PART 1. INTRODUCTION TO

THE LONG-TERM CARE OMBUDSMAN PROGRAM

1. **General**
2. **Authorization**

The Montana Long-Term Care Ombudsman Program (LTCOP) is authorized under the federal Older Americans Act and the Montana Long-Term Care Ombudsman Program Act.

1. **Purpose**

The LTCOP protects and improves the quality of care and quality of life for residents of long-term care facilities through advocacy for and on behalf of residents and through the promotion of community involvement in long-term care facilities.

1. **Philosophy**

The LTCOP is a resident-centered advocacy program. The resident of or applicant to a long-term care facility is the client, regardless of the source of the complaint or request for service. The long-term care ombudsman will make every reasonable effort to assist, represent and intervene on behalf of the resident.

1. **Applicability**

These policies and procedures govern the actions of the Office of the State Long-Term Care Ombudsman, certified staff and volunteer ombudsman, Area Agencies on Aging, the Office on Aging of the Montana Department of Public Health and Human Services and other parties involved in the operation of the LTCOP.

**REFERENCES** Older Americans Act, 42 U.S. 3001 (hereafter cited as “OAA”)

 Montana Codes Annotated 52-3-601 through 52-3-605

1. **Definitions**
	1. **Abuse**

Willful infliction of injury, unreasonable confinement, intimidation, cruel punishment with resulting physical harm, pain or mental anguish; or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

* 1. **Area Agency on Aging**

An agency designated by the Bureau of Aging Services to arrange for the provision of aging services in its planning and service area.

* 1. **Area Plan**

A plan developed by an Area Agency on Aging for its relevant planning and service area as set forth in the Older Americans Act.

* 1. **Certification**

The designation provided by the State Long-term Care Ombudsman to an individual who meets minimum qualifications, is free of conflicts of interest and has successfully completed training and other criteria stipulated in the Certification Requirements for Local Ombudsmen. Designation authorizes such individual to act as a representative of the Long-Term Care Ombudsman Program.

* 1. **Community Education**

Presentations to community groups or to groups of residents or families on long-term care issues.

* 1. **Regional Long-term Care Ombudsman Annual Plan**

A plan submitted by the Regional Ombudsman annually, with input from providers and local ombudsmen, for approval by the State Ombudsman **and AAA Directors**, which sets forth goals and objectives for the local long-term care ombudsman program.

* 1. **Complaint**

Information regarding action, inaction or decisions that may adversely affect the health, safety, welfare or rights of residents which is brought to the attention of a long-term care ombudsman and to which the ombudsman responds in order to address the adverse effect on residents.

* 1. **Complaint processing**

Services to assist consenting residents of long-term care facilities to resolve problems or complaints through investigation, verification and notification.

* 1. **Exploitation**

The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain.

* 1. **Family council activities**

Provision of technical assistance, information, training or support to family members of residents and/or facility staff regarding developing, informing and maintaining a family council.

* 1. **Guardian**

Person or entity appointed by a court to exercise the legal rights and powers of another individual.

* 1. **Immediate family**

Those persons related to an individual such as a spouse, children, siblings, parents, grandparents or in-laws.

* 1. **Information and assistance**

Services which provide information to individuals on long-term care or the needs/rights of long-term care residents.

* 1. **In-service education**

Presentations to long-term care facility staff on long-term care issues.

* 1. **Interagency coordination**

Activities which involve meeting or coordinating with other agencies to learn about and/or improve conditions for one or more residents of long-term care facilities.

* 1. **Issues advocacy**

Activities supporting and promoting issues which benefit residents of long-term care facilities.

* 1. **Legal representative**

An agent under a valid power of attorney, provided that the agent is acting within the scope of his or her agency; an agent under a durable power of attorney for health care; or an executor or administrator of the estate of a deceased resident.

* 1. **Local Long-Term Care Ombudsman (LTCO)**

An employee or volunteer designated to represent the local Ombudsman entity in carrying out the duties of the Ombudsman Program.

* 1. **Long-term care facility**

Any nursing home or personal care/assisted living home providing long-term care services and subject to regulation and facility licensure by the Department of Public Health and Human Services.

* 1. **Long-term care services**

A set of health, personal care, and social services delivered over a sustained period of time to persons who have lost or never acquired some degree of functional mental or physical capacity.

* 1. **Neglect**

The failure to provide for oneself the goods and services that are necessary to avoid physical harm, mental anguish or mental illness or the failure of a caregiver to provide the goods and services.

* 1. **Ombudsman Program components**

Services of the Long-term Care Ombudsman Program performed with the goal of protecting the health, safety, welfare and rights of long-term care residents.

* 1. **Provider Agency**

Entity designated by the SLTCO to carry out responsibilities and program components of the Long Term Care Ombudsman Program at a local level.

* 1. **Regional Long Term Care Ombudsman (RLTCO)**

Employee designated by the SLTCO to represent the Long Term Care Ombudsman Program, working with providers, ombudsmen, volunteers and facilities within their service area, to provide oversight and guidance of the program.

* 1. **Routine visits**

Visits to a nursing facility or personal care/assisted living home for the purpose of monitoring and assessing the general condition of residents and/or the physical plant of the facility.

* 1. **Service Area**

Designated area of a provider agency and/or a RLTCO in which they provide services for the Long Term Care Ombudsman Program. (i.e., county, area)

* 1. **Volunteer management**

Recruiting, training, managing and providing technical assistance to volunteers assisting the community long-term care ombudsman program in carrying out its responsibilities.

**200.29** **Friendly Visitor Volunteer**

A volunteer who is not certified but who visits residents in coordination with the local long-term care ombudsman program and otherwise provides assistance to the program. A Friendly Visitor Volunteer must work under the direct supervision of a local or regional ombudsman and is not authorized to investigate complaints.

**PART II. ADMINISTRATION OF**

**THE LONG-TERM CARE OMBUDSMAN PROGRAM**

1. **Program Structure**
	1. **Office on Aging role**

The Office on Aging, Senior and Long-Term Care Division of the Department of Public Health and Human Services (DPHHS) shall establish and operate the Office of the State Long-term Care Ombudsman (SLTCO).

* 1. **State Ombudsman role**

The SLTCO shall assure that all residents of long-term care facilities in the State have access to the services of the Montana Long-term Care Ombudsman Program (LTCOP) and that each service area in the State has a designated LTCOP.

* 1. **Contracts for ombudsman services**

The local LTCOP in each service area shall be operated through a contract with the Office on Aging as follows:

1. contracts shall exist in each service area between the Office on Aging and the Area Agency on Aging (AAA) and/or an entity or entities meeting the criteria for designation (II-201.1, below).
2. An AAA may directly provide long-term care ombudsman (LTCO) services, if not otherwise prohibited from directly delivering services, or may subcontract with another entity meeting the criteria for designation (see II-201.1, below).
	1. where an AAA provides LTCO services directly, it must also fulfill the responsibilities of a provider agency.
		1. **Designation and De-Designation of Ombudsman Programs and Ombudsmen**

**How to use this Chapter:** This Chapter sets forth procedures for designation and de-designation by the Office of the State Long-term Care Ombudsman as follows:

* + - 1. designation of ombudsman programs (i.e., provider agencies),
			2. de-designation of ombudsman programs,
			3. designation of ombudsmen (including minimum qualifications), and
			4. refusal to designate an individual as an ombudsman and de-designation of ombudsmen.

Each section includes:

1. criteria used in designating (or de-designating) and
2. the process used in designation (or designating). For designation (or de-designation) of ombudsman programs, the process is described separately for the possible placements of the provider agency:
	1. area agency on aging serves as the provider agency; and

b) provider agency contracts directly with the Office on Aging.

* + 1. **Designation of Ombudsman Programs**

# POLICY

The State Ombudsman shall designate provider agencies to provide ombudsman services throughout Montana.

# PROCEDURES

* 1. **Criteria for designation as a provider agency**

In order to be eligible for designation by the Office of the State Long-term Care Ombudsman (SLTCO) as a provider agency, an entity must:

1. be a public or nonprofit entity;
2. not be an agency or organization responsible for licensing or certifying long-term care services.
3. Not be an association (or an affiliate of an association) of providers of long-term care or residential services for older persons;
4. Have no financial interest in a long-term care facility;
5. Have demonstrated capability to carry out the responsibilities of the provider agency (see II-304, below);
6. Have no **unremedied** conflict of interest (see II-400, below); and
7. Meet all contractual requirements of the Department of Public Health and Human Services.
	1. **Process for designation of a provider agency, generally**

a. As of the effective date of these procedures, any entity providing long-term care ombudsman (LTCO) services under contract with the DPHHS, Senior and Long Term Care Division, Office on Aging or the relevant Area Agency on Aging (AAA) shall be designated as a provider agency.

* 1. **Process for designation of a provider agency, where the Area Agency on Aging serves as provider agency**

Where the AAA seeks to serve as the provider agency, the designation of a new provider agency shall occur as follows:

1. The AAA **shall** be considered as a provider agency where the SLTCO determines that either:
	1. designation of the AAA as the provider agency is necessary to assure an adequate supply of ombudsman services; or
	2. services of comparable quality can be provided more economically by the AAA.
2. The AAA shall request consideration to be designated as a provider agency and submit an Ombudsman Services Plan to the SLTCO setting forth:
	1. The goals and objectives of such entity in providing LTCO services,
	2. A description of how each Program Component shall be met by such entity (see III-100, below), and including its staffing plan for the community LTCOP, and
	3. A description of the resources of the entity which will be provided to assist in the operation of the community LTCOP.
3. The SLTCO **shall** designate the AAA as the provider agency where:
	1. The AAA meets the criteria for designation;
	2. The AAA, at the time of application, submits an acceptable Ombudsman Services Plan; and
	3. The AAA is not otherwise prohibited from fulfilling the duties of the provider agency.
4. The SLTCO shall notify the AAA within thirty (30) days of the receipt of the Ombudsman Services Plan of its decision. If the SLTCO refuses to designate the AAA as the provider agency, the notification shall include the notice of the right of the AAA to request a hearing to appeal the SLTCO determination pursuant to the Hearings Procedures. (Appendix D).
5. The execution date of the AAA’s contract with the Office on Aging to provide LTCO services shall be the effective date of designation.
6. The AAA may subcontract all or portions of their responsibility as long as the AAA assures that the subcontractor will meet all the requirements of a provider agency.
	1. **Process for designation of a provider agency, where the Office on Aging contracts directly with provider agency**

Where the contract for LTCO services is not with or through the AAA, the designation of a new provider agency shall occur as follows:

1. The Office on Aging shall issue a RFP seeking an entity to provide LTCO services within a particular service area. The RFP shall identify the criteria for designation as a provider agency and shall request submission of documents supporting the entity’s claim to meet these criteria.
2. The Office on Aging shall require that all of the responding entities which meet the criteria for designation develop an Ombudsman Services Plan setting forth:
	1. the goals and objectives of such entity in providing LTCO services, and
	2. a description of how each Program Component shall be met by such entity (see III-100, below), and including its staffing plan for the community LTCOP, and
	3. a description of the resources of the entity which will be provided to assist in the operation of the community LTCOP.
3. The SLTCO shall review each submitted Ombudsman Services Plan and shall choose the entity most appropriate to serve as the provider agency based on the submitted Ombudsman Services Plans and on the criteria for designation. In considering which entity is most appropriate to designate as the provider agency, the SLTCO may consult with the AAA serving the relevant service area.
4. The SLTCO shall notify the responding entities of this determination within forty-five (45) days. The notification shall include notice of the right of every entity not chosen to request a hearing to appeal the SLTCO determination pursuant to the hearing Procedures.
5. The Office on Aging shall contract with the provider agency to provide LTCO services. Such contract must:
	1. specify the service area;
	2. require the provider agency to adhere to all applicable federal and state laws, regulations, and policies; and
	3. provide that designation by the SLTCO continues for the duration of the contract and subsequently renewed contracts unless the provider agency is de-designated by the SLTCO (see II-202.2, below).
6. The execution date of the provider agency’s contract with the Office on Aging to provide ombudsman services shall be the effective date of the designation.

**202**. **De-designation of Ombudsman Programs**

## POLICY

The State Ombudsman may de-designate an entity as a provider agency for cause.

## PROCEDURES

* 1. **Criteria for de-designation**

The SLTCO may refuse to designate or may de-designate an entity as a provider agency for one or more of the following reasons:

1. failure of the entity to continue to meet the criteria for designation (II-201.1, above);
2. existence in the entity of an **unremedied** conflict of interest with the LTCOP;
3. deliberate failure of the entity to disclose any conflict of interest;
4. violation of LTCO confidentiality requirements by any person employed by, supervised by, or otherwise acting as an agent of the entity;
5. failure of the entity to provide adequate LTCO services, including but not limited to failure to perform enumerated responsibilities (see II-304, below), failure to fill a vacant ombudsman position within a reasonable time, failure to submit a LTCOP Annual Plan (see III-100.1, below)for approval by the SLTCO, or failure to use funds designated for the LTCOP for LTCO services;
6. failure of the entity to adhere to the provisions of the contract for the provision of ombudsman services; or
7. failure of the entity to adhere to applicable federal and state laws, regulations and policies.
	1. **Process for de-designation of a provider agency**
8. Where an AAA contracts with a provider agency, the process to de-designate the provider agency shall be as follows:
	1. The SLTCO shall send notice of the intent to de-designate at a specified date to the AAA and the provider agency. The notice shall include the reasons for de-designation and notice of the **Department of Public Health and Human Services Fair Hearings Procedures**.
	2. De-designation of a provider agency shall not become effective until all appeals are exhausted.
	3. The provider agency, AAA and the SLTCO shall provide for the continuation of ombudsman services (II-202.4, below).
	4. The AAA shall terminate its contract for LTCO services with the provider agency.
9. Where a AAA serves as a provider agency, the process to de-designate the provider agency shall be as follows:
	1. The SLTCO shall send notice of the intent to de-designate at a specified date to the AAA. The notice shall include the reasons for de-designation and notice of the Hearing Procedures.
	2. De-designation of the AAA as a provider agency shall not become effective until all appeals are exhausted.
	3. The AAA and the SLTCO shall provide for the continuation of ombudsman services (II-202.4, below).
	4. The Office on Aging shall terminate the portion of the contract between the AAA and the Office on Aging which provides for ombudsman services.
10. Where a provider agency contracts directly with the Office on Aging, the process to de-designate the provider agency shall be as follows:
	1. The SLTCO shall send notice of the intent to de-designate at a specified date to the provider agency. The notice shall include the reasons for de-designation and notice of the Hearing Procedures.
	2. De-designation of a provider agency shall not become effective until all appeals are exhausted.
	3. The provider agency and the SLTCO shall provide for the continuation of ombudsman services (II-202.4, below).
	4. The Office on Aging shall terminate its contract with the provider agency.
	5. **Voluntary withdrawal of a provider agency**

A provider agency may voluntarily relinquish its designation by providing notice to the SLTCO and to the AAA in the relevant service area. Such notice shall be provided sixty (60) days in advance of the date of the relinquishment of designation.

* 1. **Continuation of Ombudsman Services**

Where a provider agency is in the process of appealing its de-designation or has relinquished designation:

1. The provider agency and the SLTCO shall arrange for the provision of ombudsman services until a new provider agency is designated;
2. The provider agency shall surrender intact to the SLTCO or the SLTCO designee all LTCO case records, documentation of all LTCO activities and complaint processing as required by the ombudsman reporting system, and identification cards/badges of all local LTCO associated with the provider agency;
3. The provider agency shall, at the discretion of the Office on Aging, surrender any equipment purchased with funds designated for the LTCO services; and
4. The provider agency shall surrender the balance of any advanced state or federal monies to the AAA, or to the Office on Aging where the AAA serves as the provider agency.

**203**. **Designation of Long-Term Care Ombudsman**

### POLICY

The State Ombudsman designates individuals as ombudsmen to participate in the Long-term Care Ombudsman Program and to represent the Office of the State Long-term Care Ombudsman.

## PROCEDURES

**203.1** **Criteria for designation as an ombudsman**

To be designated as a LTCO, an individual must:

1. be free of **unremedied** conflicts of interest (see II-400, below);
2. meet the minimum qualifications for the applicable LTCO position;
3. satisfactorily complete the applicable certification training requirements as specified in the Certification Requirements for Ombudsmen, (Appendix B)
4. be awarded his or her certification card/identification badge, signed by the SLTCO;
5. satisfactorily fulfill LTCO responsibilities (see II-305, below); and
6. receive notice from the SLTCO of his or her renewed certification on an annual basis.

**203.2** **Minimum qualifications for Regional Ombudsmen**

1. In order to qualify as a Regional Ombudsman, an individual must have:
	1. an undergraduate degree in nursing, social work, social sciences, psychology or other related field; and
	2. The equivalent of two (2) years of full-time work experience with at least one year in aging, long-term care or related fields. At least one year in a supervisory capacity is desirable.
2. Comparable experience may be substituted at the discretion and agreement of the SLTCO and AAA Director. Graduate experience may be substituted for one year of experience.

**203.3** **Minimum qualifications for local ombudsmen**

1. In order to qualify for a LTCO staff position, an individual must have:
	1. completed two years of undergraduate education; and
	2. two years of professional experience with at least one year in aging, long-term care or related fields.
2. Comparable education and/or experience may be substituted at the discretion and agreement of the SLTCO and the provider agency.

**203.4** **Requests for substitutions or variances**

Requests for substitutions or variances related to minimum requirements must be made in writing **to the SLTCO** and approved prior to the hiring or promotion of the employee in question.

**203.5** **Notification of designation**

The SLTCO shall send written notification of an individual’s designation as a LTCO to the individual being designated, and the provider agency in the relevant service area within thirty (30) days of the determination.

**204. Refusal to Designate an Individual as a Long-term Care Ombudsman and De-Designation of a Long-term Care Ombudsman**

# POLICY

The State Ombudsman may refuse to designate or may de-designate an individual as an ombudsman.

# PROCEDURES

**204.1 Criteria for refusal to designate an individual as an ombudsman and de-designation of an ombudsman**

The SLTCO may refuse to designate an individual as an LTCO or may de-designate a LTCO for any of the following reasons:

1. failure of the individual to meet and/or maintain the criteria for designation (II-203.1, above);
2. existence of **unremedied** conflict of interest;
3. deliberate failure of the individual to disclose any conflict of interest;
4. violation of confidentiality requirements;
5. failure to provide adequate and appropriate services to long-term care residents;
6. falsifying records;
7. failure to follow direction of the SLTCO **and provider agency** regarding LTCO policies, procedures and practices;
8. a change in employment duties which is incompatible with LTCO duties;
9. separation from the LTCOP. Examples include: removal from employment by provider agency, an extended absence of the LTCO preventing fulfillment of job responsibilities, provider agency’s contract for provision of LTCO services is not renewed; or
10. failure to act in accordance with applicable federal and state laws, regulation and policies.
	1. **Process for refusal to designate an individual as an ombudsman and de-designation of an ombudsman**
11. Prior to refusing to designate or de-designation, the SLTCO shall consult with the relevant provider agency to consider remedial actions which could be taken to avoid the refusal to designate or the de-designation.
12. Refusal to designate

The SLTCO shall refuse to designate an individual as a LTCO by providing written notice of such refusal to **the individual**, provider agency and the Bureau Chief of the Office on Aging. Such notice shall:

* 1. specify the reasons for the refusal to designate, and
	2. set forth the effective date of such refusal.

c. de-designation

The SLTCO shall provide written notice of the intent to de-designate to the LTCO to be de-designated, the provider agency and the Bureau Chief of the Office on Aging. Such notice shall:

i) specify the reasons for the intended de-designation, and

ii) set forth the effective date of the de-designation

1. If the refusal to designate an individual as a LTCO or the de-designation of a LTCO results in the absence of ombudsman services in the relevant service area, the provider agency and the SLTCO shall arrange for the provision of ombudsman services until a LTCO is designated.

**300**. **Roles and Responsibilities in Administering the Program**

**301. Office on Aging Services Responsibilities**

## POLICY

The Office on Aging, Senior and Long Term Care Division shall establish and operate an Office of the State Long-term Care Ombudsman and carry out through that Office the statewide Long-term Care Ombudsman Program.

## PROCEDURES

**301.1 Office of Aging responsibilities**

The Department of Public Health and Human Services, Senior & Long-term Care Division, Office on Aging shall:

1. provide for a full-time State Long-Term Care Ombudsman;
2. provide funding for a statewide Long-term Care Ombudsman Program (LTCOP) in accordance with allocation formula and maintenance of effort requirements;
3. provide legal representation for the Office of the State Long-term Care Ombudsman (SLTCO) and local long-term care ombudsmen (see II-600, below);
4. provide support to the SLTCO to enable it to fulfill its responsibilities consistent with all applicable federal and state laws, regulations and policies;
5. administer the contracts between the Office on Aging and provider agencies;
6. provide technical assistance for and monitor performance of AAAs; and
7. administer the statewide LTCOP in accordance with all applicable federal and state laws, regulations and policies.

**302. State Long-Term Care Ombudsman Responsibilities**

## POLICY

The State Long-Term Care Ombudsman is responsible for providing leadership for the state-wide Long-term Care Ombudsman Program.

**[How to use this Section:** This Section addresses the Office of the State Long-term Care Ombudsman’s responsibilities according to the party which is being served: 1) in general, 2) to long-term care residents, 3) to long-term care ombudsmen, 4) to AAAs, and 5) to provider agencies.**]**

# PROCEDURES

* 1. **General responsibilities of the State Ombudsman**

The SLTCO is responsible for:

a. leadership and management of the statewide LTCOP

* 1. providing leadership, planning and direction for the statewide LTCOP;
	2. providing program management and development;
	3. evaluating statewide LTCOP performance;
	4. setting policies, procedures and standards for administration of the LTCOP and LTCO practice;
	5. promoting the development of citizen organizations to participate in the LTCOP; and
	6. adhering to the Ombudsman Code of Ethics (Appendix A).
1. designation of LTCO and LTCOP
	1. ensuring that any representative of the Office has received certification training and has been approved by the SLTCO as qualified to carry out LTCOP activities on behalf of the Office.
2. long-term care issues advocacy
	1. advocating for policy, regulatory and/or legislative changes in long-term care;
	2. coordinating with statewide and national advocacy organizations involved in long-term care issues; and
	3. maintaining awareness of current issues and trends in long-term care.
3. inter-agency coordination
	1. coordinating LTCO services with protection and advocacy systems, adult protective services, state agencies licensing and certifying long-term care facilities, legal assistance provided under the Older Americans Act (OAA), and other appropriate agencies.
4. maintaining LTCO records and the LTCO reporting system
	1. maintaining, through local LTCOP, case records. Such records are the property of the SLTCO and may not be released, disclosed, duplicated, or removed without the written permission of the SLTCO or designee (see II-500, below);
	2. maintaining, in collaboration with the Office on Aging, a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems and submitting such data to appropriate entities as required by the OAA; and
	3. preparing and distributing the LTCOP annual report as required by the OAA.
5. information and assistance
	1. providing information and referrals regarding long-term care issues and the LTCOP to the general public, residents, community organizations, and other agencies.
6. technical assistance
	1. providing specialized technical assistance, consultation, training and resources to local LTCO, provider agencies, AAAs, and the Office on Aging related to the operation of the LTCOP.
	2. **State Ombudsman responsibilities to long-term care residents**

The SLTCO shall, personally or through representatives of the Office:

1. identify, investigate and resolve complaints that are made by or on behalf of residents, and relating to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of:
	1. providers, or representatives of providers, of long-term care services;
	2. public agencies; or
	3. health and social service agencies
2. provide services to assist residents in protecting their health, safety, welfare and rights;
3. inform residents about means of obtaining services provided by long-term care service providers, public agencies or health and social service agencies or other services to assist residents in protecting their health, safety, welfare and rights;
4. provide regular and timely access to LTCO services for residents and timely response to complaints;
5. represent the interests of residents before governmental agencies and pursue administrative, legal and other remedies to protect health, safety, welfare and rights of residents;
6. analyze, comment on and monitor the development and implementation of federal, state and local laws, regulations and other governmental policies and actions pertaining to the health, safety, welfare and rights of residents, with respect to the adequacy of long-term care facilities and services in the state.
7. Recommend changes in such laws, regulations, policies and actions as the Office determines appropriate;
8. Facilitate public comment on laws, regulations, policies and actions;
9. Provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and
10. Prohibit inappropriate disclosure of the identity of any complainant or resident with respect to LTCO files or records.
	1. **State Ombudsman responsibilities to long-term care ombudsmen**

The SLTCO shall provide to LTCO:

1. certification training and ongoing training in accordance with the Certification Requirements for Ombudsmen (Appendix B);
2. program management and development to enable the local LTCOP to fulfill the Program Components (III-100, below);
3. technical assistance and **oversight** as needed related to complaint handling and other LTCO services;
4. timely review, comment and approval of the Local LTCOP Annual Plan (III-100, below); and
5. monitoring and evaluation of the statewide LTCOP.
	1. **State Ombudsman responsibilities to the AAAs**
6. administrative and technical assistance to assist in participating in the LTCOP, including:
	1. information and resources to assist the AAA in promoting the LTCOP within its service area;
	2. statewide LTCOP data and data analysis;
	3. assistance with monitoring the local LTCOP; and
	4. review and comment on relevant sections of area plans; and
7. assistance with arrangements for temporary provision of LTCO services during transition to a new provider agency.
8. Where the AAA serves as the provider agency, the SLTCO responsibilities to the provider agency shall also apply to the AAA (see II-302.5, below).
	1. **State Ombudsman responsibilities to the provider agency**

The SLTCO shall provide to the provider agency:

1. administrative and technical assistance to assist provider agencies in participating in the LTCOP, including:
	1. information and resources to assist the provider agency in promoting the LTCOP;
	2. statewide LTCOP data and data analysis; and
	3. assistance with monitoring the LTCOP.
2. assistance with screening LTCO applicants for certification requirements, including:
	1. providing a conflict of interest screening tool;
	2. timely response to requests for review of applications and for minimum qualification substitutions; and
	3. participation in interviews of applicants as members of an interviewing team at the provider agency’s request;
3. assistance with job performance review as requested by the provider agency; and
4. assistance with arrangements of temporary provision of LTCO services when LTCO staff of the provider agency are unavailable or the staff position is vacant.
5. ).

**304. Provider Agency Responsibilities**

## POLICY

The provider agency is designated by the State Ombudsman to house the local long-term care ombudsman program and to assure the provision of ombudsman services in the service area designated by contract with the Area Agency on Aging or the Office on Aging.

# PROCEDURES

**304.1 Provider Agency Responsibilities**

The provider agency shall:

1. be the sole provider of LTCO services in the service area designated through contract with the AAA or the Office on Aging;
2. operate the local LTCOP in accordance with the provisions of the contract for LTCO services with the AAA or the Office on Aging;
3. assure that the LTCOP performs the Program Components (III-100, below);
4. require the Regional Ombudsman to submit a LTCOP Annual Plan (III-100.1, below) to the AAA’s and to the SLTCO for approval;
5. provide, in conjunction with other appropriate providers as defined in the service area, a full-time Regional Ombudsman, who:
	1. meets the applicable minimum qualification (see II-203.2, above);
	2. has no duties in the agency outside the scope of the LTCOP; and
6. provide LTCO staff in addition to the Regional Ombudsman in order to:
	1. fulfill the Program Components (III-100, below); and
	2. maintain or exceed the level of services provided in the service area during the year 2000, as required in the Older Americans Act maintenance of effort standards;
7. assure that LTCOP data is provided to the Office of the SLTCO in the format required and in a timely manner;
8. prohibit inappropriate access to LTCO records located with the provider agency (see II-500, below);
9. assure LTCO attendance at certification training, re-certification training and other appropriate LTCO trainings;
10. assure attendance of Regional Ombudsmen at quarterly staff trainings with the SLTCO;
11. provide professional development opportunities for LTCO staff;
12. provide staff support **as needed or appropriate** for the operation of the LTCOP such as custodial, fiscal management, clerical and telephone coverage;
13. arrange, in consultation with the SLTCO and the AAA, if applicable, for temporary provision of LTCO services in the service area when LTCO staff of the provider agency are unavailable or the staff position is vacant;
14. request a waiver from the Office on Aging and SLTCO if, due to demonstrable and unusual circumstances, it anticipates it will be unable to comply with any of these responsibilities; and
15. perform each of its responsibilities in administering the LTCOP in accordance with all applicable federal and state law, regulation and polices.

**305. Long-Term Care Ombudsman Responsibilities**

## POLICY

An ombudsman is designated by the State Ombudsman to provide ombudsman services in the service area designated in the provider agency contract for ombudsman services. An ombudsman may be employed by the provider agency or serve as a volunteer.

# PROCEDURES

**305.1 Ombudsman general responsibilities**

Long-term care ombudsman (LTCO) are responsible for:

1. providing LTCO services to protect the health, safety, welfare and rights of residents in accordance with the provisions of the federal and state laws governing the LTCO and with the provisions of the provider agency contract for LTCO services;
2. fulfilling the Program components (III-100, below);
3. documenting LTCO activities and case work as required by the SLTCO **and submitting monthly statistical reports to the RLTCO**;
4. adhering to the Ombudsman Code of Ethics (Appendix A);
5. prohibiting inappropriate access to LTCO records in the possession of the LTCOP (see II-500, below);
6. carrying out other activities, **approved by the provider agency**, that the SLTCO deems appropriate; and
7. performing each responsibility in accordance with all applicable federal and state law, regulations and policies.

**305.2 Regional Ombudsman responsibilities**

Within the relevant service areas of the LTCOP, the Regional Ombudsman is responsible for:

1. overall management and development of the local LTCOP, under direction of the provider agencies and the SLTCO;
2. **oversight**, as it relates to ombudsman program components, of other LTCO staff and/or volunteers and Friendly Visitors;
3. assuring that non-certified staff and volunteers work under the direct supervision of a certified LTCO;
4. submitting to the SLTCO, **and provider agency,** a LTCOP Annual Plan (III-100.1, below) for each fiscal year indicating program goals and objectives relating to the Program Components (III-100, below) and other program activities;
5. assuring that the LTCOP satisfactorily accomplishes Program Component goals and objectives in the LTCOP Annual Plan;
6. arranging, in consultation with the SLTCO, the provider agency and the AAA, if applicable, for provision of LTCO services in the service area when the LTCOP is temporarily unable to provide coverage;
7. regularly reporting on ombudsman activities as required by the provider agency, AAA and SLTCO, including:
	1. assuring that accurate data is provided in a timely manner;
	2. regularly reviewing summary reports to check for accuracy in data entry; and
	3. regularly comparing LTCOP complaint and activity data with statewide statistics and the LTCOP Annual Plan for use in program management (see II-100.1, below); and
8. developing, in conjunction with the SLTCO and provider agencies, procedures for operations of the LTCOP in their service area, including procedures for documenting and filing documents related to complaint investigations.

**305.3 Responsibilities of staff and volunteers not designated as ombudsmen**

Persons who are either hired or have volunteered as an LTCO but who have not completed the requirements for designation as an LTCO may provide LTCO services as follows:

1. Only designated LTCO may process complaints.
	1. Where the Regional Ombudsman is the staff person not yet designated, he/she shall work towards the completion of certification and, until certified as a LTCO, is responsible to request SLTCO supervision for the processing of all complaints.

b. Staff and volunteers not designated as LTCO may assist in the provision of LTCO services other than complaint processing under the direct supervision of a designated LTCO. They may not have sole responsibility for the provision of any LTCO service (see III-110, below).

# 400. CONFLICTS OF INTEREST

## POLICY

The organizational placement of the Long-Term Care Ombudsman Program and the individuals who carry out the duties of the Program must be free from conflicts of interest.

## PROCEDURES

**401. Identifying the Conflict**

### 401.1 Definition of conflict of interest

a) A conflict of interest exists in the Long-Term Care Ombudsman Program (LTCOP) when other interests intrude upon, interfere with, or threaten to negate the ability of the LTCOP to advocate without compromise on behalf of long-term care facility residents. Types of conflict of interest include:

* 1. **conflicts of loyalty**—incentives, often related to financial or employment considerations, that shape one’s judgment or behavior in ways that are contrary to the interest of residents;

**ii) conflicts of commitment** –goals or obligations that direct one’s time and/or attention away from the interest of residents; and

* 1. **conflicts of control**—limitations or restrictions that effectively foreclose one’s ability to take actions to advocate for the interest of residents.

**401.2 Organizational Conflicts**

Conflicts arising from organizational location include, but are not limited to, LTCOP placement in an agency which:

1. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
2. provides long-term care services, 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;
3. operates programs with responsibilities conflicting with LTCOP responsibilities. Examples of such responsibilities include implementing care plans and serving as guardian over long-term care residents;
4. has governing board members with ownership, investment or employment interest in long-term care facilities; and
5. has direct involvement in the licensing or certification of a long-term care facility or long-term care services.

### 401.3 Individual Ombudsman Conflicts

Conflicts for a long-term care ombudsman (LTCO) include, but are not limited to, the following:

1. employment of an individual or a member of his/her immediate family within the previous two years by 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;
2. participation in the management of a long-term care facility by an individual or a member of his/her immediate family;
3. ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by an individual or a member of his/her immediate family;
4. involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by an individual or a member of his/her immediate family;
5. receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by an individual or a member of his/her immediate family;
6. accepting any gifts or gratuities from a long-term care facility or resident or resident representative;

**NOTE:** A LTCO should adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.

1. accepting money or any other consideration from anyone other than the provider agency or other entity designated by the Office of the State Long-Term Care Ombudsman (SLTCO) for the performance of an act in the regular course of a LTCO duties;
2. provision of services with conflicting responsibilities while serving as a LTCO, such as Adult Protective Services; discharge planning; serving as guardian, agent under power of attorney or other surrogate decision-maker for a long-term care resident in the service area; pre-admission screening or case management for long-term care residents;
3. serving residents of a facility in which an immediate family member resides; or
4. participating in activities which:
	1. negatively impact on the ability of the LTCO to serve residents, or
	2. are likely to create a perception that the LTCO’s primary interest is other than as a resident advocate.

## 402. Remedying Conflict

#### 402.1 General

a) notification of the SLTCO

Where an actual or potential conflict of interest within the LTCOP has been identified, the SLTCO and provider agency shall be notified. All agents of the Department of Public Health and Human Services, Area Agencies on Aging (AAA’s), provider agencies, and LTCOP’s have a duty to notify the SLTCO of any actual or potential conflict of interest of which they have knowledge.

* + 1. The SLTCO shall determine, with input from the provider agency, whether appropriate actions may be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the LTCOP and where the conflict is not likely to alter the perception of the LTCOP as an independent advocate for residents.

### 402.2 Remedying Organizational Conflicts

Where organizational conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

1. A written remedial plan shall be developed within thirty (30) calendar days of notification of the conflict by the SLTCO.
2. The remedial plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. Examples of such assurances could include:
	1. The LTCOP will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution.
	2. No agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of a LTCO.
	3. Governing board members of the provider agency or AAA who have a conflict of interest:
		1. must disclose the conflict to the governing board and to the SLTCO;
		2. may have no involvement with LTCO activities concerning the entity which is the source of the conflict; and
		3. must abstain from voting on issues related to the operation of the LTCOP.
	4. The agency’s policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the LTCO can fulfill their duties without interference.
	5. A memorandum of agreement exists between the LTCOP and another program which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs.
3. The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and the SLTCO. If either party cannot agree on the plan, the conflict has not been sufficiently remedied.

## 402.3 Remedying individual ombudsman conflicts

Where individual conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

1. development of a written remedial plan
	1. Where the individual is an applicant for a position as a LTCO, a plan shall be developed before the individual is hired for the position.
	2. Where the individual is an applicant for certification as a Friendly Visitor volunteer, a plan shall be developed before the individual takes any actions on behalf of the LTCOP.
	3. Where the individual is a LTCO staff or volunteer, a plan shall be developed within thirty (30) calendar days of identification of the conflict to the SLTCO.
2. The remedial plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. An example of such an assurance could include:
	1. Prohibiting the LTCO with a conflict of interest from serving the residents of the facility with which he/she has a conflict and arranging for another staff LTCO to serve those residents. Where appropriate, this arrangement could be time-limited.
3. The remedial plan must be mutually agreed upon and signed by the provider agency, the LTCO or applicant with the conflict of interest, the Regional LTCO (RLTCO), and the SLTCO.
4. Friendly Visitor Volunteers are not permitted to serve residents in facilities with which they have an **unremedied** conflict of interest. The SLTCO may delegate to a RLTCO the authority to:
	1. consider the conflicts of interest of an individual who wishes to serve as a Friendly Visitor Volunteer; and
	2. determine whether conflicts exist which may impede the ability of the Friendly Visitor Volunteer to fulfill the duties of that position or may alter the perception of the LTCOP as an independent advocate for residents. If such a conflict exists and cannot be remedied, the individual cannot serve as a Friendly Visitor Volunteer.

## 403. Procedures to Avoid Conflicts of Interest

##### 403.1 Persons seeking certification as ombudsmen

1. identification of the conflict

The provider agency, **using a tool recommended by the SLTCO or a tool of similar nature**, shall screen all persons seeking certification as LTCO staff or volunteers to identify any actual or potential individual conflicts of interest. Upon request by the SLTCO, the provider agency shall submit evidence of such screen to the SLTCO. The SLTCO may periodically request the provider agency to perform a conflict of interest screen of currently certified LTCO staff or volunteers.

1. disclosure of the conflict

All persons seeking employment or certification as LTCO staff or volunteers shall disclose, prior to beginning the initial certification course, to the provider agency all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual’s ability to carry out duties of a LTCO without conflicting interest.

**403.2 Persons seeking to become Friendly Visitor Volunteers**

1. identification of the conflict

The RLTCO shall screen all persons applying to become Friendly Visitor Volunteers to identify any actual or potential individual conflicts of interest.

1. disclosure of the conflict

All persons applying to become Friendly Visitor Volunteers shall disclose, prior to beginning the initial certification course, to the RLTCO all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual’s ability to carry out duties of a Friendly Visitor Volunteer without conflicting interest.

##### 403.3 Ombudsman involvement in activities

In determining whether LTCO participation, as a part of their ombudsman role, in community groups, professional organizations, or other activities constitutes a conflict of interest, the following questions shall be considered:

1. Will the LTCOP benefit from LTCO involvement in this activity?
2. Will the LTCO be able to represent and assert the views of long-term residents in this activity?
3. Will the role of the LTCO in this activity benefit residents?
4. How will participating in this activity affect the public perception and the resident’s perspective of the LTCOP?
5. Will the LTCO be put in a position of participating in a decision about a resident without the resident’s involvement or permission?

## 404. Failure to Identify or Remedy a Conflict of Interest

1. Failure on the part of a LTCO, RLTCO, provider agency, or AAA to identify and report to the SLTCO a known conflict of interest shall be sufficient grounds for refusal to designate the LTCO or RLTCO or de-designation of the LTCOP.
2. Existence of an **unremedied** conflict of interest shall be sufficient grounds for the de-designation of the LTCOP.
3. Failure on the part of a LTCO to identify and report to the SLTCO a known conflict of interest shall be sufficient grounds for the withdrawal of the designation of the LTCO.

###### 500. LONG TERM CARE OMBUDSMAN RECORDS

# POLICY

Records of the Long-term Care Ombudsman Program shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and these procedures.

# PROCEDURES

###### 501. Access to Long Term Care Ombudsman Records

**501.1 State Ombudsman Access**

All Long-term Care Ombudsman Program (LTCOP) client records are the property of the Office of the State Long-Term Care Ombudsman (SLTCO). The SLTCO or designee has access to all LTCOP records at all times for any purpose.

**501.2 Ombudsman Access**

a. Each Long-term Care Ombudsman has access to records of the local LTCOP for which he or she serves.

b. For the purpose of providing temporary coverage for another

LTCO, a LTCO may have access to the LTCO records of the other community’s program to the extent necessary to provide such coverage.

**501.3 Office on Aging, Area Agencies on Aging, and Provider Agencies**

a. For purposes of monitoring and supervising the LTCOP, the

Department of Public Health & Human Services, Division of Senior & Long Term Care and the relevant AAA and provider agency may review records which reflect the activities of the LTCOP, including activity reports and complaint summary reports. Neither DPHHS nor the provider agency may review records which disclose or imply the identity of any resident or complainant.

b. No state agency, AAA or provider agency may require a LTCO to disclose the identity of a complainant or resident except as specifically provided by these procedures.

**502. Response to Requests for Long Term Care Ombudsman Records**

a. Where a request is made to any party for LTCO records, the RLTCO and SLTCO shall be contacted. Records maintained by the LTCOP may not be released, disclosed, duplicated, or removed to anyone who is not a LTCOP staff or volunteer without the written permission of the SLTCO.

b. The SLTCO shall determine whether to disclose all or part of the records as follows:

i) Written:

The SLTCO shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be documented immediately and filed as a LTCO record by the LTCO to whom consent was communicated in order to meet this requirement.

ii) Resident Wishes/Interest:

The SLTCO shall review the request with the relevant RLTCO and LTCO to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).

iii) Removal of Identity of Residents or Complainants:

The SLTCO shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents or complainants who have not provided express consent for the release of their names shall not be revealed. Such consent must be in writing or made orally and documented immediately and filed as an LTCO record by the LTCO to whom consent was communicated.

iv) source of request

The SLTCO or designee shall consider the source of the request as follows:

**TABLE II-A**

LTCO RECORDS: SOURCE OF REQUEST

|  |  |
| --- | --- |
| **IF the request for LTCO records is made by…** | **THEN the LTCO or designee shall…** |
| A Resident | Release any records generated by the LTCO which are directly relevant to that resident provided that the identity of other residents or complainants is redacted |
| A complainant or by the legal representative of a complainant or resident | Release any records generated by the LTCO which are directly relevant to that resident or complainant provided that:* The RLTCO and SLTCO have been contacted and determine that the release shall not be in conflict with the wishes or interests of the relevant resident, and
* The LTCO, RLTCO and SLTCO have no reason to believe that the release shall be in conflict with the wishes or interest of the relevant resident, and
* The identity of other residents or complainants is redacted
 |
| Another agency or program | Release the records only if:* The resident has provided consent (If the resident is unable to provide consent, the resident’s legal representative may provide consent). The consent must be either written or verbal, depending on provider agency policy, and must be documented in the LTCO file
* The identities of residents or complainants who have not provided consent for the release of their names are not revealed

**NOTE:** Where federal requirements conflict with Montana State Law, the federal requirements take precedence. |
| A judge | * Release any records directly responsive to a court order, and
* Provide an explanation to the court regarding the importance of not revealing the identity of residents and complainants and/or requesting the court to seal the LTCO records where the SLTCO determines that the release of records would be inconsistent with the wishes or interests of the residents
 |
| Any other party | Release the records only if:* The resident has provided written or verbal consent, depending on provider agency policy. Consent is to be documented in the LTCO file. (IF the resident is unable to provide consent, the resident’s legal representative may provide consent), and
* The identities of residents or complainants who have not provided consent for the release of their names are not revealed
 |

**600. Legal Counsel for the Long-term Care Ombudsman Program**

## POLICY

Ombudsmen shall have access to adequate legal counsel.

## PROCEDURES

**601 Adequate Legal Counsel**

The Department of Public Health and Human Services, Division of Senior and Long-term Care, Office on Aging shall assure the provision of adequate legal counsel, without conflict of interest, including:

* 1. Advice and consultation services needed to protect the health, safety, welfare, and rights of residents and assistance to the Office of the State Long-term Care Ombudsman (SLTCO), regional Ombudsmen (RLTCO) and local long-term care ombudsmen (LTCO) in the performance of their official duties; and
	2. Representationin an actual or threatened legal action against any LTCO brought in connection with the performance of their official duties.

**602. Provision of Legal Counsel**

 Legal counsel is available as follows:

**TABLE II-C**

**LEGAL COUNSEL**

**Party Advice/Consultation Representation**

**SLTCO** \* Resident issues: Montana Legal \*If no conflict of

 Services, DPHHS Legal Dept., interest: DPHHS

 Department of Justice, Legal Legal Department

 Services Developer

\*Program operation: DPHHS \*If conflict of

 Legal Dept., Montana Legal interest: independent

 Services, independent attorney, attorney

 Department of Justice, Legal

 Services Developer

**LTCO** SLTCO, Montana Legal Services, Independent attorney

 Legal Services Developer

**Residents** Montana Legal Services, Montana Legal

Independent Attorney Services, Independent attorney

**603. Obtaining Legal Services**

* 1. **Office of the State Long-term Care Ombudsman**
		1. For the SLTCO to obtain advice and consultation, the SLTCO or designee may:
			1. confer with the Legal Services Developer;
			2. contact the Department of Public Health and Human Services Legal Services for guidance on DPHHS policy or procedure or other matters for which that office has primary responsibility; or
			3. request assistance of the State of Montana Department of Justice by following DPHHS procedures for such requests.
		2. For the SLTCO to obtain representation:
			1. The SLTCO or designee shall advise the Office on Aging Bureau Chief of the legal action or threatened legal action; and
			2. The Office on Aging Bureau Chief shall follow the procedures of the DPHHS to obtain representation from the Legal Department for representation for the SLTCO.
			3. Where a conflict of interest exists, the SLTCO or designee shall arrange for the provision of legal representation of the SLTCO by an independent attorney. A conflict of interest may be identified by either the Legal Department, the Office on Aging Bureau Chief, or the SLTCO.
			4. The SLTCO or designee shall obtain prior approval from the Office on Aging Bureau Chief for Office on Aging expenditures for legal representation.
	2. **Local ombudsmen**
	3. For legal advice and consultation, a LTCO shall request assistance from:
		1. The SLTCO, which shall assure the provision of advice and consultation for the local LTCO; or
		2. The Montana Legal Services in the relevant service area.
	4. For a local LTCO to obtain legal representation;
		1. The LTCO shall advise the SLTCO of the legal action or threatened legal action;
		2. The LTCO shall identify independent legal counsel. In doing so, the LTCO may request the assistance of the SLTCO, AAA and/or Montana Legal Services in selecting appropriate legal counsel; and
		3. The SLTCO shall obtain prior approval from the Office on Aging Bureau Chief for Office on Aging expenditures for legal representation.
	5. **Area Agencies on Aging and provider agencies**

**With complete understanding of DPHHS, and the SLTC Division responsibility to give advice to and represent the RLTCO and LTCO individually and enforce the immunity provisions of the appropriate law for the individual LTCO, any provider agency should retain their own legal counsel to protect the agency and work with the legal counsel provided by the department.**

### 700. Liability

#### POLICY

An ombudsman is immune from liability for the good faith performance of his or her official duties.

# PROCEDURES

### 701. Immunity from Liability

A long-term care ombudsman (LTCO) shall not incur any civil or criminal liability for performing his or her official duties in good faith.

* + 1. “Official duties” are those duties of a LTCO set forth in applicable federal and state law and these policies and procedures. They shall include, but not be limited to, making a statement or communication relevant to receiving a complaint or conducting investigative activity.
		2. Evidence of performing duties in “good faith” includes, but is not limited to:
			1. making every reasonable effort to follow procedures set forth in applicable laws and these policies and procedures;
			2. seeking, and making reasonable efforts to follow, direction from the Office of the SLTCO; and
			3. seeking, and making reasonable efforts to follow, direction from the relevant Regional Long-term Care Ombudsman.

### 702. Liability Insurance

* 1. The Department of Public Health and Human Services, Division of Senior and Long-term Care, Office on Aging does not provide liability insurance for Area Agencies on Aging or provider agencies. AAAs and provider agencies are expected to retain their own liability policies.

#### 800. Interference and Retaliation

#### 801. Interference and Retaliation Prohibited

* + 1. No person shall willfully interfere with a long-term care ombudsman (LTCO) in the performance of official duties. “Interference” includes any inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease or negatively impact:
			1. the objectivity of the investigation or outcome of complaints;
			2. the LTCO role as advocate for the rights and interests of the resident;
			3. the LTCO work to resolve issues related to the rights, quality of care and quality of life of residents of long-term care facilities; or
			4. the LTCO statutory responsibility to provide such information as the Office of the State Long-term Care Ombudsman determines necessary to public and private agencies, legislators and other persons regarding problems and concerns of residents and recommendations related to residents’ problems and concerns.
		2. No person shall discriminate or retaliate in any manner against any resident, or relative or guardian of a resident, any employee of a long-term care facility, or any other person due to filing a complaint with, providing information to, or otherwise cooperating in good faith with a LTCO.

#### 802. Procedures for Reporting Interference or Retaliation

a) Any person who has knowledge of such interference or retaliation may report such information to the SLTCO.

b) The SLTCO shall review the information provided, and conduct further investigation if necessary to confirm the occurrence of the interference or retaliation.

* + 1. If the SLTCO, based on such review, determines that enforcement action is warranted, the SLTCO shall pursue the following course of action:
			1. Where the entity which has interfered or retaliated is a long-term care facility or its staff or agents:
				1. The SLTCO shall submit a written report of such interference or retaliation to the Quality Assurance Division (QAD);
				2. The QAD shall investigate the report of the SLTCO in accordance with its procedures for complaint investigation; and
				3. If the QAD complaint investigation confirms the occurrence of such interference or retaliation, the QAD has the authority to impose penalties in accordance with its procedures for the imposition of penalties.
			2. Where the entity which has interfered or retaliated is an entity other than a long-term care facility or its staff or agents;
				1. The SLTCO shall report such interference or retaliation to the Department of Public Health and Human Services, Senior and Long-term Care Services, Office on Aging Bureau Chief;
				2. Such interference by an individual who is an official or employee of the DPHHS, an Area Agency on Aging, or a provider agency shall be deemed to be in violation of the Older Americans Act 705(a); and
				3. The Office on Aging Bureau Chief shall assist the SLTCO in determining appropriate sanctions and assuring that appropriate sanctions are implemented.

PART III. GUIDELINES FOR OMBUDSMAN PRACTICE

POLICIES

* An ombudsman advocates on behalf of residents to resolve problems to their satisfaction and improve their overall quality of life and quality of care.
* An ombudsman encourages, and provides information and assistance to enable, residents and complainants to personally work to address their own concerns.

# PROCEDURES

## 100. Program components

Each local long-term care ombudsman program (LTCOP) shall provide services to protect the health, safety, welfare and rights of residents. These services, known as Program Components, shall be performed in accordance with the following procedures and standards and as directed by the Office of the State Long-term Care Ombudsman (SLTCO). The Program Components are:

1. complaint processing,
2. information dissemination and consultation in long-term care facilities,
3. community education,
4. in-service education,
5. routine visits,
6. issues advocacy,
7. interagency coordination,
8. resident council and family council activities, and
9. volunteer management

**100.1 The LTCOP Annual Plan**

* 1. Regional Ombudsman responsibilities

The Regional Ombudsman shall prepare a LTCOP Annual Plan for submission to the SLTCO **and the provider agencies**, setting goals and objectives for the LTCOP for the following fiscal year (federal). Such Plan shall be submitted to the SLTCO and the provider agencies by **April** 1st for the following federal fiscal year unless the provider agency requests the Regional Ombudsman to submit the Plan at an earlier date.

* 1. Contents of the LTCOP Annual Plan

The LTCOP Annual Plan shall:

* + 1. include objectives for each Program Component. Each objective shall be measurable and specify the time frame in which it shall be accomplished;
		2. provide for complaint processing to be the highest priority Program Component;
		3. include a plan for staff and telephone coverage for the LTCOP in order to assure prompt responses to complaints and other requests for assistance; and
		4. include plans for improved performance of the LTCOP over previous years. Objectives for improved performance may relate to one or more Program Components and/or the development of special initiatives.
	1. SLTCO responsibilities
		1. The SLTCO, **in conjunction with the AAA Director**, shall inform each Regional LTCO of whether the LTCOP Annual Plan is acceptable within 30 days after receipt of the plan. If changes must be made to a LTCOP Annual Plan, the SLTCO shall provide assistance to the Regional Ombudsman to develop an acceptable Plan.
		2. Each provider agency and the SLTCO is encouraged to provide comment regarding the LTCOP Annual Plan submitted by the LTCOP in its service area within 30 days after receipt of the Plan.
		3. In determining whether a LTCOP Annual Plan is acceptable, the SLTCO **and provider agency** shall consider the following:
			1. the standards set forth in these policies and procedures for each Program component. Where a standard for a particular Program Component is not met in the Plan, the SLTCO & provider agency may approve a modified standard in a LTCOP Annual Plan for a particular LTCOP only where the Plan describes one or more of the following:
				1. specific efforts to improve performance related to that Program Component over previous years and specific plans to work toward meeting the standard related to the Program Component;
				2. specific efforts taken to improve performance of another Program Component. A plan to minimize the negative impact on other Program Components is required;
				3. initiation of a time-limited project which is consistent with the purpose of the LTCOP and which may require significant staff time or other resources. A plan to minimize the negative impact on other Program Components is required;
		4. limitations in staff or other resources which make compliance with a particular Program Component standard a hardship for the LTCOP.
			1. the Plan’s anticipated benefit to residents;
			2. the Plan’s anticipated impact on the provision of ombudsman services to long-term care residents; and
			3. the performance history of the LTCOP determined by a review of data relating to performance of Program components.

**100.2 LTCOP evaluation**

1. The Regional Ombudsman shall evaluate the performance of the local LTCOP at least annually. This review shall include a review of activities and complaint data for the LTCOP and a comparison of the LTCOP with activities and complaint data statewide.
2. The SLTCO shall maintain activities and complaint data for the statewide LTCOP regarding Program Components.
3. The SLTCO shall make complaint and activities numbers available in the Long-Term Care Annual Report and at other times as the SLTCO deems appropriate.
4. The SLTCO shall provide information regarding these numbers to Regional Ombudsmen, AAAs, provider agencies, and other interested parties at least annually **and at other times upon request**.
5. The SLTCO shall review the activities and complaint data of the statewide program and each local LTCOP, together with the LTCOP Annual Plan, at least annually to evaluate program performance.
6. The SLTCO shall make periodic site visits to evaluate local LTCOP as deemed necessary by the SLTCO.

### 101. Complaint Processing

# POLICY

Processing complaints made by or on behalf of residents of long-term care facilities is the long-term care ombudsman program’s highest priority service.

# PROCEDURES

## 101.1 General

The Long-term Care Ombudsman (LTCO) shall identify, investigate and resolve complaints made by or on behalf of residents. Although the issues and circumstances of the complaints will vary, the following are general guidelines which should apply to all complaint handling. Whenever questions arise regarding appropriate LTCO practice in handling complaints, the Regional Long Term Care Ombudsman (RLTCO) should first be contacted. If the RLTCO is unable to answer the question or needs additional guidance, the RLTCO will refer the LTCO to the State Long Term Care Ombudsman (STLCO) or contact the SLTCO for assistance.

## 101.2 Complaint intake and response

**a.** Complaint Intake

When a LTCO receives information regarding a complaint, the

LTCO shall:

i) determine (through conversation with the complainant):

A) the type of complaint

B) what outcome the complainant is seeking;

C) what attempts have already been made to resolve the complaint; and

D) whether the complaint is appropriate for LTCO activity. Examples of complaints which are not appropriate for LTCO activity include those which:

1) do not directly impact a resident or former resident of a long-term care facility;

2) are outside the scope of the mission or authority of the LTCOP; or

3) would place the LTCOP in the position of having an actual or perceived conflict of interest with the interest of a resident or residents.

**NOTE**: The LTCO may seek resolution of complaints in which the rights of one resident and the rights of another resident or residents appear to be in conflict.

ii) discuss the following with the complainant:

A) alternatives for handling the complaint;

B) the complainant’s ability and willingness to personally take appropriate action, with LTCO assistance if needed;

C) the LTCO’s commitment to act in accordance with resident wishes; and

D) the LTCOP policy of confidentiality.

b. Source of Complaint

i) Complaints may be filed with the LTCOP by residents, families and friends of residents, long-term care facility staff, and any other person.

ii) Complaints may be made anonymously to the LTCOP. Anonymous complaints must remain anonymous. If the LTCO receiving the complaint is able to communicate directly with the anonymous complainant, the LTCO may explain to the complainant that, in some circumstances, anonymity could limit the ability of the LTCO to investigate and resolve the complaint.

iii) ombudsman-generated complaints**—**A LTCO shall file a complaint when the LTCO has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents and no other person has made a complaint on such action, inaction, or decision.

**NOTE**: Such actions, inactions, or decisions include facility responses to natural disasters, evacuations, relocations, involuntary change of management, or other unusual events.

c. Timeliness of Responses to Complaints

i) a LTCO shall use his or her best efforts to initiate responses to complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. A response is considered timely as follows:

**TABLE III-A**

**COMPLAINT RESPONSE**

|  |  |
| --- | --- |
| **IF a complaint involves…** | **THEN the standard of promptness for LTCO response is…** |
| * Abuse or gross neglect, and
* The LTCO has reason to believe that a resident may be at risk
 | Immediately (same working day that the complaint is received) |
| * Abuse or gross neglect, and
* The LTCO has no reason to believe that a resident is at risk
 | Within the next working day |
| * Actual or threatened transfer or discharge from a facility
 | Whichever occurs first:* Next working day
* Last day of the bedhold period (if the resident is hospitalized), or
* Last day for filing a request and stay with the Office of Fair Hearings
 |
| * Other types of complaints
 | Within **5** working days |

ii) Where the LTCO will be unable to initiate investigations in a timely manner (e.g., due to a planned vacation or extended illness), the RLTCO shall develop a plan for temporary coverage in order to meet the standard of promptness.

**NOTE:** It is the joint responsibility of the RLTCO, the provider agency and the LTCO to coordinate coverage to ensure all complaints are responded to in a timely manner. If the LTCO needs to seek direction or guidance from the RLTCO and the RLTCO is unavailable, the LTCO should contact the STLCO directly and notify the RLTCO of this contact upon the RLTCO return.

iii) The LTCO may indicate to the complainant when he or she may expect investigative efforts to begin.

iv) The LTCOP is not designed to serve as an emergency response system; emergency situations should be referred to “911” for immediate response.

d. Resident Focus

i) Regardless of the source of the complaint, the resident of a long-term care facility is the LTCO client.

ii) Regardless of the source of a complaint, a LTCO shall personally discuss the complaint with the resident in order to:

A) determine the resident’s perception of the complaint;

B) determine the resident’s wishes with respect to resolution of the complaint;

C) advise the resident of his or her rights; and

D) work with resident in developing a plan of action.

**NOTE**: Where immediate action must be taken in order to protect resident rights, the LTCO may take necessary immediate action if it is not possible to first consult with the resident. The LTCO shall inform the resident of the action taken by the LTCO as soon as practicably possible and seek to follow resident wishes during the remainder of the complaint process.

iii) Where the complaint relates to a nursing facility or assisted living regulatory violation, the LTCO shall inform the resident and/or complainant that the LTCOP has opportunity to provide information to surveyors at the Quality Assurance Division and the LTCO shall seek resident and/or complainant permission to share the complaint information with surveyors. The LTCO shall provide the name of the complainant and/or resident to surveyors only after obtaining resident and/or complainant consent to do so

iv) resident consent refused or withdrawn

### A) If, at any point during the complaint process, the resident expresses that he or she does not want the LTCO to take further action on a complaint involving the resident, the LTCO shall determine whether further efforts should be made on the complaint. In making this determination, the LTCO shall consider the following:

**NOTE:** The LTCO/RLTCO are urged to contact the SLTCO for technical assistance on reporting.

**TABLE III-B**

**RESIDENT REFUSES CONSENT**

|  |  |
| --- | --- |
| **IF the resident…** | **THEN the LTCO shall…** |
| * Refuses to consent to LTCO work on the complaint, or
* Withdraws consent before the LTCO has verified the complaint
 | * Discontinue work on the complaint
* Follow the steps outlined below:
 |
| * Withdraws consent after the LTCO has verified or partially verified the complaint
 | * Discontinue investigation and resolution activities on the complaint
* Determine, during subsequent visits to the facility, whether the type of complaint is recurring. If it is recurring, the LTCO shall determine whether the circumstances merit other strategies towards resolution which would not involve or disclose the identity of the resident who has withdrawn consent (e.g. filing an ombudsman-generated complaint, presenting the issue to the resident or family council), and
* Follow the steps outlined in the following section
 |

### B) For all complaints in which the resident refuses or withdraws consent, the LTCO shall:

1) attempt to determine why the resident refused or withdrew consent, considering factors such as:

* past response of facility to complaints;
* the resident’s relationship with the staff;
* the experience of this resident or other residents in the facility related to this type of complaint;

2) inform the resident that he or she may contact the LTCO regarding the withdrawn complaint or other complaints in the future; and

3) provide a business card or brochure informing the resident how to contact the LTCOP.

v) resident unable to provide consent

A) The LTCO shall advocate for a resident’s wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.

B) Where a resident is unable to provide or refuse consent to a LTCO to work on a complaint directly involving the resident, the LTCO shall:

1) seek evidence to indicate what the resident would have desired and, where such evidence is available, work to effectuate that desire; and

2) assume that the resident wishes to have his or her health, safety, welfare and rights protected.

## 101.3 Investigation Process

a. The LTCO investigates a complaint in order to verify the truth of the complaint.

i) A complaint is “verified” when the LTCO determines, after completing an investigation, that the circumstances described in the complaint are substantiated or generally accurate.

ii) Because a LTCO works on behalf of residents, the LTCO gives the benefit of any doubt to the resident’s perspective. Regardless of the resident’s disability, level of cognitive functioning, or degree of dementia, the resident is considered the “expert” with regard to his or her perception of their situation.

b. The LTCO shall seek the following information during the investigation of the complaint:

i) what has occurred or is occurring;

ii) when it occurred and whether the occurrence is on-going;

iii) where it occurred;

iv) who was involved;

v) effect of the occurrence on resident(s);

vi) reason for occurrence; and

vii) what, if anything, the facility or other interested parties have done in response to the occurrence.

c. In order to verify a complaint, the LTCO shall take one or more of the following steps, as appropriate to the nature of the complaint:

i) research relevant laws, rules, regulations, and policies;

ii) personally observe the evidence;

**NOTE: a LTCO shall not search a resident’s body for evidence.**

iii) interview the resident and/or complainant;

iv) interview staff, administration, other residents and families;

v) identify relevant agencies and interview and/or obtain information from their staff; and

vi) examine relevant records.

**NOTE: a LTCO must always obtain either written or verbal permission/consent from the resident to engage in the investigatory process. Without this permission/consent none of the above steps can be taken. This consent/permission and the date it was given must be documented in the LTCO file.**

d. The LTCO is not required to independently verify a complaint in order to seek resolution on behalf of a resident. Resident perception is a sufficient basis upon which an LTCO can seek resolution.

e. Facility visits for purposes of complaint investigation shall be unannounced.

## 101.4 Plan of action

a. Upon verifying or partially verifying a complaint, the LTCO shall determine a plan of action to resolve the complaint.

b. The plan of action shall be mutually agreed upon by the resident and the LTCO.

c. The LTCO shall consider the following factors in developing the plan of action, as appropriate to the nature of the complaint:

i) the scope of the complaint;

ii) the history of the facility with respect to resolution of other complaints;

iii) available remedies and resources for referral;

iv) who would be best able to resolve the complaint; and

v) the likelihood of retaliation against the resident or complainant.

d. One or more of the following may be an appropriate plan of action in resolving complaints:

i) explanation—i.e. The findings of the investigation do not indicate a need for a change or require LTCO intervention.

The resident or complainant received an explanation which satisfied the initial problem;

ii) negotiation/joint problem solving—i.e. the LTCO advocates on behalf of or with the resident or complainant in discussing the complaint with the appropriate facility staff or other relevant party to develop an agreement that resolves the complaint;

iii) mediation—i.e., the LTCO acts as an impartial referee between parties of equal status (e.g., between residents or between family members) to assist the parties in developing an agreement that resolves the complaint;

v) coordination with and/or referrals to appropriate agencies including Adult Protective Services, the Office of Fair Hearings, Certification, Licensure, or Law Enforcement

**NOTE: a LTCO must always obtain either written or verbal permission/consent from the resident to refer his or her case to another agency. Without this permission/consent, the LTCO cannot make a referral to another agency. This consent/permission and the date it was given must be documented in the LTCO file.**

e. The LTCO shall attempt to resolve the dispute directly with the appropriate staff of the facility unless the LTCO and the resident determine that another strategy would be more advantageous to the resident.

## 101.5 Complaint Referrals

a. when a complaint shall be referred

i) A LTCO shall make a referral to another agency where:

A) the resident gives permission; and

B) one or more of the following applies:

1) another agency has resources that may benefit the resident (e.g., Adult Protective Services, Information & Assistance)

2) the action to be taken in the complaint is outside of the LTCO authority and/or expertise;

3) the LTCO needs additional assistance in order to achieve resolution of the complaint; or

4) the resident requests the referral be made.

b. referrals to regulatory agencies (Quality Assurance Division (QAD) - Certification or Licensure Bureaus)

i) A LTCO may encourage residents or complainants to directly contact the appropriate regulatory agency to file a complaint and offer information and assistance to residents or complainants in making such contact.

ii) Where a LTCO refers a complaint to the QAD, the LTCO shall:

A) submit the complaint in writing; or

B) contact QAD complaint intake personnel by telephone and subsequently document the referral by:

1) submitting a confirming letter to the agency; and/or

2) recording in LTCO records.

iii) joint investigatory activities:

Where the LTCO is invited by a regulatory agency (Licensing and/or Certification) to assist in or provide information regarding an investigation of a facility, LTCO participation is appropriate only under the following circumstances:

A) the LTCO is able to fulfill his or her role as a resident advocate;

B) the LTCO does not attempt to regulate a facility or take actions which would lead one to assume that the LTCO is a regulator (Licensing and/or Certification); and

C) the LTCO explains to facility administration and residents that his or her role is to advocate for the health, safety, welfare and rights of residents, not to enforce regulations.

**NOTE: LTCO must recognize and respect the differences between their roles and that of the regulatory agencies’. However, a portion of a LTCO advocacy occurs on a facility-wide basis and addresses some of the same issues concerning regulators. Therefore it is critical LTCO work with their RLTCO to maintain open and on-going communication with the regulatory agencies.**

c. referrals to legal services

i) For a resident who is requesting or in need of legal advice and representation, the LTCO shall contact the RLTCO and discuss the resident’s options for legal services/representation in his or her community. These services might include the Montana Advocacy Program and Montana Legal Services.

iii) Where free or reduced-cost legal services are unable to be secured, the LTCO, working in conjunction with the RLTCO and the Legal Services Developer may provide the resident with a list of private attorneys who may provide the service. The LTCO shall not make referrals to or recommendations of an individual private attorney.

d. follow-up

After a complaint has been referred, the LTCO shall determine:

i) resident satisfaction with the outcome of actions taken by the referral agency, and

ii) that appropriate action has been taken by the referral agency.

iii) resident dissatisfaction with referral outcomes and/or perceived inaction on the part of the agency to which the resident was referred should be reported by the LTCO to the RLTCO. The RLTCO, in collaboration with the SLTCO will discuss an appropriate course of action.

## 101.6 Closing a Complaint or Case

a. LTCO activity on a complaint or case is complete, and, therefore, the complaint or case may be closed, when any of the following occurs:

i) the complaint has been resolved to the resident’s satisfaction;

ii) the LTCO has determined, after investigation, that the complaint:

A) cannot be verified; or

B) was not made in good faith;

iii) further activity by the LTCO is unlikely to produce satisfaction for the resident;

**NOTE: This determination can only be made after discussions with the resident regarding further LTCO involvement.**

iv) the complaint is not appropriate for LTCO activity (see III-

101.2, above);

v) the resident requests that LTCO activity end on the complaint (complaint withdrawn).

b. follow-up After a complaint has been closed, the LTCO shall continue to monitor the circumstances of the complaint to:

i) assure that the resident is satisfied with the outcome, and

ii) determine whether further actions on behalf of the resident should be taken by the LTCOP.

## 101.7 Abuse and Gross Neglect Complaints

a. Upon receiving an abuse or gross neglect complaint, a LTCO shall use his or her best efforts to ensure protection of the resident from further abuse or neglect.

b. The LTCO shall follow complaint investigation steps (III-101.2 -

101.6) as in other types of complaints.

### NOTE: The primary role of the LTCO is to seek resolution to the resident’s satisfaction, not to verify the suspected abuse or neglect.

**Specific guidelines are provided with respect to handling and reporting suspected abuse, neglect and exploitation due to the serious nature of these complaints and in order to comply with laws which govern the Long Term Care Ombudsman Program, including confidentiality requirements and mandatory reporting requirements.**

c. The LTCO shall report suspected abuse or neglect as follows:

**TABLE III-C**

**WHEN TO REPORT ABUSE**

|  |  |
| --- | --- |
| **IF the resident…** | **THEN the LTCO shall…** |
| Gives permission to a LTCO to make the report to the appropriate agency | Consult with the RLTCO and then, after discussing the case with the RLTCO, either contact the appropriate agency directly or the RLTCO will contact the appropriate agency  |
| * Does not give permission to a LTCO to make the report; and
* The complainant is a long-term care service provider, facility staff person, or other mandatory reporter
 | * Inform the complainant of his or her duty to report to the appropriate agency
* Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
 |
| * Does not give permission to a LTCO to make the report; and
* The resident acknowledges having been abused
 | * Determine:
1. whether other residents have experienced similar circumstances
2. Whether any other such resident wishes the LTCO to take any action on his or her behalf;
* Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
* Make repeated visits to the resident who alleged abuse in order to encourage the resident to permit the LTCO to report the suspected abuse
 |
| Is unable to communicate his or her wishes | * Encourage and provide assistance to any other person who is aware of the suspected abuse to make the report to the appropriate agency
* Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
 |
| Does not make the complaint (i.e. the LTCO receives a complaint of suspected abuse or neglect from a complainant other than the resident) | * Advise the complainant to report the suspected abuse or neglect to the appropriate agency and provide information to assist the complainant in making the report
* Visit the resident and follow complaint investigation steps (III-101.2-101.6, above)
* Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
 |
| * Does not make the complaint, and
* The LTCO personally witnesses abuse of a resident
 | * Notify the resident of the LTCO responsibility to report witnessed abuse
* Immediately contact the RLTCO who, with input from the SLTCO, will determine further action and,
* Report the suspected abuse
* File an ombudsman-generated complaint
* Follow complaint investigation steps (III-101.2-101.6, above)
 |
| Requests LTCO assistance in moving from the facility | * Immediately contact the RLTCO who, with input from the SLTCO, will determine further action
* Take steps to facilitate moving the resident to another facility such as assisting with contact of family members or appropriate agencies
 |

**TABLE III-D**

**WHERE TO REPORT ABUSE**

|  |  |
| --- | --- |
| **IF suspected abuse occurs in…** | **THEN a report is to be made to…** |
| A nursing facility | Department of Public Health & Human Services (DPHHS)Certification BureauQuality Assurance DivisionPO Box 202953Helena, MT 59620-2953(406) 444-2099 |
| An assisted living home | Department of Public Health & Human Services (DPHHS)Health Care Facility Licensure BureauQuality Assurance DivisionPO Box 202953Helena, MT 59620-2953(406) 444-1575 |
| All other settings | Department of Public Health & Human Services (DPHHS)Adult Protective ServicesLocal or Regional Offices |

d. Follow-Up The LTCO shall continue to monitor:

i) the safety of the resident at issue;

ii) the involvement and/or investigation of other agencies; and

iii) resident satisfaction with the outcome of actions taken in response to the suspected abuse or neglect

## 101.8 Documentation

### a. Regarding each complaint, the LTCO shall document as follows:

i) LTCO activity as required in the SLTCO Reporting Manual for purposes of preparing National Ombudsman Reporting System (NORS) reports;

ii) complaint intake information as required by the Case Intake form, including:

A) complainant name,

B) telephone number and/or address of complainant,

C) complaint category,

D) affected resident(s) name(s),

E) facility name, and

F) name of LTCO taking complaint;

iii) a plan of action for resolution of the complaint;

iv) description of and dates of steps taken to investigate, verify, resolve, and follow-up on the complaint; and

v) explanation of the resolution or other reason for closing the complaint.

### b. The local LTCOP shall maintain complaint documentation in an organized manner which:

i) can be readily understood by another LTCO, RLTCO or the SLTCO;

ii) clearly describes all LTCO activity on the complaint; and

iii) permits a ready complaint history of each facility in the service area.

## 101.9 Complaint numbers

* + 1. The RLTCO shall periodically review the number of complaints brought to the local LTCOP to determine whether:
			1. The number of complaints is so high as to impact the ability of local LTCOP to adequately fulfill the other program components;
			2. The number of complaints is below the average number of complaints per program statewide; and
			3. The number of complaints is approximately the same as the projection in the Local LTCOP Annual Plan.

#### TABLE III-E

**COMPLAINT ACTVITY**

**How to use this table:** This table is designed to assist RLTCO, the SLTCO, Area Agencies on Aging, and provider agencies in local LTCOP evaluation and planning. It **suggests** strategies to use in impacting complaint numbers which appear unusually high or unusually low. It also provides guidance in evaluating program performance related to complaint processing. The local LTCOP is not required to process a particular number of complaints.

# IF complaint numbers are…. THEN the RLTCO shall take the

 **following steps…**

low from a particular facility \* determine whether residents, families, or staff feel free to make

 complaints to LTCOP

\*determine whether residents, families and staff are familiar with the existence of and purpose of the LTCOP

\*review whether ombudsmen-generated complaints are being accurately recorded by all staff.

# IF complaint numbers are….. THEN the RLTCO shall work with the provider agencies to implement the following steps….

Low for the local LTCOP, indicated by any \*review whether residents, families

of the following: and staff are familiar with the

\*more than **20**% below the statewide average, existence of and purpose of the

\*more than 10% below the projected number LTCOP

of complaints in the Local LTCOP \*increase frequency of routine visits

 \*increase involvement with resident

 and family councils

\*increase community education and public information regarding the purpose of the LTCOP

\*increase the numbers of in-service trainings for facility staff

\*review whether complaints, including ombudsman-generated complaints, are being accurately recorded by al LTCO

high for a particular facility or company \*look to systemic approaches to owning/managing facilities resolve common complaints

high for the local LTCOP, indicated by: \*review whether serious complaints

\*more than **20**% above the statewide average are being given highest priority for \*more than 10% above the projected number resolution

of complaints in the Local LTCOP Annual Plan \*review whether LTCO are providing sufficient resources and information to enable families and residents to personally resolve complaints where appropriate

* + 1. The RLTCO shall periodically review the resolution status of complaints to monitor resident satisfaction with complaint activity. In developing the Local LTCOP Annual Plan (III-100.1, b, I), and in otherwise setting goals and objectives, the RLTCO shall seek to:
			1. improve resident satisfaction with complaint resolution

Improved resident satisfaction is indicated by an increase in the total percentage of the sum of the following resolution categories:

A) “resolved” (defined as “addressed to the satisfaction of the resident”);

B)“partially resolved”.

**NOTE:** Some complaints will not be resolved to the resident’s satisfaction regardless of LTCO action. Categories which reflect this circumstance are not considered in determining whether resident satisfaction is increased. These categories are:

“legislative or regulatory action required,”

“withdrawn,”

“final disposition not obtained,”

“other agency failed to act on complaint,” and

“no action needed or appropriate.”

#### TABLE III-F

**RESIDENT SATISFACTION WITH COMPLAINT RESOLUTION**

# IF the percentage of complaints… THEN the RLTCO shall take the

 **Following steps…**

There is no increase from the previous \*review whether a high percentage of

Year in the total percentage of complaints residents have withdrawn their cases. If so,

Which are: identify possible causes for resident

\*”resolved,” withdrawal of complaints (e.g., is the rate

\*”partially resolved” higher for a particular staff person or

 volunteer? Is the rate higher in a particular

facility?) and seek to rectify any identified problems;

\*review whether a high percentage of complaints are “not resolved.” Of so, identify possible causes and seek to rectify;

\*review whether the percentage of complaints are being referred to other agencies have an impact on resolution; and

\*review whether a large number of complaints are related to issues that must be resolved through legislative or regulatory action.

The percentage of complaints which are review adequacy of complaint investigation

“not resolved” is increased from the techniques, including:

previous year. \*response times,

 \*thoroughness of investigations,

 \*proper identification of complaints, and

 \*adequate focus on the resident’s wishes

### 102. Information Dissemination and Consultation

## POLICY

The long-term Care Ombudsman Program (LTCOP) shall provide information dissemination and consultation (IDC) regarding long-term care and related issues as requested.

## PROCEDURES

a. timely responses

i) The LTCOP shall respond to a request for information dissemination and consultation (IDC) during the same day the request was made whenever possible and, in all cases, within five (5) working days.

b. number of requests for information dissemination and consultation

i) The Regional LTCO shall periodically review the numbers of IDC requests brought to the LTCOP within his or her region to determine whether:

A) the number of IDC requests is so high as to impact the ability of LTCOP to adequately fulfill the other program components, particularly complaint processing;

B) the number of IDC requests is below the average number of IDC requests per program statewide; or

C) the number of IDC requests is approximately the same as the projection in the Regional LTCOP Annual Plan (III-100.1,b,i), above).

**TABLE III-G**

**INFORMATION DISSEMINATION AND CONSULTATION**

**How to use this table:** This table is designed to assist Regional LTCO, the SLTCO, Area Agencies on Aging, and provider agencies in local LTCOP evaluation and planning. It **suggests** strategies to use in impacting IDC numbers which appear unusually high or unusually low. It also provides guidance in evaluating program performance related to IDC. **The LTCOP is not required to provide a particular number of IDC activities.**

|  |  |
| --- | --- |
| **IF the number of IDC activities is…** | **THEN the Regional LTCO shall work with provider agencies to implement the following steps…** |
| Low for the LTCOP indicated by * more than **20**% below the statewide average, or
* more than 10% below the projected number of IDC requests in the Regional LTCOP Annual Plan
 | * review whether residents, families and staff are familiar with the existence of and purpose of the LTCOP
* increase community education and public information regarding the purpose of the LTCOP
* review whether IDC activities are being accurately recorded by all LTCO
 |
| High for the community LTCOP, indicated by :1. more than **20**% above the statewide average,
2. impacting the ability of the LTCOP adequately fulfill the other program components
 | * review ability of community LTCOP to respond to requests in timely manner
* determine what information is most commonly requested and provide written materials to reduce time spent on IDC responses
 |

### 103. Community Education

## POLICY

The Long-term Care Ombudsman Program (LTCOP) shall educate the community about long-term care, the Ombudsman Program, and related issues.

## PROCEDURES

a. number of community education sessions

i) Each local LTCOP is expected to provide, at a minimum, two (2) community education sessions annually per full-time equivalent ombudsman staff. The community education sessions may be held jointly with other Long-term Care Ombudsmen and/or Regional LTCO and SLTCO.

ii) The Regional LTCO shall periodically review the number of community education sessions provided by the LTCO and Regional LTCO to determine whether:

A) the number of community education sessions is so high as to impact the ability of LTCOP to adequately fulfill the other program components particularly complaint processing;

B) the number of community education sessions is below the average number of community education sessions per program statewide; or

C) the number of community education sessions is approximately the same as the projection in the Regional LTCOP Annual Plan (III-100.1,b,i), above).

**TABLE III-H**

**COMMUNITY EDUCATION**

|  |  |
| --- | --- |
| **IF number of community education sessions is…** | **THEN the Regional LTCO shall take the following steps…**  |
| Low for the LTCOP indicated by:* fewer than two (2) sessions annually per full time equivalent LTCO staff; or
* more than 10% below the projected number of community education sessions in the Regional LTCOP Annual Plan
 | * seek ways to increase the numbers of community education sessions
* request suggestions and/or opportunities for community education sessions from the AAA, provider agency, SLTCO and/or other Regional LTCO
* increase provision of public information regarding the purpose and services of the LTCOP
 |
| High for the community LTCOP, indicated by:1. more than 10% above the statewide average, or
2. more than 10% above the projected number of community education sessions in the Regional LTCOP Annual Plan; and
3. impacting the ability of the community LTCOP to adequately fulfill the other Program components
 | limit the number of community education sessions provided**NOTE:** if this number is less than the projected number of community education sessions indicated in the Regional LTCOP Annual Plan or less than 2 per full-time equivalent, the provider agency and RLTCO must request approval of the SLTCO. |

### 104. In-Service Education

## POLICY

The Long-term Care Ombudsman Program (LTCOP) shall provide in-service education to long-term care facility staff regarding resident rights, abuse reporting, and related issues.

## PROCEDURES

a. number of in-service education sessions

i) Each Regional LTCOP is expected to provide annually, at a minimum, in-service education sessions:

* + - 1. for nursing homes staff—sessions equal to 25% of the number of nursing facilities in the service area, and
			2. for personal care home staff—a minimum of two (2) sessions, preferably sessions made available to a large number of providers.

ii) The Regional LTCO shall periodically review the number of in-service education sessions provided by Long-term Care Ombudsmen (LTCO) to determine whether:

A) the number of in-service education sessions is so high as to impact the ability of LTCO to adequately fulfill the other program components, particularly complaint investigation;

B) the number of in-service education sessions is below the average number of in-service education sessions per program statewide; or

C) the number of in-service education sessions is approximately the same as the projection in the Regional LTCOP Annual Plan

**TABLE III-1**

**IN-SERVICE EDUACTION FOR FACILITY STAFF**

|  |  |
| --- | --- |
| **IF the number of in-service education session is…** | **THEN the Regional LTCO shall take the following steps…** |
| Low for the Regional LTCOP, indicated by:* less than 25% of the number of nursing facilities in the service area;
* less than two (2) personal care home staff education sessions , or
* more than 10% below the projected number of in-service education sessions in the Regional LTCOP Annual Plan
 | * review whether facility administration and staff are aware that the LTCOP provides this service
* evaluate content and presentation methods of previous in-service education sessions
* consider developing new topics or new presentation methods for in-service education
* develop a training for personal care home providers within a particular geographic area
 |
| High for the Regional LTCOP indicated by:1. more than 10% above the statewide average; or
2. more than 10% above the projected number of in-services education sessions in the Regional LTCOP Annual Plan; and
3. impacting the ability of the local LTCOP to adequately fulfill the other Program components
 | * review ability of the LTCO to respond to all requests for in-service education
* limit the number of sessions available per nursing facility(e.g., one (1) per year per facility)
* provide sessions to groups of personal care home providers and staff, rather than to staff of individual facilities
 |

### 105. Routine Visits

## POLICY

The Long-term Care Ombudsman Program (LTCOP) shall have a regular presence in all long-term care facilities in order to monitor the condition of residents, provide information regarding the Ombudsman Program, and ensure resident access to an ombudsman.

## PROCEDURES

a. The Long-term Care Ombudsman (LTCO) shall monitor the condition of residents during routine visits.

i) Routine visits to facilities shall be unannounced.

ii) Timing of routine visits shall occur between 9 am and 6 pm and shall be staggered so the facilities have no basis to predict the timing of the visits.

iii) The LTCO shall document observations during or immediately subsequent to the routine visit and maintain such documentation with LTCOP records.

iv) LTCO observations of conditions in the facility which adversely affect the health, safety, welfare or rights of residents shall be documented as ombudsman generated complaints if no other person has lodged the complaint.

### b. The LTCO shall provide information regarding the LTCOP during routine visits.

i) The LTCO shall assure that the facility posts the LTCOP poster in the facility so that it is readily visible to residents, families, and staff. Depending on the facility floor plan, several posters may need to be posted to meet this requirement.

ii) The LTCO shall assure that the facility has an adequate supply of LTCOP brochures and other ombudsman information to provide all residents and their representatives with information regarding the program.

iii) The LTCO shall explain the purpose of the LTCOP and introduce him or herself to residents in the facility particularly to any residents who have been admitted since the LTCO’s last routine visit.

### c. The LTCO shall ensure resident access to an ombudsman.

i) LTCO presence in Long term care facilities, once a month at a minimum, and as frequent as possible in order to assure residents access to an ombudsman.

ii) LTCO presence should be increased in facilities in which there is a history of serious or frequent complaints.

iii) Regional LTCO (along with the appropriate LTCO) shall at a minimum visit each long-term care facility within his or her area one time per year.

A) RLTCO will visit facilities, as they deem necessary, in circumstances such as, but not limited to: Administrator changes, requests by facilities, requests by LTCO, requests by SLTCO.

iv) A visit for the purpose of investigating a complaint may be made simultaneously with a routine visit to maximize efficient use of time and resources.

### 106. Issues Advocacy

## POLICY

The Long-term Care Ombudsman Program (LTCOP) shall assure that the interests of residents are represented to governmental agencies and policy-makers.

## PROCEDURES

a. examples of issues advocacy

Issues advocacy activities include, but are not limited to:

i) educating advocacy groups, governmental agencies, and policy-makers regarding the impact of laws, policies, or practices on long-term care residents;

ii) seeking modifications of laws, regulations, and other government policies and actions pertaining to the rights and well-being of residents;

iii) facilitating the ability of the public to comment on such laws, regulations, policies, and actions;

iv) developing a task force to study a long-term care issue;

v) participating in a public hearing relating to a long-term care issue; and

vi) providing community education or information on a long-term care issue; and

vii) educating other aging services providers on a long-term care issue.

b. The Long-term Care Ombudsman may seek to resolve resident complaints through issue advocacy where:

i) a complaint cannot be resolved due to a current law, policy, or practice;

ii) many residents share a similar complaint or are affected by a policy or practice; or

iii) other strategies to reach resolution with particular facilities or agency staff have been unsuccessful.

c. Guidelines for issues advocacy

Each Regional LTCOP shall:

i) determine which issue advocacy activity to use by considering:

A) the potential impact of the activity on residents;

* + - * 1. the most appropriate and effective method of addressing the issue;
				2. the potential impact of the activity on the LTCOP; and
				3. the possibility of joint efforts by the AAA, the provider agency, the State Long-term Care Ombudsman, and residents in the activity.

ii) with prior approval from **the provider agency and the SLTCO**, participate in the planning and implementation of issues advocacy activities; and

iii) attempt to involve residents and families in the activity whenever possible.

### d. The SLTCO shall:

i) link areas or advocacy groups with mutual concerns;

ii) coordinate issues advocacy activities within the Montana LTCOP;

iii)develop advocacy strategies;

iv) provide a clearinghouse on state and national issues;

v) identify and meet resources and training needs related to issues advocacy; and

vi) provide training and technical assistance to Regional LTCO, local LTCO, AAAs, provider agencies and others in the aging network regarding the LTCOP role in issues advocacy.

### 107. Interagency Coordination

## POLICY

The Long-term Care Ombudsman Program (LTCOP) coordinates with other agencies to improve conditions for residents of long-term care facilities and to make appropriate referrals.

## PROCEDURES

a. The Regional LTCOP (*Regional LTCO, Program Managers & LTCO)* shall develop relationships with other programs and agencies with resources, services, and/or interests which could benefit residents, including, but not limited to:

i) the Montana State Auditors office:

ii) Adult Protective Services

iii) Montana Legal Services

iv) local community mental health organization

v) the City/County Health Department

vi) local community care services programs (i.e. home and community based services offered through state and private agencies)

vii) the Social Security Administration

viii)the Department of Health and Human Services; and

* 1. State and local law enforcement
	2. Independent Living Centers
	3. Montana Advocacy Program

### 108. Resident and Family Councils

## POLICY

The Long-term Care Ombudsman Program (LTCOP) shall support the development of resident and family councils in long-term care facilities.

c. number of resident and family council activities

i) Each Long-term Care Ombudsman is expected to provide annually, at a minimum, attendance at:

A) a resident council in each of the nursing facilities in the service area, and

B) family councils in 30% of the active family councils.

ii) The RLTCO shall periodically review the number of resident and family council activities provided by the LTCO to determine whether:

A) the number of resident and family council activities is so high as to impact the ability of LTCO to adequately fulfill the other program components particularly complaint processing;

B) the number of resident and family council activities is below the minimum standard; or

C) approximately the same as the projection in the Regional LTCOP Annual Plan.

**TABLE III-J**

**INVOLEMENT WITH RESIDENT AND FAMILY COUNCILS**

|  |  |
| --- | --- |
| **IF the number of resident or family council meetings attended is…** | **THEN the Regional LTCO shall take the following steps…** |
| Low for the LTCO as indicated by:* less than annually for each resident council, or
* less than 30% of active family councils
 | * review whether residents, family members, and facility administration are aware that the LTCO provides this service
* initiate regular contact with resident and family council presidents, and evaluate previous methods of developing resident and family councils
* develop and inform resident and family councils of options for presentations topics
* explain to the SLTCO why a particular resident council was not receptive to LTCO involvement
 |
| High for the LTCO indicated by:1. significantly more than annually for each of the resident councils;
2. more than 30% of the active family councils; or
3. more than 10% above the number of resident or family council activities projected in the Regional LTCOP Annual Plan; and
4. impacting the ability of the CLO to adequately fulfill the other program components.
 | * limit the number of meetings that LTCO will attend of a single resident or family council (i.e. one meeting per quarter per council); and
* assign an Ombudsman Friendly Visitor to attend the resident or family council
 |

### 109. Advisory Council Development

## POLICY

The Long-term Care Ombudsman Program (LTCOP) shall receive advice in its planning and operation from the community.

## PROCEDURES

a. The State Long-term Care Ombudsman Program shall develop its own advisory council.

b. The State Long-term Care Ombudsman shall design its advisory council to perform one or more of the following functions:

i) provide advice regarding the planning and operation of the SLTCOP

**NOTE:** The advisory council should not make decisions for or otherwise serve as a governing body of the LTCOP.

ii) enhance community understanding of LTCOP purpose and services;

iii) act as a multidisciplinary team to assist the SLTCO and Regional LTCO in obtaining resources that the LTCOP may access to benefit long-term care facility residents;

iv) develop an understanding of long-term care issues and assist the LTCOP in issues advocacy efforts; and/or

v) assist the SLTCO and Regional LTCO in special projects.

c. composition of the advisory council

i) The State Long-term Care Ombudsman may determine the composition of the advisory council.

ii) The advisory council shall be multidisciplinary and representative of a variety of parties. Examples include, but are not limited to:

A) residents;

B) family members or friends of residents;

C) older individuals within the state;

D) Governor’s Advisory Council on Aging members;

E) staff of Area Agencies on Aging;

F) staff of other agencies;

G) state representative/senators;

H) health care professionals such as pharmacists, physicians, and nurses;

I) long-term care service providers such as facility administrators and/or staff;

J) Home and Community Based Services (state and private agencies);

K) educators in gerontology or related field;

L) Regional Long-term Care Ombudsman and Long-term Care Ombudsmen

# 110. Volunteer Management

# POLICY

The Long-term Care Ombudsman Program shall utilize Friendly Visitor volunteers to maximize its resources to benefit residents of long-term care facilities.

# PROCEDURES

* + 1. Local LTCOP role

i) The local LTCOP shall propose its procedures for recruitment, training and use of volunteers in the Local LTCOP Annual Plan (III-100.1,b,I above).

* + - 1. Such proposal shall be consistent with policies and procedures, including training and certification requirements, set forth by the SLTCO.

b) **SLTCO role** (State Long-term Care Ombudsman)

i) The SLTCO shall provide resources and technical assistance to the RLTCO and local LTCOP to develop and maintain its Friendly Visitor volunteer program.

ii) The SLTCO shall provide the curriculum and supervision of training provided by the RLTCO to Friendly Visitor volunteers.

 c. **RLTCO role** ( Regional Long-term Care Ombudsman)

i) The RLTCO shall work **with the provider agencies** to recruit, train, monitor and evaluate the Friendly Visitor volunteers.

ii) The RLTCO shall work **with the provider agencies** to provide an annual recognition program for the Friendly Visitor volunteer program.

 d. **LTCO role** (Long-term Care Ombudsman)

i) The LTCO will provide orientation to facility and staff that the Friendly Visitor will be visiting.

ii) The LTCO will be the local contact for the Friendly Visitor.

### e. Friendly Visitor Role

A volunteer who is not certified but who visits LTC residents in coordination with the local LTCOP is called a Friendly Visitor.

i) The Friendly Visitor shall take the training required and offered by the SLTCO program.

ii) The Friendly Visitor shall visit (on a routine basis established by the RLTCO and local LTCOP) residents in the LTC facilities in order to:

A) build relationships with the residents, and

B) provide an independent presence in the facility.

iii) The Friendly Visitor shall assist the LTCO (to the extent determined appropriate by the RLTCO) in:

A) providing information dissemination and consultation:

B) making routine visits:

C) issues advocacy activities:

D) resident and family council activities:

E) advisory council activities:

iv) shall not process or take action on complaints, but shall:

A) refer any complaints received or observed to a certified LTCO for investigation.

v) reporting volunteer activities

Activities by Friendly Visitor Volunteers may be reported as local LTCOP activities if:

* + - * 1. all the requirements of that Program Component are met; and
				2. The Friendly Visitor Volunteer provides information to the RLTCO or designated LTCO after each activity, indicating that all the requirements have been met. Every Friendly Visitor Volunteer shall refer to the RLTCO or designated LTCO any complaints received or observed by the volunteer for LTCO investigation.

APPENDIX A

CODE OF ETHICS

APPENDIX B

CERTIFICATION REQUIREMENTS

* All candidates for designation as a certified ombudsman, whether regional or local, will attend the 45 hour certification training course provided by the SLTCOP and complete the certification exam with a passing grade.
* In addition, each local ombudsman candidate, will complete a three month mentoring program provided by the RLTCO (or SLTCO in the absence of a RLCTO).
* Each regional ombudsman candidate will complete a three month mentoring program provided by the SLTCOP.
* Each LTCO will complete 16 hours of training on an annual basis to retain their certification. A minimum of 8 hours of this training will be provided by the SLTCOP.
* Each RLTCO will complete 60 hours of training on an annual basis to retain their certification. A minimum of 48 hours of this training will be provided by the SLTCOP.