

CHAPTER 6 LONG-TERM CARE OMBUDSMAN STANDARDS OF PROFESSIONAL CONDUCT

I. Introduction

In order for the Office of the State Long-Term Care Ombudsman (OSLTCO) and its representatives to provide superior advocacy services to residents of long-term care facilities, Ombudsman representatives must follow standards of professional conduct in all their program activities. This chapter outlines the laws, regulations, OSLTCO policies, and program expectations governing Ombudsman representatives' professional conduct. Adherence to these standards allows Ombudsman representatives to advocate appropriately for the health, safety, welfare, and rights of residents in long-term care.

II. Legal Authority

FEDERAL Title 42 United States Code section 3058d(a)(6)(C)
 Title 42 United States Code section 3058g
 Title 45 Code of Federal Regulations parts 1321.51 and 1324.1-1324.21

STATE Welfare and Institutions Code sections 9700-9745

III. Forms Referenced

- Pledge of Confidentiality for Long-Term Care Ombudsman Trainees/Representatives (OSLTCO S006)
- Conflict of Interest Statement (OSLTCO S009)
- Long-Term Care Ombudsman Code of Ethics (OSLTCO S013)

IV. Individual Conflicts of Interest

Ombudsman representatives must avoid any real or perceived conflict of interest that interferes with their ability to advocate for residents. OSLTCO is responsible for ensuring that individuals representing the Ombudsman program are not subject to conflicts of interest (42 U.S.C. § 3058g(f)). Prior to certification, an Ombudsman trainee must disclose all past and current employment, group participation, memberships, and interests that might affect his or her ability to investigate and resolve complaints in an objective and independent manner. All Ombudsman representatives are required to sign a Conflict of Interest Statement (OSLTCO S009) prior to being certified and annually thereafter.

A. Conflicts that Cannot be Remedied

Individuals being considered for Ombudsman certification and their immediate families shall have no unremedied conflict of interest. (An individual's immediate family is defined as a member of the household or a relative with whom there is a close personal or significant financial relationship.) Although there are many conflicts that can be remedied, some cannot.

Ombudsman representatives and their immediate family —

- Cannot have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service
- Cannot have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or long-term care service
- Cannot be employed by or participate in the management of a long-term care facility. (Applicants should not become certified Ombudsman representatives if they worked in a long-term care facility less than a year prior to application for certification.)
- Cannot receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility

B. Conflicts that Can be Remedied

If a prospective Ombudsman applicant presents information that suggests a potential conflict of interest, the Ombudsman program coordinator serves as the first level of review to identify and remedy the conflict. In a complex or an unusual conflict of interest situation, the program coordinator shall consult with OSLTCO for a final decision regarding the applicant. Federal law (42 U.S.C. § 3058g(f)(4)), requires OSLTCO to establish mechanisms to resolve identified conflicts of interest. For example, an Ombudsman representative will not be assigned to a facility where a relative or close friend works or is a resident. The State Long-Term Care Ombudsman or his or her designee will assess conflict of interest situations on a case-by-case basis.

C. Appearance of Conflict of Interest

Although Ombudsman representatives should maintain cordial and professional relationships with long-term care facility administrators and staff, they must be extremely careful to avoid the appearance of any conflict of interest.

As advocates who work on behalf of and under the direction of long-term care facility residents, Ombudsman representatives must strenuously avoid the appearance that they represent the interests of facility owners, administrators, or employees. Time in facilities should be spent talking with residents and helping them to resolve the issues they present as well as resolving additional issues identified by Ombudsman representatives. Such things as discussing residents' issues with staff without first getting permission and direction from residents, and participating in care plan meetings based on staff invitation, greatly interfere with the Ombudsman representative's ability to earn the trust of residents.

V. Other Important Laws and Policies

A. Confidentiality

Confidentiality stands as one of the fundamental principles and reasons for the success of the Ombudsman program. Ombudsman representatives adhere to the federal and State confidentiality laws protecting the rights and privacy of long-term care residents.

All program staff and volunteers are required to sign a Pledge of Confidentiality for Long-Term Care Ombudsman Trainees/Representatives (OSLTCO S006) prior to being certified and annually thereafter. The stringent provisions of confidentiality law apply to program coordinators, other Ombudsman representatives, and non-certified staff and volunteers.

Federal law (42 U.S. Code § 3058g(d)) prohibits the disclosure of the identity of a complainant or resident unless the Ombudsman representative first obtains written consent from the resident, oral consent from the resident that is documented contemporaneously in writing, written consent from the resident's representative, a court order requiring disclosure, or, for some residents who cannot provide informed consent, authorization by the State Ombudsman or through OSLTCO procedures. Ombudsman representatives shall obtain appropriate consent or authorization prior to accessing or releasing medical, personal, or other resident information.

Ombudsman representatives must be discreet while investigating complaints to ensure resident and complainant identities are not revealed, especially during conversations with family members, friends, facility staff or the general public.

OSLTCO and the local Ombudsman programs must ensure that the protection of all records and files, including telephone communication and internal communication, meets the confidentiality requirements found in Welfare and Institutions Code section 9725. For additional information on

confidentiality, see chapter 5 of this manual, *Confidentiality, Consent, and Disclosure*.

B. Discrimination Law

Federal and State laws prohibit discrimination. An Ombudsman representative shall not discriminate against or refuse Ombudsman services to anyone on the basis of age, race, sex, religion, national origin, disability, sexual orientation, or sexual preference.

C. Certification Restrictions Policy

OSLTCO will not certify as Ombudsman representatives, any member of the board of directors of the designated agency or the immediate supervisor of the Ombudsman program coordinator. Because the program coordinator supervises the activities of all certified Ombudsman representatives within his or her jurisdiction, certification of a member of the board of directors or the coordinator's immediate supervisor places the coordinator in the inappropriate position of supervising a superior.

D. No Personal Gain Policy

An Ombudsman representative shall not use the prestige or influence of the Ombudsman position for personal gain. Ombudsman representatives shall not participate in activities resulting in personal gain, including selling insurance, financial products, personal care products, or providing any services to the residents of long-term care facilities that are outside the scope of Ombudsman services.

Another example of an activity resulting in personal gain is an Ombudsman representative soliciting employment from a long-term care facility or from a government agency to which he or she refers complaints. Furthermore, an Ombudsman representative shall not use confidential information acquired through participation in the Ombudsman program for personal gain. An Ombudsman representative must avoid the appearance of any impropriety in the performance of all the responsibilities and duties of the position.

E. Donations Policy

The Long-Term Care Ombudsman Program provides services at no cost to residents, family members or other complainants. Individual Ombudsman representatives may not receive personal donations. However, donations to local Ombudsman programs are acceptable. Checks, money orders or cashier's checks are the preferred methods for donations to the Ombudsman program.

Donations are only allowable under the following conditions:

- Services shall not be denied to anyone who does not make a donation.
- Methods used to solicit voluntary contributions shall be non-coercive.
- Donation letters shall stipulate that contributions are voluntary and are not required to receive services.
- Donation letters may not resemble invoices or statements.
- Donations received by the local Ombudsman programs must be used only to support local Ombudsman program activities and may not be used to support other programs.

F. Gratuities Policy

An Ombudsman representative shall not receive or accept money, gifts or other considerations from long-term care facility staff, residents, family members of a resident, the legal or financial representatives of a resident, or other interested parties. Gifts include, but are not limited to, meals, snacks, beverages, gratuities (tips), money, in-kind services, favors, entertainment, loans, or other items of value.

G. Identification Policy

An Ombudsman representative identifies him or herself as a long-term care Ombudsman, not as an investigator, consultant, health professional, legal advisor, or other such professional. When entering a long-term care facility, the Ombudsman representative's identification badge or certification card should be in plain view for the residents and facility staff to see. Using a lanyard or attaching the badge to clothing makes Ombudsman identification easier. If visitors are required to sign a facility visitor log, the Ombudsman representative should also sign it. However, the Ombudsman representative must not disclose the identity of residents visited or the reason for the visit.

VI. Additional State Long-Term Care Ombudsman Program Expectations

A. Working within Personal Ability

Ombudsman representatives provide services based on their training, experience, and ability. Ombudsman staff and volunteers should always consult with their supervisors about complaints they do not currently have the experience to resolve.

B. Good Judgment

An Ombudsman representative should use reasonable diligence and good judgment in the investigation and resolution of complaints that residents or any other party brings to his or her attention. Ombudsman representatives provide services consistent with the instruction and best practices taught during the initial certification training as found in the Core Curriculum, demonstrated during State and local training sessions, and in accordance with OSLTCO and the local Ombudsman program policies and procedures.

C. Continuation of Service

When an Ombudsman representative is unable to continue providing services to a resident or within a facility, arrangements should be made through the local program coordinator for the continuation of Ombudsman services to that resident or facility.

VII. Code of Ethics for Ombudsman Staff and Volunteers

The National Association of State Long-Term Care Ombudsman Programs (NASOP) has adopted a Code of Ethics to guide Ombudsman decisions in advocacy efforts and addressing issues or problems. All California long-term care Ombudsman representatives must sign annually, and abide by, the Long-Term Care Ombudsman Code of Ethics (OSLTCO S013) which was adapted from the NASOP Code of Ethics.