

Division of Aging and Adult Services

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

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I. Statement of Philosophy and Legal Base

A. Philosophy

The Amendments to the Older Americans Act of 1965 require each state to establish and operate a Long Term Care Ombudsman Program to advocate on behalf of residents in long term care facilities and resolve complaints made by or on behalf of these residents. The person residing in a long term care facility is the long term care ombudsman's client, regardless of the source of the complaint or request for assistance.

The State level and Regional Ombudsmen function in an advocacy role utilizing techniques of mediation, conciliation, and persuasion with the facility administration in attempting to resolve complaints locally. They also work with the facility administration and community advisory committees to enhance public awareness of long term care facilities in each county and the services they provide, as well as the long term care issues impacting quality of care. In addition, it is important for the State level and Regional Ombudsmen and the facility administration to work together on the development of strategies to increase community involvement in long term care facilities and to address long term care issues impacting the quality of life in these facilities.

B. Legal Base

N.C.G.S. §143B-181.15

"The General Assembly finds that a significant number of older citizens in this State reside in long term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long term care facilities, and to educate the public about the long term care system. It is the further intent of the General Assembly that the Department of Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. §3058g and N.C.G.S. §143B Part 14D, ensure that the quality of care and life for these residents is maintained, that necessary reports are made and that, when necessary, corrective action is taken at the Department level."

C. Applicability

These policies and procedures guide the actions of the Office of the State Long Term Care Ombudsman and all certified Regional Ombudsmen in the operation of the N.C. Long Term Care Ombudsman Program pursuant to mandates of the Older Americans Act of 1965, as amended, 42 U.S.C. §3058g. and N.C.G.S. §§143B-181.15 -.25.

D. Definitions for Long Term Care Ombudsman Program

1. Adult Protective Services

The adult protective services law was enacted to provide protection for adults with disabilities in the State of North Carolina. County departments of social services are authorized to provide Adult Protective Services which includes receiving, screening and evaluating reports that adults with disabilities are in need of protection as well as mobilizing essential services on their behalf.

2. Area Agency on Aging

An agency located in one of the 16 lead regional councils of government in North Carolina that provides administrative oversight for aging programs and services, including the Office of Regional Long Term Care Ombudsman. Administrative oversight includes activities such as management of personnel issues, attendance and leave schedules, salary schedules, local budget oversight, local evaluation of employee performance and ensuring availability of adequate space and supplies. (Appendix A)

3. Case Closed

Ombudsman activity on a case has concluded and final dispositions have been assigned to the complaint(s) contained in the Case Record.

4. Case Record

An established document used to record all ombudsman documentation, both hard copy and electronic, collected through a complaint investigation. All Case Records, due to confidentiality laws are protected by State level as well as Regional Ombudsmen and kept in locked files.

5. Certification

The meeting of minimum qualifications and criteria established by the State Long Term Care Ombudsman. Upon completion of all initial certification requirements, each new Regional Ombudsman will be certified by the State Long Term Care Ombudsman to act as a representative of the Office.

6. Community Advisory Committee

A committee created by NC General Statute to maintain the intent of the State Patients' Bill of Rights and federal Residents' Bill of Rights, to promote community involvement with long term care facilities, and to ensure quality of care for residents in long term care facilities.

7. Community Advisory Committee Member

A N.C. citizen appointed by a local board of county commissioners and trained by a Regional Ombudsman to serve as a volunteer on the Adult Care Home, Joint or Nursing Home Community Advisory Committee.

8. Community Education Session

Public speaking engagements, workshop sponsorship, development and distribution of educational materials about long term care issues, elder abuse and other educational activities made available to community groups

including older adult groups, families, and consumers of long term care services, agency professionals or other interested persons.

9. Community Involvement

Participation in an activity by an individual or group of people who live in the same geographical area, region, or county. Some examples include volunteerism, serving on a Community Advisory Committee, planning or participating in a workshop on aging issues, etc.

10. Complainant

An individual who files one or more complaints directly or on behalf of a resident or residents in long term care facilities.

11. Complaint

Any concern or problem filed with, or initiated by, the State level or Regional Ombudsmen for investigation and action a) by or on behalf of one or more residents and b) relating to the health, safety, welfare, and/or rights of a resident.

12. Confidentiality

The protection from disclosure of any privately shared information and/or complainant(s) identity communicated to the State level or Regional Ombudsmen in any manner, including, but not limited to, conversations, letters, personal documents and electronic communication.

13. Decertification

The cancellation or withdrawal of a certified representative's authorization to perform the duties of a Regional Long Term Care Ombudsman by the State Long Term Care Ombudsman. Certification automatically ceases when an individual is no longer employed as a State or Regional Ombudsman, and the individual may no longer carry out the duties of the Office as established by state and federal law.

14. Documentation

All written authentication of actions taken, factual information gathered, any interviews conducted and completed using written informed consent and any knowledge obtained through direct observation during a complaint investigation and concluding with final case follow up and Case Record closure.

15. Issues Advocacy

Activities supporting and promoting issues which benefit residents of long term care facilities.

16. Legal Representative

Any person, who, as defined by State law, can act on the resident's behalf when the resident is no longer able to make his/her own decisions.

17. Long Term Care Facility

Any skilled nursing facility and intermediate care facility as outlined in N.C.G.S. §131A-3(4) or any adult care home as defined in N.C.G.S. §131D-20(2).

18. Office

An entity established by State and/or federal law that carries out specific functions as outlined in the law.

19. Long Term Care Provider

An entity that provides long term care services, treatment and care in either a nursing home or adult care home.

20. Regional Ombudsman

A person or persons employed by an Area Agency on Aging and certified by the State Long Term Care Ombudsman to carry out the mandated functions of the Regional Long Term Care Ombudsman Program as established in Program Policies and Procedures and federal and state laws.

21. Resident

A person who currently lives in a long term care facility and receives treatment, care, or services in that long term care facility.

22. Review Committee

A group consisting of three people brought together to review the decertification of a representative of the State Long Term Care Ombudsman.

23. Section Chief

A person employed by the Division of Aging and Adult Services to supervise the Elder Rights and Special Initiatives Section. The Section Chief is the immediate supervisor of the Office of the State Long Term Care Ombudsman.

24. State Ombudsman

The State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. §3001, is the person who carries out the duties and functions established by Title VII, Chapter 2, Section 712 (42 U.S.C. §3058g (a) (2) (3) and N.C.G.S. §§143B-181.15-25.

25. Technical Assistance

Specialized guidance and assistance provided to another entity related to Long Term Care Ombudsman Program mandates which may include provision of practical knowledge and the interpretation of regulatory information or program administration issues either in person, by telephone, email or facsimile. Examples include programmatic support of volunteers and Regional Ombudsmen as well as information and assistance to consumers.

II. Establishment of the Office of State Long Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(1)

“In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this chapter—(A) establish and operate an Office of the State Long Term Care Ombudsman; and (B) carry out through the Office a State Long Term Care Ombudsman Program.”

N.C.G.S. §143B-181.17

“The Secretary of Department of Health and Human Services shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long term care. The Attorney General shall provide legal staff and advice to this Office.”

III. The Duties of the State Long Term Care Ombudsman

Serve as a Liaison and Promote Community Involvement

A. Legal Base

N.C.G.S. §143B-181.18(1)

“Promote community involvement with long term care providers and residents of long term care facilities and serve as liaison between residents, residents’ families, facility personnel, and facility administration.”

B. State Policies and Procedures

1. In General

The State Ombudsman will establish and revise, as deemed necessary, ongoing training for Regional Ombudsmen on techniques for promoting community involvement with long term care providers and residents of long term care facilities. Training will also be provided as needed in areas which will enhance the skills of Regional Ombudsmen in serving as a liaison between residents, residents’ families, facility personnel and facility administration.

2. The State Ombudsman will:

Train Regional Ombudsmen on how to promote community involvement by, but not limited to, public speaking on long term care issues, recruitment of volunteers to visit residents, and assisting with special activities and functions in facilities upon request by facility administration.

- a. Provide informational materials to Regional Ombudsmen for distribution to long term care providers, the general public, residents, and families.
- b. Work with long term care providers on the development of strategies to promote community involvement and to facilitate resolution of long term care issues.

Supervise the Long Term Care Ombudsman Program

A. Legal Base

42 U.S.C. §3058g(a)(3) Functions—

“The Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office—(A) identify, investigate, and resolve complaints that are made by, or on behalf of, residents . . .(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents; (C) inform the residents about means of obtaining services provided by providers or agencies [health, safety, welfare, and rights]; (D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints; (E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents; (F) provide administrative and technical assistance to entities designated under paragraph 5 . . .(G) (i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies. . . (G) (ii) recommend any changes in such laws, regulations, policies and actions; (H) (i) provide for training representatives of the Office; (H) (ii) promote the development of citizen organizations to participate in the program; (H) (iii) provide technical support for the development of resident and family councils. . . .”

42 U.S.C. §3058g(a)(5)(D)

“The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.”

N.C.G.S. §143B-181.18 (2)

“Supervise the Long Term Care Ombudsman Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to N.C.G.S. §143B-10.”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for administration and supervision of North Carolina’s Long Term Care Ombudsman Program as well as for the development of the Ombudsman Program Policies and Procedures.

2. The State Ombudsman will:

- a. Provide leadership and management of the statewide Long Term Care Ombudsman Program by:
 - (1) Providing planning and direction for the Long Term Care Ombudsman Program.
 - (2) Monitoring and evaluating the statewide Long Term Care Ombudsman Program performance. The Division of Aging and Adult Services’ Self Assessment Tool is utilized to ensure Program compliance with the Amendments to the Older Americans Act, State Long Term Care Ombudsman Program Policies and Procedures, and North Carolina General Statutes impacting the Long Term Care Ombudsman Program.
 - (3) Establishing and enforcing Program policies, procedures and standards that guide Regional Ombudsmen in the performance of their duties as part of administration of the Long Term Care Ombudsman Program. Policy development will include consultation with Regional Ombudsmen, Area Agency on Aging Directors, citizen advocacy groups and long term care providers.
 - (4) Promoting the development of citizen advocacy organizations to participate in the Long Term Care Ombudsman Program.
- b. Maintain the Long Term Care Ombudsman Program records and the Ombudsman Program documentation and information system by:
 - (1) Analyzing and evaluating data collected related to complaints received and processed as well as identified conditions in long term care facilities.

- (2) Ensuring collected data is submitted to the appropriate entities as required by the Older Americans Act.
- (3) Upholding and enforcing the confidentiality of both electronic and hard copy Program Case Records and client information.
- (4) Preparing and distributing the Long Term Care Ombudsman Program Annual Report as required by the Older Americans Act as amended and State statutes.

Certify Regional Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(5)

“In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity. . . .”

N.C.G.S. §143B-181.18 (3)

“Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, state, and local laws, policies, and standards”

B. State Policies and Procedures

1. In General

The State Long Term Care Ombudsman is responsible for establishing and revising, as deemed necessary, Program certification and decertification requirements for all regional long term care ombudsmen.

2. The State Ombudsman will:

- a. Initiate certification training for new Regional Ombudsmen within forty-five (45) days of written notification of their employment by the Area Agency on Aging Director. The new Regional Ombudsmen will be notified about certification requirements, which include, but are not limited to:
 - (1) Internships in long term care facilities.
 - An eight-hour (8) internship in a skilled nursing facility.
 - An eight-hour (8) internship in an adult care home.
 - A six-hour (6) internship in a family care home.
 - A written summary of each internship.

- (2) Five (5) days of certification training conducted by the Office of the State Long Term Care Ombudsman.
 - (3) Completion of a list of required readings.
- b. Review all documentation submitted along with the written confirmation from the Area Agency on Aging Director certifying completion of all requirements as part of the certification process and accept or reject the materials as presented.
 - c. Communicate with a new Regional Ombudsman about any areas that require further work.
 - d. Issue the certificate authorizing the Regional Ombudsman to perform the duties of a representative of the Office of the State Long Term Care Ombudsman.
 - e. Prohibit any representative of the Office from conducting any complaint investigations until the representative has completed all certification requirements and has been certified by the State Long Term Care Ombudsman as qualified to carry out mandated responsibilities.
 - f. Notify Regional Ombudsmen and Area Agency on Aging Directors about required attendance for State Long Term Care Ombudsman quarterly trainings (*not to equal less than 20 hours annually*) as well as any additional training deemed necessary by the State Long Term Care Ombudsman.
 - g. Decertify a representative of the Office to perform as a Regional Long Term Care Ombudsman for any of the following reasons:
 - (1) Failure to meet or maintain the program criteria for certification.
 - (2) Failure to report an unresolved conflict of interest that may interfere with performance of duties as outlined in state and federal law or Long Term Care Ombudsman Program Policies and Procedures.
 - (3) Violation of the Long Term Care Ombudsman Program confidentiality requirements by any person acting as an agent of the Office.
 - (4) Failure to perform mandated responsibilities.
 - (5) Falsification of records, destruction of Program records or gross failure to maintain required documentation and records both in hard copy and in the Ombudsman Program documentation and information system.

- (6) Failure to adhere to applicable federal and state laws, regulations, and policies.
 - (7) Separation from the N. C. Long Term Care Ombudsman Program due to termination from employment by the Area Agency on Aging, an extended unexcused absence in excess of six (6) months that prevents fulfillment of job duties or a change in employment duties which is incompatible with Regional Long Term Care Ombudsman duties.
- h. The State Long Term Care Ombudsman will provide written notice of the intent to decertify to the Regional Ombudsman, the Area Agency on Aging Director, the Council of Governments or Planning Commission Director, the Elder Rights and Special Initiatives Section Chief and the Division of Aging and Adult Services Director. The written notice will include the specific reasons for the decertification, any documentation and the effective date of decertification along with information about a review process, if applicable.

Resolve complaints

A. Legal Base

42 U.S.C. §3058g(a)(3)(A)

“The Ombudsman shall personally or through representatives of the Office identify, investigate, and resolve complaints that are made by, or on behalf of, residents; and relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of providers, or representatives of providers, of long term care services; public agencies; or health and social service agencies.”

G.S. §143B-181.18(4)

“Attempt to resolve complaints made by or on behalf of individuals who are residents of long term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents.”

B. State Policies and Procedures

1. In General

The State Ombudsman establishes and provides training for Regional Ombudsmen in the complaint management process as part of the initial certification training. If deemed necessary, additional complaint management training will be provided by the Office of the State Long Term Care

Ombudsman as part of ongoing technical assistance to Regional Ombudsmen.

2. The State Ombudsman will:

- a. Refer complaints received at the state level to the appropriate Regional Ombudsman if the complaints are deemed appropriate for informal resolution within the jurisdiction of the Long Term Care Ombudsman Program.
- b. Forward complaints received at the state level that are determined to be inappropriate for informal resolution by the Long Term Care Ombudsman Program to the appropriate licensure agency pursuant to N.C.G.S. §§131E-100 through 110 and N.C.G.S. §131D-2.
- c. Notify the appropriate Regional Ombudsman when complaints received by the State Office are referred to licensure agencies or to a county department of social services pursuant to N.C.G.S. §108A, Article 6.
- d. Provide assistance directly to complainants during periods of time when there is:
 - (1) A position vacant at the regional level and no other Regional Ombudsman is available in the Area Agency on Aging to temporarily assume additional responsibilities.
 - (2) An established conflict of interest and no other Regional Ombudsman is available to assist or,
 - (3) A Regional Ombudsman on extended leave and there is no other Regional Ombudsman available in the Area Agency on Aging to temporarily assume additional responsibilities.
- e. Establish, reinforce and revise, as deemed necessary, procedures for investigating complaints received about any representatives of the Office of the State Long Term Care Ombudsman that are related to the performance of their duties under federal and state law or Program Policies and Procedures.

(See Section XII. Complaint Management)

Provide Training and Technical Assistance to Regional Ombudsmen

A. Legal Base

42 U.S.C. §3058g(3)(H)(i)
“[The Ombudsman shall] provide for training representatives of the Office. . . .”

N.C.G.S. §143B-181.18(5)

“Provide training and technical assistance to regional ombudsmen.”

B. State Policies and Procedures

1. In General

In addition to providing initial certification training, the State Ombudsman is responsible for providing, as deemed necessary, technical assistance to Regional Ombudsmen. Technical assistance will also be provided upon request from a Regional Ombudsman and/or an Area Agency on Aging Director.

2. The State Ombudsman will:

- a. Schedule and conduct training for Regional Ombudsmen as deemed necessary. Training topics may include:
 - (1) Strengthening individual advocacy skills.
 - (2) Increasing knowledge of current and new long term care issues, laws and policies.
 - (3) Establishing protocols for complaint management including investigation and case documentation.
 - (4) Developing systems advocacy strategies.
 - (5) Complying with Ombudsman Program Policies and Procedures.
 - (6) Reviewing allowable Elder Abuse Prevention Activities.

Establish Procedures for Access and Protection of Confidentiality of Records

A. Legal Base

42 U.S.C. §3058g(b) Procedures for Access.

“The State shall ensure that representatives of the Office shall have access to long term care facilities and residents; appropriate access to review the medical and social records of a resident. . . .”

42 U.S.C. §3058g(d) Disclosure.

“The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b) (1) or (c).”

N.C.G.S. §143B-181.18(6)

“Establish procedures for appropriate access by regional ombudsmen to long term care facilities and residents’ records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended. . . .”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for establishing, reinforcing, and revising, as deemed necessary, policies and procedures concerning access to residents and protection of confidential Long Term Care Ombudsman Program records. Such records include all hard copy and electronic materials collected as part of a complaint investigation.

All Long Term Care Ombudsman Program client records are the property of the Office of the State Long Term Care Ombudsman. The State Long Term Care Ombudsman or his/her designee shall have access to all Long Term Care Ombudsman Program records at any time.

2. The State Ombudsman will:

- a. Ensure the right of the State level or Regional Ombudsmen to enter long term care facilities at any time deemed necessary and the right to have direct access to long term care residents for the purpose of carrying out the duties and responsibilities of the Office of the State Long Term Care Ombudsman.
- b. Ensure direct access to residents’ medical, financial, and social records when:
 - (1) The Program representative has the written informed consent of the resident or legal representative of the resident; or
 - (2) The resident is unable to consent to the records review and has no legal representative; or
 - (3) Access to the records is necessary to investigate a complaint and a legal guardian refuses to give permission or a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interest of the resident; and
 - (4) The representative of the Office obtains written approval from the State Long Term Care Ombudsman to access the resident’s record and to advocate on their behalf.

- c. Require all certified Program representatives to notify the State Long Term Care Ombudsman whenever a request is made to obtain Long Term Care Ombudsman Program records and forward a copy of the request for review by the State Ombudsman.
- d. Determine whether to disclose all or part of the records as follows:
 - (1) Review the request with the Regional Ombudsman to determine whether the release of records would be consistent with the interests of the affected resident.
 - (2) Determine whether any part of the records should be redacted (removing identifying information).
 - (3) Withhold the identity of any resident or complainant who has not provided written informed consent for the release of their names.
 - (4) Seek consultation as needed from the attorney in the N.C. Attorney General's Office assigned to the Long Term Care Ombudsman Program before authorizing the release of any resident record whenever it is determined that legal clarification is required before release.
 - (5) Make a final determination regarding whether to disclose all or part of a resident's record when any representative receives a request to release or disclose a resident's record.
- e. Ensure records maintained by any certified representative of the State Long Term Care Ombudsman are not released, disclosed, duplicated or removed without the written permission of the State Long Term Care Ombudsman, and in some cases only under direct court order.

Analyze Data

A. Legal Base

42 U.S.C. §3058g(c) Reporting System

"The State agency shall establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long term care facilities and to residents for the purpose of identifying and resolving significant problems. . . ."

N.C.G.S. §143B-181.18(7)

"Analyze data relating to complaints and conditions in long term care facilities to identify significant problems and recommend solutions. . . ."

B. State Policies and Procedures

1. In General

The State Ombudsman will analyze data contained in the Ombudsman Program documentation and information system, Regional Ombudsmen Annual Reports, survey reports received from the Division of Health Service Regulation, and from information provided by Regional Ombudsmen through discussions, both verbally and electronically, about recurring problems or issues in his/her region. The State Ombudsman is responsible for establishing and revising, as deemed necessary, procedures concerning receiving such data from the Regional Ombudsmen.

2. The State Ombudsman will:

- a. Review data by:
 - (1) Region
 - (2) Type(s) of facility (nursing home, adult care home)
 - (3) Number of complaints
 - (4) Complaint category(s)
 - (5) Agencies involved in complaint resolution process
 - (6) Quarterly/Annual total numbers
 - (7) Types of complaints
 - (8) Regional Ombudsman
 - (9) CAC volunteer information.
- b. Identify trends and significant problems by region as well as statewide.
- c. Coordinate systems advocacy approaches to address identified trends by assisting Regional Ombudsmen in the development of advocacy strategies and recommendations to be implemented in conjunction with providers, citizen advocacy groups and other interested parties. This information will be compiled into an annual report for dissemination to relevant agencies, legislators, as well as the general public.

Prepare an Annual Report

A. Legal Base

42 U.S.C. §3058g(h)(1-3) Administration

“The State agency shall require the Office to—(1) prepare an annual report— (A) describing the activities carried out by the Office in the year for which the report is prepared; (B) containing and analyzing the data collected. . .(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents; (D) containing recommendations for (i) improving quality of the care and life of

the residents; and (ii) protecting the health, safety, welfare, and rights of the residents. . . .”

N.C.G.S. §143B-181.18(8)

“Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long term care issues. . . .”

N.C.G.S. §143B-181.18(9)

“Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long term care facilities.”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for preparation of a Long Term Care Ombudsman Program Annual Report at the end of the federal fiscal year. The State Ombudsman is responsible for disseminating the Long Term Care Ombudsman Program Annual Report to any agency upon request.

2. The State Ombudsman will:

- a. Prepare an Annual Report at the end of the federal fiscal year containing:
 - (1) Data and findings regarding the types of problems experienced and complaints reported by or on behalf of residents.
 - (2) Recommendations for resolution of long term care issues identified.
 - (3) An overview of activities and services carried out through the Office.
- b. Make the report available to the:
 - (1) Secretary of the Department of Health and Human Services
 - (2) Governor
 - (3) Division of Health Service Regulation
 - (4) Other State and local agencies
 - (5) Area Agencies on Aging
 - (6) Legislators
 - (7) Associations representing the nursing and adult care home industry
 - (8) General public
 - (9) Advocacy groups
 - (10) U.S. Administration on Aging.

- c. The Annual Report will also be posted on the Division of Aging and Adult Services web site under the Ombudsman Program link.

Provide Information to the Public and Others Regarding Long Term Care Issues

A. Legal Base

42 U.S.C. §§3058g(h)(2)(3)

“(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions that pertain to long term care facilities and services, and to the health, safety, welfare, and rights of the residents, in the state, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate . . . (3) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding. . . .”

N.C.G.S. §143B-181.18(10)

“Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution.”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for representing the interests of residents with legislators, governmental agencies and policymakers in order to ensure that their health, safety, welfare, and rights are protected. The State Ombudsman will also provide information to legislators as well as public agencies on long term care issues, and make recommendations for changes that will protect the welfare and rights of residents as well as improve their quality of care and quality of life.

2. The State Ombudsman will:

- a. Advocate for policy, regulatory, and/or legislative changes in long term care as needed for resolution of issues identified by the Ombudsman Program.
- b. Collaborate with statewide and national advocacy and citizen advocacy organizations involved in long term care issues.
- c. Maintain awareness of current issues and trends in long term care.
- d. Assure that the interests of long term care residents are represented to legislators, governmental agencies and policymakers.

- e. Educate governmental agencies, policymakers and advocacy groups about the impact of laws, policies or practices on long term care facility residents.
- f. Be a spokesperson on the state level regarding laws, policies, rules and regulations directly affecting long term care residents and provide Regional Ombudsmen, provider agencies, Area Agency on Aging Directors, and other advocacy groups with technical assistance regarding the role of the Long Term Care Ombudsman Program on issues advocacy.

IV. Qualifications of the State Long Term Care Ombudsman Office of the State Long Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(2)

“The Office shall be headed by an individual, to be known as the State Long Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy.”

N.C.G.S. §143B-181.17

“The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long term care.”

B. State Policies and Procedures

1. In General

The Office shall be headed by a full-time State Ombudsman who is qualified by training and with experience in geriatrics and long term care. The office shall assure that all residents of long term care facilities in North Carolina have access to direct assistance and services of the statewide Long Term Care Ombudsman Program through the duties established by state and federal law. Qualifications include:

- a. Master’s Degree in a human services field; two years of experience, preferably in the field of aging, two of which must have been in administrative, consultative, or supervisory capacity;
- b. Bachelor’s Degree in human services field; three years of experience, preferably in the field of aging, two of which must have been in an administrative, consultative, or supervisory capacity;
- c. And/or equivalent combination of education and experience.

The Director of the Division of Aging and Adult Services and the Program's direct supervisor are responsible for ensuring that any individual employed by the Division as the State Long Term Care Ombudsman or other Division staff who become certified to carry out the responsibilities of an ombudsman are not subject to a conflict of interest. The Elder Rights and Special Initiatives Section Chief will review and confirm successful completion of all required training.

2. Training

The Candidate for State Long Term Care Ombudsman must:

- a. Have successfully completed training or be scheduled for training within six (6) months of assuming the position in the following topics:
 - (1) History of the Ombudsman Program
 - (2) Federal and state legislation establishing the Ombudsman Program
 - (3) Federal and state Residents' Rights laws
 - (4) Licensure/regulation of long term care facilities
 - (5) Roles/responsibilities of relevant agencies
 - (6) Aging processes
 - (7) Mental illness
 - (8) Program management and supervision
 - (9) Other topics deemed appropriate to promote sound program leadership and oversight.
- b. Complete internships:
 - (1) Individuals with no previous work experience in a nursing home, adult care home or family care home will complete an eight-hour (8) internship in each of the different types of facilities (nursing home, adult care home), and a six-hour (6) internship in a family care home.
 - (2) Individuals who have previous work experience in a long term care facility will complete internships only in those facilities where there has been no prior work experience or where the work experience occurred over three (3) years from the hiring date as the State Long Term Care Ombudsman.

- (3) The internships will provide knowledge of the overall operation of long term care facilities, relevant issues in long term care facilities, levels of care provided in each setting and the internal grievance process for each setting.
- (4) Read and demonstrate understanding of the following:
 - (a) Nursing Home Community Advisory Committee Handbook
 - (b) Medicare and Medicaid Nursing Home Reform Laws
 - (c) Adult Care Home Community Advisory Committee Handbook
 - (d) An Ombudsman's Guide to the Nursing Home Reform Amendments of OBRA 1987
 - (e) Long Term Care Ombudsman Desk Reference
 - (f) Comprehensive Curriculum for State Long Term Care Ombudsman Programs
 - (g) Ombudsman Program Policies and Procedures
 - (h) Federal and state legislation and regulations impacting the Long Term Care Ombudsman Program and long term care facilities
 - (i) Other reference materials deemed appropriate.
- (5) Be prohibited from the following activities:
 - (a) Federal regulations prohibit Long Term Care Ombudsman services from being provided by an agency or organization that is responsible for licensing or certifying long term care services or which is an association or affiliate of such an association of long term care facilities including any other type of residential facility for older individuals.
 - (b) In addition, no individual involved in the Long Term Care Ombudsman Program shall be subject to a conflict of interest. Conflict of interest includes having monetary interest in a long term

care facility or being related by blood or marriage to a board member, owner, administrator, staff member and/or resident of any long term care facility for which the ombudsman serves.

- (c) No representative of the Office of the State Long Term Care Ombudsman shall be assigned to investigate a complaint concerning a long term care provider with which the ombudsman was formerly employed in the last three (3) years.
- (d) If the State Ombudsman or other ombudsmen within the Office of the State Long Term Care Ombudsman receives a complaint from an individual whom s/he knows personally and s/he believes this personal relationship would interfere with his/her ability to maintain objectivity in investigating the complaint or if a relative (member of immediate family or household) of any ombudsman within the Office of the State Long Term Care Ombudsman is receiving care in a long term care facility, any complaints received about that facility must be referred either to another certified ombudsman in the Office of the State Long Term Care Ombudsman, the appropriate regulatory agency and/or a Regional Ombudsman in the region who can visit that facility.

V. Establishment of the Office of Regional Long Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(5)(A)

“In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity”

N.C.G.S. §143B-181.19(b)

“An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman”

NOTE: See Appendix A to review legal guidance received related to duties of a Regional Ombudsman as it pertains to regions that have more than one Regional Ombudsman and clarification of administrative supervision.

VI. Duties of a Regional Long Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(5)(B)(i)

“An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—(i) provide services to protect the health, safety, welfare and rights of residents;. . . .”

N.C.G.S. §143B-181.19(b)

“Pursuant to policies and procedures established by the State Office of Long Term Care Ombudsman, the Regional Ombudsman shall:”

Serve as a Liaison and Promote Community Involvement

A. Legal Base:

N.C.G.S. §143B-181.19(b)(1)

“Promote community involvement with long term care facilities and residents of long term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration. . . .”

B. State Policies and Procedures

1. In General

Regional Ombudsmen are responsible for enhancing community involvement.

2. Regional Ombudsmen will:

- a. Enhance community involvement with long term care facilities through public speaking on long term care issues, distribution of pamphlets, posters and brochures on the Long Term Care Ombudsman Program and participation in community forums and workshops. Regional Ombudsmen will also work to encourage and promote volunteer involvement in facilities.
- b. Serve as a liaison between residents, residents' families, facility personnel and facility administration in order to facilitate communication about areas of concern or about ways to improve services and quality of care or quality of life. Facilitate resolution of issues and/or complaints utilizing mediation, conciliation, persuasion and negotiation.

Receive and Resolve Complaints

A. Legal Base

42 U.S.C. §§3058g(a)(5)(B)(iii-iv)

“An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—(iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents; (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents”

N.C.G.S. §143B-181.19(b)(2)

“Receive and attempt to resolve complaints made by or on behalf of residents in long term care facilities.”

B. State Policies and Procedures

1. In General

When a Regional Ombudsman receives a complaint from or on behalf of a resident and/or about conditions in a long term care facility, s/he will provide information to the complainant about available options for filing complaints, including the Long Term Care Ombudsman Program services that offer an informal grievance resolution process and direct advocacy. If the complainant requests the services of a Regional Ombudsman, then the Regional Ombudsman will visit with the resident in person to validate that the resident has a grievance(s) and that the resident requests the services of a Regional Ombudsman.

If it is determined that the resident lacks capacity to act in his own best interest, a Regional Ombudsman will offer services to the resident’s legal representative (person conferred authority through a Durable Power of Attorney, Healthcare Power of Attorney, or Guardianship proceeding). If there is no identified legal representative and the Regional Ombudsman has observed and/or received complaints on behalf of a resident, then the Regional Ombudsman will consult with the State Long Term Care Ombudsman for permission to initiate an investigation.

If such services are agreed upon, a Regional Ombudsman will investigate the complaint(s) utilizing techniques of mediation, conciliation, persuasion and negotiation in attempting to resolve the complaint(s) received.

If a Regional Ombudsman determines that the complaint(s) cannot be resolved through an informal grievance resolution process or determines that there are probable licensure violations, s/he will refer the complainant to the appropriate regulatory agency and provide contact information.

Any complainant providing information to a Regional Ombudsman which involves the suspected need for protection as a result of abuse, neglect, and/or exploitation, as defined in N.C.G.S. §108A, Article 6, shall be referred immediately to the county department of social services, adult protective services intake unit.

If a Regional Ombudsman has received allegations of abuse, neglect or exploitation from a resident, and has explained the requirement to refer such complaints to the adult protective services agency, then the Regional Ombudsman will empower and assist the resident in contacting the adult protective services intake unit to file a report.

If the resident/legal representative declines to report the abuse, neglect or exploitation, and the Regional Ombudsman has written informed consent from the resident/legal representative then the Regional Ombudsman will file the allegations with the adult protective services intake unit on behalf of the resident and request a written follow up from the agency. If a resident refuses to allow a Regional Ombudsman to disclose their identity to the adult protective services intake unit, other options may be to contact the State Long Term Care Ombudsman for review and consultation in determining a course of action. A Regional Ombudsman may also talk with other residents in the facility and their family members or decide to file an anonymous complaint providing only a general location and general description of the situation.

If the Regional Ombudsman has direct, firsthand knowledge or witnesses an incident of abuse, neglect or exploitation while in a long term care facility, then the Regional Ombudsman will file a report immediately with the adult protective services intake unit, request an investigation be conducted and request written follow up from the agency.

2. Regional Ombudsmen will:

- a. Respect the resident's right to refuse to communicate with a Regional Ombudsman and the resident's right to participate in planning any course of action to be taken on his/her behalf if assistance is requested.
- b. Inform the resident that her/his written informed consent is required in order for the Regional Ombudsman to disclose the resident's identity or to access the resident's private medical, financial or social records as part of a complaint investigation.

- c. Follow the complaint resolution procedures outlined in **Section XII** of these Policies and Procedures for conducting complaint investigations and seeking resolution.

Collect Data about the Number and Types of Complaints Handled

A. Legal Base

42 U.S.C. §3058g(c)(1)

“The State agency shall establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long term care facilities and to residents for the purpose of identifying and resolving significant problems; and submit the data, on a regular basis.”

N.C.G.S. §143B-181.19(b)(3)

“Collect data about the number and types of complaints handled.”

B. State Policies and Procedures

1. In General

Each Regional Ombudsman will utilize the Case Record (DHHS- DAAS- 004) in the Ombudsman Program documentation and information system for documentation of all complaints which includes coding the type of facility, type of complainant, individual complaints, other agencies involved in the investigation and final outcome for each complaint investigated. The appropriate consent form(s) (see Appendix B) shall be signed and attached to each printed Case Record and kept in each Regional Ombudsman’s confidential locked files.

2. Regional Ombudsmen will:

Compile and enter all required information on complaints received in the Ombudsman Program documentation and information system as soon as feasible after each complaint-related task is performed, but no later than the 15th of the month after the end of each quarter (January 15, April 15, July 15, October 15).

Submit an Annual Report in a separate narrative format at the end of the last quarter of the fiscal year by October 15th to the Office of the State Long Term Care Ombudsman. In regions with more than one Regional Ombudsman, only one combined Annual Report will be submitted.

a. The Annual Report: will include:

- (1) A narrative description of general complaint trends and long term care issues in the region.

- (2) An overview of major Regional Ombudsmen activities/accomplishments.
- (3) Program goals established by the Regional Ombudsmen for the upcoming year.
- (4) Contributions/accomplishments of community advisory committees.
- (5) A description of Elder Abuse Awareness and Prevention accomplishments, projects and a proposed Elder Abuse Prevention budget.

Work with Long Term Care Providers to Resolve Issues of Common Concern

A. Legal Base

42 U.S.C. §3058g(a)(5)(B)

“An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—(i) provide services to protect the health, safety, welfare and rights of residents.”

N.C.G.S. §143B-181.19(b)

“(4) Work with long term care providers to resolve issues of common concern.
(6) Offer assistance to long term care providers in staff training regarding residents' rights;”

B. State Policies and Procedures

1. In General

Regional Ombudsmen will communicate with administrators of the long term care facilities within their region on a regular basis to discuss any issues of concern to long term care residents; general conditions in the facility; the facility's need for assistance with recruitment of volunteers to visit residents or any assistance that may be needed for special activities and functions.

2. Each Regional Ombudsman will:

- a. Offer support, collaboration, encouragement and assistance to administrators in addressing issues of common concern and opportunities such as culture change initiatives, person-centered training or empowerment activities for direct care workers that are related to improving residents' quality of life and quality of care.

- b. Offer to conduct in-service training for facility staff on the Residents' Bill of Rights and the Role of the Long Term Care Ombudsman Program.
- c. Support the development of resident and family councils by:
 - (1) Promoting active and independent resident-centered councils in each nursing home and adult care home in the region.
 - (2) Offering assistance to residents and the facility management staff in developing an active, resident-centered and independent residents' council in any facility that does not currently have a residents' council.
 - (3) Offering encouragement and assistance to family members in developing active family councils.
 - (4) Informing the lead representatives of each active resident or family council about the purpose of the Long Term Care Ombudsman Program and providing information about locating resources.
 - (5) Attending resident and family councils when requested to be present, and offering to conduct presentations for council members.

Work with Long Term Care Providers to Promote Increased Community Involvement
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A. Legal Base

42 U.S.C. §3058g(a)(5)(B)

“An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—(i) provide services to protect the health, safety, welfare and rights of residents;”

N.C.G.S. §143B-181.19(b)(5)

“Work with long term care providers to promote increased community involvement;....”

B. State Policies and Procedures

1. In General

Regional Ombudsmen will meet with facility administration and staff on a regular basis to discuss ways to enhance community involvement in long term care facilities.

2. Each Regional Ombudsman will:

Provide assistance with recruiting volunteers to visit residents and assist with special activities and functions, upon request.

Offer Assistance to Long Term Care Providers in Staff Training Regarding Residents' Rights

A. Legal Base

N.C.G.S. §143B-181.19(6)

"Offer assistance to long term care providers in staff training regarding residents' rights."

B. State Policies and Procedures

1. In General

Regional Ombudsmen will inform the administrators of all long term care facilities in the region that s/he is available to provide in-service training on the Residents' Bill of Rights upon request and available to work with the administrators on developing strategies for enhancing communication as well as methods for addressing quality of care issues.

Report Collected Data and Activities to the Office of the State Long Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(c)

"The Ombudsman shall personally or through representatives of the Office, collect and analyze data relating to complaints and conditions in long term care facilities and to residents for the purpose of identifying and resolving significant problems; and submit the data, on a regular basis."

N.C.G.S. §143B-181.19(b)

"(7) Report regularly to the Office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;"

B. State Policies and Procedures

1. In General

All ombudsman activities will be reported in the Ombudsman Program documentation and information system for North Carolina. Entry of each representative's documentation should be completed as soon as feasible after the completion of a reportable activity, but no later than the 15th of the month after the end of each quarter of the federal fiscal year (January 15, April 15, July 15 and October 15).

Documentation is a required component in completion of Ombudsman mandated responsibilities. The documentation must provide enough information for adequate supervision and quality assurance review of Ombudsman Program services. All written documentation entered should be clear to the reader. The Ombudsman Program documentation and information system instructions are hereby incorporated into the N. C. Long Term Care Ombudsman Program Policies and Procedures and will be followed in order to meet the mandated reporting requirements for the U. S. Administration on Aging. The Office of the State Long Term Care Ombudsman will provide initial training and written instructions for entering complaint data and information about all required Long Term Care Ombudsman Program responsibilities.

2. Each Regional Ombudsman will:

- a. Report his/her activities, accomplishments, and technical assistance provided utilizing the Ombudsman Program documentation and information system of the North Carolina Long Term Care Ombudsman Program.
- b. Follow Ombudsman Program documentation and information system instructions provided for entering all required Ombudsman Program activities and complaint case management.
- c. Track and report the number of hours contributed by community advisory committee volunteers and the number of active volunteers appointed to each committee type in all counties in their region. Reporting volunteer miles is optional, but highly encouraged.
- d. Keep the State Long Term Care Ombudsman informed about long term care issues/problems in his/her region. Technical assistance will be provided by the Office of the State Long Term Care Ombudsman in seeking resolution of these issues/problems.
- e. Seek technical assistance from the Office of the State Long Term Care Ombudsman in resolution of any data collection issues as deemed necessary.
- f. Update the data base for community advisory committee members in the Ombudsman Program documentation and information system on a quarterly basis, at a minimum. Quarterly deadlines are January 15, April 15, July 15 and October 15.

Provide Training and Technical Assistance to Community Advisory Committees

A. Legal Base

42 U.S.C. §3058g(h)(4)(A)

“The State agency shall require the Office to—(4)(A)strengthen and update procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long term care providers, and the Office . . .”

N.C.G.S. §143B-181.19(b))(8)

“Provide training and technical assistance to the community advisory committees;”

B. State Policies and Procedures

1. In General

Pursuant to N.C.G.S. §§131D-31(H) and 131E-128(G), the Division of Aging and Adult Services, Office of the State Long Term Care Ombudsman shall develop training materials and provide consultation that directs community advisory committee members in the performance of their duties. The Community Advisory Committee Handbook developed by the Division of Aging and Adult Services and distributed by the Office of the State Long Term Care Ombudsman will be used in training all new community advisory committee members.

Regional Ombudsmen are responsible for providing training and technical assistance to newly appointed volunteers for the Nursing Home, Adult Care Home and Joint Nursing Home and Adult Care Home Community Advisory Committees prior to these committee members exercising any authority under N.C.G.S. §131D-32 and/or N.C.G.S. 1§31E-128.

Regional Long Term Care Ombudsmen will train the Nursing Home, Adult Care Home and Joint Nursing Home and Adult Care Home Community Advisory Committees using the protocols outlined in the State Long Term Care Ombudsman Program Policies and Procedures for complaint management, confidentiality, consent forms, access to residents' records during a complaint investigation, case documentation, and completion of the Case Record along with relevant legislation, rules/regulations for licensing of long term care facilities and other relevant sources of information.

2. Regional Ombudsmen will:

- a. Provide initial training for all newly appointed community advisory committee members in his/her region within three (3) months of receiving notification of the appointment.

A minimum of eight (8) hours of initial classroom training is to be provided for each newly appointed community advisory committee member.

- (1) Initial training topics include, but are not limited to:

- (a) Community advisory committee members' roles and responsibilities as mandated under N.C. General Statutes governing the community advisory committee type
- (b) Residents' and Patients' Bill of Rights
- (c) Roles of licensure agencies for each type of long term care facility
- (d) North Carolina Adult Protective Service laws including reporting requirements
- (e) Role of Regional Ombudsmen and history of the Long Term Care Ombudsman Program
- (f) Policies and procedures for the State Long Term Care Ombudsman Program, including the complaint management process
- (g) Confidentiality
- (h) Use of consent forms
- (i) Basic documentation principles
- (j) Case records and completion of required reporting forms to be used by the community advisory committee members
- (k) The aging process
- (l) The aging and adult services network.

- b. Maintain documentation of all required training, including the names of community advisory committee members, topics that each committee member completed and dates of initial orientation visits which together comprise the required fifteen (15) hours of initial training and ten (10) hours of annual in-service training.

- (1) Facility orientation visits will be scheduled before the end of the third month from date of appointment.
- (2) Facility administrators must receive notification of the agreed upon date and time for the orientation visit(s) in writing by the Regional Ombudsman.

- (3) New committee members will be accompanied by either the Regional Ombudsman or the community advisory committee chairperson for the scheduled orientation visits.
- c. Obtain the number of volunteer hours contributed by each community advisory committee member and enter the total number of hours into the Ombudsman Program documentation and information system at least quarterly, by Jan 15, April 15, July 15 and October 15.
- d. Provide consultation and support at any point during a complaint investigation as requested by the chairman of the community advisory committee.
- e. Train the community advisory committees on confidentiality requirements as established in law and State Ombudsman Program Policies and Procedures. Provide each community advisory committee member with copies of all consent forms and ensure that consent forms are signed before any complaint resolution process is initiated.
- f. Assume responsibility for the investigation of a specific complaint at the request of a community advisory committee chairperson.
- g. Enter closed complaint case information submitted by a community advisory committee into the Ombudsman Program documentation and information system.
- h. Meet with each community advisory committee in the region not less than quarterly to:
 - (1) Review the progress of the committee and provide technical assistance and information to committee members.
 - (2) Conduct in-service training at least quarterly.
 - (3) Receive and discuss community advisory committee quarterly/annual reports.
 - (4) Provide assistance to committee members in developing strategies for addressing long term care issues.
- i. Provide ongoing technical assistance and support as necessary, as mandated in N.C.G.S. §§143B-181.19(b) (8), 131D-31 and 131E-128.

- j. Document all instances of technical assistance provided to community advisory committee members in the Ombudsman Program documentation and information system.

3. Community Advisory Committee Members will:

- a. Complete initial training within three months of the appointment prior to exercising any authority under N.C.G.S. §§131D-32 and 131E-128.
- b. Complete a minimum of 15 hours of initial training (part of initial training hours may include time required to complete assigned reading materials and time required for orientation visits). After the first year of appointment, community advisory committee members are to complete 10 hours of in-service training annually which will be recorded on the Committee Member Activities Record and submitted to the Regional Ombudsman assigned to their committee.
- c. Complete an orientation visit in each of the type(s) of long term care facilities they will be visiting prior to assuming any mandated responsibilities. Facility orientation visits will be conducted with the administrator or other designated management staff.
 - (1) Topics to be covered include, but are not limited to:
 - (a) Overall operation of the facility and key management positions;
 - (b) Admissions process for incoming residents;
 - (c) Types of care and services provided to residents in each type of facility;
 - (d) Facility policies for restraints;
 - (e) Transfer/discharge policies and procedures;
 - (f) Internal grievance procedure available to residents and families; and
 - (g) Residents' Rights, Residents' Councils, staffing and activities.
 - (2) During each scheduled visit, time is to be included for observation in the facility which will provide firsthand knowledge of operations, service delivery, public versus private areas, and general layout of the building.
 - (3) For nursing homes, each new community advisory committee member will also meet with the social worker or other professional staff to discuss their roles and other issues deemed appropriate.

- (4) For adult care homes, each new community advisory committee member will meet with the administrator or the designated supervisor in charge to discuss their management roles and other issues deemed appropriate.
- (5) With joint community advisory committees, orientation visits will be arranged for a nursing home, adult care home, and family care home.
- (6) Upon completion of orientation, the new committee member will review information learned from the visit with the Regional Ombudsman assigned to that county.
- (7) Regional Ombudsmen will keep written documentation on file which will include the facility name, date visited, attending staff names, and a brief summary of topics covered in orientation and reviewed with the community advisory committee member.

d. Complete annual in-service hours

- (1) These may include:
 - (a) Quarterly training conducted by a Regional Ombudsman;
 - (b) Seminars related to duties of a community advisory committee;
 - (c) Workshops related to duties of a community advisory committee; and
 - (d) Reading materials related to skills development for the advocacy role.
- (2) Each community advisory committee member will record annual in-service hours on the Committee Member Activities Record or a similarly designed form. The record of the 10 hours of in-service training for each community advisory committee member shall be kept on file by the Regional Ombudsman assigned to work with the community advisory committee.

e. Complete the following forms when appropriate:

- (1) Committee Member Activities Record (DHHS-DAAS-001)
- (2) Quarterly/Annual Visit Worksheet (DHHS-DAAS-002)
- (3) Case Record (DHHS-DAAS-004)
- (4) Resident Authorization Form (DHHS-DAAS-9112)

- (5) Resident Authorization to View Records (DHHS-DAAS-9113)
- (6) Resident Oral Consent Form (DHHS-DAAS-9114)
- (7) Complainant Authorization Form (DHHS-DAAS-9115)
- (8) Legal Authorization (DHHS-DAAS-9116)
- (9) Community Advisory Committee Annual Report Form
- (10) Other forms as deemed appropriate by the Office of the State Long Term Care Ombudsman.

Provide Information to the General Public on Long Term Care Issues

A. Legal Base

42 U.S.C. §3058g(a)(5)(B) Duties

“An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency— (v)(I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and (II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions; support the development of resident and family councils; and carry out other activities that the Ombudsman determines to be appropriate.”

N.C.G.S. §143B-181.19(b)(9)

“Provide information to the general public on long term care issues.”

B. State Policies and Procedures

1. In General

Regional Ombudsmen will work with the State Long Term Care Ombudsman to represent the interests of long term care residents in order to ensure their health, safety, welfare and rights are protected. This may include providing information to legislators, governmental agencies and policymakers along with recommendations for changes that will improve residents' quality of care and quality of life.

Regional Ombudsmen shall provide information, referral and technical assistance to the general public contacting the Ombudsman Program.

2. A Regional Ombudsman will:

- a. Maintain awareness of current issues and trends in long term care.
- b. Work with the State Ombudsman to assure that the interests of long term care residents are represented to legislators, governmental agencies and policymakers. This may include educating governmental agencies, policymakers, advocacy groups and the general public about the impact of changes on

the needs of long term care residents.

- c. Collaborate with other agencies that provide services to the aging and adult services population to plan and conduct community forums on long term care issues and elder abuse prevention.
- d. Participate in community education events, facility workshops and health fairs.
- e. Disseminate information on long term care and elder abuse.
- f. Initiate special projects and/or events to increase public awareness of current long term care issues and elder abuse prevention.
- g. Document all advocacy efforts to educate consumers about long term care issues and technical assistance provided to the public in the Ombudsman Program documentation and information system in a timely manner, but no later than the end of the current quarter (January 15, April 15, July 15 and October 15).

VII. Qualifications and Certification of Regional Ombudsmen

A. Legal Base

42 U.S.C. §3058g(a)(5)(A) and (C)

“(A) In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity. . . (C) Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall (i) have demonstrated capability to carry out the responsibilities of the Office; (ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves; (iii) in the case of the entities, be public or nonprofit private entities; and (iv) meet such additional requirements as the Ombudsman may specify.”

N.C.G.S. §143-181.18(3)

“Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;”

B. State Polices and Procedures

1. In General

Certification requirements established by the Division of Aging and Adult Services, Office of the State Long Term Care Ombudsman include a minimum of 40 hours of initial training and 20 hours of ongoing certification training annually. Training will be conducted in a group setting and/or arranged individually by the State Ombudsman. The initial training includes an internship in the different types of long term care facilities, in-service training, completion of required readings and training by the State Ombudsman. Additional training will be provided as deemed necessary by the State Ombudsman, a Regional Ombudsman, and/or the Area Agency on Aging Director. The Area Agency on Aging Director will provide assistance in scheduling the internships and forward a written summary to the State Ombudsman upon successful completion of all certification requirements established by the Office of the State Long Term Care Ombudsman.

2. A newly hired Regional Long Term Care Ombudsman must:

- a. Complete training in the following topics:
 - (1) History of the N.C. Long Term Care Ombudsman Program
 - (2) Federal and state Residents' and Patients' Bill of Rights
 - (3) Federal and state licensure and regulation of long term care facilities
 - (4) Roles/responsibilities of key regulatory agencies
 - (5) The aging process
 - (6) Mental illness
 - (7) N.C. Long Term Care Ombudsman Program Policies and Procedures
 - (8) Types of long term care facilities
 - (9) Complaint management
 - (10) Documentation requirements
 - (11) Case studies and the mediation process
 - (12) Confidentiality requirements
 - (13) Community advisory committee management, recruitment and training
 - (14) Relevant federal and state laws, regulations, policies and standards
 - (15) Community Education
 - (16) Elder Abuse Prevention, Education and Awareness
 - (17) How to develop and maintain resident councils and family councils.

b. Participate in facility internships.

- (1) Individuals with no previous work experience in nursing home(s) and adult care home(s) will complete an internship in each of the different types of facilities: An eight-hour (8) internship in a skilled nursing facility; an eight-hour (8) internship in an adult care home; and a six-hour (6) internship in a family care home. A written summary of each internship is to be submitted to the State Long Term Care Ombudsman.
- (2) Individuals who have worked in a long term care facility within three (3) years of employment as a Regional Ombudsman will complete internships only in those facilities where there has been no recent work experience.
- (3) The facility internships will provide knowledge of the overall operation of long term care facilities, relevant issues in long term care, levels of care provided, established internal grievance processes and aging processes.

c. Read and demonstrate understanding of the following:

- (1) Nursing Home Community Advisory Committee Handbook
- (2) Nursing Home Reform Amendments
- (3) Adult Care Home Community Advisory Committee Handbook
- (4) An Ombudsman's Guide to the Nursing Home Reform Amendments of OBRA 1987
- (5) State Long Term Care Ombudsman Resource Guide
- (6) Comprehensive Curriculum for State Long Term Care Ombudsman Programs
- (7) Ombudsman Program Policies and Procedures
- (8) Federal and state legislation and regulations impacting the Long Term Care Ombudsman Program and long term care facilities
- (9) Nursing Home and Adult Care Home Community Advisory Committees: The Essential Guide
- (10) Other references as deemed appropriate.

d. Be prohibited from the following activities:

- (1) Federal regulations prohibit ombudsman services from being provided by an agency or organization which is responsible for licensing or certifying long term care services or which is an association (or affiliate of such an association) of long term care facilities (including any other residential facility for older individuals).

- (2) In addition, no individual involved in the Long Term Care Ombudsman Program shall be subject to a conflict of interest. Conflict of interest includes having any monetary interest in a long term care facility or being related by blood or marriage to a board member, owner, administrator, other facility staff and/or a resident of any long term care facility in which the ombudsman serves.
- (3) No representative of the Office of the State Long Term Care Ombudsman shall be assigned to investigate a complaint concerning a long term care provider with which the ombudsman was formerly employed in the last three (3) years.
- (4) If a Regional Ombudsman receives a complaint from an individual whom s/he knows personally and as a result, a Regional Ombudsman believes that this personal relationship will interfere with his/her ability to maintain objectivity in investigating the complaint, or if a relative (a member of immediate family or household) of a Regional Ombudsman is receiving care in any long term care facility for which the Regional Ombudsman provides services, the complaint must either be referred to the appropriate regulatory agency, the appropriate community advisory committee with permission of the resident and/or the resident's legal representative, the State Ombudsman, or assigned to another Regional Ombudsman employed by the Area Agency on Aging if the Area Agency on Aging has more than one certified Regional Ombudsman.

3. The Area Agency on Aging must:

Prior to offering employment, contact the State Ombudsman to review the professional background of any individual(s) under consideration to assume the responsibilities of a Regional Ombudsman to ensure that the individual is not subject to a conflict of interest.

Report any conflict of interest that develops after a Regional Ombudsman is hired to the State Ombudsman to receive guidance and submit a suggested plan of resolution subject to approval of the State Ombudsman to ensure compliance with the Amendments to the Older Americans Act.

4. The Regional Ombudsman must:

Meet qualifications established by the Office of the State Long Term Care Ombudsman to become certified prior to exercising any power/duties of the position. Qualifications include:

- a. Bachelor's Degree in a human services field;
- b. Two years of professional experience with a minimum of one year in the field of aging, long term care, or a related field; and/or
- c. An equivalent combination of education and experience.

VIII. Legal Representation for the Offices of State and Regional Long Term Care Ombudsmen

A. Legal Base

42 U.S.C. §3058g(g) Legal Counsel

"The State agency shall ensure that (1)(A) adequate legal counsel is available, and is able, without conflict of interest, to (i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and (ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and (B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and (2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents."

N.C.G.S. §143B-181.17"

"The Attorney General shall provide legal staff and advice to this office [of State Long Term Care Ombudsman]."

N.C.G.S. §143B-181.19(a)

"(a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging and shall be headed by a Regional Ombudsman. . . The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman."

B. State Policies and Procedures

1. In General

In carrying out the functions and duties of the Offices of the State Ombudsman and Regional Long Term Care Ombudsman, federal law requires that legal representation as well as advice and consultation must be provided.

2. Concerning Legal Representation:

- a. Legal representation, advice, and consultation are provided to the Office of the State Long Term Care Ombudsman by the N.C. Attorney General's Office.

- b. Regional Long Term Care Ombudsmen are employees of Area Agencies on Aging, which are part of the lead regional councils (also known as Councils of Governments) established under N.C.G.S. §160A-470. Each Area Agency on Aging shall include written documentation in the Area Plan regarding how legal consultation, advice and representation will be provided for Regional Ombudsmen.
- c. As issues arise of general applicability to the Long Term Care Ombudsman Program involving complaints, a Regional Ombudsman will submit the issue(s) and any questions on the issue(s) which need to be addressed in writing to the State Long Term Care Ombudsman. The State Long Term Care Ombudsman will review the issue(s) and may forward the information to the Attorney General's Office for advice and consultation. The Attorney General's Office will submit a written response on the issue(s) to the State Long Term Care Ombudsman. The State Ombudsman will then distribute this information to all Regional Ombudsmen.
- d. When a Regional Ombudsman has questions regarding a specific case in which s/he is involved, the Regional Ombudsman will contact the attorney designated by the Area Agency on Aging to provide legal representation.

IX. Access Procedures for the Offices of State and Regional Long-Term Ombudsmen

A. Legal Base

42 U.S.C. §3058g(b)

“(1) In General—The State shall ensure that representatives of the Office shall have (A) access to long term care facilities and residents; (B)(i) appropriate access to review the medical and social records of a resident, if (I) the representative has the permission of the resident, or the legal representative of the resident; or (II) the resident is unable to consent to the review and has no legal representative; or (ii) access to the records as is necessary to investigate a complaint if (I) a legal guardian of the resident refuses to give the permission; (II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and (III) the representative obtains the approval of the Ombudsman; (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long term care facilities; and (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long term care facilities.”

N.C.G.S. §143B-181.20(a)

“(a) The State and Regional Ombudsman may enter any long term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §3001, is guilty of a Class 1 misdemeanor.”

B. State Policies and Procedures

1. In General

The State and Regional Ombudsmen have access to any long term care facility in carrying out their responsibilities and duties as advocates for the residents. If a State or Regional Ombudsman is in the facility to gather information on a complaint, confidentiality procedures established by the State Ombudsman must be followed. See section XI. Confidentiality, pages 48-51.

A State or Regional Ombudsman will introduce him/herself to the resident, explain the reason for the visit and indicate to the resident that s/he has the right to decide if s/he wishes an ombudsman to advocate on his/her behalf. The State or Regional Ombudsmen will work to empower the resident to advocate on his/her own behalf with the facility administration.

2. The State and Regional Ombudsmen will:

- a. Comply with the facility visitor registration policy, if one exists.
- b. Respect the right of the resident to decline the assistance of an ombudsman in attempting to resolve the complaint filed and to decline to communicate with the ombudsman.
- c. Inform the resident, resident's family, and/or the resident's legal representative about other options for complaint resolution such as referral to a regulatory agency or direct family intervention.
- d. Encourage the resident's active participation in planning the proposed action(s) to be taken on his/her behalf with the assistance of a Regional Ombudsman.

- e. Consult with the attorney designated to provide legal representation regarding procedures for appointing a legal guardian if the resident has no legal guardian and it is determined that a guardian is needed.
- f. Utilize techniques of mediation, conciliation, and persuasion.
- g. Refer to the appropriate licensure agency, pursuant to N.C.G.S. §§131F-100 through 131D-2, complaints or conditions adversely affecting residents in long term care facilities that cannot be resolved through mediation, conciliation, and persuasion pursuant to N.C.G.S. §143B-181.21(b) by the next business day.

X. Cooperation of Government Agencies

A. Legal Base

42 U.S.C. §3058g(b)(1) Procedure for Access

“The State shall assure that representatives of the Office shall have... (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long term care facilities; and (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long term care facilities.”

N.C.G.S. §143B-181.20(e)

“The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.”

B. State Policies and Procedures

1. In General

The State and Regional Ombudsmen shall contact an authorized representative of any government agency to obtain assistance, information, files, and records which are needed to perform his/her duties.

The State Long Term Care Ombudsman will maintain a current Memorandum of Agreement between the Office of the State Long Term Care Ombudsman and the Division of Health Service Regulation and review the document at least every five (5) years for any updates needed.

2. The State and Regional Ombudsmen will:

- a. Request written notification of results from any government agency where a referral is made in response to a complaint so that Case Record documentation can be completed.
- b. Request written notification of results determined by a department of social services evaluation in cases where the State or Regional Ombudsmen reported a suspected need for protection to the Adult Protective Services staff. The department of social services will indicate whether or not the complaint was substantiated. A department of social services is prohibited from including specific findings of the evaluation in order to protect the client's confidentiality pursuant to N.C.G.S. §143B-153, 10A NCAC 42V 0907.

XI. Confidentiality

A. Legal Base

42 U.S.C. §3058g(d) Disclosure

“(1) In General—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c). The procedures described [above] shall (A) provide that, subject to [below], the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and (B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless (i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing; (ii)(I) the complainant or resident gives consent orally; and (II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or (iii) the disclosure is required by court order.”

N.C.G.S. §143B-181.20

“(a) Any State or Regional Ombudsman who discloses any information obtained from the patients' records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. 3001 is guilty of a Class I misdemeanor.”

N.C.G.S. §143B-181.22

“The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential

and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §3001 (1989, c. 403, s. 1; 1995, c. 254, s. 5.)”

B. State Policies and Procedures

1. In General

The identity of the resident, resident’s legal representative, the complainant or other individual(s) providing information on a complaint shall not be disclosed unless written informed consent for disclosure is obtained. The appropriate signed consent form shall be attached to the Case Record and kept in a Regional Ombudsman’s confidential locked files.

If the complaint(s) becomes the subject of a judicial proceeding, the investigative information produced by the process of complaint resolution may be disclosed only when required by a court order.

State and Regional Ombudsmen shall not use any form of electronic communication such as electronic mail to communicate or discuss confidential complaint information with other parties including the names of a resident or complainant. Email communication is considered public domain and not protected from disclosure to third parties.

2. The State and Regional Ombudsmen may:

- a. Disclose information on complaints received about a resident in a long term care facility in another region of the state to the appropriate Regional Ombudsman in order to facilitate timely resolution of those complaints.
- b. Disclose information on complaints received to the appropriate licensure agency(s) pursuant to N.C.G.S. §§131E-100 through 110 and N.C.G.S. §131D-2.
- c. The State Ombudsman will consult with legal counsel for the Office of the State Long Term Care Ombudsman to determine if a request for records from the media and other agencies is an allowable release of confidential information under the federal laws governing confidentiality requirements for the Long Term Care Ombudsman Program.

3. Staff duly authorized to receive confidential information under the jurisdiction of the Offices of State and Regional Ombudsman:

- a. The State Ombudsman, certified ombudsmen in the State Office and the State Ombudsman’s immediate supervisor in the Division of Aging and Adult Services are authorized to receive confidential information regarding the care of residents in long term care facilities and to access confidential Case Records maintained in

either hard copy or the Ombudsman Program's documentation and information system.

- b. The Director of the Division of Aging and Adult Services has access to the State Long Term Care Ombudsman's files only for the purpose of monitoring the Long Term Care Ombudsman Program; however, access to confidential Case Records is at the discretion of the State Long Term Care Ombudsman.
- c. Only certified Regional Long Term Care Ombudsmen are allowed to access their confidential Case Records maintained in either hard copy or in the Ombudsman Program's documentation and information system. The Area Agency on Aging Director and/or the immediate supervisor of a Regional Ombudsman may act as designees to receive confidential complaint information when a Regional Ombudsman has taken an extended leave of absence or a Regional Ombudsman position is vacant. The complainant or the complaints are then referred to the Office of the State Long Term Care Ombudsman or appropriate regulatory agency. In regions with more than one certified Regional Ombudsman, complainants contacting the Area Agency on Aging will be referred to other Regional Ombudsmen in the office.
- d. Administrative staff directly responsible to the State Ombudsman and Regional Ombudsmen may be requested to prepare confidential written correspondence, to accept incoming telephone calls and take messages for the Long Term Care Ombudsman Program, but they shall not have access to confidential Case Records kept in either hard copy or electronic files. Each administrative staff person assigned to provide direct programmatic support to the Long Term Care Ombudsman Program shall receive instruction about the Program's confidentiality requirements and sign a written statement indicating they understand and will protect any confidential information they may have access to when providing direct program support to the State or Regional Ombudsmen.
- e. The State Ombudsman and Regional Ombudsmen shall maintain signed confidentiality statements in their files for each staff member and ensure that these statements are up to date and reflect any changes in administrative staff working with the Program.
- f. Other employees in the Division of Aging and Adult Services, Area Agencies on Aging or Councils of Governments are not authorized to receive or hear confidential information related to complaints involving a long term care resident nor authorized to have access to any confidential information including Ombudsman Program Case Records either in hard copy or electronic files.

- g. Designated employees are prohibited from discussing confidential information with undesignated staff within the agency. Both State and Regional Ombudsmen are responsible for ensuring that confidentiality procedures are followed.

XII. Complaint Resolution

A. Legal Base

42 U.S.C. §3058g(a)(3)(A) Functions.

“The Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office—(A) identify, investigate, and resolve complaints that (i) are made by, or on behalf of, residents; and (ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents”

42 U.S.C. §3058g(a)(5)(B)(ii)

“(B) An individual so designated shall, in accordance with the policies and procedures established by the Office and the State Agency . . . (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;”

42 U.S.C. §3058g(d)(2)

“Establish procedures to ensure that representatives of the Office have access to long term care facilities and residents including procedures to protect the confidentiality of these records and "prohibit the disclosure of the identity of any complainant or resident with respect to whom the (ombudsman's) Office maintains such files or records unless: (I) the complainant or resident, or legal representative of the complainant or resident consents to the disclosure and the consent is given in writing; (ii) (I) the complainant or resident gives consent orally; and (II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish: or (iii) the disclosure is required by court order.”

42 U.S.C. §3058(f) Definitions

(6) The term “resident” means an older individual who resides in a long term care facility.

(40) The term “older individual” means an individual who is 60 years of age or older.

State Long-Term Care Ombudsman Provisions In the Older Americans Act, as Amended in 1992 by Topic, With Administration on Aging (AOA) Policy Interpretations:

Policy Interpretation Regarding Clients:

“The primary role of the Ombudsman is to advocate for the rights and interests of residents of long term care facilities. The definitions section for Title VII, Sec.

711(6) defines “resident” as “an older individual who resides in a long term care facility.” Long-standing AOA policy is that the Ombudsman and ombudsman representatives may serve disabled individuals with disabilities under the age of 60 who are living in long-term care facilities, if such service does not weaken or decrease service to older individuals covered under the Act.”

N.C.G.S. §143B-181.20(b)

“The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.”

N.C.G.S. §143B-181.20(c)

“The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.”

N.C.G.S. §143B-181.20(d)

“The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.”

N.C.G.S. §143B-181.21(a)(b)

“(a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal techniques of mediation, conciliation, and persuasion. (b) Complaints or conditions adversely affecting residents of long term care facilities that cannot be resolved in the manner described [above] shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 – 110 and G.S.131D-2.”

N.C.G.S. §§131D-32(e) and 131E-128(h)(1)

“Each committee shall apprise itself and shall work for the best interests of the persons in the home. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.”

B. State Policies and Procedures

1. In General:

The State Ombudsman will establish and provide training for Regional Ombudsmen on the complaint resolution process as part of the initial certification training. Both the State and Regional Ombudsmen will follow the Complaint Management Procedures as outlined in current Long Term Care Ombudsman Program Policies and Procedures. The State Ombudsman also establishes, reinforces, and revises, as deemed necessary, procedures concerning legitimate complaints against any representative of the Long Term Care Ombudsman Program (see p. 59).

2. The State Long Term Care Ombudsman will:

- a. Refer complaints received through the Office of the State Long Term Care Ombudsman to the appropriate Regional Ombudsman if the complaint(s) is deemed appropriate for informal grievance resolution by the Ombudsman Program.
- b. Refer complaints that are inappropriate for informal grievance resolution by the Ombudsman Program to the appropriate licensure agency pursuant to N.C.G.S. §131E-100-110 and N.C.G.S. §131D-2.
- c. Notify Regional Ombudsmen of complaints received and referred to licensure agencies or to the county department of social services pursuant to N.C.G.S. §108A, Article 6.
- d. Provide assistance directly to complainants during periods when there is a vacant Regional Ombudsman position and no other Regional Ombudsman is available, when there is an established conflict of interest or when a Regional Ombudsman is unavailable due to extended leave and there is no other Regional Ombudsman available to assume jurisdiction over the complaint.

3. When Complaints are Received Directly by a Regional Ombudsman, a Regional Ombudsman will:

- a. Visit the resident in the facility within 1-4 working days from the date the complaint is received.
Note: It is recognized that occasionally this timeframe cannot be met by a Regional Ombudsman. When more than four (4) days elapse before a visit with the resident, the Regional Ombudsman will document the reason under the Case Record Closing Details in the field entitled **Deviations in Complaint-Handling Practice/Policy** in the Ombudsman Program documentation and information system.
- b. Obtain information on the facility's visitor registration policy prior to visiting the facility and comply with that policy. A specific resident's name will not be written in the visitors' registry unless prior written informed consent has been obtained.
- c. Proceed to the resident's room. A Regional Ombudsman may visit with several residents in order to protect the identity of the resident identified in the complaint(s) received.
- d. Identify him/herself to the resident, explain the role of an ombudsman and explain the reason for the visit.
- e. Explain written informed consent and how it will be used. If the Regional Ombudsman wants to include a community advisory committee member in the complaint process, inform the resident

and request the resident's written consent to include an advisory committee member in the grievance process. Explain the informal grievance resolution process which includes discussing complaints with the administrator as part of the efforts to resolve them.

- f. Obtain signatures from the resident and/or their legal representative on the appropriate consent form(s) that authorize review of the resident's medical/social/financial records and disclosure of the identity of the resident. If the resident uses an "X" for his/her signature, ensure there is a witness present to validate the resident's signature by signing their name under the resident's mark.
- g. Respect the right of the resident and empower the resident to participate in and approve or disapprove any courses of action to be taken by the Regional Ombudsman on the resident's behalf. If the resident is unable to communicate or if s/he has been determined legally or clinically incompetent, consult with the resident's responsible party, legal guardian or legal representative for guidance and to plan proposed actions to be taken during the complaint resolution process.
- h. Gather and document relevant information through direct observation, interviews, and record(s) review related to the complaints received. Collect specific information that will support efforts to resolve the complaint locally. Observation, interviews, and record(s) review may require multiple visits to the facility.
- i. Meet with the facility administrator or person in charge before any action is taken to allow facility management the opportunity to respond, provide additional information, or initiate internal action to resolve the complaint.
Note: If the complainant has already made attempts to resolve the complaint with management, the complainant may request that a Regional Ombudsman refrain from meeting with the administrator or not offer informal grievance resolution and assist them instead with filing a formal complaint with the appropriate regulatory agency.
- j. Utilize techniques of mediation, negotiation, conciliation, and persuasion in attempting to resolve the complaint(s) with the administrator or designated facility management staff and the complainant.
- k. If these efforts are unsuccessful and a Regional Ombudsman determines that the complaint(s) has/have not been resolved in a reasonable amount of time, then the complaint(s) will be referred by the end of the next working day to the appropriate licensure agency pursuant to N.C.G.S. §§131E-100 - 110 and N.C.G.S. §131D-2.

- I. Complete the following procedures if the results of an investigation determine that a complaint(s) is unsubstantiated at this time:
 - (1) Explain to the resident, the complainant, or resident's legal representative that the complaint could not be substantiated.
 - (2) Indicate that no further action will be taken by the Regional Ombudsman.
 - (3) Empower the resident or complainant by explaining ways to record information, including actions taken to address the problem, names of staff involved, dates, time of day the problem occurs, how frequently the problem occurs and any staff responses to the resident's complaints.
 - (4) Inform the resident or complainant that they may contact the Regional Ombudsman again for assistance.
- m. Record all documentation obtained as part of the investigation in the Case Record (DHHS-DAAS-004), including a final summary statement indicating the reason the case is closed, the extent to which the resident's desired outcome was achieved, final disposition codes for each complaint and indicate no further action will be taken by the Regional Ombudsman. Each closed case will be printed from the Ombudsman Program documentation and information system and the signature and date requirements completed by the Regional Ombudsman handling the case. Include the appropriate consent form(s), copies of all correspondence and all documents related to the investigation of the complaint(s) in the Case Record file.
- n. Keep each confidential Case Record and all confidential information involving the investigation in the Regional Ombudsman's locked file for a minimum of five (5) years from the date the case was closed. Any confidential complaint information, including Program Case Records retained in electronic files must also be retained for a minimum of five years before files are permanently deleted.
- o. If unable to resolve the complaint(s), the complaint(s) should be referred to the appropriate regulatory agency pursuant to N.C.G.S. §§131E-100-110 and N.C.G.S. §131D-2.
- p. Request a written follow-up report from the regulatory agency about the results of any investigation and/or whether the complaint(s) was/were substantiated or unsubstantiated.
- q. Provide follow-up information on the findings to the appropriate individual (i.e. resident, resident's guardian and/or legal representative(s) or complainant) upon completion of the complaint

resolution process.

4. When Complaints are Received Directly by a Regional Ombudsman, the Following Procedures for Obtaining Informed Consent will be used:

- a. Inform the resident or legal representative that written informed consent must be obtained in order to disclose the identity of the resident or complainant during an investigation of the complaints and request the written consent of the resident.
- b. Meet one of the following three conditions to have access to the medical and social records of a resident:
 - (1) Obtain the written consent of the resident and/or the legal representative of the resident; or
 - (2) Obtain approval from the State Ombudsman when the resident is unable to consent to a review of their records and has no known legal representative; and access to the records is necessary to investigate a complaint;
 - (3) Obtain the State Ombudsman's approval to access a resident's records when a legal guardian of a resident refuses to give written consent and there is reasonable cause to believe that the guardian is not acting in the best interests of the resident.
 - (4) Obtain and review medical records only after receiving written informed consent. Verbal consent cannot be used to access medical records.
- c. Obtain the following completed forms or any combination that applies to the complaint situation:
 - (1) Resident Authorization Forms (DHHS-DAAS-9112) (9113)
 - (2) Resident Oral Consent Form (DHHS-DAAS-9114)
 - (3) Complainant Authorization Form (DHHS-DAAS-9115)
 - (4) Legal Authorization Form (DHHS-DAAS-9116).
- d. Attempt to resolve the complaint and not disclose the identity of the resident if the resident requests the Regional Ombudsman to advocate on his/her behalf, but does not provide consent for his/her identity to be disclosed.
- e. Attempt to resolve the complaint and not disclose the identity of the resident if the resident gives permission to review his/her medical/social records, but does not give permission for his/her name to be disclosed. Inform the resident that the facility's policy requires

disclosure of the name of the resident in order to access residents' medical/social records and discuss alternative methods for facilitating resolution by referral of the complaint to the appropriate regulatory agency for investigation or by the Regional Ombudsman attempting to resolve the complaint without viewing the resident's records.

- f. Maintain jurisdiction and oversight of the complaint throughout the investigation process including complaints that the Regional Ombudsman requested the assistance of one or more community advisory committee members.
- g. Record a summary statement in the Case Record indicating the reason the case is closed, the extent to which the resident's desired outcome was achieved, final disposition codes, follow-up contacts completed and indicate that no further action will be taken by the Regional Ombudsman. Each closed case will be printed out from the Ombudsman Program documentation and information system and the signature and date requirements completed by the Regional Ombudsman. All hard copy Case Records shall be maintained in the Regional Ombudsman's locked files.

5. When Complaints Are Received Directly by a Regional Ombudsman, and the Resident Refuses Services, a Regional Ombudsman will:

- a. Retain jurisdiction and oversight of the complaint throughout the complaint resolution process.
- b. Visit the resident in the facility within 1-4 working days from the date the complaint is received to determine whether the resident would like the Regional Long Term Care Ombudsman's assistance with resolving their grievance(s).
- c. Obtain information on the facility's visitors' registration policy prior to visiting the facility and comply with that policy. A specific resident's name should not be written in the visitors' registry unless informed consent has been obtained.
- d. Proceed to the resident's room. A Regional Ombudsman may visit with several residents in order to protect the identity of the resident(s) with complaint(s).
- e. Identify him/herself to the resident, explain the role of a long term care ombudsman and explain the reason for the visit.
- f. If the resident refuses to communicate with the Ombudsman or refuses offered services, the general complaint will be referred without identifying the resident or complainant to a regulatory agency for investigation if appropriate, and no further action will be taken by a Regional Ombudsman on this resident's behalf.

- g. If the complaint(s) was/were filed by the resident's legal representative or other responsible party, s/he will be informed of the resident's decision and alternative methods or options for complaint resolution will be discussed.

6. When Anonymous Complaints Are Received Directly by a Regional Ombudsman, a Regional Ombudsman will:

- a. Conduct a visit to the facility to talk with residents and staff about the anonymous concerns as well as conduct general observations related to the complaint(s).
- b. Attempt to resolve the complaint(s) as a general concern or issue with the facility administration utilizing techniques of mediation, conciliation, and persuasion if the complaint is appropriate for the informal grievance resolution process.
- c. Refer the complaint(s) to the appropriate regulatory agency pursuant to N.C.G.S. §§131E-100 -110 and N.C.G.S. §131D-2 if the issue cannot be resolved informally and the complaint(s) pertains to rights or licensure issues.
- d. Complete the Case Record and maintain confidentiality of the resident(s).

7. When Problems Are Observed While in a Facility, a Regional Ombudsman will:

- a. Assume the role of a complainant and address any concerns that he/she directly observes during a facility visit with facility administration even if a complaint has not been filed with the ombudsman prior to or during the visit.
- b. Refer the issue to the appropriate agency pursuant to G.S. §§131E-100 -110 and G.S. §131D-2 if the Regional Ombudsman is unable to resolve the issue with the facility administrator and it involves possible licensure violations.
- c. Document all actions taken related to addressing the complaint(s) and complete the Case Record in the Ombudsman Program documentation and information system.
- d. Maintain the confidentiality of any resident(s) or other complainants identified who were involved in the complaint(s) unless written informed consent is obtained to reveal their identity.

8. Community Advisory Committee Members will:

- a. Notify the community advisory committee chairperson when complaints are received. The chairperson will:
 - (1) Determine whether the complaints are appropriate for the committee to investigate;
 - (2) Assign subcommittee members to investigate the complaints; and
 - (3) Consult with the Regional Ombudsman for technical assistance regarding the complaints. If consultation does not include disclosure of the resident's identity, then a community advisory committee retains jurisdiction of the complaint investigation.
- b. Accept assignment from the chairperson through the required subcommittee process to complete investigation of the complaints.
- c. Follow the Long Term Care Ombudsman Program's complaint management protocols in attempting to resolve the complaints.
- d. Adhere to the Long Term Care Ombudsman Program and statutory confidentiality requirements in working with the resident until appropriate written informed consent is obtained to disclose the resident's identity.
- e. Relinquish jurisdiction and oversight of a complaint to the Regional Ombudsman, if the community advisory committee chairperson discloses the identity of the resident to the Regional Ombudsman during a consultation.
- f. Document all actions taken in the Ombudsman Program Case Record.
- g. The committee chairman will submit all closed Case Records to the Regional Ombudsman who will enter the documentation into the Ombudsman Program documentation and information system.
- h. Assist a Regional Ombudsman in the grievance resolution process only if a Regional Ombudsman has obtained written consent from either the resident or the resident's legal representative for community advisory committee member involvement.

XIII. Complaints against Representatives of the Office of the State Long Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(5)(A)

“Designation—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.”

B. State Policies and Procedures

1. In General

The State Ombudsman may decertify a representative of the Office if an investigation and documentation review verifies there is just cause for decertification {see pages 12-13}. Complaints related to the actions of a certified Regional Ombudsman and all supporting documentation must be submitted in writing to the State Ombudsman. Once reviewed, the State Ombudsman will determine what, if any, remedial action may be taken to avoid initiating the decertification process.

2. The State Long Term Care Ombudsman will:

- a. Meet with the Regional Ombudsman to discuss the allegations and establish the facts that determine whether the Regional Ombudsman was performing duties in accordance with the Long Term Care Ombudsman Program Policies and Procedures, N.C. G.S. §§143B-181.15-.25 and Title VII of the Older Americans Act. Based on the nature of the allegations, the meeting may be conducted via a telephone conference.
- b. Provide findings in writing to the complainant that the Regional Ombudsman was acting in good faith in the performance of their duties as prescribed in state and federal law and the Long Term Care Ombudsman Program Policies and Procedures. No further action will be taken.
- c. Explain findings to the Regional Ombudsman and the complainant if the State Ombudsman determines that actions were in violation of Long Term Care Ombudsman Program Policy and Procedures, N.C.G.S. §§143B-181.15-.25 and Title VII of the Older Americans Act.
- d. Propose remedies that may include scheduling a meeting between the complainant, Regional Ombudsman and Area Agency on Aging Director to establish a basis for informal resolution of the issues. Resolution strategies may include, but are not limited to,

providing additional training and technical assistance to the Regional Ombudsman that addresses the specific inappropriate action or prohibiting the Regional Ombudsman from addressing complaints in a specific long term care facility until the existing breach is resolved.

- e. Make a determination regarding whether the Regional Ombudsman failed to follow the Ombudsman Program Policies and Procedures, state laws, federal laws and/or violated the Long Term Care Ombudsman Program confidentiality requirements which negatively impacted a resident(s) or the Long Term Care Ombudsman Program.
- f. Recommend decertification and state the reasons for the action in writing. (See reasons for decertification on pages 11-12).
- g. Review recommendations for decertification of a Regional Ombudsman with the State Ombudsman's immediate supervisor and the Division Director.
- h. Notify the Regional Ombudsman, the Area Agency on Aging Director, the State Ombudsman's immediate supervisor and the DAAS Director of the final decision to decertify the Regional Ombudsman, provide each with a written copy of a Notice of Decertification along with supporting documentation and advise that the individual may request an opportunity for further review within the Division of Aging and Adult Services.
- i. If a review is requested, convene a three-person committee to review the decertification decision. The Division Director, the Chief of the Elder Rights and Special Initiatives Section and the Ombudsman Program's legal representative in the N.C. Attorney General's Office will serve on this committee. A written decision to uphold or reverse the decertification will be disseminated to the Regional Ombudsman, Area Agency on Aging Director and the Executive Director of the Council of Governments.
- j. Personnel issues involving a Regional Ombudsman will be addressed by the Area Agency on Aging Director and Executive Director of the Council of Governments.

2. A Regional Long Term Care Ombudsman will:

- a. Meet with the State Long Term Care Ombudsman to discuss the allegations and establish the facts related to whether the Regional Ombudsman was performing duties in accordance with N.C.G.S. §§143B-181.15-.25, Title VII of the Older Americans Act and the Long Term Care Ombudsman Program Policy and Procedures.

- b. Develop and implement strategies cooperatively with the State Ombudsman designed to achieve resolution of the differences between the complainant and the Regional Ombudsman.
- c. Cease performing the duties of a Regional Long Term Care Ombudsman upon notification to the Area Agency on Aging Director of the State Ombudsman's decision to decertify the Regional Ombudsman.

3. Complaints against Community Advisory Committee Members

Community Advisory Committee members are mandated to complete initial and ongoing training as prescribed by the Division of Aging and Adult Services. Regional Ombudsmen are designated to provide this training and ongoing consultation to the community advisory committees in each region. Any complaint related to the actions of a community advisory committee member while visiting in a long term care facility must be submitted in writing for review to either the Regional Ombudsman assigned to work with the affected committee or the complainant may address their complaints directly to the local board of county commissioners since they are the appointing body.

When a Regional Ombudsman receives complaints about either a committee's recent visit or an individual community advisory committee member, the primary role will be to conduct a quality assurance review related to Program responsibilities for initial and ongoing training for the appointees, as well as the Ombudsman Program's role in providing support and technical assistance. A quality assurance review includes the following:

- a. The Regional Long Term Care Ombudsman assigned to work with the identified community advisory committee will meet with the community advisory committee member(s) for a discussion about the allegations received and gather factual information from the community advisory committee member(s) related to the complaint(s).
- b. A review of the complaint(s) will be made to determine validity and whether the allegation(s) made is/are a violation of the Ombudsman Program Policies and Procedures or G.S. §§131D-31 or 131E-128, which establishes the mandated duties of the community advisory committees.
- c. If the Regional Ombudsman decides that the community advisory committee member(s) was/were in compliance with the law and Ombudsman Program Policies and Procedures, then the complainant will be notified in writing that no further action will be taken by the Regional Ombudsman. The Regional Ombudsman will

maintain written documentation of facts established that support this decision.

- d. If it is determined that the committee members' actions were out of compliance with the Ombudsman Program Policies and Procedures or N.C.G.S. §§131D-31 or 131E-128, then the Regional Ombudsman will explain the findings and outline proposed remedial actions to the community advisory committee member(s).
 - (1) Remedial strategies may include, but are not limited to the following: conduct additional training about the duties of a community advisory committee member, offer additional technical assistance and consultation during facility visits and/or request that the community advisory committee member(s) transfer to a different subcommittee so they no longer visit the facility where the inappropriate action occurred.
 - (2) Notify the State Long Term Care Ombudsman for assistance as deemed appropriate.
 - (3) Notify the local board of county commissioners that a complaint(s) has/have been filed and the results of the Regional Ombudsman's review.
 - (4) Submit a written request to the local board of county commissioners to immediately terminate the committee member's appointment if the community advisory committee member's actions negatively impacted either residents or the successful operation of the community advisory committee.
- e. Grounds for recommending immediate removal of a community advisory committee member may include, but are not limited to the following:
 - (1) Willful failure to follow policies and procedures and training provided to community advisory committee members that outline their responsibilities.
 - (2) Failure to complete the required training within three (3) months of appointment.
 - (3) Intentional failure to reveal a conflict of interest.
 - (4) Intentional misrepresentation of the representative's designated authority or the mandated responsibilities s/he has agreed to perform.

- f. The removal of a community advisory committee is the responsibility of the local board of county commissioners.
- g. All documentation related to the complaint(s) and all actions taken will be retained in the Regional Ombudsman's confidential files.

XIV. Prohibition of Retaliation against State/Regional Ombudsmen

A. Legal Base

(N.C.G.S. §143B-181.23)

"No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long term care facility, or any other person because of the making of a complaint or providing information in good faith to the State Ombudsman or Regional Ombudsman."

B. State Policies and Procedures

The State Ombudsman will consult with the Attorney General's Office on specific cases in which possible retaliation has occurred against any person due to filing a complaint or providing information in good faith to the State Ombudsman.

The Regional Ombudsman will consult with the attorney designated to provide legal representation on specific cases in which possible retaliation has occurred against any person due to filing a complaint or providing information to the Regional Ombudsman.

XV. Immunity from Liability for the Offices of the State and Regional Long Term Care Ombudsmen

A. Legal Base

(N.C.G.S. §143B-181.24)

"No representative of the Office will be liable for good faith performance of official duties."

XVI. Penalty for Willful Interference with the Long Term Care Ombudsman Program

A. Legal Base

(N.C.G.S. §143B-181.25)

"Willful or unnecessary obstruction with the State or Regional Long Term Care Ombudsman in the performance of his/her official duties is a Class I misdemeanor."

B. State Policies and Procedures

The State Ombudsman will consult with the N.C. Attorney General's Office on specific cases in which possible willful and unnecessary interference has occurred in the performance of his/her official duties.

A Regional Ombudsman will consult with the attorney designated to provide legal representation on specific cases in which possible willful and unnecessary interference or obstruction has occurred in the performance of his/her official duties. The Regional Ombudsman should also notify the State Ombudsman.

Some examples of willful and unnecessary interference include denial of access to the facility, denial of access to residents and/or residents' records, and interference with private communication with a resident.

XVII. Appendices

DOA ADMINISTRATIVE LETTER NO. 99-5

To: LRO Directors
Area Agency on Aging Directors
Regional Long Term Care Ombudsmen

Subject: Long Term Care Ombudsman Program Role and Responsibilities
Long Term Care Ombudsman Program Legislative Advocacy

Date: June 9, 1999

To clarify the roles and responsibilities of the Long Term Care Ombudsman Program at both the state and regional level we have consulted with the Attorney General's office and have determined the following:

Policy and Procedure Development, Monitoring, and Program Oversight

- The State Long Term Care Ombudsman Office is responsible for developing policies and procedures for the Long Term Care Ombudsman Program. The State Office will develop these procedures in consultation with the Area Agencies on Aging and other appropriate parties, but the State Office is ultimately responsible for final policy affecting the program.
- The State Long Term Care Ombudsman Office is responsible for development of policies and procedures to monitor the Regional Long Term Care Ombudsman Programs and shall enforce the policy and procedures set forth for the program.
- The Area Agencies on Aging are responsible for the administrative supervision of the Regional Long Term Care Ombudsman Program which includes management of personnel issues such as attendance and salary schedules, local budget oversight, local evaluation of employee performance and ensuring availability of adequate space and supplies
- In general, administrative requirements yield to programmatic requirements.
- The State Long Term Care Ombudsman Office is responsible for designating, certifying, and providing on-going technical assistance and training to the Regional Long Term Care Ombudsmen.

The following sections of the federal and state legislation provide support for these conclusions.

- 42 CFR 1321.9(d) "If a State statute establishes a State ombudsman program which will perform the functions of [the act], the State agency continues to be

responsible to assure that all of the requirements of the act are met regardless of the State legislation or source of funds.”

- 42 CFR 1321.11(a) “The State Agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.
- 42 USC 3058g (a)(5) “Designation of local Ombudsman entities and representatives
 ...In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity. (B) Duties An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency ...”
- N.C.G.S. 143B-181.18 (2) (3) (5) These provisions set forth the mandate of the State Long Term Care Ombudsman to supervise, certify and provide training to the Regional Ombudsmen.
- N.C.G.S. 143B-181.19(a) “An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.

Legislative Advocacy

Based on federal and state law, the Ombudsman Program at both the State and Regional level has legislative advocacy as a mandated job responsibility. This is an aspect of the program that currently does not have policies and procedures to address its implementation.

The controlling federal law on this topic is Section 42 U.S.C. 3058g. One specific section is 42 U.S.C. 3058g (a)(3) which sets forth that

“The[State] Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office ... (E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents; [and] (G)(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain 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; (ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and (iii) facilitate public comment on the laws, regulations, policies, and actions;”

The U.S. Code also sets out the specific responsibilities of “local ombudsman entities” designated by the State Ombudsman Office. Specifically, 42 U.S.C. 3058g (a) (5) spells out that

An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency - ... (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents; (v)(I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and (II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions; (vi) support the development of resident and family councils; and (vii) carry out other activities that the [State] Ombudsman determines to be appropriate.

These provisions are incorporated by reference in the North Carolina Statutes in 143B-181.15 and 143B-181.17.

Wendy Sause, State Long Term Care Ombudsman, is currently developing new policies and procedures to further clarify this mandate. Once the draft is complete, we will be seeking your input.

Relevant sections of the NC General Statutes and U.S. Code, which address these issues, are attached.

Please contact Wendy Sause, Debbie Brantley, or me with any questions concerning these matters.

Sincerely,

Karen E. Gottovi, Director
Division of Aging

Attachments

KEG/wls

cc: DOA Staff



**North Carolina Department of Health and Human Services
Division of Aging and Adult Services**

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Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

Dennis W. Streets
Director

ADMINISTRATIVE LETTER NO. 07-1

To: LRO Directors
Area Agency on Aging Directors
Regional Long Term Care Ombudsmen

Subject: NC Office of the Attorney General
Informal Opinion - LTC Ombudsman Program Issues

Date: February 6, 2007

This administrative letter is being issued in response to questions raised by Area Agency on Aging Directors vis-à-vis the State Long Term Care Ombudsman Program. Since many of the issues required legal interpretation of language in the Older Americans Act and G.S. 143B-181.15-.25 for the Long Term Care Ombudsman Program, the Division requested our Legal Counsel in the NC Office of the Attorney General to review them and respond. A copy of the informal opinion issued is attached.

One of the critical issues raised was whether each regional ombudsman employed by an Area Agency on Aging must be certified and perform all the duties mandated by federal and state law when there is more than one ombudsman. This question is addressed in item # 2 of the opinion. Even though each regional ombudsman must be certified by the State Long Term Care Ombudsman and carry out all mandated responsibilities, the Area Agency on Aging has the flexibility to determine how the job functions are assigned when there is more than one ombudsman. For example, one ombudsman may be responsible for performing all of the Ombudsman Program functions in one county in the region, but also help conduct training for community advisory committees in all counties within the region because s/he has excellent training skills. The Division supports and encourages this flexibility in order for the Area Agency on Aging to best utilize staff skills and experience. The Division, though, encourages the AAA Director to discuss any proposed significant changes in programmatic assignments with the State Long Term Care Ombudsman to ensure compliance with program requirements.

We appreciate our strong working relationship with Area Agencies on Aging. We will continue to work together on efforts to pursue new, innovative ways to further strengthen the Long Term Care Ombudsman Program.

I believe the answers to the other questions addressed in the opinion are clear; however, please contact Sharon Wilder or Debbie Brantley should you have any questions and/or need further clarification.

Sincerely,

A handwritten signature in black ink that reads "Dennis W. Streets". The signature is written in a cursive style with a large, stylized 'D' and 'S'.

Dennis W. Streets

Cc: Debbie S. Brantley
Sharon Wilder
DAAS

Attachment



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

Reply to:
Robert J. Blum
Health & Public Assistance
TELE: (919) 716-6855
FAX: (919) 716-6758

ROY COOPER
ATTORNEY GENERAL

--MEMORANDUM--

TO: Sharon Wilder
State Long-Term Care Ombudsman
Division of Aging and Adult Services

FROM: Robert J. Blum *RJB*
Special Deputy Attorney General

DATE: January 25, 2007

SUBJECT: Requirements of Regional Ombudsmen

You have asked five questions regarding North Carolina's Long-Term Care Ombudsman Program. Before responding to your questions, it is prudent to repeat some of the background regarding this State's Long-Term Care Ombudsman Program.

The Older Americans Act (the "Act") requires states to establish and operate a State Long-Term Care Ombudsman Program if they wish to receive federal funds. 42 U.S.C. § 3027. Federal funds are available to states that establish and operate an Ombudsman Program that is consistent with federal regulations and the intent of Congress. You have previously advised me that more than 80% of funding for the North Carolina's Ombudsman Program is received from the federal government. As a consequence of receiving federal funding, there is federal oversight of the North Carolina's Ombudsman Program.

The Act sets forth numerous requirements for states to follow. There is a requirement to establish a State Ombudsman. North Carolina has done this through N.C.G.S. § 143B-181.17. N.C.G.S. § 143B-181.18(2) requires the State Ombudsman to supervise the State Long Term Care Program using rules adopted by the Secretary of the Department of Health and Human Services (DHHS). The State Ombudsman must also certify regional ombudsmen, which includes training in federal, State and local laws, policies and standards. N.C.G.S. § 143B-181.18(3); 42 U.S.C. § 3058g(a)(5). See also N.C.G.S. § 143B-181.19(b), which requires regional Ombudsmen to follow policies and procedures established by the State Office of Long-Term Care Ombudsman. DHHS and the Division of Aging and Adult Services (DAAS) have provided rules through the "Long-Term Care Ombudsman Program Policies and Procedures," (hereafter, "Program Policies and Procedures").

The following are the questions you have asked and my responses:

1) What is the intent of N.C.G.S. § 143B-181.18 in terms of the authority of the State Ombudsman for ongoing program operation responsibilities as outlined in both law and current Program Policies and Procedures?

Answer:

A reading of the Act and statutes enacted by our legislature establishing the Ombudsman Program present a clear intent that the State Ombudsman has the authority and responsibility for ongoing program operations. The clear intent of the North Carolina legislature was that the Secretary of DHHS establish an Office of State Long-Term Ombudsman and appoint a person to be the State Ombudsman. N.C.G.S. § 143B-181.17. The intent of the legislature is that the duty of the State Ombudsman is to supervise the Long Term Care Ombudsman Program in North Carolina consistent with state statute and the Act. N.C.G.S. § 143B-181.18(2). See also N.C.G.S. §§ 143B-181.15 through 143B-181-19. In order to supervise the Long-Term Care Ombudsman Program, the State Ombudsman must have the authority and responsibility for ongoing Long-Term Care Ombudsman Program operations.

Although N.C.G.S. § 143B-181.19 states that an Area Agency on Aging (AAA) "shall provide administrative supervision to each Regional Ombudsman," it is my opinion that the legislature intended that "administrative supervision" by the AAA be for such issues as staff salaries, transportation, vacation and sick leave, work hours and day-to-day operations. It would not include ongoing program operations because N.C.G.S. § 143B-181.18(2) is a clear statement that this is a duty of the State Ombudsman through the Program Policies and Procedures established by the Secretary of DHHS.

2) Must each individual certified Regional Ombudsman assume responsibility for all the duties and functions as set forth in the Act, N.C. General Statutes and the Program Policies and Procedures or are the mandated duties a function of a Regional Ombudsman Program.

Answer:

As stated in question # 1), N.C.G.S. § 143B-181.18(2) requires the State Ombudsman to "supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to G.S. 143B-10." The Program Policies and Procedures sets forth the duties of the State Ombudsman as well as regional ombudsmen. Sections 1504 and 1506. Although the Manual establishes a "Regional Long-Term Care Ombudsman Program" (Section 1505), it is clear that the duties of the Regional Ombudsman are individual duties personal to the Regional Ombudsman and not general duties of the program. Section 1506. See also 42 U.S.C. § 3058g(a)(5)(B), which clearly sets forth Congressional intent that local Ombudsmen are tasked with

Sharon Wilder

January 25, 2007

Page 3

duties as individuals. However, the mandated duties of a Regional Ombudsman must be consistent with Program Policies and Procedures. A Regional Ombudsman Program has no authority to operate in a manner inconsistent with Program Policies and Procedures. It is the responsibility of the State Ombudsman to supervise regional programs accordingly.

3) Can the North Carolina Attorney General's Office provide legal consultation and representation for regional long-term ombudsmen who are not State employees?

Answer:

The North Carolina Attorney General cannot provide legal consultation and/or representation to regional ombudsmen. The Office of the Attorney General may represent state agencies and state officers, employees, involuntary servants or agents pursuant to the Tort Claims Act. See N.C.G.S. § 114-2; N.C.G.S. § 143-291.

According to the U.S. Code, Code of Federal Regulations, North Carolina General Statutes and the North Carolina Administrative Code (NCAC), AAA's are "designated" by DAAS. See 42 U.S.C. § 3025(a)(2)(A); 45 C.F.R. § 1321.29; 45 C.F.R. § 1321.53; N.C.G.S. § 143B-181.19(a); 10A N.C.A.C. 5C.0204(a). AAA's are also "grantees" of funds provided by the federal and State governments. See 10A N.C.A.C. 5C.0204. A Regional Ombudsman is a person employed by the AAA to carry out the functions of the Regional Ombudsman. N.C.G.S. § 143B-181.16(4). Therefore, it is clear that AAA's and regional ombudsmen are local government entities. Personnel working with the AAA's and regional ombudsmen are neither officers, employees, involuntary servants or agents of the State. Accordingly, the Attorney General's Office has no authority to provide legal consultation or representation to the AAA's and the persons who work with and for them.

4) Is it advisable for DAAS to continue requiring written assurance of legal representation?

Answer:

Yes. The Older Americans Act requires a state plan to contain assurances that area agencies on aging enter into contracts with providers of legal assistance so that regional ombudsmen will have the ability to carry out their duties. 42 U.S.C. § 3027 (a)(11); 42 U.S.C. § 3058g(g).

5) Must regional ombudsmen obtain informed consent from complainants when delegating visitation to some other qualified volunteer? If so, must the informed consent of the complainant be in writing or can it be verbal?

Sharon Wilder

January 25, 2007

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Answer:

I have not found any provision in the Act or any of the statutes or regulations regarding the Ombudsman Program that prohibits delegation of duties to qualified volunteers. But see 42 U.S.C. § 3058f(5), which defines a "representative" as including a "volunteer" and 42 U.S.C. § 3058g(h)(4), which includes training of "unpaid volunteers." Because there is no prohibition and given the size and number of long-term care facilities in some AAA regions, it is clear that regional ombudsmen have the option of delegating duties to qualified persons. However, when duties are delegated, the consent of the complainant must be obtained if confidential information is going to be shared, even if it is only the identity of the complainant. It is noted that Section 1511 of Program Policies and Procedures and numerous other provisions address issues of confidentiality and the requirement of obtaining consent before sharing information.

With regard to the delegation of duties, the Program Policies and Procedures requires that "either written consent, oral consent or a court order must be obtained in order to disclose the identity of the resident or complainant." 42 U.S.C. § 3058g(d); Section 1506 K. If a AAA, Regional Ombudsman, or their legal advisors are of the opinion that consent should always be in writing, they are free to adopt a consent rule more stringent than the Program Policies and Procedures.

Please let me know if you have any questions. This is advisory memorandum. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

cc: Dennis Streets

Deborah Brantley ✓

RESIDENT AUTHORIZATION FORM

Your signature on this Resident Authorization Form gives written consent for the Regional Ombudsman and/or Community Advisory Committee to pursue complaint resolution on your behalf. The signed form is kept in the Regional Ombudsman's file.

A. Permission to Pursue Complaint

(Name) (Title)

**has my permission to discuss the complaint(s) I have regarding my care with the administration and staff of _____
(Facility)**

as well as with other individuals deemed necessary to resolve the complaint(s).

_____ **yes** _____ **no**

I also give permission for my name to be disclosed in the complaint resolution process.

_____ **yes** _____ **no**

Signature of Resident **Date**

RESIDENT AUTHORIZATION FORM

B. Permission to Review Medical/Social/Financial Records

_____ (Name) _____ (Title)

has my permission _____ to view my
(Resident's Name)

medical/social/financial records in order to pursue complaint resolution on my
behalf at _____.
(Facility)

Resident Signature Date

Witness Signature Date

RESIDENT ORAL CONSENT FORM

TO WHOM IT MAY CONCERN:

I have obtained the oral consent of:

_____ at _____
Resident Facility

to disclose his/her identity for the purpose of complaint investigation.

Such consent was obtained by me on _____

Date

Regional Ombudsman

or

Community Advisory Committee Member

Date

(NOTE: If the complainant and resident are not the same individual, the consent of each is required).

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COMPLAINANT AUTHORIZATION FORM

A. Written Consent

_____ has
my Name Title

permission to discuss with individuals deemed appropriate the complaint I
have filed as well as my name.

_____ yes _____ no

Complainant Signature

Date

OR

B. Oral Consent

TO WHOM IT MAY CONCERN:

I have obtained the oral consent of:

Complainant

to disclose his/her identity for the purpose of complaint investigation.

Such consent was obtained by me on _____
Date

Regional Ombudsman
or

Community Advisory Committee Member

Date

(NOTE: If the complainant and resident are not the same individual, the consent of
each is required).

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LEGAL AUTHORIZATION

To Whom it May Concern:

_____ has
my

(Name)

permission to talk with the administration and staff of _____

_____,
(Facility)

as well as any other individual(s) deemed necessary regarding the care

of _____ and to facilitate resolution of
the

(Resident)

the complaint(s) filed.

_____ has my permission to
view

(Name)

the medical/social records of _____

.

(Resident)

My relationship to _____ is _____

.

(Resident)

(Relationship)

I am legally authorized to give such permission. _____ yes _____ no

Legal Representative Signature

Date

(Form appropriate for Guardians, Health Care Powers of Attorney & Durable
Powers of Attorney ONLY)

DHHS-DAAS-9116

3/06