

# Long-Term Care Ombudsman Program Final Rule

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45 CFR § 1324.13

**EDIT KEY:** ~~Deleted Text~~ **New Text**



§ 1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman	Notes
The Ombudsman, as head of the Office, shall have responsibility <b>and authority</b> 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, as follows.	
(a) <i>Functions.</i> The Ombudsman shall, personally or through representatives of the Office- <b>:</b>  (1) Identify, investigate, and resolve complaints that- <b>:</b>  (i) Are made by, or on behalf of, residents; and (ii) Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of- <b>:</b>  (A) Providers, or representatives of providers, of long-term care;  (B) Public agencies; or  (C) Health and social service agencies.	

(2) Provide services to protect the health, safety, welfare, and rights of the residents;

(3) Inform residents about means of obtaining services provided by the Ombudsman program;

(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;

(5) Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain 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;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; **and**

(iii) Facilitate public comment on the laws, regulations, policies, and actions;

(iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office; **and**

(v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns-;

(vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located. ;

(vii) In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes **of to government agency** regulations and policies **to government agencies** by the Ombudsman or representatives of the Office do not constitute lobbying activities as defined by 45 CFR part 93.

(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and

(9) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents;-**and.**

(b) **Responsibilities.** The Ombudsman shall be the head of a unified statewide **program Long-Term Care Ombudsman Program** and shall:

(1) Establish or recommend policies, procedures , and standards for administration of the Ombudsman program pursuant to § 1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in § 1324.19 in accordance with Ombudsman program policies and procedures.

(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 **(42 U.S.C. 3058g(a)(5))** and the policies and procedures set forth in § 1324.11(e)(6).

(1) ~~Where~~ **If** 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.

(2) ~~Training requirements.~~ The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on ~~model~~ **and consistent with** standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act **(42 U.S.C. 3011(d)) and set forth by the Assistant Secretary for Aging**, in consultation with residents, resident

representatives, citizen organizations, long-term care providers, and the State agency, that- :

(i) Specify a minimum number of hours of initial training;

(ii) 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**

**(iii) Specify that all program staff or volunteers who have access to residents, files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office; and**

**(iii-iv )** Specify an annual number of hours of in-service training for all representatives of the Office; .

(3) Prohibit any representative of the Office from carrying out the duties described in § 1324.19 unless the representative- :

(i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office; .

(4) The 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 local Ombudsman entity and/or the local Ombudsman entity.

(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 entity.

(d) *Ombudsman program information.* The 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 local Ombudsman entity from maintaining such information in accordance with Ombudsman program requirements. **All program staff or volunteers who access the files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office.**

(e) *Disclosure.* In making determinations regarding the disclosure of files, records , and other information maintained by the Ombudsman program, the Ombudsman shall:

(1) 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 **(42 U.S.C. 3058g(d))** 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;

(2) 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~~ . **Criteria for disclosure of records shall consider if the disclosure has the potential to:**

**(i) Cause retaliation against residents, complainants, or witnesses;**

**(ii) Undermine the working relationships between the Ombudsman program, facilities, and/or other agencies; or**

**(iii) Undermine other official duties of the program.**

(3) 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 **this** paragraph ~~(e) of this section~~.

(f) *Fiscal management*. The 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.

(g) *Annual report.* ~~The~~ **In addition to the annual submission of the National Ombudsman Reporting System report, the Ombudsman** shall independently develop ~~and~~ , provide final approval of , **and disseminate** an annual report as set forth in section 712(h)(1) of the Act **(42 U.S.C. 3058g(h)(1))** and as otherwise required by the Assistant Secretary **for Aging** .

(1) 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/or 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.

(2) The Ombudsman shall make such report available to the public and submit it to the Assistant Secretary **for Aging** , 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.

(h) **Memoranda of understanding**. Through adoption of memoranda of understanding **and or** other means, the Ombudsman shall lead ~~state State~~ -level coordination, and support appropriate local Ombudsman entity 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~~ **including** :

**(1) The required adoption of memoranda of understanding between the Ombudsman program and:**

**(i) Legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), addressing at a minimum referral processes and strategies to be used when the Ombudsman program and a legal assistance program are both providing program services to a resident;**

**(ii) Facility and long-term care provider licensure and certification programs, addressing at minimum communication protocols and procedures to share information including procedures for access to copies of licensing and certification records maintained by the State with respect to long-term care facilities.**

**(2) The recommended adoption of memoranda of understanding or other means between the Ombudsman program and:**

**(1-i)** Area agency on aging programs;

**(2 ii)** Aging and disability resource centers;

(~~3~~ **iii**) Adult protective services programs;

(**4** **iv**) 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.);

~~(5) Facility and long-term care provider licensure and certification programs;~~

(~~6~~ **v**) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));

(~~7~~ **vi**) Victim assistance programs;

(**8** **vii**) State and local law enforcement agencies;

(**9** **viii**) Courts of competent jurisdiction; ~~and~~

(~~10~~ **ix**) The State ~~legal assistance developer and legal assistance programs, including those~~ **Legal Assistance Developer as provided under section 306(a)(2)(C) 731 of the Act. (42 U.S.C. 3058j) and as set forth in subpart C to this part; and**

**(x) The State mental health authority.**

(i) **Other activities.** The Ombudsman shall carry out such other activities as the Assistant Secretary **for Aging** determines to be appropriate **and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.**



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