

RESPONDING TO ALLEGATIONS OF ABUSE: ROLE AND RESPONSIBILITIES OF LONG-TERM CARE OMBUDSMEN

STATE LONG-TERM CARE OMBUDSMAN PROGRAM POLICIES, PROCEDURES AND PRACTICES

The Older Americans Act requires each state to create policies and procedures to ensure the state LTCOP adheres to the federal provisions regarding confidentiality and disclosure of information. Most states have procedures requiring LTCO to obtain permission from the resident and complainant (or their legal representative), but the following examples of LTCOP policies and procedures go a step further and address how to respond to proceed with complaints when residents cannot or do not provide consent.

LTCO Action when Residents Do Not Provide Consent

The following table is an adaptation of two tables from the **Georgia Long-Term Care Ombudsman Program Policies and Procedures Manual** and provides a detailed process for LTCO to follow when residents do not or cannot provide consent and after all other complaint processing protocols have been exhausted (e.g. contacting the resident representative if the resident cannot speak on their own behalf, working with facility staff, discussing the importance of reporting and responding to fear of retaliation).¹

IF the resident	THEN the LTCO shall...
Gives permission to the LTCO to make the report	Report the 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.
i) Does not give permission to a LTCO to make the report; <i>and</i> 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) Does not give permission to a LTCO to make the report; <i>and</i> ii) Acknowledges having been abused	i) Determine: <ol style="list-style-type: none"> 1) Whether other residents have experienced similar circumstances; <i>and</i> 2) Whether any other resident wishes the LTCO to take any action on his or her behalf; <i>and</i> ii) Make repeat visits to the resident who alleged abuse or gross neglect in order to encourage the resident to permit the LTCO to report the suspected abuse or gross neglect

¹ Georgia Long-Term Care Ombudsman Program Policies and Procedures. Table III-B “Resident Refuses Consent” and Table III-C “When to Report Abuse” http://www.odis.dhr.state.ga.us/5000_agi/Aging%20Directives%20Index.htm

Is unable to communicate his or her wishes	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
Does not make the complaint (e.g. the LTCO receives a complaint of suspected abuse or neglect from a complainant other than the resident)	<ul style="list-style-type: none"> i) Advise the complainant to report the suspected abuse or neglect to the appropriate agency and provide information to assist the complainant in making the report; <i>and</i> ii) Visit the resident and follow complaint investigation steps
<ul style="list-style-type: none"> i) Does not make the complaint; <i>and</i> ii) The LTCO personally witnesses abuse of a resident 	<ul style="list-style-type: none"> i) Report the alleged abuse witnessed by the LTCO to the appropriate investigating entity; ii) File an ombudsman-generated complaint
Requests the LTCO to not make a report of abuse personally witnessed by the LTCO	<ul style="list-style-type: none"> i) Determine: <ul style="list-style-type: none"> 1) Whether other residents have experienced similar circumstances; <i>and</i> 2) Whether any other resident wishes the LTCO to take any action on his or her behalf; <i>and</i> ii) Make repeat visits to the resident who was the victim of abuse observed by the LTCO in order to encourage the resident to permit the LTCO to report the alleged abuse or gross neglect.
Withdraws consent after the LTCO has verified or partially verified the complaint	<ul style="list-style-type: none"> i) discontinue investigation and resolution activities on the complaint; ii) determine, during subsequent visits to the facility, whether the type of complaint is recurring. If it is recurring, the LTCO shall determine whether the circumstances merit other strategies towards resolution which would not involve or disclose the identity of the resident who has withdrawn consent (e.g., filing an ombudsman generated complaint, presenting the issue to the resident or family council)

Ohio State Long-Term Care Ombudsman Program Policies and Procedures

The policies and procedures for the Ohio State Long-Term Care Ombudsman Program also includes clear guidance regarding how to proceed if a resident cannot provide consent and does not have a legal representative stating the following:²

H. Consent (2)(b) When there is no legal representative, the legal representative is unknown to the representative or the provider, the legal representative cannot be reached within three days of the date upon which a complaint

² Ohio Revised Code. Chapter 173 Ohio Department of Aging. State Long-Term Care Ombudsman Program. 173 2-1-17 Complaint Handling Protocol <http://www.ltombudsman.org/sites/default/files/ombudsmen-support/program-management/OH-PP.pdf>

was received, or when the estate of a deceased client has no legal representative, consent may be given by the sponsor. If there is no sponsor, the [ombudsman] representative may proceed with the approval of the SLTCO.³

NORC Curriculum: Problem Solving Process

The Problem Solving Process module of the NORC Curriculum includes a chart that outlines the process for LTCO to seek permission from the State LTCO prior to accessing resident records if the resident is unable to provide consent and does not have a legal representative. State LTCOPs could use that process as a model for their policies and procedures for responding to allegations of abuse when the resident cannot give consent and does not have a legal representative.⁴

Required Consultation and Communication

In addition to developing policies and procedures regarding maintaining confidentiality in all aspects of LTCO work, it is important to develop requirements for consultation and communication, especially when responding to complaints about abuse. It is critical that LTCO communicate with their supervisor when they receive an allegation of abuse and the resident does not provide consent to pursue the complaint or cannot provide consent (e.g. a volunteer LTCO consults their staff LTCO). Below is an example from Texas.

Texas State Long-Term Care Ombudsman Initial Certification Training⁵

The Texas certification training manual explains why consultation with supervising ombudsman staff is important and clearly states when consultation is recommended and required. The manual lists several reasons that require consultation including when ombudsmen “suspect abuse, neglect, or exploitation of a resident and the resident does not consent to reporting and feel a serious risk to resident health and safety exists in the facility where the ombudsmen serve.”

Protecting Resident Information

In keeping with the requirements of the Older Americans Act regarding disclosure of resident identities State LTCOPs should develop forms, documents and Memorandum of Understanding (MOUs) that explain the role of the LTCO and the LTCOP’s responsibility to protect resident information.

Informing Residents of Confidentiality and Disclosure

This document from the Minnesota LTCO program provides informed consent regarding the disclosure of a resident’s identity and reviews residents’ rights to privacy.⁶

Role of LTCOP and Other Agencies Regarding Abuse

Since the role of the LTCO program when responding to abuse differs from other agencies (e.g. Adult Protective Services, State Survey Agencies), but the LTCO often needs to communicate and collaborate with other agencies it is important to explain the role and responsibilities of the LTCO program. One way to explain these differences and set clear expectations (and boundaries) regarding communication and information sharing is to develop MOUs. MOUs are also a useful tool to start discussions when leadership changes within agencies or to include in initial certification training for LTCO. Sharing the MOU with new agency leadership (e.g. new State Unit on Aging Director, new Adult Protective Services Director) or during certification training for LTCO will serve as an educational opportunity regarding the role of the LTCOP compared to other agencies and programs and how they can work together.

³ per 173.14 (E) sponsor is defined as an “adult relative, friend or guardian who has an interest in or responsibility for the welfare of a resident or recipient”

⁴ NORC. *The Problem-Solving Process: Investigation. Resource Material for the NORC Curriculum*. April 2006. p. 31.

<http://www.ltombudsman.org/sites/default/files/ombudsmen-support/training/Local-Investigation-Curri-cResource-Material.pdf>

⁵ Texas State Long-Term Care Ombudsman Initial Certification Training Manual. p. 203.

<http://www.ltombudsman.org/sites/default/files/norc/certification-training-manual.pdf>

⁶ <http://www.ltombudsman.org/sites/default/files/norc/client-consent-authorization-form-MN.pdf>

Memorandum of Agreement D.C. Department of Health, Health Regulation Administration and the District of Columbia Long-Term Care Ombudsman Program⁷

This MOU addresses information sharing between agencies that respects the confidentiality requirements of each agency stating the following:

“While both parties seek through this agreement to improve cooperation and information sharing that will enable them to better carry out their mission to protect and improve the quality of life for long-term care residents in the District of Columbia, each party also recognizes the mutual obligations that they have under federal and District law to protect confidential information. Therefore, the parties agree that any item in this Memorandum of Agreement that conflicts with confidentiality provisions required of the parties by District or federal law shall be void.” [Appendix C]

Similarly, the **Protocol for Joint Investigation of Health Facilities Between New Mexico Department of Health, New Mexico Children, Youth and Families Department, New Mexico Human Services Department, and New Mexico Aging and Long Term Care Department** outlines the confidentiality requirements for all entities involved, the role of each agency and the operational guidelines for the Health Facility Joint Protocol members.⁸

The purpose of the Health Facility Joint Protocol is “to ensure maximum coordination in the management of allegations of abuse, neglect and exploitation of persons in health facilities in New Mexico, thus improving their quality of life.” The protocol acknowledges that not all complaint information and findings can be shared due to confidentiality requirements of involved agencies, but outlines goals, steps for information sharing, training and meeting requirements in the operational guidelines. [Appendix D]

For Ombudsmen seeking a more in-depth discussion and considerations regarding confidentiality, complaint investigation, information sharing and abuse in long-term care, please review the materials listed in the “Resources” section of the ***Responding to Allegations of Abuse: Role and Responsibilities of Long-Term Care Ombudsman*** Quick Reference Guide.⁹

⁷ <http://www.ltombudsman.org/sites/default/files/norc/resource-brief-ombudsman-program-mous.pdf>

⁸ <http://www.ltombudsman.org/sites/default/files/norc/resource-brief-ombudsman-program-mous.pdf>

⁹ <http://www.ltombudsman.org/issues/elder-abuse-elder-justice#ombudsmen>