



*Improving the Lives of Older Adults and People with Disabilities
Through Services, Research, and Education*

Date: November 27, 2019

To: State Long-Term Care Ombudsmen

From: Edwin L. Walker, Deputy Assistant Secretary for Aging
Director, Office of Long-Term Care Ombudsman Programs 

RE: FINAL Long-Term Care Ombudsman Program Training Standards

Thank you for your participation in the development of Long-Term Care Ombudsman program training standards. Today I am providing the final training standards, which fulfill the Older Americans Act requirement for the Office of Long-Term Care Ombudsman Programs (within the Administration for Community Living) to establish standards applicable to the training required for representatives of the Office of Ombudsman (representatives) in each state. I am sure you share my belief that training designed and delivered pursuant to these standards will support the on-going effectiveness of states' Ombudsman programs.

The development of training standards was a deliberative process, which considered the findings from the National Ombudsman Resource Center (NORC) report *Long-Term Care Ombudsman Program Training Standards Report of Workgroup Meetings and Proposals for Standards*.¹ The workgroup was comprised of state Ombudsmen, Ombudsman program representatives, and other stakeholders. Additionally, the National Association of State LTC Ombudsman Programs (NASOP) and the National Association of Local LTC Ombudsmen (NALLTCO) provided guidance beyond the work of the NORC report.

ACL staff also considered other information including the findings from the *Ombudsman Program Evaluation Study* conducted by NORC at the University of Chicago. Highlights from the survey data from paid and volunteer representatives indicate that:

- 96% of volunteers reported receiving in-person training and had several examples of field training, i.e. 74% received shadowing/mentoring observed by an experienced Ombudsman, etc.
- 93% of staff Ombudsmen report having in-person training. 87% report having field training.

¹ <https://ltcombudsman.org/uploads/files/library/training-standards-report.pdf>

- 40% of paid and 25% of volunteer representatives indicated that more training would have been helpful. Desired topics for which additional training was requested included mentoring and/or shadowing with experienced staff, more site visits, and additional hands-on, facility-based trainings.

All of this feedback, engagement, and data were most helpful in solidifying the final standards. The training standards intend to support flexibility while acknowledging the importance of field visits, and interactive training, either in person or by technology. Recognizing the complexity of the work of representatives of the Office, the minimum durational requirements for training will provide a solid foundation, with reinforcement through continuing education to support a successful experience for the learner and for the residents that they will serve.

I recognize for some programs that will need to increase their training hours, it may take time to adapt. Therefore, ACL's goal is for states to achieve the minimum training requirements no later than September 30, 2021. ACL will review states' ability to meet the training standard through the annual NORS report, which asks state Ombudsmen to report their training standard hours. The Ombudsman Resource Center will focus efforts on revising training modules and developing interactive training applicable to all representatives of the Office to support your efforts.

I appreciate your assistance in sharing the training and resources created by the NORC with your representatives, including volunteers.

Thank you again for your contributions to the development of the Long-Term Care Ombudsman Program Training Standards.

cc: State Unit on Aging Directors

Attachment: Long-Term Care Ombudsman Program Training Standards

**Administration for Community Living/Administration on Aging
Office of Long-Term Care Ombudsman Programs
Long-Term Care Ombudsman Program Training Standards**

Why do Long-Term Care Ombudsman programs need training standards?

The Long-Term Care Ombudsman Program (Ombudsman program) promotes and protects the health, safety, welfare and rights of individuals (residents) living in long-term care facilities (nursing homes, residential care communities, including assisted living and similar settings.) The Older Americans Act and corresponding regulation directs the Ombudsman and the representatives of the Office to conduct a variety of activities in support of residents. These activities¹ include:

- Services to assist the residents in protecting the health, safety, welfare, and rights of the residents,
- Investigating Complaints,
- Informing residents about how to obtain services,
- Ensuring that residents have regular and timely access to the Ombudsman program,
- Representing the interests of residents before governmental agencies,
- Seeking administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents,
- Analyzing, commenting on, and monitoring the development and implementation of Federal, State, and local laws, regulations.

To fulfill this mandate the Ombudsman and the representatives of the Office must have subject matter knowledge of resident rights, facility regulatory standards, the resident experience, complaint investigation and the Ombudsman program's policies and procedures. They also need to know how to operationalize this knowledge; for instance, how to carry out the program policies on complaint handling procedures, how to access resident records and steps to disclose resident information.² Residents call on Ombudsman programs to resolve a variety of problems; often times to address basic quality of life concerns and complex matters of eviction or abuse and neglect, therefore a baseline competency of both knowledge and skills is necessary to support effective and credible Ombudsman program services.

Statutory Background:

The Older Americans Act requires the Director of the Office of Long-Term Care Ombudsman Programs (within the Administration for Community Living) to establish standards applicable to the training required for representatives of the Office of Ombudsman in each state³.

¹ Older Americans Act Sec. 712 (a) (3) Functions of the Ombudsman

² *The Long-Term Care Ombudsman Program: Rethinking and Retooling for the Future*. (April, 2003) "The skills needed to be an ombudsman are diverse and sophisticated, ranging from the ability to communicate effectively with providers and regulators, family members and representatives of community organizations, and, most importantly, residents. Communication skills must include the ability to interview and to effectively elicit facts and then to document the facts and information obtained."

³ (L) not later than 180 days after the date of the enactment of the Older Americans Act Reauthorization Act of 2016, establish standards applicable to the training required by section 712(h)(5); and

The standards are to:

- (A) specify a minimum number of hours of initial training;
 - (B) specify the content of the training, including training relating to—
 - (i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;
 - (ii) investigative techniques; and
 - (iii) such other matters as the State determines to be appropriate; and (C) specify an annual number of hours of in-service training for all designated representatives.
- §201(2)(L) and §712(h)(5).

Section 712(h)(6) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative—

- (A) has received the training required under paragraph (5); and
- (B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office.

The Ombudsman program rule at 45 CFR 1324.13(c) further describe the functions and responsibilities of the State Long-Term Care Ombudsman concerning training.

(2) *Training requirements.* The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act, in consultation with residents, resident representatives, citizen organizations, long-term care providers, and the State agency, that—

- (i) Specify a minimum number of hours of initial training;
- (ii) Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate; and
- (iii) Specify an annual number of hours of in-service training for all representatives of the Office;

(3) Prohibit any representative of the Office from carrying out the duties described in §1324.19 unless the representative—

- (i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and
- (ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office.

In fulfillment of Section 712(h) (5)(6), the Administration for Community Living/Administration on Aging establishes the following model training standards for purposes of designating representatives of the Office of State Long-Term Care Ombudsman.

I. Training standards for purposes of designation:

Each State Long-Term Care Ombudsman Program is to provide a minimum of 36 hours of initial certification training. Ombudsman programs may choose to require more hours of training than the minimum. Training hours shall include:

- Up to 7 hours (or no more than 20% for states that provide for more than 36 hours of training) may be independent study/homework.
- At least 10 hours in the field, which may include structured tours and shadowing with an experienced representative of the Office, meeting with resident councils, etc.
- A range of 16 to – 20 hours conducted in a classroom style setting (including remote classroom format such as live webinars and/or phone discussions). This classroom training is to incorporate adult learning techniques such as case studies, role-plays and other interactive activities. States may choose to utilize selective presentations by other relevant agencies, such as the survey and certification agency, or legal assistance as part of these hours.

Recommended practices prior to training:

- ✓ Programs screen prospective representatives of the Office (both paid and volunteer) in accordance with state policies and procedures.
- ✓ Prospective representatives of the Office are aware of individual conflicts of interest and have had at a minimum a preliminary conflict of interest screening in accordance with state policies and procedures.

Curriculum content must include but not limited to the following subject matter knowledge⁴:

1. The Ombudsman program's role, responsibility and authority, specifically;
 - a. Governing statutes and regulations: Older Americans Act, Ombudsman program federal rule at 45 CFR 1324; applicable state statutes and regulations.
 - b. Ombudsman program – organizational location, and structure, key program staff.
 - c. Role of the State Ombudsman – functions and responsibilities
 - i. Identify, investigate, and resolve complaints,
 - ii. Ensure that residents have regular and timely access to the Ombudsman program,
 - iii. Represent the interests of residents before governmental agencies, etc.,
 - iv. Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies (systems advocacy,)
 - v. Statewide leader,
 - vi. Designate representatives of the Office,
 - vii. Sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program.
 - d. Duties of designated representatives of the Office

⁴ The order and the length of time allotted for each subject is at the discretion of the State LTC Ombudsman.

- i. Similarities to role of state Ombudsman, i.e. to investigate complaints, provide access,
 - ii. Differences from role of state Ombudsman
 - 1. Program policies re: systems advocacy and the role of a designated representative of the Office,
 - 2. Release of program information.
 - e. Ethics and conflicts of interest – both individual and organizational.
- 2. The resident and the resident experience
 - a. Introduction to common health issues individuals using Long-Term Services and Supports (LTSS) may experience. Types of disabilities that people may live with including physical disabilities, developmental and intellectual disabilities, Alzheimer's disease and related dementias, significant mental illnesses,
 - b. Resident experience living in a long-term care setting,
 - c. Myths and stereotypes about older adults and persons with disabilities.
- 3. Long-term care settings – Overview
 - a. Skilled Nursing Facility – federal regulations and any relevant state statutes & regulations
 - i. Resident rights,
 - ii. Assessment & care planning – person centered care,
 - iii. Transfer & discharge requirements and challenges,
 - iv. Survey and inspection process.
 - b. Residential Care Community, as defined in the state
 - i. Types of settings in the respective state,
 - ii. Characteristics and level of services provided,
 - iii. Resident rights, as applicable in state law,
 - iv. CMS HCBS settings requirements as applicable,
 - v. Licensing, survey, certification and similar process.
 - c. Resident and family councils
 - i. Purpose,
 - ii. Facility staff role and responsibilities,
 - iii. Ombudsman program role.
- 4. Access to residents, facilities & records
 - a. Program expectations regarding providing in-person access to residents and program standards regarding frequency of visits and protocols to follow during a visit.
 - b. Access to facilities and residents
 - i. Program access policies during regular hours and at any other time when access may be required by the circumstances to be investigated,
 - ii. Access to the resident and to the name and contact information of the resident representative, if any,
 - iii. Program policies on access to facility records- administrative records, policies, and documents, to which the residents have, or the public has access.

- c. Program procedure for access to resident records
 - i. Access to review the residents' medical, social and other records
 - 1. Requirements and steps to obtain consent to access resident records,
 - 2. HIPAA rule and the Ombudsman program.
- 5. Disclosure
 - a. Disclosure of resident information and Ombudsman program records
 - i. Program records may be disclosed only at the discretion of the Ombudsman or designee or pursuant to court order,
 - ii. Prohibition of the disclosure of identifying information of any resident or complainant unless –
 - 1. resident or the resident representative communicates informed consent to the disclosure (verbal or documented,)
 - 2. State Ombudsman has authorized disclosure,
 - 3. In compliance with a court order.
 - iii. Program policies and procedures; steps taken to disclose information.
- 6. Role of Resident Representative
 - a. Resident decision-making supports and options,
 - b. State laws on third party decision makers; including guardianship, communication with a guardian, with a resident for whom a guardian has been appointed.
 - c. Program policies on communication with resident representatives with regards to complaint processing in particular;
 - i. the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative.
- 7. Complaint Investigation
 - Reinforce access, disclosure, and role of the program as a resident advocate as part of complaint processing,
 - Problem solving including Interviewing, observation and complaint investigation techniques,
 - Verification and resolution.
 - a. Common types of complaints – including the use of the states' NORS data,
 - b. Abuse, neglect, exploitation, and the role of the Ombudsman program,
 - c. Program policies and procedures related to complaint investigation
 - i. Resident consent to take action,
 - ii. Role of resident representative,
 - iii. Resident consent to disclose information,
 - iv. Steps to take when no representative and resident not able to consent,
 - v. If witness abuse, neglect or exploitation,

- vi. Resolution strategies including referrals to outside entities, resolving at facility level, mediation, etc.

8. Common resources and agencies

- a. Role of Ombudsman program legal counsel and legal assistance representation of residents,
- b. Natural partner agencies that assist residents which may include Older Americans Act programs, case management, adult protective services, protection and advocacy, dementia specialist, and others as identified by the State Ombudsman,
- c. Programs that pay for long-term services and supports, including an introduction to Medicare and Medicaid.

9. Documentation

- a. Consent to access and consent to disclose forms,
- b. NORS documentation – case, complaints consultation, activities.

10. Communication

- a. Communication with residents, their representatives, facility staff and others,
- b. Visit protocol and techniques to ensure that the representative of the Office provides consistent in-person access to residents.
- c. Types of communication – verbal, non-verbal, cultural differences, etc.,
- d. Use of auxiliary aides and services in communication with residents.

Learning Outcomes:

After completion of training, the learner will understand, i.e. be able to describe or know how to find and operationalize the following information:

1. The Ombudsman program serves a vital purpose at the individual and systems level.
2. The representative of the Office is part of a statewide program under the direction of the Office of State Ombudsman and carries specific responsibilities and duties to the resident and the program.
3. The program serves as a resource to resident their families and facility staff with the goal to promote and protect the health safety, welfare and rights of residents.
4. Resident rights and choice are paramount and the program promotes empowerment and is person-directed.
5. Relevant laws, along with where to find information on these laws, i.e. how to use the training manual, links to websites, who to call for technical assistance.

6. Awareness of different communication styles and strategies to communicate.
7. The importance of and responsibility to maintain confidentiality of all communications, records and other information with residents, complainants and others.
8. Steps to take when investigating a complaint and purpose of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident; including:
 - a. Duty to support and maximize resident participation in the process of resolving the complaint,
 - b. Obligation to obtain consent to begin investigating a complaint,
 - c. Understanding confirmed of the balance of being an impartial fact finder when conducting an investigation and being a person-centered advocate to support the resident's desired outcome.
9. Programmatic requirements
 - a. Who contact for support
 - b. Access to and understanding of how to use the program policies and procedures
 - c. Familiarity with routine requirements to avoid, identify and remedy individual conflicts of interest
 - d. Affirms the importance of completing NORS and other required documentation

II. Annual In-Service Training hours required for maintaining designation

1. A minimum 18 hours per year is required although more hours are encouraged, especially for paid representatives of the Office. The Ombudsman program does not need to personally conduct all in-service training and shall provide or arrange training based on the needs of representatives of the Office.
 - a) Methods - A combination of training methods is acceptable:
 - i. Classroom - including role-plays and other interactive activities; presentations by experts of other agencies, or internal case discussions, NORS consistency training or reviews, etc. Classroom training includes remote classroom formats such as live webinars and/or phone discussions)
 - ii. In-facility training such as shadowing a trained representative of the Office or observing a survey process.
 - iii. Web-based and self-learning techniques are acceptable including training offered by other entities, such as the National Center for Law and Elder Rights (NCLER), the National Center on Elder Abuse (NCEA), etc.
 - iv. Recommend utilizing training /webinars provided or sponsored by the National Ombudsman Resource Center.

Definitions from 45 CFR 1324.1 that apply to this document

Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the organizational unit in a State or territory, which is headed by a State Long-Term Care Ombudsman.

Representatives of the Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.

State Long-Term Care Ombudsman, or Ombudsman, as used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§1324.13 and 1324.19.

State Long-Term Care Ombudsman program, Ombudsman program, or program, as used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.