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# PROGRAM MEMO

CDA 1014 (Rev. 04/11)

TO: <b>Area Agency on Aging Directors and Ombudsman Program Coordinators</b>	NO.: PM 13-04 (P)
SUBJECT: <b>Ombudsman</b>  <b>California Long-Term Care Ombudsman Program Designation Standards for Approved Organizations</b>	DATE ISSUED: <b>May 24, 2013</b> (Corrected June 24, 2013)
REVISED	EXPIRES: <b>When Superseded</b>
REFERENCES:	SUPERSEDES: <b>PM 08-29(P)</b>
PROGRAMS AFFECTED: <input type="checkbox"/> All <input checked="" type="checkbox"/> Title III-B <input type="checkbox"/> Title III-C1/C2 <input type="checkbox"/> Title III-D <input type="checkbox"/> Title III-E <input type="checkbox"/> Title V <input type="checkbox"/> CBSP <input type="checkbox"/> MSSP <input checked="" type="checkbox"/> Title VII <input type="checkbox"/> ADHC <input type="checkbox"/> Other:	

**Purpose**                      The purpose of this Program Memo is to provide updated *California Long-Term Care Ombudsman Program Designation Standards for Approved Organizations*.

**Revision Summary**                      The *Long-Term Care Ombudsman Designation Standards* have been updated to incorporate:

- Additional detail about Ombudsman staffing responsibilities (pages 4 and 5)
- Changes to background clearance procedures (pages 6 and 7)
- Clarification of program requirements for providing access to Ombudsman services (pages 9 and 10)

*Continued on next page*

**Revision  
Summary**  
*continued*

The attached document contains the following topics:

- Introduction
- Designation of an Approved Organization
- Advocacy
- Organizational Structure
- Conflict of Interest
- Confidentiality
- Training and Certification
- Facility Coverage
- Volunteer Management
- Complaint Management
- Access to Ombudsman Services
- Data Reporting Responsibilities
- Community Impact
- Additional Responsibilities

All topics have been updated to make information clearer.

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**Inquiries**

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**Attachment**

*The California Long-Term Care Ombudsman Program Designation Standards for Approved Organizations*

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Lora Connolly  
Director

## **THE CALIFORNIA LONG-TERM CARE OMBUDSMAN PROGRAM DESIGNATION STANDARDS FOR APPROVED ORGANIZATIONS**

### **INTRODUCTION**

The California Long-Term Care Ombudsman Program (LTCOP) is mandated by both the federal Older Americans Act (42 U.S.C. § 3058g) and the Older Californians Act (Welfare and Institutions Code section 9700 et seq.)

The laws and regulations governing the delivery of Ombudsman services require that the Office of the State Long-Term Care Ombudsman (OSLTCO) designate local ombudsman entities (also referred to as approved organizations or local LTCOPs) and provide administrative policy, technical direction, and program monitoring to these entities. In addition, these laws and regulations require that administrative monitoring and contracting activities be carried out by the AAAs.

These standards are provided to assure that effective, consistent, and ethical Long-Term Care Ombudsman services are provided to long-term care (LTC) residents in California. Approved agencies may submit requests for waivers related to specific policies identified in this Program Memo (PM), along with written justification, to the AAA. The AAA shall review each request and submit a written recommendation to the OSLTCO. The OSLTCO shall make the final decision granting or denying the waiver. Approved agencies will continue to implement existing policies until a waiver is approved by the OSLTCO.

### **I. DESIGNATION OF AN APPROVED ORGANIZATION**

To ensure that an approved organization meets federal and state requirements,

The AAA shall:

- Use the standard RFP process to select an entity to provide local Ombudsman services.
- Recommend an entity to the OSLTCO for approval as the local Ombudsman agency.
- Provide Ombudsman services directly, if necessary or more economical.

The OSLTCO shall:

- Determine whether the selected agency is free from conflicts of interest and meets the designation standards of the Older Americans Act [42 U.S.C. 3058g(a)(5)].

The State Long-Term Care Ombudsman shall:

- Designate the agency as a local Ombudsman entity, if it meets criteria.
- Direct the AAA to identify another agency if the selected agency does not meet criteria.
- Authorize the AAA to award the contract to an approved agency.

Once the approved organization is designated, the AAA is responsible for monitoring the provisions of the contract. The OSLTCO will provide ongoing monitoring (including periodic on-site monitoring) of the approved organization for compliance with state and federal laws, regulations, and LTCOP policies. OSLTCO monitoring includes review of administrative, program, and confidential LTCOP records.

## **II. ADVOCACY**

The California LTCOP is designed as an advocacy program for residents of LTC facilities. Approved organizations shall assure that the program, its employees, and volunteers focus on advocacy as their primary purpose and activity. Program Coordinators, staff, and volunteers shall focus on resident advocacy and the resolution of residents' complaints as their primary function. Other responsibilities, such as community education, interagency coordination, in-service training, etc., are secondary to the resolution of residents' complaints. The local LTCOP shall work to empower residents to maintain dignity, and to enable them to assert their civil rights. The program must be free to engage in appropriate advocacy activities, including public information programs, administrative actions, legislative advocacy, and liaisons with licensing and law enforcement agencies.

## **III. ORGANIZATIONAL STRUCTURE**

### **A. General Eligibility Requirements**

To be eligible as an approved organization for the LTCOP, an entity must:

- Be either a private, nonprofit corporation or a public agency.
- Be a single purpose or a multipurpose agency.
- If a public and/or multipurpose agency, render assurances to the OSLTCO that none of its sponsored programs or organizations are in conflict with the objectives and policies of the LTCOP.
- Assure that adequate resources will be devoted to the LTCOP to accomplish its purposes.
- Demonstrate interest and concern in the quality of care for LTC residents.
- Demonstrate knowledge and experience in aging programs.

Further, all approved organizations shall assure that:

- They are operated on a sound fiscal basis.
- Separate budget and expenditure accounting is maintained for the program, and is made available to the Program Coordinator and the OSLTCO.
- Funds obtained from all sources related to the LTCOP are available and used for the program.
- They will maintain an LTCOP Advisory Council that meets regularly (at a minimum on a yearly basis). The Advisory Council shall have a representative on the governing board of the approved organization. This requirement may be waived:
  - For single purpose agencies that have a board of directors.
  - For LTCOPs operated directly by AAAs. In that situation, the AAA Advisory Council may also serve as the LTCOP Advisory Council.
- They will follow confidentiality requirements in handling and storing files (paper and electronic), telephone communication, and internal communication within the organization.
- They will retain records for a minimum of four years or until an audit has occurred and an audit resolution has been issued. Longer retention periods may be required by statute, Area Plan contract, California Department of Aging (CDA) directive, or in case of any litigation, claim, negotiation, audit exception, or other legal action.
- Conflict of interest requirements are met by all persons within the organization who have administrative or policy-making responsibilities for the LTCOP.
- Any significant changes to the organizational structure of the approved organization are reported to the OSLTCO.

## **B. Governing Board**

The governing board of the approved organization shall employ staff and operate the LTCOP in compliance with state and federal laws, regulations, and OSLTCO policies. The board shall:

- Provide ongoing leadership to the program.
- Ensure the provision of adequate administrative and operational resources.
- Ensure that conflict of interest policies are in place.

## **C. Advisory Council**

Unless otherwise specified, each LTCOP should have an Advisory Council separate from the Board of Directors of its host agency. The Advisory Council should be comprised of persons concerned about the quality of care and protection of the rights of residents in LTC facilities. The Advisory Council should include representatives of service agencies within the aging network, community organizations, and consumers. In the case of a multipurpose agency, the chairperson of the Advisory Council should be a member of the governing board of the approved organization.

Single purpose LTCOPs or LTCOPs that are operated directly by the AAA do not have to have a separate formal Advisory Council since their Board of Directors or the AAA Advisory Council serves this purpose.

#### **D. Staffing**

Responsibilities of Approved Organizations: To ensure that the mandates and responsibilities of the LTCOP are effectively carried out, approved organizations shall:

- Provide adequate personnel which include a full-time Coordinator and Ombudsman volunteers. As resources permit, additional personnel may include paid Ombudsman representatives, clerical staff, and other volunteers.
- Select an individual as an Ombudsman Coordinator to manage the day-to-day operations of the local LTCOP. The name of the selected individual shall be submitted to the SLTCO to determine the appropriateness of designating the individual as an Ombudsman Coordinator.
- Assure that the selected Coordinator is qualified for the position and is empowered to manage the program effectively.
- Generally, the duties and responsibilities of the Ombudsman Program Coordinator require the Coordinator to be a full-time manager of the program. The approved organization must notify the OSLTCO and the AAA if the Coordinator will work less than full-time. The notice shall include the specific days and hours the Coordinator will work.
- Develop and maintain job descriptions for all personnel. Job descriptions should include minimum tasks and responsibilities as required by the OSLTCO.
- Provide the OSLTCO with an organizational chart for the program.
- Assure adequacy of physical space and equipment, financial support, and liability coverage for the LTCOP.

Qualifications of a Coordinator: An Ombudsman Coordinator must demonstrate:

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

In order to provide essential leadership and motivation to LTCOP staff and volunteers, the Coordinator must:

- Be free from conflicts of interest.
- Receive a criminal background clearance from the California Department of Justice and the FBI.

- Attend the requisite 36 hours of approved training and internship.
- Attend the New Coordinator Training provided by the OSLTCO.
- Attend biannual training conferences sponsored by the OSLTCO.

Duties of a Coordinator: An Ombudsman Coordinator shall:

- Supervise the activities of all Ombudsman representatives within his or her jurisdiction.
- Act as a liaison between the OSLTCO, the local LTCOP and the AAA.
- Notify the OSLTCO assigned program analyst of
  - Staffing changes.
  - Complex cases.
  - Situations with potential legal implications.
  - Emerging issues and patterns with statewide impact.
- Consult with the OSLTCO assigned program analyst about
  - Confidentiality provisions.
  - Conflict of interest.
  - Laws and regulations governing the program and LTC facilities.
  - Difficulties with Ombudsman representatives.
  - Any other program issues.
- Complete and forward an organizational chart to the OSLTCO. The organizational chart must include:
  - All local staff who are wholly or partly funded by Ombudsman Program resources.
  - Their titles/roles within the program.
  - The number of hours per week charged to the local LTC Ombudsman Program for each position.

#### **E. Legal Support**

The AAA must ensure that there is either a Memorandum of Understanding (MOU) between the local LTCOP and the Older Americans Act Legal Services Provider or an alternative written arrangement for providing advice and counsel to LTCOP and residents of LTC facilities. Alternative arrangements may include pro bono legal services to LTCOP and LTC residents. Typically, these legal services are provided at no charge to either the program or the resident. In addition, CDA legal counsel may also provide guidance to local program staff as requested through the OSLTCO.

#### **IV. CONFLICT OF INTEREST**

The approved organization must assure that the organization itself, its board members, advisory council members, employees, and volunteers do not derive personal or economic gain from LTC facilities or their associations. Information about all sources of

funding available to the local LTCOP (including grants, foundations, bequests, and donations) shall be reported on an annual basis to the SLTCO.

The following organizations or individuals are disqualified from designation as Ombudsman entities or representatives:

- Entities responsible for licensing and/or certifying LTC facilities.
- Associations of LTC providers.
- Any organization which would impair the ability of Ombudsman representatives to objectively and independently investigate complaints made by, or on behalf of, residents of LTC facilities.
- Members of the board of directors of the approved organization.
- The immediate supervisor of the Coordinator.

The LTCOP, Ombudsman staff, Ombudsman volunteers, and their respective immediate families shall not have been employed by a LTC facility within 12 months prior to being certified.

If there are any potential conflicts of interest of applicants for certification (e.g., former employment in a LTC facility) the LTCOP Coordinator shall consult with the SLTCO, and the SLTCO or his or her designee will make the final decision on certification. Ombudsman representatives shall not provide Ombudsman services in a facility where relatives or close friends currently reside or where the representative has a personal history or relationship with the LTC facility.

## **V. CONFIDENTIALITY**

Each approved organization shall assure that the local LTCOP maintains confidentiality in accordance with federal and State requirements. All Ombudsman representatives shall comply with all confidentiality laws. Ombudsman representatives are prohibited from disclosing the following, unless there is a court order or written consent from the resident or legal representative:

- Information related to any complaint filed by or on behalf of a LTC resident.
- Information related to the identity of any resident, patient, complainant or witness.

All persons with access to confidential files within the office must sign an oath of confidentiality using the most recent forms as issued by the OSLTCO. Multi-purpose agencies must assure that all files (paper and electronic), telephone and e-mail communication, and internal communication within the organization meet the confidentiality requirements of State and federal law.

## **VI. TRAINING AND CERTIFICATION**

The LTCOP requires regular training for both staff and volunteers to ensure effective and efficient resolution of complex Ombudsman cases. Each approved organization will conduct regular meetings with staff and volunteers to provide opportunities for case review, education and training, and to transmit information from the OSLTCO or between local programs.

The OSLTCO may provide continuing education to Ombudsman representatives through webinars and/or conference calls. If a Coordinator is unable to provide immediate assistance to Ombudsman representatives, the Coordinator may instruct the Ombudsman representatives to contact their assigned OSLTCO analyst for direction and guidance.

Approved organizations shall assure and document the following certification requirements for all paid and volunteer Ombudsman representatives:

- 36 hours of certification training using the Core Curriculum developed and approved by the OSLTCO.
- An internship with an experienced LTC Ombudsman representative. The Coordinator will determine the length of the internship for each Ombudsman representative based on observation of that person's needs and skills. The OSLTCO recommends an internship time of at least ten hours.
- 12 hours of continuing education each year as required by Welfare and Institutions Code, Section 9719 (a)(B)(2).

Prior to certification, all Ombudsman applicants must obtain criminal background clearance as required by Welfare and Institutions Code section 9719(b) and discussed in Program Memo 12-05(P). The local LTCOP shall use the most recent forms for the processing of criminal background clearances, as issued by the OSLTCO.

LTC Ombudsman representatives shall carry their Ombudsman certification cards whenever visiting facilities, and present cards to facility staff, as requested.

Inactive staff and volunteers shall be removed from local program rolls and a request for decertification made to the OSLTCO within five days after the individual leaves the program. The local LTCOP may submit a recommendation for decertification of LTC Ombudsman representatives to the OSLTCO based on inactivity, resignation, or for cause.

All Ombudsman Programs must follow the OSLTCO policy on certification and decertification as specified in PM 12-05(P).

## **VII. FACILITY COVERAGE**

Approved organizations shall assure that the local LTCOP has established and maintains a regular and ongoing presence of Ombudsman representatives in skilled nursing facilities, intermediate care facilities, and residential care facilities for the elderly. A current facility coverage plan outlining Ombudsman presence shall be maintained by the local LTCOP. Each local LTCOP may tailor its facility coverage plan to match the local area and needs. Each local LTCOP shall maintain facility files which will include current facility profiles, licensing agency citation/deficiency reports, and other appropriate materials for use by the program and as a basis for informing the public about the facility.

## **VIII. VOLUNTEER MANAGEMENT**

The use of volunteers as Ombudsman representatives is critical to the LTCOP and central to the intent of Congress and the State Legislature. Local LTCOPs are encouraged to be involved in their local communities in order to promote volunteer participation in the program. Each local LTCOP shall create and maintain a current plan for recruitment, training, and supervision of volunteers. Volunteer plans may include the use of more experienced volunteers as trainers and mentors for less experienced volunteers. Local LTCOPs shall provide at least annual recruiting, training, and volunteer recognition activities.

## **IX. COMPLAINT MANAGEMENT**

The receipt, investigation, and resolution of complaints made by, and on behalf of, LTC facility residents, are central tasks for Ombudsman representatives. Each approved organization shall develop and maintain a policy for complaint management. The policy shall be incorporate the current policies of the OSLTCO and cover the following areas:

- Receipt and recording of all complaints.
- A logging and tracking method.
- Timely handling and resolution of complaints.
- Confidentiality of files.
- Notification of progress and resolution to complainants.
- Systematic referral and follow-up.
- Documenting of patterns, trends, and special problems.
- Handling of CRISISline referrals.

Approved organizations may need assistance from other agencies in responding to complaints. If the local LTCOP cannot provide immediate assistance, complainants should be referred, as the situation dictates and with the consent of the resident or legal representative, to the local offices of the Department of Social Services, Community Care Licensing Division; the Department of Public Health, Licensing and Certification Program; the Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse; and/or local law enforcement.

## **X. ACCESS TO OMBUDSMAN SERVICES**

### **A. General Access**

To qualify for federal funding under the Older Americans Act, LTC Ombudsman Programs must ensure that LTC facility residents:

- Have regular and timely access to Ombudsman services.
- Receive timely responses to their complaints.

To give residents appropriate access to Ombudsman services, each local LTCOP shall ensure that LTC facilities within its jurisdiction maintain Ombudsman posters and shall provide an adequate Ombudsman presence in LTC facilities.

### **B. Telephone Access**

The approved organization shall ensure the following minimum standards for telephone access to the local LTCOP:

- Staff will answer phone calls in person rather than using a machine or voice mail during normal business hours except:
  - When staff is answering other telephone lines.
  - In rare circumstances when no staff is available to answer telephones.
- Staff will answer phones as quickly as possible, preferably during the first three rings.
- Staff will answer phones throughout the day during the business week.
- If necessary, breaks and lunch periods will be staggered so staff is available to answer incoming phone calls.
- Voice mail messaging systems will be used only as a last resort for incoming calls to local LTCOPs.
- Staff will return phone calls from complainants as quickly as possible:
  - Immediately, if the call is a crisis or emergency in a LTC facility.
  - No later than the next business day for other calls.

### **C. CRISISline Calls**

State law requires the OSLTCO to maintain a 24-hour, toll-free CRISISline to respond to calls from LTC facility residents and others. The CRISISline:

- Is available seven days a week, 24 hours a day.
- Is answered by OSLTCO staff during normal business hours.
- Is answered by a contracted answering service outside of normal business hours.

CRISISline operators assess the seriousness of each call and respond as follows:

- Instruct callers to call 911 if they are calling about a life-threatening emergency or a crime that is in process.

- Take messages for non-urgent calls, and forward them to the OSLTCO. OSLTCO staff transmit those messages to the appropriate local LTCOP the following business day.
- Call the designated local Ombudsman contact for urgent matters:
  - That require the immediate assistance of an Ombudsman.
  - That appear to imperil the life, health, or safety of a LTC facility resident.
  - When a resident may be harmed if the situation is not addressed prior to the next business day.

Each Program Coordinator will designate at least one certified Ombudsman representative and preferably a back-up, to be available at all times to take after-hours referrals from CRISISline operators.

The Coordinator must notify the OSLTCO of any changes to the designated local Ombudsman contacts for urgent matters at least two business days prior to the change becoming effective. Notification must be by email to [stateomb@aging.ca.gov](mailto:stateomb@aging.ca.gov), with a copy to the OSLTCO assigned program analyst.

## **XI. DATA REPORTING RESPONSIBILITIES**

The approved organization shall assure that it will comply with the data reporting requirements of the U.S. Administration on Aging (AoA), as described in the National Ombudsman Reporting System (NORS), and the OSLTCO.

### **Quarterly OmbudsManager Reporting Form (OSLTCO S301)**

#### **Each local LTCOP Coordinator must:**

- Regularly enter accurate, verifiable data into the data reporting system designated by the OSLTCO, currently OmbudsManager.
- Complete the OSLTCO S301 to notify the OSLTCO of the status of data entry for the quarter.
- Document that data entry has been completed or explain why the reporting is delayed and when the data for the quarter will be entered.
- Email the completed form to the OSLTCO at [stateomb@aging.ca.gov](mailto:stateomb@aging.ca.gov) by the due date.
- Forward a copy of the completed form to the AAA.
- Contact his or her assigned analyst at the OSLTCO to obtain the most recent version of the form if needed.

Due dates for data entry are as follows:

July 1 to September 30	All data for that quarter must be entered into OmbudsManager by October 31.
October 1 to December 31	All data for that quarter must be entered into OmbudsManager by January 31.
January 1 to March 31	All data for that quarter must be entered into OmbudsManager by April 30.
April 1 to June 30	All data for that quarter must be entered into OmbudsManager by July 31.

## **XII. COMMUNITY IMPACT**

The LTCOP is charged with developing adequate resources to assist LTC residents, their families and friends, care providers, and members of the community with information about available community resources, residents' rights, and other LTC issues.

As resources permit, the approved organization shall:

- Provide public information about LTC facilities to interested persons and the media.
- Develop a community resource capability to include referrals to community organizations and services in the aging network for residents of LTC facilities.
- Provide training for local groups and organizations on LTC Ombudsman services and topics related to residents of LTC facilities.
- Establish liaisons and develop working agreements and consultative services with at least the following agencies:
  - Older Americans Act Legal Services Providers.
  - Adult Protective Services.
  - Licensing agencies.
  - Law enforcement agencies.
  - Disability Rights California (formerly Protection and Advocacy).
  - Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse.
  - Other groups, as appropriate.

## **XIII. ADDITIONAL RESPONSIBILITIES**

### **A. Witnessing**

The local LTCOP shall train and register LTC Ombudsman representatives in the witnessing of Advance Health Care Directives and property transfers. Witnessing services will be provided as requested for residents of skilled nursing facilities and other long-term health care facilities, respectively.

**B. Family and Resident Councils**

As resources permit, the local LTCOP will assist residents and their families in the development of family councils and participate in resident council meetings, as requested by residents, and as Program priorities allow.

**C. Citation Review Conferences**

As resources and program priorities allow, the local LTCOP will attend Citation Review Conferences to advocate for residents when requested.

**D. Information & Consultation to Individuals**

As resources permit, the local LTCOP will provide public information to interested persons about local LTC facilities and how to select an appropriate facility.

**E. Facility Staff Training & Consultation**

As resources permit, the local LTCOP will provide training for LTC facility staff on topics such as elder abuse, mandated reporting, and residents' rights. Within the availability of program resources, consultation may also be provided to facility staff.