



## Policies and Procedures Manual for the Mississippi Ombudsman Program

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**PART I: Introduction to the Long-Term Ombudsman Program**

**SECTION A: General**

**Purpose of the Program**

The Mississippi Department of Human Services (also called the Council on Aging) has established the independent organizational unit called the Office of State Long-Term Care Facilities Ombudsman (OSLTCO) within the Division of Aging and Adult Services (DAAS) which shall provide program management and implementation of the State Ombudsman Program. The Mississippi Long-Term Care Ombudsman Program (LTCOP) provides services to protect the health, safety, welfare and rights of residents in long-term care facilities. The LTCOP investigates complaints and seeks resolutions that uphold the dignity and safety of the individual resident. Ombudsmen advocate for and on behalf of long-term care residents to improve their quality of care and quality of life.

Ten (10) local ombudsman programs are located throughout the state in the ten (10) Planning and Development Districts. In most areas, the administration of these local programs is through the Area Agencies on Aging (AAA), to provide, either directly or through a subcontract, ombudsman services at the local level. Within each local ombudsman program, the designated ombudsmen are responsible for Program Components. There must be a minimum of one full-time district ombudsman for each Area Agency on Aging. However, there must be sufficient ombudsmen staff to achieve Program Components throughout the planning and service area and sufficient travel funds to provide residents with regular and timely access to the Ombudsman Program. In addition, the residents and complainants must receive timely responses to requests for information and complaints.

**Eligibility**

Any Mississippian, regardless of age, who resides in or who is a potential resident of a long-term care facility which is subject to regulation or licensure by the Mississippi State Department of

Health (therefore, it may include an illegal unlicensed facility), shall be eligible for ombudsman service. The Mississippi State Department of Health regulates Nursing Homes, Personal Care Homes-Assisted Living and Personal Care Homes-Residential Living.

### **Philosophy of the Program**

The LTCOP is a resident-centered advocacy program. Therefore, the wishes of the resident are the primary concern regardless who is the complainant. The ombudsman will make every reasonable effort to assist, represent and intervene on behalf of the resident.

### **Legal Authority of the Program**

The Mississippi Office of the State Long-Term Care Ombudsman Program is authorized by both state (Long-Term Care Facilities Ombudsman Act in §43-7-51 through §43-7-79 of the Mississippi Code) and federal law (Older Americans Act, Public Law 89-73, Older Americans Act of 1965, as amended through Public Law 114-144, enacted April 19, 2016, 42 U.S. Code Chapter 35). The Long-Term Care Ombudsman Program Final Rule is codified in 45 CFR 1324. It is a federal regulation on how to carry out the OAA. The Nursing Home Reform Law of 1987 (OBRA '87) and revised regulations in 42 CFR 483 are also very important as they provide two key provisions:

*Quality of Care: Each resident must receive and the facility must provide, the necessary care and services to attain or maintain the highest level of physical, mental and social well-being as listed in the resident's care plan.*

*Quality of Life: Facilities must care for residents in a manner and in an environment that maintains or enhances each resident's quality of life.*

### **Unit of Service**

A unit of service equals one client hour and includes all activities carried out by the Ombudsman which relate to client service, training, and program management activities. Examples include the time spent on complaints/concerns made by or on behalf of a current or potential long-term care resident, the planning and implementation of public workshops on long-term care issues,

attending training workshops for ombudsman and the completion of ombudsman reports. This does not include time spent completing time sheets or travel vouchers.

### **Applicability**

These policies and procedures govern the actions of the Mississippi Office of the State Long-Term Care Facilities Ombudsman, designated district, local and volunteer ombudsman, provider agencies, Area Agencies on Aging (AAA), Mississippi Department of Human Services Division of Aging and Adult Services (DAAS) and other parties involved in the operation of the Mississippi Long-Term Care Ombudsman Program.

## **PART I: Introduction to the Long-Term Ombudsman Program**

### **SECTION B: Definitions**

**Abuse:** Negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness or sexual abuse.

**ADL:** Activities of Daily Living, including but not limited to, bathing, walking, excretory functions, feeding, personal grooming, and dressing. These have been revised to: mobility/ambulation; community mobility; transferring; eating and meal preparation.

**Advanced Health-Care Directive (AHCD):** Designating an agent to make health-care decisions. MS has the Uniform Health-Care Decisions Act in §41-41-201 through §41-41-229 of the MS Code which combines the power of attorney for health care along with a living will. An example is provided in §41-41-209.

**Advisory Council:** This group provides guidance and advice to the SLTCO in order to enhance the effectiveness of the statewide LTCOP. Each AAA has an Advisory Council.

**Area Agency on Aging (AAA):** An agency designated by the DAAS to arrange for providing the aging services in its planning and service area (PSA). There are 10 AAAs in Mississippi that contract with DAAS to provide services under Title III and Title VII of the OAA.

Area Plan: A plan developed by AAA for its relevant planning and service area as required by the Older Americans Act (OAA) §306.

Assisted Living Facility (ALF): Facility that provides personal care and the addition of supplemental services to include, but not be limited to, the provision of medical services (i.e., medication procedures and medication administration) and emergency response services. These are for individuals who want to maintain some level of independence, but require support with activities of daily living (ADLs).

Case: Each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one or more complaints relating to the health, safety, welfare, or rights of residents which requires opening a case and includes ombudsman investigation, strategy to resolve, and follow-up. One or more complaints constitutes a case. You cannot have a case without a complaint.

Certification: The designation provided by the State Long-Term Care Facilities Ombudsman to an individual who meets minimum qualifications, is free of conflicts of interest, and has successfully completed training and other criteria stipulated in the Certification Requirements for the Mississippi Ombudsman Program. Designation authorizes such individual to act as a representative of the Long-Term Care Ombudsman Program. An ombudsman (even a volunteer) shall not be authorized to investigate a complaint without being certified by the State Long-Term Care Facilities Ombudsman.

Closed Case: A case is where none of the complaints within the case require any further action on the part of the ombudsman and every complaint has been assigned the appropriate disposition code.

Community Education: Presentations to community groups, other agencies or professionals or to groups of residents or families (other than resident & family councils) on long-term care issues. Each Ombudsman district is required to do two community education events each federal fiscal year.

Complaint: A concern brought to, or initiated by, the ombudsman for investigation and action by or on behalf of one or more residents of a long-term care facility relating to the health, safety, welfare or rights of a resident. One or more complaints constitutes a case. You cannot have a case without a complaint.

Complainant: An individual who lodges a complaint. This could be a resident, family member, facility staff, ombudsman, banker, police officer, social worker, etc.

Conservator: An individual appointed by the Court to make *financial* decisions for and exercise the legal rights and powers of an adult where the adult lacks sufficient capacity to make or communicate significant responsible decisions *concerning the management of his or her*

*property*. A conservator has priority over the power of attorney agent. See §93-13-251 through §93-13-267 of the MS Code.

Consultation: Means providing information and technical assistance to facilities and individuals regarding long-term care issues. It is often by telephone. It does not involve investigating and working to resolve a complaint (a consultation is not a case, therefore, isn't a complaint). If you refer someone to another agency and are not actively involved in investigating and working to resolve the problem, it is not a case or complaint. However, it is counted as a consultation.

Designation: Status which authorizes an individual (whether a district or local ombudsman or volunteer) to act as a Representative of the Office. Said individual has successfully completed the training requirements and is also free of conflicts of interest.

District Ombudsman: An ombudsman who acts in a supervisory position over local ombudsman in their respective AAA region. There are currently 10 district ombudsmen in the Mississippi Long-Term Care Facilities Ombudsman Program.

Exploitation: The illegal or improper act or process of an individual, including a caregiver, using the resources (money, assets, property) of an older or vulnerable individual for monetary or personal benefit, profit or gain without the informed consent of the resident.

Family Council: Family members of residents and/or facility staff that meet regularly where the ombudsman can provide technical assistance, information, training and support.

Guardian: An individual or entity appointed by the Court to make *personal and/or property* decisions for and exercise the legal rights and powers of an adult where the court finds the adult lacking sufficient capacity to make or communicate significant responsible decisions *concerning his or her health or safety*. Even residents who have been adjudicated incapacitated and to whom a guardian has been appointed retain some rights. These residents need to have their desires and preferences considered even if the guardian has the legal responsibility over that decision.

Immediate Family: A member of the household or adult relative with whom there is a close personal or significant relationship. Examples include father, mother, son, daughter, brother, sister, aunt, uncle, first

cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepsister, stepchild, half-sister, half-brother, grandparent or grandchild. This definition is limited to conflict of interest only.

Information & Assistance: Services which provide information to individuals on long-term care or the needs/rights of long-term care residents.



In-Service Education to a Facility: Presentations to long-term facility staff on long-term care issues. Each Ombudsman district is required to do five (5) In-Service Education seminars per federal fiscal year.

Legal Representative: An agent under a valid power of attorney, provided that the agent is acting within the scope of his or her agency; an agent under a durable power of attorney for health care or health care agent under an advance health care directive; or an executor or administrator of the estate of a deceased resident. Residents who have a legal representative with decision-making power retain their ability to participate in their own care and to exercise their rights.

Local Long-Term Care Ombudsman: An individual designated by the SLTCO to be an advocate for residents in long-term care facilities to protect their health, safety, welfare and rights.

Long-Term Care: Refers to extended medical and social services required by people with chronic conditions to help them live as independently as possible despite significant challenges. It may be delivered in community settings (adult day care), institutionalized settings (nursing homes) or informal settings (home of friends or family).

Long-Term Care Facility: Any skilled nursing facility, extended care home, intermediate care facility, personal care home or boarding home which is subject to regulation or licensure by the State Department of Health (Mississippi Code §43-7-55).

Neglect: It is the failure to care for a person in a manner which would avoid physical or emotional harm or pain, or the failure to react to a situation which may be harmful. It may or may not be intentional.

Not Verified: It is determined after work (interviews, record inspection, observations, etc.) that the circumstances described in the complaint are not accurate.

Office of State Long-Term Care Facilities Ombudsman: Organizational unit in MS which is led by the State Long-Term Care Ombudsman. The organizational unit consists of the SLTCO only.

PNA (Personal Needs Allowance): After an applicant is determined eligible for Medicaid in a nursing facility, the individual is required to pay toward the cost of their care if income allows. This is referred to as Medicaid Income. It is total income less allowable deductions. PNA is one such deduction. It is currently \$44 per month. Veterans and surviving spouses who receive a \$90 VA pension get a \$90 PNA. Medicaid Income is not paid by a HCBS participant.

Representatives of the Office: District, local or volunteer ombudsmen selected by an area agency on aging who have been designated by the State Ombudsman to act as resident advocates on behalf of the state.

Resident: Any resident, prospective resident, prior resident or deceased resident of any long-term care facility, regardless of age.

Resident Council: Residents of long-term care facilities and/or facility staff that meet regularly to discuss issues relating to their care and quality of life. Assisted living facilities are not required by federal law to facilitate meetings, unlike nursing homes.

Resident Representative: means either:

(1) an individual chosen by the resident to act on his or her behalf concerning decisions, accessing medical or other personal information, managing financial affairs and receiving notifications;

(2) a person authorized by State or Federal law (including agents under a power of attorney) to act on the resident's behalf concerning decisions, accessing medical or other personal information, managing financial affairs and receiving notifications;

(3) Legal representative; or

(4) Court-appointed guardian or conservator of the resident.

Resolved: This is how the complaint has been resolved depending on the resident's satisfaction. It can either be partially resolved, not resolved or resolved to the satisfaction of the resident.

Skilled Nursing Facility (SNF): Facility in which medical care must be provided 24-hours by trained individuals, such as a registered nurse and physical, speech and occupational therapists. Examples of skilled nursing services include wound care, intravenous (IV) therapy, injections, physical therapy, and monitoring of vital signs & medical equipment.

State Long-Term Care Ombudsman (SLTCO): An individual who is the head of the Ombudsman Program for the State of Mississippi on a full-time basis to fulfill the duties and responsibilities of Older Americans Act. Said individual is responsible for ensuring that all residents of long-term care facilities in Mississippi have adequate access to the services of the LTCOP and that each AAA has at least one designated ombudsman.

Systems Advocacy: Activities which support and promote issues which benefit a group of long-term care residents.

Volunteer Ombudsman: An individual over 18 years old who has completed a Certification Training prescribed by the State Ombudsman Program and is designated to act as a representative to participate in the ombudsman program.

Willful Interference: means the actions or inactions taken by an individual in an attempt to intentionally prevent or interfere with the State Ombudsman Program from performing any of their functions or duties.

WellSky: The statewide reporting system used to collect data relating to complaints, consultations, training provided, and other activities of the ombudsman program. This data is used when submitting the NORS annual report to the AOA. It is due by January 31<sup>st</sup> of each year and represents information from the previous federal fiscal year (Oct. 1<sup>st</sup>-Sept. 30<sup>th</sup>).

**PART II: Administration of the Long-Term Ombudsman Program**  
**SECTION A: Program Structure**

- **Role and Responsibilities of Mississippi Department of Human Services, Division of Aging**

Pursuant to the federal Older Americans Act and state law, the Mississippi Department of Human Services Division of Aging and Adult Services (DAAS) has established the Office of the State Long-Term Care Ombudsman (OSLTCO). The Office of the State Long-Term Care Ombudsman is independent in its representation of the interests of long-term care facility residents, without representing the positions or policies of the Division of Aging and Adult Services, the Mississippi Department of Human Services, or any other governmental entity. The Mississippi Department of Human Services, Aging and Adult Services, will:

- Provide for a full-time State Long-Term Care Ombudsman (SLTCO);
- Provide supervision of the SLTCO without interfering with its work to promote the interests of long-term care facility residents;
- Not have personnel policies or practices which prohibit the Office of the State Ombudsman from performing the functions and responsibilities under the Ombudsman Final Rule as set forth in 45 CFR §1324.13 or from adhering to the access, confidentiality and disclosure requirements of section 712 of the OAA;
- Provide the SLTCO with administrative support for personnel, fiscal, contractual, data, and budgetary management, including administration of contracts for the LTCOP and between the DAAS and area agencies on aging (AAAs) and/or designated provider agencies;
- Provide funding for a statewide Long-Term Care Ombudsman Program (LTCOP) in accordance with the OAA and through application of a statewide allocation formula approved by the SLTCO, within appropriations specifically designed for the SLTCO;
- Provide the SLTCO with authority to manage funds designated for the LTCOP;
- Provide opportunities for training Office of the State Long-Term Care Facilities Ombudsman and the Representatives of the Office of the State Long-Term Care Facilities

Ombudsman and may use funds appropriated under Title III and/or Title VII of the Older Americans Act;

- Monitoring the SLTCOP by ensuring that the State Ombudsman Program complies with the OAA and the Final Rule;
- Ensure that the Ombudsman Program has sufficient access to residents, facilities and information to do their duties;
- Combine the goals and objectives of the OSLTCO into the state and area plans on aging;
- Provide elder rights leadership by coordinating Ombudsman program services with other programs authorized by Title VII of the OAA;
- Provide adequate legal counsel to the Ombudsman Program that is free of conflicts of interest;
- Ensure that any review of files, records or other information maintained by the Ombudsman Program is consistent with the disclosure limitations as set forth in 45 CFR §1324.11(e)(3) and 1324.13(e).
- Require the OSLTCO to prepare an annual report for the AoA/ACL;
- Refrain from interference with the LTCOP's mandate to advocate for and represent the interests of long-term care facility residents; and
- Require the OSLTCO to fulfill its duty of systems advocacy as the State Ombudsman deems is appropriate, regardless of State lobbying laws.

- **Role and Responsibilities of Area Agencies on Aging (AAAs)**

The Area Agencies on Aging or other provider agencies must assure:

- They are responsible for personnel management, but not the programmatic oversight, of the Representatives of the Office;
- They maintain separate budget and expenditure accounting for the Ombudsman Program and it is made available to the State Ombudsman upon request;
- That funds obtained from all sources related to the LTCOP are available and used for the program;
- They will follow strict confidentiality requirements in handling and storing all information and records (paper and electronic), telephone communication and internal communication within the organization so as to avoid any conflicts of interest;
- That no resident-identifying information shall be disclosed to individuals outside of the Ombudsman Program;
- That there is a Memorandum of Understanding (MOU) between the local LTCOP and the Title IIIB Legal Services or an alternative written arrangement for providing advice and counsel to LTCOP and residents of LTC facilities;
- That neither the Ombudsman nor the AAA staff is subject to a conflict of interest, in particular that the organization itself, its board members, advisory council members, employees and volunteers do not derive personal or economic gain from LTC facilities or

their associations. An annual Conflict of Interest screening tool must be completed and sent to the State Ombudsman on or before October 31<sup>st</sup>;

- Coordination with the State Ombudsman in the employment process or appointment of Representatives of the Office of the Long-Term Care Facilities Ombudsman by ensuring that applicants do not have an individual conflict of interest as determined by the State Ombudsman;
- All Ombudsman Programs must follow the Mississippi Ombudsman Program's Policies and Procedure Manual, in particular the Program Components for Ombudsman Practice;
- That the local ombudsman program abides by the complaint priority guidelines established by the Office of the State Long-Term Care Ombudsman as set forth in the Mississippi Ombudsman Program's Policies and Procedure Manual;
- That a minimum of one on-site visit is conducted per month to each long-term care facility located in the AAA's Service Area. Complaint related visits should be in addition to routine visits. If a facility is not legally licensed, but should be in accordance to § 43-11-1 et seq of the MS Code, that facility remains within the jurisdiction of the Ombudsman Program. There must be sufficient ombudsman staff to achieve Program Components and sufficient travel funds to cover these visits;
- Assure LTCO staff attendance at annual designation training and all other statewide LTCO training programs in addition to any required meetings with the State Ombudsman;
- Each local LTCOP shall create and maintain a current plan for recruitment, training and supervision of volunteer ombudsman; and
- There are no personnel policies or practices which prohibit the Ombudsman Program from performing the duties and functions under the Ombudsman Final Rule as set forth in 45 CFR §1324.19 or from adhering to the requirements of section 712 of the OAA.

- **Role of State Ombudsman**

The State Ombudsman shall serve on a full-time basis to personally or through Representatives of the Office perform the functions and duties according to state and federal law. The State Ombudsman Program shall provide services to protect the health, safety, welfare and rights of residents in long-term care facilities. The State Ombudsman shall have training or experience in the field of long-term care and advocacy, negotiation and problem resolution skills, leadership and program management skills, and consumer-oriented public policy advocacy. The Office of the State Ombudsman shall be under the direct supervision of the Director of the Division of Aging and Adult Services. The State Ombudsman shall provide leadership and monitoring, including fiscal management and performance monitoring, of the Mississippi Long-Term Care Ombudsman Program. The SLTCO shall assure that all residents of long-term facilities in the State have access to the services of the Mississippi Ombudsman Program (LTCOP) and that there is a designated ombudsman in each service area in the state. The SLTCO is responsible for providing leadership for the statewide Long-Term Care Ombudsman Program. Duties of State

Long-Term Care Facilities Ombudsman shall include:

- Being responsible for oversight of the development and updating the requirements for the Ombudsman program by providing programmatic management of the Office which includes developing policies, procedures, and standards for the administration of the LTCOP and LTCO practice;
- The State Ombudsman shall coordinate, where applicable, through area agency on aging plans to approve the contracts or plans of the Representatives of the Office of the State Long-Term Care Facilities Ombudsman and to regularly monitor their program performance. State Ombudsman shall provide oversight of the quality and program operation of the Representatives of the Office of the State Long-Term Care Facilities Ombudsman. However, wherever the Representatives of the Office of the State Long-Term Care Facilities Ombudsman is organizationally located, that agency shall be responsible for *personnel management*;
- Monitoring the Representatives of the Office which includes the following: reviewing monthly reports and data entry, one on-site visit per year to each district and fiscal management;
- Personally, or through Representatives of the Office, identify, investigate and resolve complaints made by or on behalf of residents in long-term care facilities that affect the health, safety, welfare and rights of residents in long-term care facilities;
- Ensuring that residents have regular and timely access to the services provided through the Office and such residents and other complainants received timely responses to their complaints from the Representatives of the Office;
- Ensuring that the LTCOP is representing the interests of residents before governmental agencies;
- Informing residents how to obtain services through the Ombudsman Program;
- Being responsible for monitoring the files, records and other information of the Ombudsman Program;
- Prohibiting inappropriate disclosure of the identity of any complainant or resident with respect to LTCO files, records, or other information;
- Implementing a proper record maintenance system wherein all the files, records and other information of the State Ombudsman Program, whether in physical, electronic or other format, shall be the property of the Office of the State Long-Term Care Facilities Ombudsman. Such records are the property of the SLTCO and may not be released, disclosed, duplicated or removed without the written permission of the SLTCO or designee;
- Providing technical assistance to Representatives of the Office and information and assistance regarding long-term care issues to the general public, residents and community organizations;
- Monitoring, analyzing, commenting on and recommending changes to federal, state and local laws relating to the health, safety, welfare and rights of residents in long-term care facilities by communicating with legislators, the media and other public and private agencies;

- Promoting resident and family councils and other citizen organizations and thereby relaying their concerns/information to legislators, the media and other public and private agencies;
- Designation and refusal, suspension or removal of Designation of Representatives of the Office as per policy;
- Establishing a training program for Representatives of the Office;
- Receiving grievances and investigating allegations of misconduct by the Representatives of the Office of the State Long-Term Care Facilities Ombudsman;
- Ensuring that there are no conflicts of interest with the immediate family of the State Ombudsman Program by establishing procedures to identify, remove or remedy such conflicts of interest. This shall include providing the AAAs with an organizational conflict of interest screening tool as well as an individual conflict of interest screening tool to the LTCO;
- Fiscal management of the Program by determining the use of fiscal resources appropriated for the operation of the Program to the AAA or other contracted entities. This may also include determining that program budgets and expenditures are consistent with the laws, policies and procedures governing the Ombudsman Program;
- Serve as the Patient Care Ombudsman pursuant to federal bankruptcy law where the debtor is a health care business that provides long-term care and the State Ombudsman is appointed by the U.S. Trustee;
- Analyze the success and barriers of the Ombudsman Program and recommending systemic advocacy in evaluating the problems experienced by and complaints made by and on behalf of residents; and
- Recommending public policy changes through providing an Annual Report to AOA/ACL; legislative and administrative advocacy; work with the media; collaboration with other agencies and advocates.
- **Role of District or Local Ombudsman**

Designated Local and District Long-Term Care Ombudsman are responsible for:

- **COMPLAINT PROCESSING.** Services to assist consenting residents of long term care facilities to resolve problems or complaints through investigation, verification and notification. This includes direct contact with the resident and/or his or her representative, including an on-site investigation and negotiation where necessary and/or referral to appropriate agencies;
- **ISSUES ADVOCACY.** Advocating for the improvement of practices and conditions affecting long term care residents by analyzing, monitoring, and commenting on legislation, regulations, and policies affecting residents of long term care facilities;
- **INFORMATION AND ASSISTANCE.** Providing information to individuals on long term care or the needs/rights of long term care residents;
- **CONSULTATIONS TO FACILITIES.** Providing/exchanging information in person or by phone with facility staff;

- **ROUTINE VISITATION TO FACILITIES.** Minimum monthly visits to nursing homes and personal care homes are required by local ombudsman for the purposes of monitoring and assessing the general condition of residents and/or physical plant of the facility and assuring that residents' needs are met and their rights are being protected;
- **COMMUNITY EDUCATION.** Each District Ombudsman is responsible for having at least two (2) presentations to community groups or to groups of residents or families in their service district regarding long-term care issues;
- **ADVISORY COUNCIL.** Developing, maintaining or serving on councils made up of representatives from the community to provide community involvement in the LTCO program;
- **INTERAGENCY COORDINATION.** Activities which involve meeting or coordinating with other agencies to learn about and/or improve conditions for one or more residents of long term care facilities;
- **RESIDENT/FAMILY COUNCILS.** Provision of technical assistance, information, training or support to residents and/or facility staff regarding developing, informing, or maintaining a resident/family council;
- **IN-SERVICES EDUCATION TO FACILITY STAFF.** Each District Ombudsman will have at least five (5) presentations to long term care facility staff in their service district on long term care issues;
- **VOLUNTEER MANAGEMENT.** Recruiting, training, managing and providing technical assistance to volunteers assisting the district long term care ombudsman program;
- **TECHNICAL ASSISTANCE.** Providing guidance to AAA's, provider agencies, and local ombudsmen in carrying out program activities;
- **RESIDENT ADVOCACY.** Providing LTCO services to protect the health, safety, welfare and rights of residents according to federal and state laws governing the LTCO. Exceptions occur when a resident is requesting anything that is illegal, fraudulent or dangerous;
- **QUALITY ASSURANCE STANDARDS.** Fulfilling the Program Components (see Part IV: Program Components for Ombudsman Practice);
- **FREE OF CONFLICTS OF INTEREST.** Completing an annual Conflict of Interest screening tool on or before October 31<sup>st</sup>;
- **DOCUMENTATION.** Preparing and submitting reports to the State Ombudsman in a format provided by the SLTCO. Documenting LTCO activities and case work in WellSky as required by the State Ombudsman and in accordance to said Policy;
- **PROFESSIONALISM.** Adhering to the Ombudsman Code of Ethics (see Appendix A);
- **CONFIDENTIALITY.** Ensuring confidentiality of ombudsman records by prohibiting inappropriate access to LTCO files, records, or other information in the possession of the local ombudsman and obtaining consent before disclosing any confidential information;
- **TRAINING.** District Ombudsman shall train and supervise county/local Long-Term Care Ombudsman Program staff and volunteers following the State Long-Term Care Ombudsman Program policies and procedures;
- **PROGRAM AWARENESS.** Develops and implements advocacy approaches to systemic issues;



- **REVIEW OF LAWS, REGULATIONS AND POLICIES.** Performing each responsibility in accordance with all applicable federal and state laws, regulations and policies; and
- **OTHER.** Carrying out other activities that the State Ombudsman deems appropriate.

**PART II: Administration of the Long-Term Ombudsman Program**

**SECTION B: Designation and Withdrawal of Designation of Ombudsman Programs and Ombudsmen**

- **Designation of Ombudsman Programs**

The State Long-Term Care Facilities Ombudsman shall designate provider agencies to provide Ombudsman throughout Mississippi.

- In order to be eligible for designation by the Office of the State Long-Term Care Ombudsman (SLTCO) as a provider agency, an entity must:
  - Be a public or nonprofit entity;
  - Not be an agency or organization responsible for licensing or certifying long-term care services;
  - Not be an association of providers of long-term care or residential services for older persons;
  - Have no financial interest in a long-term care facility;
  - Have demonstrated capability to carry out the responsibilities of the provider agency;
  - Have no un-remedied conflict of interest; AND
  - Meet all contractual requirements of the Mississippi Department of Human Services.
- Where an AAA contracts with a provider agency, the designation of a new provider agency shall occur as follows:
  - The AAA shall issue a request for proposal (RFP) seeking an entity to provide LTCO services within its service area. The AAA shall request, at a minimum, the following:
    - Assurance that the entity meets all the criteria for designation as a provider agency;
    - The goals and objectives of such entity in providing LTCO services;
    - A description of how such entity will comply with the Program Components (as outlined in Part IV of this manual).
    - The staffing plan for the local long-term care ombudsman program, AND

- A description of the resources of the entity which will be provided to assist in the operation of the local LTCOP.
- The AAA shall forward copies of all the proposals received in response to the RFP to DAAS and the State Long-Term Care Ombudsman shall review such in coordination with DAAS.
- The AAA shall recommend an entity for designation as a provider agency to DAAS and to the SLTCO and shall provide the SLTCO with information supporting its recommendation.
- The SLTCO shall review and consider all proposals and the recommendation of the AAA in coordination with DAAS, and shall determine the entity most appropriate to designate as the provider agency.
- The SLTCO shall notify the AAA of the determination within thirty (30) days of receiving the AAA's recommendation.
- The AAA shall notify the responding entities of the SLTCO decision within fifteen (15) days of receiving such notification.
- Upon designation by the SLTCO, the AAA may enter into a contract with the provider agency for the provision of LTCO services in the relevant service area. Such contract must:
  - Specify the service area;
  - Require the provider agency to adhere to all applicable federal and state laws, regulations and policies, AND
  - Provide that designation by the SLTCO continues for the duration of the contract and subsequently renewed contracts within the period specified within the RFP unless the provider agency is de-designated or the contract terminated for cause.
- The execution date of the provider agency's contract with the AAA to provide LTCO services shall constitute the effective date of the designation.
- Should the contract between the service provider and the AAA to provide LTCO services not be renewed or be terminated for any reason, the AAA shall:
  - Immediately notify the SLTCO;
  - Follow the steps above to designate a new provider agency as soon as possible; AND
  - Follow the steps below to provide continuation of ombudsman services.
- Where the AAA seeks to serve as the provider agency, the designation of a new provider agency shall occur as follows:
  - Designation of the AAA as the provider agency where the SLTCO determines that either:
    - Designation of the AAA as the provider agency is necessary to assure an adequate supply of ombudsman services; or
    - Services of comparable quality can be provided more economically by the AAA.
  - The AAA shall request consideration to be designated as a provider agency and submit a proposal to the SLTCO setting forth, at a minimum, the following:

- Assurance that the entity meets all criteria for designation as a provider agency;
  - The goals and objectives of such entity in providing LTCO services;
  - A description of how each Program Component shall be met by such entity;
  - The staffing plan for the district long-term care ombudsman program; AND
  - A description of the resources of the entity which will be provided to assist in the operation of the district LTCOP.
  - The SLTCO may designate the AAA as the provider agency where:
    - The AAA meets the criteria for designation;
    - The AAA submits an acceptable proposal; AND
    - The AAA is not otherwise prohibited from fulfilling the duties of the provider agency.
  - The SLTCO shall notify the AAA within thirty (30) days of the receipt of the proposal of its decision. If the SLTCO refuses to designate the AAA as the provider agency, the notification shall include notice of the right of the AAA to request a hearing to appeal the SLTCO's determination with the DAAS Division Director.
  - The execution of the AAA's contract with the DAAS to provide LTCO services shall be the effective date of the designation.
- Where the contract for LTCO services is not with or through the AAA, the designation of a new provider agency shall occur as follows:
    - DAAS will use a competitive bid process to seek an entity to provide LTCO services within a particular service area. The competitive bid process will identify the criteria for designation as a provider agency and shall request submission of documents supporting the entity's claim to meet these criteria.
    - DAAS will require that all of the responding entities which meet the criteria for designation develop a proposal setting forth, at a minimum, the following:
      - Assurance that the entity meets all criteria for designation as a provider agency;
      - The goals and objectives of such entity in providing LTCO services;
      - A description of how each Program Component shall be met by such entity;
      - The staffing plan for the local long-term care ombudsman program, AND
      - A description of the resources of the entity which will be provided to assist in the operation of the local LTCOP.
    - SLTCO shall review each submitted proposal and shall choose the entity most appropriate to serve as the provider agency based on the submitted proposals and on the criteria for designation. The SLTCO may consult with the AAA serving the relevant service area.
    - The SLTCO shall notify the responding entities of this determination within forty-five (45) days. The notification shall be consistent with DAAS policy and procedures for entities that apply and are not chosen due to the SLTCO's determination.
    - DAAS will contract with the provider agency to provide LTCO services when appropriate. Such contract must:
      - Specify the service area;
      - Require the provider agency to adhere to all applicable federal and state laws,

- regulations and policies; AND
- Provide that designation by the SLTCO continues for the duration of the contract and subsequently renewed contracts within the period specified with the RFP unless the provider agency is de-designated by the SLTCO or the contract is terminated for cause.
- The execution date of the provider agency's contract with DAAS to provide ombudsman services shall be the effective date of the designation.
- Withdrawal of Designation Ombudsman Programs

The State Ombudsman may de-designate an entity as a provider agency for cause.

- The SLTCO may refuse to designate or may de-designate an entity as a provider agency for one of more of the following reasons:
  - Failure of the entity to continue to meet the criteria for designation;
  - Existence in the entity of an un-remedied conflict of interest with the LTCOP;
  - Deliberate failure of the entity to disclose any conflict of interest;
  - Violation of LTCO confidentiality requirements by any person employed by, supervised by, or otherwise acting as an agent of the entity;
  - Failure of the entity to provide adequate LTCO services, including but not limited to failure to perform enumerated responsibilities, failure to fill a vacant ombudsman staff position within a reasonable time, failure to submit a Local LTCOP Annual Plan for approval by the SLTCO, or failure to use funds designated for the LTCOP for LTCO services;
  - Failure of the entity to adhere to the provisions of the contract for the provision of ombudsman services, OR
  - Failure of the entity to adhere to applicable federal and state laws, regulations and policies.
- Process for withdrawal of designation of a LTCO provider agency:
  - Where an AAA contracts with a provider agency, the process to de-designate the provider agency shall be as follows:
    - The SLTCO shall send notice of intent to de-designate at a specified date to the AAA and the provider agency. The notice shall include the reasons for withdrawal of designation and notice of hearing procedures of the DAAS.
    - Withdrawal of designation of a provider agency shall not become effective until all appeals are exhausted.
    - The AAA and SLTCO shall provide for the continuation of ombudsman services.
    - The AAA shall terminate its contract for LTCO services with the provider agency.
  - Where an AAA serves as a provider agency, the process to de-designate the provider agency shall be as follows:
    - The SLTCO shall send notice to de-designate at a specified date to the AAA. The

notice shall include the reasons for withdrawal of designation and notice of hearing procedures of the DAAS.

- Withdrawal of designation of the AAA as a provider agency shall not become effective until all appeals are exhausted.
- The AAA and the SLTCO shall provide for the continuation of ombudsman services until designation of another entity is effective.
- DAAS will terminate the portion of the contract between the AAA and the DAAS which provides for ombudsman services.
- Where a provider agency contracts directly with the DAAS, the process to de-designate the provider agency shall be as follows:
  - SLTCO shall send notice of the intent to de-designate at a specified date to the provider agency and to the applicable AAA. The notice shall include the reasons for withdrawal of designation and notice of the hearing procedures of the DAAS.
  - Withdrawal of designation of a provider agency shall not become effective until all appeals are exhausted.
  - SLTCO shall provide for continuation of ombudsman services until designation of another entity is effective. The SLTCO may consult with the applicable AAA regarding the provision of services in the service area.
  - DAAS will terminate its contract with the provider agency.

- Voluntary withdrawal of a provider agency:

A LTCO provider agency may voluntarily relinquish its designation by providing notice to the SLTCO and to the AAA in the relevant service area. Such notice shall be provided sixty (60) days in advance of the date of relinquishment of designation.

- Continuation of Ombudsman Services:

Where a provider agency is in the process of appealing its withdrawal of designation or has relinquished designation:

- The provider agency, the AAA if applicable, and the SLTCO shall arrange for the provision of ombudsman services until a new provider agency is designated;
- The provider agency shall surrender intact to the SLTCO or the SLTCO designee all LTCO case records, documentation of all LTCO activities and complaint processing as required by the ombudsman reporting system, and identification cards of all local LTCOs associated with the provider agency;
- The provider agency shall, at the discretion of the DAAS, surrender any equipment purchased with funds designated for LTCO services; AND
- The provider agency shall surrender the balance of any advanced state or federal monies to the AAA, or to the DAAS where the AAA serves as the provider agency.

- Designation of Long-Term Care Ombudsmen

The State Ombudsman designates individuals as ombudsmen to participate in the Long-Term Care Ombudsman Program and to represent the Office of the State Long-Term Care Ombudsman.

- Criteria for designation as an ombudsman

To be designated as a LTCO, an individual must:

- Have demonstrated capability to carry out the responsibilities of a LTCO;
- Be free of un-remedied conflicts of interest;
- Meet the minimum qualifications for the applicable LTCO position;
- Satisfactorily complete the applicable designation/certification training required as specified in said policies and procedures manual;
- Be awarded a current designation certificate by the SLTCO; AND
- Satisfactorily fulfill LTCO Program Components as outlined in said policies and procedures manual.

- Minimum qualifications for staff ombudsmen

- In order to qualify for a LTCO staff position, an individual must have:
  - An undergraduate degree from a four-year college or university;
  - Two years of professional experience with at least one year in aging, long-term care, or related fields; AND
  - A criminal background check by a local law enforcement agency. The individual shall not be hired if he or she has been convicted of any of the crimes listed under the laws related to nursing home or personal care home employees.
- Relevant and comparable education and/or experience may be substituted at the discretion of the SLTCO. Experience may be substituted for undergraduate education on a one-to-one basis; however, the same experience cannot be used to meet both the education and experience requirements.

- Values and Skills that an Ombudsman Should Possess

Regardless of the discipline from which an ombudsman comes or the level of education and training, those working with the elderly in long-term care facilities should possess certain basic values and attitudes as well as fundamental interpersonal relationship and intervention skills. Additionally, there should be a basic set of principles which guide an ombudsman decision when providing advocacy services.

### Values and Attitudes

- A genuine liking and respect for older adults, especially the frail and impaired;
- A belief in the resident's right to self-determination, privacy, confidentiality, and consent to services;
- A belief in quality of care and life;
- An ability to demonstrate commitment and take action on behalf of the frail and elderly;
- A belief and willingness to allow for the individuality of the resident unrestricted by personal belief or opinion;
- A mature attitude towards the use of power and authority;
- An understanding and acceptance of death and dying, and the ability to cope.

### Skills (Ability/Aptitude)

- Develop trust and confidence between residents and their families;
  - Provide personal understanding and empathy;
  - Conduct active listening techniques, effective communication;
  - Draw the client out, asking his preferences and actively involving him/her in the complaint investigation/resolution process;
  - Mobilize interaction among many different individuals;
  - Form resident and family councils;
  - Mediate conflicts;
  - Use support and reinforcement techniques;
  - Offer professional opinions and remain impartial;
  - Find resources, negotiate services, make referrals;
  - Educate the resident and his family, and the community about long-term care; and
  - Ability to professionally and personally bring about case closure.
- 
- Minimum qualifications for volunteers
    - There are no minimum education or experience requirements for volunteers prior to screening and acceptance into the LTCOP. The LTCOP shall clarify responsibilities

- and providing training for volunteers.
- Volunteers undergo the same training and designation process as employed Representatives of the Office.
  - A volunteer shall have a criminal background check by the local law enforcement agency. The individual shall not serve as a volunteer if he or she has been convicted of any of the crimes listed under the laws related to nursing home or personal care home employees.
  
- Provider agency process for hiring LTCO staff
  - Prior to providing an offer of employment to an individual for the purpose of serving as an LTCO, the provider agency shall:
    - Indicate to the SLTCO that the individual has a satisfactory criminal background check, AND
    - Provide the SLTCO with a completed Individual Conflict of Interest Reporting Form and an opportunity to review the resume of the candidate(s) being considered for employment.
  - The SLTCO shall promptly notify the provider agency of any concerns related to the candidate's ability to meet minimum qualifications or other designation requirements.
  - If the SLTCO has concerns about the future designation of any candidate, the SLTCO may request an interview of the candidate and shall inform the provider agency of any concerns that the provider agency should consider prior to hiring the candidate(s).
  
- Requests for substitutions or variances

Requests for substitutions or variances related to minimum requirements must be made in writing and approved prior to the hiring or promotion of the employee in question.

- Designation of formerly designated ombudsman from Mississippi or from another state

When an individual has been designated as an LTCO previously in Mississippi but is not currently designated, or when an individual has been designated as a LTCO in another state, the SLTCO shall determine what steps are needed to qualify as a designated LTCO, by reviewing the circumstances on an individual basis and considering, at a minimum, the following criteria:



- Context and extent of LTCO training completed, which must meet or exceed current designation/certification training requirements for Mississippi; AND
  - Need for updated and/or Mississippi-specific training;
  - Need to demonstrate competencies for the position by completing written or oral examinations; AND
  - Quality of performance of individual as an LTCO, including checking references.
- 
- Notification of designation

The SLTCO shall send written notification of an individual's designation as a LTCO to the individual being designated, as well as to the AAA, and the provider agency in the relevant service area within thirty (30) days of the determination.

- **Refusal to Designate, Suspension of Designation, or Withdrawal of Designation of an Individual as a Long-Term Care Ombudsman**

The State Ombudsman may refuse to designate, may suspend designation, or may withdraw designation of an individual as an ombudsman.

- The SLTCO may refuse to designate, may suspend designation, or may de-designate an individual as an LTCO for any of the following reasons:
  - Failure of the individual to meet and/or maintain the criteria for designation;
  - Existence of an un-remedied conflict of interest;
  - Deliberate failure of the individual to disclose any conflict of interest;
  - Violation of the confidentiality requirements;
  - Failure to provide adequate and appropriate services to long-term care residents;
  - Falsifying records and/or reports;
  - Failure to adhere to the Ombudsman Code of Ethics (See Appendix A);
  - Failure to follow LTCO policies and procedures or the direction of the SLTCO (which includes failure to submit reports);
  - A change in employment duties which are incompatible with LTCO duties;
  - Separation from the LTCOP. Examples include: removal from employment by the designated provider agency, an extended absence of the LTCO preventing fulfillment of job responsibilities, provider agency's contract for the provision of LTCO services is not renewed; OR
  - Failure to act in accordance with applicable federal or state laws, regulations, and policies.

- Process for refusal to designate, suspension of designation, or withdrawal of designation of an individual as an ombudsman:
  - Prior to refusing to designate, suspending designation, or withdrawing designation an individual as a LTCO, the SLTCO shall consult with the relevant AAA and the provider agency to consider remedial actions which could be taken to avoid the refusal to designate or the withdrawal of designation.
  - The SLTCO shall provide written notice of the decision to refuse to designate, suspend designation, or de-designate an individual as a LTCO to the provider agency, the AAA if applicable, and to the Division Director of DAAS. Such notice shall:
    - Specify the reasons for and the effective date of the decision, AND
    - In the case of a suspension, indicate the circumstances under which the suspension will end or be reconsidered.
  - The SLTCO or the deputy SLTCO shall promptly notify the administrator of facilities which had been regularly visited by such individual of the refusal to designate, suspension of designation, or withdrawal of designation.
  - If the decision to refuse to designate, suspend designation, or de-designate an individual as a LTCO results in the absence of ombudsman services in the relevant service area, the provider agency, the AAA, and the SLTCO shall arrange for the provision of ombudsman services until a LTCO is designated.

The State Ombudsman may de-designate or issue sanctions on an AAA for failure to comply with Ombudsman Program Components.

## **PART II: Administration of the Long-Term Ombudsman Program**

### **SECTION C: Confidentiality**

#### **Consent**

The LTCOP is first and foremost a resident driven advocacy program. The resident is the client, regardless of the complainant. Unless adjudicated incapacitated, a resident speaks for him/herself. The Ombudsman is to obtain resident informed consent. This is necessary for investigation and/or disclosure of information. If the resident is unable to provide informed consent, then the ombudsman needs to obtain informed consent from the resident representative.

Documentation of consent is required. The Consent Form documents the resident or legal representative's "written" or "oral" consent. The consent form may also be used to document a complainant's consent to release his or her identity. Written consent is advisable under certain conditions, but is not always practical. When a resident is unable to consent, document using the phrase "Resident is unable to consent." A facility staff person may speculate about the identity of a resident or complainant. Without consent of the resident or complainant, an Ombudsman must not confirm such speculation. Instead redirect the conversation to

information that is relevant and not confidential. If necessary, inform the staff of the Ombudsman Program's confidentiality rules. Consent should also be required to access a resident's record or other confidential information.

If the complainant is not the resident, the Ombudsman must seek an agreement from the resident to work on the issue. If the resident declines consent, the resident's wishes supersede the complainant's. One can then advise the non-resident complainant of alternate resolution strategies such as self-advocacy, working through a family council or contacting the Health Department if it involves a regulatory matter. The Ombudsman may also determine that the concern impacts other residents and move on with the complaint, but be sure to inform the resident that their identity will not be revealed.

The resident's lack of capacity must be supported by documentation or ombudsman observation. Documented oral consent is sufficient documentation. In obtaining consent, the ombudsman must first determine if the resident has the capacity to provide consent. It should be an "informed consent." The ombudsman is an advocate and will need to make sure that the resident appears to understand what he or she is doing/consenting.

An Order of Guardianship provides prima facie evidence of incapacity. Review and obtain the documents to determine the scope of the guardian's authority. When a resident is unable to communicate informed consent, the ombudsman must discuss the complaint with the resident's guardian or other legal representative. If a resident has been adjudicated incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are thereby exercised by the person appointed under State law to act on their behalf. If a Representative of the Office believes the guardian is not acting in an incapacitated person's interest, contact the State Ombudsman for approval to access the record or take other action on behalf of the resident.

MS Courts and the legislature have not agreed on precise or consistent meanings of "incompetence" or "incapacity". Usually a guardian looks over the person of the ward while a conservator looks over the estate, unless the Court decides otherwise. The Ombudsman should check the Court's order to see what power the guardian/conservator has been given by the Court. If there is a question, the ombudsman should consult legal counsel for clarification through the State Ombudsman. Even residents who have been adjudicated incapacitated and to whom a guardian has been appointed retain some rights. These residents need to have their desires and preferences considered even if the guardian has the legal responsibility over that decision.

Conservatorship was intended to encompass a broader class of people than just the incompetent (physical incapacity and mental weakness). A conservator has priority over the power of attorney agent. See §93-13-251 through §93-13-267 of the MS Code.

An individual who has been given authority to act on behalf of the resident under a Power of Attorney (POA) may provide consent to conduct an investigation depending on the validity of the authority given. The resident must have capacity at the time of appointment for a power of

attorney document to be valid. If the resident becomes incapacitated, the “agent” loses the authority to act unless it is a “durable” power of attorney. Depending on how the document is written, the durable POA agent may exercise authority when the resident is able to make decisions, when the resident is incapacitated or both. The resident’s primary physician has to make a written evaluation of lack of capacity. Also, look at the specific grants of authority to determine if financial or health care decisions can be determined by the agent.

The Advanced Health-Care Directive (AHCD) is a combination of a power of attorney for health care and a living will. Mississippi has the Uniform Health-Care Decisions Act in §41-41-201 through §41-41-229 of the MS Code. An example of an advanced health-care directive is provided in §41-41-209.

### **Disclosure for Complaint Investigating Purposes**

Any Resident’s identifying information and/or medical, social or other records relating to a resident shall not be disclosed by the State Ombudsman Program unless (a) the resident or the resident representative communicates informed consent in writing or through other means such as orally, visually or through the use of an auxiliary aid and such consent is recorded contemporaneously by a Representative of the Office of the State Long-Term Care Facilities Ombudsman or (b) disclosure is necessary in order to investigate a complaint in accordance with complaint handling procedures and the resident representative refuses to consent and the resident is not able to give consent and the State Ombudsman Program has a reasonable belief that the resident representative is not acting in the best interest of the resident.

The Older Americans Act specifies that state agency procedures must ensure that ombudsman files and records may be disclosed only at the discretion of the state ombudsman and prohibits disclosure of the identity of any complainant or resident without consent of the complainant or resident, legal representative or upon a court order. Any records relating to residents, complainants and any other identifying information shall be confidential. The State Long-Term Care Facilities Ombudsman (SLTCO) has the SOLE authority concerning the disclosure of files, records and other physical or electronic information held and maintained by the Ombudsman Program. The files, records and information are the property of the Office of the State Long-Term Care Facilities Ombudsman. No disclosure of such information shall be made without the prior approval of the SLTCO. This includes information maintained by the district, local and volunteer ombudsmen. The SLTCO or his/her designee has access to all LTCOP records at all times and for any purpose.

Individuals wanting a release of information will need to send a written request to the SLTCO that includes the need for the information, how it will be used and who will be given access to the information. Ombudsmen may not disclose whether a complaint has ever been received by or about an individual, the content of a complaint or investigation, or the outcome of a complaint or investigation without the appropriate consent. The SLTCO (or his/her representative) is required to give approval or disapproval of the disclosure within five working

days of such a request. However, there may be portions redacted or “blacked out” to protect privacy of residents, complainants or for other purposes. Each LTCO has access to records of the district Long-Term Care Ombudsman Program for which he or she serves. For purposes of providing temporary coverage for another district Long-Term Care Ombudsman Program, a LTCO may have access to the LTCO records of another district LTCOP to the extent necessary to provide such coverage.

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

- The resident or resident representative (legal representative) communicates informed consent in writing or through other means such as orally, visually or through the use of an auxiliary aid and such consent is recorded contemporaneously by a Representative of the Office of the State Long-Term Care Facilities Ombudsman; or
- The disclosure is required by court order.

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

- The resident or resident representative (legal representative) communicates informed consent in writing or through other means such as orally, visually or through the use of an auxiliary aid and such consent is recorded contemporaneously by a Representative of the Office of the State Long-Term Care Facilities Ombudsman; or
- The disclosure is required by court order.

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

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

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

[The State Ombudsman Program is excluded from the abuse reporting requirements in Section 43-47-7 and 43-47-37 without appropriate resident informed consent or a court order.](#)

#### **Disclosure of Ombudsman Program Records**

For purposes of monitoring and supervising the long-term care ombudsman program, the relevant AAA or provider agency may review records which reflect the activities of the LTCOP such the monthly activity reports and any aggregate data. Such records shall not disclose the identity of any resident or complainant. The relevant AAA or provider agency may not review records or files which disclose or imply the identity of any resident or complainant. Neither the Ombudsman nor a designee shall disclose resident identifying information of any complaint or long-term care facility resident to individuals outside the Ombudsman Program without consent or a court order.

For purposes of monitoring and supervising the long-term care ombudsman program, the Mississippi Department of Human Services, Division of Aging and Adult Services (DAAS) may review records which reflect the activities of the LTCOP such the monthly activity reports. Such records shall not disclose the identity of any resident or complainant. The DAAS may not review records or files which disclose or imply the identity of any resident or complainant. No state agency, AAA or other provider agency may require a long-term care ombudsman to disclose the identity of a complainant or resident except as provided by these procedures. Furthermore, designated employees are prohibited from discussing confidential information with undesignated staff within their agencies.

Where a request is made by any party for LTCOP records or files, the State Long-Term Care Ombudsman (SLTCO) should be contacted. Records maintained by the LTCOP may not be released, disclosed, duplicated, or removed by anyone who is not a Long-Term Care Ombudsman staff without written permission of the SLTCO.

The SLTCO may require that the request be made in writing before determining the appropriate response. Where the request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be documented immediately and filed as a LTCO record by the LTCO to whom consent was communicated in order to meet this requirement. The SLTCO will review the request with the relevant district LTCOP to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s) and determine whether it will have any negative impact on the Ombudsman Program. The SLTCO will 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 express consent for the release of their names should not be revealed. Such consent must be in writing or made orally and documented immediately and filed as an LTCO record by the Long-Term Care Ombudsman to whom consent was communicated.

The Ombudsman Program should release information to the state survey agency from the ombudsman records only if:

- The resident has provided consent (if the resident is unable to provide consent, the resident legal representative may provide consent) AND
- The identities of residents or complainants who have not provided consent for the release of their names are not revealed.

The SLTCO shall consult with the Legal Counsel to respond to a request for Ombudsman records

by a resident, complainant, legal representative, an open records act request, subpoena or court order. Both the SLTCO and the Legal Counsel should consider how the release could impact the credibility or effectiveness of the program.

### **Access to Facilities**

Ombudsmen shall have access to long-term care facilities during reasonable hours. If an investigation calls for an ombudsman to access the long-term care facility during non-business hours, consult with the State Ombudsman. Access should include private communication with residents and their spouses. Ombudsman should also have the right to tour the long-care facility unescorted.

### **Access to Resident Records**

The State Ombudsman Program should have access to the name and contact information of the resident representative and access to review the medical, social or other records relating to a resident if (a) the resident communicates informed consent in writing or through other means such as orally, visually or through the use of an auxiliary aid and such consent is recorded contemporaneously by a Representative of the Office of the State Long-Term Care Facilities Ombudsman (b) access is necessary in order to investigate a complaint and the resident representative refuses to consent and the State Ombudsman Program has a reasonable belief that the resident representative is not acting in the best interest of the resident.

The State Ombudsman Program should have access to (a) the administrative records, policies or other documents that the resident or the general public would have access of the long-term care facilities (b) upon request, copies of all licensing and certification records maintained by the State Department of Health and (c) all medical, social or other records of residents in the course of a State or Federal survey or inspection process.

### **Mail, e-Mail and Photographs**

All mail addressed to the ombudsman or the LTCOP should be delivered to the ombudsman unopened.

The resident or complainant's name should never be included in the subject line of an e-mail. The SLTCO or representatives of the Office shall not take any pictures of the residents without written consent and shall not share such picture or any resident information through any form of social media.

### **Safeguarding of Notes and Documentation**

The content of all written notes regarding contacts made in the course of the ombudsman's work should be entered into WellSky and the originals should be shredded in such a way to ensure that no one else has access to view them. All documentation and notes shall be in a locked cabinet (secure location) when not in possession of the ombudsman. Any emails or written documentation concerning a resident, complainant, and complaint investigation should

be scanned into WellSky and then shredded. The Ombudsman service provider/AAA client case record is the property of the State Long-Term Care Ombudsman and it shall include:

- Legible documentation of the complaint, verification of the complaint, the solution and/or outcome of the complaint, ombudsman name, date and time of visit(s);
- Referral form, where appropriate;
- Follow-up on complaint;
- Authorization releases; and
- Notice of termination of services, if applicable.

**PART II: Administration of the Long-Term Ombudsman Program**  
**SECTION D: Conflicts of Interest**

The organizational placement of the OLTCO and the Office of the State Long-Term Care Ombudsman (OLTCO) and the designated Representatives of the Office of Long-Term Care Ombudsman (LTCO) must be free, and remain free, of any conflicts of interest. A conflict of interest exists when any organizational or supervisory relationship, policy, action or individual relationship or action conflicts with, impairs or threatens to interfere with, or give the appearance of interfering with the ability of a SLTCO or LTCO to investigate, resolve, refer complaints or otherwise advocate on behalf of a long-term care facility resident.

A conflict of interest can exist whenever a contracting (or sponsoring) agency does not understand the Ombudsman function. There must be recognition that there are inherent conflicts in the job, and a need to support the role and goals of the Ombudsman through any conflict.

An individual who seeks to be hired as the SLTCO cannot have been employed or participated in the management of a long-term care facility within the previous twelve (12) months. An individual who seeks to be hired as a LTCO cannot have been employed or participated in the management of a long-term care facility within the previous six (6) months.

All LTCO must sign a conflict of interest agreement form upon employment and then annually by Oct. 31<sup>st</sup>. The State Ombudsman will keep the current signed forms on file (hard copies or electronic copies) for all Representatives of the Office of the State Long-Term Care Ombudsman. In addition, the AAAs or provider agencies must sign an Organizational Conflict of Interest form annually by October 31<sup>st</sup>.

**Identifying a Conflict**

Types of conflicts of interest include:

*Conflicts of Loyalty:* These involve issues of judgment and objectivity. An example would be if the ombudsman works as a case



manager with the responsibility for assisting individuals with moving into long-term care facilities. Some are responsible for operation of home- and community-based service programs that operate under waivers granted by the federal government.

*Conflicts of Commitment:* These are issues of time and attention. The ombudsmen who assume other employment-related responsibilities may experience this such as where to direct one's time and energy and the concern about adequacy of resources.

*Conflicts of Control:* These are issues of independence. Do other interests or obligations of the agency which houses the ombudsman program interfere with the ombudsman's advocacy on behalf of the residents? Do the administrative and political forces materially interfere with the professional judgment of the ombudsman? Is there fear of retaliation by superiors? Will an ombudsman challenge eligibility decisions or speak out publicly about long waiting lists?

**Organizational Conflicts:** Conflicts arising from organization location including, but not limited to, LTCOP placement with a service provider that:

- Is responsible to or reports to an agency that has an ownership or investment interest in a long-term care facility setting;
- Provides long-term care services, including providing personnel for long-term care facilities or the operation of programs, which control access to or services for long-term care facilities;
- Operates programs with responsibilities conflicting with LTCOP responsibilities such as developing care plans, case management or serving as guardians over long-term care residents; or
- Having governing board members with ownership, investment or employment interest in long-term care facilities.

**Individual Conflicts:** A conflict of interest on the part of the Ombudsman exists whenever:

- Employment of an individual or member of his/her immediate family within the previous year by a long-term care facility in the service area or by the owner/operator of any long-term care facility in the service area;
- Participation in the management of a long-term care facility by an individual or member of his/her immediate family;

- Involvement in the licensing or certifying of long term care facilities by an individual or member of his/her immediate family;
- Ownership or financial interest in an existing or proposed long-term care facility;
- Acceptance of a gift from a long-term care facility, resident or resident representative. Note: sample portions of food tested as part of an investigation is not a conflict;
- Receiving, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a LTC facility (meaning an immediate family member currently employed);
- Provides services with conflicting responsibilities such as adult protective services, carrying out care plans and serving as guardians or being a sole witness for a DNR order, performing case management or pre-admission screening for residents. Possible remedy would be to remove the Ombudsman Program from under the supervision of the person who supervises the case management or pre-screening program;
- Serving residents of a facility in which an immediate family member resides; or
- Participation in activities which give the appearance that that LTCO's primary interest is something other than being a resident advocate.

### **Removing or Remediating a Conflict**

If a conflict is identified, the local LTCOP will:

- 1) End the application process;
- 2) Seek a remedy; or
- 3) Request de-certification.

It is best to avoid rather than remedy conflicts. The State LTC Ombudsman will determine whether any proposed remedies are adequate. If not, he/she will work with the entity operating the LTCOP to devise acceptable remedies.

The SLTCO must be notified of any actual or potential conflict of interest. All agents of the AAAs, other provider agencies and LTCOs have a duty to notify the SLTCO of any actual or potential/perceived conflict of interest of which they have knowledge.

The SLTCO has the authority to decide what actions must take place to remedy the conflict. A conflict may be remedied only if it does not interfere with the duties of the LTCOP or where the conflict is likely not to change the perception of the LTCOP being an independent advocate for the residents of long-term care.

The following steps must be followed in order for an organizational conflict to be sufficiently remedied:

- Develop a written remedial plan within 30 days of knowledge of the conflict;
- The remedial plan must include assurances that the LTCOP will investigate complaints in

- an unbiased manner and independently determine the actions to resolve the situation;
- No agency employee or governing board member with a conflict of interest will be involved with any decision to hire or terminate the employment of a LTCO; and
- The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and the State Ombudsman. If either party cannot agree to the plan, then the conflict has not be sufficiently remedied.

The following steps must be followed in order for an individual conflict to be sufficiently remedied:

- No applicant for such a position of a LTCO will be hired if a conflict of interest is identified.
- Volunteers: If a conflict of interest is identified prior to designation/certification, the volunteer will not be designated as a representative of the Office in any facility in which a conflict of interest or an appearance of a conflict of interest could be expected to affect the performance of the ombudsman duties. The District or Local Ombudsman must notify the State Ombudsman immediately. De-certification or reassignment would be possible remedies.
- Directors of AAA: If a conflict of interest is identified, action must be taken within 30 days to remedy the situation. Possible remedies include the withdrawal of designation of the agency as an AAA.

**Failure to Identify or Remediating a Conflict**

- Failure on the part of an Ombudsman, Provider Agency, or AAA to identify and report to the Office a known conflict of interest shall be sufficient grounds for the refusal to designate or the subsequent de-designation of the Program or the certification or the de-certification of an Ombudsman.
- Existence of an un-remedied conflict of interest shall be sufficient grounds for the de-designation of the Program, the provider entity, or the de-certification of an Ombudsman.
- Final decisions regarding sanctions to identify or remedy conflict of interest situations are determined by the State Ombudsman.

SLTCO has the right to de-designate an Ombudsman or de-designate the local ombudsman program for one of the following reasons:

- Breach of confidentiality;
- Failure to follow the Program Components in program policy;

- Having an adversarial approach while conducting program business;
- Having a conflict of interest which cannot be remedied or for not revealing a conflict or potential conflict of interest;
- Not complying with program standards for visiting facilities and residents on a monthly basis and/or failing to comply with ongoing training requirements; or
- Per the discretion of the SLTCO.

**Possible Remedies:**

- Disclose the conflict to the governing board and the SLTCO;
- Have no direct involvement with LTC residents or activities; and
- Abstain from voting on issues related to the operation of the ombudsman program.

Identify the conflict and provide a written plan within 30 calendar days of identifying the conflict and submit the plan to the State Ombudsman. The plan could provide assurances that minimize the greatest extent possible the negative impact on the local ombudsman program. Examples of assurances include:

- The local LTCOP investigates complaints in an unbiased manner and independently determines actions to be taken in their resolution;
- No agency employee or governing board member with a conflict of interest is involved with or influences any decision to hire or terminate the employment of an ombudsman;
- Arrange for another ombudsman to serve at a certain facility where the conflict exists;
- Governing board members of the AAA or subcontracted agency who have a conflict of interest must:
  - Disclose the conflict to the governing board and the State Ombudsman;
  - Have no direct involvement with long-term care ombudsman activities; and
  - Abstain from voting on issues related to the operation of the local LTCOP.
- The AAA policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the ombudsman can fulfill his or her duties without interference; and
- A memorandum of understanding (MOU) exists between the local LTCOP and another program that provides services with conflicting responsibilities. Such an MOU adequately sets forth the roles, responsibilities and working relationships of the respective programs.

The SLTCO may consult with outside sources, such as the National Ombudsman Resource Center (NORC) or the National Association of State Long-Term Care Ombudsman (NASOP) for expert input to resolve any questions about conflict of interest. Agree on a plan and have the agency in which the conflict exists and the State Ombudsman sign. If either party cannot agree to a plan, the conflict has not been sufficiently remedied.

**PART II: Administration of the Long-Term Ombudsman Program**

## **SECTION E: Legal Counsel and Legal Assistance Developer**

### **Legal Counsel**

Ombudsman shall have access to adequate legal counsel. Legal counsel is provided by the Mississippi Attorney General's Office. The Mississippi Department of Human Services, pursuant to the Older Americans Act (OAA), shall ensure that:

- Adequate legal counsel is available for the State Ombudsman Program and is able, without conflict of interest (according to state ethical standards governing the legal profession), to:
  - Provide advice and consultation services needed to protect the health, safety, and rights of residents; and
  - Assist the Office of the State Long-Term Care Facilities Ombudsman and district and local ombudsman in the performance of their official duties; and
- Legal representation is provided to any representative of the State Long-Term Care Ombudsman Program against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the State Ombudsman Program. *OAA Sec. 712(g)*.

Communication between the State Ombudsman and the Legal Counsel is subject to attorney-client privilege. A State Ombudsman or representative of the Office who is a licensed attorney is not by itself establish sufficient legal counsel.

### **Legal Assistance Developer**

For the State Ombudsman to obtain advice and consultation, the State Ombudsman or designee may consult with the Legal Assistance Developer (LAD) for resident-related legal issues. For a Representative of the Office to obtain advice and consultation, he or she shall request assistance from the SLTCO who in turn will seek advice from the Legal Assistance Developer on any issues relating to long-term care facility residents.

The Legal Assistance Developer shall provide state leadership in coordinating legal assistance programs for 60 years and older or disabled individuals throughout the state. The LAD should provide technical assistance, training and other supportive functions to AAAs, legal assistance providers, ombudsmen and other persons as appropriate. They should promote financial management services for older individuals at risk for conservatorship and assist older individuals in understanding their rights, exercising choices and maintaining the rights of older individuals at risk of guardianship. Another function of the LAD is to oversee the state's capacity to improve the quality and quantity of legal services provided to older individuals.

**PART II: Administration of the Long-Term Ombudsman Program**

**SECTION F: Interference and Retaliation**

Both federal and state law require long-term care facilities to provide Ombudsman representatives with access to facilities and residents. Moreover, MS law (Section 43-7-67) has been amended and on July 1, 2017 “no individual shall discriminate, retaliate or engage in willful interference against any resident, immediate family, resident representative or an employee of a long-term care facility due to making a complaint or giving information in good faith to the State Ombudsman Program. Any person convicted or violating any provision of this section shall be guilty of a misdemeanor.” Ombudsman who encounter willful interference by facility staff or others during the performance of their duties shall immediately report the incident to the State Ombudsman and the appropriate licensing agency. The State Ombudsman shall review the information provided, and conduct further investigation if necessary to confirm the occurrence of the interference or retaliation.

Examples of willful interference include:

- Preventing ombudsman from entering the facility. If the ombudsman is trying to investigate a complaint, it may be necessary to visit the facility after normal visiting hours.
- Refusing to allow ombudsman from speaking confidentially with the residents.
- Refusing to allow the ombudsman access to all areas of the facility, including the kitchen.
- Refusing to allow the ombudsman access to resident records.

If an ombudsman encounters willful interference, the ombudsman shall give a verbal explanation of the Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference. If this is not successful, then the Ombudsman shall provide the same information to the Administrator.

If the interference continues, the State Ombudsman shall submit a written description of the incident, including dates, times, circumstances, history of interference by the individual or facility management and the steps taken by the Ombudsman Program to educate the person interfering and the facility administration, to the appropriate local law enforcement agency.

**PART II: Administration of the Long-Term Ombudsman Program**

**SECTION G: Liability**

Representatives of the Office are not liable for civil damages or subject to criminal prosecution for performing official duties unless the Representative acts in bad faith or with a malicious purpose. Official duties are those duties of a LTCO set forth in applicable federal and state law and these policies and procedures. They shall include, but not be limited to, making a statement or communication relevant to receiving a complaint or conducting investigative activity.

Evidence of good faith includes, but is not limited to:

- Making every reasonable effort to follow procedures set forth in applicable laws and these policies and procedures; and
- Seeking and making reasonable efforts to follow direction from the Office of the State Long-Term Care Ombudsman

The Mississippi Department of Human Services will not provide liability insurance or indemnification for area agencies on aging (AAAs) or provider agencies. AAAs and provider agencies should retain their own liability policies.

## **PART II: Administration of the Long-Term Ombudsman Program**

### **SECTION H: Grievance Process**

Dependent upon the content of the grievance a decision may be made by the State Ombudsman to suspend the Representative of the Office that is name in the grievance until there is full resolution.

- **Grievance about Refusal, Suspension, or Removal of Designation of a Local Ombudsman Entity (LOE) or a Representative of the Office**
  - Formal written notice that grounds exist to refuse, suspend or remove an ombudsman's designation (certification) will be sent to the individual and the AAA Director by the State Ombudsman within fifteen (15) working days of the determination.
  - Formal written notice that grounds exist to refuse, suspend or remove a Local Ombudsman Entity (LOE) will be sent the AAA Director by the State Ombudsman within fifteen (15) working days of the determination.
  - Upon receipt of the notice the individual or LOE then has ten (10) working days from the date of receipt of such findings to respond in writing to the State Ombudsman regarding the determination and findings.
  - The State Ombudsman shall issue any revised findings within five (5) working days of the receipt of the written response. The State Ombudsman may first consult with the Director of Aging and Adult Services.
  - If the State Ombudsman decides not to change the initial finding, the refusal/withdrawal of the designation (certification) becomes immediately effective upon a second notice. The second notice will be sent within three (3) working day after the final determination.
  - If the State Ombudsman decides to not refuse/withdraw the designation (certification) of the ombudsman, but implement other remedies or work improvement measures, there shall be formal written notice sent to the ombudsman and the Director of the changed decision within five (5) working days.
  - The final decision to refuse/remove designation (certification) of a Representative of the Office remains with the State Ombudsman.

- **Grievance about Actions of a Local Ombudsman**
  - A grievance regarding the actions of a local ombudsman may be filed in writing, orally or through the use of auxiliary aids and services with the State Ombudsman. The grievance must list the specific facts related to the grievance, the nature of the grievance, and any request for resolution. The grievance should be given within thirty (30) calendar days of the action.
  - The grievance will be discussed with the local ombudsman named in the grievance within ten (10) working days and a written copy (if applicable) of the grievance statement will be given to him/her at that time. He/she will have ten (10) working days to provide a written response.
  - The State Ombudsman may consult with the AAA Director if possible without violating confidentiality and disclosure rules.
  - The State Ombudsman will respond to the local ombudsman and the complainant regarding the grievance within ten (10) working days of receipt of the response from the local ombudsman. The response is final.
  
- **Grievance about the Actions of a Volunteer Ombudsman**
  - A grievance regarding the actions of a volunteer ombudsman may be filed in writing, orally or through the use of auxiliary aids and services with the supervising District Ombudsman. The grievance statement must list the facts related to the grievance, the nature of the grievance and any request for resolution. The grievance should be made within thirty (30) calendar days of the action.
  - The District Ombudsman will provide a copy of the grievance to the State Ombudsman within three (3) working days and consult with the State Ombudsman.
  - A copy of the grievance will be discussed with the volunteer ombudsman named in the grievance within ten (10) working days of initial receipt. A written copy of the grievance statement will be given to him/her at this time if available. He/she will have ten (10) working days to provide a written response.
  - The District Ombudsman will respond to the grievance in writing within ten (10) working days of receipt of the response of the volunteer ombudsman.
  - If the volunteer ombudsman is not satisfied with the decision of the District Ombudsman, he or she can appeal the decision to the State Ombudsman. The State Ombudsman has five (5) working days to provide a response to the volunteer ombudsman. The decision of the State Ombudsman will be final.
  - The final decision will be shared with the complainant within five (5) working days of the response of the volunteer ombudsman.
  
- **Grievance about Complaint Investigations**
  - Informed consent must be obtained from the resident or the resident's



representative for investigation details to be disclosed to the individual filing the grievance. If such consent is not provided, the complainant will be informed that no information can be provided and the grievance process will be ended.

- If consent is obtained, the process for a grievance about action of a local ombudsman will be followed.
- **Grievance about the Actions of the State Ombudsman**
  - The grievance should be made in writing, orally or within thirty (30) calendar days of the action and submitted to the Director of Aging and Adult Services. It must list the specific facts related to the grievance, the nature of the grievance, and any request for resolution.
  - A copy of the grievance will be discussed with the State Ombudsman within five (5) working days of its receipt. A written copy of the grievance statement will be given to him/her at that time.
  - The policies on consent and disclosure must be followed if this involves a complaint investigation.
  - The State Ombudsman shall provide a written response to the Director of Aging and Adult Services without violating the policies of disclosure within five (5) working days.
  - The Director shall provide a response to the grievance within five (5) working days from receipt of the State Ombudsman's response to the State Ombudsman and the complainant.

## **PART II: Administration of the Long-Term Ombudsman Program**

### **SECTION I: Leave of Absence**

Notice must be given to the State Ombudsman when any District or Local Ombudsman is out of the office for five (5) or more business days. The AAA or provider agency must provide Ombudsman service coverage by a designated Representative of the Office to the service area during any absences so as to comply with Program Components and complaint investigation timeframes. If there is only one Ombudsman in the service area, then the Ombudsman's phones calls and emails must be forwarded to the State Ombudsman.

## **PART III: Training for Ombudsman**

### **SECTION A: Designation Training**

All Ombudsman paid staff and volunteers must be designated by the Office of the State Long-Term Care Facilities Ombudsman which is an independent organizational unit located within the Division of Aging and Adult Services, Mississippi Department of Human Services. Prior to being issued an official Ombudsman designation badge, all applicants must complete a minimum of 40 hours of State Ombudsman approved training, which includes 24 hours of field training and

successfully passing the MS Long-Term Care Ombudsman Designation Test. All applicants must annually sign a Conflict of Interest Agreement, Confidentiality Agreement and a Code of Ethics Agreement. Until certified (designated) an intern ombudsman shall be assigned to a supervising ombudsman. The experienced ombudsman will introduce the intern to the facility management staff.

### **SECTION B: Continuing Education Training**

In order for Ombudsman and volunteers to be re-designated, they must:

- Complete twelve (12) hours of approved mandatory ombudsman training during the year. At least six (6) hours of this training must be sponsored by the Office.
- Have no conflict of interest;
- Follow to ombudsman confidentiality requirements and Code of Ethics; and
- Adhere to the Program Components in the Policy and Procedure Manual.

District and local Ombudsman are strongly encouraged to attend seminars, workshop and conferences offered by other programs and organizations. These training hours may be counted towards the required 12 hours of annual training as long as prior approval was obtained from the State Ombudsman. In order to receive credit for such courses, an ombudsman may either attend a program which has already been approved by the State Ombudsman or must submit in advance a written request for approval of a particular program that includes 1) brief description of the training; 2) who is conducting the training; 3) when and where it is to be held; 4) hours of training. Ombudsman must provide evidence of attendance at any outside training. The State Ombudsman may fail to re-designate an Ombudsman if any of the above criteria have not been met.

### **PART IV: Program Components for Ombudsman Practice**

Each community long-term care ombudsman program (LTCOP) shall provide services to protect the health, safety, welfare, and rights of residents. These services, known as **Program Components**, shall be performed in accordance with the following procedures and standards and as directed by the Office of the State Long-Term Care Ombudsman (SLTCO).

The following Mandatory Program Components must be performed by each local LTCOP:

- complaint processing for residents of long-term care facilities;
- information and assistance;

- routine visits;
- issues advocacy;
- resident council activities;
- volunteer management;
- nursing facility pre-survey information;
- family council activities;
- community outreach and education; and
- in-service education to facility staff.

#### **PART IV: Program Components for Ombudsman Practice**

##### **SECTION A: Facility Visits**

The Federal Older Americans Act (OAA) requires that “the residents have regular, timely, private, and unimpeded access” to the services provided through the Ombudsman Program. *Section 712(3)(D)* By doing so, the ombudsman will be able to identify concerns of residents, establish trust and develop relationships between the residents and explain the Ombudsman Program to both residents, their families and the facility staff and provide consistent statewide coverage of the long-term care facilities in Mississippi.

##### **Facility Visits**

- Regular and timely access is considered to be *a minimum* of quarterly visits to each long-term care facility in each service district (January-March; April-June; July-September; October-December). These would be considered routine visits for the purpose of monitoring and assessing the general condition of residents and the physical plant of the facility. However, the Mississippi Ombudsman Program requires monthly visits to the long-term care facilities. Additional visits during the month shall be conducted by district and local ombudsman in the following situations:
  - To investigate a complaint;
  - A history of serious or frequent complaints;
  - Number and types of referrals made to other agencies (Licensing & Certification

- and the AG's office);
- A change in ownership or administration;
- Implementation of a serious state or federal plan of correction (# of citations and deficiencies from a survey);
- An imminent closure;
- Facilities licensed for 120+ residents; or
- By request of the SLTCO in the interest of protecting residents' rights.
- Visits shall be unannounced so that the facilities have no advanced knowledge of the visit. The timing of the visits should also be staggered so the facility does not have a basis to predict the timing of the visit.
- Working with resident or family council, presenting an in-service for facility staff or participating in an annual survey may be combined with the monthly non-complaint related visit.
- The purpose of the visits is to:
  - Observe the condition of the residents and the facility and make recommendations as needed.
  - Meet new residents and familiarize them and any family members to the Ombudsman Program.
  - The Ombudsman shall ensure their posters are in a visible location at each facility and there is a copy of Resident's Rights posted in clear view so the residents, family members or resident representatives can observe. Depending on the size of the facility, there may be a need for more than one poster in each facility.
- Facilities with continued patterns of non-responsiveness to complaints or non-compliance with citations or deficiencies require a more frequent Ombudsman presence.
- The Ombudsman should have supply of business cards and/or brochures/book marks available so as to provide to residents.
- Prior to leaving the facility, the Ombudsman may meet with the administrator and/or department heads to provide information or recommendations based on his/her observations. Information regarding specific complaints shall be disclosed only with resident consent.

Ombudsman should, at a minimum, quarterly monitor to see if the survey results are posted where residents are able to view the results and that the ombudsman poster is prominently displayed and contains the current ombudsman's name, address and phone number. *Complaint-related visits* need to take place when responding to a complaint. The resident needs to be visited. The ombudsman shall have access to all long-term care facilities for regular visits and to investigate complaints. The ombudsman should have access to have a private conversation with each resident. Once consent is obtained and documented (written or oral), the ombudsman may be able to resolve the concern to the resident's satisfaction before leaving the facility. A concern may be a case with one or more complaints or simply a consultation. All complaints are tracked in WellSky. Consultations are only tracked for purposes of the annual NORS report.

The most important part of complaint intake is listening. Always ask the complainant if he/she has spoken with anyone at the facility to have the issue resolved. Let the caller know that an Ombudsman will be in contact with them within 2-3 days. The breakdown in communication and lack of trust is the root cause of conflict in institutions. We can help by bringing people together instead of continuing their adversarial positions. Ombudsmen use their skill in communication and mediation to advocate for a process that enables the resident's voice to be heard regarding what is most important to him/her. We take all complaints except those that involve complaints against residents, unless the concern is due to failure on the facility's part to resolve the matter, or those complaints requiring private legal counsel. If an issue of abuse, neglect, or exploitation is suspected during the intake, the ombudsman must use their discretion in referring the complainant to another agency. The Health Department will handle the regulatory issues and the Medicaid Control Fraud Unit will handle criminal abuse issues in nursing homes or personal care homes. A case may have more than one type of complaint code. However, only use one category for each type of problem. Complaints received at the Office of the State Long-Term Care Ombudsman will be assigned to the appropriate Representative of the Office to handle.

**PART IV: Program Components for Ombudsman Practice**  
**SECTION B: Complaint Processing**

A complaint is a concern brought to, or initiated by, an Ombudsman representative for investigation and action by or on behalf of one or more residents of a long-term care facility relating to the health, safety, welfare, or rights of a resident. One or more complaints constitutes a case. Each inquiry brought to, or initiated by, an Ombudsman representative on behalf of a resident or group of residents involving one or more complaints which requires opening a case; and includes Ombudsman investigation, strategy to resolve, and follow up; is recorded as a case. Each case may have more than one complaint. A complaint is also more than a consultation or a friendly visit. If a resident's problem is too simple to require filling out a case record, then it is more likely to be a consultation or friendly visit than a complaint. An "information or referral" call is different from a complaint; while information and referral can take up a lot of time and involve action on the part of the ombudsman in terms of phone calls, letters, or research, the ombudsman is not asked to intervene or alter the outcome of a situation or solve a problem. The complaint documentation process starts from the time of receiving a complaint through follow-up after the case has been closed.

Scope of Coverage/Jurisdiction of the Ombudsman Program: Section 43-7-55 of the MS Code states that a "long-term care facility" means any skilled nursing facility, extended care home, intermediate care facility, personal care home or boarding home *which is subject to regulation or licensure* by the State Department of Health. Therefore, if a facility should be licensed as required by MS law, but it is an illegal personal care home the ombudsman does have jurisdiction to provide assistance to such residents. Whenever questions arise regarding appropriate LTCO practice in handling complaints, the State Ombudsman should be contacted for guidance.

The State Ombudsman can grant consent to conduct an investigation or make referrals when:

- A resident lacks capacity and has no legal representative;
- A legal representative exists, but cannot be contacted after at least three (3) attempts; or
- The resident lacks capacity, has a legal representative who does not consent, and there is reasonable cause to believe that the representative is not acting in the best interest of the resident.

### **Intake of Complaints**

Intake Summary in WellSky must be completed **within 14 days**. It must identify the complainant, the resident, and a summary of the complaint. Documentation is extremely important for accurate reporting and for allowing others who may later become involved in the case to know what steps were taken. Also, any complaint may become the source of litigation and proper clear documentation is essential.

Complaints may be reported by:

- Residents, family members of residents, friends of residents, long-term care facility staff or any other person in the community;
- Anonymous reporter. However, this type of complaint could limit your ability to investigate and resolve the complaint;
- Ombudsman who has personal knowledge of an action or inaction that may affect the health, safety, welfare or rights of a resident in a long-term care facility.

The person that makes the complaint is referred to as the Complainant.

If a complaint involves a deceased resident, then the ombudsman shall:

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

Upon receipt of a complaint, the ombudsman shall:

- Collect all pertinent details of the complaint to determine the type of complaint presented;
- Explain that the ombudsman contacts the resident to determine his/her wishes and as resident advocate will act in accordance with the wishes of the resident;
- Discuss what outcome the complainant is seeking;
- Inquire as to what attempts, if any, have already been made to resolve the complaint and the outcome of those actions;

- Determine if the complaint is appropriate to be handled through the Ombudsman Program;

The Ombudsman must choose the best complaint code that best matches the problem. The NORS complaint codes are:

- Codes 1 through 102 (Groups A-M) are used for complaints against LTC facilities and their representatives.

RESIDENT RIGHTS:

Group A (Abuse, Gross Neglect, Exploitation) should only be used for *willful* mistreatment of residents.

Group B (Access to Information by Resident or Resident’s Representative)

Group C (Admission, Transfer, Discharge, Eviction)

Group D (Autonomy, Choice, Preference, Exercise of Rights, Privacy)

Group E (Financial, Property (except financial exploitation))

RESIDENT CARE

Group F (Care)

Group G (Rehabilitation or Maintenance of Function)

Group H (Restraints-Chemical and Physical)

QUALITY OF LIFE

Group I (Activities and Social Services)

Group J (Dietary)

Group K (Environment)

ADMINISTRATION

Group L (Policies, Procedures, Attitudes, Resources)

Group M (Staffing)

- Codes 103 through 116 (Groups N and O) are used for complaints against the State licensing and Medicaid agencies.

Group N (Certification/Licensing Agency)

Group O (State Medicaid Agency)

- Codes 117 through 128 (Group P) are used for complaints against or involving individuals who are not staff of the facilities or of the State’s licensing and certification agency.

Group P (System/Others)

- Codes 129 through 133 (Group Q) are used for complaints about services in settings other than long-term care facilities. Q codes are used for outside providers, such as an Adult Day Care Center, hospice, homemaking or transportation, or complaints at an unlicensed home.

**Investigation**

An Ombudsman shall use his or her best efforts to initiate investigations of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. If the Representative of the Office will be unable to initiate investigations due to a planned vacation, required training conference or extended illness, their supervising ombudsman shall be contacted immediately so as to develop a plan for temporary coverage. Such plan shall be communicated to the provider agency, the area agency on aging, and the SLTCO to assure appropriate and timely case referrals.

<b>IF a complaint involves...</b>	<b>THEN the response time is....</b>
<ul style="list-style-type: none"> <li>• Abuse or gross neglect and the Ombudsman believes a resident may be at risk</li> </ul>	Within the next working day
<ul style="list-style-type: none"> <li>• Abuse or gross neglect and the Ombudsman has no reason to believe a resident is at risk</li> </ul>	Within 3 days, but not to exceed 3 working days
<ul style="list-style-type: none"> <li>• Actual or threatened transfer or discharge from a facility</li> </ul>	Whichever occurs <u>first</u> : <ul style="list-style-type: none"> <li>• 5 working days;</li> <li>• The last day of bed-hold period (if resident is hospitalized), or</li> <li>• The last day for filing an appeal for an administrative hearing</li> </ul>
<ul style="list-style-type: none"> <li>• Any other type of complaint</li> </ul>	Within 5 working days

Regardless of the source of the complaint, the first person to be interviewed should be the resident. An Ombudsman shall personally discuss the complaint with the resident in order to:

- Determine the resident’s perception of the complaint;
- Determine the resident’s wishes with respect to the resolution of the complaint;
- Determine whether the Ombudsman may disclose resident identifying information to the facility and/or other appropriate agencies;
- Advise the resident of his or her rights; and
- Work with the resident in developing a plan of action.

If, at any point during the complaint process, the resident expressed that he or she does not want the LTCO to take further action on a complaint involving the resident, then LTCO shall determine whether further efforts should be made on the complaint. In making this determination, the LTCO shall consider the following:



IF the resident...	THEN the LTCO shall...
<ul style="list-style-type: none"> <li>• Refuses to consent to LTCO work on the complaint or</li> <li>• Withdraws consent before the LTCO has verified the complaint</li> </ul>	<ul style="list-style-type: none"> <li>• Discontinue work on the complaint and</li> <li>• Attempt to determine why the resident refused or withdrew consent, considering factors such as: <ul style="list-style-type: none"> <li>• Past response of facility to complaints;</li> <li>• The resident’s relationship with the staff;</li> <li>• The experience of this resident or other residents in the facility related to this type of complaint;</li> </ul> </li> <li>• Inform the resident that he or she may contact the LTCO regarding the withdrawn complaint or other complaints in the future; and</li> <li>• Provide a business card or brochure informing the resident how to contact the LTCOP.</li> </ul>
<ul style="list-style-type: none"> <li>• Withdraws consent after the LTCO has verified or partially verified the complaint</li> </ul>	<ul style="list-style-type: none"> <li>• Discontinue investigation and resolution activities on the complaint;</li> <li>• Determine during subsequent visits to the facility whether the type of complaint is recurring. If it is a recurring problem, then the LTCO must use strategies towards resolution without disclosing the identity of the resident (such as presenting the issue to a resident or family council); and</li> <li>• Attempt to determine why the resident withdrew consent, considering factors such as: <ul style="list-style-type: none"> <li>• Past response of facility to complaints;</li> <li>• The resident’s relationship with the staff;</li> <li>• The experience of this resident or other residents in the facility related to this type of complaint;</li> </ul> </li> <li>• Inform the resident that he or she may contact the LTCO regarding the withdrawn complaint or other complaints in the future; and</li> <li>• Provide a business card or brochure informing the resident how to contact the LTCOP.</li> </ul>

It is important to get all sides of the story if a complaint is to be resolved successfully. The preparation for the investigation should indicate which staff person will be involved. Try to interview the beginning level staff members first, and then move up to the administrator. Be non-threatening in the approach to staff people (review the interviewing skill’s section of the training manual). Interview upper-level staff members (administrator, head nurse, medical director, etc.) in the complaint resolution process as they may have the authority to solve the problem immediately. After all the necessary information is gathered and if no further research is indicated, attempt to resolve the complaint within the LTC facility.

If a resident is unable to provide consent, the Ombudsman shall advocate for a resident’s wishes

to the extent that the resident can express them, even if the resident has limited decision-making capacity. Where a resident is unable to provide or refuse consent to an Ombudsman to work on a complaint directly involving the resident the LTCO shall:

- Seek evidence to indicate what the resident would have desired and where such evidence is reliable, work to effectuate that desire; and
- Assume that the resident wishes to have his or her health, safety, welfare, and rights protected.

If the resident is no longer at the facility or is deceased, the LTCO may close the complaint related to that resident. The LTCO shall make referrals to other agencies where appropriate to address any unresolved issue. It is usually notated in the NORS reporting system as being “withdrawn.” However, where the complaint is a continuing or potential concern for other residents, the LTCO shall open a new case with another resident or an ombudsman-generated complaint in order to continue LTCO work to resolve the complaint. If the ombudsman does not open a case, he or she must explain to the complainant the reasons for not doing so.

### **Verification of Complaints**

Consent and Confidentiality are cornerstones of the Ombudsman Program. We need to make sure that the residents do not face retaliation for filing a complaint. The resident or legal representative must be informed of the progress of the investigation findings. The purpose of an investigation is to determine whether the complaint is valid and to gather the information necessary to determine how to resolve the complaint. A complaint is “verified” when an ombudsman determines after interview, record inspection, observation, etc. that the circumstances described in the complaint are substantiated or generally accurate. Because the LTCO works on behalf of resident’s interests, the LTCO should give the benefit of any doubt to the resident’s perspective.

Verification of a complaint should be based on facts, not the opinions of the complainant, the facility or the ombudsman. There must be sufficient documentation in WellSky for the State Ombudsman to determine whether proper case investigation through fact-finding was done. The ombudsman should determine the validity of the complaint by uncovering the facts surrounding a particular issue. In order to verify a complaint, the LTCO shall take one or more of the following steps:

- Research relevant laws, rules, regulations and policies;
- Personally observe the evidence;
- Interview the resident and/or complainant;
- Interview staff, administration, other residents, and families; and/or
- Examine relevant records.

Yet resident perception is a sufficient basis upon which a LTCO can verify a complaint of a subjective nature (e.g., a resident complains of a rude staff member). Thus, the Ombudsman does not have to independently observe staff acting disrespectfully. However, whenever

possible, the LTCO shall seek objective verification of the complaint. Facility visits for purposes of complaint investigation shall be unannounced.

Activities such as follow-up calls to either the facility, the resident, his/her representative shall be documented in WellSky under as "Journal" entries. Time spent and/or travel spent must be documented as well. The ombudsman need to document accurately what action was taken in an attempt to resolve the complaint. The State Ombudsman or his/her designee must be able to determine that an ombudsman verified a complaint or concern through proper investigative techniques.

### **Resolution/Disposition of Complaints**

The goal to complete case investigations is 90 days. The Ombudsman should make every effort to resolve the complaint to the satisfaction of the resident, representative, and/or complainant. A plan to resolve the complaint should be mutually agreed upon by the resident and the LTCO. If a resident is unable to communicate his or her wishes, the LTCO may develop a plan with the resident's representative or the complainant if consistent with the rights and interests of the resident. Empowerment is very important. The Ombudsman should encourage the complainant to personally take the appropriate action, with LTCO assistance if needed. The Representatives of the Office must support and maximize resident participation in the process of resolving the complaint.

The LTCO shall attempt to resolve the dispute directly with the appropriate staff of the facility unless the LTCO and the resident (or representative or complainant) determine that another strategy would be more advantageous to the resident. The steps involved in resolving a complaint may vary with the nature and extent of the problem. All attempts should be made to resolve the complaint within the LTC facility. Be familiar with the facilities' resolution techniques and negotiation strategies. If the complaint appears to be valid, the ombudsman must decide on the urgency of the problem and the manner in which to approach resolution. If the approaches at the local level do not achieve the desired results, the State Ombudsman shall be contacted for technical assistance.

A good approach to use when speaking with the facility is to make a point, provide evidence that supports that point and then repeat that point. (e.g., point=facility staff are not respecting his visitation rights; evidence=staff says that he cannot have visitors after 8pm; repeat point=resident's rights must be respected, residents can have visitors whenever he wants and his roommate does not mind his visitors,--knows we can come to an understanding as his visits are important to him; I don't see how this issue warrants a discharge; I don't think his visitors intend to disrupt the operations; need assurance that you will not discharge him so ask the administrator to speak to the resident with you. Ask resident if they feel the matter was resolved to their satisfaction).

For every referral made by the LTCO to another agency, the LTCO shall include documentation of such referral into WellSky. Any follow-up with the agency shall also be notated in the case

record. The LTCO must be sure that the facility administration and the residents know that their role is to advocate for the health, safety, welfare, and rights of residents, and not to enforce regulations.

The resolution of a complaint shall be determined when any of the following occurs:

- It is determined that government policy, regulatory change or legislative action is required to resolve the complaint;
- Further activity by the LTCO is unlikely to produce satisfaction for the resident (so the case is partially resolved);
- The resident requests that LTCO activity end (complaint is withdrawn-or the resident dies);
- The case was referred to another agency for resolution;
- It was determined that no action was needed, the complaint was made in bad faith or was not appropriate for LTCO activity; or
- The complaint was resolved to the resident's satisfaction. If the resident cannot communicate his/her satisfaction, the ombudsman may seek resolution to the satisfaction of the resident's representative or complainant, if consistent with the rights and interests of the resident.

### **Follow-up**

After resolving a complaint, but prior to closing a case, the LTCO shall follow-up with a report back to the complainant and do a check-up visit with the resident within two weeks of the resolution to:

- Assure that the resident or representative/complainant continues to be satisfied with the outcome and
- Determine whether further actions on behalf of the resident should be taken by the LTCOP.

If the resident has left the facility, the LTCO should make reasonable attempts to follow-up with the resident in the resident's new location if possible prior to closing the case.

If a complaint has been referred to another investigative agency, with permission of the resident, the ombudsman will follow up with the entity at least once every thirty days to determine resolution. Follow-up with the regulatory agency, if involved, and other agencies involved in the complaint investigation.

Always follow-up with the resident or complainant, making sure that promised corrections have been made, that no reprisals occurred against the resident, and that the resident is satisfied with

the resolution.

If resolution agreements were made, the agreements may be modified or extended, if warranted, or the case may be reopened.

Follow-up with the LTC facility to detect long-term care deficiencies.

Follow-up with the complainant to thank him/her for contacting the ombudsman and to encourage him/her to call again if there is any further developments or concerns.

Follow-up is important in maintaining the integrity of the ombudsman program and to aid in monitoring.

A case is closed when all of the complaints related to that case have been resolved/closed.

### **Complaint Referral Agencies**

- **APS Referral**

The primary role of the LTCO is to seek resolution to the resident's satisfaction, not to verify the suspected abuse or gross neglect. Consent from the resident or the resident's legal representative is required before referring a report of abuse, neglect, or exploitation to APS. **The Vulnerable Adult Abuse Hotline number is 844-437-6282.** There is also another unit in the Attorney General's office that handles abuse in the private home. It is the Vulnerable Persons Unit which was created in 2001. §43-47-7 of the MS Code is the enabling statute.

The role of the Ombudsman, once he or she identifies potential abuse and has received consent of the resident for a referral, is to advocate on behalf of the resident to ensure that all necessary parties are actively involved and that the resident receives proper treatment, is protected from further harm or retaliation, and remedies are in place to prevent abuse from reoccurring. Where consent is initially refused, it is the role of the Ombudsman to educate the resident regarding the benefits and protections of reporting the situation in full.

The Ombudsman may consider increasing his or her direct monitoring of any facility or provider whose staff is been accused of committing abuses, suggesting additional training for staff on avoiding and reporting abuse and neglect, and/or approaching the president of any resident council to present a program and make known his or her availability to hear and address concerns. Ombudsman act as an advocate for the abuse survivor. They are not there in a regulatory or investigatory capacity.

Ombudsmen should contact APS staff when a resident requests a discharge to an unsafe environment or an involuntary discharge is the result of possible financial exploitation by a family member. For every referral made by the LTCO to another agency, the LTCO shall include documentation of such referral in WellSky. After a complaint has been referred, the LTCO shall

make every effort to maintain the security and confidentiality of information related to the complaint, so that the information is not shared beyond the agency or agencies receiving the referral.

The State Ombudsman shall have state-level coordination with other entities that are responsible for the health, safety, welfare and rights of residents of long-term care facilities through the adoption of memoranda of understanding such as Adult Protective Services, Medicaid Fraud Control Unit, and the Mississippi Department of Health Licensure and Certification Division.

- **Attorney General-Medicaid Fraud Control Unit Referral**

The Medicaid Fraud Control Unit is a law enforcement agency under the Mississippi Attorney General's Office. It handles suspected Nursing Home and Personal Care Home abuse. See Mississippi Code Section 43-47-37. Report abuse to: 1-800-852-8341.

- **Health Department Licensure and Certification Referral**

Problems arise that may necessitate the involvement of other sister agencies. Contact the Health Department when you need clarification of a regulatory position or interpretation of the nursing facility requirements or licensing standards for personal care homes. First, determine the best person with whom to consult by choosing the person most closely responsible for a Regulatory Services decision, often a surveyor or program manager. Attempt to collect facts and corroborate evidence before communicating. During a facility closure, the Health Department serves as the lead contact with nursing homes and personal care homes. The Office of the State Long-Term Facilities Ombudsman shall schedule, plan and attend meeting with the Health Department on a quarterly basis to explain LTCOP practices, approaches, strength, weaknesses and activities. If there is a regulatory violation, it should be referred to the Health Department. It should be encouraged that the resident or complainant make direct contact with the Health Department or the LCTO can assist in the referral. The triage number to the Health Department is: 1-800-227-7308.

The SLTCO (or his/her representative) should consider whether disclosure of information to any regulatory agency could have the following effects:

- Retaliation against residents or complainants
- Intimidating individuals from contacting the ombudsman program for assistance or from assisting in a complaint investigation
- Damaging working relationships between the LTCOP, facilities, and regulatory agencies
- Negatively affecting the mission of the LTCOP

- **Legal Services Referral**

For a resident who is age 60 or older and who requests or is in need of legal advice and/or representation, the LTCO shall refer the resident to the Area Agency on Aging in the service area where the resident resides. For a resident who is under the age of 60 and who is requesting or in need of free legal advice and/or representation, the LTCO shall assist the resident in finding appropriate legal services. LTCOs may contact the particular Area Agency on Aging, the State Ombudsman, and the Legal Services Developer (LAD) by way of the State Ombudsman for information regarding such services. Where the legal services program is unable to provide the requested legal service, the LTCO may provide the resident with a list of private attorneys, but shall not recommend one.

<b>IF the resident...</b>	<b>THEN the LTCO shall...</b>
Gives permission to make a report	Report the suspected abuse or gross neglect to the Medicaid Fraud Control Unit and the Health Dept.
Does not give permission and the complainant is a long-term care provider, staff person or other mandatory reporter	Inform the complainant of their duty to report it to the appropriate agency.
Requests LTCO assistance in moving to another facility	Take steps necessary to moving the resident to another facility, such as contacting the resident's representative, family members and making sure that the facility has complied with their responsibility of providing a safe and proper transfer/discharge.

**PART IV: Program Components for Ombudsman Practice**

**SECTION C: Documentation and Monthly Reporting**

**Documentation in WellSky**

Every complaint received and all steps taken to investigate, verify and resolve the complaint shall be initially documented in WellSky within 14 days of the case being opened. The case is considered open on the day in which the complaint was given to either the State Ombudsman or to the Representative of the Office.

Each ombudsman must document, at a minimum, the following:

- The basics of the complaint, including a description of issue, the date and the time.
- The initial contact with the complainant.
- The date, time and information gathered from the resident if the resident is not the complainant.
- Consent from the resident to act on their behalf.
- The steps taken to investigate the complaint.

- The ombudsman’s findings as a result of the investigation. There must be sufficient factual information included in the notes to support a finding that the complaint was either verified or unverified.
- The conversation with the resident to support the complaint disposition/explanation of the type of resolution code chosen.

Consent forms, notices of involuntary transfer or discharge, relevant e-mails, and any other written documents obtained by the ombudsman shall be scanned and attached electronically to the case record. The originals shall then be shredded. Be sure that the documents are properly uploaded prior to shredding.

Document every monthly non-complaint/routine visits to each long-term care facility in WellSky as a “Resident Visitation (non-complaint)” under Program Activities, including the facility name, number of contacts, time spent, and other NORS related fields.

Document every Resident visitation which is related to a complaint at each long-term care facility in WellSky as “Resident visitation (complaint related)” under Program Activities, including the facility name, number of contacts, time spent, travel time, and other NORS required fields.

When a facility has closed, the ombudsman should mark the facility inactive in WellSky. In addition, when a new facility opens, it should be added to WellSky making note of the proper licensing type for such facility.

Journal Entries should be made describing the steps that have been taken to try and resolve the complaint. It can be broken down to include time spent doing the following: (travel time, visitation, complaint investigation, to reach resolution, writing documentation) or you can type in something on your own under the Subject.

Due dates for data entry are as follows:

<b>October 1 to December 31</b>	All data for that quarter must be entered into WellSky by January 31.
<b>January 1 to March 31</b>	All data for that quarter must be entered into WellSky by April 30.
<b>April 1 to June 30</b>	All data for that quarter must be entered into WellSky by July 31.
<b>July 1 to September 30</b>	All data for that quarter must be entered into WellSky by October 31.

**Monthly Reports**



Ombudsmen are required to submit monthly reports to the State Ombudsman no later than the 20<sup>th</sup> day of each month for the preceding month's activity. Failure to adhere to this mandate may result in de-designation. The reports shall be in a form adopted and approved by the State Ombudsman. The State Ombudsman Program wants consistent and uniform reporting across the state. Once this is achieved manual monthly reporting may be eliminated.

**PART IV: Program Components for Ombudsman Practice**

**SECTION D: Training to Local Ombudsman and Volunteers**

Document every Training to a local Ombudsman or Volunteer in WellSky as "Training for ombudsman/volunteer" under Program Activities, including the training topic, number of participants, time spent, and other NORS required fields. Activity comments are highly recommended as well. If this includes the annual two required community education events, then it should be notated in the activity comments section. Note: The location can be Facility Not Applicable or Unknown. However, if a Representative of the Office is training another Representative of the Office on a field visit, then the name of the facility should be included in the activity.

The person conducting or arranging the training reports this as an Ombudsman activity. The session and hours are unduplicated. A session is a meeting, whether it lasts for two hours, all day or a week.

Hours of direct service of the volunteer ombudsman shall be tracked by the local ombudsman and reported quarterly to the State Ombudsman. Volunteer long-term care ombudsman shall work under the supervision of the local ombudsman for their geographical region. When serving as a volunteer ombudsman, he or she must act as an advocate and not in other professional roles such as a social worker, nurse or an accountant. They are considered Representatives of the Office and must do the same training and be free from all conflicts of interest as the district and local ombudsman. Volunteers must be at least 18 years of age and agree to a criminal background check. Volunteer ombudsman must maintain confidentiality in all Ombudsman activities and follow all laws, regulations, and policies relating to resident consent and disclosure of information. A volunteer must notify the local ombudsman of his/her decision to resign with at least 14 days' notice, and return all Ombudsman materials (including the training manual, designation certificate and the ombudsman name badge) and any notes pertaining to the facilities and its residents. The district ombudsman must notify all staff and residents of any facilities to which the volunteer ombudsman was assigned that the volunteer is no longer a representative of the ombudsman program. Volunteers who do not wish to respond to complaints nor do the required certification training may be considered as "friendly visitors". As such, "friendly visitors" must refer complaints to the LTCOP.

**PART IV: Program Components for Ombudsman Practice**

**SECTION E: In-Service Education for Facility Staff**

Document every Training given to facility staff at each long-term care facility in WellSky as "Training given to facility staff" under Program Activities, including the training topic, number of participants, time spent, travel time and other NORS required fields. If this includes the annual

two required community education events, then it should be notated in the activity comments section. When agreeing to train staff, ask management about specific issues to address and consider complaint history when planning the session.

A training session/in-service education is a planned event for a group of staff people, not to be confused with a one-to-one or small group on-site consultation occurring during the course of a facility visit. Each district ombudsman program shall provide a minimum of five facility in-services education events per federal fiscal year.

**PART IV: Program Components for Ombudsman Practice**  
**SECTION F: Consultations for Facility Staff**

Document every Consultation for Facility Staff at each long-term care facility in WellSky as “Consultations to facilities/providers” under Program Activities, including the facility name, number of contacts, time spent, consultation topic and other NORS required fields. Note: The location can be Facility Not Applicable or Unknown.

The consultation topics include:

- Adult Protections
- Advance Directives
- Aging
- Behaviors
- Communications
- Community Services
- Complaint Process
- Developmentally Disabled
- Elderly Abuse
- Encoding questions/Software issues
- Family
- Legal
- Long-term Care
- Medicaid
- Medicare
- Mental Health
- Ombudsman Services
- Other

Ombudsman representatives may provide consultation to facilities either in person, over the telephone, through e-mail, or by other means. If there are repeated consultations to the same facility, count each consultation separately. For NORS reporting purposes, do not count training sessions that were documented in in-service education for facility staff.

**PART IV: Program Components for Ombudsman Practice**  
**SECTION G: Information and Assistance/Consultations to Individuals**

Document every Information & Assistance/Consultation to Individuals at or about each long-term care facility in WellSky as “Information & consultation to individuals” under Program Activities, including the facility name, number of contacts, time spent, consultation topic and other NORS required fields.

The consultation topics include:

- Adult Protections
- Advance Directives
- Aging
- Behaviors
- Communications
- Community Services
- Complaint Process
- Developmentally Disabled
- Elderly Abuse
- Encoding questions/Software issues
- Family
- Legal
- Long-term Care
- Medicaid
- Medicare
- Mental Health
- Ombudsman Services
- Other

Enter each instance of providing information and consultation to *anyone other than facility staff*. Consultations to individuals may be provided either in person, over the telephone, through e-mail, or by other means. This can include providing information related to alternatives to institutionalized care, how to select a nursing home, discussing resident’s rights or understanding Medicaid. If there is an increase in a particular topic, the Ombudsman may consider having a community education seminar on that topic. However, for NORS reporting purposes, do not include here participants in community education sessions.

There should be frequent checks of email messages, office phone voicemail and cell phone messages by staff so as to provide timely access to Ombudsman services. It is preferred if the call is returned the same day to provide the information and no later than within two days.

**PART IV: Program Components for Ombudsman Practice**

**SECTION H: Community Education**

Every district shall provide, at a minimum, two community education events during the federal fiscal year (Oct 1<sup>st</sup>-Sept. 30<sup>th</sup>). The State Ombudsman must be given prior notice of said events.

Document every Community Education seminar given in your district in WellSky as “Community Education” under Program Activities, including the training topic, time spent, number of participants and other NORS required fields. It should be put under “Facility Not Applicable.”

The training topics include:

- Adult Protections
- Advance Directives
- Aging
- Behaviors
- Choice Options
- Communications
- Community Services
- Complaint Process
- Developmentally Disabled
- Elderly Abuse
- Family
- Legal
- Long-term Care
- Medicaid
- Medicare
- Mental Health
- Ombudsman Services
- Other
- Physicians
- Regulations
- Resident Rights
- Restraints
- Staffing
- Survey

Every presentation an Ombudsman gives and each meeting an Ombudsman attends with community groups, senior centers, churches, etc. can be counted. Examples would be informing other agencies and the public about the Ombudsman Program or explaining issues, needs, or

rights affecting residents of long-term care facilities.

**PART IV: Program Components for Ombudsman Practice**

**SECTION I: Facility Surveys**

All ombudsman are required to attend, if notified by the Health Department, facility surveys. If short notice is given by the Health Department and the ombudsman cannot attend the survey in time, the ombudsman should ask the Health Department if a phone call would be sufficient or communicate their earliest possible arrival at the survey. Notice can also be given to the State Ombudsman to see if he/she would be able to participate at the survey.

Document every participation at a Facility Surveys at each long-term care facility in WellSky as "Participation in facility surveys" under Program Activities, including the facility name, number of contacts, time spent, travel time and other NORS required fields.

If the Ombudsman participates in more than one part of the survey, the activity is still counted as one instance of survey participation. It should be noted in the Activity Comment section whether the instance was the pre-survey briefing of the surveyors or participation in the exit interviews. Even a call regarding a survey can be counted as one activity.

Any person who reveals the information on survey dates or times to a long-term care facility prior to that survey is subject to adjudication and up to \$2,000.00 civil money penalty under § 1819(g)(2)(A)(i) and §919(g)(2)(A)(i), and §1128A of the Social Security Act. Any Ombudsman or representative of the Office of the State Long-Term Care Facilities Ombudsman that reveals any information deemed to be confidential may be subject to loss of Ombudsman designation and other disciplinary action.

**PART IV: Program Components for Ombudsman Practice**

**SECTION J: Resident Councils**

All ombudsman are required to attend three resident councils, if invited, during the federal fiscal year (Oct 1<sup>st</sup>-Sept. 30<sup>th</sup>). If there is a set schedule with the facilities and the resident council meetings, it should be provided to the State Ombudsman so as to give opportunity for the Office to attend. Notification should also be given to the State Ombudsman if there is no existence of any resident councils at one or more facilities. If there are no active resident councils in the participating districts, they should be strongly encouraged by the Ombudsman. The Ombudsman may offer assistance and encouragement to the residents and the facility in developing an active resident council. The Ombudsman shall make his or her best effort to

attend any resident council meetings to which the LTCO has been invited.

Document every participation at a resident council at each long-term care facility in WellSky as “Work with resident councils” under Program Activities, including the facility name, number of contacts, time spent, travel time and other NORS required fields. Any notable event should be included in the activity comment section. If complaints are made, then a case should be opened as well. If more than one Ombudsman attends a meeting, it should only be counted as one activity for NORS reporting.

**PART IV: Program Components for Ombudsman Practice**

**SECTION K: Family Councils**

All ombudsman are required to attend three family councils, if invited, during the federal fiscal year (Oct 1<sup>st</sup>-Sept. 30<sup>th</sup>). If there is a set schedule with the facilities and the family council meetings, it should be provided to the State Ombudsman so as to give opportunity for the Office to attend. Notification should also be given to the State Ombudsman if there is no existence of any family councils at one or more facilities. If there are no active family councils in the participating districts, they should be strongly encouraged by the Ombudsman. The LTCO should contact the leadership person of the active family council and offer to attend their meetings and offer any appropriate resources. The LTCO should also provide topics it is prepared to present if requested.

Document every participation at a family council at each long-term care facility in WellSky as “Work with family council” under Program Activities, including the facility name, number of contacts, time spent, travel time and other NORS required fields. Any notable event should be included in the activity comment section. If complaints are made, then a case should be opened as well. If more than one Ombudsman attends a meeting, it should only be counted as one activity for NORS reporting.

**PART IV: Program Components for Ombudsman Practice**

**SECTION L: Media and Monitoring Law & Regulations**

**Media**

Representatives of the Office should keep the State Long-Term Care Facilities Ombudsman informed about local media events. Document every interview and/or press release at each long-term care facility in WellSky as “Work with Media (Press Release)” under Program Activities, including the facility name, consultation topic, time spent, travel time and other NORS required fields. Activity Comments are also strongly encouraged as to provide more detail.

The consultation topics include:

- Adult Protections
- Advance Directives
- Aging
- Behaviors
- Communications
- Community Services
- Complaint Process
- Developmentally Disabled
- Elderly Abuse
- Family
- Legal
- Long-term Care
- Medicaid
- Medicare
- Mental Health
- Ombudsman Services

**Monitoring/work on laws and regulations**

Document in WellSky as “Monitoring/work on laws, regulations” under Program Activities for contact with the Health Department regarding making a complaint/referral and reviewing survey results. One must include the facility name, number of contacts (if applicable), time spent, and other NORS required fields. Activity Comments are highly recommended. A single press release given to multiple outlets counts as one press release for NORS reporting.

This section relates to time spent working with other agencies and individuals, both inside and outside of government, on laws, regulations, policies and actions to improve the health, welfare, safety and rights of long-term care residents. The Ombudsman program should assure that the interests of residents are represented to governmental agencies and policy-makers. Examples of issues advocacy activities include:

- Educating advocacy groups, governmental agencies, and policy-makers regarding the impact of laws, policies, or practices on long-term care residents;
- Seeking modifications of laws, regulations, and other government policies and actions, pertaining to the rights and well-being of residents;
- Facilitating the ability of the public to comment on such laws, regulations, policies and actions;
- Participating in a task force to study a long-term care issue and recommend solutions;
- Participating in a public hearing relating to a long-term care issue; and
- Providing information on a proposed law, regulation, or other public policy change related to long-term care.

**PART IV: Program Components for Ombudsman Practice**  
**SECTION M: Facility Closures and Bankruptcy**

**Facility Closures**

The Ombudsman Program has the responsibility to ensure that all residents impacted by a facility closure are aware of their rights and the ombudsman program services. The ombudsman's role is to be a resident advocate for their rights and resident-directed planning. There must be interagency cooperation to achieve a smooth transition for the residents. The LTCOP will provide guidance to resident and/or their representatives regarding relocation activities and resident rights, ensuring medication and health records follow the resident to their new location, access to personal needs account funds and protection of personal property. Unless a formal complaint is made, the transition of the relocated residents can be followed up during routine visits by the ombudsman.

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

- Support residents during the relocation process;
- Advise residents of their rights during the closure/transfer and ensure their rights are being protected;
- Report any potential violations of regulatory requirements to the licensing authority;
- Assist residents and their families about transfer options and educate them on how to choose a facility to best meet the needs of the resident.
- Maintain a log of the location of residents' transfer.

**Bankruptcy**

The Bankruptcy Abuse and Consumer Protection Act (BACPA) of 2005 provides for the appointment of a Patient Care Ombudsman (PCO) for bankruptcy cases when companies or individuals involved operate long-term care facilities. If the U.S. Trustee requests that the SLTCO act as PCO, the SLTCO will contact the appropriate local LTCOP to see whether that program would be willing to participate. If so, the SLTCO will accept the appointment. When the U.S. Trustee appoints the SLTCO as the PCO, the SLTCO requires monthly visit to facilities that are in bankruptcy. The local LTCOP reports to the SLTCO on the conditions at each facility named in the bankruptcy filing at least every 60 days until the court dismisses the action.

The SLTCO reviews and compiles the report for filing with the bankruptcy court. The Bankruptcy Report should include the following information:

- Facility name and city
- Current Occupancy
  - On first report, establish the licensed capacity and current occupancy.
  - On first report, note the history of occupancy for the building.



- In subsequent reports, note any change from the previous report.
- Note any significant change in resident mix, such as the admission of different client groups, younger residents, etc.
- Staffing Levels
  - List total number of RNs, LVNs, CNAs, caregivers and social workers. Notes any increases or decreases. The Administrator usually offers this information, but it will require monitoring and confirming through observation and direct-care staff reports.
  - Identify shortages, by shift if possible. If a direct patient care vacancy exists, note how long the position has been vacant and if the facility is actively recruiting to fill it.
  - Note other vacancies in areas such as food service, housekeeping, administration, or maintenance if the vacancy affects care.
- Supplies and Services
  - Identify any concerns involving vendors, utilities, or external support factors that may affect resident care.
  - Include any problems reported involving payroll or indications of cash flow problems.
- Regulatory Issues
  - List any actions taken by Licensing and Certification since the last report.
- Ombudsman Issues:
  - List any complaints or concerns addressed by the Ombudsman Program during this period.

**PART IV: Program Components for Ombudsman Practice**

**SECTION N: Volunteers**

The Long-Term Care Ombudsman Program must utilize volunteers in order to maximize its resources to benefit residents. The State Ombudsman shall provide resources and technical support to assist each district LTCOP to develop a volunteer program. The SLTCO shall provide the curriculum and supervision of training provided by the district LTCO to volunteers. The SLTCO shall administer a written examination for volunteers who seek to be designated. A volunteer who is not designated shall be known as a “Friendly Visitor” and shall not be allowed to process complaints. Instead they must refer a complaint to a designated LTCO staff person for investigation. They may under the direct supervision of a LTCO staff person perform specific limited functions to assist the LTCO process a complaint. Failure to follow the direction of the

LTCO staff person may be grounds for dismissal from the volunteer duties by the State Ombudsman. All volunteers must adhere to the laws and policies regarding confidentiality of information provided to the LTCOP.

**PART IV: Program Components for Ombudsman Practice**

**SECTION O: Pre-Survey Information**

The SLTCO shall exercise every prudent means of protecting the confidentiality of the survey schedule and shall not disclose the scheduled date of any survey to anyone outside of the LTCOP. All LTCO staff and volunteers shall exercise caution, especially during telephone calls, facility visits and conversations which might lead to sharing schedule-related information. Information about survey schedules shall:

- Not be taken into facilities
- Be filed and stored out of sight, not exposed on desktops;
- Be delivered to authorized persons in person or in a protected manner, such as secure email, and
- Not be stored in labeled folders on desktops, work tables, bookcases or unsecured files.

LTCOs may share additional appropriate information with the surveyors as requested.

**PART IV: Program Components for Ombudsman Practice**

**SECTION P: Advisory Council**

The Advisory Council membership should be composed of persons concerned about the quality of care in LTC facilities and in protecting the rights of LTC residents. Advisory Council members should include representatives of service agencies within the aging network, community organizations, and consumers.

**PART IV: Program Components for Ombudsman Practice**

**SECTION Q: Fiscal Management**

Funds for Title III programs are distributed based on a state's proportionate share of either the age 60 or older population or, in the case of caregiver support programs, the age 70 or older population. Each state then has its own formula for allocating OAA funding to area agencies on aging which enables the delivery of services to local areas. Title VII funds are allocated based on the state's proportion of residents age 60 and older. The State Ombudsman determines the use of the fiscal resources appropriated or otherwise available for the operation of the Office.