

OMBUDSMAN POLICIES AND PROCEDURES

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Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 101: Getting and Maintaining Ombudsman Certification

RATIONALE:

Both Oregon and federal law authorize a force of volunteer Certified Ombudsmen designated by the State Long-Term Care Ombudsman to perform investigation, problem resolution, resident advocacy and other specified duties.

Certified Ombudsmen are legally appointed government officials with important statutory duties, powers and responsibilities. The ombudsman job has been identified as one of the most difficult in the field of aging and has been the source of considerable misunderstanding and political controversy. Consequently, standards for appointment are high.

The volunteer ombudsman job is not for everybody. Certification requirements are stringent. This assures that those who accept the ombudsman job have the commitment and capacity to succeed in providing full ombudsman services to resident clients.

The purpose of this policy is two-fold: (a) to explain the ombudsman certification process, and, (b) to explain how ombudsmen maintain certification status.

I. Certification Requirements:

- A. Pursuant to Oregon law (ORS 441.131 (2)) ombudsmen designees (Certified Ombudsmen) must complete six days of initial training presented by the Office of the Long-Term Care Ombudsman.
 - 1. Five days of initial training credit will be earned in the classroom.
 - 2. The sixth day of training will be earned through directed home study and a facility visit.
 - 3. When there are extenuating circumstances that make the completion of the regular training process difficult or impossible, directed home study hours may be substituted for classroom hours at the discretion of the Manager of Agency Training.
- B. To be certified, volunteer ombudsmen must receive a passing score on an exam developed by the Office of the Long-Term Care Ombudsman.
 - 1. The exam will be placed in the permanent file of the volunteer trainee/Certified Ombudsman.
 - 2. Trainees who fail to receive a passing score on the exam may be asked to retake any or all of the certification training program and/or the exam, at the discretion of the Manager of Agency Training.
 - 3. Trainees who fail the exam are not guaranteed either test or class retake options.

II. Contracting and Facility Notification of Assignment:

- A. The trainer will forward signed contracts to the Office Manager for processing when the tests have been graded, except when the ombudsman candidate has not completed all training assignments or selected a facility assignment.

The Office Manager will have 3 working days to process paperwork necessary to the assignment of the newly Certified Ombudsman. That paperwork will include:

- 1. A letter of appointment to the newly Certified Ombudsman with temporary badge enclosed.
- 2. Notification of assignment to each assigned facility with a copy to the ombudsman.

3. A certificate of completion of certification training.
- B. After the assigned facility(ies) is mailed a letter informing the facility(ies) of the ombudsman's assignment, the supervising deputy will call the administrator of each facility to introduce the new ombudsman. The deputy will notify the ombudsman when the administrator has been contacted, at which time the ombudsman will set up an appointment to meet the administrator and relevant facility personnel. The newly Certified Ombudsman may request that the deputy accompany the ombudsman on the initial visit in lieu of a telephone introduction.

III. Maintaining Certification:

- A. To maintain certification, the Certified Ombudsman must meet the job commitment criteria established in Policy/Procedure # 102, as well as performance criteria established by other laws, rules and policies.
- B. In addition, to maintain certification, the Certified Ombudsman must, at a minimum, do the following:
1. Participate in 10 hours of continuing education programs in a calendar year. Continuing education credit may be earned by participating in the following:
 - a. Continuing education offered by the program. The Office will offer 12 to 16 hours in a calendar year.
 - b. Support group meetings. Ombudsmen will earn one hour of C.E. credit for each support group meeting attended in its entirety, up to a maximum of four hours credit in a calendar year.
 - c. Certification training refresher. Ombudsmen will earn hour for hour C.E. credit by attending one or more days of certification training held in their area. This must be approved in advance by the supervising deputy to receive credit.

- d. Training offered outside the program. Ombudsmen may earn up to a maximum of four hours C.E. credit in a calendar year by attending trainings, workshops, seminars, etc., offered by outside groups on topics germane to ombudsman work. To receive credit, this training must be approved by the supervising deputy.
 - A waiver of the continuing education requirement may be approved by the Salem office for good cause.
 - There is no continuing education requirement in the year in which a volunteer participates in certification training and achieves certification.
2. Submit 100% of the federally required monthly reports.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 102: Certified Ombudsman Job (Time) Commitment/ Job Abandonment

RATIONALE:

The purpose of the Office of the Long-Term Care Ombudsman is to routinely monitor the long-term care system to identify needs and seek improvements. This is accomplished in part by a dependable force of trained and qualified volunteers.

Certified Ombudsmen are government representatives who have a contractual relationship with the State of Oregon and are expected to perform their duties in accordance with federal and state standards set by law, rule, policy and procedure.

The Certified Ombudsman's agreement to visit facilities on a regular basis is a commitment of crucial importance. Routine visitation produces what researchers call the "sentinel effect," and the regular observation of facility operations and ongoing contact with residents is critical in effective ombudsman work.

People depend on the ombudsman.

This policy is intended to clarify guidelines for certified volunteers' time commitment and establish the criteria for job abandonment.

I. Visitation Requirements for Assigned Facilities:

- A. Nursing facilities, residential care facilities and assisted living facilities should be visited weekly, but not less frequently than every two weeks.
- Except under special circumstances (e.g., the initial introductory visit), visits should be unannounced and at different times. Routine patterns should be avoided. During the course of a year, Certified Ombudsmen are strongly encouraged to visit the facility during all three shifts.
- B. Certified Ombudsmen are encouraged to visit each adult foster care home at least monthly, but a minimum of one visit in each calendar quarter is required.
- Except under special circumstances (e.g., the initial introductory visit), visits should be unannounced and at different times (roughly between the hours of 9 am and 9 pm). Routine patterns should be avoided. While it is important to make occasional visits at mealtimes, they can be disruptive, and should not be made routinely unless, of course, for complaint investigation.
- C. The amount of time the Certified Ombudsman spends in the facility may change from visit to visit. It will depend on the needs of the residents. Initially, longer visits may be required for the Certified Ombudsman to become familiar with staff, residents and family members. Efforts should be made from the onset to visit each resident and meet involved family members. How much time is spent in the facility per visit will depend on the number of residents, the relationships developed with residents and the problems encountered. Each visit should be long enough to include resident contacts and observation of facility conditions.

In general, a Certified Ombudsman should anticipate spending a minimum of 10 hours a month conducting ombudsman activities.

- II. If a Certified Ombudsman receives a complaint about a facility to which he/she is not assigned, the Certified Ombudsman should refer the complaint to the ombudsman assigned to that facility, if known. Otherwise, the Certified Ombudsman should refer the complaint to the Salem office. The Certified Ombudsman must seek authorization from the Salem office to investigate a complaint in a facility to which he/she is not assigned.
- III. Job Abandonment

- A. A Certified Ombudsman who fails to meet the facility visitation requirements outlined in Section I A and B, and who has not requested a leave of absence pursuant to Policy / Procedure #107, may be

considered to have abandoned his/her assignment and may lose certification and be removed from the program rolls.

1. In such a case, a deputy will make an attempt to contact the Certified Ombudsman to determine if there are any extenuating circumstances.
2. If contact is not made, a letter will be sent by the Office asking for a status update. Failure to respond to this letter will result in loss of certification and removal from the rolls.

Office of the Long Term Care Ombudsman Policy/Procedure

Policy/Procedure # 103: Certified Volunteer "Public Availability"

RATIONALE:

Certified volunteers provide a vital public service benefiting thousands of long term care residents and their families. While the certified volunteer role is volunteer and part-time, it represents an important government appointment of considerable responsibility.

Much of the certified volunteer job is set forth in law and administrative rule. One legal provision is that local certified volunteers make their phone numbers publicly available to those who may require certified volunteer services.

While the average certified volunteer may spend only a relatively brief time in the facility each week, the law recognizes the importance that locally-assigned certified volunteers be readily available by phone, if needed.

This policy sets forth specific requirements for making the locally-assigned certified volunteer phone number available to potential clients.

- I. Certified volunteers must have their phone numbers posted in each facility where they are assigned, pursuant to Oregon Law ORS 441.124 (1).
- A. Because certified volunteers should be reachable, those who work during the day, or who are otherwise not available during the day, must have an answering machine or service. The volunteer's contact number must be a local number for the area in which the residents reside (residents do not have the means to call a long-distance number).
1. This policy in no way implies that certified volunteers should spend their days at home. However, if the certified volunteer's life-pattern means that he or she is largely unavailable during normal waking/working hours, the certified volunteer needs to take measures to increase availability.
 2. Additionally, it is vital that certified volunteers be reachable by the Salem office staff. Answering machines/services improve this accessibility.
- B. If a certified volunteer has an answering machine/service and is leaving town, it is important that the certified volunteer take precautions to avoid messages being left for the ombudsman that are not returned in a timely manner. Ombudsmen can:
1. Turn off the answering machine (callers expect that messages left will be returned fairly quickly) or
 2. Leave a message that refers complainants to the Salem toll free number 1-800-522-2602, or
 3. Some answering machines/services can be accessed remotely by their owners. If this option is available, messages should be checked daily for complaints. If a complaint is received, call Salem to have it responded to.
- C. It is preferred that certified volunteers not have caller-ID (a feature that displays the telephone number and/or name of the caller). Caller-ID discourages anonymous complaints. When caller-ID is part of a certified volunteer's telephone system, the following restrictions apply:
1. The system must not block unidentified numbers or unknown callers, or require callers to affirmatively enter their name or number.
 2. The certified volunteer must not disclose or use any information generated by the system unless the caller expressly provides that information.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 104: Inappropriate Certified Volunteer Activities and Behaviors

RATIONALE:

The main purpose of the Office of the Long-Term Care Ombudsman is to investigate and resolve complaints for the benefit of Oregon's long-term care residents.

A second purpose is to monitor the system to identify problems and improve conditions for the residents.

In performing these tasks, certified volunteers play several appropriate and important roles. They are:

- 1. complaint investigator*
- 2. problem solver*
- 3. educator*
- 4. resource broker*
- 5. routine visitor*
- 6. facility monitor*
- 7. advocate for residents*

When certified volunteers perform these roles, they are acting in accordance with state and federal laws as legal agents of the state. Insofar as they perform the legal responsibilities of an ombudsman, they are indemnified against any tort liability.

Behaviors that fall outside of these role guidelines are inappropriate and may lead to disciplinary action or the assumption of personal liability.

This policy is intended to clarify inappropriate certified volunteer behavior to protect the volunteers, the program, and the residents.

- I. Certified volunteers shall not perform direct care-giving services to residents.
 - A. Certified volunteers (regardless of experience or credentials) shall not provide medical or nursing care to residents. *This is cause for immediate termination.*
 - B. Certified volunteers shall not assist residents in the activities of daily living (ADLs) including but not limited to:
 - 1. feeding
 - 2. hydrating
 - 3. bathing
 - 4. walking
 - 5. exercising
 - 6. range of motion exercises
 - 7. toileting
 - 8. grooming
 - 9. dressing
 - 10. pushing wheelchairs
- II. Certified volunteers shall not provide resident entertainment or activities. *It is, however, the certified volunteer's duty to make sure that facilities have adequate entertainment and activities as provided by appropriate facility staff and programs.*
- III. Certified volunteers shall not transport residents under any circumstances.
- IV. Certified volunteers shall not assume any financial or decision-making responsibilities for residents in facilities they visit in the capacity of an ombudsman.
 - A. Certified volunteers shall not become conservators, guardians, or powers of attorney for residents in the long-term care facilities where they visit in an ombudsman capacity. This creates a clear conflict of interest.
 - B. Certified volunteers shall decline to do back-up work in facilities where they are a conservator, guardian, or power of attorney for a resident living in that facility.
 - C. Certified volunteers shall not assume responsibility for a resident's personal finances in facilities they visit in an ombudsman capacity. (If residents need assistance in this area, refer them to the facility social services director or care manager, and monitor the situation to assure the proper assistance is given.) This means certified volunteers shall not sign checks or balance check books for residents (this may lead to charges of conflict of interest and impropriety).

Note: this section in no way limits the certified volunteer's duty to empower residents to act as full citizens by connecting them to community resources to assist them for voting, tax and other citizenship purposes.

- V. Certified volunteers shall not provide ombudsman services in facilities where they have a family member or close personal friend (this creates a clear conflict of interest).
- VI. Certified volunteers must be professional in their personal conduct while conducting ombudsman business. Certain specific behaviors are prohibited and, if verified, may result in suspension or termination. Prohibited behaviors include:
- A. Any use of foul, profane or obscene language.
 - B. Verbal or physical threats inconsistent with reasonable standards of professional behavior.
 - C. Hostile or prejudicial language towards any class or group of people.
 - D. Certified volunteers should be mindful that certain remarks may be acceptable to some people, but offensive to others. Language that others may perceive to be sexist, ageist or otherwise offensive should be avoided.
 - E. Sexual innuendo, sexually explicit language, or sexual harassment of long-term care facility staff, residents or family.
 - F. Dating between certified volunteers and facility staff.
 - G. Signs of alcohol consumption or illegal drug use.
 - H. Any attempts to use the Ombudsman Program name, authority, position and prestige for financial gain or to further the volunteer's personal business interests, or those of someone close to the volunteer. Some examples (while not exhaustive) include:
 - soliciting prospects for another caregiver, i.e., encouraging residents to leave any one facility for another specific facility.
 - selling Tupperware, Avon, Mary Kaye or Amway, etc., *even if residents or others ask.*
 - buying or selling resident property (i.e., cars, jewelry, etc.) or the property of facility staff.

- referring a resident to a spouse or other family member's or friend's insurance business, bank, etc.
 - using the ombudsman business card in connection with any outside business interest.
 - using the ombudsman business card as a general social visiting card, rather than its intended use of promoting ombudsman work.
- I. Accepting gifts of value from residents, families, facility staff or other parties involved in the long-term care system (cards, flowers, homemade mementos, crafts and other small personal gifts on a special occasion may be acceptable, but certified volunteers should check with the Salem office if in doubt.)
- J. Offering gifts to facility staff. This creates an apparent conflict of interest.
- K. Offering gifts to residents. Certified volunteers are discouraged from offering gifts to residents. If gifts are offered to one resident, they should be offered to all residents (greeting cards, for example — anything less would be seen as favoritism).
- L. Espousing political or religious views while on official ombudsman business.
- M. Wearing T-shirts or other clothing with any signs, slogans, religious or political views that might offend any group. Certified volunteers must officially honor diversity and respond to all who need ombudsman assistance.
- N. Certified volunteers will not personally pay for care items needed by residents (but they will make sure that residents' needs are provided for).
- O. Certified volunteers shall not work for any long-term care facility, paid or otherwise. Certified volunteers shall not seek or entertain offers of employment from a long-term care facility.
- P. Conviction of any felony.

- Q. Conviction of a misdemeanor relating to inappropriate sexual behavior, harassment or abuse of any kind, as well as other conduct that might reflect poor judgment in dealing with human relationships.
- VII. When visiting a facility, certified volunteers will not be accompanied by family members, friends or associates other than those officially involved in the long-term care system. When a certified ombudsman is in his/her assigned facility, it is presumed by staff and residents that every visit is official. This also means no infants, no pets. This would be unprofessional, and pets could cause liability issues.
- VIII. Certified volunteers must avoid the appearance of closeness to facility staff (another reason for not "touring" facilities with staff when investigating complaints or making routine visits). While it is important to have good lines of communication with facility staff, ombudsmen must maintain a professional distance from those they monitor. Too often, close personal ties between ombudsmen and caregivers makes problem solving more difficult, or even impossible. Moreover, the appearance of ombudsman/provider "chumminess" may damage the volunteer's image as a resident advocate. It is imperative that the resident sees the certified volunteer as an independent, outside authority, completely unaligned with facility staff. To avoid this dangerous misunderstanding, certified volunteers may not accept food, coffee, snacks or anything else from facility representatives, and should not eat in their company, even if the volunteer has purchased his or her own food. Such behavior could lead residents, family members and others to false conclusions about who the certified volunteer works for, or answers to.

(Note: It is appropriate for an ombudsman to occasionally have beverages/food with the residents, at the residents' invitation, but the ombudsman must offer to pay for his or her own food.)

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 105: Facility Rotation

RATIONALE:

A Certified Ombudsman is a legally-appointed government representative who has agreed to provide valuable services to Oregon's long-term care facility residents. According to federal and state law, the ombudsman's primary duty is to investigate and resolve complaints on behalf of long-term care residents. To do this effectively requires, in the words of the National Academy of Science's Institute of Medicine, the Certified Ombudsman to "act as critics of government and private industry" and "challenge provider interests" when resident interests are threatened or not being served.

Because there are insufficient resources to support adequate numbers of Certified Ombudsmen, it is vitally important that every attempt be made to expand ombudsman services to the maximum number of long-term care facilities. One way of doing this is to rotate facility assignments on a regular basis.

Another way of increasing ombudsman program effectiveness is to make all reasonable attempts to allocate program resources to facilities in greater need of ombudsman services. While even the best facilities benefit from the availability of an ombudsman, some facilities are more troubled than others and their residents virtually cry out for help. Consequently, this policy also allows for some flexibility in reassigning ombudsmen who find themselves in facilities with less need for limited ombudsman resources.

This policy also assures that Certified Ombudsmen remain free from all conflict of interest with care providers. It protects the Certified Ombudsmen from the subtle influence of too close relationships with caregivers in a facility where they have been long assigned. Familiarity makes it hard to notice issues. Serving in one facility too long can lead to a loss of objectivity and make problem-solving more difficult. Certified Ombudsmen must be willing to challenge provider positions when appropriate. They must be able to do this uninfluenced by emotional attachment to caregivers, or personal prejudice favoring the intents and general good works of a particular care-giving staff.

For this reason, like many such monitoring jobs, Certified Ombudsman assignment rotation is the best insurance that Certified Ombudsmen can be objective advocates for resident. Rotation also ensures that ombudsman resources are fairly distributed in a community. An additional benefit is the stimulation that Certified Ombudsmen can experience when taking on a new assignment. New environments can pique, prod, please and renew the Certified Ombudsman spirit.

I. Facility Rotation/Reassignment

- A. Certified Ombudsmen may request facility reassignment at any time.
- B. At the end of two years of service in the same nursing facility, residential care facility or assisted living facility, a Certified Ombudsman should expect to be assigned to a new facility.
- C. At the end of one year of service in the same adult foster care home, Certified Ombudsmen should expect to be assigned to a new facility.
- D. If an ombudsman is assigned to a facility (especially an adult foster home) where there are no problems requiring the services of a Certified Ombudsman, the volunteer may be rotated sooner than the time frames outlined above. After six visits and at least two months in a home where no complaints or issues have been identified, the Certified Ombudsman will contact the deputy to discuss reassignment options. After consultation with the Certified Ombudsman, the deputy may identify a new assignment where the complaint investigation/problem resolution skills of the Certified Ombudsman can better benefit residents in need. If no reasonable alternative assignment is available, the Certified Ombudsman may continue to visit the facility.

Note: Given the shortage of Certified Ombudsmen, and the number of facilities with no ombudsman coverage, it is vitally important that a Certified Ombudsman contact his/her deputy as soon as he/she assesses a facility as not requiring a Certified Ombudsman on a regular basis.

- D. New facility assignments will be based on the Certified Ombudsman's selection from available alternate facilities within a suitable distance from the Certified Ombudsman's home. The deputy will facilitate the Certified Ombudsman's selection of new assignments.
- E. Near the end of a Certified Ombudsman's assignment in a given home, the outgoing ombudsman may be asked to introduce and orient the new ombudsman assigned to take his/her place. It is also possible that an overlapping assignment might be set up to facilitate an easy "changing of the guard."

II. Request for waivers of the facility reassignment requirement:

A. Certified Ombudsmen may request a waiver of the reassignment requirement for the following reasons:

1. There are no alternative facilities in the area.
2. The assigned Certified Ombudsman is involved in an important, ongoing case.
3. The facility is in the midst of some regulatory difficulty, closure, management reorganization or other form of organizational change where Certified Ombudsman continuity would be a stabilizing influence of benefit to residents.
4. A thorough evaluation of the assignment by the Certified Ombudsman, the deputy and State Ombudsman determines that continued assignment would be appropriate.

B. Waivers, if granted, will be granted for a period not to exceed one year subject to annual review and renewal.

- Renewal will be based on criteria established in section A, 1-4 above.

C. The Office of the Long-Term Care Ombudsman may request that a Certified Ombudsman continue to serve in a facility beyond the reassignment period.

III. Certified Ombudsmen may be reassigned to a former facility after a one year hiatus from the original assignment, or upon request by the Office of the Long-Term Care Ombudsman for any reason including criteria established in A. 1-4 above.



Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 106: Wearing the Ombudsman Badge

RATIONALE:

The purpose of the badge of the Office of the Long-Term Care Ombudsman is to identify the wearer as an official, appointed representative of the State of Oregon, Office of the Long-Term Care Ombudsman.

This policy explains standards of wear for this government issue item.

I. Approved wearing

- A. All certified volunteers must wear the authorized badge of the Oregon State Office of the Long-Term Care Ombudsman when entering a facility to perform their legal responsibilities.
- B. All certified volunteers should wear the authorized badge while performing official certified volunteer duties outside of the long-term care facility. These official situations may include, but are not limited to administrative hearings and other legal proceedings, inter-agency work sessions, out-of-facility investigations, and other official Ombudsman Program activities.
- C. All certified volunteers may wear the authorized badge when attending any LTCO program function of an official or general nature. These events may include but are not limited to the following:
 - 1. Formal LTCO program recruitment activities
 - 2. Informal social events or activities sponsored by the Office of the Long-Term Care Ombudsman
 - 3. General public activities, conferences, seminars or ceremonies relating to the field of aging and long-term care.
- D. Certified volunteers may wear the authorized badge when attending non-LTCO program sponsored functions that may lead to a greater awareness of the ombudsman role, mission and volunteer opportunities with the ombudsman program. Such activities may include civic, humanitarian, patriotic and other community-oriented gatherings of a general or official nature.
- E. In all cases mentioned in Sections C and D, the badge may be worn in transit to and from the site of the function, including meal stops and other related activities, unless such activities would unfavorably impact the public perception of the Office of the Long-Term Care Ombudsman.

II. Wearing the badge is prohibited when:

- A. The certified volunteer is undertaking any form of personal business (this includes social situations where the ombudsman is either seeking, or may be perceived as seeking business or personal financial advantage).
- B. The certified volunteer is seeking employment.

- C. The certified volunteer is unofficially visiting residents of a long-term care facility to which he/she is not assigned.
 - E. The certified volunteer is involved in any partisan political activity other than lobbying activities undertaken on behalf of the Office of the Long-Term Care Ombudsman or on behalf of long-term care residents or other related activities approved by the Salem office.
 - E. In any situation that might embarrass or discredit the Office of the Long-Term Care Ombudsman.
- III. The Ombudsman badge remains the property of the State of Oregon Office of the Long-Term Care Ombudsman and shall be returned to the Office when the volunteer is no longer participating in the program as a certified ombudsman.

Note: When wearing the ombudsman badge, remember that your activities and words reflect your office.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 107: Leave of Absence (LOA)

RATIONALE:

Certified volunteers are legally appointed government officials who have agreed to provide valuable services to Oregon's long-term care residents.

According to federal and state law, the certified volunteer's most important duties are to: (a) respond to complaints made by or on behalf of long-term care residents and (b) maintain a routine facility presence.

This routine presence is important because it creates a sentinel effect and promotes regular citizen involvement in long-term care life.

By accepting an appointment, the certified volunteer has agreed to provide this crucial routine presence. Of course, life events or a need for a well-deserved vacation may require a temporary departure from duties. In order to track statewide ombudsman availability, the following policy explains steps needed to go on a leave of absence (LOA). This policy allows the certified volunteer a break from duties while still keeping him/her on the program rolls.

I.

- A. Certified volunteers may request a leave of absence (LOA) for any reason by notifying the Salem office by phone or in writing. Any absence of less than two weeks does not constitute an LOA; however, as a courtesy, please notify the Salem office when you will be unavailable for several days.
- B. Certified volunteers are encouraged to take vacations and to take plenty of time for their personal priorities. The home front comes first. Certified volunteers who do not make their personal lives a priority, will probably disengage from the certified volunteer job, one way or another. Consequently, this policy is intended to set basic participation guidelines for an important government role on which so many people depend.

II. Leave duration and reactivation training:

A.

- 1. Certified volunteers may take up to one month leave of absence within the first year of service without incurring any additional training obligation.
- 2. Certified volunteers with less than a year of service who request a leave of absence of more than a month may be required to retrain prior to reactivation or reassignment.

B.

- 1. Certified volunteers with one year or more of uninterrupted program service are eligible to request up to three months leave of absence without incurring additional training requirements, unless there have been significant program-related changes in long-term care or ombudsman related laws, rules, policies, in which case additional training may be required. Certified volunteers must continue to meet annual continuing education requirements (see Policy / Procedure # 101: *Getting and Maintaining Ombudsman Certification*).
- 2. Certified volunteers who have served one year or more and request a leave of absence of more than three months will be required to retrain prior to reactivation or reassignment.

- C. When certified volunteers are determined to require additional training prior to reactivation or reassignment, the supervising deputy will determine the content of the training. The deputy will assess the volunteer's work history, whether continuing education and reporting requirements have been met, the length of leave and any program changes during the volunteer's absence to determine the training.
- III. Certified volunteers who take a leave in excess of two months will automatically lose facility assignments. However, upon reactivation, they may be reassigned to their previous facility(ies) unless, in the interim, another volunteer has contractually assumed assignment responsibilities, or the certified volunteer requesting reassignment has held that assignment for two years or more in a nursing facility, residential care facility or assisted living facility or one year in an adult foster care home, in which case they will not normally be reassigned (see Policy / Procedure # 105: *Facility Rotation*).
- IV. If a certified volunteer plans to extend a leave, the Salem office must be notified.
- V. If certified volunteers exceed the stated leave without notifying the Salem office, they may be dropped from the program rolls.
- VI. Certified volunteers will be dropped from the rolls when their leave of absence exceeds the lesser of one year or their length of service in the program.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 201: Implementing the Buddy System

RATIONALE:

Certified volunteers work in an extremely complex and often difficult environment. Their primary job is to solve problems for or on behalf of residents. This is not an easy task under many circumstances. In fact, the ombudsman job has been called "one of the most difficult in the field of aging." The certified volunteer may be further challenged by tension and conflict from a defensive or hostile provider. Misunderstanding, fear, or a lack of knowledge about the ombudsman role, mission, philosophy and legal authority may shape provider attitudes.

The risk for problems is especially high when certified volunteers work alone. Conflict, especially with a defensive provider, or one not familiar with the program, can leave the lone certified volunteer's actions vulnerable to misinterpretation or even false accusation. This pits the certified volunteer's word against the provider's — a recipe for disaster — not just for the involved certified volunteer, but for the program as a whole.

This policy establishes guidelines for the implementation of the buddy system in all types of long-term care facilities when certain risks are identified. The buddy system also offers the provider accountability for certified volunteer adherence to program policies and procedures.

- I. The buddy system employs two certified volunteers working in tandem in a facility. The volunteers must stick together at all times when visiting the facility in order to serve and protect individual ombudsman integrity.

The buddy system presents the following benefits:

- A. Another witness to the conduct of the certified volunteer.
 - B. A second witness to the behavior of the caregiver.
 - C. A second investigative witness.
 - D. An opportunity to model and/or observe good certified volunteer behavior and receive feedback.
 - E. An opportunity to directly share the certified volunteer experience with a colleague.
- II. Certified volunteers must initiate the buddy system under the following conditions:
- A. The certified volunteer encounters a hostile, argumentative or highly defensive caregiver.
 - B. The certified volunteer encounters an adult foster care home with serious problems, or with issues likely requiring complex and difficult problem-solving.

In either of these situations:

- 1. The certified volunteer must cease visiting the facility. He or she will immediately contact a deputy to report a need for buddy system implementation.
 - 2. The deputy will assist the certified volunteer in identifying a pool of certified volunteers to accompany the certified volunteer pursuant to II. A-B above. It is not appropriate to "buddy" with anyone other than another certified volunteer.
 - 3. If no certified volunteer "buddy" is available, the notifying certified volunteer will not visit the home until the certified volunteer and deputy agree to a plan to provide ombudsman services to the facility in question.
- III. A deputy may require a "buddy" in situations that may come to his/her attention when information suggests that the conditions in II. A or II. B have been met.

- IV. In situations where a "buddy" is required, the buddy system will remain in effect until the certified volunteer and the deputy conclude that positive, safe and productive program/provider relations have been (re)established.
- V. Certified volunteers are encouraged to work together in teams for any reason. However, the specific purpose and protocol for implementation of the buddy system distinguishes it from other models of certified volunteers working together.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 202: Interviewing Facility Staff

RATIONALE:

A certified volunteer is a legally appointed government representative whose primary duty is to investigate and resolve complaints for or on behalf of long-term care residents.

State and federal laws assure that certified volunteers have adequate authority to perform investigations. The basis of this authority can be summed up in one word: access — access to: 1) facilities, 2) people (residents, staff, other witnesses), and 3) records.

While access to residents, facilities and records is clearly spelled out in law (ORS 441.100-153), rule (OAR Chapter 114), and other policies, the access to staff is somewhat more problematic and requires additional guidelines.

This policy establishes the appropriate conduct and procedure for certified volunteers interviewing staff.

- I. Oregon law (ORS 441.117 (1), (d)) authorizes "the Long-Term Care Ombudsman and each designee" to interview "employees or agents of the long-term care facility" when undertaking an investigation.

A. When the staff member is the complainant:

1. When the staff member is the complainant, Oregon law specifically requires certified volunteers to follow "procedures to maintain confidentiality" (ORS 441.113). This means that the certified volunteer must not divulge the staff-complainant's name (nor offer any information that may lead to the identification of the complainant) to any party other than other Ombudsman Program officials or to state agencies (ORS 441.113 (1)) regarding an abuse complaint.

If the referral is not abuse, the certified volunteer may divulge the complainant's name to other state agency representatives *only with the complainant's permission*.

- a. When taking a phone call from a staff member who wishes to remain anonymous, the certified volunteer must respect that wish and proceed to gather information (even if the certified volunteer knows or suspects they know who the staff-complainant is). Other practices include:
- (1) The certified volunteer should inform the staff-complainant that, when acting in good faith, she/he is immune from any civil liability for discussing patient care issues (ORS 441.127 (1)), and,
 - (2) Inform the staff-complainant that he or she is protected by law from retaliation for talking to the certified volunteer (ORS 441.127 (2)). If the staff-complainant is still unwilling to give his or her name, show appreciation for the call and proceed to collect information.
 - (3) Should the facility suspend, terminate, reassign, or otherwise retaliate against the complainant as a result of contact with a certified volunteer, advise the complainant to call the ombudsman office for assistance. The certified volunteer should also contact the office.

- (4) An anonymous phone contact may be the certified volunteer's sole contact with a staff-complainant. Consequently, the certified volunteer must take the time to ask all the "who, what, why, when and where" questions during the initial call. There might not be a second opportunity.
 - (5) After receiving an anonymous staff complaint, the certified volunteer should NOT go to the facility and try to discover, by investigation, the staff complainant's name. There is no need to do this. Just investigate the complaint, knowing that in interviewing potential witnesses the certified volunteer may or may not be interviewing the staff-complainant.
 - (6) If, in the process of investigating an anonymous staff complaint, the certified volunteer discovers who the staff complainant is, show no recognition. Honor the desire to remain anonymous.
2. If the certified volunteer receives a complaint (by phone or in person) from a staff member who reveals his or her identity, but asks to remain anonymous to others, the certified volunteer must comply with these requests. However, in cases of abuse, the certified volunteer must reveal all witness names to the appropriate protective services personnel. Make this clear to all complainants.
- a. Advise them of Ombudsman Program confidentiality obligations.
 - b. Advise them of the anti-retaliation and indemnification clauses discussed in sections (1) (a) (b) above.
 - c. Advise them that despite legal protections, if the facility retaliates (e.g., suspends or terminates them) after communicating with a certified volunteer, he or she should call the Office of the Long-Term Care Ombudsman for assistance.

B. How to interview a staff member who is a witness:

1. In interviewing staff witnesses, be aware that they will probably find this process intimidating. The certified volunteer must work to build trust and assuage any normal anxiety.
 - a. Advise them of ombudsman confidentiality obligations.
 - b. Advise them of the anti-retaliation and indemnification clauses discussed in sections (1) (a) (b) above.
 - c. Certified volunteers need to be subtle in their approach. They might offer to meet witnesses away from the facility or to interview them over the phone if the witness seems uncomfortable or unwilling to talk to the certified volunteer in the facility where they might be observed.

Contacting witnesses outside of the facility is permissible only for purposes of a specific investigation and where protecting confidentiality may be an issue.
 - d. When interviewing in the facility, it is critical to find a place where the certified volunteer can talk to the witnesses in private.
2. If the staff witness seems unwilling to speak to the certified volunteer, the certified volunteer should cite Oregon Law ORS 441.117 (1)(d), guaranteeing the certified volunteer the authority to interview staff members as part of a complaint investigation.
3. If the staff member refuses to talk to the certified volunteer, the certified volunteer should call the Salem office, which may issue a subpoena.
4. If the staff member insists on talking to the investigating volunteer in the presence of a supervisor or attorney, the certified volunteer must do one of the following:
 - a. Comply, if this will not jeopardize the investigation, or,
 - b. If this would jeopardize the investigation, postpone any action. Call the Salem office to determine the best approach.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 203: Access to Medical Records

RATIONALE:

The primary duty of the certified volunteer is to investigate and resolve complaints. To this end, certified volunteers have appropriate, lawful access to facilities, residents, staff, and records. These are not unrestricted powers, however. Certified volunteers must be careful to exercise their investigatory access privileges according to sanctioned statutory procedures.

The purpose of this policy is to explain how and under what circumstances certified volunteers gain statutory access to resident medical records.

I. Access to medical records:

A. Pursuant to Oregon law (ORS 441.117 (2), ombudsmen designees (certified volunteers) shall have access to the medical records of residents as authorized by the residents.

1. Certified volunteers should not seek access to resident medical records without cause. Cause includes only:

- a. Any investigation for or on behalf of the resident.
- b. As requested by the resident for education, consultation, review or any other purpose expressed by the resident. In other words, certified volunteers must not seek access to resident records to satisfy personal curiosity or to become generally familiar with resident needs and/or backgrounds.

2. Procedures to access resident medical records:

a. Pursuant to Oregon Administrative Rule (OAR 114-0-030 (1)), certified volunteers must first, if at all possible, secure the written permission of the resident or the resident's legal guardian to access the resident's medical records.

- (1) While the Office of the Long-Term Care Ombudsman provides "Authorization For Certified Ombudsman Access to Records" forms, the resident's permission may be indicated, in writing, on any medium.
- (2) If the resident is unable to make a signature, the resident's mark (thumb, or fingerprint, an "x", or any other mark, intelligible or unintelligible) is sufficient to authorize access when witnessed by another individual, including, but not limited to a member of the facility staff.
- (3) Under state law, certified volunteers "may have access to resident's records, including medical records as authorized by the resident or the resident's legal representative, if needed to investigate a complaint" (ORS 441.117 (2)).

- (a) Pursuant to this clause, the interpretive policy is that residents who are unable to give written informed consent, may give verbal informed consent.
 - (b) Where verbal informed consent is the only option, a witness to the resident's verbal or physical affirmation (i.e., eye blinks, hand signals etc.) is required.
 - (c) If this procedure is unchallenged by the facility, the certified volunteer may proceed to review the resident's records.
- (4) If the resident gives consent but the facility challenges it on the grounds of capacity, the certified volunteer may offer the following argument:
- Unless the resident has a court-appointed guardian, the law requires the resident to be treated as having capacity unless the resident's action is clearly inconsistent with that of a reasonable person.
- (5) If the resident is unable to authorize access, or the resident's legal guardian refuses to authorize access, or the facility refuses to allow access on the grounds of resident incapacity, the certified volunteer may make a request that the State Long-Term Care Ombudsman subpoena the resident's medical record. Call a deputy to determine if it is necessary and appropriate to subpoena the record.

3. Facility response time to record requests:

- a. The facility should make records available promptly to the resident, resident's legal representative, or certified volunteers who have the resident's authorization to review records.
 - "Promptly" means that in no case should the requesting party expect to wait for more than 45 minutes to review records.
- b. When the certified volunteer finds it necessary to request copies of records, the facility is required to provide photocopies as requested, but the certified volunteer may

have to wait for up to two business days to receive requested copies (excluding Saturdays, Sundays, and state holidays).

Note: The certified volunteer may be required to pay for copies at a reasonable market rate (about \$.10 cents per page). This is a reimbursable expense and will be paid by the Salem office if requested and approved in advance.

4. Best practice recommendations for records review:
 - a. Certified volunteers may review facility records in private, or with the resident, in private.
 - b. Certified volunteers may request that a facility staff member be present to answer questions about entries (generally not a bad idea).
 - c. Certified volunteers need not comply with facility demands to monitor the certified volunteer while she/he reviews records (There is, however, no inherent need to object to this monitoring unless the certified volunteer must communicate in private with the resident, another certified volunteer or some other party who has legal access. In such cases, the certified volunteer's request for private review and communication must be honored).
 - d. Certified volunteers should not request copies unless absolutely necessary.
 - e. Certified volunteers should review records before requesting copies (Take notes on which specific documents are needed. This assures that requested copies are not subsequently altered or "lost", and relieves the facility of the burden of providing unnecessary documents. It also keeps costs down for everyone).
5. Certified volunteers shall not share information from medical records with anyone other than certified volunteers and Salem staff.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 204: Procedures for Official Correspondence

RATIONALE:

Certified volunteers are government representatives who work in an extremely complex and often difficult environment. Their primary job is to solve problems for or on behalf of residents. In most cases, these problems are solved informally and orally — through good faith agreements sealed with a pledge and a handshake. Sometimes, however, the certified volunteer must argue the residents' cause, present evidence, issue warnings, or formally refer complaints to regulators for enforcement action. Sometimes this is done in written form. For the purpose of this policy, official correspondence means any written communication with providers, regulators or others involved in the long-term care system, other than a written complaint referral to SDSD.

Since the objective of a certified volunteer written communication is almost always to induce a caregiver to some action desired by the certified volunteer, its chief means will be persuasion. Consequently, such correspondence should be specific, concise and to the point. Written communication must be accurate, readable and logical. Directness and brevity must be backed by solid, unequivocal evidence, not conjecture or unfounded allegation. Certified volunteer written communication must leave an impression of fair dealing and efficient performance. They must be professional. Anything less can spell disaster for the certified volunteer, the organization and the resident's cause.

Poorly conceived, or ill documented cases, false accusations, misinterpreted law and rule, sweeping generalizations, threats and/or an unprofessional tone are not only unlikely to get certified volunteers very far with providers, but may even end an otherwise productive certified volunteer career.

Written communication can be a double-edged sword. Correctly executed, it can win causes. But sloppy, ill-conceived work documents bad judgment or gross error for all to see, and may present the very evidence that destroys the writer's credibility, and damages the cause.

The purpose of this policy is to establish guidelines for official correspondence for certified volunteers as representatives of the Oregon Office of the Long-Term Care Ombudsman.

- I. Any official correspondence, except complaint referrals to SDSD, shall be reviewed and approved by the deputy or state ombudsman prior to sending.
- II. Certified volunteers will not write letters of recommendation or commendation for any long-term care facility (or its agents or representatives). There are several reasons for this:
 - A. The certified volunteer is a resident advocate only. While it is appropriate for certified volunteers to offer verifiable facts about the quality of care in facilities in which they conduct ombudsman work, written general recommendations may be seen as presenting a pro-facility bias, as opposed to a resident centered orientation.
 - B. A written commendation or recommendation of a facility (or its staff) by a certified volunteer may be used by the facility long after the written comments may have been valid. Quality of care is highly variable over time. A written commendation by a certified volunteer will always be seen as an endorsement, even after care-giving standards have changed.
 - C. Even the best certified volunteer is unlikely to know everything about a facility. People perceive things differently. While the certified volunteer may see a facility as running comparatively well, others may see troubles, unbeknownst to the assigned volunteer. Here again, the certified volunteer's written commendation would be viewed as an endorsement. It could mislead and lure consumers into a false sense of security, complacency or trust and ultimately may undermine the Ombudsman Program's credibility.
- III. There are times when it may be appropriate for the certified volunteer to document findings for a provider. Letters or written reports to providers shall be reviewed by the deputy prior to sending. Written communication needs to be reviewed for the following elements:
 - A. Legal sufficiency: Are appropriate laws and rules cited; are arguments, positions and requested actions legally supportable?
 - B. Evidentiary merit: Does the quantity and quality of evidence present a solid case? Is the quality of documentation sufficient? Are supporting references and records cited or attached? The letter must contain enough evidence to support an objective determination that the problem exists and requires resolution.
 - C. Logic: Are the conclusions supported by the facts? Are the facts relevant, and do the requests logically address the problem?

- D. Compelling and concise narrative: Is the narrative written in such a way to induce the reader to take a certain action?
 - E. Is the narrative persuasive: Does the letter present insights that will persuade the reader that there might be advantages to act in the way the certified volunteer desires?
 - F. Are warnings justified/effective: Fair and realistic warnings offer the provider an opportunity to avoid conflict escalation. Warnings must be acted upon if compliance is not forthcoming. No bluffing! A realistic warning backed with compelling evidence can motivate people to avoid the adverse consequences of non-compliance.
 - G. Fair: Is the letter or report's tone and content consistent with a sense of justice? Written correspondence should not contain:
 - 1. personal attacks
 - 2. unfounded claims
 - 3. lies
 - 4. bluffs
 - 5. promises
 - H. Is the written communication consistent with the program philosophy/policy as lawfully set by the State Long-Term Care Ombudsman?
- IV. Letters to regulatory agencies, excepting complaint referrals, shall be reviewed by a deputy or the State Ombudsman prior to sending.
- V. Any letter to anyone expressing a program policy shall be reviewed by a deputy or the State Ombudsman prior to sending.

Office of the Long-Term Care Ombudsman Policy/Procedure

Policy/Procedure # 301: Working with the Media

RATIONALE:

The main purpose of the Office of the Long-Term Care Ombudsman is to investigate and resolve complaints to benefit Oregon's long-term care residents. To this end, the media can be a valuable asset in improving the lives of Oregon's long-term care residents and can do much to promote the mission of the Office of the Long-Term Care Ombudsman. Specifically, the Oregon Ombudsman law requires the State Ombudsman to "widely publicize the Long-Term Care Ombudsman's services, purpose and mode of operation" (ORS 441.109[6]).

Media contact falls into two distinct categories:

- 1. Hard news (about long-term care problems, issues, developments, specific facilities or events, etc.)*
- 2. Soft news (publicity, public relations and recruitment)*

Each of these types of press involvement has very different purposes, risks and impact and they require very different approaches.

This policy is intended to clarify the involvement of ombudsman program volunteers with the press.

I. Hard News Stories

- A. No program volunteer may become involved with the media regarding a hard news story without the express approval of the State Long-Term Care Ombudsman.
1. "Hard news" means a story about any aspect of long-term care involving problems, issues, concerns, trends, regulatory actions, etc., that has policy implications.
 2. Hard news is often a negative event of immediate interest to the reading, listening or viewing public. Hard news stories are designed to provide a spot description of the event as soon after it happens as possible.
- B. Initial approval to engage or respond to the press (in hard news stories) does not constitute an open-ended authorization to work with the press in general, or to be a "free agent" regarding the immediate issue.
1. If authorized to work with the press, a volunteer must keep the State Ombudsman informed of all developments, including secondary and subsequent contacts and any developments that deviate from the understanding that led to the initial approval.
 2. When working with the press, the volunteer is representing the State Office of the Long-Term Care Ombudsman and not themselves. He/she must understand all relevant policy implications. If unsure of agency policy, the volunteer should contact the State Ombudsman for a briefing. More often than not, the press wants to speak to certified volunteers to obtain specific facts and details about immediate situations. The following guidelines should generally be followed:
 - a. Know the facts.
 - b. Make no derogatory or inflammatory statements.
 - c. Avoid personal opinions, guesses or theories (unless the certified volunteer has been authorized by the State Ombudsman to speculate — speculation can be okay if it is labeled as such by the reporter. Even then, people say things that can be printed out of context, giving an unintentional spin to a story). Remember, no interviewee can fully control what is printed. The press can be a strong and very effective form of advocacy, but it can also backfire.

- d. Avoid sweeping statements and generalizations. Keep to the facts as known.
- e. Remember, anything said to the press may be printed unless the reporter is told that comments are "off the record." A request to be off the record must be made prior to the comment (not after).

C. Unauthorized interaction with the media may be grounds for termination.

II. Soft News

- Public service stories are a different matter. They represent soft news. These stories deal with the human interest side of ombudsman work, such as an ombudsman being assigned to a facility, or receiving an award for outstanding accomplishments.
 - Local Recruitment and Screening Committees usually coordinate soft news stories. However, certified volunteers are needed to help and are encouraged in their efforts to publicize the program. It is important to inform members of the community about the Ombudsman Program, its services and capabilities, and especially opportunities for volunteer service. But, even here there are rules.
- A. Program volunteers must keep their appropriate Salem supervisor informed if they intend to access the media for a public interest story. The supervisor will give advice, explain guidelines and help the volunteer get started. The following guidelines must be followed:
1. Recruitment and Screening Committee members must work with the Salem office volunteer recruitment supervisor to identify volunteers who might be potential subjects for feature stories.
 2. The featured volunteer must talk to the volunteer recruitment supervisor or a deputy before meeting with a reporter to review major themes for the interview and to discuss any potential hazards. Sensitive issues might be occurring without the local volunteer's knowledge—no one wants to be surprised by a reporter.
 3. First and foremost, if a volunteer is going to act as a spokesman for a public interest story, he or she should be knowledgeable about the Ombudsman Program. This does not mean that the volunteer will be able to answer every question asked. Volunteers should never be afraid to say "I don't know," followed quickly by, "but I'll find out." Never give an answer

unless the answer is correct. Volunteers who are new to the program should refer the reporter to Salem staff for an explanation of the program.

- B. Feature stories often include photos. If the reporter wants a picture of a program volunteer in the facility, discuss it first with a deputy or the volunteer recruitment supervisor. The volunteer must also have the permission of facility administration before scheduling photo sessions. Residents must willingly give their permission for photos. This means they must demonstrate capacity for informed decision-making (experienced journalists will know how to take photos from the back, etc., for a good composition without revealing resident identities).