

CHAPTER 2 ROLES AND RESPONSIBILITIES

I. Introduction

Special mandates from Congress and the State Legislature make the Long-Term Care Ombudsman Program (LTCOP) unique. The program is carried out by three organizational entities: the Office of the State Long-Term Care Ombudsman (OSLTCO), the Area Agencies on Aging (AAA), and the local LTCOP service providers. Each entity has distinct roles and responsibilities to ensure that consistent and effective services are provided to residents of long-term care (LTC) facilities. The LTCOP provides services to residents of Skilled Nursing Facilities (SNFs), Intermediate Care Facilities (ICFs), Distinct Part SNFs and Residential Care Facilities for the Elderly (RCFEs).

II. Legal Authority

FEDERAL Title 42 United States Code sections 3026, 3027 and 3058(g)
Title 42 Code of Federal Regulations, parts 1324.1-1324.21

STATE Welfare & Institutions Code sections 9700-9745
California Code of Regulations, title 22, sections 7318 and 8010-8045

III. Documents Referenced

Long-Term Care Ombudsman Program Coordinator Agreement with the Office of the State Long-Term Care Ombudsman (OSLTCO S010)

Long-Term Care Ombudsman Code of Ethics (OSLTCO S013)

Complaint Response Timeline (included with this chapter)

IV. Organization and Management of California's Long-Term Care Ombudsman Program

A. State Long-Term Care Ombudsman

The State LTC Ombudsman leads and directs the statewide program and is responsible for compliance with federal and State laws and regulations. This, in part, is accomplished through the development of policies and procedures that guide and shape the program. The State LTC Ombudsman designates local entities to identify, investigate, and resolve complaints made by or on behalf of residents of LTC facilities. He or she certifies Ombudsman staff and volunteers, ensuring they are free from conflicts of interest and adhere to the confidentiality requirements of the Older Americans Act (OAA).

The State LTC Ombudsman represents the interests of residents before government agencies. He or she monitors, analyzes, and comments on proposed amendments to federal and State laws, regulations and policies that impact or have the potential to impact the health, safety, welfare and rights of LTC residents. Although the State LTC Ombudsman consults with the Director of the California Department of Aging (CDA) and informs the Director about his or her legislative activity, State law requires the State LTC Ombudsman to advocate “without interference from the office of the Governor, any state agency, or other entity.” (Welf. & Inst. Code § 9712.5(g)

B. Office of the State Long-Term Care Ombudsman

Located within the California Department of Aging (CDA), under the direction of the State LTC Ombudsman OSLTCO ensures and maintains consistent quality services to LTC residents by providing local LTCOPs with policy and direction, technical assistance, program and fiscal monitoring and oversight, and ongoing training for local LTCOP Coordinators.

OSLTCO processes criminal record background clearance and certification for all staff and volunteers of the LTCOP.

OSLTCO maintains a 24-hour toll-free telephone CRISISline that receives calls from or on behalf of LTC residents. CRISISline operators provide information to callers and link them with local resources.

OSLTCO collects and manages statewide program data through the National Ombudsman Reporting System (NORS). NORS data includes information about cases, complaints, and activities performed by the LTCOP and is forwarded to the Administration on Aging (AoA). NORS data is also used for program planning and resource development.

OSLTCO works in cooperation with CDA legal counsel to provide local LTCOPs with information and assistance with legal issues. The Office of the Attorney General provides legal representation to any representative of the Ombudsman Program against whom suit or other legal action is brought or threatened in connection with the performance of the official duties of the LTCOP.

C. Area Agencies on Aging (AAAs)

Under contract with CDA, AAAs are responsible for the planning and development of services for older adults within a designated Planning and Service Area (PSA). In accordance with procedures and standards developed by OSLTCO and CDA, each AAA recommends to the State

LTC Ombudsman designation of an organization to deliver Ombudsman services (see Chapter 1 of this manual). The AAA may elect to deliver Ombudsman services directly or by contract with a nonprofit or public agency. The AAA is responsible for the day-to-day monitoring and oversight of the direct service and/or the contracted local LTCOP. The AAA ensures that the local LTCOP meets the goals and objectives outlined in its Area Plan and that LTC residents within the PSA have access to Ombudsman services. The AAA assures that conflict of interest and confidentiality requirements of the OAA and current Area Plan contracts are maintained.

The AAA acts as the sub-grantee and fiscal liaison with CDA for all budgetary, accounting, and audit requirements. It must ensure that separate budget and expenditure accounting is maintained for the Ombudsman Program and is made available to the LTCOP Coordinator as specified in Title 22, section 7318 of the California Code of Regulations

The AAA must ensure that funds obtained from all sources related to the local LTCOP are available to the local LTCOP and that it is operated on a sound fiscal basis. The AAA must comply with the Minimum Funding Requirement for the LTCOP as specified in the OAA.

1. Contracted Service

The AAA may contract with an entity to provide Ombudsman services. The contract must be established using the AAA's approved procurement policies and procedures. The LTCOP contractor must be either a private nonprofit or a public agency and may be either a single purpose or a multi-service/umbrella agency. The selected contractor must demonstrate interest, concern, experience, and knowledge in programs for older and dependent adults and quality of care for residents of LTC facilities. A multi-service organization and/or public agency must assure that none of its sponsored programs are in conflict with the objectives and policies of OSLTCO, and that adequate resources are allocated to the local LTCOP.

2. Direct Service

The AAA may deliver LTCOP services directly. If the AAA elects to be a direct service provider, both AAA and local LTCOP roles and responsibilities apply.

D. Local LTC Ombudsman Program

The local LTCOP is designated by the State LTC Ombudsman to carry out the functions of the program in the PSA. The local LTCOP provides day-to-day services to protect the health, safety, welfare, and rights of residents of LTC facilities. The local LTCOP is responsible for ensuring that residents of LTC facilities have regular and timely access to

Ombudsman services. The local LTCOP ensures that complaints and requests for assistance or other services receive timely and appropriate action.

Although local LTCOP staff are employed by the AAA or the contracted service provider, they are designated representatives of OSLTCO and receive program direction and oversight from OSLTCO staff.

The local LTCOP maintains regular communications with OSLTCO and the AAA. The local LTCOP must notify OSLTCO of cases with potential legal implications or media exposure, issues that may have the potential for statewide impact, and when there is an impending evacuation or relocation of LTC facility residents.

1. Training and Certification

The local LTCOP is required to ensure that adequate and appropriately trained personnel are available to handle the day-to-day operations and fulfill the mandates of the program. The local LTCOP establishes a plan for volunteer recruiting, training, and supervision that includes, at a minimum:

- Goals for volunteer recruiting and training.
- One 36-hour Ombudsman Certification Training annually for new staff and volunteers using the OSLTCO-approved training curriculum, including an internship and mentoring by an experienced Ombudsman representative (see Chapter 7 –Training Requirements).
- In-service training to fulfill the legal requirement that Ombudsman representatives receive an additional 12 hours of training annually to maintain certification.
- An annual recognition activity for volunteers to show appreciation for their dedication and work to protect the health, safety, welfare, and rights of residents.

The local LTCOP must follow OSLTCO program direction, including but not limited to:

- Requirements for appropriate personnel attendance at OSLTCO and other mandated training.
- Procedures for compliance with required criminal background clearances (see Chapter 8 – Long-Term Care Ombudsman Certification).

- Policies and procedures to assure that Ombudsman representatives are free from conflict of interest.
- Procedures for compliance with the OSLTCO decertification process.

2. Complaint Management

The local LTCOP is required to develop a complaint management system based on current legislative requirements and OSLTCO policies containing, at a minimum, the following elements:

- Provisions for the receipt and recording of all complaints made by or on behalf of residents in LTC (see Chapter 12 – Information Systems).
- A logging and tracking method.
- Provisions for timely handling and resolution of complaints. (see Complaint Response Timeline)
- Confidentiality of files (see Chapter 5 – Confidentiality, Consent and Disclosure).
- Notification of progress and resolution to complainants.
- Systematic referral and follow-up.
- Documentation of patterns, trends, and special problems.
- Appropriate handling of CRISISline referrals (see Chapter 11 – Telephone Protocol).

3. Additional Responsibilities

The local LTCOP also provides the following services to LTC facility residents, their families, and the local community

- Witnessing advance health care directives and property transfers in excess of \$100 for residents of SNFs (see Chapter 4 – Ombudsman Witnessing of Advance Health Care Directives and Property Transfers).
- Assisting residents and their families in the development of resident and family councils.

- Participating in resident and family council meetings as requested and as program priorities allow.
- Attending citation review conferences to advocate for residents as requested and as program priorities allow.
- Providing available public information about local LTC facilities and criteria to look for in selecting a facility.
- Assisting LTC residents, their families and friends, care providers, and members of the community with information on available community services, Medi-Cal eligibility, and other LTC issues.
- Providing community resource information and referrals to community organizations and services in the aging network for residents of LTC facilities.
- Training for local groups and organizations on Ombudsman services and issues related to LTC residents.
- Assisting in review of facilities undergoing bankruptcy if requested by the State Ombudsman in order to ensure that residents' needs are being met. This is an optional activity for local LTCOPs (see Chapter 14 – Facility Closures and Bankruptcies).
- Developing working agreements and consultative services with the following agencies:
 - Legal services
 - Adult Protective Services
 - Licensing agencies
 - Law enforcement
 - Patient advocates for developmentally disabled and mentally ill persons, including Disability Rights California, formerly known as Protection and Advocacy
 - Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse
 - Regional Centers
 - Information and Assistance services
 - Provider groups
 - Community organizations
 - Other groups as appropriate

Each local LTCOP must have at least a certified paid Program Coordinator and certified Ombudsman volunteers. The local LTCOP must develop job descriptions, including responsibilities required by OSLTCO, for all paid and volunteer positions.

4. Ombudsman Program Coordinator

The day-to-day operation of the local LTCOP is managed by the local Ombudsman Program Coordinator. The Coordinator must complete the OSLTCO-sponsored New Coordinator Training and sign the Long-Term Care Ombudsman Coordinator Agreement with the Office of the State Long-Term Care Ombudsman (OSLTCO S010). This individual should possess a combination of the following qualifications:

- Experience in management or leadership of community programs/organizations.
- Knowledge of the field of gerontology and aging programs.
- Interest and commitment to services for older persons.
- Knowledge and experience in the field of LTC.
- Experience in management and supervision of volunteer programs.
- Knowledge of laws and regulations in the area of LTC facilities.

The primary duties of the Program Coordinator are to:

- Ensure that Ombudsman services are delivered pursuant to the requirements of federal and State laws and regulations and OSLTCO policies and procedures.
- Coordinate complaint investigations with licensing agencies and law enforcement when appropriate.
- Ensure telephone coverage for emergency situations when office staff is not available to take calls (see Chapter 11 – Telephone Protocol).
- Recruit, hire, manage, and supervise paid staff and volunteer Ombudsman representatives.
- Ensure an effective volunteer program through recruitment, training, retention, supervision, monitoring, and mentoring of volunteers.
- Coordinate staff and volunteer facility assignments to ensure appropriate coverage of all LTC facilities in the PSA.

- Ensure that the local LTCOP meets required confidentiality standards for internal and external communications and the handling and storage of files.
- Act as liaison between the local LTCOP and OSLTCO.
- Ensure that local LTCOP staff and volunteers are free from conflicts of interest.
- Ensure that local Ombudsman staff and volunteers receive the minimum 36 hours of State-approved certification training plus a minimum of 12 hours of continuing education annually.
- Conduct regular meetings with staff and volunteers to provide training and information.
- Provide ongoing support and guidance to Ombudsman representatives in the identification, investigation, and resolution of complaints made by, or on behalf of, LTC residents.
- Provide one-on-one technical assistance to individual local Ombudsman representatives as needed.
- Attend mandated biannual meetings convened by OSLTCO.
- Collect program data and prepare concise, accurate, and timely reports as required by OSLTCO and the AAA.
- Participate in the development of the local LTCOP budget and ensure budget and contract compliance.
- Cross-report instances of abuse, neglect, and poor facility practices to appropriate agencies with appropriate consent.
- Coordinate response to subpoenas to protect confidentiality.
- Act as a liaison to federal, State, and local agencies, including OSTLCO, licensing agencies, Adult Protective Services, the Public Guardian, the Bureau of Medi-Cal Fraud and Elder Abuse, Elder Abuse Councils, Elder Death Review Teams, and others.
- Participate in State and local workshops and meetings related to resident rights, abuse prevention, and LTC issues as time permits.
- Analyze, comment on, and monitor the development and implementation of federal, State, and local laws, regulations, and

policies related to LTC facilities and resident issues, consistent with the positions of the State LTC Ombudsman.

- Maintain a working knowledge of laws and regulations pertaining to LTC facilities and the LTCOP.
- Resolve program problems and complaints against the local LTCOP and its representatives.

5. Ombudsman Regional Coordinator

Some LTCOPs may also have Regional Coordinators. These individuals should possess the same qualifications as the Program Coordinator.

Under the supervision of the Program Coordinator, the Regional Coordinator is responsible for managing the local LTCOP in a specified geographic region within the PSA. Regional Coordinators may work in the same office as the Program Coordinator or at a separate location.

Regional Coordinators assume many of the responsibilities of the Program Coordinator, including direct supervision of staff and volunteers in the specific region. In addition, they act as lead investigators in complex cases and are available for facility coverage when other Ombudsman representatives are not available.

OSLTCO and the AAA must be notified immediately of any change in the Program Coordinator or Regional Coordinator position.

6. Long-Term Care Ombudsman Representative (Staff or Volunteer)

All LTC Ombudsman staff and volunteers are representatives of OSLTCO. Under the general guidance and direction of the Program Coordinator or a designated supervisor, the Ombudsman representative:

- Investigates complaints made by, or on behalf of, residents of LTC facilities.
- Maintains an ongoing presence in facilities.
- Participates in resident and family council meetings when requested by residents and their families and as time permits.
- Provides technical assistance to resident and family councils.

- Develops professional relationships with SNF and RCFE personnel through regular visits to each facility within an assigned area.
- Attends monthly Ombudsman meetings and participates in ongoing training.
- Documents investigations and monitoring activities and submits required records in a timely manner.
- Provides educational programs to residents and families, facility staff, community groups and organizations, and the general public on resident rights, LTC issues, community resources, elder abuse, and mandated reporting.
- Refers appropriate elder abuse cases to a supervisor for action.
- Witnesses advance health care directives and property transfers to facility staff in excess of \$100 in SNFs.

E. Governing Boards

The governing board of the local LTCOP shall employ staff and operate the program in compliance with State and federal laws, regulations, and policies. The board provides ongoing leadership to the local LTCOP, ensuring the provision of adequate administrative and operational resources. Members of the governing board must not have any ownership, investment, or employment interest in LTC facilities.

F. Advisory Councils

Public and private nonprofit multi-service agencies providing Ombudsman services are required to have a formal advisory council specifically for the local LTCOP. Single purpose Ombudsman agencies are not required to have a formal advisory council since their boards serve this purpose. The advisory council membership should be composed of persons concerned about the quality of care in LTC facilities and in protecting the rights of LTC residents. Advisory council members should include representatives of service agencies within the aging network, community organizations, and consumers. In the case of a multi-service agency, the advisory council chairman should be a member of the local LTCOP governing board.

V. Advocacy

Advocacy is the primary purpose and activity of the local LTCOP. The Ombudsman representative practices “expressed wish” advocacy. As an

expressed wish advocate, the Ombudsman representative acts as a bridge between the resident and those who exercise control and make decisions. As an expressed wish advocate, the Ombudsman representative must speak for the resident's expressed wishes despite the judgment of professionals and families or the personal beliefs or biases of the Ombudsman. The goal of Ombudsman advocacy is to use problem-solving techniques to achieve satisfaction for residents. This is a difficult task.

Successful advocacy requires taking the time to respectfully listen to the concerns of all involved, including facility administrators and staff, while also persistently pursuing residents' expressed interests. Successful Ombudsman advocacy also involves working at the direction of residents and empowering residents to be their own advocates. The Ombudsman representative advocates for the resident as an individual, for issues that impact the daily lives of residents at the facility level, and for systemic changes that impact LTC facility residents in the community or statewide. Other responsibilities are secondary to the identification, receipt, investigation, and resolution of complaints made by or on behalf of residents of LTC facilities.

A. Individual Advocacy

Individual advocacy includes the identification, receipt, investigation and resolution of complaints. When advocating on a resident's behalf, an Ombudsman representative must use informed consent and expressed wish advocacy to the greatest extent possible. Resident advocacy is accomplished through the development and maintenance of regular and ongoing Ombudsman presence in SNFs, ICFs, Distinct Part SNFs, and RCFEs. Regular presence in facilities makes local LTCOPs aware of ongoing issues that may be resolved before they become more serious. Regular presence also allows residents to make in-person complaints and ensures a more timely response to complaints and requests for assistance made by residents or on their behalf. At the end of any investigation and resolution process, the key question for an Ombudsman representative is whether the complaint has been resolved to the satisfaction of the resident.

As an advocate, the Ombudsman representative has another major responsibility, that of exemplifying ethical behavior and decision-making. The California LTCOP adheres to and requires all certified Ombudsman representatives to sign the Long-Term Care Ombudsman Code of Ethics, which was adapted from the Code developed and adopted by the National Association of State Long-Term Care Ombudsman Programs (NASOP) (OSLTCO S013).

The Ombudsman representative assists residents by providing residents, families, and facility staff with information and education regarding Ombudsman services and other issues relevant to seniors and persons

with disabilities. An important part of effective advocacy is to empower residents and their families to advocate on their own behalf.

Ombudsman representatives also advocate for incapacitated residents who are unable to express their wishes. This may require working with a resident's family, friends, legal representative, or conservator. If the resident has even limited capacity, the Ombudsman representative must attempt to determine the resident's wishes and act on his or her behalf. If the resident truly lacks capacity to understand issues and express preferences, the Ombudsman representative should advocate at the direction of the resident's legal representative, applying standards of quality of life and quality of care contained in federal and State SNF and RCFE regulations.

B. Systems Advocacy

Effective advocacy also includes addressing problems on a facility-wide level to improve the quality of life for all residents. Examples of issues where this form of advocacy would be used include staffing levels, meal service, organization services, and environmental safety.

Systems advocacy includes representing the interests of residents before government agencies. It also may involve reviewing and, if necessary, commenting on proposed or existing laws, regulations, and other governmental policies and actions related to the rights and well-being of residents. Accurately recorded Ombudsman data can provide insight into issues and trends in resident care and is helpful in supporting efforts to improve conditions for LTC residents.

VI. Reporting Requirements

A. Elder and Dependent Adult Abuse Reporting

LTCOP staff and volunteers are investigators of elder and dependent adult abuse and neglect occurring in LTC facilities. The local LTCOP receives and investigates reports of alleged or suspected abuse or neglect of elder and dependent adults occurring in LTC facilities. Cross-reporting of abuse and neglect and the disclosure of the resident's identifying information to law enforcement and licensing agencies can only be done with consent from the resident or his or her legal representative. A detailed discussion of the Ombudsman representative's role in investigating and reporting suspected elder and dependent adult abuse and neglect can be found in Chapter 3 of this manual.

B. CRISISline

OSLTCO's standard practice is to refer CRISISline calls received during the work day to the appropriate local LTCOP. The Welfare and Institutions Code requires that after business hours, CRISISline operators respond to urgent calls by contacting appropriate offices or individuals in the local communities where crises occur. This means that the CRISISline operators call designated staff of local LTCOPs to respond to calls they receive.

Changes in after-hours contact names and numbers must be reported to OSLTCO by email to stateomb@aging.ca.gov.

For more detailed information on the 24-hour CRISISline, see Chapter 11 –Telephone Protocol.

C. Cross-Reporting and Referrals

There are times when Ombudsman representatives cross-report and refer complaints to LTC facility licensing agencies, law enforcement, the California Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA), and/or other agencies. However, cross-reporting and disclosure of a resident's identifying information or case information can occur only with appropriate consent or authorization. For additional information, refer to Chapter 5 – Confidentiality, Consent and Disclosure.

D. Communications with OSLTCO

Open communication between OSLTCO and the local LTCOP is vital for effective program operations.

Each local LTCOP is assigned an OSLTCO analyst who is available to provide technical assistance to the program. The analyst can help with questions about confidentiality, conflict of interest, laws and regulations governing LTC facilities, and other issues that may come up during the work of Ombudsman representatives. CDA legal counsel is also available to assist the local programs.

Sometimes after-hours entry into a facility (10 p.m. to 7 a.m.) is needed to properly investigate a complaint. For example, the complaint may involve lack of assistance to residents during the overnight hours. When this is the case, the local LTCOP must obtain authorization from OSLTCO. The local Program Coordinator sends an e-mail request to the OSLTCO analyst assigned to the local program. The request must include:

- The reason for after-hours entry.
- The name of the facility.

- The day and time planned to enter the facility.
- The names of those individuals who will enter the facility.

Once the investigation has been completed, the Program Coordinator must send a follow-up e-mail to the analyst, providing information about the outcome of the investigation.

E. Data Reporting

The local Ombudsman program is responsible for regular reporting as required by federal and State laws and regulations and by the policies of OSLTCO.

The local LTCOP maintains accurate data on complaints and activities and enters this data into the Ombudsman Data Integration Network (ODIN). The local LTCOP Coordinator notifies the OSLTCO Management Services Technician on a quarterly basis that the data has been entered, or if delayed, when it will be entered. Additional information on data reporting is included in Chapter 12 of this manual.