

Ombudsman Policies and Procedures Manual

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Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-1

Effective: May 6, 2011

Section 100

Introduction

The Ombudsman Policies and Procedures Manual describes policies and procedures of the local ombudsman entities, known within this manual as the local Long-term Care Ombudsman Program (LTCOP). The manual addresses program rules found in the Texas Administrative Code (TAC), Title 40, Part 1, §85.401. This manual may serve in place of local procedures, or a local LTCOP may develop additional procedures to guide program activities. In the case of local policies and procedures, a program must not develop such policies and procedures in conflict with this manual.

The Office of the State Long-term Care Ombudsman (Office) releases sections of the Ombudsman Policies and Procedures Manual to replace the previous manual. Updates to the new manual will be noted by their revision number and effective date, which can be found under each section title.

In an area agency on aging (AAA) planning and service area, a AAA may directly provide long-term care (LTC) ombudsman services or may subcontract with a nonprofit organization to perform the duties of the local ombudsman entity. The local LTCOP provides services to protect the health, safety, welfare and rights of residents. Such services include investigating and resolving complaints made by or on behalf of residents, providing assistance and information to persons choosing an LTC facility, and promoting a variety of means to ensure resident rights are protected.

Representatives of the Office are granted access to residents and facilities. Representatives are not liable for civil damages or subject to criminal prosecution for performing official duties unless the representative acts in bad faith or with a malicious purpose. Representatives include staff of the Office, certified ombudsmen and ombudsman interns. Because an ombudsman intern is neither certified nor fully trained to investigate complaints, a local LTCOP will limit an intern's duties and an intern will refer complaints to a certified ombudsman within the local LTCOP.

Residents of LTC facilities are the primary clients of the ombudsman program. Other clients include family, friends, facility staff, advocates, clergy, professional health care staff, elected officials and others with an interest in the quality of care and life of residents. Resident rights serve as the foundation for a certified ombudsman's advocacy.

Purpose

This manual establishes the basis of operating a local LTCOP and establishes guidelines with respect to:

- roles and responsibilities (Section 200);
- conflicts of interest (Section 300);

- consent (Section 400);
- access (Section 500);
- consultations and cases (Section 600);
- reporting (Section 700);
- records (Section 800);
- disclosure of confidential information (Section 900);
- interference and retaliation (Section 1000);
- volunteer management (Section 1100); and
- other required documents (Section 1200)

To Whom These Policies and Procedures Apply

These policies and procedures apply to certified ombudsmen (staff and volunteers) and, when specified, ombudsman interns.

Legal Authority

- [Older Americans Act](#) (federal legislation), Title VII, Chapter 2
- [Human Resources Code](#) (state enabling legislation), Title 6, Services for the Elderly, Chapter 101, Texas Department on Aging, Subchapter D. Office of Long-Term Care Ombudsman

Rule

TAC, Title 40, Part 1, Chapter 85, Implementation of the Older Americans Act:

- [§85.401](#) Long-Term Care Ombudsman Program
- [§85.2](#) Definitions

101 Compliance

Revision 11-1; Effective May 6, 2011

Policy

A local LTCOP complies with documents promulgated by the Office. Documents include DADS:

- *Ombudsman Policies and Procedures Manual*
- Program Instructions
- Ombudsman Performance Measures (contract and Legislative Budget Board)
- Ombudsman Certification Training Manual

DADS may de-designate or issue sanctions on a AAA for failure to comply with program requirements.

102 Maintenance of Effort

Revision 09-0; Effective May 1, 2009

A AAA meets adequate expenditures for the local LTCOP according to requirements. If a waiver is needed, a AAA submits a written request to DADS by Sept. 30 of each year for the next federal fiscal year. If a AAA demonstrates adequate justification, DADS may grant the request in writing.

103 Line of Communication

Revision 11-1; Effective May 6, 2011

Each program establishes a line of communication that applies to ombudsman program consultations, grievances, approvals and escalation of complaints. The line of communication is:

1. Certified volunteer ombudsman or ombudsman intern
2. Certified staff ombudsman
3. Managing local ombudsman
4. Area agency on aging director
5. Executive director of sponsoring agency
6. State long-term care ombudsman

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-3

Effective: August 15, 2011

Section 200

Roles and Responsibilities

200 Roles and Responsibilities

Revision 11-3; Effective August 15, 2011

Purpose

This section establishes guidelines for a certified ombudsman's roles and responsibilities, specifically:

- staffing ([Subsection 201](#));
- representation of residents ([Subsection 202](#));
- professionalism ([Subsection 203](#));
- review of laws, regulations and policies ([Subsection 204](#));
- program awareness ([Subsection 205](#));
- community coordination ([Subsection 206](#)); and
- community resource ([Subsection 207](#)).

Policy

A local Long-term Care Ombudsman Program (LTCOP) provides services to address the advocacy needs of residents in nursing homes and assisted living facilities within its service area and to fulfill the roles and responsibilities set forth in rule found in Texas Administrative Code (TAC), Title 40, Part 1, [§85.401](#). A certified ombudsman (CO) abides by the Code of Ethics ([Form 8602](#)).

201 Staffing

Revision 11-1; Effective May 6, 2011

A local LTCOP operates with staff sufficient to achieve program standards and meet performance measures. The Area Agency on Aging (AAA) or subcontracted agency appoints a certified staff ombudsman (CSO) to act as a managing local ombudsman (MLO) who oversees the administration of the local program and is the program's primary contact. Additional certified staff and volunteers are assigned as needed to provide ombudsman services.

To become a CO, the local LTCOP follows the certification process described in rule (TAC §85.401(c)-

(g)) and DADS certification process.

A CSO must periodically attend training provided by the Office of the State Long-term Care Ombudsman (Office). The local LTCOP and the Office train a new MLO and CSO. Part of training includes visiting an experienced MLO from another AAA service area.

201.1 Ombudsman Services

Revision 09-0; Effective May 1, 2009

A local LTCOP ensures residents have regular and timely access to ombudsman services. Based on the number of residents in nursing homes and assisted living facilities in the service area and discussion with the CO, the MLO assigns a CO to a specific facility or facilities. Consistent assignment of a CO is preferred so residents and families know and develop trust with the assigned CO.

201.2 Staff Responsibilities

Revision 11-1; Effective May 6, 2011

Duties of the MLO include both program administration and operation functions. At a minimum, an MLO:

- achieves contract performance measures and Legislative Budget Board performance measures;
- submits required reports to the Office and the Department of Aging and Disability Services (DADS);
- ensures confidentiality of records;
- serves as the primary point of contact for the Office, local community and for residents and other clients;
- oversees individual conflict of interest screening; and
- determines which issues, complaints and materials require State Long-term Care Ombudsman (SLTCO) consultation and approval.

An MLO or CSO:

- ensures the local LTCOP responds to a request for information, consultation and complaint within two business days of receipt. The local LTCOP establishes and maintains an intake process to accept inquiries and initiates responses by a CO or person designated in the MLO's or CSO's absence, such as other agency staff or a certified volunteer ombudsman (CVO);
- oversees the recruitment, training, assignment, supervision and monitoring of volunteers in the service area;
- promotes awareness of long-term care (LTC) ombudsman services;
- develops and implements advocacy approaches to systemic issues; and
- maintains professionalism of the program through cooperative working relationships with advocacy groups, providers and other agencies.

All local LTCOP staff must be certified in order to access LTCOP records and receive and access

confidential information on behalf of the program.

201.3 Volunteers

Revision 11-1; Effective May 6, 2011

Because thousands of residents deserve optimal care and quality of life, a local LTCOP uses volunteers. A volunteer may be an intern, a CO, friendly visitor or administrative support volunteer. A local LTCOP may assign an MLO or CSO to manage program volunteers.

202 Representation of Residents

Revision 11-3; Effective August 15, 2011

Ideally, residents represent themselves. A CO works to empower them with information, education and support. However, some residents ask the local LTCOP to be their representative.

A local LTCOP may represent the interests of a resident before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the resident. A CO may act on behalf of one resident or complainant or for many. If representation will disclose a resident's identity, the resident or legally authorized representative (LAR) must consent to the disclosure.

40 Texas Administrative Code (TAC) [§85.401](#) connects individual advocacy service with responsibility to publicly represent residents' needs and to work for change in laws, regulations and policies. Local history of complaint and cases establishes a basis for seeking changes.

A CO may represent a resident or residents in a fair hearing appeal, public hearing, care plan meeting or advocacy within a facility. In a nursing home discharge fair hearing, a CO may provide input to the hearing officer on whether the facility complied with nursing facility requirements (refer to [§19.502](#), Transfer and Discharge in Medicaid-Certified Facilities, in the *Nursing Facility Requirements (NFR) Licensure and Medicaid Certification Handbook*). In a care plan meeting, a CO reviews whether the facility follows NFR [§19.802](#), Comprehensive Care Plans. When beginning a representation activity, consult with a CSO or the MLO, use resources such as the [Fair and Fraud Hearings Handbook](#) or make referrals to the Texas Legal Services Center (TLSC). More information on TLSC is in Subsection 902.2, Resources for Residents.

A CO serves as an expert on resident rights and promotes other resident-centered activities. In addition, a CO may be responsible for the following:

- Promotes resident participation in activities about resident life, including care plans and community meetings.
- Helps residents interact with other residents, participate in family and group outings and attend other community events.
- Acts as a voice for residents in settings outside a facility.

The AAA does not accept referrals for the local LTCOP to serve as an LAR. A CO must not serve as an LAR of any resident within his or her assigned facility. Being such an LAR creates potential for conflict of interest; refer to [Section 300](#), Conflict of Interest. A CO may be an LAR for persons not within his or

her service assignment and not directly related to his or her role as an ombudsman.

203 Professionalism

Revision 11-3; Effective August 15, 2011

When serving as a CO, ensure both behavior and demeanor in the community display professional communication, conduct, attire and appearance as deemed by the local LTCOP. A strength of the CO is the ability to remove the emotion held by many residents, family and staff from the resolution of the problem.

204 Review of Laws, Regulations and Policies

Revision 11-3; Effective August 15, 2011

The Office shares summaries of national and state issues with local LTCOPs and expects communication to flow to and from the Office and local LTCOPs. Comments on and testimony about systemic issues affecting long-term services and supports will be conveyed to the appropriate entity. A local LTCOP may review and comment on existing and proposed laws, regulations and other government policies and actions that pertain to the rights and well-being of a resident and facilitate the ability of the public to comment on the laws, regulations, policies and actions. In this effort, a CO may work with other advocacy organizations, such as the Texas Silver-Haired Legislature or AARP.

The AAAs and subcontracted agencies may have policies on political activity that affect a CO's role. Bring any perceived conflict of such policies to the attention of AAA leadership and coordinate resolution with the Office.

Be informed about laws and regulations, such as nursing home requirements, assisted living facility standards, Medicaid eligibility and HIPAA in order to locate sections pertinent to an advocacy issue.

- Key federal laws – Social Security Act, [Title XVIII](#), Medicare, and [Title XIX](#), Medicaid; Internal Revenue Service Code; Public Law 104-191, [HIPAA](#)
- Key state laws – Health and Safety Code, [Chapter 242](#), Nursing Homes; and [Chapter 247](#), Assisted Living Facilities
- Key rules – TAC 40, Part 1, [Chapter 19](#), Nursing Facility Requirements for Licensure and Medicaid Certification; and [Chapter 92](#), Licensing Standards for Assisted Living Facilities
- Other – Centers for Medicare and Medicaid Services (CMS) State Operations Manual (SOM), Appendix PP Guidance to Surveyors

If changes to any laws, regulations and government policies affecting LTC would improve the quality of life or care of residents, consider the following:

- Inform lawmakers and policy makers.
- Review and comment on proposed laws and policies.
- Evaluate after implementation.
- Submit recommendations if the actions do not result in expected outcomes.

Inform the Office of local activities made by a CO pertaining to policy or legislation.

205 Program Awareness

Revision 11-1; Effective May 6, 2011

To assure visibility and availability of local LTCOP services, staff and volunteers participate in a variety of activities. These include, but are not limited to the following:

- Distribution of educational materials about the LTCOP and resident rights.
- Health fairs.
- Presentations about the LTCOP and LTC in general.

If a local LTCOP wishes to use the DADS-developed "Texas Long-term Care Ombudsman Protecting Residents Rights" logo and other graphics, contact the Office. Describe the publication's use, audience and purpose, as well as provide a draft and final proof. The Office will review, comment and work toward permission for local use.

205.1 Media Relations

Revision 09-0; Effective May 1, 2009

Keep the Office informed about local media events. A local LTCOP is advised to develop a media packet to inform media of area events. A media packet offers a press release and timeline to facilitate planning and coordination with the media outlet. A packet may be developed in coordination with the Office.

206 Community Coordination

Revision 09-0; Effective May 1, 2009

A local LTCOP maintains professional relationships with staff in various agencies to coordinate efforts on behalf of residents. In settings with professionals, position yourself as an advocate voicing resident wishes. Exceptions occur when a resident is requesting anything that is illegal, fraudulent or dangerous.

Confidentiality laws always apply. Obtain consent before disclosing any confidential information.

206.1 Local Relocation Contractors

Revision 09-0; Effective May 1, 2009

To help residents in nursing homes know their options to live in the community, representatives refer those who express an interest to the local relocation contractor. A local LTCOP is encouraged to participate in regional Community Transition Team meetings coordinated by relocation contractors.

Never make judgments about a resident's capability to relocate. Identify his or her interest and help the resident contact the contractor or get permission for the contractor to call the resident. Facility social services staff may also be a resource for such referrals.

Follow up with the resident to ensure the contractor is responsive and pursuing the resident's request. If

problems occur in the referral or relocation process, initiate complaints with the appropriate staff or agency.

206.2 DFPS Adult Protective Services (APS)

Revision 09-0; Effective May 1, 2009

Refer to the memorandum of understanding between APS and the LTC Ombudsman Program.

Primarily, a CO coordinates with an APS worker when a resident requests a discharge to an unsafe environment or an involuntary discharge is the result of possible financial exploitation.

Encourage communication with APS as a partner. Build relationships with key staff. If problems occur with an APS process, contact the appropriate staff to resolve (for example, supervisor, regional director, state office). Inform and get assistance from the Office as needed.

206.3 DADS Regulatory Services

Revision 11-3; Effective August 15, 2011

Building a relationship with DADS Regulatory Services creates a partnership and establishes a local LTCOP as a resource in the LTC system. A CSO interacts with Regulatory Services for a variety of purposes, including:

- consulting on a case or investigation;
- communicating and coordinating during a Regulatory Services inspection of a facility;
- participating in quarterly meetings between CSO, MLO and Regulatory Services staff;
- reporting concerns of a serious nature, such as a suspected facility closure;
- coordinating during a facility closure, disaster or other emergency; and
- filing a formal complaint through Consumer Rights and Services at 1-800-458-9858.

A CVO coordinates with Regulatory Services in a scope limited to communication and coordination during a Regulatory Services survey or complaint investigation and in coordination during an emergency. Unless accomplished in-person during a Regulatory Services survey or investigation, a CVO consults with or reports to Regulatory Services after coordination with local LTCOP staff.

If problems occur with a Regulatory Services process, contact the appropriate staff to resolve (for example, supervisor, regional director, state office). Inform and get assistance from the Office as needed.

Exchange Information

For maximum coordination, routinely share information. Contact Regulatory Services when you need clarification of a regulatory position or interpretation of the nursing facility requirements or licensing standards for assisted living facilities. First, determine the best person with whom to consult by choosing the person most closely responsible for a Regulatory Services decision, often a surveyor or program manager. Systemic issues may need to begin with or be escalated to a regional director.

Rumor or hearsay is rarely effective to share with Regulatory Services; however, consider the potential impact on resident care when deciding what to share. Attempt to collect facts and corroborate evidence before communicating.

During crisis situations, such as recovery from natural disasters and facility closures, Regulatory Services serves as the lead contact with nursing homes and assisted living facilities. With coordination, a CO assists in the flow of communication and avoids duplication of services. To be prepared, exchange emergency contact information with Regulatory Services on a regular basis.

Special conditions apply to information received by Regulatory Services regarding CMS Special Focus Facilities and enforcement decisions. For additional guidance on these circumstances, refer to [Program Instruction 09-01](#), Notification of Sensitive Regulatory Information.

Quarterly Meetings

Schedule, plan and attend meetings with Regulatory Services on a quarterly basis. As a part of the meeting purpose, explain LTCOP philosophies, approaches, strengths, activities, scope and volunteers. Past negative experiences may affect today's perceptions; help replace any negative perceptions with new in-person interactions and build trust with Regulatory Services by demonstrating professionalism.

In-person attendance is always preferred to build and strengthen relations; however, conference call attendance on occasion is preferable to non-participation. Each local LTCOP in a DADS region should be represented in quarterly meetings.

Regulatory Services staff such as regional directors, program managers, surveyor facility liaisons and enforcement coordinators attend, as well as the CSO and MLO within the DADS region. A CVO is generally not invited to quarterly meetings. The group decides whether to include others (for example, APS and Mental Retardation Authorities), as well as how often to invite these attendees.

See also [Section 1200](#), Program Agreement between the LTC Ombudsman Program and Regulatory Services, and [Program Instruction 09-01](#).

207 Community Resource

Revision 09-0; Effective May 1, 2009

A local LTCOP is an expert on resident rights and a variety of subjects pertaining to LTC. Be prepared to provide resources and training about ombudsman services and other topics in nursing homes and assisted living facilities. A CO may provide community education sessions, such as presentations to community groups, students, churches, civic organizations and others, about the ombudsman program.

Documents for statewide distribution are the responsibility of the Office. For regional public awareness and education, a local LTCOP may create materials such as general brochures and marketing fliers. The Office reviews draft materials to ensure consistency of the Ombudsman Program message.

207.1 Residents and Families

Revision 11-1; Effective May 6, 2011

Provide consultation as an alternative to generating a complaint for investigation. A CO may advise the

resident or family member on how to lodge his or her complaint with the appropriate agency. Consultation ranges from helping interpret policies and regulations to providing information on how to pay for LTC.

Provide information on choosing a nursing home or an assisted living facility to prospective residents, families and friends. Provide a current list of licensed facilities or direct inquiries to online listings. Present information in an objective manner. Include information about alternatives to nursing home care, such as Medicaid waiver programs and the Money Follows the Person process. If asked about ombudsman complaint history, summarize the information and share with the inquirer. Suggest other resources to help select a nursing home, such as:

- National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) at <http://www.theconsumervoice.org/> (see Nursing Homes: Getting Good Care There and fact sheets);
- Compare Nursing Homes at <http://www.medicare.gov/>; and
- DADS Quality Reporting System at <http://facilityquality.dads.state.tx.us/>.

Use and distribute available resident council and family council resources from sources such as Consumer Voice, Texas Advocates for Nursing Home Reform, Internet sources and those the local LTCOP creates. Provide manuals and other council development materials to the Office for review.

Be available and offer to present at resident and family council meetings. When a CO does not feel adequately versed on a topic, refer the request to another CO or community resource. Suggested topics for a CO to present include:

- abuse and neglect;
- care planning;
- individualized care, resident-directed services and culture change;
- resident rights;
- restraints;
- role of the ombudsman; and
- self-advocacy.

207.2 Facilities

Revision 09-0; Effective May 1, 2009

Provide consultation to facility staff when contacted. Keep track of the topics discussed for reporting purposes.

Offer training to facility staff. When a CO does not feel adequately versed on a topic, refer the request to another CO or community resource. When agreeing to train staff, ask management about specific issues to address and consider complaint history when planning the session. Incorporate visual aides and opportunities for audience participation and critical thinking whenever possible. Suggested topics for a CO to present include:

- abuse and neglect;
- individualized care, resident-directed services and culture change;
- resident rights, sometimes focusing on a specific right for further exploration;
- restraints; and
- role of the ombudsman.

207.3 General Public

Revision 11-3; Effective August 15, 2011

Share knowledge accumulated by a local LTCOP, including both hard copy and electronic resources. Topics of interest to the general public include:

- LTC options, waiver programs, basic Medicaid and Medicare eligibility;
- navigating DADS Quality Reporting System (QRS) and Medicare's Compare Nursing Homes websites, and interpreting survey documents;
- summarized history on ombudsman complaints and facility management; and
- local and state LTCOP accomplishments and activities.

Non-confidential information requests such as those described in this subsection must comply with Texas Government Code [§552](#), Public Information.

[File viewing information.](#)

**Texas Department of Aging and Disability Services
Ombudsman Policies and Procedures Manual**

Revision: 11-3

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Section 300

Conflict of Interest

300 Conflict of Interest

Revision 11-3; Effective August 15, 2011

Purpose

This section establishes guidelines to avoid, identify and remedy conflict of interest issues.

Policy

The organizational placement of the local Long-term Care Ombudsman Program (LTCOP) and the people who carry out the duties of the ombudsman program must be free, and remain free, from any conflict of interest.

Procedures

The local LTCOP ensures that a certified ombudsman (CO), an ombudsman intern and a member of the immediate family of the managing local ombudsman (MLO) are not subject to a conflict of interest.

A conflict of interest exists in the local LTCOP when other interests intrude upon, interfere with or threaten to negate the ability of the local LTCOP to advocate without compromise on behalf of residents. Types of conflict of interest include 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 a resident.
- Commitment – Goals or obligations that direct time and/or attention away from the interest of residents.
- Control – Limitations or restrictions that deny the ability to advocate for the interest of residents.

The local LTCOP seeks to avoid actual and potential conflicts of interests. If a conflict is identified, the local LTCOP:

- ends the application process;
- seeks a remedy; or

- requests de-certification.

Screen friendly visitors and administrative support volunteers for any conflict of interest. Complete DADS [Form 8607](#), Conflict of Interest Statement. Consult with the State Long-term Care Ombudsman (SLTCO) when identified.

301 Avoid

Revision 11-1; Effective May 6, 2011

It is best to avoid rather than remedy conflicts. For persons interested in being a CO, including potential staff in the local LTCOP, the local LTCOP screens for any real or potential conflict of interest. For agencies interested in being a subcontracted LTCOP, an area agency on aging (AAA) screens for any conflicts of interest before contracting with another agency.

301.1 Individual Conflicts

Revision 09-0; Effective May 1, 2009

Identify and disclose conflicts of persons seeking to become a CO.

The local LTCOP screens all staff and volunteers seeking certification as a CO to identify any actual or potential conflicts of interest. Upon request by the SLTCO, the local LTCOP submits evidence of screening to the SLTCO.

Any person seeking employment or certification as staff or volunteer discloses to the local LTCOP all information relevant to past employment, memberships or interests that may affect or could reasonably be expected to affect that person's ability to carry out the duties of a CO without conflicting interest.

A CO reviews Form 8602, Code of Ethics, and signs and dates the statement before certification. By signing the Code of Ethics, a CO acknowledges he or she will "support a strict conflict of interest standard that prohibits conflicts such as financial gain, promoting management over residents or serving in a facility where a family member is a resident."

301.2 Involvement in Activities

Revision 09-0; Effective May 1, 2009

An MLO determines whether participation in community groups, professional associations or other activities constitutes a conflict of interest using the following questions:

- Will the local LTCOP financially gain from this activity?
- Will the CO be able to represent and assert the views of long-term care (LTC) residents in this activity?
- Will the ombudsman role in the activity benefit residents?
- How will participating in the activity affect public perception and resident perspective of the LTCOP?
- Will the CO be put in a position of participating in a decision about a resident without the

resident's involvement or permission?

An MLO evaluates responses to these questions and determines if participation by individuals or the program is aligned with the local LTCOP roles and responsibilities. See [Section 200](#), Roles and Responsibilities.

301.3 Organizational Conflicts

Revision 09-0; Effective May 1, 2009

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

- has direct involvement in the licensing or certification of an LTC facility, home health agency or hospice;
- has an ownership or investment interest (represented by equity, debt or other financial relationship) in an LTC facility, home health agency or hospice service;
- has governing board members with ownership, investment or employment interest in LTC facilities;
- provides LTC services, including the provision of personnel for LTC facilities or the operation of programs, which control access to or services for LTC facilities; and
- operates programs with responsibilities conflicting with local LTCOP responsibilities.

Inform the SLTCO of organizational conflicts when identified. Attempts to remedy will be coordinated among the local LTCOP, Area Agency on Aging (AAA), the Department of Aging and Disability Services (DADS) Access and Intake, and the SLTCO.

Refer to Texas Administrative Code, Title 40, Part 1, [§85.201](#)(b)(3)(A) for AAA rules on conflict of interest.

302 Identify

Revision 09-0; Effective May 1, 2009

Initially and routinely ensure that a CO, an ombudsman intern or a member of the immediate family of the MLO is not subject to a conflict of interest. A CO immediately informs the MLO when any conflict of interest occurs or might occur.

Conflicts include, but are not limited to:

- direct involvement in the licensing or certification of an LTC facility, home health agency or hospice service;
- ownership or investment interest (represented by equity, debt or other financial relationship) in an LTC facility, home health agency or hospice service;
- participation in the management of an LTC facility, home health agency or hospice service;
- employment within the previous year by an LTC facility;

- acceptance of gifts, gratuities or other consideration from an LTC facility, resident, family or anyone other than the local LTCOP for performing ombudsman services. **Note:** Sample portions of food tested as part of an investigation is not a conflict;
- receipt or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility, home health agency or hospice service;
- serving residents of an LTC facility in which a relative resides or works;
- provision of services with conflicting responsibilities while serving as a CO, such as working for Adult Protective Services or serving as a guardian, agent under a power of attorney or other type of surrogate-decision maker for a resident; and
- participation in activities that negatively impact a CO's ability to serve residents or are likely to create a perception that the primary interest of the CO is other than as a resident advocate.

303 Remedy

Revision 09-0; Effective May 1, 2009

When an actual or potential conflict of interest is identified, an MLO notifies the SLTCO. The MLO provides information about the situation to the SLTCO.

The SLTCO determines whether appropriate actions may be taken to remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict neither interferes with any duties of the local LTCOP nor is likely to alter the perception of the LTCOP as an independent advocate for residents.

303.1 Remediating Individual Conflicts

Revision 11-1; Effective May 6, 2011

As individual conflicts are identified, take the following steps to remedy the situation:

Develop a written plan:

- before the person is hired for a certified staff ombudsman position;
- before the person acts on behalf of the local LTCOP as a certified volunteer ombudsman or an ombudsman intern; or
- within 30 calendar days of notification to the SLTCO for an active CO.

Identify the conflict and provide assurances that minimize to the greatest extent possible the negative impact on the local LTCOP. For example, prohibit the CO from serving facility residents for whom a conflict exists and arrange for another CO to serve. As appropriate, consider a time-limited arrangement.

Agree, sign and date the plan. Obtain signatures of the:

- CO or applicant with the conflict of interest,
- MLO, and

- SLTCO.

Retain a copy of the signed plan permanently with the CO file. The SLTCO retains the original with the person's certification file.

303.2 Remediating Organizational Conflicts

Revision 11-1; Effective May 6, 2011

As individual conflicts are identified, take the following steps to remedy the situation:

Develop a written plan within 30 calendar days of identifying the conflict and submit the plan to the SLTCO.

Identify the conflict in the plan and provide assurances that minimize to the greatest extent possible the negative impact on the local LTCOP. Examples of assurances may include:

- The local LTCOP investigates complaints in an unbiased manner and independently determines actions to be taken in their resolution.
- No agency employee or governing board member with a conflict of interest is involved with or influences any decision to hire or terminate the employment of a CSO or certification of a CVO.
- Governing board members of the AAA or subcontracted agency who have a conflict of interest must:
 - disclose the conflict to the governing board and SLTCO;
 - have no direct involvement with LTC ombudsman activities; and
 - abstain from voting on issues related to the operation of the local LTCOP.
- The AAA policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the CO can fulfill his or her duties without interference.
- A memorandum of understanding (MOU) exists between the local LTCOP and another program that provides services with conflicting responsibilities. Such an MOU adequately sets forth the roles, responsibilities and working relationships of the respective programs.

Agree on the plan and have the agency in which the conflict exists and the SLTCO sign. If either party cannot agree to the plan, the conflict has not been sufficiently remedied.

304 Failure to Identify or Remedy

Revision 09-0; Effective May 1, 2009

Failure of a CO to identify and report to the SLTCO an individual conflict of interest may result in withdrawal of certification.

Failure to identify and report to the SLTCO an organizational conflict of interest may result in de-designation of the local LTCOP.

Failure to remedy an individual or organizational conflict of interest may result in de-designation of the local LTCOP.

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-2

Effective: July 28, 2011

Section 400

Consent

400 Consent

Revision 11-2; Effective July 28, 2011

Purpose

This section provides guidance to certified ombudsmen and ombudsman interns of the requirement to obtain consent from residents and other complainants for ombudsman work and to maintain confidentiality.

Policy

A local LTCOP ensures certified ombudsmen and ombudsman interns get consent from residents and complainants, when applicable. Documented consent may be oral or written.

Procedures

Consent is required from a resident to:

- work on a resident's behalf;
- reveal a resident's name or identifying characteristics; or
- access a resident's record or other confidential information.

For all situations in which consent is obtained, permission applies to the immediate case or request and does not extend to future work by a representative. A resident may withdraw consent at any time, halting a representative's actions.

Consent is required from a complainant who is anyone other than a resident to:

- work on a resident's behalf in response to a complaint request;
- reveal a complainant's name or identity; or
- access a resident's record or other confidential information; and
- unless a resident is unable to consent, a certified ombudsman (CO) also seeks consent from the resident to which the complaint or request applies.

Documentation of consent is required. Use one of the following methods.

- Written – Use Department of Aging and Disability Services (DADS) [Form 8624-W](#), Consent to Release Records to the Certified Ombudsman. Complete all sections with appropriate signatures and dates.
- Oral – Document consent on:
 - DADS [Form 8624-O](#), Consent to Release Records to the Certified Ombudsman;
 - DADS [Form 8619](#), Long-Term Care Ombudsman Case Record;
 - representative's case notes; or
 - monthly DADS [Form 8620](#), Long-Term Care Ombudsman Activity Report.

Written consent is advisable under certain conditions, but is not always practical. For most cases in which consent is obtained to work on a resident's behalf, documented oral consent is sufficient documentation. When a resident does not have capacity to consent, document using the phrase, "Resident is unable to consent."

Interns

Ombudsmen interns encounter residents making requests for care and services and voicing grievances. An ombudsman intern must seek consent from the resident before taking action, except when an immediate need is observed. In an immediate need situation, request help from facility staff. Generally, refer requests for care and services to facility staff. Immediately refer all grievances to the CO assigned to the facility.

Note: The remainder of Section 400 applies only to a certified ombudsman.

A resident's capacity and any assignment of a legally authorized representative (LAR) are relevant to obtaining consent and require different strategies by a CO.

Resident

Unless adjudicated incapacitated, a resident speaks for him- or herself. When a resident is unable to consent, a CO seeks consent from an LAR, if applicable. If the resident is unable to consent and there is no LAR, a CO first consults with the supervisor (managing local ombudsman (MLO) or certified staff ombudsman (CSO)), and then:

- seeks information about a resident's previous expressed wishes;
- assumes, in the absence of resident direction, the resident wishes her health, safety and welfare to be protected; and
- takes action to protect those known or assumed wishes.

Guardian (of the Person)

Confirm with facility staff or the guardian if there are current letters of guardianship of the person. Review the documents to determine scope of the guardian's authority. Work with the guardian, who speaks for the resident and may consent on the resident's (incapacitated person's) behalf, per the court

orders.

If a complainant is someone other than the guardian and the guardian refuses consent, consider if the guardian is acting in the resident's best interest. If the CO believes the guardian is not acting in an incapacitated person's best interests, the CO must obtain approval from the State Long-Term Care Ombudsman (SLTCO) to access the record or take other action on behalf of the resident.

A CO may work with the guardian of the estate regarding financial issues.

Power of Attorney

A **medical power of attorney** (MPOA) assigns an agent to exercise authority only if the resident's attending physician certifies in writing that the resident is incapacitated. The resident may revoke the MPOA. Revocation is made by oral or written notification to the agent, the provider or by any other act evidencing intent to revoke the MPOA. If a resident requests assistance or files a complaint, consider the resident as the client. Coordination or consultation with the MPOA is not required.

A **durable power of attorney** (DPOA) takes effect in accordance with the terms of the DPOA document. Depending on how the document is written, the agent may exercise authority when the resident is able to make decisions, when the resident is incapacitated or both. Determining the incapacity of the resident may be established in the language of the DPOA, but not always. Revocation of a DPOA is not addressed in law and if the DPOA document does not address revocation, the CO assumes the resident can revoke either orally or in writing as with an MPOA. Coordination or consultation with the DPOA is not required.

401 Consent to Work on a Resident or Complainant's Behalf

Revision 11-2; Effective July 28, 2011

A resident or complainant must provide consent for a CO to work on the resident's behalf.

If the complainant is not a resident, a CO seeks agreement from the resident to work on the issue. If the resident declines consent, the resident's wishes supersede the complainant's and a CO may consider the following resolution strategies:

- Advise non-resident complainant of alternate resolution strategies. Options may include providing consultation to the complainant for self-advocacy with facility management or having the complainant work through a family council. If the complainant's concern involves a regulatory violation, provide information on how to file a complaint with DADS Consumer Rights and Services.
- A CO may determine the concern impacts other residents and may file a complaint with facility management or DADS Consumer Rights and Services with the CO as the complainant and no identification of specific residents. If a CO plans to file a complaint contrary to the original resident's wishes, notify the resident of this decision and inform the resident that his or her identity will not be revealed.

402 Consent to Reveal Identity

Revision 10-2; Effective September 24, 2010

For each case in which identity cannot be protected, the complainant must provide consent to disclose or the CO clearly identifies himself as the complainant. All complainants, both residents and others, are afforded protection of identity in ombudsman laws and rules; therefore, a CO is required to protect the identity of non-resident complainants the same as residents.

A facility staff person may speculate about the identity of a resident or complainant. Without consent of the resident or complainant, a CO must not confirm such speculation. Instead, redirect the conversation to information that is relevant and not confidential. If necessary, inform facility staff of the Long-Term Care Ombudsman Program's confidentiality law or inform staff that the question arises from the CO, rather than a resident or other complainant.

403 Consent to Access Confidential Information

Revision 11-2; Effective July 28, 2011

Accessing confidential information is a sensitive issue, yet sometimes necessary in a CO's duties. Access to records and the information within a record is essentially the same circumstance. Facility staff members have an obligation to protect each resident's record from inappropriate access. In anticipation of any questions of your authority, be prepared with applicable law and rules. If facility staff members deny access, consult with the MLO or CSO. Consultation with the SLTCO Office is also available for CSO and MLO. See [Subsection 504](#), Resident Records, for additional guidance.

Related Resource:

Statutory and Rule References of the Texas LTC Ombudsman Program document

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-3

Effective: August 15, 2011

Section 500

Access

500 Access

Revision 09-1; Effective September 14, 2009

Purpose

This section provides guidance for a certified ombudsman (CO) to access facilities, information, residents and records. It also provides guidance to an ombudsman intern to access facilities and residents.

Policy

Access by the Long-Term Care Ombudsman Program (LTCOP) accomplishes three vital functions: (1) investigate and resolve complaints, (2) represent the interests of a resident, and (3) ensure the protection of resident rights in long-term care (LTC) facilities. Access to facilities, residents, confidential information, certain facility records and resident records is described in rules for the LTCOP ([TAC §85.401](#)), nursing facility ([TAC §19.413](#)) and assisted living facility ([TAC §92.801](#)).

Procedures

501 Facilities

Revision 09-1; Effective September 14, 2009

Certified ombudsmen and interns make unannounced visits to nursing homes and assisted living facilities. Exceptions include scheduled meetings with management, care plan meetings and family or resident council meetings. While a CO primarily visits during office hours, vary times to include different weekdays and hours, as well as occasional evenings and weekends.

Facilities often have a sign-in procedure for visitors and professionals. If facility policy requires all visitors to sign in, sign in as a courtesy. If the policy does not apply to all visitors, it is not necessary to sign in.

A CO respects check-in procedures that do not impede ombudsman access. Procedures may include notifying staff of the CO's presence and exiting with the administrator. Facility policies should not

violate a resident's right to privacy and access. If a CO has evidence that a policy restricts CO access, notify the local [LTCOP](#) for resolution. The Office of the State Long-Term Care Ombudsman (Office) is also available for assistance.

501.1 Visitation Times

Revision 09-1; Effective September 14, 2009

Facility visitation policies should allow unrestricted access. A CO typically visits during hours when residents are awake; however, a specific complaint may necessitate visitation at other times. If a complaint relates to an unusual time such as midnight, consult with local LTCOP staff before entering the facility at that time.

501.2 Restricted Areas

Revision 09-1; Effective September 14, 2009

A [CO](#) accesses areas where residents live and receive services. In general, areas restricted to residents are restricted to a CO, such as kitchens, medicine storage closets, and electrical and utility rooms. If invited to view a restricted area under facility staff supervision or depending upon a specific complaint or inquiry, limited access is appropriate.

502 Facility Information

Revision 09-1; Effective September 14, 2009

Facilities develop and maintain policies, procedures and forms such as admission agreements, smoking policy and staffing records. These documents are available to the public and thus available to a [CO](#).

502.1 Policies and Procedures

Revision 09-1; Effective September 14, 2009

State and federal laws require long-term care facilities to have policies and procedures, which outline general and emergency operations. Review of facility policies may be relevant, especially if staff refer to policy as the reason for a decision or action. Examples of policies include room assignment, visitation and resident sign-out procedure. If any policy appears to violate resident rights, other rules or common sense, consult with facility staff and the [MLO](#).

The admission agreement describes the services provided by the facility and the related charges. When first assigned to a facility and periodically thereafter, review the admission packet the facility gives to newly admitted residents. If any requirement appears to violate resident rights, inform facility staff and the MLO. Admission agreements are especially important in assisted living facilities and licensed-only nursing homes. They serve as contracts and describe conditions for a resident's stay, discharge procedures, costs, refunds, services and other requirements.

502.2 Records Available from Other Sources

Revision 09-1; Effective September 14, 2009

Contact the Office or submit a Public Information Act request to access Department of Aging and

Disability Services (DADS) records. Resources include Licensing (new applications and change of ownership applications), Regulatory Services/Provider Services (trust fund information), Medicaid (cost reports) and certain court records.

Access DADS and Health and Human Services websites for reports and statistics:

Regulatory Services:

- Reports and Statistics www.dads.state.tx.us/providers/reports/index.html
- Closures www.dads.state.tx.us/providers/closures/index.html
- Licensing www.dads.state.tx.us/providers/NF/howto.html#nflicense
- Nurse Aide Registry www.dads.state.tx.us/providers/NF/credentialing/nar/index.html

Health and Human Services Commission:

- Medicaid cost reports www.hhsc.state.tx.us/default.htm
- Rate analysis www.hhsc.state.tx.us/medicaid/programs/rad/LtcSvs.html

DADS court-appointed trustee program: www.dads.state.tx.us/providers/trustee/index.html

503 Residents

Revision 09-1; Effective September 14, 2009

A resident is the [LTCOP's](#) primary client. Follow a resident's direction unless a court has adjudicated the resident to be incapacitated. Even in those situations, a resident often expresses wishes and needs upon which a CO can act. A CO may follow directions of a resident's legally authorized representative (LAR).

503.1 [Legally Authorized Representatives \(LAR\)](#)

Revision 09-1; Effective September 14, 2009

LARs may include the guardian of an adult, a parent or a managing conservator of a minor or an agent authorized under a medical power of attorney (MPOA) or durable power of attorney (DPOA). An LAR must have current documentation that complies with state law. By reviewing documentation, including letters of guardianship or POA, a CO determines the scope of the LAR's authority. A resident, regardless of capacity, may revoke an MPOA at any time, ending the agent's authority. Revocation of a DPOA will either be addressed in the document or follow the same process as revocation of a MPOA.

The term "responsible party" is commonly used in long-term care facilities. However, this term has no legal authority associated with it. The responsible party is usually a relative, but may be guardian of the person, MPOA or DPOA. Notation of the responsible party may be in writing or given orally. Exercise caution when a facility extends decision-making power to the responsible party. If the resident can communicate, seek the resident's input.

503.2 Communication

Revision 09-1; Effective September 14, 2009

Communication with residents during facility visits re-enforces the LTCOP's focus on residents and ensures each resident has access to an advocate.

Always knock before entering a resident's room. This action models respect of privacy to residents and facility staff. Residents determine the location to visit with a [CO](#). If a CO believes more privacy is needed, suggest meeting in a room with the door closed.

A CO or intern's access to a resident should not interfere with therapies, wound care, bathing, incontinent care or other services. If facility staff offer care during a visit with a resident, excuse yourself and return later.

503.3 Contact Isolation and Other Issues

Revision 09-1; Effective September 14, 2009

When a resident's health condition limits accessibility, contact isolation should clearly be marked on a resident's door. Consult with facility staff regarding safeguards and precautions, when necessary, to facilitate communication with an isolated resident. Wash hands regularly and use antibacterial lotions to limit the spread of infectious disease and to protect your own health.

When ill, do not visit the facility.

Some residents have difficulty communicating orally. Try different techniques to communicate based on the resident's needs. Work with the facility social worker to encourage use of assistive communication devices for residents who may benefit.

503.4 Resident and Family Groups

Revision 11-3; Effective August 15, 2011

A representative attends a resident or family council meeting by invitation only. "Standing" invitations are permissible; however, if a CO attends every council meeting, the council might not act independently.

When reporting attendance at a resident or family council meeting, count as one resident or family contact unless additional contacts are made outside the scheduled meeting. If an ombudsman provides a formal presentation to a council, it may be reported as a community education session.

504 Resident Records

Revision 09-1; Effective September 14, 2009

Types of resident records include medical (clinical), financial, incident and other records such as:

- Bathing schedules
- Care notes
- Care plans

- Dietary orders
- Grievance reports
- Medication administration records (MAR)
- Physician orders

To investigate a complaint or respond to a resident's expressed interest, take the following steps:

1. Gather information from the resident.
2. If the resident was not the original complainant, inform the resident of the concern.
3. Determine if the LTCOP is the correct resource.
4. Get the resident's direction to investigate or to refer to another agency.
5. Determine how to proceed.

In some circumstances, a record review is the most appropriate action. A local [LTCOP](#) uses a line of communication for consultation and guidance to a [CO](#) before accessing a record. Ombudsman interns do not have access to a resident's record or its contents. Refer record requests to the MLO.

504.1 Assess Necessity of a Record Review

Revision 09-1; Effective September 14, 2009

A resident or legal representative has the right to access the resident's records, and the facility must comply with nursing facility requirements §19.403(f). All other individuals must get the resident's consent first.

Resident or Guardian Requested

Help a resident access records and support this resident right. Take the following steps:

1. Document resident consent.
2. Encourage resident participation.
3. Ensure privacy.
4. Report as "request for assistance".

Family or Power of Attorney Requested

Seek resident consent before proceeding. If the resident consents, follow items 1-4 above and assist in accessing the appropriate resident record. Consult a supervisor for instances in which the resident is unable to consent.

Office Requested

Assist the Office to obtain a resident or facility record for review usually associated with a government

or consumer inquiry. The Office submits a written request. The local [LTCOP](#), acting CO and the Office coordinate actions.

Certified Ombudsman Requested

Consider the following questions before consulting with your supervisor (MLO or certified staff ombudsman (CSO)).

1. What is the issue or concern?
2. What actions has the resident or CO already taken to resolve the situation?
3. Does the resident know he or she has the right to review personal records?
4. Does the resident have an LAR?
5. What factors make review of a record necessary?
6. What specifically are you looking for (for example, a pattern, omission or verification of fact)?
7. What alternative sources could provide the same information?
8. Does the resident understand the request for records will identify him or her?

Based on the answers, a CO may need to access a resident record. Follow the local LTCOP line of communication to seek agreement that a record review is appropriate.

If the local LTCOP or Office agrees, proceed; if parties do not agree, stop. Document the consultation discussion.

504.2 Obtain Consent

Revision 09-1; Effective September 14, 2009

In all cases, DADS requires documentation of consent. Obtain the resident's consent to access a confidential record. If the resident declines, stop the process. Other situations may include:

- If the complainant is not the resident, seek resident consent before proceeding.
- If the resident has an [LAR](#), get the LAR's consent if he or she has authority to consent.

When a resident is unable to consent and the requestor is the:

- certified volunteer ombudsman, he or she consults with the supervisor; then the supervisor consults with the Office.
- MLO or CSO, he or she consults with the Office.

504.3 Request, Review and Use of a Record

Revision 09-1; Effective September 14, 2009

After the resident grants consent to access records, request only the records necessary to meet the requestor's needs. Review pertinent sections in the records and use the findings appropriately.

Request a record at the nurse's station or administrative office. Present documentation of written or oral consent to appropriate facility staff, if requested. If the resident provided oral consent, facility staff may choose to confirm the request with the resident.

Records that a facility is not required to provide a CO include:

- personnel;
- facility budget, accounting; and
- quality assurance committee documentation.

To review a record, find a private location. Review only records pertinent to the concern or inquiry. If possible, involve the resident in the review. Take notes as needed. These notes become a record of the [LTCOP](#).

Inform the resident, or [LAR](#) if appropriate, of findings on an ongoing basis. Present information to facility staff only per resident wishes.

504.4 Documentation and Photocopying

Revision 09-1; Effective September 14, 2009

Document consent as either:

- Written – use DADS [Form 8624-W](#), Consent to Release Records to the Certified Ombudsman; complete all sections with appropriate signatures and dates.
- Oral – use DADS [Form 8624-O](#), Consent to Release Records to the Certified Ombudsman, or in case notes.

When a CO closes a case, transfer temporary notes to the appropriate format and submit documentation to the local [LTCOP](#), who maintains documentation according to retention procedures.

Occasionally, a CO photocopies items to use in formal hearings or care plan meetings and to collect information regarding a resident. A facility is allowed to charge for copies at a cost not to exceed the community standard. For a description of “community standard,” see Centers for Medicare and Medicaid Services’ State Operations Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities, [F153](#) tag.

504.5 Emergency Record Review

Revision 09-1; Effective September 14, 2009

When a facility is immediately closing or responding to a disaster, a CO may access resident records to support closure activities or disaster response. Consent from individual residents is required to access records; however, once the Office knows of the emergency, the Office waives consultation on each case.

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-2

Effective: July 28, 2011

Section 600

Consultations and Cases

600 Consultations and Cases

Revision 11-2; Effective July 28, 2011

Purpose

This section establishes guidelines for a certified ombudsman's response to requests for assistance, consultations and ombudsman casework.

Policy

A certified ombudsman (CO) responds to requests for information and consultation and to complaints. A local long-term care ombudsman program (LTCOP) manages cases identified by a CO or received from residents or other complainants. Working a case begins at intake of one or more complaints and closes after follow-up and a final disposition is determined. A CO works objectively to resolve complaints in a case to the satisfaction of the resident or complainant.

Procedures

601 Responding to Requests for Assistance (Consultation)

Revision 09-1; Effective September 14, 2009

The public views the local [LTCOP](#) as a reliable resource for information about long-term care services, benefits and resident rights. In response to a request for information or consultation, a [CO](#):

- explains the role of the ombudsman to new inquirers or to individuals requesting assistance beyond the scope of ombudsman services;
- provides objective information on choosing a nursing home or assisted living facility and paying for care (see [Subsection 207.1](#), Residents and Families);
- provides factual information such as resource lists, laws and regulations, survey protocols or provider letters to answer questions regarding facilities;
- promotes resident rights, individual choice and resident-centered care;
- offers assistance for the current situation as well as future ones; and/or
- gives referral information on other services and agencies.

If a request evolves into a complaint, open a case.

602 Opening a Case: Intake and Response

Revision 09-1; Effective September 14, 2009

Identify, investigate and resolve complaints. Working with one complainant creates a case with one or more complaints. A complaint is a concern received or identified by the ombudsman for investigation on behalf of one or more residents. A CO does the following:

- Receives and investigates all complaints within our scope;
- Verifies some complaints; and
- Works to resolve complaints whether verified or not.

602.1 Complaint Intake

Revision 11-2; Effective July 28, 2011

A local LTCOP receives complaints in writing, including e-mail, in person and by phone, either toll-free or collect calls. A CO identifies a complaint when circumstances may adversely affect a resident's health, safety, welfare or rights.

As a [CO](#) receives or gathers information, consider the following:

- The type of complaint as presented by the resident or complainant or identified by the CO;
- Whether the complaint is appropriate for CO activity; examples of inappropriate complaints include those which:
 - Do not directly impact a resident of a nursing home or assisted living facility;
 - Are outside the scope of the LTCOP authority or facility setting; or
 - Would place the local LTCOP in an actual or potential conflict of interest with a resident's interest;
- What attempts, if any, have been made to resolve the complaint; and
- What outcome the resident or complainant seeks.

A CO may seek complaint resolution in which the rights of one resident and rights of another resident conflict.

Discuss the following with the resident or complainant:

- Explanation that the resident's wishes guide a CO's actions;
- Confidentiality policy of the LTCOP and anonymity, if requested;
- Option to remain anonymous, if requested;
- Alternatives for handling the complaint;
- Self-advocacy by the resident or complainant, with CO help if needed; and

- Referral to another agency if the complaint is outside the authority of the [LTCOP](#);

When a complaint relates to a regulatory violation, inform the resident and complainant of the right to file a complaint to the DADS Consumer Rights and Services by telephone at 800-458-9858 or by e-mail to CRSComplaints@dads.state.tx.us. Explain that some complaints are within the scope of both ombudsman and regulatory authority; however, program responses differ. Also, inform the resident and complainant that a CO provides information to surveyors before standard surveys and seeks resident or complainant consent to share complaint information with surveyors. With consent, a CO provides specific information to surveyors.

602.2 Source of Complaint

Revision 09-1; Effective September 14, 2009

Residents, families and friends of residents, facility staff and other persons file complaints. Individuals may file complaints anonymously. If a [CO](#) can communicate directly with the anonymous complainant, explain how anonymity may limit the CO's ability to investigate and resolve the complaint.

A CO identifies an issue and files a complaint when:

- he or she 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.

602.3 Timeliness of Responses

Revision 09-1; Effective September 14, 2009

The local LTCOP ensures access to ombudsman services and timely response to requests and complaints by providing office coverage and visiting facilities. Office coverage may include a CO or designated person providing office-based telephone coverage, frequent checks of voicemail or use of mobile devices. A certified volunteer ombudsman (CVO) may provide office coverage.

Initiate a response to a complaint within two business days or sooner when the circumstances appear urgent. A case with the resident as the complainant takes priority over other cases. Initiation includes contact with the resident or complainant and other sources of investigative information; it does not require a facility visit within two business days. Complaints initiated by a CO are assumed to be initiated immediately while the CO is on-site in a facility. There is no required period for final disposition of a case.

The local [LTCOP](#) does not serve as an emergency responder. Refer emergencies to 9-1-1 for immediate response and allegations of abuse, neglect or exploitation to DADS Consumer Rights and Services at 1-800-458-9858 if the alleged perpetrator is facility staff or to Adult Protective Services at 1-800-252-5400 for all others.

602.4 Resident Focus

Revision 11-2; Effective July 28, 2011

Regardless of the source of a complaint, the resident is the CO's client. Personally discuss the complaint with the resident who is able to participate to:

- determine the resident's perception of the complaint;
- determine the resident's wishes with respect to investigation and resolution;
- advise the resident of his or her rights; and
- work with the resident to develop an approach.

Before working a case, obtain consent to work on the resident's behalf. If, at any point, the resident wants the CO to take no further action on a complaint involving the resident, stop and close the case. Determine whether the complaint is potentially a concern for other residents. If yes, open a new case with the CO as complainant.

A CO encounters situations that do not require resident consent.

- **Resident is unable to provide or refuse consent.**

Advocate for a resident's wishes to the extent the resident can express them, even if the resident has limited decision-making capacity. When a resident is unable to provide or refuse consent to work on a complaint directly involving the resident, a CO:

- seeks evidence to indicate what the resident would have desired and works to accomplish that desire, such as advance directives; and
- otherwise assumes the resident wishes to have his or her health, safety, welfare and rights protected.

- **Resident no longer resides at facility or is deceased.**

If a former resident who is the subject of a complaint no longer resides at the facility or is deceased, close any case related to that resident. Determine whether any unresolved complaint is potentially a concern for other residents:

- If yes, open a case and work to resolve it.
- If no, explain to the complainant the reasons for not opening a case and suggest other resources.

- **The complaint affects several residents.**

Concerns and non-compliance with regulations may be observed on visits. Situations affecting more than one resident include housekeeping, odors, pests, life and safety code violations and family council issues. Since these observations could affect two or more residents, a CO does not need to obtain residents' consent to take action. When individuals other than residents complain about general issues affecting several residents, work the complaint without obtaining residents' consent.

When immediate action must be taken in situations such as discharge or threat to health and safety, a CO acts even if it is not possible to consult with the resident first. As soon as possible, inform the resident of action taken and follow the resident's wishes for the remainder of the process.

603 Investigative Process

Revision 09-1; Effective September 14, 2009

Investigate to determine the facts. Gather information and evidence to understand what to address and how to resolve the issue. Use laws and regulations as they apply, but pursue investigation per the resident's wishes even without a specific law or regulation.

For purposes of complaint investigation, make unannounced visits to facilities.

Seek information that includes the following:

- What happened or is happening?
- When did it happen and is it ongoing?
- Where did it happen?
- Who was involved?
- What has been the effect on resident(s)?
- What is the reason for the situation or circumstances?
- What, if anything, has the facility or others done in response?

A CO verifies a complaint by determining after work, interviews, observations, consultations and/or record inspections that circumstances described in the complaint exist or are generally accurate.

To attempt to verify a complaint, take one or more of the following steps:

- Research relevant laws, rules, regulations and policies.
- Interview the resident or complainant.
- Interview staff, administration, other residents and families.
- Observe the environment. Do not search a resident's body for evidence. If a resident reveals evidence on a part of the body that would normally be clothed, document the circumstances surrounding the resident's choice to reveal such evidence.
- Identify relevant agencies and interview staff.
- Consult with the Office.
- Examine relevant records.
- Refer the complaint to a more appropriate agency for investigation. Suspend CO investigation if continuation could hinder investigation by the other agency.

Resident perception is a sufficient basis upon which a CO verifies a complaint of a subjective nature. For example, if a resident complains that staff is not acting with respect toward that resident, the CO does not need to independently observe staff acting disrespectfully. However, seek objective verification of the complaint whenever possible.

604 Working Toward Resolution

Revision 11-2; Effective July 28, 2011

Attempt to resolve complaints to the satisfaction of the resident or complainant. Where a resident is unable to communicate his or her wishes, develop an approach with the resident's legally authorized

representative (LAR) or the complainant, if consistent with the rights and known or assumed wishes of the resident. See [Subsection 602.4](#), Resident Focus.

Develop an approach by considering the following:

- Scope of the problem and number of residents impacted;
- Facility history with respect to resolution of other complaints;
- Key staff to assist with the resolution;
- Likelihood of retaliation against the resident or complainant; and
- Available referral resources.

Take action to resolve a complaint through one or more of the following actions:

- Encourage the resident to advocate for him- or herself.
- Suggest and participate in a care plan or service plan meeting.
- Negotiate on behalf of, or along with, the resident or complainant to develop a resolution.
- Act as an impartial referee between parties of equal status, such as between residents or between family members, to help the parties develop an agreement.
- Coordinate with or refer to other agencies.
- File an appeal for an administrative hearing when applicable, such as a discharge fair hearing.

Explain actions taken to the resident or complainant. Attempt to resolve the complaint directly, unless the CO and resident or complainant determines another strategy would be more advantageous to the resident.

When a complaint is not verified, explain the reasons to the resident or complainant and determine what can be accomplished to resolve the complaint. Explain alternatives such as monitoring the issue during future visits to the facility.

605 Referral

Revision 09-1; Effective September 14, 2009

Refer a complaint to another agency when the resident or complainant gives permission and any of the following applies:

- Another agency's resources may benefit the resident.
- The action to be taken is outside the scope and authority of ombudsman services.
- The CO needs additional assistance to achieve complaint resolution.
- The resident requests the referral.
- A regulatory agency or law enforcement has authority to act.

After referring a complaint, make every effort to maintain the security and confidentiality related to the

complaint, so that the agency or agencies receiving the referral do not share the information beyond their agency.

Refer a resident or complainant to other agencies with jurisdiction or expertise to resolve a complaint.

Legal services

Support direct contact with a legal entity for consultation on legal issues related to a complaint. Provide contact information for agencies such as Texas Legal Services Center or local legal aid.

Regulatory agencies

Encourage direct contact with a regulatory agency to file a complaint. Offer information and assistance in making contact or filing a complaint.

If a regulatory agency invites a [CO](#) to assist or provide information regarding an investigation, participation is appropriate when the CO:

- has consent of the resident or complainant; and
- acts as a resident advocate, not a regulator.

606 Complaint and Disposition

Revision 11-2; Effective July 28, 2011

Determine the status of a complaint when any of the following occur:

- The complaint is resolved to the resident's satisfaction. If the resident cannot communicate satisfaction, seek resolution to the satisfaction with the resident's [LAR](#) or other complainant, if consistent with the rights and any known interests of the resident.
- The CO determines, after investigation, the complaint was not made in good faith.
- Further activity by the CO is unlikely to produce satisfaction for the resident or complainant.
- The complaint is outside the scope and authority of ombudsman services.
- The CO anticipates no further response from the agency to which a referral was made.
- The resident or complainant requests the CO to cease activity.

Follow up to determine if the resident or complainant is satisfied or whether further action is required. If the resident left the facility, attempt to follow up with the resident in his or her new home before closing the case. If necessary, keep the case open and continue to work toward complaint resolution. There can be only one disposition for each complaint.

607 Closing a Case

Revision 09-1; Effective September 14, 2009

When follow-up indicates no further action on a complaint is needed and a disposition is determined,

close that complaint. When all complaints related to the case are closed, close the case.

608 Case Documentation

Revision 11-2; Effective July 28, 2011

From intake to case closure, documentation helps a CO remember details and supports data submitted in required reports. Document the initial description of the problem in the intake summary of OmbudsManager; document other details as journal entries. Refer to [Section 802.3](#), Ombudsman Case Records.

Documentation helps a CO as follows:

- Provides a record of what was done and learned;
- Tracks progress of a case and improves reliability of information;
- Helps organize thoughts;
- Makes it easier for another CO to help or continue work on a case; and
- Helps identify systemic problems in a facility and tracks changes.

Document only the relevant details. Information in Subsections 602-608 guides decision-making and development of an ombudsman approach. Documentation is not required to demonstrate compliance with each subsection.

When writing case notes, consider the following:

- Record events in chronological order by date and approximate time.
- Use quotes when useful, especially to capture the speaker's attitude, opinions or observations.
- Limit abbreviations to those that all certified ombudsmen understand.
- Avoid using "he," "she" or "they." Use names and titles for the first reference and titles thereafter.
- Use objective language:
 - Describe behavior, rather than label.
 - Describe observations, rather than draw conclusions.
 - Use measurable terms, rather than words with different meanings to different people.
- Include entries about intake, facts, actions and follow up.

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-2

Effective: July 28, 2011

Section 700

Reporting

700 Reporting

Revision 11-2; Effective July 28, 2011

Purpose

This section describes Ombudsman Program reporting requirements and provides guidance on collecting and reporting Long-term Care Ombudsman Program (LTCOP) work.

Policy

A local LTCOP submits program performance and other data as a basis for reports in accordance with requirements of the Office of the State Long-term Care Ombudsman (the Office) and other state and federal requirements.

Procedures

Reporting is required by state and federal laws, as well as for ombudsman program operations. Reporting ombudsman work serves several purposes, such as allocating resources, fulfilling legislative mandates and planning. The state fiscal year begins Sept. 1 and ends Aug. 31; the federal fiscal year begins Oct. 1 and ends Sept. 30.

The LTCOP uses OmbudsManager (OM) as its data management system. OM is a web-based application accessed from a web browser through Harmony Information System. Forms and instructions are available through DADS ombudsman portal and the Office.

A local LTCOP enters ombudsman work in OM regularly, such as daily or every other day, in order to manage information and generate reports. DADS may request or require additional reporting.

Collect data from a certified volunteer ombudsman (CVO) monthly on DADS [Form 8620](#), Long-Term Care Ombudsman Activity Report, and case notes when applicable. Collect documentation in any hand-written or electronic method and enter the data in OM or compile the data to submit to the Office. A certified staff ombudsman (CSO) may use Form 8620, DADS [Form 8619](#), Long-Term Care Ombudsman Case Record, and case notes.

All OM data, reports and documentation from a certified ombudsman (CO) become records of the

LTCOP. Keep records to support reported data and information according to applicable retention schedules.

DADS publishes and posts online the Area Agency on Aging (AAA) Report Due Date Schedule under Procedures at www.dads.state.tx.us/providers/AAA/Procedures/index.html. The schedule includes ombudsman information. Enter local LTCOP required report data no later than 8:00 a.m. on the date identified. Should a due date fall on a weekend or a national or state holiday, enter required data by 8:00 a.m. the next business day.

Timeliness of certain reports affects funding to and opportunities for a AAA. Office-approved extensions can meet timeliness criteria. If a local LTCOP needs an extension, contact the State Long-term Care Ombudsman (SLTCO), who may approve the request in writing. For additional information about AAA administrative responsibilities, see [Texas Administrative Code](#), Title 40, Part 1, §85.201(d).

701 Program Reporting

Revision 10-3; Effective October 27, 2010

The Office requires reporting of local [LTCOP](#) work in OM and other reports. The LTCOP reporting system and reports include the following:

701.1 OmbudsManager

Revision 10-3; Effective October 27, 2010

A CO submits reports and documentation to the local LTCOP. A CSO transfers the information to the appropriate format. In OmbudsManager (OM), a CSO enters information in Cases and Program Activities on a regular schedule, such as daily or every other day. Enter CVO reports when received, usually on a monthly basis.

When questions arise about reporting, refer to the following related resources or call the Office for assistance:

- DADS LTCOP performance measures; and
- DADS OmbudsManager Desk Reference.

OM-generated reports used to monitor compliance with contract and Legislative Budget Board (LBB) performance measures (see [Section 703.1](#), Performance Measures) include:

- Cases:
 - Monthly complaints overview;
 - Monthly complaints dispositions and cases; and
 - Monthly complaint analysis.
- Program Activities:
 - Monthly summary of all program activities;
 - Quarterly visits by facility type;
 - Monthly or quarterly active certified ombudsman (ACO); and

- Monthly volunteers not reporting.

701.2 Active Ombudsman Report

Revision 10-3; Effective October 27, 2010

Active ombudsman reports provide data to track participation of the unduplicated, cumulative number of active certified ombudsmen (ACO). DADS uses these totals to calculate data for annual reports to the Administration on Aging and quarterly reports to the LBB.

To be active in a month or quarter, a [CO](#):

- is certified by the SLTCO Office; and
- visits long-term care facilities within the state quarter;
- provides other ombudsman services such as in-services for nursing homes and assisted living facilities and community groups or consultations to individuals;
- receives, investigates and resolves complaints; or
- provides training and consultation to ombudsman interns or certified volunteer ombudsmen.

Documentation must exist to verify being an active CO, such as a submitted report, visitation log or calendar. Retain documentation to support reported information according to applicable retention schedules. To run the active ombudsman report, follow instructions in the DADS OmbudsManager Desk Reference. Enter quarterly data by the following due dates:

- Quarter 1 (September, October, November) – December 16
- Quarter 2 (December, January, February) – March 16
- Quarter 3 (March, April, May) – June 16
- Quarter 4 (June, July, August) – September 16

702 Bankruptcy Reports

Revision 10-3; Effective October 27, 2010

Bankruptcy law includes the appointment of a patient care ombudsman (PCO) for cases in which health care facilities file. When the judge appoints the [SLTCO](#) as PCO, the Office requires a minimum of monthly visits to facilities in bankruptcy status. A local [LTCOP](#) reports on care conditions at each facility named in the bankruptcy filing and reports every 60 days to the SLTCO until the court dismisses the case.

The SLTCO compiles the report, works with the DADS Legal Services Division and the Office of the Attorney General, and then submits the report to the bankruptcy court. Under special circumstances, the SLTCO files additional interim reports. A local LTCOP uses the outline bankruptcy report form for 60-day reports available online and through the Office.

703 Other Reports

Revision 09-1; Effective September 14, 2009

By analysis of performance measures throughout the year, the Office evaluates program performance. In addition, the Office may request a local [LTCOP](#) to complete a special report or submit data for a specific purpose.

703.1 Performance Measures

Revision 11-2; Effective July 28, 2011

A performance measure is a quantifiable indicator of achievement. LBB performance measures are set for each state biennium. Contract performance measures are required by a AAA's annual contract with DADS. The Office uses the term "performance measures" to describe other program expectations that do not require projections of such measures. The Office posts ombudsman performance measures, both contract and LBB, in the DADS ombudsman portal.

DADS staff evaluate compliance with performance measures by analysis of data in OM and on-site program monitoring.

Contract Performance Measures

1. **Ensure facility coverage by certified ombudsmen.** Coverage is defined as an in-person visit by a certified volunteer or staff ombudsman to monitor residents' health, safety, welfare and rights. Visits must include contact with residents in a nursing or assisted living facility. This measure is tracked using the Facility Visits Summary, Quarterly Visits by Facility Type report in OmbudsManager facilities reports.

The Administration on Aging requires a minimum of quarterly visits to nursing or assisted living facilities in order for DADS to report "regular" ombudsman services are provided.

Monthly visits to nursing homes are recommended to ensure residents have access to their ombudsman and to build relationships with residents as well as facility staff. Ombudsman programs should also strive for outreach and visits to residents in assisted living facilities. Annual or more frequent visits, as needed, are recommended in assisted living facilities.

2. **Maintain a complaint management system that initiates a response to all complaints within two business days** of receipt with priority given to emergency and safety situations in accordance with ombudsman procedures. This measure is tracked by reviewing the "First action" field in case documentation in OmbudsManager.

Legislative Budget Board (LBB) Performance Measures

1. **Ombudsman Expenditures:** The total amount of funds used to operate the long-term care ombudsman program. This is submitted by an area agency on aging using the ASAW report.
2. **Number of Active Certified Ombudsmen:** The cumulative number of certified ombudsmen – staff and volunteer – who report activity. This measure is tracked using the Active Ombudsman report in OmbudsManager activities reports. This measure must be met within $\pm 5\%$ of your projection.
3. **Total assisted living facility (ALF) visits:** The cumulative number of each visit made to an ALF. This measure is tracked using the Ombudsman Facility Activity, Total ALF Visits for PM report

in OmbudsManager activities reports. This measure must be met within -5%, or may be exceeded.

4. **ALFs visited:** The number of ALFs visited at least once. This reports the number of facilities served and does not count duplicate visits to the same facility. This measure is tracked using the Facility Visits Summary, ALFs Visited for PM report in OmbudsManager activities reports. This measure must be met within -5%, or may be exceeded.
5. **Percent of complaints resolved or partially resolved:** The sum of resolved and partially resolved complaints, divided by the number of all complaints received. This measure is tracked using the Complaint Analysis by Facility, Annual Complaint Dispositions and Cases report in OmbudsManager cases reports. This measure must be met within -5%, or may be exceeded.

Compliance with performance measures is evaluated by analysis of data in OmbudsManager and on-site program monitoring.

Revisions to LBB measures 2-5 should be made by the due date set on all AAA Section key measures, using the Key Performance Measure Target Revision form available on the DADS website.

703.2 Performance Projections

Revision 11-2; Effective July 28, 2011

[AAA](#) Performance Projections is a two-year planning document that identifies performance efficiency and outcome measure targets. Ombudsman performance projections are tools to improve and test performance and to assess whether results are on schedule and represent the expected activities of a local LTCOP. Projections should be accurate, realistic and set a standard for program excellence.

When projecting performance for ombudsman measures, consider the following:

1. **Ombudsman Expenditures** – Review the ombudsman maintenance of effort amount, historical ombudsman expenditures and demand for ombudsman services. Analyze the growth or decline in number and size of nursing homes and assisted living facilities in the service area.
2. **[Active Certified Ombudsmen \(ACO\)](#)** – Number of nursing homes and assisted living facilities in the service area; number of ACO historical data; resources available to support volunteer recruitment and retention; and proximity of facilities to recruitment sites.
3. **Assisted living facility visits (duplicated)** – Review historical visit data and the number of assisted living facilities in the service area and consider the available number of [CSOs](#) and [CVOs](#) to make visits.
4. **Number of assisted living facilities served (unduplicated)** – Number of assisted living facilities in the service area; goal of an annual visit to each facility and as needed based on license type and size of the facility.
5. **Percent of complaints resolved or partially resolved** – Review historical complaint data to determine a percentage of resolved and partially resolved complaints.

Retain adequate documentation to support the reported performance projections. Retain documentation for three years to respond to audits and other performance-related questions.

For details on performance projections of other AAA measures, select [Performance Projections](#) in Section 3 of the *AAA Operations Training Manual*.

703.3 Revising LBB Performance Measures

Revision 11-2; Effective July 28, 2011

To comply with contract requirements, all performance measures must be met. The Office provides a description of each measure and how compliance will be monitored. In addition, AAAs should follow guidance provided by the DADS AAA Section of Access and Intake *AAA Operations Training Manual*. The following guidance is specific to compliance with long-term care ombudsman LBB performance measures:

1. **Ombudsman Expenditures** – Compliance is determined by reviewing the Aging Services Analysis Workbook (ASAW) submitted by each AAA. This measure must be met or exceeded.
2. **Number of Active Certified Ombudsmen** – Compliance is tracked using the Active Ombudsman report in OmbudsManager activities reports. This measure must be met within $\pm 5\%$ of your projection.
3. **Total assisted living facility (ALF) visits** – Compliance is tracked by summing all visits made to ALFs by a certified ombudsman in the fiscal year as reported in the Facility Visits Summary report in OmbudsManager activities reports. This measure must be met within -5% , or may be exceeded.
4. **ALFs visited** – Compliance is tracked by counting the ALFs visited at least once by a certified ombudsman in the fiscal year as reported in the Facility Visits Summary report in OmbudsManager activities reports. This measure must be met within -5% , or may be exceeded.
5. **Percent of complaints resolved or partially resolved** – Compliance is tracked using the Complaint Analysis by Facility report in OmbudsManager cases reports. This measure must be met within -5% , or may be exceeded.

If a measure will not be met within the parameters described in this section, a AAA submits a performance measure revision request in accordance with the AAA Report Due Date Schedule and using the required DADS form.

703.4 DADS Risk Assessment

Revision 11-2; Effective July 28, 2011

The Office audits monthly, quarterly and annual reports for accuracy and funding purposes. On a quarterly basis, the Office analyzes ombudsman activities by program to determine compliance and measure (potential risk for) low performance or risk factors. The Office refers to this process as a quarterly risk assessment. Activities assessed include:

- continuing education provided and maintained for certification;
- attendance at statewide training and webinars; and
- progress toward achievement of performance measures.

704 Analysis of Complaints

Revision 11-2; Effective July 28, 2011

Casework involving complaint response is a priority long-term care ombudsman activity. Analyze data relating to complaints and conditions in nursing homes and assisted living facilities to allocate resources to help residents. While a local [LTCOP](#) is not required to respond to a particular number of complaints, it can achieve systemic advocacy – and perhaps more lasting change – by using data to promote local or state system changes.

Figure 7.1 provides guidance in analyzing, planning and responding to complaint trends. It suggests strategies to use in response to unusually high or low complaint numbers. It also provides guidance in evaluating program performance related to complaints. When planning systemic advocacy approaches, include the [MLO](#), [CSO](#) and [CVO](#) assigned to the facility.

Figure 7.1

Complaint Activity

IF complaint numbers are . . .	THEN the local LTCOP may take the following steps . . .
<p>Low for a particular facility</p> <p>Source: OmbudsManager data</p> <p>Compare one facility to another within a local LTCOP.</p>	<ul style="list-style-type: none"> • Determine whether residents, families or staff feel free to make complaints. • Determine if the facility made significant improvements, such as increased staffing or implementation of culture change. • Determine whether residents, families and staff are familiar with the existence and purpose of the LTCOP, and conduct outreach in the facility. • Increase frequency of routine visits or vary visit times and days. • Initiate contact with resident and family councils. • Review whether ombudsman-generated complaints are being accurately recorded by all COs.
<p>Low for the local LTCOP</p> <p>Source: Reports generated by the Office</p> <p>Compare a local LTCOP to another local LTCOP.</p>	<ul style="list-style-type: none"> • Compare program statistics to other local LTCOPs with similar geography and population. • Review whether residents, families and staff are familiar with the existence and purpose of the LTCOP. • Increase community education and public information regarding the purpose of the LTCOP. • Increase frequency of routine visits across the service area. • Propose additional in-service training for facility staff. • Review whether complaints, including ombudsman-generated complaints, are being accurately recorded by all COs.
<p>High for a particular facility</p>	<ul style="list-style-type: none"> • Look to systemic approaches to resolve common

<p>Source: OmbudsManager data</p> <p>Compare one facility to another within a local LTCOP</p>	<p>complaints.</p> <ul style="list-style-type: none"> • Include resident and family councils in resolution strategies. • Compare to other facilities operated by same ownership. • Provide supportive summary data to demonstrate problems to management or corporate staff. • Consider letters, media or policy approaches.
<p>High for the local LTCOP</p> <p>Source: Reports generated by the Office</p> <p>Compare a local LTCOP to another local LTCOP.</p>	<ul style="list-style-type: none"> • Compare program statistics to other local LTCOPs with similar geography and population. • Determine if serious cases are being given highest priority for resolution. • Consider whether the local LTCOP promotes empowerment of residents and families to personally resolve complaints, where appropriate. • Provide training to CSO and CVO to improve systemic approaches to problem solving. • Review whether complaint categories are being used appropriately, such as assigning one complaint code per complaint.

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-2

Effective: July 28, 2011

Section 800

Records

800 Records

Revision 11-2; Effective July 28, 2011

Purpose

This section provides guidance regarding what constitutes a record, types of records maintained and retention of records.

Policy

A local long-term care ombudsman program (LTCOP) creates, maintains and retains records to document program performance and activities. The local LTCOP is custodian of its local program records. The State Long-term Care Ombudsman (SLTCO) and staff of the Office of the SLTCO have immediate and unrestricted access to all records related to the LTCOP.

Procedure

Records include what ombudsmen see, hear and know by conversation or written documents. Procedures on when and how to disclose oral and written information are detailed in [Section 900](#), Disclosure of Confidential Information.

801 Program Records

Revision 11-2; Effective July 28, 2011

In general, a written record is all electronic or hard copy notes, including logs, case notes and reports.

Program records also include:

- medical, financial and social notes created while identifying, investigating or attempting to resolve a complaint by or on behalf of residents or complainants;
- copies of any portion of a resident's facility record;
- records collected during an investigation of a complaint;
- administrative records, policies, resident census and other documents of long-term care facilities;

- data relating to complaints and conditions in long-term care facilities; and
- other records compiled and maintained by representatives in carrying out their responsibilities.

802 Types of Records

Revision 11-2; Effective July 28, 2011

The local LTCOP maintains files in OmbudsManager and additional records on certified ombudsmen, facilities and program reports. Records may be electronic, hard-copy or a combination. They must be readily accessible and may be stored in multiple locations. All records containing resident or complainant identifying information must be stored in a locked or password protected environment.

[Section 802.1](#), Certified Ombudsmen; [Section 802.2](#), Facility; [Section 802.3](#), Ombudsman Case Records; and [Section 802.4](#), Reports, provide detailed requirements.

Transitory records may include sticky notes, reminders, trivial notes and notes in preparation of a final written product. Such notes may include case details that will be transferred onto a final case note or other final version of the record. Dispose of these temporary records properly to ensure confidentiality is protected.

802.1 Certified Ombudsmen

Revision 11-2; Effective July 28, 2011

All certified ombudsman files must include:

- completed volunteer or employment application, including the applicant's signature;
- evidence of criminal history check on each applicant entering the program after Sept. 1, 2004, as described in [Section 1100](#), Volunteer Management;
- copies of signed DADS [Form 8623](#), Certified Ombudsman Application, and DADS Certificate of Achievement;
- signed DADS [Form 8602](#), Code of Ethics;
- documentation of initial certification training on each certified ombudsman applicant entering after Sept. 1, 2008;
- documentation of continuing education, including evidence of 12 hours annually for each CO or prorated, as described in [Section 1100](#), Volunteer Management. Joint training provided to ombudsmen and LTC providers may be considered continuing education attended by an ombudsman. Documentation of continuing education:
 - must include an agenda and sign-in sheet, if provided in a group setting, or signed documentation describing the individual education assignment; and
 - may include handout materials provided during training and evaluations;
- signed DADS [Form 8607](#), Conflict of Interest Statement; and
- completed plan to remedy a conflict of interest as approved by the SLTCO if one is identified.

A certified ombudsman file may also include:

- copy of the CO badge;
- annual evaluation;
- correspondence;
- award nominations, awards achieved;
- documentation of performance concerns and the MLO or CSO response;
- documentation of any disciplinary action taken to re-train, counsel, suspend or terminate a volunteer; and
- exit evaluation.

802.2 Facility

Revision 11-2; Effective July 28, 2011

A local LTCOP must maintain current information on licensed nursing homes and assisted living facilities in the program's service area.

Facility records may include:

- admission packets, resident admission agreements;
- discharge letters;
- owner information, including historical ownership information;
- management staff names and contact information, history of management turnover;
- special services provided in facilities;
- DADS Regulatory Services survey reports, enforcement action notices;
- CMS Special Focus Facility status; and
- closure information.

802.3 Ombudsman Case Records

Revision 11-2; Effective July 28, 2011

Case records include notes on intake, facts, actions taken and follow-up in OmbudsManager case entries. See also [Section 608](#), Case Documentation.

Intake

- Description of the problem as presented by the complainant, dated
- Steps, if any, the resident or complainant has taken toward solving the problem
- Agreement about what steps the CO will take
- Consent to take action (see also [Section 401](#), Consent to Work on a Resident or Complainant's Behalf)

- Permission to reveal the complainant's identity or to maintain anonymity (see [Section 402](#), Consent to Reveal Identity)

Facts Discovered

- Include source of the fact and consider who, what, when, where, why and how.
- Note method of discovery (for example, interview, observation or record review).
- Date notes as journal entries in OmbudsManager.

Actions taken

- Note steps taken to resolve the complaint as journal entries in OmbudsManager.

Follow-up

- Note a time frame for monitoring, or when the issue was determined to be resolved or closed.
- Collect resident's or other complainant's level of satisfaction with the outcome and code accordingly in OmbudsManager.

802.4 Reports

Revision 11-2; Effective July 28, 2011

Documentation is required to support reports made to the Office. A local LTCOP keeps documentation to justify each reported activity or number pertaining to performance measures, program work and other activities. An electronically scanned record of an original document may be stored in place of the original.

803 Retention

Revision 11-2; Effective July 28, 2011

The local LTCOP keeps hard copy or electronic records according to an established retention schedule. A local LTCOP maintains all required records for a minimum of five years following the end of the federal fiscal year to which the record pertains. In addition, retain all required records until any litigation, claim, audit findings, issuance or proposed disallowed costs, or other disputes have been resolved.

The MLO determines which records should be kept and which destroyed. According to §85.201(p), an agency must establish procedures governing disposal of transitory records as part of its records management plan. The Texas State Library provides information regarding record retention, electronic records and electronic signatures at <http://www.tsl.state.tx.us/slr/recordspubs/>.

[File viewing information.](#)

**Texas Department of Aging and Disability Services
Ombudsman Policies and Procedures Manual**

Revision: 11-3

Effective: August 15, 2011

Section 900

Disclosure of Confidential Information

900 Disclosure of Confidential Information

Revision 11-3; Effective August 15, 2011

Purpose

This section establishes guidelines for disclosure of confidential information.

Policy

The long-term ombudsman program (LTCOP) maintains confidential information about residents and complainants. Disclosure of confidential information must meet requirements in the Older Americans Act and state rules. Specific processes guide disclosure of complaints made on behalf of residents, as well as requests for health information, for oral and written confidential information, and by court order.

Procedures

The following sections provide details for meeting confidentiality requirements.

901 Confidential Information Regarding Resident

Revision 10-4; Effective December 17, 2010

Confidential information regarding a resident is information that identifies a resident. Confidential information includes:

- the name of the resident;
- information about the resident's medical condition;
- the resident's medical history;
- the resident's social history, which includes occupation, residences and information about a resident's family;
- the resident's source of payment;
- information about the resident's personal life; and

- information from a conversation between a resident and a representative of the Office of the State Long-Term Care Ombudsman (Office).

Confidential information regarding a resident does **not** include:

- facility policies and procedures; or
- statistical data about residents or complaints filed with a certified ombudsman.

Confidential information regarding a resident may be oral or written.

902 Confidential Information Regarding a Complainant

Revision 10-4; Effective December 17, 2010

A complainant is a person who files a complaint with a certified ombudsman regarding a nursing home or assisted living facility.

Confidential information regarding a complainant is information that identifies a complainant or is about the complaint. Such information includes:

- the name of the complainant; and
- the relationship of the complainant to a resident.

Confidential information regarding a complainant does **not** include:

- facility policies and procedures; or
- statistical data about residents or complaints filed with a certified ombudsman.

Confidential information regarding a complainant may be oral or written.

903 General Statement About Confidentiality

Revision 11-3; Effective August 15, 2011

Confidential information may be disclosed only in accordance with the Older Americans Act, §712(d). The process of disclosing confidential information as described in [Section 905](#), Process for Oral Disclosure of Confidential Information, and [Section 907](#), Process for Disclosure of Written Confidential Information, implements the requirements in §712(d).

Disclosure of confidential information means the communication of such information to a person face-to-face, by telephone, by e-mail or other electronic means, or by paper document.

Keeping confidential information confidential in accordance with the Older Americans Act:

- promotes trust between a representative of the Office and a:
 - resident; and

- complainant;
- helps maintain the role of a representative of the Office as a professional advocate for a resident;
- helps protect a resident's right to personal privacy and confidentiality of the resident's personal and clinical records as described in 42 CFR §483.10(e) and NFR 19.407; and
- encourages a resident to confide in a representative of the Office even if the resident does not want to file a complaint.

904 Situations to Orally Disclose Confidential Information

Revision 10-4; Effective December 17, 2010

A representative of the Office may need to orally disclose confidential information in order to perform his or her duties. The following are the situations in which confidential information may need to be orally disclosed:

- a certified ombudsman investigating a complaint filed by a resident, guardian or other person;
- a representative of the Office responding to a request for assistance from a resident, guardian or other person; and
- a representative of the Office responding to a request to disclose confidential information from a person other than a resident or guardian, such as friend or family member, about a resident's health condition.

905 Process for Oral Disclosure of Confidential Information

Revision 10-4; Effective December 17, 2010

905.1 Process for Disclosure When a Complaint is Filed or Request for Assistance is Made *on Behalf* of a Resident Who Has a Power of Attorney (POA)

Revision 10-4; Effective December 17, 2010

If a complaint is filed by a person on behalf of a resident who has a POA, a certified ombudsman must:

- comply with [Section 401](#), Consent to Work on a Resident or Complainant's Behalf, in determining whether consent will be given to investigate the complaint;
- if consent is given to investigate the complaint, determine if disclosure of confidential information of the resident is necessary to effectively investigate the complaint; and
- if the certified ombudsman determines it is necessary to disclose confidential information about the resident, identify the specific confidential information that should be disclosed.

If a request for assistance is made by a person on behalf of a resident who has a POA, a representative of the Office must:

- comply with [Section 402](#), Consent to Reveal Identify, in determining whether consent will be given to respond to the request for assistance;

- if consent is given to respond to the request for assistance, determine if disclosure of confidential information of the resident is necessary to provide the requested assistance; and
- if the representative of the Office determines disclosure is necessary, identify the specific confidential information that should be disclosed.

After the specific confidential information has been identified as required, the representative of the Office must determine if the resident is able to comprehend information regarding the complaint or request for assistance and:

- if the resident is able to comprehend the information:
 - inform the resident of the need to disclose confidential information; and
 - request that the resident consent to the disclosure of the confidential information; or
- if the resident is unable to comprehend the information:
 - inform the POA agent of the need to disclose confidential information; and
 - request that the POA agent consent to the disclosure of the confidential information.

If the resident or POA agent consents to the disclosure, the representative of the Office must do one of the following to document the consent:

- have the resident or POA agent, as appropriate, complete DADS [Form 8624-W](#), Consent to Disclose Records to the Certified Ombudsman;
- complete DADS [Form 8624-O](#), Consent to Release Records; or
- document that consent was given in the certified ombudsman's case notes described in [Section 608](#), Case Documentation, or on [Form 8620](#), Long-Term Care Ombudsman Activity, or [Form 8619](#), Long-Term Care Ombudsman Case Record, and include the name of the person consenting and the date consent was given.

If the resident or POA agent does not consent to disclosure of the information, the representative of the Office must:

- explain to the resident or POA agent, as appropriate, that without disclosing the confidential information, the effectiveness of the investigation or assistance may be limited; and
- attempt to resolve the complaint or provide assistance without disclosing the confidential information.

905.2 Process for Disclosure When a Complaint is Filed or Request for Assistance is Made *But Not* When Filed or Made on Behalf of a Resident Who Has a Power of Attorney (POA)

Revision 10-4; Effective December 17, 2010

If a complaint is filed by a resident, guardian or other person (but not when filed on behalf of a resident who has a POA), the certified ombudsman must:

- determine if disclosure of confidential information is necessary to effectively investigate the complaint;
- if the certified ombudsman determines disclosure is necessary, identify the specific confidential information that should be disclosed; and
- based on the specific confidential information identified, determine whose consent is needed to disclose the confidential information.

If a request for assistance is made by a resident, guardian or other person (but not when made on behalf of a resident who has a POA), the representative of the Office must:

- determine if disclosure of confidential information is necessary to provide the requested assistance;
- if the representative of the Office determines disclosure is necessary, identify the specific confidential information that should be disclosed; and
- based on the specific confidential information identified, determine whose consent is needed to disclose the confidential information.

After the representative of the Office determines whose consent is needed to disclose confidential information, the representative must:

- inform the resident or guardian or complainant (if another person) of the need to disclose confidential information;
- request that the resident, guardian or complainant consent to the disclosure of the confidential information; and
- if the resident, guardian or complainant consents to the disclosure, do one of the following to document the consent:
 - have the resident, guardian or complainant complete DADS [Form 8624-W](#), Consent to Disclose Records to the Certified Ombudsman;
 - complete DADS [Form 8624-O](#), Consent to Release Records; or
 - document that consent was given in the certified ombudsman's case notes described in [Section 608](#), Case Documentation, or on [Form 8620](#) or [Form 8619](#), and include the name of the person consenting and the date consent was given.

If the resident or guardian or complainant does not consent to disclosure of the information, the representative of the Office must:

- explain to the resident, guardian or complainant that without disclosing the confidential information, the effectiveness of the investigation or assistance may be limited; and
- attempt to resolve the complaint or provide assistance without disclosing the confidential information.

If the resident's consent is needed to disclose confidential information and the representative of the Office determines that the resident is unable to comprehend information regarding the complaint or request for assistance, the representative of the Office must comply with [Section 400](#), Consent.

905.3 Process for Disclosure in Response to a Request from a Person Asking About a Resident's Health Condition

Revision 10-4; Effective December 17, 2010

In responding to a request to disclose confidential information from a person other than the resident or guardian (such as friend or family member asking about a resident's health condition), a representative of the Office must comply with the requirements for responding to a request for assistance described in [Section 905.1](#) or [Section 905.2](#), as applicable.

906 Situations to Disclose Written Confidential Information

Revision 10-4; Effective December 17, 2010

A certified ombudsman may need to disclose written confidential information (that is, records maintained by the local [LTCOP](#)), if requested. A certified ombudsman may be requested to disclose such information when he/she receives a:

- request for written confidential information from the resident or guardian;
- request for written confidential information from a person other than the resident or guardian (which could include a subpoena); and
- court order for disclosure of written confidential information.

907 Process for Disclosure of Written Confidential Information

Revision 10-4; Effective December 17, 2010

907.1 Process for Disclosure in Response to Request for Written Confidential Information from a Resident or Guardian

Revision 10-4; Effective December 17, 2010

If a certified ombudsman receives a request for written confidential information from a resident or guardian:

- the certified ombudsman must:
 - retrieve the records that are requested; and
 - submit copies of the retrieved records to the State Long-Term Care Ombudsman (SLTCO) for review and approval to disclose;
- the SLTCO:
 - reviews the copies of the retrieved records to determine:
 - which, if any, records should be disclosed;
 - whether redaction of any information is required; and
 - if further discussion with the resident or guardian is necessary; and
 - after a determination is made, provides the certified ombudsman with:

- written approval or denial to disclose the records;
 - a description of the specific records to be disclosed, if any; and
 - instructions about any necessary redaction of the records; and
- the certified ombudsman must:
 - redact the records in accordance with any instructions from the SLTCO;
 - disclose the records if the SLTCO has provided written approval; and
 - retain a copy of the disclosed records with documentation provided by the SLTCO as described in the second bullet of this section.

907.2 Process for Disclosure in Response to a Request for Written Confidential Information from a Person (Other than a Resident or Guardian) Regarding a Resident Who *Has* a Power of Attorney (POA)

Revision 10-4; Effective December 17, 2010

If a certified ombudsman receives a request for written confidential information from a person (other than a resident or guardian) regarding a resident who *has* a POA (which could include a subpoena), the certified ombudsman must:

- determine if the resident is able to comprehend information regarding the request;
- if the resident is able to comprehend information regarding the complaint or request for assistance, inform the resident of the request and ask the resident if he or she wants to consent to disclosure of the information; and
- if the resident is unable to comprehend information regarding the complaint or request for assistance, inform the POA agent of the request and ask the agent if he or she wants to consent to disclosure of the information.

If the resident or POA agent does not consent to the disclosure:

- the certified ombudsman must notify the [SLTCO](#), in writing, of the resident's or POA agent's decision not to consent and provide the SLTCO with any other necessary information, as requested; and
- the SLTCO or DADS legal representative denies the request for confidential information, in writing.

If the resident or POA agent consents to the disclosure, the certified ombudsman must:

- do one of the following to document the consent:
 - have the resident or POA agent, as appropriate, complete DADS [Form 8624-W](#), Consent to Disclose Records to the Certified Ombudsman;
 - complete DADS [Form 8624-O](#), Consent to Release Records; or
 - document that consent was given in the certified ombudsman's case notes described in [Section 608](#), Case Documentation, or on [Form 8620](#) or [Form 8619](#), and include the name of

the person consenting and the date consent was given;

- retrieve the records that are requested; and
- submit copies of the retrieved records and the documented consent to the SLTCO for review and approval to disclose.

The SLTCO follows the process described in the second bullet of [Section 907.1](#).

The certified ombudsman must follow the process described in the third bullet of Section 907.1.

907.3 Process for Disclosure in Response to a Request for Written Confidential Information from a Person (Other Than a Resident or Guardian) Regarding a Resident Who Does *Not* Have a Power of Attorney (POA)

Revision 10-4; Effective December 17, 2010

If a certified ombudsman receives a request for written confidential information from a person (other than a resident or guardian) regarding a resident who does *not* have a POA, the certified ombudsman must inform the resident or guardian of the request and ask the resident or guardian if he or she wants to consent to disclosure of the information.

If the resident or guardian does not consent to the disclosure:

- the certified ombudsman must notify the [SLTCO](#), in writing, of the resident's or guardian's decision not to consent and provide the SLTCO with any other necessary information, as requested; and
- the SLTCO or DADS legal representative denies the request for confidential information, in writing.

If the resident or guardian consents to the disclosure, the certified ombudsman must:

- do one of the following to document the consent:
 - have the resident or guardian, as appropriate, complete DADS [Form 8624-W](#), Consent to Disclose Records to the Certified Ombudsman;
 - complete DADS [Form 8624-O](#), Consent to Release Records; or
 - document that consent was given in the certified ombudsman's case notes described in [Section 608](#), Case Documentation, or on [Form 8620](#) or [Form 8619](#), and include the name of the person consenting and the date consent was given;
- retrieve the records that are requested; and
- submit copies of the retrieved records and the documented consent to the SLTCO for review and approval to disclose.

The SLTCO follows the process described in the second bullet of [Section 907.1](#).

The certified ombudsman must follow the process described in the third bullet of Section 907.1.

If the resident's consent is needed to disclose written confidential information and the certified ombudsman determines that the resident is unable to comprehend information regarding the request for written confidential information, the certified ombudsman must comply with [Section 400](#), Consent.

907.4 Process for Disclosure in Response to a Court Order for Disclosure of Written Confidential Information

Revision 10-4; Effective December 17, 2010

If a certified ombudsman receives a court order for disclosure of written confidential information:

- the certified ombudsman must:
 - inform the resident or guardian of the court order;
 - retrieve the records that are ordered; and
 - submit copies of the retrieved records and the court order to the [SLTCO](#) for review and approval to disclose;
- the SLTCO follows the process described in the second bullet of [Section 907.1](#); and
- the certified ombudsman must follow the process described in the third bullet of Section 907.1.

908 Requirements to Help Ensure Confidentiality of Information

Revision 10-4; Effective December 17, 2010

When in a facility investigating a complaint, a representative of the Office must visit multiple residents, in residents' rooms and in public areas as much as possible, to ensure the identity of a complainant is not easily discernible.

If a representative visits with a resident in a public area, the representative must, as much as the resident will allow, discuss confidential information of the resident in such a way that the discussion is not within audible range of other persons.

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-4

Effective: October 12, 2011

Section 1000

Legal Counsel and Resources

1000 Volunteer Management

Revision 11-4; Effective October 12, 2011

Purpose

This section provides guidance regarding legal counsel for certified ombudsmen and ombudsman interns, and legal resources for people who live in nursing homes and assisted living facilities.

Policy

DADS ensures that representatives of the long-term care ombudsman program (LTCOP) have adequate legal counsel free of any conflict of interest. For certified ombudsmen, DADS provides legal advice and consultation on legal matters related to the performance of their official duties. DADS ensures legal counsel is provided to any representative of the office against whom suit or other legal action is brought or threatened to be brought in connection with official duties. Representatives include ombudsman interns, certified volunteer ombudsmen and certified staff ombudsmen.

Because ombudsmen pursue legal remedies on behalf of residents, they make referrals to agencies to provide legal assistance and counsel to residents in need. They only refer residents and complainants to legal organizations in a manner consistent with this section.

Procedures

The following sections provide instruction regarding legal counsel for ombudsmen and legal resources for residents.

1001 Ombudsmen

Revision 11-4; Effective October 12, 2011

To ensure ombudsmen have legal counsel and advice when needed, an ombudsman consults with the Managing Local Ombudsman (MLO) and State Long-term Care Ombudsman (SLTCO) and works with legal counsel in accordance with these procedures.

1001.1 Consult with MLO

Revision 11-4; Effective October 12, 2011

An ombudsman must bring legal issues related to his or her ombudsman work to the attention of the MLO. The MLO informs his or her sponsoring agency and area agency on aging (AAA) director of any suit or other legal action involving the local LTCOP that may require legal counsel. The AAA or sponsoring agency may choose to use legal services available within its agency, in addition to services provided by DADS or the Texas Office of the Attorney General. The MLO also determines when to notify or consult with the SLTCO in accordance with [Section 1001.2](#), Consult with SLTCO.

1001.2 Consult with SLTCO

Revision 11-4; Effective October 12, 2011

Contact by an Attorney

Attorneys who represent facilities, residents, complainants, family members and friends may contact an ombudsman for information. For general information or inquiries, treat an attorney as any other member of the public and provide non-confidential information such as a description of the ombudsman role or what to expect from an investigation. If an attorney asks for confidential information, including a request for written records, do not acknowledge whether a person filed a complaint or program records exist and inform the attorney of the need to consult with the SLTCO. Consult with the SLTCO to ensure consent and disclosure of records procedures are followed as described in [Section 400](#), Consent, and [Section 900](#), Disclosure of Confidential Information.

If an agency or DADS assigns an attorney to an ombudsman to represent him or her in a possible legal action, direct all contact from opposing counsel to the ombudsman's attorney. Immediately notify the SLTCO and the ombudsman's legal counsel when contact is made by attorneys representing a facility, resident or other interested party in the case.

Request to Testify

An ombudsman may have information that is relevant in a court case. However, testifying for one side can interfere with the perception of an ombudsman as an independent resident advocate. If an attorney or other person indicates a wish for an ombudsman to testify in a hearing or deposition, inform the person that to be called to testify requires subpoena. This helps neutralize the relationship between the ombudsman and either party in the suit.

Subpoena or Court Order

A subpoena may be a request for written records, a request to testify, or both. Immediately upon receipt of a subpoena or court order, notify the SLTCO and legal counsel, if assigned, and provide a copy of the original order. In the case of a subpoena, DADS assigns a regional attorney and pursues a motion to quash. Coordination with the SLTCO is required, but court orders will generally result in the release of confidential information. If a resident consents in writing to the ombudsman releasing information, the request will be honored with all confidential information about other residents or complainants removed.

Participation in or Attendance at a Guardianship Hearing

If a person requests an ombudsman attend a guardianship hearing, immediately notify the MLO.

Attendance at a hearing places the ombudsman at risk of being called to testify and necessitates the assignment of DADS legal counsel to ensure confidentiality of resident and complainant information. In all guardianship hearing requests, the MLO notifies the SLTCO who determines the appropriate action for the ombudsman to take.

Threat of Suit

If an ombudsman receives or is threatened with a suit in relation to the performance of official duties, immediately notify the MLO and SLTCO and provide any known facts and related documentation. The SLTCO consults with DADS legal counsel and DADS Legal Services assigns an attorney to represent the ombudsman, as needed. If a suit is filed in court, the Texas Office of the Attorney General will represent the ombudsman at no cost to the ombudsman, unless the ombudsman acts in bad faith or with a malicious purpose. Ongoing coordination and communication is essential to ensure protection of the LTCOP and its representatives.

Willful Interference

Section 101.064 of the Texas Human Resources Code describes willful interference as a Class B misdemeanor if a person intentionally interferes with an ombudsman attempting to perform official duties or retaliates against any resident or employee for filing a complaint or cooperating with an ombudsman. If an ombudsman believes a person is willfully interfering with the ombudsman's performance of official duties, and the problem cannot be resolved by the local LTCOP, notify the SLTCO to review evidence. The SLTCO determines what action is appropriate to resolve the interference. Action may include communication with the facility or agency by DADS Legal Services. If the SLTCO determines enforcement action is warranted, he or she takes the following action:

- If a facility or agency staff person interfered or retaliated:
 - the SLTCO files a written complaint through DADS Consumer Rights and Services or through the division of DADS with contract oversight;
 - DADS investigates the complaint; and
 - if interference or retaliation is confirmed, DADS acts according to procedures.
- If the entity or person is not regulated by DADS:
 - the SLTCO files a written complaint to the appropriate agency and monitors progress on the investigation; and
 - if interference or retaliation is confirmed by the agency, it acts according to procedures.

1001.3 Legal Counsel

Revision 11-4; Effective October 12, 2011

After an ombudsman notifies the MLO and consults with the SLTCO regarding the need for legal counsel, the SLTCO makes a determination with guidance from DADS Legal Services. In coordination with DADS Legal Services, the SLTCO develops a plan to satisfy legal counsel requirements. The plan may involve coordination with a DADS Legal Services regional attorney or with the Texas Office of the Attorney General.

Legal counsel interviews and advises the ombudsman of how to handle any future contact by opposing counsel. Generally, once an attorney is assigned to an ombudsman and opposing counsel is informed, opposing counsel must not attempt to communicate with the ombudsman or other representatives of the LTCOP. The ombudsman keeps the SLTCO and the assigned attorney informed of any contact by other attorneys and interested parties in the case and any information related to hearings.

1002 Residents

Revision 11-4; Effective October 12, 2011

1002.1 Refer Residents to Legal Assistance Services

Revision 11-4; Effective October 12, 2011

DADS Legal Services does not provide direct legal service to a resident or complainant of the LTCOP. With consent from a resident or a resident's legally authorized representative, an ombudsman refers to approved legal services to aid in the resolution of legal problems. Ombudsmen may refer residents and other complainants to the following legal assistance services.

Area Agencies on Aging (AAA) Benefits Counseling

Benefits counselors are a resource through AAAs across Texas and the United States for a person over age 60 or a Medicare recipient. A benefits counselor provides information about various legal forms and applications, and may assist individuals in completing nursing home Medicaid and other government applications. In coordination with the Texas Legal Services Center, benefits counselors may assist in the completion and revocation of certain advance directives.

Texas Legal Services Center (TLSC)

A resident over age 60 or a Medicare recipient may obtain routine legal counsel by calling representatives of the Texas Legal Service Center, Hotline for Older Texans. TLSC sponsors special projects, such as the Facility Victims Program and the Veterans' Legal Assistance Project, to help older Texans and their family representatives with specific legal problems.

TLSC provides legal assistance to some residents and may work with an ombudsman to facilitate legal services such as appealing involuntary discharge. An ombudsman should not direct questions about ombudsman policy and procedure or seek legal counsel regarding ombudsman actions from TLSC attorneys. Use TLSC services for the coordination of legal services for residents and other complainants and for information regarding nursing home and assisted living facility requirements. Inquiries are made through a statewide intake telephone number, 800-622-2520.

Disability Rights Texas

Formerly known as Advocacy Inc., Disability Rights Texas is the federally designated legal protection and advocacy agency for people with disabilities in Texas. The organization is staffed with attorneys with an interest in advancing rights, including the right to live in the most integrated setting possible. Disability Rights Texas may be able to assist in situations where a resident seeks to restore capacity and rights in a court of law, take action against a guardian, or is denied the right to move out of a nursing home. Direct legal representation is decided by the agency based on the merits of a case and other

factors. Inquiries are made through a statewide intake telephone number, 800-252-9108.

Legal Aid

Texas Legal Aid employs attorneys who may be able to assist residents. Legal Aid attorneys may coordinate with TLSC to provide advocacy on behalf of a resident or may work independently of TLSC. Three legal aid organizations operate in Texas: Legal Aid of NorthWest, 800-955-3959; Texas Rio Grande Legal Aid, 800-369-0574; and Lone Star Legal Aid, 800-354-1889. They provide civil legal aid for low-income people based on county of residence.

Bar Associations

Bar associations are a resource for lists of board-certified attorneys, information about an attorney's license, lists of attorneys with specialization such as elder law, and information about reduced or free legal services in certain communities. Referral to a bar association is appropriate when a person has a problem not related to nursing homes and assisted living facilities, the person is not a client of the local LTCOP, or the person wishes to file suit regarding care in a nursing home or assisted living facility.

1002.2 Prohibition on Referrals to Private Attorneys

Revision 11-4; Effective October 12, 2011

Direct referral by an ombudsman to a private attorney is prohibited due to the potential of a conflict of interest and risk of liability to the LTCOP. Refer residents only to legal services described in [Section 1002.1](#).

[File viewing information.](#)

Texas Department of Aging and Disability Services Ombudsman Policies and Procedures Manual

Revision: 11-3

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Section 1100

Volunteer Management

1100 Volunteer Management

Revision 11-3; Effective August 15, 2011

Purpose

This section provides guidance on managing volunteers in a local Long-term Care Ombudsman Program (LTCOP) and details procedures for certifying volunteer ombudsmen.

Policy

The Texas Long-term Care Ombudsman Program benefits from the service of volunteers. The local LTCOP determines the volunteers needed to provide ombudsman services in accordance with Texas Administrative Code (TAC) §85.401(o). The local LTCOP provides volunteer management that includes:

- planning;
- management;
- recruitment, screening and selection;
- training and development;
- certification and decertification;
- supervision and evaluation;
- recognition; and
- exit.

Procedures

The following sections provide details for managing a volunteer program.

1101 Planning

Revision 11-3; Effective August 15, 2011

The local LTCOP ensures residents of nursing homes and assisted living facilities have regular and timely access to ombudsman services. The Administration on Aging requires a minimum of quarterly visitation to these facilities to report "regular" provision of ombudsman services. Based on case analysis and program experience, the managing local ombudsman (MLO) determines the frequency of visits. The MLO assigns a certified ombudsman (CO) to one or more facilities, one or more certified ombudsmen to large facilities or those with high need, and a CO temporarily to a facility during an emergency, disaster response or facility closure.

To develop a plan for recruitment, service and retention:

- analyze current volunteer resources and facility assignments;
- determine the total volunteers needed; and
- review local data to analyze the people who completed training, achieved certification, obtained annual continuing education and submitted reports.

1101.1 Volunteers

Revision 11-3; Effective August 15, 2011

An ombudsman volunteer is anyone who, without compensation beyond travel reimbursement, supports the local LTCOP. Ombudsman volunteers include ombudsman interns and certified volunteer ombudsmen, as well as friendly visitors as defined in TAC §85.2 and volunteers who support program operations. Section 1100 describes the role of certified staff ombudsmen (CSO) in the management of a certified volunteer ombudsman (CVO).

A local LTCOP ensures a person meets qualifications and completes certification training. The [SLTCO](#) certifies the person to assume responsibilities such as resolving complaints.

If a staff member of the sponsoring agency becomes a CVO, his or her service involves work outside the scope of normal staff duties and outside of work hours. If family members of staff volunteer, the direct supervisor should be someone other than the employed family member.

1101.2 Service

Revision 11-3; Effective August 15, 2011

A local LTCOP selects and supervises volunteers. The local LTCOP, CVO or SLTCO may terminate CVO service. When a CVO leaves the program, inform the facility where the person was assigned. If a person has a grievance regarding the decision, he or she should file a complaint with the MLO's supervisor. For cause, the SLTCO decertifies a person who is then no longer a CO. Only the SLTCO certifies a volunteer or staff and decertifies a CO.

1102 Management

Revision 11-3; Effective August 15, 2011

An effective LTCOP develops trust with facility residents and within the community. Factors that build trust include having no real or perceived conflicts of interest and maintaining confidentiality. As representatives of the Office, certified volunteer ombudsmen perform ombudsman duties in accordance with Texas ombudsman code of ethics and as described in [Section 203](#), Professionalism.

Service of certified ombudsmen is at the mutual agreement of the MLO and SLTCO. Should either ombudsman disagree regarding certification or service of a volunteer, the decision of the SLTCO prevails. Volunteers and staff can speak freely about concerns related to the person's performance and the long-term care ombudsman program. A volunteer with a grievance regarding the local LTCOP should file a complaint with the MLO's supervisor. If the grievance is not resolved at this level, the person follows the lines of communication in accordance with [Section 103](#), Line of Communication.

1102.1 Allowable Expenses

Revision 11-3; Effective August 15, 2011

State and federal regulations allow certain expenditures. A local LTCOP may reimburse a CVO for certain expenses incurred while providing ombudsman services. The local LTCOP informs a CVO regarding specific reimbursements, such as mileage, meals and training registration.

A local LTCOP provides liability and accident insurance for a CVO engaged in ombudsman service. A CVO may consult his or her insurance agent regarding extending personal insurance to include volunteer service.

The limit on recognition costs is \$75 per volunteer, per year. Recognition costs may include an "award item" and other costs for a recognition event, such as food, decorations, supplies and costs associated with the event site. This limit does not apply to mileage, training or other reimbursement costs associated with volunteer service. The law is Texas Government Code §2109.004, Program Requirements and Guidelines.

A local LTCOP may contract with a CVO to do specific ombudsman work. The contract between the local LTCOP and the CVO states duties and compensation.

1102.2 Representation of the Local LTCOP

Revision 11-3; Effective August 15, 2011

Prior to any action or statement that might significantly affect or obligate the local LTCOP, a CVO consults with the MLO and gets approval. Actions may include, but are not limited to, public statements to the press, coalition efforts with other organizations, or any agreements involving contractual or other financial obligations. The MLO authorizes additional activities in the performance of official duties.

1103 Recruitment, Screening and Selection

Revision 11-3; Effective August 15, 2011

A AAA makes a good faith effort to recruit volunteers. Use a variety of methods and settings. Ensure an applicant meets all qualifications described in TAC 85.401(g), does not have a real or perceived conflict of interest (TAC 85.401(i)), and has no barring criminal convictions as described in Health and Safety Code §250.006, Convictions Barring Employment.

Establish clear and complete descriptions of duties and responsibilities for ombudsman interns and certified volunteer ombudsmen based on DADS assignment descriptions, plus any local LTCOP requirements. Review and update position descriptions periodically or whenever the work changes substantially.

1103.1 Recruitment

Revision 11-3; Effective August 15, 2011

Recruit individuals to become certified volunteer ombudsmen who advocate for residents. For volunteers who do not want to investigate complaints, train them as friendly visitors, if applicable, or refer them to the DADS Silver Lining program.

Use print and electronic media for recruitment as well as social networking sites. Respond promptly to inquiries. To improve outcomes of a recruitment campaign, schedule one or more orientation sessions to offer inquirers more information. Introduce the ombudsman program and give an overview of certification training and internship to interested people.

1103.2 Screening

Revision 11-3; Effective August 15, 2011

Review a volunteer application to identify a real or perceived conflict of interest. Complete DADS [Form 8607](#), Conflict of Interest Statement. If a conflict can be remedied and approved by the SLTCO, the MLO may allow him or her to serve. Contact references then decide whether to schedule an interview or notify the applicant his or her application is declined and why.

Interview an applicant, preferably in person, to determine interest, qualifications and commitment. Answer any questions about the ombudsman position. The MLO may involve staff in the process and use an orientation session to screen applicants.

Complete DADS [Form 8622](#), Consent for Criminal History Check, with the applicant for certified ombudsman or friendly visitor and submit it to the Office. The Office notifies the MLO of the results and enters applicant data in OmbudsManager. Ombudsmen who directly serve residents must not have a barring criminal record, but the MLO must consider non-barring convictions as well and consult with the SLTCO before accepting any applicant with a criminal history. An applicant can ask to review the criminal history and dispute the record, but the applicant is responsible for clearing the record. An MLO may hold the volunteer application until the record is clear then review documentation. Criminal history check information obtained by DADS is for its exclusive use. Do not release or disclose criminal history information to any person except on court order or with the consent of the subject of that information. The Office may repeat a criminal history check at any time. Prior to Sept. 1, 2004, applicants were not screened for criminal history.

1103.3 Selection

Revision 11-3; Effective August 15, 2011

After accepting the applicant, begin certification training and ombudsman internship. Consider internship as a probation period. The MLO typically assigns an ombudsman intern to the facility where he or she will eventually serve as a CO.

After completing training and internship, the MLO and volunteer complete DADS [Form 8602](#), Code of Ethics, and DADS [Form 8623](#), Certified Ombudsman Application. The MLO recommends the volunteer and the SLTCO approves him or her as a CO and representative of the Office. Assign the CVO to a facility and introduce him or her to residents and facility staff as an advocate who identifies, investigates and works to resolve complaints. With an official badge, a CVO assumes CO roles and responsibilities.

1103.4 Active Service

Revision 11-3; Effective August 15, 2011

By signature on DADS Form 8623, Certified Ombudsman Application, the CO agrees to a 12-month commitment and regular visits to the assigned facility. A CO actively participates in and complies with the Office and local LTCOP requirements. Document a CO's activities, initial certification and continuing education in OmbudsManager. Notify the Office of any leave of absence or other changes in status, which the Office then updates in OmbudsManager system administration records.

A CO requests a leave of absence for reasons such as extended illness, unexpected circumstances and family problems. The MLO approves a leave of absence and maintains documentation. When approved, suspend the CO's responsibilities until the leave ends.

Volunteers have a variety of skills and talents. Some have professional certifications or licenses. When serving as a CO, he or she acts as an advocate – not in other professional roles such as social worker, nurse or accountant.

1104 Training and Development

Revision 11-3; Effective August 15, 2011

Provide state-approved initial certification training and local continuing education (CE). Volunteers who do not respond to complaints or handle confidential material do not require certification training.

1104.1 Friendly Visitor Training

Revision 11-3; Effective August 15, 2011

For volunteers who want to be friendly visitors, use Chapters 1, 2, 3, 4 and 5 of the state-approved certification training. Give clear direction that friendly visitors refer complaints to the local LTCOP.

1104.2 Ombudsman Certification Training

Revision 11-3; Effective August 15, 2011

A local LTCOP must use the state-developed Ombudsman Initial Certification Training. The Office provides training manuals and other resources. Add supplemental material, but do not delete or alter the original student manual.

Individuals in training are ombudsman interns. Internship typically lasts three months. The MLO may:

- shorten internship time based on documented experience in long-term care; or
- extend an internship for any number of reasons, such as the intern not scheduling routine facility visits or reporting intern activity to the local LTCOP.

The local LTCOP assigns an intern to a facility, and a supervising staff ombudsman monitors the intern. The MLO, CSO or experienced CVO introduces the intern to the administrator in person and provides written notice of the ombudsman intern and CO to facility management. Interns build relationships with residents, observe staff interacting with residents, watch for resident rights in action and report any

complaint to their supervisor to investigate.

1104.3 Continuing Education

Revision 11-3; Effective August 15, 2011

Assess education needs to plan activities and secure resources by:

- asking current volunteers;
- reviewing prior agendas and evaluations;
- determining CO length of service and experience;
- analyzing monthly reports; and
- providing information from the Office, such as new policies.

Training provides valuable face-to-face time with volunteers to ensure knowledge, skills, effectiveness and consistency of ombudsman services across Texas. A CO can request alternate continuing education, such as educational programs by others, self-directed courses and audio/visual materials. The MLO must pre-approve. The CO provides documentation before the MLO gives credit.

To maintain certification, ensure each CO receives 12 hours of continuing education each year.

- Prorate hours of one hour per month of certification; for a new CO, begin the month after being certified.
- Provide substitute activities for ombudsmen who are unable to attend locally-sponsored continuing education.
- Document attendance or report credits.
- Maintain agendas and related documentation in the original format or as originals scanned in OmbudsManager.

1105 Certification and Decertification

Revision 11-3; Effective August 15, 2011

The SLTCO holds the authority to certify and decertify individuals from the DADS Ombudsman Program.

1105.1 Certification

Revision 11-3; Effective August 15, 2011

Upon completion of certification training, the MLO recommends volunteers to the SLTCO for certification.

- Review, discuss and sign DADS [Form 8623](#), Certified Ombudsman Application.
- Mail original CO application to the Office. The SLTCO signs and enters the date that becomes the official certification date. If the local LTCOP faxes the completed form, the SLTCO dates it.

When the original arrives in the mail, the SLTCO signs the form and enters the date of the fax as the official certification date. The application is processed upon receipt of the original application.

- The Office updates OmbudsManager, and mails a copy of the signed application, a certificate and a badge.
- Present the certificate and badge to the volunteer and introduce to the assigned facility as a CO.

1105.2 Decertification

Revision 11-3; Effective August 15, 2011

A local LTCOP may recommend decertification or the SLTCO initiates the process. The SLTCO may remove certification if a CO violates ombudsman policies and procedures. The SLTCO notifies the CO of any decision. The CO may appeal the decision through the local LTCOP, the sponsoring agency or AAA, or the SLTCO.

1106 Supervision and Evaluation

Revision 11-3; Effective August 15, 2011

For each CO, identify a supervisor who provides guidance, support, consultation and assistance. A supervising staff ombudsman routinely communicates with a CVO to:

- monitor performance;
- support effective volunteer conduct; and
- identify training needs.

To promote retention of certified volunteer ombudsmen:

- provide continuing education;
- provide recognition and motivational activities;
- conduct annual evaluations; and
- conduct exit interviews with a CVO who leaves.

1106.1 Lines of Communication

Revision 11-3; Effective August 15, 2011

Formally and informally, provide information to ensure a CVO understands the roles and responsibilities of a long-term care ombudsman. Consult with a CVO about decisions affecting any official duty. Include certified volunteer ombudsmen in and provide access to appropriate memos, materials and meetings. Supervising staff keep the MLO informed about certified volunteer ombudsmen and immediately inform the MLO of changes to the volunteer's status.

1106.2 Assignment Duties and Expectations

Revision 11-3; Effective August 15, 2011

The MLO assigns ombudsmen for facility coverage. A CVO visits regularly, attends training and submits reports. If expecting to be absent, a CVO informs supervising staff in advance to arrange alternate coverage. Continual absenteeism or failure to submit reports may result in reassignment or decertification.

1106.3 Evaluations

Revision 11-3; Effective August 15, 2011

Conduct annual evaluations of each CVO. The assignment description and standards of performance form the basis of an evaluation. In some local LTCOPs, the volunteers also evaluate the ombudsman program. Evaluations may include open-ended and multiple choice questions, fill in the blank statements or other methods. Keep a record of each evaluation. Use the information to:

- review performance;
- suggest changes to the volunteer's methods;
- plan continuing education for the coming year;
- convey appreciation; and
- determine continued interest in serving.

The MLO assesses each evaluation and determines actions.

- Continued service – review and renew commitment.
- Corrective action – additional training, reassignment, suspension or dismissal.
- Recommend decertification – recommend decertification to the SLTCO for not adhering to rules and procedures.

1107 Recognition

Revision 11-3; Effective August 15, 2011

The local LTCOP expresses appreciation to volunteers for their valuable service. On a regular basis, staff recognize certified volunteer ombudsmen formally and informally. A local LTCOP may hold recognition activities and events. To develop an appropriate format for an event, consult and involve volunteers.

A local LTCOP may recognize certified volunteer ombudsmen through individual or group awards.

Awards generally fall into two categories:

- Things – certificates, pins, photographs, gifts and items such as t-shirts and caps
- Events – lunches, dinners, parties and trips

Rewards include:

- giving respect to and recognizing the service of volunteers;

- giving more responsibility, such as supervisory duties; and
- featuring volunteers in newsletter, newspaper and Internet articles.

1108 Exit

Revision 11-3; Effective August 15, 2011

A CVO leaves the long-term care ombudsman program by resignation or decertification.

- A CVO resigns at any time; encourage advance notice of departure.
- The SLTCO decertifies a CVO after consultation with the MLO.

Prior to leaving the program, a CVO has an opportunity to discuss the reasons with supervising staff ombudsmen. Document all supervising activities, such as evaluation, counseling, training, warning and emergency removal. Possible grounds for decertification may include, but are not limited to:

- gross misconduct or insubordination;
- being under the influence of alcohol or drugs while serving as a CO;
- theft of property or misuse of agency equipment or materials;
- abuse of, mistreatment to, or inappropriate conduct with residents or complainants;
- failure to abide by agency policies and procedures;
- failure to meet physical or mental standards of performance; or
- failure to satisfactorily perform assigned duties.

The local LTCOP or SLTCO may review decisions involving corrective action. If a local LTCOP takes corrective action, inform the CVO of procedures to express personal concern or grievance.

If the CVO initiates resignation, determine the reason for leaving and ask for suggestions to improve the program. If appropriate, discuss and act on options to serve in another capacity locally. If relocating within Texas, ask about interest in serving at another local LTCOP.

Change the CVO from active to inactive status:

- Retrieve the CO badge and other materials.
- Update local files.
- Notify the Office to update OmbudsManager and state office files.

When a CO leaves and facility assignment ends, inform those who need to know, including the facility administrator. In cases of cause, give written notice and clearly indicate any further contact with the former CO is not related to service with the long-term care ombudsman program.

[File viewing information.](#)

Ombudsman Policies and Procedures Manual

Section 1200

Other Required Documents

 [Program Agreement between the LTC Ombudsman Program and Regulatory Services – Signed](#)

 [Memorandum of Understanding with DFPS Adult Protective Services – Signed](#)

 [Memorandum of Understanding with DFPS Adult Protective Services – Unsigned](#)

[File viewing information.](#)

Ombudsman Policies and Procedures Manual

Acronyms

Acronyms	Terms
AAA	Area Agency on Aging
ACO	Active Certified Ombudsman
APS	Adult Protective Services (a division of the Department of Family and Protective Services)
CMS	Centers for Medicare and Medicaid Services
CO	Certified Ombudsman, both certified volunteer and/or certified staff
CSO	Certified Staff Ombudsman
CVO	Certified Volunteer Ombudsman
DADS	Department of Aging and Disability Services
DFPS	Department of Family and Protective Services
HSC	Health and Safety Code
LAR	Legally Authorized Representative, such as a guardian, a parent, managing conservator of a minor, or an agent authorized under a power of attorney
LBB	Legislative Budget Board
LTC	Long-Term Care
LTCOP	Long-Term Care Ombudsman Program, i.e., a local ombudsman entity
MFP	Money Follows the Person
MLO	Managing Local Ombudsman; is also a Certified Ombudsman
MoU	Memorandum of Understanding
NCCNHR	formerly National Citizens Coalition for Nursing Home Reform (now going by the acronym only)
OAA	Older Americans Act
OM	OmbudsManager
PCO	Patient Care Ombudsman
POA	Power of Attorney
DPOA	Durable Power of Attorney
MPOA	Medical Power of Attorney
QRS	Quality Reporting System
RS	Regulatory Services

SLTCO	State Long-Term Care Ombudsman
TAC	Texas Administrative Code
TOPPS	Texas Ombudsman Program Performance System, i.e., the Internet-based reporting system

[File viewing information.](#)

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For information about forms accessibility, contact DADS at handbookfeedback@dads.state.tx.us

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Ombudsman Policies and Procedures Manual

Glossary

Activities of Daily Living – Activities essential to daily self-care, such as bathing, dressing, grooming, toileting, housekeeping, shopping and meal preparation.

Abuse – Any act or failure to act, done knowingly, recklessly or intentionally, including incitement to act, which causes or may cause major or minor physical and/or emotional injury to an individual. This includes exploitation and sexual activity.

Administration on Aging (AoA) – A federal agency within the U. S. Department of Health and Human Services that provides grants to states, tribal organizations and other community service providers. Together these entities comprise the National Aging Services Network, which makes comprehensive supportive services available to vulnerable elderly individuals and their family caregivers.

Administrative Hearing – A proceeding in which the legal rights, duties or privileges of a party are to be determined by a state agency after an opportunity for an adjudicative hearing.

Admission Agreement – A written statement describing the services provided by the facility and the related charges.

Adult Foster Care (AFC) – Residential services and care in a family's home or in a small group home that provides a 24-hour supervised living arrangement for individuals who are unable to continue living independently in their own homes due to physical, mental or emotional limitations. An AFC must be licensed as a Type A assisted living facility.

Adult Protective Services – Voluntary and involuntary services to elderly and disabled adults who are reported to be abused, neglected or exploited. Services include investigation, service planning, casework services and protective case management. Adult protective services are provided without regard to income.

Advance Directives – An instruction to administer, withhold or withdraw life-sustaining treatment in the event of a terminal or irreversible condition, an out-of-hospital do not resuscitate (DNR) order or a medical power of attorney.

Advocate – A person who represents his or her own interest publicly or a person who represents the interests of another individual.

Aged – Persons 60 years of age and older.

Appeal – A client's request for a fair hearing concerning a department action.

Applied Income – That portion of an individual's income that must be applied toward the cost of institutional care.

Area Agency on Aging (AAA) – Agencies designated by each state to be a focal point for Older Americans Act programs within a Planning and Service Area.

Assisted Living Facility (ALF) – Provides food and shelter and personal care services to four or more persons unrelated to the owner. Facility types range from adult foster care homes to facilities serving residents capable of self-evacuation, to facilities serving residents who may require nighttime attendance and assistance with evacuation.

Behavioral Health Care – Assessment and treatment of mental or emotional disorders and chemical dependency disorders.

Business Day – Any day except Saturday, Sunday, a state holiday or a federal holiday.

Case – Each inquiry, brought to or initiated by the ombudsman on behalf of a resident or group of residents involving one or more complaints, that requires opening a case and includes ombudsman investigation, strategy to resolve and follow up.

Centers for Medicare and Medicaid Services (CMS) – The federal agency responsible for administering Medicare and overseeing state administration of Medicaid, formerly known as the Health Care Financing Administration (HCFA).

Certified Medicaid Eligible – A person who has gone through the Medicaid application process and has been determined by the state to be eligible for the Medicaid program.

Certified Ombudsman – A certified staff ombudsman or a certified volunteer ombudsman

A certified staff ombudsman is a person who:

- meets the qualifications described in §85.401(g)(1) (relating to Long-Term Care Ombudsman Program);
- is employed by or is contracting with a AAA or nonprofit organization designated in accordance with §85.401(b); and
- performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.

A certified volunteer ombudsman is a person who:

- meets the qualifications described in §85.401(g)(1);
- is not employed by or contracting with a AAA or nonprofit organization designated in accordance with §85.401(b); and
- voluntarily performs activities for the AAA or designated nonprofit organization to implement the LTC Ombudsman Program.

Closed Case – A case in which none of the complaints within the case requires any further action on the part of the ombudsman and every complaint has been assigned the appropriate disposition code.

Community Based Alternative (CBA) Waiver – A waiver of the Medicaid state plan granted under Section 1915(c) of the Social Security Act that allows Texas to provide community-based services to

adults as an alternative to nursing facility care.

Complaint – A concern brought to or initiated by, the ombudsman for investigation and action by or on behalf of one or more residents of a long-term care facility relating to health, safety, welfare or rights of a resident. One or more complaints constitute a case.

Complainant – A person who makes a complaint.

Compliance, Assessment, Regulation, Enforcement System (CARES) – DADS Regulatory Services database system.

Comprehensive Care Plan – A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet a nursing home resident's needs after admission. The plan addresses the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity and resident's rights, and includes strategies consistent with the physician's prescribed plan of care.

Co-pay – A cost-sharing arrangement in which a covered person pays a specified amount for a specified service. Payment is usually required at the time the service is rendered.

Developmental Disability – A severe, chronic disability manifested during the developmental period before age 22 that results in impaired intellectual functioning or deficiencies in essential skills.

Direct Care Staff – Any person who works directly with consumers and assists consumers with daily needs.

Durable Medical Equipment (DME) – Equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person unless the person is ill or injured, and is appropriate for using at home.

Dual Diagnosis – A term used to describe a person's condition involving diagnosis of more than one type of mental disability, such as mental illness occurring with mental retardation or mental illness occurring with chemical dependency.

Dual Eligible – A person who qualifies for both Medicare benefits and Medicaid assistance.

Exploitation – The illegal or improper act or process of an employee using the resources of a person served by DADS for monetary or personal benefits, profit or gain.

Fair Hearing – A meeting conducted by a regional hearing officer with an individual or his/her representative who disagrees with and wishes to appeal some action taken on the individual's case.

Federal Fiscal Year (FFY) – A 12-month period that begins on Oct.1 and ends Sept. 30.

Guardian – A person lawfully invested with the power and charged with the duty of taking care of and managing the property and rights of another person who, for deficit of age, understanding or self-control, is considered incapable of administering his/her own affairs.

Health and Human Services Commission (HHSC) – The oversight agency for health and human services in Texas and the single state Medicaid agency for Texas. Agencies under HHSC authority

are:

Department of Aging and Disability Services
Department of Assistive and Rehabilitative Services
Department of Family and Protective Services
Department of State Health Services

Health Insurance Portability and Accountability Act (HIPAA) – A federal law (Public Law 104-191) that allows persons to qualify immediately for comparable health insurance coverage when they change employment relationships. Title II, Subtitle F, of HIPAA gives Health and Human Services the authority to:

- mandate the used of standards for the electronic exchange of health care data;
- specify what medical and administrative code sets should be used within those standards;
- require the use of national identification systems for health care patients, providers, payers and employers; and
- specify the types of measures required to protect the security and privacy of personally identifiable health care information.

Home and Community Support Services Agencies (HCSSA) – Providers of one or more home health services, including home health, hospice and personal assistance services, to individuals in a residence or independent living environment.

Home Health Services – One or more health services required by an individual in a residence or independent living environment. Health services include nursing; physical, occupational, speech or respiratory therapy; medical social services; intravenous therapies; dialysis; services by unlicensed personnel; medical equipment and supplies (excluding drugs); or nutritional counseling.

Hospice – An array of special services provided to individuals who are terminally ill and to their families. This includes physical care and counseling. Hospice is for all age groups, including children, adults and the elderly during their final stages of life. The goal of hospice is to care for the patient and the family, not to cure the terminal illness. A team of doctors, nurses, home health aides, social workers, counselors and trained volunteers help the patient and family cope with the illness. Hospice services may be provided in the home or other residential settings.

Incident – An abnormal event, including accidents or injury to staff or residents that are documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect or exploitation must also be reported to DADS. (§19.101)

Individual Service Plan (ISP) – A written description of the medical care or supervision and non-medical care needed by a resident living in an assisted living facility licensed by DADS.

Inspection – Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review or similar purpose.

Interdisciplinary Team – A group of persons drawn from or who represent professions, disciplines, service areas or agencies relevant to identify an individual's needs and design a program to meet those needs.

Intermediate Care Facility for Persons with Mental Retardation (ICF/MR) – A Medicaid program that provides active treatment in a residential setting for individuals with mental retardation or a related condition.

Legally Authorized Representative (LAR) – A person authorized or required by law to act on behalf of an individual with regard to a matter described in 40 TAC Chapter 92, including a parent, guardian, managing conservator of a minor or the guardian of an adult.

Legislative Budget Board (LBB) – A permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations for all agencies of state government, as well as completes fiscal analyses for proposed legislation. The LBB also conducts evaluations and reviews to identify and recommend changes that improve the efficiency and performance of state and local operations and finances.

Level of Care (LOC) – An assessment of the type of care necessary to meet the individual's needs. The assessment considers the individual's needs in all aspects of development, level of functioning and potential to benefit from a particular program.

Long-Term Care Ombudsman – Services that identify, investigate and resolve complaints made by or on behalf of residents of nursing facilities and assisted living facilities and which relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents, providers or representatives of providers of long-term services, public agencies or health and social services agencies.

Long-Term Services and Supports (LTSS) – Assistance and care for persons who are elderly or have some other chronic disabling condition. The goal of LTSS is to help these individuals remain as independent as possible.

Managed Care – A system in which a single provider or organization oversees the overall care of a patient. Many state Medicaid programs include managed care components as a method of improving quality and controlling costs.

Medicaid – A federal medical assistance program for certain persons with low income. Medicaid is financed by both federal and state funds. Each state designs and administers its own program under the general oversight of the U.S. Department of Health and Human Services. The program was enacted in 1965 under Title XIX of the Social Security Act.

Medical Assistance Only (MAO) – MAO consumers receive no income assistance but are eligible for Medicaid. Except for their income and resources, these individuals would be eligible for money payments. This means they are in one of the categories of aged, blind, disabled or families with dependent children.

Medicaid Eligible (ME) – In Texas, persons who have been determined eligible to receive Medicaid services after having gone through a certification process.

Medical Necessity (MN) – Health services that are reasonably necessary to prevent illness or medical conditions or to provide interventions and/or treatments for conditions that cause suffering or pain.

Medicare – The nation's largest health insurance program financed by the federal government. The

program provides insurance to people who are age 65 and older, who are disabled or who have permanent kidney failure.

Medicare Part A – Medicare hospital insurance that helps pay for medically necessary inpatient hospital care and, after a hospital stay (for a limited period of time), for inpatient care in a skilled nursing facility, for home care by a home health agency, or hospice care by a licensed and certified hospice agency.

Medicare Part B – Medicare medical insurance that helps pay for medically necessary physician services, outpatient hospital services, outpatient, physical therapy and speech pathology services, and a number of other medical services and supplies that are not covered by the hospital insurance.

Medicare Part C – Previously called Medicare+Choice, this part of the Medicare program was renamed Medicare Advantage and modified by the Medicare Prescription Drug, Improvement and Modernization Act of 2003. It provides for certain managed care coverage options in Medicare, under which managed care organizations receive a capitated monthly payment per covered beneficiary.

Medicare Part D – A new, voluntary Medicare prescription drug benefit created by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 that began January 1, 2006. Beneficiaries who remain in traditional Medicare may choose a private drug-only plan; those who choose to enroll in a managed care organization may choose a plan that offers a drug benefit.

Mental Illness – A single, severe mental disorder, excluding mental retardation, or a combination of several mental disorders as defined in the latest edition of the American Psychiatric Association's *Diagnostic and Statistical Manual on Mental Disorders*.

Mental Retardation (MR) – Significantly sub-average intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

Minimum Data Set (MDS) – Minimum data set. See Resident Assessment Instrument (RAI).

Money Follows the Person (MFP) – An initiative that helps people who receive long-term services and supports in a nursing facility return to the community to get services without having to be on a community services interest list.

NCCNHR – Formerly the National Citizens Coalition for Nursing Home Reform (now goes by acronym only). A national membership group that advocates for quality long-term care.

National Ombudsman Resource Center (NORC) – An organization that provides support, technical assistance and training to the 53 state long-term care ombudsman programs and their statewide networks. Objectives are to enhance the skills, knowledge and management capacity of state programs to enable them to handle residents' complaints and represent resident interests (individual and systemic advocacy). Funded by the Administration on Aging (AoA) and operated by NCCNHR in cooperation with the National Association of State Units on Aging (NASUA).

Neglect – A negligent act or omission by any person responsible for providing services that caused or may have caused physical or emotional injury to a person served by DADS or which placed a person

served at risk of physical or emotional injury or death.

Nursing Facility (NF) – A facility licensed by the state in which individuals receive nursing care and appropriate rehabilitative and restorative services.

Nursing Home Compare (<http://www.medicare.gov/>) – An Internet tool containing detailed information about every Medicare and Medicaid-certified nursing home in the country.

Older Americans Act (OAA) – Public Law 109-365 as part of the United States Statutes at large.

Personal Care Services – Assistance with meals, dressing, movement, bathing or other personal needs or maintenance; the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

Power of Attorney (POA) – A legal document authorizing one to act as the agent of the grantor.

Preadmission Screening and Resident Review (PASARR) – An evaluation process used to determine whether a person with mental illness, mental retardation and/or related condition is most appropriately placed in a nursing facility and needs training and/or treatment for the conditions.

Program Agreement – Formal agreement between divisions within an agency for more interpretation of a policy that is enforceable by rule or by state or federal regulation.

Program Instruction (PI) – Clarification or more interpretation of a policy that is enforceable by rule or by state or federal regulation.

Promoting Independence – A state initiative in response to the U. S. Supreme Court ruling in *Olmstead v. Zimring* mandating that states provide community-based services to persons with disabilities who would otherwise be entitled to institutional services when certain conditions are met.

Provider – A person, group or agency other than a DADS staff person who performs a service for an individual for a fee paid by DADS; sometimes called vendor.

Quality Monitor – A function that provides external review of the access to and the quality of care provided to Medicaid consumers enrolled in Medicaid managed care.

Quality Reporting System (QRS) – Information to help a person evaluate the quality of long-term care services, such as specific information about a particular long-term care provider or to compare providers in a particular area. QRS is one resource to help choose a provider. Go to <http://facilityquality.dads.state.tx.us/>.

Regulatory Services – A division of the Department of Aging and Disability Services, which is responsible for surveying nursing facilities and assisted living facilities for licensure and for nursing facility certification for Medicaid participation to determine compliance with regulations. (§19.101)

Related Condition (RC) – A disability other than mental retardation that manifests itself during an individual's developmental period (before age 22) and results in substantial functional limitations in

three of six major life activities (self-care, expressive/receptive language, learning, mobility, self-direction and capacity for independent living).

Representative Payee – A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary and ensure benefits will be used according to the beneficiary's needs. (§19.101)

Resident – Any individual residing in a nursing home or assisted living facility.

Resident Assessment Instrument (RAI) – An assessment tool to conduct comprehensive, accurate, standardized and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the CMS, utilization guidelines, and Resident Assessment Protocols (RAPS). (§19.101)

Resident-Centered Care – A quality-of-life approach to care giving that combines the best of the clinical model of skilled nursing care with a flexible, innovative social model of care.

Resource Utilization Group (RUG) – A level of care determination for an individual that is used to establish payment levels to nursing facilities and service ceilings for CBA, MDCP and certain CWP consumers. RUG replaced the TILE methodology on Sept.1, 2008.

Skilled Nursing Facility (SNF) – An institution primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care; or rehabilitation services for the rehabilitation of injured, disabled or sick persons; or, on a regular basis, health-related care and services to individuals who, because of their mental or physical condition, require care and services (above room and board) that can be made available to them only through institutional facilities. Skilled nursing facilities are not primarily for the care and treatment of mental disorders.

Social Security Administration (SSA) – The federal agency responsible for determining eligibility for Supplemental Security Income (SSI) benefits in Texas and most other states.

STAR+PLUS – State of Texas Access Reform plus Managed Care.

State Fiscal Year (SFY) – The Texas fiscal year begins on Sept. 1 and ends Aug. 31.

State Long-Term Care Ombudsman (SLTCO) – An individual who heads the Office of the State Long-Term Care Ombudsman with expertise and experience in the fields of long-term care and advocacy.

Supplemental Security Income (SSI) – A federal cash assistance program for low-income elderly people and people of all ages with disabilities, administered by the Social Security Administration.

Texas Index for Level of Care (TILE) [replaced by RUGS on Sept. 1, 2008] – The level of effort required by providers in order to provide appropriate service(s) to a client based on an assessment of the client's medical need. A TILE (values 201 - 211) was used to calculate the payment rate for certain client services.

Texas Legal Services Center (TLSC) – A Legal Services Program office that gives specialized assistance to advocates of low-income people. The assistance areas include training, litigation

support and communication.

Texas Silver-Haired Legislature (TSHL) – A nonpartisan and nonprofit organization composed of 116 representatives selected by Texans 60 years and older to serve two-year terms; TSHL Foundation, a 501 (c) 3 organization, manages the funds. (<http://www.txshl.org/>)

Titles of the 1965 Social Security Act:

II– Old age, Survivors and Disability Insurance Benefits

IV-A – Temporary Assistance for Needy Families; WIN social services

XVI– Supplemental Security Income

XVIII– Medicare

XIX – Medicaid

XX – Social Services

XXI – Children’s Health Insurance Program

Vendor – Provider of care to clients.

Vendor Hold – Temporary suspension of payment from the department to a service provider.

Volunteer – Someone who contributes time, effort and talent to meet a need or further a mission, without going on the payroll.

[File viewing information.](#)