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# PROGRAM MEMO

TO: AREA AGENCY ON AGING DIRECTORS OMBUDSMAN PROGRAM COORDINATORS	NO.: PM 08-29(P)
SUBJECT: The California Long-Term Care Ombudsman Program Designation Standards for Approved Organizations	DATE ISSUED: December 30, 2008
REVISED	EXPIRES: <b>Effective Until Further Notice</b>
REFERENCES: <b>PM 90-61</b>	SUPERSEDES: <b>PM 91-59</b>
PROGRAMS AFFECTED: <input type="checkbox"/> All <input checked="" type="checkbox"/> Title III-B <input type="checkbox"/> Title III-C1/C2 <input type="checkbox"/> Title III-D <input type="checkbox"/> Title III-E <input type="checkbox"/> Title V <input type="checkbox"/> CBSP <input type="checkbox"/> MSSP <input checked="" type="checkbox"/> Title VII <input type="checkbox"/> ADHC <input type="checkbox"/> Other:	
REASON FOR PROGRAM MEMO: <input type="checkbox"/> Change in Law or Regulation <input type="checkbox"/> Response to Inquiry <input checked="" type="checkbox"/> Other Specify: <b>Program Flexibility</b>	
INQUIRIES SHOULD BE DIRECTED TO: Jana Matal, Ombudsman Program Manager, 916-419-7510, <a href="mailto:jmatal@aging.ca.gov">jmatal@aging.ca.gov</a>	

This Program Memo reissues the attached revised document entitled *The California Long-Term Care Ombudsman Program Designation Standards for Approved Organizations*. The document has been revised to allow interim flexibility to Area Agencies on Aging and local Long-Term Care Ombudsman Programs in the administration and operation of local programs. In particular, the following sections have had substantive updates which reflect current practices:

## Introduction

- Roles and Responsibilities of Area Agencies on Aging and the Office of the State Long-Term Care Ombudsman; Designation of Local Ombudsman Programs (pages 3 & 4)

## Section II – Organizational Structure

- Advisory Councils (pages 4 & 5)
- Handling and Storage of Files (pages 4 & 5)
- Staffing (pages 5 & 6)

## Section V – Training and Certification

- Internships (page 7)
- Criminal Background Clearances (page 7)
- Continuing Education & Technical Assistance (page 7)
- Decertification (page 8)

## Section VI – Facility Coverage (page 8)

## Section VIII – Complaint Management (page 9)

## Section IX – Reporting Responsibilities (pages 9 & 10)

## Section XI – Additional Requirements (page 11)



The document is effective until further notice.

A handwritten signature in black ink, reading "Lynn Daucher". The signature is written in a cursive style with a large, looped initial "L".

Lynn Daucher  
Director

Attachment

## THE CALIFORNIA LONG-TERM CARE OMBUDSMAN PROGRAM DESIGNATION STANDARDS FOR APPROVED ORGANIZATIONS

### INTRODUCTION

The California Long-Term Care (LTC) Ombudsman Program is mandated by both federal and State law and regulations. The following quotation from the Older Californians Act (Welfare and Institutions Code, beginning with Section 9700) establishes the State legislative mandate of the California LTC Ombudsman Program:

9700. (a) The Legislature recognizes that the department, pursuant to a grant from the federal government, has established a Long-Term Care Ombudsman Program.

(b) The Legislature declares that it is the public policy of this state to encourage community contact and involvement with elderly patients or residents of long-term care facilities or residential facilities through the use of volunteers and volunteer programs, and nothing in this chapter shall be construed as limiting or restricting the continuation of relationships established between ombudsmen, the elderly patients or residents of long-term care facilities or residential facilities, and the operators of these facilities.

(c) The Legislature finds that in order to comply with the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), as amended, and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, the structure, powers, and duties of the Long-Term Care Ombudsman Program must be specifically defined.

9701. Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the interpretation of this chapter:

(a) "Approved organization" means any public agency or other appropriate organization that has been designated by the department to hear, investigate, and resolve complaints made by or on behalf of patients, residents, or clients of long-term care facilities relating to matters that may affect the health, safety, welfare, and rights of these patients, residents, or clients.

The LTC Ombudsman Program, with its special mandates from Congress and the State Legislature, is unique. The laws and regulations governing the delivery of Ombudsman services require that the Office of the State Long-Term Care Ombudsman (OSLTCO) provide administrative policy, technical direction, and program monitoring, while at the same time administrative monitoring and contracting activities are carried out by the Area Agencies on Aging (AAAs).

The AAA selects the "approved organization" recommended for designation utilizing its normal Request for Proposals and contracting procedures. Before the final award of a contract is made by the AAA, the OSLTCO shall review the selection to determine if the agency chosen by the AAA is free from all conflicts of interest and meets the designation requirements of the Older Americans Act, as specified in 42 U.S.C. 3058g (a)(5). AAAs may provide the Ombudsman Program directly if it is necessary to assure that adequate services are provided or if it is more economical for services to be provided by the AAA rather than comparable services purchased from a service provider. Once the OSLTCO has completed its review of the organization recommended for designation and finds that

there are no obstacles, the State LTC Ombudsman will designate the organization as the local Ombudsman Program. If the OSLTCO finds that the organization recommended for designation is not free from conflict of interest or fails to meet the other requirements specified in the Older Americans Act, the OSLTCO will inform the AAA that they will need to identify an organization that meets the requirements of the Act.

The AAA monitors the provisions of the contract, while the OSLTCO will periodically monitor the approved organization for compliance with State and federal laws, regulations and policies, including the review of confidential LTC Ombudsman records.

These standards are provided to assure that consistent and effective LTC Ombudsman services are provided to LTC residents in California. Waivers related to specific policies identified in this Program Memo (PM) may be requested by approved agencies by submitting a written justification and request to the AAA for review and recommendation to the OSLTCO. Final determination will be made by the State LTC Ombudsman.

## **I. ADVOCACY**

The LTC Ombudsman Program is designed as an advocacy program for residents of LTC facilities. The approved organizations shall assure that the Program, its employees, and volunteers focus on advocacy as their primary purpose and activity. The Program Coordinator, staff, and volunteers shall provide resident advocacy as their primary function. Other responsibilities such as community education, interagency coordination, in-service training, etc., are secondary to the resolution of residents' complaints. The Program shall work to empower residents to maintain dignity, and to enable them to assert their civil rights. The Program must be free to engage in appropriate advocacy activities, including public information programs, administrative actions, and referral and liaisons to licensing and law enforcement agencies.

## **II. ORGANIZATIONAL STRUCTURE**

The approved organization must be either a private, nonprofit corporation or a public agency. It may be either a single purpose or a multipurpose agency. Those organizations that are public and/or multipurpose in nature must render assurances to the State that none of their sponsored programs or organizations are in conflict with the objectives and policies of the LTC Ombudsman Program, and that adequate resources will be devoted to the LTC Ombudsman Program to assure that its purposes will be achieved. The approved organization must demonstrate not only interest and concern in programs for elders and quality of care for residents of LTC facilities, but also demonstrate experience and knowledge in this field.

All approved organizations shall assure that:

- they are operated on a sound fiscal basis.
- they will maintain a LTC Ombudsman Advisory Council which meets regularly, and has representation on the governing board of the approved organization. This may be waived for single purpose agencies that have a board of directors. This may also be waived for LTC Ombudsman Programs operated directly by AAAs. In that situation, the AAA Advisory Council may also serve as the LTC Ombudsman Advisory Council.
- handling and storage of files (paper and electronic), telephone communication, and internal communication within the organization meet confidentiality requirements under the law.

- records are generally maintained for four years. However, in accordance with Area Plan (AP) contracts, records shall be retained until an audit has occurred and an audit resolution has been issued, or longer if required by statute, AP contract agreement, or as required by the Department. Also, records must be retained until any litigation, claim, negotiation, audit exception, or other action is cleared to the satisfaction of the State.
- conflict of interest requirements are met by all persons within the organization who have administrative or policy-making responsibilities for the LTC Ombudsman Program.
- separate budget and expenditure accounting is maintained for the Program, and is made available to the Program Coordinator.
- funds obtained from all sources related to the LTC Ombudsman Program are available to the Program.

#### **A. Governing Board**

The governing board of the approved organization shall employ staff and operate the LTC Ombudsman Program in compliance with State and federal laws, regulations, and policies. The board shall provide ongoing leadership to the Program, ensure the provision of adequate administrative and operational resources, and assure that conflict of interest policies are in place.

#### **B. Advisory Council**

Single purpose LTC Ombudsman Programs are not required to have a formal Advisory Council since their board serves this purpose. LTC Ombudsman Programs that are a direct service of the AAA also are not required to have a formal Advisory Council since the AAA Advisory Council serves this purpose. In nonprofit multipurpose agencies, there shall be an Advisory Council for the LTC Ombudsman Program. The Advisory Council shall be composed of persons concerned about the quality of care and protection of the rights of residents in LTC facilities. The Advisory Council should include representatives of service agencies within the aging network, community organizations, and consumers. In the case of a multipurpose agency, the chairperson of the Advisory Council should be a member of the governing board of the approved organization.

#### **C. Staffing**

The approved organization shall assure the provision of adequate personnel to carry out the mandates and responsibilities of the Program. Normally, this includes a full-time Program Coordinator and Ombudsman volunteers. As resources permit, additional personnel to assure volunteer supervision, facility coverage, and complaint/abuse investigation may include paid LTC Ombudsman representatives, clerical staff, and other volunteers.

The approved organization is required to select a LTC Ombudsman Program Coordinator to manage the day-to-day operations of the local LTC Ombudsman Program. The LTC Ombudsman Program Coordinator must be empowered to manage the Program effectively. The Program Coordinator shall be the liaison between the OSLTCO, the local LTC Ombudsman Program, and the local AAA.

As resources permit, the LTC Ombudsman Program Coordinator should manage the local LTC Ombudsman Program's activities on a full-time basis. The approved organization must notify the

OSLTCO and the AAA of any anticipated changes in the LTC Ombudsman Program Coordinator position, i.e., the name of the individual assuming the Program Coordinator position, days and hours that will be worked, etc.

The approved organization shall maintain job descriptions for the LTC Ombudsman Program Coordinator, paid and volunteer LTC Ombudsman representatives, and any other positions. Job descriptions should include minimum tasks and responsibilities as required by the OSLTCO. The Program Coordinator provides the essential leadership and motivation to the staff and volunteers. Program Coordinators must be free from conflicts of interest, receive a criminal background clearance, receive the required 36 hours of classroom training and internship, and the New Coordinator Training provided by the OSLTCO. The approved organization shall assure that applicants for this position possess, at a minimum, an appropriate combination of the following qualifications:

- experience in management or leadership of community programs/organizations;
- knowledge in the field of gerontology and aging programs;
- interest and commitment to services to older persons;
- knowledge and experience in the field of LTC;
- experience in management and supervision of volunteer programs;
- knowledge of laws and regulations in the area of LTC facilities.

#### **D. Administrative Support**

At a minimum, the approved organization shall assure adequate staffing, physical space and equipment, financial support, and liability coverage for the provision of LTC Ombudsman services to LTC facility residents in the communities served by the Program. The legal services to be assured by the AAA include a Memorandum of Understanding (MOU) between the local LTC Ombudsman Program and the Older Americans Act Legal Services Program or an alternative arrangement for providing advice and counsel to residents of LTC facilities. Alternative arrangements may include pro bono legal services to residents. Legal services are understood to be complementary to the responsibilities of the State in the provision of legal representation to the OSLTCO and its approved organizations.

### **III. CONFLICT OF INTEREST**

The approved organization must provide assurances that board members, Advisory Council members, employees, and volunteers do not derive personal or economic gain from LTC facilities or their associations.

A local LTC Ombudsman Program may not be designated in an organization which is responsible for licensing and/or certifying LTC facilities or which is an association of such providers. A local LTC Ombudsman Program may not be designated in any other organization which would impair the ability of the LTC Ombudsman to objectively and independently investigate complaints made by, or on behalf of, residents of LTC facilities.

The State LTC Ombudsman shall not certify as Ombudsman representatives, members of the board of directors of the approved organization or the immediate supervisor of the Program Coordinator. Program Coordinators have the responsibility for supervising the activities of all Ombudsman representatives within their jurisdiction. To allow such individuals to be certified would place the

Ombudsman Program Coordinator in the awkward and compromising position of supervising a superior.

The Ombudsman Program Coordinator, paid staff, volunteers (and their immediate families), should not have been employed by any LTC facility within 12 months prior to being certified. If there are any potential conflicts of interest of applicants for certification such as former employment in a LTC facility, the State LTC Ombudsman shall be consulted, and s/he or her/his designee shall make the final decision. Ombudsman representatives shall not be assigned to a facility where relatives or close friends reside.

#### **IV. CONFIDENTIALITY**

Confidentiality is mandated by federal and State law for all residents, complainants, and witnesses. The approved organization shall assure that the LTC Ombudsman Program maintains confidentiality in accordance with federal and State requirements. The provisions of confidentiality apply to all Ombudsman representatives. Ombudsman representatives or other Program staff shall not disclose the identity of any resident, complainant or witness providing information to the Program during the investigation of a complaint, unless there is consent from each person identified in the complaint which has been documented, or a court orders the disclosure. All persons with access to confidential files within the office must sign an oath of confidentiality. Multi-purpose agencies must assure that all files (paper and electronic), telephone and e-mail communication, and internal communication within the organization meet the confidentiality requirements under State and federal law.

#### **V. TRAINING AND CERTIFICATION**

The LTC Ombudsman Program, with its reliance on volunteers and the complexity of the cases to be resolved, requires regular and effective training for both staff and volunteers.

The approved organization shall assure and document training in the following areas:

- The organization will provide the required number of 36 classroom hours of certification training using the approved Core Curriculum developed by the OSLTCO, to all paid staff and volunteer LTC Ombudsman representatives.
- This classroom training will be followed by an internship with an experienced LTC Ombudsman representative.
- All representatives must have passed a criminal background clearance before certification.
- As a prerequisite to maintain certification, Ombudsman representatives must receive the required 12 hours of continuing education each year as required by State law.
- The organization will conduct regular meetings with staff and volunteers to provide current training, and to transmit information from the OSLTCO.
- The Program Coordinator will participate in New Coordinator Training and attend regular training meetings as required by the OSLTCO.

The OSLTCO may assist local Ombudsman Programs in providing the continuing education of paid and volunteer Ombudsman representatives through webinars and conference calls sponsored by the State Office. Additionally, if local Program Coordinators are unable to provide immediate assistance to volunteers or paid staff that are in the field and need technical assistance, they may instruct their Ombudsman representatives to contact their assigned analyst at the OSLTCO for direction and guidance.

The approved organization shall ensure that before submitting an application for certification of a LTC Ombudsman representative, current requirements for no conflict of interest, confidentiality, training, and background clearances (as discussed in Program Memo 07-17), are met. The local LTC Ombudsman Program shall use the most recent forms for the processing of criminal background clearances, as issued by the OSLTCO. LTC Ombudsman Program Coordinators may contact their assigned analyst to obtain the most recent version of the forms.

LTC Ombudsman representatives shall carry their LTC Ombudsman certification card whenever visiting facilities and present it to facility staff, as requested. The certification process is intended to train and certify active LTC Ombudsman representatives. Inactive volunteers shall be removed from local Program rolls and a request for decertification made to the OSLTCO within five days after the individual leaves the program. A recommendation for decertification of LTC Ombudsman representatives may be made because of inactivity, resignation or for cause. Programs must follow the OSLTCO policy on certification and criminal background check requirements as specified in PM 07-17.

## **VI. FACILITY COVERAGE**

The approved organization shall assure, as resources allow, that the Program has established and maintains a regular and ongoing presence of LTC Ombudsman representatives in skilled nursing facilities, intermediate care facilities, and residential care facilities for the elderly. A current facility coverage plan outlining this presence shall be maintained by the Program. Each local program may develop its own format for a facility coverage plan. Facility files will be maintained and will include current facility profiles, citation/deficiency reports, and other appropriate materials for use by the Program and as a basis for informing the public.

## **VII. VOLUNTEER MANAGEMENT**

Community involvement through the use of volunteers as Ombudsman representatives and in other Program functions is central to the intent of Congress and the State Legislature. A current plan shall be maintained by the Program which provides for recruiting goals, training, and supervision of volunteers. The plan shall provide for the continuous maintenance of the volunteer corps by the training of experienced volunteers as volunteer supervisors and trainers. The Programs shall assure at least annual recruiting, training, and recognition activities.

## **VIII. COMPLAINT MANAGEMENT**

The receipt, investigation, and resolution of complaints by, and on behalf of, residents of LTC facilities, are central tasks in providing the resident advocacy of the LTC Ombudsman Program. The presence of LTC Ombudsman representatives in facilities, as well as the required Ombudsman poster, provides residents with Program access.

The approved organization shall assure that the Program will develop a complaint management system based on current policies of the OSLTCO and containing at least these elements:

- provisions for receipt and recording of all complaints;
- a logging and tracking method;
- provisions for timely handling and resolution of complaints;
- confidentiality of files;
- notification of progress and resolution to complainants;
- systematic referral and follow-up;
- documenting of patterns, trends, and special problems;
- handling of CRISISline referrals.

The approved organization may need assistance from other agencies in responding to complaints. If the local Ombudsman Program cannot provide immediate assistance, complainants should be referred, as the situation dictates and with the consent of the resident or legal representative, to the local offices of the Department of Social Services, Community Care Licensing; the Department of Public Health, Licensing and Certification Program; the Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse; and local law enforcement.

The current law requiring the CRISISline to be available to residents and complainants, 24 hours a day, seven days a week, remains in place. After hours, weekends, and holidays, the CRISISline is staffed by an answering service. Messages for non-emergency calls are taken by operators and are transmitted by the OSLTCO to local Ombudsman Programs the next business day. For urgent matters that require the immediate assistance of an Ombudsman, operators will call the designated local Ombudsman contact. The CRISISline operators assess the seriousness of calls and contact local Ombudsman staff after business hours, on weekends, and holidays when a situation imperils the life, health or safety of a LTC facility resident and requires immediate attention or when a resident may be harmed if the situation is not addressed prior to the next business day. Operators will instruct callers to call 911 if the call is being made because of a life-threatening emergency, or if a crime is in the process of being committed.

## **IX. REPORTING RESPONSIBILITIES**

The approved organization shall assure that they will comply with the data reporting requirements of the U.S. Administration on Aging, as described in the National Ombudsman Reporting System (NORS), and the OSLTCO.

### **A. Quarterly OmbudsManager Reporting Form**

The Quarterly OmbudsManager Reporting Form (S301 – Rev. 12/07) must be completed by all local Programs to notify the OSLTCO of the status of data entry for the quarter. Program Coordinators shall e-mail this completed form to the OSLTCO by each quarterly due date. It is important that every Program Coordinator completes the form to document that data entry has been completed or explains why the reporting is delayed and when the data for the quarter will be entered.

Due dates for data entry are as follows:

July 1 to September 30 is the first quarter.	All data for that quarter must be entered into OmbudsManager by October 31.
October 1 to December 31 is the second quarter.	All data for that quarter must be entered into OmbudsManager by January 31.
January 1 to March 31 is the third quarter.	All data for that quarter must be entered into OmbudsManager by April 30.
April 1 to June 30 is the fourth quarter.	All data for that quarter must be entered into OmbudsManager by July 31.

If a Program will not be able to meet the specified due dates for data entry, this form is used to notify the OSLTCO of the delay and provide an estimated date that data entry will be complete. Use the reporting form to notify the AAA if a Program is experiencing delays in data entry, as required in the Area Plan contracts. A copy of the aggregated data for each quarter should also be sent to the AAA. LTC Ombudsman Program Coordinators may contact their assigned analyst to obtain the most recent version of the form.

## **X. COMMUNITY IMPACT**

The LTC Ombudsman Program is charged with developing adequate resources to assist LTC residents, their families and friends, care providers, and members of the community with information about available community resources, Medi-Cal, and other LTC issues.

As resources permit, the approved organization shall assure that the following elements for community impact are provided. The Program will:

- provide public information on LTC facilities to interested persons and the media.
- develop a community resource capability to include referrals to community organizations and services in the aging network for residents of LTC facilities.
- provide training for local groups and organizations on LTC Ombudsman services and issues related to residents of LTC facilities.
- establish liaisons and develop working agreements and consultative services with at least the following agencies:
  - Older Americans Act Legal Services Providers
  - Adult Protective Services
  - Licensing agencies
  - Law enforcement agencies
  - Disability Rights California (formerly Protection and Advocacy)
  - Bureau of Medi-Cal Fraud and Elder Abuse
  - Other groups, as appropriate

**XI. ADDITIONAL RESPONSIBILITIES****A. Witnessing**

The Program shall train (using the two-hour, State-approved curriculum) and register LTC Ombudsman representatives in the witnessing of Advance Health Care Directives and property transfers. These services will be provided as requested, for residents of skilled nursing facilities and long-term health care facilities, respectively.

**B. Family and Resident Councils**

As resources permit, the Program should assist residents and their families in the development of family councils and should participate in resident council meetings, as requested, and as Program priorities allow.

**C. Citation Review Conferences**

As resources permit, the Program should attend Citation Review Conferences to advocate for residents, as requested, and as Program priorities allow.

**D. Information & Consultation to Individuals**

As resources permit, the Program should provide public information to interested persons about local LTC facilities, and how to select an appropriate facility.

**E. Facility Staff Training & Consultation**

As resources permit, the Program should provide training for LTC facility staff on topics such as elder abuse, mandated reporting, and residents' rights. Within the availability of Program resources, consultation may also be provided to facility staff.

**XII. COMMUNICATION WITH THE OSLTCO**

Administrative policy, training, and technical information flow from the OSLTCO to the local Programs. The local Programs must assure regular communication with the OSLTCO on unusual incidents involving Ombudsman representatives, complex cases, situations with potential legal implications, changes in key staffing, emerging issues and patterns with Statewide impact, confidentiality, and conflict of interest issues.