the SUA and, where applicable, with agencies hosting local Ombudsman entities to coordinate representatives of the Office in providing services

- outside of the geographic boundaries of their service areas; and,
- e. suspension of some Ombudsman program services, such as presentations to resident or family councils, or community education, except as those activities support emergency response efforts.

26.9b Complaint Processing

- A. The Ombudsman assesses complaint intake, response, investigation, referral, and resolution procedures and standards applicable under normal operating conditions and then determines if adjustments are needed in order to respond to emergencies. The complaint process during emergencies shall continue to reflect the primacy of the resident's goals, wishes and determination of satisfaction with the resolution, as required by 45 CFR 1324.19(b).
- B. The Ombudsman program maintains complaint processing practices regarding disclosure of resident or complainant identifying information, as required by 45 CFR 1324.19(b). Informed consent is obtained to the greatest extent possible with consideration of the specific circumstances of each emergency.
- C. The Ombudsman shall provide technical assistance and support to representatives of the Office on working with entities not familiar with complaint processes and resident rights such as emergency shelters, and first responders.
- D. The Ombudsman shall provide training and technical assistance to assure the competency of representatives of the Office to process complaints frequently associated with emergency response and recovery, such as:
 - a. relocation and evacuation with accessible transportation;
 - b. wishes related to returning to the facility or to move to other settings;
 - c. quality of care;
 - d. access to medications;
 - e. access to resident medical and social records;
 - f. security concerns;
 - g. access to durable medical equipment;
 - h. residents who cannot be immediately located and reunification assistance services;
 - i. loss of residents' personal belongings;
 - j. access to FEMA's Individual Assistance programs or other eligible recovery funds;
 - k. utility response time to power outages;
 - l. pets or service animals; and,
 - m. emergency management response.

26.10c Providing Access to the Ombudsman Program

- A. The Office facilitates Ombudsman program visitation to residents for services, both in emergency shelters and in facilities, as soon as possible after the emergency continuing on a regular basis until residents and facilities recover. Procedures may include the following:
- B. Coordinating among local Ombudsman entities, where applicable, and/or other states' Ombudsman programs, when residents must evacuate out of the state or to a different part of the state.
- C. Providing alternative means of providing access (e.g., telephone, e-mail) when visits are impractical or impossible (such as due to impassable roads or other safety hazards).

- D. Providing instructions to representatives of the Office regarding reporting of emergency-related information to the Office. Reports may include, for example:
- describing the impact of the emergency,
 - needed areas of service or advocacy,
 - and whether the facility has reported to the agency coordinating the Clearinghouse of Information.

26.10 Education and Outreach to Residents, Families, and Other Resident representatives in preparation for emergencies

Policy: The Ombudsman program assists residents, families, and other resident representatives in preparation for emergencies.

Procedure:

- A. The Office provides technical assistance and resources to assist representatives of the Office to educate to residents, families, and other resident representatives in order to raise awareness about emergency planning.
- B. Representatives of the Office shall provide resident and/or family education during resident visits, during resident or family council meetings, or through other mechanisms. The content of such education shall include, but not be limited to:
 - a. responsibilities of facility staff (e.g. evacuation plan, family notification, and reunification),
 - b. responsibilities of first responders, health care and behavioral health providers, and other relevant parties during an emergency; and,
 - c. distribution and promotion of the CMS emergency planning checklist and/or similar long-term care facility-focused checklists.
- C. Representatives of the Office shall support resident and/or family councils in emergency preparedness by:
 - a. developing goals to conduct outreach to resident and family councils annually;
 - b. providing a ready-made presentation, recommended materials, other talking points and a mechanism to track which councils/facilities have received this training;
 - c. encouraging and facilitating councils' involvement in facility emergency preparations and exercises (e.g. evacuate, shelter-in-place, point of distribution, etc.); and,
 - d. providing assistance or referrals when requested.
- D. The Office shall assure that representatives of the Office have access to resources to assist them in meeting the requirements of these procedures, including:
 - a. ready-made presentations for use in training or discussions;
 - b. CMS Emergency Planning Checklist and/or similar long-term care facility-focused checklists; and,
 - c. guidance on how to obtain facility-specific emergency plans and procedures.
- E. During or immediately after an emergency, the Office shall utilize a variety of methods and communication tools to disseminate regular updates on the status of an emergency. Tool and methods will depend on the circumstances of the emergency. These methods may include, but are not limited to:
 - a. Ombudsman program and/or related websites,
 - b. Ombudsman program telephone helpline,
 - c. media announcements, and/or

d. social media.

- F. During or immediately after an emergency, the Office will give representatives of the Office materials describing how the Ombudsman program can be a resource to residents, families, other resident representatives, and facility to facilitate access to recovery services.

26.11 Information and Consultation to Facility Providers

Policy: The Ombudsman program provides information and consultations to long-term care facility providers to support resident-centered emergency planning and response.

Procedure:

- A. The Ombudsman provides information to provider associations, and representatives of the Office consult with facility leaders, on emergency planning as follows:
- a. Informing facility providers of the responsibilities of the Ombudsman program in responding to emergencies,
 - b. Informing facility providers of emergency preparedness and recovery resources, including, but not limited to:
 - CMS Emergency Planning Checklist and/or similar long-term care facility focused resources, training resources, (Attachment 6);
 - Opportunities to participate in Health Care Coalitions; and
 - Resources to support resident access to recovery funds.

Please note that additional information on Emergency Preparedness for the LTCO program can be found at: <https://ltcombudsman.org/issues/emergency-preparedness#additional-resources>

ATTACHMENT 1

<p>MONTANA LONG-TERM CARE OMBUDSMAN CONFIDENTIALITY AGREEMENT</p>	 <p>OFFICE OF MONTANA STATE LONG-TERM CARE OMBUDSMAN</p> <p><i>Working to provide education, assistance and advocacy to long term care residents and their families in an effort to ensure dignity and quality of life.</i></p>
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In accordance with the Montana Long-Term Care Ombudsman Program Policies and Procedures, Ombudsman (Regional/Local/Intern) and Ombudsman Volunteers agree to abide by the following policy:

As identified in the Montana Long-Term Care Code of Ethics (Attachment 2 of the Montana Long-Term Care Ombudsman Program Policies and Procedures:

I, _____, understand that as an Ombudsman (Regional/Local/Intern) or Ombudsman Volunteer with the Montana State Long-Term Care Ombudsman Program, I may at times become aware of written or spoken information that must remain confidential.

I agree to keep any information about Long-Term Care Ombudsman cases, complaints, residents, facilities and staff confidential and to not discuss such information outside of the Montana State Long-Term Care Ombudsman Program.


I will not express an opinion about the quality of specific long-term care facilities to the public, family or friends.

I have read this confidentiality agreement and agree to abide by it.

By placing my signature on this document, I agree to abide by the Montana Long-Term Care Confidentiality Agreement.

Signature

Date

<p>MONTANA LONG-TERM CARE OMBUDSMAN CODE OF ETHICS</p>	 <p>OFFICE OF MONTANA STATE LONG-TERM CARE OMBUDSMAN</p> <p><i>Working to provide education, assistance and advocacy to long term care residents and their families in an effort to ensure dignity and quality of life.</i></p>
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1. The ombudsman provides services with respect for human dignity and the individuality of the client, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
2. The ombudsman respects and promotes the client's right to self-determination.
3. The ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
7. The ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect for the policies of the sponsoring organization.
8. The ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
9. The ombudsman participates in efforts to promote a quality, long term care system.
10. The ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
11. The ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board, and care services, or other long-term care services that are within their scope of involvement.
12. The ombudsman shall conduct himself/herself in a manner that will strengthen the statewide and national ombudsman network.

By placing my signature on this document, I agree to abide by the Montana Ombudsman Program Code of Ethics.

Signature

Date

Montana Long-Term Care Ombudsman Program

Code of Ethics
February 2019
Revised: July 2020



A conflict of interest for a Montana long-term care ombudsman (LTCO), an ombudsman intern or volunteer includes, but is not limited to, the following:

- a) employment of an individual or a member of his/her immediate family within one year by a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;
- b) participation in the management of a long-term care facility by an individual or a member of his/her immediate family;
- c) ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by an individual or a member of his/her immediate family;
- d) involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by an individual or a member of his/her immediate family;
- e) receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by an individual or a member of his/her immediate family;
- f) accepting any gifts or gratuities of significant value from a long-term care facility or its management, a resident or resident representative of a long-term care facility (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as an LTCO; NOTE: A LTCO, ombudsman intern, or volunteer must adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.
- g) accepting money or any other consideration from anyone other than the provider agency or other entity designated by the Office of the State Long-Term Care Ombudsman for the performance of an act in the regular course of a LTCO's duties;
- h) provision of services with conflicting responsibilities while serving as a LTCO, an ombudsman intern, or volunteer, such as Adult Protective Services; discharge planning; serving as guardian, agent under power of attorney or other surrogate decision-maker for a long-term care resident in the service area; pre-admission screening or case management for long-term care residents;
- i) serving residents of a facility in which an immediate family member resides; o
- j) participating in activities which:
 - 1. negatively impact on the ability of the LTCO/FV to serve residents, or
 - 2. are likely to create a perception that the LTCO, ombudsman intern or volunteer whose primary interest is other than as a resident advocate.
- k) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services.

If I become involved in a conflict of interest as described above or in the Montana Long-Term Care Program Policy and Procedure Manual (September 2020) or believe an activity that I am involved in may be a conflict, I will take responsibility to advise the State Long-Term Care Ombudsman and/or Regional Ombudsman of such a possible conflict. Failure to identify, report, and remedy a conflict of interest will result in de-certification.

____ I certify that I have read and understand this Conflict of Interest Statement and I have no conflicts.

____ I certify that I have read and understand this Conflict of Interest Statement and I notified the State Long-Term Care Ombudsman of the following conflict(s):

Local Ombudsman/Ombudsman Intern/Volunteer

Date

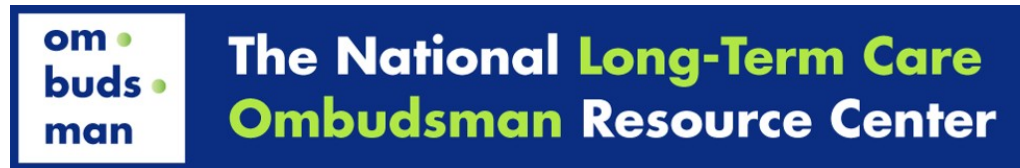
Regional or State Long-Term Care Ombudsman

Date

Source: Older Americans Act, As Amended, Title VII, Chapter 2 Sec. 712 (f) Conflict of Interest (1) Individual Conflict of Interest and 45 CFR 45 §1324.21.

Forward original to the State Long-Term Care Ombudsman Office

LTCOP ORGANIZATIONAL CONFLICTS OF INTEREST – EXAMPLES OF IDENTIFICATION, REMEDIES, AND REMOVAL OF THE LOCAL OMBUDSMAN ENTITIES



LTCOP Organizational Conflicts of Interest – Examples of Identification, Remedies, and Removal *Local Ombudsman Entities (LOEs)*

Disclaimer: This list not inclusive and use of one or more of these remedies does not guarantee compliance by an individual program. Sufficient remedies are those that preserve loyalty (judgment and objectivity, financial issues), commitment (time & attention, adequacy of resources), control (independence & ability to take action), and perception of the LTCOP. Visit the NORC website for more information.¹ State Offices and Local Ombudsman Entities must have a policy and procedure in place to screen and identify conflicts.

Key of Acronyms & Abbreviations

COI = Conflict of Interest	CFR = Code of Federal Regulations
LOE = Local Ombudsman Entity	LTCO = Long-Term Care Ombudsman
LTCOP = Long-Term Care Ombudsman Program	MOU = Memorandum of Understanding
OSLTCO = Office of the State Long-Term Care Ombudsman	P&P = Policies & Procedures
SLTCO = State Long-Term Care Ombudsman	

Additional Resources

[LTCOP Rule Issue Brief: State LTC Ombudsman Program Organizational Level Conflict of Interest](#)

[LTCOP Rule Issue Brief: Local Ombudsman Entity Organizational Level Conflict of Interest](#)

[Side-by-Side of the LTCOP Final Rule and Pertinent Preamble Language](#)

¹ Additional information about the LTCOP Rule and conflicts of interest are available on the NORC website:
http://ltcombudsman.org/library/fed_laws/ltcop-final-rule and http://ltcombudsman.org/omb_support/pm/ethics.

Conflict of Interest	Examples of Identification	Examples of Remedy or Removal
<p>1 Is responsible for licensing, surveying, or certifying long-term care facilities (CFR 1324.21(a)(1))</p>	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Licenses, surveys, or certifies long-term care facilities, including nursing homes, Assisted Living, Adult Foster/Family Care, or other board & care facilities Makes recommendations to another agency about licenses, surveys, or certifications (NOTE: It is not automatically a prohibited conflict if the entity that houses the LOE makes recommendations, but is not the final decision-making entity. In such cases, the LOE should identify this conflict and implement appropriate remedy and/or removal.) 	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Move LTCOP Move licensing, certifying, or surveying functions to another agency or division
<p>2 Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities ((OAA Sec. 712(f)(2)(A)(ii) and (CFR 1324.21(a)(2)); NOTE: OAA citation does not have “or individuals with disabilities”)</p>	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Facility associations, such as state/local affiliate of the for-profit nursing facility association (American Health Care Association); or the non-profit, Leading Age, for example. 	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Move LOE to another agency Move association or affiliate of LTC facilities out of the organization

3	Is responsible for licensing, certifying, or surveying long-term care services in the State (OAA Sec. 712(f)(2)(A)(i))	<ul style="list-style-type: none"> Licenses, surveys, or certifies long-term care services, such as adult day service, home-delivered meals or transportation, whether funded by Medicaid waivers, OAA, state revenue, or other funding sources Monitors long-term care service providers (NOTE: ACL anticipates that all LOEs that are placed in Area Agencies on Aging (AAAs) will report this as a conflict due to AAA roles in monitoring OAA-funded and/or other long-term care service providers.) 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the LTCOP is placed MOU/P&P outlines LTCOP separation from these functions Separate branding, including materials and on-line presence, distinguishes LOE from the host agency Separate phones, fax lines and clearly defined limits regarding access to LOE database, information and other records LOE is located in a different building or separate office only accessible to LOE staff Move LOE to another agency Move organization responsible for licensing and survey
4	Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility (CFR 1324.21(a)(3))	<ul style="list-style-type: none"> Operates a long-term care facility, such as a county nursing home (NOTE: It is not automatically a prohibited conflict if a county owns a nursing home, if operation of the nursing home rests with a different entity than the entity that houses the LOE (e.g., County Department of Health operates a nursing home and the LOE is placed within the County Department of Human Services) and the county can demonstrate that the entity that houses the LOE has no claim to ownership or investment interest. In such cases, the LOE should identify this as a potential conflict, provide explanation as to why it does/does not meet the standard for a prohibited conflict, and implement appropriate remedy and/or removal.) Receives grants, donations, or sponsorships from a long-term care facility for a program, conference, event, or other purpose 	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Owns, has investment interest or operates a long-term care facility, such as a state nursing home Divest any ownership or investment interest Move LOE <p>May be remedied, not an absolute prohibition</p> <ul style="list-style-type: none"> Receives grants, donations, or sponsorships from a long-term care facility for a program, conference, event, or other purpose Cease/return grants or donations Develop clear policies & procedures and review on a periodic (e.g., semi-annual, annual) basis These grants/donations are handled by a different unit of the agency from where the Office is placed These grants/donations are for non-Ombudsman programs and activities

		<ul style="list-style-type: none"> NOTE: Other financial relationship may include where AAA contracts with a nursing home for respite services. This should be identified as outlined in #7. This would not be a prohibited conflict, as the AAA is purchasing a service, but it is not an ownership or investment interest and no funds are received from the nursing home. 	<ul style="list-style-type: none"> Communications regarding these grants/donations avoid perception of influence or impact on the Ombudsman program or representatives of the Office Separate branding, including materials and on-line presence, distinguishes LOE from programs of agency that may accept such grants/donations
5	Has governing board members with any ownership, investment or employment interest in long-term care facilities (CFR 1324.21(a)(4))	<ul style="list-style-type: none"> Board members (state names and/or number of members identified) have an ownership, investment, or employment interest in a long-term care facility or facilities 	<ul style="list-style-type: none"> Require board members with COI to resign or recuse themselves from any decisions both programmatic and budgetary regarding the LTCOP LOE monitors and reviews meeting minutes and financial statements to ensure compliance Monitor complaint activity of board member facilities Move LOE to another agency
6	Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities (CFR 1324.21(a)(5))	<ul style="list-style-type: none"> Conducts/administers nursing home pre-admission screening programs, including determining level of care Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the Office is placed MOU/P&P outlines LTCOP separation from these functions Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE Move these functions to another agency or division Move LOE to another agency
7	Provides long-term care services, including programs carried out under a	<ul style="list-style-type: none"> Funds, administers, monitors, and/or directly provides long-term care services, such as adult day service, respite (including respite provided in a nursing home, assisted living, or other facility), 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions

	<p>Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n) (OAA Sec. 712(f)(2)(A)(iii))</p>	<p>home-delivered meals or transportation, whether funded by Medicaid waivers, OAA, state revenue, or other funding sources (NOTE: ACL anticipates that all LOEs that are placed in AAAs will report this as a conflict due to AAA roles in providing long-term care services under the Older Americans Act and/or other funding sources.)</p>	<ul style="list-style-type: none"> • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency
8	<p>Provides long-term care case management (OAA Sec. 712(f)(2)(A)(iv))</p>	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly provides long-term care case management (NOTE: ACL anticipates that most, if not all, LOEs that are placed in AAAs will report this as a conflict due to AAA roles in providing long-term care case management under the Older Americans Act and/or other funding sources.) 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency

9	Provides long-term care coordination or case management for residents of long-term care facilities (CFR 1324.21(a)(6))	<ul style="list-style-type: none"> Funds, administers, monitors, and/or directly provides long-term care case management (NOTE: ACL anticipates that LOE that are placed in AAAs which administer or provide services under a Medicaid waiver program covering Assisted Living, or similar residential settings, will report this as a conflict) 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the Office is placed MOU/P&P outlines LTCOP separation from these functions Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records LTCOP is located in a different building or separate office only accessible to LTCOP staff Move these functions to another agency or division Move LOE to another agency
10	Sets reimbursement rates for long-term care facilities (CFR 1324.21(a)(7))	<ul style="list-style-type: none"> Sets reimbursement rates, and/or implements rates set by state legislature, Medicaid, or other department (NOTE: ACL anticipates that LOEs that are placed in AAAs which administer a Medicaid waiver program covering Assisted Living, or similar residential settings, will report this as a conflict) Sets reimbursement rates for respite services delivered in long-term care facilities (ACL anticipates that LOEs that are placed in AAAs which deliver OAA-funded respite in long-term care facilities will report this as a conflict) 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the Office is placed MOU/P&P outlines LTCOP separation from these functions Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records LTCOP is located in a different building or separate office only accessible to LTCOP staff Move these functions to another agency or division Move LOE to another agency

<p>11</p>	<p>Sets rates for long-term care services (OAA Sec. 712(f)(2)(A)(v))</p>	<ul style="list-style-type: none"> • Sets reimbursement rates, and/or implements rates set by state legislature, Medicaid, or other department for long-term care services, such as adult day service, home-delivered meals or transportation, whether funded by Medicaid waivers, OAA, state revenue, or other funding sources (NOTE: ACL anticipates that all LOEs that are placed in AAAs will report this as a conflict due to AAA roles in providing long-term care services under the Older Americans Act and/or other funding sources.) 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency
<p>12</p>	<p>Provides adult protective services (OAA Sec. 712(f)(2)(A)(vi) & (CFR 1324.21(a)(8)))</p>	<ul style="list-style-type: none"> • A social services program provided by state and/or local governments serving older adults and adults with disabilities who need assistance because of abuse, neglect, self-neglect, or financial exploitation. 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency

13	Is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (OAA Sec. 712(f)(2)(A)(vii))	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly determines eligibility for Medicaid programs, including conducting functional eligibility assessments for Medicaid waiver programs and/or nursing home level of care determinations (NOTE: ACL anticipates that LOEs that are placed in AAAs which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency
14	Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities (CFR 1324.21(a)(9))	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly determines or collects information regarding eligibility for Medicaid programs or other public benefits programs for residents of long-term care facilities, including conducting functional and/or financial eligibility assessments for nursing home level of care determinations, Medicaid waiver programs that cover Assisted Living and similar residential settings, and residential state supplement programs (NOTE: ACL anticipates that LOEs that are placed in AAAs which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency

15	<p>Conducts preadmission screening for placements in facilities described in clause (ii) (OAA Sec. 712(f)(2)(A)(viii); CFR 1324.21(a)(10) language has essentially the same meaning)</p>	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly conducts preadmission screening (NOTE: ACL anticipates that LOEs that are placed in AAAs which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency
16	<p>Makes decisions regarding admission or discharge of individuals to or from such facilities (OAA Sec. 712(f)(2)(A)(ix); CFR 1324.21(a)(11) language has essentially the same meaning)</p>	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly conducts or gathers information for functional and/or financial eligibility assessments for nursing home level of care determinations and Medicaid waiver programs that cover Assisted Living (NOTE: ACL anticipates that LOEs that are placed in State Units on Aging which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • LOE in a different management reporting chain • Representatives of the Office do not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines LTCOP separation from these functions • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE • Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move these functions to another agency or division • Move LOE to another agency

17	Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities (CFR 1324.21(a)(12))	<ul style="list-style-type: none"> Provides guardianship, conservatorship, money management / bill paying services 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the Office is placed MOU/P&P outlines LTCOP separation from these functions Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE Separate phones, fax lines and clearly defined limits regarding access to LTCOP database, information and other records LTCOP is located in a different building or separate office only accessible to LTCOP staff Move these functions to another agency or division Move LOE to another agency
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We also encourage the *LOE* to identify organizational conflicts of interest and steps taken to remedy or remove these conflicts regarding:

Conflict of Interest	Examples of Identification	Examples of Remedy or Removal
<p>Any other service (e.g., <i>Name of Service</i>) provided by the agency that could pose a potential or actual conflict of interest, including other work done by LTCOP employees</p>	<ul style="list-style-type: none"> Legal Assistance (including legal representation of long-term care facility residents) 	<ul style="list-style-type: none"> LOE in a different management reporting chain Representatives of the Office do not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the LTCO is placed MOU/P&P outlines LTCO separation from these functions LTCO has staff assigned to these programs and programs contribute to, and do not detract from, LTCOP work Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE

		<ul style="list-style-type: none"> • Contract with SLTCO requires prior approval for LTCOs to work on other programs or initiatives • Included in assurances with SLTCO, annual organizational disclosure statement with proposed remedies submitted to and approved by SLTCO, and reviewed in annual monitoring • Move these functions to another agency or division • Move LOE to another agency
<p>Any other perceived or actual conflicts of interest from the resident / consumer / general public perspective with the LTCOP</p>	<ul style="list-style-type: none"> • LTCOP webpage is posted under a department/division without remedied/removed conflicts and/or that does not align with its organizational placement • Lack of separate branding, including materials and on-line presence, to distinguish LTCOP from other programs of agency where placed 	<ul style="list-style-type: none"> • LTCOP on-line and print materials explain independence of Office • LTCOP has dedicated phone number, fax number, and email address • LTCOP conducts periodic customer satisfaction survey • LOE’s Aging Advisory Board/Commission solicits customer feedback • Ombudsman includes statement that participation is advisory only & dissenting LTCO viewpoints regarding the Board/Committee’s actions are documented • Included in assurances with SLTCO, annual organizational disclosure statement with proposed remedies submitted to and approved by SLTCO, and reviewed in annual monitoring
<p>Where there is a shared “front door” to the agency where the LTCOP is located, how the agency determines where to direct calls, emails, or other contacts that come in to the agency</p>	<ul style="list-style-type: none"> • Shared “front door” for phone calls, emails, and/or other contacts that come to the LTCOP 	<ul style="list-style-type: none"> • Policy that when call/email indicates concern with LTC facility, call/email/walk-in is given option of which program(s) to contact • Direct number/email to LTCOP also provided • Disclosure (with option to contact SLTCO) provided to contacts who are have complaints regarding services also provided by the LOE • Separate branding, including materials and on-line presence, distinguishes LTCOP from LOE

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LTCOP ORGANIZATIONAL CONFLICTS OF INTEREST – EXAMPLES OF IDENTIFICATION, REMEDIES, AND REMOVAL OF THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN (OSLTCO)



**LTCOP Organizational Conflicts of Interest – Examples of Identification, Remedies, and Removal
*Office of the State Long-Term Care Ombudsman (OSLTCO)***

Disclaimer: This list not inclusive and use of one or more of these remedies does not guarantee compliance by an individual program. Sufficient remedies are those that preserve loyalty (judgment and objectivity, financial issues), commitment (time & attention, adequacy of resources), control (independence & ability to take action), and perception of the LTCOP. Visit the NORC website for more information.¹ State Offices and Local Ombudsman Entities must have a policy and procedure in place to screen and identify conflicts.

Key of Acronyms & Abbreviations

COI = Conflict of Interest
LOE = Local Ombudsman Entity
LTCOP = Long-Term Care Ombudsman Program
OSLTCO = Office of the State Long-Term Care Ombudsman
SLTCO = State Long-Term Care Ombudsman

CFR = Code of Federal Regulations
LTCO = Long-Term Care Ombudsman
MOU = Memorandum of Understanding
P&P = Policies & Procedures

Additional Resources

[LTCOP Rule Issue Brief: State LTC Ombudsman Program Organizational Level Conflict of Interest](#)

[LTCOP Rule Issue Brief: Local Ombudsman Entity Organizational Level Conflict of Interest](#)

[Side-by-Side of the LTCOP Final Rule and Pertinent Preamble Language](#)

¹Additional information about the LTCOP Rule and conflicts of interest are available on the NORC website: http://ltcombudsman.org/library/fed_laws/ltcop-final-rule and http://ltcombudsman.org/omb_support/pm/ethics.

Conflict of Interest	Examples of Identification	Examples of Remedy or Removal
<p>1 Is responsible for licensing, surveying, or certifying long-term care facilities (CFR 1324.21(a)(1))</p>	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Licenses, surveys, or certifies long-term care facilities, including nursing homes, Assisted Living, Adult Foster/Family Care, or other board & care facilities Makes recommendations to another agency about licenses, surveys, or certifications (NOTE: It is not automatically a prohibited conflict if the entity that houses the OSLTCO makes recommendations, but is not the final decision-making entity. In such cases, the OSLTCO should identify this conflict and implement appropriate remedy and/or removal.) 	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Move licensing, certifying, or surveying functions to another agency or division Move OSLTCO
<p>2 Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities ((OAA Sec. 712(f)(2)(A)(ii)) and (CFR 1324.21(a)(2)); NOTE: OAA citation does not have “or individuals with disabilities”)</p>	<p>CFR PROHIBITS – No Remedy, only Removal</p> <ul style="list-style-type: none"> Facility associations, such as state affiliate of the for-profit nursing facility association (American Health Care Association); or the non-profit, Leading Age, for example. 	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Move OSLTCO Move association or affiliate of long term care facilities out of the organization
<p>3 Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility (CFR 1324.21(a)(3))</p>	<ul style="list-style-type: none"> Operates a long-term care facility, such as a state nursing home (NOTE: It is not automatically a prohibited conflict if a state owns a nursing home, if operation of the nursing home rests with a different entity than the entity that houses the OSLTCO (e.g., State Department of Health operates a nursing home and the OSLTCO is placed within the State Department of Human Services) and the State can demonstrate that the entity that houses the OSLTCO has no claim to ownership or investment interest. In such cases, the OSLTCO should identify this as a 	<p>CFR PROHIBITS - No Remedy, only Removal</p> <ul style="list-style-type: none"> Owns, has investment interest or operates a long-term care facility, such as a state nursing home <ul style="list-style-type: none"> Divest any ownership or investment interest Move OSLTCO <p>May be remedied, not an absolute prohibition</p> <ul style="list-style-type: none"> Receives grants, donations, or sponsorships from a long-term care facility for a program, conference, event, or other purpose <ul style="list-style-type: none"> Cease/return grants or donations

		<p>potential conflict, provide explanation as to why it does/does not meet the standard for a prohibited conflict, and implement appropriate remedy and/or removal.)</p> <ul style="list-style-type: none"> • Receives grants, donations, or sponsorships from a long-term care facility for a program, conference, event, or other purpose. • NOTE: Other financial relationship may include where SUA contracts with a nursing home for respite services. This should be identified as outlined in #7. This would not be a prohibited conflict, as the SUA is purchasing a service, but it is not an ownership or investment interest and no funds are received from the nursing home. 	<ul style="list-style-type: none"> ○ Develop clear policies & procedures and review on a periodic (e.g., semi-annual, annual) basis ○ These grants/donations are handled by a different unit of the agency from where the Office is placed ○ These grants/donations are for non-Ombudsman programs and activities
4	Is responsible for licensing, certifying, or surveying long-term care services in the State (OAA Sec. 712(f)(2)(A)(i))	<ul style="list-style-type: none"> • Licenses, surveys, or certifies long-term care services, such as adult day service, home-delivered meals or transportation, whether funded by Medicaid waivers, OAA, state revenue, or other funding sources • Monitors long-term care service providers (NOTE: ACL anticipates that all OSLTCO that are placed in State Units on Aging will report this as a conflict due to SUA roles in monitoring long-term care service providers, including AAAs who provide direct services.) 	<ul style="list-style-type: none"> • SLTCO does not report to person directly responsible for these functions • SLTCO is in a different management reporting chain • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • Move OSLTCO • Move these functions to another agency or division
5	Has governing board members with any ownership, investment or employment interest in long-term care facilities (CFR 1324.21(a)(4))	<ul style="list-style-type: none"> • Board members (state names and/or number of members identified) have an ownership, investment, or employment interest in a long-term care facility or facilities 	<ul style="list-style-type: none"> • Require board members with COI to resign or recuse themselves from any decisions, both programmatic and budgetary, regarding the LTCOP • OSLTCO monitors and reviews meeting minutes and financial statements to ensure compliance • Monitor complaint activity of board member facilities

			<ul style="list-style-type: none"> • Move OSLTCO
6	<p>Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities (CFR 1324.21(a)(5))</p>	<ul style="list-style-type: none"> • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • Move OSLTCO • Move these functions to another agency or division
7	<p>Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n) (OAA Sec. 712(f)(2)(A)(iii))</p>	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly provides long-term care services, such as adult day service, respite (including respite provided in a nursing home, assisted living, or other facility), home-delivered meals or transportation, whether funded by Medicaid waivers, OAA, state revenue, or other funding sources (NOTE: ACL anticipates that all OSLTCO that are placed in State Units on Aging will report this as a conflict due to SUA roles in providing long-term care services under the Older Americans Act and/or other funding sources.) 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • LTCOP is located in a different building or separate office only accessible to LTCOP staff • Move OSLTCO • Move these functions to another agency or division

8	Provides long-term care case management (OAA Sec. 712(f)(2)(A)(iv))	<ul style="list-style-type: none"> Funds, administers, monitors, and/or directly provides long-term care case management (NOTE: ACL anticipates that most, if not all, OSLTCO that are placed in State Units on Aging will report this as a conflict due to SUA roles in providing long-term care case management under the Older Americans Act and/or other funding sources.) 	<ul style="list-style-type: none"> SLTCO is in a different management reporting chain SLTCO does not report to person directly responsible for these functions These functions are handled by a different unit of the agency from where the Office is placed MOU/P&P outlines OSLTCO separation from these functions Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records OSLTCO is in a different building or separate office only accessible to OSLTCO staff Move OSLTCO Move these functions to another agency or division
9	Provides long-term care coordination or case management for residents of long-term care facilities (CFR 1324.21(a)(6))	<ul style="list-style-type: none"> Funds, administers, monitors, and/or directly provides long-term care case management (NOTE: ACL anticipates that OSLTCO that are placed in State Units on Aging which administer a Medicaid waiver program covering Assisted Living , or similar residential settings, will report this as a conflict) 	<ul style="list-style-type: none"> SLTCO does not report to person directly responsible for these functions SLTCO is in a different management reporting chain These functions are handled by a different unit of the agency from where the Office is placed MOU/P&P outlines OSLTCO separation from these functions Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records OSLTCO is located in a different building or separate office only accessible to OSLTCO staff Move OSLTCO Move these functions to another agency or division

10	Sets reimbursement rates for long-term care facilities (CFR 1324.21(a)(7))	<ul style="list-style-type: none"> • Sets reimbursement rates, and/or implements rates set by state legislature, Medicaid, or other department (NOTE: ACL anticipates that OSLTCO that are placed in State Units on Aging which administer a Medicaid waiver program covering Assisted Living, or similar residential settings, will report this as a conflict) • Sets reimbursement rates for respite services delivered in long-term care facilities (ACL anticipates that OSLTCO that are placed in State Units on Aging which deliver OAA-funded respite in long-term care facilities will report this as a conflict) 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division
11	Sets rates for long-term care services (OAA Sec. 712(f)(2)(A)(v))	<ul style="list-style-type: none"> • Sets reimbursement rates, and/or implements rates set by state legislature, Medicaid, or other department for long-term care services, such as adult day service, home-delivered meals or transportation, whether funded by Medicaid waivers, OAA, state revenue, or other funding sources (NOTE: ACL anticipates that all OSLTCO that are placed in State Units on Aging will report this as a conflict due to SUA roles in providing long-term care services under the Older Americans Act and/or other funding sources.) 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division

12	Provides adult protective services (OAA Sec. 712(f)(2)(A)(vi) & (CFR 1324.21(a)(8)))	<ul style="list-style-type: none"> • A social services program provided by state and/or local governments serving older adults and adults with disabilities who need assistance because of abuse, neglect, self-neglect, or financial exploitation. • Example: SUA has a single state planning and service area and an Elder Protective Services Unit provides adult protective services for persons 60 years old and older who may experience abandonment, abuse, neglect, exploitation, or isolation. 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division
13	Is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (OAA Sec.712(f)(2)(A)(vii))	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly determines eligibility for Medicaid programs, including conducting functional eligibility assessments for Medicaid waiver programs and/or nursing home level of care determinations (NOTE: ACL anticipates that OSLTCO that are placed in State Units on Aging which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division

14	Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities (CFR 1324.21(a)(9))	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly determines or collects information regarding eligibility for Medicaid programs or other public benefits programs for residents of long-term care facilities, including conducting functional and/or financial eligibility assessments for nursing home level of care determinations, Medicaid waiver programs that cover Assisted Living, and residential state supplement programs (NOTE: ACL anticipates that OSLTCO that are placed in State Units on Aging which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division
15	Conducts preadmission screening for placements in facilities described in clause (ii) (OAA Sec. 712(f)(2)(A)(viii); CFR 1324.21(a)(10) language has essentially the same meaning)	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly conducts preadmission screening (NOTE: ACL anticipates that OSLTCO that are placed in State Units on Aging which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict) • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Move OSLTCO • Move these functions to another agency or division
16	Makes decisions regarding admission or discharge of individuals to or from such facilities (OAA Sec. 712(f)(2)(A)(ix); CFR	<ul style="list-style-type: none"> • Funds, administers, monitors, and/or directly conducts or gathers information for functional and/or financial eligibility assessments for nursing home level of care determinations and Medicaid waiver programs that cover Assisted Living (NOTE: ACL 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed

	1324.21(a)(11) language has essentially the same meaning)	<p>anticipates that OSLTCO that are placed in State Units on Aging which administer a Medicaid waiver program or any nursing home prescreening programs will report this as a conflict)</p> <ul style="list-style-type: none"> • Conducts/administers nursing home pre-admission screening programs, including determining level of care • Administers the Pre-Admission Screening and Resident Review (PASSRR) program 	<ul style="list-style-type: none"> • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division
17	Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities (CFR 1324.21(a)(12))	<ul style="list-style-type: none"> • Provides guardianship, conservatorship, money management / bill paying services 	<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move OSLTCO • Move these functions to another agency or division

We also encourage *States* to identify organizational conflicts of interest and steps taken to remedy or remove these conflicts regarding:

Conflict of Interest	Examples of Identification	Examples of Remedy or Removal
<p>Any other service (e.g., <i>Name of Service</i>) provided by the agency that could pose a potential or actual conflict of interest, including other work done by SLTCO or OSLTCO employees</p>		<ul style="list-style-type: none"> • SLTCO is in a different management reporting chain • SLTCO does not report to person directly responsible for these functions • These functions are handled by a different unit of the agency from where the Office is placed • MOU/P&P outlines OSLTCO separation from these functions • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed • Separate phones, fax lines and clearly defined limits regarding access to OSLTCO database, information and other records • OSLTCO is located in a different building or separate office only accessible to OSLTCO staff • Move these functions to another agency or division
<p>Any other perceived or actual conflicts of interest from the resident / consumer / general public perspective with the Office of the SLTCO</p>	<ul style="list-style-type: none"> • LTCOP webpage is posted under a department/division without remedied/removed conflicts and/or that does not align with its organizational placement • Lack of separate branding, including materials and on-line presence, to distinguish OSLTCO from other programs of agency where placed 	<ul style="list-style-type: none"> • OSLTCO on-line and print materials explain independence of Office • OSLTCO has dedicated phone number, fax number, and email address • OSLTCO conducts periodic customer satisfaction survey • State’s Aging Advisory Board/Commission solicits customer feedback • Ombudsman includes statement that participation is advisory only & dissenting LTCO viewpoints regarding the Board/Committee’s actions are documented

<p>Where there is a shared “front door” to the agency where the OSTLCO is located, how the agency determines where to direct calls, emails, or other contacts that come into the agency</p>	<ul style="list-style-type: none"> • Shared “front door” for phone calls, emails, and/or other contacts that come to the OSLTCO 	<ul style="list-style-type: none"> • Policy that when call/email indicates concern with LTC facility, call/email/walk-in is given option of which program(s) to contact • Direct number/email to LTCOP also provided • Separate branding, including materials and on-line presence, distinguishes OSLTCO from other programs of agency where placed
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ATTACHMENT 6
EMERGENCY PLANNING CHECKLIST
RECOMMENDED TOOL FOR PERSONS IN LONG-TERM CARE FACILITIES &
THEIR FAMILY MEMBERS, FRIENDS, PERSONAL CAREGIVERS, GUARDIANS &
LONG-TERM CARE OMBUDSMEN

Part I: For Long-Term Care Residents, Their Family Members, Friends, Personal Caregivers, & Guardians

Target Date	Date Completed	
		<ul style="list-style-type: none"> ● Emergency Plan: Prior to any emergency, ask about and become familiar with the facility’s emergency plan, including: <ul style="list-style-type: none"> ✓ Location of emergency exits ✓ How alarm system works and modifications for individuals who are hearing and/or visually impaired ✓ Plans for evacuation, including: <ul style="list-style-type: none"> ■ How residents/visitors requiring assistance will be evacuated, if necessary ■ How the facility will ensure each resident can be identified during evacuation (e.g., attach identification information to each resident prior to evacuation) ■ Facility’s evacuation strategy ■ Where they will go ■ How their medical charts will be transferred ■ How families will be notified of evacuation ✓ Will families be able to bring their loved one home rather than evacuating, which is often less traumatic than a move to a new facility? ✓ How family members can keep the facility apprised of their location and contact information (e.g., address, phone number, e-mail address), so the facility will be able to contact them, and family members will be able to check with the facility to meet their loved one following an emergency ✓ How residents and the medicines and supplies they require will be prepared for the emergency, have their possessions protected and be kept informed during and following the emergency ✓ How residents (if able) and family members can be helpful (for example, should family members come to the facility to assist?) ✓ How residents, who are able, may be involved during the emergency, including their roles and responsibilities. Note: It is important for staff to know each resident personally, and whether involving him/her in the emergency plan will increase a sense of security or cause anxiety. For example, residents may have prior work or personal experience that could be of value (health care, emergency services, military, amateur ham radio operators, etc.) Provide the opportunity for residents to discuss any fears and what actions may help to relieve their anxiety (e.g., a flashlight on the bed, water beside the bed, etc.).

		<ul style="list-style-type: none"> • Helping Residents in a Relocation: Suggested principles of care for relocated residents include: <ul style="list-style-type: none"> ✓ Encourage the resident to talk about expectations, anger, and/or disappointment ✓ Work to develop a level of trust ✓ Present an optimistic, favorable attitude about the relocation ✓ Anticipate that anxiety will occur ✓ Do not argue with the resident ✓ Do not give orders ✓ Do not take the resident's behavior personally ✓ Use praise liberally ✓ Be courteous and kind ✓ Include the resident in assessing problems ✓ Encourage family participation ✓ Ensure staff in the receiving facility introduce themselves to residents
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Part II: For Long-Term Care Ombudsmen		
Targeted Date	Date Completed	
		<ul style="list-style-type: none"> • State Ombudsman Responsibilities: <ul style="list-style-type: none"> ✓ Become generally familiar with state emergency plans pertinent to long-term care facilities, including the state or federal agency that may be established to serve as a clearinghouse for facility evacuations: know the name, telephone number and e-mail of the person to whom long-term care facility evacuations and evacuees' names should be reported. If no clearinghouse has been established, advocate for one. ✓ At least annually, ensure that all regional ombudsman coordinators and local ombudsmen and/or representatives read, are familiar with and have the opportunity to discuss resources, such as the two recommended CMS emergency preparedness checklists pertaining to long-term care facilities: the <i>CMS Emergency Preparedness Checklist – Recommended Tool for Effective Health Care Facility Planning</i> and this <i>CMS Emergency Planning Checklist – Recommended Tool for Persons Living In Long-Term Care Facilities, Their Family Members, Friends, Personal Caregivers, Guardians, & Long-Term Care Ombudsmen</i>. ✓ Maintain at home and office hard copies of current regional ombudsman contact information, including cell phones. ✓ Prior to an anticipated disaster, if the state ombudsman program has regional coordinators and/or other program representatives in the areas likely to be affected, call them to make sure they have assigned representatives to carry out the responsibilities listed in the section below pertaining to local ombudsman programs. ✓ Immediately following a disaster, contact regional ombudsman coordinators/representatives in the affected areas to provide support and resources, as needed and feasible.

- **Regional Ombudsman Coordinator & Representative Responsibilities (for states with regional/local ombudsman programs and/or representatives)**

Prior to any emergency, ombudsmen:

- ✓ Become generally familiar with the local emergency plans and the roles of local, county and state agencies in a disaster, especially as pertaining to long-term care facilities.
- ✓ Read and become familiar with emergency plans of facilities in the region for which the regional program has responsibility. If a state or regional clearing house for evacuations has been established, know the agency, phone number and e-mail where facility evacuations will be reported.
- ✓ Maintain, at home and office, hard copies of current contact information for facilities, other ombudsmen and appropriate agencies, especially the local emergency management agency.

Prior to an anticipated emergency and following an emergency:

- ✓ The regional ombudsman program coordinator assigns a representative to check on each facility covered by the program and reviews the responsibilities listed below with representatives assigned to facilities.
- ✓ Assigned representatives check on assigned facilities to assure that residents' rights are protected prior to, during and after evacuation and provide information about conditions and any evacuation to the regional ombudsman coordinator; regional coordinator provides information to the state ombudsman office. **Exception:** *when the ombudsman lives in an area under mandatory evacuation; however, if possible, the ombudsman should contact the facility by telephone, even if the area is under evacuation order. (Some states may have other specific procedures in place which ombudsman representatives would be required to follow.)*
- ✓ Ombudsman representatives visit residents as soon as possible after the disaster, whether they have been sheltered in the facility or transferred to another location. (If they have been transferred out of the region, state ombudsman and regional coordinators coordinate visitation by ombudsman representatives in the receiving region.)
 - Discuss and record their immediate status/needs. If the state and local ombudsman coordinator decides a form is needed, use appropriate form to record information (a sample form is attached) and send a copy of the form to whomever they specify.
 - Take urgent action to help obtain the resources and assistance residents need to be safe and, if they have been evacuated, find their loved ones and relocate to an area/facility or other setting of their preference. (**Note:** *the ombudsman is not responsible for providing resources but instead should be aware of available resources and work to ensure they are provided to residents.*)
- ✓ Track, if possible, the impact of the disaster on the residents
- ✓ Determine whether the facility has reported the names and destination of any evacuated residents to the clearinghouse (if state or region has

established a clearinghouse) and is prepared to handle transfer trauma and support facility staff in handling resident trauma. As provided in Part I, above, suggested principles of care for the relocated residents include:

- Encourage the resident to talk about expectations, anger, and/or disappointment
- Work to develop a level of trust
- Present an optimistic, favorable attitude about the relocation
- Anticipate that anxiety will occur
- Do not argue with the resident
- Do not give orders
- Do not take the resident's behavior personally
- Use praise liberally
- Be courteous and kind
- Include the resident in assessing problems
- Encourage staff in the receiving facility to introduce themselves to residents
- Encourage family participation
- ✓ Counsel residents about their rights to:
 - Be informed regarding the status of the relocation
 - Be provided information on alternative living arrangements and the options available
 - Be assessed for eligibility for funding and supports to safely return to live in their home or community
 - Visit other facilities to help them better decide where to live
 - Seek representation by an ombudsman or other representative/advocate available in the area
 - Expect to receive adequate care and treatment services during the relocation
 - Meet with the facility staff to express any concerns
 - Seek a review of any relocation changes with which they disagree
 - Expect that their rights, while a resident of any facility, will not be violated

(Note: Adapted from WI Ombudsman Program brochure for residents of facilities scheduled for closure)

OMBUDSMAN LONG-TERM CARE FACILITY RESIDENT EVACUATION ASSESSMENT CHECKLIST						
Ombudsman Name:				Resident Evacuee Information (see reverse)		
Region:				Previous Facility:		
Additional ombudsman follow-up is necessary				City:	County:	
Assessment Date				Current Facility:		
Yes	No	N/A		City:	County:	
			<ul style="list-style-type: none"> Does the facility have power? If not, do the residents have a source of light (e.g., lamps on a generator or handheld flashlights)? Comment:			
			<ul style="list-style-type: none"> Did the facility suffer any significant structural damage? If so please indicate. Comment: 			
			<ul style="list-style-type: none"> Are high traffic areas, such as hallways, common areas, and doorways, clear of debris so residents may move freely throughout the facility? Comment:			
			<ul style="list-style-type: none"> Did the facility receive evacuees from other facilities? If so, how long are the displaced residents scheduled stay at the new facility? Comment:			
			<ul style="list-style-type: none"> Have residents and their representatives been consulted regarding their wishes for return or transfer to a different facility? Comment:			
			<ul style="list-style-type: none"> Have plans been made to return or transfer residents elsewhere, according to the wishes of the displaced residents and their representatives? Comment:			
			<ul style="list-style-type: none"> According to displaced residents, do they have their personal belongings (e.g., clothing, toiletries, mementos, etc.)? Comment:			
			<ul style="list-style-type: none"> According to the displaced residents, is the facility geographically accessible to their family and friends? If not, what arrangements can be made to accommodate them? Comment: 			
			<ul style="list-style-type: none"> Is there an adequate source of food, ice, and water available to meet basic needs? If not, does the facility need these items to be delivered? Comment:			
			<ul style="list-style-type: none"> Are vital medications available and administered per residents' medical condition? If the medication is not available, are the residents' conditions being monitored and documented? Comment: 			
			<ul style="list-style-type: none"> According to the residents, are there sufficient staff to provide adequate care and services to meet their needs? Comment:			
			<ul style="list-style-type: none"> Is there anything additional the Long-Term Care Ombudsman Program can do to assist in other areas besides those outlined here? Comment:			
Ask facility for a list of evacuees and their originating or destined facilities. Please forward this information to the district coordinator for additional follow-up.						
Staff interviewed:				See reverse for additional information:		
Position:						

<p align="center">Resident Evacuee Information</p> <ul style="list-style-type: none"> • Number of residents evacuated: • Number of residents transferred to this facility: • In the space provided below, please indicate the names of residents who have been transferred/evacuated 	<p align="center">Any Resident(s) Concerns</p>
<p align="center">Residents Names</p>	<p align="center">Residents Names</p>
<p align="center">Evacuee or Transferred Residents Concerns</p>	<p align="center">Additional Information</p>

(This Attachment was developed by the Centers for Medicare and Medicaid Services, Survey and Certification, 2007)