

# CHAPTER 1 SELECTION, DESIGNATION, AND TERMINATION OF LOCAL OMBUDSMAN PROGRAMS

## I. Introduction

The federal Older Americans Act (OAA) provides the authority for the State Ombudsman to designate an entity as a local Long-Term Care Ombudsman Program (LTCOP). The California Legislature determined that in order to comply with this federal requirement and to effectively assist residents of long-term care (LTC) facilities in the assertion of their civil and human rights, the structure, powers, and duties of the LTCOP must be specifically defined.

The Office of the State Long-Term Care Ombudsman (OSLTCO) has defined three types of designation in this process: Provisional Designation, Full Designation, and Emergency Designation. This chapter details the process and requirements for each designation status.

## II. Legal Authority

**FEDERAL** Title 42 United States Code section 3058g(a)(5)(A)-(D)

**STATE** Welfare and Institutions Code section 9701 et seq.

## III. Eligibility Criteria for Designation

According to federal law [42 U.S.C. § 3058g(a)(5)(C)], in order to qualify for designation as a local LTCOP, an organization shall:

- Have demonstrated capability to carry out the responsibilities of the Office;
- Be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals served by the Ombudsman;
- Be a public or nonprofit private entity; and
- Meet such additional requirements as the State Ombudsman may specify. (Additional requirements may be specified in the Program Manual, Program Clarification Memos, and other documents generated by the State Ombudsman.)

According to State law [Welf. & Inst. Code, § 9701(a)], an “approved organization’ means any public agency or other appropriate organization that has been designated by the Office of the State Long-Term Care Ombudsman to hear, investigate, and resolve complaints made by or on behalf of patients, residents, or clients of long-term care facilities relating to matters that may affect the health, safety, welfare, and rights of these patients or residents of long-term care facilities related to matters that may affect the health, safety, welfare, and rights of these patients or residents.” For the purposes of this chapter, entity and approved organization are used interchangeably.

Local LTCOPs shall not be designated in an organization which is responsible for licensing and/or certifying LTC facilities or which is an association of such providers. Local LTCOPs shall not be designated in any other organization which would impair the ability of the Ombudsman to objectively and independently investigate complaints made by, or on behalf of, LTC residents.

#### **IV. Selection and Designation Process**

The selection and designation of organizations to provide local LTCOP services is a process involving the Area Agencies on Aging (AAAs) and the OSLTCO. The OSLTCO designates only one program in each Planning and Service Area (PSA), unless CDA provides written approval otherwise.

1. The AAA issues a Request for Proposal (RFP) or Invitation for Bid (IFB), which must include, but is not limited to, the program standards and criteria established by the OSLTCO as specified in Program Memo 13-04 (Exhibit 1-A).
2. The AAA reviews proposals and selects the best qualified entity utilizing its normal RFP and contracting procedures.
3. The AAA provides a written recommendation of provisional designation for the selected entity to the OSLTCO. The recommendation must provide documentation that the selected entity meets program standards and criteria.
4. Prior to awarding provisional designation status, the OSLTCO completes a review of the entity’s ability to comply with program standards and criteria. If the entity meets the standards and criteria, or if the OSLTCO finds minor deficiencies which can be corrected within a reasonable period, the OSLTCO awards the entity provisional designation for a period of six months, subject to extensions at the discretion of the OSLTCO. If the deficiencies require a Corrective Action Plan (CAP), one will be developed jointly by the OSLTCO, the AAA, and the recommended entity. If the entity fails to meet the standards or subsequently cannot complete the corrective action plan, the OSLTCO will inform the AAA of the entity’s deficiencies and require the AAA to select another entity.

5. The AAA contracts with the provisionally designated entity based upon program standards and criteria established by the OSLTCO.
6. Prior to the end of the provisional designation period, the AAA conducts an evaluation to assure contract compliance and completion of the implementation plan.
7. The AAA recommends full designation status to the OSLTCO and provides a written evaluation to support the recommendation. Before the final award of a contract by the AAA, the OSLTCO reviews the selection to determine if the agency chosen by the AAA is free from all conflicts of interest and meets the designation requirements of the OAA, as specified in section 3058g(a)(5) of title 42 of the United States Code. Once the OSLTCO completes its review of the organization recommended for designation and finds that there are no obstacles, the State LTC Ombudsman will designate the organization as the local LTCOP. If the OSLTCO finds that the organization recommended for designation is not free from conflict of interest or fails to meet the other requirements specified in the OAA, the OSLTCO will inform the AAA that they will need to identify an organization that meets the requirements of the OAA.
8. If the AAA does not recommend full designation status and the OSLTCO agrees, or if the AAA documentation does not support the recommendation for full designation; the entity, at the request of the AAA, may be granted an extension of provisional designation for a specified time period. The OSLTCO will require a CAP and response from the entity followed by subsequent compliance or AAA selection of a new entity.
9. The previously designated entity shall provide to the newly designated entity all records pertaining to the local LTCOP, including but not limited to all records of all complaints, including abuse, investigations and actions, facilities visited/monitored, residents served, records of certified Ombudsman representatives, training and other documents/records essential to ensure continuity in the program.

## **V. Changes in Designation**

The OSLTCO may change the entity's full designation status if the designated entity fails to substantially comply with the program's established standards and criteria. In the case of non-compliance, this change to provisional designation status is subject to the development of a CAP, including timelines for compliance, by the OSLTCO and local entity. The OSLTCO conducts a review of the entity to determine compliance with the CAP. Reinstatement to full designation may occur after consultation with the AAA, if the standards and criteria are met. If the standards and criteria are not met, the OSLTCO may grant an extension to amend the CAP, followed by a secondary review by the OSLTCO; or the action toward termination in Section VI may begin.

## **VI. Termination of Designated Local LTC Ombudsman Program**

Ombudsman services may be terminated by the AAA or by the subcontractor.

The AAA, subject to the terms and conditions of the contract, may terminate the contract of the approved organization responsible for local LTCOP services.

Upon notice of termination of Ombudsman services, the AAA shall do the following:

- Notify the OSLTCO in writing within three working days of the intent to terminate responsibility;
- Provide documentation to the OSLTCO regarding the reasons for recommendation of termination of the current approved organization;
- Receive OSLTCO approval for termination of designation;
- Notify the OSLTCO within one working day of any change in local Ombudsman phone services as a result of a transition of responsibilities;
- Submit a Transition Plan within 15 working days which includes, at a minimum, provision for an adequate number of certified LTC Ombudsman representatives in order to maintain service levels during the transition;
- Implement the transition plan as approved and monitored by the OSLTCO;

- Recommend an entity for emergency designation, if required (see Section VII);
- Begin the process to select a new designated entity.

## **VII. Emergency Designation Process**

In the event an approved organization is unable to operate the local LTCOP, an emergency designation may be granted. "Unable to operate" is defined as a situation in which services are severely impaired or not being delivered, or the AAA has terminated the contract. This allows operation of the local LTCOP on an interim basis in place of the currently designated organization.

1. The AAA will consult with the OSLTCO and recommend an entity, not to exclude the AAA, to operate the program on an interim basis for a specific period of time, not to exceed six months.
2. Upon the emergency designation of an interim entity, the designation of the current approved organization is withdrawn.
3. Within 30 days of the emergency designation, the AAA will initiate the process to select a new entity.