

CHAPTER 2 ROLES AND RESPONSIBILITIES

I. Introduction

Special mandates from Congress and the State Legislature make the Long-Term Care Ombudsman Program (LTCOP) unique. The program is carried out by three organizational entities: the Office of the State Long-Term Care Ombudsman (OSLTCO), the Area Agencies on Aging (AAA), and the local LTCOP service providers. Each entity has distinct roles and responsibilities to ensure that consistent and effective services are provided to residents of long-term care (LTC) facilities. The LTCOP provides services to residents of Skilled Nursing Facilities (SNFs), Intermediate Care Facilities (ICFs), Distinct Part SNFs and Residential Care Facilities for the Elderly (RCFEs).

II. Legal Authority

FEDERAL Title 42 United States Code sections 3026, 3027 and 3058(g)

STATE Welfare & Institutions Code sections 9700-9745
California Code of Regulations, title 22, sections 7318 and
8010-8045

III. Organization and Management of California's Long-Term Care Ombudsman Program

A. State Long-Term Care Ombudsman

The State Long-Term Care Ombudsman leads and directs the statewide program and is responsible for compliance with federal and state laws and regulations. This, in part, is accomplished through the development of policies and procedures that guide and shape the program. The State Ombudsman designates local entities to identify, investigate, and resolve complaints made by or on behalf of residents of LTC facilities. He or she certifies Ombudsman staff and volunteers, ensuring they are free from conflicts of interest and adhere to the confidentiality requirements of the Older Americans Act (OAA).

The State Ombudsman represents the interests of residents before government agencies. He or she monitors, analyzes, and comments on proposed amendments to federal and state laws, regulations and policies that impact or have the potential to impact the health, safety, welfare and rights of LTC residents.

B. Office of the State Long-Term Care Ombudsman

Located within California Department of Aging (CDA), under the direction of the State Ombudsman, the staff of the OSLTCO ensures and maintains consistent quality services to LTC residents by providing local LTCOPs with policy and direction, technical assistance, program and fiscal monitoring and oversight, and ongoing training for local Program Coordinators.

The OSLTCO processes criminal record background clearance and certification for all staff and volunteers of the LTCOP.

The OSLTCO maintains a 24-hour toll-free telephone CRISISline that receives calls from or on behalf of LTC residents. CRISISline operators provide information to callers and link them with local resources.

The OSLTCO collects and manages statewide program data through the National Ombudsman Reporting System (NORS). NORS data includes information about cases, complaints, and activities performed by the LTCOP and forwarded to the Administration on Aging (AoA). NORS data is also used for program planning and resource development.

The OSLTCO works in cooperation with CDA legal counsel to provide local programs with information and assistance with legal issues. The Office of the Attorney General provides legal representation to any representative of the Ombudsman Program against whom suit or other legal action is brought or threatened in connection with the performance of the official duties of the LTCOP.

C. Area Agencies on Aging (AAAs)

Under contract with CDA, AAAs are responsible for the planning and development of home and community based services for older adults within a designated Planning and Service Area (PSA). In accordance with procedures and standards developed by the OSLTCO and CDA, each AAA recommends to the State Ombudsman designation of an organization to deliver ombudsman services (see Chapter 1 of this Manual). The AAA may elect to deliver ombudsman services directly or by contract with a non-profit or public agency. The AAA is responsible for the day-to-day monitoring and oversight of the direct service and/or the contracted LTCOP. The AAA ensures that the local LTCOP meets the goals and objectives outlined in its Area Plan and that LTC residents within the PSA have access to ombudsman services. The AAA assures that conflict of interest and confidentiality requirements of the OAA and current Area Plan contracts are maintained.

The AAA acts as the sub-grantee and fiscal liaison with CDA for all budgetary, accounting, and audit requirements. It must ensure that separate budget and expenditure accounting is maintained for the Ombudsman Program and is made available to the Program Coordinator as specified in the California Code of Regulations (Cal. Code Regs., tit. 22, § 7318).

The AAA must ensure that funds obtained from all sources related to the local LTCOP are available to the local LTCOP and that it is operated on a sound fiscal basis. The AAA must comply with the Minimum Funding Requirement for the Ombudsman Program as specified in the OAA.

1. Contracted Service

The AAA may contract with an entity to provide ombudsman services. The contract must be established using the AAA's approved procurement policies and procedures. The LTCOP contractor must be either a private nonprofit or a public agency and may be either a single purpose or a multi-service/umbrella agency. The selected contractor must demonstrate interest, concern, experience, and knowledge in programs for older and dependent adults and quality of care for residents of LTC facilities. A multi-service organization and/or public agency must assure that none of its sponsored programs are in conflict with the objectives and policies of the OSLTCO, and that adequate resources are allocated to the local LTCOP.

2. Direct Service

The AAA may deliver LTCOP services directly. If the AAA elects to be a direct service provider, both AAA and local LTCOP roles and responsibilities apply.

D. Local LTC Ombudsman Program

The local LTCOP is designated by the State Ombudsman to carry out the functions of the Program in the PSA. The local LTCOP provides day-to-day services to protect the health, safety, welfare, and rights of residents of LTC facilities. The local LTCOP is responsible for ensuring that residents of LTC facilities have regular and timely access to ombudsman services. The local LTCOP ensures that complaints and requests for assistance or other services receive timely and appropriate action.

Although local LTCOP staff are employed by the AAA or the contracted service provider, they are program staff of the OSLTCO and receive their program direction and supervision from State Ombudsman staff.

The local LTCOP maintains regular communications with the OSLTCO and the AAA. The local LTCOP must notify the OSLTCO of cases with potential legal implications or media exposure, issues that may have the

potential for statewide impact, and when there is an impending evacuation or relocation of residents.

1. Training and Certification

The local LTCOP is required to ensure that adequate and appropriately trained personnel are available to handle the day-to-day operations and fulfill the mandates of the program. The local LTCOP establishes a plan for volunteer recruiting, training, and supervision; which includes at a minimum:

- Goals for volunteer recruiting and training.
- One 36-hour ombudsman certification training annually for new staff and volunteers using the OSLTCO approved training curriculum, including an internship and mentoring by an experienced ombudsman (see Chapter 7 - Training Requirements).
- In-service training to fulfill the legal requirement that ombudsman representatives receive an additional 12 hours of training annually to maintain certification.
- Requirements for appropriate personnel attendance at OSLTCO and other mandated training.
- Procedures for compliance with required criminal background clearances (see Chapter 8 - Long-Term Care Ombudsman Certification).
- Policies and procedures to assure that ombudsman representatives are free from conflict of interest.
- Procedures for compliance with the OSLTCO decertification process.
- An annual recognition activity for volunteers to show appreciation for their dedication and work to protect the health, safety, welfare, and rights of residents.

2. Complaint Management

The local LTCOP is required to develop a complaint management system based on current legislative requirements and policies of the OSLTCO containing at a minimum, the following elements:

- Provisions for the receipt and recording of all complaints (Chapter 12 -Information Systems).

- A logging and tracking method.
- Provisions for timely handling and resolution of complaints.
- Confidentiality of files (Chapter 5 - Confidentiality).
- Notification of progress and resolution to complainants.
- Systematic referral and follow-up.
- Documentation of patterns, trends, and special problems.
- Appropriate handling of CRISISline referrals (Chapter 11 - Telephone Protocol).

3. Additional Responsibilities

The local LTCOP also provides the following services to residents and their families.

- Witnessing advance health care directives and property transfers in excess of \$100 for residents of SNFs (Chapter 4 -Ombudsman Witnessing of Advance Health Care Directives and Property Transfers).
- Assisting residents and their families in the development of resident and family councils.
- Participating in resident and family council meetings as requested and as program priorities allow.
- Attending citation review conferences to advocate for residents as requested and as program priorities allow.
- Providing available public information about local LTC facilities and criteria to look for in selecting a facility.
- Assisting LTC residents, their families and friends, care providers, and members of the community with information on available community services, Medi-Cal eligibility, and other LTC issues.
- Providing community resource information and referrals to community organizations and services in the aging network for residents of LTC facilities.

- Training for local groups and organizations on ombudsman services and issues related to LTC residents.
- Assisting in review of facilities undergoing bankruptcy if requested by the State Ombudsman in order to ensure that residents' needs are being met. This is an optional activity for local LTCOPs. (See Chapter 14 – Facility Closures and Bankruptcies.)
- Developing working agreements and consultative services with the following agencies:
 - Legal services
 - Adult Protective Services
 - Licensing
 - Law enforcement
 - Patient advocates for developmentally disabled and mentally ill persons, including Disability Rights California, formerly known as Protection and Advocacy
 - Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse
 - Information and Assistance services
 - Provider groups
 - Community organizations
 - Other groups as appropriate

Each local LTCOP must have at least a paid Program Coordinator and certified Ombudsman volunteers. The local LTCOP must develop job descriptions, including responsibilities required by the OSLTCO, for all paid and volunteer positions.

4. Ombudsman Program Coordinator

The day-to-day operation of the local LTCOP is managed by the Program Coordinator. The Coordinator must complete the OSLTCO-sponsored New Coordinator Training and sign the Coordinator Agreement (OSLTCO S010), included as Exhibit 2-A. This individual should possess a combination of the following qualifications:

- Experience in management or leadership of community programs/organizations.
- Knowledge of the field of gerontology and aging programs.
- Interest and commitment to services to older persons.
- Knowledge and experience in the field of LTC.
- Experience in management and supervision of volunteer programs.

- Knowledge of laws and regulations in the area of LTC facilities.

The primary duties of the Program Coordinator are to:

- Ensure that ombudsman services are delivered pursuant to the requirements of federal and State laws and regulations and OSLTCO policies and procedures.
- Coordinate complaint investigations with licensing agencies and law enforcement when appropriate.
- Ensure telephone coverage for emergency situations when office staff is not available to take calls (Chapter 11, Telephone Protocol).
- Recruit, hire, manage, and supervise paid staff and volunteer ombudsman representatives.
- Ensure an effective volunteer program through recruitment, training, retention, supervision, monitoring, and mentoring of volunteers.
- Coordinate staff and volunteer facility assignments to ensure appropriate coverage of all LTC facilities in the PSA.
- Ensure that required confidentiality standards for internal and external communications and the handling and storage of files are met.
- Act as liaison between the local LTCOP and the OSLTCO.
- Ensure that local LTCOP staff and volunteers are free from conflicts of interest.
- Ensure that local ombudsman staff and volunteers receive a minimum 36 hours of State-approved certification training plus a minimum of 12 hours of continuing education annually.
- Conduct regular meetings with staff and volunteers to provide training and information.
- Provide on-going support and guidance to ombudsman representatives in the identification, investigation, and resolution of complaints made by, or on behalf of, LTC residents.

- Provide one-on-one technical assistance to individual local ombudsman representatives as needed.
- Attend mandated biannual meetings convened by the OSLTCO.
- Collect program data and prepare concise, accurate, and timely reports as required by the OSLTCO and the AAA.
- Participate in the development of the program's budget and ensure budget and contract compliance.
- Cross-report instances of abuse, neglect, and poor facility practices to appropriate agencies as mandated by law.
- Coordinate response to subpoenas to protect confidentiality.
- Act as a liaison to federal, state, and local agencies; including the OSTLCO, licensing agencies, Adult Protective Services, the Public Guardian, the Bureau of Medi-Cal Fraud and Elder Abuse, Elder Abuse Councils, Elder Death Review Teams, and others.
- Participate in State and local workshops and meetings related to residents' rights, abuse prevention, and LTC issues as time permits.
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and policies related to LTC facilities and resident issues.
- Maintain a working knowledge of laws and regulations pertaining to LTC facilities and the LTCOP.
- Resolve program problems and complaints against the local LTCOP and its representatives.

Some LTCOPs may also have Co-coordinators and/or Regional Coordinators. These individuals should possess the same qualifications as the Program Coordinator.

5. Ombudsman Program Co-Coordinator

Under the supervision of the Program Coordinator, a Program Co-Coordinator shares some or all of the responsibilities of the Coordinator. In addition, a Co-Coordinator may have primary responsibility for specific program areas such as volunteer recruitment and training, management/administration, or data analysis and reporting.

6. Ombudsman Regional Coordinator

Under the supervision of the Program Coordinator, the Regional Ombudsman Coordinator is responsible for managing the local Ombudsman Program in a specified geographic region within the PSA. Regional Coordinators may work in the same office as the Program Coordinator or at a separate location.

Regional Coordinators assume many of the responsibilities of the Program Coordinator, including direct supervision of staff and volunteers in the specific region. In addition, they act as lead investigators in complex cases and are available for facility coverage when other ombudsman representatives are not available.

The OSLTCO and the AAA must be notified immediately of any change in the Program Coordinator, Co-Coordinator, or Regional Coordinator position.

7. Long-Term Care Ombudsman Representative (Staff or Volunteer)

Ombudsman staff and volunteers are representatives of the State Long-Term Care Ombudsman Program. Under the general guidance and direction of the Program Coordinator or a designated supervisor, the ombudsman representative:

- Investigates complaints made by, or on behalf of, residents of LTC facilities.
- Maintains an on-going presence in facilities.
- Participates in resident and family council meetings when requested by residents and their families and as time permits.
- Provides technical assistance to resident and family councils.
- Develops professional relationships with nursing and residential care facility personnel through regular visits to each facility within assigned area.
- Attends monthly ombudsman meetings and participates in ongoing training.
- Documents investigations and monitoring activities and submits required records in a timely manner.
- Provides educational programs to residents and families, facility staff, community groups and organizations and the general public

on residents' rights, placement, LTC issues, community resources, elder abuse, and mandated reporting.

- Refers appropriate elder abuse cases to supervisor for action.
- Witnesses advance health care directives and property transfers to facility staff in excess of \$100 in skilled nursing facilities.

D. Governing Boards

The governing board of the local LTC Ombudsman Program shall employ staff and operate the program in compliance with state and federal laws, regulations, and policies. The board provides ongoing leadership to the program, ensuring the provision of adequate administrative and operational resources.

E. Advisory Councils

Public and private non-profit multi-service agencies providing ombudsman services are required to have a formal advisory council specifically for the local Ombudsman Program. Single purpose ombudsman agencies are not required to have a formal advisory council since their boards serve this purpose. The advisory council membership should be composed of persons concerned about the quality of care in LTC facilities and in protecting the rights of LTC residents. Advisory council members should include representatives of service agencies within the aging network, community organizations, and consumers. In the case of a multi-service agency, the advisory council chairman should be a member of the local Ombudsman Program's governing board. (Program Memo 08-29)

IV. Advocacy

Advocacy is the primary purpose and activity of the local LTCOP. The ombudsman representative practices "expressed wish" advocacy. As an "expressed wish" advocate, the ombudsman representative acts as a bridge between the resident and those whom exercise control and make decisions. As an expressed wish advocate, the ombudsman representative must speak for the resident's expressed wishes despite the judgment of professionals and families, or the personal beliefs or biases of the ombudsman. The goal of ombudsman advocacy is to use problem solving techniques to achieve satisfaction for residents. This is a difficult task.

Successful advocacy requires taking the time to respectfully listen to the concerns of all involved, including facility administrators and staff, while also persistently pursuing residents' expressed interests. Successful ombudsman advocacy also involves working at the direction of residents and empowering

residents to be their own advocates. The ombudsman representative advocates for the resident as an individual, for issues that impact the daily lives of residents at the facility level, and for systemic changes that impact LTC facility residents in the community or state-wide. Other responsibilities are secondary to the identification, receipt, investigation, and resolution of complaints made by, or on behalf of residents of LTC facilities.

A. Individual Advocacy

Individual advocacy includes the identification, receipt, investigation and resolution of complaints. When advocating on a resident's behalf, an ombudsman representative should seek to ensure that informed consent and "expressed wish" advocacy are utilized to the greatest extent possible. Resident advocacy is accomplished through the development and maintenance of regular and ongoing ombudsman presence in SNFs, ICFs, Distinct Part SNFs, and RCFEs. Regular presence in facilities means local LTCOPs become aware of ongoing issues that may be resolved before they become more serious. Regular presence also allows residents to make in-person complaints, and ensures a more timely response to complaints and requests for assistance made by residents or on their behalf. At the end of any investigation and resolution process, the key question for an ombudsman representative is whether the complaint been resolved to the satisfaction of the resident.

As an advocate, the ombudsman representative has another major responsibility, that of exemplifying ethical behavior and decision-making. The California LTC Ombudsman Program adheres to the Ombudsman Code of Ethics developed and adopted by the National Association of State Long-Term Care Ombudsman Programs (NASOP) which is included as Exhibit 6-A in Chapter 6 of this Manual.

The ombudsman representative also assists residents by providing residents, families and facility staff with information and education regarding ombudsman services and other issues relevant to seniors. An important part of effective advocacy is to empower residents and their families to advocate on their own behalf.

Ombudsman representatives also advocate for incapacitated residents who are unable to express their wishes. This may require working with a resident's family, friends, legal representative, or conservator. If the resident has even limited capacity, the ombudsman representative must attempt to determine the resident's wishes and act on his or her behalf. If the resident truly lacks capacity to understand issues and express preferences, the ombudsman representative should advocate at the direction of the resident's legal representative, applying standards of quality of life and quality of care contained in federal and State nursing home and RCFE regulations.

B. Systems Advocacy

Effective advocacy also includes addressing problems on a facility level to improve the quality of life for all residents. Examples of issues where this form of advocacy would be used are: staffing levels, meal service, organization services, and environmental safety.

Systems advocacy includes representing the interests of residents before government agencies. It also may involve reviewing and if necessary, commenting on proposed or existing laws, regulations, and other governmental policies and actions related to the rights and well-being of residents. Ombudsman data can provide insight into issues and trends in resident care.

V. Reporting Requirements

A. Elder and Dependent Adult Abuse Reporting

LTCOP staff and volunteers are investigators and mandated reporters of elder and dependent adult abuse and neglect. The local LTCOP receives and investigates reports of alleged or suspected abuse or neglect of elder and dependent adults occurring in LTC facilities. Cross-reporting of abuse and neglect and the disclosure of the resident's identifying information to law enforcement and licensing agencies can only be done with consent from the resident or his or her legal representative. A detailed discussion of the ombudsman representative's role in investigating and reporting suspected elder and dependent adult abuse and neglect can be found in Chapter 3 of this Manual.

B. CRISISline

The OSLTCO's standard practice is to refer CRISISline calls received during the work day to the appropriate local LTCOP. The Welfare and Institutions Code requires that after business hours, CRISISline operators respond to crisis calls by contacting appropriate offices or individuals in the local communities where crises occur. This means that the answering service operators call designated staff of local LTCOPs to respond to calls they receive.

Changes in after-hours contact names and numbers must be reported to the OSLTCO by email to stateomb@aging.ca.gov.

For more detailed information on the 24-hour CRISISline, see Chapter 11 -Telephone Protocol.

C. Cross Reporting and Referrals

There are times when ombudsman representatives cross-report and refer complaints to LTC facility licensing agencies, law enforcement, the California Department of Justice's Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA), and/or other agencies. However, cross-reporting and disclosure of the resident's identifying information or case information can occur only if the resident or legal representative consents to disclosure. For additional information, refer to Chapter 5 - Confidentiality.

D. Communications with the OSLTCO

Open communication between the OSLTCO and the local LTCOP is vital for effective program operations.

Each local program is assigned an OSLTCO analyst, who is available to provide technical assistance to the program. The analyst can help with questions about confidentiality, conflict of interest, laws and regulations governing LTC facilities, and other issues that may come up during the work of ombudsman representatives. CDA legal counsel is also available to assist the local programs.

Sometimes after-hours entry into a facility (10:00 p.m. to 7:00 a.m.) is needed to properly investigate a complaint. For example, the complaint may involve lack of assistance to residents during the overnight hours. When this is the case, the local LTCOP must obtain authorization from the OSLTCO. The local Coordinator sends an e-mail request to the OSLTCO analyst assigned to the local program. The request must include:

- The reason for after-hours entry.
- The name of the facility.
- The day and time planned to enter the facility.
- The names of those individuals who will enter the facility.

Once the investigation has been completed, the Coordinator must send a follow-up e-mail to the analyst, providing information about the outcome of the investigation.

The local LTCOP must also request approval from the OSLTCO whenever an investigation is requested on behalf of a deceased resident or an individual who is no longer a resident of the particular LTC facility involved. The request is e-mailed to the OSLTCO analyst and should include:

- The name of the resident.
- The name of the facility.
- The reason for the request.

- A statement showing how the investigation would assist current residents of the facility.

E. Monthly and Quarterly Reports

The local Ombudsman Program is responsible for regular reporting as required by federal and State laws and regulations and by the policies of the OSLTCO.

The local LTCOP maintains accurate data on complaints and activities and enters this data into OmbudsManager. The Coordinator notifies the OSLTCO Management Services Technician on a quarterly basis that the data has been entered, or if delayed, when it will be entered. Additional information on data reporting is included in Chapter 12 of this Manual.

The local LTCOP submits monthly expenditure data for State Health Facilities Citation Penalties Account and SNF Quality and Accountability funds to the AAA. The AAA provides a monthly expenditure report to the OSLTCO so that payment can be processed.