

CHAPTER 8 LONG-TERM CARE OMBUDSMAN CERTIFICATION

I. Introduction

Local Long-Term Care Ombudsman Program (LTCOP) Coordinators have the responsibility to recruit, train, and support Long-Term Care (LTC) Ombudsman volunteers and paid staff in order to meet the objectives of the LTCOP.

Paid staff and volunteers must be certified by the Office of the State Long-Term Care Ombudsman Program (OSLTCO) prior to working on any LTC ombudsman tasks. Tasks include but are not limited to: facility visits, providing consultation, receiving complaints, investigating complaints, resolving complaints, and accepting reports of abuse and neglect of senior and dependent adults living in LTC facilities.

The certification process ensures that all LTC ombudsman representatives are free from conflict of interest as required by law, pass a criminal record background clearance, complete 36 hours of training, and are qualified to perform the duties of an ombudsman representative. Local LTCOP Coordinators evaluate applicants and forward recommendations for certification or decertification to the State Ombudsman.

II. Legal Authority

FEDERAL Title 42 United States Code sections 3058g(a)(5)(A) and (C)
Title 42 United States Code sections 3058g(h)(4) and (5)

STATE Welfare and Institutions Code section 9719

III. Requirements for Initial Certification

Local ombudsman staff and volunteers must meet the following certification requirements:

1. Be at least 18 years of age.
2. Be free from real or perceived conflicts of interest.
3. Complete 36 hours of OSLTCO-approved classroom training.
4. Be fingerprinted and pass California Department of Justice (DOJ) and FBI criminal record background clearance screenings.
5. Complete 10 hours of internship or a minimum number of supervised facility visits, as determined by the local LTCOP Coordinator.
6. Submit the Application for Long-Term Care Ombudsman Certification (OSLTCO S002 – Exhibit 8-A).
7. Sign a Conflict of Interest Statement (OSLTCO S009 – Exhibit 8-B), acknowledging that there is no known conflict of interest that interferes with the ombudsman representative's performance of duties.

8. Sign a Pledge of Confidentiality for Long-Term Care Ombudsman Trainees/Representatives (OSLTCO S006 – Exhibit 8-C), acknowledging a clear understanding of ombudsman confidentiality requirements.
9. Sign a Statement Acknowledging Requirement to Report Suspected Abuse of Dependent Adults and Elders (SOC 341A – Exhibit 8-D).
10. Sign a Requirement for Criminal Background Clearance (OSLTCO S003 – Exhibit 8-E)
11. Sign the Long-Term Care Ombudsman Code of Ethics (OSLTCO S013 – Exhibit 8-Q)
12. Agree to complete 12 hours of additional approved training each year.

If a local Coordinator chooses not to certify an ombudsman applicant after the initial training or internship, that decision is final and is not subject to appeal.

IV. Background Clearance Procedures

California Welfare and Institutions Code section 9719, as amended effective July 1, 2007, requires existing and prospective LTC ombudsman staff and volunteers to be fingerprinted and to undergo criminal record background clearances prior to certification as LTC ombudsmen. The clearances are processed by the California Department of Social Services (CDSS).

At the beginning of the certification process, each ombudsman applicant must complete a Criminal Record Statement (LIC-508B – Exhibit 8-F). It is important that this be completed accurately and signed by the applicant. The signed form is kept in a secure location in the local Ombudsman Program office.

The OSLTCO recommends that local LTC Ombudsman Programs send new applicants for Live Scan fingerprinting within the last two days of classroom training and prior to the start of their internships. The Coordinator provides the applicant with a Request for Live Scan Service form (LIC 9163B – Exhibit 8-G), which the applicant takes to the Live Scan operator. When being fingerprinted, the ombudsman applicant should request a copy of the Live Scan form with the assigned ATS number, in case he or she needs to return for a second Live Scan.

Within one to two days after applicants are given the Request for Live Scan Service forms, the local LTCOP Coordinator submits the Long-Term Care Ombudsman Fingerprint Reporting Form (OSLTCO S004 – Exhibit 8-H) by email to the Management Services Technician (MST) at the OSLTCO at stateomb@aging.ca.gov. This form lists the names of applicants who have been sent to be fingerprinted. It is necessary that the MST receive the Fingerprint Reporting Form in order to be able to match clearance information for individual applicants with the correct local LTCOP.

Within one to two weeks after fingerprinting, the OSLTCO will be notified by CDSS through a secure Website if the local ombudsman applicant receives a DOJ background clearance. At that time, the MST will notify the appropriate local LTCOP Coordinator.

When the applicant is cleared by DOJ and has completed the required training and internship, the local LTCOP Coordinator will complete the Request for Certification of Long-Term Care Ombudsman Representatives (OSLTCO S001 – Exhibit 8-I) and attach each candidate's Application for Long-Term Care Ombudsman Certification (OSLTCO S002 – Exhibit 8-A). The Request for Certification and the original Applications are mailed to:

Management Services Technician
Office of the State Long -Term Care Ombudsman
1300 National Drive, Suite 200
Sacramento, CA 95834-1992

When the MST receives the Request for Certification and the original Applications, the OSLTCO issues a certification card for the ombudsman volunteer or staff member and sends it to the local LTCOP Coordinator for signature. The State Ombudsman sends a Congratulatory Letter (Exhibit 8-J), to each new Ombudsman Program representative.

Continued certification also requires background clearance by the FBI, which may take an additional 6-8 weeks. If the FBI finds evidence of a criminal background, the new ombudsman must immediately cease all Ombudsman Program activities until the issue is resolved.

If the Live Scan prints of an ombudsman applicant are unreadable by the DOJ or the FBI, the ombudsman applicant is informed by CDSS and must return for a second Live Scan. The applicant must present a copy of the CDSS reject letter, the first Live Scan Request form, and the original receipt to the Live Scan facility so that the Live Scan operator and the LTCOP recognize that this is a second scan and not a new applicant. *Carefully following this procedure will avoid additional charges to the program and additional scans for the applicant.* If the second Live Scan is also unreadable, a criminal record history is performed using the applicant's name or maiden name. However, if a second Live Scan is done without the Live Scan operator having appropriate information from the first Live Scan, the name search will not be done, and the applicant will have to reprint for a third time. Coordinators with questions about this process should contact the OSLTCO Management Services Technician or Program Manager before sending applicants for printing.

If the applicant has a criminal history, DOJ or FBI forwards this information to CDSS. Some crimes are exemptible, typically those that are non-violent misdemeanors and show no pattern of criminal activity. In those cases, the ombudsman applicant is informed and may request a Criminal Record Exemption from CDSS. To request the Criminal Record Exemption, the applicant must complete the form and supply information within the allowable time limits as specified by CDSS. The exemption process involves an investigation which, depending upon the circumstances, may take significant time to complete.

Criminal Record Exemptions are not available for some crimes. Where that is the case, CDSS notifies the prospective ombudsman and the OSLTCO, and the applicant must not be certified or must be immediately decertified.

V. Requirements for Program Coordinator Certification

In addition to the requirements specified in the previous section for initial certification, local LTCOP Coordinators must meet the following criteria:

- Agree to attend the 36 hour ombudsman certification classroom training at another local LTCOP recognized by the OSLTCO within the next six months.
- Agree to complete the Self-Directed Orientation for New Ombudsman Coordinators.
- Agree to attend the next New Coordinator Training conducted by the OSLTCO.
- Agree to attend biannual statewide OSLTCO Coordinator training sessions.

Within one month from the date of hire, new local LTCOP Coordinators must sign the Long-Term Care Ombudsman Program Coordinator Agreement with the Office of the State Long-Term Care Ombudsman (OSLTCO S010 – Exhibit 8-K) certifying that they will comply with all the above requirements. Each new Coordinator shall send the completed form to his or her assigned analyst at the OSLTCO.

VI. Liability Insurance

Certified LTC ombudsman representatives who use their private automobiles on ombudsman-related business must have current automobile insurance. Copies of their proof of insurance forms must be given to the local LTCOP Coordinator to keep on file, and must be updated annually.

While Ombudsman representatives will use their private automobiles to travel to facilities, they must *never* be used for such things as transporting residents to appointments or activities.

VII. Advance Health Care Directive Witness Registration

Residents of Skilled Nursing Facilities (SNFs), including distinct parts SNFs, who have capacity, have the right to make their own medical and health care decisions and to designate someone else (an agent) to make those decisions for them if they become incapable of making health care decisions for themselves. A resident with capacity can also choose to have the agent's authority become effective immediately. One means of designating an agent is through an Advance Health Care Directive (AHCD), which is witnessed by an Ombudsman.

The responsibility of the ombudsman in witnessing the AHCD is to attest to the identity of the resident, ascertain that s/he is capable of understanding the document being signed, and that no coercion or undue influence is involved. The

ombudsman is not required to explain or read the documents to the resident but is to ensure that the resident is signing them freely, knowingly, and voluntarily.

Ombudsman staff and volunteers who witness AHCDs must attend a two-hour Ombudsman Program Curriculum Course, "Ombudsman's Role as Witness," given by the local Coordinator.

The local LTCOP Coordinator determines whether an Ombudsman qualifies to witness an AHCD. To register an Ombudsman as an AHCD witness, the Coordinator completes the Request for Registration of Ombudsman Witness for Advance Health Care Directives and Property Transfers (OSLTCO S103 – Exhibit 8-L) and sends it to the OSLTCO. The OSLTCO maintains a database of State certified Ombudsman staff and volunteers registered as witnesses for AHCDs.

VIII. Annual Recertification

Ombudsman staff and volunteer certification is renewed annually by the OSLTCO based on the recommendation of the local Coordinator. In order to be recertified, each ombudsman representative must:

- Have completed 12 hours of approved mandatory ombudsman training during the year;
- Have no conflict of interest; and
- Adhere to ombudsman confidentiality requirements and Code of Ethics.

Every May, a report of currently certified ombudsman staff and volunteers is sent electronically to the local Coordinator by the OSLTCO. The Coordinator is responsible for verifying that all ombudsman staff and volunteers who are providing ombudsman services are included on the list, and that all have completed 12 additional hours of training. The Coordinator returns the list electronically to the OSLTCO for record updating, indicating any errors or omissions. The update is due by e-mail to the OSLTCO by June 15 of each year.

A decision by the local Coordinator not to recertify an ombudsman who does not meet the required qualifications is final and is not subject to appeal.

IX. Leave of Absence

An ombudsman representative may take a leave of absence when he or she needs an extended period of time off due to illness, family needs, extended travel, or other reasons. When an ombudsman is on a leave of absence for more than one year, he or she must be decertified. If an ombudsman returns prior to one year from the first day of the leave of absence, he or she can be recertified without repeating the 36-hour certification training. However, upon return from a leave of absence, the ombudsman representative must be sure to complete the 12 hours of annual training. If an ombudsman returns one year or more from the first day of a leave of absence, in order to be recertified, he or she must attend

the 36-hour certification training, be fingerprinted again, and receive a background clearance.

X. Voluntary Decertification

There are times when ombudsman staff and volunteers have to resign from the LTCOP due to illness, change of residence or other reasons. In order to assure that the OSLTCO does not receive additional arrest information after an ombudsman leaves the program, the local LTCOP Coordinator must complete a Decertification of Long-Term Care Ombudsman Representatives (OSLTCO S005 – Exhibit 8-M) and submit it to the OSLTCO *no later than five days* after notice of resignation. This ensures that the State certification database can be kept current and accurate.

The OSLTCO then notifies CDSS that the former ombudsman has been decertified. *Because the OSLTCO is not allowed to receive subsequent arrest information for ombudsmen who have left the program, timely decertification is imperative.*

The OSLTCO sends a letter to the former ombudsman “Decertification without Cause” (Exhibit 8-N) expressing appreciation for service.

XI. Decertification with Cause

There are occasions when it is necessary to terminate the service of an ombudsman representative for cause. Cause, which requires decertification, includes, but is not limited to, the following:

- Unwillingness to work cooperatively under supervision
- Gross misconduct
- Violation of confidentiality
- Unwillingness to comply with program policies or procedures
- Misrepresentation of ombudsman responsibilities
- Unreported conflict of interest
- Failure to complete required training hours
- Failure to pass background clearance requirements

The local LTCOP Coordinator may be required to temporarily suspend a volunteer from the program, pending investigation and review of a background clearance issue, by accepting and holding the certification card until the matter is resolved. Suspension will be automatic if subsequent arrest information is received by the OSLTCO from CDSS and will continue until the pending investigation and review is complete. The OSLTCO will notify the local Ombudsman Coordinator of all subsequent arrests requiring suspension.

To initiate the decertification process, the local Coordinator recommends decertification of ombudsman volunteers or staff by completing the Decertification of Long-Term Care Ombudsman Representatives form (OSLTCO S005 – Exhibit 8-M) and submitting it to the State Ombudsman *within five days of the termination date*. The Coordinator indicates on the form which type of

decertification letter to send: Decertification with Cause (Exhibit 8-O) or Decertification due to Background Investigation (Exhibit 8-P). The State Ombudsman reviews the recommendation and takes decertification action as appropriate. An ombudsman is not decertified until the OSLTCO has formally decertified the individual and indicated the decertification date in the database.

The OSLTCO sends the appropriate letter to the volunteer or staff member stating that decertification has been requested by the local program and has been approved by the State Ombudsman. Paid ombudsman staff is subject to designated agency personnel procedures for dismissal and will be decertified at the request of the local Coordinator.

XII. Confidentiality After Decertification

Ombudsman representatives are legally obligated to maintain the confidentiality of LTCOP complaint files, including the identities of all residents, complainants and witnesses at all times, even after they have left the Ombudsman Program. Upon decertification, ombudsman representatives must return all case records and notes to the local LTCOP office and relinquish their certification cards. If a current or former ombudsman representative receives a subpoena regarding ombudsman activities, he or she must notify the local LTCOP immediately for instructions on how to respond to the subpoena. This applies even after the ombudsman representative has been decertified. Failure to maintain confidentiality may result in civil liability.

XIII. Destruction of Certification Cards

It is the responsibility of the local LTCOP Coordinators to collect all certification cards from decertified ombudsman representatives. As a safety precaution, all certification cards from former ombudsmen need to be destroyed.

When the Coordinator is unable to collect the certification card from a former ombudsman representative, the OSLTCO should be notified. Pertinent facilities must be notified that the individual still possesses a certification card, but is no longer a representative of the LTC Ombudsman Program.

XIV. Exhibits for Chapter 8

Exhibit 8-A	Application for Long-Term Care Ombudsman Certification (OSLTCO S002)
Exhibit 8-B	Conflict of Interest Statement (OSLTCO S009)
Exhibit 8-C	Pledge of Confidentiality for Long-Term Care Ombudsman Trainees/Representatives (OSLTCO S006)
Exhibit 8-D	Statement Acknowledging Requirement to Report Suspected Abuse of Dependent Adults and Elders (SOC 341A)
Exhibit 8-E	Requirement for Criminal Background Clearance (OSLTCO S003)
Exhibit 8-F	Criminal Record Statement (LIC 508B)
Exhibit 8-G	Request for Live Scan Service (LIC 9163B)
Exhibit 8-H	Long-Term Care Ombudsman Fingerprint Reporting Form (OSLTCO S004)
Exhibit 8-I	Request for Certification of Long-Term Care Ombudsman Representatives (OSLTCO S001)
Exhibit 8-J	Congratulatory Letter
Exhibit 8-K	Long-Term Care Ombudsman Program Coordinator Agreement with the Office of the State Long-Term Care Ombudsman (OSLTCO S010)
Exhibit 8-L	Request for Registration of Ombudsman Witness for Advance Health Care Directives and Property Transfers (OSLTCO S103)
Exhibit 8-M	Decertification of Long-Term Care Ombudsman Representatives (OSLTCO S005)
Exhibit 8-N	Decertification without Cause Letter
Exhibit 8-O	Decertification with Cause Letter
Exhibit 8-P	Decertification due to Background Investigation Letter
Exhibit 8-Q	Long-Term Care Ombudsman Code of Ethics (OSLTCO S-013)