

State Long-Term Care Ombudsman Program
Ombudsman Policies and Procedures Manual
Revised September 2019



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Chapter 100: Introduction

110 State Long-Term Care Ombudsman Program

The State Long-Term Care Ombudsman Program is authorized by:

- Older Americans Act, §711 and §712 (United States Code, Title 42, §3058f and §3058g); and
- Texas Human Resources Code, Title 6, Chapter 101A, Subchapter F.

The purpose of the Ombudsman Program is to protect the health, safety, welfare, and rights of residents.

120 Purpose of this Manual

The purpose of this manual is to describe the requirements of representatives of the Office in the implementation of the Ombudsman Program.

130 References to the Ombudsman Program in Statutes, Regulations, and Rules

Federal Statute

United States Code

Title 42. The Public Health and Welfare
Chapter 35. Programs for Older Americans
Subchapter XI. Allotments for Vulnerable Elder Rights Protection Activities
Part A. State Provisions
Subpart II. Ombudsman Programs
Section 3058f. Definitions
Section 3058g. State Long-Term Care Ombudsman Program

State Statute

Texas Human Resources Code

Title 6. Services for the Elderly
Chapter 101A. State Services for the Aging
Subchapter F. Office of State Long-Term Care Ombudsman

Federal Regulations

CFR

Title 45. Public Welfare
Subtitle B. Regulations Relating to Public Welfare
Chapter XIII. Administration for Children and Families, Department of Health and Human Services

Subchapter C. The Administration for Community Living
Part 1321. Grants to State and Community Programs on Aging
Subpart B. State Agency Responsibilities
§1321.11. State Agency Policies
Part 1324. Allotments for Vulnerable Elder Rights Protection Activities
Subpart A. State Long-Term Care Ombudsman Program

State Rules

TAC

Title 26. Health and Human Services
Part 1. Health and Human Services Commission
Chapter 88. State Long-Term Care Ombudsman Program

140 Organization of Manual

This manual is organized as follows: chapters, sections, subsections, paragraphs, subparagraphs, clauses, bullets, circles, squares, and arrows. Shown below is an example of the format, based on a portion of Section 5060, with references to the corresponding parts.

Chapter 5000: LOE Administration *(This is a **chapter**)*

5060 Volunteer Ombudsman Leave of Absence, Transfer between LOEs, or Service in Two LOEs *(This is a **section**)*

a. Volunteer Ombudsman Leave of Absence and Return to Ombudsman Program *(This is a **subsection**)*

1. Leave of Absence Allowed for Volunteer Ombudsman *(This is a **paragraph**)*

A. Leave of absence of less than six months *(This is a **subparagraph**)*

i. Requirements before performing Ombudsman Program functions *(This is a **clause**)*

- (Text) *(This is a **bullet**)*
 - (Text) *(This is a **circle**)*
 - (Text) *(This is a **square**)*
 - (Text) *(This is an **arrow**)*

Chapter 200: Definitions

The following words and terms, when used in this manual, have the following meanings unless the context clearly indicates otherwise.

AAA--An area agency on aging (commonly referred to as a "triple A"). A public or private nonprofit agency or organization, designated by HHSC in accordance with Older Americans Act, §305(a)(2)(A).

Abuse--This term has the meaning set forth in 40 TAC §19.101 and 26 TAC §553.2.

ALF--An assisted living facility. A facility licensed in accordance with Texas Health and Safety Code, Chapter 247.

ANE--Abuse, neglect, or exploitation.

APS--The adult protective services program of the Texas Department of Protective and Family Services.

Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

Capital equipment-- An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more.

Certified ombudsman--A staff ombudsman or a volunteer ombudsman.

CFR--Code of Federal Regulations.

Clerical worker--A person who provides general office support such as processing and filing documents.

CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

Complainant--A person who makes a complaint.

Complaint--A statement of dissatisfaction or concern made by or on behalf of a resident, that relates to action, inaction, or a decision by any of the following entities or persons, that may adversely affect the health, safety, welfare, or rights of the resident:

- an LTC facility or LTC facility staff;
- a governmental entity, including a health and human services agency; or
- any other person who provides care or makes decisions related to a resident.

Controlled asset-- Real or personal property with an estimated life of greater than one year with a value less than the capitalization threshold established for that asset type, but due to its high-risk nature, is required to be reported to the State Property Accounting System. A controlled asset includes:

- a copier;
- a computer;
- a printer;
- a cellphone; and
- media equipment.

DAHS facility--A day activity and health services facility. A facility licensed in accordance with Texas Human Resources Code, Chapter 103.

Day--A calendar day.

Disaster-- A natural, civil defense, or man-made event such as a hurricane, tornado, storm, flood, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, fire, explosion, or nuclear accident. A disaster also includes events that affect residents locally, such as extreme temperatures and power outages.

DRTx--Disability Rights Texas. The organization that is designated the protection and advocacy agency under Title 42, United States Code, §15043.

Exploitation--This term has the meaning set forth in 40 TAC §19.101 and 26 TAC §553.2.

FFY--Federal fiscal year. A 12-month period of time from October 1 through September 30.

First responder--A person who is responsible for going immediately to the scene of an accident or emergency to provide assistance.

Governmental entity--An entity that is:

- a state agency;
- a district, authority, county, municipality, regional planning commission, or other political subdivision of the state; or
- an institution of higher education, as defined in Texas Education Code, §61.003.

Guardian-- A person who has the legal authority to care for the personal or property interests of a person who, because of age, understanding, or self-control, is considered by a court to be incapable of administering his or her own affairs.

HCSSA--Home and community support services agency. An entity licensed in accordance with Texas Health and Safety Code, Chapter 142.

HHSC--Health and Human Services Commission. The oversight agency for health and human services in Texas and the single state Medicaid agency for Texas.

Host agency--A governmental entity or nonprofit organization that contracts with HHSC to ensure that the LOE implements the Ombudsman Program in an ombudsman service area.

ICT manual--State Long-Term Care Ombudsman Program Initial Certification Training Manual.

Immediate family member--A member of the same household or a relative with whom there is a close personal or significant financial relationship.

Individual conflict of interest--A situation in which a person is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes a person:

- having direct involvement in the licensing, surveying, or certification of an LTC facility, a HCSSA, a DAHS facility, a nursing facility administrator, or a nurse aide;
- having ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility, a HCSSA, or a DAHS facility;

- managing or being employed in an LTC facility, a HCSSA, or a DAHS facility;
- being employed by an LTC facility within the 12 months before performing functions of the Ombudsman Program;
- accepting gifts, gratuities, or other consideration from an LTC facility or from a resident of such an LTC facility or the resident's family;
- accepting money or any other consideration from anyone other than the local ombudsman entity or host agency for performing functions of the Ombudsman Program;
- receiving or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility, a HCSSA, or a DAHS facility;
- being involved in PASRR screenings for LTC facility placements other than responding to a complaint made to the Ombudsman Program;
- determining eligibility regarding Medicaid or other public benefits for residents;
- being employed by a managed care organization that provides services to residents;
- serving as a representative of the Office for an LTC facility in the ombudsman service area and in which a relative of the representative resides or works;
- acting as a decision-maker or legally authorized representative for a resident in the ombudsman service area, including providing adult protective services as described in Texas Human Resources Code, Chapter 48;
- being a resident;
- being a member of a board or council that represents the interests of an LTC facility; or
- having an immediate family member who meets any of the descriptions in the other bullets in this definition.

LAR--Legally authorized representative. A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

- a parent, guardian, or managing conservator of a minor;
- the guardian of an adult;
- an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or
- the representative of a deceased person.

LOE--Local ombudsman entity. An entity that is one of the following:

- an identifiable unit of a host agency that:
 - consists of representatives of the Office who are employees, independent contractors, or volunteers of the host agency; and
 - implements the Ombudsman Program in an ombudsman service area; or
- an identifiable unit of a governmental entity or nonprofit organization that:

- consists of representatives of the Office who are employees, independent contractors, or volunteers of the governmental entity or nonprofit organization; and
- contracts with a host agency to implement the Ombudsman Program in an ombudsman service area.

LOE service area--The county or counties, specified in the contract between HHSC and a host agency, in which the LOE performs functions of the Ombudsman Program.

LTC facility--Long-term care facility. An NF or an ALF.

MCO--A managed care organization. This term has the meaning set forth in Texas Government Code, §536.001.

MLO--A managing local ombudsman. A person who:

- is certified as a staff ombudsman to serve as a managing local ombudsman in accordance with 40 TAC §88.102; and
- works with a host agency and the Office to oversee the implementation of the Ombudsman Program in an ombudsman service area.

Neglect--This term has the meaning set forth in 40 TAC §19.101 and 26 TAC §553.2.

NF--Nursing facility. A facility licensed in accordance with Texas Health and Safety Code, Chapter 242.

Nurse aide--A person listed on the nurse aide registry as having active status in accordance with 26 TAC §556.9.

Office--The Office of the State Long-Term Care Ombudsman. An organizational unit within HHSC that:

- is headed by the State Ombudsman;
- consists of representatives of the Office who are employees of HHSC; and
- oversees the statewide implementation of the Ombudsman Program.

Older Americans Act--A federal law (Title 42, United States Code, §3011 et seq.) that establishes and funds a comprehensive service system for persons 60 years of age or older.

Ombudsman intern--A person who is being trained to be a volunteer ombudsman in accordance with the Ombudsman Certification Training Manual but has not been certified as a volunteer ombudsman.

Ombudsman Program--The State Long-Term Care Ombudsman Program as defined in 45 CFR §1324.1. The program through which the functions of the Office are carried out by the State Ombudsman and representatives of the Office.

Ombudsman Program records--The files, records, and other information created or maintained by the State Ombudsman or a representative of the Office in the performance of functions of the Ombudsman Program, including:

- information relating to complaint investigations;
- emails and documentation of phone conversations;
- documentation related to the budget and expenditures for the Ombudsman Program; and
- information contained in the ombudsman database.

Organizational conflict of interest--A situation in which an organization is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes an organization:

- having any ownership, operational, or investment interest in, or receiving grants or donations from, an LTC facility;
- being an association of LTC facilities or an affiliate of such an association;
- having responsibility for licensing, surveying, or certifying LTC facilities;
- having a governing board member with an ownership, investment, or employment interest in an LTC facility;
- providing long-term care to residents of LTC facilities, including the provision of personnel for LTC facilities or the operation of programs that control access to, or services of, LTC facilities;
- providing long-term care coordination or case management for residents of LTC facilities;
- setting reimbursement rates for LTC facilities;
- providing adult protective services, as described in Texas Human Resources Code, Chapter 48;
- determining eligibility regarding Medicaid or other public benefits for residents of LTC facilities;
- conducting PASRR screening for LTC facility placements;
- making decisions regarding admission of residents to, or discharge of residents from, LTC facilities; or
- providing guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of LTC facilities.

PASRR--Preadmission screening and resident review. A review performed in accordance with 40 TAC Chapter 17.

POA agent --A power of attorney agent. A person authorized to make decisions about another person's property, finances, or medical care or other matters in accordance with a power of attorney.

Power of attorney--A legal document authorizing a person to represent or act on another person's behalf.

Public official--A person who has official authority granted by the state or federal government or a local government and who holds a legislative, administrative, or judicial position of any kind, whether appointed or elected.

Representative of the Office--A staff ombudsman, volunteer ombudsman, or ombudsman intern.

Resident--A person of any age who resides in an LTC facility.

Resident representative--A person chosen by a resident, through formal or informal means, to act on behalf of the resident to:

- support the resident in decision-making;
- access medical, social, or other personal information of the resident;
- manage financial matters; or
- receive notifications.

SNF-only--A Skilled Nursing Facility-only. An NF that accepts Medicare but does not accept Medicaid and provides only short-term rehabilitation services.

SFY--State fiscal year. A 12-month period of time from September 1 through August 31.

Staff ombudsman--A person who meets the following criteria, including a managing local ombudsman:

- is certified as a staff ombudsman in accordance with 40 TAC §88.102;
- performs functions of the Ombudsman Program; and
- is an employee or independent contractor of:
 - a host agency;
 - a governmental entity or nonprofit organization that contracts with a host agency; or
 - HHSC.

State Ombudsman--The State Long-Term Care Ombudsman, as defined in 45 CFR §1324.1. The person who heads the Office and performs the functions, responsibilities, and duties described in 40 TAC §88.101.

Systems advocacy--Analyzing, commenting on, making recommendations, and monitoring the development and implementation of laws, rules, regulations, and other policies and actions that pertain to the health, safety, welfare, and rights of residents, with respect to the adequacy of LTC facilities and services.

TAC--Texas Administrative Code.

Volunteer ombudsman--A person who:

- is certified as a volunteer ombudsman in accordance with 40 TAC §88.102;
- performs functions of the Ombudsman Program; and
- is not an employee or independent contractor of:
 - HHSC;
 - a host agency; or
 - a governmental entity or nonprofit organization that contracts with a host agency.

Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

Chapter 300: Functions of the Office and the State Ombudsman

310 Responsibility of the State Ombudsman to Provide Programmatic Oversight

In accordance with 26 TAC §88.101(b)(5), the State Ombudsman is responsible for the programmatic oversight of LOEs and representatives of the Office, which includes:

- screening a representative of the Office who is employed by HHSC for individual conflicts of interest;
- screening a host agency for organizational conflicts of interest at least once a year (which typically occurs on or about January 15th each year);
- directing a representative of the Office to investigate a complaint or take other action related to a complaint; and
- providing advice and consultation to a representative of the Office in the performance of functions of the Ombudsman Program.

320 Independence of the State Ombudsman and the Office

In accordance with Texas Human Resources Code, §101A.254(c), the Office acts independently of HHSC in the performance of its powers and duties under federal and state law, including, as described in 26 TAC §88.101(e), §88.102, and §88.104, making decisions about the following :

- disclosure of confidential information maintained by the Ombudsman Program;
- recommendations to changes in federal, state, and local laws, rules, regulations, policies, and actions that relate to the health, safety, welfare, and rights of residents;
- provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns about residents and recommendations related to the problems and concerns;
- certification of ombudsmen and refusing, suspending, or terminating certification; and
- designation of LOEs, and refusing, suspending, or terminating designation.

Chapter 400: General Functions of Certified Ombudsmen

410 Requirement to Perform the Functions of the Ombudsman Program

In accordance with 26 TAC §88.302(a)(1), a certified ombudsman must perform the functions described in the Older Americans Act and the CFR, including:

- identifying, investigating, and resolving complaints made by, or on behalf of, residents that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of residents;
- providing services to protect the health, safety, welfare, and rights of residents;
- providing residents with information about the Ombudsman Program;
- making regular visits to residents in LTC facilities, as well as promptly responding to requests received by telephone, mail, and electronic means;
- representing the interests of residents before governmental agencies, and pursuing administrative, legal, and other remedies to protect residents;
- systems advocacy; and
- coordinating with and promoting the development of citizen organizations, including resident and family councils.

420 Requirement to Document Performance of the Functions of the Ombudsman Program

A staff ombudsman is required to document performance of Ombudsman Program functions in writing, in accordance with Sections 7050 and 7060 of this manual.

A volunteer ombudsman must document his or her performance of Ombudsman Program functions using HHSC form "Long-Term Care Ombudsman Activity Report." The volunteer ombudsman must submit a completed HHSC form "Long-Term Care Ombudsman Activity Report" to a staff ombudsman for entry in the ombudsman database, as described in Sections 7050(a) and 7060(a) of this manual, by a deadline established by the LOE.

Chapter 500: Access to LTC Facilities, Residents, Resident Records, and Other Information

510 Access to LTC Facilities

a. Requirement for Visits by a Certified Ombudsman

In accordance with 26 TAC §88.302(a)(1)(D), an LOE must ensure that a certified ombudsman makes regular visits to residents. A visit by a certified ombudsman must be unannounced, unless the visit includes a scheduled meeting with LTC facility staff, such as a care plan meeting. An unannounced visit is a visit for which a certified ombudsman does not, before the visit, notify LTC facility staff of the visit.

b. Authority of a Certified Ombudsman to Access an LTC Facility

In accordance with 26 TAC §88.201(a)(1), a certified ombudsman has immediate, private, and unimpeded access to enter an LTC facility:

- at any time during a facility's regular business hours or regular visiting hours; and
- at a time other than regular business hours or visiting hours, if the certified ombudsman determines access may be required by the circumstances to be investigated.

c. Requirement for a Volunteer Ombudsman to Obtain Approval to Visit an LTC Facility Other Than During Regular Business or Visiting Hours

To visit an LTC facility at a time other than during the facility's regular business or visiting hours, a volunteer ombudsman must consult with the ombudsman's supervising staff ombudsman or the MLO about the proposed visit.

d. Requirement for a Certified Ombudsman to Wear a Certified Ombudsman Badge While in an LTC Facility

A certified ombudsman must visibly wear the badge provided by the Office identifying the person as a certified ombudsman while performing Ombudsman Program functions in an LTC facility.

e. LTC Facility's Visitor Log, Notifying Facility Staff of Visit, and Requesting Resident Information

Upon entering an LTC facility, a certified ombudsman:

- is not required to sign a facility's visitor log;
- must attempt to notify one of the following that the certified ombudsman is in the facility:
 - a person at the front desk, the facility administrator, or a person working at the nurse's station; or
 - if none of these persons are available at the facility, another staff person at the facility; and
- may request a list of resident names and room numbers in accordance with 42 CFR §1324.11(e)(1)(C)(vii).

f. Access to Areas in an LTC Facility Not Accessible to the Public

If a certified ombudsman needs to view an area of an LTC facility that is not accessible to the public, such as a kitchen, medicine storage closet, or electrical or utility room, the certified ombudsman must:

- request that facility staff assist the ombudsman in accessing the area; and
- follow any facility procedures regarding health and safety precautions in viewing the area.

520 Access to Residents

a. Authority of Certified Ombudsman to Access a Resident

In accordance with 26 TAC §88.201(a)(2), a certified ombudsman has immediate, private, and unimpeded access to a resident.

b. Not Interfering with Provision of Care to Resident

A certified ombudsman must not interfere with the provision of care to a resident, such as physical therapy, wound care, bathing, or incontinence care.

c. Health Precautions when Visiting an LTC Facility

A certified ombudsman:

- must follow LTC facility safeguards and precautions when visiting a resident who is in contact isolation because of an illness;

- must wash hands regularly when in an LTC facility to limit the spread of infectious disease; and
- must not visit an LTC facility when the certified ombudsman is ill.

530 Access to Resident Representative Information

a. Authority of Certified Ombudsman to Access Resident Representative Information

In accordance with 26 TAC §88.201(a)(3), a certified ombudsman has access to the name and contact information of a resident representative when the information is needed to perform functions of the Ombudsman Program.

b. Obtaining Resident Representative Information

If a certified ombudsman needs the name and contact information of a resident representative, the certified ombudsman must request that LTC facility staff provide the information to the certified ombudsman.

c. Requirements if LTC Facility Refuses to Provide Resident Representative Information

If LTC facility staff refuse to provide resident representative information to a certified ombudsman:

- the certified ombudsman, if not the MLO, must notify the MLO of the refusal; and
- the MLO must comply with Section 2010(c) of this Manual.

540 Access to Resident Records

a. Authority of a Certified Ombudsman to Access a Resident Record

In accordance with 26 TAC §88.201(c), a certified ombudsman has immediate access:

- in accordance with Older Americans Act, §712(b)(1)(B), to all files, records, and other information concerning a resident, including an incident report involving the resident, if:
 - in accordance with 45 CFR §1324.11(e)(2)(iv)(A) or (B), the certified ombudsman has the consent of the resident or legally authorized representative;

- in accordance with the Older Americans Act, §712(b)(1)(B)(i)(II), the resident is unable to communicate consent to access and has no legally authorized representative; or
- in accordance with 45 CFR §1324.11(e)(2)(iv)(C), such access is necessary to investigate a complaint and the following occurs:
 - the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;
 - the certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and
 - if it is the certified ombudsman seeking access to the records, files, or other information the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent.

b. Examples of a Resident Record

Examples of a resident record are:

- admission paperwork with resident signature;
- bathing schedules;
- care notes;
- care plans;
- dietary orders;
- incident reports related to the resident;
- grievances;
- medication administration records; and
- physician orders.

c. Process to Access a Resident Record

To access a resident record, a certified ombudsman must:

- request consent from the resident or LAR to access the record; or
- have authority to access without consent in accordance with subsection (a) of this section; and
- if consent is obtained or determined not to be required, request that LTC facility staff provide the information to the certified ombudsman.

d. Requirements if LTC Facility Refuses to Provide Resident Record or Refuses to Provide Privacy to the Certified Ombudsman to Review a Resident Record

If LTC facility staff refuse to provide a resident record to a certified ombudsman who has obtained consent for the record or has authority to access without consent or refuse to allow a certified ombudsman privacy when reviewing the resident record:

- the certified ombudsman, if not the MLO, must notify the MLO of the refusal; and
- the MLO must comply with Section 2010(c) of this Manual.

e. Process to Review a Resident Record

A certified ombudsman:

- must review a resident record in a private area of an LTC facility or in a manner that maintains the confidentiality of the record;
- must involve the resident in the review, to the extent possible; and
- may make notes about or request a copy of the record, as needed.

f. Copies of or Notes about a Resident Record

A note made or copy of a resident record is an Ombudsman Program record.

550 Access to LTC Facility Information**a. Authority of Certified Ombudsman to Access LTC Facility Information Accessible to Residents or the Public**

In accordance with 26 TAC §88.201(c)(2), a certified ombudsman has access to the administrative records, policies, and documents of an LTC facility to which the residents or general public have access.

b. Examples of LTC Facility Information Accessible to Residents or the Public

Examples of LTC facility information accessible to residents or the public are:

- facility policies and procedures;
- admission agreements;
- smoking policies;
- facility grievance procedures;
- staffing records; and

- emergency operation policies.

c. Access to LTC Facility Licensing and Certification Information

1. Authority of a certified ombudsman to access LTC facility licensing and certification information

In accordance with Older Americans Act, §712(b)(1)(D), a certified ombudsman has access to all LTC facility licensing and certification records maintained by HHSC.

2. Requesting LTC facility licensing and certification information

A certified ombudsman may request that HHSC provide the licensing or certification information of an LTC facility to the certified ombudsman by sending an email to HHSC at credential@hhsc.state.tx.us.

560 Affirmation that HIPAA Does Not Prevent Release of Information to a Certified Ombudsman

In accordance with 26 TAC §88.201(d), the rules adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 160 and 45 CFR Part 164, subparts A and E, do not preclude an LTC facility from releasing protected health information or other identifying information regarding a resident to a certified ombudsman if the requirements of Sections 540(a) and 540(c) of this chapter are otherwise met. A certified ombudsman is a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

570 Communicating with a Person Who Speaks a Language Other than a Language the Certified Ombudsman Speaks

If a certified ombudsman needs to communicate with a person but is unable to communicate with the person because the certified ombudsman is not proficient in the language the person speaks, the certified ombudsman must:

- ensure that a certified ombudsman who is proficient in the person's language, communicates with the person;
- use a translation service provided by the host agency to communicate with the person; or
- obtain direction from the Office regarding the certified ombudsman's inability to communicate with the person.

Chapter 600: Confidentiality, Consent, and Disclosure Requirements

610 Confidentiality

a. Confidential Information Regarding a Resident or Complainant

1. Definition of confidential information

In accordance with 26 TAC §88.304(a), information identifying a resident or complainant is confidential. Confidential information may be oral or written. Such information includes:

- the name of the resident or complainant;
- information about the resident's medical condition or medical history;
- the resident's social history, including occupation, residences, and information about a resident's family and personal life;
- the resident's source of payment;
- whether a person has filed a complaint with the Ombudsman Program;
- whether Ombudsman Program records exist about a particular person or situation; and
- information from a communication between a resident and a representative of the Office.

2. Prohibition from disclosing confidential information unless consent and disclosure requirements are met

A certified ombudsman may disclose confidential information only if the disclosure is made in accordance with 26 TAC §88.304 and Section 630 or 640 of this chapter.

3. Information that is not confidential

Information that is not confidential includes:

- LTC facility policies and procedures;
- statistical data about residents or complaints filed with the Ombudsman Program;
- conversations with LTC facility owners, management, and staff who are not complainants in which confidential information is not disclosed;
- observations about the quality of care, environment, or operations of an LTC facility; and
- trends or patterns related to complaints.

b. Maintaining Confidentiality while Visiting an LTC Facility

A representative of the Office must:

- knock before entering a resident's room;
- if visiting with a resident in a public area, as much as the resident will allow, discuss confidential information of the resident in such a way that the discussion is not within audible range of other persons; and
- visit multiple residents during a visit to an LTC facility, to help ensure that the identity of a complainant is not easily discernable.

620 Consent

a. Requirement of a Certified Ombudsman to Seek Consent in Order to Access a Resident Record, Investigate a Complaint, or Disclose Confidential Information

1. Consent to access a resident record

A certified ombudsman must comply with Section 540(c) of this manual to access a record of a resident.

2. Consent to investigate a complaint

A certified ombudsman must comply with Section 740 or Section 750 of this manual to investigate a complaint.

3. Consent to disclose confidential information

A certified ombudsman must comply with Section 630 or Section 640 of this chapter to disclose confidential information.

b. How a Resident or LAR may Communicate Consent

A resident or LAR may communicate consent orally, in writing, visually, or through the use of auxiliary aids and services.

For example, to communicate consent, a resident may:

- nod his or her head "yes";
- give a "thumbs up" sign;
- use an electronic communication board to say "yes";
- write the word "yes"; or
- say the word "yes".

c. Determining a Resident's Ability to Communicate Consent

1. Requirement for a certified ombudsman to make determination about a resident's ability to communicate consent

A certified ombudsman must use his or her judgment in determining whether a resident has the ability to consent for a specific situation. To determine if a resident has the ability to consent, the certified ombudsman must determine if the resident understands information relevant to the situation and appreciates the consequences of consenting or not consenting regarding the situation. In making such a determination, a certified ombudsman may need to:

- visit the resident in person;
- visit the resident on multiple occasions; or
- inquire with the resident's LAR, LTC facility staff, or other persons familiar with the resident about the resident's ability to consent.

2. Considerations related to ability to consent

A. Ability to consent dependent on nature of situation

The ability of a resident to consent to a situation may depend on the nature of the situation.

For example, a certified ombudsman may determine that a resident is able to consent to the investigation of a complaint about meal choices but is not able to consent to an investigation about medication dosage.

B. Ability to consent may change

The ability of a resident to consent to a situation may change from one time to another.

For example, a certified ombudsman may determine on one occasion that a resident is able to consent to the investigation of a complaint about the cleanliness of the LTC facility. A month later, the certified ombudsman determines that the resident is not able to consent to an investigation of a complaint about the quality of the food at the facility.

3. Examples of determining a resident's ability to consent

- The daughter of a resident of an NF tells the certified ombudsman that the resident does not like her roommate and gives the certified ombudsman consent to investigate the complaint, including consent to disclose her name to the resident. The certified ombudsman visits with the resident to determine if she has the ability and wants to consent to the investigation of the complaint. The certified ombudsman asks the resident if she needs help with anything. The resident shakes her head "no." The certified ombudsman

asks the resident if she gets along with her roommate. The resident nods her head “yes” and smiles. The certified then tells the resident that her daughter said that the resident has concerns about her roommate and asks the resident if she wants the certified ombudsman to help resolve any issues with her roommate. The resident emphatically shakes her head “no.” Based on the resident’s responses, facial expressions, and gestures, the certified ombudsman determines that the resident has the ability to consent because she understands information relevant to the situation and appreciates the consequences of not consenting to investigation of the complaint.

- A certified ombudsman visits a resident in an NF. The resident seems to believe the certified ombudsman is a childhood friend of his and calls him “Billy.” The certified ombudsman explains who he is and his role at the NF. The resident tells the certified ombudsman that he likes his NF but states that he does not want to take showers so early in the morning. The certified ombudsman asks the resident if the ombudsman may speak with NF staff about getting him a shower at a different time. The resident says “yes, please, that would really help me.” Even though the resident seems confused about the certified ombudsman’s identity, the certified ombudsman determines that the resident has the ability to consent because he is able to articulate a complaint about this shower schedule and understand the consequences of consenting to investigation of the complaint.
- A certified ombudsman visits a resident in an NF. The resident repeats the word “help” as she walks around her room but does not appear to be in physical or emotional distress. The resident does not respond to the certified ombudsman’s greetings or questions. The certified ombudsman asks the NF administrator about the resident’s behavior. The administrator informs the certified ombudsman that the resident frequently exhibits this behavior. The certified ombudsman asks the administrator if the resident has an LAR. The administrator tells the certified ombudsman that the resident’s son is the resident’s POA agent and gives the certified ombudsman the contact information for the resident’s son and the document authorizing him as the POA agent. The certified ombudsman calls the son and asks him about the resident’s behavior. The son informs the certified ombudsman that his mother commonly paces in her room and repeats the word “help.” The certified ombudsman determines that the resident does not have the ability to consent because she does appear to understand questions being asked of her or information relevant to the situation.

d. Limitation of Consent

Consent given by a resident or LAR is limited to the specific situation and activities for which it was given.

e. Withdrawal of Consent

A resident or LAR may withdraw consent at any time.

f. Requirement to Document Consent

A certified ombudsman must document, in writing, when a resident or LAR consents, refuses consent, or is unable to consent to the certified ombudsman regarding a situation requiring consent for an ombudsman to act.

630 Oral Disclosure of Confidential Information

a. Oral Disclosure of Confidential Information Related to a Complaint Investigation

1. Oral disclosure related to a complaint investigation

A certified ombudsman must comply with Section 760(a)(2)(5th bullet), (b)(2)(8th bullet), or (c)(3) of this manual to orally disclose information related to a complaint investigation.

2. Examples of situations involving a complaint investigation in which a certified ombudsman may need to orally disclose confidential information

- A certified ombudsman is investigating a complaint on behalf of a resident and needs to disclose the name of the resident to LTC facility staff to resolve the complaint.
- A resident requests that a certified ombudsman reveal the name of the person who made a complaint on the resident's behalf.
- A complainant who is not the resident or LAR requests information about the outcome of the investigation of a complaint.

b. Oral Disclosure of Confidential Information NOT Related to a Complaint Investigation

1. Consent requirements for oral disclosure of confidential information in response to a request not related to a complaint investigation

To orally disclose confidential information in response to a request not related to a complaint investigation, a certified ombudsman must:

- if the resident to whom the information pertains is able to consent to the disclosure, obtain consent from the resident;
- if the resident to whom the information pertains is unable to consent to the disclosure and has an LAR with authority to consent to disclosure as

determined by the documentation authorizing the LAR, obtain consent from the LAR; or

- if the resident to whom the information pertains is unable to consent and does not have an LAR with authority to consent to disclosure as determined by the documentation authorizing the LAR, obtain approval of the Office.

2. Examples of situations involving oral disclosure of confidential information not related to a complaint investigation

- A friend of a resident asks the certified ombudsman if the resident has recovered from an illness.
- A family member of a resident asks the certified ombudsman if the resident would like the family to visit.
- A person claiming to be a resident's family member asks if the certified ombudsman knows whether the resident lives at a specific LTC facility.

640 Request for Certified Ombudsman to Disclose Written Confidential Information

a. Requirement to Notify the State Ombudsman after Receipt of a Request for Written Confidential Information

If a certified ombudsman receives a request for written confidential information, the certified ombudsman must immediately:

- notify the State Ombudsman of the request; and
- provide the State Ombudsman with any communication from the requestor.

b. State Ombudsman Response

In accordance with 26 TAC §88.304(c), if the State Ombudsman receives a request from a representative of the Office to disclose written confidential information, the State Ombudsman must:

- send written acknowledgement of receipt of the request to the representative of the Office;
- review the request and respond to the requestor within a time frame required by applicable state or federal law; and
- send a copy of the response to the LOE.

c. Examples of a Request for Written Confidential Information

- An LAR requests a certified ombudsman's notes related to a resident.

- An attorney claiming to represent the resident requests a copy of a certified ombudsman's notes regarding a complaint.
- An LOE receives a subpoena for the LOE's records related to an LTC facility.
- A certified ombudsman receives a court order ordering the release of confidential information about a resident in a lawsuit involving an LTC facility.

Chapter 700: Complaints

710 Requirement of a Certified Ombudsman to Identify and Investigate Complaints on Behalf of Residents and Requirement to Seek Direction from the MLO or the Office When Needed

a. Requirement to Identify, Investigate, and Resolve Complaints

In accordance with 26 TAC §88.302(a)(1)(A), an LOE must ensure that a certified ombudsman identifies, investigates, and resolves a complaint made by or on behalf of a resident that relates to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of the resident.

b. Requirement to Act on Behalf of the Resident

Regardless of who makes a complaint, a certified ombudsman must always act on behalf of the resident in investigating and resolving the complaint.

c. Requirement to Seek Direction from the MLO or the Office when Needed

If a certified ombudsman is uncertain about whether a complaint is appropriate for investigation by the certified ombudsman or about how to proceed with investigating the complaint, the certified ombudsman must seek direction from the MLO or the Office.

720 Definition of a Complaint and Description of Situations that are not Complaints

a. Definition and Examples of a Complaint

In accordance with 26 TAC §88.2, a “complaint” is a statement of dissatisfaction or concern made by or on behalf of a resident, that relates to action, inaction, or a decision by any person or entity who provides care or makes decisions related to a resident, that may adversely affect the health, safety, welfare, or rights of the resident.

The following are examples of a complaint:

- a resident tells a certified ombudsman that the LTC facility does not offer him enough food choices and wants help getting a wider variety;
- a resident tells the certified ombudsman that she doesn’t like showering at 6am and wants help getting a later shower time;

- a resident's guardian tells the certified ombudsman she is concerned that the facility staff is not properly administering medication to a resident and wants help investigating the situation; and
- a certified ombudsman observes that multiple call lights at an LTC facility go unanswered for 20 minutes while the ombudsman is in the facility.

b. Communications that Are Not Complaints

A communication to a certified ombudsman that is not a complaint is one that:

- does not directly affect a resident;
- is about a situation outside the scope of the Ombudsman Program; or
- is a request solely for information not related to a complaint.

The following are examples of communications that are not complaints:

- an LTC facility staff person tells a certified ombudsman that he is upset with how his manager at the facility criticized him;
- a person who does not live in an LTC facility tells a certified ombudsman that her home health aide always shows up late;
- a resident asks the certified ombudsman to explain the purpose of the Ombudsman Program;
- a resident's family member wants the phone number for HHS Regulatory Services but does not want ombudsman assistance; and
- a resident requests an item, such as a utensil or glass of water, from a certified ombudsman and the certified ombudsman concludes that the request is not a statement of dissatisfaction or concern of the resident.

730 LOE Complaint Receipt and Response

a. Allowing a person to make a complaint and initiation of a complaint by the LOE

In accordance with 26 TAC §88.305(a)(1) – (2), an LOE must:

- ensure that a person is allowed to make a complaint as follows:
 - in writing, including by email;
 - in person; or
 - by telephone; and
- initiate a complaint if the LOE becomes aware of circumstances that may adversely affect the health, safety, welfare, or rights of a resident.

b. Requirement to Document the Nature of a Complaint and Determine Appropriateness to Investigate

In accordance with 26 TAC §88.305(b)(1), if a certified ombudsman receives a complaint, the certified ombudsman must:

- document the nature of the complaint; and
- determine:
 - whether the complaint is appropriate for the certified ombudsman to investigate, specifically, whether the information provided meets the definition of a complaint as described in Section 720 of this chapter;
 - if any attempts have been made to resolve the complaint; and
 - the outcome sought by the complainant.

c. Request for Assistance that is Not a Complaint

If a certified ombudsman determines that a request for assistance is not a complaint as described in Section 720(b) of this chapter, the certified ombudsman must comply with Chapter 900 of this manual (Information and Assistance, Trainings, and Responding to Requests from the Media or a Public Official).

d. Responding to a Complaint

1. Timeframe to respond to a complaint

In accordance with 26 TAC §88.305(a)(3) an LOE must respond to a complainant within two business days after receipt of the complaint, except when a complaint is an allegation of abuse, neglect, or exploitation of a resident, in which case the LOE must comply with Chapter 800 of this manual (Allegations of ANE or a Threat of Harm to Others or Suicide).

2. How to respond to a complainant

An LOE may respond to a complainant by telephone, in writing, or in person.

3. Content of a response to a complainant

A response to a complainant may include the following:

- a statement acknowledging receipt of the complaint;
- a statement of whether the complaint is appropriate for investigation by a certified ombudsman;
- a request for consent from the complainant to disclose the identity of the complainant; and
- if the complainant is not the resident who is the subject of the complaint, an explanation that, in accordance with 26 TAC §88.305(b)(1)(C), the complaint will be investigated only if:
 - the resident who is the subject of the complaint or the resident's LAR consents to investigation of the complaint; or
 - in accordance with 45 CFR §1324.19(b)(2)(iii), the resident is unable to consent to investigation of the complaint and has no LAR.

4. Required visits to an LTC facility in response to a complaint

A. Determining if a visit to an LTC facility is necessary

A certified ombudsman must determine whether a visit to an LTC facility is necessary to:

- obtain consent from the resident to investigate the complaint as described in Section 740 of this chapter; or
- investigate the complaint.

B. Determining if there is a risk to a resident or a time sensitive need to visit an LTC facility

If a certified ombudsman determines that a visit to an LTC facility is necessary, the certified ombudsman must determine if, in light of the complaint:

- there is a risk to the health or safety of a resident, in accordance with subparagraph (i) below; or
- there is a time-sensitive reason to visit the LTC facility, in accordance with subparagraph (ii) below.

i. A risk to a resident

A certified ombudsman may determine that a risk to the health or safety of a resident exists if:

- a resident has informed the certified ombudsman that he or she is experiencing physical or psychological harm; or
- the alleged circumstances of the complaint could result in a resident experiencing physical or psychological harm.

ii. A time-sensitive reason to visit a facility

A certified ombudsman may determine that a time-sensitive reason to visit the LTC facility exists if:

- there is the need to quickly obtain a resident record or other physical evidence; or
- the complaint relates to an impending deadline, such as a resident's discharge date.

C. Timeframe to visit an LTC facility

i. Visiting a facility within two business days after receipt of the complaint

If a certified ombudsman determines that a visit to an LTC facility is necessary and that there is a risk to the health or safety of a resident or a time sensitive need to

visit the facility, the certified ombudsman must conduct the visit no later than two business days after receipt of the complaint.

ii. Visiting a facility within 10 business days after receipt of the complaint

Except as provided in clause (iii) of this subparagraph, if a certified ombudsman determines that a visit to an LTC facility is necessary but there is no risk to the health or safety of a resident or no time sensitive need to visit the facility, the certified ombudsman must conduct the visit within 10 business days after receipt of the complaint.

iii. Visiting a facility on the certified ombudsman's next scheduled visit

If a certified ombudsman determines that a visit to an LTC facility is necessary to investigate the complaint but there is no risk to the health or safety of a resident or there is not a time sensitive need to visit the facility, the certified ombudsman may wait until the next scheduled facility visit to conduct the visit if:

- the resident agrees to the timing of the visit; or
- the certified ombudsman determines that an earlier visit is not essential to the complaint investigation.

740 Consent to Investigate a Complaint

a. Requirement to Seek Consent from a Resident or LAR or Determine if Complaint may be Investigated without Consent

In accordance with 26 TAC §88.305(b)(1)(D), if the certified ombudsman receives a complaint, the certified ombudsman must investigate the complaint:

- with the consent of the resident or LAR in accordance with subsection (b) or (c) of this section; or
- without consent of the resident or LAR in accordance with Section 750 of this chapter.

b. Consent Requirements When a Resident is ABLE to Consent

1. Requirement to comply with this subsection when a resident is ABLE to consent unless it is a situation for which consent is not required

A certified ombudsman must comply with paragraphs (2), (3), or (4) of this subsection when the certified ombudsman determines that a resident is able to consent to investigation of a complaint, unless the situation is a circumstance described in Section 750(c) or (d) of this chapter.

2. A resident is ABLE to consent and the certified ombudsman does not initially know if the resident has an LAR

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and the certified ombudsman does not initially know if

the resident has an LAR, a certified ombudsman must seek consent from the resident, in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section. If a certified ombudsman becomes aware that the resident has an LAR while investigating the complaint, the certified ombudsman must comply with paragraph (3) or (4) of this subsection.

Example:

- A resident complains to a certified ombudsman that she does not like her current medications. The certified ombudsman determines that the resident is able to consent and, therefore, relies on the consent of the resident to investigate the complaint. The certified ombudsman discovers no evidence while investigating the complaint that the resident has an LAR and, therefore, the investigation is completed based on consent of the resident.

3. A resident is ABLE to consent and HAS an LAR that is a POA AGENT

A. Requirement to seek consent from the resident

Except as provided in subparagraph (B) of this paragraph, if a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and the certified ombudsman knows that the resident has a POA agent, the certified ombudsman must seek consent from the resident in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section.

B. Requirement to seek consent from the POA agent if requested by the resident

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint but the resident requests that the certified ombudsman seek consent from the resident's POA agent, the certified ombudsman must seek consent from the POA agent in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section.

C. Examples

- A resident tells the certified ombudsman that he is unhappy in his current living setting and asks the certified ombudsman to help him transfer to a different LTC facility. The certified ombudsman determines that the resident is able to consent to investigation of the complaint and, therefore, relies on the consent of the resident to investigate the complaint. While investigating

the complaint, the certified ombudsman discovers that the resident has a POA agent. The certified ombudsman must continue to rely on the consent of the resident to investigate the complaint and must not seek consent from the POA agent.

- A certified ombudsman notices that the floor of a resident's room is dirty. The certified ombudsman tells the resident about the dirty floor and determines that the resident is able to consent to investigation of the complaint. The resident does not want to get involved in the matter, however, and requests that the certified ombudsman talk to the resident's POA agent to seek consent to investigate. The certified ombudsman must seek consent from the POA agent.
- The daughter of a resident is the resident's POA agent. The daughter complains to the certified ombudsman that she has asked the LTC facility not to allow phone calls from the resident's sister because her sister upsets the resident, however, the facility has not complied with her request. The certified ombudsman meets with the resident and determines that she is able to consent. The resident tells the certified ombudsman that she likes to get calls from her sister and does not consent to investigation of the POA agent's complaint. The certified ombudsman must not proceed with investigation of the POA agent's complaint and must comply with subsection (g) of this section.
- The husband of a resident is her POA agent. The husband complains to the certified ombudsman that the LTC facility has not been giving his wife her prescribed medication. The certified ombudsman meets with the resident and determines that she is able to consent. The resident tells the ombudsman that she hates to take the medication and refuses it when staff ask her to take it. The certified ombudsman must support the resident's right to refuse the medication and must not proceed with investigation of the POA agent's complaint, and must comply with subsection (g) of this section.

4. A resident is ABLE to consent and HAS an LAR that is a GUARDIAN OR MANAGING CONSERVATOR

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and the certified ombudsman knows that the resident has a guardian or managing conservator, the certified ombudsman must determine if the complaint relates to a power granted to the guardian or managing conservator based on the court order or the letters of guardianship.

A. Resident under 18 Years of Age

If a resident is clearly under 18 years of age, a certified ombudsman is considered to have knowledge that the resident has a guardian or managing conservator.

B. Learning about guardian or managing conservator during investigation of complaint

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and the certified ombudsman does not initially know if the resident has a guardian or managing conservator, the certified ombudsman must seek consent of the resident in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section. If the certified ombudsman becomes aware while investigating the complaint that the resident has a guardian or managing conservator, the certified ombudsman must:

- cease investigation of the complaint; and
- comply with subparagraph (C), (D), or (E) of this paragraph.

C. Reviewing documents to determine whether complaint is related to matters within the scope of the authority of the guardian or conservator

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and knows that the resident has a guardian or managing conservator but does not know whether the complaint relates to a power granted to the guardian or managing conservator, the certified ombudsman must:

- review the court order or letters of guardianship to determine whether the complaint relates to a power granted to the guardian or managing conservator; and
- comply with subparagraph (D) or (E) of this paragraph.

D. Complaint relates to matters within the scope of the authority of the guardian or conservator

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and knows that the resident has a guardian or managing conservator and that the complaint relates to a power granted to the guardian or managing conservator based on the court order or the letters of guardianship, the certified ombudsman must seek consent from the guardian, in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section.

*E. Complaint **not** related to matters within the scope of the authority of the guardian or conservator*

If a certified ombudsman determines that a resident is able to consent to the investigation of a complaint and knows that the resident has a guardian or managing conservator and that the complaint does **not** relate to a power granted to the guardian or managing conservator based on the court order or the letters of guardianship, the certified ombudsman must seek consent from the resident, in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section.

F. Examples

- A resident complains to a certified ombudsman that he no longer wants to receive physical therapy. The resident is 17 years of age but is not clearly under the age of 18. The certified ombudsman determines that the resident is able to consent and, therefore, relies on the consent of the resident to investigate the complaint. While investigating the complaint, the certified ombudsman discovers that the resident is under 17 years of age and that the resident's grandmother is the managing conservator. The certified ombudsman ceases investigation of the complaint and reviews the court order appointing the resident's grandmother sole managing conservator and determines that the grandmother has the right to consent to medical care for the resident. The certified ombudsman informs the resident that the certified ombudsman must seek consent from her grandmother as the managing conservator to investigate the complaint.
- A resident who is clearly under 18 years of age tells the certified ombudsman that he no longer wants to participate in public school. The certified ombudsman determines that the resident is able to consent. Because the certified ombudsman is aware that the resident is under 18 years of age and, therefore, has a guardian or managing conservator, the certified ombudsman must obtain consent from the guardian or managing conservator to investigate the complaint.
- A resident complains to a certified ombudsman that she wants the camera in her room removed. The certified ombudsman determines that the resident is able to consent and, therefore, relies on the consent of the resident to investigate the complaint. While investigating the complaint, the certified ombudsman speaks with the administrator of the facility and learns that the resident has a guardian. The certified ombudsman ceases investigation of the complaint and reviews the letters of guardianship and determines that the guardian has the duty to provide supervision and protection for the resident. The certified ombudsman informs the resident that the certified

ombudsman must seek consent from her guardian to investigate the complaint.

- A resident tells the certified ombudsman that he wants to move to a different ALF. The certified ombudsman determines that the resident is able to consent. Further, the certified ombudsman knows that the resident's brother is the resident's guardian of the person. The certified ombudsman does not know if the powers granted to the guardian include the issue of the complaint. The certified ombudsman reviews the letters of guardianship and determines that the court gave the guardian the power to choose where the resident lives. The certified ombudsman must obtain consent of the guardian in order to investigate the resident's complaint.
- A resident tells a certified ombudsman that the resident does not like the choice of activities at the NF and requests assistance from the certified ombudsman to help her advocate for different activity choices. The certified ombudsman determines that the resident is able to consent. Further, the certified ombudsman knows from a previous investigation that the resident does not have a guardian of the person but does have a guardian of the estate. Because the authority of the guardian of the estate is limited to financial matters and does not extend to the issue of the complaint, the certified ombudsman must rely on the consent of the resident to investigate the complaint.
- A resident tells a certified ombudsman that the resident does not like the food at the NF and requests assistance from the certified ombudsman to help her advocate for different meal choices. The certified ombudsman determines that the resident is able to consent. Further, the certified ombudsman knows from a previous investigation that the resident has a guardian of the person. Even though the resident has a guardian of the person, the resident has the right to have personal preferences and make food choices. Because the nature of the complaint does not relate to the authority of the guardian, the certified ombudsman must rely on the consent of the resident to investigate the complaint.

c. Consent Requirements When a Resident Is UNABLE TO CONSENT

1. Certified ombudsman does not know if resident has an LAR

If a certified ombudsman determines that a resident is unable to consent to investigation of a complaint and the certified ombudsman does not know if the resident has an LAR, the certified ombudsman must:

- seek evidence of whether the resident has an LAR by reviewing the resident record or asking LTC facility staff and, based on the evidence, comply with paragraph (3) or (4) of this subsection; or
- investigate the complaint without obtaining consent from an LAR or seeking evidence of whether the resident has an LAR, in accordance with Section 750(b), (c), or (d) of this chapter.

2. A certified ombudsman knows whether resident has an LAR

If a certified ombudsman determines that a resident is unable to consent to investigation of a complaint and the certified ombudsman knows:

- that the resident does not have an LAR, the certified ombudsman must comply with paragraph (3) of this subsection; or
- that the resident does have an LAR, the certified ombudsman must comply with paragraph (4) of this subsection.

3. A Resident Is UNABLE TO CONSENT and DOES NOT HAVE an LAR

If the certified ombudsman determines that the resident is unable to consent and does not have an LAR, the certified ombudsman must investigate the complaint in accordance with Section 750(a) of this chapter.

4. If a Resident Is UNABLE TO CONSENT and HAS an LAR

A. Determining the authority of an LAR

If the certified ombudsman determines that the resident is unable to consent to investigation of a complaint and that the resident has an LAR, the certified ombudsman must determine if the complaint is related to the authority granted to the LAR based on:

- letters of guardianship or the court order appointing the guardian;
- a court order appointing the managing conservator; or
- documentation authorizing the POA agent.

*B. Complaint **not** related to the authority of the LAR*

If the certified ombudsman determines that the resident is unable to consent to investigation of a complaint and that the complaint is not related to the authority granted the LAR, the certified ombudsman must comply with Section 750(a) of this chapter.

C. Complaint related to the authority of the LAR

If the certified ombudsman determines that the resident is unable to consent to investigation of a complaint and that the complaint is related to the authority granted the LAR, the certified ombudsman must seek consent from the LAR, in accordance with subsection (d) of this section. If consent is obtained, the certified ombudsman must comply with subsection (e) of this section. If consent is declined, the certified ombudsman must comply with subsection (g) of this section.

d. Seeking Consent to Investigate a Complaint

To seek consent from a resident or LAR, the certified ombudsman must:

- if the resident or LAR is not the complainant, inform the resident or LAR:
 - that a complaint regarding the resident has been made;
 - of the name of the complainant, if consent is obtained in accordance with Section 760(b)(2)(1st bullet);
- discuss the details of the complaint with the resident or LAR;
- determine the perspective of the resident or LAR about the validity of the complaint;
- determine the wishes of the resident or LAR with respect to resolution of the complaint;
- request that the resident or LAR consent to investigation of the complaint;
- if the certified ombudsman believes it is necessary to disclose confidential information to investigate the complaint, request that the resident or LAR consent to disclose confidential information in accordance with Section 760(a)(2)(5th bullet), (b)(2)(8th bullet), or (c)(3) of this chapter; and
- if the certified ombudsman believes it is necessary to access the resident's record to investigate the complaint, request that the resident or LAR consent to the certified ombudsman accessing the resident's record in accordance with Section 540(c) of this manual.

e. Resident or LAR Consents to Investigation of the Complaint

If a resident or LAR consents to investigation of the complaint, the certified ombudsman investigates the complaint in accordance with Section 760 of this chapter.

f. Withdrawal of Consent by a Resident or LAR

A resident or LAR may withdraw consent to investigation of the complaint at any time. If a resident or LAR withdraws consent to investigation of the complaint, a certified ombudsman must comply with subsection (g) of this section.

g. If Consent to Investigation of the Complaint Is Declined or Withdrawn

In accordance with 26 TAC §88.305(b)(5), if the resident or LAR declines to give consent or withdraws consent to have the complaint investigated, the certified ombudsman:

- if the resident or LAR declines to give consent, must not investigate the complaint;
- if the resident or LAR withdraws consent, must cease investigating the complaint;

- if the certified ombudsman believes that the LAR's decision to decline or withdraw consent may adversely affect the resident, must comply with subsection (h) and (i) of this section;
- if the complaint is not referred to an appropriate authority, in accordance with subsection (h) of this section:
 - must inform the complainant that the complaint will not be investigated because the resident or LAR declined to consent or withdrew consent to investigation of the complaint; and
 - must advise the complainant of his or her options to pursue resolution of the complaint such as:
 - providing information to the complainant on how he or she can file a complaint with a regulatory or protective agency;
 - suggesting that the complainant discuss the matter with LTC facility staff; and
 - suggesting that the complainant raise the issue with the family council established for the LTC facility.

h. Referring A Complaint If LAR Declines to Provide Consent or Is Not Responsive

1. Approval of State Ombudsman required to refer a complaint if an LAR declines consent or is not responsive to requests for consent

If an LAR declines to consent or does not respond to a certified ombudsman's requests for consent for investigation of a complaint, including reporting an allegation of ANE, the certified ombudsman must request and obtain approval from the State Ombudsman to refer the complaint.

2. Criteria to request approval from State Ombudsman to refer a complaint

A certified ombudsman must request approval from the State Ombudsman to report a complaint to an appropriate authority if the certified ombudsman determines that:

- the LAR has acted, failed to act, or made a decision that may adversely affect the welfare or rights of a resident, including declining consent for a certified ombudsman to investigate a complaint or to refer an allegation of ANE to the appropriate authority;
- the resident is unable to consent or the resident consents to reporting the complaint to an appropriate authority;
- it is in the best interest of the resident to refer the complaint; and
- there is no evidence indicating that the resident would not want the referral to be made.

3. Notification from State Ombudsman regarding request for approval

If the State Ombudsman receives a request for approval to refer a complaint, the State Ombudsman:

- determines whether the request is approved; and
- notifies the certified ombudsman, in writing, within three business days after receipt of the request of:
 - whether the request to refer the complaint is approved; and
 - if the request is approved, the specific authority to which the certified ombudsman must make the referral, such as one of the following:
 - an LTC facility;
 - APS;
 - HHS Regulatory Services; or
 - law enforcement.

4. Reporting misconduct to appropriate authority in accordance with notification from State Ombudsman

A certified ombudsman must refer the complaint to the appropriate authority in accordance with the written notification from the State Ombudsman as described in paragraph (3) of this subsection.

5. Examples

- A certified ombudsman notices that the clothes of a resident in an NF are soiled and torn. The certified ombudsman knows that the son of the resident is the resident's guardian. The certified ombudsman speaks with the guardian about the condition of the resident's clothes. The guardian tells the ombudsman that he thinks that the facility does not properly maintain the resident's clothing but does not feel the need to address the issue because the resident doesn't seem to care about the state of her clothing. The certified ombudsman explains that the NF has a responsibility to properly maintain the resident's belongings and care for the resident in a manner that preserves the resident's dignity. The certified ombudsman asks for the guardian's consent to investigate the complaint by discussing the issue with the facility. The guardian declines to consent to investigation of the complaint. The certified ombudsman determines that the criteria in paragraph (2) of this subsection are met and requests permission from the State Ombudsman to refer the complaint about the resident's clothes to HHS Regulatory Services.
- A certified ombudsman visits a resident of an ALF who is unable to communicate. During the visit, the resident's roommate tells the certified ombudsman that a nurse aid "smacked" the resident. The certified ombudsman observes bruising on the resident's arm. The certified ombudsman knows that the daughter of the resident is the resident's guardian. The certified ombudsman calls the guardian immediately about the allegation but does not hear back from the guardian within the next two

hours. The certified ombudsman determines that the criteria in paragraph (2) of this subsection are met and requests permission from the State Ombudsman to report the allegation to APS.

i. Reporting the Misconduct of an LAR to an Appropriate Authority

1. Approval of State Ombudsman required to report misconduct of LAR

The certified ombudsman must request and obtain approval from the State Ombudsman to report the misconduct of an LAR to an appropriate authority.

2. Criteria to request approval from State Ombudsman to report misconduct of an LAR

A certified ombudsman must request approval from the State Ombudsman to report the misconduct of an LAR to an appropriate authority if the certified ombudsman determines that:

- the LAR has acted, failed to act, or made a decision that may adversely affect the welfare or rights of a resident, including declining consent for a certified ombudsman to investigate a complaint;
- the resident is unable to consent or the resident consents to reporting the misconduct of the LAR;
- it is in the best interest of the resident to report the LAR; and
- there is no evidence indicating that the resident would not want the report to be made.

3. Notification from State Ombudsman regarding request for approval

If the State Ombudsman receives a request for approval to report the misconduct of an LAR, the State Ombudsman:

- determines whether the request is approved; and
- notifies the certified ombudsman, in writing, within three business days after receipt of the request:
 - of whether the request to report misconduct is approved; and
 - if the request is approved, the specific authority to which the certified ombudsman must make the report, such as one of the following:
 - the LTC facility;
 - APS;
 - the court that appointed the guardian;
 - HHSC Guardianship Services;
 - HHS Regulatory Services; or
 - law enforcement.

4. Reporting misconduct to appropriate authority in accordance with notification from State Ombudsman

A certified ombudsman must report the misconduct of an LAR to the appropriate authority in accordance with the written notification from the State Ombudsman described in paragraph (3) of this subsection.

5. Examples

- An LTC facility informs a certified ombudsman that a resident's POA agent is not paying applied income to the LTC facility for the resident's care and the facility will need to discharge the resident for non-payment. The certified ombudsman determines that the resident is unable to consent to the investigation of the complaint and that the POA agent's authority includes managing the resident's finances. The certified ombudsman also determines that the POA agent is the resident's Social Security Administration representative payee and receives the resident's applied income each month. The certified ombudsman determines that it is in the resident's best interest to report the conduct of the POA agent and that there is no evidence to suggest the resident would not want the POA agent to be reported. The certified ombudsman requests approval from the State Ombudsman to report the misconduct of the POA agent to the appropriate authority. The State Ombudsman notifies the certified ombudsman, in writing that the request to report the misconduct is approved and directs the certified ombudsman to report the POA agent to APS and the Social Security Administration. In accordance with the notification, the certified ombudsman reports the POA agent's alleged misconduct to APS and the Social Security Administration.
- A resident tells a certified ombudsman that he is upset because the resident's guardian, his sister, directed the NF staff to prohibit the resident from interacting with his girlfriend, another resident at the NF. The certified ombudsman asks the resident's guardian about the resident's complaint. The guardian acknowledges that she told the NF staff not to let the resident interact with his girlfriend because the girlfriend is much older than the resident and smokes cigarettes. The certified ombudsman informs the guardian of the responsibility under state law for a guardian to consider the wishes and preferences of the ward. The guardian refuses to give consent for the ombudsman to investigate the complaint and continues to express her desire that the resident not be permitted to interact with his girlfriend. When speaking with the resident again, the resident tells the certified ombudsman that he is depressed because he misses his girlfriend. The certified ombudsman concludes that the guardian's decision to prohibit the resident from interacting with his girlfriend may adversely affect the welfare or rights of a resident and, therefore, requests approval from the State Ombudsman to report the misconduct of the guardian to the appropriate authority. The State Ombudsman notifies the certified ombudsman, in writing that the request to report the misconduct is approved and directs the certified

ombudsman to report the guardian to the court that appointed the guardian and to the LTC facility. In accordance with the notification, the certified ombudsman reports the POA agent's misconduct to the court and to the administration of the LTC facility.

j. Assisting a Resident in Revoking a Power of Attorney, Removing or Changing a Social Security Administration (SSA) Representative Payee, Restoring Capacity of the Resident, Removing a Guardian, or Appointing a Different Managing Conservator

1. Resident requests assistance in revoking a power of attorney

If a resident requests assistance from a certified ombudsman to revoke a power of attorney, the certified ombudsman must:

- assist the resident in contacting a non-profit legal services organization in accordance with Section 770(c)(2) of this chapter, to revoke the power of attorney and, if desired, to execute a new power of attorney; and
- if necessary, request that a person chosen by the resident, such as an LTC facility staff person, assist the resident with activities related to revocation of the power of attorney including:
 - obtaining notarization of the resident's signature on the written revocation; and
 - submitting the written revocation to the LTC facility and other entities that rely on the power of attorney.

2. Resident requests assistance in removing or changing an SSA representative payee

A. Assistance in removing an SSA representative payee

If a resident requests assistance from a certified ombudsman in removing or changing an SSA representative payee, the certified ombudsman must:

- assist the resident in contacting the Social Security Administration at 1-800-772-1213, to request removal of the resident's SSA representative payee;
- if necessary, assist the resident in obtaining and submitting one or more of the following to the SSA to demonstrate that the resident has the ability to manage his or her social security income:
 - a statement from a physician that the resident has the capacity to manage his or her social security income;
 - an official copy of a court order saying that the court believes that the resident has capacity to manage his or her social security income; or

- other evidence that the resident has capacity to manage his or her social security income; and
- as requested by the resident, assist the resident in reporting the misuse of social security income by an SSA representative payee by calling the SSA Office of the Inspector General at 1-800-269-0271.

B. Assistance in changing an SSA representative payee

If a resident requests assistance from a certified ombudsman in changing an SSA representative payee, the certified ombudsman must assist the resident in contacting the SSA at 1-800-772-1213, to request a change of the resident's SSA representative payee.

3. Resident requests assistance in asking a court to restore capacity to the resident, remove a guardian, or to appoint a different managing conservator

A. Request State Ombudsman approval

If a resident requests assistance from a certified ombudsman to restore capacity to the resident, remove a guardian, or to appoint a different managing conservator, the certified ombudsman must:

- inform the MLO of the resident's request, if the certified ombudsman is not the MLO; and
- request approval from the State Ombudsman to inform the resident about actions to take to restore capacity to the resident, request removal of a guardian, or appoint a different managing conservator.

B. Approval and instruction from State Ombudsman

If the State Ombudsman approves the request of the certified ombudsman to inform the resident about actions to take to restore capacity to the resident, request removal of a guardian, or appoint a different managing conservator, the State Ombudsman instructs the certified ombudsman to:

- provide information to the resident about how to notify the appropriate court of the resident's request to restore capacity to the resident, remove the guardian, or appoint a different managing conservator; or
- provide contact information for a non-profit legal services organization, as described Section 770(c)(2) of this chapter, for assistance in restoring capacity to the resident, seeking removal of the guardian, or appointing a different managing conservator.

C. Reporting Misconduct of an LAR

The certified ombudsman may report the misconduct of an LAR to an appropriate authority in accordance with subsection (i) of this section.

D. Example

A resident, whose son is her guardian, tells a certified ombudsman that she believes she has capacity to make her decisions and does not need a guardian. The certified ombudsman tells the resident that only a court can remove a guardian and tells the resident she will talk to the guardian. The guardian tells the certified ombudsman that he believes his mother has dementia and, therefore, needs a guardian. The certified ombudsman informs the MLO of the resident's request and requests approval from the State Ombudsman for the certified ombudsman to assist the resident in obtaining legal counsel to help her petition the court for restoration of capacity to the resident. The State Ombudsman gives approval and provides guidance to the ombudsman on how to assist the resident in contacting Texas Legal Services Center to obtain legal assistance in seeking restoration of capacity to the resident.

750 Situations for Which Consent is Not Required to Take an Action

a. A Resident Is Unable to Consent and Does Not Have a LAR or has an LAR but the Complaint is not Related to the Authority Granted the LAR

If a certified ombudsman determines that a resident is unable to consent and does not have an LAR or determines that the resident has an LAR but the complaint is not within the scope of the authority granted the LAR, the certified ombudsman must investigate the complaint in accordance with Section 760(c) of this chapter. In this situation, the certified ombudsman is the complainant.

b. A Certified Ombudsman Observes a Need and a Resident Is Unable to Consent

1. A certified ombudsman observes a care need

A certified ombudsman may request LTC facility staff to assist a resident without seeking evidence of an LAR or obtaining consent from an LAR if:

- the certified ombudsman observes a resident who needs immediate assistance from LTC facility staff; and
- the certified ombudsman determines that the resident is unable to consent to investigation of a complaint.

2. Requirement if the action taken is ongoing

If to resolve a complaint, the certified ombudsman is required to take actions in addition to requesting assistance from LTC facility staff as described in paragraph (1) of this subsection, the certified ombudsman must comply with Section 740(c) of this chapter or subsection(a) of this section.

3. Examples

- A certified ombudsman observes that a resident's brief is soiled and determines that the resident is unable to consent to investigation of a complaint. The certified ombudsman immediately requests a nurse aide to provide incontinence care to the resident without seeking evidence of whether the resident has an LAR.
- A certified ombudsman observes a resident who appears to have fallen on the floor and is struggling to stand up. The certified ombudsman determines that the resident is unable to consent to investigation of a complaint. The certified ombudsman immediately requests a nurse aide to assist the resident without seeking evidence of whether the resident has an LAR.
- A certified ombudsman observes a resident who is attempting to get out of bed. The certified ombudsman determines that the resident is unable to consent to investigation of a complaint. The certified ombudsman requests that a nurse aide assist the resident. The nurse aide goes to the resident's room. An hour later, the certified ombudsman observes the same resident having difficulty getting out of bed. The certified ombudsman asks the nurse aide to assist the resident again. The nurse aide tells the certified ombudsman that she is busy and will assist the resident when she is available. She also tells the certified ombudsman that the resident needs to get out of bed to use the restroom "all the time" and that the facility does not have staff available to assist the resident as often as requested. The certified ombudsman asks the facility administrator and determines that the resident has a guardian of the person. The certified ombudsman calls the guardian to seek consent to further investigate the complaint. The guardian tells the certified ombudsman that the resident is on a new medication and asks for the ombudsman's assistance in setting up a care plan to discuss incontinence care with the facility.

c. A Certified Ombudsman Identifies a Complaint that Affects a Substantial Number of Residents

In accordance with 26 TAC 88.305(b)(6), if a certified ombudsman identifies a complaint that affects a substantial number of residents in an LTC facility, the certified ombudsman may investigate and work to resolve the complaint without obtaining consent from the residents or the LARs to investigate the complaint. The

certified ombudsman investigates the complaint in accordance with Section 760 of this chapter. In this situation, the certified ombudsman is the complainant.

The following are examples of situations affecting a substantial number of residents:

- LTC facility closure;
- inadequate housekeeping throughout an LTC facility;
- unpleasant odors in the common areas of an LTC facility;
- rodents in an LTC facility; or
- life and safety code violations at an LTC facility.

d. Immediate Threat to a Resident

1. Requirement if time does not allow

If a certified ombudsman determines that a situation presents an immediate threat to the health or safety of a resident, a certified ombudsman, except as provided in paragraph (2) of this subsection, may investigate the complaint without obtaining consent from the resident or LAR to investigate the complaint. The certified ombudsman investigates the complaint in accordance with Section 760 of this chapter.

2. Requirement if time allows

If a situation presents an immediate threat to the health or safety of a resident and time allows, a certified ombudsman must *attempt* to contact the resident or an LAR to obtain consent to investigate the complaint before investigating the complaint.

3. Requirement if the action taken is ongoing

If the action taken during the investigation of an immediate threat situation is ongoing, the certified ombudsman must comply with the consent requirements in Section 740 or subsection (a) of this section.

4. Examples

- A facility notifies the certified ombudsman that it will be discharging a resident the next day. The certified ombudsman knows that the resident is unable to consent to the investigation of the complaint and that the resident has a guardian who has authority to make decisions about the resident's care. The certified ombudsman attempts to communicate with the resident's guardian but receives no response from the guardian after several hours. To help protect the resident from being discharged, the certified ombudsman may begin investigating the complaint without consent from the guardian by filing a request for a fair hearing to appeal the discharge and informing the facility that an appeal has been filed.

- A certified ombudsman observes a resident who does not appear to be breathing. The certified ombudsman immediately notifies a nurse.

760 Complaint Investigation

a. If the Complainant Is the Resident or LAR

1. Criteria for complaint investigation

If the complainant is the resident or LAR, a certified ombudsman must investigate the complaint, in accordance with this subsection, if:

- the certified ombudsman has determined that the complaint is appropriate for ombudsman investigation, specifically, that the information provided meets the definition of a complaint as described in Section 720 of this chapter; and
- the certified ombudsman has obtained consent from the resident or LAR to investigate the complaint in accordance with Section 740 of this chapter.

2. Activities of complaint investigation

If the criteria in paragraph (1) of this subsection is met, the certified ombudsman must investigate the complaint by:

- determining what, if any, state or federal requirements apply to the complaint;
- observing the environment of the resident and situations in the LTC facility related to the complaint;
- interviewing relevant witnesses;
- reviewing relevant records, if necessary, including confidential information if consent or other authority is obtained in accordance with Section 540(c) of this manual;
- determining if disclosure of confidential information is necessary to effectively investigate the complaint and if such disclosure is necessary:
 - identifying the specific confidential information that needs to be disclosed;
 - requesting that the resident or LAR consent to disclose the confidential information; and
 - if consent is given, only disclosing the specific information for which consent was obtained; or
 - if consent to disclose the confidential information is not given:
 - explaining to the resident or LAR that without disclosing the confidential information, the effectiveness of the investigation may be limited; and
 - attempting to investigate the complaint without disclosing the confidential information;

- if the complaint relates to a violation of state or federal requirements for an LTC facility, informing the resident or LAR of the option to report the complaint to HHS Regulatory Services in accordance with Section 770 of this chapter;
- if the complaint may be resolved by assistance from a governmental entity or non-profit organization, inform the resident or LAR that:
 - the certified ombudsman may request assistance from the entity or organization in accordance with Section 770 of this chapter;
 - the resident or LAR may request such assistance; and
 - the certified ombudsman may help the resident or LAR in requesting such assistance.
- if the complaint relates to ANE, complying with Chapter 800 of this manual (Allegations of ANE or a Threat of Harm to Others or Suicide);
- determine if the complaint is “verified” or “not verified” as described in Section 7050(d) of this manual;
- working with the resident or LAR to develop a plan of action for resolution of the complaint;
- encouraging the resident or LAR to participate in the process to resolve the complaint;
- documenting the activities performed by the certified ombudsman during the investigation, in writing;
- determining and documenting the resident’s or LAR’s satisfaction with the outcome of the investigation; and
- determining and documenting a disposition code for the complaint, as described in Section 7050(f) of this manual, when:
 - the resident or other complainant communicates satisfaction with the resolution of the complaint;
 - the certified ombudsman determines that, after investigation, the complaint was not made in good faith;
 - the certified ombudsman determines that further investigation is unlikely to produce resident or complainant satisfaction or achieve the desired outcome of the resident or complainant; or
 - the resident or complainant withdraws the complaint or asks the certified ombudsman to cease complaint investigation.

b. If the Complainant Is NOT the Resident or LAR but the Resident is ABLE to Consent or HAS an LAR

1. Criteria for complaint investigation if the complainant is not the resident or LAR

If the complainant is not the resident or LAR, a certified ombudsman must investigate the complaint, in accordance with this subsection, if:

- the certified ombudsman has determined that the complaint is appropriate for ombudsman investigation in accordance with Section 720 of this chapter, specifically, that the information provided meets the definition of a complaint as described in Section 720 of this chapter; and
- the certified ombudsman has:
 - obtained consent from the resident or LAR to investigate the complaint in accordance with Section 740 of this chapter; or
 - determined that consent to investigate the complaint is not required in accordance with Section 750 of this chapter.

2. Activities of complaint investigation

If the criteria in paragraph (1) of this subsection is met, the certified ombudsman must investigate the complaint by:

- requesting that the complainant consent to disclose confidential information, such as the name of the complainant;
- communicating with the resident or LAR about the complaint and obtain the resident or LAR's perspective about the complaint, if the resident is able to communicate;
- determining which, if any, state or federal requirements apply to the complaint;
- informing the resident or LAR of the resident's rights and other law related to the complaint;
- observing the environment of the resident and situations in the LTC facility related to the complaint;
- interviewing relevant witnesses;
- reviewing relevant records, if necessary, including confidential records if consent or other authority is obtained in accordance with Section 540 of this manual;
- determining if disclosure of confidential information is necessary to effectively investigate the complaint and if such disclosure is necessary:
 - identifying the specific confidential information that needs to be disclosed such as the name of the resident and the status and outcome of the complaint investigation;
 - requesting the resident or LAR consent to disclose the confidential information; and
 - one of the following:
 - if consent is given, only disclosing the specific information for which consent was obtained; or
 - if consent to disclose information is not given:
 - explaining to the resident or LAR that without disclosing the confidential information, the effectiveness of the investigation may be limited; and

- attempting to investigate the complaint without orally disclosing the confidential information;
- if the complaint relates to a violation of state or federal requirements for an LTC facility, informing the resident or LAR of the option to report the complaint to HHS Regulatory Services in accordance with Section 770 of this chapter;
- if the complaint may be resolved by assistance from a governmental entity or non-profit organization, inform the resident or LAR that:
 - the certified ombudsman may request assistance from the entity or organization in accordance with Section 770 of this chapter;
 - the resident or LAR may request such assistance; and
 - the certified ombudsman may help the resident or LAR in requesting such assistance;
- if the complaint relates to ANE, complying with Chapter 800 (Allegations of ANE or a Threat of Harm to Others or Suicide) of this manual;
- determine if the complaint is “verified” or “not verified” as described in Section 7050(d) of this manual;
- working with the resident or LAR to develop a plan of action for resolution of the complaint;
- encouraging the resident or LAR to participate in the process to resolve the complaint;
- documenting the activities performed by the certified ombudsman during the investigation, in writing;
- determining and documenting the resident’s or LAR’s satisfaction with the outcome of the investigation; and
- determining and documenting the disposition of the complaint, as described in Section 7050(f) of this manual, when:
 - the resident or other complainant communicates satisfaction with the resolution of the complaint;
 - the certified ombudsman determines that, after investigation, the complaint was not made in good faith;
 - the certified ombudsman determines that further investigation is unlikely to produce resident or complainant satisfaction or achieve the desired outcome of the resident or complainant; or
 - the resident or complainant withdraws the complaint or asks the certified ombudsman to cease complaint investigation.

c. If the Resident Is UNABLE to Consent and DOES NOT Have an LAR or the Resident HAS an LAR but is UNABLE to Consent and the Complaint is not related to the Authority Granted the LAR

1. Criteria for complaint investigation if the resident is unable to consent and does not have an LAR or has an LAR but the complaint is not related to the authority granted the LAR

A certified ombudsman must comply with this subsection if:

- one of the following situations exists:
 - the certified ombudsman has determined that the resident is unable to consent to investigation of the complaint and does not have an LAR; or
 - the resident has an LAR but the certified ombudsman has determined that the resident is unable to consent to investigation of the complaint and the complaint is not related to the authority granted the LAR; and
- the certified ombudsman has determined that the complaint is appropriate for ombudsman investigation in accordance with Section 720 of this chapter, specifically, that the information provided meets the definition of a complaint as described in Section 720 of this chapter.

2. Activities of complaint investigation

If the criteria in paragraph (1) of this subsection is met, the certified ombudsman must investigate the complaint by:

- determining what, if any, state or federal requirements apply to the complaint;
- determining how many residents are potentially affected by the complaint;
- observing the environment of the resident and situations in the LTC facility related to the complaint;
- determining if disclosure of confidential information is necessary and authorized in accordance with paragraph (3) of this subsection;
- interviewing relevant witnesses;
- reviewing relevant records, if necessary, including confidential records if consent or other authority is obtained in accordance with Section 540(c);
- if the complaint relates to a violation of state or federal requirements for an LTC facility, reporting the complaint to HHS Regulatory Services in accordance with Section 770 of this chapter;
- if the complaint may be resolved by assistance from a governmental entity or non-profit organization requesting assistance from the entity or organization in accordance with Section 770 of this chapter;
- if the complaint relates to ANE, complying with Chapter 800 of this manual, (Allegations of ANE or a Threat of Harm to Others or Suicide); and

- determine if the complaint is “verified” or “not verified” as described in Section 7050(d) of this manual;
- documenting the activities performed by the certified ombudsman during the investigation, in writing;
- determining and documenting whether the complaint is satisfactorily resolved; and
- determining and documenting the disposition of the complaint, as described in Section 7050(f) of this manual, when:
 - the certified ombudsman determines the complaint is resolved to the satisfaction of the certified ombudsman;
 - the certified ombudsman determines that, after investigation, the complaint was not made in good faith; or
 - the certified ombudsman determines that further investigation is unlikely to achieve the desired outcome of the resident or complainant.

3. Disclosure of confidential information related to the complaint investigation

If consent of a resident or LAR to investigation of a complaint is not required in accordance with Section 750 of this chapter, a certified ombudsman may disclose confidential information to investigate the complaint without consent from a resident or LAR if the certified ombudsman:

- believes the disclosure is necessary to investigate the complaint;
- believes the disclosure is in the best interest of the resident; and
- has no reason to believe that the resident would not want the information disclosed.

770 Requesting Assistance from a Governmental Entity, Non-Profit Organization, or MCO to Help Resolve a Complaint Other Than a Complaint about ANE

a. Requirements for a Certified Ombudsman to Request Assistance from a Governmental Entity, Non-profit Organization, or MCO

1. Determination that assistance may help resolve complaint

A certified ombudsman may determine that assistance from a governmental entity, non-profit organization, or MCO may help resolve a complaint. The reasons for such a determination include the following:

- the governmental entity, non-profit organization, or MCO offers benefits or services related to the complaint and for which the resident may qualify; and
- the governmental entity or MCO has authority to investigate an issue related to the complaint.

2. Requirement to obtain consent or have authority to request assistance

A certified ombudsman may request assistance from a governmental entity, non-profit organization, or MCO to help resolve a complaint if:

- the certified ombudsman has made a determination that the assistance may help resolve the complaint and the certified ombudsman:
 - obtained consent from the resident or LAR to request assistance in accordance with Section 740 of this chapter; or
 - has the authority to request assistance without consent in accordance with Section 750(a) of this chapter; or
- the resident or LAR has requested that the certified ombudsman request assistance from the governmental entity, non-profit organization, or MCO.

3. Requirement to obtain consent or have authority to disclose confidential information

If a certified ombudsman determines that disclosure of confidential information is necessary to request assistance from a governmental entity, non-profit organization, or MCO to help resolve a complaint, the confidential information may be disclosed only if the certified ombudsman:

- obtains consent from the resident or LAR to disclose the confidential information in accordance with Section 740 of this chapter; or
- has authority to request assistance without consent in accordance with Section 750 of this chapter.

4. Prohibited referrals

A certified ombudsman is prohibited from making certain referrals as described in Section 3010(e) of this manual.

b. Performing Complaint Investigation Activities even if a Governmental Entity, MCO, or Non-Profit Organization Provides Assistance

Even if a governmental entity, non-profit organization, or MCO provides assistance as requested by a certified ombudsman or by a resident or LAR, the certified ombudsman must perform the activities described in Section 760(a)(2), (b)(2), or (c)(2) of this chapter.

c. Entities and Organizations from which Certified Ombudsmen Frequently Request Assistance

1. HHS Regulatory Services

A. Description of HHS Regulatory Services

HHS Regulatory Services is a division of HHSC that licenses and regulates LTC facilities. HHS Regulatory Services investigates formal complaints regarding LTC facilities and conducts annual licensure inspections of NFs and biannual licensure inspections of ALFs. If HHS Regulatory Services determines that an LTC facility is in violation of a licensure requirement or federal regulation, HHS Regulatory Services may issue a citation and impose a monetary penalty against the facility.

B. Filing a complaint with HHS Regulatory Services

If the requirements in subsection (a) of this section are met, a certified ombudsman may request assistance by filing a complaint with HHS Regulatory Services. A complaint is filed by submitting the complaint to HHS Complaint and Incident Intake:

- by telephone at 1-800-458-9858; or
- by email at CiiComplaints@hhsc.state.tx.us.

C. Requesting information from HHS Regulatory Services

If the requirements in subsection (a) of this section are met, a certified ombudsman may request assistance from an HHS Regulatory Services staff person by requesting information about:

- a requirement or policy of HHS Regulatory Services;
- an interpretation of a regulation by HHS Regulatory Services; or
- the outcome of an investigation by HHS Regulatory Services.

2. Non-profit legal services organizations or AAA benefits counseling

A. Description of a non-profit legal services organizations and AAA benefits counseling

A non-profit legal services organization and AAA benefits counseling provide free or low cost legal advice, referrals, and representation to persons who qualify for such services. Non-profit legal services organizations include the Texas Legal Services Center (TLSC), Disability Rights Texas (DRTx), the State Bar of Texas, the Refugee and Immigrant Center for Education and Legal Services (RAICES), the National Academy of Elder Law Attorneys (NAELA), and regional legal aid organizations.

i. AAA benefits counseling

A AAA offers benefits counseling to persons who meet qualifying criteria. Benefits counseling provides legal assistance on a variety of matters including public and medical benefits, estate planning and probate, and decision-making options such as advanced directives and guardianships. The AAA information line is 1-800-252-9240.

ii. DRTx

DRTx is the federally designated legal protection and advocacy agency for people with disabilities in Texas. DRTx protects the rights of persons with disabilities through the courts and justice system such as assisting a person to restore capacity and rights, taking action against a guardian not acting in a ward's best interest, or representing a person who was denied the right to move out of a NF. The DRTx statewide intake telephone number is 1-800-252-9108.

iii. TLSC

TLSC provides legal services to a person who is 60 years of age or older and meets other qualifying criteria. The legal services provided by TLSC include free counsel and advice by phone, assistance in obtaining legal forms, and referrals to other organizations. The TLSC hotline is 1-800-622-2520.

iv. RAICES

RAICES provides legal advocacy and representation to persons in the immigration system. The RAICES intake and general questions email is info@raicetexas.org.

iv. State Bar of Texas

The State Bar of Texas oversees attorneys licensed to practice law in Texas. It can help a person find a lawyer or organization that provides services to low-income and middle-income Texans. The website for the State Bar of Texas is <http://www.texasbar.com/> and the phone number is 1-800-204-2222.

v. NAELA

NAELA is an organization of attorneys who specialize in elder law. NAELA can help a person find an elder law attorney. The email for intake and general questions is naela@naela.org.

vi. Regional legal aid organizations

Several legal aid organizations in Texas provide free or low-cost legal aid for low-income persons based on a person's place of residence, along with other qualifying criteria. Regional legal aid organizations that operate in Texas include:

- Legal Aid of North West Texas, 1-888-529-5277
- Texas Rio Grande Legal Aid, 1-800-733-8394
- Lone Star Legal Aid, 1-888-988-9996
- Dallas Volunteer Attorney Program, 1-214-243-2247
- Houston Volunteer Lawyers, 1-713-228-0732
- Volunteer Legal Services of Central Texas, 1-512-476-5550

B. Requesting assistance from a legal services organization.

If the requirements in subsection (a) of this section are met, a certified ombudsman may contact any of the legal services organizations listed in subparagraph (A) of this paragraph or another non-profit legal services organization, to request legal services assistance on behalf of a resident.

C. Prohibition of referral to private attorney.

In accordance with Section 3010(e) of this manual, a representative of the Office is prohibited from referring a person to a private attorney.

3. MCO*A. Description of an MCO*

An MCO is a health care organization that contracts with HHSC to provide for the delivery of Medicaid services to certain persons, including the majority of residents in NFs and some residents in ALFs. Residents in an LTC facility may or may not be enrolled with the same MCO. Two of the responsibilities an MCO performs for a resident of an LTC enrolled with the MCO are:

- providing a service coordinator to meet with a resident to review the resident's services, goals, and needs; and
- providing assistance to a resident who wants to relocate to a community setting, including:
 - for a resident of an NF, meeting with the resident to explain the transition process, conducting an assessment for relocation, and helping the resident to arrange relocation to the new residence; and
 - for a resident of an ALF, setting up medical services in the community after the resident has found a residence outside of the ALF.

B. Service Coordinator

i. Requesting assistance from an MCO service coordinator

If the requirements in subsection (a) of this section are met, a certified ombudsman may request assistance from an MCO service coordinator related to a complaint, including assistance related to the following:

- resident care needs;
- notification to a resident that the LTC facility is discharging the resident; and
- a complaint made by a resident regarding action taken or not taken by an MCO.

ii. MCO Service coordinator does not respond in a timely manner

If the resident, LAR, or certified ombudsman requests assistance from an MCO service coordinator, but the service coordinator does not assist the resident in a timely manner and if the requirements in subsection (a)(2) and (3) of this section are met, the certified ombudsman may:

- escalate the complaint to the MCO by calling or emailing a manager or the customer service department at the MCO; or
- contact the HHS Office of the Ombudsman, as described in paragraph (4) of this subsection.

C. Requesting assistance if a resident of an NF wants to relocate to a community setting

If a resident of an NF expresses interest in moving to a community setting and the requirements in subsection (a) of this section are met, a certified ombudsman must request assistance by:

- informing the LTC facility social worker that the resident expressed interest in relocating to a community setting;
- requesting the LTC facility social worker to contact the resident's MCO, if the resident has an MCO; and
- following up with the resident to ensure that the MCO and the LTC facility are performing activities to assist the resident in relocating.

4. HHS Office of the Ombudsman

A. Description of HHS Office of the Ombudsman

The HHS Office of the Ombudsman receives complaints from persons concerning services provided by HHSC, such as Medicaid services provided through an MCO,

support services provided through HHSC, and medical transportation provided through HHSC.

B. Requesting assistance from the HHS Office of the Ombudsman

If the requirements in subsection (a) of this section are met, a certified ombudsman may request assistance from the HHS Office of the Ombudsman:

- if the complaint relates to an HHSC service, such as a denial of eligibility for a Medicaid benefit;
 - by telephone at 877-787-8999; or
 - by email at contact@hhsc.state.tx.us; or
- if the complaint relates to an MCO, such as a service coordinator not responding to requests or an MCO denying a service;
 - by telephone at 866-566-8989; or
 - by email at contact@hhsc.state.tx.us.

5. Other organizations or entities from which assistance is frequently requested

A. 2-1-1

2-1-1 is a program of HHSC that provides state-wide information and referral. 2-1-1 staff provide information about local and state-wide resources and information about Medicaid benefits and community services such as food pantries, mental health services, veterans centers, and rent assistance.

B. AAA

A AAA provides services for people age 60 and older, their family member, and caregivers. In addition to benefits counseling, services include care coordination, caregiver support services, in-home support services, and providing information and referral to community services. The AAA information line is 1-800-252-9240.

C. Aging and Disability Resource Center (ADRC)

An ADRC is an entity that contracts with HHSC to provide information and counseling to the public about long-term services and supports. The ADRC information line is 855-937-2372.

D. Center for Independent Living (CIL)

A CIL is an organization that provides a variety of independent living services for persons with disabilities such as information and referral and independent living skills training. A CIL may contract with an MCO to provide services that facilitate

transition from an NF to a community setting. The website for a CIL directory and contact information in Texas is <https://www.txsilc.org/cils.html>.

E. Local Authorities

i. Local Mental Health Authority (LMHA)

An LMHA is an entity that contracts with HHSC to provide mental health services related to serious mental illness. LMHAs are responsible for the performance of some activities regarding the PASRR process. The website for LMHA contact information is <https://apps.hhs.texas.gov/contact/search.cfm>.

ii. Local Intellectual or Developmental Disability Authority (LIDDA)

A LIDDA is an entity that contracts with HHSC to provide services and supports to persons with intellectual and developmental disabilities. LIDDAs are responsible for the performance of some activities regarding the PASRR process related to intellectual and developmental disabilities. The website for LIDDA contact information is <https://apps.hhs.texas.gov/contact/la.cfm>.

F. Requesting assistance from an organization or entity in this paragraph

If the requirements in subsection (a) of this section are met, a certified ombudsman may contact any of the organizations or entities listed in this paragraph to request assistance on behalf of a resident.

780 Assisting a Resident or LAR in a Medicaid Fair Hearing or an Appeal to an MCO

a. Requirements for a Certified Ombudsman to Assist a Resident or LAR in a Medicaid Fair Hearing or an Appeal to an MCO

1. Determination that assistance in a fair hearing or an appeal to an MCO may help resolve a complaint

A certified ombudsman may determine that assisting a resident in a fair hearing or an appeal to an MCO could help resolve a complaint if the hearing or appeal relates to:

- a Medicaid benefit or service for which the resident may qualify and for which the resident was denied; or
- a resident who was given a notice of discharge from a Medicaid-certified NF.

2. Requirement to obtain consent or have authority to assist a resident or an LAR in a fair hearing or an appeal to an MCO

A certified ombudsman may assist a resident in a fair hearing or an appeal to an MCO, including serving as the resident's representative for the fair hearing or MCO appeal, if the certified ombudsman has determined that the assistance may help resolve the complaint and the certified ombudsman has:

- consent from the resident or LAR to assist in the hearing or appeal in accordance with Section 740 of this chapter; or
- authority to assist in the hearing or appeal without consent in accordance with Section 750 of this chapter.

3. Requirement to obtain consent or have authority to disclose confidential information to provide assistance related to a fair hearing or appeal to an MCO

To disclose confidential information to assist the resident in a fair hearing or appeal to an MCO, the certified ombudsman must have consent from the resident or LAR or have authority to disclose the information without consent in accordance with Section 630(a)(1) of this manual.

b. Requirement to Comply with Protocol if Medicaid Fair Hearing Relates to a Discharge from an NF

To assist a resident or LAR in a fair hearing regarding a discharge from an NF, a certified ombudsman must, in addition to complying with subsection (a) of this section, comply with Ombudsman Program Protocol 17-02 "Participation in a Discharge Fair Hearing", in Appendix I of this manual.

c. Providing Assistance Related to a Medicaid Fair Hearing or an Appeal to a Managed Care Organization for a Denial of a Medicaid Service

1.Actions to assist a resident or LAR to request a fair hearing for denial of a Medicaid service or an appeal to an MCO for a denial of a Medicaid service

A. Actions to assist a resident or LAR to request a fair hearing

If the requirements in subsection (a) of this section are met, a certified ombudsman may assist the resident or LAR in requesting a fair hearing for denial of a Medicaid service. To make such a request, the certified ombudsman sends a written request for a hearing that includes the name and contact information of the resident and LAR to HHSC. The request must be faxed to 1-866-559-9628 or emailed to oesfairhearings@hhsc.state.tx.us.

B. Actions to assist a resident or LAR to request an appeal of an MCO decision

If the requirements in subsection (a) of this section are met, a certified ombudsman may assist the resident or LAR in requesting an appeal of an MCO decision for denial of a Medicaid service. To make such a request, the certified ombudsman must follow the instructions in the MCO's member handbook or on the MCO's website.

2. Actions to assist a resident or LAR related to a fair hearing for denial of a Medicaid service or an appeal to an MCO for a denial of a Medicaid service, but not serve as the resident's representative

A certified ombudsman may assist a resident or LAR, without serving as the resident's representative for the entire hearing or appeal process, by:

- assisting the resident or LAR to request the fair hearing or appeal;
- assisting the resident or LAR to prepare evidence and statements for the hearing or appeal;
- assisting the resident or LAR to get information about the status of the hearing or appeal; or
- serving as a witness during the hearing or appeal.

3. Serving as the resident's representative for the entire fair hearing for denial of a Medicaid service or an appeal to an MCO for a denial of a Medicaid service*A. Designation to serve as the resident's representative*

A certified ombudsman is designated to serve as the resident's representative for purposes related to the hearing or appeal if:

- the resident or LAR designates a certified ombudsman to serve as the resident's representative during the hearing or appeal on the forms generated by the MCO or HHSC fair hearings office; or
- the State Ombudsman approves a certified ombudsman to be designated a resident representative if the resident is unable to consent to the designation and does not have an LAR.

B. Serving as the resident's representative

If a certified ombudsman has been designated the resident's representative in accordance with subparagraph (A) of this paragraph, the certified ombudsman serves as the resident's representative for the entire hearing process or MCO appeal by performing actions such as:

- assisting the resident or LAR to request the hearing or appeal or by requesting the hearing or appeal for the resident or LAR;
- making inquiries about the status of the hearing or appeal;
- preparing evidence and statements for the hearing or appeal;
- questioning witnesses at the hearing and presenting the resident's position; and
- requesting an administrative review if the decision from the hearing is unfavorable to the resident.

Chapter 800: Allegations of ANE or a Threat of Harm to Others or Suicide

810 Requirements for a Complaint that is an Allegation of ANE

a. Prohibition of a Certified Ombudsman from Investigating ANE

In accordance with 26 TAC §88.305(c)(1), a certified ombudsman must not investigate whether ANE of a resident has occurred.

b. Required Actions if Certified Ombudsman Receives a Complaint of ANE or Suspects ANE

If a certified ombudsman receives a complaint of alleged ANE or suspects ANE has occurred, the certified ombudsman must:

- if a complaint is received by the certified ombudsman, inform the complainant, within one business day after receipt of the complaint:
 - that the certified ombudsman does not investigate a complaint of alleged ANE; and
 - of the appropriate authority, as described in Section 820 of this chapter, to whom the complainant may report the allegation of ANE; and
- if the resident is able to consent to reporting the complaint, report the allegation of ANE to the appropriate authority in accordance with Section 830(d) of this chapter; or
- if the resident is unable to consent, report the allegation of ANE to the appropriate authority in accordance with Section 830(e) of this chapter; and
- within 24 hours after reporting an allegation of ANE to an investigative authority, inform the MLO that such report was made.

820 Authorities that Investigate Allegations of ANE

a. HHS Regulatory Services

HHS Regulatory Services investigates ANE if the alleged ANE occurs in an LTC facility or during a period when the LTC facility is responsible for the supervision of the resident. A person reports alleged ANE to HHS Regulatory Services by calling 1-800-458-9858 or emailing ciicomplaints@hhsc.state.tx.us.

b. APS

APS investigates ANE if:

- except as provided in the following bullet, the alleged ANE does not occur at an LTC facility and is during a period when the LTC facility is not responsible for the supervision of the resident; or
- the alleged ANE is financial exploitation and the alleged perpetrator is a person other than an LTC facility staff person.

A person reports an allegation of ANE to APS by calling 1-800-252-5400.

c. Law Enforcement

Law enforcement investigates ANE if the alleged ANE is a criminal offense. A person reports an allegation of ANE to law enforcement by calling 9-1-1.

d. Reporting an Allegation of ANE to More than One Authority

An allegation of ANE may be made to more than one authority because multiple authorities may investigate an allegation of ANE.

830 Consent or Authority Requirements for a Certified Ombudsman to Report an Allegation of ANE**a. Requirement of a Certified Ombudsman to have Consent or Authority to Report ANE Without Consent**

A certified ombudsman may report an allegation of ANE to the appropriate authority only if the certified ombudsman has:

- consent of the resident or LAR in accordance with subsection (d) or (e) of this section; or
- authority to report without the consent of the resident or LAR in accordance with Section 750 of this manual.

b. Compliance with Subsection (a) Regardless of Reporting Requirements in Professional Licensure Standards

If a certified ombudsman has a professional license issued by a governmental entity, the certified ombudsman must comply with subsection (a) of this section, regardless of whether the licensure standards governing such license require mandatory reporting of ANE.

c. An Allegation of ANE from a Person OTHER than the Resident**1. Responding to allegations of ANE when the complainant is NOT the resident who is the alleged victim, an LTC facility staff person, or a licensed professional with mandatory ANE reporting requirements**

If the complainant **is not** the resident who is the alleged victim of ANE, an LTC facility staff person, or a licensed professional with mandatory ANE reporting requirements, the certified ombudsman must:

- encourage the complainant to report the allegation to the LTC facility, to the appropriate authority as described in Section 820 of this chapter, or to both; and
- report the allegation to the appropriate authority only if the certified ombudsman has:
 - consent of the resident or LAR in accordance with subsection (d) or (e) of this section; or
 - authority to report without the consent of the resident or LAR in accordance Section 750 of this manual.

2. Responding to allegations of ANE when the complainant IS an LTC facility staff person or licensed professional with mandatory ANE reporting requirements

If the complainant **is** an LTC facility staff person or a licensed professional with mandatory ANE reporting requirements, the certified ombudsman must:

- if the complainant is an LTC facility staff person, inform the person of his or her duty to report ANE in accordance with HHSC rules at 40 TAC §19.602 or 26 TAC §553.102;
- if the complainant is a licensed professional, inform the professional of his or her duty to report ANE in accordance with licensure standards governing the professional's license;
- if the certified ombudsman is not the MLO and the complainant refuses to report the suspected ANE, inform the MLO of the refusal within 24 hours after learning of the refusal; and
- report the allegation to the appropriate authority only if the certified ombudsman has:
 - consent of the resident or LAR in accordance with subsection (d) or (e) of this section; or
 - authority in accordance Section 750 of this manual.

d. Reporting ANE When the Resident is ABLE TO CONSENT or HAS an LAR

1. Seeking consent from the resident or LAR to report the allegation

To seek consent from the resident or LAR to report an allegation of ANE, the certified ombudsman must:

- if the complainant is not the resident or LAR, inform the resident or LAR:
 - that an allegation of ANE regarding the resident has been made;
 - of the name of the complainant, if consent to disclose the name of the complainant was obtained;
- discuss the details of the allegation with the resident or LAR;
- determine the wishes of the resident or LAR regarding the allegation;
- request consent from the resident or LAR for the certified ombudsman to:
 - report the allegation to the LTC facility, the appropriate authority as described in Section 820 of this chapter, or to both; and
 - disclose confidential information to the authority in reporting the allegation; and
- comply with paragraph (2) of this subsection if the resident or LAR consents to the certified ombudsman reporting the allegation; or
- comply with paragraph (3) of this subsection if the resident or LAR declines to consent to the certified ombudsman reporting the allegation.

2. If the resident or LAR consents to reporting the allegation

If the resident or LAR consents to the certified ombudsman reporting the allegation of ANE, the certified ombudsman must:

- based on the specifics of the consent, report the allegation to the LTC facility, the appropriate authority, or to both; and
- within 24 hours after reporting an allegation of ANE to the LTC facility or appropriate authority, inform the MLO that such report was made, if the certified ombudsman is not the MLO.

3. If the resident or LAR DOES NOT consent to reporting the allegation

If the resident or LAR does **not** consent to the certified ombudsman reporting the allegation of ANE, the certified ombudsman must:

- encourage the resident, LAR, or other complainant to report the allegation to the LTC facility, the appropriate authority, or to both;
- discuss other advocacy strategies with the resident, LAR, or other complainant that protect the resident's confidentiality and ensure resident safety;
- take no further action to report the allegation of ANE, even if the certified ombudsman personally witnesses ANE;

- continue to communicate with the resident or LAR and monitor the situation;
- comply with paragraph (2) of this subsection if the resident or LAR, at any time, consents to reporting the ANE; and
- comply with Section 740(h) of this manual if the certified ombudsman has reason to believe that an LAR's decision to not report the ANE may adversely affect the health, safety, welfare, or rights of the resident.

e. Reporting ANE When the Resident is UNABLE TO CONSENT

1. Reporting ANE when the certified ombudsman PERSONALLY WITNESSES ANE and the resident is UNABLE TO CONSENT and DOES NOT have an LAR or the certified ombudsman DOES NOT initially know if the resident has an LAR

If a certified ombudsman personally witnesses ANE, determines that the resident is unable to consent to reporting the allegation, and is not aware of an LAR, the certified ombudsman must seek evidence of whether the resident has an LAR by reviewing the resident record or asking LTC facility staff. If the certified ombudsman determines that the resident has an LAR, the certified ombudsman must comply with paragraph (3) of this subsection. If the certified ombudsman determines that the resident does not have an LAR, believes reporting the allegation of ANE to the appropriate entity is in the best interest of the resident, and has no reason to believe the resident would not wish the certified ombudsman to report, the certified ombudsman must:

- report the allegation to the LTC facility, the appropriate authority, or to both as described in Section 820 of this chapter; and
- within 24 hours after reporting an allegation of ANE to the LTC facility or appropriate authority, inform the MLO that such report was made, if the certified ombudsman is not the MLO.

2. Reporting an allegation of ANE when a resident is UNABLE TO CONSENT and the certified ombudsman DOES NOT initially know if the resident has an LAR or knows that a resident does not have an LAR

A. Certified ombudsman does not know if a resident has an LAR

If a certified ombudsman receives a complaint that is an allegation of ANE of a resident and the certified ombudsman determines that the resident is unable to consent to reporting the allegation to the appropriate agency and is not aware of an LAR, the certified ombudsman must seek evidence of whether the resident has an LAR by reviewing the resident record or asking LTC facility staff. If the certified ombudsman determines that the resident has an LAR, the certified ombudsman must comply with paragraph (3) of this subsection. If the certified ombudsman determines that a resident does not have an LAR, the certified ombudsman must comply with subparagraph (B) of this paragraph.

B. Certified ombudsman knows or determines that a resident does not have an LAR

If the certified ombudsman knows or determines that the resident does not have an LAR, the certified ombudsman must report the allegation of ANE to the LTC facility or to the appropriate authority, or to both, as described in Section 820 of this chapter. Within 24 hours after reporting an allegation of ANE to the LTC facility or appropriate authority, inform the MLO that such report was made, if the certified ombudsman is not the MLO.

3. Reporting ANE when a resident is UNABLE TO CONSENT and HAS an LAR

A. Seeking consent from the LAR

If a certified ombudsman knows or determines that a resident has an LAR, the certified ombudsman must seek consent from the LAR to report the allegation of ANE to the LTC facility or an appropriate authority as described in Section 820 of this chapter by:

- if the complainant is not the LAR, informing the LAR:
 - that an allegation of ANE regarding the resident has been made;
 - of the name of the complainant, if consent to disclose the name of the complainant was obtained;
- discuss the details of the allegation with the LAR;
- determine the wishes of the LAR including whether to report the allegation to the LTC facility, other appropriate authority, or to both, and whether the certified ombudsman may disclose identifying or other relevant information;
- request that the LAR consent to reporting the allegation of ANE and disclosing confidential information to the appropriate authority; and
 - comply with subparagraph (B) of this paragraph if the LAR consents to reporting the allegation; or
 - comply with subparagraph (C) of this paragraph if the LAR declines to consent to reporting the allegation.

B. LAR consents to reporting allegation of ANE

If the LAR consents to the certified ombudsman reporting the allegation of ANE, the certified ombudsman must:

- report the allegation of ANE to the LTC facility, an appropriate authority, or both; and
- within 24 hours after reporting an allegation of ANE to the LTC facility or appropriate authority, inform the MLO that such report was made, if the certified ombudsman is not the MLO.

C. LAR does not respond or declines to consent to reporting allegation of ANE

If the LAR declines to consent to the certified ombudsman reporting the allegation of ANE or does not respond to requests for consent for the certified ombudsman to report the allegation, the certified ombudsman must comply with Section 740(h) and (i) of this manual if the certified ombudsman has reason to believe that the LAR's lack of response or decision to not report the allegation may adversely affect the health, safety, welfare, or rights of the resident.

840 A Threat of Harm or Suicide**a. A Threat by a Person That Is NOT a Resident**

If a certified ombudsman receives a credible communication from a person, other than a resident, that the person is threatening to harm himself or herself or others, the certified ombudsman must:

- if the person being threatened is a resident or staff person of an LTC facility, report the threat to:
 - the LTC facility administrator or manager on duty; or
 - law enforcement by calling 9-1-1; or
- if the person being threatened is not a resident or staff person of an LTC facility, report the threat to law enforcement by calling 9-1-1.

b. A Threat by a Resident

If a certified ombudsman receives a communication from a resident that is a threat to harm others or commit suicide, the certified ombudsman must:

- request information from the resident including:
 - who the resident is threatening to harm;
 - why the resident is threatening harm;
 - when and how the resident intends to carry out the threat of harm;
 - whether the resident has the means and ability to carry out the threat of harm; and
 - whether the resident consents to the certified ombudsman taking action, such as reporting the threat to the LTC facility or calling 9-1-1 or a mental health crisis center;
- request that the resident not act on the threat;
- if the resident consents to the certified ombudsman taking action and the certified ombudsman believes the threat may be credible and possible report the threat to:
 - the LTC facility;
 - law enforcement by calling 9-1-1; or
 - a mental health crisis center; and

- if the resident does not consent to the certified ombudsman taking action and the certified ombudsman believes the threat may be credible and possible:
 - immediately contact the MLO or Office for assistance and take action as directed by the MLO or Office, if the certified ombudsman believes there is time to make such contact without risking the safety of any person; or
 - if the certified ombudsman attempts to contact the MLO or Office and the MLO or Office is not immediately available or the ombudsman believes that taking time to contact the MLO or Office will risk the safety of any person, immediately report the threat to the LTC facility administrator or to law enforcement by calling 9-1-1.

Chapter 900: Information and Assistance (Formerly “Consultation”), Trainings, and Responding to Requests from the Media or a Public Official

910 Information and Assistance (Formerly “Consultation”)

a. Information and Assistance to an Individual

1. Definition of information and assistance to an individual

Information and assistance to an individual is the provision of information that is not related to a complaint, as described in Section 720 of this manual, by a certified ombudsman to a person who is not affiliated with an LTC facility.

2. Examples of information and assistance to an individual

Examples of information and assistance to an individual by a certified ombudsman include when a certified ombudsman:

- explains the role of a certified ombudsman to a resident;
- provides objective information to an LAR on how to choose an ALF and how to pay for long-term care;
- provides information to a resident about alternatives to LTC facilities;
- provides information to a resident’s family member about LTC facility laws and regulations;
- provides information about managed care to a resident;
- provides information to a resident about the resident council;
- provides information to a member of the public, who is not an LTC facility staff person, about resources or services outside the scope of the Ombudsman Program; and
- provides contact information for a governmental entity or non-profit organization to a resident’s family member.

b. Information and Assistance to a Facility

1. Definition of information and assistance to a facility

Information and assistance to a facility is the provision of information that is not related to a complaint, as described in Section 720 of this manual, by a certified ombudsman to an LTC facility staff person.

2. Example of information and assistance to a facility

Examples of information and assistance to a facility by a certified ombudsman include when a certified ombudsman:

- provides information to an LTC facility social worker about the Ombudsman Program;

- provides laws and regulations, survey protocols, or provider letters to an LTC facility staff person;
- provides materials about promoting residents' rights, individual choice and resident-centered care to an LTC facility administrator;
- provides contact information to a governmental entity or non-profit organization to an LTC facility staff person; and
- provides interpretation of laws and regulations governing LTC facilities to a staff person at a corporate office of an LTC facility.

920 Training for LTC Facility Staff, Resident and Family Councils, and the Public

A certified ombudsman must, upon request and as his or her schedule allows, provide training to LTC facility staff, resident and family councils, and the public, on topics such as:

- the recognition and prevention of abuse and neglect;
- resident-centered care;
- communicating with residents with dementia;
- residents' rights;
- the dangers of physical and chemical restraints and alternatives to restraints; and
- the Ombudsman Program.

930 Responding to a Communication from the Media or a Public Official

a. Communication from the Media or Public Official Requiring a Response that is Systems Advocacy

If a communication from the media or a public official requires a certified ombudsman to give a response that is systems advocacy, the certified ombudsman must comply with Section 1020 of this manual.

b. Communication from the Media Requiring a Response that is NOT Systems Advocacy

1. Required actions for a communication from the media requiring a response that is NOT systems advocacy

If a certified ombudsman receives a communication from the media requiring a response that is not systems advocacy, the certified ombudsman must not provide information to the media and must refer the communication to the MLO. The MLO must:

- only provide information that is not confidential to the media;

- within one business day after receiving the referral from the certified ombudsman, inform the Office of the communication from the media, the MLO's response to the media, and the information being requested by the media; and
- comply with direction from the Office regarding any further communication to or from the media.

2. Examples of communications from the media requiring a response that is not systems advocacy

- A reporter calls an LOE to inquire about a recent death at an ALF.
- A person from a local TV news station is filming at an ALF while a certified ombudsman is visiting and asks the certified ombudsman for a comment about the ALF.
- An investigative journalist calls a certified ombudsman about the bankruptcy filing by the owner of an NF.

c. Communication from a Public Official Requiring a Response that is NOT Systems Advocacy

1. Required actions for a communication from a public official requiring a response that is NOT systems advocacy and is NOT related to a complaint

If a certified ombudsman receives a communication from a public official requiring a response that is not systems advocacy and that is not related to a complaint, the certified ombudsman must not provide information to the public official and must refer the communication to the MLO. The MLO must:

- only provide information that is not confidential to the public official;
- within one business day after receiving the referral from the certified ombudsman, inform the Office of the communication from the public official and the MLO's response to the public official; and
- comply with direction from the Office regarding further communication to or from the public official.

2. Examples of communications from a public official requiring a response that is NOT systems advocacy and is NOT related to complaint

- A mayor's office calls the MLO to ask about the functions of the Ombudsman Program.
- A state representative's office calls a certified ombudsman to ask about the number of complaints that the LOE has gotten about a specific NF.

3. Required actions for a communication from a public official requiring a response that is NOT systems advocacy but IS related to a complaint

If a certified ombudsman receives a communication from a public official requiring a response that is not systems advocacy but is related to a complaint, the certified ombudsman must refer the communication to the MLO. The MLO must:

- within one business day after receiving the referral from the certified ombudsman:
 - respond to the public official by acknowledging the communication and informing the official that the LOE is currently investigating the complaint or will investigate the complaint; and
 - notify the Office of the communication;
- investigate the complaint or assign a certified ombudsman to investigate the complaint in accordance with Chapter 700 of this manual (Complaints);
- provide information about the investigation to the Office, as requested; and
- provide non-confidential information about the progress of the investigation to the public official.

4. Examples of communications from a public official requiring a response that is NOT systems advocacy but IS related to complaint

- A certified ombudsman receives an email from the governor's office about a complaint the LOE is currently investigating.
- A staff person from a state legislator's office informs a certified ombudsman that a constituent who lives in an NF is complaining that the facility has bedbugs.

Chapter 1000: Systems Advocacy

1010 Systems Advocacy Definition and Examples

a. Definition of Systems Advocacy

As defined in Chapter 200 of this manual (Definitions), systems advocacy is analyzing, commenting on, making recommendations, and monitoring the development and implementation of laws, rules, regulations, and other policies and actions that pertain to the health, safety, welfare, and rights of residents, with respect to the adequacy of LTC facilities and services.

b. Examples of Systems Advocacy

Examples of systems advocacy include when a certified ombudsman:

- assists a resident council in preparing a statement of concerns for LTC facility administration;
- submits written testimony to a legislative committee on the need for more oversight of ALFs;
- assists a resident in contacting her city council person to request a crosswalk outside of her NF;
- submits written comments to CMS regarding a proposed federal regulation;
- provides oral testimony to an HHSC advisory committee regarding the need for person-centered training in LTC facilities;
- coordinates a letter writing campaign for residents to write to their legislators to request an increased personal needs allowance;
- writes an “op-ed” in her local paper about the Ombudsman Program and residents’ rights; and
- participates in an interview for the local news about residents’ rights.

1020 Systems Advocacy Activities Requiring Approval of the Office

a. Requirement to Obtain Approval from the Office Before System Advocacy Communications to a Public Official, Governmental Entity, or the Media

In accordance with 26 TAC 88.302(a)(2)(A), a certified ombudsman must consult with and obtain approval from the Office before commenting on or recommending changes to a public official, governmental entity, or the media regarding the development and implementation of laws, rules, regulations, and other policies and actions that pertain to the health, safety, welfare, and rights of residents with respect to the adequacy of LTC facilities and services.

b. Process to Seek Approval of the Office to Submit Written Comments or Provide Public Testimony**1. Submitting written comments to a public official, governmental entity, or media**

To seek approval from the Office to submit written comments to a public official, governmental entity, or the media as required by subsection (a) of this section, a certified ombudsman must submit the following to the Office:

- a draft of the comments;
- information about the law, rule, regulation, or other policy or action about which the comments are made; and
- if applicable, the deadline by which the comments must be submitted.

2. Providing Public Testimony

To seek approval from the Office to provide public testimony as required by subsection (a) of this section, a certified ombudsman must submit the following to the Office:

- a draft of the proposed testimony;
- the date and a description of the meeting or hearing at which the testimony will be provided; and
- information about the agenda, charge, or topic of the meeting or hearing.

c. Requirement to Include a Statement that Position of Ombudsman is not Position of Host Agency

In accordance with 26 TAC §88.302(a)(2)(B), when providing comments or recommended changes to a public official or governmental entity or information to a legislator or the media, a certified ombudsman must include a statement that the comments, recommended changes, or information is made as a representative of the Office and does not represent the position or views of the host agency with whom the representative is affiliated.

d. Communication with a Public Official, Government Entity, or Media Organization that is not Systems Advocacy

If a certified ombudsman makes a communication with a public official, government entity, or media organization that is not systems advocacy, the certified ombudsman must comply with Section 930(b) or 930(c) of this manual.

Chapter 2000: Willful Interference and Retaliation

2010 Willful Interference

a. Definition of Willful Interference

As defined in Chapter 200 of this manual (Definitions), to willfully interfere means to act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

b. Prohibition of Willful Interference

In accordance with Texas Human Resources Code, §101A.264, it is a Class B misdemeanor to willfully interfere or attempt to interfere with the official duties of the State Ombudsman or a representative of the Office.

In accordance with 40 TAC §19.2112(a)(8) and 26 TAC §553.551(a)(8), HHSC may assess an administrative penalty against an LTC facility that willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program.

c. Required Action If a Certified Ombudsman Suspects Willful Interference

If a certified ombudsman suspects that a person is willfully interfering with the performance of duties by a representative of the Office, the certified ombudsman must immediately notify the MLO of the suspected interference. Within one business day after the notification from the certified ombudsman, the MLO must notify the Office, in writing, of the suspected interference.

d. Examples of Willful Interference

- An LTC facility owner prevents a certified ombudsman from immediately entering the LTC facility.
- An LTC facility staff person refuses to allow an ombudsman intern to speak with a resident without the presence of a facility staff person.
- An LTC facility administrator refuses to allow a certified ombudsman to interview a facility staff person for the purpose of investigating a complaint.
- The corporate office of an LTC facility directs the facility administrator to prohibit a certified ombudsman from viewing a resident's record or facility policies or procedures related to a complaint investigation.
- An LTC facility threatens to discharge a resident if the certified ombudsman investigates a complaint regarding the facility.

- A POA agent of a resident instructs a certified ombudsman not to visit the resident even though the resident has asked to see the ombudsman.
- A host agency prevents a certified ombudsman from investigating a complaint.
- A host agency requires a certified ombudsman to submit written testimony for an upcoming public meeting that is different than the testimony approved by the Office.
- A resident's family member who is not the resident's LAR instructs a certified ombudsman to stop investigating a complaint for which the resident gave consent to be investigated.

2020 Retaliation

a. Prohibition of Retaliation

In accordance with 40 TAC §19.2112(a)(9) and 26 TAC §553.551(a)(9), HHSC may assess an administrative penalty against an LTC facility that retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

- with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or otherwise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or
- for performing the functions of the Ombudsman Program.

b. Required Action if a Certified Ombudsman Suspects Retaliation

If a certified ombudsman suspects that an LTC facility is retaliating against a representative of the Office, the certified ombudsman must immediately notify the MLO of the suspected retaliation. Within one business day after the notification from the certified ombudsman, the MLO must notify the Office, in writing, of the suspected retaliation.

c. Example of Retaliation

An LTC facility administrator submits a grievance to the LOE containing false allegations about a certified ombudsman because the certified ombudsman is investigating a complaint about the facility.

Chapter 3000: Prohibited Activities

3010 List of Prohibited Activities

a. Unlawful Activity

A representative of the Office is prohibited from engaging in unlawful activity while performing the functions of the Ombudsman Program.

b. Drug and Alcohol Use

A representative of the Office is prohibited from consuming, being under the influence of, using, or possessing alcohol, illegal drugs, or inhalants while performing the functions of the Ombudsman Program.

c. Transporting a Resident in a Vehicle

A representative of the Office is prohibited from transporting a resident in a vehicle.

d. Bringing Animals, Other than Service Animals, into an LTC Facility

A representative of the Office is prohibited from bringing an animal into an LTC facility when visiting as a representative of the Office, unless the animal is a "service animal," as defined in 28 CFR §35.104, and only performing tasks for the benefit of the representative of the Office.

e. Prohibited Referrals

A representative of the Office is prohibited from referring a resident to:

- a for-profit business; or
- a friend or family member of the representative to perform a service.

f. Photos and Videos of Residents

A representative of the Office is prohibited from taking a photo or making an audio or video recording of a resident unless the representative obtains written consent for the photo or recording from the resident or LAR.

g. Conduct that May Compromise the Functions of the Ombudsman Program

A representative of the Office is prohibited from engaging in conduct that compromises the representative's ability to perform the functions of the Ombudsman Program. Examples of conduct that may interfere with a

representative's ability to perform the functions of the Ombudsman Program include:

- advertising products or services or soliciting staff or residents to buy products or services;
- communicating personal beliefs or values, such as religious or political opinions, to residents or LTC facility staff;
- accepting or giving gifts or gratuities to a resident or a friend or family member of a resident or a person affiliated with an LTC facility;
- performing an activity that is not a function of the Ombudsman Program, such as animal assisted therapy, music therapy, or assisting an LTC facility to plan a party for a holiday, while ombudsman duties are being performed; or
- conduct that is inconsistent with a recommended action approved by the State Ombudsman to remove or remedy a conflict of interest, as described in Section 4010(d)(7) of this manual.

Chapter 4000: Initial Certification, Internship, Continuing Education, Annual Evaluation, CO II Designation, and Suspension or Termination of Certification

4010 Requirements for Initial Certification of an Ombudsman

a. Compliance with 26 TAC §88.102

In accordance with 26 TAC §88.102, the State Ombudsman initially certifies a person as a certified ombudsman if the requirements in §88.102 are met. The requirements include the following:

- for a person wanting to be certified as a staff ombudsman other than an MLO:
 - the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;
 - the person does not have an individual conflict of interest or has an individual conflict of interest that has been remedied, as described in subsection (d) of this section;
 - the person successfully completes the certification training provided by the LOE in accordance with subsection (e) of this section; and
 - the LOE recommends to the Office that the person be approved as a certified ombudsman in accordance with subsection (b) of this section;
- for a person wanting to be certified as an MLO, the person:
 - has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;
 - does not have an individual conflict of interest or has an individual conflict of interest that has been remedied, as described in subsection (d) of this section; and
 - successfully completes the certification training provided by the Office as described in subsection (g) of this section; and
- for a person wanting to be certified as a volunteer ombudsman:
 - the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal

- history record of the person obtained by the Office from the Texas Department of Public Safety;
- the person does not have an individual conflict of interest or has an individual conflict of interest that has been remedied, as described in subsection (d) of this section;
- the person successfully completes the certification training provided by the LOE in accordance with subsection (e) of this section;
- the person successfully completes an internship in accordance with subsection (f) of this section; and
- the LOE recommends to the Office that the person be approved as a certified ombudsman in accordance with subsection (b) of this section.

b. LOE Recommendation to the Office for a Person to be Approved as a Certified Ombudsman, Other Than an MLO

An LOE may recommend that a person be approved as a certified ombudsman, other than an MLO only if:

- the LOE obtains approval by the State Ombudsman of the person's criminal history record as described in subsection (c) of this section;
- the person completes HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" and the LOE:
 - submits the completed form to the Office; and
 - if a conflict of interest is identified on the form, complies with subsection (d) of this section;
- the person completes initial certification training conducted by the LOE as described in subsection (e) of this section;
- a person wanting to be a volunteer ombudsman completes an internship conducted by the LOE as described in subsection (f) of this section;
- the person completes the HHSC form "Code of Ethics" and submits the completed form to the Office;
- the LOE provides a photo of the person to the Office for purposes of a badge; and
- the LOE completes HHSC form "Certified Ombudsman Application" and submits the completed form to the Office.

c. Criminal History Check

1. Submission of form to the Office

To determine whether the State Ombudsman approves a criminal history record for a person wanting to become a certified ombudsman other than an MLO, the LOE must complete HHSC Form "Consent for Criminal History Check" and submit the completed form to the Office.

2. State Ombudsman review of form

The State Ombudsman reviews a completed "Consent for Criminal History Check" form and approves the criminal history record of the person if the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006.

d. An Individual Conflict of Interest

1. Definition of an individual conflict of interest

As defined in Chapter 200 of this manual (Definitions), an "individual conflict of interest" means a situation in which a person is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program.

2. Examples of an individual conflict of interest

Examples of an individual conflict of interest are:

- A certified ombudsman has a relative that resides in an ALF in the service area of the certified ombudsman's LOE.
- A person applying to become a certified ombudsman was formerly employed as a nurse at an NF.
- A person applying to become a certified ombudsman is employed as an activities director by an NF.
- A certified ombudsman's spouse is employed as a nurse aide by an NF.
- A person applying to become a certified ombudsman serves on the board of an LTC facility.
- A certified ombudsman's father moves into an ALF in a county located in the service area of the certified ombudsman's LOE.

3. Screening for an individual conflict of interest

An HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" must be completed by:

- A person wanting to become a certified ombudsman performing functions of the Ombudsman Program; and
- a representative of the Office, other than an MLO:
 - at least once a year; and
 - if the LOE identifies an individual conflict of interest involving the representative of the Office.

4. Requirement for representative of the Office to notify LOE of an individual conflict of interest

In accordance with 26 TAC §88.303(b), a LOE must require a representative of the Office to immediately notify the LOE of an individual conflict of interest regarding a representative of the Office.

5. Requirements of LOE if an individual conflict of interest is identified

If an LOE identifies an individual conflict of interest:

- regarding an applicant for a certified ombudsman position, other than an MLO position:
 - the LOE must complete HHSC form “Conflict of Interest Identification, Removal, and Remedy,” including recommending action to remove or remedy the conflict of interest, if possible; and
 - submit the completed form to the State Ombudsman for a determination about certification as described in subsection (a) of this section;
- regarding a representative of the Office, other than the MLO:
 - the LOE must complete HHSC form “Conflict of Interest Identification, Removal, and Remedy,” including recommending action to remove or remedy the conflict of interest, if possible; and
 - submit the completed form to the Office within 30 days after identifying the conflict; and
- regarding an MLO:
 - the host agency is required to complete HHSC form “Conflict of Interest Identification, Removal, and Remedy,” including a recommending action to remove or remedy the conflict of interest, if possible; and
 - submit the completed form to the Office within 5 days after identifying the conflict.

6. Examples of a conflict of interest remedy

Examples of a conflict of interest remedy are:

- A certified ombudsman does not visit any LTC facility that shares ownership with the LTC facility in which her spouse is employed.
- A certified ombudsman volunteers for a LOE that serves a different area than the area in which her relative lives.
- An MLO assigns another staff ombudsman to the LTC facility in which the MLO’s relative is employed and the assigned staff ombudsman consults with the Office, instead of the MLO, about issues in the facility when needed.

- A certified ombudsman who formerly worked in an LTC facility does not, for a period of at least 12 months, serve as a certified ombudsman in that LTC facility or in any LTC facility that shares ownership with the LTC facility in which the certified ombudsman worked.

7. Review by State Ombudsman of conflict of interest remedy form

When the Office receives a completed HHSC form "Conflict of Interest Identification, Removal, and Remedy", the State Ombudsman:

- reviews the form and approves, modifies, or rejects the recommended action to remove or remedy the conflict of interest; or
- if it is not possible to remove or remedy the conflict of interest, refuses or terminates certification of the person with the individual conflict of interest.

e. Initial Certification Training for a Person to be Approved as a Certified Ombudsman, Other Than an MLO

To conduct initial certification training, an LOE must train a person on the entire contents of the ICT Manual. The ICT Manual includes nine DVDs to be shown to the person being trained. The Office mails a hard copy of the ICT Manual to an LOE upon request but includes the DVDs in only the first ICT Manual sent to an LOE. Replacement DVDs may be purchased by an LOE as described in the ICT Manual. An LOE is not permitted to revise the ICT Manual.

f. Internship for a Person to be Certified as Volunteer Ombudsman

1. Components of an internship

To conduct an internship for an ombudsman intern, an LOE must assign the ombudsman intern to an LTC facility in which the intern makes:

- at least two accompanied visits; and
- at least two unaccompanied visits.

2. Accompanied visit

A. Definition of an accompanied visit

An accompanied visit is when an ombudsman intern:

- accompanies a certified ombudsman in meeting with residents, LTC facility staff, or any other persons in the LTC facility; and
- during such meetings, observes the certified ombudsman interacting with the residents, LTC facility staff, and other persons in the LTC facility.

B. Activities that must be completed before making an accompanied visit

Before making an accompanied visit, an ombudsman intern must, as determined by the Office, meet the criteria in 26 TAC §88.301(a)(1) and (2), and have successfully completed chapters 1 – 6 of the ICT Manual.

C. Accompanied visit procedures and requirements

If during an accompanied visit an ombudsman intern receives a complaint, as defined in Section 720 of this manual, the ombudsman intern:

- must not investigate the complaint; and
- must inform a certified ombudsman about the complaint.

3. Unaccompanied visit*A. Definition of an unaccompanied visit*

An unaccompanied visit is when an ombudsman intern meets with residents, LTC facility staff, or any other persons in the LTC facility and is not accompanied by a certified ombudsman at the visit.

B. Activities that must be completed prior to making an unaccompanied visit

Before making an unaccompanied visit, an ombudsman intern must complete at least one accompanied visit.

*C. Unaccompanied visit procedures and requirements.**i. Requirements when entering LTC facility*

Upon entering an LTC facility, an ombudsman intern:

- is not required to sign a facility's visitor log;
- must attempt to notify one of the following that the ombudsman intern is in the facility:
 - a person at the front desk, the facility administrator, or a person working at the nurse's station; or
 - if none of these persons are available, another facility staff person; and
- may request a copy of the facility's census.

ii. Requirements during visit.

An ombudsman intern must:

- make unaccompanied visits during the LTC facility's regular business or visiting hours;
- visibly wear the badge provided by the LOE identifying the person as an ombudsman intern;
- follow LTC facility safeguards and precautions when visiting a resident who is in contact isolation because of an illness;
- wash hands regularly when in the LTC facility to limit the spread of infectious disease; and
- follow confidentiality and disclosure requirements as described in Chapter 600 (Confidentiality, Consent, and Disclosure Requirements) of this manual.

An ombudsman intern must not:

- access a resident's record;
- interfere with the provision of care to a resident such as physical therapy, wound care, bathing, or incontinent care;
- attend a care plan meeting without a certified ombudsman; or
- visit the LTC facility when the ombudsman intern is ill.

iii. Prohibition to investigate a complaint

If during an unaccompanied visit an ombudsman intern identifies a complaint, as defined in Section 720 of this manual, the ombudsman intern:

- must not investigate the complaint; and
- must inform a certified ombudsman about the complaint.

iv. Permitted activities during unaccompanied visit

The following are examples of activities an ombudsman intern may perform during an unaccompanied visit:

- communicating a resident's request to LTC facility staff for:
 - food or a beverage;
 - medication;
 - assistance in getting out of bed or going to the bathroom; or
 - assistance with personal hygiene; and
- informing LTC facility staff if a resident needs immediate assistance to protect the resident's health and safety; and
- informing a certified ombudsman of a complaint.

4. Requirement of an ombudsman intern to document performance of Ombudsman Program functions using HHSC Form “Long-Term Care Ombudsman Activity Report” and submit to a staff ombudsman

An ombudsman intern must document his or her performance of Ombudsman Program functions on HHSC Form “Long-Term Care Ombudsman Activity Report.” The ombudsman intern must submit a completed form to a staff ombudsman for entry as “Initial certification training” in the ombudsman database, as described in Section 7060(a) of this manual, by a deadline established by the LOE.

5. Duration of internship and completion of initial certification training during the internship

An internship must be for at least 60 days, which begins on the day of the first accompanied visit. Subject to the requirement to complete a portion of the initial certification training before making an accompanied visit as described in paragraph (2)(B) of this subsection, an intern must complete the initial certification training during the period of the internship.

g. MLO Certification Training

The Office provides training to a person wanting to become an MLO. The training provided is based on the experience of the person and includes a staff ombudsman employed by HHSC conducting an in-person training on the ICT Manual.

h. Renewal of Ombudsman Certification

1. Certification period

In accordance with 26 TAC §88.102(e), the State Ombudsman certifies a person for a period of two years.

2. Renewal of certification of a staff ombudsman

After initial certification, the State Ombudsman renews the certification of a staff ombudsman if the staff ombudsman:

- meets the requirements in subsection 26 TAC §88.102 (a)(1) – (3);
- completes continuing education provided by the Office as described in Section 4020(a) of this chapter; and
- demonstrates compliance with the ICT Manual and the policies and procedures in this manual as determined by the annual evaluation described in Section 4030(b) or (c) of this chapter.

3. Renewal of certification of a volunteer ombudsman

After initial certification, the Office renews the certification of a volunteer ombudsman if the volunteer ombudsman:

- meets the requirements in subsection 26 TAC §88.102 (a)(2) – (3);
- completes continuing education provided by the LOE in accordance with Section 4020(b) of this chapter; and
- demonstrates compliance with the ICT Manual and the policies and procedures in this manual as determined by the certified ombudsman's annual evaluation described in Section 4030(b) of this chapter.

i. Process and Requirements if Certified Ombudsman Does Not Meet Criteria for Renewal

1. Options of State Ombudsman if certified ombudsman no longer meets criteria for renewal of certification

In accordance with 26 TAC §88.103, if the Office determines that a certified ombudsman no longer meets the criteria in subsection (h)(2) or (3) of this section, the State Ombudsman:

- suspends the certification in accordance with Section 4050 of this chapter;
- terminates the certification in accordance with Section 4050 of this chapter; or
- allows the certification to expire and refuses to renew the person's ombudsman certification.

2. Notifying MLO or host agency of consideration or determination to refuse renewal of certification

If the State Ombudsman is considering refusing to renew a person's ombudsman certification, the State Ombudsman informs the LOE or host agency of the situation. In accordance with 26 TAC §88.103(f), the State Ombudsman immediately notifies the MLO and, if appropriate, the host agency of a determination to refuse renewal of certification of an ombudsman.

3. Actions required by LOE if State Ombudsman refuses renewal of certification

If the State Ombudsman notifies an MLO of a determination to refuse to renew certification of a person who was a certified ombudsman, the LOE must:

- notify the person that his or her certification has not been renewed and that the person is not permitted to perform functions of the Ombudsman Program;
- obtain the following from the person:
 - the person's certified ombudsman badge;
 - any Ombudsman Program records in the possession of the person, such as:
 - activity reports completed by the person;
 - notes made by the person related to the performance of Ombudsman Program functions; and
 - emails related to the performance of Ombudsman Program functions from the person's personal account;
- revise Ombudsman Program records to reflect that the person is no longer a certified ombudsman; and
- send written notification to each LTC facility to which the person was assigned of the certified ombudsman who is assigned to the facility.

4. Grievance regarding a State Ombudsman determination to refuse renewal of certification

A person may file a grievance regarding the State's Ombudsman's determination to refuse renewal of certification of a representative of the Office in accordance 26 TAC §88.309(c).

4020 Continuing Education of Certified Ombudsman

a. Continuing Education Requirements for a Staff Ombudsman

A staff ombudsman, including an MLO, must complete at least 12 hours of continuing education provided by the Office during each SFY. The Office provides continuing education through webinars or in person.

b. Continuing Education Requirements for a Volunteer Ombudsman

1. Requirement for 12 hours of continuing education per SFY

Except as provided in paragraph (7) of this subsection, a volunteer ombudsman must complete at least 12 hours of continuing education provided by the LOE during each SFY beginning the SFY after the SFY in which the volunteer ombudsman was initially certified.

Example:

A volunteer ombudsman is initially certified on May 10, 2020. The volunteer ombudsman is not required to complete continuing education for SFY 2020. The volunteer ombudsman must complete 12 hours of continuing education for SFY 2021.

2. Activities for a volunteer to complete continuing education

A volunteer ombudsman must complete continuing education by:

- attending a training provided by the LOE as described in paragraph (3) of this subsection; or
- completing self-study activities as described in paragraph (4) of this subsection.

3. Continuing education provided by the LOE

An LOE must provide continuing education at least four times per SFY. The continuing education must:

- relate to the performance of Ombudsman Program functions and
- be in-person, by conference call, or by live video.

4. Self-study activities

A volunteer ombudsman must obtain approval of a self-study activity from the MLO before beginning the activity. Self-study completed by a volunteer ombudsman must relate to the performance of Ombudsman Program functions. Examples of self-study include reading a book or attending a training that is related to advocacy for residents and is not provided by the LOE.

5. Review by the Office

The Office may determine that a training provided by the LOE or self-study activity approved by the MLO is not adequate for reasons such as:

- the material or activity does not sufficiently relate to functions of the Ombudsman Program; or
- the material or activity is not substantive.

6. Continuing education exceeding 12 hours per SFY

If a volunteer ombudsman completes more than 12 hours of continuing education in one SFY, the volunteer ombudsman may apply the hours exceeding 12 hours, up to six hours, to the next SFY.

7. Requirement for one hour of continuing education per month after volunteer returns from leave of absence

For a volunteer ombudsman returning from a leave of absence, as described in subsection 5060(a) of this manual, the volunteer ombudsman is required to complete one hour of continuing education per month, beginning the month after he or she resumes performance of Ombudsman Program functions.

For example, if a volunteer ombudsman takes a leave of absence from September 1st to November 30th, the volunteer ombudsman is responsible for nine hours of continuing education (one hour for each month, December through August) for that SFY.

4030 Annual Evaluation of a Certified Ombudsman

a. Requirement to Conduct an Annual Evaluation of a Certified Ombudsman

In accordance with 26 TAC §88.302(a)(3)(B) and 26 TAC §88.302(a)(4)(B), an LOE must ensure that a certified ombudsman, other than an MLO, is evaluated annually to determine if he or she demonstrates compliance with the ICT Manual and this manual.

b. Annual Evaluation of a Certified Ombudsman, Other Than an MLO **1. Process for annual evaluation**

Except as provided in paragraph (2) of this subsection, to conduct an annual evaluation of a certified ombudsman other than an MLO, an MLO must:

- accompany and observe the certified ombudsman performing functions of the Ombudsman Program during an LTC facility visit;
- assess the certified ombudsman's performance of Ombudsman Program functions;
- assess the certified ombudsman's compliance of the continuing education requirements as described in Section 4020 of this chapter; and
- based on the evaluation, take any necessary action such as:
 - providing additional training to the certified ombudsman;
 - reassigning the certified ombudsman; or
 - making a recommendation that the certified ombudsman's certification be suspended or terminated in accordance with Section 4050 of this chapter.

2. Exception allowing designated staff ombudsman to perform annual evaluation of a volunteer ombudsman

A staff ombudsman designated in accordance with Section 5050(d) may conduct the activities described in paragraph (1) of this subsection for a volunteer ombudsman.

3. Ombudsman Evaluation Form

An MLO or designated staff ombudsman may use the “Ombudsman Evaluation Form” included in Appendix VIII of this manual to evaluate a certified ombudsman.

c. Annual Evaluation of an MLO

The Office conducts an annual evaluation of an MLO. To conduct the evaluation, the Office:

- may accompany and observe the MLO performing functions of the Ombudsman Program during an LTC facility visit;
- uses the “Ombudsman Evaluation Form,” included in Appendix VIII of this manual, to evaluate an MLO;
- reviews an MLO’s activity and case records contained in the Ombudsman database; and
- assesses the MLO’s performance of Ombudsman Program functions and, based on the evaluation, takes any necessary action such as:
 - providing consultation or counseling to the MLO;
 - requiring the MLO to provide additional reports to the Office;
 - requiring the MLO to create a corrective action plan to address issues identified in the evaluation;
 - providing additional training to the MLO; or
 - suspending or terminating the MLO’s certification in accordance with Section 4050 of this chapter.

4040 Certified Ombudsman II

a. Designation of Staff Ombudsman as a Certified Ombudsman II

1. Criteria for CO II designation of a staff ombudsman

The Office routinely reviews records to determine if a staff ombudsman qualifies as a CO II. The Office formally designates a staff ombudsman as a CO II if the staff ombudsman:

- has been employed in Texas as a staff ombudsman for the 24-month period immediately prior to the designation;

- for each month of the 24-month period:
 - made a visit to an LTC facility;
 - investigated at least one complaint; and
 - entered required activity data into the ombudsman database, as required by Section 420 of this manual;
- completed at least 12 hours of continuing education as required by Section 4020(a) of this manual during the SFY previous to the designation; and
- based on a review of Ombudsman Program records, complied with the requirements in this manual during the 24-month period, including performing the functions described in Section 410 of this manual.

2. Activities performed by Office to designate staff ombudsman as a CO II

The Office designates a staff ombudsman as a CO II by:

- signing and dating HHSC form "State Long-Term Care Ombudsman Program Certified Ombudsman II Recommendation and Approval";
- making a CO II badge for the staff ombudsman; and
- mailing a copy of the signed CO II form, certificate of certification, and badge to the LOE.

3. MLO informing the Office if staff ombudsman may qualify for CO II designation

An MLO may inform the Office when the MLO believes a staff ombudsman meets the criteria for CO II designation.

b. Designation of Volunteer Ombudsman as a Certified Ombudsman II

1. Criteria for CO II designation of a volunteer ombudsman

The Office formally designates a volunteer ombudsman as a CO II if the volunteer ombudsman:

- has been a volunteer ombudsman in Texas for the 24-month period immediately prior to the designation;
- for each month of the 24-month period:
 - made a visit to an LTC facility;
 - investigated at least one complaint; and

- completed at least 12 hours of continuing education as required by Section 4020(b) of this manual during the SFY previous to the designation;
- submitted reports of ombudsman activities to a staff ombudsman, as required by Section 420 of this manual; and
- based on a review of Ombudsman records, complied with the requirements in this manual during the 24-month period, including performing the functions described in Section 410 of this manual.

2. Requirement for MLO to notify the Office if volunteer ombudsman meets criteria to be designated as a CO II

An MLO must notify the Office when it determines that a volunteer ombudsman meets the criteria described in paragraph (1) of this subsection by submitting to the Office a completed HHSC form "State Long-Term Care Ombudsman Program Certified Ombudsman II Recommendation and Approval."

3. Activities performed by Office to designate volunteer ombudsman as a CO II

The Office reviews a submitted HHSC form "State Long-Term Care Ombudsman Program Certified Ombudsman II Recommendation and Approval" and the volunteer ombudsman's records to determine if the volunteer ombudsman meets the criteria in paragraph (1) of this subsection. If the volunteer ombudsman meets the criteria the Office designates a volunteer ombudsman as a CO II by:

- signing and dating HHSC form "State Long-Term Care Ombudsman Program Certified Ombudsman II Recommendation and Approval";
- making a CO II badge for the volunteer ombudsman; and
- mailing a copy of the signed CO II form and badge to the LOE.

c. CO II Designation Period

A CO II designation is effective for a period of two years.

d. Renewal of CO II Designation

The Office automatically renews the CO II designation of a staff ombudsman or volunteer ombudsman if the ombudsman continues to meet the criteria in subsection (a)(1) or (b)(1) of this section.

e. CO II Designation Not Renewed

If the Office determines that a staff ombudsman or volunteer ombudsman designated as a CO II no longer meets the criteria in subsection (a)(1) or (b)(1) of this section, the Office allows the designation to expire and does not renew the CO II designation. If the Office does not renew the CO II designation of a staff

ombudsman or volunteer ombudsman, the Office issues the ombudsman a new badge without the CO II designation.

4050 Suspension or Termination of Certification of an Ombudsman

a. State Ombudsman Authority to Suspend or Terminate a Certification

The State Ombudsman may suspend or terminate certification for good cause, as determined by the State Ombudsman, in accordance with 26 TAC §88.103(c) and (d).

b. LOE Recommendation that a Certified Ombudsman's Certification be Suspended or Terminated

An LOE may recommend to the State Ombudsman that a certified ombudsman's certification be suspended or terminated in accordance with 26 TAC §88.302(d).

c. Informing LOE or Host Agency of Potential Suspension or Termination of Ombudsman Certification and Notifying LOE or Host Agency of Decision to Suspend or Terminate Ombudsman Certification

If the State Ombudsman is considering suspension or termination for a certified ombudsman, the State Ombudsman informs the LOE or host agency of the situation. In accordance with 26 TAC §88.103(f), the State Ombudsman immediately notifies the MLO and, if appropriate, the host agency of a determination to suspend or terminate certification of a certified ombudsman.

d. Action Required by LOE if State Ombudsman Suspends Certification of an Ombudsman

If the State Ombudsman notifies an MLO of a determination to suspend certification of a certified ombudsman, the LOE must notify the certified ombudsman that his or her certification has been suspended and that he or she is not permitted to perform functions of the Ombudsman Program.

e. Corrective Action Plan for Suspension of Certification

If the State Ombudsman determines that the certification of a certified ombudsman is suspended, the State Ombudsman develops a corrective action plan with which the certified ombudsman must comply. The State Ombudsman may work with the

LOE or host agency to develop the plan. The State Ombudsman lifts the suspension if the certified ombudsman complies with the corrective action plan.

f. Prohibited Activities During Suspension of Certification.

If the State Ombudsman suspends certification of a certified ombudsman, the certified ombudsman must not do the following during the period of suspension:

- visit an LTC facility; or
- investigate a complaint.

g. LOE Responsibility to Ensure Performance of Functions During Suspension of Certification

The LOE must ensure that the functions that were performed by a certified ombudsman whose certification was suspended are performed by another certified ombudsman during the period of suspension.

h. Determination that Certified Ombudsman Complies with Corrective Action Plan

If the State Ombudsman determines that a certified ombudsman complied with the corrective action plan:

- the State Ombudsman:
 - lifts the suspension of certification of the certified ombudsman; and
 - notifies the MLO and suspended ombudsman of the determination; and
- the certified ombudsman may resume performance of Ombudsman Program functions.

i. Options of State Ombudsman if Certified Ombudsman Does Not Comply with Corrective Action Plan

If the State Ombudsman determines that a certified ombudsman whose certification was suspended did not comply with the corrective action plan, the State Ombudsman may:

- revise the corrective action plan, including extending the period of suspension; or
- terminate the certification of the certified ombudsman in accordance with subsection (j) of this section.

j. Action Required by LOE if State Ombudsman Terminates or does not Renew Certification of an Ombudsman or if a Certified Ombudsman Resigns

If the State Ombudsman notifies an MLO of a determination to terminate or to not renew certification of a person who was a certified ombudsman or if a certified ombudsman resigns, the LOE must:

- notify the person that his or her certification has been terminated and that the person is not permitted to perform functions of the Ombudsman Program;
- obtain the following from the person:
 - the person's certified ombudsman badge;
 - any Ombudsman Program records in the possession of the person, such as:
 - activity reports completed by the person;
 - notes made by the person related to the performance of Ombudsman Program functions; and
 - emails related to the performance of Ombudsman Program functions from the person's personal email account;
- revise Ombudsman Program records to reflect that the person is no longer a certified ombudsman; and
- send written notification to each LTC facility to which the person was assigned of the certified ombudsman who is assigned to the facility.

k. Grievance Regarding a State Ombudsman Determination to Suspend or Terminate Certification of an Ombudsman

A person may file a grievance regarding the suspension or termination of certification of a representative of the Office by the State Ombudsman in accordance 26 TAC §88.309(c).

Chapter 5000: LOE Administration

5010 Allowable Activities

In accordance with 26 TAC §88.406(b), a function of the Ombudsman Program performed by an LOE that is paid for with funds allocated by HHSC must be an allowable activity. An allowable activity includes:

- an activity performed by a certified ombudsman as described in Section 410 of this Manual;
- the purchase of liability and accident insurance for a volunteer ombudsman in the performance of functions of the Ombudsman Program;
- recognition of a volunteer ombudsman with an engraved certificate, plaque, pin, or award of a similar nature that does not exceed \$75;
- a stipend to a volunteer ombudsman to perform functions of the Ombudsman Program that does not result in the volunteer ombudsman being an employee or contractor of the host agency; and
- training costs that relates to the performance of functions of the Ombudsman Program.

5020 Reimbursement of Expenses Incurred by a Certified Ombudsman

If an LOE's policies allow for certified ombudsmen to be reimbursed for expenses incurred to perform functions of the Ombudsman Program, such as for mileage and meals when traveling, copies of a resident's record, and the cost to attend training, the LOE must inform certified ombudsmen of such policies.

5030 Required Approval for Controlled Assets Costing More than \$500 or Capital Equipment

a. Requirement to Obtain Approval from the Office to Purchase a Controlled Asset that Costs More than \$500 or Capital Equipment

Before an LOE purchases a controlled asset that costs more than \$500 or capital equipment using Ombudsman Program funds, the host agency must submit a written request for the purchase to the Office and obtain approval from the Office for the purchase as described in subsection (b) of this section.

b. Process to Request Approval from the Office

A host agency must request approval from the Office to purchase a controlled asset that costs more than \$500 or capital equipment using Ombudsman Program funds

by submitting HHSC Form “Capital Equipment and Controlled Assets,” completed by the LOE, to the HHSC Office of the Area Agencies on Aging.

c. Review of Form

The HHSC Office of the Area Agencies on Aging sends the completed form to the Office. The Office reviews the form and notifies the HHSC Office of the Area Agencies on Aging of whether the request to purchase the item is approved or denied. The HHSC Office of the Area Agencies on Aging notifies the host agency of whether the request to purchase the item is approved or denied.

5040 Ombudsman Program Records

a. Examples of Ombudsman Program Records

Ombudsman Program records include:

- records relating to certified ombudsmen and ombudsman interns;
- medical, financial, and social notes created while identifying, investigating, or attempting to resolve a complaint by or on behalf of residents or complainants;
- copies of any portion of a resident’s LTC facility record;
- records collected during an investigation of a complaint;
- administrative records, policies, resident census, and other documents of LTC facilities;
- data relating to complaints and conditions in LTC facilities;
- notes made by a representative of the Office during performance of functions of the Ombudsman Program; and
- other records compiled and maintained by representatives of the Office in carrying out their responsibilities.

b. Maintenance of Records Regarding Representatives of the Office

The LOE must maintain records for each representative of the Office performing Ombudsman Program functions in the LOE service area, including:

- the written acknowledgement from the Office approving a person’s criminal history check;
- the completed HHSC form “Individual Conflict of Interest Screening of a Representative of the Office”;
- the completed HHSC form “Code of Ethics”;
- the completed HHSC form “Certified Ombudsman Application”;
- records of the certified ombudsman’s completion of initial certification training; and

- records of the certified ombudsman's completion of continuing education training.

c. Protection of an Ombudsman Program Record

An LOE must store an Ombudsman Program record containing confidential information in a locked or password-protected environment.

d. Retention of an Ombudsman Program Record

An LOE must retain an Ombudsman Program record until one of the following, whichever is later:

- seven years after the record was created or obtained by the LOE; or
- the resolution of any litigation, claim, audit findings, issuance or proposed disallowed costs, or other disputes involving the record.

e. Destruction of Ombudsman Program Records

If an LOE destroys Ombudsman Program records, the records must be destroyed in a manner that makes the record unusable, such as shredding, burning or pulping paper.

5050 MLO Requirements and Supervision of a Certified Ombudsman

a. Requirement to have an MLO

In accordance with 26 TAC §88.402(b), an LOE must have an MLO.

b. Responsibilities of an MLO

In accordance with 26 TAC §88.402(c) an MLO:

- is the primary contact for the LOE;
- participates in making the decision to hire and terminate a staff ombudsman;
- decides whether the LOE recommends to the Office that a person be approved as a certified ombudsman; and
- serves on a full-time basis in performing duties of the MLO, unless this requirement is waived by the State Ombudsman in accordance with 26 TAC §88.402(d).

c. Requirement to Perform MLO Duties if MLO is Unavailable

If an MLO is unavailable to perform his or her duties for more than two consecutive business days, the LOE must ensure that another certified ombudsman is available to perform the MLO's duties while the MLO is unavailable.

d. Supervision of Representatives of the Office, Other Than an MLO

In its management of an LOE, an MLO must supervise the representatives of the office who work in the LOE. An MLO may designate another staff ombudsman to do the following regarding a volunteer ombudsman of the LOE:

- provide guidance and assistance to a volunteer ombudsman in the performance of functions of the Ombudsman Program;
- monitor the performance of a volunteer ombudsman; and
- identify any concerns about a volunteer ombudsman's performance and make recommendations to the MLO that may address the concerns.

5060 Volunteer Ombudsman Leave of Absence, Transfer between LOEs, or Service in Two LOEs**a. Volunteer Ombudsman Leave of Absence and Return to Ombudsman Program****1. Leave of Absence Allowed for Volunteer Ombudsman**

An MLO may allow a volunteer ombudsman to take a leave of absence from the Ombudsman Program. A volunteer ombudsman must not perform Ombudsman Program functions while on a leave of absence. A volunteer ombudsman may return from a leave of absence and resume performing functions of the Ombudsman Program if the volunteer ombudsman complies with paragraph (2) of this section.

2. Return of Volunteer to Ombudsman Program After Leave of Absence**A. Leave of absence of less than six months**

A volunteer ombudsman who returns from a leave of absence of less than six months and may immediately resume performance of Ombudsman Program functions but must complete the continuing education hours required by Section 4020(b)(7) of this manual.

B. Leave of absence of at least six months but less than one year*i. Requirements before performing Ombudsman Program functions*

A volunteer ombudsman who returns from a leave of absence of at least six months but less than one year must, before resuming performance of Ombudsman Program functions, complete and submit the following HHSC Forms to the Office:

- "Individual Conflict of Interest Screening for a Representative of the Office";
- "Conflict of Interest Identification, Removal, and Remedy," if applicable; and
- "Code of Ethics."

ii. Requirement to complete continuing education requirements

A volunteer ombudsman who returns from a leave of absence of at least six months but less than one year and resumes performance of Ombudsman Program functions in accordance with clause (i) of this subparagraph, must complete continuing education hours required by Section 4020(b)(7) of this manual.

C. Leave of absence of at least one year but less than two years*i. Requirements before performing Ombudsman Program functions*

A volunteer ombudsman who returns from a leave of absence of at least one year but less than two years must, before resuming performance of Ombudsman Program functions:

- complete and submit the following HHSC Forms to the Office:
 - "Consent for Criminal History Check";
 - "Individual Conflict of Interest Screening for a Representative of the Office";
 - "Conflict of Interest Identification, Removal, and Remedy," if applicable; and
 - "Code of Ethics"; and
- complete 12 hours of training provided by the LOE that consists of:
 - a review of this manual; and
 - a review of the ICT Manual.

ii. Requirement to complete continuing education requirements

A volunteer ombudsman who returns from a leave of absence of at least one year but less than two years and resumes performance of Ombudsman Program

functions in accordance with clause (i) of this subparagraph, must complete continuing education hours required by Section 4020(b)(7) of this manual.

D. Leave of absence of two years or more

A volunteer returning to performance of Ombudsman Program functions from an absence of two years or more must be certified by the State Ombudsman in accordance with Section 4010 of this manual.

b. Transfer of Volunteer Ombudsman from one LOE to Another LOE

A volunteer ombudsman may transfer from one LOE to another LOE if the MLO with the transferring LOE and the MLO with the receiving LOE approve of the transfer. If both MLOs approve a request from a volunteer ombudsman to transfer from one LOE to another LOE, the receiving LOE must obtain a copy of the following HHSC Forms regarding the volunteer ombudsman from the transferring LOE:

- "Individual Conflict of Interest Screening of a Representative of the Office";
- "Conflict of Interest Identification, Removal, and Remedy," if applicable;
- "Code of Ethics"; and
- "Certified Ombudsman Application."

c. Performance of Ombudsman Program Functions by Volunteer Ombudsman for More than one LOE

1. Requirement to obtain permission from the State Ombudsman and MLOs to perform functions for more than one LOE

To be a volunteer ombudsman for more than one LOE at the same time, a volunteer ombudsman must request and obtain approval from the State Ombudsman and the MLO of each LOE.

2. Responsibilities of each LOE

If the State Ombudsman and MLOs approve a request for a volunteer ombudsman to be a volunteer ombudsman for more than one LOE at the same time, the MLOs must:

- agree on:
 - which LOE will be the primary LOE, as described in paragraph (3) of this subsection, and which LOE will be a secondary LOE, as described in paragraph (4) of this subsection; and
 - the number of LTC facilities in each LOE assigned to the volunteer ombudsman; and

- retain a copy of the following HHSC Forms regarding the volunteer ombudsman:
 - “Individual Conflict of Interest Screening of a Representative of the Office”;
 - “Conflict of Interest Identification, Removal, and Remedy,” if applicable;
 - “Code of Ethics”; and
 - “Certified Ombudsman Application”.

3. Primary LOE responsibilities

Only one LOE may be a primary LOE. The primary LOE must:

- provide initial certification training, as described in Section 4010(e) of this manual, to the volunteer ombudsman;
- provide continuing education, as described in Section 4020(b) of this manual, to the volunteer ombudsman;
- enter all initial certification training and continuing education in the ombudsman database as described in Section 7060 of this manual;
- provide supervision for the performance of functions by the volunteer ombudsman in the service area of the primary LOE; and
- enter the volunteer ombudsman’s activity report data in the ombudsman database for cases and activities in the primary LOE’s service area as described in Sections 7050 and 7060 of this manual.

4. Secondary LOE responsibilities

An LOE that is not a primary LOE is a secondary LOE. A secondary LOE must:

- provide supervision for the performance of functions by the volunteer ombudsman in the service area of the secondary LOE; and
- enter the volunteer ombudsman’s activity report data in the ombudsman database for cases and activities in the secondary LOE’s service area as described in Sections 7050 and 7060 of this manual.

5070 Requesting an Interpretation of a State or Federal Requirement Regarding LTC Facilities from HHS Regulatory Services

A certified ombudsman may request an interpretation of a state or federal requirement regarding LTC facilities from HHS Regulatory Services by calling the

LOE's regional HHS Regulatory Services office or by emailing
PolicyRulesTraining@hhsc.state.tx.us.

5080 Prohibition of Certified Ombudsmen to Disclose Information Provided by Surveyors

A certified ombudsman must not disclose information provided to the certified ombudsman by a surveyor regarding a survey or complaint investigation of an LTC facility to a person who is not a representative of the Office. Examples of such information are:

- information regarding an upcoming survey of an LTC facility;
- information from a conversation with a surveyor about a survey; or
- information discussed during an exit conference or survey team meeting attended by the certified ombudsman.

5090 Requirements for Certified Ombudsman if Providing Information to HHS Surveyor Regarding an Annual Survey or Complaint Investigation of an LTC Facility

A certified ombudsman may provide information to an HHS surveyor during an annual survey or complaint investigation but must not disclose confidential information to the surveyor unless the certified ombudsman has obtained consent or has authority to disclose the information in accordance with Section 630 of this manual. An example of information that is not confidential and may be disclosed to an HHS surveyor is a description of the types of complaints frequently made regarding an LTC facility.

5100 HHS Regulatory Regional Quarterly Meetings

a. Requirement for an MLO To Attend Regional Quarterly Meetings

An MLO is required to attend, in person or by telephone, the quarterly meetings held by the regional HHS Regulatory Services office in the MLO's service area.

b. Permissible Activities During Attendance of Regional Quarterly Meetings

During an HHS Regulatory Services regional quarterly meeting, an MLO may:

- provide a training or presentation; and
- discuss complaints or situations regarding LTC facilities with other attendees of the meeting but must not disclose confidential information

unless the MLO has obtained consent or has authority to disclose the information in accordance with Section 630 of this manual.

5110 LOE Emergency Preparedness and Response

a. LOE Emergency Disaster Plan

An LOE must develop and implement a written emergency disaster plan that describes the procedures certified ombudsmen must follow in the event of a disaster. The plan must:

- include a description of how a certified ombudsman will communicate with the following during the disaster:
 - other certified ombudsmen;
 - LTC facilities;
 - the Office;
 - HHSC Regulatory Services; and
 - the LOE's host agency; and
- require the LOE to:
 - provide information on a routine basis and upon request to the Office regarding the condition of residents and LTC facilities; and
 - request information from HHS Regulatory Services regarding the condition of LTC facilities.

b. Prohibition of a Certified Ombudsman to Act as a First Responder During the Disaster

A certified ombudsman must not act as a first responder during a disaster.

c. Option for an LOE Emergency Disaster Plan to be Part of Host Agency Emergency Disaster Plan

The LOE's emergency disaster plan may be a part of a host agency's emergency plan if the requirements described in subsection (a) of this section are included in the host agency's emergency plan.

5120 Materials for Public Distribution and Ombudsman Program Logo

a. Requirement to Obtain Approval from the Office for Materials for Public Distribution

In accordance with 26 TAC §88.308(a), an LOE must obtain approval from the Office for materials to be distributed to persons other than representatives of the Office, before the materials are distributed.

Examples:

- An MLO creates a volunteer ombudsman recruitment flyer. The MLO must obtain approval from the Office before distributing the flyer.
- A staff ombudsman creates a pamphlet about resident rights to distribute to new residents. The LOE must obtain approval from the Office before distributing the pamphlet.

b. Requirement to Use Approved Ombudsman Program Logo

In accordance with 26 TAC §88.308(b), if an LOE uses a logo on printed materials created by the LOE, the LOE must use a logo that is approved by the Office.

Chapter 6000 LOE Visitation Requirements, Performance Measures, and Monitoring

6010 Visitation Requirements

a. LOE to Ensure Compliance with Visitation Requirements

An LOE must ensure that a certified ombudsman visits each NF and ALF in the LOE's service area in accordance with this section.

b. Required Visits for an NF

1. Minimum required visits to NFs per FFY by licensed capacity

Except as provided in paragraphs (4) - (6) of this subsection, a certified ombudsman must visit each NF in the LOE's service area:

- for a minimum number of times per FFY as described in the following table; and
- at least once each quarter of the FFY.

Licensed Capacity of NF (not census)	Minimum Number of Required Visits Per FFY
1-49	4
50-99	6
100+	9

2. What constitutes a required visit to an NF

A certified ombudsman must do the following on a visit to an NF required by paragraph (1) of this section:

- monitor the residents' health, safety, welfare, and rights;
- receive, investigate, and resolve complaints on behalf of residents; and
- observe conditions of the NF.

3. Requirement for visit to occur in a different month.

If a certified ombudsman visits an NF for only the minimum number of times per FFY as required in paragraph (1) of this subsection, the visits must occur in different months of the FFY. If a certified ombudsman visits an NF for more than the minimum number of times per FFY as required in paragraph (1) of this

subsection, only the minimum number of visits must occur in different months of the FFY.

Examples:

- An NF is licensed for 30 beds. In accordance with paragraph (1) of this subsection, a certified ombudsman must make at least four visits to the NF during the FFY. To ensure that an NF visit is made at least once a quarter, a certified ombudsman is required to make at least one visit to the NF in each of the following quarters: October-December, January-March, April-June, and July- September.
- An NF is licensed for 150 beds. In accordance with paragraph (1) of this subsection, a certified ombudsman must make at least nine visits to the NF during the FFY. To ensure that an NF visit is made at least once a quarter, a certified ombudsman is required to make at least one visit to the NF in each of the following quarters: October-December, January-March, April-June, and July- September. In addition, at least nine of the visits to the NF must occur in nine different months in the FFY.

4. Minimum required visits for a newly opened NF

A certified ombudsman is not required to visit an NF in the quarter of an FFY in which the NF opens for business. A certified ombudsman must visit the NF for the remaining quarters of the FFY:

- for a minimum number of times as described in the following table; and
- at least once each quarter.

Licensed Capacity of NF (not census)	Minimum number of required visits if 3 quarters remaining in FFY	Minimum number of required visits if 2 quarters remaining in FFY	Minimum number of required visits if 1 quarter remaining in FFY
1-49	3	2	1
50-99	4	3	1
100+	7	5	2

Examples:

- An NF with a licensed capacity of 50 beds opens in February. Because there are two quarters remaining in the FFY, a certified ombudsman must make at least three visits to the NF by the end of the FFY. Further, to ensure that a visit to the NF is made at least once each quarter, a certified ombudsman is

required to make at least one visit to the NF in the third quarter of the FFY (April–June) and at least one visit in the fourth quarter of the FFY (July–September).

- An NF with a licensed capacity of 110 beds opens in October. Because there are three quarters remaining in the FFY, a certified ombudsman must make at least seven visits to the NF by the end of the FFY. Further, to ensure that a visit to the NF is made at least once each quarter, a certified ombudsman is required to make at least one visit to the NF in the second quarter (December–February), at least one visit in the third quarter of the FFY (April–June), and at least one visit in the fourth quarter of the FFY (July–September).

5. Minimum required visits to a SNF-only attached to a hospital

A certified ombudsman must visit a SNF-only that is physically attached to a hospital only when a visit is required to investigate a complaint in accordance with Section 730(d)(4) of this manual.

6. Facility visit requirements for a closed NF

A certified ombudsman is not required to visit an NF that has closed.

c. Required Visits for an ALF

1. Minimum required visits to ALFs per FFY by licensed capacity

Except as provided in paragraphs (4) and (5) of this subsection, a certified ombudsman must visit each ALF in the LOE's service area:

- for a minimum number of times per FFY as described in the following table; and
- at least once each quarter of the FFY.

Licensed Type/Capacity of ALF (not census)	Minimum Number of Required Visits Per FFY
All Type A and C	4
Type B (1-49)	4
Type B (50-99)	5
Type B (100+)	7

2. What constitutes a required visit to an ALF

A. Visits while the residents are in the ALF, not in the ALF, or are receiving services in a DAHS facility

Except as provided in subparagraphs (B) and (C) of this paragraph, a visit required by paragraph (1) of this section must be one of the following:

- a visit to the ALF site while the residents are in the ALF to:
 - monitor the residents' health, safety, welfare, and rights;
 - receive, investigate, and resolve complaints on behalf of residents; and
 - observe conditions of the ALF;
- a visit to the ALF site while the residents are not in the ALF to observe conditions of the ALF; or
- a visit to a DAHS facility while the residents of the ALF are receiving services at the DAHS facility to:
 - monitor the residents' health, safety, welfare, and rights; and
 - receive, investigate, and resolve complaints on behalf of residents.

B. Requirement for at least one visit to be to the ALF site

At least one of the required visits must be a visit to the ALF site.

C. Only one visit to ALF site without residents is permitted

If more than one of the required visits is to the ALF site, only one of those visits may be while residents are not in the ALF.

D. Example

An ALF is licensed as a Type A. In accordance with paragraph (1) of this subsection, a certified ombudsman must make at least four visits to the ALF per FFY. During the FFY, the certified ombudsman makes three visits to the DAHS facility while the ALF residents are receiving services at the DAHS facility. For the fourth visit, a certified ombudsman must visit the ALF site regardless of whether the residents are in the ALF at the time of the visit.

3. Requirement for visit to occur in a different month

If a certified ombudsman visits an ALF for only the minimum number of times per FFY as required in paragraph (1) of this subsection, the visits must occur in

different months of the FFY. If a certified ombudsman visits an ALF for more than the minimum number of times per FFY as required in paragraph (1) of this subsection, only the minimum number of visits must occur in different months of the FFY.

Examples:

- An ALF type B is licensed for 15 beds. In accordance with paragraph (1) of this subsection, a certified ombudsman make at least four visits to the ALF per FFY. To ensure that a visit is made at least once a quarter, a certified ombudsman is required to visit at least once in each of the following quarters: October-December, January-March, April- June, and July-September.
- An ALF type B is licensed for 120 beds. In accordance with paragraph (1) of this subsection, a certified ombudsman make at least seven visits to the ALF per FFY. To ensure that a visit is made at least once each quarter, a certified ombudsman is required to visit at least once in each of the following quarters: October - December, January - March, April - June, and July - September. In addition, each of the seven visits must occur in a different month of the FFY.

4. Minimum required visits for a newly opened ALF

A certified ombudsman is not required to visit an ALF in the quarter of an FFY in which the ALF opens for business. A certified ombudsman must visit the ALF for the remaining quarters of the FFY:

- for a minimum number of times as described in the following table; and
- at least once each quarter.

Licensed Capacity of ALF (not census)	Minimum number of required visits if 3 quarters remaining in FFY	Minimum number of required visits if 2 quarters remaining in FFY	Minimum number of required visits if 1 quarters remaining in FFY
Type A and C, and Type B (1-49)	3	2	1
Type B (50-99)	4	2	1
Type B (100+)	6	3	2

Examples:

- An ALF type A opens in February. Because there are two quarters remaining in the FFY, a certified ombudsman must make at least two visits to the ALF by the end of the FFY. Further, to ensure that a visit to the ALF is made at least once each quarter, a certified ombudsman is required to visit the ALF at least once in the third quarter of the FFY (April–June) and once in the fourth quarter of the FFY (July–September).
- An ALF type B with a licensed capacity of 110 beds opens in October. Because there are three quarters remaining in the FFY, a certified ombudsman must make at least seven visits to the ALF by the end of the FFY. Further, to ensure that a visit to the ALF is made at least once each quarter, a certified ombudsman is required to visit the ALF at least once in the second quarter (December–February), once in the third quarter of the FFY (April–June), and once in the fourth quarter of the FFY (July–September).

5. Facility visit requirement for a closed ALF

A certified ombudsman is not required to visit an ALF that has closed.

d. Situations that do not Constitute a Visit to an NF or an ALF

The following are examples of situations that do not constitute a visit to an NF or an ALF and are not reportable as a “Facility visit” in accordance with Section 7060(c)(5) of this manual.

- A certified ombudsman visits an LTC facility or DAHS facility and only investigates a complaint. The certified ombudsman does not communicate with residents to receive a new complaint or monitor the residents' health, safety, welfare, and rights. This activity must be reported as a “facility visit for complaint only” in accordance with Section 7060(c)(6) of this manual.
- A certified ombudsman attends a care plan meeting for a resident at an LTC facility and speaks with the resident at the meeting. The certified ombudsman does not communicate with other residents at the facility to receive a new complaint or monitor the residents' health, safety, welfare, and rights. This activity must be reported as a “care or service plan” in accordance with Section 7060(c)(2) of this manual.
- A certified ombudsman attends a resident council meeting at an LTC facility and talks to residents who are at the meeting. The certified ombudsman does not communicate with other residents who are not at the meeting to receive a new complaint or monitor the residents' health, safety, welfare and rights. This activity must be reported as a “resident council attended” in accordance with Section 7060(c)(16) of this manual.

6020 LOE Performance Measures

a. Requirement to Meet Performance Measures

An LOE is required to meet performance measures as described in this section.

b. Description of Performance Measures

An LOE must meet performance measures (1) - (7) as described below:

- 1) the number of certified ombudsmen, as projected by the host agency in accordance with subsection (c) of this section, who will visit LTC facilities and identify and investigate complaints in the LOE's service area;
- 2) the number of visits to ALFs by certified ombudsmen, as projected by the host agency in accordance with subsection (c) of this section, that will occur during an SFY;
- 3) the number of ALFs, as projected by the host agency in accordance with subsection (c) of this section, that will receive at least one visit by a CO in an SFY;
- 4) the percentage of complaints, as projected by the host agency in accordance with subsection (c) of this section, that will be resolved or partially resolved in an SFY;
- 5) the LOE's annual expenditures, as projected by the host agency in accordance with subsection (c) of this section;
- 6) the LOE's compliance with the requirement in 26 TAC §88.307(a) to ensure each LTC facility in the LOE's service area is visited by a certified ombudsman in accordance with Section 6010 of this chapter; and
- 7) compliance with requirements in 26 TAC §88.305(a)(3) and (c)(2) to initiate a response to all complaints within two business days and within one business day if the complaint relates to an allegation of ANE.

c. Additional Requirements for Performance Measures (1) - (5)

1. Requirement to develop projections for performance measures (1) - (5)

A host agency is required to work with the LOE to develop projections for performance measures (1) - (5) as described in subsection (b) of this section.

2. Submitting a projection

A host agency is required to submit the performance measure projections required by paragraph (1) of this subsection to the HHSC Office of the Area Agencies on Aging. The HHSC Office of the Area Agencies on Aging sends the performance measure projections to the Office. The Office reviews the form and approves, modifies, or rejects the proposed performance measure projections.

d. Requirement to meet variance for approved projections of performance measures (1) - (5)

In accordance with 26 TAC §88.405(d), a host agency is required to ensure that an LOE, by the end of each SFY, meets the approved projections for performance measures (1) -(5) as described in paragraph (1) of this subsection by:

- being within a variance of minus five percent of the projections; or
- exceeding the projections.

e. Requirement to meet variance for performance measures (6) - (7)

An LOE, by the end of each SFY, must meet performance measures (6) and (7) as described in subsection (b) of this section by:

- being within a variance of minus ten percent of the projections; or
- exceeding the projections.

6030 Monitoring of an LOE by the Office**a. Items Monitored by the Office**

In accordance with 26 TAC §88.105(c), the Office conducts an onsite visit or a desk review of an LOE to monitor:

- the performance of functions of the Ombudsman Program by a representative of the Office;
- the compliance by an LOE with 26 TAC Chapter 88 Subchapter D (relating to Requirements of a Local Ombudsman Entity); and
- the compliance by a host agency with 26 TAC Chapter 88 Subchapter E (relating to Requirements of a Host Agency).

b. Onsite Visit**1. Description of an onsite visit**

In accordance with 26 TAC §88.105(d), an onsite visit includes:

- observing and evaluating a visit of an MLO to an LTC facility; and
- reviewing information regarding an LOE's compliance with 26 TAC Chapter 88 Subchapter D (relating to Requirements of a Local Ombudsman Entity), including documentation regarding:
 - the training of representatives of the Office;
 - identification of individual conflicts of interest; and

- expenditures for the Ombudsman Program, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office.

2. Frequency of an onsite visit

In accordance with 26 TAC §88.105(d), the Office conducts at least one onsite visit every three SFYs.

3. Actions by the Office related to an onsite visit

In accordance with 26 TAC §88.105(e), the Office:

- selects a date for an onsite visit in consultation with the MLO;
- notifies the host agency of a scheduled onsite visit at least 30 days before the visit; and
- within 30 days after the Office completes an onsite visit, provides to the LOE and the host agency a written report containing findings from the visit.

4. Requirement of LOE to make information and work space available for onsite visit

An LOE must ensure that:

- the following information is available for review by the Office during an onsite visit:
 - ombudsman database reports, as described in Section 7080 of this manual, for a time frame identified by the Office;
 - documentation related to performance of Ombudsman Program functions, such as case notes, volunteer monthly reports, and call logs;
 - host agency policies and procedures related to the LOE;
 - paper or electronic copies of the most current versions of Ombudsman Program reference materials, including this manual and the ICT Manual;
 - Ombudsman Program records regarding a representative of the Office as described in Section 5040(b) of this manual;
 - directories of LTC facilities in the LOE's service area; and
 - records related to assignments of certified ombudsmen to LTC facilities in the LOE's service area; and
- a workspace at the location of the LOE is available for staff of the Office to use while conducting the onsite visit.

5. Providing the written report to the LOE

In accordance with 26 TAC §88.105(e)(3), the Office will provide a final written report to the LOE and host agency within 30 days after the onsite visit. The report may include findings and recommendations that require a written response from the LOE in coordination with the host agency.

6. Requirement for host agency to submit a plan of correction

In accordance with 26 TAC §88.105(f), if the written report contains findings, the host agency is required to submit, within 30 days after receipt of the written report described in paragraph (5) of this subsection, a written plan of correction to the Office that describes:

- the action that will be taken to correct each finding; and
- the date by which each action will be completed.

7. Requirement of LOE to complete actions in approved plan of correction

In accordance with 26 TAC §88.105(g), if the Office approves the plan of correction, the LOE must complete the actions contained in the plan of correction by the dates in the plan.

8. Determination by the Office of whether the LOE has completed actions in approved plan of correction

In accordance with 26 TAC §88.105(h), the Office may take one or both of the following actions to determine if the LOE has completed the actions in accordance with an approved plan of correction or approved modified plan of correction:

- request that the LOE submit evidence of correction to the Office; or
- visit the LOE.

9. Assistance from the Office to correct any issue of non-compliance or potential non-compliance

In accordance with 26 TAC §88.105(k), upon request by an LOE or host agency, the Office provides consultation and technical assistance to an LOE or host agency to develop a plan of correction.

c. Desk Reviews

1. Description of a desk review

A desk review is a review of an LOE's Ombudsman Program records conducted at the location of the Office to determine if the LOE:

- is in compliance with the following:
 - as described in Section 730(d) of this manual, the requirement to respond to a complainant within two business days after receipt of the complaint, if the complaint is not an allegation of ANE;
 - as described in Section 810(b) of this manual, the requirement to respond to a complainant within one business day after receipt of the complaint, if the complaint is an allegation of ANE;
 - the visitation requirements described in Section 6010(b) and (c) of this chapter;
 - the continuing education requirements described in Section 4020 of this manual; and
 - the data entry requirements described in Chapter 7000 of this manual (Ombudsman Program Reporting System (Ombudsman Database)); and
- has met or is making progress toward meeting the performance measure projections described in Section 6020(b) of this chapter.

2. Frequency of a desk review

In accordance with 26 TAC §88.105(i), the Office may conduct a desk review at any time and will conduct at least one desk review of an LOE every three months.

3. Notifying an LOE and host agency of an issue of non-compliance or potential non-compliance identified during a desk review

In accordance with 26 TAC §88.105(j), if the Office identifies an issue of non-compliance or potential non-compliance during a desk review, the Office sends the LOE and the host agency a written description of the non-compliance or potential non-compliance within 30 days after the Office completes the desk review.

4. Assistance from the Office to correct any issue of non-compliance or potential non-compliance

In accordance with 26 TAC §88.105(k), upon request by an LOE or host agency, the Office provides consultation and technical assistance to an LOE or host agency to address an issue of non-compliance or other concern from the desk review.

Chapter 7000: Ombudsman Program Reporting System (Ombudsman Database)

7010 Requirement to Establish a Uniform Reporting System and Collect and Report Ombudsman Program Data

Older Americans Act, §712(c), requires the State to:

- establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in LTC facilities and to residents for the purpose of identifying and resolving significant problems; and
- submit the data on a regular basis to the National Ombudsman Resource Center established under Older Americans Act, §202(a)(18).

7020 Ombudsman Database

a. Purpose of the Ombudsman Database

The “ombudsman database” is the statewide reporting system required by §712(c) of the Older Americans Act. It is a web-based application in which Ombudsman Program data is entered, stored, maintained, and analyzed.

b. Types of Data Contained in the Ombudsman Database

The following data must be collected and stored in the ombudsman database:

- information related to representatives of the Office as described in Section 7030 of this chapter;
- information related to LTC facilities as described in Section 7040 of this chapter;
- information related to the investigation of complaints by certified ombudsmen as described in Section 7050 of this chapter; and
- information related to performance of activities that may or may not be associated with a complaint performed by representatives of the Office as described in Section 7060 of this chapter.

c. Accessing the Ombudsman Database

1. Link to the ombudsman database and provision by the Office of a username and password

A staff ombudsman may access the ombudsman database at <https://ombudsmgrtx.harmonyis.net/#>. The Office provides a staff ombudsman

with a username and password to allow the ombudsman to access the ombudsman database.

2. Prohibition of volunteer ombudsmen and ombudsmen interns from accessing the ombudsman database

Volunteer ombudsmen and ombudsman interns are not permitted to access the ombudsman database. An ombudsman intern or volunteer ombudsman must document his or her performance of Ombudsman Program functions on HHSC Form "Long-Term Care Ombudsman Activity Report." The ombudsman intern or volunteer ombudsman must submit a completed form to a staff ombudsman for entry in the ombudsman database, as described in Sections 7060(a) of this manual, by a deadline established by the LOE.

d. Ombudsman Database User Guide

The user guide for the ombudsman database is available via the login portal of the ombudsman database.

7030 Information Related to Representatives of the Office

a. Only the Office Permitted to Enter or Edit Data Regarding Representatives of the Office

Only staff of the Office are permitted to enter or edit data regarding a representative of the Office's personal identifying information, contact information, or certification information in the ombudsman database. The Office creates a "user profile" for each representative of the Office. A user profile of a representative of the Office who performs Ombudsman Program functions for an LOE is based on information provided to the Office by the LOE.

b. Requirement of LOE to Provide the Office with Information Regarding a Representative of the Office

An LOE must provide the following information to the Office for each representative of the Office performing Ombudsman Program functions in the LOE's service area:

- the first and last name of the representative;
- the address of the representative;
- the phone number of the representative;
- the email address of the representative;
- the "title" of the representative;
- whether the representative is "paid program staff," a "clerical worker," or a "volunteer";

- if the representative is a staff ombudsman, whether the representative is “full time” or “part time”;
- if the representative is a “paid program staff”, the average percent of time the representative spends on performance of Ombudsman Program functions each week;
- if applicable, documentation regarding a conflict of interest of the representative; and
- if applicable, documentation regarding the termination or leave of absence of the representative.

c. Requirement of LOE to Request that the Office Correct or Add Information in a User Profile

If an LOE identifies information that is inaccurate or missing in a user profile of a representative of the Office, the LOE must request that the Office correct or add information in the user profile.

7040 LTC Facility Information

a. Only the Office Permitted to Create an LTC Facility Record in the Ombudsman Database but LOE Required to Correct Identified Inaccuracies

Only staff of the Office are permitted to create a record regarding each LTC facility in an LOE’s service area. An LTC facility record is based on information provided to the Office by HHS Regulatory or the LOE. An LOE must correct an LTC facility record as described in subsection (c) of this section.

b. Required Information for LOE to Provide the Office for Creation of LTC Facility Record

If providing information to the Office for the purpose of creating new LTC facility record in the ombudsman database, an LOE must provide the following information to the Office:

- the unique license number of the facility;
- the license type of the facility;
- the business name of the facility;
- the physical address of the facility;
- the county in which the facility is located;
- the phone number of the facility;
- the fax number of the facility;

- the opening date of the facility;
- the effective date of the license of the facility; and
- the licensed capacity of the facility.

c. Requirement of LOE to Correct or Add Information in an LTC Facility Record

If an LOE identifies information that is inaccurate or missing in an LTC facility record created by the Office, the LOE must correct or add the information in the record.

7050 Information Regarding the Investigation of Complaints

a. Requirement of Staff Ombudsman to Create a Record Regarding Investigations of Complaints

A staff ombudsman must create a record in the ombudsman database regarding investigations of complaints in accordance with subsection (b) of this section. If the staff ombudsman is entering a record regarding a complaint investigated by a volunteer ombudsman or ombudsman intern, the staff ombudsman makes the entry based on documentation required by Section 7020(c)(2) of this chapter.

b. Requirement to Enter Information Regarding Investigation of a Complaint as a “Case”

A staff ombudsman must enter information regarding an investigation of a complaint into the ombudsman database as a “case.” A “case” is information about one or more complaint investigations. A staff ombudsman enters information about investigations of multiple complaints into one case if the complaints:

- are reported to the staff ombudsman by one complainant or joint complainants:
 - at the same time; or
 - at a different time but relate to a complaint made at an earlier time; or
- are made by the staff ombudsman or a volunteer ombudsman.

Examples:

- A resident calls the certified ombudsman to complain that she does not like her ALF. The resident says the food is cold, staff are rude to her, and that staff don’t allow her visitors. The certified ombudsman opens one case with the resident as the complainant and includes the three complaints (cold food; staff attitudes; not allowing visitors) in that case.

- A son and a daughter of a resident call a certified ombudsman to complain that their mother's NF is not giving her baths frequently enough. The certified ombudsman opens one case with one complaint (hygiene).
- A resident calls the certified ombudsman to complain that staff at her ALF won't let her leave the facility. The certified ombudsman investigates the complaint and, with consent of the resident, speaks to the administrator of the ALF about the complaint. A few days later, the resident calls the certified ombudsman and says that facility staff are now being rude to her because she made the initial complaint with the ombudsman. The certified ombudsman opens one case with two complaints (not allowing the resident to leave; retaliation).
- A certified ombudsman is visiting an NF and notices that several call lights go unanswered for more than 20 minutes and that there is trash overflowing in the trashcans of many residents. The certified ombudsman opens one case with two complaints (call lights; housekeeping).

c. Required Data Components for a Case

For each case in the ombudsman database, a staff ombudsman must enter the following information:

- the certified ombudsman assigned to the case;
- if known, the name of the resident;
- the name of the complainant, if not the resident;
- the role of the complainant, if not the resident;
- a reference title that briefly describes the case;
- the date the case was opened; and
- the following information for each complaint in the case:
 - a complaint code;
 - the date the complaint was opened;
 - the name of the LTC facility associated with the complaint;
 - identification of the person who provided consent to investigate the complaint;
 - if the certified ombudsman did not obtain consent from a person to investigate the complaint, a statement that the complaint is "ombudsman determined," meaning that a certified ombudsman has authority to act without consent to investigate the complaint, disclose confidential information, or access a resident record, in accordance with Section 620 of this manual;
 - if a resident is unable to consent, a statement that the resident is unable to consent;

- whether the certified ombudsman verified the complaint as required by Subsections 760(a)(2)(9th bullet), 760(b)(2)(12th bullet), and 760(c)(2)(10th bullet) of this manual;
 - a referral code for the complaint, as listed in subsection (e) of this section;
 - the activities performed during the investigation as documented by the certified ombudsman in the “journals” of the ombudsman database and in accordance with Subsections 760(a)(2)(12th bullet), 760(b)(2)(15th bullet), and 760(c)(2)(11th bullet) of this manual;
 - a disposition code as documented by the certified ombudsman in accordance with Subsections 760(a)(2)(14th bullet), 760(b)(2)(17th bullet), and 760(c)(2)(13th bullet) of this manual;
 - the resident’s or complainant’s satisfaction with the outcome of the investigation as documented by the certified ombudsman in accordance with Subsections 760(a)(2)(13th bullet), 760(b)(2)(16th bullet), and 760(c)(2)(12th bullet) of this manual; and
 - the date the complaint is closed; and
- the date the case was closed, as described in paragraph (g) of this subsection.

d. Complaint Verification

1. Determining a complaint is “verified”

After a certified ombudsman investigates a complaint, the certified ombudsman determines that the complaint is “verified” if:

- the certified ombudsman determines that most or all of the allegations of the complaint are true or likely to be true based on investigation activities including interviews, observations, and record reviews;
 - the resident is the complainant and the certified ombudsman determines that the complaint is subjective in nature as described in paragraph (3) of this subsection; or
- the resident is not the complainant and the certified ombudsman determines that the complaint is subjective in nature as described in paragraph (3) of this subsection and that the resident agrees with the opinion of the complainant.

2. Determining a complaint is “not verified”

After a certified ombudsman investigates a complaint, the certified ombudsman determines that the complaint is “not verified” if:

- most or all of the allegations of the complaint are not true or not likely to be true based on investigation activities including interviews, observations, and record reviews; or
- the resident is not the complainant and the certified ombudsman determines that the complaint is subjective in nature as described in paragraph (3) of this subsection and that the resident does not agree with the opinion of the complainant.

3. A complaint subjective in nature

A complaint is subjective in nature if it is based on allegations that are personal feelings or opinions as opposed to allegations that are fact-based, measurable, and observable.

Examples of complaints of a resident that are subjective in nature:

- “a facility staff person was rude to me”;
- “it’s too cold in my room”;
- “the food here is tastes bad.”

Examples of complaints of a resident that are not subjective in nature:

- “there are bugs in my room”;
- “a nurse aide told me to me shut my mouth”;
- “I never received my lunch.”

e. Complaint Referral Code

A certified ombudsman must enter at least one of the referral codes listed below in the ombudsman database for each complaint in a case.

1. “Licensing, regulatory, or certification agency”

The referral code of “licensing, regulatory, or certification agency”

is entered if, as part of a complaint investigation, a certified ombudsman requested assistance from HHS Regulatory Services in accordance with Section 770 of this manual.

2. “Adult protective services”

The referral code of “adult protective services” is entered if, as part of a complaint investigation, a certified ombudsman reported the allegation to APS in accordance with Section 830 of this manual.

3. “Law enforcement or prosecutor”

The referral code of “law enforcement or prosecutor” is entered if, as part of a complaint investigation, a certified ombudsman reported the allegation to law enforcement in accordance with Section 830 of this manual or to another local, state, tribal, or federal agency such as the Office of Attorney General or the Medicaid Fraud Control Unit.

4. “Protection and advocacy”

The referral code of “protection and advocacy” is entered if, as part of a complaint investigation, a certified ombudsman requested assistance from DRTx in accordance with Section 770 of this manual.

5. “Legal services”

The referral code of “legal services” is entered if, as part of a complaint investigation, a certified ombudsman requested assistance from a non-profit legal services organization, other than DRTx, in accordance with Section 770.

6. “No referral was made”

The referral code of “no referral was made” is entered if a certified ombudsman did not request assistance in accordance Section 770 of this manual or did not report an allegation to law enforcement or APS in accordance with Section 830 of this manual.

7. “Other”

The referral code of “other” is entered if, as part of a complaint investigation, a certified ombudsman requested assistance from a governmental entity, non-profit organization, or MCO, other than:

- HHS Regulatory;
- APS;
- law enforcement; or
- DRTx or another non-profit legal organization.

f. Complaint Disposition

Disposition Code

As part of a complaint investigation, a certified ombudsman must document one of the disposition codes listed in paragraphs (3) - (5) of this subsection.

1. Basis of Disposition Code

A. Resident able to communicate satisfaction

The disposition code documented by a certified ombudsman is based on the perception of the resident if the resident is able to communicate his or her satisfaction with a complaint investigation.

B. Resident unable to communicate satisfaction and has an LAR

If the resident is unable to communicate his or her satisfaction with a complaint investigation and the resident has an LAR, the disposition code documented by a certified ombudsman is based on the satisfaction of the LAR, unless the certified ombudsman determines that the LAR is not acting in the best interest of the resident.

C. Resident unable to communicate satisfaction and does not have an LAR

If the resident is unable to communicate his or her satisfaction with a complaint investigation and the resident does not have an LAR, the disposition code documented by a certified ombudsman is based on the satisfaction of the complainant.

3. “Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant”

The disposition code of “partially or fully resolved to the satisfaction of the resident, resident representative, or complainant” is documented if the complaint is partially or fully resolved as determined by the resident, resident’s LAR, or complainant.

Example:

A certified ombudsman receives a complaint from a resident that the LTC facility had not returned the resident’s clothing after it was collected to be laundered. With consent from the resident, the certified ombudsman investigates the complaint and speaks with the owner of the ALF about the unreturned clothing. The owner explained that facility’s washing machine was not working and the resident’s clothes were taken to a laundromat and would be returned to the resident that evening. The ALF owner further explains that a new washing machine would be installed in the facility the next day. After being informed of the owner’s response by the certified ombudsman, the resident indicates that she is satisfied with the actions taken by the ALF. Further, the resident contacts the certified ombudsman that evening to inform him that she received her laundered clothes and that she is satisfied with the result of the certified ombudsman’s investigation. The certified ombudsman documents the disposition code of “partially or fully resolved to the satisfaction of the resident, resident representative, or complainant”.

4. “Withdrawn or no action needed by the resident, resident representative or complainant”

The disposition code of “withdrawn or no action needed by the resident, resident representative, or complainant” is documented if:

- the resident who is the subject of the complaint or the resident’s LAR declines consent for the certified ombudsman to investigate the complaint;
- the complaint is withdrawn by the resident or complainant or the resident or complainant requests that the certified ombudsman cease complaint investigation;
- the certified ombudsman determines that the complaint was not made in good faith; or
- the resident died before final outcome of complaint investigation and the certified ombudsman determines that further investigation would not benefit other residents.

Example:

A resident’s husband calls the certified ombudsman and says the facility is not providing his wife with adequate medication to relieve her anxiety. The certified ombudsman visits the resident and determines that she is able to consent. The resident explains that she does not have anxiety and does not need medication. The resident declines consent for the certified ombudsman to investigate the complaint. The certified ombudsman documents the disposition code “withdrawn or no action needed by the resident, resident representative, or complainant.”

5. “Not resolved”

The disposition code of “not resolved” is documented if the problem identified in a complaint was not addressed to the satisfaction of the resident, resident’s LAR, or complainant.

Example:

A resident tells the ombudsman that she wants to move in with her son. After contacting the resident’s son, the son tells the ombudsman that he is unable to care for his mother and doesn’t want her to live with him. The certified ombudsman explains to the son that his mother may be able to receive home health care assistance in the son’s home. The son continues to state that he does not want his mother to live with him. The certified ombudsman asks the resident if she would be interested in moving to another place in the community. The resident states that she is only interested in living with her son. The certified ombudsman determines that further complaint investigation by the certified ombudsman is unlikely to produce resident satisfaction. The certified ombudsman documents the

disposition code “not resolved” to the satisfaction of the resident, resident’s LAR, or complainant.

g. Closing a Case

For each complaint in a case, a staff ombudsman must determine if all reasonable attempts to resolve the complaint have been made. If the staff ombudsman determines that all reasonable attempts have been made and has entered the information in the ombudsman database as required by subsection (c) of this section, the staff ombudsman must close the case.

7060 Information Regarding the Performance of Certain Activities

a. Requirement to Enter Information Regarding “Activity”

A staff ombudsman must create a record in the ombudsman database regarding an activity performed by a representative of the Office, as described in subsection (c) of this section. If the staff ombudsman is creating a record regarding an activity performed by a volunteer ombudsman or ombudsman intern, the staff ombudsman makes the entry based on documentation required by Section 7020(c)(2) of this chapter.

b. Required Data Components for an Activity

For each activity entered in the ombudsman database, a staff ombudsman must enter the following information:

- the name of the certified ombudsman who performed the activity;
- the activity code for the activity performed in accordance with subsection (c) of this section;
- the date the activity was performed; and
- if applicable:
 - the time allocated to the activity;
 - the name of the LTC facility related to the activity;
 - the topic of the information and assistance (formerly “consultation”) provided;
 - the name of any involved residents;
 - the topic of the training;
 - the names of the certified ombudsmen who received the training; and
 - the names of the persons wanting to be certified ombudsmen who received the initial certification training.

c. List of Activity Codes

A staff ombudsman must enter one of the following activity codes in the ombudsman database for each activity performed by a representative of the Office.

1. "Care or service plan"

The activity code "care or service plan" activity code is entered if a certified ombudsman participates in a resident's care or service plan meeting.

2. "Care or service plan for complaint resolution"

The activity code "care or service plan for complaint resolution" is entered if a certified ombudsman participates in a resident's care or service plan meeting for the purpose of complaint investigation.

3. "Continuing education"

The activity code "continuing education" is entered if a certified ombudsman receives continuing education training.

4. "Facility visit"

The activity code "facility visit" is entered if a visit to an LTC facility by a certified ombudsman constitutes a visit as described in Section 6010(b) or (c) of this manual, and the visit is not for the sole purpose of investigating a complaint.

5. "Facility visit for complaint only"

The activity code "facility visit for complaint only" is entered if a certified ombudsman visits an LTC facility for the sole purpose of investigating a complaint.

6. "Facility visit to a DAHS facility"

The activity code "facility visit to DAHS facilities" is entered if a certified ombudsman visits a DAHS facility for the purpose of visiting residents of an ALF.

7. "Fair hearing or MCO appeal attended"

The activity code "fair hearing or MCO appeal attended" is entered if a certified ombudsman serves as a witness or represents a resident in a fair hearing about a discharge from a Medicaid certified NF, a denial of a Medicaid benefit or service, or an appeal to an MCO decision related to a denial of a Medicaid service.

8. "Family council attended"

The activity code "family council attended" is entered if a certified ombudsman attends a family council meeting.

9. "Guardianship hearing attended"

The activity code "guardianship hearing attended" is entered if a certified ombudsman attends a guardianship hearing.

10. "Information and assistance (formerly "consultation") to facilities"

The activity code "information and assistance to facilities" is entered if a certified ombudsman provides information and assistance to an LTC facility, in accordance with Section 910(b) of this manual, that is not related to a complaint and for which a case is not opened in accordance with Section 750(b) of this manual.

11. "Information and assistance (formerly "consultation") to individuals"

The activity code "information and assistance to individuals" is entered if a certified ombudsman provides information and assistance to a person who is not affiliated with an LTC facility in accordance with Section 910(a) of this manual, that is not related to a complaint and for which a case is not opened in accordance with Section 750(b) of this manual.

12. "Initial certification training"

The activity code "initial certification training" is entered if a person wanting to be a certified ombudsman receives initial certification training in accordance with Section 4010 of this manual, including if an ombudsman intern makes an accompanied or unaccompanied visit in accordance with Section 4010(f).

13. "Legal services coordination"

The activity code "legal services coordination" is entered if a certified ombudsman coordinates with legal services to assist a resident.

For example, a resident requires assistance establishing a trust to qualify for Medicaid and the certified ombudsman assists the resident in contacting the Texas Legal Services Center.

14. "Media (interview or press release)"

The activity code "media (interview or press release)" is entered if a certified ombudsman:

- participates in an interview with the media related to residents or the Ombudsman Program; or
- creates a press release about the Ombudsman Program or residents that is published by the media.

15. "Public education"

The activity code "public education" is entered if a certified ombudsman presents information about the Ombudsman Program or LTC facilities to persons who are not residents or LTC facility staff.

Examples of community education activities are a certified ombudsman giving a presentation to a health fair or a local neighborhood association about the Ombudsman Program and speaking at a conference on aging about residents' rights.

16. "Resident council attended"

The activity code "resident council attended" is entered if a certified ombudsman attends a resident council meeting.

17. "Survey participation (includes IDR or SOAH)"

The activity code "survey participation (includes IDR or SOAH)" is entered if a certified ombudsman:

- provides information to an HHS surveyor during an HHS Regulatory Services survey in accordance with Section 5070(b) of this manual; or
- participates in an informal dispute resolution (IDR) or an administrative hearing held at State Office of Administrative Hearing (SOAH).

This activity code is distinguished from the activity code "fair Hearing or MCO appeal attended" described in paragraph (8) of this subsection.

18. "Systems advocacy"

The activity code "systems advocacy" is entered if a certified ombudsman performs systems advocacy activities described in Chapter 1000 of this manual (Systems Advocacy).

19. "Training provided to facility staff"

The activity code "training provided to facility staff" is entered if a certified ombudsman provides training to LTC facility staff in accordance with Section 920 of this manual.

7070 Deadline to Enter Data in the Ombudsman Program Database

In accordance with 26 TAC §88.307(b), an LOE must submit activities and casework, as described in Sections 7050 and 7060 of this chapter, to the Office by entering information into the ombudsman database by 8:00 a.m. on:

- the 16th day of each month if the 16th is a business day; or
- if the 16th day of the month is not a business day, the first business day immediately following the 16th.

7080 Running Reports

a. Running a Report in the Ombudsman Database

A staff ombudsman may run a report in the ombudsman database to analyze data about the staff ombudsman's LOE, including to determine the LOE's compliance with the performance measures described in Section 6020(b) of this manual, such as:

- the number of certified ombudsmen who have visited LTC facilities and identified and investigated complaints in the LOE's service area;
- the number of LTC facility visits in a date range; and
- the percentage of complaints that have the disposition code of "resolved or partially resolved" in a date range.

b. Requirement for an MLO to Run a Monthly Report Regarding Compliance with Visitation Requirements

An MLO must run a monthly report in the ombudsman database to determine the LOE's progress in complying with the visitation requirements described in Section 6010 of this manual.

Chapter 8000: Legal Counsel for Representatives of the Office Related to Performance of Ombudsman Program Functions

8010 Representation by Attorney General for Representatives of the Office

In accordance with §101A.256 of the Texas Human Resources Code, the attorney general represents a representative of the Office if a suit or other legal action is brought or threatened to be brought against the representative in connection with the representative's performance of Ombudsman Program functions.

8020 Requirement for a Representative of the Office to Notify the MLO and the State Ombudsman in Circumstances Potentially Requiring Legal Counsel

A representative of the Office must immediately notify the MLO and State Ombudsman in any of the following circumstances:

- the representative receives a subpoena related to a lawsuit or other legal action that pertains to performance of Ombudsman Program functions;
- the representative receives a court order related to a lawsuit or other legal action that pertains to performance Ombudsman Program functions;
- the representative is served with notice of a suit in relation to the performance Ombudsman Program functions;
- the representative is threatened with suit; or
- the representative needs legal counsel for an issue related to the performance of Ombudsman Program functions.

Examples:

- An administrator of an ALF tells a certified ombudsman that she is going to sue the ombudsman because the ombudsman told a resident with dementia that the resident had the right to receive visitors. The administrator is concerned that visitors upset the resident. The certified ombudsman immediately notifies his MLO and the State Ombudsman of the administrator's threat to sue him.
- A certified ombudsman receives a subpoena to testify in a lawsuit regarding an NF. The certified ombudsman immediately notifies her MLO and the State Ombudsman of the subpoena.

- An MLO receives a court order requiring the MLO to disclose the LOE's records about a resident. The MLO immediately notifies the State Ombudsman of the court order.
- A certified ombudsman is served with a lawsuit brought by an NF. The certified ombudsman immediately notifies the MLO and the State Ombudsman of the lawsuit.
- A resident asks a certified ombudsman to serve as a witness in a hearing to determine the resident's incapacity. The certified ombudsman immediately notifies the MLO and the State Ombudsman of the request.
- An administrator of an ALF tells a certified ombudsman that the ombudsman is trespassing by entering the ALF and will be arrested if further attempts to enter the facility are made. The certified ombudsman immediately notifies the MLO and the State Ombudsman of the threat of arrest.

Appendices

Appendix I: Ombudsman Program Protocols

16-01: Unlicensed Facilities

I. Introduction

An ombudsman may become aware of a facility that meets the definition of an assisted living facility (ALF) but is operating without being licensed as an ALF. If an ombudsman becomes aware of a facility operating as an ALF without being licensed as an ALF, the ombudsman should gather information and take action as outlined in this protocol. HHS Regulatory Services investigates allegations of unlicensed facilities and **an ombudsman is prohibited from visiting the site of an unlicensed facility.**

II. Applicable State Law, Rule, and Policy

Title 4, Texas Health and Human Safety Code (HSC), Subchapter A, §247.002

Title 26, Texas Administrative Code (TAC), Subchapter B, §553.11

Texas Health and Human Services Provider Letter 2010-32

III. Definition of an Assisted Living Facility

Per 26 TAC §553.11(a):

1. An assisted living facility is an establishment that:
 - a. furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;
 - b. provides:
 - i. personal care services;
 - ii. administration of medication by a person licensed or otherwise authorized in this state to administer the medication; or
 - iii. services described in clauses (i) and (ii) of this subparagraph; and
 - c. may provide assistance with or supervision of the administration of medication.
2. An assisted living facility may provide skilled nursing services for the following limited purposes:
 - a. coordinate resident care with an outside home and community support services agency or health care professional;
 - b. provide or delegate personal care services and medication administration, as described in this chapter;
 - c. assess residents to determine the care required; and
 - d. deliver, for a period not to exceed 30 days, temporary skilled nursing services for a minor illness, injury, or emergency.
3. HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

- a. common ownership;
- b. physical proximity;
- c. shared services, personnel, or equipment in any part of the facilities' operations; and
- d. any public appearance of joint operations or of a relationship between the facilities.

IV. Requirement for a Facility Operating as an ALF to be Licensed

Facilities with three or fewer residents, excluding anyone related to the owner, are not required to be licensed as an ALF. Per §247.002, a facility is required to be licensed as an assisted living facility if:

- the facility has four or more residents unrelated to the owner; and
- the facility is providing personal care services or administration of medication, or both, to at least one resident.

V. Actions if a Certified Ombudsman Becomes Aware of a Potential Unlicensed Facility Operating as an ALF

If a certified ombudsman becomes aware of a potential unlicensed facility operating as an ALF, the ombudsman must:

1. as needed, review:
 - a. the state regulations related to facilities that must be licensed as an ALF in 26 TAC §553.11.
 - b. HHSC policy about common ownership described in HHSC Provider Letter 2010-32, which relates to a provider operating both licensed and unlicensed facilities.
2. determine if the facility is currently licensed as an ALF by reviewing LTS provider search or a current LTC facility list distributed by HHS Regulatory Services.
 - a. If the facility is currently licensed as an ALF and the ombudsman received a complaint about the facility, inform the complainant that the facility is licensed and assist the complainant with other concerns, as appropriate.
 - b. If the facility is not licensed as an ALF, determine if the facility is in the process of obtaining a license by inquiring with HHS Regulatory Services.
 - i. If the facility is in the process of obtaining a license and the ombudsman received a complaint about the facility, inform the complainant of the pending licensure and how a certified ombudsman can assist the complainant with other concerns.
 - ii. If the facility is not licensed as an ALF, or is not in the process of obtaining an ALF license, proceed with the actions below.
3. not visit the site of the unlicensed facility.
4. if the certified ombudsman became aware of the unlicensed facility through the ombudsman's own observations, such as driving by the facility or seeing the facility advertise online, file a complaint with HHS Regulatory Services by email at CiiComplaints@hhsc.state.tx.us or by telephone at 1-800-458-9858.
5. if the certified ombudsman received a complaint about the unlicensed facility:
 - a. investigate by asking the following questions to the complainant.
 - i. How many people live in the facility?

- ii. Is the facility providing personal care services, such as assistance with eating (not meal preparation), dressing, bathing or other personal needs or maintenance?
 - iii. Is the facility administering or supervising medications?
 - iv. How do residents pay the facility for services?
 - v. What is the unlicensed facility's name and address?
 - vi. Does the owner operate another facility that is licensed as an ALF? Collect the name and address of the licensed facility.
 - vii. Did the facility lead you to believe the facility is currently licensed as an ALF?
 - viii. Do you have any concerns about residents or the care being provided?
- b. if the certified ombudsman determines that an unlicensed facility meets the definition of an ALF:
 - i. inform the complainant that the investigating authority for an unlicensed facility operating as an ALF is HHS Regulatory Services and that the complainant can report the situation by email at CiiComplaints@hhsc.state.tx.us or by telephone at 1-800-458-9858; or
 - ii. if the complainant is a resident or an LAR and gives consent to reporting the situation, report the information collected in (a) to HHS Regulatory Services by email at CiiComplaints@hhsc.state.tx.us or by telephone at 1-800-458-9858.
 - iii. if the complainant is not a resident or LAR, report the information collected in (a) to HHS Regulatory Services by email at CiiComplaints@hhsc.state.tx.us or by telephone at 1-800-458-9858. In this situation, only provide complainant information with consent from the complainant.
- c. if the certified ombudsman does not determine that the unlicensed facility meets the definition of an ALF but there is concern for residents' well-being:
 - i. inform the complainant that the investigating authority for a facility not required to be licensed is Adult Protective Services (APS). Inform the complainant that he or she can report the situation to APS by calling 1-800-252-5400; or
 - ii. report the situation to APS by telephone at 1-800-252-5400. In this situation, only provide complainant information with consent from the complainant.
- d. if the certified ombudsman does not determine that the unlicensed facility is operating as an ALF and there is no concern for the resident's well-being, inform the complainant that the facility is not required to be licensed as an ALF.

17-01: Notice of Discharge from a Medicaid Certified Nursing Facility

I. Introduction

Federal and State law protect residents from improper discharge. Ombudsmen receive involuntary discharge notifications from nursing facilities and may receive a request for assistance from residents and resident representatives regarding discharge. Ombudsmen act to ensure the resident's rights are upheld. Because discharge is a time sensitive issue, ombudsmen must prioritize discharge cases accordingly.

II. Applicable Regulations

FEDERAL Title 42 Code of Federal Regulations (CFR) §483.15
Title 42 Code of Federal Regulations §483.21

STATE Title 40 Texas Administrative Code (TAC) §19.502
Title 40 Texas Administrative Code §19.503
Title 40 Texas Administrative Code §19.803
Fair and Fraud Hearings Handbook, Texas Health and Human Services

III. Facility Requirements for Involuntary Discharge

A. Permissible Reasons for Discharge

Title 42 CFR §483.15(c)(1) states: "Facility requirements—(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

- (A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
- (F) The facility ceases to operate."

Per 42 CFR §483.15(e)(1)(ii), if a facility determines a resident transferred to a hospital with the expectation of returning to the facility cannot return to the facility, the facility must follow transfer and discharge procedures found in 42 CFR §483.15(c).

B. Documentation Requirements

Per 40 TAC §19.502(c), the facility is required to provide documentation from the resident's physician if citing reason §19.502(b)(1)(2) or any physician if citing reason §19.502(b)(4).

Per 42 CFR §483.15(c)(2) the facility must ensure that transfer or discharge is documented in the resident's medical record and the information must be communicated to the receiving provider. If the facility is citing "needs cannot be met" as a reason for discharge, documentation must include the facility's attempts to meet these needs and the services available at the receiving facility to meet these needs (effective 11-28-17).

C. Notification Requirements

Per 40 TAC §19.502(d) a facility must:

- (d)(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language the resident understands;
- (2) record the reasons in the resident's clinical record;

If the resident has resided in the facility for more than 30 days and the resident is not posing an immediate risk to the health and safety of any individual then, according to §19.502(e)(1) [...] the notice of transfer or discharge [...] must be made by the facility at least 30 days before the resident is transferred or discharged.

D. Contents of the Notice

Per §19.502(f), the written discharge notice must include the following:

- (1) the reason for transfer or discharge;
- (2) the effective date of transfer or discharge;
- (3) the location to which the resident is transferred or discharged;
- (4) a statement that the resident has the right to appeal the action as outlined in HHSC's Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local DADS office within 10 days;
- (5) the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, DADS, and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412; and
- (6) in the case of a resident with mental illness, the address and phone number of the state mental health authority, which is Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78712-9347, 1-800-252-8154; or in the case of a resident with an intellectual or developmental disability, the authority for persons with intellectual and developmental disabilities, which is DADS Access and Intake Division, P.O. Box 14930, Austin, Texas 78714-9030, 1-800-458-9858, and the phone number of the agency responsible for the protection and advocacy of persons with intellectual and developmental disabilities, which is: Disability Rights Texas, 2222 West Braker Lane, Austin, Texas 78758, 1-800-252-9108.

Per 42 CFR §483.15(c)(5)(iv), the notice must also include the name, address, email, and telephone number of where to submit an appeal and information on how to obtain an appeal form and receive assistance to submit the appeal.

E. Discharge Planning

Facilities must perform adequate discharge planning. Per 40 TAC §19.803, discharge planning must be done by appropriate facility staff and a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. Per 42 CFR §483.21(c)(1)(iii)-(v) the resident and resident representative must be involved in the discharge planning process and informed of the final plan.

Per 42 CFR §483.21(c)(2)(iv) the discharge plan must include where the resident plans to reside and any arrangements made for the post-discharge care. “Discharge to a location of the resident’s choice” or “discharge to resident’s home”, for example, are not acceptable.

F. Fair Hearings

Residents of Medicaid-certified nursing facilities have 90 days to appeal their discharge notice and must appeal prior to the date of discharge in order to remain in the facility until a fair hearing determination is issued, except in emergency cases or if the resident has not resided at the facility for at least 30 days. See the LTC Ombudsman Participation in a Discharge Fair Hearing Protocol 17-02 for a description of the role of the ombudsman in a discharge fair hearing.

IV. Ombudsman Response to Involuntary Discharge

Ombudsmen help residents, not facilities, in the pursuit, resolution, or request of a fair hearing appeal of discharge. Do not advise a facility regarding discharge, other than to refer the facility staff to federal and state requirements. Ombudsman consent and confidentiality requirements apply to all of the following.

- A. When a notice of discharge is received, an ombudsman must read the discharge notice and determine if there are errors such as an omission or inaccurate information about the ombudsman, the right and how to appeal, or discharge location, date, or reason.
 1. If there are no errors, no action is required unless contacted by the resident or resident representative.
 2. If there are errors and the resident is known to the ombudsman, contact the resident within two business days of receiving the notice. If the resident or representative is not known to the ombudsman, contact the facility and request to speak with the resident. If the resident cannot communicate consent, request resident representative contact information from the facility.
 - a. If the resident cannot communicate consent and has no representative, open a case with the ombudsman as the complainant. Proceed to Section B of this protocol.
 - b. If the goal of the resident is to remain in the facility, inform the resident or resident representative of how to file a fair hearing appeal and proceed to Section B of this protocol.
 - c. If the resident’s goal is to move, provide the resident with information about long-term care facility options. An ombudsman may then inform facility staff of an error in the letter and request a corrected notice. The discharge date will then be 30 days from the issuance of the corrected notice.
 3. Contact the state office for guidance if needed.
- B. If a resident or resident representative requests assistance from an ombudsman and consents for the ombudsman to work on the case, do the following to gather information and resolve in addition to a fair hearing:

1. Review 40 TAC §19.502 and 42 CFR §483.15 for details on state and federal requirements for facilities regarding discharge, notification requirements, and right to fair hearing, and 40 TAC §19.803 regarding discharge planning.
2. Conduct interviews with the resident and other appropriate parties to understand the resident's interests.
 - a. Inform the resident and the resident's representative, if applicable, of the:
 - i. resident's rights;
 - ii. discharge process;
 - iii. resolution options other than a fair hearing appeal, such as requesting a care plan meeting; and
 - iv. options regarding a fair hearing appeal.
 - b. If the resident or the resident's representative wishes to file a fair hearing appeal, assist as necessary to submit the fair hearing request as soon as possible. See LTC Ombudsman Participation in a Discharge Fair Hearing Protocol: 17-02.
3. Review the resident's records, including documentation related to the reason for discharge, care plans and other interventions related to the reasons for discharge, incident reports, and admission history. Records are available to residents per 40 TAC §19.403(f) and ombudsmen per §19.413(c). Determine if documentation exists in accordance with §19.502(c).
4. Determine if the facility met requirements relating to the discharge reason, notice, and documentation in 42 CFR §483.15 and 40 TAC §19.502.
5. Determine if the facility attempted reasonable interventions before issuing the discharge. Investigate with the following questions:
 - a. Did the facility investigate for underlying causes of the issue?
 - i. Did the problem exist at the time of the resident's admission?
 - ii. Is there a medical problem?
 - iii. Is there a psychological problem?
 - iv. Does the resident need outside services or programs?
 - v. Is action or inaction by the facility contributing to the problem?
 - b. Does the facility have a policy regarding this issue?
 - i. Was the resident informed of this policy? If yes, when?
 - ii. Has this policy been applied in the same way to other residents?
 - iii. Does the policy comply with state and federal regulations?
 - c. Did facility staff speak directly with the resident or resident representative about this issue?
 - d. Was the issue addressed in a care plan meeting?
 - i. Did the care plan meeting include an interdisciplinary team?
 - ii. Did the resident, and if applicable a resident representative, participate in the care plan meeting?
 - iii. Was a plan to address the issue added to the care plan?
 - iv. Did the resident or resident representative agree to a change in the care plan?
 - v. Has a change in the care plan been implemented?
6. Use findings from steps 3-5 of this section to attempt resolution with the facility and the resident.
 - a. If the issue existed at the time of admission, advocate that discharge is not appropriate.
 - b. If the issue began after admission, and the resident is not posing an immediate risk to the health and safety of other residents, advocate for the facility to address the issue with non-discharge interventions.

- c. If the reason for discharge is non-payment, ensure a resident is not Medicaid-pending which protects the resident from discharge. If financial exploitation is suspected, inform the facility of its requirement to report to:
 - i. Regulatory Services, if suspect is employed by the facility;
 - ii. Adult Protective Services, if suspect is a family member or other person with an ongoing relationship with the resident; and
 - iii. law enforcement, if a law is suspected of being violated.
 - d. Propose alternatives to discharge as described in Section B-5(a-d) of this protocol.
 - e. If a representative of the facility states they will withdraw the discharge, request a written statement from the facility that explains the discharge is withdrawn.
7. If the facility does not withdraw the discharge in writing, take one or more of the following actions in accordance with ombudsman consent requirements:
- a. Proceed with a fair hearing appeal.
 - b. Monitor discharge planning.
 - c. File a complaint with Consumer Rights and Services for an investigation by Regulatory Services.
 - d. Refer the complainant to Texas Legal Services Center (TLSC). Cooperate with the TLSC or other attorney as needed.

17-02: Participation in a Nursing Facility Discharge Fair Hearing

I. Introduction

Federal and State regulations grant residents of Medicaid-certified nursing facilities the right to appeal a discharge issued by their facility and receive a fair hearing on the appropriateness of the discharge. If asked to assist with a fair hearing by the resident or resident representative, a certified ombudsman must follow the instructions listed in this protocol to assist the resident.

II. Applicable Regulations and Policies

FEDERAL Title 42 Code of Federal Regulations (CFR) §483 Subpart B
Title 42 CFR §431 Subpart E

STATE Title 1 Texas Administrative Code (TAC) Chapter 357
Title 40 TAC Chapter 19
Fair and Fraud Hearings Handbook, Texas Health and Human Services

III. Right to a Fair Hearing and Deadline for Submitting Request

Per, 40 TAC §19.502(i), a nursing facility resident who receives a notice of a transfer or discharge has 90 days from the date of the notice to request an appeal. If the recipient appeals prior to the date of discharge, the facility must allow the resident to remain in the facility, except in the circumstances described in subsections 40 TAC §19.502 (b)(5) and (e)(3), until the hearings officer makes a final determination.

IV. Submitting the Appeal Request

Email appeal requests to oesfairhearings@hhsc.state.tx.us or fax to 1-866-559-9628, using HHSC Form 8625 “Designation of a Long-Term Care Ombudsman as Representative and Request to Appeal a Nursing Facility Discharge.” Include correct mailing addresses and contact information. Include the discharge letter from the facility and as much as possible of the resident’s case in the appeal request, including reasons why the discharge would be inappropriate. Provide names and contact information for witnesses.

The resident or representative may also call 211, option 3, to request the appeal or check the status of the appeal.

Hearing staff will send a Hearing Packet to the resident or representative to acknowledge the hearing request and to set a time, date, and place for the hearing.

V. Fair Hearings General Process

A. Location

A fair hearing may be conducted either by telephone or face-to-face. The hearings officer determines if a face-to-face hearing is necessary, however, most hearings are conducted by telephone.

B. Attendance of Persons Other Than the Resident at the Fair Hearing

Friends, relatives, or advocates of the resident may attend at hearing at the resident's or resident representative's request. In order to confirm a person's legal authority to speak on behalf of the resident, a hearings officer may ask for a copy of letters of guardianship, a document granting a person a medical or durable power of attorney, or HHSC Form 8625 "Designation of a Long-Term Care Ombudsman as Representative and Request to Appeal a Nursing Facility Discharge."

VI. Preparing for the Fair Hearing

A. Burden of Proof

Per 1 TAC §357.9, the nursing facility bears the burden of proof in transfer and discharge hearings. The nursing facility meets the burden of proof if the stronger evidence, overall, favors the facility, as determined by the hearings officer. Although the facility bears the burden of proof, the resident or resident representative may submit their own evidence. A copy of the resident's evidence will be provided to the facility by the hearings officer.

B. Evidence Discovery

Per 1 TAC §357.13(b)(7)(A), before the hearing, the resident and resident representative have a right to review any evidence that will be presented in the hearing, including their case file. The facility representative is responsible for ensuring that copies of documents used to prove the need to discharge are provided to both the hearings officer and the resident or resident representative before the hearing.

VII. Participating in the Fair Hearing

A. Facilitation of the Hearing

The hearings officer will facilitate the meeting. Both the resident and his or her representatives and witnesses and the facility representatives and facility witnesses will have the opportunity to express their case, when directed by the hearings officer.

B. Responsibility to Appear

Per 1 TAC §357.13(e) the hearings officer will wait seven minutes from the time listed on the appointment notice to allow parties to call in to the conference call or appear at the meeting location. If the resident or resident representative fails to appear at the scheduled time, the hearings officer closes the record and issues a decision dismissing the appeal. Per 1 TAC §357.7, if the facility representative fails to appear at the scheduled time, the hearings officer closes the record and issues a decision reversing the discharge.

C. Resident or Resident Representative's Rights

Per 1 TAC §357.13(d), the resident or resident representative must have the opportunity to, present the case personally or with the aid of others, including legal counsel, bring witnesses, present arguments or make statements about the case, and question or refute any testimony or evidence.

VIII. Fair Hearing Decisions

Per 42 CFR §431.244, all appeal requests must be completed within 90 days from the request date unless there is an approved delay. Per 1 TAC §357.5(c)(3) and §357.25(a), the hearings officer renders a decision based on the evidence presented at the hearing.

A. Discharge Reversed

Per 40 TAC §19.502(i)(2) if the hearings officer determines that the discharge was inappropriate, the facility must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, the facility must allow the resident to remain in the facility.

B. Discharge Upheld

Per 40 TAC §19.502(i)(3) when the hearings officer determines that the discharge is appropriate, the resident or resident representative is notified in writing of this decision. The facility has 10 days from the date of the decision to implement.

C. Request to Reconsider

Per 1 TAC §357.23(f) the hearings officer may reopen an appeal and reconsider the decision if, within 12 months, the resident or resident representative offers evidence that is new or would have changed the outcome of the case.

IX. Actions for a Certified Ombudsman to Assist with a Discharge Fair Hearing

A. Requirement of a Certified Ombudsman to Assist a Resident Upon Request or If the Resident Is Unable to Communicate and Does Not Have a Representative

Upon request of a resident or resident representative or given permission by the State Ombudsman if a resident is unable to consent and does not have a representative, a certified ombudsman must assist with filing an appeal, and preparing for and attending the fair hearing.

B. Timing of the Request for a Fair Hearing

To remain in the facility until a fair hearing decision is determined, the resident, resident representative, or certified ombudsman on behalf of the resident, must submit an appeal request before the date of discharge. The resident's right to an appeal expires after 90 days from the receipt of discharge notice.

C. Contents of the Request for a Fair Hearing

The request for a hearing must include the:

1. Resident's name
2. Date
3. Date of birth
4. Resident's social security number
5. Resident's Medicaid identification number, if applicable

6. Facility name and address from which the resident is being discharged
7. Name(s) of anyone who will serve as a witness or representative for the resident, including address and phone number
8. Need for interpreter, if applicable
9. A copy of discharge notice, if possible
10. Reasons why discharge would be inappropriate

D. Requirement for a Certified Ombudsman to Submit Request on Behalf of Resident

If requested by a resident or resident representative, or if the State Ombudsman approves if a resident is unable to consent and does not have a resident representative, the certified ombudsman must:

1. Complete HHSC Form 8625 “Designation of a Long-Term Care Ombudsman as Representative and Request to Appeal a Nursing Facility Discharge”.
2. Submit HHSC Form 8625 by email to oesfairhearings@hhsc.state.tx.us or by fax to 1-866-559-9628.
3. Keep a record of the submitted request such as the email or fax receipt.
4. Inform facility administration or management, in writing, that the appeal has been requested and of the resident’s rights to remain in the facility until a fair hearings officer issues a determination.

E. Certified Ombudsman Assistance in Preparing for the Hearing

A certified ombudsman must, to the extent requested by the resident or resident representative, or if the resident is unable to consent and does not have a representative, assist in preparation for the hearing by:

1. Reviewing the discharge letter.
 - a. If the discharge letter does not contain required elements of 40 TAC §19.502(f), prepare an explanation of omitted or incorrect information for the resident, including citations from the TAC and CFR.
2. As possible, informing the resident or resident representative of hearing rules and procedures, including the resident’s rights, responsibilities, and consequences for missing the hearing.
3. Assisting the resident or resident representative gather information pertaining to the case, including clinical records, incident reports, and interviews with the resident, representatives, and staff.
4. Assisting the resident or resident representative to prepare a written statement stating the resident’s case for remaining in the facility or preparing a written statement on behalf of the resident.
5. If the fair hearing is by teleconference, ensuring the resident or resident representative has a private place reserved to participate in the hearing at the facility and access to a telephone.

F. Certified Ombudsman Requirement to Attend the Hearing

A certified ombudsman must attend the fair hearing if serving as the resident’s representative or if invited by the resident or resident representative. At the hearing, the certified ombudsman must state his or her role is as a long-term care ombudsman and as either representative or

witness for the resident. Participate as needed, including submitting evidence on behalf of the resident.

G. If the Hearings Officer Issues a Decision Reversing the Discharge

If the hearings officer issues a decision in favor of the resident, a certified ombudsman must monitor the resident's rights as he or she remains in the facility.

H. If the Hearings Officer Issues a Decision Upholding the Discharge

If the hearing officer issues a decision in favor of the facility, the certified ombudsman must monitor the discharge or transfer process to ensure the resident's rights are upheld. If new evidence is discovered that may have affected the hearings officer's decision, a certified ombudsman must assist the resident or representative to submit a request to reconsider the fair hearing decision, if requested by the resident or resident representative or if resident is unable to consent and has no representative.

17-03: Notice of Discharge from an Assisted Living Facility

I. Introduction

State law protects residents from improper discharge. Ombudsmen may receive involuntary discharge notifications from assisted living facilities (ALFs) and be asked by residents and resident representatives to assist. Ombudsmen act to ensure the resident's rights are upheld. Because discharge is a time sensitive issue, ombudsmen must prioritize discharge cases accordingly.

II. Applicable Regulations

STATE Title 26 Texas Administrative Code (TAC) §553.125

III. Facility Requirements for Involuntary Discharge

A. Permissible Reasons for Discharge

Per 26 TAC §553.125 (a)(3), the resident's bill of rights states, "Each resident in the assisted living facility has a right to:

(X) not be transferred or discharged unless:

- (i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;
- (ii) the resident's health is improved sufficiently so that services are no longer needed;
- (iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;
- (iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or
- (v) the resident fails, after reasonable and appropriate notice, to pay for services"

B. Notification Requirements

Per 26 TAC §553.125(a)(3)(Y), the resident may "not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:

- (i) that the facility intends to transfer or discharge the resident;
- (ii) the reason for the transfer or discharge;
- (iii) the effective date of the transfer or discharge;
- (iv) if the resident is to be transferred, the location to which the resident will be transferred; and
- (v) any appeal rights available to the resident"

Per 26 TAC §553.125(b)(2)(C), after notifying Regulatory Services, an ALF may immediately discharge a resident if a resident is "a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility".

C. Options to Appeal

There is no state fair hearing or formal way for ALF residents to appeal a discharge with the state. Some ALFs have an internal procedure to appeal a discharge. Typically this procedure is described in the resident agreement.

If a STAR+PLUS resident's services are reduced or stopped, the resident can appeal to her managed care organization (MCO). Discharge is not an appealable action to the MCO.

D. Resident Right to Leave

Per 26 TAC §553.125(a)(3)(Z), residents have the right to "leave the facility temporarily or permanently, subject to contractual or financial obligations".

IV. Ombudsman Response to Involuntary Discharge

Ombudsmen help residents, not facilities, in the pursuit and resolution of discharge. Do not advise a facility regarding discharge, other than to refer the facility staff to state requirements. Ombudsman consent and confidentiality requirements apply to all of the following.

If an ombudsman is asked by a resident or resident representative to assist with a discharge, do the following to gather information and resolve:

- A. Obtain consent. If the resident is the complainant and gives consent to work a case on their behalf, proceed to the next step. If the resident cannot communicate consent, request resident representative contact information from the facility. If the resident cannot communicate consent and has no representative, open a case with the ombudsman as the complainant.
- B. Review the resident's bill of rights in 26 TAC §553.125(a)(3)(X-Z) and the provider bill of rights in 26 TAC §553.125(b)(2)(C) for details on state requirements regarding discharge and notification of discharge.
- C. Conduct interviews with the resident and other appropriate parties to understand the resident's interests.
 1. Inform the resident and the resident's representative, if applicable, of the:
 - a. resident's rights;
 - b. discharge process; and
 - c. resolution options, such as requesting a service plan meeting.
 2. If the resident's goal is to move, provide the resident with information about long-term care facility options.
- D. Review the resident's records, including documentation related to the reason for discharge, the resident agreement, service plan, and other interventions related to the reasons for discharge, incident reports, and admission history. Records are available to residents per 26 TAC §553.125(a)(3)(M) and ombudsmen per §553.801(c).

- E. Determine if the facility met requirements relating to the discharge reason and notice in 26 TAC §553.125. An ombudsman must read the discharge notice and determine if there are errors such as an omission or inaccurate information about the reason for the discharge, the effective date of the discharge, the location to which the resident will be transferred, if the resident is to be transferred, and any appeal rights available to the resident. With permission from the resident, an ombudsman informs facility staff of any errors in the letter and requests a corrected notice with the discharge date set 30 days from the issuance of the corrected notice.
- F. Determine if the facility attempted reasonable interventions before issuing the discharge. Investigate with the following questions:
 - 1. Did the facility investigate for underlying causes of the issue?
 - a. Did the problem exist at the time of the resident's admission?
 - b. Is there a medical problem?
 - c. Is there a psychological problem?
 - d. Does the resident need outside services or programs?
 - e. Is action or inaction by the facility contributing to the problem?
 - 2. Does the facility have a policy regarding this issue? (such as inappropriate placement)
 - a. Was the resident informed of this policy? If yes, when?
 - b. Has this policy been applied in the same way to other residents?
 - c. Does the policy comply with state regulations?
 - 3. Did facility staff speak directly with the resident or resident representative about this issue?
 - 4. Was the issue addressed in a service plan meeting?
 - a. Did the service plan meeting include an interdisciplinary team?
 - b. Did the resident, and if applicable a resident representative, participate in the service plan meeting?
 - c. Was a plan to address the issue added to the service plan?
 - d. Did the resident or resident representative agree to a change in the service plan?
 - e. Has a change in the service plan been implemented?
- G. Use findings from steps D-F of this section to attempt resolution with the facility and the resident.
 - 1. If the issue existed at the time of admission, advocate that discharge is not appropriate.
 - 2. If the issue began after admission, and the resident is not posing an immediate risk to the health and safety of other residents, advocate for the facility to address the issue with non-discharge interventions.
 - 3. If the resident's condition changed and the facility is discharging the resident according to 26 TAC §553.41(f) relating to inappropriate placement, discuss the option of the resident remaining in the facility.
 - 4. If the reason for discharge is non-payment and financial exploitation is suspected, inform the facility of its requirement to report to:
 - a. Regulatory Services, if suspect is employed by the facility;
 - b. Adult Protective Services, if suspect is a family member or other person with an ongoing relationship with the resident; and

- c. law enforcement, if a law is suspected of being violated.
 - 5. Propose alternatives to discharge as described in step F(1-4) of this protocol.
 - 6. If a representative of the facility states they will withdraw the discharge, request a written statement from the facility that explains the discharge is withdrawn.
 - 7. If the facility has an appeal process, consider filing an appeal.
- H. If the facility does not withdraw the discharge in writing, take one or more of the following actions in accordance with ombudsman consent requirements:
- 1. Monitor discharge planning.
 - 2. File a complaint with Consumer Rights and Services for an investigation by Regulatory Services.
 - 3. Refer the complainant to Texas Legal Services Center (TLSC). Cooperate with the TLSC or other attorney as needed.

19-01: Resident Requests Assistance Related to Modification of Child Support Payments

I. Introduction

The Office of the Attorney General (OAG) oversees the Child Support Division, including child support payments, and may require a resident of a long-term care facility to make a monthly child support payment. A resident may be court ordered to pay a monthly amount or monthly income may be garnished to cover the cost of a child support payment. Child support payments may result in a resident having insufficient funds to pay for his or her care in a long-term care facility or result in the resident having a reduced amount of his or her personal needs allowance. If a resident requests ombudsman assistance regarding a modification to child support payments, a certified ombudsman must act in accordance with this protocol.

II. Applicable Regulations

STATE	Title 5, Texas Family Code, Subchapter A, Chapter 154 Title 1, Texas Administrative Code, Subchapter C, Chapter 358, Subchapter C, Division 6
FEDERAL	Title 20, Code of Federal Regulations §416.1123 Title 42, Code of Federal Regulations, §435.725-726, §435.735

III. Definitions

Applied income--the amount of personal income a person in a nursing facility (NF) must pay toward the cost of his or her care.

Arrears--debt that is overdue after missing one or more required payments.

Copayment--the portion of an assisted living facility (ALF) resident's income that the resident may be required to pay to the ALF, in addition to the room and board charge. The copayment amount is set by the Medicaid for Elderly and People with Disabilities handbook.

Child support payments--ongoing payments made by a noncustodial parent to the other parent to support their child's or children's living costs.

Community Care for the Aged and Disabled (CCAD)--a State program that covers the cost of services to low income older adults or individuals with disabilities in their own home or community, such as adult foster homes or ALFs.

Dependent--The child for whom child support payments benefit.

Emancipated--a minor who has been declared an adult by the court or a person who is 18 or older or has graduated high school.

Garnish--money taken from a person's income to pay a debt.

Room and board-- a charge that all ALF residents must pay to the ALF. ALF residents who receive STAR+PLUS pay room and board at a rate calculated by the resident's monthly Supplemental Security Income (SSI) federal benefit minus a personal needs allowance of \$85.

STAR+PLUS--a Texas Medicaid managed care program for people who have disabilities or are age 65 or older.

IV. Child Support Payments Not Eligible for Reduced ALF or NF Payments

A resident is not eligible for reduced applied income, copayment, or room and board charges because of mandated child support payments. Nonpayment of the full required amount of applied income, copayment, or room and board charges may result in a resident losing his or her STAR+PLUS or CCAD benefits.

V. Option to Request a Modification of Child Support Payments

A resident making child support payments can request a modification to their payment.

1. Payments that may qualify for modification.

Child support payments may be modified if:

- the child support payments were established or last modified more than three years ago;
- the monthly amount differs by 20 percent or \$100 from the child support guidelines; or
- a material and substantial change in circumstances has occurred since the child support payments were last set, such as a decrease in income, the child now lives with a different person, or the payor now resides in an NF or ALF.

2. Modification of payments for current support for a minor child.

Payments for current support for a minor child are court ordered and can only be adjusted with a new court order. The modification and review process can take approximately 6 to 8 weeks. If the case qualifies for a modification, OAG Child Support Division will set a meeting at the OAG office or will file the case with the court. If the case is filed for court, this process may take longer to resolve.

3. Modification of child support arrears only payments. These are payments for a child who has emancipated and for whom current child support is no longer due.

In some circumstances, child support arrearage payments for an emancipated dependent can be adjusted administratively (without a new court order) by the OAG Child Support Division. This type of adjustment is case specific and is done at the discretion of OAG Child Support Division.

VI. Ombudsman Response to a Resident Request for Assistance Regarding Child Support Payments

If a resident requests assistance from an ombudsman related to child support payments affecting the resident's ability to pay for ALF or NF care, the certified ombudsman must:

1. determine if the resident is paying current child support, arrears only payments, or both. It is possible that the resident is paying on more than one case.
2. if the child support payment is for an arrears only case where the dependent is now emancipated:

- a. collect the resident's name, date of birth, and Social Security number (or child support case number), names and dates of birth of each child, name of the other parent, the monthly income amount(s) and source(s), and the current child support payment amounts;
 - b. collect a signed "Authorization for Release of Information" form giving permission to release information to the long-term care ombudsman. The " OAG Authorization for Release of Information" form can be found here: <https://www.texasattorneygeneral.gov/sites/default/files/files/child-support/forms/1A004ae.pdf>;
 - c. collect a completed "Request to Review" form. The "Request to Review" form can be found here: https://www.texasattorneygeneral.gov/sites/default/files/images/child-support/cs_review_questionnaire.docx;
 - d. fax or email the completed "Authorization for Release of Information" and "Request to Review" forms to the state office at 512-438-3233; and
 - e. request state office staff to contact an OAG Child Support Division ombudsman and request a case review to determine if a modification is appropriate.
3. if the child support payment is for current support for a dependent that is not emancipated:
 - a. provide the resident with the "Request to Review" form and instruct the resident to mail the completed form to the OAG Child Support Division at P.O. Box 12017, Austin, Texas 78711-2017. The "Request to Review" form can be found here: https://www.texasattorneygeneral.gov/sites/default/files/images/child-support/cs_review_questionnaire.docx; or
 - b. collect the resident's name, date of birth, and Social Security number (or child support case number), names and dates of birth of each child, name of the other parent, the monthly income amount(s) and source(s), and the current child support payment amounts; and
 - c. assist the resident to complete and mail the completed form to OAG Child Support Division at P.O. Box 12017, Austin, Texas 78711-2017.

19-02: No Residents Are Present When an Ombudsman Visits a Facility

I. Introduction

Long-term care ombudsmen are required to make unannounced visits to long-term care (LTC) facilities in accordance with the Ombudsman Policies and Procedures Manual (OPPM). Visits to LTC facilities must be for the purpose of monitoring for resident safety and rights, receiving and investigating complaints, and observing conditions of the LTC facility.

At times, a certified ombudsman may visit an LTC facility and find that no residents are present in the building. This situation may occur if the facility is newly opened and residents have not yet moved in, if the facility is in the process of closing, or if residents are at an activity or service provided outside of the facility. A certified ombudsman must act in accordance with this protocol if, during a visit to an LTC facility, he or she expects to see residents at the site of a facility but finds that no residents are present in a facility.

II. Applicable Policy, Law, and Rule

OMBUDSMAN POLICIES & PROCEDURES MANUAL

Chapter 500, Access to LTC Facilities, Residents, Resident Records, and Other Information

Chapter 2000, Willful Interference and Retaliation

Chapter 6000, Local Ombudsman Entity Visitation Requirements, Performance Measures, and Monitoring

FEDERAL Title VII Older Americans Act §712(b)
Title 45 Code of Federal Regulations §1324.11(e)(2), §1324.19(a)(3)

STATE Title 6 Human Resource Code §101A.257
Title 26 Texas Administrative Code §88.201 and §88.302(a)
Title 26 Texas Administration Code §553.551(a)(8-9), §553.801
Title 40 Texas Administration Code §19.413 and §19.2112

III. Ombudsman Response When No Residents Present

If, during a visit to an LTC facility, a certified ombudsman expects residents to be present but finds that no residents are present at the site of the facility, the ombudsman must take the following steps.

1. If LTC facility staff are present at the facility, the certified ombudsman must:
 - a. interview facility staff about the current location of residents;
 - b. observe the environment such as building condition, required postings, supplies, activity calendars, and menus; and
 - c. proceed with steps 3 - 7 below.
2. If no LTC facility staff are present at the facility, the certified ombudsman must:
 - a. not attempt to enter the facility;

- b. visually inspect the exterior of the facility for signs that the facility is in operation, such as posted signs and staff vehicles; and
 - c. attempt to contact facility management or staff;
 - i. if the certified ombudsman speaks with facility management or staff, the ombudsman must interview the person about the current location of residents. Proceed to steps 3 - 6 below.
 - ii. If the certified ombudsman is unable to contact facility management or a facility representative, proceed to steps 3 and 8 below.
3. If the licensure status of the facility is unknown, the certified ombudsman must verify whether the LTC facility is currently licensed as a facility by:
 - a. reviewing the LTS provider search at <https://apps.hhs.texas.gov/LTCSearch/>;
 - b. reviewing a facility list provided by HHS Regulatory Services; or
 - c. contacting HHS Regulatory Services.
4. If the certified ombudsman determines that the facility is licensed as an ALF and that residents attend a Day Activity Health Services (DAHS):
 - a. the ombudsman may:
 - i. visit the residents of the ALF at the DAHS and enter the visit as a "Facility Visit to a DAHS" activity in accordance with the OPPM Section 7060; or
 - ii. observe the conditions of the ALF and enter the visit as a "Facility Visit" activity, in accordance with the OPPM Section 7060, if it is the ombudsman's only visit to the site of the ALF when residents are not present during that FFY; and
 - b. in accordance with the OPPM Section 6010(c)(2):
 - i. a certified ombudsman is required to make at least one visit to the site of the ALF per FFY; and
 - ii. a certified ombudsman may enter only one visit to the site of the ALF while residents are not present as a "Facility Visit" activity during a FFY.
5. If the certified ombudsman determines that the facility is licensed, but no residents are living there, the certified ombudsman must visit the facility in accordance with the minimum visit requirements established in the OPPM Section 6010. A certified ombudsman must enter these visits in the ombudsman database as a "Facility Visit" activity in accordance with the OPPM Section 7060.
6. If the certified ombudsman determines that the facility's license has expired, and there is a pending licensure application, the certified ombudsman must visit the facility in accordance with the visit requirements established in the OPPM Section 6010. A certified ombudsman must enter these visits in the ombudsman database as a "Facility Visit" activity in accordance with the OPPM Section 7060.
7. If the certified ombudsman determines that the LTC facility is no longer licensed as an LTC facility and there is not a pending licensure application for the facility, the certified ombudsman must mark the facility as "inactive" in the ombudsman database and stop visits to the facility. A visit to a facility that is not operating as an LTC facility and not licensed as an LTC facility or DAHS is not a reportable activity. If the LTC facility is no longer licensed and the certified ombudsman believes the facility is operating a facility that should be licensed, the certified ombudsman must act in accordance with LTC Ombudsman Protocol 16-01, Unlicensed Facilities.

8. If the certified ombudsman is unable to contact facility staff or determine if residents are living at the LTC facility and the certified ombudsman confirms that the facility is licensed as an LTC facility, the certified ombudsman must:
 - a. report the situation to HHS Regulatory Services;
 - b. continue to visit the LTC facility in accordance with the minimum visit requirements established in the OPPM Section 6010; and
 - c. enter each visit as a "Facility Visit" activity in accordance with the OPPM Section 7060.

IV. Certified Ombudsman Access to the Facility is Denied by LTC Facility Staff

Regardless of if residents are present, facilities licensed as a nursing facility or an assisted living facility must give ombudsmen immediate, unimpeded access to enter the facility at any time during the facility's regular business hours in accordance with 26 TAC §553.801(b) and 40 TAC §19.413. If a certified ombudsman visits a facility and is denied access by facility staff, regardless of whether residents are present, the certified ombudsman must comply with the OPPM Chapter 2000 (Willful Interference and Retaliation).

Appendix II: HHSC Form “Long-Term Care Ombudsman Activity Report.”

<https://hhs.texas.gov/sites/default/files/documents/laws-regulations/forms/8620/8620.pdf>

Appendix III: HHSC Form Consent to Release Records to the Ombudsman Program

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8624-o-consent-release-records-certified-ombudsman>

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8624-w-consent-release-records-certified-ombudsman>

Appendix IV: HHSC Forms Related to Ombudsman Program Initial Certification

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8623-request-certification-ombudsman>

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8613-office-state-long-term-care-ombudsman-conflict-interest-identification-removal-remedy>

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8614-grievance-regarding-ombudsman-certification-decision>

Appendix V: HHSC Form Ombudsman Program CO II Recommendation

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8610-state-long-term-care-ombudsman-program-certified-ombudsman-ii-recommendation-approval>

Appendix VI: HHSC Form “Designation of a Long-Term Care Ombudsman as a Representative and Request to Appeal a Nursing Facility Discharge

<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8625-designation-a-long-term-care-ombudsman-representative-request-appeal-a-nursing-facility>

Appendix VII: Ombudsman Evaluation Form

Ombudsman Evaluation Form

Section I – Agency Information

Local Ombudsman Entity: Choose an item.

Ombudsman Name: Click here to enter text.

Fiscal Year of Evaluation: Choose an item.

Facility Selected for Visit: Click here to enter text.

Person Completing this Form: Click here to enter text.

Section II – Compliance with 26 TAC §88, Subchapter D

Complete this section based on ombudsman conduct within the previous 12 months.

1. Date of last screening for conflicts of interest, using “Individual Conflict of Interest Screening of a Representative of the Office”:

Click here to enter a date.

2. Describe how the ombudsman demonstrates knowledge and skill regarding consent requirements: --- Case documentation and case discussion with state office

Click here to enter text.

3. Does the ombudsman identify, investigate, and resolve complaints in compliance with ombudsman rule and policy? --- Cases and care plans in ombudsman database, case discussion with state office

Choose an item. Click here to enter text.

4. Does the ombudsman provide residents with information about the Ombudsman Program? --- Consultations to individuals in ombudsman database

Choose an item. Click here to enter text.

5. Does the ombudsman make regular visits to residents in long-term care facilities? --- Facility visits in ombudsman database

Choose an item. Click here to enter text.

6. Does the ombudsman promptly respond to requests received by telephone, mail, and email? --- Ombudsman database, including case intake and first action dates, and response to state office inquiries

Choose an item. Click here to enter text.

7. Does the ombudsman represent the interests of residents before governmental agencies, and pursue administrative, legal, and other remedies to protect residents? --- Hearings, legal coordination, and survey participation in ombudsman database

Choose an item. [Click here to enter text.](#)

8. Does the ombudsman analyze, comment on, make recommendations, and monitor the development and implementation of laws, rules, regulations, and other policies and action that pertain to the health, safety, welfare, and rights of residents, with respect to the adequacy of long-term care facilities and services? --- Communication with state office, and media interviews and other systems advocacy in ombudsman database

Choose an item. [Click here to enter text.](#)

9. Does the ombudsman coordinate with and promote the development of citizen organizations, including resident and family councils? --- Councils attended and community education in ombudsman database

Choose an item. [Click here to enter text.](#)

Section III – Facility Visit

Complete this section if a facility visit is conducted in conjunction with an onsite monitoring visit.

1. Upon entry, did the ombudsman notify facility staff of the ombudsman's presence? Choose an item.
2. Did residents appear to know the ombudsman? Choose an item.
3. Did the ombudsman knock and receive permission to enter residents' rooms? Choose an item.
4. Did the ombudsman interact professionally with facility staff? Choose an item.
5. Did the ombudsman actively listen to residents? Choose an item.
6. Did the ombudsman engage with incapacitated and isolated residents? Choose an item.
7. Did the ombudsman offer privacy to residents or complainants? Choose an item.
8. Did the ombudsman obtain consent prior to taking action on behalf of each resident? Choose an item.

Section IV – Overall Evaluation

Complete this section based on ombudsman conduct within the previous 12 months, including responses to sections II and III of this form.

1. Identify any areas for improvement for the ombudsman.

[Click here to enter text.](#)

2. Overall evaluation regarding the ombudsman's demonstrated compliance with Title 26 TAC §88, Subchapter D; Ombudsman Certification Training Manual; and Ombudsman Policies and Procedures Manual.

Choose an item.

Comments: Click here to enter text.

Section V – Signature of State Ombudsman

X

State Ombudsman or Designee

Appendix VIII: Onsite Monitoring Form



Onsite Monitoring Form

Office of the State Long-term Care Ombudsman

Monitoring Information

Local Ombudsman Entity: Choose an item.

Month and Year Selected for Review: Click here to enter text.

Purpose

Assess if the local ombudsman entity (LOE) service provision is in compliance with rule, policy, and procedure.

Governing Documents

Texas Administrative Code (26 TAC §88)

Federal Rule (45 CFR Parts 1321 and 1324)

Older Americans Act (Sections 711 and 712)

Procedures

In accordance to 26 TAC §88.105(c) – (k):

The Office conducts an onsite visit to monitor:

- the performance of functions of the Ombudsman Program by a representative of the Office;
- the compliance by an LOE with Subchapter D, relating to Requirements of an LOE, Chapter 88 of the Texas Administrative Code; and
- the compliance by a host agency with Subchapter E, relating to Requirements of a Host Agency, Chapter 88 of the Texas Administrative Code.

An onsite visit includes:

- observing and evaluating a visit of a managing local ombudsman (MLO) to a LTC facility selected by the monitor;
- as determined by the monitor, observing and evaluating visits of staff ombudsmen to LTC facilities selected by the monitor; and

- reviewing information regarding a LOE's compliance with Subchapter D, including documentation regarding:
 - the training of representatives of the Office;
 - identification of individual conflicts of interest;
 - expenditures for the Ombudsman Program, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office; and
- reviewing information regarding a host agency's compliance with Subchapter E.

The Office:

- selects a date for an onsite visit in consultation with the MLO and AAA director;
- notifies the host agency of a scheduled onsite visit at least 30 days before the visit, including the month and year selected by the monitor for audit; and
- within 30 days after the Office completes an onsite visit, provides to the LOE and the host agency a written report containing findings from the visit.

The host agency must, within 30 days after receipt of the written report, submit a written plan of correction to the Office that describes:

- the action that will be taken to correct each finding; and
- the date by which each action will be completed.

Within 30 days after the date the Office receives the plan of correction, the Office notifies the LOE and host agency of whether the plan is approved or requires modification.

- If the Office approves the plan, the LOE must complete the actions contained in the plan of correction by the dates in the plan.
- If the Office determines that the plan requires modification, the host agency must submit a modified written plan of correction within a time period determined by the Office for approval by the Office.

The Office may take one or both of the following actions to determine if the LOE has completed the actions in accordance with an approved plan of correction or approved modified plan of correction:

- request that the LOE submit evidence of correction to the Office; or
- visit the LOE.

An LOE or host agency may request technical assistance from the Office regarding developing a plan of correction or addressing an issue of non-compliance.

Ombudsman Evaluation Form

State office staff completes an Ombudsman Evaluation Form for the MLO and any other staff ombudsmen with whom a facility visit is made.

Monitoring Guide

Ombudsman Program Rule	Requirements	Evidence
26 TAC §88.301	Each certified ombudsman must have criminal history screening, initial conflict of interest screening form and remedy form (if applicable), documentation of initial certification training, documentation of internship (volunteer only), and signed certified ombudsman application	<ul style="list-style-type: none"> • Certified ombudsman files reviewed onsite • Ombudsman records in the ombudsman database
26 TAC §88.302(a)(1)	Certified ombudsmen must identify, investigate, and resolve complaints; provide information to residents; make regular visits to facilities; represent the interests of residents; analyze, comment on, make recommendations, and monitor laws and regulations; and coordinate with and promote the development of resident and family councils	<ul style="list-style-type: none"> • Cases and activities in the ombudsman database • Supporting documentation of cases and activities reviewed onsite
26 TAC §88.302(a)(2)	The LOE or a representative of the Office must consult with and obtain approval from the Office regarding systems advocacy	<ul style="list-style-type: none"> • Examples of LOE systems advocacy
26 TAC §88.302(a)(3)	Each staff ombudsman completes 12 hours annually of continuing education (CE) provided by the Office and is evaluated by the MLO annually	<ul style="list-style-type: none"> • CE records in the ombudsman database • Evaluation of records in staff ombudsman files reviewed onsite • Evaluation of staff during a facility visit by state office staff
26 TAC §88.302(a)(4)	Volunteer ombudsman completes 12 hours annually of CE provided by the LOE and is evaluated by a staff ombudsman annually	<ul style="list-style-type: none"> • Volunteer ombudsman files for evaluations and database for CEs including supporting documentation for the CEs reviewed onsite

Ombudsman Program Rule	Requirements	Evidence
26 TAC §88.303(a)	Conflict of interest screening must be completed annually and conflict of interest identification, removal, and remedy forms must be approved by the State Ombudsman	<ul style="list-style-type: none"> • LOE certified ombudsman files and state office files
26 TAC §88.304 Older Americans Act §712(d) 45 CFR §1324.11(e)(3)	Information identifying a resident or complainant must be kept confidential and disclosed only with appropriate consent	<ul style="list-style-type: none"> • Observation of MLO and other staff ombudsmen, as applicable • Case documentation in the ombudsman database • Telephone procedures at host agency, including call handling of phone inquiries by the monitor • File storage procedures • Other LOE confidentiality measures taken
26 TAC §88.305(a)	The LOE must respond to a complainant within two business days of receipt of a complaint and initiate a complaint if it becomes aware of circumstances that adversely affect a resident	<ul style="list-style-type: none"> • Case documentation, including the first action date and number of cases reported by staff and volunteer ombudsmen in the current fiscal year
26 TAC §88.305(b)	A certified ombudsman investigates complaints following the steps outlined in this subsection.	<ul style="list-style-type: none"> • Case documentation, including evaluation of the percent of cases reported during the current fiscal year
26 TAC §88.305(c)	A certified ombudsman must respond within one business day to a complaint alleging abuse, neglect, or exploitation (ANE) and not investigate whether ANE occurred	<ul style="list-style-type: none"> • Case and consultation records in the ombudsman database

Ombudsman Program Rule	Requirements	Evidence
26 TAC §88.306	The LOE must have a current version of the Ombudsman Policies and Procedures Manual (OPPM), any Ombudsman Program Protocols, and Ombudsman Certification Training Manual	<ul style="list-style-type: none"> • Observation at the LOE
26 TAC §88.307(a)	A certified ombudsman visits each long-term care (LTC) facility in the LOE's service area in accordance with OPPM and visitation schedule set by the Office	<ul style="list-style-type: none"> • Facility visit records • Observation of ombudsman facility visits by state office staff
26 TAC §88.308	<p>The LOE seeks approval from the Office before publicly distributing ombudsman materials created for LOE distribution to the public</p> <p>Voice mail messages for a staff ombudsman must identify that the person works for the Ombudsman Program and the message left by the caller is confidential</p>	<ul style="list-style-type: none"> • Email or other documentation that demonstrates the material was reviewed and approved • Website and social media • Observation of staff ombudsman voice mail messages
26 TAC §88.402(e)	The host agency must ensure that the LOE complies with Subchapter D	<ul style="list-style-type: none"> • Reports provided to host agency by the LOE for the month selected by the monitor • Interview LOE and MLO supervisor
26 TAC §88.403	Any organizational conflict of Interest must be identified and have an approved remedy	<ul style="list-style-type: none"> • Remedy forms (if applicable) • Interview with host agency and LOE

Ombudsman Program Rule	Requirements	Evidence
26 TAC §88.405	<p>Performance measure projections must be met each state fiscal year</p> <ul style="list-style-type: none"> • number of active certified ombudsmen • number of assisted living facilities (ALFs) visited • number of ALF visits • percent of complaints resolved or partially resolved 	<ul style="list-style-type: none"> • Reported data in the ombudsman database for the previous and current year
26 TAC §88.406	<p>A host agency must expend for a federal fiscal year at least the amount of federal funds expended in the federal fiscal year 2000; only allowable activities are paid for by funds from HHSC; and purchases of a service, material, equipment, or good that is paid for with funds from HHSC must meet federal requirements</p>	<ul style="list-style-type: none"> • Current and previous years' expenditures on the LOE, including any history of failing to meet the minimum expenditure requirement • Approved staffing plan, time sheets, mileage reimbursement, and other expenditures for the month selected by the monitor • Controlled asset request logs at state office and observation at the LOE

Monitor's Preliminary Conclusions

The following preliminary conclusions were discussed with representatives from the local ombudsman entity and host agency at the conclusion of the visit. [Choose an item.](#)

[Click here to enter a date.](#)

[Click here to enter text.](#)

X

Office of the State LTC Ombudsman
Onsite Monitor

Monitor's Final Report, Including Findings

The following report, including any findings is issued to the local ombudsman entity and host agency.

Is action required of the host agency? Choose an item.

[Click here to enter text.](#)

X

Office of the State LTC Ombudsman
Onsite Monitor