

Long-Term Ombudsman Program
Policies and Procedures Manual

Service Chapter 650-50

**North Dakota Department of Human Services
600 East Boulevard Dept. 325
Bismarck, ND 58505-0250**

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Purpose 695-01-01

(Revised 1/1/18 ML #3500)

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This manual outlines the policies and procedures for governing the administration, management, funding and implementation of the State Long Term Care Ombudsman Program funded under the Older Americans Act, Titles III and VII. The Long Term Care Ombudsman Program is a resident directed advocacy program. The purpose is to identify, investigate and resolve complaints that affect the health, safety, welfare or rights of residents.

Legal Authority 695-01-05
(Revised 1/1/18 ML#3500)

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The North Dakota Long Term Care Ombudsman Program is mandated by:
the U.S. Administration on Aging through:

- Public Law 109-365, Older Americans Act of 1965, as amended in 2016;
42 U.S.C. § 3001 et seq. Section 712;
- 45 CFR Parts 1321 and 1324

And Legal authority also through:

- NDCC 50.10.1
- NDAC 75-03-25-01

Definitions 695-01-10

(Revised 1/1/18 ML #3500)

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

Adult Protective Services – Remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department's designee:

1. Receiving, evaluating, and assessing reports of alleged abuse, neglect, or exploitation;
2. Short term crisis intervention and arranging for the provision of essential services such as case management and counseling;
3. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;
4. Monitoring the delivery of services to vulnerable adults making progress assessments; and
5. Arranging for or providing and coordinating other services consistent with state law. N.D.C.C. § 50-25.2-01(3).

Aging Services Division - This is the division of the ND Department of Human Services responsible for administering the Long Term Care Ombudsman Program. AKA as the state unit on aging.

Assisted Living Facility - Licensed by the Department of Human Services. As per NDCC 50-32-01 it is a building or structure containing a

series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.

Basic Care Facility - Licensed by the Department of Health. It means a residence, not licensed under chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four hour medical or nursing services and:

- a. Makes response staff available at all time to meet the twenty-four hour per day scheduled and unscheduled needs of the individual; or
- b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.

See NDCC 23-09.3

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

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

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

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

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

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

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

and

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

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

Department - The North Dakota Department of Human Services

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

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

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

- A. Making reasonable efforts to follow procedures set forth in applicable laws and this manual
- B. Seeking and making reasonable efforts to follow direction from the Office of the SLTCO (for volunteers direction could also be given by the local ombudsmen.)

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

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

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

Nursing Facility - Licensed by the Department of Health. It means an institution or a distinct part of an institution established to provide health care under the supervision of a licensed health care practitioner and continuous nursing care for twenty-four or more consecutive hours to two or more residents who are not related to the licensee by marriage, blood, or adoption; and who do not require care in a hospital setting. See NDCC 33-07-03.2

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

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

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

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

Resident - Defined in NDCC 50-10.2 as a person residing in a facility.

Resident Council - An independent, organized group of people living in a long term care facility that meets on a regular basis to discuss concerns and develop suggestions on improving services or resolve differences in their home. The council has the right to privately meet.

Resident Representative -

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

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4. The court appointed guardian or conservator of a resident.
45 CFR §1327.1

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

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

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

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

(Revised 1/1/18 ML #3500)

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Aging Services Division (aka the State Unit on Aging) within the Department of Human Services, has established the Office of the State Long Term Care Ombudsman within the Department as a programmatically independent advocacy service. The State Long Term Care Ombudsman provides the leadership and management of the Long Term Care Ombudsman Program in North Dakota.

Program Implementation 695-01-15-01
(Revised 1/1/18 ML #3500)

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Aging Services Division has responsibilities to the Long Term Care Ombudsman Program as specified in 45 CFR parts 1321 and 1324.15.

The Office of the State Long Term Care Ombudsman is a programmatically independent advocacy service located within the North Dakota Department of Human Services, Aging Services Division. Points of view, opinions, or positions of the State Long Term Care Ombudsman do not necessarily represent the views, positions, or policy of the ND Department of Human Services. [As per 1324.11(e)(8)]

The Department is an umbrella agency with many divisions operating within it. (see Conflicts of Interest 695-01-20-15)

General Authority and Mission 695-01-15-05

(Revised 2/1/16 ML #3462)

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

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

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

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

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

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

(Revised 1/1/18 ML #3500)

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

Reference 45 CFR 74.53(b)

NOTE: Due to the allowance of a three year spend down this time frame may actually be six years. It is monitored by the Department's fiscal liaison and Aging Services Division staff and memos are issued with the dates for record retention purposes.

Organizational Responsibilities 695-01-20

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

(Revised 1/1/18 ML #3500)

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The State Long Term Care Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the Aging Services Division and/or the Department.

1. Leadership and management of the Office
2. Monitors the work of the representatives of the Office
 - a. Conducts annual performance reviews for the local ombudsmen as per personnel policies of the Department
 - b. Regular phone calls
 - c. Two site visits/resident visitations with each local ombudsman per year as budget allows
3. Identification, investigation, and resolution of complaints made by or on behalf of residents of LTC facilities
4. Provision of services to protect the health, safety, welfare and rights of the residents and advocacy for quality of life and quality of care
5. Informs residents how to obtain services provided by other agencies
6. Ensures that residents have regular and timely access to the services provided through the Office and that residents and complainants receive timely responses about complaints
7. Represents the interests of residents before governmental agencies and seeking administrative, legal and other remedies to protect the health, safety, welfare and rights of residents
8. Provide administrative and technical assistance to representatives of the Office to include,
 - a. Guidance on interpretation and application of the LTCOP policies and procedures and applicable statutes
 - b. Timely responses and support in problem solving
9. Systems advocacy according to the policy 695-01-25-85 to include the following,
 - a. Analyzes, comments on and monitors the development and implementation of federal, state, and local laws regulations and

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- other governmental policies and actions, pertaining to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state. The facilitation of public comment may also be a part of this.
- b. Recommends changes in such laws, regulations, policies, and actions as the Office determines to be appropriate.
10. Provides technical support to resident and family councils as requested to protect the well-being and rights of residents
 11. Determines certification or removal of certification of representatives of the Office as per policy 695-01-20-20
 12. Establishes training protocol for representatives of the Office
 13. Receives grievances and investigates allegations of misconduct by representatives of the Office in the performance of ombudsman duties. See policy 695-01-20-25 for further information
 14. Determines the use of fiscal resources appropriated or otherwise available for the operation of the Office.
 - a. Works with fiscal liaison and ASD director in building and monitoring budget
 - b. Submits and signs off on reimbursement claims for the LTCOP
 - c. Kept informed on legislative appropriations by ASD director and fiscal liaison and involved in discussions on how that affects the LTCOP budget
 15. Coordinates with other state agencies, programs and committees as appropriate. This may include, but is not limited to, the Department of Health, Medicaid Fraud Division, law enforcement, advocacy programs and adult protective services
 16. Submits NORS report to ACL/AOA
 17. Develops and provides final approval of an annual report
 18. Distributes the annual report as per federal regulation
 - a. The annual report is sent by e-mail to the ND state governor, the state legislators, the executive director of the Department, the Department of Health survey and certification agency, staff person responsible for assisted licensing in the Department; Protection & Advocacy. Copies of sent e-mails will be retained on file to provide verification they have been sent.
 - b. The Department will also post the annual report in the Publications section on its public website.
 19. Analyzes the data collected through OmbudsManager to identify and resolve significant or systems concerns
-

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20. Provides information and assistance regarding long term care issues to the general public, community organizations, residents, and staff of long-term care facilities and other interested parties

**Determinations and Media Contacts of the State Long
Term Care Ombudsman (Office of) 695-01-20-05
(NEW 1/1/18 ML #3500)**

[View Archives](#)

In the process of resident and systems advocacy the points of view, opinions or positions of the Ombudsman Program may not be in agreement with those of the Department and should be viewed as independent from the Department. The SLTCO and the representatives of the Office shall communicate for the best interests of residents of long term care homes. Determinations shall be shared with the Director of Aging Services Division and the Director of the Department as a courtesy. This does not imply that the Department has the right to review or pre-approve positions or communications of the Office.

For press releases and interactions with the media the SLTCO shall utilize the Department's media specialists' expertise and contacts. This does not imply that the Department has the right to review or approve of the contents.

Confidentiality and Authorized Disclosures 695-01-20-10 (Revised 9/1/21 ML #3632)

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Note: Throughout this manual it is understood that resident informed consent is necessary for investigation of a complaint or disclosure of information. If the resident is determined not able to provide informed consent at the time, informed consent of the resident representative will then be sought. There is policy to be followed if there is no resident representative. (See also Resident Unable to Provide Consent 695-01-25-40).

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

Individuals wanting information released from the LTCOP shall send a written request to the SLTCO. The request shall clearly explain the specific information requested, the reason for the request, how it will be used, and who else may be given access to the information. A written consent from the resident or resident representative authorizing the requested disclosure must also be included. Requests will be reviewed by legal services as needed upon request of the SLTCO.

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

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

1. The resident, or the legal representative of the resident, gives informed consent to the disclosure and the consent is given in writing, orally or visually including through the use of auxiliary aids and services. If the release is not in writing the consent is documented contemporaneously in the documentation by the representative of the Office; or
2. The disclosure is required by court order.

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

1. The complainant gives informed consent to the disclosure and the consent is given in writing, including through the use of auxiliary aids and services; or
2. The complainant gives informed consent orally or visually, including through the use of auxiliary aids and services. If the release is not in writing the consent must be documented contemporaneously in writing by the representative of the Office; or
3. The disclosure is required by court order.

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

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

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

Refer also to policy 695-01-25-40 if there is no resident representative.

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

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

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

The designee of the SLTCO to make the determination on release of information if the SLTCO is not available or accessible for more than 24 hours will be the most senior local ombudsman.

The following information is not considered confidential.

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

Mail, E-Mail and Use of Technology

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

The resident or complainant's name should **never** be included in the subject line of an e-mail. Any e-mail sent by an ombudsman, even a reply e-mail (responding to an outside e-mail), that contains information

identifying a resident or complainant sent outside of the state system shall be sent using secure mail as per the Department's policy (see link below).

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

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

Safeguarding of Notes and Documentation

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

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

Response to a subpoena or court order

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

Any legal document requesting disclosure of information will be documented in the resident record and scanned into OmbudsManager. It should also be noted in the file exactly what records if any are disclosed.

Reference Section 712 of the Older Americans Act and 45 CFR Parts 1321 and 1324 for more information.

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

Conflicts of Interest 695-01-20-15

(Revised 1/1/18 ML #3500)

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Consideration must be given to individual and organizational conflicts of interest that may impact the effectiveness and credibility of the work of the Office. Both the Aging Services Division and the SLTCO are responsible to identify actual and potential conflicts. If a conflict is identified it must be removed or remedied.

Reference 45 CFR 1324.21

To identify individual conflicts of interest the hiring/certifying process for a local ombudsman will require he/she to answer the following questions.

- Do you, or a member of your immediate family, have direct involvement in the licensing or certification of a long term care facility?
- Do you, or a member of your immediate family, have ownership, operational, or investment interest in an existing or proposed long term care facility?
- Are you, or a member of your immediate family, employed by, or participate in the management of a long term care facility in the service area?
- Have you or a member of your immediate family, been employed by or participated in the management of a long-term care facility within the previous six months?
- Are you, or a member of your immediate family, employed by the owner or operator of any long term care facility in the service area?
- Do you, or a member of your immediate family, receive, or have the right to receive, remuneration through an arrangement with an owner or operator of a long-term care facility?
- Have you, or a member of your immediate family, accepted gifts or gratuities of significant value from a long term care facility or its

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management, a resident or a resident representative of a long term care facility in which you would/do provide ombudsman services?

- Do you, or a member of your immediate family, serve as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long term care facility in which you would/do provide ombudsman services?
- Do you have an immediate family member (a member of the household or a relative with whom there is a close personal or significant financial relationship) in a facility for which you would provide ombudsman services?

If any answers are yes there will be discussion regarding the potential conflict of interest. Resolution of the conflict must be reached prior to any offer of employment and/or certification to act as a representative of the Office. Resolution steps may include reassignment of a facility, termination of payments, remunerations etc. To be eligible for hire a local long term care ombudsman cannot have been employed or participated in the management of a long term care facility within the previous three months.

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

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

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

If at any time during the time of employment as a local ombudsman a conflict of interest arises the SLTCO should be immediately notified and a plan of resolution put into place.

If at any time a conflict of interest cannot be remedied the employment of the individual as a local ombudsman must be terminated.

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

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

Organizational Conflicts

The SLTCO in cooperation with the Aging Services Division (SUA) shall identify actual and potential organizational conflicts of interest that may impact the effectiveness and credibility of the LTCOP. When a conflict has been identified there will be a cooperative effort to remove or remedy said conflict. This process will be done annually doing the first quarter of the FFY in preparation of the annual report.

Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that the SLTCO or any representative of the Office perform conflicting activities, in an organization that:

1. Is responsible for licensing, surveying, or certifying long-term care facilities;
2. Is responsible for licensing, surveying, or certifying long-term care services;
3. Is an association (or an affiliate of such as association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
4. Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;
5. Has governing board members with any ownership, investment or employment interest in long term care facilities;

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6. Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
7. Provides long-term care coordination or case management for residents of long-term care facilities.
8. Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S. C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n);
9. Sets reimbursement rates for long-term care facilities;
10. Sets reimbursement rates for long-term care long-term care services
11. Provides adult protective services;
12. Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
13. Conducts preadmission screening for long-term care facility placements;
14. Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
15. Provides guardianship, conservatorship or fiduciary or surrogate decision-making services for residents of long-term care facilities.

The SLTCO shall identify organizational conflicts of interest and describe steps taken to remove or remedy conflicts within the National Ombudsman Reporting System (NORS) annual submission to the Assistant Secretary.

Below are identified organizational conflicts of interest that currently exist due to the placement of the OSLTCO in the Department and the current remedies.

- Licensing of the Assisted Living facilities is done by the Department through the Medical Services Division. However the Office of the SLTCO is physically separate from the Medical Services Division and has a separate director. There is exchange of information between the OSLTCO and the licensing administrator for complaint resolution and systems advocacy. However there is no interference from licensing

regarding the administration of the LTCOP. That administrator has no authority over the LTCOP.

- Enrollment of Qualified Service Providers (QSPs) is done through the Department in the Medical Services Division. The QSPs provide Home and Community Based Services (HCBS). The OSLTCO has no jurisdiction in the enrollment process and the same is true in reverse.
- HCBS services carried out through a Medicaid waiver and plan are administered through the Medical Services Division of the Department and also through Aging Services Division. County Social Service case managers do the eligibility and functional assessments. The HCBS Final Rule settings compliance oversight is also done through the Aging Services Division. There is exchange of information on programming between those staff and the OSLTCO however there are separate policies and procedures. The HCBS administrators do not direct or have jurisdiction over the role and services of the LTCOP.
- Rate Setting is done by the Department in the Medical Services Division. The OSLTCO is physically separate from the Medical Services Division and has a different immediate director. There is no collaboration between the Office and Medical Services on the setting of rates for long term care facilities. The rate setting is also regulated by North Dakota Century Code and North Dakota Administrative Code, both of which have extensive legislative oversight.
- The rates for HCBS services are administered by the Department through Medical Services. As stated above there is physical separation between the OSLTCO and Medical Services with different directors. Rates for OAA programs such as home delivered meals and Family Caregiver respite are administered within the Aging Services Division. Overall the rates are 'set' through oversight by the appropriation through the legislative process.
- Adult Protective Services (APS) are within the Aging Services Division as is the OSLTCO. Each have separate Program Administrators and set their own policies, procedures and protocol. The supervisor/director is shared however the programs are separate and distinct. There is exchange of information as permitted and needed between the OSLTCO and APS for complaint resolution and systems advocacy.

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- APS staff and the local ombudsman are physically located within the Aging Units at the regional Human Service Centers. The two programs have separate administrators/supervisors and only engage regarding mutual clients as consent and disclosure regulations and policy allow. There is an exchange of program information as needed for advocacy etc.
- The toll-free intake I/R (ADRL) line is shared between the LTCOP, APS. The LTCOP calls are referred on to the local ombudsman or the SLTCO as soon as that is the identified service.
- Both APS and the LTCOP follow their policies to insure the programmatic independence of the LTCOP.
- The Medicaid and public benefits staff are administered through the Economic Assistance Division of the Department which is physically and organizationally separate from the LTCOP. County social services are responsible to complete the actual eligibility determinations for Medicaid and economic assistance programs. The Office of the SLTCO have no authority in setting the policy for the determination of benefits, or in determining the eligibility. The ombudsmen may contact Medicaid and Economic Assistance Policy staff for I & A in understanding the policy etc. and to advocate for a resident of a long term care facility.
- Preadmission screenings (DDM Ascend – PASRR/LOC) for long term care facility placements are administered Medical Services Division of the Department. The OSLTCO has no involvement the screenings or the setting of policies for them. If the SLTCO became aware of a systemic weakness in the preadmission screening process, the SLTCO would take responsibility to forward the concerns to the Medical Services Division and advocate for change. The Medical Services Division would be responsible for evaluating the input and deciding if and how to change policy and/or the screening process.
- The North Dakota State Hospital, which is also a part of the Department, does screening to allow admission to the Gero-psych nursing home beds. They are physically separate from the OSLTO and

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also have a separate director. The screening and decisions are done totally independently from the LTCOP.

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

(Revised 1/1/18 ML #3500)

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

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11. Provide technical support and training to residents, families, and facility staff in the development, formation, and maintenance of family councils and resident councils.
12. Participate in nursing home and basic care facility surveys.
 - a. Give input to survey staff on systems issues noted at a facility and contact information for residents and complainants who want to be contacted during the survey to weigh in on the issues. Survey staff will contact the local ombudsman either by phone or e-mail.
 - b. Attend the exit survey if possible.
 - c. Review the survey report when it is published for awareness of the cited deficiencies.
13. Participate in HCBS On-Site Reviews of basic care memory care facilities enrolled as Adult Residential Services Qualified Service Providers.
 - a. The HCBS program administrator will contact local ombudsman prior to on-site visits either by phone or e-mail and the ombudsman will share concerns regarding compliance with the settings rule.
 - b. If a complaint is received by the LTCOP related to the settings rule the local ombudsman will ask for the necessary consent from the resident to send that information to the HCBS Program Administrator for tracking and follow up
 - c. The ombudsman will review the on-site visit review report for those areas out of compliance for monitoring during resident visits

Certification & Training Requirements of Local ombudsmen and volunteer ombudsmen/representatives of the Office 695-01-20-25

(Revised 9/1/21 ML #3632)

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

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

- Have no un-remedied or unresolved conflicts of interest as per 695-01-20-10
- Have completed the hiring and screening process required by the Department of Human Services and be eligible for hire
- Have completed at least 40 hours of initial training as set forth by the Office
- Be qualified to carry out the activities required on behalf of the Office
- Complete at least 10 hours of annual training

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

- Have no unremedied or unresolved conflicts of interest as per 695-01-20-10
- Have successfully completed reference checks and the background check process
- Have completed at least 4 hours of initial classroom training as set forth by the Office and 2 hours of shadowing the local ombudsman
- Be determined qualified to carry out the activities required on behalf of the Office
- Complete at least 6 hours of training annually
- Volunteer ombudsmen shall be recertified every two years
 - background checks shall be updated prior to recertification
- When a volunteer is certified he/she will be added to the WSI listing for insurance coverage.

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

Non-issuance or Revocation of certification

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

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

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

For volunteers only:

- Has failed to report abuse, neglect or exploitation of a long-term care resident to the local ombudsman.
- Has not submitted a monthly report for three months.

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

Contents of Training – Local ombudsmen

40 hours of initial training to include but not be limited to:

State and Federal Laws regarding the ombudsman program, residents rights, and regulations of long term care facilities

Ombudsman Policy and Procedure Chapter for ND

Elder Justice Act

Involuntary Transfer/Discharge

NORC Online Training Curriculum:

Module 1: History and Role of the Long Term Care ombudsman Program

Module 2: The Aging Process

Module 3: Residents' Rights

Module 4: The Problem Solving Process – Investigation

Module 5: The Problem Solving Process – Resolution

NORS Training – Modules I – IV

Working with Families

ND Vulnerable Adult Protective Services laws, and policies,

Informed Health Care Consent Law, POA/DPOA; guardianship; living wills/health care directives etc.

SHIC

MDS requirements for residents wanting to transition out of nursing homes

Types of LTC Homes and licensing/regulations in North Dakota

Facility Surveys process and ombudsman involvement

Shadowing a LTC ombudsman for at least 7 hours – at least 2 hours in an assisted living, a basic care, and a nursing home and at least 1 hour in a swing bed

After the completion of 160 hours as a certified ombudsman the SLTCO will shadow the new ombudsman for one visit at his/her assigned facility to evaluate performance and adherence to policy.

Training Requirements – Volunteer ombudsmen

4 hours of initial classroom training to include but not be limited to:

History & Philosophy of the LTCOP

Resident Rights

Problem Solving Process

Decision Maker

Organization of Facilities

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Assessment and Care Planning
Case Mix, MC & BCAP
Confidentiality & APS information
Aging Process

There may also be assignments given for the individual to study independently.

Shadowing the local ombudsman doing resident visitation and complaint resolution for at least 2 hours.

Grievances 695-01-20-30**(Revised 9/1/21 ML #3632)**[View Archives](#)

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

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

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

Grievance about Actions of a Local ombudsman

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

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

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

Grievance about complaint investigations

A grievance regarding a complaint investigation may be filed in writing with the SLTCO. The grievance statement must list the specific facts related to the grievance, the nature of the grievance, and any request for resolution. The grievance should be made in writing within thirty (30) calendar days of the action.

- The complaint investigation documentation will be reviewed by the SLTCO within five (5) working days.
- The local ombudsman who completed the complaint investigation will be interviewed as part of the investigation.
- Informed consent must be obtained from the resident or the resident's representative for any resident identifying details of the investigation to be disclosed to the individual filing the grievance. The response that is provided will address whether the complaint investigation process followed the policies of the program.
- If the concerns noted about the complaint investigation are substantiated, corrective action and education will be done with the local ombudsman.
- The SLTCO will have five (5) working days to provide a written response. The response is final.

Grievance about the actions of the State ombudsman

- The grievance should be made in writing within 30 days of the action and submitted to the Director of the Aging Services Division. It must list the specific facts related to the grievance, the nature of the grievance, and any request for resolution.

- A copy of the grievance will be discussed with the SLTCO within five (5) working days of its receipt. A written copy of the grievance statement will be given to him/her at that time.
- The policies on consent and disclosure must be followed if this involves a complaint investigation.
- The SLTCO shall provide a written response to the Director of Aging Services without violating the policies of disclosure within 5 working days.
- The Director shall provide a response to the grievance within 5 working days from receipt of the SLTCO response to the SLTCO and the complainant.

Grievance about the actions of a volunteer ombudsman

- A grievance regarding the actions of a volunteer ombudsman may be filed in writing with the local ombudsman or the SLTCO. The grievance statement must list the facts related to the grievance, the nature of the grievance, and any request for resolution. The grievance must be made in writing within thirty (30) days of the action.
- If received by the local ombudsman, he/she will provide a copy of the grievance to the SLTCO within one working day (or the SLTCO to the local ombudsman if received by the SLTCO) and may discuss the grievance with the SLTCO.
- The grievance will be discussed with the volunteer ombudsman named in the grievance within five (5) working days of initial receipt. A written copy of the grievance statement will be given to him/her at this time. He/she will have five (5) working days to provide a written response.
- The SLTCO will review the response within two (2) working days with the local ombudsman and the volunteer ombudsman and discuss the resolution of the grievance. The resolution will be final.
- The SLTCO will provide the complainant who filed the grievance the resolution in writing within 5 working days of the resolution meeting with the volunteer ombudsman.

Retaliation and Willful Interference Prohibited 695-01-20-35

(Revised 1/1/18 ML #3500)

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The representatives of the Office, or any entity with direct knowledge, shall notify the SLTCO immediately of any allegations of willful interference or suspected retaliation by a long-term care facility or other entity, or individual regarding any resident or complainant for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office in the fulfillment of their duties.

They shall also report allegations of interference, retaliation, and reprisals by a long-term care facility, other entity or individual against the SLTCO or representative of the Office for fulfillment of the functions, responsibilities, or duties as laid out in 1324.13 and 1324.19.

Upon receipt of such notification the SLTCO shall contact the alleged long-term care facility, entity, or individual and:

- Review the information presented and how it is seen to be willful interference or retaliation;
- Educate on the role and responsibilities of the LTCOP;
- Attempt resolution of the situation;
- If resolution is not successful referral shall be made to the Attorney General's office for prosecution;
- A complaint will also be filed with the DOH if a nursing home is involved as such actions may be cited as deficiencies which would require a plan of correction.

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

resident, or on account of the providing of information to a long term care ombudsman constituting or relating to a complaint.

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

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

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

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

Eligible Clients 695-01-25-01

(Revised 1/1/18 ML #3500)

[View Archives](#)

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

The program will provide consultations and information to any LTC staff, family of a LTC resident, or community member on issues pertaining to the health, safety, welfare and rights of LTC residents.

Resident Visits 695-01-25-05

(Revised 9/1/21 ML #3632)

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- A. Quarterly non-complaint related visits
1. The local long-term care ombudsman shall visit each quarter the residents of each long term care facility in their assigned geographic area.
 2. Visits shall be unannounced and staggered so that facilities have no basis to predict the timing of the visit.
 3. A visit for the purpose of complaint investigation, working with the resident or family council, presenting an in-service for facility staff, participating in an annual survey or other related reason may be combined with a quarterly non-complaint related visit. Documentation of time must be done separately.
 4. The ombudsman shall not interfere with the provision of resident care or the daily facility function when making visits.
 5. The purpose of the visits shall be:
 - a. To observe the condition of the residents and the facility and make recommendations as appropriate.
 - b. Meet new residents and orientate them and any family members about the Ombudsman program. Ombudsman brochures and copies of the Resident Rights handbooks shall also be given out. The ombudsman can also give out their business card.
 - c. Confirm that facilities have information about the ombudsman program posted in an area accessible to residents. Ombudsman posters are available through the Office of the SLTCO.
 - d. Visit with residents, and/or family members, and staff to determine if there are any issues that need to be resolved.
 - e. To gather and maintain an updated listing of phone numbers or e-mail addresses for the residents and resident representatives. Consent shall be obtained at the same time to use this contact information if necessary.
- B. Complaint related visits

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1. Upon responding to a complaint the ombudsman may need to visit the resident at the facility.
2. See Intake of Complaints 695-01-25-45 for further information.

C. Increased frequency of visits

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

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

D. Declaration of disaster or emergency issued by either federal or state officials that specifically restricts visitation by the ombudsmen to residents of long-term care facilities

1. The ombudsmen shall follow the visitation restriction for the duration of the declaration.
2. The ombudsmen shall use the contact information for the residents and resident representatives to make phone calls and virtual visits.
3. If necessary, the ombudsmen will contact the long-term care facility and request updates on contact information for all the current residents. The ombudsman shall obtain consent to use the contact information upon the initial contact with the resident.
4. This shall apply for both the regular quarterly contacts and complaint resolution contacts.
5. Specific protocols will be developed by the SLTCO based on the nature of the disaster or emergency.

Role in Facility Closure 695-01-25-10

(Revised 9/1/21 ML #3632)

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

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

- support residents during the relocation process
- monitor the facility's planning for the discharge/relocation of residents (see also CFR 483.75(r) for nursing facilities)
- advise residents of their rights during the closure and insure their rights are protected
- report violations of regulatory requirements to the licensing authority as a systems issue
- assist residents and their families by providing information about relocation options and educating them on choosing a facility to best meet the residents needs
- follow up with as many residents as possible after discharge is complete to evaluate the process and satisfaction with current living arrangement
- Notify local ombudsmen if residents are relocating to facilities in their zone for follow-up on the actual move and adjustment to the new facility.

Access to Facilities and Residents 695-01-25-15

(Revised 1/1/18 ML #3500)

[View Archives](#)

As stated in NDCC 50-10.1 the ombudsman shall have access to all long term care facilities within the state for regular visits and also to investigate complaints. Thus the ombudsmen can enter all long term care facilities at any time and on any day of the week as needed to do a visit or to do complaint investigation.

Also as stated in NDCC 50-10.1-04 the ombudsman shall also be able to visit with a resident in a private space.

The ombudsman shall:

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

Access to Records 695-01-25-20

(Revised 1/1/18 ML #3500)

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As per NDCC 50-10.1.04 the ombudsman shall have access to all social and medical records of a resident if:

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

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

If the resident is unable to provide informed consent and the name of the resident representative is needed to address a concern the ombudsman shall:

- a. Request the name and contact information of the resident representative from the LTC facility.

As per OAA Section 712 (b)(3) For purposes of section 264(c) of the Health Insurance Portability and Accountability (HIPPA) Act of 1996, 45 CFR part 160 and 45 CFR 164, subparts A & E, does not preclude release by covered entities of resident private health information or other resident identifying to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

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A Memorandum of Agreement with the Department of Health (last updated March 2017) states they shall share copies of all licensing and certification records maintained by them with respect to specific long-term care facilities consistent with state and federal laws and regulations. This includes the nursing homes, basic cares, and swing beds.

The licensing and certification records for assisted living homes are maintained by the Department of Human Services, Medical Services Division. Those records are can be accessed upon request (phone call, e-mail, etc.).

Consultation 695-01-25-25

(Revised 1/1/18 ML #3500)

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

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

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

Community Education 695-01-25-30
(Revised 1/1/18 ML #3500)

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The SLTCO and the local ombudsman are available to provide information and education regarding the long-term care system, aging issues, the rights and benefits of residents of long-term care facilities, and services available to residents. Recruitment of volunteer ombudsman may also be done through community education.

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

Consent and Resident Directedness in Complaint Process 695-01-25-35

(Revised 9/1/21 ML #3632)

[View Archives](#)

- A. Regardless of the source of the complaint the ombudsman advocates on behalf of the resident of the long-term care facility. All complainants shall be informed that consent from the resident or resident representative is necessary for the ombudsman to actively advocate or investigate a complaint.
- B. The purpose of a complaint investigation is to resolve the issue to the satisfaction of the resident and to protect his/her health, welfare and rights. The goal is not to substantiate if abuse or other allegations occurred to the standard of law.
- C. Investigation by the ombudsman of a complaint shall proceed only with the expressed and informed consent of the resident or the resident's representative.
- D. For all complaint investigations the ombudsman shall:
 - a. Determine the resident's perception of the complaint or issue
 - b. Determine the resident's wishes regarding the resolution of the complaint
 - c. Advise the resident of his or her rights
 - d. Promote self-advocacy
 - e. Develop a plan of investigation leading to a resolution consistent with the resident's wishes.
- E. If at any time during the complaint investigation and resolution process the resident indicates that he or she does not want the ombudsman to take further action on the complaint the ombudsman shall:
 - a. Attempt to determine the reason the resident is refusing or withdrawing consent including the following.
 - i. Past responses of the facility to complaints
 - ii. The residents relationship with the staff and presence of support systems/placement options

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

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- i. If possible share information with the facility administrator without giving resident identifying information. Remind the administrator of the facility's responsibility to investigate and report allegations of abuse. Refer the administrator to the regulatory agency for further guidance.
- j. If complainant is other than the resident, educate them of the role of the LTCOP, the need for resident consent, and refer them to the appropriate investigative entity.

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

(Revised 9/1/21 ML #3632)

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1. The LTCOP shall advocate for a resident's wishes to the extent the resident can express them, even if the resident has a legal decision maker.
2. When a resident is determined unable to provide informed consent to the ombudsman the ombudsman shall:
 - a. Determine the name and contact information for the resident representative from the resident's record. (Refer also to 695-01-25-20)
 - b. Consult with the resident's representative - unless the representative is implicated in the complaint or is seen to be not acting in the best interests of the resident.
3. If resident is determined unable to provide informed consent and there is no resident representative designated the ombudsman shall:
 - a. Seek information from family, friends, and other sources that indicate what the resident would have likely desired and work from that premise.
 - b. Be guided on the principal of 'reasonable - best interest' and that the resident would likely have wanted his or her health, safety, welfare and rights protected.
 - c. Staff with the SLTCO for final approval before proceeding. (Approval will be given within 24 hours of staffing.) The designee to make the determination if the SLTCO is not available or accessible will be the most senior local ombudsman.
 - d. If determined the resident will not be able to be their own decision maker long term the ombudsman must advocate for the facility to take action for a resident representative to be assigned.

Intake of Complaints 695-01-25-45

(Revised 9/1/21 ML #3632)

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A. Complaints may be reported by:

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

B. Complaint involving a deceased resident

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

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

C. Complaint involving a resident no longer residing in a long term care facility

As the individual is no longer a resident of a long term care facility the concern should be handled as a consultation.

- a. Provide information for self-advocacy and make appropriate referrals.

- b. If concerns are tied to a specific facility document the concerns and when visiting residents there use observation and directed questions to determine if the concerns are ongoing.
 - c. Follow all consent and disclosure policies.
- D. Complaint alleging abuse, neglect, or exploitation
- 1. Advise the complainant, to report the matter to the facility, the Department of Health, the licensing authority, Adult Protective Services, and/or law enforcement as appropriate.
 - 2. Assist the individual if requested in reporting the abuse, neglect or exploitation.
 - 3. If the report is received from Vulnerable Adult Protective Services:
 - a. Review the report to determine if within the scope of service of the Long-Term Care Ombudsman Program.
 - b. If the report is within the scope of service, the ombudsman shall contact the resident or resident representative to determine what action they want the ombudsman to take.
- E. Complaint Intake

Upon receipt of a complaint the ombudsman shall:

- 1. Collect relevant details from the complainant.
- 2. Explain that the ombudsman contacts the resident to determine his/her wishes and as resident advocate will act in accordance with the direction given by the resident.
- 3. Discuss all actions/attempts that have been made to resolve the complaint and their outcomes;
- 4. Determine if the complaint is appropriate for the Ombudsman program.
- 5. Determine the desired outcome both from the complainant and the resident if one is named. The resident's desired outcome will take precedence.
- 6. Discuss alternatives for resolution, possible results and possible consequences, and resources available to resolve the complaint.
- 7. Review regulations that give the complainant and resident the right to state a grievance and expect review and some type of resolution without retaliation.

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8. Educate on the action steps of advocacy. The complainant can be encouraged to take the concern to the resident council or the family council if it seems to be a systems issue.
9. Explain the relevant confidentiality and consent/disclosure provisions of the ombudsman program.
10. Talk through any fears of retaliation.

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

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

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Complaints relating to payment, benefits etc.	less from the receipt of the complaint Determine severity, if systematic etc.
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The LTCOP is not an emergency response system. 911 or other emergency response systems should be contacted if the situation is considered an emergency or life threatening.

Investigation of Complaints 695-01-25-55

(Revised 9/1/21 ML #3632)

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- A. The ombudsman shall work with the resident and/or resident representative to develop a reasonable plan of action to resolve the complaint. The ombudsman shall discuss with the resident and/or resident's representative the administrative, legal, and other remedies available to resolve the complaint. The plan of action shall be directed by the resident. To investigate a complaint the ombudsman shall use one or more of the following steps as appropriate and with the informed consent of the resident.
 - 1. Interview the resident and/or complainant to gain more information if needed
 - 2. Personally observe the situation
 - 3. Interview any staff, administration, physician, other residents, family members etc. that may have relevant knowledge
 - 4. Research relevant laws, rules, regulations, and policies
 - 5. Examine any relevant records while following access and confidentiality policies and procedures

- B. An investigation shall include, at a minimum, the following activities.
 - 1. Direct contact and interview with the resident and/or the resident representative. This may be a face to face contact, telephone call, e-mail, or letter.
 - 2. Direct contact and interview with the complainant. This may be a face to face contact, telephone call, e-mail, or letter.

- C. If a complaint, or an investigation, indicates alleged abuse, neglect, or financial exploitation of a resident the ombudsman shall:

See also Referrals 695-01-25-75 & Joint Investigations 695-01-25-80

- 1. Explain to the resident the ombudsman role as an advocate and the role of other investigative agencies. Determine if due to

- cognition issues there is a legal decision-maker other than the resident.
2. Encourage the resident, or resident representative to report the suspected abuse, neglect, or exploitation to the facility administration, the Department of Health, the licensing authority, Adult Protective Services and/or law enforcement.
 3. Request consent from the resident, or resident representative, to report the suspected abuse, neglect, or exploitation to the facility administration, the Department of Health, the licensing authority, Adult Protective Services, and/or law enforcement if they don't want to make the report themself. When reporting to nursing home staff, review their responsibility to report to the DOH and law enforcement and to conduct their own investigation.
 4. Inform the complainant if they are a mandated reporter through NDCC 50-25.2.
 5. Determine what the resident wants and obtain informed consent to investigate; determine if resident has fear of retaliation or is in need of assistance and/or protection.
 6. Serve as advocate for the resident with service providers if resident requests.
 7. Link resident with available protections and service providers.
 8. Remain available for consultation with the resident, resident representative, decision maker, and any of the involved entities. Follow all rules of confidentiality, informed consent, and disclosure.

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

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

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

Resolution of Complaints 695-01-25-65

(Revised 9/1/21 ML #3632)

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The resident and/or resident's representative, to the fullest extent possible, shall be involved and empowered in self-advocacy to participate in the resolution of the complaint. The resident shall be updated regularly about the actions taken during the investigation and the information gathered.

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

The ombudsman may need to have ongoing discussions with the resident to adjust the course of action to resolve the complaint.

The resolution status of each complaint shall be documented in OmbudsManager according to the options available. The resolution process shall include a follow up of the situation with the complainant and/or resident to determine whether:

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

Notification of Case Closure 695-01-25-70

(Revised 1/1/18 ML #3500)

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

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

1. When all of the complaints listed for the case have been resolved.
2. When the resident or complainant asks that no further activity be taken on all of the complaints within a case.
 - a. A resident can ask that no further activity be taken on one or more complaints within a case prior to resolution but also ask that one or more other complaints within the case continue to be investigated to resolution.

Every attempt should be made to complete work and documentation to close a case within 90 days from the date on which the complaint was received. Often there needs to be face to face contact with the resident to insure good communication of the investigation and to determine if resident understands and accepts the resolution reached.

Referrals 695-01-25-75

(Revised 9/1/21 ML #3632)

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A plan for resolution of a complaint may involve a referral to another entity if the initial advocacy efforts are unsuccessful. Referrals may also be made when providing information and consultation. All policies of confidentiality, consent and disclosure must be followed.

- A. The ombudsman shall provide information upon request about agencies available to assist with a concern or issue to any resident, resident representative, family member, complainant, or long term care facility staff.
- B. The ombudsman shall provide referral information to a complainant when the concern is within that agency's scope of service.
- C. Referrals to regulatory agencies

If the complaint involves a possible violation of a regulatory issue and cannot be resolved through advocacy, or involves serious threats to the health, safety, welfare and rights of a resident, the ombudsman shall refer residents or complainants to directly contact the appropriate regulatory agency to file a complaint.

The ombudsman can make the referral to the regulatory agency on behalf of the resident or complainant if so requested and with consent from the resident.

If an issue is widespread in a facility and attempts to resolve the issue with the facility have been unsuccessful the ombudsman should make a complaint referral to the regulatory authority as a system issue.

- D. Referrals to Corporate Headquarters or Facility Owners

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

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

E. Referrals to Medical Services Fraud & Abuse

1. The ND Medicaid Fraud Control Unit (MFCU) investigates and prosecutes health care providers who defraud the ND Medicaid Program and who abuse, neglect, or financially exploit a resident in any facility that accepts Medicaid funds. A referral can be made the MFCU in any of the following ways:
 - By email: agomedicaidfraud@nd.gov
 - By telephone: 701-328-5446 (Monday-Friday, 8AM - 8PM only)
 - By mail:

MFCU
PO Box 2495
Bismarck ND 58502-2495
2. If there is suspicion of Medicaid fraud and/or abuse the ombudsman shall report it in one of the following ways:
 - By calling 1.800.755.2604 and select Option 6 to speak with an attendant
 - By email at medicaidfraud@nd.gov

F. Follow Up

When a referral is made in the process of complaint resolution, the ombudsman shall follow up with the resident to determine if the referral was successful in resolving the issue and if the resident was satisfied with the response of the referral agency. It should be assessed if additional referrals are needed to resolve the concern.

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Referrals may also be received directly from other programs (e.g. Department of Health, VAPS). Each of those programs have a separate role from that of the LTC ombudsman. Their referrals should be evaluated to determine the role the ombudsman can have in the situation. If the referral concerns involve a specific facility the ombudsman should note the concerns. When visiting residents, observation and directed questions can be used to follow up on the concerns.

If the referral involves an open case the ombudsman must seek resident consent to share relevant information. If it is a closed case or information is known through providing information and consultations refer to the section Confidentiality and Authorized Disclosures 695-01-20-10.

- G. Referrals from Vulnerable Adult Protection Services (VAPS)
Refer to NDCC 50-25.2-04 and Vulnerable Adult Protective Services (VAPS) Policy 690-01-23-25.

VAPS intakes for any resident of a LTC facility are routed to the local ombudsman to inform the ombudsman of concerns within their zone facilities. The ombudsman may confirm receipt of the intake report and follow policy on intake of a case etc.

- H. Referrals from Certification and Survey - Department of Health
The ombudsman shall follow the policy on intake of a case etc. if the concerns are within the ombudsman scope of practice.

Joint Investigations 695-01-25-80 **(Revised 9/1/21 ML #3632)**

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A joint investigation may be conducted by a local ombudsman with staff from another agency when the concerns are included in the other agency's scope of service also. It shall be conducted according to the terms of an active Memorandum of Agreement between the agencies. If a Memorandum does not exist or cover this issue the agencies shall agree on conduct and responsibilities of each before the investigation begins.

The ombudsman must ask consent from the resident to conduct a joint investigation in collaboration with the other agencies and share information.

All rules of confidentiality, consent and disclosure apply.

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

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

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

The LTCOP should not be the primary investigator when DOH, VAPS, or P & A are involved as those agencies have primary responsibility to determine if a law, standard or regulation has been violated. They also have the authority to take official action if necessary. See Investigation of Complaints 695-01-25-55 for the investigative role of the ombudsman.

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If the ombudsman has knowledge of the facility that would be helpful to the primary investigative agency it should be shared with that agency. If resident specific information is known that could be relevant to the investigation consent to share should be sought from the resident. If consent is given information should be shared as soon as possible.

Even with other agencies involved a resident may direct the ombudsman to also investigate the concerns. The resident should be informed of potential conflicts and/or interference with the other agencies' investigations and how this may impact the investigation and the outcomes.

Systems Advocacy 695-01-25-85

(Revised 9/1/21 ML #3632)

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In the systems advocacy process the State Long Term Care Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the Aging Services Division and/or the Department. The goal of the systems advocacy will be to provide the perspective of the LTC resident.

The SLTCO will assure that in all written and verbal communications about such issues the communications will state that the determinations and positions taken are those of the OSLTCO and not the Department. The appropriate legal citation(s) that explains that the Office of the SLTCO is not required to have the OSLTCO correspondence reviewed or pre-approved by the Department shall be included in all communications.

[Authority is given in state statute as follows: NDCC 50—10.-03(2); NDCC 50-10.3(7); NDAC 75-03-25-03 (4-9)]

The SLTCO may consult with the Department's legal division, other legal resources, and the Director of the SUA in forming determinations and positions of the Office.

To promote consultation between the OSLTCO and the Department where the OSLTCO is organizationally located, systems advocacy efforts shall be shared with the Director of Aging Services Division and the Executive Director of the Department per the communication protocol that is established for all Department employees. Complying with the notification protocol does not imply that the Department has the right to review or pre-approve positions or communications of the OSLTCO.

The SLTCO will direct the involvement of the representatives of the Office with systems advocacy. All representatives of the Office must first discuss

and receive written notice of approval from the SLTCO regarding their systems advocacy efforts. The SLTCO will notify the director of the Aging Services Division of systems advocacy actions.

The SLTCO and all representatives of the Office are not considered lobbyists under NDCC as they are employees of the state and are acting in their official capacity. [NDCC 54-05.1-02 & NDCC 34-11.1-02 See also NDCC 34-11.1-05(5)]

The SLTCO analyze, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that pertain to the health, safety, welfare and rights of residents with respect to the adequacy of long-term care facilities and services in the State through:

- News sources and internet
- List serves and advocacy networks
- Involvement in workgroups and committees
- Tracking of legislation, rule making, and policy development activities
- Identifying issues and trends that have potential to affect residents of LTC in ND

The SLTCO shall comment on and recommend any changes in such law, regulations, policies and actions as the Office determines to be appropriate to a long-term care facility, a government agency, an organization, a corporation etc. by:

- Submitting comments and recommendation on proposed regulations, changes etc.
- Testifying on proposed state legislation
- Proposing new state legislation
- Sharing data and LTC systems observations of concerns
- Encouraging resident participation in the creation of legislation or regulations
- Using data and complaint trends to respond to proposed changes that will potentially have impact

The SLTCO shall facilitate public comment on laws, regulations, policies and actions that pertain to the health, safety, welfare and rights of the

resident, with respect to the adequacy of long-term care facilities and services in the state by:

- Including education and opportunity for comment at presentations done by the LTCOP
- Sharing information about pending legislation, regulations, policies, etc. that impact residents
- Asking for comment from residents, family members and staff of long-term care facilities
- Educating and asking for comments from resident and family councils
- Encouraging resident participation in the development of legislation, regulations, policies, etc.

The SLTCO shall provide information to public and private agencies, legislators, the media and other persons regarding the problems and concerns of residents and recommendations related to the problems and concerns through:

- In-person meetings, distribution of the LTCOP annual report, e-mails, letters, press releases, letters to the editor, community education, discussions with resident councils and family councils, fact sheets etc.

Systems advocacy may also occur within a smaller system such as a long-term care facility, or a corporate entity. Written notice of approval from the SLTCO is not necessary for this type of systems advocacy when it correlates with the investigation of a complaint. If the advocacy will affect residents in other zones the advocacy issue should be shared with the full ombudsman team.

Ombudsman Participation in Administrative Proceedings 695-01-25-90

(Revised 9/1/21 ML #3632)

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A resident of a nursing facility has the right to appeal a discharge/transfer notice within 30 days after the date of the notice. The appeal is filed with the Department Appeals Supervisor which may result in an administrative hearing facilitated by an Administrative Law Judge (ALJ). With the filing of the appeal, the transfer or discharge shall be delayed until the hearing decision is made, unless the failure to transfer or discharge would endanger the health or safety of the resident or other individuals in the facility.

The resident can ask the ombudsman to assist if retaining legal counsel. The ombudsman never serves in a lawyer/client relationship but is an advocate assisting the resident to effectively prepare for and present his/her position to refute the transfer or discharge.

The Ombudsman can also:

- a. Assist the resident in processing the points the resident wants to make at the hearing and his/her preferred outcome.
- b. Explain the appeal process.
- c. Educate the legal counsel on state and federal regulations with the consent of the resident.
- d. Offer to support the resident throughout the appeal process. This may include advocacy with the facility prior to the hearing to resolve the issues leading to discharge, or attending the hearing with the resident assisting the resident to present his or her position.
 1. If an ombudsman is asked to testify at the hearing a list of witnesses is to be sent to the ALJ prior to the hearing.

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- e. Testify at the hearing about the notice complying with regulations at the resident's request.
- f. Review the finding of the hearing with the resident.

Also refer to NDAC CHAPTER 75-0-03; APPEALS AND HEARINGS for further information.

Legal Consultation and Resources 695-01-25-95

(Revised 9/1/21 ML #3632)

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Legal counsel must be shown to be adequate, available, with competencies relevant to the legal needs of the LTCOP.

The Department's Legal Advisory Unit is available to provide consultation for the representatives of the Office to assist with advocacy for long term residents. This involves:

- a. protecting the health, safety, welfare, and rights of residents of long-term care facilities.

The Department will also assist with arranging for legal representation of the SLTCO or the representatives of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties.

The Legal Advisory unit will state if there is a conflict of interest as defined by the State ethical standards governing the legal profession.

All communications between the SLTCO, or the representatives of the office, and legal counsel are subject to attorney-client privilege.

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

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

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

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

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

Reporting and Documentation 695-01-30

OmbudsManager Documentation 695-01-30-01

(Revised 2/1/16 ML #3462)

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Complaint

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

Consultations, Information to Individuals

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

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

Volunteer Ombudsman Tracking 695-01-30-05

(Revised 2/1/16 ML #3462)

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

Volunteer Long Term Care Ombudsman 695-01-35

Qualifications 695-01-35-01

(Revised 1/1/18 ML #3500)

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

Qualifications:

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

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

Responsibilities 695-01-35-05

(Revised 7/1/18 ML #3531)

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Category I Volunteer ombudsmen shall:

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

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11. Receive and report concerns, issues, and complaints to the Local Ombudsman for investigation and resolution within one working day of receipt.
12. Notify the Local ombudsman of any extended leave of absence from the role of volunteer ombudsman.
13. Notify the Local ombudsman of decision to resign with at least 14 days notice, and return all ombudsman materials and any notes regarding the facility and its residents.
14. Perform his or her responsibilities in accordance with applicable federal and state laws, rules and regulations, and this Manual.

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

15. Receive, investigate and resolve complaints (this should be documented on the monthly reports.) This replaces #11 under Category I)
16. Support resident and family council activities and attend the councils upon invitation from the council members.
17. Assist with issue advocacy and public information and education to the extent determined appropriate by the SLTCO

Effective 07/01/2018 all new volunteer ombudsmen shall be certified as Category II.

Volunteer ombudsman shall not:

1. Be appointed in any protective service or fiduciary capacity for a long-term care resident in their assigned facility,
2. Provide advice to residents or staff regarding medical issues, or legal issues. Appropriate referrals shall be made.
3. Establish relationships with residents or staff that will interfere with the advocacy role and be a conflict of interest.
4. Serve as a facility volunteer, or organize/lead facility activities. Volunteers may attend activities to observe and visit with residents.
5. Receive payment or accept gifts (including meals) from families, residents, or facility staff
6. Provide any direct hands on personal care, activity, transportation, or treatment for resident.

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

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

(Revised 7/1/18 ML #3531)

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There will be a state wide recruitment plan developed and responsibilities assigned to the local ombudsmen.

When a person states interest in volunteering as an ombudsman he/she shall complete an application and the conflict of interest questionnaire. The local ombudsman will then:

1. Meet with the potential volunteer
2. Review the qualifications & responsibilities (to include conflicts of interest)
3. Review the consent and disclosure expectations
4. Review the complaint resolution expectations

If person is still interested the local ombudsman will:

1. Complete the required background checks on the potential volunteer
2. Complete reference checks
3. Review the conflict of interest questionnaire.

This information shall then be forwarded-to the SLTCO for review.

1. Any misdemeanors, felonies, red flags, etc. or conflicts of interests shall be reviewed by the SLTCO
2. If concerns exist they will be processed with the potential volunteer.
3. The SLTCO will work with the potential volunteer to remove or remedy conflicts of interest if possible (see also Conflicts of Interest 695-01-20-15).

If/When the SLTCO gives approval to proceed the local ombudsman will arrange training with the potential volunteer.

(See Certification & Training Requirements of Local ombudsmen and volunteer ombudsmen/representatives of the Office 695-01-20-25 for the training requirements.)

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Upon completion of initial training the potential volunteer shall:

1. Sign the Volunteer Long Term Care ombudsman Position Description form indicating understanding and agreement.
2. Sign the Confidentiality Statement of Understanding form indicating an understanding and agreement to follow the policies
3. Discuss with the local ombudsman what facility they would prefer for assignment.

The potential volunteer must shadow the local ombudsman doing resident visits and complaint resolution for at least two hours.

Once the potential volunteer completes the above steps the Local ombudsman will:

1. Notify the SLTCO of the potential volunteer's completion of initial training and shadowing
2. Provide the potential volunteer's contact information
3. Give recommendations on certification (see 695-01-20-25.) of potential volunteer

The SLTCO will review all information and make a decision on certification of the potential volunteer. The individual will be notified in writing of certification status as a representative of the office and the local ombudsman will be ccd.

If certified the volunteer will be added to the WSI coverage.

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

1. Notify the facility of the assigned volunteer.
2. Set up a file for the volunteer ombudsman with the following information. The volunteer shall be given a copy of each document.
 - a. The signed Volunteer ombudsman Application Form
 - b. The signed Volunteer Long Term Care ombudsman Position Description;

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- c. The signed-Confidentiality Statement of Understanding form;
 - d. The signed Conflict of Interest Questionnaire
 - e. The Volunteer ombudsman Certification letter.
 - f. The Letter of Notification to the facility.
3. Provide written notice to the volunteer ombudsman of the two following requirements.
 - a. For the first two months the volunteer ombudsman will review all activities and cases with the local ombudsman for technical assistance.
 - b. After the volunteer ombudsman has completed one month of resident visits the local ombudsman will shadow he/she during a resident visit to evaluate performance and adherence to policy.

Annual Evaluation 695-01-35-15

(Revised 7/1/18 ML #3531)

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

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

Leave of Absence 695-01-35-20

(Revised 2/1/16 ML #3462)

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

In such circumstances:

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

Return from Leave of Absence

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

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

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

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

Suspension 695-01-35-25

(Revised 2/1/16 ML #3462)

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

The SLTCO shall:

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

Resignation 695-01-35-30

(Revised 2/1/16 ML #3462)

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The volunteer ombudsman shall:

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

The local ombudsman shall:

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

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

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

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

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

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

Reimbursement of Expenses 695-01-35-40

(Revised 1/1/18 ML #3500)

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

Reimbursement will be made according to established state rates.

**Emergency Preparedness and Response 695-01-40
(NEW 9/1/21 ML #3632)**

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The Ombudsman Program is not considered as first responders in emergencies or disasters and is not authorized through the Older Americans Act as such. However, the OAA and federal regulations do require the Ombudsman program to provide services to assist residents in protecting their health, safety, welfare, and rights, as well as to represent the interests of residents before governmental agencies. Even though the ombudsmen are not first responders they will coordinate with and follow direction from the first responders as needed.

In North Dakota the coordination, planning and safety plans for emergencies is through the Department of Health Preparedness & Response division. The following guidelines can help prepare for a possible emergency, including a terrorist event.

<https://www.health.nd.gov/epr/planning-and-safety/>

An emergency or a disaster can be any of the following, but not limited to the following: a tornado, storm, flood, earthquake, landslide, mudslide, snowstorm, fire, explosion, nuclear accident, pandemic or any other natural or man-made catastrophe—that warrants action to save lives and to protect property, public health, and safety. There may be times where the governor will issue a declaration of disaster or emergency. There may also be a federal declaration of disaster or emergency.

**Preparation for Emergency Situations 695-01-40-05
(NEW 9/1/21 ML #3632)**

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- A. Each local ombudsman shall maintain an updated electronic and hard copy of Ombudsman program-related information which includes at a minimum:
- a. contact information for the representatives of the Office (both staff and volunteer), and State LTC Ombudsmen from the surrounding states,
 - b. a copy of LTCOP laws, regulations, program policies and procedures, including emergency preparation and response policies and procedures,
 - c. business cards,
 - d. LTCOP brochures and/or other outreach materials, and,
 - e. LTCOP forms, such as consent to access and disclosure forms.
- B. Each local ombudsman shall maintain an updated electronic and hard copy of contact information relevant agencies. This shall include:
- a. the state survey and certification licensing agency,
 - b. the State Preparedness and Response Division,
 - c. the ND Long-Term Care Association,
 - d. long-term care facilities.
- C. Education and Outreach to Residents, Families, and Other Resident Representatives will be done as possible and needed to raise awareness about emergency planning.
- i. Representatives of the Office shall provide resident and/or family education during resident visits, during resident or family council meetings, or through other mechanisms. The content of such education shall include, but not be limited to:
 - a. responsibilities of facility staff (e.g. evacuation plan, family notification, and reunification),

- b. responsibilities of first responders, health care and behavioral health providers, and other relevant parties during an emergency; and distribution and promotion of the CMS emergency planning checklist and/or similar long-term care facility-focused checklists.
- ii. Representatives of the Office shall support resident and/or family councils in emergency preparedness by:
 - a. developing goals to conduct outreach to resident and family councils annually;
 - b. providing a ready-made presentation, recommended materials, other talking points and a mechanism to track which councils/facilities have received this training;
 - c. encouraging and facilitating councils' involvement in facility emergency preparations and exercises (e.g. evacuate, shelter-in-place, point of distribution, etc.); and,
- iii. Informing facility providers of the responsibilities of the Ombudsman program in responding to emergencies

Adjustments in the LTCOP Policy and Practices in Response to Emergencies 695-01-40-10

(NEW 9/1/21 ML #3632)

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- A. The SLTCO shall assess the LTCOP procedures and standards applicable to the delivery of services under normal operating conditions and determine if there is a need for adjustments in response to a specific emergency.
- B. The SLTCO shall assess complaint intake, response, investigation, referral, and resolution procedures and standards applicable under normal operating conditions and then determine if adjustments are needed in order in response to a specific emergency. The complaint process during emergencies shall continue to reflect the resident's goals, wishes and determination of satisfaction with the resolution, as required by 45 CFR 1327.19(b).
- C. The Ombudsman program shall maintain practices regarding disclosure of resident or complainant identifying information, as required by 45 CFR 1327.19(b) even during emergencies. Informed consent shall be obtained to the greatest extent possible with consideration of the specific circumstances of each emergency.
- D. Procedures and standards are adjusted, with notification to the Aging Services Division as necessary, and are communicated, to the representatives of the Office.
- E. Adjustments may also include temporary changes to procedures or standards, including, but not limited to:
 - i. timely response to complaints,
 - ii. facility coverage through visits to residents,
 - iii. access by representatives of the Office to residents, and ability to provide ombudsman services, in non-facility settings to which residents may have been relocated, such

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- as emergency shelters, FEMA's Individual Assistance programs and Disaster Recovery Centers,
- iv. coordinating local ombudsmen in providing services outside of the geographic boundaries of their service areas, and,
 - v. suspension of some Ombudsman program services, such as presentations to resident or family councils, or community education, except as those activities support emergency response efforts.

Maintaining Access to the Ombudsman Program 695-01-40-15

(NEW 9/1/21 ML #3632)

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- A. The ombudsmen shall facilitate visitation to residents for services, both in emergency shelters and in facilities, as soon as possible after the emergency and continuing on a regular basis until residents and facilities recover. Procedures may include the following:
- i. Coordinating among local ombudsman and/or other states' Ombudsman programs, when residents must evacuate to a different part of the state or out of the state.
 - ii. Providing alternative means of access (e.g., telephone, e-mail) when visits are impractical or impossible (such as due to impassable roads or other safety hazards).
 - iii. Reporting of emergency-related information to the SLTCO as needed. Reports may include, for example:
 - describing the impact of the emergency,
 - needed areas of service or advocacy,
- B. During and after an emergency, the SLTCO shall:
- i. obtain information regarding affected facilities and/or geographic areas and the impact of the emergency on LTC facility residents;
 - ii. coordinate and communicate with the SUA, state officials, provider associations, and other entities engaged in the emergency response; and
 - iii. maintain communications with the representatives of the Office in the impacted geographic area.
 - iv. facilitate resident access to response and recovery efforts and resources when needed, including through providing information and consultation.
 - v. advocate for systems issues related to emergency plans with attention to residents' rights and preferences and collaborating on relevant legislation, regulations, policies,

- and training opportunities; and to address gaps in resident-centered emergency preparedness.
- vi. communicate and coordinate with other State Ombudsman programs as necessary (i.e., nearby states or regions) regarding emergency planning, information sharing, and resource sharing when it is anticipated that residents will be relocated across state lines.
 - vii. analyze strengths, weaknesses, opportunities, and challenges faced in response to the emergency to facilitate improvements and to plan for future emergencies. The findings will be shared with appropriate agencies.
- C. During and/or after an emergency the local ombudsmen will:
- i. Follow emergency protocols of the LTCOP drafted by the SLTCO for the specific emergency and, if applicable, of the agency hosting the LTCOP. The goal will be to function as fully as possible during an emergency and fulfill as much as possible the program's mission of resident-directed advocacy.
 - ii. Follow instructions of public health officials and first responders, including evacuation orders, orders to shelter-in-place, and restrictions on accessing dangerous locations.
 - iii. To extent possible, continue providing residents with access to Ombudsman program services.
 - iv. Determine extent of impact on residents and long-term care facilities in zone, while minimizing disruption to public health, first responders and facility management and staff providing emergency response to residents.
 - v. Communicate observations and relevant information to the Office.
 - vi. Inform local agencies of the role, responsibilities, and functions of the LTCOP regarding emergency preparation and response to include, at a minimum, the complaint process and consultations to residents, their families, other resident representatives, and facility staff.

The SLTCO shall provide training and technical assistance to assure the competency of representatives of the Office to process complaints frequently associated with emergency response and recovery, such as:

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- i. relocation and evacuation with accessible transportation,
- ii. wishes related to returning to the facility or to move to other settings,
- iii. quality of care,
- iv. access to medications,
- v. access to resident medical and social records,
- vi. security concerns,
- vii. access to durable medical equipment,
- viii. residents who cannot be immediately located and reunification assistance services,
- ix. loss of residents' personal belongings,
- x. pets or service animals, and,
- xi. emergency management response.