

CHAPTER 8 LONG-TERM CARE OMBUDSMAN CERTIFICATION

I. Introduction

Local Long-Term Care Ombudsman Program (LTCOP) Coordinators have the responsibility to recruit, train, and support Long-Term Care (LTC) Ombudsman volunteers and paid staff in order to meet the objectives of the LTCOP.

Paid staff and volunteers must be certified by the State LTC Ombudsman prior to working on LTC Ombudsman tasks. Tasks include but are not limited to: facility visits, providing consultation, investigating and resolving complaints, and investigating reports of abuse and neglect of elder and dependent adults living in LTC facilities.

The certification process ensures that all LTC Ombudsman representatives are free from conflict of interest as required by law, pass a criminal record background clearance, complete 36 hours of training, and are qualified to perform the duties of an Ombudsman representative. Local LTCOP coordinators evaluate applicants and forward recommendations for certification or decertification to the State LTC Ombudsman.

II. Legal Authority

FEDERAL Title 42 United States Code sections 3058g(a)(5)(A) and (C)
Title 42 United States Code sections 3058g(h)(4) and (5)
45 Code of Federal Regulations part 1324.11(e)(6) and (7)
45 Code of Federal Regulations part 1324.13(c)

STATE Welfare and Institutions Code section 9719

III. Requirements for Initial Certification

Local Ombudsman staff and volunteers must meet the following certification requirements:

- Be at least 18 years of age.
- Be free from real or perceived conflicts of interest.
- Complete 36 hours of OSLTCO-approved classroom training.
- Be fingerprinted and pass California Department of Justice (DOJ) and FBI criminal record background clearance screenings.
- Complete 10 hours of internship or a minimum number of supervised facility visits, as determined by the local LTCOP coordinator.
- Submit the Application for Long-Term Care Ombudsman Certification (OSLTCO S002).

- Agree to sign a Conflict of Interest Statement annually (OSLTCO S009), acknowledging that there is no known conflict of interest that interferes with the Ombudsman representative's performance of duties.
- Agree to sign a Pledge of Confidentiality for Long-Term Care Ombudsman Trainees/Representatives annually (OSLTCO S006), acknowledging a clear understanding of Ombudsman confidentiality requirements.
- Sign a Statement Acknowledging Requirement to Report Suspected Abuse of Dependent Adults and Elders (SOC 341A).
- Sign a Requirement for Criminal Background Clearance (OSLTCO S003).
- Agree to sign the Long-Term Care Ombudsman Code of Ethics annually (OSLTCO S013).
- Agree to complete the California Department of Aging security awareness training annually.
- Agree to complete 12 hours of additional approved training each year.

All forms referenced in this chapter are located on the Coordinator Resources Webpage.

If a local LTCOP coordinator or the State LTC Ombudsman chooses (1) not to certify an individual after the initial training or internship, or (2) to suspend or decertify an Ombudsman representative, the individual may ask the State LTC Ombudsman to reconsider that decision and may submit supporting documentation. The State LTC Ombudsman's decision, after reconsideration, will be final.

IV. Background Clearance Procedures

California Welfare and Institutions Code section 9719, as amended effective July 1, 2007, requires existing and prospective LTC Ombudsman staff and volunteers to be fingerprinted and to undergo criminal record background clearances prior to certification as LTC Ombudsman representatives. The clearances are processed by the California Department of Social Services (CDSS).

At the beginning of the certification process, each Ombudsman applicant must complete a Criminal Record Statement (LIC-508B). It is important that this be completed accurately and signed by the applicant. The signed form is kept in a secure location in the local LTCOP office.

OSLTCO recommends that local LTCOPs send new applicants for Live Scan fingerprinting within the last two days of classroom training and prior to the start of their internships. The LTCOP coordinator provides the applicant with a Request for Live Scan Service form (LIC 9163B), which the applicant takes to the Live Scan site. When being fingerprinted, the Ombudsman applicant should request a copy of the Live Scan form completed by the Live Scan operator with the assigned ATS number. The applicant will return the form to the local LTCOP in case he or she needs to return for a second Live Scan.

Prior to sending applicants to the Live Scan site, the local LTCOP coordinator must submit the Long-Term Care Ombudsman Fingerprint Reporting Form (OSLTCO S004) by email to the OSLTCO Staff Services Analyst (SSA) at stateomb@aging.ca.gov. This form lists the names of applicants who will soon be sent to the Live Scan site. It is necessary that the SSA receive the Fingerprint Reporting Form in order to be able to match clearance information for individual applicants with the correct local LTCOP.

Within one to two weeks after fingerprinting, CDSS will notify OSLTCO through a secure website if the local Ombudsman applicant receives a DOJ background clearance. At that time, the SSA will notify the appropriate local LTCOP coordinator.

When the applicant is cleared by DOJ and has completed the required training and internship, the local LTCOP coordinator will complete the Request for Certification of Long-Term Care Ombudsman Representatives (OSLTCO S001) and attach each candidate's Application for Long-Term Care Ombudsman Certification (OSLTCO S002). The Request for Certification and the applications are emailed to the SSA at stateomb@aging.ca.gov.

When the SSA receives the Request for Certification and the applications, OSLTCO issues a certification card for the Ombudsman volunteer or staff member and sends it to the local LTCOP coordinator for signature. The State LTC Ombudsman sends a congratulatory letter to each new Ombudsman representative.

Certification also requires a background clearance by the FBI, which may take an additional 6-8 weeks. If the FBI finds evidence of a criminal background, the new Ombudsman representative must immediately cease all Ombudsman activities until the issue is resolved.

If the Live Scan prints of an Ombudsman applicant are unreadable by DOJ or the FBI, CDSS informs the Ombudsman applicant and OSLTCO and the applicant must return for a second Live Scan. Upon receipt of the notice of rejection, the SSA will send the local LTCOP Coordinator detailed instructions about the next steps. The applicant will return to the Live Scan site and present a copy of the CDSS rejection letter, the first Live Scan Request form, and the original Live Scan receipt so that the Live Scan operator and DOJ recognize that this is a second scan and not a new applicant. *Carefully following this procedure will avoid additional charges to the program and additional scans for the applicant.* If the second Live Scan is also unreadable, DOJ or the FBI performs a criminal record history using the applicant's name. However, if a second Live Scan is done without the Live Scan operator having appropriate information from the first Live Scan, the name search will not be done, and the applicant will have to reprint for a third time. Coordinators with questions about this process should contact the OSLTCO SSA or program manager before sending applicants for printing.

If the applicant has a criminal history, DOJ or the FBI forwards this information to CDSS. Some crimes are exemptible, typically those that are nonviolent misdemeanors and show no pattern of criminal activity. In those cases, the Ombudsman applicant is informed and may request a Criminal Record Exemption

from CDSS. To request the Criminal Record Exemption, the applicant must complete the proper form and supply information within the allowable time limits as specified by CDSS. The exemption process involves an investigation which, depending upon the circumstances, may take significant time to complete.

Criminal Record Exemptions are not available for some crimes. Where that is the case, CDSS notifies the Ombudsman applicant and OSLTCO, and the applicant must not be certified or must be immediately decertified.

V. Requirements for Program Coordinator Designation

In addition to the requirements specified in the previous section for initial certification, local LTCOP coordinators must agree to do the following:

- Attend the 36-hour Ombudsman certification classroom training at another local LTCOP recognized by OSLTCO within the next six months.
- Complete the Self-Directed Orientation for New Ombudsman Coordinators.
- Attend the next New Coordinator Training conducted by OSLTCO.
- Attend biannual statewide OSLTCO training conferences.

Prior to naming a candidate as a local LTCOP coordinator, the agency employing the candidate must send the documents listed below to OSLTCO. The State LTC Ombudsman will review the documents to determine whether to designate the candidate as the LTCOP coordinator for the Planning and Service Area (PSA):

- The candidate's resume
- The agency's current job description or duty statement for the coordinator position
- The candidate's signed:
 - Pledge of Confidentiality (OSLTCO S006)
 - Conflict of Interest Statement (OSLTCO S009)
 - LTCOP Coordinator Agreement with OSLTCO (OSLTCO S010)
 - LTCO Code of Ethics (OSLTCO S013)

VI. Liability Insurance

Certified LTC Ombudsman representatives who use their private automobiles on Ombudsman-related business must have current automobile insurance. Copies of their proof of insurance forms must be given to the local LTCOP coordinator to keep on file and must be updated annually.

While Ombudsman representatives will use their private automobiles to travel to facilities, they must *never* be used for such things as transporting residents to appointments or activities.

VII. Advance Health Care Directive Witness Registration

Residents of Skilled Nursing Facilities (SNFs), including distinct part SNFs, who have capacity, have the right to make their own medical and health care decisions and to designate someone else (an agent) to make those decisions for them if they become incapable of making health care decisions for themselves. A resident with capacity can also choose to have the agent's authority become effective immediately. One means of designating an agent is through an Advance Health Care Directive (AHCD), which is witnessed by an Ombudsman representative.

The responsibility of the Ombudsman representative in witnessing the AHCD is to verify the identity of the resident, ascertain that s/he is capable of understanding the document being signed, and determine that no coercion or undue influence is involved. The Ombudsman representative is not required to explain in detail or read the document to the resident but is to ensure that the resident is signing it freely, knowingly, and voluntarily.

Ombudsman staff and volunteers who witness AHCDs must attend a two-hour Ombudsman Program Curriculum Course, "Ombudsman's Role as Witness," given by the local LTCOP coordinator.

The local LTCOP coordinator determines whether an Ombudsman representative qualifies to witness an AHCD. To register an Ombudsman representative as an AHCD witness, the coordinator completes the Request for Registration of Ombudsman Witness for Advance Health Care Directives and Property Transfers (OSLTCO S103) and sends it to the OSLTCO SSA. OSLTCO maintains a statewide database of certified Ombudsman staff and volunteers registered as witnesses for AHCDs.

For more information on witnessing, see Chapter 4 of this manual.

VIII. Annual Recertification

Ombudsman staff and volunteer certification is renewed annually by OSLTCO based on the recommendation of the local LTCOP coordinator. In order to be recertified, each Ombudsman representative must:

- Have completed 12 hours of approved Ombudsman training during the year;
- Have no conflict of interest;
- Adhere to Ombudsman confidentiality requirements and the code of ethics; and
- Complete the CDA security awareness training annually.

Every May, the OSLTCO SSA sends a report of currently certified Ombudsman staff and volunteers electronically to each local LTCOP coordinator. The coordinator is responsible for verifying that all Ombudsman staff and volunteers who are part of the local LTCOP are included on the list, that staffing hours are correct, that all certified Ombudsman representatives have completed 12 additional hours of training and met other annual requirements. The coordinator returns the list electronically to the

OSLTCO SSA for record updating, indicating any errors or omissions. The update is due by email to OSLTCO by June 15 of each year.

IX. Leave of Absence

An Ombudsman representative may take a leave of absence when he or she needs an extended period of time off due to illness, family needs, extended travel, or other reasons. When an Ombudsman representative is on a leave of absence for more than one year, he or she must be decertified. If an Ombudsman representative returns prior to one year from the first day of the leave of absence, he or she can be recertified without repeating the 36-hour certification training. However, upon return from a leave of absence, the Ombudsman representative must be sure to complete the 12 hours of annual training and meet other annual requirements. If an Ombudsman representative returns one year or more from the first day of a leave of absence, in order to be recertified, he or she must attend the 36-hour certification training, be fingerprinted again, and receive a background clearance.

X. Voluntary Decertification

There are times when Ombudsman staff and volunteers have to resign from the LTCOP due to illness, change of residence, or other reasons. In order to ensure that OSLTCO does not receive additional arrest information after an Ombudsman representative leaves the program, the local LTCOP coordinator must complete a Decertification of Long-Term Care Ombudsman Representatives (OSLTCO S005) and submit it to OSLTCO *no later than five days* after notice of resignation. This ensures that the Ombudsman certification database can be kept current and accurate.

OSLTCO then notifies CDSS that the former Ombudsman representative has been decertified. *Because OSLTCO is not authorized to receive subsequent arrest information for Ombudsman representatives who have left the program, timely decertification is imperative.*

OSLTCO sends a letter to the former Ombudsman representative in cases of decertification without cause, expressing appreciation for service.

XI. Criteria for Refusal to Certify and Decertification with Cause

The State LTC Ombudsman may refuse to certify or may decertify an individual as an Ombudsman representative.

There are occasions when it is necessary to terminate the service of an Ombudsman representative for cause. Cause, which requires decertification, includes, but is not limited to, the following:

- Unwillingness to work cooperatively under supervision
- Failure to follow direction of the State LTC Ombudsman or the local LTCOP coordinator regarding LTCOP policies, procedures, and practices
- A change in employment duties that is incompatible with LTCOP duties

- Gross misconduct
- Violation of confidentiality
- Misrepresentation of Ombudsman responsibilities
- Failure to provide adequate and appropriate services to LTC residents
- Falsifying records
- Existence of an unremedied conflict of interest
- Unreported conflict of interest
- Failure to complete required training hours
- Failure to pass or maintain background clearance requirements

The local LTCOP coordinator may be required to temporarily suspend a volunteer from the program, pending investigation and review of a background clearance issue, by accepting and holding the certification card until the matter is resolved. Suspension will be automatic if subsequent arrest information is received by OSLTCO from CDSS and will continue until the investigation and review is complete. OSLTCO will notify the local Ombudsman coordinator of all subsequent arrests requiring suspension.

Prior to decertifying or refusing to certify an individual, the State LTC Ombudsman shall consult with the relevant local LTCOP coordinator to consider remedial actions which could be taken to avoid the refusal to certify or the decertification.

The State LTC Ombudsman shall refuse to certify an individual as an Ombudsman representative by providing written notice of such refusal to the individual and provider agency. Such notice shall:

- Specify the reasons for decertification or refusal to certify, and
- Set forth the effective date of the decertification or refusal.

To initiate the decertification process, the local LTCOP coordinator recommends decertification of Ombudsman volunteers or staff by completing the Decertification of Long-Term Care Ombudsman Representatives form (OSLTCO S005) and submitting it to the State LTC Ombudsman *within five days of the termination date*. The coordinator indicates on the form that the type of decertification letter to send is decertification with cause. The State LTC Ombudsman reviews the recommendation and, if appropriate, sends the written notice referenced above to the Ombudsman representative.

An applicant or Ombudsman representative has 15 calendar days from the date on the notice to ask the State LTC Ombudsman to reconsider a decision to refuse, suspend, or remove his or her certification. The person requesting reconsideration may submit additional information, if any, that was not considered when the original decision was made.

Notwithstanding this reconsideration, the State LTC Ombudsman shall make the final determination to refuse or remove certification of an Ombudsman representative (45 CFR § 1324.11(e)(7)(i)).

If the individual does not seek reconsideration within 15 calendar days of the notice, the State LTC Ombudsman takes decertification action as appropriate. An Ombudsman representative is not decertified until OSLTCO has formally decertified the individual and indicated the decertification date in the database.

OSLTCO then sends a Final Decertification with Cause Letter to the volunteer or staff member stating that decertification has been approved by the State LTC Ombudsman. Paid Ombudsman staff members are subject to designated agency personnel procedures for dismissal and will be decertified following OSLTCO procedures at the request of the local LTCOP coordinator.

XII. Confidentiality after Decertification

Ombudsman representatives are legally obligated to maintain the confidentiality of LTCOP complaint files, including the identities of all residents, complainants, and witnesses at all times, even after they have left the LTCOP. Upon decertification, Ombudsman representatives must return all case records and notes to the local LTCOP office and relinquish their certification cards. If a current or former Ombudsman representative receives a subpoena regarding Ombudsman activities, he or she must notify the local LTCOP immediately for instructions on how to respond to the subpoena. This applies even after the Ombudsman representative has been decertified. Failure to maintain confidentiality may result in civil liability.

XIII. Destruction of Certification Cards

It is the responsibility of the local LTCOP coordinators to collect all certification cards from decertified Ombudsman representatives. As a safety precaution, all certification cards from former Ombudsman representatives must be destroyed.

When the local LTCOP coordinator is unable to collect the certification card from a former Ombudsman representative, the coordinator must notify OSLTCO. The local LTCOP also must notify pertinent facilities that the individual still possesses a certification card but is no longer a representative of the LTCOP.