

**Long-Term Ombudsman Program
Policies and Procedures Manual**

Service Chapter 695-01

**North Dakota Department of Human Services
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Long-Term Care Ombudsman Program Policies and Procedures 695-01

Purpose 695-01-01

(Revised 2/1/16 ML #3462)

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This manual outlines the policies and procedures for governing the administration, management, funding and implementation of the State Long Term Care Ombudsman Program funded under the Older Americans Act, Titles III and VII.

Legal Authority 695-01-05

(NEW 2/1/16 ML#3462)

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Public Law 109-365, Older Americans Act of 1965, as amended in 2006; 42 U.S.C. § 3001 et seq.; 45 CFR Parts 1321 and 1327 NDCC 50.10.1

- NDAC 75-03-25-01

Definitions 695-01-10

(Revised 2/1/16 ML #3462)

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Abuse - The willful Infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or willful deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. (OAA § 102 (1))

Caregiver - An individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual [OAA §102 (18) (B)]

Case - Each request for assistance or inquiry brought to, or initiated by, the Ombudsman Program on behalf of a resident or group of residents involving one or more complaints which requires opening a case and includes ombudsman investigation, fact gathering, development and implementation of a resolution strategy. A case can include one or more complaints. You cannot have a case without a complaint.

Certification - A status bestowed on an individual upon meeting minimum qualifications, including proof that is free of conflicts of interest and has successfully completed training. This status authorizes the individual to act as a representative of the Office.

Community Education - Presentations made by an Ombudsman to community groups, students, churches, etc. This includes attendance at community and health fairs and similar gatherings where the Ombudsman has a display and is available to provide information to attendees.

Complainant - Person reporting the concern. May be a resident, family member, facility staff, community member, ombudsman, etc.

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Complaint -A concern brought to, or initiated by, the ombudsman for investigation and action

- a. On behalf of one or more residents of a long term care

and

- b. Relating to the health, safety, welfare, or rights of a resident.

Consultation - Providing information and assistance to an individual or a facility regarding long-term care facilities and residents. It does not involve investigating and working to resolve complaints (i.e., a consultation is not a case.) Also if the ombudsman refers someone with a concern to another agency and is not actively involved in investigating and working to resolve a problem, it is documented as a consultation.

Department - The North Dakota Department of Human Services

Exploitation - The fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets. (OAA § 102 (18)(A)).

Family Council Activities - A self-led, self-determining group of families and friends of nursing home residents that work to improve the quality of care and quality of life of the facility's residents and provides families a voice in decision-making that affects them and their loved ones.

Good Faith - Evidence of includes but is not limited to:

- A. Making reasonable efforts to follow procedures set forth in applicable laws and this manual

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- B. Seeking and making reasonable efforts to follow direction from the Office of the SLTCO (for volunteers direction could also be given by the local ombudsmen.)

Local Long-Term Care ombudsman - An individual who is certified by the SLTCO to be an advocate for residents of long term care facilities to protect their rights, safety and welfare. The Local Long-Term care ombudsman is an employee of the Department. He/She is also referred to as a representative of the Office.

Long-Term Care Facility - Defined in North Dakota Century Code Chapter 50-10.1, as any skilled nursing facility, basic care facility, nursing home as defined in subsection 3 of the North Dakota Century Code section 43-34-01, assisted living facility or swing bed hospital approved to furnish long-term care services.

Neglect - The failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual; or self-neglect (OAA § 102 (38)).

OmbudsManager - The statewide reporting system used to collect data relating to complaints, consultations, trainings provided, and other activities of the ombudsman program.

This data is used when submitting the National Ombudsman Reporting System (NORS) annual report to the Administration on Aging (AOA). It is due by January 30 each year for the previous federal fiscal year, October 1 through September 30.

Office of State Long-Term Care Ombudsman - The organizational unit in North Dakota which is led by the State Long-Term Care Ombudsman.

Representative of the Office - A local long term care ombudsman or a volunteer long term care ombudsman.

Resident Council - An independent, organized group of people living in a long term care facility that meets on a regular basis to discuss concerns

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and develop suggestions on improving services or resolve differences in their home. The council has the right to privately meet.

Resident Representative -

1. An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
2. A person authorized by State or federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications
3. Legal representative, as used in section 712 of the Older Americans Act;
4. The court appointed guardian or conservator of a resident.
45 CFR §1327.1

State Long-Term Care Ombudsman (SLTCO) - The State Long-Term Care Ombudsman is hired to head the Office of the State Long-Term Care Ombudsman Program on a full time basis to fulfill the duties and responsibilities as set forth in the Older Americans Act.

Volunteer Ombudsman - An individual, 18 years of age and older, certified by the SLTCO to act as a representative of the Office. He/She is not an employee of the Department and is also considered a representative of the Office.

Willful Interference - Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the ombudsman from performing any of his/her duties, functions or responsibilities, 45 CFR §1327.1

**Division Administrative and Management Functions
695-01-15**

(Revised 2/1/16 ML #3462)

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The Department of Human Services, Aging Services Division (aka State Unit on Aging), has established the Office of the State Long Term Care Ombudsman which will develop, administer, and implement the Long Term Care Ombudsman Program in North Dakota.

Program Implementation 695-01-15-01

(Revised 2/1/16 ML #3462)

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The Office of the State Long Term Care Ombudsman is established in the Department of Human Services within the Aging Services Division (aka State Unit on Aging). The State Long Term Care Ombudsman will develop, administer and implement the Long Term Care Ombudsman Program.

General Authority and Mission 695-01-15-05

(Revised 2/1/16 ML #3462)

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The Office of the State Long Term Care Ombudsman Program is authorized by and in accord with the Federal Older Americans Act, 42 U.S. C. Section 3001 et seq. and the North Dakota Century Code 50.1-02.

The Long Term Care Ombudsman Program (LTCOP) protects and improves the quality of care and quality of life for residents of long term care facilities in North Dakota through:

Individual and systemic advocacy for and on behalf of residents, including representing the interests of residents before government agencies, reviewing and commenting on existing and proposed laws, seeking out and responding to media requests, the promotion and cultivation of best practices within long term care services, and through the promotion of family/community and resident involvement in long term care facilities.

The LTCOP is a resident advocacy program. The resident is the client, regardless of the source of the complaint or request for service. The Ombudsman will make every reasonable effort to empower, assist, represent, and advocate on behalf of the resident.

Processing complaints made by or on behalf of residents of long term care facilities and resolving the problems and questions of the residents is the highest priority of the LTCOP. The principles and techniques of empowerment and self-advocacy are to be used whenever possible when addressing resident complaints and problems. The goal is to resolve the issue at the facility level whenever possible. If this can't be accomplished then other agencies may be involved, to include the regulatory agency (Department of Health) as necessary.

Record Maintenance, Retention & Destruction
695-01-15-10

(Revised 2/1/16 ML #3462)

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The Ombudsman program is operated by North Dakota pursuant to grants of the Department of Health and Human Services (HHS) so the Federal requirements related to retention of records maintained pursuant to HHS grants apply. Thus the following must be retained for a period of 3 years from the date the final Financial Status Report is submitted by the state to HHS: financial and programmatic records, supportive documents, statistical records, and all other records that are required by the terms of a grant or may reasonably be considered pertinent to a grant.

Organizational Responsibilities 695-01-20

State Long Term Care Ombudsman (SLTCO) Responsibilities 695-01-20-01

(Revised 2/1/16 ML #3462)

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1. Leadership and management of the Office
2. Monitoring of the representatives of the Office
 - a. Conducting annual performance reviews as per personnel policies of the Department
 - b. Phone check ins
 - c. Two on site visits per year
3. Identification, investigation, and resolution of complaints made by or on behalf of residents of LTC facilities
4. Provision of services to protect the health, safety, welfare and rights of the residents and advocacy for quality of life and quality of care
5. Informing residents how to obtain services provided by other agencies
6. Ensuring that residents have regular and timely access to the services provided through the Office and that residents and complainants receive timely responses about complaints from the representatives of the Office.
7. Representing the interests of residents before governmental agencies and seeking administrative, legal and other remedies to protect the health, safety, welfare and rights of residents
8. Provision of administrative and technical assistance to representatives of the Office
9. Systems advocacy according to the policy 695-01-25-85.
10. Analyzing, commenting on and monitoring the development and implementation of federal, state, and local laws regulations and other governmental policies and actions, pertaining to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state. Facilitating public comment may also be a part of this.
11. Recommending changes in such laws, regulations, policies, and actions as the Office determines to be appropriate.

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12. Providing technical support to resident and family councils as requested to protect the well-being and rights of residents
13. Determining certification or removal of certification of representatives of the Office as per policy 695-01-20-20
14. Establishing training protocol for representatives of the Office.
15. Receiving grievances and investigating allegations of misconduct by representatives of the Office in the performance of ombudsman duties. See policy 695-01-20-25 for further information.
16. Determining the use of fiscal resources appropriated or otherwise available for the operation of the Office.
17. Developing and providing final approval of an annual report.
18. Sending out the annual report as per federal regulation

Confidentiality and Authorized Disclosures 695-01-20-05 (Revised 2/1/16 ML #3462)

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Note: Throughout this manual it is understood that resident informed consent is necessary for investigation of a complaint or disclosure of information. If the resident is determined not able to provide informed consent at the time, informed consent of the resident representative will then be sought. There is policy to be followed if there is no resident representative.

All records relating to residents, complainants and any information identifying them are to be held confidential. The SLTCO shall have the sole authority in making decisions concerning the disclosure of the files, records, and other information (physical, electronic, or other formats) maintained by the Ombudsman program (includes cases and activities of the LTCOP). No disclosure of such information shall be done without the prior approval of the SLTCO or his/her representative. This includes information maintained by local ombudsmen and volunteer ombudsmen. Such files, records and other information are the property of the Office.

Individuals wanting a release of information from the LTCOP should send a written request to the SLTCO. The request should clearly explain the need for the information, how it will be used, and who else will be given access to the information.

Ombudsmen may not disclose whether a complaint has ever been received by or about an individual, the content of a complaint or investigation, or the outcome of a complaint or investigation without the appropriate consent.

Disclosure of the identity of any resident or identifying information is prohibited unless:

1. The resident, or the legal representative of the resident, gives informed consent to the disclosure and the consent is given in writing, orally or

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visually including through the use of auxiliary aids and services. If the release is not in writing the consent is documented contemporaneously in the documentation by the representative of the Office; or

2. The disclosure is required by court order.

The disclosure of the identity of any complainant, or any complainant identifying information, is prohibited unless:

1. The complainant gives informed consent to the disclosure and the consent is given in writing, including through the use of auxiliary aids and services; or
2. The complainant gives informed consent orally or visually, including through the use of auxiliary aids and services and the consent is documented contemporaneously in writing by the representative of the Office; or
3. The disclosure is required by court order.

If a resident is unable to communicate informed consent, the ombudsman may accept communication of informed consent from the resident representative if there is no reasonable cause to believe the resident representative is not acting in the best interests of the resident.

If a resident is unable to communicate informed consent and has no resident representative resident-identifying information may be disclosed and referrals made in the following situations.

1. The ombudsman has reasonable cause to believe there may be an adverse effect to the health, safety, welfare, or rights of the resident;
2. The ombudsman has no evidence indicating the resident would not wish a referral to be made;
3. The ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
4. The representative of the Office obtains the approval of the SLTCO, or the designee of the SLTCO, and otherwise follows the policies and procedures of the Office.

The SLTCO or his/her representative considers whether disclosure of information could have the following effects.

- Retaliation against residents or complainants.

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- Intimidating individuals from contacting the ombudsman program for assistance or from assisting in a complaint investigation
- Damaging working relationships between the LTCOP, facilities, and regulatory agencies
- Destabilizing the mission and service delivery of the LTCOP.

The SLTCO, or the designee of the SLTCO, is required to give approval or disapproval, within 2 working days of the request. In situations in which the SLTCO approves the release of information there may be portions redacted (edited by blacking out) to protect privacy of residents, complainants, or for other purposes.

The individual designee to make the determination if the SLTCO is not available or accessible will be the most senior local ombudsman.

The following information is not considered confidential.

- Facility policies and procedures
- Statistical and aggregate data if no resident or complainant identifying information is included
- E-mails or letters that give clarification on regulations, policy etc. that do not contain resident or complainant identifying information can be maintained in binders and shared as they are not considered confidential documents.

Mail, E-Mail and Use of Technology

Mail addressed to the ombudsman or the LTCOP should be delivered to the ombudsman unopened.

The resident or complainant's name should never be included in the subject line of an e-mail. Any e-mail, even an e-mail responding to an outside e-mail, that has the identifying information a resident or complainant within the message sent outside of the state system shall be sent using secure mail as per the Department's policy (see links below).

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01-10. E-Mailing of Protected Health Information (PHI) or Client Specific Information (Revised 02/14 ML #3395)

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The SLTCO or representatives of the Office will not take any pictures of residents without written consent and shall not share such picture or any resident information through any form of social media.

Safeguarding of Notes and Documentation

The content of all written notes regarding contacts made in the course of the ombudsman's work should be entered into OmbudsManager and the originals should be shredded in such a way to ensure no one else has access to view them. Until such can be done they should be kept in a locked file when not in the possession of the ombudsman.

Any e-mails or written documents concerning a resident, complainant, complaint investigation etc. should be scanned into OmbudsManager and then shredded in such a way to ensure no one else has access to view them.

Response to a subpoena or court order

The local ombudsman shall immediately contact the SLTCO and provide a copy of the legal document. It shall then be referred to the Department's legal division for guidance on the response.

Any disclosure of information will be documented in the resident record. Also a copy of any disclosed records should be kept on file.

Also reference Section 712 of the Older Americans Act and 45 CFR Parts 1321 and 1327 for more information.

Also see the policy on Consent 695-01-25-35 for further direction.

Conflicts of Interest 695-01-20-10

(Revised 2/1/16 ML #3264)

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When hiring/certifying a local ombudsman he/she will have to answer the following questions.

- Do you, or a member of your immediate family, have direct involvement in the licensing or certification of a long term care facility?
- Do you, or a member of your immediate family, have ownership, operational, or investment interest in an existing or proposed long term care facility?
- Are you, or a member of your immediate family, employed by, or participate in the management of a long term care facility in the service area?
- Have you or a member of your immediate family, been employed by or participated in the management of a long-term care facility within the previous twelve months?
- Are you, or a member of your immediate family, employed by the owner or operator of any long term care facility in the service area?
- Do you, or a member of your immediate family, receive, or have the right to receive, remuneration through an arrangement with an owner or operator of a long-term care facility?
- Have you, or a member of your immediate family, accepted gifts or gratuities of significant value from a long term care facility or its management, a resident or a resident representative of a long term care facility in which you would/do provide ombudsman services?
- Do you, or a member of your immediate family, serve as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long term care facility in which you would/do provide ombudsman services?
- Do you have an immediate family member (a member of the household or a relative with whom there is a close personal or significant financial relationship) in a facility for which you would provide ombudsman services?

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If any answers are yes there will have to be discussion regarding the potential conflict of interest with resolution reached prior to any offer of employment and/or certification to act as a representative of the Office.

At the time of the annual performance review each current local long term care ombudsman will be asked the questions above with the addition of the question below.

- Have you accepted money or any other consideration from anyone other than the Department for the performance of an act in the regular course of your duties as an ombudsman?

If there are yes answers to any of the questions there will have to be discussion to resolve the potential conflict of interest so that individual can continue to work/be certified as a local ombudsman.

The STLCO will also have to respond to all of the above questions prior to being hired and then annually thereafter. If the SLTCO answers yes to any of the questions there will have to be discussion with the Aging Services Division Director to resolve the potential conflict of interest so the SLTCO can continue in the position.

To be eligible for hire the SLTCO cannot have been employed or participated in the management of a long term care facility within the previous twelve months.

To be eligible for hire a local long term care ombudsman cannot have been employed or participated in the management of a long term care facility within the previous three months.

Responsibilities of Local Long Term Care ombudsmen 695-01-20-15

(Revised 2/1/16 ML #3462)

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1. Identify, investigate, and resolve complaints made by or on behalf of residents that affect the health, safety, welfare or rights of the residents,
 - a. Attempt to resolve resident concerns at the facility level.
 - b. Work cooperatively with facility staff, encouraging them to take resident concerns seriously.
 - c. Help break down barriers
2. Provide services to protect the health, safety, welfare, and rights of residents and advocate for quality of life and quality of care
3. Plan with residents, families, and facilities in the event of a facility closure or relocation to assure residents rights are honored to the extent possible in the transfer process.
4. Inform residents how to obtain services provided by other agencies
5. Ensure that residents have regular, reliable and timely access to the services provided through the Office and that residents and complainants receive timely responses about complaints
6. Provide recruitment, training and oversight of the volunteer ombudsmen.
7. Partner with local aging networks and coalitions for the benefit of long term care residents.
8. Maintain documentation in OmbudsManager as per this Manual.
9. Represent the interests of residents before governmental agencies and pursue administrative and legal remedies to protect the health, safety, welfare and rights of residents as the Office determines to be appropriate. (See also Systems advocacy policy 695-01-25-85.)
10. Analyze, comment on and monitor the development and implementation of federal, state, and local laws regulations and other governmental policies and actions, pertaining to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state. Facilitation of public comment may be a part of this.

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11. Provide technical support and training to residents, families, and facility staff in the development, formation, and maintenance of family councils and resident councils
12. Give input to survey staff on concerns noted at a facility and contact information for residents and complainants who want to be contacted during the survey to weigh in on the issues. Also participate if at all possible in the exit survey.

Certification of ombudsmen/representatives of the Office 695-01-20-20

(Revised 2/1/16 ML #3462)

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The SLTCO certifies individuals to be given the title and responsibilities of an ombudsman/representative of the Office.

For a **local ombudsman** to be certified an individual must:

- Have no un-remedied or unresolved conflicts of interest as per 695-01-20-10
- Have completed the hiring and screening process required by the Department of Human Services and be eligible for hire
- Have completed at least 40 hours of initial training as set forth by the Office.
- Complete the required training hours annually.

For a **volunteer ombudsman** to be certified an individual must:

- Have no unremedied or unresolved conflicts of interest as per 695-01-20-10
- Have successfully completed the background check process
- Have completed at least 4 hours of initial training as set forth by the Office; upon recertification must have completed the required annual trainings
- Volunteer ombudsmen shall be recertified every two years.

No ombudsman shall independently investigate any complaint unless she or he has been certified by the SLTCO.

Non-issuance or Revocation of certification

An individual may not be issued certification or have his/her certification revoked if there is a determination for the individual of any of the following, but not limited to the following:

- Has failed to pass a criminal background check

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- Has an identified conflict of interest that cannot be adequately removed or remedied (as per 695-01-20-10)
- Has failed to protect the rights of a long term care resident
- Has failed to thoroughly and completely investigate and resolve complaints made by or on behalf of residents of a long term care facility
- Has failed to perform ombudsman duties consistent with the policies and procedures of the ombudsman program, or federal or state law
- Has failed to maintain confidentiality and has not followed the laws, regulations and policies on informed consent and disclosure of information
- Has abused, neglected or exploited any resident of a long term care facility, or any other individual
- Has engaged in conduct that is not in good faith and undermines the Office of the SLTCO

For volunteers only:

- Has failed to report abuse, neglect or exploitation of a long-term care resident to the local ombudsman.

When the SLTCO determines that an individual will not be certified or the certification will be revoked the procedure under Grievances 695-01-20-25 can be used.

Certification is automatically revoked if the individual is no longer an employee of the Aging Services Division in the position of an ombudsman. This is not subject to the Grievance Process.

Grievances 695-01-20-25**(Revised 2/1/16 ML #3462)**[View Archives](#)

Dependent upon the content of the grievance a decision may be made by the SLTCO to suspend the representative of the Office that is named in the grievance until there is full resolution. If the concerns are found to be valid a work improvement plan may be set up.

Grievance about Refusal of Certification or Withdrawal of Certification of an ombudsman/representative of the Office

- Formal written notice that grounds exist to refuse/withdraw an ombudsman's certification will be sent to the individual and the Director of Aging Services Division by the SLTCO within 5 working days of the determination.
- Upon receipt of the notice the individual then has 5 working days from the date of receipt of such findings to respond in writing to the SLTCO regarding the determination and findings.
- The SLTCO shall issue any revised findings within 5 working days of the receipt of the written response. The SLTCO may first consult with the Director of the Aging Services Division.
- If the SLTCO decides not to change the initial findings the refusal/withdrawal of the certification becomes immediately effective upon a second notice. The second notice will be sent within one working day after the final determination.
- If the SLTCO decides to not refuse/withdraw the certification of the ombudsman but implement other remedies or work improvement measures there shall be formal written notice sent to the ombudsman and the Director of the changes decision within 5 working days.
- The final decision to refuse/remove certification of a representative of the Office remains with the SLTCO.

Grievance about Actions of a Local ombudsman

- A grievance regarding the actions of a local ombudsman may be filed in writing with the SLTCO. The grievance statement must list the specific facts related to the grievance, the nature of the grievance, and any

request for resolution. The grievance should be made in writing within thirty (30) calendar days of the action.

- The grievance will be discussed with the local ombudsman named in the grievance within five (5) working days and a written copy of the grievance statement will be given to him/her at that time. He/she will have five (5) working days to provide a written response.
- The SLTCO may discuss the grievance with the Aging Services Division Director if possible without violating confidentiality and disclosure rules.
- The SLTCO will respond to the local ombudsman and the complainant regarding the grievance within 5 working days of receipt of the response from the local ombudsman. The response is final.

Grievance about complaint investigations

- Informed consent must be obtained from the resident or the resident's representative for investigation details to be disclosed to the individual filing the grievance. If such consent is not provided the complainant will be informed that no information can be provided and the grievance process will be ended.
- If consent is obtained the process for a grievance about actions of a local ombudsman will be followed.

Grievance about the actions of the State Ombudsman

- The grievance should be made in writing within 30 days of the action and submitted to the Director of the Aging Services Division. It must list the specific facts related to the grievance, the nature of the grievance, and any request for resolution.
- A copy of the grievance will be discussed with the SLTCO within five (5) working days of its receipt. A written copy of the grievance statement will be given to him/her at that time.
- The policies on consent and disclosure must be followed if this involves a complaint investigation.
- The SLTCO shall provide a written response to the Director of Aging Services without violating the policies of disclosure within 5 working days.
- The Director shall provide a response to the grievance within 5 working days from receipt of the SLTCO response to the SLTCO and the complainant.

Grievance about the actions of a volunteer ombudsman

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- A grievance regarding the actions of a volunteer ombudsman may be filed in writing with the local ombudsman or the SLTCO. The grievance statement must list the facts related to the grievance, the nature of the grievance, and any request for resolution. The grievance must be made in writing within thirty (30) days of the action.
- The local ombudsman will provide a copy of the grievance to the SLTCO within one working day (or the SLTCO to the local ombudsman) and may discuss the grievance with the SLTCO.
- A copy of the grievance will be discussed with the local ombudsman named in the grievance within five (5) working days of initial receipt. A written copy of the grievance statement will be given to him/her at this time. He/she will have five (5) working days to provide a written response.
- The local ombudsman will respond to the grievance in writing within 5 working days of receipt of the response from the volunteer ombudsman.
- If the volunteer ombudsman is not satisfied with the decision of the local ombudsman he or she can appeal the decision to the SLTCO the SLTCO has 5 working days to provide a response to the volunteer ombudsman. The decision of the SLTCO will be final.
- The final decision will be shared with the complainant within 5 working days of the response to the volunteer ombudsman.

Retaliation and Willful Interference Prohibited

695-01-20-30

(Revised 2/1/16 ML #3462)

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NDCC 50-10.1-05 states that a long term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that resident, or on account of the providing of information to a long term care ombudsman constitution or relation to a complaint.

NDCC 50-10.2-02 ensures the right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.

NDCC 50-10.2-04. For enforcement has the following action.

Any facility that violates this chapter may be enjoined by a district court. Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in the name of the state. Actions for injunction under this section must be prosecuted in the county where the case arises.

**Long Term Care Ombudsman Program (LTCOP) Service
Delivery 695-01-25**

Eligible Clients 695-01-25-01

(Revised 2/1/16 ML #3462)

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Any resident of a long term care facility may receive services from the Long Term Care Ombudsman program.

Facility Visits 695-01-25-05

(Revised 2/1/16 ML #3462)

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- A. Quarterly non-complaint related visits
 1. A visit each quarter shall be made to each long term care facility by the assigned local long term care ombudsman.
 2. Visits shall be unannounced and staggered so that facilities have no basis to predict the timing of the visit.
 3. A visit for the purpose of complaint investigation, working with the resident or family council, presenting an in-service for facility staff, participating in an annual survey or other related reason may be combined with a quarterly non-complaint related visit.
 4. The ombudsman shall not interfere with the provision of resident care or the daily facility function when making visits.
 5. The purpose of the visits shall be:
 - a. To observe the condition of the residents and the facility and make recommendations as appropriate.
 - b. Meet new residents and orientate them and any family members about the Ombudsman program. Ombudsman brochures and copies of the Resident Rights handbooks shall also be given out. The ombudsman can also give out their business card.
 - c. Confirm that facilities have information about the ombudsman program posted in an area accessible to residents. Ombudsman posters are available through the Office of the SLTCO.
 - d. Visit with residents, and/or family members, and staff to determine if there are any issues that need to be resolved.
- B. Complaint related visits
 1. Upon responding to a complaint the ombudsman may need to visit the resident at the facility.
 2. See Intake of Complaints 695-01-25-45 for further information.
- C. Increased frequency of visits

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The ombudsman shall visit a facility more frequently than once a quarter when the facility has

1. a history of serious or frequent complaints;
2. a change in ownership or administration
3. imposition of a serious state or federal sanction or plan of correction;
4. an imminent closure;
5. by request of the SLTCO in the interests of protecting residents' rights.

Role in Facility Closure 695-01-25-10
(Revised 2/1/16 ML #3462)

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The ombudsman role during the closure of a long term care facility is to advocate for resident rights and resident directed planning.

Upon notice that a facility is closing the local ombudsman shall:

- support residents during the relocation process
- monitor the facility's planning for the transfer/relocation of residents (see also CFR 483.75(r) for nursing facilities)
- advise residents of their rights during the closure/transfer and insure their rights are protected
- report potential violations of regulatory requirements to the licensing authority (observe all consent and disclosure laws, rules etc.)
- assist residents and their families in locating information about transfer options and educate on how to choose a facility to best meet the residents needs

Access to Facilities and Residents 695-01-25-15
(Revised 2/1/16 ML #3264)

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As stated in NDCC 50-10.1 the ombudsman shall have access to all long term care facilities within the state for regular visits and also to investigate complaints.

Also stated in NDCC 50-10.1 the ombudsman shall also be able to visit with a resident in a private space.

The ombudsman shall:

1. Knock before entering a resident's room, identify self as the ombudsman, and receive resident's permission to enter the room.
2. End a conversation with a resident at the resident's request.
3. Follow all infection control measures required to visit with a resident.
4. If visiting with a resident in a public area ask the resident about moving to a private area or attempt to have a discussion not within audible range of other persons.

Access to Records 695-01-25-20

(Revised 2/1/16 ML #3462)

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The ombudsman shall have access to all social and medical records of a resident if:

- a. The representative of the Office has the informed consent of the resident or the resident representative.
- b. Access to the records is necessary to investigate a complaint and the resident is unable to consent to the review and has no resident representative and the SLTCO approves access.
- c. The resident representative refuses to give consent and the representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interest of the resident AND the SLTCO approves access.

Informed consent can be communicated in writing, through the use of auxiliary aids and services, orally, and visually. Informed consent must be documented in the resident's file by the ombudsman. Documentation must show the reasonable cause and the SLTCO approval if needed.

Consultation 695-01-25-25

(Revised 2/1/16 ML#3462)

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The LTCOP is a resource for information about long-term care services and resident rights. Representatives of the Office may provide the following information to community members, family members, or facility staff. (Information is not limited to the following.)

- Explanation of the ombudsman advocacy role
- Information and direction on choosing a long term care facility and an explanation of the levels of care
- Factual information such as laws, regulations, and survey information etc. about long term care facilities.
- Promotion and clarification of resident rights, individual choice and resident directed care.
- Referral information on other services and agencies.

If a consultation evolves into a complaint a case is also opened.

Community Education 695-01-25-30
(Revised 2/1/16 ML #3462)

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The SLTCO and the local ombudsman are available to provide information and education regarding the long-term care system, aging issues, the rights and benefits of residents of long-term care facilities, and services available to residents.

Public education activities include public speaking engagements, conducting workshops, promoting the development of community organizations to participate in the Ombudsman Program, developing and distributing written materials, and promoting media coverage of long-term care issues.

Consent and Resident Directedness 695-01-25-35

(Revised 2/1/16 ML #3462)

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- A. Regardless the source of the complaint the ombudsman advocates on behalf of the resident of the long term care facility. All complainants shall be informed of this.
- B. The purpose of a complaint investigation is to resolve the issue to the satisfaction of the resident and to protect his/her health, welfare and rights. The goal is not to substantiate if abuse or other allegations occurred.
- C. Investigation by the ombudsman of a complaint shall proceed only with the expressed and informed consent of the resident or the resident's representative.
- D. For all complaint investigations the ombudsman shall
 - a. Determine the resident's perception of the complaint or issue
 - b. Determine the resident's wishes regarding the resolution of the complaint
 - c. Advise the resident of his or her rights
 - d. With the resident's consent promote self-advocacy or a plan of investigation leading to a resolution consistent with the resident's wishes.
- E. If at any time during the complaint investigation and resolution process the resident indicates that he or she does not want the ombudsman to take further action on the complaint the ombudsman shall:
 - a. Attempt to determine the reason the resident is refusing or withdrawing consent including the following.
 - i. Past responses of the facility to complaints
 - ii. The residents relationship with the staff and presence of support systems/placement options
 - iii. The experience of the resident with the facility; or fear of retaliation by facility staff.
 - b. Discontinue investigation and resolution activities on the complaint
 - c. Inform the resident that he or she may contact the ombudsman in the future regarding the withdrawn complaint or a different complaint.
 - d. Provide contact information for the LTCOP to the resident.

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- e. If the complaint is systemic/recurring the Ombudsman shall determine whether to use other strategies that would not involve or disclose the identity of the resident who has withdrawn consent. (e.g. filing a complaint as the complainant, presenting the issue to the resident or family council)
 - i. If this option is pursued the resident should be informed of the action to be taken.
- F. For abuse and neglect complaints in which the resident refuses to give, or withdraws, consent, the Ombudsman shall use the following advocacy strategies.
 - a. Inform the resident of the process of an abuse or neglect investigation – what agencies could be involved, etc.
 - b. Discuss the reasons the resident does not want to pursue the allegations of abuse and/or report them.
 - c. Ask resident if the information has been shared with anyone else or if there is a person he/she trusts to share it with. Ask for consent to talk to that person.
 - d. Explain resident rights and the ombudsman role to support the resident.
 - e. Review the potential risks of disclosure as well as the risks for not pursuing the allegations of abuse for the resident and potentially other residents
 - f. Offer to investigate the complaint without disclosure of identifying information if possible (e.g. reporting the times and dates the incidents occurred without disclosing a name and identifying information.)
 - g. Have contact with the resident as often as possible and offer referrals to supportive services (e.g. counseling) and encourage permission to report.
 - h. Seek out other residents who may have the same issue who are willing to give consent and work towards resolution.
 - i. Investigate to gather information. If possible share that information with the facility administrator without giving resident identifying information. Remind the administrator of the facility's responsibility to investigate and report allegations of abuse. Refer the administrator to the regulatory agency for further guidance.
 - j. If complainant is other than the resident, educate them of the role of the LTCOP, the need for resident consent, and refer them to the appropriate investigative entity.

Resident Unable to Provide Consent 695-01-25-40

(Revised 2/1/16 ML #3462)

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1. The LTCOP shall advocate for a resident's wishes to the extent the resident can express them, even if the resident has limited decision – making capacity.
2. When a resident is determined unable to provide informed consent to the ombudsman the ombudsman shall:
 - a. Determine the name and contact information for the resident from the resident's record. Permission from the SLTCO is needed.
 - b. Consult with the resident's representative - unless the representative is implicated in the complaint or is seen to be not acting in the best interests of the resident.
3. If resident determined unable to provide informed consent and there is no resident representative designated the ombudsman shall:
 - a. Seek information from family, friends, and other sources that indicate what the resident would have likely desired and work from that premise.
 - b. Be guided on the principal of 'reasonable – best interest' and that the resident would likely have wanted his or her health, safety, welfare and rights protected.
 - c. Staff with the SLTCO for final approval before proceeding.
 - d. If determined the resident will not be able to be their own decision maker long term the ombudsman must advocate for the facility to take action for a resident representative to be assigned.

Intake of Complaints 695-01-25-45

(Revised 2/1/16 ML #3462)

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- A. Complaints may be reported by:
1. Residents, family members of residents, friends of residents, long term care facility staff and any other person in the community
 2. An anonymous reporter. An anonymous complainant could limit the ability of the LCTOP to investigate and resolve the complaint.
 3. An ombudsman when he/she has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents. All confidentiality and disclosure laws, regulations and policies must be followed.
- B. Complaint involving a deceased resident

When a complaint is received regarding a deceased resident the ombudsman shall:

1. Determine if the issues are systemic. If so then a case can be opened. If not the complainant will be told there is no resident for which an issue can be resolved.
2. Refer the complainant to the ND Department of Health as appropriate.
3. Suggest to the complainant other referral options including police, private attorneys, coroner, etc. as relevant.

C. Complaint Intake

Upon receipt of a complaint the ombudsman shall:

1. Collect relevant details from the complainant;
2. Explain that the ombudsman contacts the resident to determine his/her wishes and as resident advocate will act in accordance with the direction given by the resident
3. Discuss all actions/attempts that have been made to resolve the complaint and their outcomes;
4. Determine if the complaint is appropriate for the Ombudsman program;

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5. Determine the desired outcome both from the complainant and the resident if one is named. The resident's desired outcome will take precedence.
6. Discuss alternatives for resolution and resources available to resolve the complaint;
7. Encourage the complainant to personally take the appropriate action (self-advocacy). Educate on the action steps of advocacy. A recommendation that the individual take the concern to the resident council or the family council is a step to encourage self-advocacy.
8. Offer assistance of the local ombudsman if requested and individual doesn't believe they can self-advocate.
9. Explain the relevant confidentiality and consent/disclosure provisions of the ombudsman program

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Timeliness of Complaint Responses 695-01-25-50 (Revised 2/1/16 ML#3462)

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If a complaint involves	THEN timing of initial LTCO response is
Abuse, gross neglect and the LTCO has reason to believe that a resident may be at imminent risk or in a life-threatening situation Actual or threatened involuntary transfer or discharge of a resident from a facility Use of restraints	As soon as possible but no later than the next working day from the receipt of the complaint
Abuse or gross neglect and the LTCO has no reason to believe that a resident is in immediate risk Resident care and resident rights	Within 3 working days from the receipt of the complaint
All other categories of complaints to include: Complaints related to the facility (e.g. environmental problems) unless they have potential for imminent threat to the health or safety of a resident Complaints relating to payment, benefits etc.	Within 7 working days or less from the receipt of the complaint Determine severity, if systematic etc.

The LTCOP is not an emergency response system. 911 or other emergency response systems should be contacted if the situation is considered an emergency or life threatening.

Investigation of Complaints 695-01-25-55

(Revised 2/1/16 ML#3462)

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- A. To investigate a complaint the ombudsman shall use one or more of the following steps as appropriate and with the informed consent of the resident.
 - 1. Interview the resident and/or complainant to gain more information if needed
 - 2. Personally observe the situation
 - 3. Interview any staff, administration, physician, other residents, family members etc. that may have relevant knowledge
 - 4. Research relevant laws, rules, regulations, and policies
 - 5. Examine any relevant records while following access and confidentiality policies and procedures
- B. An investigation shall include, at a minimum, the following activities.
 - 1. Direct contact and interview with the resident and/or the resident representative. This may be a face to face contact, telephone call, e-mail, or letter.
 - 2. Direct contact and interview with the complainant. This may be a face to face contact, telephone call, e-mail, or letter.
- C. Abuse/Neglect Complaints

If a complaint or an investigation indicates alleged abuse or neglect of a resident the ombudsman shall:

- 1. Explain to the resident the ombudsman role as an advocate and the role of other investigative agencies.
- 2. Advise the complainant, the resident who is the alleged victim of the abuse, or the resident representative, to report the matter to the facility, the Department of Health, the licensing authority, Adult Protective Services, and/or law enforcement as appropriate.
- 3. Assist any individual who wants to report abuse or neglect.
- 4. Request consent from the resident, or resident representative, to report suspected abuse or neglect to the facility, the Department of Health, the licensing authority, Adult Protective Services, and/or law enforcement if the resident does not want to make the report themselves.

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5. Inform the complainant if they are a mandated reporter through NDCC 50-25.2.
6. Determine what the resident wants and obtain informed consent; determine if resident has fear of retaliation or is in need of assistance and/or protection.
7. Serve as advocate for the resident with service providers if resident requests.
8. Link resident with available protections and service providers.
9. Remain available for consultation with the resident, resident representative, decision maker, and any of the involved entities. Follow all rules of confidentiality, informed consent, and disclosure.

Verification of Complaints 695-01-25-60
(Revised 2/1/16 ML #3462)

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The investigation of a complaint looks at the general accuracy of each complaint based on evidence/information obtained during the investigation.

A complaint is 'verified' when an ombudsman determines, after interview, record inspection, observation, etc. that the circumstances described in the complaint are generally accurate.

Resolution of Complaints 695-01-25-65 **(Revised 2/1/16 ML #3462)**

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The resident shall be told of the actions taken during the investigation and the information gathered. The ombudsman shall discuss with the resident and/or resident's representative the administrative, legal, and other remedies available to resolve the complaint. The ombudsman shall work with the resident and/or resident representative to develop a plan of action to resolve the complaint. The plan of action shall be mutually agreed upon by the resident and the ombudsman. The resident and/or resident's representative to the fullest extent possible shall be involved and empowered in self-advocacy to participate in the resolution of the complaint.

Attempts should be to resolve the dispute directly with the appropriate staff of the facility or the other party that is the source or cause of the complaint. The ombudsman should always work first to bring problems to the attention of the appropriate facility staff so that they can solve them before they rise to a level where a regulator must get involved.

The findings of the investigation may lead the ombudsman to explain there is not a need for a change or advocacy to resolve the complaint.

The ombudsman may need to negotiate with the resident and then on behalf of the resident to develop an agreement or course of action that resolves the complaint.

The resolution status of each complaint shall be documented in OmbudsManager according to the options available.

The resolution process may include a 30 day follow up of the situation with the complainant and/or resident to determine whether:

- a. there has been follow through with the course of action for resolution,
- b. the causes giving rise to the complaint have reoccurred, and/or;
- c. the situation needs further work for long term resolution.

Notification of Case Closure 695-01-25-70

(Revised 2/1/16 ML #3462)

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The resolution action, the outcome and the subsequent closure of the case should be discussed with the resident and/or resident representative. With the informed consent of the resident/resident representative a referring agency or the complainant can be also be told of the actions taken during the investigative and resolution process and the outcome.

A case involving one or more complaints may be closed in the following circumstances.

1. When all of the complaints listed for the case have been resolved.
2. When the resident or complainant asks that no further activity be taken.

Every attempt should be made to complete work and documentation to close a case within 30 days from the date on which the complaint was received.

Referrals 695-01-25-75
(Revised 2/1/16 ML #3462)

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A plan for resolution may involve a referral to another entity if the initial advocacy efforts are unsuccessful.

- A. The ombudsman shall provide information upon request about agencies available to assist with a concern or issue to any resident, resident representative, family member, complainant, or long term care facility staff.
- B. The ombudsman shall refer a complaint or problem to another agency when the resident believes the referral will be of benefit and gives informed consent for the referral.
- C. Referrals to regulatory agencies

If the complaint involves a possible violation of a regulatory issue and cannot be resolved through advocacy or involves serious threats to the health, safety, welfare and rights of a resident the ombudsman shall refer residents or complainants to directly contact the appropriate regulatory agency to file a complaint and provide the contact information and/or share the complaint information with the surveyors at the time of the annual survey.

With consent from the resident the ombudsman can make the referral to the regulatory agency if the resident or complainant requests.

If an issue is widespread in a facility and attempts to resolve the issue with the facility have been unsuccessful the ombudsman should warn the facility of the intent to make a complaint referral to the regulatory authority. There should then be follow through on the part of the ombudsman to make the referral.

- D. Referrals to Corporate Headquarters or Facility Owners

If advocacy attempts to resolve a concern with the facility have been unsuccessful the ombudsman can refer residents or complainants to directly contact the facility's corporate leadership or the facility's owner/s.

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With consent from the resident the ombudsman can make the referral to the corporate leadership or the facility's owner/s.

E. Follow Up

The ombudsman shall follow up with the resident to determine if the referral was successful in resolving the issue and if the resident was satisfied with the response of the referral agency. It should be assessed if additional referrals are needed to resolve the concern.

If a complaint has been referred to another investigative agency, other than licensing or an attorney, with permission of the resident the ombudsman will follow up with the entity at least once every thirty days to determine resolution.

Joint Investigations 695-01-25-80

(Revised 2/1/16 ML #3462)

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A joint investigation may be conducted by a local ombudsman with staff from another agency when both agencies have an interest in an issue or events involving a resident of a long term care facility. It shall be conducted according to the terms of an active Memorandum of Agreement between the agencies. If a Memorandum does not exist or cover this issue the agencies shall agree on conduct and responsibilities of each before the investigation begins.

All rules of confidentiality, consent and disclosure apply.

A joint investigation may be needed in the following situations. (but not limited to)

1. Cases of immediate jeopardy to resident health & safety
2. Cases of severe injury
3. Where a pattern indicates systemic neglect may exist
4. Where there are repeated unsubstantiated complaints

Following the completion of a joint investigation the ombudsman shall make a written report to the other agency with five working days insuring that all rules of confidentiality, consent and disclosure are applied. A written report from the other agency shall also be requested.

Systems Advocacy 695-01-25-85

(Revised 2/1/16 ML #3462)

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The SLTCO and the representatives of the Office are required by the Older Americans Act to analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that connect to long term care facilities and services and to the health, safety, welfare and rights of residents.

The SLTCO and the representatives of the Office shall also recommend any changes in such law, regulations, and policies as the Office determines to be appropriate. The SLTCO and the ombudsmen will also facilitate public comment on the laws, regulations, policies and actions.

The SLTCO and the representatives of the Office will provide information to public and private agencies, legislators, the media and other persons regarding LTC residents' problems and concerns and recommendations related to them.

The SLTCO will provide leadership to statewide advocacy efforts of the Office on behalf of long term care residents. All representatives of the Office must first discuss and receive written notice of approval from the SLTCO regarding their systems advocacy efforts. The SLTCO will notify the director of the Aging Services Division of any systems advocacy.

**Ombudsman Participation in Administrative Proceedings
695-01-25-90****(Revised 2/1/16 ML #3462)**[View Archives](#)

A resident of a nursing facility may appeal a discharge/transfer notice which may result in an administrative hearing. This is facilitated by an Administrative Law Judge (ALJ) who after the hearing will make a ruling.

With the notice of the administrative hearing the resident is given information about obtaining legal counsel. The ombudsman can assist the resident in making the necessary contacts to retain the legal counsel. The ombudsman never serves in a lawyer/client relationship but is an advocate assisting the resident to effectively prepare for and present his/her position on the issues mentioned in the discharge/transfer notice.

The Ombudsman can also:

- a. Assist the resident in processing the points the resident wants to make at the hearing and his/her preferred outcome.
- b. Review the process and possible outcomes and consequences with the resident.
- c. Obtain the resident's written consent for disclosure of information with the legal counsel.
- d. Encourage and assist resident to present own position.
- e. Follow direction from the ALJ and the resident's attorney if allowed to present information during the hearing.

The local ombudsman, or SLTCO, may appear with a resident at the administrative hearing at the request of the resident for support.

After the hearing the local ombudsman, or SLTCO, shall review the decision of the ALJ with the resident and attempt to explain the reasoning to the resident.

Legal Consultation 695-01-25-95

(Revised 2/1/16 ML #3462)

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The Department's Legal Advisory Unit is available for consultation and representation as needed on issues relevant to advocacy for long term residents. This involves:

- a. protecting the health, safety, welfare, and rights of residents of long term care facilities.
- b. assisting the SLTCO and representatives of the Office in the performance of their responsibilities and duties.
- c. arranging for legal representation of the SLTCO or the representatives of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties.

The Legal Advisory unit will need to state if there is a conflict of interest in a consult or representation (as defined by the State ethical standards governing the legal profession).

The communications between the SLTCO and legal counsel are subject to attorney-client privilege.

The SLTCO will utilize other resident advocate legal counsel resources as needed in the resolution of resident advocacy efforts.

The SLTCO and the representatives of the Office will assist residents in seeking available legal counsel in locating sources of legal assistance to include private attorneys as needed.

The legal services developer of the Aging Services Division manages a contract with Legal Services of North Dakota for the provision of services. This contract identifies that staff attorneys will assist with the following areas – abuse, defense of guardianship, health care, housing, long term care, and neglect. The category of long term care includes:

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- a. LTC facilities transfer and discharge casework including payment issues
- b. Selected nursing home bill of rights issues primarily related to admissions, discharges, and least restricted alternatives for clients who want to leave a facility.

The ombudsman never serves in a lawyer/client relationship or gives legal advice but is an advocate for the resident.

Reporting and Documentation 695-01-30

OmbudsManager Documentation 695-01-30-01

(Revised 2/1/16 ML #3462)

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Complaint

- A. Every complaint received and all steps taken to investigate, verify, and resolve the complaint shall be documented in OmbudsManager.
- B. Consent forms, notices of involuntary transfer or discharge, relevant e-mails, and any other written documents obtained by the ombudsman while doing an investigation shall be scanned and attached electronically to the case file. The original should then be shredded.
- C. Include entries about intake, facts, actions, and follow up.
- D. Objective language should be used:
 1. Describe behavior, rather than label.
 2. Describe observations, rather than draw conclusions.

Consultations, Information to Individuals

1. Information shall be documented as needed for reporting to the federal authority.

All other activities reportable through NORS will be documented using OmbudsManager.

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Volunteer Ombudsman Tracking 695-01-30-05

(Revised 2/1/16 ML #3462)

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Hours of direct service of the volunteer ombudsman shall be tracked by the local ombudsman and reported quarterly to the ombudsman volunteer coordinator.

Volunteer Long Term Care Ombudsman 695-01-35

Qualifications 695-01-35-01

(Revised 2/1/16 ML #3462)

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Volunteer long term care ombudsmen (volunteers) shall work under the supervision of the local ombudsmen for their geographical zone. They are considered representatives of the Office. They are not employees of the Department and as such are not paid.

Qualifications:

1. Have an interest in being an advocate for residents of long term care facilities (e.g. understand the issues of residents in long term care facilities and be ready to speak on their behalf)
2. Be free of conflicts of interest that can't be resolved or remedied (see section 695-01-20-10)
3. Possess good interpersonal, verbal, writing and reading skills
4. Agree to a criminal background check, reference checks, and other applicable screening
5. Attend and participate in required training opportunities
6. Be at least 18 years of age
7. Agree to comply with all federal and state laws and regulations to include all policies and procedures of the LTCOP.

An individual interested in becoming a volunteer ombudsman shall complete a Volunteer LTC Ombudsman Program Application.

**Volunteer LTC Ombudsman Responsibilities 695-01-35-05
(Revised 2/1/16 ML #3462)**

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Category I Volunteer ombudsmen shall:

- A. Visit residents of long term care facilities on a regular basis (at least monthly) to:
1. Build relationships with residents
 2. Provide a basic orientation on the ombudsman program to all new residents
 3. Provide information and assistance to residents
 4. Observe the condition of the residents and facility during visits
 5. Know the facility's staff, practices and services provided.
 6. Encourage self-advocacy of the residents
 7. Encourage positive interaction among residents, and residents and staff
 8. Submit monthly documentation (activity log) by the 10th of the following month. The documentation should include:
 - a. Dates of visits, listing of information and orientation provided to residents, and observations,
 - b. The amount of time expended in Ombudsman activities at the facility,
 - c. If any resident names or identifying information is included in the activity log it must be sent to the local ombudsman by mail in an envelope marked "Confidential – to be opened only by ombudsman" or through a secure network.
 9. Attend the mandatory training to include initial and annual.
 10. Maintain confidentiality in all Ombudsman activities and follow all laws, regulations and policies relating to resident consent and disclosure of information.
 11. Receive and report concerns, issues, and complaints to the Regional Local Ombudsman for investigation and resolution within one working day of receipt.

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12. Notify the Local ombudsman of any extended leave of absence from the role of volunteer ombudsman.
13. Notify the Local ombudsman of decision to resign with at least 14 days notice, and return all Ombudsman materials and any notes regarding the facility and its residents.
14. Perform his or her responsibilities in accordance with applicable federal and state laws, rules and regulations, and this Manual.

The Category II volunteer ombudsman shall do all of the above plus the following.

15. Receive, investigate and resolve complaints (any complaint involving medical issues, legal issues, financial, discharge/transfer, abuse, neglect, or exploitation should be referred to the local ombudsman for investigation and resolution).
16. Support resident and family council activities and attend the councils upon invitation from the council members.
17. Assist to the extent determined appropriate by the SLTCO with issue advocacy activities and public information and education

Volunteer ombudsman shall not:

1. Be appointed in any protective service or fiduciary capacity for a long-term care resident in their assigned facility,
2. Investigate complaints or provide advice to residents or staff regarding medical issues, legal issues, financial, discharge/transfer, abuse, neglect, or exploitation.
3. Access to resident's information on file. If access is needed the local ombudsman should be notified.
4. Establish relationships with residents or staff that will interfere with the advocacy role
5. Serve as a facility volunteer or organize, lead, or take an active role in facility activities. Volunteers may attend activities to observe and visit with residents.
6. Receive payment or accept gifts (including meals) from families, residents, or facility staff
7. Provide any direct hands on personal care, activity, transportation, or treatment for resident.

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8. Conduct personal business for residents; such as writing checks, purchasing gifts or clothing.

Recruitment, Selection, and Training of Volunteer LTC ombudsman 695-01-35-10

(Revised 2/1/16 ML #3462)

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The Volunteer Program Coordinator shall:

1. Establish a recruitment plan and delegate responsibilities to local ombudsmen as needed.
2. Establish a training plan and materials for state wide consistency.
 - i. Local ombudsman will train new volunteers in their geographical zones. The initial training must be at least 4 (four) hours.
 - ii. Local ombudsmen will coordinate annual training within their geographical zones. There must be a minimum of 4 hours of mandatory training that is relevant to the ombudsman duties. Required training hours shall be pro-rated to reflect the portion of the year a new ombudsman has participated in the program.

Prior to Initial Training the local ombudsman will complete the required background checks on the volunteer. If there are any misdemeanors, felonies, or red flags they shall be reviewed with the SLTCO and the potential volunteer prior to completing training.

At time of Initial Training and Annually thereafter each volunteer ombudsman must:

1. Sign a Volunteer Long Term Care ombudsman Position Description form indicating understanding and agreement.
2. Sign a Confidentiality Statement of Understanding form indicating an understanding and agreement to follow the policies
3. Sign a Conflict of Interest Statement form to identify if there are any conflicts that need to be remedied and or resolved.

When the volunteer has completed Initial Training the Local Ombudsman will:

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1. Notify the SLTCO of the volunteer's completion of initial training and status regarding conflict of interest (see 695-01-20-10) and request certification (see 695-01-20-20.) indicating which category the volunteer wants.

Upon notice from the SLTCO that the volunteer will be certified the local ombudsman will:

- a. Match each volunteer with a facility and notify each facility of the assignment.
- b. Open a file for each volunteer ombudsman containing the following information and give the volunteer a copy of each document:
 - The signed Volunteer ombudsman Application Form
 - A signed Volunteer Long Term Care ombudsman Position Description;
 - A signed-Confidentiality Statement of Understanding form; and
 - A signed Conflict of Interest Statement
 - Community Ombudsman Certificate.
 - Letter of Notification to the facility
- c. Notify the volunteer coordinator of the new volunteer and ask he/she be added to the listing for WSI as well as the master volunteer listing.

Annual Evaluation 695-01-35-15

(Revised 2/1/16 ML #3462)

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The Local ombudsman shall conduct an annual evaluation of each volunteer ombudsman in the month he/she was originally certified. The evaluation which shall include:

1. The volunteer ombudsman reviewing and initialing the Confidentiality Statement of Understanding form.;
2. The volunteer ombudsman reviewing, updating as needed, and initialing the Conflict of Interest Statement form.
3. The volunteer ombudsman reviewing and initialing the Volunteer Long Term Care ombudsman Position Description;
4. The local ombudsman verifying that training requirements have been met.
5. Discussing the areas on the annual evaluation form and using input from the volunteer ombudsman to complete the volunteer ombudsman Annual Evaluation Form; and
6. Placing the forms in the volunteer's file and giving a copy to the volunteer ombudsman.
7. Forwarding all relevant information to the SLTCO if volunteer due for renewal of certification.

Leave of Absence 695-01-35-20

(Revised 2/1/16 ML #3462)

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In some circumstances the volunteer ombudsman may choose to take leave of absence (two months or longer) from the responsibilities and role of volunteer being an ombudsman.

In such circumstances:

1. The volunteer ombudsman shall:
 - a. Notify the local ombudsman of the plan for a leave of absence with an indication of the time frame and return date.
2. The local ombudsman shall:
 - a. Notify the volunteer ombudsman coordinator and the SLTCO of the leave of absence and time frame;
 - b. Send a written notice to the volunteer ombudsman indicating the change in status to a leave of absence;
 - c. Send a letter to the facility to which the volunteer ombudsman is assigned, informing them of the leave of absence; and
 - d. Place a copy of the notice to the volunteer ombudsman and the facility in the volunteer ombudsman's file

Return from Leave of Absence

When notice is received from the volunteer ombudsman that he/she can return to his or her volunteer role, the local ombudsman shall:

1. Have the volunteer ombudsman review and initial the Volunteer Long Term Care ombudsman Position Description;
2. Have the volunteer ombudsman review and initial the Confidentiality Statement of Understanding form;
3. Have the volunteer ombudsman review, update and initial the Conflict of Interest Statement form;
4. Complete any missed training hours.
5. Send a letter to the volunteer ombudsman informing him or her that he or she has been reactivated.

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6. Send a letter to the facility to which the volunteer ombudsman is assigned informing them of the reinstatement activation of the volunteer ombudsman; and
7. Send a notice to the volunteer ombudsman coordinator and the SLTCO about the reactivation of the volunteer
8. File all applicable correspondence and initialed forms in the volunteer ombudsman's file.

If the leave of absence extends for one year or longer the volunteer ombudsman will be de-certified and if he/she wants to be reinstated will need to complete the initial training again.

Suspension 695-01-35-25

(Revised 2/1/16 ML #3462)

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If the SLTCO in consultation with the local ombudsman determines that there are sufficient concerns regarding the performance of a volunteer ombudsman a suspension may be used to allow time to fully investigate the concerns.

The SLTCO shall:

1. Notify in writing the volunteer ombudsman of the suspension, the reason for the suspension;
2. Notify in writing the facility to which the volunteer ombudsman was assigned about the suspension and asking that all notices identifying the volunteer as an ombudsman be removed as well as notification to all staff and residents that the volunteer is currently suspended as a representative of the ombudsman program.
3. The local ombudsman shall file copies of the written notices in the volunteer ombudsman's file.
4. After completion of the investigation (to follow the grievance procedure) the volunteer will either be reinstated as a representative of the Office, retained on suspension pending completion of disciplinary action, or dismissed.

Resignation 695-01-35-30

(Revised 2/1/16 ML #3462)

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The volunteer ombudsman shall:

1. Notify the local ombudsman of the intent to resign and the effective date of the resignation. It is asked that two weeks' notice is given.
2. Return to the local ombudsman all Ombudsman Program materials to include the training manual, certification letter, and the ombudsman name badge, and any notes regarding the facility or the residents.

The local ombudsman shall:

1. Send written acknowledgment of the resignation to the volunteer ombudsman,
2. Make arrangements for return of the Ombudsman Program materials to include the training manual, certification letter, and the name badge, etc.
3. Send written notice to the facility(ies) to which the volunteer ombudsman was assigned informing them of the resignation and requesting the facility remove any posted documentation or notices that the person is a volunteer ombudsman.
4. Send notification to the volunteer ombudsman program coordinator and the SLTCO.
5. The SLTCO shall send written notice that the volunteer is no longer certified to act as a representative of the Office and send copies to the volunteer, the local ombudsman, and the facility.
6. File a copy of all notices and correspondence relating to the resignation in the volunteer ombudsman's file.

**Dismissal, Revocation of Certification 695-01-35-35
(Revised 2/1/16 ML #3462)**

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See Certification of ombudsman/representatives of the Office
[695-01-20-15](#)

If a volunteer has their certification revoked he/she is automatically dismissed as a volunteer.

The SLTCO in consultation with the local ombudsman may determine the volunteer ombudsman has demonstrated behavior that meets the criteria for dismissal. The SLTCO shall then:

1. Notify in writing the volunteer ombudsman of the dismissal, the reason for the dismissal and notice of revocation of certification;
2. Notify the volunteer ombudsman in writing of the expectation that all ombudsman materials will be returned direct to the local ombudsman including any remaining notes referencing residents, complainants, complaints, or the facility;
3. Notify in writing the facility to which the volunteer ombudsman was assigned about the dismissal and revocation of certification and asking that all notices identifying the volunteer as an ombudsman be removed as well as notification to all staff and residents that the volunteer is no longer a representative of the ombudsman program;
4. Provide copies all written notices to the local ombudsman to file in the volunteer ombudsman's file.

Reimbursement of Expenses 695-01-35-40

(Revised 2/1/16 ML #3462)

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Volunteer ombudsman will be reimbursed, within resources available, for approved expenses incurred in their function as a Volunteer ombudsman.

Reimbursement will be made according to established state rates.

Ombudsman Complaint Categories 695-01-55

(Revised 4/1/07 ML #3075)

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OMBUDSMAN COMPLAINT CATEGORIES

NOTE: A through M are for complaints against managers or staff of nursing facilities, basic care homes, or similar facilities covered by the Ombudsman Program. N through Q are for complaints made against, or problems with, other individuals or outside agencies.

RESIDENT RIGHTS

A. Abuse, Gross Neglect/Exploitation

1. Abuse, physical
2. Abuse, sexual
3. Abuse, verbal/mental (including involuntary seclusion)
4. Financial exploitation (use E for less severe forms of financial complaints)
5. Gross neglect (use categories under Resident Care for less severe forms of neglect)
6. Resident-to resident physical or sexual abuse

B. Access to Information

7. Access to own records
8. Access to ombudsman/visitors
9. Access to facility survey
10. Information regarding advance directive
11. Information regarding medical condition, treatment, and any changes
12. Information regarding rights/benefits/services
13. Information communicated in understandable language

C. Admission, Transfer, Discharge, Eviction

14. Admission contract and/or procedure

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15. Appeal process: absent, not followed
16. Bed hold: written notice, refusal to readmit
17. Discharge/eviction: planning, notice, procedure
18. Discrimination in admission due to condition, disability
19. Discrimination in admission due to Medicaid status
20. Room assignment/room change/intrafacility transfer

D. Autonomy, Choice, Exercise of Rights, Privacy

21. Choose personal physician/pharmacy
22. Confinement in facility against will (illegally)
23. Dignity, respect, staff attitudes
24. Exercise choice and/or civil rights (includes right to smoke)
25. Exercise right to refuse care/treatment
26. Language barrier in daily routine
27. Participate in care planning by resident and/or designated surrogate
28. Privacy: telephone, visitors, couples, mail
29. Privacy in treatment, confidentiality
30. Response to complaints
31. Reprisal, retaliation

E. Financial, Property (Except for Financial Exploitation)

32. Billing/charges: notice, approval, questionable, accounting wrong or denied (includes overcharge of private pay residents)
33. Personal funds: mismanaged, access denied, deposits and other money not returned (report criminal level misuse of personal funds under #4)
34. Personal property lost, stolen, used by others, destroyed

RESIDENT CARE

F. Care

35. Accidents, improper handling
36. Call lights, requests for assistance
37. Care plan/resident assessment: inadequate, failure to follow plan or physician orders (report lack of resident/surrogate involvement under #30)
38. Contracture

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39. Medications: administration, organization
40. Personal hygiene (includes oral hygiene)
41. Physician services
42. Pressure sores
43. Symptoms unattended, no notice to others of change in condition
44. Toileting
45. Tubes: neglect of catheter, NG tube (use #28 for inappropriate/forced use)
46. Wandering, failure to accommodate/,monitor

G. Rehabilitation or Maintenance of Function

47. Assistive devices or equipment
48. Bowel and bladder training
49. Dental services
50. Mental health, psychosocial services
51. Range of motion/ambulation
52. Therapies: physical, occupational, speech
53. Vision and hearing

H. Restraints: Chemical and Physical

54. Physical restraint: assessment, use, monitoring
55. Psychoactive drugs: assessment, use, evaluation

QUALITY OF LIFE

I. Activities and Social Services

56. Choice and appropriateness
57. Community interaction, transportation
58. Roommate conflict
59. Social services: availability/appropriateness (use #56 for mental health, psychosocial counseling/service)

J. Dietary

60. Assistance in eating or assistive devices
61. Fluid availability/hydration
62. Menu: quantity, quality, variation, choice
63. Snacks, time span between meals

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- 64. Temperature
- 65. Therapeutic diet
- 66. Weight loss due to inadequate nutrition

K. Environment

- 67. Air temperature and quality (heating, cooling, ventilation, smoking)
- 68. Cleanliness, pests
- 69. Equipment/building: disrepair, hazard, poor lighting, fire safety
- 70. Furnishings, storage for residents
- 71. Infection control
- 72. Laundry: lost, condition
- 73. Odors
- 74. Space for activities, dining
- 75. Supplies and linens
- 76. ADA accessibility

ADMINISTRATION

L. Policies, Procedures, Attitudes, Resources (See A through E for Policies on Advance Directives, Due Process, Billing, Management of Residents' Funds)

- 77. Abuse investigation/reporting
- 78. Administrator(s) unresponsive, unavailable
- 79. Grievance procedure (use C for transfer, discharge appeals)
- 80. Inadequate record keeping
- 81. Insufficient funds to operate
- 82. Operator inadequately trained
- 83. Offering inappropriate level of care (for Basic Care/similar)
- 84. Resident/family council/committee interfered with, not supported

M. Staffing

- 85. Communication, language barrier (use #29 if problem involves resident's inability to communicate)
- 86. Shortage of staff
- 87. Staff training, lack of screening
- 88. Staff turnover, overuse of nursing pools
- 89. Staff unresponsive, unavailable

- 90. Supervision
- 91. Feeding assistants

PROBLEMS WITH OUTSIDE AGENCY, SYSTEM OR PEOPLE

N. Certification/Licensing Agency

- 92. Access to information (including survey)
- 93. Complaint, response to
- 94. Decertification/closure
- 95. Intermediate sanctions
- 96. Survey process
- 97. Survey process: ombudsman participation
- 98. Transfer or eviction hearing

O. State Medicaid Agency

- 99. Access to information, application
- 100. Denial of eligibility
- 101. Non-covered services
- 102. Personal needs allowance
- 103. Services

P. System/Others

- 104. Abuse by family member/friend/guardian, or while on visit out of facility, or by any other person
- 105. Bed shortage; placement
- 106. Basic Care/similar facility licensing, regulation
- 107. Family conflict
- 108. Financial exploitation by family or other not affiliated with facility
- 109. Legal: guardianship, conservatorship, power of attorney, wills
- 110. Medicare
- 111. PASARR
- 112. Resident's physician not available
- 113. Protective service agency
- 114. SSA, SSI, VA (Other benefits)
- 115. Request for less restrictive placement

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Q. Complaints in Other than Nursing or Basic Care/Similar Settings

- 116. Home care
- 117. Hospital or hospice
- 118. Public or other congregate housing not providing personal care
- 119. Shelters

Forms Appendix 695-01-60

**Community Ombudsman Activity Log 695-01-60-01
(Revised 4/1/07 ML #3075)**

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**Authorization of Release of Information, SFN 1059
695-01-60-05**

(Revised 4/1/07 ML #3075)

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Orientation Check List 695-01-60-10
(Revised 4/1/07 ML #3075)

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**Confidentiality and Conflict of Interest Statement of
Understanding 695-01-60-15**

(Revised 4/1/07 ML #3075)

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Community Ombudsman Position Description 695-01-60-20

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