POLICIES AND PROCEDURES MANUAL

OFFICE OF THE DISTRICT OF COLUMBIA LONG-TERM CARE OMBUDSMAN
LEGAL COUNSEL FOR THE ELDERLY
-sponsored by the AARP FOUNDATION and AARP

Part of the Senior Service Network funded by the D.C. Office on Aging

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1.0 COMPLAINT INVESTIGATION AND RESOLUTION

Federal and District of Columbia laws charge the Office of the District of Columbia Long-Term Care Ombudsman with the duty to investigate and resolve complaints and concerns made by or on behalf of residents of long-term care facilities. A long-term care facility is defined as any licensed or unlicensed nursing home or community residence facility, including assisted living facilities, mental health community residence facilities, and intermediate care facilities for the mentally retarded.

The Ombudsman Office’s staff and volunteer advocates visit residents in these facilities, take telephone calls from residents or potential residents and their family members or representatives, listen to their complaints and concerns, and take action on behalf of residents or potential residents of all long-term care facilities to resolve their complaints or concerns. Complaints may also be received from staff of long-term care facilities, healthcare and social services workers in the community, and any other concerned citizen. Complainants are not required to identify themselves by name, and all resident records and identifying materials are kept strictly confidential as mandated by D.C. law.

Any issues involving the health, safety, welfare, and rights of nursing home, assisted living and community residence facility residents in the District of Columbia are investigated by the Ombudsman Office. A case specific form is completed for every complaint or concern that requires an ombudsman to take action on behalf of a resident or a potential resident. These forms provide the data for the Ombudsman Tracking System (OTS) and the National Ombudsman Reporting System (NORS) that is required by the United States Administration on Aging.

Complaints related to facilities outside of the District of Columbia are referred to the Office of the Long-Term Care Ombudsman in the appropriate jurisdiction. However, the D.C. Ombudsman may investigate complaints involving the transfer, discharge, or placement of D.C. residents in facilities outside of the District of Columbia.

Complaints concerning life-threatening situations are investigated as soon as possible, but no later than 12 hours after receipt. Complaints involving suspected abuse, neglect, or exploitation are reported to Adult Protective Services and the Health Regulation Administration or Department of Mental Health no later than 24 hours after receipt, as mandated by D.C. Law, § 6-3514 (10), unless doing so would violate a resident’s right to confidentiality. Other agencies -- such as the D.C. Department of Mental Health, D.C. Medicaid Fraud Control Unit, and the Police Department -- are also notified if their involvement is appropriate. Complaints related to resident care and rights are generally investigated within three working days. Complaints related to the facility itself, such as environmental problems, are generally investigated within 5 to 10 working days, unless they pose an imminent threat to the health or safety of one or more residents. Complaints unrelated to the facility itself, such as problems with benefits from a government agency, are investigated within 21 working days, unless the matter requires a more timely response.
In addition to responding to complaints, ombudsmen are required to monitor the facilities to which they are assigned. The Board and Care Ombudsman is required to make at least one visit a year to every licensed Board and Care and Assisted Living Facility in the District. The Nursing Home Ombudsmen are required to visit each of their facilities at least once a month. In addition, they or their volunteer advocates are required to visit each facility with over 100 residents at least every other week and each facility with fewer than 100 residents at least every six weeks, or as needed. A schedule of facilities that will be visited each month is provided by each local ombudsman program to the Director of the D.C. Long-Term Care Ombudsman Office by the beginning of the last week of the previous month (See Attachment D).

Ombudsmen are required to make every attempt to resolve a problem as soon after it occurs as possible. However, the Ombudsman Program encourages complainants to utilize each facility's grievance procedures, as established by the facility's written policies and the lines of authority within the facility, to resolve complaints before requesting an ombudsman’s intervention.

1.1. COMPLAINT PROCESS

Step One: Reporting Complaints

Complaints are received by Ombudsman Office staff and volunteer advocates in writing, by telephone, and in person. Complaints may also be identified by Ombudsman Office staff or volunteer advocates while in a facility. Complainants are asked to specify their desired outcome(s) and to indicate what, if any, steps have already been attempted to resolve the complaint. The ombudsman will, if applicable, obtain permission from the complainant to proceed with the complaint by executing the attached Ombudsman Office Consent Form (see Attachment C). The plan of action for investigation of the complaint are, if possible, agreed upon between the complainant and the ombudsman. The ombudsman will also obtain consent from the complainant to use the resident's name in pursuing resolution of the complaint with facility personnel and/or outside agencies.

Step Two: Form Completion

The Ombudsman Office staffperson or volunteer advocate who receives the complaint must fill out a case specific Complaint Intake Form (see Attachment A). The case number must be included on this form, which, along with all supporting documents obtained during the course of an ombudsman’s investigation, become the complaint record. [NOTE: The Case No. is the ombudsman’s I.D. number, followed by the facility I.D. number, followed by the month and year of intake, followed by the number of cases the ombudsman has opened so far that fiscal year. For example, if the ombudsman’s I.D. number is 8, the facility I.D. number is 10, the month and year of intake are March 2002, and the case is the 150th the ombudsman has opened since October 1, 2001, the Case No. would be: 8-10-0302-150.]
Confidentiality of complaints and complaint records is governed by Policy Number 4.0: Confidentiality of Communications and Records.

**Step Three: Referral**

Referral is defined as sending or communicating a complaint (and/or confidential information related to the complaint) to persons, agencies, or organizations that are separate from the Office of the D.C. Long Term Care Ombudsman. Any communications between staff of the Office of the D.C. Long Term Care Ombudsman and local ombudsman staff or volunteers that relate to complaints are considered assignments or consultations, not referrals.

Any complaint that cannot be resolved by ombudsman staff at the facility level or that requires further investigation by the Health Regulation Administration, Department of Mental Health, or other outside agency, must be referred to that agency by fax or mail on the form provided to the local ombudsman programs by the Office of the D.C. Long Term Care Ombudsman (see Attachment B). If the complaint is initially telephoned to an outside agency, the telephone call must be followed up with the written form, and a copy of the form must also be provided simultaneously to the Office of the D.C. Long Term Care Ombudsman.

If the complaint falls within the category of suspected abuse, neglect, or exploitation as defined in D.C. Law 5-156, the complaint should be referred to the Adult Protective Services Hotline, the Medicaid Fraud Control Unit, and/or the Police Department, as well as to the Health Regulation Administration or Department of Mental Health. However, the Ombudsman Program remains responsible for the investigation and disposition of the complaint notwithstanding such referral.

**Step Four: Investigation/Verification**

The goal of investigation is to identify information to aid in resolution of the complaint and to provide information for potential issue development. Investigation involves a systematic, straightforward, and careful inquiry into the allegations of the complainant and statements of the respondent(s).

Whenever Ombudsman Office staff or volunteers visit a long-term care facility to investigate a complaint or to monitor the facility, they must wear their official identification badge. When they enter the facility, they must sign their name, date, and time of day in the Ombudsman log (for CRFs/ALRs, visitors’ log) that is generally kept at the front desk or entrance hall of the facility and inform the Security or other staff that an ombudsman is in the building. This procedure serves to record the presence of a representative of the Ombudsman Office in the facility and to provide notification to the staffperson in charge of the facility that an ombudsman is in the building in accordance with D.C. Code Sec. 6-3521(c).
When Ombudsman Office staff or volunteers go to a floor or unit of a nursing home, they should first go to the nursing station, introduce themselves to the staff at that station, and announce their presence. If no staff are present, the ombudsman or volunteer should continue making rounds and introduce himself/herself when staff are next observed. When Ombudsman Office staff or volunteers go to a floor or unit of an assisted living or community residence facility, they should also introduce themselves to any staff on duty.

Ombudsman Office staff and volunteers generally visit facilities between the hours of 8:00 a.m. and 8:00 p.m. However, entry to facilities between 8:00 p.m. and 8:00 a.m. is provided for by D.C. law when the nature of a complaint requires investigation during that time period. In these cases, the ombudsman should indicate to the person in charge of the facility at the time of the visit that his/her visit during these hours is necessary. The reason(s) for and outcome(s) of the visit should be documented in the ombudsman’s notes. At all times, confidentiality (as outlined in Section 4.0) regarding the complaint being investigated and the name of the complainant must be maintained.

Ombudsmen should utilize the following techniques, as appropriate, in the investigation process:

1. interview the complainant to obtain a clear statement and history of the problem;
2. make a personal onsite visit to the facility to assess the situation;
3. interview other residents;
4. interview staff and other witnesses;
5. examine resident records; and
6. determining what laws, regulations or policies might apply.

If a complaint cannot be substantiated, the ombudsman should explain the situation fully to the complainant, suggest alternative remedies, and close the case record. If a complaint is substantiated by the ombudsman, facility staff should be informed of the complaint as soon as possible and encouraged to respond to the issue(s) raised. However, throughout the investigation and reporting processes, confidentiality and the integrity of the investigation must be maintained.

Step Five: Resolution

Complaint resolution involves translating the results of the investigation into positive action on behalf of the complainant/resident. This process insures that, to the greatest degree possible, complainant/resident or ombudsman expectations and objectives relative to the complaint are achieved. The means to be marshaled in resolving a specific complaint are determined by the severity, character, and extent of the problem. Problem resolution is authorized by Federal and District of Columbia statutes through utilization of the following:
• negotiating with staff at the facility level to change a particular behavior, pattern, or practice affecting a resident(s);
• educating a resident, family member, or facility personnel on ways to relieve a problem;
• referring the situation to the Health Regulation Administration, Department of Mental Health, or other outside agency for further action;
• proposing regulatory or statutory changes or amendments to agency and government officials;
• communicating with community groups, professional organizations, and the media;
• pursuing legal and administrative remedies on behalf of a resident and facilitating the utilization of legal services assistance by the complainant/resident(s).

Not every problem is capable of a resolution entirely satisfactory to the complainant/resident. However, the ombudsmen should exhaust all reasonable avenues of assistance to the complainant/resident, directly or by referral. If such efforts are unsuccessful, the ombudsman should then so advise the complainant(s) and provide the individual(s) with information on how to proceed independently.

The resolution process should include a 30-day follow-up of the situation with the complainant and/or resident for the purpose of determining whether the causes giving rise to the complaint have repeated or recurred and whether the situation has been resolved to the complainant’s satisfaction.

Step Six: Closure

Once a complaint has been resolved, the record should be closed.

Step Seven: Reporting

Each ombudsman must complete and send to the Office of the D.C. Long-Term Care Ombudsman by the 10th of each month, either in hard copy or by computer input, a case specific complaint intake form for every complaint received or in any way acted upon during the previous month. In addition, a copy of every complaint reported by fax or mail to an outside agency must be provided simultaneously to the Office of the D.C. Long-Term Care Ombudsman.

The facility administrator or his/her designee should be informed of every substantiated complaint received, either in an oral exit interview or by telephone within 24 hours after the complaint has been substantiated, unless doing so would violate a resident’s right to confidentiality or compromise the ombudsman’s further investigation of the complaint. This procedure provides an opportunity for the facility to respond to the complaint as outlined in Step Four.
1.2. COORDINATION OF COMPLAINT INVESTIGATION ACTIVITIES

The intent of the Long-Term Care Ombudsman provisions of the Older Americans Act is to ensure a complaint investigation and resolution system that is responsive to the problems and concerns of persons who reside in long-term care facilities. The development of the capacity to undertake these activities under the Older Americans Act is in no way meant to relieve any other State Agency of any statutory responsibilities to respond to long-term care complaints, nor is it contemplated that unnecessary duplication of effort between the Office of the Long-Term Care Ombudsman and any other agency should occur.

The Office of the Long-Term Care Ombudsman is a representative of the long-term care resident. Its function is not to cite violations of the regulations, but an ombudsman, in investigating a complaint, may recognize regulatory deficiencies. The Ombudsman Office uses the Health Regulation Administration and the licensing and monitoring division of the Department of Mental Health as referral sources and reports suspected violations of law or code requirements to these agencies. This role is made clear in the Ombudsman Program Instruction Number 8-81 issued from the federal Administration on Aging and stating as follows:

Although each program must respond to complaints, there is a significant difference in the purpose each has in doing so. A State regulatory agency's primary concern and focus is related to the continued compliance by licensed or certified health care providers with State and Federal (and sometimes local) laws and regulations. The Long Term Care Ombudsman, although interested in facilities' compliance with law, works on behalf of long term care residents and is responsible for improving their condition and seeking satisfactory resolutions to their problems.

The Office of the D.C. Long-Term Care Ombudsman, through the D.C. Office on Aging, has signed a Memorandum of Understanding with the D.C. Department of Health, the regulatory agency in D.C. for nursing homes and assisted living facilities, outlining the roles and responsibilities of the respective agencies. This MOU is currently being reviewed and revised. The Ombudsman Office has also signed a Memorandum of Understanding with the D.C. Office of Adult Protective Services, the agency that is required to investigate suspected cases of abuse, neglect, and exploitation, outlining the roles and responsibilities of the respective agencies. This MOU is also currently being reviewed and revised. In addition, the Ombudsman Office is exploring the development of an MOU with the Department of Mental Health, the regulatory agency for mental health community residence facilities (MHCRFs).

2.0. ACCESS TO FACILITIES, RESIDENTS AND RECORDS

The Office of the District of Columbia Long-Term Care Ombudsman requires access to facilities, residents, and records in order to perform two vital functions of the
Office: (1) investigating/resolving complaints, and (2) monitoring the quality of care provided in long-term care facilities. Both Federal and District of Columbia law are sources for the Ombudsman's authority to gain access to facilities, their residents, and facility and resident records.

2.1. Federal Law

The Older Americans Act, at section 712(b)(1), states:

The State shall ensure that representatives of the Office [of the Ombudsman] shall have – (A) access to long-term care facilities and residents; (B) . . . appropriate access to review the medical and social records of a resident, . . . (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

The Act at section 712(b)(2) states, “The State agency shall establish procedures to ensure the access described in paragraph (1).”

Program Instruction Number 8-81 issued by the Federal Administration on Aging elaborates:

The procedure established by the State should recognize that long term care facility residents have inherent Constitutional rights of access to and information from Ombudsman while respecting the residents' routine receipt of care in the facility ... [including] equal access to facilities and residents by all authorized representatives of the State Long Term Care Ombudsman Program.

The Instruction continues:

The State must, in accordance with State Law, establish and formalize procedures that provide for access by the Ombudsman and persons designated by the Ombudsman to the personal and medical records of residents of long term care facilities and to have the ability to inspect, review and copy these records. The Ombudsman may review those portions of a resident's records which are applicable to investigating a specific complaint made by or on behalf of a resident or residents or to gain information about the conditions of a long term care facility generally.

The Nursing Home Reform Amendments in the Omnibus Reconciliation Act of 1987 are quite specific with respect to a nursing facility's duty to provide immediate access by the Ombudsman to residents. 42 U.S.C. 1396r(c)(3)(A). See also 42 U.S.C.
The facility must "permit representatives of the State Ombudsman ... with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records." 42 U.S.C. 1396r(c)(3)(E); 42 U.S.C. 1395i-3(c)(3)(A); 42 CFR 483.10(j)(1).

2.2. District Law

District law concerning access to facilities, residents, and records is found in the District of Columbia Municipal Regulations and the District of Columbia Long-Term Care Ombudsman Program Act of 1988 -- D.C. Law 7-218. District law allows broader access than the minimum access provisions found in the federal statutes and regulations, and it provides far stronger support for access to community residence facilities.

D.C. Code Section 6-3521 of the Ombudsman Program Act, which governs access to long-term care facilities and their residents, states the following:

(a) The operator of a long term care facility shall permit the Ombudsman or his or her designee access to the facility to:
   (1) Visit, talk with, or make personal, social or legal services available to all residents, or investigate complaints;
   (4) Inspect all areas of the facility, except the living area of a resident who protests inspection.
(b) Access under this section shall be permitted between 8:00 a.m. and 8:00 p.m. daily unless the nature of the complaint requires investigation at other times.

District of Columbia Municipal Regulations, Title 22, Chapters 34 and 38, also address the requirement that a community residence facility allow access to members of community organizations and representatives of community legal services organizations. The language is virtually identical to that of the Ombudsman Act requirements.

Access also includes noninterference by the nursing or community residence facility’s personnel with Ombudsman Office staff or volunteers in conducting their investigations. Any actions by facility personnel that compromise a resident’s or ombudsman’s ability to investigate a complaint and/or maintain confidentiality will be considered interference with access and will be reported to the Department of Health’s or Department of Mental Health’s regulatory agency. Continued interference by facility staff with an ombudsman’s investigation of a complaint will result in a petition to the court for a temporary restraining order and/or an injunction.

Access to records is an especially important aspect of complaint investigation and resolution, and D.C. law is particularly strong on this point. Several provisions of the Ombudsman Act address access to records:

- D.C. Code § 6-3515 authorizes the Ombudsman and his or her designees access to any record that is necessary to carry out their responsibilities under the act.
• D.C. Code § 6-3522 details the Ombudsman's access to facility and District agency records. The Ombudsman is provided with "the same access that is provided to the Mayor to review, inspect, or photocopy the records of a facility covered by 32-1301 et seq. or 31-1401 et seq., to carry out the provisions of this chapter." D.C. Code § 6-3522(b).

Further, each District agency is charged with the responsibility to provide cooperation, assistance, data, and access to records necessary to enable the Ombudsman to perform her or his duties.

2.3. Denial of Access

On occasion, the Ombudsman, or his or her designee(s), may fail to gain access to a facility, residents, and/or records, either through passive denial or overt denial. A passive denial results when there is no response by nursing home or community residence facility personnel to attempts by an ombudsman to gain access. In this situation, a business card and/or a program brochure is left at the facility, and a follow-up telephone contact or visit is made. An overt denial occurs when an ombudsman is personally denied access to the facility. Unless circumstances dictate otherwise (e.g., the denial is of a visit in response to a complaint which appears to present an emergency or a potentially harmful situation or is part of a pattern of denials of access), at least one additional attempt to gain access will be made prior to petitioning the court for an order granting emergency access. The Department of Health’s or Department of Mental Health’s regulatory arm is informed about each instance of denied access.

2.4. Access to Residents’ Records by Attorneys

Attorneys who represent the Office of the D.C. Long-Term Care Ombudsman may review a resident's records under the following circumstances:

1. If the resident is competent, with the resident's or the resident representative's written consent,

2. If the resident is incompetent, with the resident representative's written consent, or with the Ombudsman's consent when there is no other representative designated pursuant to D.C. Law 6-108.

Before giving access to a resident's records to an Ombudsman Office attorney representing a long-term care facility resident, the Ombudsman will verify that consent to do so exists.

3.0. TRAINING AND CERTIFICATION

The District of Columbia Long-Term Care Ombudsman Program Act of 1988, D.C. Law 7-218, D.C. Code 6-3514(a)(15) requires that the Long-Term Care Ombudsman establish and conduct a training program for persons employed by or
associated with the program. Completion of pre-service training is mandatory before service begins. However, the Ombudsman training program is not designed and operated merely to meet legal requirements. Rather, its purpose is to ensure that all staff and volunteers are thoroughly prepared to provide the best possible advocacy for District of Columbia residents in long-term care facilities.

Chapter XI of the Technical Assistance Materials for State Long-Term Care Ombudsman Programs, prepared by the Federal Administration on Aging, discusses the importance of training ombudsman staff and volunteers.

The fundamental purpose of Ombudsman training is to impart to those working at all levels of the Ombudsman Program the basic skills and substantive knowledge necessary for them to carry out their responsibilities. It is imperative that all persons involved in complaint investigation and resolution receive such training, receive certification for having been trained and demonstrate competency in performing their assigned roles.

3.1 Training of Volunteer Resident Advocates

Pre-service training and certification of Volunteer Resident Advocates is mandatory under D.C. Code Section 6-3514(a)(15) and must occur in the following subject areas:

- Reviewing medical records
- Regulatory requirements for long term care facilities
- Confidentiality of records
- Techniques of complaint investigation
- Effects of institutionalization
- Special needs of the elderly

Volunteer advocates are recruited and trained by the local ombudsmen programs with assistance from and using the Volunteer Manual developed by the Office of the D.C. Long-Term Care Ombudsman. Pre-service training consists of two full days (15 hours) of subject matter review followed by on-site visits to the nursing home at which the volunteer advocate will serve. Training methods may include lecture by guest speakers, panel discussion, videos, question and answer, role plays, and case history presentations. Presenters may include consumer advocates, ombudsmen, lawyers, nursing home staff, nursing home residents, and current volunteer advocates.

The recruitment and training of volunteer advocates should be implemented annually by each local ombudsman program, but may occur more often if additional volunteer staff is needed by a local ombudsman program. The training covers the following areas:

1) Overview of the Ombudsman Program, the Older Americans Act, and
the D.C. aging network;

2) Characteristics, special needs, problems, and strengths of long term care facility residents and effects of institutionalization;

3) Characteristics of nursing homes, assisted living and community residence facilities;

4) Long-term care reimbursement system;

5) Long-term care regulatory system;

6) Complaint investigation, resolution, and advocacy skills;

7) Problem identification;

8) Residents' rights;

9) Assertiveness and negotiation skills; and

10) Confidentiality.

Each volunteer resident advocate is required to attend the 15-hour training session, and a certificate of attendance is mailed to each person who completes the pre-service training. In addition, each volunteer advocate is required to complete 12 hours of training per year provided by the local ombudsman programs at monthly in-service training sessions. Guest speakers may be invited, and information specific to nursing homes visited by the volunteers should be exchanged, such as staffing ratios or turnover of key staff. In-service training sessions should be designed to present substantive material, improve communication skills, promote exchange of experience, and develop techniques, as well as to support the work of the volunteer resident advocates and encourage their continued involvement in the local ombudsman program.

3.2. Training of Ombudsman Office Staff

Ombudsman Office staff meet monthly to discuss problems and changes in the long-term care system and to receive training in specific long-term advocacy issues. In addition, Ombudsman Office personnel are encouraged to attend a range of training programs available in the community, as well as the annual meetings of such organizations as the National Citizens Coalition for Nursing Home Reform, the National Association of Protection and Advocacy Agencies, and the National Council on Aging. Participation in forums on the legal rights of long-term care residents and on other issues related to protections for long-term care residents, sponsored by the D.C. Bar and other advocacy organizations, is also encouraged and supported.

A training plan for staff of the Office of the D.C. Long-Term Care Ombudsman and the local ombudsmen has been developed which meets the requirements of the D.C.
3.3. Ombudsman Designation Requirements

A candidate for designation of Ombudsman shall meet the following requirements:

- Completion of a minimum of 15 hours of training which include the following:
  
  a. Review of medical records,
  b. Regulatory requirements for long term care facilities,
  c. Confidentiality of records,
  d. Techniques of complaint investigation,
  e. Effects of institutionalization, and
  f. Special needs of the elderly.

- Be employed by the Long-Term Care Ombudsman Office funded by the D.C. Office on Aging OR be employed by one of the two designated local long-term care ombudsman programs funded by the D.C. Office on Aging;

- Certify that he or she has not been employed in an administrative capacity by a long-term care facility or a corporation that directly or indirectly owned or operated a long-term care facility within the past 2 years;

- Certify that he or she or any immediate family member does not have a pecuniary interest in a long-term care facility.

3.4. Designation Process

The D.C. Ombudsman submits the names of individuals for which she or he is requesting designation and their designation packages to the Executive Director of the D.C. Office on Aging for approval.

The designation package for each designee candidate includes verification of ombudsman training, verification of employment with Legal Counsel for the Elderly or one of the two designated local ombudsman programs, resume of experience, certification that the candidate has not been employed in an administrative capacity by a long-term care facility within the past two years, and certification that the candidate does not have any pecuniary interest in a long-term care facility.

The Executive Director reviews the candidate's package and informs the D.C. Ombudsman in writing if the candidate has been approved or denied designation status.

Designee status is automatically revoked if the designee is no longer an employee of the Ombudsman Office. The Executive Director of the D.C. Office on Aging may also
withdraw an individual's designation to perform the duties of a Long-Term Care Ombudsman when there is evidence that the designee (1) has failed to pass a criminal background check; (2) has failed to zealously protect the rights of any older person or of any long-term care facility resident and has not represented such individual's interests with undivided loyalty and without conflict of interest; (3) has failed to thoroughly and completely investigate and resolve complaints made by or on behalf of an older person or other person who is a long-term care facility resident; (4) has failed to perform his or her duties as an ombudsman under either federal or District law; (5) has abused, neglected or exploited, as defined in the D.C. Adult Protective Services Act of 1984, any older person or any resident of a long-term care facility; or (6) has engaged in conduct that is disruptive to the Long-Term Care Ombudsman Office, such as interfering with the Ombudsman's ability to address the needs of residents of long term care facilities by making unsubstantiated allegations of abuse, neglect, or exploitation.

When the Executive Director of the D.C. Office on Aging finds that grounds exist for withdrawing an individual's designation, she will send written notification of such finding to the designee, his or her employer, and to the D.C. Long-Term Care Ombudsman. The designee and the D.C. Ombudsman shall then have 15 calendar days from the date of receipt of such findings to respond in writing to the Director's findings.

The Director shall issue any revised findings within 15 calendar days of the receipt of the written responses. If the Director decides not to revise her initial findings, the initial determination withdrawing the designation becomes immediately effective upon a second notice. The Director shall issue a second notice within 15 calendar days of the receipt of the written responses, indicating that the initial determination is effective as of the date of the second notice.

4.0 CONFIDENTIALITY OF COMMUNICATIONS AND RECORDS


All files, complaints, responses to complaints, and all other information related to any complaint or investigation are considered confidential. No person who gains access to residents' records shall discuss or disclose information in the records or disclose a resident's identity outside of the Office of the D.C. Long-Term Care Ombudsman without the permission of the resident or the resident’s representative. Any communication made to the Office of the D.C. Long-Term Care Ombudsman or to a local ombudsman program by a resident or complainant must be held in the strictest confidence and shall not be revealed without the expressed permission of the resident, the resident’s representative, or complainant.

Any request made to the Office of the D.C. Long-Term Care Ombudsman or to a local ombudsman program by a representative of the media or by an outside attorney for
information or records about a long-term care facility resident, investigation, or complaint shall be referred by Ombudsman Office staff or volunteer advocates to the attorney for the Office of the D.C. Long-Term Care Ombudsman.

Complainants and/or residents shall be informed of their right to remain anonymous throughout the complaint investigation process. The provisions of confidentiality apply to all staff and volunteer resident advocates associated with the Office of the D.C. Long-Term Care Ombudsman. No complaint or other confidential information or records maintained by the Office of the D.C. Long Term Care Ombudsman may be disclosed unless the D.C. Ombudsman authorizes the disclosure.

The D.C. Ombudsman shall not disclose the identity of any complainant, resident, or others providing information to an ombudsman during the investigation of a complaint, unless:

(a) the complainant or resident, or legal representative of either, consents to the disclosure and specifies to whom the identity may be disclosed, or
(b) a court orders the disclosure.

In the case of an incompetent resident, information is disclosed only to the extent necessary to resolve the complaint.

Inspection dates provided to the Office of the D.C. Long-Term Care Ombudsman by the Health Regulation Administration are confidential under Federal and District law. Inspection dates and dates of unannounced visits to long-term care facilities by the Health Regulation Administration and the Department of Mental Health, including visits for the purpose of complaint investigation, are also confidential and shall not be revealed by any Ombudsman Office staff.

Privacy shall be provided for receipt of complaints by mail, telephone, or personal interview in order to maintain confidentiality. All mail addressed to an ombudsman by name or title shall be delivered unopened to the ombudsman. Locked files shall be used to maintain confidential records. Access to such files is limited to staff of the Office of the D.C. Long-Term Care Ombudsman.

Because the Office of the D.C. Long-Term Care Ombudsman is authorized by law to pursue legal and administrative matters on behalf of residents, the ombudsmen may consult with and/or refer matters to attorneys at Legal Counsel for the Elderly and to private attorneys. However, any communication between an ombudsman and a private attorney about a resident should take place only after discussion of the matter with, and advice of, counsel for the Office of the District of Columbia Long-Term Care Ombudsman, and the Ombudsman Office’s counsel should be present at any meeting between an ombudsman and private attorney that concerns an ombudsman investigation. The District of Columbia Bar's Code of Professional Responsibility governs matters concerning the attorney/client relationship, be it between an ombudsman and his/her counsel, or a client and counsel. The Code of Professional Responsibility also applies to matters referred by the Ombudsman Office to private attorneys.
The records of the Office of the District of Columbia Long-Term Care Ombudsman are not public information and are not discoverable under the Federal or D.C. Freedom of Information Act. In addition, access to the records cannot be granted by any person or entity other than the D.C. Ombudsman.

5.0. CODE OF ETHICS

The Office of the District of Columbia Long-Term Care Ombudsman works to promote:
- each resident's right to self-determination,
- each resident's optimal level of functioning and independence,
- each resident’s informed participation in decision making by all members of the long-term care community, and
- the protection of vulnerable individuals.

The primary responsibility of the Office of the D.C. Long-Term Care Ombudsman is to promote residents' rights and well-being. Ombudsman Office staff are guided in this endeavor by the residents' wishes concerning the manner in which a complaint is to be resolved and the degree of anonymity to be maintained.

The Ombudsman Office safeguards the residents' right to privacy by protecting information. All complaints brought to the attention of an ombudsman are confidential and can be discussed only with persons who are authorized to assist with their resolution. The name of the complainant or resident will not be revealed or included in a referral to another agency unless the complainant or resident has specifically granted permission for his or her name to be disclosed.

The Office of the D.C. Long-Term Care Ombudsman provides advocacy services unrestricted by personal beliefs or opinions and without regard to age, social or economic status, personal characteristics, race, sex, marital status or sexual preference. The Ombudsman Office respects and promotes a resident's right to self-determination and makes every effort to determine and act in accordance with the resident's wishes. The resident or potential resident is considered to be the client of the Ombudsman Office, regardless of who contacts the program.

Ombudsman staff and volunteers act in accordance with the standards, practices, policies and procedures of the D.C. Long-Term Care Ombudsman Office. Each ombudsman upholds his/her legal and professional responsibility to act on behalf of vulnerable individuals, and each maintains competence in areas relevant to the long-term care system such as regulatory and legislative changes and long-term care service options.

A local component of the Office of the D.C. Long-Term Care Ombudsman may not be, or be part of, an organization that is responsible for licensing or certifying long-
term care facilities or providing long-term care services, or an association of such providers, or any association which may impair the ability of an ombudsman to investigate and resolve complaints objectively and independently. Ombudsman staff and volunteer advocates shall be free of any conflict of interest and shall not be in any position to derive economic gain from any long-term care facility or organization that provides long-term care services or represents providers of such facilities.
Attachment A

Complaint Intake Forms
DRAFT Version 20

DISTRICT OF COLUMBIA LONG TERM CARE OMBUDSMAN PROGRAM
CASE INTAKE FORM

STATE CODE: 09 DC

OMBUEDSMAN ID: ____________________________

FACILITY NAME: ___________________________________ Facility Code: __________________

COMPLAINANT'S NAME: _______________________________________________________________

Complainant's Address: _______________________________________________________________

Complainant's Phone: H(______)_____________________ W(_______)_________________

Complainant's Relationship to Resident: CODE # ___________ *(See Below) Family Relation:_________

*I – Resident 2-Family/Friend 3- Non-relative guardian/legal representative 4-ombudsman
5-Facility/provider administrator/staff 6 - medical person, i.e. physician staff 7-Representative of other
social service agency or program 8-Unknown 9-other

May Name of Complainant be revealed? ______ Comments: ______________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

DATE INCIDENT OCCURRED:________ TIME or SHIFT________ am/pm(circle) ONGOING_______

RESIDENT'S NAME:_________________________________________________AGE:____________
(Last Name) (First Name) (Middle Initial)

RESIDENT'S GENDER _______ RACE ___________ PAY STATUS________
1-Male 2-Female 1-African-American 2-Asian 1-Medicare 2) Medicaid
3-Caucasian 4-Hispanic 3-Medicare & medicaid
5-Native American Indian 4-Private Pay/Insurance
6-Unknown 7-Other 5-VA 6-Other

INTAKE DATE:__________ BY: Phone___ Letter___ FAX ____ Personal Contact___________

CONSENT for Ombudsman Action: Verbal _____ Written_______

DATE RECEIVED:___/____/_____ DATE OF FIRST ACTION:___/____/_____

DATE REFERRED:___/____/_____ DATE INT. RES.:___/____/_____

DATE FINAL RES.:___/____/_____ 30 DAY FOLLOW-UP:___/____/_____

DATE CASE CLOSED:___/____/____

STATEMENT OF COMPLAINT(S):
Narrative:___________________________________________________________

CASE Intake Form Completed By:_____________________________________

COMPLAINT CATEGORY CODES: (refer to code sheet from AOA*)

DRAFT Version 20
DISTRICT OF COLUMBIA LONG TERM CARE OMBUDSMAN
INTAKE PROGRESS NOTES

Facility ___________________________ Resident ___________________________

<table>
<thead>
<tr>
<th>Type of Contact *</th>
<th>Entry</th>
<th>Time</th>
<th>Initials</th>
</tr>
</thead>
<tbody>
<tr>
<td>TC - Telephone Contact</td>
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<td></td>
<td></td>
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<tr>
<td>*FV - Facility Visit</td>
<td></td>
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</tbody>
</table>

Case No. ________________________

*FV - Facility Visit
TC - Telephone Contact

Page # _____ of _____
Attachment B

Complaint Referral Form
Attachment C

Consent Form
D.C. Long-Term Care Ombudsman Program
Authorization for Release of Confidential Information

1. **Authorized Agent/Organization**
   
   Your Name and Organization

2. **Regarding Individual**
   
   Resident’s Name

3. I, _______________________, authorize the above-named agent or organization to release information contained in my records to individual(s) or organization listed below, this authorization has been give by oral and/or written consent:
   
   - a) Individual/Organization’s Name
     - Office Number
   - Address with a posted attention
     - Fax Number

4. Any or all of the following types of records may be requested from the authorized agent: All medical/psychiatric records, progress notes and nurse’s records, financial records, for example: fees for services, contracts, rent to facility, benefit income, or addition medical fees not related to facility. And I authorize my doctors to speak with the staff of the D.C. Long-Term Care Ombudsman Program.

   The purpose for such disclosure is to investigate allegations of complaints on my behalf.

5. I understand that I have the right to review or request copies of the released materials.

6. I understand that this authorization, except for action all ready taken, may be voided by me at any time, verbally or in writing. This consent (unless expressly revoked earlier) expires one year from date of signature below. I also consent to allow copies of this release to be made and for copies to constitute a valid release.

   ________________________________  __________________________
   Signature of Resident              Date

   ________________________________  __________________________
   Signature of Resident’s Representative     Date
   (if needed)

   If authorization was given orally, please print the resident/resident’s representative’s name here: ________________________________ and date_________________.

DRAFT Version 24
Attachment D

Monthly Schedule of Visits Form
<table>
<thead>
<tr>
<th>Date of Visit</th>
<th>Name and Address of Facility</th>
<th>Approx. Time Spent on Visitation</th>
<th>Late Recorded Visitation Date</th>
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</thead>
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</tbody>
</table>

Signature of Ombudsman:_____________________________________.

Signature of Ombudsman’s Manager:____________________________.