

# CHAPTER 6 LONG-TERM CARE OMBUDSMAN STANDARDS OF PROFESSIONAL CONDUCT

## I. Introduction

In order for the Office of the State Long-Term Care Ombudsman (OSLTCO) and its representatives to provide superior advocacy services to residents of long-term care (LTC) facilities, ombudsman representatives must follow standards of professional conduct in all their program activities. This chapter outlines the laws, regulations, OSLTCO policies, and program expectations governing ombudsman representatives' professional conduct. Adherence to these standards allows ombudsman representatives to advocate appropriately for the health, safety, welfare, and rights of LTC residents.

## II. Legal Authority

**FEDERAL** Title 42 United States Code section 3058d(a)(6)(C)  
Title 42 United States Code section 3058g  
45 Code of Federal Regulations part 1321.51

**STATE** Welfare and Institutions Code sections 9700-9745

## III. Ombudsman Standards of Professional Conduct

Ombudsman representatives shall abide by the following laws and program policies:

### A. Discrimination Law

Federal and State laws prohibit discrimination. An ombudsman shall not discriminate against or refuse ombudsman services to anyone on the basis of age, race, sex, religion, national origin, disability, or sexual preference.

### B. Conflict of Interest Law

Ombudsman representatives shall avoid any real or perceived conflict of interest which interferes with their ability to advocate for residents. The OSLTCO is responsible for insuring that individuals representing the Ombudsman Program are not subject to conflicts of interest [42 U.S.C. § 3058g(f)]. Prior to certification, an ombudsman trainee must disclose all past and current employment, group participation, memberships, and interests that might affect the ombudsman's ability to investigate and resolve complaints in an objective and independent manner.

## **1. Certification of Ombudsman Coordinators, Staff, and Volunteers**

Individuals being considered for ombudsman certification shall have no conflict of interest, including the following circumstances: (For clarification purposes, immediate family means a spouse, domestic partner, parent, child, or sibling.)

- No individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under the Older Americans Act (OAA) is subject to a conflict of interest;
- No officer or employee of the office, representative of a local Long-Term Care Ombudsman Program (LTCOP), or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;
- Ombudsman representatives—
  - cannot have a direct involvement in the licensing or certification of a LTC facility or of a provider of a LTC service;
  - cannot have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a LTC facility or LTC service;
  - cannot be employed by or participate in the management of a LTC facility. (Applicants should not become certified Ombudsman representatives if they worked in a LTC facility less than a year prior to application for certification.)
  - cannot receive, or have 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 facility; and
  - will not be assigned to a LTC facility where a relative or close friend works or is a resident.

If a prospective ombudsman applicant presents information that suggests a potential conflict of interest, the Ombudsman Program Coordinator serves as the first level of review. In a complex or an unusual conflict of interest situation, the Program Coordinator shall consult with the OSLTCO for a final decision regarding the applicant. Federal law [42 U.S.C. § 3058g(f)(4)], requires the OSLTCO to establish mechanisms to resolve identified conflicts of interest. The State Long-Term Care Ombudsman, or his/her designee, will assess conflict of interest situations on a case-by-case basis.

All ombudsman representatives are required to sign a Conflict of Interest Statement (OSLTCO S009) prior to being certified. For additional information concerning certification of ombudsman representatives,

including required forms, see Chapter 8 of this Program Manual, Long-Term Care Ombudsman Certification.

## **2. Appearance of Conflict of Interest**

Although ombudsman representatives should maintain cordial and professional relationships with LTC administrators and staff, they must be extremely careful to avoid the appearance of any conflict of interest.

As advocates who work on behalf of and under the direction of LTC residents, ombudsman representatives must strenuously avoid the appearance that they represent the interests of LTC owners, administrators, or employees. Time in facilities should be spent talking with residents and helping them to resolve the issues they present as well as those that are discovered by the ombudsman representative. Such things as discussing residents' issues with staff without first getting permission and direction from residents, and participating in care plan meetings based on staff invitation, greatly interfere with the ombudsman representative's ability to earn the trust of residents.

## **C. Confidentiality Law**

Confidentiality stands as one of the fundamental principles and reasons for the success of the Ombudsman Program. Ombudsman representatives adhere to the federal and State confidentiality laws protecting the rights and privacy of LTC residents.

All program staff and volunteers are required to sign a Pledge of Confidentiality for Long-Term Care Ombudsman Trainees/Representatives (OSLTCO S006) prior to being certified. The stringent provisions of confidentiality law apply to Program Coordinators, ombudsman representatives, and non-certified staff and volunteers.

Title 42 United States Code section 3058g(d) prohibits the disclosure of the identity of a complainant or resident unless the ombudsman representative has written consent from the resident, oral consent from the resident which is documented contemporaneously in writing, written consent from the resident's legal representative, or a court order requiring disclosure. Ombudsman representatives shall obtain written consent (or oral consent if the resident is unable to write) from the resident or his/her legal representative prior to accessing or releasing medical and/or personal resident information.

Ombudsman representatives must be discrete while investigating complaints to ensure resident and complainant identities are not revealed, especially during conversations with family members, friends, LTC facility staff or the general public.

The OSLTCO and the local LTCOPs must assure that the protection of all records and files, including telephone communication and internal communication, meet the confidentiality requirements found in Welfare and Institutions Code section 9725. For additional information on confidentiality, see Chapter 5 of this Program Manual, Confidentiality.

#### **D. Certification Restrictions Policy**

The OSLTCO will not certify as ombudsman representatives, any member of the board of directors of the designated agency or the immediate supervisor of the Ombudsman Program Coordinator. Because the Ombudsman Program Coordinator supervises the activities of all certified ombudsman representatives within his or her jurisdiction, certification of a member of the board of directors or the Ombudsman Program Coordinator's immediate supervisor places the Ombudsman Program Coordinator in the inappropriate position of supervising a superior.

#### **E. No Personal Gain Policy**

An ombudsman shall not use the prestige or influence of the ombudsman position for personal gain. Ombudsman representatives shall not participate in activities resulting in personal gain, including selling insurance, financial products, personal care products, or providing any services to the residents of LTC facilities that are outside the scope of ombudsman services.

Another example of an activity resulting in personal gain is an ombudsman soliciting employment at a LTC facility or government agency to which he or she refers complaints. Furthermore, an ombudsman representative shall not use confidential information acquired through participation in the Ombudsman Program for personal gain. An ombudsman representative avoids the appearance of any impropriety in the performance of all the responsibilities and duties of the position.

#### **F. Donations Policy**

The Ombudsman Program provides services at no cost to residents, family members or other complainants. Individual ombudsman representatives may not receive personal donations. However, donations to local LTCOPs are acceptable. Checks, money orders or cashier's checks are the preferred methods for donations to the Ombudsman Program.

Donations are only allowable under the following conditions:

- Services shall not be denied to anyone who does not make a donation.

- Methods used to solicit voluntary contributions shall be non-coercive.
- Donation letters shall stipulate that contributions are voluntary and not required to receive services.
- Donation letters may not resemble a bill or a statement.
- Donations received by the local LTCOPs must be used only to support the local LTCOP's activities and may not be used to support other programs.

### **G. Gratuities Policy**

An ombudsman representative shall not receive or accept money, gifts or other considerations from LTC facility staff, residents, family members of a resident, the legal or financial representatives of a resident, or other interested parties. Gifts include, but are not limited to meals, snacks, beverages, gratuities (tips), money, in-kind services, favors, entertainment, loans, or other items of value.

### **H. Identification Policy**

An ombudsman representative identifies him/herself as a LTC Ombudsman, not as an investigator, consultant, health professional, legal advisor, or other such professional. When entering a LTC facility, the ombudsman's identification badge or State Certification Card should be in plain view for the residents and facility staff to see. Using a lanyard or a badge which can attach to clothing makes ombudsman identification easier. If visitors are required to sign a facility visitor log, the ombudsman representative should also sign it. However, the ombudsman representative must not disclose the identity of residents visited or the reason for the visit.

## **IV. Additional State Long-Term Care Ombudsman Program Expectations**

### **A. Working within Personal Ability**

Ombudsman representatives provide services based on their training, experience, and ability. Ombudsman staff and volunteers should always consult with their supervisors about complaints they do not currently have the experience to resolve.

### **B. Good Judgment**

An ombudsman representative should use reasonable diligence and good judgment in the investigation and resolution of complaints that residents or any other party brings to the ombudsman's attention. Ombudsman representatives provide services consistent with the instruction and best practices taught during the initial certification training as found in the Core

Curriculum, demonstrated during State and local training sessions, exemplified in the Core Elements, and in accordance with OSLTCO and the local LTCOP's policies and procedures.

### **C. Continuation of Service**

When an ombudsman representative is unable to continue providing services to a resident or within a facility, arrangements should be made through the local Coordinator for the continuation of ombudsman services to that resident or facility.

### **V. Code of Ethics for Ombudsman Staff and Volunteers<sup>1</sup>**

The National Association of State Long-Term Care Ombudsman Programs (NASOP) has adopted a Code of Ethics to guide ombudsman decisions in advocacy efforts and addressing issues or problems. All ombudsman representatives are expected to abide by this Code of Ethics, which is included as Exhibit 6-A of this Manual.

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<sup>1</sup> From the National Association of State Long-Term Care Ombudsman Programs,  
<http://www.nasop.org/ethics.htm>  
<http://www.nasop.org/ethics.htm>