

## **CHAPTER 9**

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## **9-1 LEGAL AUTHORITY**

Within the commission there shall be an established office of the state long-term care ombudsman, referred to as “the office” in this section, which shall carry out those functions delineated in § 307(a)(12) of the Older Americans Act. OAA § 307(a)(12);42 U.S.C. 3058g(a)(1) A)(B); TN Code 71-2-109a; TCAD Rules 0030-1-9

## **9-2 APPOINTING AN OMBUDSMAN**

The state agency shall employ a full-time state long-term care ombudsman (SLTCO) who will insure that activities are carried out through the Office to meet the requirements of the Older Americans Act. The Ombudsman Program includes all District Long-Term Care Ombudsman (DLTCO) programs as designated representatives of the State Long-Term Care Ombudsman. The State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization. 42 U.S.C. 3058g (a) (l) A) (B)

## **9-3 DEFINITIONS**

1. **Access**-The right to enter any long-term care facility; to communicate privately and without restriction with any resident who consents to the communication; to seek consent to communicate privately and without restriction with any resident; and to inspect a resident's records under conditions set out in 42 U.S.C. 3058g(b)(I)(A-D) and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (AoA-IM-03-01, February 4, 2003).
2. **Certification** - The designation provided by the (SLTCO) to an individual who meets minimum qualifications, is free of conflicts of interest, and has

successfully completed training and other criteria stipulated in the Certification Requirements for Community Ombudsmen. Designation authorizes such individual to act as a representative of the Long-Term Care Ombudsman Program. (See OAA § 712(a) (5); O.C.G.A. § 31-8-52)

3. **Community education** - Presentations to community groups, other agencies or professionals, or to groups of residents or families (other than resident or family councils) on long-term care issues.
4. **Complaint** - Information regarding action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents which is brought to the attention of a long-term care ombudsman and to which the ombudsman responds in order to address the adverse effect on residents.
5. **Complaint processing** - Services to assist residents of long-term care facilities to resolve problems or complaints through investigation, verification and notification.
6. **Conflict of Interest** - Means that other interests intrude upon, interfere with, and threaten to negate, or give the appearance of interfering with or negating the ability of the state ombudsman, state level staff of the office, local ombudsmen, volunteers, or local ombudsman entities to advocate without compromise on behalf of residents of long-term care facilities. It also means any situation that would create a reasonable appearance of a conflict of interest.
7. **Consult" or "consultations"** - To share information with and to keep apprized

8. **De-designation** - Formal notification by the long-term care ombudsman that a district program meets requirements, and shall be considered a subdivision of the state office.
9. **District Long-Term Care Ombudsman (DLTCO)** - An individual designated by the State Long-Term Care Ombudsman to represent and to carry out all duties of the Tennessee Long-Term Care Ombudsman (STLCO) as specified in the Older Americans Act of 1965 Section 711, (3)(5)-712(a)(5)(A)(h)(5) and 42 use 3058f and 42 USC 3058g(a)(5)(A)(h)(5) (A) (B).
10. **Family council activities** - Provision of technical assistance, information, training or support to family members of residents and/or facility staff regarding developing, informing, or maintaining a family council.
11. **Guardian** - Person or entity appointed by a court to exercise the legal rights and powers of another individual.
12. **Immediate family** - Those persons related to an individual as a spouse, child, sibling, parent, grandchild or grandparent.
13. **Information and assistance** - Services which provide information to individuals on long-term care or the needs/rights of long-term care residents.
14. **In-service education to facility** - Presentations to long-term care facility staff on long-term care issues.
15. **Interagency coordination** - Activities which involve meeting or coordinating with other agencies to learn about and/or improve conditions for one or more residents of long-term care facilities.

16. **Issues advocacy** - Activities supporting and promoting issues which benefit residents of long-term care facilities.

17. **Integrated long-term care:**

(A) means items and services that consist of –

(i) with respect to long-term care –

- I. long-term care items or services provided under a State plan for medical assistance under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including nursing facility services, home and community-based services, personal care services, and case management services provided under the plan; and
- II. any other supports, items, or services that are available under any federally funded long-term care program; and

(ii) with respect to other health care, items and services covered under –

- I. the Medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);
- II. the State plan for medical assistance under the Medicaid program; or
- III. any other federally funded health care program; and

(B) includes items or services described in subparagraph (A) that are provided under a public or private managed care plan or through any other service provider. [OLDER AMERICANS ACT TITLE I Section 102 (32)]

18. **Legal representative** - An agent under a valid power of attorney, provided that the agent is acting within the scope of his or her agency; an agent under a durable power of attorney for health care; or an executor, executrix, administrator, or administrator of the estate of a deceased resident.
19. **Long-Term Care Facility** - Any residential nursing facility, Assisted-Care Living Facility, Home For The Aged or Supportive Living Facility and any similar type of homes operating within the state as defined by USC 42 1396r (a) and 42 USC 1395i-3(a).
20. **Long-term care** - Means any service, care, or item (including an assistive device), including a disease prevention and health promotion service, an in-home service, and a case management service –
- a) intended to assist individuals in coping with, and to the extent practicable compensate for, a functional impairment in carrying out activities of daily living;
  - b) furnished at home, in a community care setting (including a small community care setting as defined in subsection (g)(1), and a large community care setting as defined in subsection (h)(1), of section 1929 of the Social Security Act (42 U.S.C. 1396t)), or in a long-term care facility; and
  - c) not furnished to prevent, diagnose, treat, or cure a medical disease or condition. OLDER AMERICANS ACT TITLE I Section 102 (34)
21. **Local Long-Term Care Ombudsman (LLTCO)** - Person or persons, designated by the SLTCO, either paid or volunteer, working under the direct

supervision of the State or District Long-Term Care Ombudsman, and responsible for assisting with the performance of long-term care ombudsman duties as mandated in 42 U.S.C. 3058g (a)(5)(A)and(B).

22. **Long-Term Care Ombudsman Staff** - Person or persons, paid or volunteering, working under the direct supervision of the State or District Long-Term Care Ombudsman, and responsible for assisting with the performance of long-term care ombudsman duties.
23. **Long-term care services** - A set of health, personal care, and social services delivered over a sustained period of time to persons who have lost or never acquired some degree of functional mental or physical capacity. (Institute of Medicine, Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act, 1995 at p. 290)
24. **Nonprofit** - As applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.
25. **Neglect** - The failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caregiver to provide the goods and services. (OAA § 102(34))
26. **PSA: Planning and Service Area** - Service Description (Ombudsman Program): The statement of required service activities for the District Long-Term Care Ombudsman program, for which each provider agency is

responsible, as established by the Tennessee Commission on Aging Guide to Contract Preparation and Reporting, TCA-PI-95-08 As amended.

27. **Provider Agency** - An agency funded through a contract with the either State Agency or an Area Agency on Aging and Disability which provides local ombudsman services in accord with federal and state law and policies.
28. **Representative of the office** - Means the state ombudsman, other state level ombudsman staff, local ombudsmen, or volunteer ombudsmen.
29. **Resident council activity** - Provision of technical assistance, information, training, or support to residents and/or facility staff regarding developing, informing, or maintaining a resident council.
30. **Resolved** - The complaint has been resolved to the resident's satisfaction. If the resident cannot communicate his/her satisfaction, the ombudsman may seek resolution to the satisfaction of the resident's representative or complainant if consistent with the rights and interests of the resident.
31. **Routine Visit** - Visit to a long-term care facility by an ombudsman for the purpose of providing residents with access to an ombudsman and for monitoring and assessing the general condition of residents and/or the physical plant of the facility. (Georgia Long-Term Care Ombudsman Reporting Manual)
32. **State Agency** - The Tennessee Commission on Aging and Disability.
33. **Systemic Advocacy** - Activities which represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions;. 42 U.S.C. 3058g (a) (5) (B) (iv) (v) (I) (II)

34. **The Office** - The Office of the State Long-Term Care Ombudsman.

OAA 712(a) (1) (A)

35. **Volunteer Management** - Recruiting and managing volunteers, hosting volunteer appreciation events, developing materials and carrying out other tasks related to volunteer services for the ombudsman program.

36. **Volunteer Ombudsman Representative (VOR)** - Any individual who serves the long-term care ombudsman program in an unpaid capacity and who has successfully completed or is currently enrolled in a standardized training and certification program approved by the Office of the State Long-Term Care Ombudsman.

## **9-4 ADMINISTRATIVE REQUIREMENTS**

### **9-4.1. State Agency**

(a) The State Agency shall provide for statewide delivery of quality long-term care ombudsman services through support to the SLTCO and the district long-term care ombudsmen and shall consider the views of Area Agencies on Aging and Disability, older individuals, and long-term care ombudsman providers in planning and operating the program.

- (b) The State Agency will establish appropriate access procedures for representatives of the Office. [Rules of Tennessee Commission on Aging and Disability, Chapter 0030-1-9-.02)].
- (c) The State Agency will establish procedures to assure confidentiality of files maintained by the program (Section 9-8 of this Manual).
- (d) The State Agency will insure that no representative of the program or person involved in the designation of program activities is subject to a conflict of interest and that mechanisms are in place to identify and remedy any conflicts (Section 9- 6 of this manual).
- (e) The State Agency will insure that adequate legal counsel and/or representation is available, without conflict of interest, to authorized representatives of the Ombudsman Program when engaged in performance of official duties of the Office of the SLTCO (See paragraph (4) (U) below.)
- (f) The State Agency, in accord with 42 U.S.C. 3058g (a) (2) and (3), shall delegate responsibilities listed in (2) below to the SLTCO.

#### **9-4.2. State Long-Term Care Ombudsman (SLTCO)**

The office shall designate and contract with, either directly or through the area agency on aging, a local grantee to establish and operate a local ombudsman program in each of the designated planning and service areas. Each local ombudsman program shall carry out the duties of the office in each area through paid staff and trained volunteers. For the purposes of carrying out those duties, and only to the extent required by § 307(a)(12)(H)(vi) of the Older Americans Act, each local program unit will be considered to be a “subdivision” of the office; provided, that this shall have no effect

upon the character of local government or private agencies or corporations, and they shall not be considered to be agencies of the state of Tennessee. 71-2-109. Long-term care ombudsman — State office — Personnel. (b)

- (a) The SLTCO shall insure that the District Long-Term Care Ombudsmen carry out responsibilities of the Long-Term Care Ombudsman Program as specified in this policy manual.
- (b) The SLTCO shall support and maintain a designated uniform complaint documentation system for all complaints received by the State Agency and the designated district representatives of the Ombudsman Program.
- (c) The SLTCO will provide training and technical assistance in the delivery of district ombudsman program services in cooperation with Area Agencies on Aging and Disability.
- (d) The SLTCO shall be involved in the selection of the district long-term care ombudsman. [OAA section 712 (a) (5) (A) and (h) and 42 USC 3058g (a) (5) (A) and (h) (5) (A) (B)]
- (e) The SLTCO shall prepare and disseminate an annual report in accord with Administration on Aging instructions.
- (f) The SLTCO has primary responsibility in formulating and revising policies and procedures for the Ombudsman Program as needed.
- (g) The SLTCO will arrange for required training events each year for LTCO employed in district ombudsman programs and insure that volunteer ombudsman representatives (VORs) are trained in their respective PSAs.

- (h) The SLTCO will insure that district ombudsman programs are provided with relevant program instructions and information.
- (i) The SLTCO will work with AAAD to insure that their monitoring activities are consistent with federal and state laws and regulations and meet needs apparent to the Ombudsman Program and in regard to the respective district ombudsman program.
- (j) The SLTCO shall insure that all district ombudsman programs coordinate with agencies centrally involved in services to long-term care residents including but not limited to the Departments of Health/Health Care Facilities; Human Services Adult Protective Services; Mental Health, and Intellectual Disabilities; Tennessee Bureau of Investigation; and Disability Law and Advocacy Center. Case referrals to these agencies by the DLTCO shall be confirmed in writing to the referral agency with the approval of the SLTCO. A follow-up report from the referral agency shall be requested.
- (k) The SLTCO shall establish with the director of the state Adult Protective Services (APS) program written protocols for reporting and making referrals of complaints involving alleged abuse, neglect and/or exploitation involving vulnerable adults which ensures prompt response to those in need while protecting confidentiality in accordance with statutory and regulatory requirements.
- (l) The SLTCO shall establish with the director of the state Division of Health Care Facilities a mutually acceptable written procedure for district ombudsmen to provide to the Department of Health survey teams and

complaint investigators a written summary of complaints received by the district ombudsman for each facility.

### **9-4.3. Area Agency on Aging and Disability (AAAD)**

All administrative requirements must be met by each AAAD

- (a) The area agency shall support the LTCOP through funding and contracting with a provider agency. [OAA sec. 712(a) (5) (B) and (C) 42 USC section 3058g (a)(5)(B)(C)].
- (b) The area agency shall enter into a contract with a provider that is capable of meeting the district long-term care ombudsman duties as specified in the OAA sec. 712 (a)(5)(B) and (C) and 42 USC section 3058g (a)(5)(B) and (C)
- (c) The area agency shall contract with a provider agency that meets the following criteria:
  - 1. Demonstrates a history of effective advocacy on behalf of older individuals receiving long-term care services;
  - 2. Demonstrates the capacity to be visible and accessible in delivering ombudsman services throughout the service area with comparable services to residents of various long-term care facility types;
  - 3. Is committed to developing and maintaining an active cadre of volunteer ombudsman representatives (VORs) as prescribed in section 9-7 (3) of this manual;
  - 4. Has staff with knowledge of long-term care facilities, regulations, reimbursement, and public benefits programs providing coverage of long- term care services; and

5. Provides the most compelling assurances that this service will be delivered in accord with the standards of the State Agency and the OSLTCO.
- (d) The provider agency will agree to assume all responsibilities as cited in the contract agreement between the AAAD and the provider will allow the district long-term care ombudsman to fulfill the duties of the Ombudsman Program. Implementation of the program will be through the SLTCO directly to the full-time designated district long-term care ombudsman and all long-term care ombudsman staff.
  - (e) The area agency shall provide to the provider agency or applicant a copy of this chapter and require that a "Statement of Assurances for Long-Term Care Ombudsman Service Providers," be signed annually by an individual authorized to commit the provider agency, includes at a minimum the elements in the model statement of assurances provided in Attachment A of this chapter.
  - (f) Each AAAD shall share quality assurance responsibility with the State Agency to assure that the DLTCO meets minimum standards for program quality and consistency. The area agency shall fulfill this responsibility by carrying out the following activities:
    1. The area agency shall determine prior to an award of an ombudsman service contract that the provider is capable of satisfying all of the "service provider requirements" stipulated in Section 9-4-(4) and the

"Statement of Assurance for Long-Term Care Ombudsman Service Providers."

2. The area agency will select a provider agency through its usual procedure and send documentation to the state agency to insure that the selected agency meets program standards.
3. The area agency shall monitor contract compliance of the provider agency including continuing compliance with the "Statement of Assurances for Long-Term Care Ombudsman Service Providers" throughout the contract period and shall conduct in accord with STLCO, an annual assessment of the provider, and more frequently if corrective actions are being followed.
4. The area agency ombudsman program monitor shall integrate recommendations of the SLTCO in the annual report with its requirements of the provider in order to coordinate State and Area Agency quality assurance efforts, to eliminate area and state agency duplication of effort as possible, and to reach agreement concerning technical assistance needed by the district long-term-care ombudsman.
5. The area agency shall send written reports of all monitoring and assessment activities and findings to the STLCO within one month of the monitoring or assessment activities.
6. The area agency shall insure that the provider submits to the SLTCO and the Area Agency on Aging and Disability a quarterly provider

service report in the format and within the time frame established by the SLTCO.

#### **9-4.4. General Standards for Providers**

All administrative requirements must be met by each ombudsman provider agency in accordance with Section 4-10 of this manual. Each provider agency shall:

- (a) Agree to comply with all LTCO mandates and policies as specified in the OAA of 1965, 712 (a) (5) (B) (C) and 42 USC 3058g (a) (5) (B) (C); Tennessee Code Annotated [T.C.A. 71-2-109] and the Tennessee Commission on Aging, Policies and Procedures for Programs on Aging. TCAD Rule 0030-1-9
- (b) Assure that the long-term care ombudsman is not required to reveal any identifying information that is protected by the Older Americans Act section 712 (d) (2); 45 CFR 1321.11 (b); and Policies and Procedures for Programs on Aging Section 9-8 (5)
- (c) Employ at least one full-time district long-term care ombudsman whose full-time function (with no other responsibilities), will be to develop and implement the long-term care ombudsman program and carry out other activities that the SLTCO determines to be appropriate. Section 712 (5) (B) (vii)
- (d) The provider agency shall in accordance with 42 USC 3058g (a) (5) (A) involve the SLTCO in the selection process of filling any vacant district long-term care ombudsman position. TN Code Section, 71-2-109
  - 1. The provider shall submit to the SLTCO the resume of the final candidate chosen for the vacant DLTCO position and assure the

SLTCO in a written statement that the candidate to serve as the DLTCO is free from any conflict of interest.

- (e) Assure that the DLTCO is not restricted from performing the assigned duties as outlined in the OAA sec. 712(a) (5) (A) and (B), 42 USC 3058g (a) (5) (A) and (B)
- (f) Assure that the SLTCO will have access to all DLTCO case files, which include all identifying information.
- (g) Provide adequate supervisory assistance, office space, supplies, and secretarial/clerical assistance to support the district long-term care ombudsman program.
- (h) Develop and maintain a policies and procedures manual for program activities, describing each program component. The manual and subsequent revisions must be approved by the area agency and in concert with the SLTCO.
- (i) Develop and implement a plan approved by the SLTCO, which provides for appropriate case-handling options in situations wherein the complainant proclaims a possible conflict of interest on the part of the ombudsman, volunteer ombudsman representative (VOR), ombudsman staff, or provider agency. (See Section 9-6)
- (j) Develop, implement, and document an active visitation schedule, which shows either a bi-annual visit with incremental progress toward the goal of a quarterly visit by a representative of the district program in each long-term care facility.

(k) Develop and implement a case-handling protocol, which includes written confirmation to regulatory agencies of referrals made to them, approved by the SLTCO.

1. Provide each complainant with information regarding the grievance procedure of the provider agency, as well as an opportunity to evaluate and comment on services received.

(l) Submit reports on program information and operations as required by SLTCO.

(m) Provide a written contingency plan of coverage for the DLTCO in the event of any absence by the DLTCO or LLTCO and provide advance notification to the SLTCO. Contingency ombudsman coverage shall be provided by:

1. Paid or volunteer staff of the DLTCOP
2. By rerouting resident complaints to the SLTCO
3. All medical issues shall be routed to TN Department of Health/Health Care Facilities.
4. All abuse complaints shall be directed to contact the TN Department of Human Services/Adult Protective Service (DHS/APS)

(n) Within 24 hours, notify the SLTCO, verbally and in writing, of any situation wherein there is indication of the possibility of legal action being brought against DLTCO,–LLTCO, a (VOR) or ombudsman's staff of the provider agency in connection with the performance of their official duties.

(o) Provide adequate travel funds to:

1. Carry out an active visitation plan;

2. Accomplish other needed local travel in support of program operations;
  3. For paid staff to attend all training sessions sponsored by, requested, or approved by the SLTCO.
- (p) Establish cooperative agreements with Legal Assistance Program for the elderly for consultation and/or referral of problems with legal ramifications.
- (q) Establish and maintain contact with regional offices of the Department of Health/Health Care Facilities; Department of Mental Health, Intellectual Disabilities; Department of Human Services Adult Protective Services; District offices of the Social Security Administration and Veterans Administration; Tennessee Bureau of investigation; Tennessee Protection and Advocacy; and/or other agencies, as indicated, so that needed coordination with those offices is accomplished and duplication of service is avoided.
- (r) Provide summary of complaints received by the DLTCOP to the Department of Health survey team and complaint investigators upon notification by the team that they are in a facility for the annual survey.
- (s) Develop and implement a plan for publicizing the program periodically which assures, at a minimum, publication and widespread dissemination of posters and brochures.
- (t) Utilize Ombudsman manager to actively maintain and update, as needed, current information, including ownership, local management, and bed count, on all long-term care facilities in the PSA.

- (u) Develop and implement a participant contribution plan approved by the SLTCO which will provide each complainant with a statement regarding voluntary contributions to the district long-term care ombudsman program.

## **9-5 MINIMUM STANDARDS FOR PERSONNEL OF THE DISTRICT LONG-TERM CARE OMBUDSMAN PROGRAM**

The provider agency shall insure that minimum education, experience, and orientation/training standards as outlined below are met or exceeded.

### **9-5.1. District Long Term Care Ombudsman Qualifications**

The provider agency shall insure that minimum education, experience, and orientation/training Standards as outlined below are met or exceeded.

- a. Ability to engage effectively in problem solving and empower others to do so;
- b. Skills in arbitration, conciliation, or negotiation;
- c. Experience and/or education in gerontology or aging programs;
- d. Knowledge of federal and state regulations related to long-term care;
- e. Written and verbal communication skills; Ability to establish working relationships with nursing home residents and their families;
- f. Experience in managing multiple activities while meeting deadlines.
- g. Possession of professional skills and demeanor appropriate to the responsibilities and high standards of the program.
- h. be free of unremedied conflicts of interest ;
- i. meet the minimum qualifications for the applicable DLTCO position;

- j. satisfactorily complete the applicable certification training requirements
- k. be awarded a current certification card, signed by the SLTCO; and
- l. satisfactorily fulfill DLTCO responsibilities
- m. In order to qualify as a DLTCO, an individual must have:
  - 1. an undergraduate degree from a four-year college or university;
  - 2. the equivalent of three years of full-time work experience with at least two years in aging, long-term care, or related fields (at least one year in a consultative or supervisory capacity is desirable); and
  - 3. a criminal background check by a local law enforcement agency.The individual shall not be hired if he or she has been convicted of any of the crimes listed under the laws related to nursing home or personal care home employees
- n. Comparable experience may be substituted at the discretion of the SLTCO. Experience may be substituted for undergraduate education on a one-to-one basis; however, the same experience cannot be used to meet both the education and experience requirements. Graduate education may be substituted for one year of experience; however, a minimum of two years of full-time work experience is required.

**9-5.2. Orientation and training:**

The SLTCO will provide an orientation/training program tailored to the individual's needs that will be designed to certify that the individual has been properly trained and will include:

- a. Agency orientation, policy, and structure;
- b. The ombudsman program;
- c. Background of nursing homes, homes for the aged and assisted care living facilities and their residents;
- d. Regulation of long-term care facilities;
- e. Medicare, TennCare and Medicaid;
- f. Policies and procedures for handling complaints;
- g. Complaint documentation and reporting requirements;
- h. Long-term care issues including long-term care insurance;
- i. Other program activities and resources available to the ombudsman program.

#### 9-5.3. **Provider agency supervisory responsibilities**

The provider agency shall:

- a. be the sole provider of LLTCO services in the service area designated through contract with the AAA
- b. operate the LLTCOP in accordance with the provisions of the contract for LLTCO services with the AAAD if applicable and/or the SLTCOP;
- c. assure that the LLTCOP performs the Program Components;
- d. require the LLTCO Coordinator to submit a LLTCOP Annual, below to the AAAD if applicable, and to the SLTCO for approval;
- e. provide a LLTCO Coordinator, who:
  - (i) meets the applicable minimum qualifications
  - (ii) has no duties in the agency outside the scope of the LTCOP; and
  - (iii) is employed full time (37.5 hours minimum).

- f. provide resources for LLTCO staff and/or volunteers in addition to the DLTCO Coordinator as necessary to:
  - (i) fulfill the **Program Components**; and **Scope of Services**
  - (ii) maintain or exceed the level of services provided in the service area during the previous fiscal year;
- g. assure that LLTCOP data is available to the Office of the SLTCO in the format required by AOA by the 20<sup>th</sup> day of the month following each quarter;
- h. prohibit inappropriate access to LLTCO files, records, or other information located with the provider agency;
- i. assure LLTCO staff attendance at certification training and all statewide LTCO trainings;
- j. provide professional development opportunities for LLTCO staff;
- k. provide administrative support as needed for the operation of the LLTCOP such as custodial, fiscal management, clerical, technology support, and telephone coverage;
- l. provide the LLTCO Coordinator with information about and opportunity to make requests regarding the use of funds designated for LLTCOP use;
- m. request a waiver from the AAAD when applicable and the STLCO if, due to demonstrable and unusual circumstances, it anticipates it will be unable to comply with any of these responsibilities; and
- n. perform each of its responsibilities in administering the LLTCOP in accordance with all applicable federal and state law, regulations, and policies. OAA §§ 306; 712(a) (4), (5) (A)

#### **9-5.4. Long-Term Care Ombudsman Staff and Volunteers**

Any employed staff working in any capacity with the Ombudsman Program, e.g., secretary, volunteer coordinator, or assistant, who has access to complaint information and files must be bound by confidentiality restriction and must have on record signed copies of the Code of Ethics, Conflict of Interest, and Statement of Agreement.

(a) Orientation and Training

New Staff Members: The provider agency including the DLTCO must conduct an orientation/training session providing a general understanding of the content and skills new staff will need to assume their responsibilities. Such content and skills may include some of the training required for the ombudsman as well as basic training addressing relationships, communication, and problem-solving skills.

(b) Supervision Responsibilities of the Provider Agency

Staff members shall receive:

1. Guidance on problems and concerns related to day-to-day job responsibilities;
2. Answers to questions; and
3. Assistance with development of job skills; relative to coping with problems via the telephone.
4. Volunteer Ombudsmen Representatives (VORs).

All requirements as specified in current training manual(s) as approved by the State Agency must be met.

- (a) Job description- The Volunteer Ombudsman Representative's role must be clearly outlined with responsibilities and accountability requirements specified.
- (b) Selection/screening- Each candidate for Volunteer Ombudsman Representative must be interviewed and assessed regarding his/her appropriateness for the role. Education, experience, attitudes, and motivation for involvement in the program should be explored as a part of the selection assessment.
- (c) Orientation/training:
1. Initial Training for new VORs. The District Ombudsman must plan orientation/training sessions providing a general understanding of the content and skills new ombudsman representatives will need to assume their responsibilities. Such content and skills may include some of the training required for the ombudsman as well as more elementary relationship, communication, and problem solving skill development. The current training manual(s) as approved by the SLTCOP will be used with a copy provided for each VOR's further study and reference.
  2. Continuing Training for VORs Half- day sessions or their equivalent tailored to manifest ongoing training needs shall be attended quarterly with make-up assignments allowable. Monthly meetings should be offered.
- (d) Certification **Volunteer Ombudsman Representatives** VORs shall be certified in accord with:

1. Minimum standards designated by the SLTCO and specified in the state agency policies and procedures manual, including, but not limited to classroom training, written examination, documentation that requirements have been met and background checks as required in chapter 15 of this manual.
2. The SLTCO shall provide the official designation certificate and identifying photo ID badge.

(e) Supervision VORs shall receive:

1. Guidance on day-to-day job performance problems and concerns;
2. Answers to questions;
3. Backup and support on complaint investigation and resolution activities;
4. Assistance with development of job skills; and,
5. Ongoing assessment of gratification from and appropriateness for assigned duties.

(f) Statement of Agreement- A copy of the signed agreement, in accord with current training manuals as approved by the State Agency must be on file at the State Agency prior to any complaint investigation activity by the VOR. (See Attachment C to this chapter.) Documentation must be available to substantiate that certification requirements attested to therein be met.

## **9-6 Conflicts of Interest Policies and Procedures**

### **9-6.1. Definition:**

A conflict of interest exists in the Local Long-Term Care Ombudsman Program (LLTCOP) when other interests intrude upon, interfere with or threaten to negate the

ability of the LLTCO (Local Long-Term Care Ombudsman) to advocate without compromise on behalf of long-term care facility residents and duties outlined in the Older Americans Act (OAA) sec. 712(a) (5) (A) and (B), 42 United States Code (USC) 3058g (a) (5) (A) and (B)

**9-6.2.Ombudsman duties:**

The official duties of the LLTCO, as outlined in OAA sec. 712(a) (5) (A) and (B), 42 USC 3058g (a) (5) (A) and (B) are:

- (i) provide services to protect the health, safety, welfare and rights of residents;
- (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;
- (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- (I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
- (II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;
- (vi) support the development of resident and family councils; and

- (vii) carry out other activities that the State Long-Term Care Ombudsman (SLTCO) determines to be appropriate.

### **9-6.3. Organizational conflicts**

See Appendix A

#### **Remedial Procedure**

1. Disclosure of the conflict to the resident/complainant, in writing or orally, with documentation, by the LLTCO.
2. Present resident/complainant with options on resolving the conflict.
  - a. Resident/complainant may accept service from the conflicted LLTCO, by oral or written means.
  - b. Resident/complainant does not accept service from the conflicted LLTCO, with the case immediately referred to the SLTCO, by electronic means, for resolution. The LLTCO will send a redacted referral to the Area Agencies on Aging and Disability (AAADs) and grantee providers.
3. Within one business day, notify, by electronic means, the SLTCO of any actual or potential conflict of which they have knowledge. AAADs and grantee agencies shall be copied on the notice.
4. If further attempts to solve the issue are necessary, a remedial plan will be developed by the grantee agency, and sent to the SLTCO, with copy to the AAAD.
5. Within 30 days of the electronic notification to the SLTCO, described in procedure number 3, a remedial plan will be provided and agreed upon by the SLTCO.

6. Failure on the part of a LLTCO or grantee provider agency to identify, report, or remedy a known conflict of interest to the SLTCO shall be sufficient grounds for refusal to designate, suspension of designation, or de-designation of the LLTCOP grantee provider or LLTCO.

#### **9-6.4. Individual Ombudsman Conflicts**

See Appendix B

#### **Remedial Procedure**

##### **a. Identification of the conflict**

The grantee provider agency shall screen all persons seeking certification as LLTCO staff or volunteers to identify any actual or potential individual conflicts of interest. The grantee provider agency shall submit evidence of such screening to the SLTCO. The SLTCO may periodically request the provider agency to perform a conflict of interest screen of currently certified LLTCO staff or volunteers.

##### **b. Disclosure of the conflict**

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

##### **c. Remedy**

VORs found to have a conflict of interest with a resident, facility or other, shall be removed from advocacy of the situation or facility where the conflict lies

#### **d. Failure to Identify or Remedy a Conflict of Interest**

Failure on the part of an LLTCO or grantee provider agency, to identify, report, or remedy a known conflict of interest to the SLTCO, shall be sufficient grounds for refusal to designate, suspension of designation, or de-designation of the LLTCOP grantee provider or LLTCO.

#### **9-6.5. Interference Conflicts**

The State of Tennessee ensures that Ombudsman representatives shall perform their official duties without interference of their official duties. The State shall prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and provide for appropriate sanctions with respect to the interference, retaliation, and reprisals. (42 U.S.C. 3058g)

#### **Remedial Procedure**

1. Notify the SLTCO of any actual or potential interference of which they have knowledge.
2. SLTCO shall send a cease and desist letter of the interference to the grantee provider, facility, or entity, from the SLTCO, with copy to AAAD.
3. If further attempts to solve the issue are necessary, a remedial plan will be developed and agreed upon with the SLTCO.

4. Failure to remedy interference with the LLTCOP shall be sufficient grounds for the suspension of or de-designation of the LLTCOP grantee provider.

### **9-7 SERVICE COMPONENTS**

The following basic program components shall be required of each District Long-Term Care Ombudsman provider agency. The Area Agency on Aging and Disability shall monitor all of these components during the annual visit to the district long-term care ombudsman program.

Required program components include:

- (1) Complaint Resolution

- (a) Procedures, including reasonable time-lines, for complaint receipt, investigation, documentation, resolution, and follow-up, incorporating guidelines from the SLTCO must be clearly outlined and followed. Response time-lines shall include an explanation of how complaints are prioritized.
- (b) Complaints received will include any action, inaction, or decision of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of older individuals who are residents of long-term care facilities.
- (c) Complaints may be initiated by anyone, provided assistance or intervention requested falls within the ombudsman role and respects the resident's right to self-determination.

- (d) Services shall be extended to older individuals seeking admission to long-term care facilities if their problems involve procedures or practices related to barriers to access care and/or related entitlements under federal and state laws and regulations. Services of a general nature to the non-institutionalized are precluded unless the services provided are instrumental toward preventing institutionalization. The long-term care ombudsman shall not become involved in direct provision of social services to residents.
- (e) The long-term care ombudsman may respond to complaints by long-term care facility residents under the age of sixty (60), or by those acting directly in their behalf, where such action will (a) either benefit older residents of that long-term care facility or older residents of long-term care facilities generally, or be the only viable avenue of assistance available to the complainant; and, (b) will not significantly diminish the long-term care ombudsman program's effort on behalf of older persons.

## (2) Issues Identification and Activity

- (a) The ombudsman program is responsible for identifying and influencing needed changes in policies, regulations, and legislation affecting long-term care residents' quality of life and care. DLTCO can fulfill this responsibility by responding to and participating in Ombudsman Program issue initiatives and directives, and through identifying and addressing specific issues within their area or in a particular long-term care facility.

(b) DLTCO may be called on to provide expert opinion, written and/or verbal, concerning existing conditions in the long-term care system, and will prepare policy, regulatory and legislative comments and recommendations regarding needed policy, regulatory or legislative actions regarding problems. Systemic issues identified and/or worked on by the program should be reported on each quarter. For each issue, the following shall be reported: (a) the problem, (b) barriers to resolution, and (c) how the issue was resolved, or recommendations and strategies for system-wide changes needed to resolve the issue.

(3) Recruiting, Training and Supervising Volunteers

The DLTCO must recruit and train volunteers according to a plan approved and with training material provided by the SLTCO (See section 9-5 (3) (c) 1 of this manual.) The plan for training and certification of volunteer ombudsmen shall reflect or incrementally approach the long-term goal of developing a regular community presence in long-term care facilities through relying on trained volunteers to visit each long-term care facility weekly. The current training manual(s) as approved by the State Agency must be adhered to as minimum standards in carrying out requirements for this program component. Trained volunteers are to be accountable to the district ombudsman as they carry out activities in accord with their job description.

(4) Promoting Citizen Organizations to Participate in the District Ombudsman Program

The district long-term care ombudsman shall work with and promote citizens' organizations and existing citizens' advocacy groups for their participation to

promote the development of interest in long-term care issues. The state and district ombudsmen will serve as resource persons to these groups, educating them about issues needing their attention, and assisting them in examining strategies for impacting issues in behalf of consumers of long-term care.

(5) Public Education

The DLTCO will collect and maintain, and serve as a repository for, material and information relating to long-term care, including information transmitted by the SLTCO. Information and material to be maintained for public dissemination includes but is not limited to:

- (a) Home and community based care services including assessment of need for such services;
- (b) Financing of health care, including information on Medicare, TennCare, Medicaid, and Social Security;
- (c) Facility selection, including information on how to visit a facility and what to look for;
- (d) Regulations for nursing homes, homes for the aged and assisted care living facilities and mental health group homes, including respective residents' rights;
- (e) Problem-solving and complaint resolution options, which may be pursued;
- (f) Reference to TN Department of Health website, which includes facility survey reports and facility plans of correction;
- (g) Resident, family, and community councils;
- (h) Long-term care issues;

- (i) Current and pending policies, regulations, or legislation relative to long-term care;
  - (j) Other relevant web sites, which may include, but not be limited to, Medicare.gov/nursing home compare;
  - (k) State Health Insurance Program (SHIP), Senior Medicare Patrol Program (SMPP) and Health Insurance Portability and Accountability Act (IDP AA).
- (6) The DLTCO or designated representatives will, as time permits:
- (a) Attend facility survey exit interviews in accord with federal and state laws and SLTCO directives.
  - (b) Distribute topical consumer information guides.
  - (c) Assist facilities with resident, family and staff training on resident rights.
  - (d) Provide assistance to resident and family councils
  - (e) Assist community groups in locating appropriate persons to make public presentations regarding topics above and participate in presentations when the ombudsman or advocacy perspective is important.

**TABLE 1**  
**COMPLAINT RESPONSE**

IF a complaint involves	THEN the standard of promptness for LTCO response (i.e. the action date) is.
-------------------------	--

i) abuse or gross neglect, and ii) the LTCO has reason to believe that a resident may be at risk	within the next working day*
i) abuse or gross neglect, and ii) the LTCO has no reason to believe that a resident is a risk	within three days, but not to exceed three calendar days*
actual or threatened transfer or discharge from a facility	whichever occurs first: i) 5 working days, ii) the last day of bed-hold period (if resident is hospitalized), or iii) the last day for filing an appeal for an administrative hearing
other types of complaints	within 7 working days

#### 7. Out of Office Procedure

Where the LTCOP will be unable to initiate investigations in a timely manner (e.g., due to a planned vacation or extended illness), the LTCO Coordinator shall develop a plan for temporary coverage in order to meet the standard of promptness. Such plan shall be communicated to the provider agency, the area agency on aging, and the SLTCO to assure appropriate and timely case referrals.

- \* When all LTCO staff are out of the office (e.g., due to a required training conference or because the provider agency office is closed), then the response shall be within the next working day that any LTCO staff are in the office.

- \* When all LTCO staff are out of the office (e.g., due to a required training conference or because the provider agency office is closed), then the response shall be within the next working day that any LTCO staff are in the office
- \* When all LTCO staff are out of the office (e.g., due to a required training conference or because the provider agency office is closed), then the response shall be within the next working day that any LTCO staff are in the office

### **9-8 MAINTENANCE OF OMBUDSMAN RECORDS**

(1) The Office of the STLCO shall collect and analyze data and maintain records relating

to:

- (a) Complaints received by or on behalf of program clients;
- (b) The development and implementation of federal, state, and local laws, regulations, and policies affecting long-term care facilities in the state;
- (c) Public information on the problems of older persons in long-term care facilities;
- (d) The organization and development of the statewide ombudsman network;
- (e) The development and provision of recruitment, training, and supervision to staff volunteers; and,
- (f) Long-term care facilities information

(2) Records shall be maintained in the Offices of the SLTCO and of the district long-term care ombudsman as appropriate to the responsibilities of each entity.

(3) The SLTCO and/or the DLTCO respectively, shall be the designated custodian of the ombudsman program records therein. Requests for the disclosure of information,

other than those ordered by a court, shall be approved, or disapproved by the responsible SLTCO, consistent with paragraph (5) below.

OAA sec. 712 (d)(1)(2)(A)(B)} 42 USC 3058g(d)(1)(2)(A)(B).

- (4) Except as otherwise noted, only the director or senior manager of the service provider agency in which the ombudsman program is administratively located shall have access to case files, minus the identity of the complainant and/or resident and facility, of the ombudsman program for program oversight, monitoring or quality assurance purposes only. [45 CFR Part VI Section 1321.11 (b)] The individual who performs the program oversight, monitoring or quality assurance must be screened for conflict of interest as specified in Section 9-6 of this chapter.
- (5) Consistent with the requirements of Title 45 Code of Federal Regulations Section 1321.51(a) and 42 USC 3058g (d) (2) (B), no record or information maintained by the State Long-Term Care Ombudsman or the District Long-Term Care Ombudsman Office which identifies a resident/complainant may be disclosed unless:
- (a) The complainant or resident, or the resident's legal representative, has consented in writing to the disclosure of his/her identity for a time-certain, specific or general purpose and has indicated, in writing, to whom such disclosure may be made; or,
  - (b) The complainant or resident or resident's representative gives oral consent. If oral consent is given, the oral consent is documented contemporaneously in writing by a representative of the District or State Long-Term Care Ombudsman Program. The written statement is placed in the resident's file. The documentation must include the date, and time of the oral consent and it

must specify what information may be shared and with whom the information may be shared and the reason for the requested consent.

[OAA sec. 712 (d) (2)(B)(ii)(I)(II) and 42 USC 3058g(d)(2)(B)(ii)(I)(II)]

(c) A court order requires the disclosure.

[OAA sec. 712 (d) (iii) 42 USC 3058g (d) (2) (B) (iii)]

(6) Generally, only resident complaints and/or facility monitoring files will contain confidential or sensitive information. Such records must be stored in files or cabinets that are locked when not in use or in computer systems that have restricted access. Access to these files shall be restricted to the State Long-Term Care Ombudsman, District Long-Term Care Ombudsman or others that the District Ombudsman may designate. [OAA section 712(d) (1) (2) (A) and 42 USC 3058g (d) (1) (2) (A)] Designation of the individual(s) on the provider agency staff who are granted access to ombudsman program files shall be in writing and maintained on file. The records to be safeguarded include, but are not limited to:

- (a) Identity of individual residents or complainants;
- (b) Notes of interviews with or affidavits by complainants;
- (c) All copies of resident records;
- (d) All memoranda, which are developed in the process of evaluating and resolving residents' complaints;
- (e) All photographs, video tapes, tape recordings, or other similar materials of complainants/individuals;

- (f) Information regarding unverified complaints about long-term care facilities; the owners, administrators, or staff of these facilities; and other professionals involved in the care-providing system;
  - (g) Investigative materials and other information, containing resident or complainant identifying data, used in drafting and organizing written or oral testimony related to development and implementation of laws, regulations, and policies affecting long-term care; and/or,
  - (h) Computer diskettes, data tapes, or similar electronic media, which may contain any of the above information.
- (7) The district ombudsman shall provide the SLTCO with a written list of individuals in the provider agency designated to have access to the case files with identifying information and a list of individuals who have access to the case files without identifying information. [OAA sec. 712(d) (2)]
- (8) The district ombudsman will provide the state ombudsman with an update of this list at least annually or whenever there are staff changes. [OAA sec. 712(d)(2)]
- (9) Inactive case records shall be maintained by each ombudsman office for no less than three (3) years plus the current year of operation.
- (10) Mailing Case Records and other Confidential Information
- Copies of case records and all confidential information mailed to the Office of the State Long-Term Care Ombudsman (OSLTO) must be double sealed. All confidential material must be placed in an envelope and sealed. This envelope should be marked, "Confidential, to be opened by State Long-Term Care Ombudsman only" or "Confidential, to be opened only by person whose name appears on front of

envelope." The sealed envelope must be enclosed within another envelope and appropriately sealed before mailing to the Office of the State Long-Term Care Ombudsman.

#### **9-9 REPORTING SYSTEM**

1. All complaints, resident, and facility records shall be maintained on a quarterly basis in Ombudsman manager, to meet the requirements of OAA reporting.



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**Statement of Assurances for Long-Term Care Ombudsman Service  
Providers**

The applicant hereby assures and certifies that applicable laws, regulations, policies, guidelines, and requirements will be complied with as they relate to the application, acceptance, and use of federal funds for this project. The applicant also assures and certifies that:

(a) The provider agency possesses legal authority to apply for the grant: that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(b) The provider agency is a private non-profit or public agency and the officers, employees and any other representatives of the grantee and the proposed program are not associated or affiliated with or in control of or controlled by persons or interests which are providers of long-term care services, facilities or supplies, or which are associations of employees working in long-term care facilities.

(c) The provider agency understands that the program activities of the program are conducted in coordination with the Tennessee Commission on Aging and Disability/Office of the State Long Term Care Ombudsman (TCAD/STLCO) and shall acknowledge this fact on all material published by the program. The title of the program shall be the (geographic area) Long-Term Care Ombudsman Office.

(d) The provider agrees to house the full-time designated district long-term care ombudsman (DLTCO) and staff members and will allow the district long-term care ombudsman to fulfill the duties of the Office as specified in OAA sec. 712(a) (5) (B) and (C) 42 USC 3058g(a)(5)(B) and (C).

(e) The provider agency agrees to prohibit any employee or other representative of the ombudsman office from investigating any complaint filed with the Office unless the individual has been designated by the SLTCO as a representative of the Office of the State Long-Term Care Ombudsman.

(f) The provider agency agrees that the designated salaried ombudsman will be allowed time and funding to attend sponsored ombudsman training events.

- (g) The provider agency agrees to adhere to existing federal and state laws regarding the classification and release of office data and to insure that the identity of any complainant or resident shall not be disclosed unless such complainant, resident, or his/her legal representative, consents in writing to such disclosure; or such disclosure is required by court order.
- (h) The provider agency agrees to comply with all reporting and record-keeping requirements specified by the SLTCO, and agrees to submit additional information as requested.
- (i) The provider agency agrees to comply with policies and procedures established by the State Agency in operating its ombudsman program.
- (j) The provider agency agrees to establish safeguards to prohibit any conflict, or appearance of a conflict, of interest including ombudsmen or ombudsman representatives using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Such safeguards shall include a prohibition against requiring any fees for ombudsman services.
- (k) The provider agency agrees to comply with all requirements imposed by the federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements as prescribed in *Tennessee Commission on Aging Policies and Procedures for Programs on Aging*.
- (l) The provider agency agrees that the failure to comply with these assurances shall constitute a material failure to comply with the terms and conditions of the grant and may result in the suspension or termination of the grant.

**ACCEPTED:**

---

Representative of Provider  
 (Date)  
 Agency for District Ombudsman Program

**APPROVED:**

---

Area Agency on Aging and Disability  
 Executive Director

(Date)



**STATE OF TENNESSEE**  
**COMMISSION ON AGING AND DISABILITY**

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**CODE OF ETHICS**  
**VOLUNTEER OMBUDSMAN REPRESENTATIVE (VOR)**

As a VOR, I realize that I am subject to a code of ethics similar to that which binds others in the field in which I work. Like them, I assume certain responsibilities and expect to account for what I do in terms of what I am expected to do. I recognize and adhere to the following points of volunteer ethics and as a VOR will endeavor to:

1. Participate in efforts to maintain and promote the integrity and credibility of the long-term care ombudsman program.
2. Recognize the boundaries of my own level of training and skills and consult with the district ombudsman when needed.
3. Maintain competence in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
4. Provide services with respect for human dignity and the individuality of the resident unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choice.
5. Respect and promote the resident's right to self-determination, making every reasonable effort to ascertain and act in accordance with the resident's wishes.
6. Assure that the residents' rights as reflected in federal and state laws and regulations are known by and applied to the residents for whose protection they were written.
7. Continually safeguard the confidentiality of residents and not divulge any information obtained in the course of ombudsman activity without proper consent

from the resident, unless an immediate life-threatening situation overrides this discretion.

8. Act in accordance with the standards and practices of the Long-Term Care Ombudsman Program (LTCOP), and with respect to the policies of the sponsoring organization.

9. Participate in efforts to promote a quality long-term care system.

10. Avoid any conflict of interest or appearance of conflict of interest, including financial gain, in the provision of ombudsman services within nursing homes, assisted care living facilities, homes for the aged and mental health group homes.

**I will do my utmost to uphold this code as I understand the effectiveness and credibility of this program depends, in part, on the way I carry out my responsibilities.**

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_



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**STATEMENT OF AGREEMENT  
BETWEEN VOR AND DISTRICT OMBUDSMAN**

**As a VOR, I agree to:**

1. Adhere to the policies, procedures and guidelines of the state long-term care ombudsman program (SLTCOP) as set forth in this manual;
2. Perform duties as outlined in the VOR job description to the best of my abilities;
3. Fulfill minimum training requirements as set forth in the VOR job description;
4. Receive supervision from and be accountable to the district ombudsman; and
5. Exercise my responsibilities in accordance with the VOR code of ethics.

**As a district ombudsman, I agree to:**

1. Train VOR as required for certification;
2. Provide support and supervision through maintaining regular contact with VOR as follows:

- 
3. Assist VOR as needed with investigation and resolution of specific complaints; and
  4. Conduct an annual review with the VOR of job satisfaction and performance.

**This VOR was** \_\_\_\_ **certified/** \_\_\_\_ **re-certified on** \_\_\_\_\_.  
(check one) (date)

Date: \_\_\_\_\_  
Volunteer Ombudsman Representative (VOR)

Date: \_\_\_\_\_  
District Long-Term Care Ombudsman



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**OMBUDSMAN STAFF CODE OF ETHICS**

As a staff member of the District Ombudsman Program, I realize that I am subject to a code of ethics similar to that which binds others in the field in which I work. Like them I assume certain responsibilities and expect to account for what I do in terms of what I am expected to do. I recognize and adhere to the following points of ethics and as a staff member (paid or unpaid) will endeavor to:

1. Participate in efforts to maintain and promote the integrity and credibility of the long-term care ombudsman program.
2. Recognize the boundaries of my own level of training and skills and consult with the district ombudsman when needed.
3. Maintain competence in areas relevant to the long-term care system, related to my job duties.
4. Continually safeguard the confidentiality of residents and not divulge any information obtained in the course of my job duties without proper consent from the resident, unless an immediate life-threatening situation overrides this discretion.

5. Act in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect to the policies of the sponsoring organization.
6. Participate in efforts to promote a quality long-term care system.
7. Avoid any conflict of interest or appearance of conflict of interest, including financial gain, in the provision of ombudsman services within nursing homes, assisted care living facilities, homes for the aged and mental health group homes.

**I will do my utmost to uphold this code as I understand the effectiveness and credibility of this program depends, in part, on the way I carry out my responsibilities.**

**Signed:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



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**STATEMENT OF AGREEMENT**

**BETWEEN STAFF AND DISTRICT OMBUDSMAN**

**As a Staff Member, I agree to:**

1. Adhere to the policies, procedures and guidelines of the long-term care ombudsman program as set forth in this manual;
2. Perform duties as outlined in the my specified job description to the best of my abilities;
3. Receive supervision from and be accountable to the district ombudsman; and
4. Exercise my responsibilities in accordance with the Staff code of ethics.

**As a district ombudsman, I agree to:**

1. Train or assure staff receives training necessary to carry out their job duties.
2. Provide support and supervision through maintaining regular contact with staff:  
\_\_\_\_\_  
\_\_\_\_\_
3. Conduct an annual review with the staff of job satisfaction and performance.

Date: \_\_\_\_\_

Ombudsman Staff

Date: \_\_\_\_\_

District Long-Term Care Ombudsman



**STATE OF TENNESSEE  
COMMISSION ON AGING AND DISABILITY**

Andrew Jackson Building  
500 Deaderick Street, Suite 825  
Nashville, Tennessee 37243-0860

Voice 615-741-2056

TDD 615-532-3893

Fax 615-741-3309

**STATEMENT OF CONFIDENTIALITY  
VOLUNTEER OMBUDSMAN REPRESENTATIVE AND STAFF**

The Volunteer Ombudsman Representative and Ombudsman Staff shall not disclose the identity of a resident, complainant, or the legal representative of the resident or complainant without the consent of the resident, complainant, or the legal representative of the resident or complainant. The consent must be in writing.

If the resident or complainant gives oral permission to disclose his/her identity, the consent shall be documented contemporaneously [present period of time] in writing by a representative of the Office.

Disclosure without the expressed consent of the resident, complainant, or the legal representative of the resident or complainant can be disclosed only if required by court order.

As a representative or staff member of the ombudsman program, I will:

- Never discuss the resident or their circumstances with anyone outside of the ombudsman program,
- Never discuss one resident with another resident,
- Never discuss residents or their circumstances in public places such as lobbies hallways or restaurants.

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Date:

Signature VOR/Staff

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Date:

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**CONFLICT OF INTEREST SCREENING QUESTIONNAIRE**

A conflict of interest in the long-term care ombudsman program may occur when any secondary interest compromises the effectiveness of the ombudsman and lessens the ability of the ombudsman to advocate on behalf of residents of long-term care facilities.

While it is impossible to identify all apparent or potential conflicts, it is possible to identify a situation that lends itself to a conflict of interest or to the appearance of a conflict of interest.

While the disclosure of a conflict may disqualify the applicant as an ombudsman, each possible conflict of interest will be examined to determine if indeed a conflict does exist and, if there is, the possibility of eliminating or remedying the conflict will be explored in a manner that could qualify an individual to serve the office.

The potential volunteer or staff member should answer these questions and provide explanatory information where required or desired:

1. Do you or any member of your immediate household receive any financial remuneration or have any other financial interest in a long-term care facility?

\_\_\_yes \_\_\_no

If yes, list facility (ies) and give details.

2. Do you have any other ties with long-term care providers, which might "appear" to be a conflict of interest?

\_\_\_yes \_\_\_no

If yes, give details.

3. Are there any long-term care facilities in which any member of your household or other close associate of yours is a resident?

\_\_\_\_yes \_\_\_\_no

If yes, list facility (ies) and give details.

4. Do you work for any agency that is in competition with a long-term care facility?

\_\_\_\_yes \_\_\_\_no

If yes, give details.

5. Have you been employed by a long-term care facility within the last two years?

\_\_\_\_yes \_\_\_\_no

If yes, give details.

6. Do you or any member of your household have a direct involvement in the licensing or certification of a long-term care facility or other providers of long-term care services?

\_\_\_\_yes \_\_\_\_no

If yes, give details.

Date: \_\_\_\_\_

Ombudsman Staff

Date: \_\_\_\_\_

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**Examples of CONFLICTS**

**Organizational Conflicts:**

Conflicts arising from organizational location include, but are not limited to, LLTCOP placement in an agency which has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service; provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities; operates programs with responsibilities conflicting with LLTCOP responsibilities. Examples of such responsibilities include developing and carrying out care plans and serving as guardian or conservator of long-term care residents; has governing board members with ownership, investment, or employment interest in long-term care facilities; and has direct involvement in the licensing or certification of a long-term care facility or long-term care services.

**Individual Conflicts:**

Conflicts for a long-term care ombudsman (LLTCO) include, but are not limited to, the following: **a.** employment of an individual or a member of his/her immediate family within the previous year by a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area; **b.** participation in the management of a long-term care facility by an individual or a member of his/her immediate family; **c.** ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by an individual or a member of his/her immediate family; **d.** involvement in the licensing or certification of a long-term care facility or provision of a

long-term care service by an individual or a member of his/her immediate family; **e.** receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by an individual or a member of his/her immediate family; **f.** accepting any gifts or gratuities from a long-term care facility or resident or resident representative that would not be considered a donation to the program; (**NOTE:** A LLTCO should adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.) **g.** accepting money or any other consideration from anyone other than the provider agency or other entity designated by the Office of the State Long-Term Care Ombudsman (SLTCO) for the performance of an act in the regular course of a LLTCO's duties. (**NOTE:** This provision does not prohibit a provider agency from obtaining grants, donations or other funding for the LLTCOP from entities without conflicts of interest;) **h.** provision of services with conflicting responsibilities while serving as a LLTCO, such as adult protective services; discharge planning; **i.** serving as guardian or conservator, agent under power of attorney, or other surrogate decision-maker for a long-term care resident in the service area; **j.** pre-admission screening; or case management for long-term care residents; serving residents of a facility in which an immediate family member resides; or participating in activities which: negatively impact on the ability of the LLTCO to serve residents, or are likely to create a perception that the LLTCO's primary interest is other than as a resident advocate.

**Interference:**

Restrictions which prohibit the Ombudsman representative from performing duties, such as participating in open meetings regarding pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services; representing the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.



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**FACILITY CLOSURES**

During times of facility closures, the local long-term care ombudsman (LLTCO) will be unable to respond to all routine or daily complaints. Depending on the attitude, cooperation, the nature, and number of residents in the closing facility, the amount of time required by s/he will vary.

When there is a lack of cooperation by the facility, there is a large number of residents, several difficult to place residents, or other extenuating circumstances the lltco will need assistance with copying case files of residents transferring to other facilities, help in locating placements for transferring residents, and counseling with transitioning residents and their families during and after the transfer. In these situations, a backup ombudsman, such as a supervisor, other staff person, or one or more volunteer ombudsman representatives (VOR) should assist the (LLTCO) with the closing and routine complaints to which the ombudsman is unable to respond.

Follow up on all residents who have been transferred to other facilities should continue by (LLTCO) through the first month after all placements have been completed.

## AAAD Service Provider Contracts

### Scope of Service

#### Ombudsman

Definition – Advocacy for residents of long-term care facilities, including complaint resolution and issue identification and activity.

The subcontractor will provide the following:

#### **Administration**

1. Comply with the program guidelines contained in the Ombudsman Chapter in the “Policies and Procedures for Services Contracted Through Area Agencies on Aging and Disability”
2. Develop and maintain a policy and procedure manual for program activities approved by the State LTCO. The manual shall include case-handling protocol, which includes written confirmation to regulatory agencies of referrals made to them.
3. Develop and implement a participant contribution plan approved by the State
4. Maintain verification that annually (or when staff changes), the District LTCO provides the State LTCO with a written list of individuals in the provider agency designated to have access to the case files
5. Maintain verification that the District Ombudsman has maintained current data in the Ombudsman manager at least monthly
6. Maintain verification of the submission of a quarterly report from the District LTCO to the State LTCO in a format specified by the State LTCO by the 20<sup>th</sup> day following end of quarter. Such report may require information detailing problem investigation and resolution process, problems referred, whether satisfactory resolution was accomplished and findings upon follow-up investigations.

#### **Planning and Program**

1. Develop and implement an active visitation schedule that shows bi-annual visits or incremental progress toward quarterly visits to each long-term care facility in the district. At a minimum, each long-term care facility will be visited annually
2. Give each complainant information regarding the grievance procedures of the service provider agency and an opportunity to evaluate and comment on services provided (such as a customer satisfaction survey)
3. Institute a contingency plan for coverage of the District LTCO responsibilities when the District LTCO is unavailable

4. Maintain annual cooperative agreements with the Legal Assistance Program in the district Maintain verification that the District LTCO maintains contact with the regional offices of the Department of Health/Health Care Facilities; Department of Mental Health and Developmental Disabilities; Department of Human Services; Social Security; Veterans Administration; Tennessee Bureau of Investigation; and Tennessee Protection and Advocacy
5. Maintain verification that the District LTCO has provided a summary of complaints received to the Department of Health Survey Team and complaint investigators when notified by the team that they are in a facility for the annual survey
6. Develop and implement a plan for publicizing the District LTCO services
7. Maintain verification that the District LTCO worked with and promoted citizens' organizations and advocacy groups
8. Maintain information and material for public dissemination concerning the Ombudsman services and other services pertinent to working with long-term care patients
9. Maintain the current ownership information regarding long-term care facilities in the district

## **Staff**

1. Employ a full-time District Long-term Care Ombudsman (LTCO). The District LTCO will have a combination of educational and work experience which totals 6 years in the field of social service and/or advocacy
2. Provide adequate supervisory assistance, office space, supplies, travel funds and secretarial assistance for the District LTCO
3. Maintain verification that the District LTCO staff (secretary, volunteer coordinator, assistant) have signed the Code of Ethics, Conflict of Interest, and Statement of Agreement
4. Maintain verification that the orientation and training of any new District LTCO addresses relationships, communication, and problem-solving
5. Maintain verification of the recruitment of \_\_\_\_ new Volunteer Ombudsman Representatives (VORs)
6. Maintain verification of the initial training of all new VORs and continuing training for all VORs equivalent to ½ day quarterly
7. Maintain verification that the VORs are supervised
8. Maintain verification that District LTCO maintained a cadre of \_\_\_\_ VORs

## Appendix A

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

- a. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
- b. provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
- c. operates programs with responsibilities conflicting with LTCOP responsibilities. Examples of such responsibilities include developing and carrying out care plans and serving as guardian or conservator of long-term care residents;
- d. has governing board members with ownership, investment or employment interest in long-term care facilities; and has direct involvement in the licensing or certification of a long-term care facility or long-term care services.

OAA 712(f)

## Appendix B

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

- a. employment of an individual or a member of his/her immediate family within the previous year by a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;
- b. participation in the management of a long-term care facility by an individual or a member of his/her immediate family;
- c. ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by an individual or a member of his/her immediate family;
- d. involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by an individual or a member of his/her immediate family;
- e. receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by an individual or a member of his/her immediate family; accepting any gifts or gratuities from a long-term care facility or resident or resident representative; **NOTE:** A LTCO should adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.
- g. accepting money or any other consideration from anyone other than the provider agency or other entity designated by the Office of the State Long-Term Care Ombudsman (SLTCO) for the performance of an act in the regular course of a LTCO's duties. **NOTE:** This provision does not prohibit a provider agency from obtaining grants, donations or other funding for the LTCOP from entities without conflicts of interest;
- h. provision of services with conflicting responsibilities while serving as a LTCO, such as adult protective services; discharge planning; serving as guardian or conservator, agent under power of attorney, or other surrogate decision-maker for a long-term care resident in the service area; pre-admission screening; or case management for long-term care residents;
- i. serving residents of a facility in which an immediate family member resides; or
- j. participating in activities which:
  - i) negatively impact on the ability of the LTCO to serve residents, or
  - ii) are likely to create a perception that the LTCO's primary interest is other than as a resident advocate.

OAA 712(f)