

LTCOP Rule Issue Brief

LONG-TERM CARE OMBUDSMAN PROGRAM GRIEVANCE PROCESS

The purpose of this document is to assist states to address requirements regarding a grievance process related to the determinations or actions of the Ombudsman (State Long-Term Care Ombudsman) and representatives of the Office of the State Long-Term Care Ombudsman (the Office) required by the State Long-Term Care Ombudsman Programs, Final Rule.¹

The Rule requires the Office to have:

- ❑ policies and procedures related to grievances,
- ❑ a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office, and
- ❑ provisions in the grievance process that include an opportunity for reconsideration of Ombudsman designation decisions.

This brief consists of the following sections:

- Implementation, Key Points to Consider
 - New Grievance Process
 - Existing Grievance Process, Review and Update
- List of Authorities.

****Note: Effective July 1, 2016 the Administration for Community Living (ACL) consolidated their regulations into one subchapter resulting in the LTCOP rule number changing from 45 CFR 1327 to 45 CFR 1324. We are in the process of revising our resources to reflect that change. Information about the consolidation is available [here](#).***

Implementation, Key Points to Consider

New Grievance Process

If the Office in your state does not have a grievance process as required by the Rule, develop one.

- 1. Examine grievance processes used by other programs in your state/agency or other state ombudsman programs.**
 - ❑ Is there an existing agency grievance or appeal process that may be utilized as part of the Office’s policies/protocols?
 - ❑ What are the key elements of the grievance processes?
 - ❑ Are there any provisions or elements that may be adapted for the Long-Term Care Ombudsman Program (LTCOP)?
 - ❑ How is input from key stakeholders gathered and utilized to inform the development of a grievance process?

- 2. Consider the following questions in developing a grievance process.**

¹ Published in the *Federal Register*, 02/11/2015, Vol. 80, No. 28. [LTCOP Final Rule](#)

- How will grievances against the Office, the Ombudsman, and representatives, be handled? Are different processes/protocols needed for grievances related to:
 - Ombudsman decisions regarding designation or de-designation of local entities,
 - Ombudsman decisions regarding designation or de-designation of representatives,
 - Ombudsman or representative of the Office actions or services, and
 - Appropriate ombudsman actions, i.e. the complaint is unfounded, the ombudsman is fulfilling responsibilities and following policies?

- Is the purpose of the grievance process clear, i.e. the nature of a grievance that may be submitted and by whom?
 - Is there information that must be submitted when filing a grievance?
 - Is there a form or format to be completed when filing a grievance?
 - Is there a clear, consistent process when someone calls with a grievance?
 - Is there a clear, consistent process if someone sends a grievance via email without using the grievance form or protocol?
 - What happens with grievance information when someone refuses to complete a form or follow the protocol?

- Does the process clearly indicate to whom the grievance is submitted?

- Does the process indicate who receives notification that a grievance has been received?

- What time frames are established for investigating the grievance, making findings and reporting on the outcome?

- Who is responsible for investigating the allegations?
 - Is there guidance regarding the thoroughness of the investigation or essential components, especially regarding interviews with residents?
 - How are disclosure and confidentiality requirements of the Office maintained during the grievance investigation?
 - What standards, criteria, or policies guide the investigation?
 - Is there a consideration of the impact of the alleged actions/inaction on long-term care residents?
 - Is there a consideration of the Ombudsman or representative of the Office employing resident directed services on behalf of residents?
 - Is there a consideration of the impact of the alleged actions/inaction on the credibility of the Office?
 - Is it clear who needs to participate in the investigation and determinations?
 - What documentation is required?

- Who makes the decision regarding the outcome?
 - Is the Ombudsman's responsibility stated clearly?
 - Are there some decisions that can be delegated, such as a complaint about a volunteer representative of the Office? If so,
 1. How and when is this information shared with the Ombudsman?
 2. What is the role of the Ombudsman in decision-making?
 - How is decision shared with the individual filing the grievance?
 1. Written response?

- 2. Documented phone call?
 - What records are retained and where?
 - If the individual filing the grievance is not satisfied with the outcome, is there an appeal process?
 - If there is one, how is the information conveyed?
 - What time frames exist for filing an appeal and for receiving a response?
 - Is there a clearly delineated “end of the line” with pursuing a grievance?
 - When the grievance relates to the Ombudsman’s decision regarding designation, refusal to designation or withdrawal of designation:
 - Is there a process for someone else or another entity to review the Ombudsman’s decision and make a recommendation to the Ombudsman?
 - Is it clear that the Ombudsman makes the final decision?
 - Is it clear that the Ombudsman’s decision is consistent with established policies and procedures regarding designation, refusal to designate, or de-designation?
- 3. How and when will the grievance process be incorporated in the policies and procedures of the Office?**
- How will local ombudsman entities and ombudsman representatives be informed of the grievance process?
 - How will complainants or any other relevant entities obtain information regarding the grievance process?
 - In addition to policies and procedures, will any contract provisions, program standards, or agreements with Ombudsman representatives, need to be revised to reflect the grievance process?

Existing Grievance Process, Review and Update

Review the existing grievance process(es) utilized by the Office to determine if it contains the specified provisions in the Rule.

- 1. Does the grievance process address grievances related to the determinations of the Ombudsman regarding:**
 - designation, refusal to designate and de-designation of entities, if applicable, and representatives and
 - grievances related to the actions of the Ombudsman or representatives?
- 2. Does the process utilize the criteria established for designation, refusal to designate or de-designation?**
 - Is there an opportunity for the Ombudsman to re-consider a decision regarding designation?
 - Is it clear that the Ombudsman makes the final determination?
- 3. Does the process need additional clarity or specificity? Refer to the key points to consider in the preceding section, New Grievance Process.**

4. Is there anything that needs to be improved based on feedback or experience with using the current process?
5. Does the process adhere to the disclosure/confidentiality provisions of Ombudsman documentation and release of records/program information?

For additional information and examples of grievance processes/procedures states are using, refer to the NORC Technical Assistance on Grievance Procedure, [here](#). State policies and procedures related to complaints against: the Long-Term Care Ombudsman Program; the Ombudsman regarding designation, refusal to designation and de-designation determinations of local entities and representatives; the Ombudsman related to other issues are available [here](#). The NORC [LTCOP Rule webpage](#) will continue to be updated as NORC receives updated resources and processes from States.

List of Authorities

Older Americans Act (the Act) of 1965 as amended 2006

Sec. 712. State Long-Term Care Ombudsman Program.

(5) Designation of Local Ombudsman Entities and Representatives.

(A) DESIGNATION.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(D) POLICIES AND PROCEDURES.— (i) IN GENERAL.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office. (ii) POLICIES.—In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity. (iii) CONFIDENTIALITY AND DISCLOSURE.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

State Long-Term Care Ombudsman Programs, Final Rule²

§ 1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

(7) *Grievance process.* Policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

(i) Such process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office.

² The regulations and sections of the Preamble included in this paper are an excerpt from the Rule, highlighting the most relevant provisions. For complete information refer to the full text of the Rule. [LTCOP Final Rule](#)

§ 1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

(c) *Designation.* The 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 § 1324.11(e)(6).

(1) Where an 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 local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and
- (iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.

§ 1324.13 (5) 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/or the local Ombudsman.

§ 1324.17 Responsibilities of agencies hosting local Ombudsman entities.

(B) (1) (1) Policies, procedures and practices, including personnel management practices of the host 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.

Select Public Comment and Response from the Preamble to the LTCOP Rule

Comment: Two commenters recommended the need for a fair hearing process or appeal procedures for situations in which a representative of the Office is de-designated for good faith performance of their duties. One of these commenters recommended that representatives of the Office should have an opportunity to appeal to AoA or that appeals be heard by an independent entity mutually selected by parties to the appeal. (p. 7718)

Response: We have added a requirement that Ombudsman program policies include the criteria and process for de-designation at § 1324.11(e)(6). In addition, we have added a grievance process requirement in § 1324.11(e)(7) to address situations where an opportunity for review of an Ombudsman action or determination is warranted. Given that the Ombudsman has the sole authority responsibilities to designate, or to refuse, suspend or remove designation, of representatives of the Office, we do not agree that it is appropriate for AoA or another entity to override the designation decisions of the Ombudsman. However, we do believe that it is appropriate for there to be a process in which another entity or person reviews the grievance and makes recommendations to the Ombudsman for his or her re-consideration related to his or her decision to designate, or to refuse, suspend or remove designation.

Comments: Two commenters indicated that the scope of complaint investigations indicated in §1324.13(a)(1) should include complaints regarding a representative of the Ombudsman program. (p.7718)

Response: Section 1324.13(a)(1) describes functions of the Ombudsman program.... While we have notwe have included, in the final rule, a new provision at § 1324.11(e)(7), to require the establishment of

a grievance process within the Ombudsman program so that individuals served by the Ombudsman program have a clear process for filing a grievance, having their concern investigated, and receiving a response to the grievance.

Comment: One commenter recommended that the provisions related to oversight of the Office at proposed § 1324.15(a)(4) and (5) should include a process for investigating complaints against the Ombudsman and representatives of the Office and a mechanism for due process in the event of disciplinary action or de-designation. (p. 7736)

Response: We have included a new provision at § 1324.11(e)(6) of the final rule to require that the development of designation policies and procedures, which include the criteria and process for de-designation. In addition, we have added a grievance process requirement in § 1324.11(e)(7) to address this and other situations where an opportunity for review of an action or determination is warranted.

ACL/AoA Frequently Asked Questions

What types of matters must be addressed by the grievance process, as required in 45 CFR 1324.11(e)(7)? (p.7)

The grievance process is to be available “for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.” Examples include, but are not limited to:

- An Ombudsman determination not to designate an individual as a representative of the Office;
- An Ombudsman determination to de-designate a local Ombudsman entity;
- A complaint by a facility about the manner in which a representative of the Office carries out ombudsman services (such as a visit to residents, complaint handling, or a facility staff training) while in the facility;
- An action by a representative of the Office on complaint resolution with which a resident or complainant disagrees. An example could be that a representative of the Office closes a case but the complainant or resident does not believe that work is complete.

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