

CHAPTER 15 GRIEVANCE PROCESS FOR COMPLAINTS AGAINST THE LONG-TERM CARE OMBUDSMAN PROGRAM

I. Introduction

Two separate processes are available for handling grievances against the Long-Term Care Ombudsman Program, its staff, and volunteers:

- **AAA Grievance Process:** AAAs are required to have a grievance process available to older individuals and their authorized representatives. This process includes an administrative review, and, if necessary, an administrative hearing (see section VII below).
- **Office of the State Long-Term Care Ombudsman (OSLTCO) Grievance Process:** A separate grievance process is available to anyone who wants to submit a grievance about the Ombudsman program. This could include residents, family members, facility staff, an outside agency, or anyone else. The OSLTCO process includes a procedure for requesting reconsideration of an Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office (see section VIII below).

Neither grievance process precludes the informal resolution of grievances by the local Ombudsman program coordinator.

II. Legal Authority

FEDERAL Older Americans Act of 1965 as amended 2016, section 712 (42 U.S.C. § 3058g)

Title 45 Code of Federal Regulations parts 1324.11 and 1324.13

STATE California Code of Regulations, Title 22, sections 7400-7406

III. Examples

Any formal or informal expression of dissatisfaction about Ombudsman program services by a member of the public is a grievance. Grievances can involve a wide variety of subjects, including, but not limited to, the following examples:

- A facility administrator feels the services provided by the program have impacted business activities in a negative or unfair manner.
- A resident (or resident's representative) is dissatisfied with access to services or the quality of service received from the Ombudsman program.

- Another department, program, agency, or organization is dissatisfied with the activities of the program.
- A certified Ombudsman or applicant has a grievance regarding the local program.

IV. Objectivity

It is essential to maintain the integrity of the program by responding to grievances in an objective, thorough manner. OSLTCO staff is available to provide technical assistance as needed.

V. Confidentiality

While responding to a grievance against the program, it is important to abide by all confidentiality requirements:

- Ombudsman representatives must not divulge the identity of a resident, complainant, and/or witness without prior written consent from the resident, complainant, or witness.
- All files and records of the Ombudsman program relating to a case investigation are confidential and may not be disclosed without the resident’s consent or a court order.
- Grievances that can be handled without reference to specific case information should be handled accordingly.

For more information about confidentiality requirements, see Chapter 5, *Confidentiality, Consent, and Disclosure*, and Chapter 6, *Long-Term Care Ombudsman Standards of Professional Conduct*.

VI. Maintenance of Records

Records of grievance investigations, findings, and responses shall be maintained in accordance with the law. A grievance log that identifies the date of the grievance, the complainant, and the resolution must also be maintained by the local program for review as necessary.

VII. AAA Grievance Process

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| Background | State law requires AAAs to make a grievance procedure available to older individuals and their authorized representatives. |
| Responsibility | Area Agencies on Aging (AAA) and contracted Ombudsman service providers (where applicable) |
| Policy | All AAAs and contracted Ombudsman service providers will establish written policies and procedures to receive and review grievances about the Ombudsman program’s determinations, actions, staff, or volunteers. This grievance process will be available to older individuals and their representatives. |

| Steps | Procedure | Responsible |
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| 1 | The Ombudsman program coordinator will first try to resolve the grievance informally. | Ombudsman program coordinator |
| 2 | If that is not possible and the Ombudsman program is provided by a contracted service provider, the grievance will be addressed according to the contracted service provider's written grievance procedure. | Ombudsman contracted service provider |
| 3 | <p>If that does not resolve the problem, or if Ombudsman services are provided directly by the AAA, the grievance will be elevated to the AAA for administrative review.</p> <p>The Ombudsman program coordinator or the contracted service provider will give the complainant a copy of the AAA's written grievance policy and procedure.</p> | Ombudsman program coordinator or contracted service provider |
| 4 | <p>The grievance must be submitted in writing to the AAA director. If the complainant cannot prepare a written grievance, the AAA will accept a verbal grievance, prepare the grievance in writing, and have the complainant sign it.</p> <p>The written grievance shall include:</p> <ul style="list-style-type: none"> • The name, mailing address, and telephone number of the older individual or person authorized to act on his or her behalf. • The type of service and provider involved. • The names of individuals involved. • The issue of concern or dispute. • The date, time, and place of the concern or dispute. • The names of any witnesses. | Complainant |
| 5 | The AAA will complete an impartial investigation of the grievance and attempt to informally resolve the issues. | AAA |
| 6 | <p>Following this administrative review, the AAA will prepare a written report of the results and send copies to the involved parties. The report:</p> <ul style="list-style-type: none"> • Will be issued no more than 45 days from the AAA's receipt of the grievance. • Will include a process for ensuring the fulfillment of any agreements reached during the administrative review. • Will advise the complainant of the right to an administrative hearing at the AAA level if he or she is dissatisfied with results of the administrative review. | AAA |

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| 7 | If the complainant chooses to request an administrative hearing, he or she must make a request to the AAA director, either orally or in writing, within 30 days of the receipt of the written report of the administrative hearing. | Complainant |
| 8 | <p>The AAA will notify the complainant and other involved parties of the hearing. The hearing notice will include:</p> <ul style="list-style-type: none"> • The date, time, and location of the hearing. • The right of all parties to be present at the hearing and/or to have another person act on their behalf during the hearing. • The right of all parties to have legal counsel present. • The right of all parties to present evidence and witnesses. • The right of all parties to examine evidence, other sources of relevant information, and witnesses. | AAA |
| 9 | <p>The AAA will:</p> <ul style="list-style-type: none"> • Hold the hearing no later than 45 days from the receipt of the written hearing request. • Hold the hearing in an informal manner with testimony restricted to the issues requiring resolution. • Have an impartial officer or panel conduct the hearing. • Place all persons testifying under oath or affirmation. • Record the hearing verbatim, either electronically or stenographically. <p>The technical rules of evidence and procedures will not apply to the hearing.</p> | AAA |
| 10 | <p>No later than 30 days after the date of the hearing, the hearing officer or panel will prepare a proposed decision that contains:</p> <ul style="list-style-type: none"> • A description of each issue. • A statement as to whether the grievance was upheld or denied. <ul style="list-style-type: none"> ○ If upheld, the proposed decision should also include an explanation of the remedy for the grievance. ○ If denied, the proposed decision should include the basis for denial. • A citation of applicable laws and regulations. <p>The proposed decision will be forwarded to the AAA director (or to the chairperson of the governing board if the grievance is against the director of the AAA).</p> | AAA hearing officer or panel |

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| 11 | <p>No later than 30 days after the AAA director (or chairperson of the governing board) receives the proposed decision, it will either be accepted as is or amended and adopted as the final decision. The final decision:</p> <ul style="list-style-type: none"> • Will include procedures to ensure that any remedies are implemented. • Will immediately be transmitted to the parties involved. • Will not be subject to appeal. | AAA director or chairperson of the governing board |
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VIII. OSLTCO Grievance Process

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| Background | The OSLTCO grievance process is <i>in addition</i> to the Title 22 process. It does not replace it. This option is available to anyone who wishes to submit a grievance about the Ombudsman program or a representative of the Ombudsman program. |
| Responsibility | State Long-Term Care (LTC) Ombudsman, OSLTCO staff, and California Department of Aging director |
| Policy | <ol style="list-style-type: none"> 1. The Office of the State Long-Term Care Ombudsman will review and respond to grievances related to the determinations or actions of the State LTC Ombudsman and representatives of the Office. 2. The State LTC Ombudsman will review and respond to requests for reconsideration of an Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. The State Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. For more information about the reconsideration process, see Chapter 1, <i>Selection, Designation, and Termination of Local Ombudsman Programs</i>, and Chapter 8, <i>Long-Term Care Ombudsman Certification</i>. |
| Procedure for grievances | <p>People who wish to contact OSLTCO regarding grievances about the Ombudsman program or a representative of the Ombudsman program should be directed to call or email the local Ombudsman program’s assigned analyst. Alternatively, the program coordinator may give the complainant the state-level grievance form, OSLTCO S900, which is available on the Coordinator Resources web page.</p> <p>Once OSLTCO is contacted by a complainant or receives the form, the program’s assigned analyst will seek to resolve the grievance informally.</p> |

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| | <p>If the grievance cannot be resolved informally, the analyst will ask the complainant to complete OSLTCO S900 if the complainant has not already done so.</p> <p>The analyst will then investigate the grievance and work with the State LTC Ombudsman to draft a written response.</p> <p>The written response will be provided to the complainant and the program coordinator within 30 calendar days of the date the written grievance was received.</p> |
| <p>Procedure for requests for reconsideration</p> | <p>Individuals or entities that receive notice of a State LTC Ombudsman decision to refuse, suspend, or remove designation may submit a written request for reconsideration.</p> <p>The written request must be submitted to the State LTC Ombudsman within 15 calendar days of the date on the notice.</p> <p>The written request should explain why the person or entity requesting reconsideration disagrees with the decision on the notice. It should also provide any additional information or documentation that was not considered when the original decision was made.</p> <p>The State LTC Ombudsman will provide a written response within 15 calendar days.</p> |