**CHAPTER 4**

**Ombudsman Program Standards**

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**AGENCY INTERACTIONS & REFERRALS**

1. ***AGENCY INTERACTIONS & REFERRALS***

***(Rev. 12/31/14)***

The Long-Term Care Ombudsman Program interacts with and has agreements with other state agencies to improve information-sharing and cooperation that will enable the agencies to better carry out their missions to protect and improve the quality of life for long-term care facility residents. The Memoranda of Understanding set forth the responsibilities of the LTCOP and the other agencies for the coordination of nursing home, assisted living, and adult family care home inspection and complaint activities. All parties to the memoranda recognize the mutual obligations they have under federal and state law to protect confidential information and the limits of jurisdiction imposed for each party.

Copies of current Memoranda of Understanding (MOUs) that the LTCOP has entered into are posted on the program Intranet.

All referrals require consent of the resident or the resident’s legal representative. In some circumstances, consent from the State Ombudsman may be appropriate.

General Referral Instructions:

* 1. Obtain consent from the resident or the resident’s legal representative if appropriate, to make a referral. If consent is not granted, encourage the resident or the legal representative, to self-report.
	2. If the resident lacks capacity and has no legal representative, make a request for State Ombudsman consent.
	3. If the resident lacks capacity, has a legal representative, but there is reasonable cause to believe the representative is not acting in the best interest of the resident, make a request for State Ombudsman consent.
	4. After obtaining consent, the DOM should prepare a referral for the ROM’s review. Referrals must be sent to the Legal Advocate (with a copy to the State Ombudsman and legal assistant) for review and approval prior to submitting to a referring agency unless an emergency exists.
1. **911**

At any time an emergency situation exists, ombudsmen should ask the facility to call 911 for immediate assistance from law enforcement and emergency medical services. If the facility is unwilling or unable to call 911, an ombudsman may contact 911. Please note, no prior

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consent is required in emergency situations. Also, ombudsmen should keep in mind that AHCA and APS are not considered “first responders” in addressing emergency situations.

1. **Agency for Health Care Administration (AHCA)**

AHCA is the primary health facility policy and planning entity for the State of Florida. AHCA's Health Quality Assurance Program (HQA) is responsible for the licensure, inspection, and regulatory enforcement of all long-term care facilities in the state. AHCA investigates regulatory as well as consumer complaints related to long-term care facilities.

Using the AHCA website (ahca.myflorida.com), the LTCOP can gather information for all facilities, including an updated list of recently closed facilities. The agency's website also provides an avenue for individuals to lodge complaints against facilities. Survey and complaint investigation materials may be obtained from the agency's website to understand the regulatory enforcement history of a particular facility (floridahealthfinder.gov).

 AHCA Referral Instructions:

1. Refer complaints to AHCA’s Complaint Administration Unit if the concerns are under AHCA’s purview and represent that residents are at risk for, or have suffered, serious harm, impairment, or death. Referrals shall be made within two (2) days of verified identification of the concern and may be sent by emailing the LTCOP referral form to: LTCOP@ahca.myflorida.com.
2. Refer verified complaints to AHCA’s Complaint Administration Unit if the concerns represent persistent noncompliance and need further inspection and/or regulatory action by AHCA. Such referrals shall be made within twenty (20) days of the date

the LTCOP’s case is closed and may be sent by emailing the LTCOP referral form to: LTCOP@ahca.myflorida.com

1. **Adult Protective Services**

Adult Protective Services (APS) is a division of the Department of Children & Families (DCF) and investigates allegations of abuse, neglect, or exploitation of vulnerable adults reported to the Abuse Hotline (1-800-962-2873/1-800-96ABUSE). The Abuse Hotline is available 24/7.

Consent from the resident or the resident’s legal representative is required before referring a report of abuse, neglect, or exploitation to APS even though state statute directs ombudsmen to be mandatory reporters. See the memorandum “LTCOP as Mandatory Reporters to APS” on the program’s Intranet site under the Legal tab for a detailed discussion.

**AGENCY INTERACTIONS & REFERRALS**

APS can be found online <http://www.myflfamilies.com/service-programs/abuse-hotline> .

 APS Referral Instructions:

* 1. Refer complaints or make a report to APS’s Abuse Hotline if the ombudsman knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited.
	2. The following are the reporting methods:
* report online at <https://reportabuse.dcf.state.fl.us/>
* call 1-800-962-2873
* fax your report to 1-800-914-0004
1. **Attorney General – Medicaid Fraud Control Unit**

The Medicaid Fraud Control Unit is a law enforcement agency under the Florida Office of the Attorney General, and is responsible for investigating provider-related Medicaid fraud. It is composed of two teams: the fraud division and the P.A.N.E. (patient abuse, neglect, exploitation) division. Operation Spot Checks are organized by the MFCU and include team members from several agencies. Spot checks are unannounced inspections of health care facilities, including long-term care facilities. Ombudsmen participate in spot checks of long-term care facilities, and are responsible for completing an administrative assessment during the event. Problems may or may not involve Medicaid fraud. Individuals may report Medicaid fraud by contacting the MFCU at 1-866-966-7226.

MFCU can be found online at <http://myfloridalegal.com> under “Programs.”

1. **Other Agency Interactions**

Problems may arise that will necessitate the involvement of other outside agencies. In consultation with the Regional Ombudsman Manager, the District Ombudsman Manager may contact outside agencies after obtaining consent, including, but not limited to:

* Department of Health (including Medical Quality Assurance)
* Law Enforcement
* Department of Veterans Affairs
* CARES within the Department of Elder Affairs
* Area Agency on Aging / Aging and Disability Resource Center
* Fire Marshal

**FACILITY CLOSURES**

1. ***FACILITY CLOSURES***

***(Rev. 10/6/14)***

Facility closures may occur for a variety of reasons. The LTCOP has the responsibility to participate with and assist sister agencies in ensuring that all the residents that are impacted by a facility closure are aware of their rights and ombudsman program services.

The LTCOP has entered into an agreement to coordinate activities surrounding emergency relocation and/or closures of residential and health care facilities licensed by the Agency for Health Care Administration. This agreement exists between the LTCOP, the Agency for Health Care Administration (AHCA), the Department of Elder Affairs, Comprehensive Assessment and Review for Long-Term Care Services (CARES), the Agency for Persons with Disabilities (APD), the Office of the Attorney General (OAG), the Medicaid Fraud Control Unit (MFCU), and the Department of Children and Families Adult Protective Services (APS). The parties are committed to the effective and efficient delivery of services to the adults who reside in these facilities to ensure the safety and well-being of Florida’s citizens through cooperation, collaboration, and the sharing of appropriate information.

As each agency has specific statutory authority responsibilities and resources to provide for the needs of these adults, it is through a concerted effort of interagency cooperation that a full array of cooperation is upheld to ensure the adults remain safe and risk free in their community setting.

General Roles and Responsibilities**:**

AHCA, CARES, LTCOP, MFCU, APD and DCF as partners of the agreement, agree to:

1. Provide updated contact information at least quarterly (contact information to include name, position title and phone numbers for ‘other than normal’ business hours).
2. Inform the others of any policy or operational changes that may affect the services provided or the population being served under this agreement.
3. Develop and implement local protocols to ensure timely joint planning, and notification of action to ensure client continuity of safety.
4. Provide representation to assist each other in facility closures.

LTCOP PROCEDURES FOR FACILITY CLOSURE

Upon notification of a potential closure:

1. Cooperate with DCF, APD, AHCA, CARES, and MFCU
2. Provide resident advocacy support onsite as needed and requested by facility monitoring team or residents. Such advocacy efforts will focus on issues from the residents’ perspective.

**FACILITY CLOSURES**

1. Provide information to residents and their legal representative, if any, concerning relocation activities and residents’ rights such as protection of personal property, access to personal needs account funds, deterioration of current services, and ensuring medications and health records transfer to the new location.
2. Assist in placement of residents who are not victims in an open report of abuse, neglect or exploitation by providing information.
3. Once a resident is relocated, the LTCOP role will cease unless a complaint is received concerning that resident at the new location.

Relocated residents may be visited while performing an assessment or quarterly visit to check on their status and satisfaction with the relocation. The LTCOP does not routinely follow-up with relocated residents after a facility closure, unless an assessment, visit or complaint investigation is appropriate.

The Facility Closure Checklist for Residents should be completed for residents in the closing facility as appropriate and is found on the Program’s intranet website.

**FACILITY CLOSURES**



**TRANSFER/DISCHARGE ISSUES**

1. ***TRANSFER/DISCHARGE ISSUES***

***(Rev. 10/6/14)***

When a long-term care facility decides to no longer provide services or housing to a resident, federal or state regulations may provide guidelines for the transfer or discharge of the resident. The Ombudsman Program is able to assist residents with concerns relevant to their relocation or assist with advocating for them to remain at the current facility if they desire, even if the resident has received a transfer/discharge notice.

**Nursing Home Discharges**

Residents of nursing homes are entitled to a 30 day notice of transfer or discharge, provided certain conditions are met. When such conditions are met, the resident should receive the standard AHCA Transfer/Discharge Form (AHCA Form 3120-0002) from the facility and be given the opportunity to appeal the discharge notice.

**Federal transfer/discharge requirements** (CFR 483.12) state a facility may not transfer or discharge a resident unless:

**1.** The transfer or discharge is necessary to meet the resident’s welfare and the resident’s welfare cannot be met in the facility;

**2.** The transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility;

**3.** The safety of individuals in the facility is endangered;

**4.** The health of individuals in the facility would otherwise be endangered;

**5.** The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

**6.** The facility ceases to operate.

* Documentation in the resident’s clinical record is required for events outlined in #1-5.
* For #1 and #2 the resident’s physician must provide the documentation.
* For #4 the documentation must be provided by any physician.
* The facility notice must include an explanation of the right to appeal the transfer to the state as well as the name, address and phone number of the state long-term care ombudsman.
* If a developmentally disabled individual, the name, address and phone number for the agency advocating for the developmentally disabled must be included.
* If a mental illness individual, the name, address, and phone number for the agency responsible for advocating for mentally ill individuals must be included.

**TRANSFER/DISCHARGE ISSUES**

* Notice must be 30-days prior to transfer/discharge. Exceptions for the 30-day requirement apply when the transfer/discharge is effected because of;
	+ Endangerment to the health or safety of others in the facility\*;
	+ When a resident’s health has improved to allow a more immediate transfer or discharge\*;
	+ When a resident’s urgent medical needs require more immediate transfer\*; and
	+ When a resident has not resided in the facility for 30-days\*.

**\*In these cases, the notice must be provided as soon as practicable before discharge.\***

* Medicaid participating facility is also required to provide notice to the residents of the facility’s bed-hold policies and readmission policies prior to transfer of a resident for hospitalization or therapeutic leave.
* Regarding readmission in a Medicaid participating facility, the facility must develop policies that permit residents eligible for Medicaid, who were transferred for hospitalization or therapeutic leave and whose absence exceeds the bed-hold period, to return to the facility in the first available bed.
* Notice Before Transfer-the facility must;
	+ Notify the resident and if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
	+ Record the reasons in the resident’s clinical record; and
	+ Include in the notice: the reason for the transfer or discharge; effective date, **location to which the resident is transferred or discharged**, a statement the resident has a right to appeal the action to the State, and name, address and telephone number of the State Long Term Care Ombudsman.
* Orientation for Transfer or Discharge-the facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
	+ **“Sufficient Preparation**” means the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation.
	+ **Examples of orientation may include; trail visits, if possible, by the resident to the new location, working with family to ask their assistance in assuring the resident’s possessions are not left behind or lost; orienting staff in the receiving facility to resident’s daily patterns and reviewing with staff routines for handling transfer and**

**TRANSFER/DISCHARGE ISSUES**

**discharges in a manner that minimizes unnecessary and avoidable anxiety or depression and recognizes characteristic resident reactions identified by the resident assessment and care plan.**

* Notice of Bed-Hold Policy and Readmission: Written information to the resident and a family member or legal representative that specifies;
	+ The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the nursing facility; and
	+ The nursing facility’s policies regarding bed-hold periods, which must be consistent permitting residents to return.
* Permitting Resident to Return to Facility.
	+ Facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident—
		- Requires the services provided by the facility; and
		- Is eligible for Medicaid nursing facility services.
* Equal Access to Quality of Care

Facility must establish and maintain identical policies and practices regarding transfer, discharge and the provision of services under the state plan for all individuals regardless of source of payments

**State Discharge Requirements (**Chapter 400.0255, F.S.)

* + When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or designee **must sign** the notice of transfer or discharge.
	+ Any notice indicating a medical reason for transfer or discharge must either be signed by the residents attending physician or the medical director of the facility, or include an attached written order for the transfer or discharge. The notice or order must be signed by the resident’s physician, medical director, treating physician, nurse practitioner or physician assistant.
	+ The AHCA Form 3120-0002 Nursing Home Transfer and Discharge Notice – must be complete including the specific reason for transfer or discharge, effective date and the **location** to which the resident is being transferred or discharged.

**TRANSFER/DISCHARGE ISSUES**

* + A resident may request that the local ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ombudsman council shall do so within 7- days after receipt of the request.
	+ The nursing home must forward the request for review to the local ombudsman council within 24 hours after the request is made.
	+ Failure to forward the request within 24 hours after the request shall toll the running of the 30-day advance notice period.
	+ A resident is entitled to a fair hearing to challenge the proposed transfer or discharge.
	+ The resident or resident legal representative may request a hearing at any time within 90-days after the resident’s receipt of the facility’s notice of the proposed transfer or discharge.
	+ If hearing request within 10-days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge.
	+ The facility may not take action and the resident may remain in the facility until the outcome of the initial fair hearing. The hearing is completed within 90-days after receipt of the request for fair hearing.
	+ If the resident fails to request a hearing within 10-days the facility may transfer or discharge the resident after the 30-days.
* Fair Discharge Hearings:
	+ Per 400.0255 (13) The following persons must be present at all hearings
		- The resident, or residents legal representative or designee;
		- The facility administrator or facility’s legal representative or designee;
		- A representative of the long term care ombudsman program may also be present.
* The Department of Children and Families-Office of Appeal Hearings conducts the hearings.
	+ If hearing favorable to the resident and resident was transferred or discharged the facility must readmit the resident to the first available bed.
	+ The decision of the hearing officer is final.

**TRANSFER/DISCHARGE ISSUES**

* Rule 59A-4.106, F.A.C., Facility Policies
	+ Each resident shall receive at the time of admission and as changes are being made and upon request, in a language the resident or his representative understands, a copy of the facility’s admission and discharge policies.

**LEGAL ISSUES**

1. ***LEGAL ISSUES***

***(Rev. 12/31/14)***

* 1. **Confidentiality and Consent**

The Older Americans Act (OAA) and Florida statutes impose strict requirements directed at protecting the confidentiality of LTCOP information including the identityof residents, complainants, and investigation information. Virtually all human services agencies have confidentiality provisions; however, the LTCOP is distinct because of the narrow limits the OAA and Florida statutes put on the sharing of resident specific information even with other government agencies or departments.

Adhering to these confidentiality provisions sometimes can be challenging. However, the credibility of the LTCOP relies on residents and families trusting the LTCOP to keep their information confidential unless they give permission. Section 400.0077, Fla. Stat. (2014), sets forth the confidentiality requirements as follows:

**400.0077 Confidentiality.—**

(1) The following are confidential and exempt from the provisions of s. 119.07(1):

(a) Resident records held by the ombudsman or by the state or a local ombudsman council.

(b) The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless:

1. The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing;

2. The complainant or resident consents orally and the consent is documented contemporaneously in writing by the ombudsman council requesting such consent; or

3. The disclosure is required by court order.

(c) Any other information about a complaint, including any problem identified by an ombudsman council as a result of an investigation,

1. **Consent**

Ombudsmen must obtain consent from residents, legal representatives, and complainants to conduct ombudsman work and to maintain confidentiality.

Consent is required from a resident to begin investigation of a complaint, to reveal the resident’s name or identity, to access a resident’s records, and to disclose any problem identified by an investigation or any other information about a complaint. If the resident lacks capacity, then the consent must be obtained from the resident’s authorized legal representative.

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Consent is required from a complainant only to reveal the complainant’s name or identity. A complainant cannot consent to an investigation, to the release of resident records, or complaint investigation records. If the complainant is also the resident, then the above consent requirements pertaining to a resident apply.

For all situations in which consent is required and obtained, the consent only applies to the immediate case or request and does not extend to future work by ombudsmen. A

competent resident or an incompetent resident’s legal representative may withdraw consent at any time and the ombudsman’s work must cease.

Documentation of consent is required. The Consent Form documents the resident or legal representative’s “written” or “oral” consent. The consent form may also be used to document a complainant’s consent to release his or her identity. The form, Consent to Release Information, is available on the Intranet in English and Spanish.

The State Ombudsman can grant consent to conduct an investigation or make referrals in certain situations. These situations are appropriate for seeking State Ombudsman consent:

* + 1. A resident lacks capacity and has no legal representative.
		2. A legal representative exists but cannot be contacted after at least three attempts.
		3. The resident lacks capacity, has a legal representative who does not consent, and there is reasonable cause to believe that the representative is not acting in the best interest of the resident.

In these situations, the resident’s lack of capacity must be supported by documentation or ombudsman observation. Complete the State Ombudsman Consent Request form available on the program’s Intranet site and follow the instructions on the form for routing.

1. **Capacity**

In obtaining consent, the ombudsman must first determine if the resident has the capacity to provide consent. Capacity is the ability of the resident to communicate a willful and knowing decision. We also refer to an individual’s capacity as “competent to make decisions” and speak about the inverse of capacity as “lack of capacity”, “incapacity”, “incapacitated”, and “incompetent.” A resident should be capable of making an “informed consent.”

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An informed consent for LTCOP purposes is consent voluntarily given by an individual after a sufficient explanation and disclosure of the issue(s) involved to enable that individual to have a general understanding of the issue(s) in order to make a knowing decision without coercion or undue influence.

The LTCOP provides an advocacy service and does not perform clinical assessments to make determinations about a resident’s capacity. The ombudsman must rely on the resident’s ability to communicate consent. The ombudsman will want to be assured that the resident appears to understand to what he or she is consenting – informed consent.

If the resident is unable to communicate an informed consent, then the ombudsman should determine whether the resident has a legal representative with the authority to provide consent. An order of guardianship provides prima facie evidence of incapacity. See below for further discussion.

1. **Legal Representatives**

When a resident is unable to communicate informed consent, the ombudsman must discuss the complaint with the resident’s guardian or other legal representative. Legal representatives are considered as substitute decision makers as they are making a decision on behalf of the incapacitated individual. A guardian is appointed by a court; a power of attorney, durable power of attorney, and health care surrogate are assigned authority by a competent resident; and a health care proxy is designated through operation of law.

Federal regulations are instructive in how the LTCOP should work with legal representatives. Rule 42 C.F.R. §483.10(a), states the following in regard to guardians and other legal representatives:

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

Subparagraph (3) in the rule above addresses the authority of guardians to exercise rights of the resident, or ward. The specific rights to be exercised will be contained in

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the order appointing guardian. Subparagraph (4) refers to powers of attorney, health care surrogates, and health care proxies as defined in Florida law.

* + - * 1. Guardians: If a guardian has been appointed for the resident, the ombudsman should obtain consent to investigate from the guardian. The resident, or ward, has been judicially determined to lack capacity to make an informed consent and cannot legally provide consent. This does not preclude an ombudsman from trying to ascertain the wishes and preferences of the ward and communicating those to the guardian for consideration.

A specific provision in Chapter 744, Florida Statutes, the “Florida Guardianship Law”, directs guardians to cooperate with ombudsman concerning complaint investigations. Section 744.44(17), Florida Statutes, allows for sharing of information with an ombudsman without court approval by directing a guardian to:

Provide confidential information about a ward that is related to an investigation arising under part I of chapter 400 to a local or state ombudsman council member conducting such an investigation. Any such ombudsman shall have a duty to maintain the confidentiality of such information.

* + - * 1. Powers of Attorney: An individual who has been given authority to act on behalf of a resident under a power of attorney document may provide consent to conduct an investigation depending on the validity of the authority conferred. An individual appointed by a resident to make decisions on their behalf is an “attorney in fact” or “agent” and the resident is the “principal.” The principal must have capacity or be competent at the time of the appointment of the agent for a power of attorney document to be valid. If the principal becomes incapacitated, the agent loses the authority to act unless the power of attorney was made “durable.” A power of attorney is durable is it contains the words: “This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes” or similar words that show the intent to make the powers valid after the incapacity of the principal.

Florida’s Power of Attorney Act, Chapter 709, Florida Statutes, was extensively revised effective October 1, 2011 which may affect the authority of an agent to act. The Act applies to all powers of attorney, regardless of the date the powers of attorney were created, and the meaning and effectiveness of authorities granted under the power of attorney are

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determined under the revised language of the Act. One of the changes in the Act includes a prohibition of blanket or default powers. Language granting authority “to do all acts that the principal could do” is not sufficient, in and of itself, to grant any authority to the agent. Section 709.2201 states an agent “may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority.” Therefore, a blanket grant of authority is not valid and does not confer the ability to the agent to consent to an ombudsman investigation. Look to the specific grants of authority to determine if financial or health care decisions can be determined by the agent. Please consult with the Legal Advocate for further direction as necessary.

* + - * 1. Health Care Surrogate: A health care surrogate may provide consent to investigate a complaint. A health care surrogate is appointed in writing by an individual, the principal, to make health care decisions on their behalf in the event the principal becomes incapacitated. The principal must be competent at the time of the appointment of the surrogate. The surrogate’s authority to make health care decisions does not become effective until the principal’s attending physician has concluded the principal lacks capacity. This written evaluation of incapacity must be in the principal’s medical record; and, the attending physician is the primary physician who has responsibility for the treatment and care of the resident.

The authority of the health care surrogate controls over the authority of the agent in a power of attorney unless two factors are met: (i) the power of attorney is executed on a date after the health care surrogate designation; and, (ii) the power of attorney document gives authority to the agent to make health care decisions and specifically states it replaces the health care surrogate designation.

* + - * 1. Health Care Proxy: A health care proxy may provide consent to investigate a complaint. A health care proxy is a competent adult who has not been selected by the principal to make health care decisions in advance of the principal’s incapacity; but nonetheless, receives authority to make decisions under Part IV, Chapter 765, Florida Statutes. The principal must be determined incapacitated (physically or mentally unable to communicate a willful and knowing health care decision) by the principal’s attending physician. The attending physician is the primary physician who has responsibility for the treatment and care of the resident. There is no

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requirement that a proxy be “appointed” by another individual; the proxy’s powers come into effect by operation of law.

If an ombudsman determines a resident lacks capacity or is unable to consent and there is no known legal representative with authority to provide consent, then the ombudsman may obtain consent to proceed with the investigation from an individual as listed in the order of priority for acting as a health care proxy under section 765.401, Florida Statutes.

*In summary*:

* Confidentiality must be maintained for the resident, the complainant, and for any information connected with the complaint.
* Proper consent must be obtained prior to disclosing the identity of the resident or complainant and any other information about a complaint.
* Consent for the resident shall be obtained in one of three ways (in priority order listed below):
	+ - Written or oral consent of resident (if resident has capacity);
		- Written or oral consent of legal representative (if resident lacks capacity and an authorized legal representative exists); or
		- Written consent of the State Ombudsman (if the resident lacks capacity; and, the resident’s legal representative is unknown or cannot be contacted; or the legal representative refuses to provide consent and the ombudsman has reasonable cause to believe the legal representative is not acting in the best interest of the resident).
* Seek consultation with the Legal Advocate if needed for more detailed analysis or instruction for specific factual scenarios.
	1. **Requests for LTCOP Records**

All requests for records of the LTCOP must be sent to the Legal Advocate, with a copy to the Legal Assistant. Requests may be in writing or may be oral. All subpoenas must also be sent to the Legal Advocate and Legal Assistant as soon as received. The State of Florida has strict procedures for responding to record requests, so forwarding requests in a timely manner is critical. Records requested are commonly for the following;

* Complaint investigation files (confidential and exempt from public records)
* Assessment reports (not confidential, but may contain confidential information)

Under state and federal law, confidential complaint records maintained by the LTCOP may be released only with the consent of the resident, the resident’s legal representative, or

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under court order. The identity of the complainant is also confidential and may only be released with the complainant’s consent.

If a request is made for an administrative assessment, the District Office may discuss the findings of the assessment with the requestor, being sure not to disclose any confidential or protected health information that may be on the document. If the requestor wants a copy of the assessment, the District Office may review the assessment for confidential or protected health information, redact or black out the confidential information, and forward the redacted copy to the requestor. Record the provision of the assessment in the records request log.

Each time a public records request is received, whether in person, e-mail, telephone, fax, or mail, enter the date of the request and the particulars into the **Records Request Log**. On the last day of every quarter (Mar, Jun, Sep, Dec) forward the previous quarter’s Log in an email to the Legal Assistant.

* 1. **Subpoena Naming a Persons or Persons**

Upon receipt of a subpoena naming an individual ombudsman, make sure that the ombudsman has received a copy of the subpoena. Immediately scan and e-mail or fax the subpoena to the Legal Advocate. The Legal Advocate will then contact the DOM and the ombudsman and will make an appropriate response to the subpoena.

**Please make sure all ombudsmen know to contact the District Office immediately should they receive a subpoena regarding their activities as an ombudsman.**

* 1. **Subpoena Request for Records**

Upon receipt of a subpoena for records, scan and e-mail, or fax the subpoena to the Legal Advocate as soon as possible.

**RESIDENT VISITS/ASSESSMENTS**

1. ***RESIDENT VISITS/ASSESSMENTS***

***(Rev. 10/6/14)***

For standardized Program administrative assessment and resident visit information and forms, see the Program Intranet. Available items relevant to administrative assessments and resident visits include:

* Administrative Assessment Form
* Assessment Quality Analysis
* Resident Visit Form
	1. **Facility Assignment**

Prior to the beginning of every federal fiscal year (October 1 – September 30), the District Ombudsman Manager should review the AHCA website (http://www.floridahealthfinder.gov/facilitylocator/facloc.aspx) for all active facilities (nursing homes, assisted living facilities, adult family care homes, and skilled nursing units) within the local council of the district to ensure that all facilities are included in the LTCOP Web Application. Once the LTCOP Web Application has been updated, the DOM should be prepared to assign facilities to ombudsmen to ensure completion of annual assessments, quarterly resident visitations, and to meet complaint investigation standards. The facility assignment list should be provided to ombudsmen at the October monthly council meeting. Any certified ombudsmen can enter any facility covered by the Program regardless of facility assignments. An assigned ombudsman should be notified by the local office of another ombudsman’s presence at the assigned ombudsman’s facilities.

AHCA’s Facility Closure List identifies facilities that have closed and should be reviewed by the DOM on a regular basis. If a facility closes, the DOM should alert the assigned ombudsman of the closure and mark the facility inactive in the LTCOP Web Application. If an ombudsman identifies that a facility has closed, the DOM should notify the local AHCA field office.

* 1. **Administrative Assessments**

An administrative assessment is a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.

All facilities licensed by AHCA under the Program’s jurisdiction as of October 1 should be assessed during the October 1-September 30 assessment year, unless the facility closes. Facilities licensed after October 1 do not require an annual assessment by the Program until

**RESIDENT VISITS/ASSESSMENTS**

the next fiscal year, but (depending on ability) the district may assess or visit the facility. A new facility opening after October 1 should be added to the LTCOP Web Application and complaint investigations must be accepted for ombudsman investigation at a new facility.

Assessment Techniques

A standard assessment form is to be used by ombudsman when conducting an assessment. A facility-specific cover sheet can be printed from the LTCOP Web Application under the reports tab (New Assessment). Information included on the exit page of the assessment should reflect the findings of the assessment and will be shared with the Administrator or designee orally by the ombudsman during the exit interview and in writing by the local office in the assessment letter generated by the LTCOP Web Application after the assessment has been approved by the DOM.

Assessment Entry in the LTCOP Web Application

Once an assessment has been approved by the district ombudsman manager, the assessment should be entered in the LTCOP Web Application. The DOM is ultimately responsible for the work product generated by the ombudsman.

* 1. **Resident Visits**

A resident visit is separate and distinct from an assessment or complaint. A few examples of resident visits include participation in resident or family council meetings, facility closures, or AHCA exit meetings. Active communication with residents is a required component of a resident visit. A resident visit allows ombudsman to monitor the condition of residents, provide information regarding the Ombudsman Program, and ensure resident access to an ombudsman.

Resident visits are required on a quarterly basis. The annual assessment counts as one of the quarterly visits. The quarters are identified as October through December, January through March, April through June and July through September. For reporting purposes, a visit must take place every quarter at each facility.

Visit Techniques

A visit form is available to assist ombudsmen with visit completion. An exit consultation is not required with the administrator or designee after a visit.

Visit Entry in LTCOP Web Application

Once a visit has occurred, the visit should be entered in the LTCOP Web Application. The DOM is ultimately responsible for the work product generated by the ombudsman.

**RESIDENT VISITS/ASSESSMENTS**

* 1. **Complaints Received During Assessments/Visits**

Any individual may bring a complaint to the ombudsman’s attention while an ombudsman is completing an assessment or visit. The ombudsman should obtain consent from the resident before discussing any concerns with facility staff. Once consent is obtained and documented (verbal or written), the ombudsman may be able to resolve the concern to the resident’s satisfaction before leaving the facility. The ombudsman must contact the district office to ensure complaint paperwork is generated and completed.

Standardized forms for Administrative Assessments and Resident Visits may be found on the Program’s intranet website.

**COMPLAINT INVESTIGATIONS**

## *COMPLAINT INVESTIGATIONS*

 ***(Rev. 10/6/14)***

For standardized Program complaint investigation information and forms, see the Program Intranet. Available items relevant to complaint investigations include:

* Complaint intake form
* Complaint codes
* Complaint form
* Consent form
	1. **Complaint Intake**

Ultimately, the Program’s objective during a complaint investigation is to achieve for the resident a satisfactory resolution that addresses the root of the problem(s) identified.

When a caller expresses an interest in filing a complaint within the Program’s jurisdiction, complete an Intake Form to take notes on the concern(s). A concern may be identified as a case with one or more complaints or a consultation. All complaints are tracked within the Program LTCOP Web Application. Consultations are only tracked for reporting purposes on the NORS report.

As defined by the National Ombudsman Resource Center:

* 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.
* A complaint is defined as a concern brought to, or initiated by, the ombudsman for investigation and action a) on behalf of one or more residents and b) relating to the health, safety, welfare or rights of a resident.
* A consultation is defined as providing information and assistance to an individual or a facility.

An individual contacting the local office to file a complaint (“complainant”) may do so in a variety of ways. A complaint may be received by telephone, email, fax, physical presence, ombudsman observation (during an assessment, visitation or complaint), or other means. Complaints can be received from many sources, including residents, family members, friends of residents, visitors to the facility, facility staff, other state agencies, outside caregivers, hospice, resident or family council members, or ombudsmen.

**COMPLAINT INVESTIGATIONS**

The most important part of the complaint intake process is listening. Gather information needed for completion of the intake form. The complainant should be empowered and educated in residents’ rights. Ask the complainant, “Have you spoken with anyone at the facility to have this issue resolved?” Let the caller know that an Ombudsman will be in touch with them within 7 calendar days if a case is generated. Additionally, the caller should be informed that when an ombudsman contacts them, the call may appear “restricted” or “blocked,” due to the ombudsman using their personal phones and the \*67 feature to block their number from release.

*We take all complaints, even if:*

* An attorney is involved.
* Another agency is involved.
* The resident has passed away (with consent from legal representative) and/or the issue may pertain to other residents in the facility. The DOM may contact the ROM for further direction as to what the Program can assist or advocate for on behalf of the deceased resident. (NOTE: POA, DPOA, and Healthcare Surrogate authority cease upon death.)

*We take all complaints, except:*

* Complaints against residents, unless the concern is due to facility failure to resolve resident-to-resident conflicts.
* Complaints regarding setting up income trusts for Medicaid Planning.
* Complaints requiring private legal advice. (Should refer the complainant to local Title IIIB Legal Services or Senior Legal Helpline).

Agency Referrals During Complaint Intake

After the complaint intake process has been completed, if any issues have been identified that warrant a referral to another agency, follow the procedures below:

* If an issue of abuse, neglect or exploitation is suspected during case intake, the DOM should use their discretion as to whether to refer the caller to the Adult Protective Services (APS) Abuse hotline (1-800-962-2873); or, to assist the caller in contacting APS via a 3-way conference call; or, to contact APS for the caller (only after conferring with the ROM or only in the event the resident lacks capacity to call themselves or lacks a legal representative that could call).
* If a regulatory violation is alleged against the facility during case intake, advise the caller that they may contact the Agency for Health Care Administration hotline (1-888-419-3456).
* If concerns are reported that should be investigated by additional agencies, such as the Department of Health, Code Enforcement, etc., refer the caller to the appropriate agency.

**COMPLAINT INVESTIGATIONS**

After advising the caller of other agency referrals, the District Office should proceed with the normal complaint process. Before placing any agency referrals, see Chapter 4(A) – Agency Interactions and Referrals for further information on the referral process.

* 1. **Complaint Coding**

Review the Complaint Codes and code each complaint appropriately. A case can have more than one code. Use only one category for each type of problem (i.e., do not check both A.3 Verbal Abuse and D.26 Dignity/Respect for the same staff behavior – determine which category is most appropriate to the particular problem). Additionally, if two problems fit under the same category, only one code should be used for the two problems (i.e., do not utilize two D.26 Dignity/Respect codes for separate issues of staff not wearing name tags and staff attitude concerns). The office staff must choose the one code which best fits the problem identified. If, during the investigation, additional concerns arise or the original code/complaint statement does not appear appropriate, a code may be added or changed to be more suitable to the concerns investigated.

* 1. **Complaint Entry Into the LTCOP Web Application**

Once the district office has received a complaint, the complaint should be entered in the LTCOP Web Application. A guide for data entry is available on the Program intranet.

Complaints should be assigned by contacting the ombudsman to confirm ability to investigate. Depending on the district, ombudsmen may be assigned to handle cases in a specific facility, or cases may be rotated among the volunteers taking into consideration

distance and particular issues that may need an ombudsman with matching skills.

Complaints cases should be sent to an ombudsman in a secure fashion. USPS mail, encrypted email, secure fax location, or personal delivery/pick-up may be used. Within 24 hours of case intake, a complaint case should be sent to the assigned ombudsman.

If there is difficulty assigning a case investigation, the DOM should make every effort to ensure that action is taken to initiate the investigation within 7 calendar days. If a case is not initiated within 7 calendar days, contact the ROM with the reason why there was a delay and include the reason in the case recording notes.

**COMPLAINT INVESTIGATIONS**

* 1. **Complaint Investigation Techniques**

A standard complaint form is generated by the LTCOP Web Application and is to be used by ombudsmen when conducting a complaint investigation. Complaint investigation

techniques are reviewed in the certification training program. Consent and confidentiality are the foundations of the Program, especially when dealing with complaint investigations. It is very important that we protect the residents that we are advocating for and ensure that they do not face retaliation for filing a complaint with the LTCOP or for voicing their concerns. Refer to the consent and confidentiality section of Chapter 4 for additional information.

* Consent
* Investigate
* Interviews within consent
* Resolve
* Initial exit interview
* Follow up
* Exit administrator
* Exit resident or legal representative as appropriate

Ombudsmen should be instructed to contact the District Office when questions or situations arise that need consultation or for decisions regarding consent. As an investigation progresses, additional complaint codes may need to be added to a complaint investigation. Cases may not be deleted from the LTCOP Web Application without ROM approval.

Relevant parties such as the resident and the resident’s legal representative (with resident consent), must be notified of investigation findings and proposed resolutions. The complainant, if not the resident or the resident’s legal representative, is not entitled to information about the investigation unless the resident or legal representative, as appropriate, consent to the disclosure of the confidential information.

Refer to the Ombudsman Program Intranet website for additional guidance for procedures of complaint investigations. A referral to outside agencies may occur at any point during a complaint investigation. Refer to Section 4 – Agency Referrals and Interactions for additional guidance.

**COMPLAINT INVESTIGATIONS**

* 1. **Complaint Investigation Completion**

The DOM should review the open case report from the LTCOP Web Application on a monthly basis to monitor cases nearing the 90 day deadline for case completion. The LTCOP is required to complete complaint investigations within 90 days, unless an extension to the deadline is granted due to extenuating circumstances. If the complaint investigation completion deadline is approaching, contact the ombudsman to inquire about the need for a possible extension beyond 90 days. A case investigation extension must be approved by the ROM.

The correct review of the database in regard to the 90 day timeframe should be a review of “investigations not concluded within 90 days” rather than “cases not closed within 90 days” of the intake date. Currently within the framework of the Florida Administrative Code, there is no time requirement within which a DOM must complete a review and approval of the completed case investigation for case closure. Using the database terminology, the 90 days should be measured from the Intake Date to the Date Completed and not to the Date Accepted.

Ombudsmen must be directed to return completed investigation documentation to the district office within 14 days of the final exit with the administrator. The documentation is

then reviewed by the DOM who is the official record keeper and is responsible for quality analysis. The case is accepted after being reviewed and approved by the DOM. A guide for data entry is described below.

**Case Investigation Data Entry**

Below is the current interpretation and explanation of the interaction between the Florida Administrative Code sections governing the LTCOP, the LTCOP Web Application, and the Complaint Form. This explanation contains a cross-reference of terminology between database input fields (“Database”); DOEA Form LTCOP-001, March 2010 (“Form”); and Florida Administrative Code requirements (Rule), if applicable. The explanation is in the sequential order in which a case investigation proceeds. To the extent any database, non-rule policy, or form contains requirements in conflict with the Florida Administrative Code, the requirements of the Florida Administrative Code will prevail and such other requirements will be interpreted so as to avoid conflict.

* **Intake Date (Database) / Intake Date (Form) / Case Open Date (Rule 58L-1.007(1)(b))**

The date of receipt of a complaint by a district office which is documented on an intake form. The intake date may also reflect the date the annual administrative assessment was conducted if a case is opened as a result of a complaint made

**COMPLAINT INVESTIGATIONS**

during the assessment; however an intake form is not completed as the assessment form serves this purpose.

* **Enter Date (Database)**

The date automatically generated by the database at the time the information from the intake form is entered into the database. If a case is opened as a result of a complaint made during the annual administrative assessment, the enter date may reflect a date that is several weeks after the intake date (the date when the assessment was conducted). This may occur because of a delay by the ombudsman in providing the assessment paperwork to the district office for data entry of the complaint generated from the assessment. The enter date does not trigger any regulatory compliance deadlines and applies only to database data entry.

* **Date Initiated (Database) / Initial Contact Date (Form) / Initiation Date (Rule 58L-1.007(2)(a))**

The date the ombudsman initiated the investigation by making contact with the complainant or resident. The initiation of the investigation must occur no later than 7 calendar days after the Intake Date, otherwise described above as the date of receipt of the complaint by the district office.

* **Date Completed (Database) / Investigation Completed and Date Completed Investigation (Form) / Investigation Conclusion (Rule 58L-1.007(2)(e))**

The date an ombudsman records that the case investigation is concluded after completing the case investigation form with appropriate disposition codes, conducting the exit interview with facility personnel, and contacting the resident or representative concerning disposition or resolution. Pursuant to Rule 1.007(2)(d), investigations conducted by an ombudsman must be completed, or concluded, within 90 calendar days of the Intake Date. If the ombudsman is unable to complete the investigation within this time period, under certain specified circumstances the ombudsman may request additional time within which to complete the investigation.

*Note:* The 90-day period and any extensions thereto, applies to the investigation activity of the ombudsman, and does not include time spent by the district ombudsman manager in performing a review and approval of the completed investigation.

* **Date Accepted (Database) / Date Closed by Council (Form) / Case Closed (Rule 58L-1.0011(1)(b) and 1.007(2)(f))**

The date the district ombudsman manager completes a quality review of the complaint investigation and approves the disposition or resolution.

**COMPLAINT INVESTIGATIONS**

Once a case is marked as accepted in the LTCOP Web Application; a letter is generated for the resident (when identified) and administrator from the Reports section of the LTCOP Web Application. The DOM will forward these letters within 14 days of the complaint investigation passing quality assurance. A copy of these letters should be maintained with the complaint investigation.

A facility may submit comments within 7 calendar days from the date on the summary letter to be added to the complaint record.

A copy of the administrator complaint letter may be sent to the local AHCA office. The DOM is responsible for contacting the local AHCA office to determine their desire to receive the letter.

Any standardized forms for Complaint Investigations may be found on the Program’s intranet website. Tools that may be useful for the DOM to consider related to Complaint Investigation include:

* National Ombudsman Resource Center training – coding, verified, resolutions.

**QUALITY ANALYSIS**

1. ***QUALITY ANALYSIS***

***(Rev. 10/6/14)***

For standardized Program quality analysis information and forms, see the Program Intranet. Available items relevant to quality assurance include:

# Assessment Quality Analysis

* Complaint QA

# The purpose of the quality analysis review process is to evaluate an ombudsman’s effectiveness in conducting advocacy work on behalf of residents through case investigations and administrative assessments. The results of the quality analysis review process will help to ensure representatives of the Long-Term Care Ombudsman Program have conducted advocacy work in accordance with the scope, authority, and statutory requirements of the program, while also identifying opportunities for education and training in systemic advocacy relating to the rights, health, safety, and welfare of long-term care residents.

* + 1. **Assessments**

For administrative assessments, the DOM must ensure that the ombudsman thoroughly documented resident comments and ombudsman observations across all assessment categories to ensure a complete and comprehensive assessment of the facility was conducted. Concerns marked on the assessment need to be properly addressed, and the ombudsman should accurately and appropriately document the issues and any follow-up actions that take place in an attempt to resolve such issues.

* + 1. **Complaint Investigations**

For case investigations, the DOM must ensure that an ombudsman’s documentation is accurate and succinct. A critical role of the quality analysis review process is to determine that the ombudsman verified a complaint or concern through proper investigative techniques, including comparing resident interviews and ombudsman observations with proper and accurate documentation. Verification of a complaint or concern should be based on facts, not on the opinions of the complainant, facility, or ombudsman. The objective of the quality analysis review process is to determine, from the ombudsman’s documentation, whether the ombudsman completed the case investigation through fact-finding rather than through arbitrary means. An ombudsman is always an advocate of the resident(s); however, the ombudsman should determine the validity of a complaint or concern by uncovering the facts surrounding the particular issue(s). These facts, combined with resident interviews and ombudsman observations, will lead the ombudsman to classify a complaint as “verified” or “not verified.” The DOM must ensure that the ombudsman correctly obtained, properly documented, and adequately adhered to consent and confidentiality requirements.

 **QUALITY ANALYSIS**

* + 1. **ROM Review**

Each quarter, the ROM shall review a sample of randomly selected cases and administrative assessments per local council to evaluate the integrity of the quality analysis review process. The ROM shall submit a report to the State Ombudsman that identifies gaps within district quality analysis and proposed training needs.

 **MONITORING**

 ***H. MONITORING***

**Monitoring Case Complaints**

The Deputy State Ombudsman for Field Operations provides prepared reports to each Regional Ombudsman Manager (ROM) at the beginning of each month to aid ROM’s in monitoring case status and address any concerns with the District staff. A report listing the unassigned cases is prepared to identify cases which lack documentation of who is assigned for follow up. A report identifying the number of days between ‘intake date’ and ‘initiation date’ as well as the number of days between ‘intake date’ and ‘completion date’. ROM’s are responsible to review reports to identify any cases requiring additional attention regarding timeliness and completeness. These measures are intended to increase timely completion of all phases of case file work.