Appendix 2

Program and Policy Manual

June 2018

Policies and Procedures

Missouri State Long-Term Care Ombudsman Program

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100.0 General Information

These policies address the manner in which the Missouri Division of Senior and Disability Services (DSDS) and the Missouri State Long-Term Care Ombudsman Office (Office) develop the State Long-Term Care Ombudsman Program (Program), monitor Host Agencies and Local Ombudsman Entities (LOEs), including local program's activities, files, records, and other information maintained by the Office.

These policies are established under the authority of the State Long-Term Care Ombudsman, in consultation with the DSDS, to carry out the Ombudsman program in accordance with the Older Americans Act and all relevant regulations, policies, and procedures.

The Program protects and improves the quality of care and quality of life for residents of Long-Term Care (LTC) Communities in Missouri through individual and systemic advocacy for and on behalf of residents, including representing the interests of residents before government agencies, reviewing and commenting on existing and proposed laws, responding to media requests, the promotion and cultivation of best practices within LTC services, and through the promotion of family and community involvement in LTC Communities.

The Program is a resident centered advocacy program. The resident is the program's client, regardless of the source of the complaint or request for service. The Ombudsman will make every reasonable effort to assist, empower, represent, and advocate on behalf of the resident.

101.0 Statutes & Regulations

The Missouri Long-Term Care Ombudsman Program (Program) is authorized by, and in accordance with, the federal Older Americans Act, 42 U.S.C. Section 3001 *et seq*.

Older Americans Act sections that govern the operation of the Office are contained in Public Law 109-365, Title VII, Chapter 2, Sections 711 to 713.

Federal regulations governing the Office are contained in 45 CFR Parts 1321, and 1324.

Missouri statutes concerning the establishment and operation of the Missouri State Long-Term Care Ombudsman Office are contained in Secs.192.2300-2315, RSMo.

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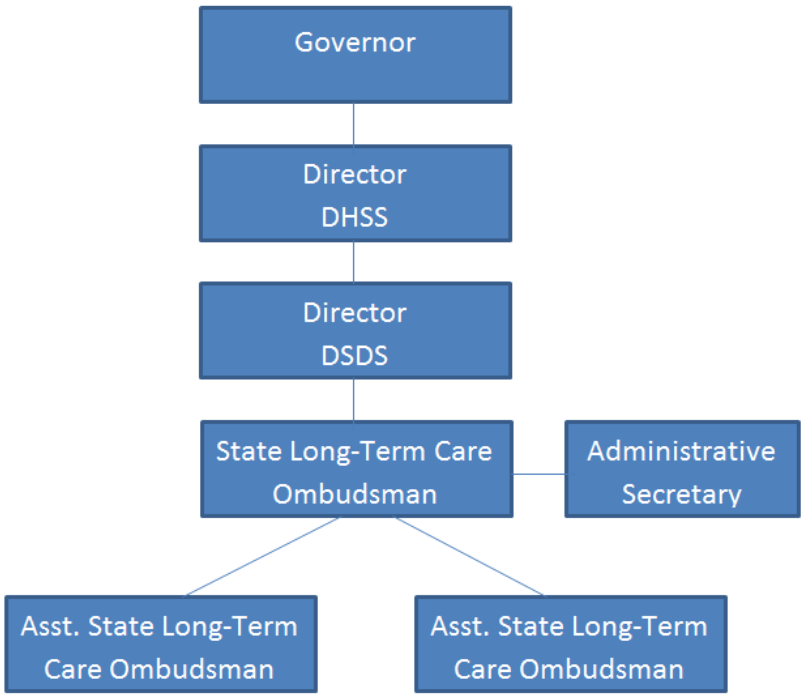
Missouri regulations governing the operation of the Office are contained in 19 CSR 15-4.060.

These policies and procedures govern the operations of the Program and establish the relationship and responsibilities of Area Agencies on Aging (AAA) and their contracted Local Ombudsman Entities (LOEs), where applicable, and the Missouri Division of Senior and Disability Services (DSDS), in relation to the Program.

102.0 Missouri Program Organization

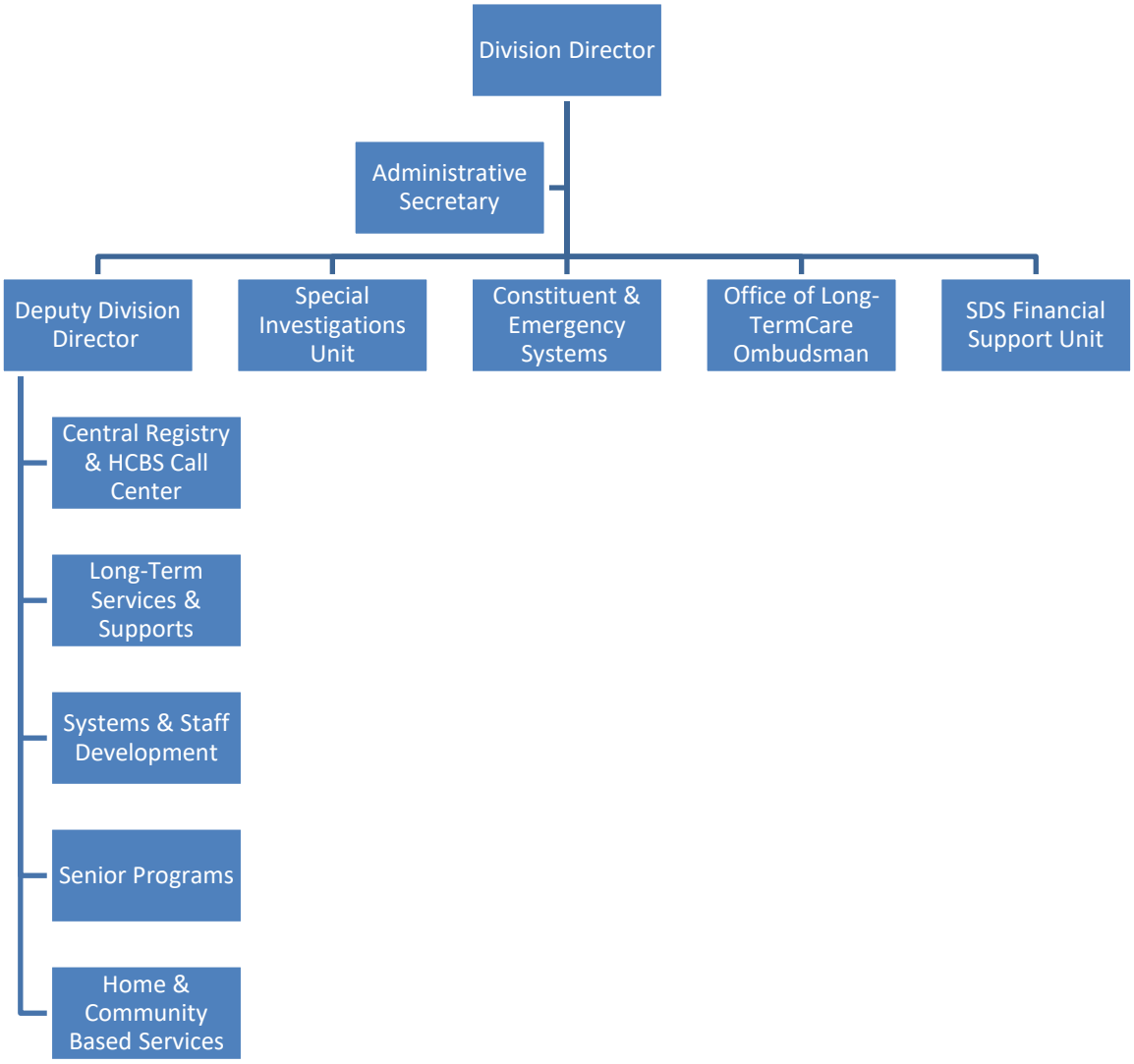
In accordance with the Older Americans Act, Missouri statute established the Office of the State Long-Term Care Ombudsman in the Missouri Department of Health and Senior Services (DHSS) within the Division of Senior and Disability Services (DSDS).

102.1 Organizational Structure – Overview



102.2 Organizational Structure - Division

Department of Health & Senior Services
Division of Senior & Disability Services



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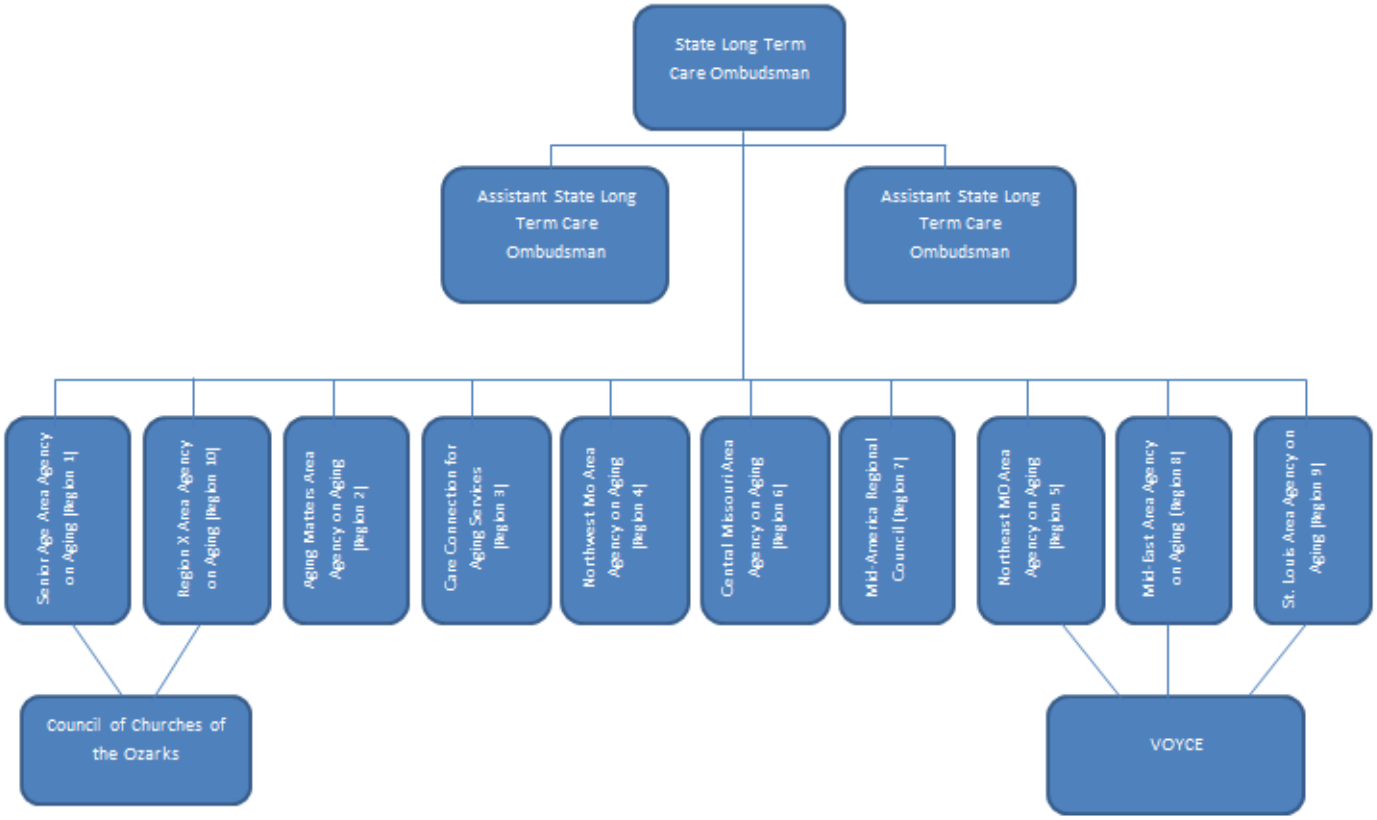
102.3 Organizational Structure

Local Ombudsman Entities (LOEs)



200.0 Definitions

1. “Act,” or “Older Americans Act,” the Older Americans Act of 1965, reauthorized most recently in 2016.

2. "Department", the Missouri Department of Health and Senior Services;

3. “Division” or “Agency,” The Division of Senior and Disability Services, within the Missouri Department of Health and Senior Services;

4. “Host Agency” means an Area Agency on Aging (AAA) in contract with the Office where the AAA contracts with another local agency to provide the direct

local program activities thus the local agency is the LOE and the AAA is the Host Agency. The Host Agency will be required to monitor the LOE and coordinate with the Ombudsman.

5. "Immediate family," pertaining to conflicts of interest as used in these policies, means a member of the household or a relative with whom there is a close personal or significant financial relationship including a spouse, parents, children, and siblings.

6. "Local Ombudsman Entity," (LOE) means an entity designated by the State Long-Term Care Ombudsman to assist in directly carrying out the duties and services of the Program. The LOE acts as the provider of the local Program and may be either the AAA in contract with the Office; or an agency in contract with the AAA where the AAA acts as a Host Agency. If the AAA performs the duties of the Program, then they are the LOE; if they contract with another agency for the direct services, the AAA is the Host Agency. Missouri law requires that the Department of Senior and Disability Services contracts with the AAAs to provide OAA program services. However, the AAA may choose to contract with a third party.

7. "Long-Term Care Community", (LTC Community) any facility licensed pursuant to chapter 198 and long-term care (LTC) communities connected with hospitals licensed pursuant to chapter 197;

8. "Office of the State Long-Term Care Ombudsman," (Office) as used in these policies, means the organizational unit which is headed by a State Long-Term Care Ombudsman.

9. "Representative of the Office of the State Long-Term Care Ombudsman", (Representative of the Office) as used in these policies, are the employees or Volunteers designated by the Ombudsman to fulfill the duties set forth in the Final Rule 1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by a Local Ombudsman Entity.

10. "Regional Ombudsman Coordinators", (ROCs) designated individuals working for, or under contract with, the area agencies on aging (AAA), and are so designated by and certified by the State Ombudsman as meeting the qualifications established by the Office, and who coordinate the regional activities of the Program under the direction of the Ombudsman.

11. “Regional Ombudsman Program Director”, (ROPD) This Regional Ombudsman Coordinator has extra duties outlined in their job description such as fiscal reporting and supervising other Program Representative in their region.

12. "Resident", any person who is receiving care or treatment in a long-term care community.

13. “Resident representative,” is any of the following:

    (a) An individual chosen by the resident (can be and is often an informal designation by the resident) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications.

    (b) A Legal representative who is a person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

    (c) The court appointed guardian or conservator of a resident.

14. “State Long-Term Care Ombudsman” or "Ombudsman", the state Ombudsman for long-term care community residents;

15. “Willful Interference” is the action or inaction taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in 45 CFR 1324.13 or the Ombudsman or a Representative of the Office from performing any of the duties set forth in 45 CFR 1324.19.

300.0 Establishment of the Missouri Office of the State Long-Term Care Ombudsman

The Missouri Division of Senior and Disability Services (DSDS) shall establish an Office of the State Long-Term Care Ombudsman (Office) which will operate a statewide Long-Term Care Ombudsman Program (Program) in accordance with the

Older Americans Act (Act), and applicable federal and state laws, rules and regulations.

The Office shall assure that all residents of Missouri LTC communities have access to the services of the program and that every area of the State has a designated Regional Program. The Office shall be headed by a State Long-Term Care Ombudsman (Ombudsman) who personally or with designees carries out the functions of the Office.

Regional Program services shall be delivered through contracted local entities and individuals designated by the Office and shall be operated through a contract with the Division and an Area Agency on Aging (AAA) or other nonprofit organization.

The DSDS shall:

A. Submit a State Plan on Aging pursuant to the Older Americans Act in order to receive an allotment under Title III and Title VII from the Administration for Community Living, Administration on Aging, U.S. Department of Health and Human Services.

B. The Office shall carry out the Program as a distinct entity, separately identifiable and located within or connected to the State agency.

C. Ensure that the program has sufficient authority and access to LTC communities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office of the Long-Term Care Ombudsman.

D. Determine that the policies and procedures related to the determinations of the Office must ensure that the Ombudsman, as head of the Office, shall be able to independently make determinations and establish policy positions of the Office, without necessarily representing the determinations or positions of the State agency or other agency in which the office is organizationally located regarding:

    1. Disclosure of information maintained by the Ombudsman program within the limitations set forth in section 712(d) of the Act;

2. Recommendations to changes in Federal, State, and local laws, regulations, policies, and actions pertaining to the health, safety, welfare, and rights of residents; and

3. Provision of information to public and private agencies, legislators, and media and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

E. Provide that the Office be headed by a full-time Ombudsman who meets the minimum qualifications set forth by 45 CFR 1324.11(d)(1)-(4) which states, "The State agency and other entity selecting the Ombudsman shall ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:

1. Long-term services and supports or other direct services for older persons or individuals with disabilities;

2. Consumer-oriented public policy advocacy;

3. Leadership and program management skills; and

4. Negotiation and problem resolution skills."

F. Determine the available funding levels, and ensure that federal requirements and reporting are met. The SLTC Ombudsman determines the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies and procedures governing the Ombudsman program.

G. Further interagency coordination through the establishment of working relationships with other state agencies involved in meeting the needs of residents of LTC communities.

H. Use funds made available and not supplant any funds that are expended under any federal or state law to carry out the program in accordance with Section 705(a)(4) of the OAA minimum funding requirements.

I. At a minimum, ensure that the Office shall have access to an attorney knowledgeable about the federal and state laws protecting the rights of residents and governing long-term care communities. Legal representation of the Ombudsman program or another Ombudsman who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

301.0 Employment of the State Long-Term Care Ombudsman

The Missouri State Long-Term Care Ombudsman Office (Office) is headed by a full-time State Long-Term Care Ombudsman (Ombudsman). The leadership and management of the Office, including the functions, responsibilities, and duties, are to constitute the entirety of the Ombudsman's work, as set forth in 45 CFR §1324.13 and §1324.19. No entity shall require or request the Ombudsman to be responsible for performing the work of non-Ombudsman services or programs except on a time-limited, intermittent basis.

The DSDS in hiring the State Long-Term Care Ombudsman shall utilize the Missouri Human Resources hiring practices following the policies and procedures defined in the Department's Administrative Manual. The Ombudsman position is a non-classified position in the state civil service system.

Minimum Qualifications

The Department of Health and Senior Services shall ensure the Ombudsman meets minimum qualifications as defined in 45 CFR 1324.11(d) including but not limited to:

- demonstrated expertise in long-term services and supports or other direct services for older persons or individuals with disabilities;
- consumer-oriented public policy advocacy;
- leadership and program management skills;
- negotiation and problem resolution skills; and
- graduation from an accredited college or university with a Bachelor's Degree in Human Services, Nursing, Social Work, Psychology, Long Term Care, Public or Business Administration, Gerontology, Education or a closely related field.

In accordance with Section 712(f) of the Older Americans Act, the individual employed as the Ombudsman must be free from conflicts of interest including not

having worked in or been employed by a LTC community within the previous twelve (12) months and/or not having any fiduciary relationship with a LTC community including ownership or employment of immediate family.

Under no circumstance shall the DSDS hire an Ombudsman who:

- has direct involvement in the licensing or certification of a LTC community;
- has an ownership or investment interest (represented by equity, debt, or other financial relationship) for themselves or immediate family member in a LTC community;
- has been employed by or participated in management of a LTC community within the previous twelve months; or
- receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a LTC Community.

302.0 Program Administration and Structure

The Missouri Long-Term Care Ombudsman Program is administered by the Office of the State Long-Term Care Ombudsman located in the Missouri Department of Health and Senior Services (DHSS) within the Division of Senior and Disability Services (DSDS).

The State Office of the Long-Term Care Ombudsman (Office), with the State Ombudsman as its head, provides the management, direction and programmatic oversight of all activities related to the Office.

Missouri law requires the DSDS to contract with Area Agencies on Aging (AAA) to operate the programs and services of the Older Americans Act (OAA), including the Long-Term Care Ombudsman Program services.

303.0 Designation of Regional Programs

All entities and individuals that perform ombudsman services must be designated by the State Ombudsman. Designation includes multi-step processes for both potential Local Ombudsman Entities (LOEs) and individuals.

Refusal to designate occurs prior to designation and stops the process. Refusal to designate is based on information received by the Ombudsman including, but not limited to, an un-remedied conflict of interest.

303.1 Designation of Local Ombudsman Entities (LOEs) and Host Agencies

The State Ombudsman shall have the authority to designate and refuse, suspend, or remove designation of LOEs and Representatives of the Office. This includes instances where an identified conflict of interest cannot be adequately removed or remedied, as well as situations in which the LOE fails to comply with the Office's policies and procedures.

The Ombudsman shall designate LOEs to provide Ombudsman services throughout Missouri. At least one Regional Ombudsman Coordinator (ROC) will be hired for each planning and service area (PSA).

303.1(a) Criteria for Designation as a LOE

The DSDS will enter into contracts with each PSA in order to provide Ombudsman services in a statewide manner.

In accordance with federal law 42 U.S.C. 3058g(a)(5)(C), in order to be eligible for designation by the SLTC Ombudsman as a Local Ombudsman Entity (LOE) or Host Agency, an organization must:

- Be a public or nonprofit entity;
- Not be an agency or organization responsible for licensing, or certifying long-term care services;
- Not be an association (or an affiliate of an association) of providers of long-term care or residential services for older persons
- Have no financial interest in a long-term care facility;

- Have demonstrated capability to carry out the responsibilities of the provider or host agency
- Have a clearly definable unit to function as the Regional Program
- At a minimum have at least one paid designated Regional Ombudsman
- Be free of conflicts of interest (as defined by 1324.21 and the OAA) and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
- Have no un-remedied conflict of interest; and
- Meet all applicable requirements of the Missouri DSDS and the Office.

The LOE, as contracted or otherwise arranged, must have the capacity and ability to administer the program in a manner compliant with both federal and state laws and regulations. This will include compliance with fiscal requirements as well as programmatic requirements including, addressing un-remedied conflicts of interest. The agency or entity must demonstrate commitment to the goals of the program by providing adequate support and resources.

Missouri law provides that the state Area Agencies on Aging are to be the contracted entities for Older Americans Act services. In order to determine the AAA as a LOE or Host Agency in the Ombudsman Program, the DSDS will follow the Missouri state contracting process. The Missouri contracting process shall include the following:

A. DSDS and the Ombudsman will provide written recommendation of program standards and criteria for providing services.

    1. Long-Term Care Ombudsman Program service components will include, but are not limited to:

        a. Identification, investigation and resolution of complaints on behalf of residents;

        b. Regular presence in long-term care communities;

        c. Consultation and community education;

        d. Issue advocacy;

        e. Support development of resident and family councils.

f. Shall set forth service activities for each fiscal year and meet or exceed any benchmark measures set by the Office.

2. A regional agency is designated by the State Ombudsman to house the Regional Program and assure the provision of Ombudsman services in the service area designated by a contract with the AAA.

3. Activities of the designated Regional programs shall be evaluated by the Office on a regular basis.

4. The LOE shall be responsible for the personnel management, but not the programmatic oversight of the Ombudsman Program services.

B. The AAA must provide documentation that the organization meets the program standards and criteria set forth by the contract. Valid documentation shall be determined by the Ombudsman.

C. If it is determined that the applying entity has an un-remedied conflict of interest, such entity may not be designated to be the LOE. Thus the Ombudsman will refuse to designate that entity.

303.1(b) Process for Designation of an AAA as a LOE or Host Agency

The Ombudsman is responsible for designating an AAA as an LOE based on the contracting process established by the Department.

Where the AAA meets all criteria and seeks to serve as the LOE, the designation shall occur as follows:

A. The AAA may be considered as the LOE where the Ombudsman determines that either:

1. The designation of the AAA as the LOE is necessary to assure an adequate supply of Ombudsman services;

2. The Ombudsman services are directly related to the AAA's administrative functions; or

3. The Ombudsman services can be provided more economically, and with comparable quality by the AAA.

303.2 Office Contracts with an AAA to be the LOE

A. The AAA will provide DSDS with information confirming the AAAs ability to meet the contract criteria and standards including:

   1. The goals and objectives of such entity in providing Program services;

   2. A description of how each Program component shall be met by such entity;

   3. The staffing plan for the LOE;

   4. A description of the resources of the entity which will be provided to assist in the operation of the Program; and

   5. A description of the recruitment of anticipated volunteers and the implementation of the Office training and supervision procedures.

B. The AAA shall forward to the Office copies of the completed information.

C. The State Ombudsman shall review and consider all submitted information to the DSDS. The State Ombudsman shall notify the DSDS director of its designation determination and shall notify the responding entities of the State Ombudsman decision.

D. In the event that submitted information is incomplete, the State Ombudsman shall request additional information from the AAA.

E. Upon designation by the Ombudsman, the DSDS shall enter into a contract with the AAA for the provision of Program services in the relevant service area. Such contract must:

   1. Specify the service area;

   2. Require the AAA to adhere to all applicable federal and state laws, regulations and policies; and

3. Provide that designation by the Ombudsman continues for the duration of the contract and subsequently renewed contracts within the period specified within the contract unless the AAA is de-designated or the contract is terminated for cause.

F. The execution date of the LTCO contract with the AAA to provide Program services shall be the start date plainly labeled on the executed contract between DSDS and the AAA.

G. Should the contract between the DSDS and the AAA to provide Program services not be renewed or be terminated for any reason, the DSDS shall:

1. Immediately notify the Ombudsman (within 48 hours);

2. Follow the steps to designate a new LOE (above) as soon as possible; and

3. Follow steps to provide continuation of Program services.

H. As of the effective date of these policies and procedures, any entity providing ombudsman services under an existing agreement with the Missouri DSDS is designated as a LOE for the period of the existing contract. Future contracts will be reviewed on an annual basis and reissued every year.

303.3 Designation of LOE, where the AAA contracts with a Local Agency

Where an AAA contracts with a local agency to be the LOE, the designation of the LOE shall occur as follows:

A. The AAA shall issue a request for proposal (RFP) developed by the AAA with the approval of the Office seeking an entity to provide Long-Term Care Ombudsman Program services within its service area.

B. The RFP shall follow the written recommendation required in Section 303.1(A)(1) of this manual for providing services. Long-Term Care Ombudsman Program service components will include but are not limited to:

1. Identification, investigation and resolution of complaints on behalf of residents;

2. Regular presence in long-term care communities;

3. Consultation and community education;

4. Issue advocacy;

5. Support development of resident and family councils.

6. Set service activities for each fiscal year; and

7. Meet or exceed any benchmark measures set by the Office.

8. Activities of the designated Regional programs shall be evaluated by the AAA and the Office on a regular basis.

9. The LOE agency shall be responsible for the personnel management, but not the programmatic oversight of the Ombudsman Program services.

C. The AAA must provide documentation that the local organization meets the program standards and criteria set forth by the RFP.

D. If it is determined that the applying entity has an un-remedied conflict of interest, such entity may not be selected to be the LOE. Thus the Ombudsman will refuse to designate that entity.

E. The AAA shall request, at a minimum:

1. As part of the RFP packet, the potential LOE will provide a document of assurance that the entity meets all criteria for designation as a LOE.

2. The goals and objectives of such entity in providing Program services;

3. A description of how each Program component shall be met by such entity;

4. The staffing plan for the LOE;

5. A description of the resources of the entity which will be provided to assist in the operation of the Program; and

6. A description of the recruitment of anticipated volunteers and the implementation of the Office training and supervision procedures.

F. The AAA shall forward to the Office copies of the completed RFP of all responding entities.

G. The AAA shall recommend an entity for designation as a LOE to the Office and shall provide the Office with information supporting its recommendation.

H. The State Ombudsman shall review and consider all RFPs submitted to the AAA and the recommendation of the AAA, and shall determine the entity most appropriate to be designated as the LOE for the service area.

I. If the State Ombudsman agrees with the AAA recommendation, the State Ombudsman shall notify the AAA of its designation determination within 30 days of receiving the AAA's recommendation. The State Ombudsman shall notify the Director of all designation decisions.

J. The AAA shall notify the responding entities of the State Ombudsman's designation decision within fifteen (15) days of receiving such notification. The AAA notification shall include notice of the right of every entity not chosen to appeal the State Ombudsman determination pursuant to the Department's procedures.

K. If the State Ombudsman does not agree with the AAA recommendation, the State Ombudsman will meet with the AAA to discuss the decision and attempt to reach an agreement.

L. If an agreement is reached, the State Ombudsman shall notify the AAA of its designation determination and the AAA shall notify the responding entities of the State Ombudsman decision.

M. In the event an agreement cannot be reached, the State Ombudsman will review a summary of the recommendation rationale. The Ombudsman will render a final designation decision. The AAA shall notify the responding entities of the Ombudsman's decision. The AAA notification shall include

notice of the right to appeal the designation decision pursuant to the procedures of the Office.

N. Upon designation by the Ombudsman, the AAA shall enter into a contract with the chosen agency for the provision of Program services in the relevant service area. Such contract must:

1. Specify the service area;

2. Require the chosen agency to adhere to all applicable federal and state laws, regulations and policies; and

3. Provide that designation by the Ombudsman continues for the duration of the contract and subsequently renewed contracts within the period specified within the RFP unless the chosen agency is de-designated or the contract is terminated for cause.

O. The execution date of the chosen agency's contract with the AAA to provide Program services shall be the start date plainly labeled on the executed contract between DSDS and the AAA.

P. Termination or voluntary removal of LOE:

1. Should the contract between the chosen LOE agency and the AAA to provide Program services not be renewed or be terminated for any reason, the AAA shall:

a. Immediately notify the Ombudsman (within 48 hours);

b. Follow the steps to designate a new LOE (above) as soon as possible; and

c. Follow steps to provide continuation of Program services.

303.4 De-Designation or Withdrawal of LOE

The Ombudsman has the authority to refuse to designate or de-designate an entity as a LOE for failure to meet the requirements of applicable federal and state laws, rules and regulations, and the Missouri State Long-Term Care Ombudsman Policies and Procedures Manual, including but not limited to the following:

1. Failure of the entity to continue to meet the criteria for designation;

2. Failure of the entity to disclose, seek to remedy, or actually remedy a conflict of interest;

3. Violation of Program confidentiality requirements by a person acting as an agent of the entity;

4. Failure of the entity to provide mandated Program services, including but not limited to, failure to perform enumerated responsibilities, failure to fill a vacant Ombudsman position within a reasonable time, and failure to perform Ombudsman services; or

5. Failure of the entity to comply with provisions of the grant or contract.

303.5 De-Designation of AAA as a LOE

Where an AAA serves as a LOE, the process to de-designate shall be as follows:

A. The Ombudsman shall send written notice of the intent to de-designate on a specified date to the AAA. The notice shall include the reasons for withdrawal of designation, effective date of decision, and notice of appeal procedures of the DSDS.

B. In the case of suspension, indicate the circumstances under which the suspension will end or be reconsidered. Suspension may occur, but is not limited to, when an LOE is under the appeal process or is in the process of coming into compliance with reporting or conflict of interest.

C. Withdrawal of designation of the AAA as a LOE shall not become effective until all appeals are exhausted.

D. The Appeals process is as follows:

The LOE receives notice from the Ombudsman, and the LOE may:

1. Request further review of the decision by the Ombudsman.

2. The LOE may provide additional information pertinent to the decision.

3. Upon review, final decision by the Ombudsman stands.

E. The AAA and the Ombudsman shall provide for the continuation of Ombudsman services until designation of another entity is effective.

F. DSDS will terminate the portion of the contract between the AAA and the DSDS which provides for Ombudsman Program services.

303.6 De-Designation of a LOE in contract with AAA

Where an AAA contracts with a LOE agency, the process to de-designate the LOE shall be as follows:

A. The Ombudsman shall send notice of the intent to de-designate on a specified date to the AAA and the LOE.

B. The notice shall include the reasons for withdrawal of designation and notice of appeal procedures of the DSDS.

C. In the case of a suspension, indicate the circumstances under which the suspension will end or be reconsidered.

D. Reconsideration may occur where the LOE is in the process of coming into compliance, for example, when coming into compliance with reporting or conflict of interest.

E. The Appeals process shall be as follows:

The LOE receives notice from the Ombudsman the LOE may request:

1. Request further review of decision by the Ombudsman at the request of the ROC or AAA Director. DSDS director may hear appeal and provide recommendation but Ombudsman has final decision.

2. The LOE may provide additional information pertinent to the decision at the request of the ROC or AAA Director.

3. Upon review, final decision by the Ombudsman stands.

If de-designation stands:

F. The AAA and the Ombudsman shall provide for the continuation of Ombudsman services until designation of another entity is effective.

1. Withdrawal of designation of a provider agency shall not become effective until all appeals are exhausted.

2. The AAA shall terminate its contract for Program services with the provider agency.

303.7 Voluntary withdrawal of a LOE

A LOE may voluntarily relinquish its designation by providing notice to the Ombudsman and to the AAA (where appropriate) in the relevant service area. Such notice shall be provided sixty days (60) days in advance of the date of the relinquishment of designation.

303.8 Continuation of Ombudsman services

Where a LOE is in the process of appealing its de-designation or has relinquished designation or the designation is suspended:

A. The AAA, if applicable, and the Ombudsman shall arrange for the provision of Program services until a new LOE is designated;

B. The LOE shall surrender intact to the Ombudsman, or the Ombudsman designee, all Program case records, documentation of all Program activities, access to computer systems, and complaint processing as required by the Ombudsman Program reporting system and identification cards of all representatives of the Program associated with the LOE or provider agency;

C. The LOE shall, at the discretion of DSDS and consistent with federal and state requirements, surrender any equipment purchased with funds designated for Program services.

304.0 Designation of Individuals as Representatives of the Office

304.1 General Employment/Appointment

The Agency in which the Office is organizationally located and Local Ombudsman Entities (LOEs) must not have personnel policies or procedures which prohibit the Representatives of the Office from performing the functions, duties and responsibilities of the Program as set forth in 45 CFR 1324.13 and section 712 of the Older Americans Act. This does not prohibit the agency from requiring the Ombudsman, or other Representatives of the Office, including Volunteers, from adhering to the personnel policies of the entity.

The State LTCO Office staff persons are hired by and work at the direction of the Ombudsman. State LTCO Office staff persons are employees of the state and hold classified positions. State LTCO Office staff receives training, certification and designation as LTC Ombudsman Representatives of the Office. The Ombudsman provides statewide leadership for the Program including, but not limited to, directing activities of the LTCO Office staff, Regional Ombudsman Program Directors (ROPDs), Regional Ombudsman Coordinators (ROCs), and Volunteers in order to fulfill the functions of the Office set forth in the Act.

304.2 Employment of Regional Ombudsman Program Directors (ROPDs) and Regional Ombudsman Coordinators (ROCs) by AAA or LOE

Designated LOEs will develop employment procedures for recruitment of potential candidates as ROPDs and ROCs with the review and approval of the Ombudsman.

LOE's provide personnel management but not programmatic management. LOE's are to provide personnel oversight, as well as, to provide fiscal and administrative support for RPODs and ROCs. ROPDs and ROCs are therefore employed by the LOE but are program representatives of the Office and receive policy and program supervision from the Office.

304.3 Recruitment and Background Checks for LOE Employees

The LOE will recruit for positions as soon as notice is given or the position is vacated. Recruitment will follow the equal opportunity employing practices of the LOE.

All applicants must be screened for conflicts of interest and pass the Family Care Safety Registry background check.

In accordance with the 45 CFR 1324, LOE's will coordinate with the Ombudsman in the employment or appointment of Representatives of the Office by sharing information about applicants for the ROCs position with the Ombudsman for his/her input and approval.

In large service areas, it may be necessary for the LOE to define additional responsibilities in employment for one individual (ROC) position to serve as Regional Ombudsman Program Director (ROPD). The employment of this individual will meet requirements in an expanded job description.

For all individuals, the employment process shall be as follows:

Individuals selected to serve as Representatives of the Office must:

- Meet the minimum qualifications for the applicable Program position required by the Office. Job descriptions and qualifications will be established by the Ombudsman.
- Be free of un-remedied conflicts of interest;
- Successfully pass Family Care Safety Registry background checks;
- Have demonstrated capability to carry out the responsibilities of a Representative of the Office;
- Complete the initial training set forth by the Ombudsman;
- Agree to conform to the moral and ethical requirements of the Office (See Appendix 1); and
- Agree to complete required hours of continuing education training.

A. A successful candidate must have education and/or experience to perform the duties of the Office to which they have been chosen.

B. A person employed as a Regional Ombudsman Coordinator (ROC) should have the same minimum qualifications as laid out in the Federal regulation for the State Ombudsman, which should include:

1. experience in long-term services and supports or other direct services for older persons or individuals with disabilities;

2. consumer-oriented public policy advocacy;

3. leadership and program management skills;

4. negotiation and problem resolution skills;

5. should not have been employed by a long-term care community in the previous 12 months; and

6. having no un-remedied conflicts of interest.

C. The LOE will share applicant information with the Ombudsman for his/her input and approval.

1. The Ombudsman should review at least the top three potential employees.

2. After review, the Ombudsman shall make recommendation for employment to the LOE.

3. The Ombudsman shall have final approval of the potential ROC candidate.

4. The Ombudsman shall inform the AAA of his/her decision.

D. The LOE will inform the Office in writing of the hiring or appointment of a ROC within two (2) business days following acceptance of an employment offer from the LOE.

E. When a ROC has resigned, the LOE will notify the State Office in writing (via email) within one (1) business day informing them of the last day of employment.

F. When a ROC has been terminated, the local Ombudsman entity shall inform the Office in writing (via email) within one (1) business day of the action. Any disciplinary action should be shared with the Ombudsman as it occurs.

No Representative of the Office shall investigate any complaint unless he/she has completed the required initial training, been screened for potential conflicts of interest, and is designated. A designated Ombudsman is authorized to provide services anywhere in the State only with the consent of the State Ombudsman or the Regional Ombudsman in the respective area.

304.4 Recruitment and Background Checks for Volunteers

The Program will recruit volunteers on an ongoing basis. All potential volunteers must fill out an application, be screened for conflict of interest, complete an interview, and pass a Family Care Safety Registry background check.

A. The ROC in each area should advertise for volunteers using various methods such as articles in newspapers, radio shows, posters in community gathering places, etc.

B. The Office requires all volunteer applicants to fill out a volunteer application and a conflict of interest form. (See Appendix 5)

C. The ROC will request a Family Care Safety Registry (FCSR) check to identify any criminal or civil cases that indicate a concern about the individual's conduct before scheduling an interview.

D. The ROC will interview the volunteer in person to explain the program and the volunteer duties and responsibilities, identify the individual's reason for wanting to volunteer, and detect any issues/behaviors that would preclude a successful volunteer experience. The ROCs may screen out potential volunteers who do not appear to be a good fit for the program due to behavior, attitude, or past history (i.e. due to incomplete or negative reference checks, not conforming to the Code of Ethics).

E. At any time during training, the volunteer, the ROC, or the Ombudsman (or designee) may decide that a volunteer is not a good fit for the Program. This type of decision will immediately stop the volunteer training and cause the Ombudsman to refuse to designate that individual. The Office will notify the volunteer in writing.

305.00 Training and Certification

305.1 Training of State Long-Term Care Ombudsman

The State Ombudsman will annually attend national training provided by the National Ombudsman Resource Center (NORC) and the Administration on Aging in order to remain current on Program requirements. Funding for annual training of the State Ombudsman is provided as part of the Title VII funding from the Administration on Aging.

Based on training provided by NORC and additional information related to resident rights and care, the Ombudsman will develop materials for training the Representatives of the Office including Volunteers.

305.2 General Training of the Representatives of the Office

In order to provide standard training across the State of Missouri, the Office will provide a training manual for all LOEs and Individuals. All Representatives of the Office shall undergo 24 hours of training during their first two (2) months with the program using the training materials developed by the State LTCO Office. The requirement to use the training manual does not preclude any local program from developing and using additional materials of its own creation. However, additional materials developed and used in local programs must be pre-approved for use by the State Ombudsman.

The Ombudsman will ensure that all Representatives of the Office meet the Program training requirements under the OAA. All Representatives of the Office are prohibited from carrying out the duties of the Office until they have completed the required Level 1 initial sixteen (16) hours of training and the Level 1 Mentoring eight (8) hours of field training within the first two (2) months of connection to the Program.

All Representatives of the Office whether employees or volunteers will complete the Program training curriculum which follows recommendations made by the National Ombudsman Resource Center for Program training best practices. The curriculum will include a minimum of 24 hours of coursework and field training within their first two (2) months with the program.

305.2(a) Training of Regional Ombudsman Coordinators (ROCs) and Regional Ombudsman Program Directors (ROPDs)

The Ombudsman will ensure that all Representatives of the Office meet the Program training requirements under the Act. All Representatives of the Office are prohibited from carrying out the duties of the Office until they have completed the required Level 1 initial training, which has been verified by a ROPD (where applicable), ROC, and by the Ombudsman.

Full ROC training includes two sections, Level 1-initial training and mentoring and Level 2-additional information training. Level 2 training should be completed within 6 (six) months of employment or as soon as feasible when training is offered.

The Office will ensure opportunities for training are provided for the Ombudsman and Representatives of the Office in order to maintain expertise to serve as effective advocates for residents of LTC communities.

Regional Ombudsman Coordinator Training Requirements:

All Representatives of the Office must complete Level I training within two (2) months of the date of employment.

The State Ombudsman certifies individuals as Representatives of the Office after they have completed the initial Level 1 training and met the other requirements including study of training material, passing the background check, and having no un-remedied conflict of interest, Certification is a multi-step process which includes application, background check, training, and request for certification. After certification, the individual can be recommended for designation. The State Ombudsman will determine Designation.

In order to be recommended for certification, an individual must complete Level I Training and Level 1 Mentoring for initial certification. In addition, Representatives of the Office must meet the training requirements as follows:

Level I Training includes but is not limited to:

A. Level I Training: The ROC will complete 16 hours initial training curriculum which includes at least these 4 parts:
   1. Overview of the Long-Term Care Ombudsman Program;
   2. The Aging Process;

3. Resident Rights; and
4. LTC Community Visits and Case Resolution.

B. Level 1 Mentoring (Shadowing): After completion of the classroom curriculum, the new employee will complete field training of at least eight (8) hours of supervised long-term care community visits with a ROC. The final visit will be led by the new employee to demonstrate competence of Program skills. Field training should also include attendance at both a resident and a family council meeting, if possible.

C. New ROCs will schedule an appointment with the Ombudsman to spend a day going through an overview of the Program.

D. The new employee will meet individual training goals during the first two (2) months of employment. These goals will include at a minimum:

1. Completion of the NORC online Program training. Completed tests/reviews will be provided to the Ombudsman or his/her designee.

2. Completion of the NORS training curriculum. Completed tests/reviews will be reviewed by the Ombudsman or his/her designee including training on the use of the Missouri Ombudsman Electronic Reporting System with the Ombudsman or designee.

3. Review of specific areas of the NORC website to be determined by the Ombudsman.

4. Review of the Program policies.

5. Review of the LOE's procedures for completing paperwork for travel, timesheets, mileage, time management, LTC community visits, intakes, and requesting IT support with the Ombudsman or designee.

6. Designation of ROCs will occur after completion of Level 1 training and certification; with the understanding that Level 2 training will be completed before six (6) months have elapsed after start date or as soon as feasible when training is offered.

Level 2 Training should be completed within six (6) months of employment or as soon as is feasible when Level 2 training is offered.

Level 2 Training may include, but is not limited to, any or all of the following, depending on the experience of the new employee.

A. List of agencies to review in order to :

    1. learn about resources,

    2. referrals, and

    3. develop networks;

B. Review programs and training for agencies and individuals working with dementia, falls prevention, elder abuse, and other resident issues determined by the Ombudsman.

C. Review of federal and state laws and regulations relating to long-term care as determined by the Office.

D. Additional information as determined by the Ombudsman.

305.2(b) Training of Volunteers as Representative of the Office

In order to provide consistent training statewide, the Volunteer training manual will be furnished by the Office to the ROCs, as needed. Additional materials developed by the ROCs will be pre-approved by the Ombudsman.

A. Level I Training: A designated ROC will teach the 16 hour initial training curriculum which includes 4 parts:

    1. Overview of the Long-Term Care Ombudsman program;
    2. The Aging Process;
    3. Resident Rights; and
    4. LTC Community Visits and Case Resolution.

B. Level 1 Mentoring (Shadowing)After completion of the classroom curriculum, eight (8) hours of field training (shadowing) will be completed by the volunteer under the supervision of the ROC responsible for the LTC community to which the volunteer has been assigned. The final visit will be led by the volunteer to demonstrate competence of Program skills. The ROC or volunteer may request additional visits be completed.

C. Volunteer training will include the process for Volunteer reporting and additional information as needed.

D. Volunteers will be expected to complete Level 2 training after certification and before six (6) months have elapsed after start date or as feasible when training is offered.

305.3 Continuing Education for Representatives of the Office

305.3(a) Continuing Education Training for ROCs and State Office Staff

A. All ROCs will participate in at least 12 hours annually of continuing education. Continuing education for ROCs will be provided by the Ombudsman and Office staff including:

1. regular conference calls scheduled by the Ombudsman; and

2. two (2) face-to-face meetings scheduled by the Ombudsman with all staff annually.

3. A third face-to-face continuing education opportunity will occur in years when there is a volunteer training conference. ROC continuing education training will be added to the volunteer training conference.

B. Time sensitive and immediate continuing education information will be provided by the Office via electronic updates, as needed.

305.3 (b) Continuing Education for Volunteers

A. Volunteers will participate in at least eight (8) hours continuing education trainings annually provided by a ROC. The Ombudsman will determine material for all or part of the continuing education trainings in order to provide consistent statewide education.

B. Continuing education materials will be furnished by the Office. Additional LOE created materials must be pre-approved by the Ombudsman.

C. Continuing education opportunities may be provided by face-to-face meetings, referral to electronic informational material, or volunteer conferences.

D. Continuing education topics may include (but are not limited to) nursing home laws and regulations, possible referral agencies, and networks.

306.0 Designation of an Individual as a Representative of the Office (including State Staff Ombudsman, Regional Ombudsman Coordinator, (ROC), Regional Ombudsman Program Director (ROPD), or Volunteer Ombudsman)

After an individual meets the basic requirements and completes the specified training required for a Staff Ombudsman, ROC, or Volunteer, the individual will be considered certified and ready for designation. The LOE Director will request designation for a ROC and the appropriate ROC will request designation of a Volunteer by the Ombudsman.

An individual is considered certified after completion of the initial training (Level 1, passing background checks, and having no un-remedied conflicts of interest. Designation is required to perform Program services and must be given by the Ombudsman.

The designation request should include the following:

A. Resume of individual for Staff Ombudsman position, ROC position, or application of Volunteer;

B. Confirmation that the individual has completed Level 1 required training and mentoring;

C. Confirmation that the individual has no un-remedied conflicts of interest. Conflicts of interest that are identified during hiring or application must be remedied before an individual's starting date of employment;

D. Documentation that the individual has successfully passed background checks.

Upon approval of Designation, the Ombudsman notifies the LOE Director and the ROC when appropriate. The Office sends the individual the designation certificate and the required form of identification (ID Badge) to officially designate that person as a Representative of the Office.

The Ombudsman designates individuals as Representatives of the Office to participate in the Program and to represent the Office. Individuals employed by the Office, AAA, or LOE must be designated by the Ombudsman. Volunteers must also be designated.

307.0 Refusal to Designate an Individual as a Representative of the Office

The Ombudsman may refuse to designate an individual as a Representative of the Office. Certification and designation are at the discretion of the Ombudsman. The Ombudsman will take into consideration the recommendations of the AAA or LOE.

Possible reasons for refusing to designate an ROC or volunteer are:

1. Recommendation of LOE Director or ROC in the case of a volunteer's behavior, attitude, personnel matters, or past history (i.e. conforming to the Code of Ethics);

2. Failure of the individual to meet the criteria for designation;

3. Existence of a conflict of interest that has not been remedied;

4. Violation of confidentiality requirements (i.e. while shadowing other designated Office of Representatives);

5. Failure to successfully pass the specified background check.

308.0 Suspension of Designation of an Individual as a Representative of the Office

The Ombudsman may suspend Designation of a Representative of the Office including Volunteers. Suspension can only be done by the Ombudsman but could come at the recommendation of the AAA or LOE. Suspension can occur in instances where it is determined that the individual can retain their position if remedial action occurs. Remedial action is determined by the Ombudsman.

The Ombudsman would make a determination for Suspension after receiving information from persons inside or outside of the Office regarding misconduct of a Representative of the Office.

Possible reasons for suspension are:

1. Existence of an un-remedied conflict of interest where a process is in progress to remedy same.
2. Failure to meet service requirements for the position i.e. not visiting assigned facility.
3. Having a grievance in process.
4. Based on personnel matters as identified by the LOE.

309.0 De-Designation of Individual as a Representative of the Office

The Ombudsman has the authority to suspend or withdraw designation of an individual as a Representative of the Office.

The Ombudsman shall de-designate a Representative of the Office for the following reasons:

- Voluntary separation from Office (moved, unable to volunteer any longer, etc.);
- Has a conflict of interest that cannot be adequately removed or remedied;
- Deliberate failure of the individual to disclose any conflict of interest;
- Violation of confidentiality requirements;
- Falsifying records or providing false information;
- Violation of the Ombudsman code of ethics (see Appendix I);
- Failure to follow Program policies and procedures;
- Refusal to follow the direction of Ombudsman or designee;

- Failure to act in accordance with applicable federal and state laws, regulations and policies; or
- Annual performance review shows failure to satisfactorily perform duties of the Office including a volunteer's failure to make monthly visits or complete monthly reports.

The process for de-designation includes:

A. For employee voluntary de-designation, the Ombudsman shall follow the policies and procedures of the SLTCO.

B. For involuntary de-designation situations, the Ombudsman or ROC shall consider remedial actions which could be taken to avoid the de-designation. Remedial actions to avoid de-designation can include retraining of individual, additional supervision, pairing individual with a mentor, and weekly meeting with the ROC for further evaluations.

C. The Ombudsman or ROC shall provide written notice of the decision to de-designate which shall include:

1. Specific reasons for de-designation;

2. Effective date of the decision;

3. A copy of the Program appeals procedure; and

4. The Ombudsman shall follow the policies and procedures of the Office.

D. Prior to suspending designation or withdrawing designation for an individual as a Representative of the Office, the Ombudsman shall consult with the relevant AAA and the LOE to consider remedial actions which could be taken to avoid the, suspension of designation, or the withdrawal of designation.

E. The Ombudsman shall provide written notice of the decision to suspend designation, or withdraw designation of an individual as a Representative of the Office to the LOE, the AAA if applicable, and the Director of DSDS. The written notice shall:

a. Specify the reasons for and effective date of the decision; and

b. In the case of a suspension, indicate the circumstances under which the suspension will end or be reconsidered.

F. The Appeals process is as follows:

1. The LOE or Individual Representative of the Office receives notice from the Ombudsman.

2. The LOE may request further review of decision by the Ombudsman at the request of the Representative of the Office.

3. The LOE may provide additional information pertinent to the decision at the request of the Representative of the Office.

4. Upon review, final decision by Ombudsman stands.

If suspension or de-designation stands:

G. The AAA and the Ombudsman shall provide for the continuation of Ombudsman services until designation of another individual is effective.

H. Specify the reasons for and effective date of the decision.

I. The LOE shall promptly notify the administration of LTC communities which had been regularly visited by such individual of the, suspension of designation, or withdrawal of designation.

J. If the decision to, suspend designation, or withdraw designation of an individual as a Representative of the Office results in the absence of Ombudsman Program services in the relevant service area, the LOE and the Ombudsman shall arrange for the provision of Program services until a Representative of the Office is designated.

K. After de-designation or suspension of a Representative of the Office, the ROC or designee will:

a. Recover name tags from employee;
b. Recover name badge from volunteer;
c. Remove computer access;

d. Recover any hard copy records; and
e. Recover any property used in performance of Ombudsman Program services that belongs to the Office.

L. The ROC or designee shall notify the LTC community contact where the Representative of the Office was responsible for visiting.

400.0 Functions and Responsibilities

401.0 Responsibilities of DSDS related to the Program

401.1 Funding

The state agency shall provide funding for the statewide Program in accordance with the Act and through application of a statewide allocation formula approved by the Ombudsman.

The state agency will provide administrative support for the personnel, fiscal, contractual, data, and budgetary management, including administration of contracts for the Program between the DSDS and the AAA's.

401.2 Legal Counsel

The DSDS ensures that the legal counsel for the Department of Health and Senior Services is available to the Office for consultation and assistance with legal matters, including, but not limited to, the production of memoranda of understanding with other entities.

A. The Ombudsman and Representatives of the Office shall have access to adequate legal counsel to support Ombudsman activities. Consultation and assistance will be arranged by the Office.

B. The Ombudsman and Representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman or ROC shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

C. Per RSMo 192.2315, a Representative of the Office shall:

1. Not be held liable for good faith performance of his or her official duties under the provisions of sections 192.2300 to 192.2315

2. Be immune from suit for the good faith performance of such duties.

3. Be considered a state employee under section 105.711.

4. Contact the Ombudsman when needing legal counsel in order to access the appropriate level of legal representation.

D. The Ombudsman may consult with the DSDS General Counsel or the State Office of the Attorney General about legal action or threatened legal action against a Representative of the Office.

E. No reprisal or retaliatory action may be taken against any resident or employee of a long-term care community for any communication made or information given to the Office. Representatives of the Office will contact the Ombudsman when seeking legal advice regarding issues initiated by or on behalf of residents.

F. Any person who knowingly or willfully violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

The Ombudsman and Representatives of the Office shall have access to adequate legal counsel to support Ombudsman activities.

401.3 Supervision and Management of Ombudsman and State Office Staff

DSDS shall provide personnel supervision and management for the Ombudsman and Representatives of the Office who are employees of DSDS. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

401.4 DSDS Monitoring of Ombudsman Program

DSDS shall provide monitoring, as required by 45 CFR 1321.11(b), including but not limited to fiscal monitoring, where the Office and/or Local Ombudsman Entity (LOE) is organizationally located within an agency under contract or other arrangement with the State agency.

Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in 45 CFR 1324.13 and 45 CFR 1324.19. The State agency may make reasonable requests of reports, including aggregated data regarding Ombudsman program activities using a monitoring and assessment tool developed by the Ombudsman.

402.0 Functions and Responsibilities of the State Long-Term Care Ombudsman

The Ombudsman is head of a unified, statewide program. The Ombudsman provides leadership and management of the statewide Program. In accordance with federal and state requirements, the Ombudsman establishes policies and procedures for administration of the Program and shall require Representatives of the Office to fulfill the program's duties in accordance with those policies and procedures.

The State Ombudsman shall:

A. Determine designation, and refusal, suspension, or removal of designation, of Regional Ombudsman Programs. Notwithstanding the grievance process, the State Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a Regional Ombudsman Program.

B. The Ombudsman will ensure adequate training of all Representatives of the Office by establishing procedures for training, certification, and continuing education.

C. Under the direction of the Ombudsman, the Representatives of the Office shall identify, investigate and resolve complaints that are received through the program, by or about residents, or relating to incidents that may adversely affect residents that are initiated or propagated by providers, public agencies or health and social service agencies.

D. The Ombudsman through the Representatives of the Office shall ensure that services are provided to protect the health, safety, welfare and rights of residents, as well as informing residents about how to obtain the services of the Program.

E. The Ombudsman or designee shall monitor the performance of all Representative of the Office to ensure they carry out the duties of the Office, including supervision of Office staff and investigation of allegations of misconduct of Representatives of the Office.

F. The Ombudsman or designee shall be responsible for monitoring the files, records and other information maintained by the Program to ensure the quality and timeliness of data. Neither the Ombudsman nor designee shall disclose identifying information of any complainant or LTC community resident to individuals outside the Program. The Ombudsman shall have the sole authority to make determinations concerning the disclosure of such information per 45 CFR 1324.11(e)(3).

G. As required in 45 CFR 1324.13 (a)(5), the Ombudsman shall represent the interests of residents before governmental agencies and provide leadership in systems advocacy as required to support their interests, as outlined in the Systems Advocacy section of these policies.

H. The Ombudsman will provide direction to the Representatives of the Office and LOEs.

I. The Ombudsman personally and through Representatives of the Office will promote, and provide technical support for the development of, and provide ongoing support as requested for resident and family councils to protect the well-being and rights of residents.

J. The Ombudsman will support other programs and initiatives that support the health, safety, welfare and rights of residents by leading or participating in community task forces, work groups, and stakeholder groups.

K. The Ombudsman shall review Program policies and procedures at least every 3 years; or more often if needed to accommodate change.

403.0 Responsibilities of LOE related to the Program

The LOE shall be responsible for the personnel management, but not the programmatic oversight, of Representatives, including employee and volunteer representatives, of the Office.

The LOE shall not have personnel policies or practices which prohibit the Representatives of the Office from performing the duties, or from adhering to the access, confidentiality, and disclosure requirements of section 712 of the Act, as implemented through 45 CFR 1324.17 and the policies and procedures of the Office.

Policies, procedures and practices, including personnel management practices of the LOE, which the Ombudsman determines conflict with the laws or policies governing the Program shall be sufficient grounds for the refusal, suspension, or removal of the designation of the LOE by the Ombudsman.

Nothing in this provision shall prohibit the LOE from requiring that the representatives of the Office adhere to the personnel policies and procedures of the LOE which are otherwise lawful.

404.0 Responsibilities and Duties of the Representatives of the Office

Representatives of the Office will have the following responsibilities:

- To identify, investigate and resolve complaints;
- To provide services to protect residents and their interests;
- To provide timely access to Program services;
- To review laws and regulations;
- To provide technical support to resident and family councils; and
- To facilitate the public's ability to comment on laws and regulation

404.1 Visits to LTC Communities

Representatives of the Office shall provide a regular presence in LTC communities in order for residents to have access to Program services. Regular visits provide resident access to the Program services.

A. ROC's will be encouraged to visit each LTC Community in their assigned area quarterly (4 times per year). However, it is required that the ROC visit assigned facilities not less than two (2) times during a reporting year. A visit for the purpose of investigating a complaint, working with resident councils, in-service for LTC community staff, or any other program related reason may be made simultaneously with a routine visit to maximize efficient use of time, and resources.

B. The ROC shall visit a community more frequently than once a quarter when the community has:

   1. A history of serious or frequent complaints;

   2. A change in ownership or administration;

   3. Imposition of a serious state or federal sanction or plan of correction;

   4. An imminent closure;

   5. By request of the Ombudsman in the interests of protecting residents' rights.

C. It is the duty of Representatives of the Office to visit residents in LTC communities in their assigned region. These visits serve the purpose of gathering information about the residents, including whether the residents have concerns about their care, their living environment, their rights, or any other facet of their lives.

D. Ombudsman shall confirm that communities prominently post the Long-Term Care Ombudsman Program poster in a place accessible to the residents and the public as required by law. If the majority of the residents speak a language other than English, then the majority of the posters shall be in that language. The poster shall include the current address and phone number of the Office and the Regional Program.

E. Representatives of the Office should be able to provide residents, families, and community staff with Ombudsman Program brochures.

F. All complaints will be documented as required and the Representatives of the Office will work with residents in accordance with Ombudsman training to resolve issues.

G. Except for planned in-services for LTC community staff or meetings, visits to LTC communities shall be unannounced and staggered so that LTC communities have no basis to predict the timing of the visit.

404.2 Complaint Processing

Regardless of the source of a complaint, Representatives of the Office serve the resident of a LTC community.

Resolution of a complaint, including but not limited to a complaint related to abuse, neglect or exploitation, is always focused on resolution to the satisfaction of the resident, and protecting the health, welfare, and rights of the resident.

The Ombudsman or Representative of the Office must maximize and support resident participation in the process of complaint resolution, as provided in the Federal Rule.

404.2(a) Receipt of Complaints (See Appendix 2 for chart)

A. Complaints may be initiated by:

1. Residents, families and friends of residents, long-term care facility staff, and any other person.

2. Complainants who wish to remain anonymous. In the majority of cases, the program can proceed without knowing the complainant's or resident's identity and should continue to investigate the issue. If the ROC or volunteer receiving the complaint is able to communicate directly with the anonymous complainant, the ROC or volunteer shall explain to the complainant that, in some circumstances, anonymity

could limit the ability of the Program to investigate and resolve the complaint.

3. Representatives of the Office when they have personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents including actions, inactions, or decisions of:

    a. Facilities in response to natural disasters, evacuations, relocations, involuntary change of management, closures, or other unusual events; or

    b. Governmental agencies in response to the concerns and conditions of residents in long-term care communities.

B. When information regarding a complaint or problem is received, the ROC or volunteer should explain that the Program's role is to act in accordance with resident wishes and maintain confidentiality.

C. The ROC or Volunteer should meet with the resident or complainant to:

1. Collect all relevant information from the complainant including previous actions to remedy the problem. The conversation should include the following:

    - A personal discussion with the resident (or resident's representative when the resident is unable to communicate consent) will help to determine the perspective of the resident as to the complaint;
    - the wishes of the resident as to resolution or desired outcomes;
    - whether the resident wishes to report the complaint to outside agencies;
    - whether the resident understands his/her rights;
    - the perspective of the resident in the plan of action;
    - whether the resident considers the resolution satisfactory.

D. The ROC or Volunteer should determine if the complaint is appropriate for Ombudsman services.

1. The following complaints are not appropriate for Ombudsman activity:

    a. Complaints that do not directly impact residents;
    b. Complaints that are outside the scope of the mission or authority of the Program; and
    c. Complaints which would create an irresolvable conflict of interest.

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

2. Complaints involving non-elderly residents are appropriate.

E. Complaints regarding a Deceased resident.

NOTE: if the resident dies during the time that a case is open, the Representative of the Office will close the case.

Special consideration shall be given when the program receives a complaint about a deceased resident.

The Ombudsman shall:

a. Determine if the case should be opened as a systemic case. If the Ombudsman determines that the case should not be opened as a systemic case, the Ombudsman will inform the complainant that the Ombudsman will not open a case as there is no client for which an issue can be resolved.

b. Refer the complainant to the appropriate Missouri Department.

c. Suggest to the complainant other referral options including police, private attorneys, coroner, etc. as possible.

F. Resident is unable to give Informed Consent.

1. If the resident is unable to communicate informed consent, and has no representative, the Ombudsman or Representative of the Office shall

attempt to investigate and resolve the complaint in order to protect the health, safety, welfare and rights of the resident.

2. If the resident cannot give consent or the Representative of Office witnesses the incident, the Representative of the Office will request consent to investigate from the Ombudsman.

3. The Ombudsman or designee shall give decision on consent for an investigation within 24 hours of receipt of case information.

In order to process the case, the Ombudsman or Representative of the Office shall:

1. Investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident.

2. Determine, if possible, whether the complaint has been resolved to the satisfaction of the resident. This will include a determination of whether a resident's representative has legal authority to speak for the resident.

3. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or Representative shall ascertain the extent of the authority that has been granted to the representative under court order (in the case of a guardian or conservator), by a power of attorney, or other document by which the resident has granted authority to the representative, or under other applicable state or federal laws.

4. Investigation by the Ombudsman or Representative of the Office shall proceed only with the express consent of the resident or resident representative except in systemic cases or when the Representative of the Office has concern regarding the safety and best interest of the resident.

5. Communication of informed consent may be made in writing, orally, or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or Representative of the Office.

6. If the resident is unable to communicate informed consent and has no representative, the Ombudsman or Representative of the Office may attempt to determine what the resident's wishes would have been,

particularly in the case where the health, safety, welfare and rights of the resident would be affected.

7. If the resident expresses a desire to have regulatory, protective services, or law enforcement action taken on the complaint, the Ombudsman or Representative of the Office must assist the resident in contacting the appropriate agency and/ or disclose the information the resident has consented to for such purposes.

G. Complaints of Abuse, Neglect and Exploitation:

Per 45 CFR 1324.11(e)(3)(iii)(c)(iv), The Regional Ombudsman Coordinators and Ombudsman volunteers shall have the authority to report instances of abuse and neglect to the Ombudsman.

1. No Ombudsman or Representative of the Office is required to immediately report or cause a report to be made under sections 192.2400 to 192.2470 RSMo. Volunteer Ombudsman is instructed to report all possible abuse, neglect and exploitation cases to the ROC.

2. If the Ombudsman or Representative of the Office has not obtained informed consent from the resident or residents' representative, the Ombudsman and Representative are prohibited from reporting except under the following circumstances:

    a. If the resident or resident's representative refuses consent to reporting suspected neglect, abuse, or exploitation, the Ombudsman or Representative of the Office shall not report the suspected abuse, neglect or exploitation.

    b. However, if the Representative of the Office has reason to believe the representative of the resident is not acting in the best interest of the resident, the State Ombudsman may make the determination to report based on evidence in the case.

3. If the resident is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the ROC shall:

    a. Check to see if the resident has a legal guardian or legal representative;

b. If there is no legal guardian or legal representative and the Ombudsman has reason to believe that the resident is a victim of abuse, neglect and/or exploitation, approve further action;

Contact the Office of the State Ombudsman to discuss the case, seek guidance and get approval to take further action.

4. If the Representative of the Office witnesses abuse, neglect or exploitation of a resident:

a. With resident informed consent, the ROC will proceed with abuse reporting to the Ombudsman and follow the appropriate process.

b. In a case where a Volunteer witnesses abuse, neglect or exploitation, the Volunteer should contact the ROC as soon as possible. The Volunteer may take some action first if necessary and then contact the ROC. The ROC will then proceed with the complaint investigation with initial information from the Volunteer.

c. If the resident is unable to give informed consent, has no resident representative and the Representative of the Office has reasonable cause to believe that an action or further action may adversely affect the health, safety and welfare of the resident, the Representative of the Office shall open a case with the Ombudsman program as the complainant and follow the complaint resolution procedures outlined in Appendix 2.

d. Where the resident is unable to give informed consent and has no resident representative, the Representative of the Office may proceed with the complaint, after receiving approval from the Ombudsman, if they have no evidence indicating that the resident would not wish a referral to be made and has reasonable cause to believe that it is in the best interest of the resident to make a referral. The Ombudsman shall grant approval within 24 hours or the next business day after receipt of complaint information.

e. The Ombudsman or Representative of the Office shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation to other appropriate agencies for regulatory oversight,

protective service, access to administrative, legal or other remedies, and/or law enforcement action.

404.2(b) Complaint Response

Regardless of the source of the information or complaint, the resident of a long-term care community is the Program's client and all complainants shall be so informed.

Complaints will be accepted via whichever method or modality the complainant chooses to employ. Complaint information will determine the response time as indicated in the chart below. A response to the complaint is expected no later than seven (7) business days from receipt of the complaint.

COMPLAINT RESPONSE TIMELINE

If a complaint involves:	**THEN the standard of promptness for a Representative of the Office response is:**
○ abuse or gross neglect, and the Ombudsman has reason to believe the resident may be at risk ○ actual or threatened transfer or discharge from the facility within two (2) calendar days ○ use of restraints	○ within the **next** working day from the receipt of the message or information by the Regional Program
○ abuse or gross neglect, and the Ombudsman has no reason to believe that a resident is at any risk (i.e., the resident has left the facility for home or a hospital) ○ actual or threatened transfer or discharge from a facility where a "Notice of Involuntary Transfer or Discharge" is issued	○ Within three (3) working days from the receipt of the message or information by the Regional Program
○ other types of complaints	○ within 5-7 working days or less depending upon severity of complaint

Appropriate responses include, but are not limited to:

- Direct response to complainant, including visits to resident;
- Advice and guidance to complainant and/or resident;
- Technical assistance;
- Referral to Hotline, in cases of abuse, neglect, or exploitation; and/or
- Referral to outside agency (e.g. MoHealthNet for Medicaid issues).

404.2(c) Complaint Investigation

A. In order to investigate, verify, and ultimately resolve a complaint, the Ombudsman or Representative of the Office shall take one or more of the following steps as appropriate to the nature of the complaint and with the express consent of the resident:

1. Research relevant laws, rules, regulations and policies;

2. Interview the resident and/or complainant, offer privacy to the resident for the purpose of confidentially providing information and investigating the complaint;

3. Advise the resident (and representative, where applicable) of resident rights;

4. Determine the wishes of the resident with respect to the resolution of the complaint, including whether the allegations are to be reported and if so, whether the Representative of the Office may disclose resident-identifying information or other relevant information to the facility and/or appropriate agencies;

5. Observe the situation and evident issues;

6. Interview any staff administration, physician, residents and family members with consent from the resident;

7. Identify relevant agencies and interview and/or obtain information from their staff;

8. Examine any relevant records including clinical, medical, social, financial, and other records in keeping with access and confidentiality policies and procedures;

9. Review any other information available to the Representative of the Office and pertinent to the investigation;

10. Consider the most appropriate time to conduct an on-site visit;

11. Consider combining these issues with other problems in the same facility, corporation, agency, or program; and

12. Determine the sequence of investigatory steps.

B. An investigation shall minimally include the following investigative activities:

1. Face-to-face visit and interview with the resident(s) and/or his or her representative (if applicable); and

2. Direct contact and interview with the complainant, which may be by a face-to-face visit, a telephone call, an email or a letter. However, direct contact with the complainant is not required if the complaint was made anonymously or if the complainant requests not to be contacted.

C. Exceptions to face-to-face (FTF) contact with the resident are as follows:

1. If the resident requested that he or she not be visited or contacted;

2. If the resident is the complainant and confirms that an FTF visit is not needed;

3. If the case involves a notice of involuntary transfer or discharge for non-payment and the Representative of the Office is able to speak to the resident directly over the telephone and resolve the case without a FTF visit; and

4. If the case involves a Medicaid application and the Representative of the Office is able to speak to the resident directly over the telephone and resolve the case without a FTF visit.

D. Investigate the complaint to determine if the complaint is verified.

E. Complaints will be resolved with maximum participation of the resident. The resident will guide the resolution as much as possible, especially in regard to the resident's consent to the investigation and resolution of the complaint.

F. At the conclusion of the investigation and resolution, the Representative of the Office will determine whether the resident is satisfied with the outcome. Attempts should be made to resolve the complaint to the resident's satisfaction. If resident satisfaction is not achieved it should be noted in the record. This will also be documented in the Missouri Ombudsman Electronic Reporting System.

G. Where the resident is unable to communicate informed consent, and has no representative, the Representative of the Office shall:

1. Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

2. Determine whether the complaint was resolved to the satisfaction of the complainant.

H. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of a resident related to complaint processing, the Representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by a power of attorney, or under other applicable state or federal law.

I. Investigation by the Representative of the Office shall proceed only with the express consent of the resident, or their resident representative except in systemic cases or as outlined with Ombudsman permission in cases where there is concern that the resident representative is not acting in the best interest of the resident.

J. Communication of informed consent may be made in writing, orally, or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Representative of the Office.

K. The resident may choose to refuse consent or withdraw consent for the Representative of the Office to pursue a case investigation. If this occurs, the Representative of the Office may:

1. Determine whether the type of complaint is recurring with other residents and may proceed with a Representative of the Office generated complaint as a systemic problem.

2. Inform the resident that he may contact the Program in the future regarding the withdrawn complaint.

3. Provide contact information such as a business card or brochure informing the resident on how to contact the program; and

4. Discontinue work on the individual complaint.

5. For all abuse and neglect complaints in which the resident, knowing full well the potential consequences of his or her refusal to give or withdraw consent, the Representative of the Office shall:

   a. Complete the steps 1-4;

   b. Discontinue work on the complaint; and

   c. Report the withdrawal or refusal immediately to the Office.

404.3 Consultations

The Program shall provide information and consultations regarding long-term care issues and the needs and rights of residents. Consultation requests may be received from anyone including LTC Community staff.

Consultations may generate research in order to provide adequate information but should not generate an investigation.

The Program shall promptly respond to requests for information, however, responses should not take more than five (5) working days when practicable.

Complaints and consultations for residents, LTC communities, other Representatives of the Office, and members of the public will be documented in the Missouri Ombudsman Electronic Reporting System, under the appropriate category and noting the complaints' final disposition.

Documentation in the Missouri Ombudsman Electronic Reporting System should follow the basic principles for National Ombudsman Reporting System (NORS) criteria.

404.4 Community Education and Facility In-Services

The Program shall provide community education programs to inform groups about the Long-Term Care Ombudsman Program and resident rights.

The Program shall provide educational in-services to long-term care community staff. This type of program typically should be used to inform staff of the Ombudsman Program role, resident rights, and information on abuse, neglect and exploitation to better prepare facility staff.

404.5 Resident and Family Councils

A. The program shall provide technical support to resident and family councils. The Program through the LOE shall respond to questions and provide literature and assistance relating to resident and family councils.

B. Program involvement and assistance in council activities may include helping with the development of new councils and informing the leadership and/or membership of resident and family councils about:

    1. The purpose of the LTC Ombudsman Program;

    2. The Programs availability to assist resident and family councils; and

    3. The topics the Program is prepared to present if requested.

C. ROCs will make every effort to be present at resident and family council meetings, when invited.

D. The Office shall provide technical assistance to Regional programs to promote the development of resident and family councils.

500.0 Monitoring

The DSDS, the Office, the AAAs, and the LOEs, if applicable, share the duty of ensuring the quality of Ombudsman services provided to residents of LTC communities.

A. The Ombudsman will monitor the performance of State Office staff, LOEs, and Representative of the Office on an ongoing basis through the use of the following:

1. Personal observation;

2. Use of a monitoring tool of the Ombudsman's choice;

3. Periodic quality assurance visits;

4. Survey instruments; and

5. Other information gathering techniques, as appropriate, including real time monitoring of the Missouri Ombudsman Electronic Reporting System data.

6. The Office tracks services provided to LTC residents as documented in the Missouri Ombudsman Electronic Reporting System.

501.0 Fiscal Management and Monitoring

The DSDS is the repository of federal Older Americans Act (OAA) funds and ensures that the federal funds are spent prudently on OAA programs including the Long-Term Care Ombudsman Program.

A. DSDS is responsible for monitoring fund expenditures to meet compliance with the federal law.

B. Fiscal oversight is the responsibility of the DSDS budget staff, DSDS director, and the Ombudsman.

The Ombudsman actively participates in the review of fiscal reporting that is submitted by LOEs to the DSDS.

C. Quarterly reports will be generated by the Area Agency on Aging and provided to the Office based on the reporting structure detailed in the Long-Term Care Ombudsman Program service contract.

D. Fiscal monitoring shall provide assurance that the amount each Regional program spends each year is not less than the Minimum Funding Requirement found in Title 42 U.S. Code section 3027(a)(9).

E. DSDS must assure that the amount of federal funds received by the program is equal to or greater than the amount expended by the state in the last fiscal year prior to the reauthorization of the OAA in 2000.

502.0 Monitoring of LOEs and Representatives of the Office

Monitoring of LOE contracts and services will be reviewed by the Ombudsman at least once every 3 years. Results of the Regional program's reviews will be reported to the LOE and the AAA where applicable). This report shall not contain any resident, representative, or complainant identifying information.

The Office establishes program policies and procedures and provides statewide oversight of the Program to ensure consistent advocacy and resolution of complaints on behalf of LTC community residents in Missouri.

A. The Office shall make periodic site visits at least twice a year or more often if needed to monitor the LOE's performance and provide technical assistance and support to LOEs as deemed necessary by the Office.

B. Monitoring shall include access to and review of programmatic and fiscal information by the State Ombudsman and appropriate Representatives of the Office designated by the Ombudsman.

C. All data, files, and information pertaining to activity by any Representative of the Office are the property of the Office.

D. Input of all data is done by ROPDs, ROCs or State Office staff into the Missouri Ombudsman Electronic Reporting System.

E. Case documentation will be entered into the Missouri Ombudsman Electronic Reporting System in a timely manner (within 30 days of case closure) by the ROC representing the case service area. The Missouri Ombudsman Electronic Reporting System shows complaint resolution and partial resolution, as well as other program activity. The Ombudsman has the responsibility to monitor case information on a regular basis through the Missouri Ombudsman Electronic Reporting System.

F. The Office shall review, at least quarterly, the activities and complaint data of the statewide Program and each Regional program.

G. Volunteer feedback regarding training, mentoring, reporting, and supervision will be reviewed at least once every three years. Volunteer feedback will assist in maintaining a strong, standardized program for all designated Representatives of the Office.

503.0 Supervision of Volunteers

Direct supervision of Volunteers is provided by the ROC in each service area with general statewide oversight provided by the Ombudsman.

A. Volunteers must meet training requirements of the Program in order to be designated.

B. Volunteers are expected to perform the duties of the Ombudsman Program according to the Ombudsman Code of Ethics and the duties assigned by the Program.

C. Volunteers should be monitored in face-to-face meetings at least twice (2x) a year by the ROC.

504.0 Annual Report

The Ombudsman shall be responsible for the creation of an annual report to be submitted to the Assistant Secretary of the U.S. Department of Health and Human

Services, Administration for Community Living, Administration on Aging (ACL/AoA). The report will contain all information as required by ACL/AoA.

Information contained in the Annual Report will be gathered from data submitted into the Missouri Ombudsman Electronic Reporting System as well as reports and monitoring provided by LOEs.

The Annual Report shall include the following:

A. A description of activities carried out by the Office in the year for which the report is prepared;

B. An analysis of the data collected by the Program;

C. An evaluation of the problems experienced by and the complaints made by or on behalf of, residents;

D. Recommendations for policy, regulatory, or legislative changes to improve quality of care and life of residents;

E. An analysis of the success of the Program; and

F. A summary of identified barriers that prevent the optimal operation of the Program.

In addition to the Assistant Secretary of ACL/AoA in the Department of Health and Human Services, copies of the report shall go the Missouri Governor, DHHS Director, DSDS Director, legislators, and other interested parties as requested.

600.0 Access

In accordance with the federal Long-Term Care Ombudsman Program Final Rule (Federal Register, Vol. 80, No. 28, 7704-7767 published February 11, 2015) and proposed Missouri statute 192.2305.4, "The department shall establish and implement procedures for resolution of complaints.

601.0 Access to Residents and LTC Communities

The Ombudsman or Representatives of the Office shall have the authority to:

A. Enter any long-term care community and have access to residents of the community at any time during a community's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated.

B. The Representative of the Office shall notify the community staff of his or her presence upon entering the facility by signing the visitor log or verbally telling a staff member. The Representative shall wear his or her Program identification when entering the community.

C. The Representative of the Office has the authority to communicate privately and without restriction with any resident who consents to the communication.

D. Residents of the facility shall have the right to request, deny or terminate visits with a Representative of the Office.

E. Access also includes access to resident representatives, if any, where needed to perform the functions and duties of the Office. The need for access is always predicated on the need for information in investigating a complaint. If the resident representative refuses to consent to access, and a Representative of the Office believes the resident representative is not acting in the best interests of the resident, the Representative of the Office shall obtain approval of the Ombudsman in order to gain access.

602.0 Access to Resident Records

A. Under federal law designated Representatives of the Office shall have access to review medical, social, personal, clinical, financial and other records of a resident. This includes access to the name and contact information of the resident representative, if any, where needed to perform the duties of the Program. In order to empower residents, the ROC should explain the request for records to the resident or the resident's representative in order to get

permission to review the records. A resident release form is provided for this activity. (See Appendix 3)

B. If there is an issue involving access to records, the volunteer must contact the ROC and the ROC will determine how to proceed (which may include the ROC handling the complaint instead of the volunteer).

C. If a resident is not able to give informed consent, the Representative of the Office may seek informed consent from the resident representative. When written consent is not possible from the resident or the resident representative, oral authorization must be documented in the Program case records.

D. Review of records may be pursued by the Representative of the Office without consent of the resident or their legal representative if the Representative of the Office has reason to believe the resident representative is not acting in the best interest of the resident, the resident is not able to give consent, and the Representative of the Office obtains the approval of the Ombudsman.

E. If there is no representative and the resident is not able to give consent, the ROC may access records when they feel it is necessary to resolve the case investigation.

F. Representatives of the Office shall have complete and timely access to LTC communities, residents, and their records at all times. Access to records must be granted to the Ombudsman and Representatives of the Office, regardless of format and including, upon request, copies of such records (Appendix 3).

G. Records include medical, social, and other records relating to a resident. Access to these records is subject to informed consent to the access by either the resident or resident representative, either in writing or orally, visually, or through the use of auxiliary aids and services, with contemporaneous documentation by a Representative of the Office if not in writing.

H. Per 45 CFR 1324.11(a)(2)(vii) the Health Insurance Portability and Accountability Act of 1996 (HIPAA) does not preclude release by covered entities of resident private health information or other resident identifying information to the LTC Ombudsman Program, including, but not limited to, residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

I. Under the terms of an established memorandum of understanding between the Ombudsman's Office and the Department's regulatory bureau, the Section for Long-Term Care Regulation, the section provides records of survey schedules, completed surveys, and other regulatory documentation on a regular basis to the Ombudsman. The Ombudsman distributes these records to the LOEs for their use.

J. The records of a resident shall be treated with the highest degree of confidentiality and obtained only as necessary to seek resolution of a complaint.

603.0 Interference

42 U.S. section 3058 (g)(b) requires LTC communities to provide Representatives of the Office with access to LTC communities and residents. The law authorized Representatives of the Office to move freely, without an escort or hindrance, throughout a LTC community in order to:

- identify, investigate, and resolve complaints;
- observe and monitor conditions of residents, and LTC communities;
- speak confidentially with residents; and
- provide services to assist residents in protecting their health, safety, welfare and rights.

Representatives of the Office who encounter willful interference by LTC community staff or others during the performance of their duties shall immediately report the incident(s) to their local ROC and the Ombudsman.

A. In cases where interference is by LTC community administration or staff, the ROC will inform the Ombudsman of the incident at the time of occurrence.

B. In cases where the volunteer is the individual experiencing the interference, the volunteer will notify the ROC and the ROC will immediately proceed to notify the Ombudsman.

C. The State Ombudsman will contact the community administrator either by phone or in person and proceed to resolve the issue. In all cases, the Ombudsman shall work to resolve the issue of interference.

D. After consultation with LTC community administration, if there is no agreed resolution, the Ombudsman will take action in compliance with Section 712 of the Older Americans Act.

E. Missouri RSMo 192.2315 provides immunity from liability for official duties performed by Ombudsman Representatives of the Office, including Volunteers. There will be no reprisals, violations, or penalties against employees or LTC communities or residents, for information furnished to the office.

F. Concerns regarding interference, retaliation or reprisals can be reported to the Adult Abuse Hotline for investigation by the Section for Long-Term Care Regulation, with informed consent of the complainant.

G. Examples of interference include but are not limited to:

1. Preventing Representatives of the Office from entering a LTC community;

2. Refusing to allow Representatives of the Office to speak confidentially with residents;

3. Refusing to allow Representatives of the Office access to all areas in the LTC community; and

4. Refusing to grant Representatives of the Office access to resident records.

700.0 Disclosure

Files, records, and information maintained by the LTC Ombudsman Program may be disclosed only at the discretion of the State Ombudsman or designee, as stated in RSMo 192.2310, Section 712 of the Act or by court order. Requests for disclosure must be referred to the State Ombudsman.

A. Requests for information received by ROCs or Volunteers, must be sent in writing to the Ombudsman via email with telephone confirmation of receipt. The State Ombudsman has the sole authority to make determinations

concerning the disclosure of the files, records, and other information maintained by the Program.

1. A request for disclosure must be presented to the Representative of the Office in writing.
2. The Representative of the Office shall send request to the Ombudsman within 24 hours of receipt of request.
3. The Ombudsman shall respond to the request with written notification of decision within 48 hours of receipt request.
4. The Ombudsman makes the determination of whether the information can be released.

B. The Ombudsman shall not disclose the identity of or any information that would lead to the identification of the resident, or complainant involved in a complaint, unless the individual (or his or her resident representative) has consented to the disclosure, or such disclosure is required by a court order. The disclosure of identifying information of any resident in such records is prohibited, unless informed consent has been given by the resident or resident representative. Such consent may be in writing, or orally, visually, or through the use of auxiliary aids and services. When consent is not in writing, it shall be documented contemporaneously and placed in the client file by a Representative of the Office.

C. Disclosure of the identity of a complainant whose information is contained in Program records is also prohibited, absent informed consent from the complainant in writing, orally, visually, or through the use of auxiliary aids and services. When consent is not in writing, it shall be documented contemporaneously by a Representative of the Office.

D. Disclosure of any of the files or records maintained by the Office will be considered only when a request for such records is received in writing, including by email.

E. In evaluating whether the records will be disclosed, the Ombudsman will take into account whether consent has been granted and whether the record is available from another agency or entity. However; to ensure the effectiveness and credibility of the Office, the Ombudsman should not be responsible for directing the requestor to another agency.

F. Disclosure will also be granted when it is required by a judge's court order in accordance with RSMo 192.2310.1. In some cases, the Ombudsman should consult with legal counsel to determine appropriate actions.

800.0 Systems Advocacy

The Ombudsman, by analyzing and monitoring the development of federal, state and local laws, may comment on and make recommendations to the relevant governmental agencies regarding changes in rules and regulations proposed or adopted that could adversely affect the rights of any resident in a LTC community. In addition, recommendations may be made to strengthen the quality of life, rights, and consumer protections for residents.

The Ombudsman will provide leadership in statewide systems advocacy of the Office on behalf of residents, coordinating the efforts of Representatives of the Office. Prior to each legislative session, the Ombudsman, State Office staff, ROPDs, and ROCs will meet to determine issues that should be part of the Advocacy agenda for that year.

Issue advocacy activities may include but are not limited to:

A. Providing information to the public, public and private agencies, legislators, the media, and others regarding the problems and concerns of residents and recommendations related to those problems and concerns.

B. Facilitating the ability of residents, resident and family councils, and the public to comment on such laws, regulations, policies, and actions.

C. Advocating for modification of laws, regulations, and other governmental policies, and actions pertaining to the rights and well-being of residents.

D. Coordinating with statewide and national advocacy organizations involved in advocating for resident interests by maintaining awareness of current issues and trends in long-term care.

E. Presenting to and participating in public hearings related to long-term care issues.

F. Media involvement may be used to further public awareness of significant advocacy issues.

G. When many residents share a similar complaint or are affected by a similar policy or practice in the community, the Program may address the complaint with systems advocacy which could include proposed legislation or regulatory changes.

Such procedures must exclude the Ombudsman and Representatives of the Office from any lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act.

900.0 Grievance Process

This section concerns the receipt and review of grievances regarding the determinations or actions of the Ombudsman and Representatives of the Office.

901.0 General grievance requirements:

Grievances against Representatives of the Office must be filed in writing, including the use of auxiliary aids and services, with either the ROC or the State Ombudsman. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such must be documented contemporaneously by the individual receiving the grievance.

Anyone may file a grievance: residents, Representatives of the Office, family members, and/or LTC community staff. (See Appendix 4)

All complaints should contain the following information:

A. Contact information of the person filing the grievance (name, phone number, email or mailing address).

B. The nature of the complaint, including at least the following:

1. Name of the person or organization the grievance is against;

2. Date and time of the incident;

3. Location of incident; and

4. Brief description of what happened.

C. Specific facts supporting the allegation, including at least the following:

1. Any documentation of the incident; and

2. Names of others involved or witnesses.

D. The complainant's desired resolution of the grievance.

Upon receipt of a grievance, the ROC, Ombudsman or designee shall acknowledge the receipt as soon as possible, but preferably no later than five (5) business days from receipt. The acknowledgement should include the date of receipt of a grievance, explain the grievance process and clarify any information, if needed.

902.0 Grievances against the State Ombudsman

1. Complaints against the State Ombudsman must be filed with the DSDS Director.

2. Complaints against the State Ombudsman will follow DHSS Administrative Policies. Complaints should be verified to eliminate grievances with no substance.

3. In cases where a conflict might exist, a review committee consisting of 3 individuals may be appointed by the Director. Members of such a committee could be an administrative hearing attorney or staff from the state human relations office.

4. Consent will be requested to disclose resident identifying information.

Actions to be taken on grievances regarding State LTC Ombudsman:

- State Ombudsman
  - The DSDS Director will follow DHSS policies and procedures regarding grievances against the State Ombudsman.
  - Actions may include but are not limited to supervision or termination.

903.0 Grievances against Representatives of the Office

Grievances against Representatives of the Office will be investigated by the Ombudsman, Ombudsman designee, ROPD, or ROC depending on grievance. All efforts will be made to complete the investigation within fourteen (14) business days of receipt of complaint by the LOE or Office.

A. Affected individuals, such as Volunteers, will be notified in writing, telephone call, or in person of the grievance as soon as possible after the grievance is acknowledged, but no later than five (5) business days.

B. After review and investigation, a response to the grievance must be issued as soon as possible, but no later than fourteen (14) days of receipt. All efforts will be made to provide the complainant with a written response within fourteen (14) business days. The response will follow the Program confidentiality policies regarding Program records.

Any individual who filed a grievance and is dissatisfied with the decision of the Ombudsman or ROC may file a written request for review with the DSDS Director. If the review requires resident identity information, the Ombudsman will request consent to disclose. The DSDS Director shall respond to the written request for a review within sixty (60) days of receipt of the request.

Actions to be taken on grievances regarding:

- **State Office Staff**
  - State Ombudsman will follow DHSS policies and procedures regarding grievances against State Office Staff.
  - Remedia**l** action such as additional training, supervision, or de-designation may be taken to remedy the grievance.
  - Action will be determined by the Ombudsman and will be implemented at the State Office level.

- Regional Coordinator or Local Ombudsman
  - Grievance against Local/Regional Ombudsman Representatives of the Office shall be reviewed by the Ombudsman.
  - Remedial action such as additional training, supervision, or de-designation may be taken to remedy the grievance.
  - Actions will be determined by the Ombudsman and may be implemented and monitored by the Office.

- Volunteers
  - Grievances against Volunteer Representatives of the Office will begin with review by Volunteer's ROC and the Ombudsman.
  - Remedial actions may include additional training, supervision or de-designation.
  - Grievance may be resolved by the ROC with guidance of the Ombudsman.
  - Appeal may be made to the State Ombudsman, whose decision is final.

Decisions regarding designation

- Per 45 CFR 1324.11(e)(7) the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a Local Ombudsman Entity (LOE) or Representative of the Office.

1000.0 Records

The Ombudsman shall ensure the proper management of files, resident records, and other information of the Program, whether in physical, electronic, or other formats, including information maintained by the Office pertaining to the cases and activities of the Program. Such files, records, and other information are the property of the Office.

The Ombudsman is responsible for maintaining a system of case records, both at the Office and through LOE programs. Such records are the property of the Office and may not be released, disclosed, duplicated, or removed without the written permission of the Ombudsman or designee.

The Ombudsman will maintain, in collaboration with DSDS, a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in LTC communities, and to residents for the purpose of identifying and resolving significant problems. Such system shall be known as the Missouri Ombudsman Electronic Reporting System and shall be isolated from access by anyone not designated by the Ombudsman.

General case information storage shall be as follows:

A. All open cases files, notes, and other documents that include personally identifiable information shall be stored in a locked file cabinet.

B. Personal information may only be stored on laptops that are encrypted and require a password.

C. Personal information may only be emailed using a secure email system. All other information should be faxed.

D. When closing a case, all documentation in the file including notes shall be entered into the Missouri Ombudsman Electronic Reporting System in a timely manner. All case documentation shall be entered in the case file within 30 days of closure of the case.

E. All paper copies of files should be stored in a locked file cabinet for the duration specified in the contracts.

1100.0 Conflicts of Interest

A conflict of interest exists in the Program when other interests intrude upon, interfere with, or threaten to negate the ability of the Program to advocate without compromise on behalf of LTC Community residents. The Program identifies and applies the definitions and categories of potential conflicts that are contained in 45 CFR 1324.21, including organizational conflicts and individual conflicts.

The organizations involved in the establishment of the program and the individuals who carry out the duties of the Program, the Department, AAAs, and Provider Agencies must be free from conflicts of interest, pursuant to Section 712(f) of the Older Americans Act, 45 CFR 1324.21, and procedures developed by the Office.

The Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. It is the duty of all LOEs and Representatives of the Office to identify and report any conflict of interest to the Ombudsman.

1101.0 Organizational Conflicts of Interest

Organizational conflicts include any conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman perform conflicting activities, in an organization that:

A. Is responsible for licensing, surveying, or certifying long-term care facilities;

B. Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;

C. Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facilities;

D. Has governing board members with any ownership, investment or employment interest in long-term care facilities;

E. Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

F. Provides long-term care coordination or case management for residents of long-term care facilities;

G. Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n);

H. Sets reimbursement rates for long-term care facilities;

I. Sets reimbursement rates for long-term care services;

J. Provides adult protective services;

K. Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;

L. Conducts preadmission screening for long-term care facility placements;

M. Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; and/or

N. Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

Annually the Ombudsman shall review the Program to determine if there are any organizational conflicts of interest for the Program. (See Appendix 5)

A. The Ombudsman shall annually review the Office for organizational conflicts of interest and determine whether appropriate actions may be taken to sufficiently remedy the conflict. The Ombudsman may consult with outside sources, such as the Administration for Community Living (ACL), or the National Ombudsman Resource Center (NORC)) for expert input to resolve any questions about potential conflict of interest.

B. Where organizational conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

    1. A written remediation plan shall be developed within thirty (30) calendar days of the identification of the conflict.

    2. The Ombudsman may choose to develop a memorandum of understanding (MOU) with the organization.

        a. The MOU should set forth the roles, responsibilities and appropriate working relationships between the respective programs that clarify the remediation of the conflict of interest.

        b. The document should be signed by the Ombudsman and the Director of the LOE.

C. The Ombudsman shall describe steps taken to remove or remedy any organizational conflicts in the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

1102.0 LOE Conflict of Interest

Where an actual or potential conflict of interest within the Program has been identified, the Ombudsman shall be notified. All LOEs and Host Agencies have a duty to notify the Ombudsman of any actual or potential conflict of interest of which they have knowledge. (See Appendix 6)

The Ombudsman shall determine whether appropriate actions may be taken to sufficiently remedy the conflict.

A conflict can be sufficiently remedied only:

A. where the existence of the conflict does not interfere with any duties of the Program; and

B. where the conflict is not likely to alter the perception of the Program as an independent advocate for long-term care community residents.

The Ombudsman may de-designate local programs in which a conflict of interest has been identified but not remedied or removed.

When ROCs and their affiliated staff are recruiting Volunteers, they should include information about conflicts of interest, including definitions and examples, in their recruiting efforts. This will assist in preventing misunderstandings and miscommunications before full training activities begin.

1103.0 Individual Conflict of Interest

Individual conflicts of interest include, but are not limited to, participation in or an immediate family member's participation in any of the following:

A. Having direct involvement in the licensing or certification of a LTC community.

B. Having an ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed LTC community. If the individual gives up his/her financial interest immediately at the time of employment or appointment, that is considered an adequate remedy.

C. Having been employed by or participating in the management of a LTC community within the previous twelve months.

D. Receiving, or having the right to receive, directly or indirectly, remuneration (in cash or in kind) from an owner or operator of a LTC community.

E. Accepting gifts or gratuities of significant value from a LTC community or its management, a resident or a resident representative of a LTC community in which the Program provides services.

F. Accepting money or any other consideration from anyone other than the Program, for the performance of an act in the regular course of the duties of the Program without Ombudsman approval.

G. Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a LTC community in which the Program provides services.

H. Serving residents of a LTC community in which an immediate family member resides.

I. Providing services with conflicting responsibilities while serving as an Ombudsman to a resident such as:

1. Adult protective services
2. Discharge planning
3. Preadmission screening for long-term care
4. Case management for long-term care
5. Legal services

In **no circumstance** shall the Ombudsman appoint a Representative of the Office who:

A. Has direct involvement in the licensing or certification of a LTC community.

B. Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a LTC community where they are not willing to give up their financial interest immediately at the time of employment or appointment.

C. Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a LTC community.

D. Is employed by, or participating in the management of, a LTC community.

1104.0 Disclosure of a Conflict of Interest

The Ombudsman and ROCs shall make efforts to avoid designating a Representative of the Office who has been employed by or participated in the management of a LTC community within the previous 12 months. Where such an individual is already a Representative of the Office, the ROC or Ombudsman shall take steps to remedy the conflict.

Annually all LOE employees and volunteers shall sign the conflict of interest document declaring they are free of any conflicts which would interfere with the performance of their duties as a Representative of the Office. (See Appendix 6)

Whenever a Department or agency, whether state or local, is considering the hiring or appointment of an State Ombudsman or Representative of the Office, the Department or agency will carefully review the application and resume of the candidate for conflicts. In addition, during the interview and preliminary research process, the Department or agency will ask specific questions regarding the previously listed conflicts in order to determine whether conflicts exist. The Department or agency will also seek information about the candidate's immediate family, in order to determine whether conflicts exist there.

To ensure compliance with conflict of interest standards, all staff and volunteers requesting designation as a Representative of the Office shall complete a "Conflict of Interest Agreement" form and affirm that they are in compliance with the previously listed standards or explain any variance from such compliance. (See Appendix 5)

The agreement shall be reviewed annually to ensure that no new conflict of interest has arisen in the prior 12 months. Any new conflicts shall be reviewed then removed or remedied, subject to final review by the ROC and/or Ombudsman.

Every 12 months, the local programs will complete a verification to the Ombudsman that they have completed their annual review of staff and volunteer agreements and that no conflicts of interest remain that are not remedied. This verification will originate at the Ombudsman's office and will be due within fourteen (14) days after they are sent.

Once identified, failure to disclose a potential conflict in a timely manner may be grounds for de-designation as a Representative of the Office or de-designation as a LOE or Host Agency of the Program.

1105.0 Remediation of Conflicts of Interest

After a conflict of interest has been identified, the Ombudsman, designee, ROC, or volunteer shall be responsible to ensure the removal or remediation of such conflict. Remediation of a conflict must be completed prior to the start date of a new employee or a new volunteer. A conflict can be sufficiently remedied only when:

A. an actual or potential conflict of interest within the Program has been identified, the Ombudsman shall be notified immediately;

B. the existence of the conflict does not interfere with any duties of the Program; and

C. the conflict is not likely to alter the public's perception of the Program as an independent advocate for residents of Missouri LTC communities.

1105.1 Organizational Conflicts of Interest Remediation

The State Ombudsman shall determine whether actions may be taken to remedy an identified organizational conflict. A conflict can be satisfactorily remedied only when the continued existence of the conflict does not compromise the ability of the Program to carry out its duties and is not likely to diminish the perception of the Program as an independent advocate for residents.

A. Reviewing the conflict of interest

1. When potential conflict is identified, the State Ombudsman shall review the circumstances of the potential conflict. The State Ombudsman shall determine:

    a. Whether a conflict of interest exists;

    b. Whether the conflict could be remedied by appropriate action by the agency involved;

2. The Office shall inform the agency involved of the results of the review and may provide assistance.

B. Remedying conflicts

1. If the conflict can be remedied, the Regional Program shall, or in the case of conflict within an AAA, the AAA shall:

    a. Develop a written plan within five (5) business days of identification of the conflict:

        1. which shall define the conflict and propose a remedy to eliminate, or

        2. to the greatest extent possible, minimize the impact of the conflict.

    b. Submit the proposed remedy to the Office for approval

2. The Office shall:

    a. Review the proposed remedy and notify the Regional Program and AAA of approval, denial, or additional corrections needed in order for the potential conflict to be remedied.

    b. Respond within five (5) days of notification of potential remedies.

1105.2 Individual Conflicts of Interest Remediation

Where individual conflicts have been identified, a written remediation plan shall be developed within thirty (30) calendar days of the identification of the conflict. The plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict of interest. The plan must be signed by both the Representative of the Office and ROC, Ombudsman or designee. (See Appendix 6)

A. Where the individual is an applicant for a paid position as a Representative of the Office, a plan shall be developed before the individual is hired for the position.

B. Where the individual is an applicant for a position as a Volunteer Representative of the Office, a plan shall be developed before the individual is designated as a Representative of the Office.

C. Where the individual is already a designated Representative of the Office, a plan shall be developed, as soon as possible, to remediate the conflict of interest.

D. Reasonable steps should be taken to avoid assigning Representatives of the Office to a LTC community that would create a conflict of interest.

E. Failure to identify and report a known individual conflict of interest to the Ombudsman shall be sufficient grounds for refusal to designate a potential Representative of the Office, to de-designate a Representative of the Office, and/or termination of a Representative of the Office.

F. Failure to remove a conflict of interest or the existence of a conflict of interest that cannot be remedied shall be sufficient grounds for the de-designation of the Volunteer Representative of the Office or termination of the Volunteer Representative of the Office.

1105.3 Failure to Identify or Remedy a Conflict of Interest

A. Failure on the part of a Representative of the Office, AAA or Provider Agency to identify and report to the Office a known conflict of interest shall be sufficient grounds for the refusal to designate or the subsequent de-designation

of the Program or the refusal to designate or the subsequent de-designation of a Representative of the Office.

B. Existence of an un-remedied conflict of interest shall be sufficient grounds for the de-designation of the Program, the provider entity, or the de-designation of a Representative of the Office.

C. Final decisions regarding sanctions to identify or remedy conflict of interest situations are determined by the State Ombudsman.

Appendix 1

CODE OF ETHICS FOR OMBUDSMEN

Regardless of an Ombudsman's level(s) of advocacy effort, or the complexity of the issue/or problem being addressed, there is a basic set of principles which guide an Ombudsman's decisions. The National Association of State Long-Term Care Ombudsman Programs developed the following Code of Ethics for ombudsmen.

1. The Ombudsman provides services with respect for human dignity and the individuality of the client unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choices.

2. The Ombudsman respects and promotes the client's right to self-determination.

3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.

4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.

5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.

6. The Ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.

7. The Ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman program and with respect for the policies of the sponsoring (contract) organization.

8. The Ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.

9. The Ombudsman participates in efforts to promote a quality long-term care system.

10. The Ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman program.

11. The Ombudsman supports a strict conflict of interest standard with prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long-term care services which are within their scope of involvement.

12. The Ombudsman shall conduct himself/herself in a manner which will strengthen the statewide and national Ombudsman network.

_____ _____

Name Date

Appendix 2

Appendix 2

Complaint Response for Resident Consent

***Communication of consent may be made orally, visually, or in writing, including through the use of auxiliary aids and services and must be documented contemporaneously by the Representative of the Office.**

GENERAL COMPLAINTS	
If the Resident…	**Then the Representative of the Office shall….**
Gives informed consent (permission obtained in writing or with documented verbal consent)	Provide privacy to the resident to assure confidentiality and proceed to make and investigate the complaint to the satisfaction of the resident.
Is able, but does not give consent (permission)	Stop report and investigation
Is unable to give consent and has a resident representative who does give consent	Determine resident representative extent of authority that has been granted by the resident under legal documentation or court order, Follow consent of resident representative to investigate and resolve complaint in the best interest of the resident.
Is unable to give consent and the resident representative does not give consent Note: the question of a Bad Actor	Determine resident representative extent of authority that has been granted by the resident under legal documentation or court order. If consent is denied and verified to be in the resident's best interest, then process is stopped and the resident representative is informed of future process for reactivation of complaint. If consent is denied by resident representative, and the Representative of the Office or the Ombudsman has reason to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident the Representative of the Office may become the complainant for this issue with approval from the State Long-Term Care Ombudsman.
Not able to consent and has NO resident representative	Become the complainant in the case and work to resolve the complaint based on the best interest of the resident having no reasonable cause to believe that the resident would not want the issue resolved.
ABUSE, NEGLECT, AND EXPLOITATION COMPLAINTS	
If the Resident…	**Then the Representative of the Office shall…**
Is able and gives consent	Proceed with complaint investigation, report suspected abuse or gross neglect to the appropriate agency, and to law enforcement according to local/state laws regarding abuse and

	LTCOP policies and procedures. Notify the Ombudsman immediately.
i. Is able, but does not give consent to the Representative of the Office to make the report, and ii. May or may not acknowledge having been abused	i. Determine: 1. Whether other residents have experienced similar circumstance; and 2. If any other resident wishes the Office to take any action on his or her behalf; *and* ii. Make repeat visits to the resident who has alleged abuse in the LTC community in order to encourage the resident to permit the Representative of the Office to report and investigate the suspected abuse or gross neglect.
i. Does <u>not</u> give consent (permission) to the Representative of the Office to make the report; *and* ii. the complainant is a long-term care service provider, facility staff person, or other mandatory reporter	Inform the complainant of his or her duty to report the alleged abuse to the appropriate agency.
i. Is unable to communicate his or her consent or wishes; *and* ii. Resident representative will <u>not</u> give content NOTE: Questionable Bad Actor	Refer the suspected abuse or gross neglect to the appropriate agency under ombudsman authority to protect the resident's right to be free from abuse or gross neglect with State Long-Term Ombudsman approval. If consent is denied by resident representative, and the Representative of the Office or the Ombudsman has reason to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident the Representative of the Office may become the complainant for this issue with approval of the State Long-Term Care Ombudsman.
i. is unable to communicate his or her consent and ii. has no resident representative	Shall open the case with the Representative of the Office as the complainant with reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident. If the Representative of the Office has no reason to believe that the resident would not want the referral to be made, the Representative of the Office obtains the approval of the Ombudsman.
i. The Representative of the Office personally witnesses abuse, neglect or exploitation of a resident, *and* ii. The resident will not make the complaint	i. Obtain approval from the State Long-Term Care Ombudsman to report the alleged abuse witnessed by the Representative of the Office to the appropriate investigating entity. If there is an adverse effect requiring immediate attention, the Representative of the Office may take action and notify the State Long-Term Care Ombudsman of that action (only when the resident is unable to communicate consent and there is no resident representative).

	ii. If the resident will not, meaning there is no consent, the Ombudsman program cannot take action on behalf of the resident. Other options need to be offered such as contacting the ROC or State Long-Term Care Ombudsman for guidance.
Withdraws consent after the Representative of the Office has verified or partially verified the complaint	i. Discontinue investigation and resolution activities on the complaint. ii. If reported to law enforcement or oth able to withdraw complaint. Ombudsma determine.

Appendix 3

Long Term Care Ombudsman Program
Release of Information

I give permission to _____, the designated representative of the Long Term Care Ombudsman Program to contact and share information on my behalf with the following agencies or persons. I understand any information given or received will remain confidential. It will be used by the Ombudsman Program only in _____ _____ facility and/or to acquire needed services or resources:

State Agencies:
_____ Department of Health and Senior Services
_____ Department of Social Services
_____ Other: Name _____
_____ Other: Name _____

Health Services:
_____ Physician: Name _____
_____ Hospital: Name _____
_____ Other: Name _____
_____ Other: Name _____

Financial:
_____ Social Security Office
_____ Bank: Name _____
_____ Other: Name _____

Nursing Facility:
_____ Medical Records
_____ Financial Records
_____ Personal Records

Family Members:
_____ Name: _____

_____ Name: _____

Other:

_____ Name: _____

_____ Name: _____

Signature of Resident: _____

Signature of Ombudsman Representative:_____

Date: _____

Missouri Long-Term Care Ombudsman Program Grievance Form

Name of Complainant: _____

Mailing address: _____

E-mail: _____ Phone number: _____

Long-Term Care Facility Associated with Complaint: _____

Date(s) Cause for Complaint Occurred: _____

Description of Complaint—please be as detailed as possible, you may attach a written description or supporting documents to this form.

Appendix 2

Signature _____ Date _____

Return form to: Missouri State Long-Term Care Ombudsman, P.O. Box 570, Jefferson City, MO 65102 or fax to: 573-751-6499

Appendix 5

Office of the Missouri State Long-Term Care Ombudsman
Conflict of Interest Screening for a Representative of the Office

In accordance with the Older Americans Act, Section 712(f) all representatives of the office must be screened for individual conflicts of interest prior to performing the functions of the Ombudsman Program and annually thereafter.

An individual conflict of interest exists if a person or their immediate family is involved in multiple interests, financial or otherwise, that could impact the effectiveness and credibility of the work of the Ombudsman Program.

Immediate family member is defined as, "a member of the household or a relative with whom there is a close personal or significant financial relationship".

In the past 12 months, have you or an immediate family member:

a. Been involved in the licensing or certification of a long-term care facility?
Yes☐ No☐ If yes, what facility?

If yes, what was your role?

b. Have ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility?
Yes☐ No☐ If yes, what facility?

If yes, what was your role?

c. Managed or worked in a long-term care facility?
Yes☐ No☐ If yes, what facility?

If yes, what was your role?

d. Received or has the right to receive, directly or indirectly, remuneration (cash or in-kind) under a compensation arrangement with an owner or operator of a long-term care facility?
Yes☐ No☐ If yes, please explain:

e. Accepted gifts gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services ?
Yes☐ No☐ If yes, please explain:

f. Accepted money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval.
Yes☐ No☐ If yes, please explain:

g. Served or are serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services.
Yes☐ No☐ If yes, please explain:

h. Served or are serving residents of a facility in which an immediate family member resides.
Yes☐ No☐ If yes, please explain:

Answering "Yes" to any of these questions indicates a potential conflict of interest. If a conflict of interest is identified, the "Conflict of Interest Identification, Removal and Remedy Form" must be completed with your Regional Ombudsman Coordinator.

Failure to identify and remove a conflict of interest will result in the denial or removal of designation as a Representative of the Office.

☐ I certify that I have read and understand this Conflict of Interest form and I have no conflicts.

☐ I certify that I have read and understand this Conflict of Interest form and I notified my Regional Ombudsman Coordinator of the identified potential conflicts of interest.

Print Name of current Representative of Office/Applicant	Signature of current Representative of Office/Applicant	Date

Appendix 2

_____ _____

Signature of Regional Ombudsman Coordinator Date

Appendix 6

Office of the Missouri State Long-Term Care Ombudsman
Conflict of Interest Identification, Removal and Remedy

Name of individual completing form:
Date Conflict was Identified:
Name of Person with the Identified Conflict:

If there is an answer of "yes" to any of the questions on the "Conflict of Interest Screening of a Representative of the Office" form, you must complete the information below for each yes answer.

Please indicate the letter of the identified conflict of interest as indicated on the "Conflict of Interest Screening of a Representative of the Office" form (a-h) and describe the conflict below:

Letter which corresponds to the Conflict of Interest Screening of a Representative of the Office form:

Please describe the conflict:

Appendix 2

Describe how the conflict will be remedied or removed below:

What is the expected duration of this conflict and plan?

Print Name of current Representative of Office/Applicant	Signature of current Representative of Office/Applicant	Date

Appendix 2

_____ _____

Signature of Regional Ombudsman Coordinator Date

Appendix 7

Glossary of Terms

- Abandonment is defined as the desertion of a vulnerable adult by a caregiver.
    - An example of *abandonment* occurs when caregivers leave the home with no one to attend the residents.

- Abuse is defined as the intentional, knowing, or reckless non-accidental, and non-therapeutic infliction of physical pain, injury, or mental or emotional distress, or fear, including coercion and intimidation; (or) sexual assault.
    - Examples of *physical abuse:* Hitting, shoving, pinching or maliciously restraining/isolating a resident, resulting in falls, broken bones, bruises, lacerations, pain, and/or mental distress.
    - Examples of *verbal abuse:* Shouting, screaming, swearing at or speaking in a disparaging manner about a resident, causing fear.
    - Examples of *sexual abuse:* Coercing a resident into sexual contact, sexually exploiting a resident, assaulting residents, or exposing them against their will to pornography.
    - Examples of *mental abuse* include humiliation, harassment, threats, punishment or deprivation resulting in fear, anxiety or depression.

- Administrative Hearing: This is a quasi-judicial hearing before an agency; it does not include an informal conference or review held by an agency before a final decision is issued or a rate-making proceeding or other non-adjudicative public hearing.

- Advance directives: An advance health care directive is a legal document which allows a person to a) express a preference regarding health and/or mental health treatment/non-treatment, and b) designating a decision-maker for health care in the event of the person's incapacity.

- Advocacy: The act of pleading for, supporting, or recommending a cause or course of action.

- Area Plan: A plan for statewide senior services developed by the Missouri division of Senior and Disability Services for the State of Missouri as set forth in the Older Americans Act (OAA) §306 (b).

- Case: Each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one or more complaints or problems which

requires opening of a case file and includes ombudsman investigation, fact gathering, setting of objectives and/or strategy to resolve, and follow-up.

- Certification: The term provided by the State Long-Term Care Ombudsman to an individual who meets minimum qualifications, is free of conflicts of interest, and has successfully completed training. Certification means that an individual is ready to be considered for Designation as a Representative of the Office.

- Community Education: Presentations to community groups or to groups of residents or families on residents' rights, the OLTCO, or other long-term care issues.

- Complaint: Information regarding action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of elders which is brought to the attention of a LTCO and to which the ombudsman responds in order to identify the cause(s) and remove or mitigate the present or future adverse effect on residents of any age.

- Complaint Investigation and Resolution: Efforts to assist residents of any age in resolving problems or complaints through investigation, verification of complaint, formal or informal problem resolution strategies, referrals to other investigative, advocacy, or enforcement agencies, and when appropriate, issuances of public reports.

- Confidentiality: The physical, technical, and administrative safeguards that prevent the improper use or disclosure of complaint and case information, including the names of residents and/or complainants, unless express consent is given by the resident (or legal representative) or complainant.

- Consultation: Providing information and assistance to an individual or a facility. It does not involve investigating and working to resolve complaints (i.e., a consultation is not a case). It is a reportable activity which Representatives of the Office enter into the Missouri Electronic Reporting System database.

- Designation: An individual or agency has completed all required activities and are an appropriate fit to be a Representative of the Office or Local Ombudsman Entity (LOE). Designation only occurs at the approval of the Ombudsman.

- Documents: Document means and includes the original and any copy, regardless of origin or location, produced or reproduced, of any kind of written (electronically, mechanically, or by hand), typewritten, printed, transcribed, scanned, punched, taped, recorded, filmed (photographic or graphic material), including but not limited to, any writing filed for reporting or other purposes with any federal, state, or local agency; papers; books; letters; postcards; audited or un-audited financial statements; financial ledgers; notices; circulars; bulletins; memoranda; contracts; agreements; bills; reports; plans; plats; research memoranda or summaries; telegrams;

handwritten notes; invoices; purchase orders; receipts; periodicals; notices; pamphlets; statements; reports; studies; telephone records or reports; correspondence; diaries; notepads; desk calendars; interoffice and personal interviews; minutes; interoffice communications; schedules; data sheets; data processing cards or tapes or disks; computer disks (including backup, zip, compressed, and hard drives); tapes and disk recordings (including audio, video, CD-ROM, DVD); questionnaires; licenses or applications for licenses; or drafts of any of the above, whether in public use or not.

- Exploitation is defined as "the unjust or improper use of another person or another person's resources for one's own profit or advantage, with or without the person's consent, includes acts by a person who stands in a position of trust or confidence with a vulnerable adult or who knows or should know that the vulnerable adult lacks the capacity to consent that involve obtaining profit or advantage through undue influence, deception, fraud, intimidation, or breach of fiduciary duty."

    - Examples of *exploitation:* Pressuring a vulnerable adult to quit claim the deed to his house or taking control of a resident's funds and spending them for one's self.

- Family Council: An organization of long term care residents' family members which meets to discuss issues pertaining to the quality of life and care of residents. Nursing home regulations require administrators to provide space for such meetings and a staff liaison. Family councils can bring issues to administrators for resolution.

- Immediate Jeopardy: Reported condition(s) where, if not resolved or mitigated, would potentially result in significant harm to one or more nursing home residents, up to and including death. A finding of federal or state nursing home facility surveyors.

- Imminent harm: When a vulnerable adult is at immediate risk of physical, mental, or emotional harm from some danger in his or her environment, then the adult is said to be at risk of imminent harm.

- Information and Assistance: Services which provide information to individuals regarding long- term care or the needs/rights of long-term care residents. This service is classified as an Activity under OLTCO database and for OAA reporting purposes.

- Interagency Coordination: Activities which involve meeting or coordinating with other agencies to improve the effectiveness of investigations or services for older Missourians.

- Issues Advocacy: Activities representing the collective interests of residents in seeking administrative, legal, and other remedies.

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

    - Power of Attorney: A durable power of attorney is a legal instrument that allows an agent to act on a principal's behalf in business and other matters, in the event that the principal is either unable to make decisions or specifically delegates decision-making to the agent.
    - Conservator: Defined by the State of Missouri as "a person appointed by the court to manage only the property and the finances of an incapacitated person."
    - Guardian: Defined by the State of Missouri as "a person appointed by the court to protect the rights and manage the affairs of an incapacitated person."

- Long-Term Care Facility: Any licensed nursing home or assisted living home providing long-term care services and subject to federal and/or state regulations.

- Long-Term Care Services: A set of health, personal care, and social services delivered over a sustained period of time to persons who have lost or never acquired some degree of functional mental or physical capacity. (Institute of Medicine, Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act, 1995, p.290.

- NASOP: The National Association of State Long Term Care Ombudsman Programs. The Missouri State LTCO is a NASOP member, working with other Ombudsmen to advocate for the program and develop best practices for Ombudsmen.

- Neglect is defined as the intentional, knowing or reckless failure by a caregiver to provide essential care or services, or access to essential care and services, or to carry out a prescribed treatment plan necessary to maintain the physical and mental health of the vulnerable adult when the vulnerable adult is unable to provide or obtain the essential care or services or to carry out the prescribed treatment plan on the vulnerable adult's own behalf; in this paragraph, "essential care or services" includes food, clothing, shelter, medical care, and supervision. Also referred to as gross neglect in extreme cases.

        - Examples of *neglect*: Failing to keep a resident clean and dry with subsequent skin breakdown or intentionally, failing to provide adequate nutrition, or refusing to allow a nurse to provide care prescribed by a physician.

- NORC: The National Ombudsman Resource Center, funded by a grant from the Administration on Aging, provides technical assistance to State and Local Ombudsmen.

- Office of the Long Term Care Ombudsman (OLTCO): The Office designated by the State of Missouri to advocate for the health, safety, welfare and rights of Older Missourians in long term care facilities. [OAA § 305(2)(A)]

- Older Americans Act (OAA): The federal law which established and funds a safety net of senior services, including transportation, nutrition, and other services, including the Office of the Long Term Care Ombudsman.

- Preponderance of the Evidence: The totality of the information (written, oral, direct or circumstantial) that results in the conclusion that the events are more likely to have happened in that manner than not to have happened. This is an accepted standard of proof at administrative hearings. Verified is the standard used in the Long-Term Care Ombudsman Program (see definition for Verified below).

- Resident: An individual residing in a long-term care facility.

- Resident Council: A group of residents who meet regularly to discuss issues relating to their care and quality of life. Federal nursing home law requires the facility to provide space and a staff liaison to facilitate resident council meetings. Assisted living facilities are not required by state or federal law to facilitate resident council meetings.

- Self-Advocacy: The act of pleading for, supporting, or recommending a course of action for one's own self.

- State Long-Term Care Ombudsman (SLTCO): The individual who heads the OLTCO, meets the qualifications for this position, and is serving in this capacity on a full-time basis. [OAA §712 (2-3),]

- Undue Influence: Is defined as "the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care."

  Example of *undue influence*: A caregiver "befriends" a resident and then convinces him to give her power of attorney and control of her debit card.

- Verified: After work (investigation, record inspection, observation, etc.) it is determined that the circumstances described in the complaint are generally accurate.

- Vulnerable adult: Defined as "a person 18 years of age or older who, because of incapacity, mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance, is unable to meet the person's own needs or to seek help without assistance.