



The National **Long-Term Care**  
**Ombudsman** Resource Center

# MODULE ONE

## **The State Long-Term Care Ombudsman Program: Roles, Responsibilities, and Authorities**

### **TRAINEE MANUAL**

January 2022

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# **Section 1:**

## **Welcome and Introduction**

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# Welcome

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Welcome to Module 1 of certification training *The State Long-Term Care Ombudsman Program: Role, Responsibilities, and Authorities*. This curriculum is designed to prepare you for your work as an advocate for residents. Thank you for investing your time and having an interest in the lives of individuals living in long-term care settings.

## **The *Initial Certification Training Curriculum for Long-Term Care Ombudsman Programs***

This is the *Initial Certification Training Curriculum for Long-Term Care Ombudsman Programs*, developed by the National Long-Term Care Ombudsman Resource Center (NORC). The curriculum has ten Modules, each with a specific topic(s). The manual is yours to keep. Feel free to take notes as you go along and be sure to ask questions about any information discussed. If at any time a term or an abbreviation is used that has not yet been explained, please ask for clarification.

Included in each Module are:

**Table of Contents** with topics and corresponding page numbers.

**Key Words and Terms** specific to the Module.

**Learning Objectives** to indicate what you can expect to learn from each Module.

**Footnotes** which include citations for the source material and/or links for additional information.

**Module Questions** specific to each Module intended to be discussed at the end of the training session.

**Additional Resources** for supplemental information.

## **Certification Training Learning Outcomes**

Based on the Administration for Community Living (ACL) Training Standards, during certification training, trainees will learn:<sup>1</sup>

1. The Ombudsman program serves a vital purpose at the individual and systems level.
2. The representative of the Office is part of a statewide program under the direction of the Office of the State Ombudsman and carries specific responsibilities and duties to the resident and the program.

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<sup>1</sup> *Final Long-Term Care Ombudsman Program Training Standards*. Administration for Community Living. Office of Long-Term Care Ombudsman Programs. Learning Outcomes.  
[https://ltcombudsman.org/uploads/files/support/2019\\_LTCOP\\_Training\\_Standards.pdf](https://ltcombudsman.org/uploads/files/support/2019_LTCOP_Training_Standards.pdf)

3. The program serves as a resource to residents, their families, and facility staff with the goal to promote and protect the health, safety, welfare, and rights of residents.
4. Resident rights and choice are paramount. The program is resident-directed and promotes empowerment.
5. Relevant laws, along with where to find information on these laws, i.e., how to use the training manual, links to websites, who to call for technical assistance and support.
6. Basic information about different communication styles and strategies to improve communication.
7. The importance of, and responsibility to maintain confidentiality of all communications, records, and other information concerning residents, complainants, and others.
8. Steps to take when investigating a complaint and purpose of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident.
9. Programmatic requirements.

## Module 1 Agenda

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- Section 1: Welcome and Introduction
- Section 2: Overview & History of the Long-Term Care Ombudsman Program
- Section 3: Long-Term Care Ombudsman Program Requirements and Management
- Section 4: The State Long-Term Care Ombudsman Program
- Section 5: The Long-Term Care Ombudsman Program Role and Responsibilities
- Section 6: Conflicts of Interest
- Section 7: Long-Term Care Ombudsman Program Ethics
- Section 8: Conclusion

## Module 1 Learning Objectives

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After completing Module 1 you will understand:

- The history of the program
- Laws and regulations pertaining to the Long-Term Care Ombudsman program (LTCOP)
- Program structure
- Training requirements
- Functions and responsibilities of the State Long-Term Care Ombudsman
- Duties of the representatives of the Office of the State Long-Term Care Ombudsman
- The difference between individual advocacy and systems advocacy

## Training Requirements

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Certification training is required as part of the process to become a representative of the Office of the State Long-Term Care Ombudsman. A representative of the Office of the State Long-Term Care Ombudsman (representative) is an individual (employee or volunteer) designated by the State Long-Term Care Ombudsman (Ombudsman) to fulfill the duties as defined in federal law and regulations. States may use the term “ombudsman” more broadly in reference to a representative.

Each state is required to provide a minimum of 36 hours of initial certification training that includes:

- Up to 7 hours of independent study
- At least 10 hours in the field
- 16-20 hours of classroom style training

Once designated, at least 18 hours of in-service training (also known as “continuing education training”) is required annually.

## Module 1 Key Words and Terms

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The following key words and terms are defined relative to Ombudsman program practices and are found throughout this Module. Take a moment to familiarize yourself with this important information.

**Administration on Aging (AoA)** – An operating agency within the federal Department of Health and Human Services (HHS) that provides assistance in the development of new or improved programs to help older persons. It provides grants to the States for community planning and support services and for training, through research, development, or training project grants.<sup>2</sup>

**Advocate** – An individual who works on behalf of another individual or group of individuals or an action taken on behalf of an individual or a group of individuals. An advocate does not represent their own views but amplifies those of the person or persons they are supporting.

**Area Agency on Aging (AAA)** – An agency designated by the state to address the needs of older individuals within a specific region or geographical area known as a planning and service area (PSA).

**Certification** – The process of satisfying the training and other program requirements to become a representative of the Office.

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<sup>2</sup> Older Americans Act <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>

**Client** – The resident whom the Long-Term Care Ombudsman program represents.

**Confidentiality** – Federal and state laws mandate that the Long-Term Care Ombudsman program keep all identifying information about a resident and a complainant private within the program.

**Designation** – The authority given to the State Ombudsman to appoint or select (i.e., designate), and refuse, suspend, or remove designation of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Older Americans Act set forth in §1324.11(e)(6) of the State Long-Term Care Ombudsman Programs Rule.

**Empowerment** – This is a primary role of the Long-Term Care Ombudsman program in which representatives provide the tools (e.g., information about residents' rights, facility responsibilities), encouragement, and assistance to promote resident self-advocacy.

**Immediate Family** – As pertaining to conflicts of interest, is a member of the household or a relative of the representative of the Office with whom there is a close personal or significant financial relationship.<sup>3</sup> Such relationships could impair the judgment or give the appearance of bias on the part of a representative of the Office.

**Local Ombudsman Entity (LOE)** – Public agencies or nonprofit organizations, designated by the State Ombudsman, responsible for hosting local or regional Ombudsman programs to carry out the activities of the program.

**National Ombudsman Reporting System (NORS)** – The uniform data collection and reporting system required for use by all State Long-Term Care Ombudsman programs.

**Office of the State Long-Term Care Ombudsman (Office, OSLTCO)** – As used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.<sup>4</sup>

**Older Americans Act (the Act, OAA)** – Federal law enacted in 1965 that provides for comprehensive services for older adults. The OAA created a National Aging Network comprised of federal, state, and local supports and services for individuals ages 60 and older. The OAA established the Long-Term Care Ombudsman program.<sup>5</sup> This law is reauthorized (revised) by Congress every five years and signed into law by the President.

**Ombudsman** – A Swedish word meaning agent, representative, or someone who speaks on behalf of another. For the purposes of this manual, the word “Ombudsman” means the State Long-Term Care Ombudsman.

**Representatives of the Office of the State Long-Term Care Ombudsman (Representatives)** – As used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a),

<sup>3</sup> 45 CFR Part 1324 Subpart A §1324.1 Definitions

<sup>4</sup> 45 CFR Part 1324 Subpart A §1324.1 Definitions

<sup>5</sup> <https://acl.gov/about-acl/authorizing-statutes/older-americans-act>

whether personnel supervision is provided by the Ombudsman or his or her designees, or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.<sup>6</sup>

**Resident** – An individual of any age who resides in a long-term care facility.<sup>7</sup>

**Resident-Directed** – The core of the Ombudsman program’s foundation is to follow the direction of the resident to the fullest extent possible. For example, the Ombudsman program does not make decisions for the resident but does support and advocate on behalf of the resident’s wishes.

**Skilled Nursing Facility or Nursing Facility** – Also known as a “nursing home,” is a certified facility that provides skilled nursing care for residents who require medical or nursing care rehabilitation or provides health-related care and services to individuals who, because of their mental or physical condition, require care and services (above the level of room and board) which can be made available to them only through institutional facilities.<sup>8</sup> For the purposes of this training and to be consistent with the National Ombudsman Reporting System (NORS), we use the term “nursing facility” for both skilled nursing facilities and nursing facilities.<sup>9</sup>

**State Agency/State Unit on Aging (SUA)** – The designated state agency responsible for developing and administering programs that provide assistance to older individuals, their family members, and in many states, for adults with disabilities.

**State Long-Term Care Ombudsman (Ombudsman, State Ombudsman)** – As used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible personally, or through representatives of the Office, to fulfill the functions, responsibilities, and duties set forth in §1324.13 and §1324.19.<sup>10</sup>

**State Long-Term Care Ombudsman program (Ombudsman program, the program, LTCOP)** – As used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.<sup>11</sup>

**State Long-Term Care Ombudsman Programs Rule (LTCOP Rule)** – The Federal Rule that governs the Long-Term Care Ombudsman program (45 CFR Part 1324).<sup>12</sup>

<sup>6</sup> 45 CFR Part 1324 Subpart A §1324.1 Definitions

<sup>7</sup> SEC. 711. Definitions Older Americans Act <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>

<sup>8</sup> This definition is a combination of Requirements for, and assuring Quality of Care in, Skilled Nursing Facilities, Section 1819(a) of the Social Security Act [42 U.S.C. 1395i–3(a)]

[https://www.ssa.gov/OP\\_Home/ssact/title18/1819.htm](https://www.ssa.gov/OP_Home/ssact/title18/1819.htm) and Requirements for Nursing Facilities, Section 1919(a) of the Social Security Act [42 U.S.C. 1396r(a)] [https://www.ssa.gov/OP\\_Home/ssact/title19/1919.htm](https://www.ssa.gov/OP_Home/ssact/title19/1919.htm)

<sup>9</sup> NORS Table 1 [https://ltcombudsman.org/uploads/files/support/NORS\\_Table\\_1\\_Case\\_Level\\_10-31-2024.pdf](https://ltcombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf)

<sup>10</sup> 45 CFR Part 1324 Subpart A §1324.1 Definitions

<sup>11</sup> 45 CFR Part 1324 Subpart A §1324.1 Definitions

<sup>12</sup> <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>



**Subsection Symbol (§)** – The subsection symbol is used to denote an individual numeric statute or regulation (rule).

**U.S. Department of Health and Human Services (HHS)** – The principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.<sup>13</sup>

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<sup>13</sup> <https://www.hhs.gov/about/strategic-plan/introduction/index.html>

## **Section 2:**

# **Overview and History of the Long-Term Care Ombudsman Program**

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## What is an Ombudsman?

Ombudsman is a Swedish word meaning agent, representative, or someone who speaks on behalf of another. There are many different types of ombudsmen which may lead to some confusion with people understanding what type of ombudsman is working within the Long-Term Care Ombudsman program.

The Long-Term Care Ombudsman program (LTCOP) serves as an **advocate ombudsman**. The LTCOP is impartial while investigating to determine the facts relevant to a case. Once the facts are determined, the LTCOP advocates, seeking a resolution the resident wants. An advocate ombudsman does not represent their own views but amplifies those of the person they are supporting. The goal is resolution to the satisfaction of the resident.



**Watch the video:** [What is a Long-Term Care Ombudsman?](#)<sup>14</sup> The video provides a brief introduction to the program.

## The State Long-Term Care Ombudsman

The Ombudsman is the head of the Office of the State Long-Term Care Ombudsman program (the Office) and is responsible personally, or through representatives of the Office, to carry out a variety of functions and responsibilities about which you will learn in this Module. In general, the Ombudsman is responsible for:

- Ensuring that residents have access to the program
- Responding to and resolving complaints
- Representing the interests of residents before governmental agencies
- Ensuring all program requirements are fulfilled
- Ensuring representatives of the Office fulfill their duties
- Designating representatives of the Office and local Ombudsman entities

The Ombudsman's responsibilities are covered in greater detail later in the training.

*The State Long-Term Care Ombudsman is also known as the State Ombudsman, the Ombudsman, and SLTCO. Since the term "Ombudsman" (always capitalized) is used in federal references to differentiate the State Ombudsman from representatives of the Office, it is also used as such in the training materials.*

## Representatives of the Office

Representatives of the Office of the State Long-Term Care Ombudsman (representatives) are employees or volunteers designated by the Ombudsman to fulfill the duties of the

<sup>14</sup> This video series was developed by the Texas Department of Aging and Disability Services in coordination with the Texas Long-Term Care Ombudsman Program. <https://www.youtube.com/watch?v=6VRmetXQVEY>

Long-Term Care Ombudsman program set forth in the Older Americans Act and §1324.19 of the LTCOP Rule.

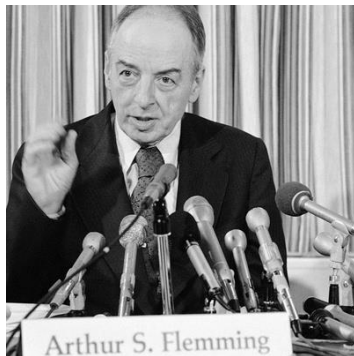
The State Ombudsman is responsible for designating representatives of the Office. Individuals so designated are responsible for carrying out the duties of the Office. To be considered for designation, individuals are required to:

- Meet the screening criteria for certification and/or designation under your state's LTCOP policies and procedures
- Identify, remove, or remedy all conflicts of interest as specified in the Older Americans Act (OAA), State Long-Term Care Ombudsman Programs Rule (LTCOP Rule), and in your state program policies and procedures
- Complete certification training

## History of the Long-Term Care Ombudsman Program

To fully understand the unique and essential roles of the Ombudsman and representatives of the Office, it is important to understand the history of the Long-Term Care Ombudsman program (LTCOP).

The idea for the LTCOP was developed by Dr. Arthur Flemming, Commissioner on Aging to President Nixon. Dr. Flemming envisioned the program as an advocacy program for residents; and he personally wrote the first guidelines.<sup>15</sup>



The program officially began in 1972 with implementation of President Nixon's 1971 Eight Point Initiative to improve nursing facility care. The Health Care Services and Mental Health Administration funded nursing home Ombudsman demonstration projects in Idaho, Pennsylvania, South Carolina, Wisconsin, and Michigan *"to respond in a responsible and constructive way to complaints made by or on behalf of individual nursing home patients."*

The following is from the State Long-Term Care Ombudsman Program 2019 Revised Primer for State Agencies:<sup>16</sup>

### 1970s

The Nursing Home Ombudsman program was created as part of President Nixon's initiative to improve conditions and respond to widespread reports of resident abuse in

<sup>15</sup> Statement by Elma Holder, Founder, National Citizens' Coalition for Nursing Home Reform (now the National Consumer Voice for Quality Long-Term Care), in a presentation, "Tapping and Nurturing Grassroots Support," for State Long-Term Care Ombudsman Representatives, Rhode Island, April 2000.

<sup>16</sup> *State Long-Term Care Ombudsman Program: 2019 Revised Primer for State Agencies*. The National Long-Term Care Ombudsman Resource Center and the National Association of States United for Aging and Disabilities (NASUAD). <https://ltcombudsman.org/uploads/files/support/nasuad-ombudsman-acl-rpt-0319-web-final.pdf>

the nation's nursing facilities. The initiative started as a demonstration program to test its effectiveness, and by the late 1970s, all states were required to have an Ombudsman program as a requirement of the Older Americans Act (OAA).

### **1980s**

The program expanded in the 1980s to include board and care as well as other similar adult care facilities. Clarifying language was added to the OAA in the late 1980s to ensure the program's access to long-term care facilities and residents, as well as access to resident and facility records. The amendments also provided immunity from liability to the Ombudsman and representatives of the Office who were acting in "good faith" in the performance of their duties. The program was also renamed the Long-Term Care Ombudsman program (LTCOP) to reflect its expanded scope.

### **1990s**

Title VII, the Vulnerable Elder Rights Protection Program, was created by Congress in the 1992 amendments to the OAA. Title VII focused renewed attention on the individual and collective advocacy functions of the aging network and recognized the unique role played by each of the four advocacy programs -- Ombudsman, elder abuse prevention, legal assistance, and benefits counseling. Title VII emphasized the benefit of a coordinated advocacy approach to address older persons' understanding and exercising of their rights as well as access to assistance with problems they encounter. The 1992 amendments included the creation of an Office of the State Long-Term Care Ombudsman (the State Ombudsman Office) and some clarification of conflicts of interest.

### **2000s**

The 2000 OAA amendments included specific language that prohibited Ombudsmen entities and representatives of the Office from financial gain through an action or potential action brought on behalf of individuals they served. It also required coordination of the program with state and local law enforcement agencies. The OAA amendments retained and updated Ombudsman provisions in Titles II, III, and VII, including specific conflict of interest provisions.

### **2006**

Reauthorization added "Assisted Living Facilities" to the definition of "Long-term Care Facility" thereby clarifying that the program provides services to residents of Assisted Living Facilities.

### **2015**

The State Long-Term Care Ombudsman Programs Rule was published in February 2015 with an effective date of July 1, 2016. The LTCOP Rule adds clarity to many of the program responsibilities and provisions in the OAA.

### **2016**

The 2016 OAA amendments added clarity and additional authority to the program in several areas.

Pertinent amendments to the LTCOP included:

- Authorizing the program to serve all long-term care facility residents regardless of their age
- Serving residents transitioning from a long-term care facility to a home-care setting, when feasible
- Clarifying that the program may work to resolve complaints on behalf of residents unable to communicate their wishes, including those lacking an authorized representative (e.g., guardian, power of attorney)
- Requiring programs to actively encourage and assist in the development of resident and family councils
- Confirming that the program is considered a “health oversight agency” for the purposes of the Health Insurance Portability and Accountability Act (HIPAA)

## 2020

The 2020 OAA reauthorization clarified that the LTCOP is allowed to provide, and financially support, recognition for individuals designated as volunteer representatives. The LTCOP may reimburse or otherwise provide financial support for any costs, such as transportation costs, incurred by representatives of the program.



Learn more about the history of the program [here](#).<sup>17</sup>

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<sup>17</sup> The National Long-Term Care Ombudsman Program Resource Center, *The Long-Term Care Ombudsman Program Milestones 1972-2016* <https://ltcombudsman.org/uploads/files/about/ltcop-milestones-to-2016.pdf>

## **Section 3:**

# **Long-Term Care Ombudsman Program Requirements and Management**

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## Federal Requirements

The Long-Term Care Ombudsman program has federal and state requirements that direct the structure, role, and responsibilities of the program. It is important for representatives to understand the federal and state laws as well as program policies and procedures. The following are federal requirements for the LTCOP.

### The Older Americans Act (OAA)

The Older Americans Act (OAA) of 1965 created a National Aging Network comprised of federal, state, and local supports and services for individuals ages 60 and older. In addition to providing comprehensive services for older adults, the OAA established the Long-Term Care Ombudsman program.

Older Americans Act  
Title VII, Chapter 2,  
Sections 711/712  
specifically pertains  
to the LTCOP.

The OAA also authorizes the State Units on Aging and the Area Agencies on Aging. The OAA is the legal basis for services and funding in every state to support the dignity and welfare of individuals who are 60 years of age and older.

These services include but are not limited to:

- Home and community-based services
- Nutritional programs
- Health promotion and disease prevention activities for older adults
- Programs that protect vulnerable persons, such as the Long-Term Care Ombudsman program

The OAA is the foundation for the authority of the Ombudsman and the Long-Term Care Ombudsman program, and it is administered at the state level.<sup>18</sup>

While the OAA requires every state to have a Long-Term Care Ombudsman program, it also:

- Authorizes funding for the LTCOPs
- Authorizes the establishment of the Office
- Determines the functions and responsibilities of the Ombudsman
- Identifies the Ombudsman as the head of the State Long-Term Care Ombudsman program responsible for the management and fiscal management of the program
- Authorizes the Ombudsman and representatives of the Office regular, timely, private, and unimpeded access to residents and access to residents' records
- Requires that all potential individual and organizational conflicts of interest are identified and remedied

### The State Long-Term Care Ombudsman Programs Rule

The Administration for Community Living (ACL) published the State Long-Term Care Ombudsman Programs (LTCOP) Rule (45 CFR Part 1324) in February 2015 and effective

<sup>18</sup> Older Americans Act of 2020 <https://www.congress.gov/bill/116th-congress/house-bill/4334/text>



on July 1, 2016. The LTCOP Rule guides states in their operation of the LTCOP and clarifies program responsibilities and requirements of the Older Americans Act including but not limited to:

- Responsibilities of key figures in the system, including the Ombudsman and representatives of the Office
- Responsibilities of the entities in which LTCOPs are housed
- Criteria for establishing consistent, person-centered approaches to resolving complaints on behalf of residents
- The appropriate role of LTCOPs in resolving abuse complaints
- Conflicts of interest

*Throughout this training, the “State Long-Term Care Ombudsman Programs Rule” is also referred to as the “LTCOP Rule.”*

## Long-Term Care Ombudsman Program Management

Providing an effective Long-Term Care Ombudsman program requires coordination at the federal, state, and local levels.

### Federal

At the federal level, the U.S. Department of Health and Human Services (HHS) improves the health and well-being of all Americans focusing on public health and social services.

Within HHS, the Administration for Community Living (ACL) believes that older adults and people of all ages with disabilities should be able to live where they choose, with the people they choose, and be able to participate fully in their communities.

The Administration on Aging (AoA) is the primary agency within ACL responsible for carrying out the requirements of the Older Americans Act. AoA oversees the Long-Term Care Ombudsman program (LTCOP) and offers support and assistance to State Units on Aging (SUAs) and State Long-Term Care Ombudsman programs.

### State

A State Unit on Aging (SUA) is the designated state agency responsible for developing and administering programs that provide assistance to older individuals, their family members, and in many states, adults with disabilities. The SUA is responsible for ensuring that the Ombudsman program has sufficient authority, access to facilities and residents, and information and training needed to perform all the functions of the Office. The SUA determines the structure of the Long-Term Care Ombudsman program. The SUA is responsible for providing legal counsel to the Ombudsman program for consultation and representation as needed for the LTCOP to protect the health, safety, welfare, and rights of residents. All program responsibilities of the SUA are included in

the LTCOP Rule, the OAA, and in other regulations governing Health and Human Services (HHS) grantees.

## **Local**

### ***Area Agencies on Aging***

Area Agencies on Aging (AAAs) were established by the Older Americans Act to provide options, supports, and services to individuals 60 years of age and older. An AAA is an agency designated by the state to address the needs of all older individuals within a specific region or geographical area known as a planning and service area (PSA).

### ***Local Ombudsman Entities (LOEs)***

The Ombudsman is responsible for designating local Ombudsman entities (LOEs). LOEs are public agencies or nonprofit organizations responsible for hosting local or regional Ombudsman programs to carry out the activities of the program. States that utilize other agencies or organizations to host the program have specific requirements. Some AAAs are designated by the State Ombudsman as host agencies of an LOE.

Local Ombudsman entities are required to:

- Refrain from having personnel policies or practices which prohibit representatives of the Office from performing the duties of the program or from adhering to Section 712 of the Older Americans Act
- Be responsible for the personnel management, but not the programmatic oversight, of representatives of the Office
- Coordinate with the State Ombudsman when hiring individuals to be considered as representatives of the Office
- Allow the State Ombudsman to monitor the performance of the representatives of the Office in carrying out the duties of the program
- Identify, remove, or remedy all conflicts of interest as specified in the LTCOP Rule and in your state's policies and procedures
- Adhere to the Ombudsman's federal and state confidentiality and disclosure requirements

# **Section 4:**

## **State Long-Term Care Ombudsman Program**

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# State Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman program (LTCOP) consists of the Office, headed by a full-time State Long-Term Care Ombudsman; all representatives (both paid and volunteer); and local Ombudsman entities (when applicable).

The Ombudsman program addresses complaints and advocates on behalf of residents and responsibilities include:<sup>19</sup>

- Educating residents, their family, and facility staff about residents' rights, good care practices, and similar long-term services and supports resources
- Ensuring residents have regular and timely access to Ombudsman services
- Providing technical support for the development of resident and family councils
- Advocating for changes to improve residents' quality of life and care
- Providing information to the public regarding long-term care facilities and services, residents' rights, and legislative and policy issues
- Representing resident interests before governmental agencies
- Seeking legal, administrative, and other remedies to protect residents

*Throughout this training and in the field, the terms "Long-Term Care Ombudsman program," "Ombudsman program," "program," or "LTCOP" are used to identify the State Long-Term Care Ombudsman program.*

The LTCOP is unique in that it is required to provide **individual and systems advocacy** on behalf of residents in nursing facilities and other long-term care facilities.

**Individual advocacy** occurs when the representative takes direction from a resident and works to resolve their concern or concerns.

**Systems advocacy**<sup>20</sup> occurs when the LTCOP recommends changes to a system (e.g., a long-term care facility, a government agency, an organization, a corporation, policies, regulations, and law) to benefit long-term care residents. Effective and credible systems advocacy is supported by data and complaint trends, but can also be in response to policy, regulatory, and legislative proposals that could negatively impact residents.

Whether through individual or systems advocacy, the LTCOP works to resolve problems affecting residents' health, safety, quality of care, quality of life, and rights. These responsibilities will be discussed in greater detail throughout the training.

<sup>19</sup> National Ombudsman Resource Center. LTCOP What you Must Know

<https://ltcombudsman.org/uploads/files/library/long-term-care-ombudsman-program-what-you-must-know.pdf>

<sup>20</sup>National Ombudsman Resource Center. LTCOP Reference Guide Role and Responsibilities of the Ombudsman Program Regarding Systems Advocacy <https://ltcombudsman.org/uploads/files/support/sltco-systems-advocacy-ref-guide-final.pdf>

## The Office of the State Long-Term Care Ombudsman

The Office is required to be a distinct and separately identifiable entity and is charged with carrying out the functions and responsibilities set forth in the Older Americans Act and in the LTCOP Rule.

*Throughout this training the term “Office” is used to identify the Office of the State Long-Term Care Ombudsman.*

A “distinct and separately identifiable entity” means that the Office operates independently from the host agency and/or the State Unit on Aging and is understood to be a separate entity.

## The Structure of the Long-Term Care Ombudsman Program

The Office may be located within or connected to the State Unit on Aging (SUA), or the SUA may designate a public or non-profit agency to host the Office of the State Long-Term Care Ombudsman program. LTCOPs have one of two structures: centralized or decentralized.

### Centralized

In a centralized structure, the State Ombudsman and all representatives of the Office are housed within a single entity. This entity could be a State Unit on Aging, or an agency designated by the SUA.

### Decentralized

In a decentralized structure, the State Ombudsman is an employee of the state, or designated agency, but the regional/district/local representatives of the Office are employed by other contracted entities referred to as local Ombudsman entities (LOEs). In this structure, the Ombudsman has programmatic oversight (e.g., designation and de-designation of representatives, training representatives, providing guidance regarding complaint processing and other activities), but not personnel oversight (e.g., hiring and firing) of the representatives of the Office. In some states, the local LTCOP is a stand-alone entity. Most states have a decentralized structure.



Learn more about [program structure](#)<sup>21</sup> and for more information on program management, visit the NORC [website](#).<sup>22</sup>

<sup>21</sup> Nguyen PhD, Kim and White MA, Emily, *Protecting Rights and Preventing Abuse: Systems Advocacy and Long-Term Care Ombudsman Program Organizational Placement* [https://acl.gov/sites/default/files/programs/2020-10/NORC%20Research%20Brief\\_Systems%20Advocacy\\_508.pdf](https://acl.gov/sites/default/files/programs/2020-10/NORC%20Research%20Brief_Systems%20Advocacy_508.pdf)

<sup>22</sup> National Long-Term Care Ombudsman Resource Center. Ombudsman Program Structure & Management <https://ltcombudsman.org/uploads/files/support/NASUAD-2016-Ombudsman-Rpt.pdf>

## **Section 5:**

# **Long-Term Care Ombudsman Program Role and Responsibilities**

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## Activity: Who Are We?

The role of a representative of the Office is unique and one you may often find yourself having to explain. The word **ombudsman** is defined as “***an agent, representative, or someone who speaks on behalf of another.***” However, the definition does not fully describe the LTCOP’s role in resident-directed advocacy.

The following activity<sup>23</sup> is designed to help clarify the role of a representative. Place the words in the category that you think **Best Describes**, **May Describe**, or **Does Not Describe** the role of a representative. This activity will be discussed at the end of the Section.

- Investigator
- Judge
- Neutral
- Open-minded
- Social Worker
- Friend
- Mediator
- Facilitator
- Advocate
- Educator

Best Describes	May Describe	Does Not Describe



## Activity: Fact or Fiction

Federal and state requirements direct the LTCOP to identify, investigate, and resolve complaints made by or on behalf of residents when those complaints are related to an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents. However, many residents, family members, individuals working in long-term care settings, or state agencies do not fully understand the role of a representative. Below are some common myths about the program, followed by explanations of the facts, and where those facts are located in the LTCOP Rule.

<sup>23</sup> Adapted and revised from the Illinois State Long-Term Care Ombudsman Program Level 1 Trainer’s Manual

## THE LONG-TERM CARE OMBUDSMAN PROGRAM – FACT OR FICTION?<sup>24</sup>

Figure 1

<b>Fiction</b>	<b>Fact</b>	<b>Basis</b>
<b><i>The Long-Term Care Ombudsman Program...</i></b>		
<i>Works in the best interest of the resident.</i>	Within the scope of the program, the representative follows the direction of the resident, even if that is not what others think is in the resident's best interest.	The LTCOP rule directs the representative to support and maximize resident participation in the process of resolving the complaint and determine the wishes of the resident with respect to resolution of the complaint. The LTCOP's top priority is to empower residents to exercise their right to self-determination. <b>§1324.19(b)(2)</b>
<i>Shares resident information freely with family members, facility staff, and medical providers in an effort to resolve concerns.</i>	The representative needs permission from the resident to discuss the resident's concerns with anyone, including facility staff and family.	The representative is bound by strict rules of confidentiality and may not disclose any identifying information about the resident or complainant without consent from the resident, complainant, or the State Ombudsman. <b>§1324.11(e)(3)</b>
<i>Does not investigate allegations of abuse.</i>	The LTCOP does investigate allegations of abuse but does so as directed by resident goals for complaint resolution. The LTCOP does not gather evidence to substantiate that abuse occurred or to determine if a law or regulation was violated to enforce a penalty.	The LTCOP investigates and resolves complaints that "relate to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of the residents" and that includes complaints about abuse, neglect, and exploitation. <sup>25</sup> <b>§1324.19(b)</b>

<sup>24</sup> Adapted and revised from the Illinois State Long-Term Care Ombudsman Program Level 1 Trainer's Manual

<sup>25</sup> Older Americans Act of 1965. Section 712 (a)(3)(A)



<i>Acts as a neutral third party.</i>	<p>The representative is not neutral when advocating to resolve a complaint on behalf of a resident. The representative works to resolve concerns to the satisfaction of the resident, not other parties involved.</p> <p>The LTCOP may mediate when there is a conflict between parties of equal power (e.g., two residents).</p>	<p>The LTCOP is designed to represent resident concerns and interests. The representative is unbiased while investigating a complaint and gathering information, but the information gained is to be used to advocate on behalf of residents.</p> <p><b>§1324.19 (b)(2)</b></p>
<i>Just stirs up trouble.</i>	<p>The LTCOP is required to identify, investigate, and resolve concerns made by or on behalf of residents, seeking to resolve problems to the satisfaction of the resident(s).</p>	<p>Often, residents feel more comfortable discussing concerns with the LTCOP than they do complaining to facility staff, medical providers, or even their own family members. This may lead to the misperception that the program is creating problems when, in fact, the problems were there all along.</p> <p><b>§ 1324.13(a)(1)</b> <b>§ 1324.19(a)(1)</b></p>
<i>Does not have the professional background or training necessary to understand the issues affecting residents living in long-term care facilities.</i>	<p>Representatives are trained advocates working to protect the rights of residents.</p>	<p>To become designated as a representative of the Office, individuals are required to attend a minimum number of hours of initial training. In addition, representatives are required to attend on-going training once designated.</p> <p><b>§1324.13(c)(2-3)</b></p>

## What Do We Do?










The Ombudsman and representatives of the Office have similar and different responsibilities under federal law.
















One way to describe the relationship of the Ombudsman to the representatives of the Office is to think of the representatives as an extension of the Office. This means that every required activity conducted as a representative of the Office is a direct action from the Office. For example, the LTCOP Rule states that “functions” of the Ombudsman are to be carried out “personally or through representatives of the Office” [§1324.13(a)].

Therefore, it is important that all representatives have a clear understanding of the actions required by the Older Americans Act and the LTCOP Rule. The functions, responsibilities, and/or duties outlined in Figure 2 are exact language from the LTCOP Rule.

## FUNCTIONS, RESPONSIBILITIES, AND/OR DUTIES

Figure 2

Functions, Responsibilities, and/or Duties	The Ombudsman (§1324.13)	Representatives of the Office §1324.19
Establish or recommend policies, procedures, and standards for the administration of the LTCOP.		
Require representatives to fulfill the duties set forth in the LTCOP Rule and in accordance with state program policies.		
Determine designation, refusal, suspension, or removal of designation of LOEs and representatives.		
Monitor the performance of local Ombudsman entities (LOEs).		
Establish training requirements for representatives.		
Maintain sole authority to determine disclosure of files, records, and other information maintained by the Office.		
Determine the use of fiscal resources appropriated and available for the operation of the Office and determine that program budgets and expenditures of the Office and LOEs are consistent with the laws, policies, and procedures governing the LTCOP.		
Provide administrative and technical assistance to representatives of the Office and agencies hosting LOEs.		
Coordinate with and promote the development of citizen organizations consistent with the interests of residents.		

<p>*Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain 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.</p> <p><i>*This language is specific to the Ombudsman per § 1324.13(a)(7)(i)</i></p>		
<p>Recommend any changes in laws, regulations, policies, and actions as the Office determines to be appropriate and facilitate public comment on the laws.</p>		
<p>*Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions.</p> <p><i>*This language is specific to representatives of the Office per § 1324.19(a)(5)(i)</i></p>		
<p>Identify, investigate, and resolve complaints made by or on behalf of residents and relate to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of residents.</p>		
<p>Provide services to protect the health, safety, welfare, and rights of residents.</p>		
<p>Inform residents about the ways to obtain LTCOP services.</p>		
<p>Ensure that residents have regular and timely access to the services provided through the LTCOP and that residents and complainants receive timely responses from the representatives of the Office to their requests.</p>		
<p>Represent the interest of residents before governmental agencies; assure that individual residents have access to, and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.</p>		
<p>Promote, provide technical support for the development of, and provide ongoing support as requested by the resident and family councils to protect the well-being and rights of residents.</p>		

# Fundamentals of the Long-Term Care Ombudsman Program

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The fundamentals of the program provide an overall picture of the LTCOP. Each is discussed in detail throughout the training. These principles come from the Older Americans Act and the LTCOP Rule.

## Empower

The primary role of the Long-Term Care Ombudsman program is **empowerment** in which representatives provide the tools (e.g., information about residents' rights, facility responsibilities), encouragement, and assistance to promote resident self-advocacy. The Long-Term Care Ombudsman program has a responsibility to empower residents to advocate on their own behalf.

The LTCOP empowers residents by:

- Educating residents on their rights
- Educating residents on their options
- Discussing all possible outcomes
- Encouraging residents to do something about their concerns, needs, or wishes

## Represent the Interests of Residents

The Long-Term Care Ombudsman program represents the interests of residents through individual and systems advocacy. The Ombudsman and representatives work with, and on behalf of residents to ensure their voices are heard during complaint resolution, through legislation, and in the media.

## Provide Resident-Directed Advocacy

The foundation of all Ombudsman program advocacy is to follow the direction of the resident to the fullest extent possible. The Ombudsman program cannot act without consent from the resident.

The LTCOP has a responsibility to:

- Determine the resident's perception of the problem
- Explain potential solutions and outcomes
- Work with the resident to determine steps towards the resident's goals

It is important to not let personal feelings or judgements interfere with resident-directed advocacy.

## Ensure Confidentiality

Federal and state laws mandate that the Long-Term Care Ombudsman program keep all identifying information about a resident and a complainant private, within the program. There are strict federal requirements regarding disclosure of LTCOP information (e.g.,

resident and complainant identity, observations, complaint, and case documentation). Resident-identifying information cannot be shared with anyone without the permission of the resident, the resident's representative, the State Ombudsman, or by court order. Confidentiality and disclosure of information are covered in more detail throughout the training.

## **Educate**

The LTCOP is responsible for educating residents, family members, facility staff, state and local agencies, community members, and others about residents' rights, good care practices, long-term services and supports, and the LTCOP.

## **Comply with Federal and State Laws, Regulations, and Policies**

The Ombudsman and representatives of the Office are expected to follow both federal and state requirements while fulfilling the responsibilities of the LTCOP.

## **Document**

The Ombudsman and representatives of the Office are responsible for accurately and appropriately documenting all activities conducted while performing the duties of the Office.

# **What Makes the Long-Term Care Ombudsman Program Unique?**

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Compared to other services and programs in the aging and disability networks, the Ombudsman program is unique in many ways. There is often misunderstanding, confusion, and even tension when representatives interact with others who do not understand the program. Therefore, it is important to have a clear understanding about the role and unique characteristics of the program.

## **The Long-Term Care Ombudsman Program is Resident-Directed**

The resident is the "client" no matter where the complaint originates. Because it is a resident-directed program, the LTCOP is required to support and maximize resident participation in the process of resolving the complaint and follow their direction with respect to resolving the complaint.

When a complaint is initiated by someone other than the resident, the LTCOP first visits or contacts the resident to determine if the resident wishes the services of the LTCOP. If not, no further actions are taken. In addition, the LTCOP cannot report any information back to the person who filed the complaint without permission from the resident. An example of a common situation:



*A daughter calls the LTCOP and says her mother, Olga, is getting terrible care and never gets her showers as scheduled. The representative visits Olga and Olga says that her daughter worries too much, and Olga has no concerns with her care. However, Olga complains the food is often cold and asks the representative to talk to the dietary manager about the problem.*

As noted in this situation, the LTCOP's focus is on the resident's complaint, not the daughter's complaint.

## **The Long-Term Care Ombudsman Program Does Not Work in the Best Interest of the Resident**

Best interest is subjective and based on individual thoughts, experiences, morals, values, etc. It is a personal determination about what is beneficial for someone else. The program does not determine what is best for residents, nor does it make decisions for the resident. Rather the **program supports and advocates on behalf of the resident's wishes.**

This approach may conflict with the perspective of long-term care facility staff, medical professionals, family members, and others as they might feel that resident-directed advocacy is not in the best interest of the resident on specific issues. An example of a common situation:



*The facility refuses to honor Melissa's choice in meals and snacks claiming it is in her best interest to follow a low-sugar diet since Melissa has a diagnosis of diabetes. However, Melissa understands the potential risks of not following a low-sugar diet and has the right to choose what to eat.*

## **Long-Term Care Ombudsman Programs are Not Mandatory Reporters**

More specifically, representatives are **not allowed** to report suspected abuse, neglect, or exploitation of a resident without permission to do so. Permission can only be granted by the resident, the resident representative if the resident is unable to communicate informed consent, or the State Ombudsman under special circumstances.<sup>26</sup> This mandate may cause tension between the LTCOP and others not familiar with the program. As a representative, it is important to talk to the resident about their situation and the consequences of reporting or not reporting the alleged abuse, including any fears of retaliation. Educating the resident allows for the resident to make an informed decision.

### ***Why aren't we mandated reporters?***

*Ombudsmen and representatives are required to act on behalf of a resident per the resident's wishes and direction. Reporting without resident permission discredits the integrity of the program and harms the representative-resident relationship.*

<sup>26</sup> Those circumstances are spelled out in 1324.19(b)(6)

## The Long-Term Care Ombudsman Program Works Towards Resident Satisfaction

The resident's perception is used to determine whether the problem has been resolved.

The LTCOP determines resolution of the concern based on the resident's satisfaction of the outcome. In some situations, reporting the complaint to the facility or to the state agency responsible for investigating long-term care facilities may not satisfactorily resolve the resident's concern when the problem continues after the report has been made. An example of a common situation:



*The representative works with Tonya about concerns of staff and residents verbally abusing her because of her sexual orientation. The representative provides in-service training for the facility staff about rights and abuse. With the help of a representative, Tonya files a complaint with the state agency responsible for investigating long-term care facilities and the results show evidence of verbal abuse. While the verbal abuse stops, Tonya still feels uncomfortable around certain people. Because she is not satisfied with the outcome, the representative continues to work with Tonya towards her feeling more comfortable in the facility.*



### Activity: Who Are We?

At the beginning of this Section, there was an activity in which you were asked to categorize certain words that *describe*, *may describe*, or *do not describe* the role of representatives of the Office. Take another look at your answers and see if you have changed your mind about your responses.

### Describes

First and foremost, the role of a representative is that of an *advocate* for residents. Representatives are *open-minded* and *investigate* every angle of the concern by researching the root cause of the concern and all potential remedies. Representatives serve as *facilitators* by requesting others to act in accordance with their roles and responsibilities. Representatives are trained in residents' rights and are required to *educate* all parties about residents' rights and Ombudsman services.

### May Describe

While representatives would never *mediate* a resident's rights away, there may be instances when mediation between individuals of equal power (e.g., two residents) occurs to obtain the best possible outcome for the resident(s).



The LTCOP is designed to represent resident concerns and interests and is *not neutral* with representation. However, representatives *are neutral* during an investigation and when gathering information. Information gained is used to advocate for the resident(s).

## Does Not Describe

Representatives are resident advocates and attempt to foster trusting relationships, but not *friendships* with residents. A friendship is a reciprocal relationship and implies mutual support. Representatives don't rely on residents for support or help. In addition, it is not the representative's role to place their personal opinions or values on the decisions of residents. Representatives do not *judge* residents' feelings, actions, or decisions. Representatives are sometimes confused with social workers, but they are not *social workers*. Representatives are advocates in the truest sense, meaning they advocate on behalf of residents, not in the best interest of residents.



Learn more about the LTCOP in [Long-Term Care Ombudsman Program What You Must Know](#)<sup>27</sup> and in [Long-Term Care Ombudsman FAQ](#).<sup>28</sup>

<sup>27</sup> NCEA Fact Sheet *Long-Term Care Ombudsman Program What You Must Know*:

<https://ltcombudsman.org/uploads/files/library/long-term-care-ombudsman-program-what-you-must-know.pdf>

<sup>28</sup> Administration for Community Living, *Long-Term Care Ombudsman FAQ*, <https://acl.gov/programs/long-term-care-ombudsman/long-term-care-ombudsman-faq>



# **Section 6:**

## **Conflicts of Interest**

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## Conflicts of Interest

*“The ombudsman program has a mandate to focus on the individual resident. If the ombudsman finds him or herself in a conflict of interest situation (whether it is a conflict of loyalty, commitment, or control), the resident, even more than the program, may suffer. The resident’s problem may not be resolved, certain avenues of resolution may be foreclosed, the resident’s voice may not be heard by policymakers, and the resident’s interests will be inadequately represented or altogether absent from the table at which public policy is made.”<sup>29</sup>*

The following definitions of conflict of interest include insertions to illustrate how the definitions may apply to the Long-Term Care Ombudsman program.

- Situation where a party’s [representative’s] responsibility to a second party [employer or another program] limits its ability to discharge its responsibility to a third party [resident].<sup>30</sup>
- a conflict between the private interests and the official responsibilities of a person [representative] in a position of trust<sup>31</sup>

The Ombudsman program’s most important asset is its independence, which is crucial to the program’s success in advocating for residents. Key to this independence is freedom from conflicts of interest. An actual conflict of interest, or even the appearance of a conflict of interest, can seriously impact the effectiveness and credibility of the program as an independent advocate.

Three conflict-of-interest situations are described below to provide additional context to perceived or actual conflicts.<sup>32</sup>

*The LTCOP Rule describes the SUA and Ombudsman requirements for identifying and removing or remedying all actual or potential conflicts of interest within the program. (§1324.21).*

- **Conflicts of Loyalty:** These involve issues of judgment and objectivity and are typical situations almost everyone understands—financial and employment considerations. A representative’s ability to be fair and act as a resident advocate might be questioned if the representative also is a consultant to a facility, a board member of a facility or management company, or works as a case manager with responsibility for assisting individuals with moving into long-term care facilities. Loyalty may also be an issue if the representative of the Office is assigned to a facility where the representative was previously employed.

<sup>29</sup> "Conflicts of Interest." Institute of Medicine. 1995. *Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*. Washington, DC: The National Academies Press. doi: 10.17226/9059. Page 109. <https://www.nap.edu/read/9059/chapter/1>

<sup>30</sup> The National Long-Term Care Ombudsman Resource Center *Conflict of Interest and the Long-Term Care Ombudsman Program Resource Paper* July 2009 <https://ltcombudsman.org/uploads/files/support/COI-July-09-paper-final.pdf>

<sup>31</sup> Merriam-Webster. Definition of conflict of interest. Searched 2021. <https://www.merriam-webster.com/dictionary>

<sup>32</sup> The following section describing conflicts of loyalty, commitment, and control are from the *Conflict of Interest and the Long-Term Care Ombudsman Program* (Hunt, S.) resource cited above.

- **Conflicts of Commitment:** These are issues of time and attention. Toward which goals or obligations does one direct one's efforts—i.e., one's time and energies? Concerns about the adequacy of resources come into play because pressures to do more occur when available resources are limited. In local Ombudsman entities, representatives who assume several other employment-related responsibilities in addition to their Ombudsman program responsibilities may experience conflicts of commitment.
- **Conflicts of Control:** These are issues of independence. Do other interests, priorities, or obligations of the agency that houses the program materially interfere with the advocacy of the Ombudsman and/or representative on behalf of residents? Do administrative or political forces materially interfere with the professional judgment of the Ombudsman or representative? Is the Ombudsman or representative able to act responsibly without fear of retaliation by superiors?



Learn more about [conflicts of interest and the Long-Term Care Ombudsman program](#).<sup>33</sup>

There are two types of conflicts that are required to be addressed: **individual** and **organizational conflicts of interest**. Key requirements to handle both individual and organizational conflicts include the following:

- When possible, avoid the conflict of interest prior to designation.
- Require disclosure of conflicts and steps taken to remove/remedy them.
- Establish a process for periodic review/identification of conflicts.
- Establish criteria and processes for review and approval of steps taken to remedy or remove a conflict.

## Individual Conflicts of Interest

The LTCOP Rule §1324.21(c) and the OAA list individual conflicts of interest.

The SUA and the Ombudsman are required to identify actual or potential conflicts of interest for the Ombudsman, representatives of the Office, and members of their immediate family. Your state may have policies and procedures that exceed the federal requirements listed below.

<sup>33</sup> The National Long-Term Care Ombudsman Resource Center *Conflict of Interest and the Long-Term Care Ombudsman Program Resource Paper July 2009* <https://ltcombudsman.org/uploads/files/support/COI-July-09-paper-final.pdf>

All representatives of the Office must disclose individual conflicts of interest including, but not limited to:

- Direct involvement of licensing or certification of a long-term care facility or a long-term care service provider
- Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or a long-term care service provider
- Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area
- Receipt of, or 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
- Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident, or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident, or resident representative which is separate from the individual's role as Ombudsman or representative of the Office)
- Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or representatives of the Office without the Ombudsman's approval
- Serving as guardian, conservator, or other fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services
- Having management responsibility for, or operating under the supervision of an individual with management responsibility for, adult protective services
- Serving residents of a facility in which an immediate family member resides

**Immediate family,** pertaining to conflicts of interest as used in section 712 of the OAA, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

Once identified, it is the responsibility of the Ombudsman to make the final determination if a conflict exists and if there are remedies. The representative of the Office does not

make this decision. It is important to disclose all possible conflicts, even if it seems like it is not a conflict or that the potential conflict was in the past.

Examples of conflicts of interest:



*“My step-mother resides in the facility in which I am assigned, but we haven’t talked in years, so I don’t think it is a conflict of interest.”*



*“I worked in the facility for only 2 months, and it was 2 years ago. I left on good terms, so I don’t see it as a conflict of interest to be assigned as a representative to this facility.”*

These examples are potential conflicts and are to be disclosed as required by program policies and procedures. The Ombudsman will determine appropriate actions necessary to remove or remedy the conflicts of interest consistent with the program’s policies and procedures.

After a conflict is identified, it is required be removed or remedied. In the examples given above, a potential remedy would be to re-assign the representative of the Office to a different facility. Some conflicts of interest are not able to be removed or remedied. In these situations, the individual cannot be designated as a representative of the Office.

Examples of conflicts that *cannot* be removed or remedied:



*“I own a licensed group home and would like to become a representative of the Office.”*



*“I license and inspect assisted living facilities but would like to volunteer as a representative of the Office in my spare time.”*

Individuals cannot own or work for a facility, receive payment, or be involved with licensing or certifying long-term care facilities and be a representative of the Office. Additional disqualifications may include when an immediate family member has these conflicts.



*When considering the employment or appointment of an individual as the State Ombudsman, the State agency or other employing or appointing entity cannot hire an individual who has been employed by or participated in the management of a long-term care facility within the previous twelve months. Many programs have similar requirements for representatives of the Office and the LTCOP Rule encourages programs to “make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or participated in the management of a long-term care facility within the previous twelve months.”*

Learn more about [individual conflicts of interest](#).<sup>34</sup>

## Organizational Conflicts of Interest

An organizational conflict of interest is a situation in which two entities have duties or responsibilities directly or indirectly influencing their vested interest. Organizational conflicts of interest are conflicts that may impact the effectiveness and credibility of the work of the Office of the State Long-Term Care Ombudsman (the Office). The State agency and the Ombudsman are required to:

- Avoid organizational conflicts prior to designating or renewing designation
- Consider organizational conflicts of interest that may impact the effectiveness and credibility of the program
- Ensure that the program has policies and procedures in place to identify, remedy, or remove organizational conflicts of interest

The LTCOP Rule §1324.21 and the OAA identify specific organizational conflicts of interest for the Office and for entities hosting the Long-Term Care Ombudsman program.

**NORS** is the uniform data collection and reporting system required for use by all State Long-Term Care Ombudsman programs.

The Ombudsman is required to report all organizational conflicts and remedies in the National Ombudsman Reporting System (NORS). If you have questions regarding an organizational conflict of interest about the agency hosting the LTCOP, contact your direct supervisor.

The LTCOP Rule and the OAA state that organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

- Is responsible for licensing, surveying, or certifying long-term care facilities
- Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities
- 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

<sup>34</sup>The National Long-Term Care Ombudsman Resource Center LTCOP Rule Issue Brief Considerations for Identifying and Addressing individual conflicts of Interest <https://ltcombudsman.org/uploads/files/support/ltcop-rule-issue-brief-coi-final.pdf>

- Has governing board members with any ownership, investment, or employment interest in long-term care facilities
- 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
- Provides long-term care services, including programs carried out under a Medicaid waiver
- Provides long-term care coordination or case management for residents of long-term care facilities
- Sets reimbursement rates for long-term care facilities
- Sets rates for long-term care services
- Provides adult protective services
- Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities
- Conducts preadmission screening for long-term care facility admission
- Makes decisions regarding admission or discharge of individuals to or from long-term care facilities
- Provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities

Here's an example of an organizational conflict of interest:



*“The agency hosting the LTCOP where I work has a nursing facility administrator on their Board of Directors and the administrator votes on our local Ombudsman budget.”*

In this situation the representative, or host agency of the local Ombudsmen entity (LOE), would disclose this conflict to the Ombudsman. The Ombudsman would work with the LOE to remove or remedy the conflict.



Learn more about organizational conflicts of interest at the [local](#)<sup>35</sup> and [state](#)<sup>36</sup> levels.

<sup>35</sup> The National Long-Term Care Ombudsman Resource Center *LTCOP Brief Local Ombudsman Entity Organizational Level Conflict of Interest* [https://ltcombudsman.org/uploads/files/library/LTCOP\\_Rule\\_Issue\\_Brief\\_-\\_SLTCOP\\_ORG\\_COI\\_-\\_FINAL\\_\(1\)\\_re\\_numbered.pdf](https://ltcombudsman.org/uploads/files/library/LTCOP_Rule_Issue_Brief_-_SLTCOP_ORG_COI_-_FINAL_(1)_re_numbered.pdf)

<sup>36</sup> The National Long-Term Care Ombudsman Resource Center *State LTC Ombudsman Program Organization Conflict of Interest LTCOP Rule Issue Brief* [https://ltcombudsman.org/uploads/files/library/LTCOP\\_Rule\\_Issue\\_Brief\\_-\\_SLTCOP\\_ORG\\_COI\\_-\\_FINAL\\_\(1\)\\_re\\_numbered.pdf](https://ltcombudsman.org/uploads/files/library/LTCOP_Rule_Issue_Brief_-_SLTCOP_ORG_COI_-_FINAL_(1)_re_numbered.pdf)

# **Section 7:**

## **Long-Term Care Ombudsman Program Ethics**

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# Ethics

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Ethics are defined as:<sup>37</sup>

- A set of moral principles: a theory or system of moral values
- The principles of conduct governing an individual or a group
- A guiding philosophy
- A consciousness of moral importance

Ethics are based on individual and social beliefs about what is or is not acceptable behavior. Sometimes individuals want to apply their personal ethics to their role as a representative of the Office, but when those ethics conflict with the goals of the program, it can cause the representative to feel uncomfortable and uncertain about how to handle certain situations.

*Like many other professions, the Ombudsman program has a code of ethics that provides the guiding philosophy and principles for the program's work. Dilemmas sometimes arise regarding how to apply the ethical principles to a specific situation. Representatives need to be able to work in situations where there may not be clearly "right" or "wrong" actions. Working through "gray" issues is typical for representatives. A key challenge is remaining sensitive to such issues by identifying the ethical dimensions of a situation and working through them with some thoughtfulness and consistent adherence to Ombudsman program principles.<sup>38</sup>*

Keep in mind that the LTCOP is **resident-directed**, and the role of the representative is that of an **advocate**. In addition, the representative is often a **facilitator**, not the "doer" of the requested action as demonstrated in the following activity.



Learn more about [LTCOP ethics](https://ltcombudsman.org/uploads/files/support/Quick-Reference-Guide-Ethics.pdf).<sup>39</sup>

<sup>37</sup> Merriam-Webster Dictionary. Searched 2021. <https://www.merriam-webster.com/dictionary/ethics>

<sup>38</sup> Adapted from The National Long-Term Care Ombudsman Resource Center *Ethical Guidance for Long-Term Care Ombudsmen* <https://ltcombudsman.org/uploads/files/support/Quick-Reference-Guide-Ethics.pdf>

<sup>39</sup> The National Long-Term Care Ombudsman Resource Center *Ethical Guidance for Long-Term Care Ombudsmen* <https://ltcombudsman.org/uploads/files/support/Quick-Reference-Guide-Ethics.pdf>



## Activity: Ethical Dilemmas

1. June asks you to pour her a glass of water because her throat is dry. The water pitcher and cup are on her bed-side table, but out of her reach.

### What's the ethical dilemma?

Dilemma – The resident is thirsty, and you want to help but you are not able to give June the water.

### What should you consider?

Consider - Who is responsible for getting her water? Does she have fluid restrictions? Does she have difficulty swallowing?

### How would you respond?

Response: *"I'd be happy to ask a staff member to assist; is that okay with you?"*

It is not the responsibility of a representative to give a resident drinks or food and it may even be dangerous to the resident. If the resident is hungry or thirsty, it is the job of the facility staff to see that food and drinks are delivered to the resident in the manner spelled out in the care plan. Residents may have a problem with swallowing, may be on water restrictions due to a serious medical condition, and/or staff may be required to document the resident's intake for medical purposes. The key is you don't know, and it is not your role. Your role is to facilitate the request, not to personally provide the service.

2. You are talking to Jack in a public area, but he wants to talk in private. Jack uses a wheelchair and cannot push himself down to his room. He asks you to do so.

### What's the ethical dilemma?

Dilemma – The resident wants you to talk with him in private and wants you to push him to his room. You want to help, but you are not allowed to push residents in their wheelchair.

### What should you consider?

Consider – Who is responsible for taking Jack to his room?

### How would you respond?

Response: *"If you are okay with it, I'd be happy to ask a staff member to assist you; I am not allowed to push residents in their wheelchairs."*

Representatives cannot push a resident in their wheelchair, nor can they assist with any kind of ambulation in any way. It is not the role of the representative, but more importantly, providing assistance of any kind with ambulation could put the resident at risk of harm. For example, if you were to push a resident in a wheelchair and they put their feet on the ground, the resident could topple over and be seriously harmed.

3. During a visit in Billie's room, she tells you she's chilly and asks you to get her sweater out of her closet and help her put it on.

**What's the ethical dilemma?**

Dilemma – The resident is uncomfortable, and you want to help but you are not sure if you can get her sweater from the closet or help her put it on.

**What should you consider?**

Consider - Who is responsible for assisting residents with their clothes? What is the perception of a representative going through a resident's closet?

**How would you respond?**

Response: *"I'd be happy to ask a caregiver to assist you; is that okay with you?"*

While it may seem innocent enough to get a sweater out of a closet, the appearance of going through a resident's belongings isn't ideal. How would the resident get the sweater if you were not there? The answer is likely the direct care staff. More importantly, representatives cannot assist a resident with dressing or providing any personal care. Doing so is outside of the scope of duties and could potentially harm the resident. For example, you assist the resident with putting on her sweater and because she is so frail, you accidentally hurt her arm while trying to get it into the sleeve.

These are just a few of the many situations you will come across as a representative. It is possible to politely communicate that a request is something you cannot fulfill, but you can find someone who can.

When in doubt, take a step back, and consider the following:

1. Is the request within the scope of my duties as a representative of the Office (i.e., is it my job/role/responsibility to fulfill this request)?
2. Who else might be responsible for conducting the actions I am being asked to fulfill?
3. Is there potential harm that could be done to the resident if I personally act on the request?
4. What can I do to assist the resident without overstepping the boundaries of the program?

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*Advocacy work is a privilege and with that privilege comes the responsibility to demonstrate ethical behavior and decision-making. Actions taken by a representative of the Office can have a long-term impact on the credibility of the statewide Ombudsman program.*

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## Ethical Situations

Representatives work in situations that are subjective, meaning they are not always clear or cut and dry. A key challenge is remaining sensitive to such issues by identifying the ethical challenges of a situation and working through them with some thoughtfulness.

A few examples of such situations follow:

- A group of residents in a facility likes to congregate on Friday nights to order pizza and watch movies or listen to music. Other residents complain that the group gets too rowdy, and it interferes with residents trying to sleep or watch TV in their rooms. The group says they are exercising their choices and preferences. A resident asks you to represent those frustrated with the group of residents by talking to the administrator about banning the group's gatherings. Who does the LTCOP represent?
- Stella complains that meals served in her room are cold and asks you to sample the food to see if you agree. What would you do?
- Kai is at risk of choking but insists on eating all meals alone in his room. He is not comfortable eating in the dining room and doesn't want a staff member in his room "babysitting" him. Kai asks you for help with convincing the staff to let him eat in his room. Are you comfortable advocating on behalf of the resident in this situation?

## Code of Ethics

Many professional organizations have a code of ethics for individuals who work in that specific field. A code of ethics usually includes values, principles, and standards by which workers follow in their day-to-day work.

The National Association of State Long-Term Care Ombudsman Programs (NASOP) developed a Code of Ethics for Long-Term Care Ombudsmen. You will see that their Code of Ethics summarizes the information covered during this training session.

## Code of Ethics for Long-Term Care Ombudsmen

*From: The National Association of State Long-Term Care Ombudsman Programs (NASOP)*

The word "Ombudsman" in the Code of Ethics refers to the State Ombudsman and all representatives of the Office.

1. The Ombudsman provides services with respect for human dignity and the individuality of the client,<sup>40</sup> unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The Ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
7. The Ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman program, and with respect for the policies of the sponsoring organization.
8. The Ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
9. The Ombudsman participates in efforts to promote a quality, long-term care system.
10. The Ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman program.
11. The Ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long-term care services that are within their scope of involvement.
12. The Ombudsman shall conduct himself/herself in a manner that will strengthen the statewide and national Ombudsman network.



Learn more about LTCOP ethics: read this [guide](#),<sup>41</sup> visit this [webpage](#),<sup>42</sup> and National Association of Local Long-Term Care NALLTCO [Code of Ethics for Ombudsmen](#).<sup>43</sup>

<sup>40</sup> In the Code of Ethics, *client* refers to the range of consumers served by LTCOP such as residents, their family members, and individuals who are seeking information about long-term care facilities.

<sup>41</sup> National Ombudsman Resource Center Ethical Guidance for Long-Term Care Ombudsmen <https://ltcombudsman.org/uploads/files/support/Quick-Reference-Guide-Ethics.pdf>

<sup>42</sup> The National Long-Term Care Ombudsman Resource Center [https://ltcombudsman.org/omb\\_support/pm/ethics](https://ltcombudsman.org/omb_support/pm/ethics)

<sup>43</sup> National Association of Local Long-Term Care Ombudsmen <https://nalltco.weebly.com/code-of-ethics.html>

# **Section 8:**

# **Conclusion**

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## Module 1 Questions

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Questions 1-6 True or False?

1. The authority of the LTCOP comes from the Older Americans Act.
2. Representatives of the Office are required to fulfill the duties set forth in the Older Americans Act, the LTCOP Rule, and the policies and procedures set forth by the Office and the State Unit on Aging.
3. The Office of the State Long-Term Care Ombudsman is a distinct entity, separately identifiable from the State Unit on Aging or another hosting agency.
4. Only the State Ombudsman has the authority to designate, refuse to designate, or suspend or remove designation of a representative of the Office or a local Ombudsman entity, unless the State Unit on Aging overrules the Ombudsman's decision.
5. My father just started working as a maintenance man in an assisted living facility. I don't visit that facility, so I don't need to report it as a conflict of interest.
6. The facility reached out to me and asked if I would volunteer to help take residents to activities every Tuesday. I noticed during my regular visits as a volunteer representative that residents miss activities because no one can take them to scheduled activities, so, I agreed to do so. It is not a conflict of interest because I volunteer as a representative on Fridays.
7. Review the following situations to determine if the request to the LTCOP is appropriate or inappropriate. Explain why the representative would or would not have a role for each of the situations.
  - A. Mr. Lopez has uncontrolled diabetes and is morbidly obese. Against the doctor's recommended diet, he wants to eat the desserts that the other residents without diabetes are served. He asks you to talk to the dietary manager about getting the same desserts as everyone else.
  - B. The facility social worker contacts the LTCOP and asks for help finding a facility for a resident who is causing "problems."
  - C. Mrs. Thompson complains that she is lonely and asks you to stay longer to keep her company and look through her photo albums with her.
  - D. Mrs. Cohen tells the LTCOP she would like to go to Temple every week. Mrs. Cohen states that she heard "The Ride" program takes two fellow residents, but she needs assistance to fill out the application and submit it. With Mrs. Cohen's permission, the LTCOP asks the social worker to help the resident complete the application.

- E. Mr. Clark wants your help to convince the facility staff that he should be allowed to take a shower every morning. The facility says they are concerned they don't have enough staff to allow for Mr. Clark or anyone else to shower daily and asked, "What would happen if all of the residents wanted to take a shower every morning?" The staff member asks you to talk Mr. Clark out of his request.



# Module 1 Additional Resources

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## ***Federal Agencies and National Organizations***

- Administration for Community Living <https://acl.gov/programs/Protecting-Rights-and-Preventing-Abuse/Long-term-Care-Ombudsman-Program>
- National Ombudsman Resource Center <https://ltcombudsman.org/>
  - NORC library of resources for the State Long-Term Care Ombudsman Programs Rule [https://ltcombudsman.org/library/fed\\_laws/ltcop-final-rule](https://ltcombudsman.org/library/fed_laws/ltcop-final-rule)
- The National Consumer Voice for Quality Long-Term Care <https://theconsumervoice.org/home>
- ADvancing States <http://www.advancingstates.org/initiatives/long-term-care-ombudsman-resource-center>

## ***Conflict of Interest***

- See Conflict of Interest under Technical Assistance [https://ltcombudsman.org/omb\\_support/ta](https://ltcombudsman.org/omb_support/ta)
- Organizational Conflict of Interest <https://ltcombudsman.org/uploads/files/support/coi-examples-of-identification-likes-july2017-v3.pdf>