



**Office of
Ombudsman for
Long-Term Care**

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Policy and Procedure Manual

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Part 1: Definitions

- a. **Acute care facility:** a facility licensed as a hospital under Minn. Stat. [144.50](#) to [144.56](#).
- b. **Annual Report:** a report independently approved by the State Ombudsman that contains the following:
 - i. Description of the activities carried out by the Office in the year for which the report is prepared;
 - ii. Analysis of Ombudsman program data;
 - iii. Evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
 - iv. Policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;
 - v. Analysis of the success of the Ombudsman program, including success in providing services to residents of, assisted living, board and care facilities and other similar adult care facilities; and
 - vi. Identification of barriers that prevent the optimal operation of the Ombudsman program.
- c. **Client:** an individual who requests, or on whose behalf a request is made for, ombudsman services and is (a) a resident of a long-term care facility or (b) a Medicare beneficiary who requests assistance relating to access, discharge, or denial of inpatient or outpatient services, or (c) an individual reserving, receiving, or requesting a home care service.
- d. **Complaint:** A problem of commission or omission that that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents by the following entities: long-term care facility, acute care facility, home care service provider, or government agency as defined in Minn. Stat. 256.974.
- e. **Home care service:** health, social, or supportive services provided to an individual for a fee in the individual's residence and in the community to promote, maintain, or restore health, or maximize the individual's level of independence, while minimizing the effects of disability and illness.
- f. **Immediate Family:** a member of the household or a relative with whom there is a close personal or significant financial relationship.
- g. **Long-term care facility:** a nursing home licensed under Minn. Stat. sections 144A.02 to 144A.10; a boarding care home licensed under sections 144.50 to 144.56; or a licensed or registered residential setting that provides or arranges for the provision of home care services.
- h. **Office of Ombudsman for Long-Term Care (OOLTC):** the organizational unit in Minnesota, established within the Minnesota Board on Aging, which is headed by a State Long-Term Care Ombudsman.
- i. **Person-centered:** the philosophy that provides the foundation for the delivery of ombudsman services. Person-centered ombudsman services means listening to and acting upon what the client identifies as important to him/her in creating or maintaining a personally-valued life while also discussing/ planning for what is important for the person to maintain health and safety. Person centered services focus on the person's whole life context by maximizing client participation in complaint handling, respecting client confidentiality, and promoting empowerment of the person.
- j. **Representatives of the Office of the State Long-Term Care Ombudsman:** the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in § 45 C.F.R. 1324.19(a) and the duties set forth in [Minn. Stat. 256.9742](#).
- k. **Resident Representative:** means any of the following:
 - a. An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

- b. A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
 - c. Legal representative; or
 - d. The court-appointed guardian or conservator of a resident.
- l. **State Long-Term Care Ombudsman, or Ombudsman:** the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§ 45 C.F.R. 1324.13 and 1324.19 and [Minn. Stat. 256.9742](#)
- m. **Willful Interference:** actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in § 1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in § 1324.19.

Part 2: Introduction to the Long-Term Care Ombudsman Program

a. Authorization

The Office of Ombudsman for Long-Term Care is a program of the Minnesota Board on Aging (MBA) in accordance with Minnesota Statutes § 256.974-256.9744. The requirements of the Long-Term Care Ombudsman Program as enacted in 42 U.S.C. §3058 et. seq., and as enabled by 45 CFR Parts 1321 and 1324, are hereby incorporated by reference. OOLTC provides individual and systemic advocacy statewide, utilizing regional ombudsman throughout Greater Minnesota as well as Regional Ombudsmen and Central Office Staff within the metro area.

b. Mission Statement

OOLTC works to enhance the quality of life and quality of services for long-term care consumers through advocacy, education, and empowerment.

c. Vision Statement

OOLTC envisions a time when *all* consumers receive high quality, affordable health and long-term care services to meet individual needs and preferences. Our vision ensures that consumers of long-term care will have:

- choices about where to live and where to receive care
- flexibility in choosing caregivers
- fair service costs to ensure choices
- rights, standards, and consumer protections
- individualized care and services tailored to meet individual needs, rather than service-provider needs

d. Ombudsman Code of Ethics

A Representative of the Office of Ombudsman for Long-Term Care shall:

- Provide services with respect for human dignity and the individuality of the client unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle
- Respect and promotes the client's right to self-determination.
- Make every reasonable effort to ascertain and act in accordance with the client's wishes.
- Act to protect vulnerable individuals from abuse and neglect
- Safeguard the client's right to privacy by protecting confidential information.
- Remain knowledgeable in areas relevant to the long term care system, especially regulatory and legislative information, and long term care service options.

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- Provide professional advocacy services unrestricted by his or her personal belief or opinion.
- Participate in efforts to promote a quality long term care system.
- Participate in efforts to maintain and promote the integrity of the long-term care ombudsman program
- Support a strict conflict of interest standard which prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long-term care services which are within the scope of involvement
- Conduct him or herself in a manner which will strengthen the statewide and national ombudsman network.

Part 3: Administration of the Long-Term Care Ombudsman Program

a. Governance and Role of the MBA

OOLTC is a program of Board on Aging as Minnesota's State Unit on Aging. OOLTC is a distinct entity, separately identifiable from other MBA programs and from the Aging and Adult Services Division within the Department of Human Services. All representatives of the Office report to the State Long-Term Care Ombudsman. The State Long-Term Care Ombudsman heads the office and is responsible personally or through delegates, to carry out the duties set forth in applicable federal and state law.

b. Organizational Conflicts of Interest

The Older Americans Act defines organizational conflict of interest and provides provisions in regards to the organizational placement of the Office of the Long-Term Care Ombudsman and the individuals who carry out the duties of the program. The State Agency (MN Board on Aging) and the State Long-Term Care Ombudsman are responsible for identifying actual and potential organizational conflict of interests. When a conflict of interest is identified, policy and procedure must be in place to identify, remove, or remedy the conflict.

A conflict of interest exists in the Office of The Long Term Care Ombudsman (OOLTC) when other interests intrude upon, interfere with, or threaten to negate the ability of the Office of Ombudsman for Long-Term Care to advocate without compromise on behalf of long-term care consumers served by the Ombudsman Program. Types of conflict of interest include:

- Conflicts of loyalty - incentives, related to financial, employment or relationship considerations, that shape one's judgment or behavior in ways that are contrary to the interest of residents;
- Conflicts of commitment - goals or obligations that direct one's time and/or attention away from the interest of residents; and
- Conflicts of control - limitations or restrictions that effectively foreclose one's ability to take actions to advocate for the interests of residents.

Organizational conflicts are conflicts arising from organizational location and include, but are not limited to, OOLTC placement in an agency which:

- Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
- Provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
- Provide programs with responsibilities conflicting with OOLTC responsibilities. Examples of such responsibilities include providing protective services and pre-admission screening for long-term care facility placements;
- Has governing board members with ownership, investment or employment interest in long-term care facilities;
- Is responsible for eligibility determinations regarding Medicaid or other public or Veteran benefits, and
- Has direct involvement in the licensing or certification of long-term care facilities or long term care services.
- Provides long term care coordination or case management for residents of long-term care facilities or long-term care services and supports.
- Makes decisions regarding admission or discharge of individuals to or from long-term care facilities.

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- Provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

Policy: Avoiding Organizational Conflict of Interest

The Minnesota Board on Aging (MBA) is the State Agency as defined in the OAA. The Minnesota Board on Aging has approved Policies and Procedures (see Minnesota Board on Aging Policies for Advocacy and Protection of Vulnerable Adults) that address organizational conflict of interest.

Minnesota Statute 256.974 establishes; duties and responsibilities of the State Long-Term Care Ombudsman, authorizes representatives of the Office, and assures effectiveness of the OOLTC.

The MN OOLTC is located within an umbrella agency; MN Department of Human Services. The Office is identified separately on an organizational chart. Proper firewalls are in place to avoid any outside access to any case investigation documentation of the Ombudsman Program. No information is shared without proper consent of the subject and/or court order.

If the dual role of the MBA executive director as the director of the DHS Aging and Adult Services Division creates an organizational conflict of interest related to a proposed action of the State Ombudsman, the executive director shall not limit or restrict the Ombudsman's performance of official duties. If the executive director identifies such a conflict, the state ombudsman shall consult with the Chair of the Minnesota Board on Aging for guidance.

The Ombudsman has sufficient authority to recommend changes in laws, regulations, policies, and actions as the Office determines to be appropriate as a specific function and responsibility of the Ombudsman. (OAA Section 712(a)(3)(G); 45 CFR 1324.13(a)(7)(ii).

The Ombudsman has sufficient authority related to systems advocacy, including leadership in statewide system advocacy efforts of the Office. This authority includes coordination of systems advocacy efforts carried out by representatives of the Office.

- c. Duties of the State Long-Term Care Ombudsman:** The State Long-Term Care Ombudsman shall personally, or through representatives of the Office:
- i. gather information and evaluate any act, practice, policy, procedure, or administrative action of a long-term care facility, acute care facility, home care service provider, or government agency that may adversely affect the health, safety, welfare, or rights of any client;
 - ii. mediate or advocate on behalf of clients by identifying, investigating, and resolving complaints that—
 1. Are made by, or on behalf of, residents; and
 2. Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of—
 3. Providers, or representatives of providers, of long-term care;
 4. Public agencies;
 5. Health and social service agencies
 - iii. monitor the development and implementation of federal, state, or local laws, rules, regulations, and policies affecting the rights and benefits of clients;
 - iv. comment on and recommend to public and private agencies regarding laws, rules, regulations, and policies affecting clients, including publication of an annual report;
 - v. inform public agencies about the problems of clients;
 - vi. provide for training of volunteers and promote the development of citizen participation in the work of the office;

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- vii. conduct public forums to obtain information about and publicize issues affecting clients;
- viii. provide public education regarding the health, safety, welfare, and rights of clients; and
- ix. collect and analyze data relating to complaints, conditions, and services;
- x. Inform residents about means of obtaining services provided by the Ombudsman program;
- xi. Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints.

d. Fiscal Management

Policy: The State Long-Term Care Ombudsman (SLTCO) will develop the annual program budget in collaboration with the MBA Executive Director and the MBA budget manager and complete any required tasks of the MBA budget manager for submission of the federal spending plan. The SLTCO manages the program's operating budget in consultation with the MBA budget manager. The SLTCO will follow all state regulations relating to travel and procurement.

Procedures:

- The SLTCO will start budget preparation in time for submission of the federal spending plan to the MBA Executive Committee and the full Board in September of each year.
- The MBA budget manager will provide to the SLTCO historic spending data and project anticipated services and personnel costs (including increases in space rental, step raises, and benefit cost increases) for the coming year. Generally this is done by July.
- The SLTCO provides the MBA Executive Director and MBA budget manager with anticipated costs for travel, supplies and contractual services. The SLTCO and MBA budget manager collaboratively prepare the proposed budget.
- If program revenue is not sufficient to cover anticipated expenditures, the SLTCO, MBA Executive Director and the MBA budget manager discuss options such as a request for a funding increase or discuss possible budget decreases without affecting the program requirements.
- The SLTCO can access budget reports from the SWIFT accounting system and may also request year-to-date expenditures statements from the MBA budget manager or designee as needed in order to track program expenditures.
- The SLTCO in collaboration with the MBA Executive Director, must approve the annual Ombudsman program budget prior to submitting the federal spending plan to the MBA.

Part 4: Designation and De-Designation of Ombudsman

a. Designation Authority: Policy

The State Long-Term Care Ombudsman shall have the sole authority to designate and de-designate Representatives of the Office. The State Ombudsman shall ensure that all applicable criteria for initial and ongoing designation are met prior to approving initial designation and re-designation.

b. Criteria for Designation of Representatives of the Office: An individual must meet the following qualifications to be designated to provide ombudsman services:

- i. A bachelor's degree or equivalent education in health, human services, or related field;
- ii. Two years' work experience in the health or human services or advocacy;
- iii. Knowledge and skills in at least two of the following areas: negotiation or mediation; gerontology or aging programs; federal and state regulating or financing of long-term care, acute care, or home care; writing and verbal communications skills; or ability to develop relationships with consumers;
- iv. Must be free of any disqualifying conflict of interest as defined in Part 5;
- v. Must inform the State Ombudsman of any declared conflict of interest and abide by the remedy approved by the State Ombudsman;

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- vi. Must pass a criminal background check;
- vii. Must complete orientation; and
- viii. Must complete required annual training hours.

c. Criminal Background Check

No one shall be designated as an Ombudsman if the results of the criminal background check would constitute a basis for disqualification for the purposes of human services licensing under Minnesota Statutes, section 245C.15.

d. Orientation

Prior to designation, an Ombudsman must complete a twenty (20) hour orientation conducted by, or under the supervision of, the Ombudsman, consisting of training in investigation, dispute resolution, health care regulation, confidentiality, resident and patients' rights, health care reimbursement, and the documentation of cases and complaints (NORS training). No investigative casework may take place until this training is completed.

e. Annual Training

To remain a designated representative of the Office, the representative must complete a minimum of sixty (60) hours of training per year provided by, under the direction of, or approved by the Ombudsman. NORS training is provided on a continuing basis to increase consistency and uniformity in the documentation of cases and complaints.

f. Procedures: Designation of Representatives of the Office

An individual hired by OOLTC to perform the duties of a Regional Ombudsman shall complete the criteria outlined in section 4(b)(i-viii)above (excepting annual training). When these criteria have been completed, the person completes, signs, and returns the following forms to the Ombudsman supervisor:

- a. Conflict of Interest Declaration (appendix A)
- b. Orientation Verification form (appendix D)
- c. Initial Designation Checklist (appendix B)

g. Re-designation: Policy

Current representatives of the office that are designated as Regional Ombudsman must maintain 60 hours of continuing education each year, remain free from disqualifying conflicts of interests, and immediately declare any conflict of interest that occurs, as well abide by the declared conflict of interest remedial plan (see Conflict of Interest Declaration Form, attached at appendix A).

h. Re-designation: Procedures

On or before January 1, the Regional Ombudsman shall complete and return the following forms to the Ombudsman Supervisor:

1. Continuing Education Verification form (appendix E)
2. Re-designation Checklist (appendix C)
3. Updated Conflict of Interest Declaration (appendix A)

The Ombudsman supervisor verifies that all forms are complete and accurate, then provides them to the State Ombudsman for approval.

i. Criteria for De-designation

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The Ombudsman may withdraw a representative's designation if the representative fails to perform duties identified in the applicable position description, willfully disregards the policies and procedures for this manual, or fails to meet the designation requirements outlined in section 4(b)(i-viii).

De-designation also occurs when the representative voluntarily terminates employment with OOLTC, or when disciplinary action results in the representative being unable to continue to perform the Ombudsman services or fulfill the requirements of the position description. The State Long-Term Care Ombudsman individually or through delegates (e.g. the Ombudsman supervisor) works proactively and collaboratively with the designated representative to avoid and prevent involuntary de-designation. These actions/procedures include: annual review of conflicts of interests, provision of quarterly in-person training, regular staff meetings, development of individual training/professional development plans, implementation/updating of this manual, as well regular meetings (i.e. "check-ins") with individual designees to discuss case work and related topics.

OOLTC follows all applicable State of Minnesota Human Resources procedures, including abiding by the appropriate union contract, when an employee's performance demonstrates a need for progressive discipline. Regardless of the disciplinary status of the representative of the office, the State Long-Term Care Ombudsman has the sole authority to determine if removal of designation from an individual is warranted.

j. Process for De-designation

The State Long-Term Care Ombudsman shall inform the representative in writing of the decision to de-designate in writing. The supervisor for the de-designated representative collects the Ombudsman identification badge and client documents. The supervisor sends a letter to the facilities previously covered by the de-designated representative to inform facility administration that a new Ombudsman is assigned to those facilities. The supervisor shall arrange for a temporary or permanent coverage plan for the affected facilities to ensure that clients have regular access to Ombudsman services at all times. If the representative disputes The State Long-Term Care Ombudsman's decision to de-designate, the representative may request a reconsideration of such action by the Board on Aging, but any further decision of the State Ombudsman about designation shall be final.

Part 5: Avoiding Individual Conflicts of Interest

a) Policy: Representatives of the Office shall be free from disqualifying conflict of interests and shall immediately declare and remedy disqualifying conflict of interests. Avoiding or remedying conflicts of interest is essential to the operation of the Ombudsman program and ensures that no other interests intrude upon, interfere with, or threaten to negate the ability of the OOLTC to advocate without compromise on behalf of long-term care facility residents. The presence of an un-remedied or disqualifying conflict of may impact the effectiveness and credibility of the work of the Office. Examples of types of conflicts of interest include but are not limited to:

- (1) Conflicts of loyalty: incentives, often related to financial or employment considerations, which shape one's judgment or behavior in ways that are contrary to the interest of residents.
- (2) Conflicts of commitment: goals or obligations that direct one's time and/or attention away from the interest of residents.
- (3) Conflicts of control: limitations or restrictions that effectively foreclose one's ability to take actions to advocate for the interest of residents.

b) Disqualifying Conflicts Versus Declared Conflicts

Some conflicts of interest cannot be remedied and are deemed disqualifying. A disqualifying conflict of interest prohibits the person from being employed as a representative of the Office. Disqualifying conflicts of interest exists when the person seeking employment with OOLTC:

1. Has direct involvement in the licensing, surveying, or certification of a long-term care facility;

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2. Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
3. Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or
4. Is employed by, or participating in the management of, a long-term care facility.

Other examples of conduct that constitute disqualifying conflicts of interest include:

- Accepting any gifts or gratuities from a long-term care facility in violation of the [Code of Ethics for Executive Branch employees](#) (appendix G).
- Participating in activities which negatively impact the ability of the representative of the Office to serve residents or are likely to create the perception that the representative of the Office's primary interest is other than as a resident advocate.

c) Declared Conflicts of Interest

Declared conflicts of interests are conflicts that exist but can be remedied by a plan that separates the representative from the facility, provider, or individual with whom a conflict exists, such as not assigning the ombudsman to a facility in which a member of his/her immediate family resides. The State Ombudsman has the sole authority to approve or disapprove a proposed remedy for an individual conflict of interests. Examples of declared conflicts of interests include but are not limited to:

- Employment of an individual or member of his/her immediate family within the previous three years by a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;
- Participation in the management of a long-term care facility by a member of his/her immediate family;
- Ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by a member of the representative's immediate family;
- Involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by a member of the representative's immediate family;
- Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by a member of the representative's immediate family;
- Serving residents of a facility in which an immediate family member resides.
- Serve as a conservator, guardian, health care power of attorney or durable (financial) power of attorney for a person receiving services from a service provider.

d) Procedures to avoid Conflicts of Interest

OOLTC avoids conflicts of interest by screening, identifying, and remedying (when appropriate) conflicts of interest using the procedures outlined below.

e) New Hires

Prior to the first interview with a candidate for employment with OOLTC, the hiring screens the applicant for disqualifying conflicts of interest and obtains consent for conducting a background study by sending an email to the applicant modeled after The Applicant Initial Conflict Screen template email (attached as appendix H). If the applicant discloses a disqualifying conflict or refuses to consent to a background study, the applicant will no longer be considered for employment.

Following the initial interview, the hiring manager provides the applicant the Conflict of Interest Declaration and written consent for a background study for completion. The hiring manager encourages the applicant to discuss any potential

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disqualifying conflicts with him or her and keeps the SLTCO informed if any conflicts of interests are identified. If a declared conflict of interest is identified, the SLTCO must approve the remedial plan prior to an offer of employment.

f) Disclosure of Conflicts of Interest – Current Employees

If a conflict arises after a representative of the Office has already been designated, they shall immediately inform the SLTCO and the supervisor, as well as complete a new Conflict of Interest Declaration Form, including a recommended plan to remedy the conflict.

Each representative of the Office will complete a Conflict of Interest form annually as a part of the annual Re-designation Checklist (appendix C) to ensure that no new conflicts of interest exist and that remedies for existing conflicts remain adequate.

g) Remediating Declared Conflicts of Interest

Where individual conflicts have been identified, a written remedial plan shall be developed. The remedial plan must identify the nature, extent, and potential impact of the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the OOLTC. An example of such a remedial plan is prohibiting the representative of the Office with a conflict of interest from serving the residents of the facility with which he/she has a conflict and arranging for another Ombudsman to serve those residents.

The State Ombudsman has the sole authority to approve or deny a remedial plan to address a Declared Conflict of Interest. The approved remedy will remain in effect for as long as the remedy is effective and the conflict of interest exists

h) Failure to Identify or Remedy Conflicts of Interest

Failure to identify and report a disqualifying conflict of interests results in the de-designation of the representative by the SLTCO. Failure to immediately identify, report, or remedy a declared conflict of interest may also result in de-designation of the Representative of the office by the State Ombudsman. See also Designation section of this manual.

Part 6: Grievances against Representatives of the Office

a) Grievance Policy

Pursuant to 45 C.F.R. § 1324.11(7), The Ombudsman Program shall establish a grievance process to accept and hear complaints (grievance) regarding the actions of the Ombudsman and representatives of the Office. The process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a representative of the Office based on a grievance about the conduct of a representative of the office.

A grievance is a complaint, expressed in written or verbally, of dissatisfaction of service received from the MN Office of Ombudsman for Long-Term Care. Any formal expression of dissatisfaction about the Ombudsman Program may be generated for a variety of reasons including but not limited to:

- A client (or client's representative, family member, acquaintance) who is dissatisfied with quality of service received from the Ombudsman Program.
- A facility staff person who feels the services provided by the Ombudsman Program have negative impact or delivered in an unfair manner.
- Another department, program, agency, or organization that is dissatisfied with the activities of the Ombudsman Program.

b) Confidentiality and the Grievance Process

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While responding to a complaint against the Ombudsman Program, it is important to abide by all confidentiality requirements as identified in Part 10(c-k) of this manual. Representatives of the office must not divulge the identity of a resident, complaint and/or witness without prior written consent from the resident, complainant, or witness. All files and records of the Ombudsman Program relating to a case investigation are confidential and may not be disclosed without the resident's consent or a court order. Records of complaint investigations, findings, and responses shall be maintained in accordance with applicable Federal and State Law related to confidentiality, privacy, and record retention.

c) Grievances – Procedures

When the office is contacted by someone who has a grievance or concern about the conduct of the representative of the office, such grievance shall be reported to the Deputy Ombudsman or the direct supervisor of the representative. The Deputy Ombudsman shall promptly investigate the complaint within three to five business days. The written grievance form (appendix L) shall be available to anyone requesting to file a written grievance, but the grievant may decide to file the grievance verbally in the alternative.

After receiving the grievance, the Deputy Ombudsman shall contact the representative of the Office that is the subject of the grievance or complaint to understand the factual circumstances that generated the concern. The Deputy Ombudsman shall re-contact the grievant to learn and understand the complainant's perspective on the factual circumstances that generated the grievance or complaint.

If necessary to resolve the grievance or complaint, the Deputy may also interview other parties with knowledge of the grievance or complaint and/or gather written documents including but not limited to emails and letters.

For grievances or complaints with potential to reveal the identity of the subject of the investigation conducted by representatives of the Office, the Deputy Ombudsman shall follow policies and procedures related to client confidentiality and disclosure as articulated in the Disclosure/Complaint Handling section of this manual and the following procedures:

- If the resident is capable of giving informed consent and provides written consent, the result of the investigation may be disclosed to the individual filing the grievance or complaint with the resident's consent.
- If the resident is unable to provide written consent, the person investigating the matter shall contemporaneously document the consent given.
- If the resident is not capable of giving informed consent, the resident's legal representative, pursuant to a durable power of attorney or the resident's legally appointed guardian, may consent to disclosure of the investigation results.
- If such consent is not provided, the person conducting the investigation may not report back to the individual filing the grievance or complaint except to confirm an investigation was conducted.

When evaluating the appropriate remedies for the grievance, the Deputy Ombudsman shall consider:

- Whether the Representative followed policies and procedures of this manual and Office generally.
- Whether the Representative's conduct is consistent with the Ombudsman code of ethics.
- Whether the Representative has complied with applicable employment policies of the state of Minnesota, including but not limited to: code of ethics for state employees, use of state-issued equipment policy, gift-giving policy.
- Whether the complainant is acting in good faith.
- Whether the complainant has reason to retaliate against the Representative due to the Representative's advocacy efforts.

d) Grievance Resolution - Role of Deputy Ombudsman

Following investigation (as outlined above) into the grievance, The Deputy shall discuss the proposed remedy for the grievance with the Representative of the office to seek feedback from the Representative. If the Representative has

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objections to the Deputy's proposed resolution, the Representative may appeal to the State Ombudsman and discuss the objection.

If the Deputy Ombudsman is able to resolve the matter to the satisfaction of the complainant the Deputy Ombudsman will document in writing the outcome and any relevant actions taken to resolve the issue, subject to protecting client confidentiality and protecting the Representative's rights under existing State Human Resources policy and the appropriate collective bargaining agreements. If the Deputy Ombudsman is unable to resolve the matter to the satisfaction of the complainant, the Deputy Ombudsman shall promptly forward the matter to the State Ombudsman.

e) Grievance Resolution - Role of State Ombudsman

The State Ombudsman shall promptly investigate the complaint within five business days. The State Ombudsman shall contact the complainant followed by the Ombudsman staff member to understand the perspective on the factual circumstances that generated the concern. If necessary to resolve the grievance or complaint, the State Ombudsman may also interview other parties with knowledge of the grievance or complaint or gather written documents including but not limited to emails and letters.

The State Ombudsman shall document the nature of the complaint. The State Ombudsman will respond back to the complainant within 14 working days following a thorough investigation. The State Ombudsman will work to resolve the matter in less than 14 days or an earlier date in order to assure a timely response.

At all times during the investigation and resolution, the State Ombudsman shall follow policies and procedures related to client confidentiality and disclosure as articulated in this section of this manual to ensure that client confidentiality is protected. The decision of the State Long-Term Care Ombudsman shall be final.

Grievance Resolution - Role of the Executive Director of State Unit on Aging

If a complainant who files a grievance is dissatisfied with the decision of the State Ombudsman, the matter shall be referred to the Executive Director of the Board on Aging (State Unit on Aging Agency). The Executive Director of the Board on Aging shall investigate the matter and respond to the complainant within 5 days of receipt of the request. Grievances or complaints alleging violations of Board on Aging, human resources, or other state administrative policy shall be investigated pursuant to the applicable State Human Resources policy and labor agreement for the representative.

A complaint about the State Ombudsman shall be forwarded to the Executive Director of the Board on Aging. The Executive Director of the Board on Aging shall promptly investigate the complaint within five business days. The Executive Director shall contact the complainant to learn and understand the complainant's perspective on the factual circumstances that generated the grievance or complaint. The Executive Director shall contact the State Ombudsman to understand the State Ombudsman's perspective on the factual circumstances that generated the concern. If necessary to resolve the grievance or complaint, the Executive Director may also interview other parties with knowledge of the grievance or complaint or gather written documents including but not limited to emails and letters.

At all times during the investigation and resolution, the Executive Director shall follow policies and procedures related to client confidentiality and disclosure as articulated in this section of this manual to ensure that client confidentiality is protected. If the complainant is not satisfied with the response from the Executive Director the complainant may file an appeal the Chairperson of the Minnesota Board on Aging who shall review the record and whose decision shall be final.

Part 7: Access to Residents, Facilities, and Records

a) Policies

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The Older American Act (OAA) and state law (256.9742 subdivision 4) authorizes representatives of the Office designated as Regional Ombudsman¹ (R.O.) immediate access to all long-term care facilities to observe all areas, except the living area of any resident who declines, to visit/talk with representatives of the Office. R.O.'s have access to residents regardless of whether a resident has an authorized legal representative or a resident representative. The RO has access during a facility's regular business hours or regular visiting hours, as well as at any other time when access is required due to presenting circumstances of a complaint investigation. The R.O. may enter any long-term care facility without notice at any time.

The R.O. may enter any acute care facility without notice during normal business hours. The R.O. may enter any acute care facility without notice at any time to interview a patient or observe services being provided to the patient as part of an investigation of a matter that is within the scope of the Ombudsman's authority, but only if the Ombudsman's or designee's presence does not intrude upon the privacy of another patient or interfere with routine hospital services provided to any patient in the facility; Representatives of the office may communicate privately and without restriction with any client, as long as the Ombudsman has the client's consent for such communication. The R.O. may inspect records of a long-term care facility, home care service provider, or acute care facility that pertain to the care of the client according to sections [144.291](#) to [144.298](#).

b) Access to Facility: Procedures

1. A R.O. shall notify of his/her presence upon entering the facility by signing a visitor log if available. The R.O. shall not release or provide the name of the resident on the visitor log without prior consent should an appointment/interview be scheduled with an individual resident or residents. In the alternative, the RO may also indicate "all residents" as the person(s) being visited in the log.
2. A R.O. should be prepared to show his/her program identification upon request.
3. A R.O. shall wear the Office of Ombudsman for Long-Term Care (OOLTC) issued name tag while present in a facility or other long-term care setting.
4. A R.O. is entitled to communicate privately and without restriction with any resident who consents to communication.
5. If carrying out the duties of a Regional Ombudsman requires the RO to access a long-term care facility between 10PM and 6AM, the RO informs his or her direct supervisor or the purpose of the visit if the supervisor is not already aware.

c) Access to Facility Records: Procedures

A R.O. shall have access to the same facility policy and procedures to which the residents or the general public has access.

A R.O. shall have access to copies of all licensing and certification, complaint investigation (public) records maintained by the State Licensing and Certification Department with respect to long-term care facilities.

d) Access to Resident Records: Policies

An R.O. is entitled review of medical, social, and other records of a resident where needed to perform the functions and duties of an Ombudsmen per the OAA and Office Policy and procedure. Health Insurance Portability Accountability Act of 1996 (HIPAA) does not preclude release by covered entities of resident health information to the Ombudsmen. The Long-Term Care Ombudsman is a "health oversight agency" for purposes of HIPAA.

In order to empower residents, a R.O. should review a residents records with the resident whenever possible and should explain to the resident how to read and use the records.

¹ Certified Ombudsman Volunteers have slightly different access rights to long-term care settings. Please see the Volunteer Program policy and procedure manual for information about Certified Volunteer Ombudsman access to facilities and records.

e) R.O. Access to Resident Records: Procedures

The R.O. shall seek record access if the resident or resident representative give proper consent (see complaint handling procedures) and access is necessary to investigate a complaint. The records of a resident shall be treated with the highest regard of confidentiality and be disclosed only with the consent of the resident and only as necessary to seek resolution of a complaint.

If the resident is unable to consent to the release of his or her records, the RO shall seek consent from the resident's representative, subject to the following:

- The resident representative refuses consent and the R.O. has reason to believe the resident representative, including a court-appointed guardian, is not acting in the best interest of the resident, the RO obtains the approval of the SLTCO or if the SLTCO is not available the Deputy Ombudsman .
- If the resident is unable to give consent and there is no resident representative, access to resident records necessary to perform the duties of the RO is authorized by Minn. Stat. 256.9741 subd.4(6).

When the records accessed are stored in electronic form at a long-term care facility, the R.O. shall work with the designated facility staff person to determine the most efficient way to access and receive copies of the needed records. If the R.O. is given access to the online content in medical records, the R.O. shall access only records for the client after obtaining consent (see disclosure in the complaint handling section of this manual). When reviewing electronic records, the R.O. shall refrain from making any changes to the records.

When the R.O. has physical possession of confidential records, the R.O. shall maintain these records in secure, locked location in their workspace or in transit from the facility to their workplace.

f) Record Retention: Procedures

The R.O. shall follow the record retention schedule as stated by Aging and Adult Services Division Department of Human Services. Specific to client files, the R.O. shall retain client records for 3 years, then discard by shredding or other secure means of disposal. If the R.O. has scanned the records into the Ombudsman case management database, this meets the retention requirements. If the documents are scanned into the database, the R.O. may shred any paper copies of these client files as soon as they are no longer needed to resolve the case investigation.

g) Denial of Access: Policies

A person who denies access of an RO to residents or their records, subject to the consent provisions in this section and the complaint handling section of this manual, in violation of Minn. Stat. 256.9741 subd. 4 or who or aids, abets, invites, compels, or coerces another to do so is guilty of a misdemeanor.

h) Denial of Access: Procedures

If an R.O. is denied access to a facility, to a resident, or to resident records by a facility employee, the R.O. shall request of the facility administrator or highest ranking available employee the reason for the denial of access to the facility or to any resident.

The R.O. shall provide the staff Federal and State information authorizing the legal right of the Ombudsman Program to visit the facility, have access to residents, and information. If denial of access continues the R.O. shall inform his or her direct supervisor. A decision may be made to request an explanation in writing from the administrator or highest ranking employee available as to the reasons for the refusal of access. The Ombudsman supervisor shall notify the State Ombudsman and provide supporting documentation concerning the refusal of access.

Should unreasonable denial of access continue the State Ombudsman shall consult with the State of MN Attorney General's Office assigned legal counsel and determine any legal remedies available to protect resident access to

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Ombudsman Program services. The Ombudsman Supervisor and R.O. shall be notified of the Office's actions to resolve an unreasonable denial of access to facility and/or residents

Part 8: Legal Counsel for the Long-Term Care Ombudsman Program

a) Policy

Ombudsman program is to have access to adequate legal counsel, free of conflict of interest and with competencies relevant to the legal needs of the program.

The Minnesota Board on Aging (MBA) serves in the capacity as the "State Agency" for the OOLTC. The MBA pursuant to the OAA will ensure that legal counsel for the Ombudsman program is adequate and available for the State Long Term Care Ombudsman (SLTCO) and is able without conflict of interest. The SLTCO may consult with legal counsel on any topic related to the official duties of the office, including but not limited to:

- Advice and consultation services needed to protect the health, safety, welfare, and rights of residents;
- Advice and consultation and or representation as needed to assist the SLTCO and the representatives of the Office in the performance of their official responsibilities including but not limited to consumer complaint resolution and systems advocacy;
- Legal representation is provided to the SLTCO and any representatives of the Office against whom suit or legal action is brought or threatened to be brought with the performance of official duties in accordance with State Law and OAA § 712(g).

A Representative of OOLTC is immune from civil liability that otherwise might result from the person's actions or omissions if the person's actions are in good faith, are within the scope of the person's responsibilities as an ombudsman or designee, and do not constitute willful or reckless misconduct. See also [Minn. Stat. 256.9741\(subd. 2\)](#).

b) Procedures – State Long-Term Care Ombudsman

For the SLTCO to obtain legal representation, the SLTCO or designee shall contact the MN Attorney General's Office Legal Counsel _____ Division Supervising Attorney or designee to seek legal representation. The Office of Attorney General shall determine if representing the OOLTC creates a conflict of interest, as defined by the Minnesota Rules of Professional Responsibility and applicable statute, relative to the Attorney General's responsibility to represent other state agencies. Where a conflict of interest exists, the Office of Attorney General shall take appropriate steps to remedy the conflict. If no remedy is appropriate, the SLTCO or designee shall arrange for the provision of legal representation by independent counsel.

The SLTCO or designee shall obtain prior approval from the Executive Director of MBA for the expenditures for proper legal representation. The State Agency will provide funding for such expenditures, when appropriate and within budgetary considerations.

c) Representatives of the Office (Regional Ombudsmen)

For legal advice and consultation related to the official duties of OOLTC, a representative of the Office shall request assistance from the SLTCO prior to contacting the Office of Attorney General. If the SLTCO Ombudsman is not available, the representative shall consult with the Deputy Ombudsman. The STLCO shall ensure that the representative's direct supervisor is aware of the request for legal advice from the Office of Attorney General.

For representatives of the Office (Regional Staff) to obtain legal representation:

- The representatives of the Office shall advise the Deputy Ombudsman of the legal action or threatened legal action.
- The Deputy Ombudsman shall advise the SLTCO of the legal action or threatened legal action.

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- If the SLTCO determines that the representative of the Office preformed his or her duties in good faith, the SLTCO shall authorize the representative of the Office to obtain legal representation.
- Legal Counsel will not be authorized by the SLTCO to provide defense to duties performed not in good faith or criminal charges brought against a representative of the Office.
- In the event the MN State Attorney General’s Office is unable to provide legal representation due to a conflict of interest, the SLTCO shall seek approval from the Executive Director of the MBA to identify independent legal counsel. In so doing the MBA will provide funds to cover such legal representation as available and as appropriate.

Part 9: Intake and Triage

a) Intake and Triage Process: policy

The intake and triage process assures that residents and long-term care service recipients have consistent and regular access to OOLTC services. The Office Administrator and Program Advocacy Coordinator (Intake Staff) use an Intake process to connect callers with the appropriate Regional Ombudsman or state office staff and provide general information regarding long-term care and related issues, resident rights, and resources as requested. If the appropriate Regional Ombudsman is not available, the intake staff route the caller to the back-up ombudsman for consultation. If more in-depth assistance is required before the appropriate Regional Ombudsman is available, intake staff refers the situation to the Deputy Ombudsman.

The Office of Ombudsman for Long-Term Care (OOLTC) is not an emergency response service. Calls, e-mail inquiries, or fax submissions received by the OOLTC are handled and triaged Monday – Friday during 8-4:30.

b) Intake and Triage: Procedures

The Intake staff shall respond to a request for information and assistance during the same day the request is made whenever possible and, in all cases, within two working days. The Intake staff shall provide adequate phone coverage to accept calls and requests for information confidentially during regular business hours. Adequate coverage may include LTCOP staff or if in case of absence seek coverage from available administrative staff trained to take OOLTCP calls. Adequate coverage includes frequent checks of voice mail messages, mail, and inquiries from regional staff.

- **Calls to the Main Intake Line**
 - Intake staff collect the following information:
 - i. Caller name, phone number, address
 - ii. Client information (if different than caller information)
 - iii. Brief description of problem
 - iv. Identify assigned Regional Ombudsman (RO) based on location of resident’s home address.
 - Screen and transfer calls as follows:

When a caller asks for a specific Regional Ombudsman (RO):

 1. May transfer to that RO, check electric calendar to see if the RO is scheduled in the office, provide the caller with the direct dial number for the RO prior to attempting the transfer.
 2. If the RO is scheduled out of the office, relay this information to the caller and ask if they wish to leave a message on the Regional Ombudsman’s voice mail, you will transfer the call.

3. If caller prefers to not leave a message do not transfer the call, take the intake information. Explain the information will be forwarded to the RO and they can expect to hear from RO within 2 business days.
4. If the Regional Ombudsman is on vacation or out (2 or more business days) tell the caller the RO is out of the office (until whatever date). Request intake information. Ask if they are able to wait until the RO returns. If the caller cannot wait and need to speak with someone transfer caller to RO on back-up for that day. (Program Advocacy Coordinator may offer more in-depth consultation as per PD).
5. If the RO is going to be out for a while and caller has long distance service suggest they go ahead and leave a VM for the RO and mention that intake staff suggested they call which gives the RO a head's up that an intake will be in Peer Place database.
6. A minority of callers either don't have long distance service or have to pay for long distance calls, so intake staff shall inquire about this.

c) Contact with the Media or Legislators

Calls from media are transferred to the SLTCO. If the SLTCO is not available, media inquiries are transferred to the Deputy Ombudsman. Calls from Legislators, federal, state, county, city officials (or their staff) shall be transferred to SLTCO or the Deputy Ombudsman if unavailable.

d) Contact with Other Stakeholders

Calls from other state agencies, provider associations or calls from federal agencies: collect information about reason for call, then transfer to State Ombudsman or Deputy Ombudsman. If not available, Policy Specialist in OOLTC. Calls from consumers, providers, stakeholders with policy related questions (not related to a specific resident/client) forward to Policy Specialist.

Calls from MDH Nursing Home Surveyors or Home Care Surveyors transfer to the assigned RO. If the assigned RO is out and the caller requests to talk to someone now transfer to RO back-up.

Calls and/or requests for assistance outside of the scope of service of OOLTC - intake staff explain to caller and give referral information.

e) Back-up Coverage

A Regional Ombudsman (RO) is assigned each day to provide a quick response to callers who **a)** are currently working with a regional ombudsman who is on vacation and want to speak to another ombudsman or **b)** are not currently working with a regional ombudsman and ask to speak to someone right away.

The Office Administrator generates and distributes the back-up schedule. If an RO is not able to be on-call on an assigned date, it is the responsibility of that person to arrange for a substitution and notify the Office Administrator.

When an RO assigned as On-call Ombudsman is sick, s/he notifies the Office Administrator and the Deputy Ombudsman. The Deputy Ombudsman may assist in arranging for a substitution.

f) Duties of Back-up R.O.

- The Back-up R.O. may indicate on his/her voice mail that s/he is the back-up RO for the day.
- The Back-up RO will attempt to respond to all calls on the day of the request. If the RO is unable to respond to all calls the RO shall notify the Intake staff so the calls may be properly triaged in a timely manner.
- If a case is open and the assigned Ombudsman is on vacation, the RO on back-up determines what the complaint involves and what has been done so far, provides assistance, documents the intake and refers to proper RO.
- The RO on back-up or the Intake staff do not provide specific advice regarding a consumer without proper consent and permission to disclose resident identifying information.

Part 10: Investigation and Complaint Processing

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a) Policy

The Office handles complaints within the scope of its authority. Ombudsman representatives shall identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities. Under federal and state law, representatives may process complaints made by or on behalf of one or more residents of nursing facilities, other adult residential facilities, and home care. The Office has state and federal statutory authority to handle complaints that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents of:

- Nursing homes
- Boarding care homes
- Housing with services and assisted living
- Adult foster care
- Medicare recipients living in their own home

Representatives of the offices shall provide complaint handling services in a person-centered manner that protects the client's right to privacy and confidentiality.

b) Procedures: Priority of Response to Intakes/Case Investigations

The OOLTC and its representatives exercise discretion to determine if a complaint as presented falls within the scope of OOLTC authority. If a complaint falls outside of the scope of OOLTC authority and mandate, the OOLTC may make referrals to other agencies as appropriate and inform the complainant that no action will be taken by the OOLTC on the subject of the complaint. Additionally, The OOLTC may decline to investigate any complaint if it determines any of the following:

- The complaint is frivolous, vexatious, or not made in good faith;
- The complaint was made so long after the occurrence of the incident on which it is based that it is no longer reasonable to conduct an investigation;
- An adequate investigation cannot be conducted because of insufficient funds, insufficient staff, lack of staff expertise, or any other reasonable factor that would result in an inadequate investigation despite a good faith effort;
- An investigation by the office would create a real or apparent conflict of interest.

When the complaint falls within the scope of OOLTC authority, the representative of the Office (representative) assesses the complaint to determine where it falls within complaint priorities identified below. In determining the response time for initiating an investigation, the program shall analyze the urgency of the complaint as seen by the program and by the client. The response time shall be commensurate with the potential harm posed to the client or clients. The complaint priorities, with corresponding response times are listed below.

Priority 1:

- a. Abuse or gross neglect, and the representative has reason to believe that a resident may be at risk.
- b. Actual or threatened transfer/discharge from a facility or housing with services establishment and the representative has reason to believe the transfer/discharge will occur immediately.

Response time: within the next working day

Priority 2:

Abuse or gross neglect, and the representative has no reason to believe that a resident is at risk. *Response time: within 3 working days*

Priority 3:

Actual or threatened transfer/discharge from the facility, and the representative has no reason to believe that the transfer/discharge will occur immediately.

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Response time (whichever occurs first): 5 working days, last day of bed hold period if resident is hospitalized, or last day for filing transfer/discharge appeal.

Priority 4: All other complaints

Response time: within 7 working days. Complaints that fall in priorities 1-3 require representative response within the identified response times, as well as subsequent investigation to determine if direct service to the client is wanted and appropriate. All other complaints within the scope of OOLTC authority are prioritized based on the following factors:

- Whether the complaint or complaints have been verified
 - If the representative cannot verify the complaint, the representative may still assist the resident in resolving the concern, but the concern may be a lower priority than verified complaints. In the case of non-verified complaints, the representative may:
 1. Discuss alternative steps that might be available, such as referrals to other agencies
 2. Suggest that the complainant begin to document his or her observations and other information relevant to the problem
 3. Empower the resident to represent his or herself
 4. At the representative's discretion, do whatever else is appropriate to resolve the concern.
- The relative severity of the complaint/potential for harm to the resident if action is delayed
- The resident or resident representative's ability to speak out and/act on his or her own behalf.

For complaints that fall into the category 4, representatives have discretion to determine if they take action, refer the complaint, or provide solely information and consultation to the complainant to empower him or her to address the complaint directly. If the Representative is unsure about how to prioritize a certain case or complaint, the representative should consult his or her direct supervisor for guidance.

c) Protecting Client Confidentiality and Disclosure: Policy

In order to provide Ombudsman complaint processing services in a person-centered manner and to maximize resident participation, Representatives of the office protect client confidentiality and prevent unauthorized disclosure of resident-identifying information, including medical records.

The Ombudsman or representatives of the Office shall not disclose resident-identifying information unless to third party unless:

- 1) The resident or resident representative communicates informed consent to the disclosure in writing;
- 2) The resident or resident representative communicates informed consent in another manner and the consent is documented contemporaneously by a representative of the office according to procedures; or
- 3) The disclosure is required by court order.

If the resident is unable to communicate informed consent, the Ombudsman or representative may rely on informed consent and/or perspective of the resident representative as long as the Ombudsman or representative has no reasonable cause to believe that the resident representative is not acting in the best interest of the resident. If applicable, the representative should request copies of legal documents (e.g. health care directives, powers of attorney) to verify the scope of legal authority conferred on the resident's representative.

Communication of informed consent can be made in writing, as well as through the use of auxiliary aids and services. This informed consent should be documented using the Client Consent and Authorization Form (appendix I). Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office in the case file in Ombudsman case management database.

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d) Referrals

The Ombudsman or representatives of the Office may disclose resident-identifying information to another agency for regulatory, protective services, law enforcement or other purposes if the resident or resident representative has communicated informed consent. If the goals of the resident are better served by disclosing information to a facility representative or referrals to other entities, the Ombudsman or representative of the Office should obtain informed consent and assist the resident or resident representative in contacting the appropriate person or entity, provide information on how the resident may contact the person or entity, and/or disclose the resident's information to the person or entity for which the representative of the office has obtained informed consent.

Where the resident is able to communicate informed consent or has a resident representative available to provide consent, the Ombudsman or representative shall follow the direction of the resident or resident representative regarding making referrals to other agencies.

Agencies for referral purposes may include:

- Minnesota Adult Abuse Reporting Center (MAARC)
- Ombudsman for Mental Health and Developmental Disabilities
- Senior LinkAge Line
- Minnesota Department of Human Rights
- Legal service agencies
- Regional Office of Civil Rights
- Minnesota Office of Attorney General (for consumer complaints)

e) Legal Referrals and Legal Information in Complaint Handling: Policies

Representatives of OOLTC are knowledgeable in the rights and regulations that apply to long-term care services and supports across multiple settings. Providing information about applicable laws and regulation to both clients and providers is an essential component of effective advocacy.

However, representatives do not provide legal advice on any subject and shall not hold themselves out as being competent to provide legal advice or act as the client's attorney in any legal proceedings. Representatives of OOLTC shall not engage in the unauthorized practice of law, as defined in [Minn. Stat. 481.02](#).

When legal advice or legal service is needed or requested, representatives of the Office shall follow the procedures identified below.

f) Procedures: Providing Legal Information

When providing legal information, the representative of the office shall state affirmatively that they are not an attorney and cannot provide legal advice, but is able to provide information about legal referrals should the person wish to seek legal advice.

The representative may direct clients and other stakeholders to credible sources of legal information as needed throughout the advocacy process. Potential sources of legal information include but are not limited to: federal regulations, fact sheets from legal service providers, federal and state statutes, information provided on state and federal government websites (including memoranda and interpretive guidance), and information from long-term care advocacy organizations such as NCLC, Consumer Voice for LTC, ABA Commission on Law and Aging.

If the representative is unsure about whether a source of legal information is credible or not, he/she shall consult with the direct supervisor before providing the information.

g) Procedures: Providing Legal Referrals

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Legal Services are essential components to effective advocacy. Representatives do not provide referrals to specific attorneys, but may provide information about referrals to a specific type of practice of law, such as elder law or probate/guardianship/conservatorship law. Representatives may also help the client identify the most effective methods to select an attorney by providing information on different referral source options. These options include but are not limited to: Minnesota State Bar Association, County Bar Associations, National Academy of Elder Law Attorneys, Minnesotahelp.info, The Office of Attorney General, and legal services (legal aid) offices.

h) Role of Representatives in Administrative Hearings : Policy

Representatives of the Office are often involved in legal proceedings that relate to resident right issues in long-term care, such as involuntary discharge hearings. In these legal proceedings, the representative does not act as the attorney for the client, but does provide a supportive and empowering role to the client. The representative works toward resolving the issue prompting the need for legal proceedings whenever possible and appropriate, based on the client’s wishes and preferences. If a hearing cannot be avoided, it is the role of the representative to help the client understand the hearing process to the best of the representative’s ability in order to ensure that the client is able to exercise his or her right to due process. The representative may attend the hearing with the client in the supportive role with or without legal counsel representing the client.

i) Procedures

When a legal proceeding is a part of the representative’s case, the representative first informs the client of his or her right to seek legal advice and representation for the proceeding and encourages the client to do so. Following the procedures for making referrals in Part 10(c-d), the representative may assist with the legal referral process. If the client seeks legal representation but is unable to find a lawyer, the representative may discuss alternative strategies/referrals with his/her supervisor.

During the hearing, the representative supports the client, ensures that the client understands the hearing process, and empowers the resident to provide his or her “side of the story.” The representative identifies the applicable regulations at issue and how they apply to the facts of the case, when appropriate. The representative may assist the client in obtaining all the necessary information about the legal dispute for the judge.

When the resident or resident representative is not able to speak for him or herself, the representative of the Office follows the procedures outlined in Part 10 (c-d) for working with a resident representative.

j) Reporting Abuse and Neglect

When working in the course and scope of their duties as an Ombudsman, representatives of the Office are not mandated reporters, even if they hold a professional licensure that would otherwise require mandated reporting.²

The representative of the office shall use his or her best efforts to ensure protection of the resident from abuse, neglect or exploitation. If a representative of the office witnesses abuse, neglect, or exploitation of a resident, a representative of the office does not abandon the resident in spite of exemption from mandated reporter responsibilities. The representative of the office shall follow complaint processing steps found in this section. The primary role of the representative of the office is to seek resolution to the resident’s satisfaction, not to verify the suspected abuse, neglect, or exploitation. The Department of Health-Health Regulation Division, Adult Protective Services, and law enforcement are official reporting agencies to investigate abuse, neglect, and exploitation in long-term care facilities. In considering whether a report or referral should be made to these or other protective agencies, the representative shall follow the requirements listed in the table below:

If the resident (or resident representative)...	Then the representative of the office shall...
Gives permission to report	Report to facility staff and MAARC

² Mandated Reporters are defined in Minnesota’s Vulnerable Adult Act, found at Minn. Stat. [626.557](#)

Does not give permission to report and complainant is a facility staff person or other mandatory reporter	Remind the complainant of their duty to report it to MAARC
Does not give permission to report and acknowledges being abused	Determine if other residents have experienced similar situations and would like the representative to take action on their behalf and make repeated visits to the resident who alleged abuse or neglect to encourage them to permit representative to report the abuse or neglect
Does not give permission to report abuse, gross neglect, or exploitation personally witnessed by the representative of the office	Determine if other residents have experienced similar situations and would like the representative to take action on their behalf and make repeated visits to the resident who alleged abuse or neglect to encourage them to permit representative to report the abuse or neglect
Is unable to communicate his or her wishes and does not have a resident representative and the representative of the office personally witnesses abuse, gross neglect, or exploitation	Open a case with the representative of the office as complainant, follow complaint handling procedures, and disclose resident information to the management of the facility and/or MAARC for substantiation of the abuse or neglect as long as all of the following criteria are met: <ul style="list-style-type: none"> • The representative of the office does not have evidence indicating the resident would not want the referral to be made • The representative of the office has reasonable cause to believe the disclosure would be in the resident's best interest • The representative of the office obtains the approval of the SLTCO or if the SLTCO is not available the Deputy Ombudsman.
Does not make the complaint (e.g., from family or friends)	Advise the complainant to report the suspected abuse or neglect to the appropriate agency and provide information to assist the complainant in making the report and visit the resident and follow complaint handling process

k) Disclosures Without Client or Representative Consent

If the resident cannot provide consent and there is no resident representative, the Ombudsman or representative of the Office may disclose resident-identifying information or make a referral to the appropriate agency or agencies for the purposes of: regulatory oversight; protective services; access to administrative, legal, or other remedies; and law enforcement. Such disclosures can only be made under all of the following circumstances:

1. The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and has no resident representative, or the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;
2. The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare or rights of the resident;
3. The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
4. The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; **and**

[Type here]

5. The representative of the office obtains the approval of the SLTCO or if the SLTCO is not available the Deputy Ombudsman.

l) Investigation Process: Policy

Investigation is an essential part of Ombudsman work. Investigation allows the representatives of the Office to understand multiple viewpoints related to complaint and assists the representative in developing potential resolutions for the complaint. The Office investigates complaints in an impartial manner, free from initial bias and conflicts of interests, and in a person-centered manner.

Representatives of the Office provide service to clients in a manner that encourages empowerment of the client to act on his or her own behalf, or with representative assistance, if needed. Whenever possible or feasible, the representative encourages the client to act on his or her own behalf to resolve the concern.

The investigative process is only a means to an end in Ombudsman work, and not the end itself. The purpose of investigation is to gather sufficient information to help the client. Representatives of the Office investigate complaints in order to:

- Determine a client's perception and wishes regarding the complaint
- Determine an outcome to the complaint (verification)
 - Verified complaint: A complaint is verified when the representative determines, after investigation, that the circumstances described in the complaint are generally accurate. Because representatives work on behalf of residents, representatives give the benefit of the doubt to the client's perspective. The verification status of the complaint or complaints should be documented in PeerPlace (case management database).
 - Non-verified complaint: if the representative cannot verify the complaint, the representative may still assist the resident in resolving the concern, although non-verified complaints are of lower priority than verified complaints. In the case of non-verified complaints, the representative may:
 - Discuss alternative steps that might be available, such as referrals to other agencies;
 - Suggest that the complainant begin to document his or her observations and other information relevant to the problem;
 - Empower the resident to represent himself or herself;
 - At the representative's discretion, do whatever else is appropriate to resolve the concern.

m) Investigation: Procedures

The primary tools of investigation are interviewing, observing, and reviewing documents. When investigating a complaint, the representative may consider using the following steps:

1. Identifying and/or separating the problem(s)
2. Categorizing the problems by complaint type
3. Identifying relevant laws or regulations
4. Exploring possible causes of the problem
5. Determining all participants
6. Identifying relevant persons and agencies
7. Reviewing steps already taken
8. Clarifying the outcome the client or complainant is seeking
9. Developing an action plan

See Table 1 below, from *Equipping Long-Term Care for Effective Advocacy, The Problem Solving Process: Investigation*, for more information on the investigative process.

[Type here]

Regardless of the source of the complaint (i.e. the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative must support and maximize resident participation and empowerment in the process of resolving the complaint as follows:

1. The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.
2. The Ombudsman or representative of the Office shall personally discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:
 - a. Determine the perspective of the resident (or resident representative, where applicable) of the complaint;
 - b. Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;
 - c. Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies;
 - d. Advise the resident (and resident representative, where applicable) of the resident's rights;
 - e. Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;
 - f. Investigate the complaint to determine whether the complaint can be verified; and
 - g. Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).
3. Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:
 - a. Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and
 - b. Determine whether the complaint was resolved to the satisfaction of the complainant.
4. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

Table 1

STAGE 1 INTAKE AND INVESTIGATION	
Receive the Complaint	Receive problems, complaints, concerns.
Gather Information	Collect information from interviews, records, observations.
Verify the Problem	Review information gathered. Assess what seems to be at the root of the problem. The complaint may be only a symptom.
STAGE 2 ANALYSIS AND PLANNING	
Analyze the Situation	Once you identify the problem, consider the causes.

[Type here]

Consider Solutions	Generate alternative solutions or approaches. Who should be involved? When? How? Why?
Identify Obstacles	Anticipate obstacles to help select an appropriate approach.
STAGE 3 RESOLUTION AND FOLLOW UP	
Choose an Approach	From your list of alternative solutions, choose the most efficient way to proceed, keeping any obstacles in mind. Identify alternative strategies in case you need them.
Act	Proceed with the selected plan, but be prepared to use an alternative.
Evaluate Outcome	Check back with the persons involved to evaluate the outcomes. Is the problem solved? Is it partially solved? If not, look for new approaches or information and start again.

(from *The Problem Solving Process: Investigation*)

n) Plan of Action

The representative of the Office determines what the client wants by reviewing the complaint and evidence collected during the investigation and consulting with the client. The representative considers the following factors in developing the plan of action:

- The scope of the complaint;
- The history of the facility with respect to resolution of other complaints;
- Available remedies and resources for referral;
- The person most able to resolve the complaint;
- The likelihood of retaliation against the client or complainant.

The representative develops a plan of action including a range of solutions and offers them to the client. The representative attempts to resolve the dispute directly with the appropriate staff of the facility unless the representative and client determine that another strategy would be more advantageous to the client.

Based on client wishes and representative knowledge of the long-term care system, the representative of the Office determines what method of resolution to use. The methods include:

- **Negotiation** - the representative advocates on behalf of and with the client in discussing the complaint with appropriate facility staff, or other relevant parties, to develop an agreement that resolves the complaint.
- **Facilitation** - the representative establishes communication channels which bring concerns and problems needing solution directly to decision makers
- **Mediation** - the representative acts as a referee between parties of equal status (between residents or between family members) to assist the parties in developing an agreement that resolves the complaint.
- **Coordination** - the representative either helps the client or complainant bring complaints to the regulatory agency (MDH) or refers the complaint to another agency.
- **Explanations** - the findings of the investigation do not indicate a need for a change, or do not require further representative involvement.

Where appropriate, the representative encourages and empowers the client to handle the complaint directly with the agency, provider or person with whom the client has the problem and provides assistance as needed to achieve resolution.

o) Closing a Case and Complaint Investigation

A case is closed when any of the following occurs:

- The complaint has been resolved to the client's satisfaction or partial satisfaction;
- The representative has determined after investigation that the complaint **a)** cannot be verified or **b)** was not made in good faith;
- Further action by the representative is unlikely to produce satisfaction for the client;
- The complaint is not appropriate for the Office;
- The resident requests that the representative take no further action on the complaint(s).

A disposition is made for each complaint according the NORS disposition definitions:

- Legislative or regulatory action required
- Not resolved
- Withdrawn
- Referred for resolution and final disposition not obtained
- Referred for resolution and other agency failed to act
- Referred for resolution and agency did not substantiate
- No action needed or appropriate
- Partially resolved
- Resolved

[Type here]

The final journal entry will contain a written summary of the outcome of the case, how the resident was informed of closing the case and where to send the customer satisfaction survey.

Cases should be closed once the complaint has been resolved and the representative of the Office has completed a follow up contact to determine if the resident is satisfied with the outcome and no further action is needed at the time. A new case will be opened if new complaints surface once the case has been closed. Old cases are not to be re-opened when a new issue is presented.

p) Prohibition against Discrimination or Retaliation & Willful Interference

No entity shall take discriminatory, disciplinary, or retaliatory action against an employee or volunteer, or a patient, resident, or guardian or family member of a patient, resident, or guardian for filing in good faith a complaint with or providing information to the ombudsman or designee including volunteers. A person who violates this subdivision or who aids, abets, invites, compels, or coerces another to do so is guilty of a misdemeanor.

There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of report, is discriminatory, disciplinary, or retaliatory. For the purpose of this clause, the term "adverse action" refers to action taken by the entity involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to:

1. discharge or transfer from a facility;
2. termination of service;
3. restriction or prohibition of access to the facility or its residents;
4. discharge from or termination of employment;
5. demotion or reduction in remuneration for services; and
6. any restriction of rights set forth in section [144.651](#), [144A.44](#), or [144A.751](#).

Willful Interference

Willful interference means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in § 1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in § 1324.19. If a representative experiences willful interference in the performance of Ombudsman duties, the representative shall inform the supervisor for guidance and support to appropriately resolve the issue.

Part 11: Role of the Certified Ombudsman Volunteer

The Certified Ombudsman Volunteer has a genuine interest in talking with and helping nursing home residents and assisted living consumers. The Certified Ombudsman Volunteer is orientated and designated. They have an annual 12 hour continuing education requirement to maintain designation. They are supervised by a Regional Ombudsman and work to help identify and address resident problems.

The Certified Ombudsman Volunteer assists residents through:

- Education – helping residents be fully informed about their rights and the resources available for solving problems.
- Supporting and promoting resident and family councils
- Outreach/Access – making the ombudsman program visible and available statewide to residents by visiting on a regular basis.
- Providing Reassurance – visiting residents regularly to build trust, address their concerns and alleviate the fear of retaliation.

[Type here]

- Problem Solving – giving residents tools to address concerns before they escalate into crisis.
- Self-Empowerment – providing resources and empowering residents to act on their own behalf whenever possible.

The Office of Ombudsman for Long-Term Care has a complete Certified Ombudsman Volunteer Policies and Procedures manual specific to the Volunteer Program. Please see that manual for specific policies and procedures for the Volunteer Program.

Appendices

Appendix A: Conflict of Interest Declaration Form

Appendix B: Initial Designation Checklist Form

Appendix C: Re-designation Checklist Form

Appendix D: Orientation Verification Form

Appendix E: Continuing Education Verification Form

Appendix G: Initial Applicant Conflict Screen

Appendix H: Client Consent and Authorization Form

Appendix I: Ombudsman State Statute

Appendix J: Long-Term Care Ombudsman Program Complaint Codes

Appendix K: Instructions for Completing the State Long Term Care Ombudsman Program Reporting Form for The National Ombudsman Reporting System (NORS)

Appendix L: Grievance Form

Office of Ombudsman for Long-Term Care
Conflict of Interest Declaration Form

Please print, fill out form and return to:

The Office of Ombudsman for Long-Term Care
PO Box 64971

St. Paul, MN 55164-0971

Name of person for whom the form is completed: _____

The Office of Ombudsman for Long-Term Care serves consumers who receive services from long-term care service providers. For purposes of this form, "service providers" are defined as the provider or the setting of:

- Adult day services
- Adult foster homes
- Boarding care homes
- Housing with services (including assisted living)
- Hospice
- Hospitals
- In-home/home care agencies or individuals
- Nursing homes
- Veteran homes

a. Declaration of No Disqualifying Conflict of Interest

Having a disqualifying conflict of interest prohibits employment or volunteer service with the Office of Ombudsman for Long-Term Care.

I declare that I have none of the following conflicts of interest:

1. I am not currently employed by a long-term care service provider _____(initial here).
2. I do not have an ownership interest or investment interest (including but not limited to equity, debt, or other financial interest in a long-term care service provider. _____ (initial here).
3. I do not receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility or service provider _____ (initial here).
4. I do not participate in the management of a long-term care facility or service provider agency _____ (initial here).

[Type here]

- 5. I am not self-employed as a service provider _____ (initial here).
 - 6. I do not serve on a board of directors (volunteer or paid) of a service provider _____ (initial here).
 - 7. I do not have direct involvement in licensing, surveying, or certifying long-term care service providers _____ (initial here).
- I have no Disqualifying Conflict of Interest

Signature _____ Date _____

b. General Declared Conflict of Interest

The following conflicts of interest must be declared (check the box that applies):

- A member of my immediate family is employed by a service provider. "Immediate Family" is defined as a member of my household or a relative with whom I have a close personal or significant financial relationship.
- A member of my immediate family lives in a setting operated by or receives services from a long-term care service provider.
- I currently volunteer for a service provider
- I am a conservator, guardian, health care power of attorney or durable (financial) power of attorney for a person receiving services from a service provider.
- I have another affiliation with a long-term care provider that could negatively affect perceptions about the credibility or effectiveness of the work of OOLTC.

- I have no declared Conflict of Interest

Signature _____ Date _____

OR

- I have a declared conflict of interest (please complete the Conflict of Interest Remedy form on the next page)

Signature _____ Date _____

Office of Ombudsman for LTC

Conflict of Interest Remedy Form

Date: _____

Name: _____

Description of Conflict:

Remedy*: _____

Signature of Representative of the Office, date

- Approved
- Denied

State Ombudsman Signature date

*The State Ombudsman has the sole authority to approve or deny a proposed remedy for a declared conflict of interest

[Type here]

Appendix B

Office of Ombudsman for Long-Term Care

Initial Designation Checklist

Please initial on each line

_____ I have received (either electronic or paper) the most recent version of the OOLTC policy and procedure manual. I agree to abide by the policies and procedures identified in the manual. If I have any questions or concerns, I will speak to my direct supervisor or the State Long-Term Care Ombudsman.

_____ I have cleared the required background study (attach documentation)

_____ I have reviewed and signed the applicable position description. If I have any questions about my role, I will consult with my direct supervisor or the State Long-term Care Ombudsman.

_____ I have completed the required 20 hours of orientation on the following topics: investigation, dispute resolution, health care regulation, confidentiality, resident and patients' rights, and health care reimbursement. A list of orientation topics completed is attached to this checklist (use Orientation Verification Form).

_____ I have no disqualifying conflicts of interests. Any declared conflicts of interests have been disclosed and remedied with approval from the State Ombudsman. A completed Conflict of Interest Declaration Form is attached.

By initialing above and signing below, I verify that I have completed the requirements necessary designation as a representative of the Office of Ombudsman for Long-Term Care. I respectfully request designation.

Signature of representative of the office

date

Request for designation is approved/denied (circle one)

Cheryl Hennen, State Long-Term Care Ombudsman

date

[Type here]

Appendix C

Office of Ombudsman for Long-Term Care

Annual re-designation checklist

Please initial on each line

_____ I have received (either electronic or paper) the most recent version of the OOLTC policy and procedure manual. I agree to abide by the policies and procedures identified in the manual. If I have any questions or concerns, I will speak to my direct supervisor or the State Long-Term Care Ombudsman.

_____ Since the date of my initial background study, I have not been convicted of any felonies in Minnesota, any other state or country, nor do I have any substantiated maltreatment findings (as defined in [Minn. Stat. 626.557](#)) against me.

_____ I have completed the required 60 hours of continuing education. A list of the training I've completed is attached to this checklist (use Continuing Education Verification Form).

_____ I have no disqualifying conflicts of interests. Any declared conflicts of interests have been disclosed and remedied with approval from the State Ombudsman. A completed Conflict of Interest Declaration Form is attached.

By initialing above and signing below, I verify that I have completed the requirements necessary for annual re-designation. I request re-designation for January _____ through December _____.

Signature of representative of the office

date

Request for re-designation is approved/denied (circle one)

Cheryl Hennen, State Long-Term Care Ombudsman

date

[Type here]

Office of Ombudsman for Long-Term Care
Orientation Verification Form
Minimum 20 hours

Name of new ombudsman _____

1. Overview of Office of Ombudsman for LTC & Primary Connections with Federal & State Government (1 hour) Date _____

History, Role, Mission & Code of Ethics and Confidentiality

-Role of the State Long-Term Care Ombudsman

-Ombudsman Final Rule overview

Federal law, Older Americans Act (OAA) & state OOOM law

United States Department of Health & Human Services

Center for Medicaid and Medicare Services (CMS)

Minnesota Department of Human Services (DHS) & Minnesota Board on Aging

Minnesota Department of Health (MDH):

Office of Health Facility Complaints (OHFC)

Facility & Provider Compliance Division

Other Minnesota Ombudsman offices

**2. Review of job tasks, background study & conflict of interest (1 hr.)
Review of Position Description**

Criminal Background Check/complete forms

Conflict of Interest & Declared Conflict of Interest/complete form

Date(s) _____

3. OOLTC client confidentiality and disclosure (including working with resident representatives) (1 hour)

4. On-line HIPAA & Data Practices training Date _____ (min. 2 hours)

**5. Vulnerable Adult Act with DHS Adult Protection Consultant (1 hour)
Date _____**

**6. Consumer Rights (min. 2 hrs.)
Nursing Home Resident Rights Date _____**

[Type here]

Patient Bill of Rights (hospital & outpatient) Date_____

Home Care Bill of Rights Date_____

Hospice Bill of Rights Date_____

7. Nursing Homes (2-3 hours)

___Regulations

___Case Mix Reimbursement

___Case work examples

___Staff resources

Date(s)_____

Individualized Care /Culture Change/person-centered thinking and practices (2 hour)

Date_____

8. Home & Community Services and Housing With Services (2-3 hours)

___Regulations

___Funding Options/Public programs

___Case work examples

___Staff resources

___Referral Protocol for Home Care Issues SLL & LTCOP

Date_____

9. Scope of Ombudsman role with Medicare Beneficiaries (.5 hour)

___Role of State Health Insurance Counseling Program/SLL

___Role of Stratis Health

___Discharge Rights/Medicare coverage

___Case work examples

___Staff resources

Date_____

10. Volunteer Program (2 hr.) Date_____

[Type here]

Appendix E

Office of Ombudsman for Long-Term Care
Continuing Education Verification Form

Name: _____

Date of Training	Training Hours	Topic	Trainer

_____ Signature of Ombudsman Date _____
_____ Signature of Ombudsman Supervisor Date _____

Appendix F

Ombudsman for Long-Term Care

Initial Applicant Conflict Screen

(Hiring manager sends to applicants as an initial screen for disqualifying conflicts.)

Dear applicant:

I am writing to offer you an interview for the Client Advocate Position with the Office of Ombudsman for Long-Term Care.

Before I provide further detail, I need to ensure that you are aware of our office's Conflict of Interest Policy. Federal Law, as defined in the Older Americans Act, prohibits a Designated

Ombudsman from any of the following:

- Have a financial interest in a nursing home, board and care home, adult foster care home, adult day center, home care agency, housing with services establishment or hospital.
- Be employed by any of the above-mentioned providers.
- Be a volunteer for any of the above-mentioned providers.
- Serve on the board of directors of any of the above-mentioned providers.
- Participate in the licensing or certification of long-term care providers.

Working for our office also requires passing a background study. Are you willing to consent to a criminal background check?

If you need an accommodation for an interview, you may contact Lisa Duda at 651-431-2344 or lisa.duda@state.mn.us for assistance.

If you are willing to consent to a background study and are free from the above-mentioned conflicts of interest, please "reply all" to this email with that information. Once your email our Office Administrator will assist you in scheduling a specific date and time for the interview.

Office of Ombudsman for LTC

Written grievance form

OMBUDSMAN for LONG-TERM CARE COMPLAINT FORM

Your Information:

Name

Address

Preferred Number to call:

Day

Night

Cell

Person you are calling about: (If you are not the recipient or resident of long-term care who does this complaint involve and what is your relationship to the resident. If you are not the resident is the resident aware of this complaint?)

Person you have a complaint about: (Name of the Ombudsman Office Representative you talked to and/or working with. Please include date(s) you spoke to and/or met with the Ombudsman Office Representative)

Explanation of Problem: (include names and contact information of other people we may wish to contact. Provide any written documentation related to your complaint)

What resolution are you seeking?

The information you provide may be used in our efforts to resolve the problem, to communicate with you, and/or to enforce applicable laws, policies and procedures. The information may be shared with the party complained against. You are not legally required to provide this information, but failure to do so may hinder efforts to resolve your problem.

Please mail completed, signed form (and any attachments) to: Office of Ombudsman for Long-Term Care, P.O. Box 64971, St. Paul, MN 55155. Call our office at (651) 431-2555 or (800) 657-3591 with any questions.

Thank you for the opportunity to assist you.

43A.38 CODE OF ETHICS FOR EMPLOYEES IN THE EXECUTIVE BRANCH.

Subdivision 1. Definitions.

For the purpose of this section the following definitions shall apply:

(a) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in nonprofit or profit making activities.

(b) "Confidential information" means any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in nonsummary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business.

(c) "Private interest" means any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption or advantage from the action of a state agency or employee that is not available to the general public.

Subd. 2. Acceptance of gifts; favors.

Employees in the executive branch in the course of or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law. However, the acceptance of any of the following shall not be a violation of this subdivision:

(a) Gifts of nominal value or gifts or textbooks which may be accepted pursuant to section [15.43](#).

(b) Plaques or similar mementos recognizing individual services in a field of specialty or to a charitable cause.

(c) Payment of reimbursement expenses for travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the state and which have been approved in advance by the appointing authority as part of the work assignment.

(d) Honoraria or expenses paid for papers, talks, demonstrations, or appearances made by employees on their own time for which they are not compensated by the state.

(e) Tips received by employees engaged in food service and room cleaning at restaurant and lodging facilities in Itasca State Park.

Subd. 3. Use of confidential information.

An employee in the executive branch shall not use confidential information to further the employee's private interest, and shall not accept outside employment or involvement in a business or activity that will require the employee to disclose or use confidential information.

Subd. 4. Use of state property.

(a) An employee shall not use or allow the use of state time, supplies or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

(b) An employee may use state time, property, or equipment to communicate electronically with other persons including, but not limited to, elected officials, the employer, or an exclusive bargaining representative under chapter 179A, provided this use, including the value of the time spent, results in no incremental cost to the state or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impracticable.

(c) The commissioners of administration and management and budget shall issue a statewide policy on the use of electronic mail and other forms of electronic communications by executive branch state employees. The policy is not subject to the provisions of chapter 14 or 179A. Appointing authorities in the legislative and judicial branches shall issue policies on these issues for their employees. The policies shall permit state employees to make reasonable use of state time, property, and equipment for personal communications and shall address issues of privacy, content of communications, and the definition of reasonable use as well as other issues the commissioners and appointing authorities identify as necessary and relevant.

Subd. 5. Conflicts of interest.

The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, section [43A.39](#) or disciplinary action as appropriate:

(1) use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;

(2) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties;

(3) actions as an agent or attorney in any action or matter pending before the employing agency except in the proper discharge of official duties or on the employee's behalf; or

(4) the solicitation of a financial agreement for the employee or entity other than the state when the state is currently engaged in the provision of the services which are the subject

of the agreement or where the state has expressed an intention to engage in competition for the provision of the services; unless the affected state agency waives this clause.

Subd. 6.Determination of conflicts of interest.

When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:

(1) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform, prestige or influence of state office or employment;

(2) receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee;

(3) employment by a business which is subject to the direct or indirect control, inspection, review, audit or enforcement by the employee;

(4) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee.

Subd. 7.Resolution of conflict of interest.

If the employee, appointing authority or commissioner determine that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

Subd. 8.Precedence of chapter 10A.

Where specific provisions of chapter 10A apply to employees and would conflict with this section, the provisions of chapter 10A shall apply.

Subd. 9.Limits.

This section shall not be interpreted to apply to any activity which is protected by sections [179A.01](#) to [179A.25](#) and collective bargaining agreements and practices thereunder nor to prevent a current or former employee from accepting employment with a labor or employee organization representing employees

Appendix F

Ombudsman for Long-Term Care

Initial Applicant Conflict Screen

(hiring manager sends to applicants as an initial screen for disqualifying conflicts)

Dear applicant

I am writing to offer you an interview for the Client Advocate Position with the Office of Ombudsman for Long-Term Care.

Before I provide further detail, I need to ensure that you are aware of our office's Conflict of Interest Policy. Federal Law, as defined in the Older Americans Act, prohibits a Designated Ombudsman from any of the following:

- Have a financial interest in a nursing home, board and care home, adult foster care home, adult day center, home care agency, housing with services establishment or hospital.
- Be employed by any of the above-mentioned providers.
- Be a volunteer for any of the above-mentioned providers.
- Serve on the board of directors of any of the above-mentioned providers.
 - Participate in the licensing or certification of long-term care providers.

Working for our office also requires passing a background study. Are you willing to consent to a criminal background check?

If you need an accommodation for an interview, you may contact Lisa Duda at 651-431-2344 or lisa.duda@state.mn.us for assistance.

If you are willing to consent to a background study and are free from the above-mentioned conflicts of interest, please “reply all” to this email with that information. Once your email our Office Administrator will assist you in scheduling a specific date and time for the interview.

Appendix H

Client consent and Authorization Form – see paper copy.