



**Office of the State
Long Term Care
Ombudsman**

Policies and Procedures Manual

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STATE LONG TERM CARE OMBUDSMAN |

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Chapter 100 The New York State Long Term Care Ombudsman Program

101 Authority and Mission of the Long Term Care Ombudsman Program

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101 Authority and Mission of the Long Term Care Ombudsman Program

1. The New York State Long Term Care Ombudsman Program (Program) is authorized by §711 and §712 of the Older Americans Act, Sub-Part A of Part 1324 of Title 45 of the Code of Federal Regulations (Federal LTCOP Rule), SECTION 218 of New York's Elder Law, and 9 NYCRR §§ 6660.1-6660.12 (the NYS Ombudsman State Rule).
2. The Long Term Care Ombudsman Program protects and improves the quality of care and quality of life for residents of long-term care facilities in New York through individual and systems advocacy for and on behalf of residents who live in skilled nursing homes and Adult Care Facilities (ACF) and Family Type Homes (FTH).
3. The Long Term Care Ombudsman Program is a resident-centered advocacy program. The resident is the program's client regardless of the source of the complaint, or request for assistance. The Program educates, empowers, and advocates on behalf of residents.
4. The Long Term Care Ombudsman Program identifies, investigates, and resolves 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 residents.
5. The Long Term Care Ombudsman Program ensures residents have regular and timely access to Ombudsmen through routine and complaint visits to long-term care facilities, empowers residents and concerned individuals by providing information and assistance, provides community education, and supports Resident Councils and Family Councils.
6. The policies and procedures in this Manual govern the operations of the Program and establish the relationship and responsibilities of Regional Ombudsman Programs, Local Ombudsman Entities, and the State Unit on Aging, in relation to the Program.

102 Structure of the New York State Long Term Care Ombudsman Program

1. The State Unit on Aging is responsible for establishing an Office of the New York State Long Term Care Ombudsman Program (Office) to operate a statewide Long Term Care Ombudsman Program in accordance with the Older Americans Act, the LTCOP Rule, and NYS Ombudsman State Rule.
2. The Office is a distinct entity, separately identifiable, and is located within the State Unit on Aging.
3. The Office of the State Long Term Care Ombudsman (Office) shall be headed by the State Ombudsman who is responsible to personally, or through representatives of the Office (certified Ombudsmen), fulfill the functions, responsibilities, and duties set forth in §1324.13 and §1324.19 of the LTCOP Rule.
4. The Office shall assure residents of long-term care facilities have access to the services of the Program by designating Local Ombudsman Entities (LOEs) responsible for providing Regional Ombudsman Program services in all areas of the state.
5. Local Ombudsman Entities host the Regional Ombudsman Programs through a contract with the State Unit on Aging and must follow federal and state requirements, Ombudsman contract requirements as an Ombudsman Host Agency, and the policies and procedures in this Manual.
6. Regional Ombudsman Programs employ individuals, and manage volunteers designated by the State Ombudsman, as certified Ombudsmen to carry out the duties identified in §1324.19 of the LTCOP Rule.

103 Definitions

Abuse

Any willful mistreatment of residents by facility staff, resident representative/family/friend, other residents, or an outside individual. There are three categories of abuse: physical, sexual, and psychological.

Area Agency on Aging

An agency designated by the state to address the needs of older individuals within a specific region or geographical area known as a planning and service area (PSA).

Case

Comprised of a complainant, complaint code(s), a facility, verification, resolution, and information regarding whether a complaint was referred to another agency. Each case must have a minimum of one complaint.

Certification

The process of satisfying the training and other LTCOP requirements to become a representative of the Office as certified by the State Ombudsman.

Community Education

An Ombudsman's attendance at health fairs, community events, general presentations, etc.

Complaint

An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman Program which requires Ombudsman Program investigation and resolution on behalf of one or more residents of a long-term care facility.

Complaint Visit

An Ombudsman's visit to a facility in response to a complaint when only complaint-related activities are conducted.

Conflict of Interest

Situations in which an individual or an organization is involved in multiple interests and serving one interest could work against the other. Conflicts of interest may occur when there are differences between individual/organizational and professional interests which could undermine the ability to act on behalf of the resident.

Designation

The authority given to the State Ombudsman to appoint or select (i.e., designate), refuse to designate, and remove designation of Regional Programs and to certify or remove certification

of representatives of the Office (i.e., Ombudsmen) pursuant to section 712(a)(5) of the Act and the policies and procedures set forth in § 1324.11(e)(6).

Emergency

Any occasion or instance of a natural or man-made catastrophe—that warrants action to save lives and to protect property, public health, and safety.

Financial Exploitation (Exploitation)

The illegal or improper use of an individual’s funds, property, or assets for another person’s profit or advantage.

Grievance

An official statement of a complaint regarding determinations or actions of an Ombudsman.

Gross Neglect (Neglect)

The failure to protect a resident from harm or the failure to meet needs for essential medical care, nutrition, hydration, hygiene, clothing, basic activities of daily living or shelter, which results in a serious risk of compromised health and/or safety, relative to age, health status, and cultural norms.

Immediate Family

Pertaining to conflicts of interest, shall mean a member of the household or a relative with whom there is a close personal or significant financial relationship. Such relationships could impair the judgment or give the appearance of bias on the part of an Ombudsman.

Information and Assistance

Information provided to an individual or facility staff about issues impacting residents (e.g., resident rights, care issues, services), and/or sharing information about accessing services without opening a case and working to resolve a complaint.

Informed Consent

Permission granted with the understanding of all possible options and outcomes, and the risks and benefits associated with such options and outcomes.

Local Ombudsman Entity (LOE) (Host Agency)

Any entity designated by the State Ombudsman to operate a local Long Term Care Ombudsman Program.

Long-Term Care Facilities

A term inclusive of all facility types to which the Long Term Care Ombudsman Program has access. Such facilities include, nursing homes and Adult Care Facilities, and Family Type Homes, etc.

Long Term Care Ombudsman Program (LTCOP)

The program through which the functions and duties of the State Office are carried out, consisting of the State Ombudsman, the Assistant State Ombudsmen, and all certified Ombudsmen (i.e., representatives of the Office).

Long-Term Care Ombudsman Programs Rule (LTCOP Rule)

The Federal Rule that governs the Long-Term Care Ombudsman Program.

Loved Ones

Individuals such as family members, friends, and legal decision makers with whom the resident has a close, personal relationship.

Office of the State Long Term Care Ombudsman (Office)

A distinct, separately identifiable entity headed by the State Ombudsman who carries out the functions and responsibilities set forth in § 1324.13 and shall carry out directly and/or through local Ombudsman entities the duties set forth in § 1324.19.

Older Americans Act

The authorizing federal statute for the Long Term Care Ombudsman Program and many other aging network programs.

Ombudsman (Representative of the Office, Long Term Care Ombudsman)

An employee or volunteer designated as a representative of the Office to fulfill the duties of the Office.

Planning and Service Area

A geographic area of the state that is designated by the State Unit on Aging for the purposes of planning, development, delivery, and overall administration of services under an area plan.

Policies and Procedures Manual (Manual)

The written manual governing the operations of the Long Term Care Ombudsman Program and establishing the relationship and responsibilities of host agencies, Regional Programs, and NYSOFA in relation to the Long Term Care Ombudsman Program.

Post-Mentoring

Structured facility visits where an experienced Ombudsman observes a person in training to become an Ombudsman during visits with residents and other activities. Post-Mentoring is one requirement of certification training.

Pre-Shadowing

Structured facility visits where a person in training to become an Ombudsman observes an experienced Ombudsman during the course of their duties. Pre-shadowing is one requirement of certification training.

Program Records

All files, records, correspondences, documentation, case notes, and communications related to Ombudsman activities and to a specific case, resident, or complainant.

Regional Coordinator

A Long Term Care Ombudsman who performs all Ombudsman functions with additional responsibility for the management of a Regional Ombudsman Program within a Planning and Service Area.

Regional Ombudsman Program

A local Ombudsman Program, housed in a designated Local Ombudsman Entity, that provides Ombudsman services to residents of long-term care facilities.

Resident

An individual who currently lives in a long-term care facility.

Resident Record

Any medical, social, personal, and financial information maintained by any licensed facility, any state or local agency, pertaining to a resident.

Resident Representative

An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; a person authorized by state or federal law (including but not limited to agents under power of attorney, health care proxy, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; a legal representative, as used in section 712 of the Older Americans Act of 1965, as amended; or the court-appointed guardian or conservator of the resident.

Routine Visit

An Ombudsman's visit to a facility to conduct activities that promote regular and timely access to the LTCOP and as determined in Program policies and procedures (e.g., visit with multiple residents, share information about the Ombudsman Program, receive complaints, walk around, and observe activities in the facility).

State Long Term Care Ombudsman

The individual who heads the Office of the State Long Term Care Ombudsman and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties of the Office.

State Unit on Aging (SUA)

New York State Office for the Aging (NYSOFA).

Systems Advocacy

Actions taken by Ombudsmen to recommend changes to a system (e.g., a long-term care facility, a government agency, an organization, a corporation, policies, regulations and law) to benefit long-term care residents.

Volunteer Ombudsman

An Ombudsman who performs services without pay.

Willful Interference

Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede an Ombudsman from performing any of the functions or responsibilities of the Office.

104 Policy Clarification, Suspensions, and Amendments to this Manual

1. When requested, the Office shall issue clarifications of this Manual. Requests for policy clarifications may be submitted to the Office in writing. A response from the Office will be made within forty-five (45) business days by either responding directly to the request or by seeking further information from the requestor.
2. The State Ombudsman has the authority to temporarily suspend or amend this Manual or parts thereof at their discretion.

Chapter 200 Organizational Responsibilities and Requirements

201 State Unit on Aging

202 New York State Long Term Care Ombudsman Functions and Responsibilities

203 Office of the New York State Long Term Care Ombudsman

204 Local Ombudsman Entities

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206 Regional Coordinators

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201 State Unit on Aging

1. The New York State Office for the Aging, NYSOFA, is responsible for the establishment of the Office headed by the State Long Term Care Ombudsman, who is responsible to carry out all functions and responsibilities set forth in the LTCOP Rule and applicable state regulations either personally or through representatives of the Office.
2. When considering the employment or appointment of an individual as the State Ombudsman NYSOFA shall:
 - a. take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest; and
 - b. take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest.
3. In no circumstance shall NYSOFA appoint or employ an individual as the State Ombudsman, who:
 - a. has direct involvement in the licensing or certification of a long-term care facility;
 - b. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
 - c. receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
 - d. is employed by, or participating in the management of, a long-term care facility or a related organization, and has been employed by such a facility or organization within 1 year before the date of the determination involved;
 - e. has management responsibility for, or operate under the supervision of an individual with management responsibility for, adult protective services; or
 - f. serves as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).
4. NYSOFA shall provide sufficient staff in the Office to carry out federal and state functions and responsibilities of the Office.
5. NYSOFA shall support the Office as a distinct entity, separately identifiable from the State Unit on Aging.

6. The Director of NYSOFA appoints an individual as the State Long Term Care Ombudsman who meets minimum qualifications which include demonstrated expertise in:
 - a. long-term services and supports or other direct services for older persons or individuals with disabilities;
 - b. consumer-oriented public policy advocacy;
 - c. leadership and program management skills; and
 - d. negotiation and problem resolution skills.
7. NYSOFA shall require the State Ombudsman to serve on a full-time basis to administer and supervise the Office of the Long Term Care Ombudsman. NYSOFA shall not require or request the State Ombudsman to be responsible for leading, managing or performing the work of non-Ombudsman services or programs.
8. NYSOFA shall provide personnel supervision and management of Ombudsmen state employees.
9. NYSOFA fiscal staff will consult with the State Ombudsman and obtain his or her approval for any allocations of Federal and State funds provided to Local Ombudsman Entities.
10. NYSOFA will provide the State Ombudsman with necessary assistance in fiscal management of LTCOP and will make available the resources of NYSOFA's Division of Finance and Administration.
11. NYSOFA shall ensure the State Ombudsman complies with the relevant provisions of the Older Americans Act, the LTCOP Rule, and applicable state regulations through an annual assessment that may include:
 - a. a request of reports, including aggregated data regarding the LTCOP; and
 - b. reviews of non-confidential information, such as the State Ombudsman's Annual Report, the National Ombudsman Reporting System (NORS) report, facility visit reports, complaint analysis reports, and the yearly assessments of the Regional Programs.
12. NYSOFA shall ensure the Ombudsman Program has sufficient authority and access to facilities, residents, and information needed to fully perform all functions, responsibilities, and duties of the Office.
13. NYSOFA shall provide opportunities for Ombudsman training to maintain expertise to serve as effective advocates for residents. NYSOFA shall provide for Ombudsmen

attendance at any and all conferences sponsored or required by the Administration of Community Living (ACL) for the training of Ombudsmen subject to the required approvals.

14. NYSOFA shall not have personnel policies or practices which prohibit the State Ombudsman from performing the functions and responsibilities of the State Ombudsman.
15. NYSOFA shall:
 - a. take reasonable steps to avoid internal conflicts of interest;
 - b. establish a process for review and identification of internal conflicts;
 - c. take steps to remove or remedy conflicts;
 - d. ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and
 - e. assure the State Ombudsman has disclosed applicable conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.
16. NYSOFA and the State Ombudsman are responsible to identify, remedy, and/or remove actual or perceived individual and organizational conflicts of interest between the Office and NYSOFA that may impact the effectiveness and credibility of the work of the Office.
17. NYSOFA shall ensure it has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals with respect to any resident, facility employee, complainant, or Ombudsman by:
 - a. a long-term care facility; other entity, or individual with respect to any resident, facility employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with an Ombudsman; or
 - b. by a long-term care facility, other entity or individual against an Ombudsman for fulfillment of the functions, responsibilities, or duties of the Office.
18. NYSOFA shall provide for appropriate sanctions with respect to interference, retaliation, and reprisals.
19. NYSOFA shall ensure legal counsel for the Long Term Care Ombudsman Program is adequate, available, has competencies relevant to the legal needs of the Program and of residents, and is without conflict of interest. NYSOFA will make available an attorney

employed in its Legal Unit to serve as legal Counsel to LTCOP. Communications between Ombudsmen and legal counsel are subject to attorney-client privilege. Legal counsel shall:

- a. provide consultation and representation as needed in order for the Ombudsman Program to protect the health, safety, welfare, and rights of residents; and
- b. provide consultation and/or representation as needed to assist Ombudsmen in the performance of their official functions, responsibilities, and duties, including, but not limited to, complaint resolution and systems advocacy.

20. NYSOFA shall integrate the goals and objectives of the Office into the State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Older Americans Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Older Americans Act, to promote collaborative efforts and diminish duplicative efforts.

21. NYSOFA shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman Program services with the activities of other programs authorized by Title VII of the Older Americans Act, as well as other State and local entities with responsibilities relevant to the health, safety, well-being or rights of older adults, including residents of long-term care facilities.

202 New York State Long Term Care Ombudsman Functions and Responsibilities

1. The State Ombudsman, as head of the Office and unified statewide program, shall have responsibility for the leadership and management of the Office and Local Ombudsman Entities carrying out the Ombudsman Program.
2. The State Ombudsman shall be responsible for developing policies, procedures and standards for administration of the Ombudsman Program.
3. The State Ombudsman shall personally or through Long Term Care Ombudsmen:
 - a. identify, investigate, and resolve complaints that:
 - i. are made by or on behalf of residents in New York State; and
 - ii. relate to an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of long-term care providers or their representatives, public agencies, or health and social service agencies;
 - b. provide services to protect the health, safety, welfare, and rights of residents;
 - c. inform residents about means of obtaining services provided by the Ombudsman Program;
 - d. ensure that residents have regular and timely access to the services provided through the Ombudsman Program and that residents and complainants receive timely responses from Ombudsmen to requests for information and complaints;
 - e. represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the State Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;
 - f. provide administrative and technical assistance to Ombudsmen and Regional Ombudsman Programs;
 - g. 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 by:
 - i. recommending any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate;
 - ii. facilitating public comment on the laws, regulations, policies, and actions;

- iii. providing leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by Ombudsmen;
 - iv. providing information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns. Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of NYSOFA or a Local Ombudsman Entity;
 - h. coordinate with and promote the development of citizen organizations consistent with the interests of residents; and
 - i. promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents.
- 4. The State Ombudsman shall require all Ombudsmen to fulfill the duties set forth in the LTCOP Rule, applicable state regulations, and in accordance with these policies and procedures.
- 5. The State Ombudsman shall develop a certification training program and continuing education for Ombudsmen which at a minimum shall meet the Administration for Community Living (ACL) requirements for certification. The State Ombudsman prohibits anyone from carrying out the duties of the Office unless the individual:
 - a. completes the required New York State Ombudsman certification training; and
 - b. is certified as an Ombudsman for the State of New York.
- 6. The State Ombudsman, with the approval of the Director of NYSOFA, may appoint one or more Assistant State Long Term Care Ombudsmen to assist the State Ombudsman in the performance of his or her duties. Such Assistant State Ombudsmen must complete a certification training program developed by the State Ombudsman within six (6) months of their appointment.
- 7. The State Ombudsman has sole authority to determine certification of an Ombudsman.
- 8. The State Ombudsman designates Local Ombudsman Entities in coordination with NYSOFA and in accordance with applicable state contracting procedures.

9. Policies, procedures, or practices which the State Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman Program shall be sufficient grounds for refusal, suspension, or removal of certification of a representative of the Office.
10. When the State Ombudsman determines that policies, procedures, or practices of a Local Ombudsman Entity are in conflict with the laws, policies, or procedures governing the Ombudsman Program, the State Ombudsman, in coordination with NYSOFA, may refuse, suspend, or remove designation of the Local Ombudsman Entity.
11. The State Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman Program duties and, as applicable, coordinate such investigations with NYSOFA and/or the Local Ombudsman Entity. After such investigation, the State Ombudsman has the final determination to suspend or remove certification of an Ombudsman.
12. The State Ombudsman shall manage and monitor the files, records, and other information of the Ombudsman Program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office pertaining to the cases and activities of the Ombudsman Program. Such files, records, and other information are the property of the Office.
13. In making determinations regarding the disclosure of files, records and other information maintained by the Ombudsman Program, the State Ombudsman shall have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman Program.
14. In accordance with applicable state contracting procedures, the State Ombudsman shall coordinate with NYSOFA in the review and approval of plans or contracts governing Local Ombudsman Entity operations.
15. The State Ombudsman shall have general responsibility for determining the use of fiscal resources appropriated or otherwise available for the operation of the Ombudsman Program subject to the approval of state oversight agencies including the New York State Division of Budget and the Office of the State Comptroller.
16. The State Ombudsman shall approve the allocations of Federal and State funds provided to Local Ombudsman Entities for the operation of the Regional Ombudsman Programs.

The State Ombudsman shall determine if the budgets and expenditures of the Office and Local Ombudsman Entities are consistent with laws, policies and procedures governing the Ombudsman Program.

17. In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Older Americans Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies by any Long Term Care Ombudsman do not constitute lobbying activities as defined by 45 CFR part 93.
18. The State Ombudsman shall determine and establish positions of the Office. In doing so, the State Ombudsman provides leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents. This includes the coordination of systems advocacy efforts carried out by representatives of the Office.

203 Office of the New York State Long Term Care Ombudsman

1. The Office of the New York State Ombudsman (Office) is a distinct entity, separately identifiable from the State Unit on Aging.
2. The Office shall conduct background checks on all potential staff Ombudsmen by calling the New York State Division of Criminal Justice Services Sex Offender Registry at 518-457-5837 or 1-800-262-3257 to get information about all levels of sex offenders. When calling the toll-free number, the Office must provide the individual's name, and one of four identifiers (either an exact address, date of birth, social security number or driver's license number).
 - a. The background check must be completed PRIOR to hiring an individual as an Ombudsman.
 - b. Any individual listed on the state's Sex Offender Registry is prohibited from working for the New York State Long Term Care Ombudsman Program.
 - c. If there is uncertainty about an individual's status with regard to the Sex Offender Registry, the Office must verify that the individual is not listed on the Sex Offender Registry before the individual is offered an Ombudsman position.
3. The Office shall:
 - a. work to resolve complaints made by or on behalf of residents;
 - b. advocate for broad policy, regulatory and/or legislative changes to improve the quality of care and quality of life for residents;
 - c. develop and implement certification training and provide for continuing education opportunities for Ombudsmen;
 - d. maintain Program records and the Program electronic reporting system;
 - e. provide information and assistance to the general public, residents, legislators, community organizations and other agencies regarding long-term care issues and state and federal licensing, certification and regulation;
 - f. provide technical assistance to Local Ombudsman Entities and Regional Ombudsman Programs;
 - g. provide Program data and analysis;
 - h. prepare and distribute an annual report as described in the Older Americans Act and the LTCOP Rule;
 - i. monitor and evaluate the statewide and Regional Ombudsman Programs which may include, but is not limited to:
 - i. reviewing a sample of individual case files for complaint processing review;
 - ii. reviewing accuracy of Ombudsman Program activities;

- iii. fiscal monitoring, including review of budget, expenditure, and audit reports;
- iv. reviewing conflict of interest forms and remedies;
- v. observing Ombudsmen on facility visits;
- vi. interviewing volunteers and regional office staff;
- vii. reviewing volunteer management policies; and
- viii. meetings with Local Ombudsman Entities.

204 Local Ombudsman Entities

1. Local Ombudsmen Entities (LOEs) are designated by the State Ombudsman to house Regional Ombudsman Programs and to assure the provision of Ombudsman services in the service area designated by a contract with NYSOFA.
2. The LOE must follow federal and state requirements, Ombudsman contract requirements as an Ombudsman Host Agency, and the policies and procedures in this Manual.
3. Each LOE shall be the sole provider of designated Ombudsman services in the service area identified in the contract with NYSOFA.
4. When considering the employment of an individual as an Ombudsman, the LOE shall:
 - a. take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;
 - b. take reasonable steps to avoid hiring an individual to perform duties which would constitute an unremedied conflict of interest; and
 - c. make efforts to avoid employing an individual as an Ombudsman who has been employed by or participated in the management of a long-term care facility within the previous twelve months.
5. In no circumstance shall the LOE employ an individual as an Ombudsman, who:
 - a. has direct involvement in the licensing or certification of a long-term care facility;
 - b. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
 - c. receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
 - or
 - d. is employed by, or participating in the management of, a long-term care facility.
6. The LOE shall be responsible for the personnel management, but not the programmatic oversight of the Regional Ombudsman Program.
7. The LOE shall respect and support the confidential nature of the Regional Ombudsman Program records. Without written consent of a complainant or resident, personal information relating to complainants or residents who provide information to

Ombudsmen relating to complaints shall be kept confidential within Ombudsman Program. Ombudsman Program records maintained by the Regional Ombudsman Program are the property of the New York State Ombudsman and the information contained in such files may only be shared outside of the State Ombudsman Program at the direction of the State Ombudsman.

8. The LOE shall provide adequate administrative support for the Regional Ombudsman Program that includes, but is not limited to, suitable and confidential space for Program staff, locked file cabinets, supplies, equipment, general support services, and staff support.
9. The LOE shall not have personnel policies or practices which prohibit Ombudsmen from performing the duties, or from adhering to the access, confidentiality and disclosure requirements of the Older Americans Act, LTCOP Rule and applicable state regulations. The LOE must consult with the State Ombudsman prior to issuing new policies that might impact the LTCOP to determine whether there is a conflict that needs to be resolved.
10. All Regional Ombudsman Program materials developed by the LOE may not be published or distributed without the review and approval of the State Ombudsman. The LOE shall follow NYSFOA branding requirements and shall promote the Regional Ombudsman Program through:
 - a. local media;
 - b. community groups; and
 - c. educational and outreach materials.
11. LOEs shall not solicit funds or donations and shall not distribute literature or materials for an entity or cause during in-service trainings or certification training. This policy does not prohibit agencies and organizations which are presenting information as part of an in-service training or certification training from distributing descriptive literature about their respective agency or organization.
12. The LOE shall assist the Regional Coordinator in recruiting volunteers and must provide adequate meeting space for training and in-services.
13. The LOE shall support the Regional Ombudsman Program to be in compliance with federal and state regulations, the contract with NYSOFA, and the policies and procedures in this Manual.

14. The LOE shall employ a full-time Regional Coordinator and at least one additional Long Term Care Ombudsman. To the extent practicable and as funds allow, the LOE shall hire one Long Term Care Ombudsman per 2,000 long-term care beds in the applicable service area. The LOE shall meet additional Program staffing requirements as determined by the Office.
15. The LOE shall ensure a background check on volunteers involved with the Regional Ombudsman Program has been completed by the Regional Coordinator as per Section 206(2).
 - a. Volunteer background checks must be completed prior to beginning any portion of certification training, including pre-shadowing visits.
 - b. Any individual on the New York State Sex Offender Registry is prohibited from volunteering for the Long Term Care Ombudsman Program.
16. Prior to hiring an Ombudsman, the LOE shall forward the applicant's resume, request for background check, and the job description to the Office. The LOE, in consultation with the Office, shall ensure the potential staff member meets the applicable certification requirements of this Manual.
 - a. All background checks must be conducted prior to being offered employment.
 - b. Any individual on the New York State Sex Offender Registry is prohibited from working for the Long Term Care Ombudsman Program.
17. If the LOE conducts a background check that is more comprehensive than the Office-required background check, the LOE may continue to use its own background check process in addition to the Office-required background check.
18. The LOE shall provide written notification to the Office at least one month prior to, or as soon as practicable, when a Regional Coordinator resigns or leaves employment with the LOE or plans to be on a leave of more than three (3) weeks. Included in the notification shall include a plan and a timeline for coverage and replacing the Regional Coordinator.
19. The LOE shall communicate with the Office any concerns, complaints, or grievances about Ombudsman Program staff or volunteers concerning the performance of Ombudsman duties.
20. The LOE agrees to make LTCOP funds available to the Regional Ombudsman Program for the activities set out in the Coordinator's Ombudsman Program Work Plan, as approved by the State Ombudsman. The LOE must not place restrictions on travel for required

Ombudsman Program training or restrictions on stipends for volunteers or reimbursement for their out-of-pocket expenses or funding of volunteer retention activities.

21. The LOE will complete, with input from the Regional Coordinator, the projected Program Budget. The LOE shall budget adequate funds that support the Regional Coordinator's Ombudsman Program Work Plan, and funds for volunteer recruitment, retention, and recognition, and any other programmatic directives issued by the State Ombudsman. Other considerations must include programmatic needs, such as outreach, equipment, continuing education, and training.
22. The LOE provides general fiscal oversight of the Regional Ombudsman Program to the extent that it works with the Regional Coordinator to complete required fiscal forms for transmittal to NYSOFA. The LOE shall ensure these forms are supported by vouchers indicating the funds were used for Ombudsman Program purposes in accord with the Program Budget and the approved Regional Coordinator's Annual Ombudsman Program Work Plan.

205 Regional Long Term Care Ombudsman Programs

1. A Regional Ombudsman Program is a distinct entity, separately identifiable from the Local Ombudsman Entity to provide Ombudsman services in the designated service area of the LOE.
2. Regional Ombudsman Programs are an extension of the Office of the Long Term Care Ombudsman and are required to follow federal and state requirements pertaining to the Ombudsman Program and the policies and procedures in this Manual.
3. Regional Ombudsman Programs are managed by a Regional Coordinator who has completed Ombudsman certification training and is designated by the State Ombudsman as the Regional Coordinator.
4. The Regional Coordinator must notify the Office when the Regional LTCOP will be unexpectedly closed due to an emergency situation as soon as practicable.
 - a. The Regional Coordinator shall provide an estimated timeline, when possible, for resumption of normal agency and programmatic operations.
 - b. When a closure due to an emergency situation is expected to last for more than two (2) business days, a written plan must be submitted via email to the State Ombudsman and assigned Assistant State Ombudsman, outlining the Regional LTCOP's plan for assuring continued access to Program services by long-term care residents while the agency is closed.
 - i. Once submitted to the State Office, this plan will be reviewed and approved by the State Ombudsman or designee. The Regional Coordinator will receive either an approval of the plan or follow up communication from the State Office within two (2) business days of the date the plan is received by the State Office. If the plan is not approved, the State Office will contact the Regional Coordinator, and if needed, the LOE's Executive Director to discuss any outstanding issues or concerns related to the plan and its execution. The State Ombudsman or their designee will send final approval of the plan within two (2) business days of an acceptable plan being received by the State Office.
5. If a Regional Program will be closed for any amount of time for non-holiday purposes, the Regional Coordinator shall notify the State Ombudsman and assigned Assistant State Ombudsman, at least fifteen (15) business days prior to the expected closure.

- a. The Regional Coordinator shall submit a written plan via e-mail to the State Ombudsman and assigned Assistant State Ombudsman outlining the Regional Coordinator's plan for assuring continued long-term care resident access to Program services for the extent of the expected closure.
- b. Once received by the State Office, this plan will be reviewed and approved by the State Ombudsman or their designee. The Regional Coordinator will receive either an approval of the plan or a follow up communication from the State Office within two (2) business days of the date the plan is received by the State Office. If the plan is not approved, the State Office will contact the Regional Coordinator, and if needed, the LOE's Executive Director to discuss any outstanding issues or concerns related to the plan and its execution. The State Ombudsman or their designee will send final approval of the plan within two (2) business days of an acceptable plan being received by the State Office.

206 Regional Coordinators

1. The Regional Coordinator is responsible for the day-to-day operations of the Regional Long Term Care Ombudsman Program.
2. The Regional Coordinator must screen all individuals, whether volunteer or staff, prior to sending them through the LTCOP certification training. At minimum, the following steps shall occur before someone begins certification training (including pre-shadowing):
 - a. notification sent to interested individuals explaining the Ombudsman Program, the certification process, training, and all other requirements to become a certified Ombudsman;
 - b. a completed an application with a request for references;
 - c. an interview;
 - d. reference checks;
 - e. a completed conflict of interest form; and
 - f. cleared background check(s).
3. Regional Coordinators, or their designee shall conduct background checks on prospective volunteers by calling the New York State Division of Criminal Justice Services Sex Offender Registry at 518-457-5837 or 1-800-262-3257 to get information about all levels of sex offenders. When calling the toll-free number, Regional Coordinators must provide the individual's name, and one of four identifiers (either an exact address, date of birth, social security number or driver's license number).
 - a. The background check must be completed PRIOR to offering the prospective volunteer a slot in the Regional LTCOP's certification training class.
 - b. Any individual listed on the state's Sex Offender Registry is prohibited from working or volunteering for the New York State Long Term Care Ombudsman Program.
 - c. If there is uncertainty about an individual's status with regard to the Sex Offender Registry, Regional Coordinators must verify that the individual is not listed on the Sex Offender Registry before offering the individual a volunteer position.
 - d. If any current staff or volunteers appear on the Registry, contact the Office immediately.
3. The Regional Coordinator shall:
 - a. ensure the Ombudsmen in the Regional Ombudsman Program identify, investigate, and work to resolve complaints made by or on behalf of residents;

- b. ensure the Ombudsmen in the Regional Ombudsman Program provide information and assistance to residents, facility staff, the general public, legislators, community organizations, and other agencies regarding long-term care issues;
- c. participate in the hiring process of a Long Term Care Ombudsman with the LOE by screening and interviewing applicants to ensure all criteria are met and by submitting the applicant's resume, request for a background check, and job description to the Office;
- d. ensure individuals complete the certification process and meet all criteria to become an Ombudsmen as required by the Office;
- e. only recommend individuals to be certified as Long Term Care Ombudsmen to the State Ombudsman who meet all criteria as required by the Office;
- f. maintain an accurate and current list of paid and volunteer Ombudsmen (including, name, phone numbers, address and email address), Ombudsman assignments, and long-term care facilities within its service area. Such lists must be made available to the Office upon request;
- g. partner with aging and disability networks and other stakeholders for the benefit of residents;
- h. provide supervision and technical assistance to Ombudsmen and contact the ASO when concerns arise related to Ombudsman performance;
- i. on an annual basis, or as directed by the State Office, develop an Ombudsman Program Work Plan in consultation with the Office;
- j. provide input to the LOE on the projected Program Budget; to include adequate funds that support the Ombudsman Program Work Plan, funds for volunteer recruitment, retention, and recognition, and any other programmatic directives issued by the State Ombudsman. Other considerations must include programmatic needs, such as outreach, equipment, continuing education, and training;
- k. consult with and obtain approval of the Office prior to advocating for broad policy, regulatory, administrative, and legislative issues that effects residents and the LTCOP;
- l. follow the positions and direction of the Office when speaking publicly;
- m. cooperate with and follow the direction of the Office on projects, initiatives, and responses to systems advocacy needs;
- n. develop a plan for temporary personnel coverage in order to meet the complaint response time in accordance with this Manual;
- o. attend all training events and meetings required by the Office unless such attendance is excused by the Office;

- p. comply with all Office reporting requirements and ensure all Program activities and complaint data are entered into the Office approved electronic database within the timelines set forth in this Manual; and
 - q. not perform any duties different from those presented in this Manual without the express permission of the State Ombudsman.
4. For each twelve-month period of the work plan, each Regional Coordinator shall provide a minimum of eighteen (18) hours of continuing education for staff and volunteer Ombudsmen. Training should be presented by a qualified individual with expertise/resources on a specific subject matter that relates to aging and long-term care issues or topics that enhance Ombudsmen advocacy skills.
- a. With the exception of Section 406 (6)(i)&(ii), training topics and the manner in which they are presented (e.g., on-line or in person) are at the discretion of the Regional Coordinator.
 - b. The following in-person continuing education sessions must be offered on an annual basis, held separately, and not combined into one training:
 - i. Complaint Handling Philosophy and Documentation; and
 - ii. Program Activity Documentation.
 - c. The Regional Coordinator is responsible to ensure volunteer and staff Ombudsmen meet the eighteen-hour continuing education requirement.
5. The Regional Coordinator is responsible for ensuring Program records collected by their Regional Ombudsman staff and volunteers are kept confidential and not disclosed without the approval of the State Ombudsman. Should the LOE or any entity seek Ombudsman Program records, the Regional Coordinator shall notify the Office of any requests for records prior to providing the information.

207 Long Term Care Ombudsmen

1. Long Term Care Ombudsmen are employees or volunteers designated as a representative of the Office to fulfill the duties of the Office.
2. Long Term Care Ombudsmen must complete the certification training set forth by the Office and meet all federal and state requirements to become a representative of the Office.
3. Long Term Care Ombudsmen must complete continuing education requirements set forth by the Office and the Administration for Community Living (ACL).
4. All Long Term Care Ombudsmen shall, in accordance with federal and state laws and this Manual:
 - a. 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;
 - b. provide advocacy services to protect the health, safety, welfare, and rights of residents;
 - c. ensure that residents in the applicable Regional Ombudsman Program service area have regular and timely access to the services provided through the Ombudsman Program and that residents and complainants receive timely responses to requests for information and complaints; and
 - d. promote and provide technical support as requested by potential and current resident councils and family councils; and
 - e. only under the direction and supervision of the Regional Coordinator and in conjunction with the position(s) of the Office Long Term Care Ombudsmen:
 - i. represent the interests of residents before government agencies and assure that residents have access to, and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
 - ii. 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
 - iii. facilitate the ability of the public to comment on the laws, regulations, policies, and actions.

5. Long Term Care Ombudsmen shall follow the direction of the Regional Coordinator, including the current Ombudsman Program Work Plan, to meet any regional or state goals.
6. Long Term Care Ombudsmen shall comply with all Program reporting requirements and ensure all Program activities and complaint data are entered into the Office approved electronic database within the timelines set forth in this Manual.
7. Long Term Care Ombudsmen shall not perform any duties different from those presented in this Manual without the express permission of the State Ombudsman.
8. Volunteer Ombudsmen shall also:
 - a. only act under the direct supervision of the Regional Coordinator or Office;
 - b. visit their assigned facility(s) for a minimum of two (2) hours per week for skilled nursing homes and one (1) hour per week for Adult Care Facilities to establish a regular presence;
 - c. complete the monthly program activity report and applicable case documentation on the designated forms provided by the Office and submit to the Regional Ombudsman Program;
 - d. be clear in their role as an advocate for facility residents, not as an auxiliary volunteer for the facility or “friendly visitor;”
 - e. notify the Regional Ombudsman Program under the following circumstances:
 - i. when planning to visit a facility outside of regular visiting hours;
 - ii. when in question about what actions or inactions should be taken during the course of performing Ombudsman duties;
 - iii. if witness to abuse, neglect or exploitation of a resident in a long-term care facility;
 - iv. if there is a conflict of interest or the appearance of a conflict of interest as described in this Manual; or
 - v. if unable to perform their duties for any reason.

208 Volunteer Management

1. The Long Term Care Ombudsman Program shall use volunteers to maximize its resources to benefit residents.
2. The Office shall provide technical assistance to each Regional Ombudsman Program to develop and maintain its volunteer program.
3. The Regional Coordinator shall submit a plan for recruitment, use, and supervision of volunteers in the Ombudsman Program Work Plan. The proposal shall be consistent with Office directives and this Manual.
4. The Regional Coordinator shall establish a system for receiving volunteer documentation for facility visits, activities, and case notes that includes:
 - a. timeframes for submission;
 - b. confidentiality requirements;
 - c. how the documentation is entered into the Office-approved electronic database;
and
 - d. who is responsible for entering the documentation.
5. All volunteers are required to read and sign the New York State Long Term Care Certified Ombudsman Agreement form.
6. Failure to follow the direction of an Ombudsman Program staff person, the Certified Ombudsman Agreement, or this Manual shall be grounds for decertification.

Chapter 300 Designation and Certification

301 Designation of Local Ombudsman Entities

302 Refusal, Removal, or Suspension of Designation of Local Ombudsman Entities

303 Certification of an Ombudsman

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301 Designation of Local Ombudsman Entities

1. Public or non-profit private entities are designated as Local Ombudsman Entities (LOE) through the NYSOFA procurement process and in coordination with the State Long Term Care Ombudsman.
2. Local Ombudsman Entities must:
 - a. be a public or non-profit entity;
 - b. have the capability to carry out the responsibilities of a Regional Ombudsman Program;
 - c. have a separately identifiable unit to function as a Regional Ombudsman Program, headed by a Regional Coordinator;
 - d. meet the staffing requirements in the contract with NYSOFA and this Manual;
 - e. have Ombudsmen available to perform all duties of the Office;
 - f. meet all grant and contractual requirements and all policies and procedures set forth in this Manual.
3. The State agency shall not enter into a contract or other arrangement with a potential LOE to carry out the Ombudsman Program if it:
 - a. is responsible for licensing, surveying, or certifying long-term care facilities;
 - b. is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or
 - c. has any ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.
4. In order to be eligible for designation, the entity must not have a conflict of interest per Section 401 of this Manual that cannot be removed or remedied.
5. The State Ombudsman, in coordination with NYSOFA, shall review and approve plans or contracts governing LOE operations.
6. The LOE shall enter into a contract with NYSOFA for the provision of Ombudsman services in the relevant service area.
7. Once designated, the LOE must maintain compliance with this Manual, the LTCOP Rule, the Older Americans Act, and the contract with NYSOFA.

302 Refusal, Removal, or Suspension of Designation of Local Ombudsman Entities

1. The State Ombudsman, in coordination with NYSOFA, may refuse, remove, or suspend designation of a Local Ombudsman Entity for failure to meet the requirements of this Manual, including but not limited to:
 - a. failure to meet the criteria for designation;
 - b. failure to disclose, remove, or remedy a conflict of interest;
 - c. violation of Ombudsman Program confidentiality requirements by any person acting as an agent of the entity;
 - d. failure to provide mandated Ombudsman Program services;
 - e. failure to fill a vacant Ombudsman position within a reasonable time;
 - f. failure to use funds as appropriated for Ombudsman services;
 - g. failure to comply with the provisions of the contract with NYSOFA; or
 - h. failure to comply with the applicable federal and state laws, rules, and regulations, and this Manual.
2. A Local Ombudsman Entity's policies, procedures, and practices which the State Ombudsman has determined to be in conflict with the laws, policies, or procedures governing the Ombudsman Program shall be sufficient grounds for refusal, removal, or suspension of designation.
3. When the State Ombudsman does not designate an entity that has applied for consideration as a Local Ombudsman Entity, the entity may submit a request for debriefing.
4. Prior to removing or suspending a Local Ombudsman Entity's designation, the State Ombudsman shall send NYSOFA and the LOE a notice of the intentions to remove or suspend the designation.
5. When designation of a Local Ombudsman Entity is removed or suspended, the State Ombudsman shall submit a written notice to NYSOFA and the Local Ombudsman Entity that includes:
 - a. the grounds for designation removal;
 - b. the effective date of the designation removal; and
 - c. the opportunity to grieve the State Ombudsman's decision, including the timeframe to request a grievance.

6. The LOE may submit a written request to grieve the State Ombudsman's decision to remove or suspend designation per Section 307 (13) and (15) of this Manual.
7. The State Ombudsman shall make the final determination to remove, suspend, or retain designation of a Local Ombudsman Entity.
8. The State Ombudsman shall ensure the continuity of Ombudsman services during the process to remove or suspend designation.
9. NYSOFA shall terminate its contract for Ombudsman Program services with the LOE upon notice from the State Ombudsman of the final decision to remove designation of the LOE.
10. If a Local Ombudsman Entity intends to request to relinquish its designation, it must provide notice of at least one year in advance, or as soon as practicable, to the State Ombudsman and to NYSOFA.
11. When the State Ombudsman has removed designation of a Local Ombudsman Entity, the State Ombudsman shall arrange for the provision of Ombudsman services until a new LOE has been designated.
12. Upon State Ombudsman instruction, the Local Ombudsman Entity shall surrender intact to the Office all Program case records, documentation of all Program activities and complaint processing as required and identification badges of all Ombudsmen associated with the Local Ombudsman Entity.
13. Upon State Ombudsman instruction, the Local Ombudsman Entity shall surrender intact to the Office any equipment purchased with state or federal funds designated for the LTCOP.

303 Certification of an Ombudsman

1. The State Ombudsman determines certification or non-certification of individuals as Ombudsmen.
2. The Regional Coordinator, or, when there is a vacancy in the Regional Coordinator position, the LOE shall submit names of persons to be certified as Ombudsmen using the form prescribed by the Office. To be eligible for consideration as a Long Term Care Ombudsman, an individual must be vetted to ensure at minimum the individual:
 - a. meets the requirements of the LOE;
 - b. is at least 18 years old;
 - c. submits to a background check and not have a disqualifying conviction as determined by the Office or the LOE;
 - d. is able to carry out the responsibilities of an Ombudsman;
 - e. has no direct involvement in the licensing or certification of a long-term care facility;
 - f. does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
 - g. is not or has not been employed by or participated in the management of a long-term care facility within the previous twelve months and if so, consultation with the State Office is required;
 - h. does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
 - i. is not a supervisor of a Regional Coordinator;
 - j. does not have any conflict of interest as listed in Section 401 of this Manual that cannot be remedied or removed; and
 - k. completes all certification requirements prescribed by the Office.
3. Regional Coordinators must:
 - a. be a certified Ombudsman;
 - b. have attained a minimum of a bachelor's degree;
 - c. have a minimum of three (3) years of work experience in advocacy, aging, social services, healthcare or related fields; and
 - d. work full-time as the Regional Coordinator.

4. Prior to beginning certification training, including pre-shadowing, all individuals must complete the vetting process listed in Section 303 (2)(a-j), the LTCO Program Confidentiality and Conflict of Interest Agreement form, and have cleared the background check per Sections 203 (2) and 204 (15) of this Manual.
5. Individuals going through the certification process (i.e., trainees) must wear Office-issued trainee badges when in a long-term care facility as part of their training. Regional Programs may request additional trainee badges from the Office as needed.
6. In order to be recommended for certification, an individual must complete the minimum thirty-six (36) hour initial certification training as follows and in this order:
 - a. four (4) hours of pre-shadowing, conducted by an experienced staff Ombudsman, unless otherwise approved by the Office;
 - b. classroom training that covers the Ombudsman Program's role, responsibility and authority per state and federal laws and regulations, the resident and the resident experience, an overview of long-term care settings; access to residents, facilities, and records, disclosure, the role of an Ombudsman, complaint investigation, common resources and agencies, documentation, and communication; and
 - c. six (6) hours of post-mentoring, conducted by an experienced staff Ombudsman, unless otherwise approved by the Office.
7. Within one (1) month of certification, all newly certified Ombudsmen are required to complete documentation training as prescribed by the Office.
8. Once certified by the State Ombudsman, the Regional Coordinator must place the individual's information in the Office-approved electronic data management system. This information must include the individual's name, date of birth, telephone or cell phone number, email address (if available) and gender. The Regional Coordinator should then send an email with the volunteer's photo to the Office requesting a badge issuance.
9. The Office will issue a badge within ten (10) working days of receipt of the necessary information. When multiple badges are requested, they will be sent in bulk to the local program coordinator.
10. Should an Ombudsman lose their badge, they shall report it to the Regional Coordinator as soon as practicable. The Regional Coordinator may request a replacement badge from the Office by contacting the Regional Program's assigned Assistant State Ombudsman (ASO). The replacement will be re-issued within ten (10) working days of the request.

11. In order to maintain certification, all Ombudsmen are required to:
 - a. complete eighteen (18) hours of continuing education each federal fiscal year. All hours must be entered into the approved database system. Required hours shall be reduced proportionately to reflect the portion of a federal fiscal year a new Ombudsman participates in the Program. New Ombudsmen who start after October first must complete a prorated amount of 1.5 continuing education hours per month beginning the month of their start date in the Program. Acceptable training methods include:
 - i. continuing education offered by the State Office or the Regional Program;
 - ii. in-person or remote classroom formats (e.g., live webinars);
 - iii. in-facility training (e.g., shadowing an experienced Ombudsman in a facility);
 - iv. web-based and self-learning techniques, including but not limited to training offered by other entities, (e.g., the National Ombudsman Resource Center or the National Center for Law and Elder Abuse);
 - b. complete Complaint Handling Philosophy and Documentation Training and Program Activity Training each federal fiscal year (hours counted towards continuing education requirements); and
 - c. meet all requirements for certification as prescribed in this Manual.
12. Failure to meet training requirements may result in:
 - a. probation;
 - b. suspension of duties until the continuing education requirements are met; or
 - c. decertification.
13. No individual shall independently investigate any complaint filed with the Long Term Care Ombudsman Program unless they have been certified as an Ombudsman by the State Ombudsman.
14. An Ombudsman is authorized to provide services only in their respective area. An Ombudsman may visit facilities outside of their area only with the consent of the State Ombudsman or the Regional Coordinator in the relevant area.
15. A volunteer must notify the Regional Coordinator if unable to perform their Ombudsman duties for any reason, for more than two (2) weeks.
16. Regional Coordinators are required to notify the Office of any scheduled time-off of one day or more and shall notify the Office of the plan for coverage.

17. If an individual is absent or inactive from the Program for two (2) years, the Ombudsman must go through certification training again.
18. The State Ombudsman reserves the right to require any current or former Program representative to go through certification training at any time.
19. Certification continues until the individual is decertified by the State Ombudsman.

304 Active and Inactive Ombudsmen

1. The LTCOP considers an Ombudsman “active” when Program documentation (program activity or complaint form) is submitted at least every ninety (90) days.
2. The LTCOP considers an Ombudsman “inactive” when Program documentation (program activity or complaint form) is not submitted for, more than, ninety (90) consecutive days.
3. The Regional Coordinator shall notify the Office and the individual of an inactive status in the Office-approved documentation system.
4. While inactive, the individual may not present themselves as a representative of the Office in any manner.
5. The Office, in coordination with the Regional Coordinator, shall determine steps to take to enable the inactive Ombudsman to be reinstated as active.

305 Probation

1. The State Ombudsman has the authority place an Ombudsman on probation in order to monitor the functions and duties of the Ombudsman whose actions or inactions are deemed insufficient or inappropriate to the extent that they negatively affect the integrity of the Program.
2. Reasons for consideration of probation include, but are not limited to:
 - a. failure to perform the duties of a representative of the Office (i.e., an Ombudsman) as determined in the federal LTCOP Rule and this Manual;
 - b. failure, refusal, or inability to submit required documentation or any other duties outlined in the Certified Ombudsman Agreement;
 - c. failure, refusal, or inability to follow the direction of the Regional Coordinator, the Office, or the State Ombudsman;
 - d. inactivity from Ombudsman duties for 90 days; or
 - e. at the discretion of the State Ombudsman.
3. The State Ombudsman shall consider written requests for probation from Assistant State Ombudsmen for any Ombudsman, and Regional Coordinators for staff and volunteer Ombudsmen.
4. The Office, in consultation with the Regional Coordinator, shall determine the extent of the probation including, but not limited to:
 - a. the timeframe of the probationary period;
 - b. any modifications to the functions and duties allowed to be performed by the Ombudsman during the probationary period;
 - c. any required continuing education; and
 - d. monitoring and assessing the individual for improvement.
5. The Office shall notify the Regional Coordinator and the Local Ombudsman Entity if a Regional Coordinator is placed on probation. The Regional Coordinator shall notify the Ombudsman and the Local Ombudsman Entity if a staff or volunteer Ombudsman is placed on probation. The notification must contain:
 - a. the reason for the probation;
 - b. the timeframe of the probationary period;
 - c. modifications made to the functions and duties allowed to be performed by the Ombudsman during the probationary period, if any;
 - d. continuing education requirement, if any; and

- e. the name of the person responsible for monitoring and assessing the Ombudsman for improvement.
- 6. The Regional Coordinator shall document the progress of staff and volunteer Ombudsman.
- 7. The Assistant State Ombudsman shall document the progress of Regional Coordinator.
- 8. At the end of the probationary period, the State Ombudsman shall review the documentation provided by the Regional Coordinator or the Assistant State Ombudsman pertaining to the probation and determine if the Ombudsman:
 - a. has completed the probationary period with no further action required;
 - b. needs further monitoring and will continue to be on probation;
 - c. will be suspended; or
 - d. will be decertified.

306 Suspension and Decertification of an Ombudsman

1. The State Ombudsman has the authority to suspend the duties of an Ombudsman and to decertify an Ombudsman. The State Ombudsman may consider remedial actions which could be taken to avoid the decertification of an Ombudsman. Such remedial actions, if any, are completely within the discretion of the State Ombudsman.
2. The State Ombudsman shall consider the requests for suspension and decertification by the Regional Coordinator for staff and volunteer Ombudsmen, the LOE for the Regional Coordinator, or Office staff for any Ombudsman. Requests shall be made in writing to the State Ombudsman.
3. Regional Coordinators shall notify the Office prior to dismissing any staff or volunteer Ombudsman. The notification must include:
 - a. clear, written documentation as to the reasons for the pending dismissal;
 - b. evidence the Regional Coordinator documented and notified the Ombudsman of their unsatisfactory job performance; and
 - c. a request for decertification of the Ombudsman.
4. The State Ombudsman may suspend or decertify an Ombudsman with or without a request from another entity for one of more of the following reasons:
 - a. failure of the Ombudsman to meet and/or maintain the criteria for certification;
 - b. existence of a conflict of interest that has not been remedied;
 - c. deliberate failure of the Ombudsman to disclose all conflicts of interest;
 - d. a change in circumstances that creates a conflict in accordance with Section 401 of this Manual;
 - e. violation of confidentiality requirements of this Manual;
 - f. failure to perform the duties of a representative of the Office (i.e., an Ombudsman) as determined in the federal LTCOP Rule and this Manual;
 - g. failure, refusal, or inability to submit required documentation;
 - h. falsifying Program records or providing false information;
 - i. failure, refusal, or inability to follow the direction of the Regional Coordinator, the Office, or the State Ombudsman;
 - j. discontinuation of involvement with the Long Term Care Ombudsman Program, including, but not limited to:
 - i. employment;
 - ii. an absence of six (6) months or more from performing the duties of the Office or;

- iii. cessation of the Local Ombudsman Entity's contract for the provision of Ombudsman services; or
 - k. failure to act in accordance with federal and state laws, regulations and this Manual.
- 5. An individual may submit a request to grieve the State Ombudsman's decision to refuse, suspend or remove certification by filing a formal grievance per Section 307 (14) of this Manual.
- 6. The State Ombudsman shall make the final determination to suspend, remove or retain certification of an individual.
- 7. Once decertified, the former volunteer or staff Ombudsman must return their identification badge to the Regional Coordinator, or designee. The Regional Coordinator, or designee shall send it to the Office within ten (10) business days and immediately remove the individual's access to the electronic documentation system. The Regional Coordinator shall also remove the individual from any listing of certified Ombudsmen.
- 8. If the former Ombudsman does not return the badge within sixty (60) days from the end of service, the Regional Coordinator, or designee must send a certified letter to the former Ombudsman requesting its immediate return. If the badge is not returned within ninety (90) days from the end of service, the Regional Coordinator, or designee must contact their assigned Assistant State Ombudsman and make a notation in the electronic data management system under the comments section that attempts were made to retrieve the badge.
- 9. The Office shall inform the Regional Coordinator and the LOE of the State Ombudsman's decision to suspend or remove certification. The Regional Coordinator or the Office, shall make a reasonable effort to notify the facilities known to be visited by the former Ombudsman.
- 10. If the refusal to certify an individual as an Ombudsman, absence, suspension, or the decertification of an Ombudsman results in the inability to provide Ombudsman services in the relevant service area, the LOE and the Office shall arrange for the provision of Ombudsman services until an Ombudsman is certified.

11. If the individual believes the State Ombudsman refused to certify, suspended or decertified the individual without basis, the individual may file a formal grievance using the process in Section 307 of this Manual.

307 Formal Grievances Against an Ombudsman Related to the Performance of Duties

1. Formal grievances made involving determinations or actions by an Ombudsman related to the performance of their duties shall be filed as prescribed in this Section, within thirty (30) calendar days of the date of the determination or action.
 - a. If the grievance comes in after the 30-calendar day requirement, the State Ombudsman will determine whether the grievance should be considered for investigation.
2. The State Long Term Care Ombudsman or their designee investigates formal grievances against Ombudsman Program staff or volunteers related to the performance of their duties.
3. Any formal grievance received by NYSOFA, a Local Ombudsman Entity, or a Regional Program about Ombudsman Program staff or volunteers related to the performance of their duties must be immediately submitted to the State Ombudsman for investigation.
4. When a concern or complaint (not a formal grievance) about an Ombudsman is received by NYSOFA, a Local Ombudsman Entity, or a Regional Program the complaint shall be forwarded to the State Ombudsman or their designee to determine further action. When the complainant is not satisfied with the attempts to resolve the concern or complaint or it cannot be resolved without an investigation, the State Ombudsman or their designee must ask the complainant if they wish to file a formal grievance against the applicable Ombudsman.
5. All formal grievances shall be made in writing. If an individual is unable to submit the grievance in writing, the staff member receiving the grievance shall assist with documenting the grievance. All formal grievances must contain the following information:
 - a. the contact information for the person filing the grievance (name, phone number, email, or mailing address);
 - b. the nature of the grievance;
 - i. name of the person or program the grievance is being filed against;
 - ii. date and time of the incident;
 - iii. location of the incident;
 - iv. description of the incident;
 - c. specific facts supporting the allegation;
 - i. any documentation related to the incident;
 - ii. names of others involved or witnesses; and

- d. the complainant's desired resolution of the grievance.
6. Investigations shall be initiated within ten (10) business days from the receipt of the grievance and may include interviews with all parties and reviews of pertinent records.
7. The State Ombudsman or their designee shall attempt to contact the complainant by telephone, email, or letter within ten (10) business days to acknowledge the receipt of the grievance, explain the grievance process, and clarify or obtain further information. Information provided to the complainant shall include the contact information of the Office, along with instructions for sending the matter to the next level, in the event the complainant is not satisfied with the outcome of the investigation.
8. All efforts will be made to complete the investigation within sixty (60) business days of receipt of the grievance by the Office. If it appears the investigation cannot be completed within sixty (60) business days, the State Ombudsman will notify the complainant in writing with an expected date of completion.
 - a. The State Ombudsman may modify or suspend the duties of the Ombudsman until the investigation is completed and/or there is a resolution of the grievance.
 - b. The State Ombudsman will provide the complainant with a written response within thirty (30) business days of the completion of the investigation. The response will follow all applicable confidentiality and disclosure policies and procedures in this Manual.
9. Upon notice, the State Ombudsman may suspend any of the timeframes in this section.
10. The decision of the State Ombudsman is final and cannot be appealed.
11. Adhering to the disclosure and confidentiality requirements of this Manual, the Office shall submit in writing to the respective Local Ombudsman Entity:
 - a. a summary of findings from the grievance investigation;
 - b. the decision of the investigation; and
 - c. timeframe of suspension or date of decertification, if applicable.
12. Formal grievances regarding actions taken or determinations made by the State Ombudsman shall be directed to the Director of NYSOFA or the Director's designee.
 - a. All efforts will be made to complete the investigation within sixty (60) business days of the receipt. If it appears the investigation cannot be completed within sixty

(60) business days, NYSOFA will notify the complainant in writing with an expected date of completion.

- b. The Director of NYSOFA may suspend or modify functions and responsibilities, within applicable State employment practices, the State Ombudsman until the investigation is completed and/or there is resolution of the grievance.
 - c. The Director of NYSOFA will provide the complainant with a written response to their grievance within thirty (30) business days of the completion of the investigation. To the extent applicable, the response will follow any applicable confidentiality and disclosure policies and procedures in this Manual.
 - d. All decisions of the Director of NYSOFA will be final and in compliance with State employment practices and regulations.
 - e. Upon notice, the Director of NYSOFA may suspend any of the timeframes in this section.
 - f. The State Ombudsman shall receive a copy of the decision.
13. Grievances regarding the decision to refuse, suspend or remove the certification of an Ombudsman will be reviewed by the State Ombudsman or their designee. All efforts will be made to complete the review within sixty (60) business days of receipt of a grievance by the Office. If it appears the review cannot be completed within sixty (60) business days, the State Ombudsman will notify the individual in writing who filed the grievance (i.e., complainant) with an expected date of completion. All grievances must be in writing and contain the specific facts that support the individual's grievance against the suspension or decertification.
- a. All efforts will be made to provide the complainant with a final written decision within thirty (30) business days of the completion of the investigation.
 - b. All decisions of the State Ombudsman will be final.
14. Grievances regarding the non-selection of a Local Ombudsman Entity will be handled through New York State contracting procedures.
15. Grievances regarding the suspension or removal of designation will be handled through New York State contracting procedures.

Chapter 400 Conflict of Interest

401 Organizational and Individual Conflicts of Interest

402 Identification and Disclosure

403 Review, and the Removal or Remedy of Conflicts of Interest

404 Failure to Identify, Report, Remove, or Remedy a Conflict of Interest

401 Organizational and Individual Conflicts of Interest

1. The agencies, organizations, and individuals involved in the establishment of the Office, Local Ombudsman Entities (LOEs), Regional Ombudsman Programs, and the delivery of Ombudsman services shall be free from conflicts of interest pursuant to Section 712 (f) of the Older Americans Act and the policies and procedures in this Manual. Such entities shall take reasonable steps to avoid internal conflicts of interest.
2. NYSOFA and the State Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both NYSOFA and the State Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict.
3. Organizational conflicts of interest include, but are not limited to, placement of the Office or requiring that any Ombudsman perform conflicting activities, in an organization that:
 - a. is responsible for licensing, surveying, or certifying long-term care facilities;
 - b. is responsible for licensing, surveying, or certifying long-term care services;
 - c. is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
 - d. has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;
 - e. has governing board members with any ownership, investment, or employment interest in long-term care facilities;
 - f. provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
 - g. provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n);
 - h. provides long-term care case management;
 - i. provides long-term care coordination or case management for residents of long-term care facilities;

- j. sets reimbursement rates for long-term care facilities;
 - k. sets reimbursement rates for long-term care services;
 - l. provides adult protective services;
 - m. is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
 - n. conducts preadmission screening for long-term care facility placements;
 - o. makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
 - p. provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities.
4. The State Ombudsman makes the final decision on what constitutes an organizational conflict of interest or the appearance of an organizational conflict of interest in a Local Ombudsman Entity, and whether a conflict is able to be removed or remedied.
 5. The State Ombudsman shall identify organizational conflicts of interest in the Ombudsman Program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.
 6. Individual conflicts of interest for the State Ombudsman, Long Term Care Ombudsmen, and members of their immediate family include, but are not limited to:
 - a. direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;
 - b. ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or a long-term care service;
 - c. employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;
 - d. employment of an individual by, or participation in the management of, a long-term care facility within the previous twelve (12) months;
 - e. receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
 - f. accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the State Ombudsman or Long Term Care Ombudsman provide services

(except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as State Ombudsman or Long Term Care Ombudsman);

- g. accepting money or any other consideration from anyone other than the Office, or an entity approved by the State Ombudsman, for the performance of an act in the regular course of the duties of the State Ombudsman or Long Term Care Ombudsman without State Ombudsman approval;
 - h. serving as guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the State Ombudsman or Long Term Care Ombudsman provides services;
 - i. serving residents of a facility in which an immediate family member resides;
 - j. serving as a member of an ethics review committee for any facility located within New York State; and
 - k. providing services with conflicting responsibilities while serving as an Ombudsman including, but not limited to:
 - i. adult protective services;
 - ii. discharge planning;
 - iii. preadmission screening for long-term care;
 - iv. case management for long-term care;
 - v. a Regional Coordinator's supervisor within an LOE;
 - vi. legal services; or
 - vii. supervising or being supervised by any **NY Connects** supervisors or staff members who provide information and assistance through **NY Connects**.
7. The State Ombudsman makes the final decision on what constitutes an individual conflict of interest or the appearance of an individual conflict of interest, and whether a conflict is able to be removed or remedied.

402 Identification and Disclosure of Conflicts of Interest

1. NYSOFA shall ensure that no individual, or member of the immediate family of an individual, involved in, appointing, selecting or terminating the State Ombudsman is subject to a conflict of interest per Section 712 (f)(1) of the Older Americans Act and the policies and procedures in this Manual.
 - a. Before appointing an individual to serve as State Ombudsman, or taking actions related to their termination, the Director of NYSOFA will disclose any circumstances that may create a conflict of interest on the part of the Director or of the Director's immediate family. If a conflict of interest is identified, the Director will refrain from taking part in the appointment or termination of the State Ombudsman. In such instances, the Deputy Director of NYSOFA's Executive Division, in consultation with NYSOFA's General Counsel, shall act in the place of the Director.
 - b. The Director of NYSOFA and, when applicable, any individual involved in appointing, selecting or terminating the State Ombudsman, shall complete a conflict of interest form developed by the Office and submit it to the Office and NYSOFA's General Counsel on an annual basis.
 - c. The Director of NYSOFA and any individual involved in appointing, selecting or terminating the State Ombudsman shall disclose to the Office and NYSOFA's General Counsel, all potential conflicts of interest as soon as possible, but no longer than five (5) business days upon learning of the potential conflict. Should the individual(s) fail to report a potential conflict or refuse to remove or remedy a conflict, the State Ombudsman, or Office shall notify the Administration for Community Living (ACL) within five (5) business days.
2. NYSOFA shall ensure that the State Ombudsman, or member of their immediate family, is free from a conflict of interest per Section 712 (f)(1) of the Older Americans Act and the policies and procedures in this Manual.
 - a. The Director will screen all applicants for the position of State Ombudsman to identify any actual or potential conflicts of interest, including, but not limited to, those identified in applicable state and federal laws and regulations. This screening will include developing a list of appropriate questions to be asked of each applicant. If a conflict of interest is identified, the Director will consult with NYSOFA's General Counsel to determine whether the conflict is capable of being remedied. Before appointing any individual to the position, the Director will verify that any identified conflicts of interest have been remedied. The State Ombudsman will be informed of circumstances that may constitute a conflict of

interest and will be required to inform the Director of any such circumstance that may come into existence.

- b. The State Ombudsman shall complete a conflict of interest form developed by the Office and submit it to the Director of NYSOFA or their designee on an annual basis.
 - c. Once appointed, the State Ombudsman shall disclose all potential conflicts of interest as soon as possible, but no longer than five (5) business days upon learning of the potential conflict. Should the State Ombudsman fail to report a potential conflict or refuse to remove or remedy a conflict, NYSOFA shall notify the Administration for Community Living (ACL) within five (5) business days. Failure to report a potential conflict or refusal to remove or remedy a conflict is grounds for removal of the State Ombudsman's designation.
3. NYSOFA shall ensure that the LTCOP's Legal Counsel, or member of their immediate family, is free from a conflict of interest per Section 712 (f)(1) of the Older Americans Act and the policies and procedures in this Manual.
 4. Should LTCOP's Legal Counsel become subject to a conflict of interest, including through the attorney's employment by NYSOFA, the attorney must inform all necessary parties of the conflict. The Director of NYSOFA, NYSOFA's General Counsel, and the State Ombudsman will coordinate to remedy the conflict, if possible, or to develop an alternative plan for the provision of legal counsel.
 5. The LTCOP's Legal Counsel shall complete a conflict of interest form developed by the Office and submit it to the State Ombudsman and NYSOFA's General Counsel on an annual basis.
 6. Where NYSOFA carries out the State Long Term Care Ombudsman Program by contract or other arrangement with a public agency or nonprofit private organization, NYSOFA shall:
 - a. establish a process for periodic review and identification of conflicts;
 - b. establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;
 - c. require that such agency or organization have a process in place to:
 - i. take reasonable steps to avoid conflicts of interest, and
 - ii. disclose identified conflicts and steps taken to remove or remedy conflicts to NYSOFA for review and approval.

7. The Office shall establish a conflict of interest form to be completed by any entity seeking designation or currently designated as a Local Ombudsman Entity.
 - a. Prior to designation, the entity shall submit to the State Ombudsman and NYSOFA the completed conflict of interest form.
 - b. Once designated, on an annual basis, the LOE must submit to the State Ombudsman a completed conflict of interest form developed by the Office.
 - c. The LOE shall disclose to the State Ombudsman all potential conflicts of interest as soon as possible, but no longer than five (5) business days upon learning of the potential conflict. Failure to report a potential conflict or refusal to remove or remedy a conflict is grounds for removal of the LOE's designation.
 - d. An entity with a conflict of interest that cannot be remedied or removed shall not be designated as an LOE.
8. The State Ombudsman shall identify organizational conflicts of interest in the State Long Term Care Ombudsman Program and describe steps taken to remove or remedy conflicts within the annual report submitted to the assistant secretary through the National Ombudsman Reporting System (NORS) as required by the Administration for Community Living (ACL).
9. The Office shall establish a conflict of interest form to be completed by an individual seeking certification or currently certified as an Ombudsman.
 - a. Prior to certification, the individual shall submit to the Regional Coordinator, or LOE for Regional Coordinator positions, who will forward to the State Ombudsman, the completed conflict of interest form. Office staff shall submit the form directly to the State Ombudsman.
 - b. Once certified, and on an annual basis, Ombudsmen must submit to the Regional Coordinator, or to the State Ombudsman, as applicable, a completed conflict of interest form developed by the Office.
 - c. Ombudsmen shall disclose all potential conflicts of interest as soon as possible, to the Regional Coordinator, or to the State Ombudsman, as applicable, but no longer than five (5) business days upon learning of the potential conflict.
 - d. Failure to report a potential conflict or refusal to remove or remedy a conflict is grounds for removal of the Ombudsman's certification.
 - e. An individual with a conflict of interest that cannot be remedied or removed shall not be certified as an Ombudsman.

403 Review and the Removal or Remedy of Conflicts of Interest

1. NYSOFA and the State Ombudsman shall identify and take steps to remove or remedy conflicts of interest between the Office and NYSOFA or other agency carrying out the State Long Term Care Ombudsman Program.
2. Where NYSOFA is unable to adequately remove or remedy a conflict, it shall carry out the State Long Term Care Ombudsman Program by contract or other arrangement with a public agency or nonprofit private organization. NYSOFA may not enter into a contract or other arrangement with another entity to carry out the State Long Term Care Ombudsman Program and may not operate the Office directly if it has a conflict of interest listed in The Older Americans Act, SECTION 218 Long-term care ombudsman Elder (ELD) CHAPTER 35-A, ARTICLE 2, TITLE 1, and this Manual.
3. Where an agency or organization carrying out the State Long Term Care Ombudsman Program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, NYSOFA shall either operate the State Long Term Care Ombudsman Program directly or by contract or other arrangement with another public agency or nonprofit private organization.
4. The State Ombudsman shall determine whether actions may be taken to remedy an identified individual or organizational conflict. A conflict can be satisfactorily remedied only when the continued existence of the conflict does not compromise the ability of the Ombudsman to carry out their duties and is not likely to diminish the perception of the Long Term Care Ombudsman Program as an independent advocate for residents.
5. When a potential conflict is identified, the State Ombudsman shall review the circumstances of the potential conflict. The State Ombudsman shall determine:
 - a. whether a conflict of interest exists; and
 - b. whether the conflict could be remedied by appropriate action by the individual or agency involved.
6. The Office shall inform the individual or LOE involved of the results of the review and will provide assistance with a remedy or removal of the conflict.

404 Failure to Identify, Report, Remove, or Remedy a Conflict of Interest

1. Failure of an LOE to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension, or removal of designation of the Local Ombudsman Entity by the State Ombudsman.
2. Failure of an Ombudsman to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension, or removal of certification of the Ombudsman by the State Ombudsman.
3. Final decisions regarding sanctions to identify or remedy conflict of interest situations are determined by the State Ombudsman, cannot be appealed, and are final.

Chapter 500 Access

501 Access to Facilities and Residents

502 Access to Resident Records

503 Denial of Access

504 Willful Interference and Retaliation

501 Access to Facilities and Residents

1. Ombudsmen shall have authority to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated and shall have access to all residents and/or the resident representative to perform all functions and duties of the Office.
2. Ombudsmen shall notify the Office of any non-routine visit that falls outside of regular business hours.
3. Ombudsman shall have immediate access to all long-term care facilities to observe all areas, except the living area of any resident who declines, and to visit and talk with all residents, staff, and others. A facility may not deny an Ombudsmen access to a resident simply because that resident has an authorized legal representative.
4. Ombudsmen shall wear their Program-issued identification badge during all facility visits and upon a staff member's request, Ombudsmen shall identify themselves by showing their identification card issued by the Office.
5. Ombudsman shall comply with the facility's procedures for signing in and out of the facility.
6. Ombudsmen have authority to communicate privately and without restriction with any resident who consents to the communication. Whenever possible, Ombudsmen will seek to speak with residents at times that are convenient for them.
7. Ombudsmen shall also respect the right of a resident to decline the assistance of an Ombudsman when attempting to resolve a complaint and to decline communication with the Ombudsman. Residents shall have the right to request, deny, or terminate visits with an Ombudsman at any time and the Ombudsman must adhere to such wishes.

502 Access to Resident Records

1. Resident private health information or other resident-identifying information may be released by the covered entity to the Ombudsman Program for purposes of Ombudsman investigation or advocacy under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule [45 CFR part 160 and 45 CFR part 164 subparts A and E].
2. Ombudsmen shall have access to review and receive copies of the medical, social, and other records, regardless of format, of a resident if access is necessary in order to investigate a complaint and:
 - a. the resident or resident representative communicates informed consent to the access and the consent is given in writing, orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by an Ombudsman in accordance with this Manual; or
 - b. the resident representative refuses to consent to the access, an Ombudsman has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the Ombudsman obtains the approval of the State Ombudsman.
3. All resident records shall be treated with confidentiality and obtained only as necessary to seek resolution of a complaint.
4. Ombudsmen shall seek to access records in accordance with the following:
 - a. When a resident is able to communicate informed consent, whether or not there is a resident representative, the Ombudsman may, with the express permission of the resident, examine the resident's medical, social and other records. Written consent or oral authorization by the resident or communication of informed consent via the use of auxiliary aids and services must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity to give informed consent to access records.
 - b. When a guardian of the person has been appointed by a court, the Ombudsman must make a good faith judgment as to the capacity of a resident to give consent to access records. Ombudsmen may examine the medical, social, and other records with the informed consent of the resident. Written consent or oral authorization by the resident or communication of informed consent via auxiliary aids and services must be documented in Program case records.

5. If a resident with a resident representative is not able to communicate informed consent, the Ombudsman may seek informed consent from the resident representative. Written consent, oral authorization or authorization through the use of auxiliary aids and services must be documented in Program case records.
6. When a resident is not able to communicate informed consent for access to records, the Ombudsman may access records when the Ombudsman has conducted a face-to-face visit with the resident and concluded the resident is not able to communicate informed consent and determined:
 - a. access to the records is necessary in order to investigate the complaint;
 - b. the resident has no representative; or
 - c. the representative refuses to consent to the access, and:
 - i. the Ombudsman has reasonable cause to believe the representative is not acting in the best interest of the resident;
 - ii. the representative cannot be located despite a reasonable effort by the Ombudsman to do so and the Ombudsman has documented the attempts in the Office-approved case documentation system; and
 - iii. the Ombudsman obtains approval from the State Ombudsman.
7. All circumstances under Section 502 (6) shall be documented in the Program case record.
8. When requested, Ombudsmen must use the Office-approved form for consent to access records of a resident who is not able to communicate informed consent and must include the form in the resident's case record.
9. When examining resident records, Ombudsmen should, when possible, do so with the resident and explain to the resident how to read and use the records.
10. Ombudsmen shall not remove the resident's original record from the facility. Any copies made are subject to the confidentiality provisions of federal and state laws, rules and regulations, and this Manual.
11. Ombudsmen shall have access to administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities.
12. Ombudsmen shall have access to all licensing and certification records maintained by the state with respect to long-term care facilities and copies upon request.

13. Ombudsmen shall have access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties of the LTCOP.
14. Ombudsman shall have access to long-term care facilities lists of resident names and room numbers.

503 Denial of Access

1. If an Ombudsman is denied immediate access to a facility, a resident or a resident's records by a long-term care facility employee or agent, the Ombudsman shall request of the facility administrator or highest-ranking available employee the reason for the denial of access to the facility or to any resident or resident record.
 - a. If the explanation appears reasonable, the Ombudsman shall seek the earliest opportunity to visit the resident or facility or to obtain records.
 - b. If the explanation does not appear reasonable to the Ombudsman, or if access is being denied arbitrarily, the Ombudsman or the Regional Coordinator shall review the applicable statutes and regulations regarding access to facilities and residents with the highest-ranking available employee or administrator at the facility.
 - c. If the LTCO is unable to obtain the needed access, the LTCO should contact the State Office who will then contact the administrator/owner of the facility.
 - d. If this is unsuccessful, then the State Office will contact the appropriate licensing agent for the facility to request their assistance in resolving the matter.

2. When a denial of access continues after the steps listed in Section 503 (1) of this Manual are attempted, the Ombudsman shall contact the Regional Coordinator and/or the Office. The Regional Coordinator and/or the Office:
 - a. shall request from the administrator, or highest-ranking employee available, a written explanation be given to the Regional Program and the Office as to the reasons for the refusal of access to a facility, a resident or a resident record;
 - b. shall immediately notify the State Ombudsman and provide supporting documentation concerning the facility's refusal of access; and
 - c. if all attempts to resolve the denial of access are unsuccessful a complaint will be filed with the New York State Department of Health for violating the Ombudsman's right to access.

3. The Office, upon notice by the Regional Coordinator of an unreasonable refusal by the facility to permit access to a resident, resident records or a facility, may notify New York State Department of Health. The Regional Coordinator shall be notified of the Office's actions relative to the Regional Coordinator's report of an unreasonable denial of access.

504 Willful Interference and Retaliation

1. No long-term care facility, other entity, or individual shall:
 - a. refuse to permit an Ombudsman entry into a long-term care facility, interfere with, refuse to cooperate with, or retaliate against an Ombudsman carrying out their mandated functions, duties, and responsibilities set forth in federal and state laws, rules, regulations and this Manual;
 - b. refuse to permit residents or staff to communicate freely and privately with an Ombudsman; or
 - c. retaliate against any resident, resident representative, complainant, or staff member for filing a complaint with, providing information to, or otherwise cooperating with any Ombudsman.
2. The Office shall investigate any report of willful interference and intentional acts of retaliation.
3. When an Ombudsman believes that willful interference was attempted or has occurred, the Ombudsman will inform the perpetrator of the sanctions provided by law, and, when the perpetrator is an employee of a facility, advise the appropriate supervisor or the administrator of the facility of the situation and the sanctions provided by law. All attempts to prevent or correct willful interference shall be recorded in the case records.
4. If the interference continues, the Ombudsman shall immediately inform the Office about the interference and provide supporting documentation concerning the interference.

Chapter 600 Duties of the Long Term Care Ombudsman Program

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601 Program Service Components

1. The State Ombudsman shall ensure the following program service components are met either personally or through certified Ombudsmen:
 - a. identify, investigate and resolve complaints that are made by, or on behalf of, long-term care residents in New York State and that relate to actions, inactions or decisions that adversely affect the health, safety, and welfare or rights of such residents;
 - b. represent the interests of residents before governmental agencies and seek appropriate administrative, legal, and other remedies to protect residents' welfare, safety, health and rights. This includes analyzing, commenting on, and monitoring the development and implementation of federal, state and local laws, regulations, policies and actions that pertain to the health, safety, welfare, and rights of the residents of long-term care facilities and services through systems advocacy;
 - c. inform the residents, resident representatives, complainants, and others about means of obtaining services provided by the Long Term Care Ombudsman Program and other public agencies through providing information and assistance and community education;
 - d. ensure that residents have regular and timely access to the services provided through the LTCOP and that residents and complainants receive timely responses to requests for information and complaints through routine and complaint visits; and
 - e. promote, provide technical support for the development of, and provide ongoing support as requested by Resident Councils and Family Councils to protect the well-being and rights of residents.
2. All Regional Ombudsman Programs must provide and document the provision of each of these service components.
3. The Regional Coordinator shall develop an Ombudsman Program Work Plan reflective of the service components and shall meet or exceed any goals set forth by the State Office.
4. The activities of the Regional Ombudsman Programs shall be evaluated by the Office on a regular basis as outlined in Section 608 of this Manual.

602 Investigative Services

1. Every Regional Ombudsman Program shall receive, investigate and resolve complaints made by or on behalf of residents relating to actions, inactions, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare or rights of such residents. Should questions arise regarding appropriate Program practice that is not addressed in this Manual, the Office should be contacted for guidance.

603 Facility Visits

1. Ombudsmen are required to conduct routine visits that promote regular and timely access.
2. Ombudsman shall also conduct complaint visits that require investigation and/or follow-up on a complaint received by the LTCOP. To optimize use of time, Ombudsmen may also address complaints during routine visits.
3. Except for planned training for facility staff or scheduled meetings that include facility staff, Ombudsman shall not notify the facility in advance of a visit. Visits shall be staggered so facilities cannot predict the timing of the visit.
4. Family Type Homes and other facilities that remain licensed, and do not have residents are not required to be visited by an Ombudsman until residents are living in such facility. In this situation, the Regional Ombudsman Program shall call the facility, at minimum, one time per quarter, to inquire if the facility has residents. If so, an Ombudsman must visit the facility within the quarter and continue with quarterly visits as prescribed in this Manual.
5. At minimum, the Regional Ombudsman Program shall conduct a routine visit on a quarterly basis to the following long-term care facility types:
 - a. Nursing homes
 - b. Adult Care Facilities
 - i. Adult Homes
 1. Transitional Adult Homes
 - ii. Enriched Housing Programs
 - iii. Assisted Living Residences
 1. Enhanced Assisted Living Residences
 2. Special Needs Assisted Living Residences
 - iv. Assisted Living Program
 - c. Family Type Homes
 - d. Continuing Care Retirement Communities
 - e. Transitional Care Units

6. Ombudsmen shall keep a record of dates, times, and actions taken during visits to facilities and document observations after each facility visit in accordance with this Manual.
7. The Regional Coordinator shall ensure residents have regular and timely access to Ombudsmen.
8. Ombudsmen presence shall be increased in facilities with:
 - a. a history of serious frequent complaints;
 - b. a change in ownership or administration if this change raises concerns about the health, safety, or welfare of residents;
 - c. imposition of a serious state or federal sanction or plan of correction;
 - d. a pending bankruptcy; or
 - e. an imminent closure.
9. Ombudsman presence shall be increased at the request of the Office or Regional Coordinator for any reason necessary to protect residents' interests.
10. Ombudsmen should attempt to meet with facility administrator, manager/operator or other administrative staff during their first visit to the facility to:
 - a. introduce themselves and the LTCOP;
 - b. determine who will act as the appropriate contact person(s) for the facility when a complaint arises;
 - c. request the name and contact information of the Resident Council President; and
 - d. request a copy of the latest New York State Department of Health facility survey.
11. Upon arrival to a long-term care facility, Ombudsmen shall comply with the facility's procedures for signing in and out of the facility and may inform a staff member of their arrival. The Ombudsman shall not inform staff in any way the purpose of the visit or the names of residents who will be visited.
12. Upon entering the facility, Ombudsmen shall:
 - a. wear their Program identification badge at all times;
 - b. ask for and receive a resident census, when needed; and
 - c. have unescorted access to all areas of the facility.
13. At minimum, a routine visit consists of:
 - a. visiting with multiple residents and resident representatives;

- b. sharing information about the Ombudsman Program;
 - c. walking through public areas of the facility;
 - d. observing activities in the facility; and
 - e. confirming Ombudsman Program posters are appropriately displayed.
14. Ombudsmen shall closely observe all appropriate aspects of the facility including, but not limited to:
- a. common areas, including functionality, cleanliness and odors;
 - b. care provision, including resident cleanliness and comfort;
 - c. activities provided according to activities calendar;
 - d. meal provision and posting of menus and;
 - e. availability of the most recent state survey.
15. The Ombudsman shall knock, identify themselves as an Ombudsman or resident advocate, and await permission before entering a resident's room.
16. If a resident's room is not suitable for private communication, or such communication infringes on the rights of roommates, the Ombudsman shall seek an appropriate private place for a meeting.
17. If at any time, a resident refuses to communicate with the Ombudsman for any reason, the Ombudsman shall honor the resident's wishes and respectfully discontinue the communication.
18. Ombudsmen shall maintain confidentiality with individual residents, groups of residents, loved ones, resident representatives, and/or staff.
19. Upon request, Ombudsmen shall provide residents, loved ones, resident representatives, and staff with the Ombudsman Program Brochures and program contact information.
20. Ombudsmen shall explain the purpose of the Program and introduce themselves to active members of the Resident Council and attempt to see residents who have been admitted since the last Ombudsman visit. Ombudsman may request a current resident census from the facility at any time.
21. Ombudsman shall not:
- a. provide any type of care to residents;
 - b. provide transportation to residents;

- c. make purchases on behalf of residents;
- d. provide or accept money, food, drinks, gifts, gratuities, or any other consideration to or from residents or facility staff;
- e. become involved in facility staff's internal disputes that do not affect resident care or quality of life; nor
- f. act in the role of facility volunteer or friendly visitor.

604 Information and Assistance, Community Education, and Training for Facility Staff

1. The LTCOP shall provide information and assistance regarding long-term care issues and the needs and rights of residents.
2. The LTCOP shall respond promptly to requests for information; however, responses should not take more than five business days when practicable.
3. Upon requests, the LTCOP shall provide general presentations to community members, stakeholders, universities, state agencies, places of worship, or advocacy groups, etc., per Office requirements.
4. Ombudsmen shall participate in community events, health fairs, and similar gatherings where the Ombudsman has program information and handouts available to attendees.
5. Newsletters, blogs, and other forms of media do not constitute community education for the purposes of federal reporting.
6. Upon request, the LTCOP shall provide training to long-term care facility staff in person, web-based, or on-line per Office requirements.
7. Community Education and training for long-term care facility staff can be in person, web-based, or on-line but must have a way to count the number of individuals who completed the session.

605 Systems Advocacy

1. The State Ombudsman shall provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office (i.e., Ombudsmen).
2. The State Ombudsman shall make determinations and establish positions of the Office, without necessarily representing the determinations or positions of NYSOFA.
3. All systems advocacy activities performed by Ombudsmen shall be consistent with the positions of the Office.
4. The State Ombudsman shall ensure the following systems advocacy activities are completed when appropriate, either personally, by the Office, or by Ombudsmen assigned to do so by the State Ombudsman:
 - a. represent the interests of residents before governmental agencies and seek appropriate administrative, legal and other remedies to protect their welfare, safety, health and rights;
 - b. analyze, comment on, and monitor the development and implementation of federal, state and local laws, regulations, policies and actions that pertain to the health, safety, welfare, and rights of the residents of long-term care facilities in New York State;
 - c. recommend changes in federal, state and local laws, regulations, policies, and actions pertaining to the health, safety, welfare, and rights of residents;
 - d. present to and participate in public hearings related to long-term care issues; and
 - e. inform advocacy groups, governmental agencies, and policymakers about the impact of laws, policies, or practices on residents.
5. Prior to completing the actions and activities listed in 605 (4)(a-e) Ombudsmen shall notify the Office to ensure the actions and activities are consistent with the positions of the State Ombudsman.
6. The Office shall:
 - a. when possible, inform the Director, or their designee, of plans to engage in the issue advocacy activity in advance and as reasonable, provide written testimonies;
 - b. facilitate public comment on laws, policies and actions;

- c. link Regional Ombudsman Programs and advocacy groups with mutual concerns or shared issues;
 - d. coordinate systems advocacy activities within the LTCOP;
 - e. develop and implement advocacy priorities and strategies;
 - f. identify resources and training needs of Ombudsmen and others related to issue advocacy; and
 - g. provide training and technical assistance to AAAs, Local Ombudsman Entities, and others in the aging and disability network regarding the Office's role in systems advocacy and the systems advocacy priorities as determined by the Office.
6. The LTCOP may also provide systems advocacy by:
- a. facilitating the ability of residents, Resident Councils, Family Councils, and the public to comment on laws, regulations, policies, and actions pertaining to the health, safety, welfare, and rights of residents;
 - b. developing or participating in committees or workgroups to study long-term care issues;
 - c. educating other aging service providers, advocacy groups, and the public on specific long-term care issues and policies; and
 - d. collaborating with AAAs, LOEs, advisory councils, Resident Councils, Family Councils or other advocacy organizations on long-term care issues and policies.
7. Ombudsmen are excluded from any state lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Older Americans Act.

606 Resident Councils and Family Councils

1. The LTCOP shall provide technical support to Resident Councils and Family Councils. The LTCOP shall respond to questions, provide literature, and assist Resident Councils and Family Councils.
2. Ombudsmen involvement and assistance in Council activities may include helping with the development of new Councils and informing the leadership and/or membership of Resident Councils and Family Councils about:
 - a. the purpose of the Ombudsman Program;
 - b. the Ombudsman Program's availability to assist Councils;
 - c. topics the Ombudsman Program is prepared to present to the Councils, if requested; and
 - d. issues, concerns, and complaints the Ombudsman Program could address with the Councils.
3. Ombudsmen shall make every effort to be present at Resident Council meetings and Family Council meetings, when invited.
4. The Office shall provide technical assistance to Regional Ombudsman Programs to support and promote the development of Resident Councils and Family Councils.

607 Ombudsman Program Work Plans

1. The Office shall create the format for the Ombudsman Program Work Plan.
2. Regional Coordinators are responsible for developing an Ombudsman Program Work Plan for their region on an annual basis and as directed by the Office.
3. The Ombudsman Work Plan shall include:
 - a. goals for the Regional Ombudsman Program based on the LTCOP service components and any directives from the Office;
 - b. objectives to meet such goals;
 - c. volunteer recruitment, retention, and management plan;
 - d. performance measures.
4. The Office shall review and issue final approval of the Ombudsman Program Work Plan within forty-five (45) calendar days of receipt when practicable. If changes must be made to the Ombudsman Program Work Plan, the Office shall provide assistance to the Regional Coordinator to develop an acceptable plan. The Office shall notify the Regional Coordinator and the LOE of the approval of the Plan.

608 Monitoring and Evaluating the Long Term Care Ombudsman Program

1. The Office shall review quarterly, or as needed, the activities and complaint data of the statewide LTCOP and each Regional Ombudsman Program, to evaluate Program performance.
2. The Office shall conduct an annual in-person assessment with each Regional Coordinator to identify best practices, monitor the Regional Ombudsman Program's performance and provide technical assistance and support to Regional Ombudsman Programs. This assessment shall include, but is not limited to information about:
 - a. program administration;
 - b. the Regional LTCOP budget;
 - c. program access and intake;
 - d. referrals;
 - e. facility visits;
 - f. collaboration with stakeholders;
 - g. communication with the State Office;
 - h. branding, marketing, and social media;
 - i. volunteer management;
 - j. conflicts of interest;
 - k. background checks;
 - l. continuing education, facility staff training, and community education;
 - m. systems advocacy; and
 - n. data review, collection, and retention.
3. The State Ombudsman shall submit an annual report to the governor, commissioner of the federal Administration on Aging, speaker of the assembly, temporary president of the senate, director of NYSOFA, Commissioner of the Department of Health, and the Commissioner of Children and Family Services a report and make such report available to the public:
 - a. describing the activities carried out by the Office during the prior calendar year;
 - b. containing and analyzing data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems;
 - c. evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

- d. containing recommendations for appropriate state legislation, rules and regulations and other action to improve the quality of the care and life of the residents, protecting the health, safety and welfare and rights of the residents and resolving resident complaints and identified problems or barriers;
- e. containing an analysis of the success of the LTCOP, including success in providing services to residents;
- f. describing barriers that prevent the optimal operation of the Ombudsman Program;
- g. describing any organizational conflicts of interest in the LTCOP that have been identified and the steps taken to remove or remedy such conflicts; and
- h. any other matters as the State Ombudsman, in consultation with the Director NYSOFA, determines to be appropriate.

Chapter 700 Complaints

701 Complaint Intake and Initial Plan Development

702 Complaint Response Time

703 Complaint Investigation

704 Complaint Verification

705 Complaint Analysis and Planning

707 Complaints about Abuse, Neglect, and/or Exploitation

708 Complaint Referral

701 Complaint Intake and Initial Plan Development

1. Complaints that relate to an action, inaction, or decision, that may adversely affect the health, safety, welfare, or rights of one or more residents may be initiated by residents, loved ones, resident representatives, long-term care facility staff, Ombudsmen, an anonymous source, or any other person. Individuals filing a complaint with the LTCOP are referred to as complainants.
 - a. The Ombudsman receiving the complaint from the anonymous complainant shall explain, in some circumstances, anonymity could limit the ability of the LTCOP to investigate and resolve the complaint.
 - b. Ombudsmen may begin to investigate the complaint without knowing the identity of the complainant and must do so in compliance with this Manual.
 - c. Ombudsmen may initiate a complaint when they have personal knowledge (e.g., observations) of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents including actions, inactions, or decisions of:
 - i. facilities in response to natural disasters, evacuations, relocations, involuntary change of management, closures, or other unusual events; or
 - ii. governmental agencies in response to the concerns and conditions of residents.
2. The following concerns are not appropriate for Ombudsman activity:
 - a. complaints that do not directly impact current residents;
 - b. complaints that are outside the scope of the mission or authority of the Program;
 - or
 - c. when a resident refuses to give permission to follow up on a complaint.
3. Intake process **when the resident is the complainant**, at minimum, an Ombudsman shall:
 - a. explain the role of the LTCOP is to act in accordance with the resident's direction and explain confidentiality and disclosure requirements;
 - b. empower the resident to self-advocate to the extent the resident is comfortable;
 - c. discuss applicable resident rights;
 - d. collect all relevant information from the resident;
 - e. determine the resident's perspective of concern, and if the concern is a complaint as defined in this Manual;
 - f. ascertain attempts made to resolve the concern;
 - g. determine the resident's desired outcome; and

- h. obtain permission to advocate on the behalf of the resident to resolve the complaint to the resident's satisfaction.
- 4. Intake process **when the complainant is not the resident**, at minimum, the LTCOP shall:
 - a. explain the role of the LTCOP is to act in accordance with the resident's direction and explain confidentiality and disclosure requirements;
 - b. discuss applicable resident rights;
 - c. collect necessary information from the complainant;
 - d. ask what, if any, attempts have been made by facility staff or the complainant to resolve the complaint;
 - e. empower the complainant to personally take action, when appropriate; and
 - f. determine if the problem or concern is a complaint as defined by this Manual.
- 5. When the complainant is not the resident, the Ombudsman must make a face-to-face visit with the resident to determine the resident's perspective of the concern, the resident's desired outcome; and obtain permission to advocate on the behalf of the resident to resolve the complaint to the resident's satisfaction. When a face-to-face visit is not possible and the Ombudsman has permission from the Office, initial contact may be made virtually or via phone.
- 6. When the LTCOP receives a concern about a deceased resident of a long-term care facility:
 - a. the Ombudsman shall determine if the concern also affects current residents in the facility, and if so, shall investigate the complaint as prescribed in this Manual; and
 - b. the Ombudsman shall suggest referral options to the individual such as, the New York State Department of Health (DOH), the Office of Children and Family Services (OCFS) – only pertaining to residents in Family Type Homes, law enforcement, legal services, coroner, or any other applicable resource.
- 7. When the LTCOP receives a concern about an individual who is not a resident as defined in this Manual or a problem or concern is not a complaint as defined in this Manual, the LTCOP shall make attempts to refer the individual to the appropriate entity for assistance.
- 8. The LTCOP is not designed to serves as an emergency response entity. Emergency or life-threatening situations reported to the LTCOP should be referred to 9-1-1 and/or other emergency response systems for immediate response.

702 Complaint Response Time

1. Ombudsmen must take into consideration the nature and severity of the complaint and shall respond to complaints in a timely and thorough manner.
2. The LTCOP shall initially respond via telephone, email, or in person by the next business day from receipt of a complaint and must conduct an in-person visit with the resident as soon as possible, but no longer than three (3) calendar days if the complaint involves:
 - a. abuse or gross neglect, and the Ombudsman has reason to believe the resident may currently be at risk of harm;
 - b. actual or threatened immediate transfer or discharge from a facility; or
 - c. the use of restraints or confinement.
3. The LTCOP shall conduct an in-person visit within three (3) business days from the receipt of a complaint if the complaint involves:
 - a. abuse or gross neglect, and the Ombudsman has no reason to believe that a resident is at risk of harm (e.g., the resident is not currently in the facility); or
 - b. actual or threatened transfer or discharge, which is not imminent.
4. The LTCOP shall conduct an in-person visit with the resident(s) within 10 business days from the receipt of a complaint for all other types of complaints, taking into consideration the severity of the complaint.
5. The Ombudsman may indicate to the complainant a timeframe in which the LTCOP will begin an investigation, when appropriate.

703 Complaint Investigation

1. Ombudsmen investigate complaints in order to verify the general accuracy of the complaint and gather information to resolve them. Complaint investigations are based on the direction of the resident, or the resident representative if the resident cannot communicate informed consent, and involve gathering information through interviews, observations, and, when necessary, record reviews.
2. Regardless of the source of information or complaint, the resident is the LTCOP's client, and all complainants shall be so informed.
3. Regardless of the source of the complaint (i.e., the complainant), including when the source is the Ombudsman, the Ombudsman must support and maximize resident participation in the process of resolving the complaint as follows:
 - a. the Ombudsman shall offer privacy to the resident for the purpose of confidentiality; and
 - b. the Ombudsman shall personally discuss the complaint with the resident, or resident representative (if the resident is unable to communicate informed consent) to:
 - i. advise of resident rights;
 - ii. determine the perspective of the resident;
 - iii. seek permission to assist the resident with the complaint;
 - iv. develop an initial plan of action that includes, but is not limited to:
 1. understanding the resident's desired outcomes and goals;
 2. discussing possible solutions to the problem(s);
 3. clarifying whether the Ombudsman has consent from the resident to act on their behalf;
 4. clarifying whether the Ombudsman has consent from the resident to identify the resident when communicating with involved parties;
 5. clarifying whether the Ombudsman has consent to access records, if necessary;
 6. determining the wishes of the resident with respect to reporting allegations to DOH, OCFS, or another entity; and
 7. determining who is responsible for all required actions within the plan.
4. Investigation by an Ombudsman shall proceed only with the expressed consent of the resident unless the resident is unable to communicate informed consent. If the resident

is unable to communicate informed consent, then consent is needed from the resident representative or the State Ombudsman to proceed with the investigation.

5. Communication of informed consent may be made in writing, orally, or visually, including through the use of auxiliary aids and services, and such consent must be documented in the case file contemporaneously by the Ombudsman.
6. When the resident is unable to communicate informed consent, the Ombudsman shall:
 - a. advocate for the resident's wishes to the extent that the resident can express them;
 - b. ask the facility if they have the name of a resident representative on file and, if so, seek informed consent from the representative as prescribed in Section 703(7);
 - c. seek information from loved ones and other sources that indicates what the resident would have desired and, where such evidence is available, work to meet that desire; and
 - d. assume the resident wishes to have their health, safety, welfare and rights protected.
7. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident, the Ombudsman shall ascertain, by reviewing the resident representative document, the extent of the authority granted to the representative under court order (in the case of a guardian or conservator), by a power of attorney, health care proxy, or other document by which the resident has granted authority to the representative, or under other applicable state or federal laws.
8. Where the resident is unable to communicate informed consent and has no resident representative, or when the resident is unable to communicate informed consent and the Ombudsman has reason to believe an action, inaction, or decision of the resident representative may adversely affect the health, safety, welfare, or rights of the resident, the Ombudsman shall:
 - a. ascertain there is evidence the resident would or would not wish LTCOP assistance;
 - b. seek permission from the Office to proceed with compliant investigation and resolution;
 - c. with approval from the Office, take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident, including seeking evidence to indicate what the resident would have desired; and

- d. determine whether the complaint was resolved to the satisfaction of the complainant.
9. The Office shall respond to requests for guidance and direction within two (2) business days when situations in Section 703 (8)(b) apply.
10. For all complaints in which the resident refuses LTCOP assistance or withdraws consent, the Ombudsman shall:
 - a. attempt to determine why the resident refused or withdrew consent and consider the following factors:
 - i. past responses of facility, such as failure to respond to complaints and/or retaliation against complainants;
 - ii. the resident's experience with facility staff; and
 - iii. the experience of residents related to this type of complaint;
 - b. inform the resident they may contact the LTCOP in the future, and provide LTCOP contact information to the resident;
 - c. discontinue work on the individual complaint;
 - d. document the refusal or withdrawal in the Office-approved forms and database system; and
 - e. determine if the complaint is systemic in nature and affects other residents in the facility. If so, then open a new case for multiple residents with the Ombudsman as the complainant and follow the requirements in this Manual on confidentiality and complaint investigation.
11. When the complaint is an allegation of abuse, neglect and/or exploitation regarding a resident who is unable to communicate informed consent, the Ombudsman shall follow the requirements in Sections 707 (2) and 906 (9) of this Manual.
12. For all abuse and neglect complaints in which the resident knowing full well the potential consequences of their refusal to give or withdraw consent the Ombudsman shall follow the requirements in Section 707 (6) of this Manual.
13. If, during the course of an investigation, the resident dies, the Ombudsman shall:
 - a. determine if the complaint is systemic in nature and follow the requirements in this Manual on confidentiality and complaint investigation;
 - b. document the death into the Office-approved database and close the individual case;

- c. when appropriate, refer the complainant to DOH, OCFS, law enforcement, legal services, or the coroner.
14. An in-person visit with the resident is required for all investigations unless the Office has granted a waiver per Section 104 (2) of this Manual, or the resident:
- a. requests not to be visited or contacted;
 - b. is the complainant and confirms that a visit is not needed;
 - c. the Ombudsman has personal knowledge (e.g., a prior in-person visit with the resident) that the resident is unable to communicate informed consent; and
 - d. is able to take direction from a resident representative per Section 703 (7-8) of this Manual.
15. Ombudsman investigations may include the following actions:
- a. research relevant laws, rules, regulations, policies, and other pertinent information;
 - b. observe the facility environment, evidence, and anything else pertinent to the complaint;
 - c. identify and interview, with resident permission, individuals with pertinent information (e.g., resident representative, facility staff, loved ones, etc.);
 - d. review relevant records including clinical, medical, social, financial, and other records in keeping with access and confidentiality procedures of this Manual.
16. Ombudsmen shall seek the following information during an investigation:
- a. what has occurred or is occurring;
 - b. when it occurred and whether the occurrence is on-going;
 - c. where it occurred;
 - d. who is involved;
 - e. effect of the issue on the resident(s);
 - f. reason for occurrence;
 - g. what, if anything, the facility or other interested parties have done in response to the occurrence; and
 - h. resident's goals and wishes as a complaint resolution.
17. Resident perception of the problem or complaint is sufficient basis upon which an Ombudsman can seek resolution to a complaint.

704 Complaint Verification

1. A complaint is verified when, after interviews, observation, and record reviews (when necessary) an Ombudsman confirms most, or all facts alleged by the complainant are likely true.
2. Whether or not the Ombudsman can verify a complaint, the LTCOP gives the benefit of any doubt to the resident's perspective and attempts to resolve complaints to the satisfaction of the resident.

705 Complaint Analysis and Planning

1. Once a complaint is identified and verified the Ombudsman shall consider the root cause of the problem by determining:
 - a. why the problem occurred; and
 - b. who or what is responsible for the problem.
2. If the complaint is not verified, but the resident's perception of the problem or concern warrants resolution, the Ombudsman shall determine the root cause of the problem and/or if there is a need for LTCOP involvement.
3. The Ombudsman shall revisit the plan of action with the resident, or the resident representative regularly or when applicable, to:
 - a. review the resident's desired outcome and possible solutions;
 - b. determine if there are new or different concerns;
 - c. determine if any changes need to be made to the initial plan of action;
 - d. consider whether anyone else needs to be involved to reach resolution;
 - e. discuss with the resident possible barriers when selecting an appropriate approach to resolution and identify alternative strategies in which the resident is agreeable.

706 Complaint Resolution

1. With input and agreement from the resident or their representative, an Ombudsman may use one or more of the following methods to reach complaint resolution:
 - a. resident self-advocacy;
 - b. Ombudsman advocacy;
 - c. negotiation without negotiating away any resident right;
 - d. mediation if the complaint involves conflict between two or more residents;
 - e. fair hearing process in complaints regarding facility-initiated transfers or discharges;
 - f. referral to another agency when outside assistance will achieve resolution; and/or
 - g. systems advocacy if resolution to the complaint requires work to change a system.
2. When the method of resolution for complaints regarding transfers or discharges includes the fair hearing process, an Ombudsman may:
 - a. assist the resident with filing an appeal;
 - b. provide the resident with contact information for local Older Americans Act-funded attorneys; and
 - c. represent the resident in the fair hearing process with permission of the resident or their representative when the resident is unable to communicate informed consent.
3. Resolution of a complaint is based on the satisfaction of the resident, or the resident representative if the resident cannot communicate their perspective to the extent to which the matter has been satisfactorily resolved.
4. If the resident is unable to communicate their perspective and does not have a resident representative or if the resident expires before the investigation is complete and does not have a representative, the LTCOP shall rely on the perspective of the complainant to determine the level of resolution.
5. If a complaint cannot be resolved through the methods listed in Section 706(1), the Ombudsman shall consult with the Regional Coordinator to consider other potential resources or strategies and/or close the complaint.

707 Complaints about Abuse, Neglect, and/or Exploitation

1. The Ombudsman Program investigates complaints about abuse, neglect, and/or exploitation for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident, not to determine whether any law or regulation has been violated.
2. In accordance with the LTCOP Federal Rule CFR 45 §1324, Ombudsmen shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent except in situations where the resident is unable to communicate informed consent to the LTCOP and all the following circumstances exist:
 - a. the resident does not have a representative or the Ombudsman has reasonable cause to believe that the representative has taken an action, has failed to act, or has made a decision that may adversely affect the health, safety, welfare or rights of the resident; and
 - b. the Ombudsman has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare or rights of the resident; and
 - c. the Ombudsman has no evidence indicating that the resident would not wish a referral to be made; and
 - d. the Ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
 - e. the Ombudsman receives the approval of the State Ombudsman.
3. Ombudsmen who hold a professional license that requires abuse reporting (e.g., a licensed social worker, or nurse), are not exempt from the Long Term Care Ombudsman Program disclosure requirements in the LTCOP Federal Rule CFR 45 §1324 and this Manual when conducting the duties of the Program.
4. If a complaint or an investigation indicates suspected abuse, neglect, or exploitation of a resident, the Ombudsman shall:
 - a. advise the resident, complainant, or witness to report the matter to DOH, OCFS, Adult Protective Services (APS), and/or law enforcement as appropriate. The Ombudsman shall offer assistance to an individual who wants to report abuse, neglect, or exploitation, when suitable;
 - b. if the complainant is required by law to report suspected abuse, neglect, or exploitation of a resident (e.g., a facility staff member), inform the complainant to

- follow their reporting requirements on filing complaints with DOH, OCFS, APS, and/ or local law enforcement;
- c. if the resident or resident representative is unwilling or unable to report themselves, request permission of the resident or the resident representative, if the resident cannot communicate informed consent, for the Ombudsman to report the suspected abuse, neglect, or exploitation to DOH, OCFS, APS, and/or law enforcement; and/or
 - d. advocate for and follow the resident's wishes to the extent the resident can express them.
5. When the resident is the alleged victim of abuse, neglect, or exploitation, and is unable to communicate informed consent, the Ombudsman shall determine if the resident has a representative. If there is no representative, the Ombudsman shall follow the policies and procedures in Sections 707 (2) and 906 (9), contact the Office to discuss the case, seek guidance, and obtain approval to take further action.
 6. When a resident refuses to give consent to report suspected abuse, neglect, or exploitation, the Ombudsman shall:
 - a. attempt to determine why, considering:
 - i. past response of the facility or agency to complaints;
 - ii. the resident's relationship with facility staff;
 - iii. the experience of residents in the facility related to this type of complaint;and
 - b. notify, as soon as possible, the Regional Coordinator and the Office of the resident's refusal to report.
 7. The Office shall consider the impact on the resident, other residents, and the integrity of the Program in deciding whether to file a report when the resident is unable to communicate informed consent to report suspected abuse, neglect, or exploitation to DOH, OCFS, APS, and/or law enforcement. Such decision shall be recorded in the case record.
 8. Should an Ombudsman witness abuse the Ombudsman shall at minimum:
 - a. stop what they are doing, remain calm, and call attention to the situation;
 - b. pay close attention to details;
 - c. identify other witnesses, especially facility staff since they are mandatory reporters of abuse;

- d. as soon as possible after the incident, speak with the resident to explain their rights, the LTCOP, and determine if they want to report the incident to DOH or OCFS, APS, and/or law enforcement;
 - e. offer to talk with facility staff and the resident together about steps taken to ensure the resident's safety;
 - f. document the incident;
 - g. contact the Regional Coordinator for support and further direction.
9. When an Ombudsman personally witnesses suspected abuse, neglect, or exploitation of a resident, the Ombudsman shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies.
- a. Where such resident is able to communicate informed consent or has a resident representative available to provide informed consent, the Ombudsman shall follow the direction of the resident or resident representative.
 - b. Where the resident refuses to give consent, the Ombudsman shall not act on behalf of that specific resident. The Ombudsman shall consult with their Regional Coordinator and/or the State Office for further direction.
 - c. Where the resident is unable to communicate informed consent and has no resident representative available to provide informed consent, the Ombudsman shall open a case with the Ombudsman as the complainant, follow complaint handling requirements in Sections 703-706 of this Manual. The Ombudsman shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect, or exploitation only in the following circumstances:
 - i. the Ombudsman has no evidence indicating that the resident would not wish a referral to be made;
 - ii. the Ombudsman has reasonable cause to believe that disclosure would be in the best interest of the resident; and
 - iii. the Ombudsman obtains the approval of the State Ombudsman.
10. When an Ombudsman determines a referral to an entity outside of the LTCOP regarding abuse, neglect and/or exploitation requiring approval from the State Ombudsman should be made on behalf of a resident who is unable to communicate informed consent to such referral:
- a. the Ombudsmen shall discuss the concern with the Regional Coordinator;

- b. the Regional Coordinator shall inform the Office and must receive permission from the State Ombudsman prior to making a referral to DOH, CDFS, APS and/or law enforcement; and
- c. the State Ombudsman shall reply within two (2) business days, as practicable, to any request for approval of disclosure under this provision; or
- d. if the State Ombudsman is not available, approval may be provided by a designee within the State Office.

708 Complaint Referral

1. Ombudsmen should encourage and offer information and support to any resident, resident representative, or complainant who wishes to file a complaint against an individual or a long-term care facility to contact the entity directly.
2. When a volunteer Ombudsman is unable to resolve a complaint, the volunteer Ombudsman should contact their regional office staff Ombudsman for technical assistance. The regional office staff may offer suggestions for additional interventions. If these interventions are not effective, and the problem still exists or additional interventions do not resolve the complaint per Section 706 (3) and (4), the staff Ombudsman shall contact the assigned Assistant State Ombudsman (ASO) for further technical assistance.
3. When a staff Ombudsman is unable to resolve a complaint, the staff Ombudsman should contact their ASO for technical assistance.
4. The ASO will determine if there is further action that can be taken to work toward resolution of the complaint or if all possible interventions have been exhausted and the matter rises to the level of filing a complaint with the regulatory agency.
5. Prior to recommending a referral be made to any law enforcement, regulatory, or oversight agency the Ombudsman shall:
 - a. work to resolve any complaints received as directed by the resident or the resident representative if the resident is unable to communicate informed consent; and
 - b. document all actions taken to resolve the complaint, including recommended interventions and the outcome of these interventions. Ombudsmen should include as much detail as possible, including direct observations, dates, staff interviews, facility documents reviewed, and any relevant resident information if permission has been provided by the resident.
6. Ombudsmen shall not file a complaint with the New York State Department of Health (DOH), New York Office of Children and Family Services (OCFS), Adult Protective Services (APS), or any other law enforcement agency without informing the State Office of the possible need for referral and receiving permission to file the complaint.
7. The applicable ASO shall review the request by the Ombudsman and will determine if a referral is warranted.

8. The LTCOP shall refer a complaint or concern to another agency when the resident gives an Ombudsman consent to do so, the Ombudsman has received permission from the Office, and one or more of the following apply:
 - a. another agency has resources that may help resolve the resident's concern;
 - b. the complaint is outside the Program's authority and/or expertise; or
 - c. the Ombudsman needs additional assistance in order to achieve resolution of the complaint.

9. When an Ombudsman refers a complaint to another entity, it does not necessarily mean that the Ombudsman is no longer involved in complaint processing and resolution. The Ombudsman shall continue to follow the requirements of this Manual.

10. The LTCOP may refer the complaint and disclose resident-identifying information to the facility in which the resident resides, DOH, OCFS, law enforcement, APS, and to an entity or agency that provides access to administrative, legal, or other remedies without the permission of the resident or resident representative only in the following circumstances:
 - a. the resident is unable to communicate informed consent to the Ombudsman and has no representative and the Ombudsman has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare or rights of the resident, or the Ombudsman has reasonable cause to believe that the representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident; and
 - b. the Ombudsman has no evidence indicating that the resident would not wish a referral to be made; and
 - c. the Ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
 - d. the Ombudsman obtains the approval of the State Ombudsman.

11. Once the Office determines a complaint about a nursing home or an adult care facility needs to be filed with DOH the following process shall be followed.
 - a. Only regional office staff or State Office staff will file the complaint.
 - b. The staff Ombudsman filing the complaint must use the dedicated electronic complaint form and hotline number found here: <https://health.ny.gov/facilities/nursing/ombudsman.htm>.
 - c. Each Regional Ombudsman Program must be provided with a unique ID number which is required on the electronic complaint form and when calling in a complaint through the hotline phone number. State LTCOP will provide and maintain the list of ID numbers.

- d. Ombudsmen should be primarily filing complaints utilizing the electronic complaint form and using the hotline number only in extreme cases. This allows for a written record of what was provided and easier reference of the information.
 - e. All complaints to DOH from LTCOP for nursing homes will be reviewed and triaged by NYSDOH utilizing the Centers for Medicare and Medicaid Services (CMS) State Operation Manual (SOM). An acknowledgement letter will be sent to the Ombudsman filing the complaint by DOH.
 - f. All complaints for adult care facilities are reviewed and triaged by NYSDOH against the established Division of Adult Care Facility and Assisted Living Surveillance Operations Manual. An acknowledgement letter will be sent to the Ombudsman filing the complaint by DOH.
12. No Ombudsman should file a complaint with NYSDOH without informing the State Office. All complaints to NYSDOH will be reviewed and approved by the ASO prior to submitting.
13. No Ombudsman should file a complaint anonymously, as these will not be recorded or recognized as complaints identified by LTCOP.
14. When a resident tells the LTCOP they have a need for legal assistance and requests legal advice and/or representation, the LTCOP shall assist the resident in finding appropriate legal services by providing the resident with contact information for local legal assistance providers or the protection and advocacy agency.
15. When an Ombudsman personally refers a complaint to a legal service entity, the Ombudsman shall follow all confidentiality and disclosure requirements of this Manual.
16. When the LTCOP has an open case on a resident who then moves to a long-term care facility in another Regional Ombudsman Program service area in New York State, the current Regional Coordinator shall consider the likelihood that the concern or complaint will continue in the new region, and if so:
- a. the Regional Coordinator shall contact the Office for technical assistance; and
 - b. the Office will determine:
 - i. if there is a need for an Ombudsman to visit the resident in the new facility, and the timeframe in which the visit should occur;
 - ii. if the case will be opened in the receiving Region;
 - iii. what information will be shared between the Regional Programs; and
 - iv. which Ombudsman will visit the resident.

17. When the LTCOP has an open case on a resident who then moves to a long-term care facility in another state, the Regional Coordinator shall notify the Office and the Office will determine what information, if any, will be shared with the receiving State Office.
18. When the LTCOP has an open case and made a referral on behalf of a resident, an Ombudsman shall follow up with the resident, to determine whether services have been received and/or if the identified need has been met following the referral.

Chapter 800 Threats of Self-Harm or Harm to Others

801 When a Threat of Self-Harm or Harm to Others is Received

801 When a Threat of Self-Harm or Harm to Others is Received

1. If the LTCOP receives information from a person, other than a resident, that a resident is threatening to harm themselves, or another resident in a facility:
 - a. determine if the complainant is a mandatory reporter and advise them to follow such requirements;
 - b. determine whether the complainant has contacted the facility or any other entity and if not, encourage the complainant to contact:
 - i. the facility administrator or manager on duty; or
 - ii. if anyone is in immediate harm, 911; and
 - c. immediately consult with the Regional Coordinator and/or the Office to determine if/when a visit should be conducted to speak with respective resident(s) and seek technical assistance for further steps.
2. If a resident communicates to an Ombudsman their intention to harm themselves, the Ombudsman shall request the following information from the resident:
 - a. whether the resident consents to the Ombudsman taking action, such as reporting the threat to the facility, calling 911, and/or the 988 Suicide and Crisis Lifeline;
 - b. why the resident is threatening harm;
 - c. when and how the resident intends to carry out the threat of harm; and
 - d. whether the resident has the means and ability to carry out the threat of harm.
3. The Ombudsman shall request the resident not act on the threat and:
 - a. discuss the need for additional assistance and ask if the resident is currently working with a doctor or counselor;
 - b. advise the resident to talk to someone in the long-term care facility (facility staff, doctor, nurse) about their feelings now. If agreeable, assist in arranging the discussion and offer to sit with the resident for support;
 - c. if the resident is unwilling to speak directly to anyone at the time of the visit, seek permission to talk with facility staff, doctor, nurse, representative, family member, or friend; and
 - d. advise the resident of their need to share the concern with someone who can help.
4. If the resident consents to the Ombudsman taking action:
 - a. follow complaint procedures as directed in Section 703 (3)(b);

- b. provide the resident with names and contact information of resources that can assist them, such as a mental health crisis center, and/or the 988 Suicide and Crisis Lifeline and, with their permission, assist them with making the call;
 - c. provide the resident with LTCOP contact information; and
 - d. contact the Regional Office for technical assistance.
- 5. If the resident refuses to consent to the Ombudsman disclosing the concern for self-harm:
 - a. contact the Regional Coordinator or if the Regional Coordinator is not available, call the Office before leaving the facility; and
 - b. give the resident the contact information for the 988 Suicide and Crisis Lifeline, the LTCOP, and any other applicable resources available in the area.
- 6. If the Ombudsman believes death or serious physical harm to any resident could occur within a short period of time (i.e., imminent threat) dial 9-1-1, whether or not the Ombudsman receives permission from the resident; then immediately contact the regional office staff who should then contact the Office as soon as possible.
- 7. If the resident's plan involves harming others, immediately report the concern to the regional office for further direction. regional office staff should then contact the Office as soon as possible.

Chapter 900 Documentation and Records

901 Documentation of Ombudsman Services

902 Program Record Maintenance

903 Confidentiality of Program Records

904 Monitoring the Records of the Regional Long Term Care Ombudsman Programs

905 Notices of Transfer and Discharge

906 Disclosure of Information

907 Social Media and Communication with the Media

901 Documentation of Ombudsman Services

1. Required Program activities completed, complaints received, and all actions taken to investigate, verify, and resolve complaints by the Program shall be documented by staff Ombudsman as prescribed by the Office and as required by the National Ombudsman Reporting System (NORS).
2. All Ombudsmen shall use the form(s) prescribed by the Office to record facility visits and Ombudsman activities. Information from the forms shall be entered in the Office-approved electronic data collection system by a regional staff Ombudsman.
3. Activities required to be documented include:
 - a. facility visits;
 - b. information and assistance;
 - c. training for Ombudsmen;
 - d. training for facility staff;
 - e. state survey participation;
 - f. Resident Council participation;
 - g. Family Council participation;
 - h. community education; and
 - i. additional volunteer hours (hours and travel time for volunteers).
4. Case records must contain, at minimum, the following documentation:
 - a. one or more complaints;
 - b. a complainant;
 - c. case open date;
 - d. case closed date;
 - e. complaint verification;
 - f. complaint disposition; and
 - g. journal entries as prescribed in 901(4).
5. Case journal entries must contain a factual and chronological accounting of all interactions and observations completed by the LTCOP regarding complaint(s) beginning with intake, and including investigative actions, consent to act, referrals, and the resident's perspective of complaint resolution.
6. Documentation timeframes:

- a. Staff Ombudsman documentation for activities and cases must be entered into the data capturing system as soon as possible, but no later than the fifteenth (15th) day of the following month.
 - b. Volunteer Ombudsmen documentation forms shall be submitted to the Regional Program as soon as possible or no later than the fifteenth (15th) day of the following month in person, via email, or postal mail.
 - c. All volunteer data and actions taken by staff Ombudsmen shall be entered by the last day of the following month. This includes journal entries, all activities listed in 901 (2), and all other activities required by the Office.
 - d. Once all complaints within the case are closed, the case shall be reviewed by the staff Ombudsman and closed as soon as possible.
 - e. If a case is open for more than forty-five (45) days, the staff Ombudsman must review the case to determine if the case should continue to be open or be closed.
7. Staff Ombudsman shall review the volunteer documentation forms (Program activities and cases) for quality assurance and seek clarification from the volunteer, when necessary, prior to entering the information into the database.
8. Ombudsman activities, case journal notes, resident records, or resident identifying information shall not be entered into any case management system outside of the Office-approved electronic data collection system.
9. Permission or refusal by the resident or representative to consent to the Ombudsman providing investigative services shall be documented in a case journal entry in every case.
10. If a resident or complainant provides consent to release his or her identity, or if a resident or resident representative consents to release records, that consent shall be documented within a case journal entry.
11. The resolution status, or disposition of each complaint shall be documented based on the satisfaction of the resident.
12. Ombudsmen shall select one of the disposition codes listed below when closing each compliant within a case:
 - a. Partially or fully resolved when:
 - i. the concern has been corrected and the complaint is resolved;
 - ii. the concern has been partially resolved and some concerns still remain; or

- iii. if a significant portion of the complaint was resolved prior to a resident's withdrawal of the complaint.
 - b. Not Resolved when:
 - i. the problem identified in the complaint has not been corrected; or
 - ii. the change made was in no way to the satisfaction of the resident.
 - c. Withdrawn or No Action Needed when:
 - i. the complaint was withdrawn at the request of the resident or complainant or discontinued by the Ombudsman;
 - ii. the investigation proved no action by the Ombudsman was needed or appropriate;
 - iii. the findings of the investigation did not indicate a need for change or require further Ombudsman investigation and complaint resolution; or
 - iv. the resident dies or moves away, and the complaint is no longer relevant.
- 13. Cases may be closed under the following circumstances:
 - a. when the complaint or complaints have been resolved to the resident's satisfaction or the satisfaction of the representative or complainant;
 - b. when the Ombudsman has exhausted all possible means of working to resolve the complaint and the resident is not satisfied with the outcome;
 - c. the resident moves out of the Region; or
 - d. the resident dies.
- 14. All Ombudsmen shall follow the requirements for confidentiality (Section 903) and disclosure of resident records and information (Section 905) as prescribed in this Manual.

902 Program Record Maintenance

1. The Office determines, oversees, and maintains an electronic database system in which all Regional Ombudsman Programs shall use and where all LTCOP files and records shall be stored pertaining to casework and required Ombudsman activities.
2. When hard copies of Program records are maintained Regional Ombudsman Programs shall store all non-electronic documentation in a locked filing cabinet that is accessible only to the Regional Coordinator and designated staff pertaining to:
 - a. Identifying resident information;
 - b. Identifying complainant information;
 - c. complaints;
 - d. program activities; and
 - e. employment records of LTCOP staff and volunteers.
3. Discharge notices received from nursing homes for the purpose of complying with 42 CFR 483.15(c)(3)(i) shall be stored in a physical or electronic location that ensures the security and confidentiality of such records.
4. Confidential information saved on the Ombudsman's LTCOP-issued computer or any other LTCOP-issued electronic device (e.g., tablet or mobile phone, etc.) relating to resident or complainant identifying information, Program activities, and casework should be password protected (e.g., a word doc.) and should be deleted once the case is closed or the information is entered into the Office-approved electronic database system.
5. Program records pertaining to cases and Program activities shall not be stored electronically outside of the Office approved electronic database system.
6. Staff Ombudsmen shall not use personal devices such as personal computers, tablets, and cell phones for the purposes of LTCOP work.
7. Volunteers should avoid using personal landline or cell phones in conducting LTCOP activities unless they are otherwise unable to fulfill their official duties in a timely, efficient manner.
8. Telephone calls should never be used as a convenience when in-person methods of response are available.

9. If a volunteer has no other option than to use their phone, the volunteer should employ methods (such as use of the *67 option) to avoid disclosing their personal phone number.
10. Volunteer Ombudsmen should avoid using personal email accounts to communicate with residents, facilities, resident representatives, etc., when conducting LTCOP activities, unless they are otherwise unable to fulfill their official duties in a timely, efficient manner. Email should never be used as a convenience when in-person methods of response are available.
 - a. When communication via email is necessary, it should be used for coordination purposes only (meetings, etc.). In no instances, shall an email contain confidential information pertaining to a complaint, or resident or complainant identifying information.
 - b. Any personal email account used by a volunteer in any LTCOP-related communication must not be a shared account or any account that can be accessed by another person.
 - c. The appropriate Regional Program supervisor or coordinator must be copied on all LTCOP-related email communications made by a volunteer.
11. Record Retention
 - a. Program Activity Forms shall be retained for two (2) years from the month of receipt.
 - b. Employment records of the staff and volunteers shall be retained for six (6) years after the staff member or volunteer permanently ceases working or volunteering for the Regional Ombudsman Program.
 - c. Nursing home discharge notices shall be retained for two (2) years from the date the discharge notice is received.
 - d. Case forms relating to each complaint shall be immediately destroyed after such information is entered into the Office-approved data collection and reporting system.
 - e. Unless there is a valid reason, such as a litigation hold, that the Program records need to be retained for a period of time that exceeds the timeframes set above, the applicable Program records should be destroyed upon the expiration of the retention periods set in this Manual.
12. Failure to follow confidentiality policies may result in suspension or decertification pursuant to Section 306 of this Manual.

903 Confidentiality of Program Records

1. Program records are the property of the Office of the State Long Term Care Ombudsman, and the Office shall have access to all Program records at all times.
2. Program records that are to be kept confidential include:
 - a. all files, records, correspondence, documentation, case notes, and communications related to a specific compliant, case, or complainant; and
 - b. all information, whether in electronic form or hard copy, pertaining to the identity of residents and complainants.
3. NYSOFA, Local Ombudsman Entities, and Area Agencies on Aging shall not have access to confidential Program records.
4. Employment records of LTCOP staff and volunteers, shall be kept confidential.
5. Program records stored or received electronically or in hard copy shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and Section 905 of this Manual.
6. The Regional Coordinator shall:
 - a. limit access of Program records to authorized Ombudsman Program personnel;
 - b. maintain Program records in a secure location controlled by the Regional Coordinator;
 - c. ensure the LOE provides for confidential transmissions of records by electronic mail or facsimile for the LTCOP; and
 - d. immediately report a breach of confidentiality to the Office.

904 Monitoring the Records of the Regional Long Term Care Ombudsman Programs

1. NYSOFA, LOEs, and Area Agencies may use aggregate data provided by the LTCOP for the purposes of oversight and monitoring of the State and Regional Ombudsman Programs.
2. The LOE supervisor of the Regional Coordinator shall not review confidential Program records.
3. The Regional Coordinator shall develop a process to conduct random reviews of Program records (activities and cases) on a monthly basis for the purpose of quality assurance.
4. The Regional Coordinator shall develop a process to review aggregate data reports on a monthly basis.
5. The Office shall conduct quarterly reviews of Regional Program data for the purpose of quality assurance.
6. The Office shall conduct annual assessments of all Regional Programs.
7. More frequent Regional Program reviews may be conducted at the request of the Local Ombudsman Entity or the Office.

905 Notices of Transfer or Discharge

1. Federal requirements for long-term care facilities (i.e., nursing homes) 42 CFR § 483.15 indicate nursing homes must submit copies of facility-initiated transfers and discharges to the Long Term Care Ombudsman Program. Receipt of such notices by the LTCOP does not automatically require an Ombudsman to open a case.
2. Regional Coordinators, in consultation with the assigned ASO, shall develop a process to manage notices of transfers and discharges. The process shall include:
 - a. review of the notices;
 - b. response, if any, to the notices; and
 - c. tracking and filing the notices.
3. Ombudsmen may review the notices to determine:
 - a. whether the reason for transfer discharge is allowable under federal requirements (42 CFR § 483.15);
 - b. if information provided is incomplete;
 - c. the appropriateness of the location to be transferred or discharged;
 - d. the timeliness of the notice;
 - e. if there is a current open case on the resident;
 - f. if there is other concerning information provided that requires Ombudsmen intervention and
 - g. determine if further action is necessary, including whether a case should be opened.
4. An Ombudsman may follow up on any notice as applicable per Chapter 700.

906 Disclosure of Information

1. The State Ombudsman shall have the sole authority to make or delegate determinations concerning the disclosure of the files, records and other information maintained by the Long Term Care Ombudsman Program. The State Ombudsman shall comply with section 712(d) of the Older Americans Act, the LTCOP Rule, and 9 NYCRR §6660.11 in responding to requests for disclosure of files, records and other information, regardless of the format of such files, records or other information, the source of the request, and the sources of funding to the Ombudsman Program.
2. No state agency, Local Ombudsman Entity, Area Agency on Aging, resident representative, facility staff, or anyone shall require an Ombudsman to disclose Program records without the consent of the State Ombudsman.
3. If a Regional Program is contacted by an enforcement agency (e.g., law enforcement, Attorney General's Office, etc.), the Regional Program must either refer the entity to the State Office directly or obtain the contact information of the individual from the enforcement agency that contacted the Regional Program and send that individual's contact information to the State Office.
4. Ombudsmen shall not disclose the identity of, or any information that would lead to the identification of a complainant or resident involved in a complaint, report or investigation, unless the individual (or the resident representative if the resident is not able to communicate informed consent) has consented to the disclosure, or such disclosure is required by a court order.
 - a. If an Ombudsman receives a subpoena, court order, or request under the Freedom of Information Law (FOIL), the Ombudsman shall immediately notify the Regional Coordinator and shall not respond to the requester.
 - b. The Regional Coordinator shall immediately notify the Office of the subpoena, court order or request under the FOIA.
 - c. The Office shall follow the requirements in Section 905 (7) (c) and (d) for disclosure.
5. The Ombudsman shall make every effort to obtain consent from the resident (or the resident representative when the resident is unable to communicate informed consent), and/or the complainant when applicable, to disclose files, records and other information maintained by the Long Term Care Ombudsman Program. Consent may be made in

writing, orally, visually, or through the use of auxiliary aids and services and shall be documented contemporaneously in the case notes by the Ombudsman.

6. When a request is made by any party for any Program records containing resident or complainant information, the Office shall be contacted immediately by the Regional Coordinator. The State Ombudsman will approve or disapprove such a disclosure within five (5) business days of the date of the request.
7. Program records containing resident or complainant information may not be released or disclosed to anyone who is not an Ombudsman without the written permission of the Office.
8. The State Ombudsman shall determine whether to disclose all or part of the records as follows:
 - a. the State Ombudsman shall review the request with the relevant Program staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident. The State Ombudsman shall consider whether the request will lead to:
 - i. retaliation against residents, complainants, or witnesses;
 - ii. intimidation in an effort to prevent residents, complainants, or witnesses from contacting or assisting the Ombudsman Program;
 - iii. undermining working relationships between the Ombudsman Program, facilities, and enforcement agencies or otherwise undermining the work of the Ombudsman Program; or
 - b. in consultation with legal counsel for the LTCOP, the State Ombudsman shall determine whether any part of the records should be redacted (i.e., all identifying information removed). The identities of residents or complainants who have not provided expressed consent for the release of their names shall not be revealed; and
 - c. the State Ombudsman, in consultation with the legal counsel for the LTCOP, shall consider the source of the request (e.g., resident, facility, complainant, another agency, or any other party) and the type of request (written request, Freedom of Information Law (FOIL) request, subpoena, court order) in determining whether to disclose all or any part of the records. Requests coming from residents should generally be honored. The Program may provide the resident copies of records that are directly related to the resident and such records shall be redacted to protect the identity of other residents and complainants.

9. An Ombudsman may disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight, protective services, access to administrative, legal or other remedies, and/or law enforcement action in the following circumstances:
 - a. the resident is unable to communicate informed consent to the Ombudsman and has no representative, and the Ombudsman has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare or rights of the resident, or the Ombudsman has reasonable cause to believe that the representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident; and
 - b. the Ombudsman has no evidence indicating the resident would not wish information to be disclosed to be; and
 - c. the Ombudsman has reasonable cause to believe it is in the best interest of the resident to disclose the information; and
 - d. the Ombudsman obtains the approval of the State Ombudsman.
10. Ombudsmen shall not testify in court, at administrative hearings, or at dispositions as to any confidential matters without the approval of the State Long Term Care Ombudsman, or by court order.
 - a. Ombudsmen who receive any request to testify shall immediately notify the Regional Coordinator and the Office.
11. Even with consent for disclosure, except pursuant to court order, an Ombudsman shall not disclose to any person outside of the Ombudsman Program any information obtained from a resident's personal or medical records to which the resident would not otherwise have had the right of access. This restriction shall not prevent an Ombudsman from advising a resident of the status or progress of an investigation or from referring such complaint to any agency which licenses, investigates or regulates the facility in which the resident resides or has resided in accordance with the disclosure procedures in this Section.
12. Any information accessed by an Ombudsman shall only be used for the purposes of the Long Term Care Ombudsman Program. Any use of such information other than for the purposes of the LTCOP or purposes authorized under this section may constitute grounds for the decertification of such Ombudsman.
13. No administrative records (e.g., staff and volunteer reviews, background check results, Regional Program monitoring tools, etc.) maintained by the Office or the Regional Long Term Care Ombudsman Programs with regard to staff and volunteer Ombudsmen or

Regional Ombudsman Program monitoring shall be shared with any entity without the expressed permission from the State Ombudsman.

14. Ombudsmen shall not provide opinions in support of or against a facility to anyone, but can provide aggregate data, public resources, or non-confidential observations.
15. The following information is not confidential and does not fall within the purview of confidentiality and disclosure requirements within the LTCOP P&Ps:
 - a. LTCOP statistical data reported to the National Ombudsman Reporting System;
 - b. trends or patterns related to complaints;
 - c. observations about the quality of care, environment, or the operations of a long-term care facility;
 - d. non-confidential communication with long-term care facility owners, management, and staff who are not complainants;
 - e. Long Term Care Ombudsman Program policies and procedures; and
 - f. Long Term Care facilities policies and procedures.

907 Social Media and Communication with the Media

1. When systems advocacy or any public communication about the positions of the Office include the use of media or social media, prior to the communication the Ombudsman shall notify the Regional Coordinator who will obtain approval from the Office.
2. All media requests shall be forwarded to the Office for response determination and shall not be acted upon without approval from the Office.
3. When the Regional Coordinator uses newsletters, blogs, or social media to inform the public about problems and concerns of residents and recommendations related to the problems and concerns, the Regional Coordinator shall inform the Office and obtain approval prior to publishing such information.
4. When using social media, the LOE and the LTCOP are required to comply with NYSOFA branding requirements.

Chapter 1000 Coordination with State Licensing Agencies and Other Agencies

1001 State Regulatory and Licensing Agencies

1002 Other Agencies and Professional Groups

1001 State Regulatory and Licensing Agencies

1. The State Ombudsman leads a coordinated effort with fellow state agencies responsible for licensing and regulating long-term care facilities in New York State. The Department of Health (DOH) regulates and investigates complaints in nursing homes and Adult Care Facilities. The Office of Children and Family Services (OCFS) regulates and investigates complaints in Family Type Homes.
2. Such coordinated efforts include, but are not limited to:
 - a. involvement in annual surveys or inspections;
 - b. Ombudsmen referrals for compliant investigation;
 - c. collaboration during emergencies and closures; and
 - d. participation on Independent Informal Dispute Resolution (IIDR) or Informal Dispute Resolution (IDR) panels.
3. Annual Surveys
 - a. Once a Regional Program is notified by the regulatory agency that an annual survey is being conducted, the Ombudsman may:
 - i. share all relevant information with the surveyors either in person or by phone at the time of survey. Information shared must either be non-identifying (i.e., non-confidential) or confidential only with consent of the resident, complainant, or the State Office;
 - ii. visit the facility at the time of the survey to encourage residents to talk with surveyors;
 - iii. with permission of the residents, attend the resident meeting; and
 - iv. participate either in person, or by phone, at the “exit” survey meeting when the survey is complete to hear about the findings.
 - b. Should the LTCOP become aware of an annual survey date prior to the regulatory agency entering the facility, Ombudsmen shall not disclose the upcoming survey date to anyone.
4. Ombudsman Referrals for Complaint Investigation
 - a. Prior to referring a complaint to any law enforcement, regulatory or oversight agencies, the Office shall be contacted for guidance.
 - b. Only with consent from the resident, or if the resident is unable to communicate informed consent, the resident representative or the State Ombudsman, shall an Ombudsmen disclose a complainant’s or resident’s identifying information to the regulatory agency.

- c. When an Ombudsman is filing a complaint with the appropriate regulatory agency and the complaint affects multiple residents, no resident's or complainant's identifying information shall be disclosed without their consent.
 - d. Ombudsmen must follow Section 905 Disclosure of Information when referring or following up on a complaint with the regulatory agency.
 - e. Complaint referrals to the New York State Department of Health must follow Section 708 Complaint Referral. Referrals to the Office of Children and Family Services for complaints against a Family Type Home can be made at OCFS Human Services Call Center Bureau of Adult Services Helpline.
 - f. All Ombudsman referrals shall be documented in the Office-approved electronic database.
5. Collaboration During Emergencies and Closures
- a. The Office shall collaborate with DOH and OCFS to ensure the rights, health, safety, and welfare of residents are protected.
 - b. The Office shall ensure information shared with the respective Regional Ombudsman Programs and the regulatory agencies is complete and comprehensive.
 - c. The LTCOP may share non-confidential information with the regulatory agencies.
 - d. The LTCOP may coordinate with the regulatory agencies regarding visits and contact with affected facilities.
 - e. At no time while performing their duties as prescribed in the Older Americans Act, LTCOP Rule, and this Manual, shall an Ombudsman act outside of the scope of such duties.

1002 Other Agencies and Professional/Advocacy Groups

1. The State Ombudsman shall lead state-level coordination to benefit residents, and support LOE coordination between the Ombudsman Program and entities listed in § 1324.13(h) of the LTCOP Rule. Such coordinated efforts must be vetted and approved by the Office and may include, but are not limited to:
 - a. memorandums of understanding;
 - b. joint or cross training opportunities;
 - c. participation in advisory groups;
 - d. participation in issue-focused workgroups; and
 - e. referral protocols.

2. The State Ombudsman shall ensure a memorandum of understanding (MOU) with respect to OAA-funded legal assistance provider(s) is in place to clarify and formalize the working relationship between the two entities. At minimum, the MOU shall include:
 - a. referral protocols;
 - b. confidentiality;
 - c. joint or cross training; and
 - d. consultation process with the legal assistance provider.

Chapter 1100 Emergency Preparedness

1101 Communication and Coordination: Prior to an Emergency

1102 Communication and Coordination: During an Emergency

1103 Ombudsman Program Services During an Emergency

1104 Emergency Plan Coordination: After an Emergency

1101 Communication and Coordination: Prior to an Emergency

1. The State Ombudsman is responsible for:
 - a. communicating and coordinating with relevant state officials and regional representatives of federal agencies regarding ongoing emergency planning, to prepare for anticipated emergencies, and to coordinate Ombudsman response during an emergency;
 - b. participating with non-governmental organizations for emergency planning and assistance such as national, state, and local long-term care provider associations; long-term care facility corporate leaders; the American Red Cross; and others as applicable;
 - c. coordinating with NYSOFA to plan and prepare for an emergency and ensure the plan addresses the role, responsibilities, and functions of the Ombudsman Program with respect to emergency preparation and response, including, at a minimum, the complaint process, and information and assistance to residents, their loved ones, resident representatives, and facility staff; and
 - d. coordinating with Regional Coordinators to determine the capacity and support needed to plan and prepare for an emergency.

2. State Ombudsman coordination with outside entities may include:
 - a. informing agencies of the role, responsibilities, and functions of the Ombudsman Program with respect to emergency preparation and response, including, at a minimum, the complaint process and information and assistance to residents, their loved ones, resident representatives, and facility staff;
 - b. discussing systems issues with provider associations related to emergency plans with attention to residents' rights and preferences and collaborating on relevant legislation, regulations, policies, and training opportunities;
 - c. participating in the state emergency planning team as part of the public health and emergency management operations center, when appropriate, and serving as a visible advocate of residents' interest; and
 - d. attending or assisting with development of joint agency planning, trainings, and emergency exercises.

3. The Office is responsible for:
 - a. assessing, on an annual basis, the need for the Long Term Care Ombudsman Program communication resources and developing guidelines for their use by Regional Programs in order to maintain communication before, during (if possible) and after a disaster. Relevant communication resources may include:

- i. landline phones (not cordless);
 - ii. mobile phones;
 - iii. smart phone apps (e.g., Facebook Safety Check, Twitter, etc.);
 - iv. websites, other social media tools; and/or
 - v. other resources as available.
 - b. developing and implementing a plan to ensure the continuity of Program operations to prepare the LTCOP to function as fully as possible during an emergency and remain capable of fulfilling its resident-centered responsibilities; and
 - c. sharing any education preparedness materials with Ombudsmen, residents, and their loved ones and supporting coordinated messaging with other entities.
- 4. Regional Coordinators are responsible for:
 - a. informing the LOE of the role, responsibilities, and functions of the Ombudsman Program with respect to emergency preparation and response including, at a minimum, the complaint process and information and assistance to residents, their loved ones, resident representatives, and facility staff;
 - b. ensuring all facilities within their service area are informed of the role, responsibilities and functions of the LTCOP with respect to emergency preparation and response;
 - c. ensuring all Ombudsmen within the Regional Program are trained on the role, responsibilities, and functions of the Ombudsman Program with respect to emergency preparation and response; and
 - d. explaining of the role, responsibilities, and functions of the Ombudsman Program with respect to emergency preparation and response including, at a minimum, the complaint process and information and assistance to residents, their loved ones, resident representatives, and facility staff when coordinating with other local entities.
- 5. Regional Coordinators may develop a process to request a copy of all facilities' emergency preparedness plans and to ensure all Ombudsmen have access to the plans of the facilities in which individual Ombudsmen are assigned.
 - a. When the facility's policies and procedures include actions of the Ombudsman Program, the Regional Coordinator or their designee shall discuss the facility's plan with the Office.
 - b. If there are concerns with the Ombudsman involvement with the facility plan, the Regional Coordinator and/or Office will discuss the concerns with the person responsible for implementing the facility's plan, to ensure the Ombudsman role

is mutually agreed upon and the Program is updated as changes are made to the plan.

6. Regional Coordinators, with Office approval, may:
 - a. attend or assist with the development of joint agency planning, training sessions, and emergency exercises and may encourage Ombudsmen within the Program to do the same; and
 - b. participate in the local emergency planning team and when doing so, shall serve as a visible advocate of residents' interests.

7. Staff and Volunteer Ombudsmen shall:
 - a. be familiar with LTCOP policies and procedures related to emergencies;
 - b. become familiar with facility emergency plans if the Ombudsman Program is included in such plan;
 - c. have paper copies of important names and phone numbers, such as work colleagues, volunteers, and long-term care facilities available at all times; and
 - d. have personal protective equipment (PPE) available at all times.

1102 Communication and Coordination: During an Emergency

1. Responsibilities of the Office and the State Ombudsman include, but are not limited to:
 - a. obtaining information about affected facilities and/or geographic areas and the impact of the emergency on residents;
 - b. coordinating with NYSOFA and other state and local entities engaged in emergency response;
 - c. maintaining communications with the Regional Coordinators within the impacted geographic area to determine Ombudsman availability to respond, Ombudsmen actions completed, and further whether further Ombudsman actions are necessary;
 - d. providing technical assistance and support to the Regional Ombudsman Programs, including but not limited to:
 - i. developing a plan of action;
 - ii. determining the need for additional coordination and the availability of Ombudsmen from other service areas; and
 - iii. providing information, and other Ombudsman services by telephone, virtually or other remote means to residents, resident representatives, and loved ones by the Office and/or Ombudsmen from other service areas when those services cannot be completed in person.

2. Responsibilities of Regional Coordinators include, but are not limited to:
 - a. immediately notifying the Office and the LOE of any known emergencies in their service area and the known impact on residents;
 - b. contacting volunteer and staff Ombudsmen to inform them of the emergency and Office approved plan of action;
 - c. notifying the Office if additional assistance is needed during the emergency;
 - d. communicating with the Office and other Regional Ombudsman Programs as necessary, regarding emergency planning, information sharing, and resource sharing when it is anticipated that residents will be relocated to another service area; and
 - e. requesting a listing of residents and their representatives along with their new location from the facility and assuring follow-up with residents either via phone, electronically, or in person as soon as it is safe to do so when residents are relocated due to the emergency.

3. Responsibilities of staff and volunteer Ombudsmen include, but are not limited to:

- a. contacting the Regional Coordinator and/or the Office as soon as possible should they become aware of an emergency in their area that affects or may affect residents;
 - b. visiting residents in the facility if they were sheltered in place, or relocated to another long-term care facility, mass care shelter, or a hospital when safe to do so;
 - c. contacting the Regional Coordinator and/or the Office immediately if physically unable to visit with residents due to road closures or personal impact of the disaster; and
 - d. maintaining all LTCOP federal and state requirements, and policies and procedures to the greatest extent possible with consideration of the specific circumstances of each emergency, and at the direction of the Office.
4. Only after first responders have completed their work and the local authorities give approval for people to be in or near the scene of the disaster, should any Ombudsman enter the area or facility.

1103 Ombudsman Program Services During an Emergency

1. The State Ombudsman shall assess the policies and procedures applicable to the delivery of services under normal operating conditions and determine if there is a need to make adjustments in response to an emergency.
2. Policies and procedures may be adjusted and communicated, as relevant, to impacted Regional Ombudsman Programs and LOEs. Such adjustments may include temporary changes to the policies and procedures including, but not limited to
 - a. timely response to complaints;
 - b. facility coverage through visits to residents;
 - c. access by Ombudsmen to residents including the ability to provide Ombudsman services in non-facility settings to which residents may have been relocated (e.g., emergency shelters, FEMA's Individual Assistance programs, and Disaster Recovery Centers);
 - d. coordinating with the State Agencies and LOEs with regard to providing Ombudsman services outside of the geographic boundaries of their service areas; and
 - e. suspension of some Ombudsman Program services, such as presentations to Resident Councils or Family Councils, or community education, unless those activities support emergency response efforts.
3. The State Ombudsman shall assess complaint intake, response, investigation, referral, and resolution procedures applicable under normal operating conditions and determine if adjustments are needed in order to respond to emergencies. The complaint process during emergencies shall continue to reflect the primacy of the resident's goals, wishes, and determination of satisfaction with the resolution, as required by 45 CFR 1324.19(b).
4. The Ombudsman Program shall maintain complaint processing practices regarding disclosure of resident or complainant identifying information, as required by 45 CFR 1324.19(b). Informed consent is obtained to the greatest extent possible with consideration of the specific circumstances of each emergency.
5. The State Ombudsman shall provide technical assistance and support to Ombudsmen when working with entities not familiar with complaint processes and resident rights, such as emergency shelters, and first responders.

6. The State Ombudsman shall provide training and technical assistance to assure the competency of Ombudsmen to process complaints frequently associated with emergency response and recovery is understood. Such topics may include but are not limited to:
 - a. relocation and evacuation with accessible transportation;
 - b. wishes related to returning to the facility or to move to other settings;
 - c. quality of care;
 - d. access to medications;
 - e. access to resident medical and social records;
 - f. security concerns;
 - g. access to durable medical equipment;
 - h. residents who cannot be immediately located;
 - i. reunification assistance services;
 - j. loss of residents' personal belongings;
 - k. access to FEMA's Individual Assistance programs or other eligible recovery funds;
 - l. utility response time to power outages;
 - m. pets or service animals; and
 - n. emergency management response.

7. The Office shall facilitate Regional Ombudsman Program visitation to residents for services, both in emergency shelters and in facilities, as soon as possible after the emergency and continuing on a regular basis until residents and facilities recover. Procedures may include the following:
 - a. coordinating among Regional Ombudsman Programs and/or other State Ombudsman programs when residents must evacuate out of the state or to a different part of the state;
 - b. providing alternative means of access (e.g., telephone, e-mail, video conference software) when visits are impractical or impossible (such as due to impassable roads or other safety hazards);
 - c. providing instructions to Ombudsmen with regard to reporting of emergency-related information to the Office. Reports may include:
 - i. describing the impact of the emergency;
 - ii. needed areas of service or advocacy; and
 - iii. whether the facility has reported to the agency coordinating the emergency response.

8. The Office shall provide technical assistance and any available resources to assist Ombudsmen with educating residents, their loved ones, and resident representatives in order to raise awareness about emergency planning.

9. Ombudsmen shall provide information and assistance to residents, their loved ones, and resident representatives during resident visits. When possible, Ombudsmen shall provide education during Resident Council and/or Family Council meetings, or through other mechanisms.
10. Ombudsmen shall support Resident Councils and/or Family Councils in emergency preparedness by:
 - a. developing goals to conduct outreach to Councils as necessary;
 - b. encouraging and facilitating Councils' involvement in facility emergency preparations and exercises (e.g., evacuate, shelter-in place, point of distribution, etc.); and
 - c. providing assistance when requested.
11. The Office shall assure that Ombudsmen have access to any available resources to assist them in meeting the requirements of these procedures and provide guidance on how to obtain facility-specific emergency plans and procedures.
12. During or immediately after an emergency, the Office shall utilize a variety of methods and communication tools to disseminate regular updates on the status of the emergency. Tools and methods will depend on the circumstances of the emergency. These methods may include, but are not limited to:
 - a. statewide email notifications;
 - b. media announcements; and/or
 - c. social media.
13. During or immediately after an emergency, the Office will provide or have available LTCOP materials describing how the Ombudsman Program can be a resource to residents, their loved ones, resident representatives and facilities to help facilitate access to recovery services.
14. The Ombudsman Program shall provide information to provider associations and consult with facility leaders on emergency planning by:
 - a. informing facility providers of the responsibilities of the Ombudsman Program in responding to emergencies; and
 - b. informing facility providers of any known emergency preparedness and recovery resources.

1104 Emergency Plan Coordination: After an Emergency

1. The State Ombudsman shall analyze strengths, weaknesses, opportunities, and challenges faced in response to the emergency in order to facilitate improvements and to plan for future emergencies.
2. The State Ombudsman shall conduct systems-level advocacy to address gaps in resident-centered emergency preparedness.
3. Regional Coordinators shall analyze strengths and weakness faced during an emergency and report to the Office when concerns and challenges were faced during an emergency because of gaps within the plan or where there was a breakdown in communication with outside entities.
4. Should resident concerns remain as a result of the emergency, but after the emergency has dissipated, the Ombudsman Program shall continue to work to resolve resident complaints pursuant to the policies and procedures in this Manual.

Chapter 1200 Facility Closures and Ownership Transfers

1201 Ombudsman Program Role in Facility Closures

1202 Ombudsman Program Role in Ownership Transfers

1201 Ombudsman Program Role in Facility Closures

1. Whether a closure is voluntary or involuntary the Ombudsman has an important role to advocate on behalf of residents and educate all parties about resident rights during a closure. Once the Office has received notice from the facility or a state agency involved with the closure of the facility, the Office shall:
 - a. inform the Regional Program of the confirmed notice of pending closure and the timeframe in which the facility has to provide notice to residents;
 - b. contact DOH to begin collaborative efforts during the closure process; and
 - c. monitor the Regional Program's efforts during the closure.
2. If the facility or another entity notifies the Regional Program of a closure, the Regional Coordinator shall immediately notify the Office.
3. Once the Regional Coordinator has discussed the notice of a facility closure with the Office, the Regional Coordinator may, either personally or through an Ombudsman designated by the Regional Coordinator, ensure the following actions are taken:
 - a. contact the facility administrator, or other person in charge of the closure as soon as possible, but no later than (twenty-four) 24 hours, after notice is received and gather the following information:
 - i. when and how the residents, representatives, loved ones, and staff were or will be notified;
 - ii. the projected date of closure;
 - iii. the reason for closure;
 - iv. the closure plan;
 - v. names and location of residents who have already been discharged due to the closure; and
 - vi. date and location of any public meeting open to residents and loved ones with regard to the closure;
 - b. request the facility send the Regional Program an updated census listing on a daily basis (or another agreed upon timeframe not to exceed five (5) business days) that includes the names of current residents and the names and locations of residents who have been discharged;
 - c. consult with the Office to develop a plan of action;
 - d. open a case and document all actions taken relevant to the closure on behalf of all residents;
 - e. make all attempts to attend any public meeting open to residents and loved ones with regard to the closure.

4. The Regional Coordinator shall attend facility closure calls.

The Regional Coordinator, in consultation with the Office, shall determine if visits should be made to the facility and if so, how many Ombudsmen shall visit the facility and in what timeframe the visits shall be made.

5. During the initial facility visit after confirmation of closure, Ombudsmen shall:
 - a. attempt to see every resident or as many residents as possible to discuss their rights during a closure (e.g., right to choose a new facility and to visit the facility before making a decision) and give them the LTCOP contact information;
 - b. ask residents if they have someone helping them with the move or with making decisions;
 - c. ask residents if they have noticed a difference with care, staffing, food, or supplies;
 - d. inquire with facility about staffing (e.g., are staff leaving before the closure, are they using temporary staff, etc.);
 - e. inquire with the facility about supplies such as food, personal needs, and medical;
 - f. request the facility to provide the Regional Program with the names of the resident representatives for residents who cannot communicate informed consent and for any resident the LTCOP has been unable to contact after two (2) attempts;
 - g. inform visitors (e.g., loved ones and resident representatives) about resident rights and the Ombudsman Program and provide the LTCOP contact information; and
 - h. observe all areas of the facility and note the following:
 - i. call light response;
 - ii. quality of food at mealtime;
 - iii. resident participation in activities;
 - iv. resident participation in therapy;
 - v. staffing levels;
 - vi. laundry and housekeeping; and
 - vii. over-all atmosphere.
6. To the extent possible, visit residents who did not receive a face-to-face visit with an Ombudsman as soon as practicable, and proceed with Section 1201 (5) (1-3).
7. To the extent possible, contact representatives of all residents with whom the Program could not visit to inform them of resident rights during a closure and of the LTCOP.

8. Follow the LTCOP P&Ps should any complaint be brought to the attention of the Program.
9. After the initial facility visit, an Ombudsman may attempt to attend the next Resident Council Meeting, and any meetings the facility has scheduled that are open to residents and loved ones with regard to the closure.
10. The Regional Coordinator shall update the Office about the status of the closure per agreed upon frequency.
11. The Regional Coordinator shall ensure frequent visits are made to the facility as deemed necessary by the Office.
12. The Regional Coordinator shall immediately contact the Office if/when the following becomes known to the LTCOP:
 - a. there are serious concerns about the health, safety, and welfare of any resident;
 - b. the facility is running out of food or supplies;
 - c. the facility is low on staffing;
 - d. an Ombudsman is contacted by the media for an interview;
 - e. all residents have vacated the facility; and
 - f. any other concern develops.
13. When the Regional Program receives the updated resident census listings, the Regional Coordinator may require Ombudsmen to visit residents in their new facilities. If residents have moved out of the Regional Program's area, the Regional Program may notify the applicable Regional Coordinator and the State Office of the resident's name and new facility.
14. When residents move to a different Region, it is the responsibility of the Regional Coordinator covering that area to visit residents, when necessary, unless an Office-approved and mutually agreed upon plan has otherwise been developed.

1202 Ombudsman Program Role in Ownership Transfers

1. When the Office receives notice of an application for incorporation or establishment of any nursing home from DOH, the Office shall contact the impacted Regions as needed.
2. The Office shall submit its recommendation the Public Health and Health Planning Council.

Chapter 1300 Legal Advice and Representation

1301 Access to Legal Counsel

1302 Representation for Civil Legal Action

1301 Access to Legal Counsel

1. The State Agency shall ensure Ombudsmen have access to adequate and available legal counsel with competencies relevant to the legal needs of the LTCOP and of residents in order to:
 - a. provide consultation and representation, as needed, in order for the LTCOP to protect the health, safety, welfare, and rights of residents; and
 - b. provide consultation and/or representation, as needed, to assist Ombudsmen in the performance of their official functions, responsibilities, and duties, including, but not limited to, complaint resolution and systems advocacy.
2. Ombudsmen assist residents in seeking administrative, legal and other appropriate remedies by coordinating with the legal services developer, legal service providers, and/or victim assistance services to promote the availability of legal counsel to residents and in accordance with Section 708 of this Manual.
3. When seeking legal advice regarding issues raised by or on behalf of residents, Ombudsmen must maintain compliance with the confidentiality and disclosure requirements of this Manual. Ombudsmen may request advice via phone or in writing to the Older Americans Act funded legal services and victim assistance programs. Or the Ombudsman may contact the Office to request advice from the LTCOP legal counsel on programmatic issues.
4. When an Ombudsman requests legal clarification or advice from the LTCOP legal counsel through the Office, the Office shall respond to the request within five (5) business days by:
 - a. providing the requested legal advice to the Regional Program, after conferring with counsel;
 - b. requesting additional information from the Regional Program;
 - c. providing an update to the Regional Program on the progress in obtaining the necessary information and an anticipated timeframe for providing the requested legal advice; or
 - d. indicating to the Regional Program that the request submitted is inappropriate and why the Office will take no further action.
5. Communications between an Ombudsman and legal counsel are subject to client-attorney privilege.

1302 Representation for Civil Legal Action

1. The State Agency shall ensure that adequate legal counsel is available to an Ombudsman for legal representation of an Ombudsman against whom legal action is brought in connection with the performance of Ombudsman duties and functions.
2. Per section 218 of the NYS Elder Law, notwithstanding any other provision of law, Ombudsmen shall be included within the definition of employee as set forth in section seventeen of the public officers law and shall be defended and indemnified in accordance with the provisions of article two of such law.
3. An Ombudsman shall immediately notify the Regional Coordinator who shall notify the Office upon receipt of any complaint, summons, subpoena, lawsuit, injunction, court order, or notice of any other legal action taken against the Regional Program or an individual Ombudsman in connection with the performance of official duties. Written notice shall be provided within 24 hours and shall include a copy of the legal documents along with a brief case summary.
4. The Office may consult with legal counsel about the legal action or threatened legal action against the LTCOP or an Ombudsman.
5. When appropriate, the Office may submit a written request to the Office of the New York State Attorney General for legal representation.
6. Should the Attorney General's office agree to represent the LTCOP or individual Ombudsman, by acceptance of this representation, either party agrees to fully cooperate with the Attorney General's office.
7. Should the Attorney General's office decline to represent the individual Ombudsman subject to the legal action or identifies a conflict, the State Office will make available adequate legal counsel.
8. Federal or state funds cannot be expended for the reimbursement of private legal counsel where it is the final judgment of the court that the actions, decisions, or conduct which are the basis for the legal action for which the private legal counsel was employed were not undertaken in good faith or were outside the scope of official duties.