

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
John Thurston  
500 Woodlane Street, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



---

Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

---

Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

7/1/2020



# Ombudsman Policies

OFFICE OF THE STATE OMBUDSMAN  
DIVISION OF AGING ADULT BEHAVIORAL HEALTH  
SERVICES

## Arkansas Office of the Long Term Care Ombudsman Program

### Contents

Chapter 100	Introduction to the Arkansas Long-Term Care Ombudsman Program .....	2
Chapter 200	Administration of the Arkansas Long-Term Care Ombudsman Program (LTCOP) .....	6
Chapter 300	Designation and Certification and Grievance Processes.....	16
Chapter 400	Long-Term Care Ombudsman Program Service Components and Delivery .....	27
Chapter 500	Organizational and Individual Conflicts of Interest.....	35
Chapter 600	Legal Counsel .....	40
Chapter 700	Willful Interference, Retaliation.....	42
Chapter 800	LTCO Access to Residents, Facilities, and Records.....	44
Chapter 900	Confidentiality, Monitoring, Disclosure and Maintenance.....	47
Chapter 1000	Complaint Processing.....	51
APPENDIX A	Code of Ethics for Ombudsmen .....	65
APPENDIX B	Arkansas Long-Term Care Ombudsman Representative Certification Training Requirements .....	66

## **Arkansas Office of the Long Term Care Ombudsman Program**

### **Chapter 100 Introduction to the Arkansas Long-Term Care Ombudsman Program**

#### **Section 101 Establishment of the Arkansas Long-Term Care Ombudsman Program (LTCOP)**

- A. The Arkansas Long-Term Care Ombudsman Program (LTCOP) is authorized under section 712 of the federal Older Americans Act (42 U.S.C. §§3001 et seq), and the Arkansas Long-Term Care Ombudsman Act (Ark. Code Ann. § 20-10-601 et seq.).
- B. The LTCOP protects and improves the quality of care and quality of life for residents of long-term care facilities through individual and systemic advocacy for and on behalf of residents, and through the promotion of community involvement in long-term care facilities.
- C. The LTCOP is a resident-centered advocacy program. The resident is the program's client, regardless of the source of the complaint or request for service. The Ombudsman will make every reasonable effort to assist, empower, represent, and advocate on behalf of the resident.
- D. These policies govern the operations of the Office of the State Long-Term Care Ombudsman, certified staff and volunteer Ombudsman Representatives, provider agencies, area agencies on aging, the Arkansas Division of Aging, Adult, and Behavioral Health Services, and other parties involved in the operation of the LTCOP.

#### **Section 102 Definitions**

##### **Abuse**

Willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

##### **Annual Services Plan**

A written plan, prepared by the Regional Ombudsman for submission to the Office of the State Long-Term Care Ombudsman and the Area Agency on Aging, setting goals and objectives for the regional ombudsman program for the following federal fiscal year.

##### **Area Agency on Aging (AAA)**

An agency designated by the Division of Aging, Adult, and Behavioral Health Services (DAABHS) to arrange for the provision of aging services in its planning and service area.

##### **Certification**

## **Arkansas Office of the Long Term Care Ombudsman Program**

The designation provided by the State Long-Term Care Ombudsman to an individual who meets minimum qualifications, is free of conflicts of interest, and has successfully completed training and other criteria stipulated in Chapter 300 of this manual. Designation authorizes such individual to act as a representative of the Long-Term Care Ombudsman Program in accordance with the OAA §712(a)(5) and in keeping with this manual.

### **Complaint**

Information regarding action, inaction, or decisions that may have adversely affected the health, safety, welfare, or rights of one or more residents that is brought to the attention of, or initiated by, an Ombudsman Representative for action.

### **Conflict of Interest**

A competing interest, obligation, or duty which compromises, influences, interferes with or gives the appearance of compromising, influencing or interfering with the integrity, activities, or conduct of any Ombudsman, the Department, Office, AAAs or provider agencies in faithfully and effectively fulfilling official duties.

### **Designation**

The authorization by the State Ombudsman of an entity to host a regional ombudsman program in a specified geographic area or of an individual who has been certified to have met all minimum qualifications, training, and other criteria in accordance with the OAA §712(a)(5) and this in keeping with this manual.

### **Exploitation**

The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

### **Family Council Activities**

The provision of technical assistance, information, training, or support to family members of residents or facility staff, about the development, education, work, or maintenance of a family council.

### **Good Faith**

Evidence of performing duties in “good faith” includes, but is not limited to:

- Making reasonable efforts to follow procedures set forth in applicable laws and this manual;
- Seeking and making reasonable efforts to follow direction from the Office of the State Long-Term Care Ombudsman; and
- Seeking and making reasonable efforts to follow direction from the relevant Regional Ombudsman.

### **Guardian**

Person or entity appointed by a court to exercise the legal rights and powers of another individual as specified in the court order.

## **Arkansas Office of the Long Term Care Ombudsman Program**

### **Home and Community Based Services**

Home and community based services (HCBS) provide opportunities for Medicaid beneficiaries to receive services in their own home or community rather than institutions or other isolated settings. These programs serve a variety of targeted populations groups, such as people with intellectual or developmental disabilities, physical disabilities, and/or mental illnesses.

### **Immediate Family**

Those persons related to an individual as a spouse, child, sibling, parent, grandchild, or grandparent. An immediate family member is also any member of the household or a relative with whom there is a close personal or significant relationship.

### **Interagency Coordination**

Activities that involve meeting or coordinating with other agencies to learn about or improve conditions for one or more residents.

### **Issue Advocacy**

Activities supporting and promoting issues which benefit or advance the health, safety, welfare, or rights of residents.

### **Legal Representative**

A guardian; an agent under valid power of attorney, provided that the agent or attorney-in-fact is acting within the scope of his or her agency; a surrogate decision maker; or an executor or administrator of the estate of a deceased resident or participant.

### **Local Ombudsman Entity**

The local agency designated by the State Long-Term Care Ombudsman to represent the Office of the State Long-Term Care Ombudsman in carrying out the program responsibilities and components.

### **Long-Term Care Facility**

Any nursing facility; board and care facility; and any other adult care home, including an assisted living facility, board and care facility, and other similar facilities. (See OAA §102(35)).

### **Neglect**

The failure to provide 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.

### **NORS**

*National Ombudsman Reporting System* means the state uniform reporting system required for the Office of the Long-Term Care Ombudsman in the Older Americans Act.

## **Arkansas Office of the Long Term Care Ombudsman Program**

### **Office of Chief Counsel**

Provides legal assistance and representation on administrative matters, litigation pertaining to delivery of services, program administration, personnel, civil rights and overpayment collections, as applicable, to all the various divisions of the Department.

### **Office of the State Long-Term Care Ombudsman**

The organizational unit headed by the State Long-Term Care Ombudsman.

### **Ombudsman or State Long-Term Care Ombudsman**

The individual who heads the Office of the State Long-Term Care Ombudsman and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities, and duties of the Long-Term Care Ombudsman Program.

### **Ombudsman Representative or Regional Ombudsman**

The employees or volunteers designated by the Ombudsman to fulfill the duties of the Office, whether personnel supervision is provided by the State Ombudsman or by an agency hosting a Regional Long-Term Care Ombudsman Program.

### **Program Records**

All files, records, correspondence, documentation, case notes, and communications related to a specific case or client.

### **Provider Agency or Local Ombudsman Entity**

The entity designated by the State Ombudsman to operate a regional ombudsman program in a particular service area.

### **Volunteer Ombudsman**

An Ombudsman who performs services without pay.

### **Willful Interference**

Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions, responsibilities, or duties of the Ombudsman.

## Arkansas Office of the Long Term Care Ombudsman Program

### Chapter 200 Administration of the Arkansas Long-Term Care Ombudsman Program (LTCOP)

#### Section 201 Program Structure

- A. The Division of Aging, Adult, and Behavioral Health Services (DAABHS) of the Arkansas Department of Human Services (DHS) shall establish and administer the Office of the State Long-Term Care Ombudsman (OSLTCO) in accordance with the Older Americans Act, the Arkansas Long-Term Care Ombudsman Act, and applicable federal regulations and state rules.
- B. The OSLTCO shall assure that all residents of Arkansas long-term care facilities have access to the services of the LTCOP and that each service area of the state has a designated regional program.
- C. Regional program services shall be delivered through provider agencies and individuals designated by the OSLTCO and shall be operated through a grant or contract with DAABHS or an AAA.

#### Section 202 Arkansas Division of Aging, Adult, and Behavioral Health Services (DAABHS) Responsibilities

The Division shall:

- A. Provide for a full-time State Long-Term Care Ombudsman (SLTCO) that meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:
  - 1. Long-term services and supports or other direct services for older persons or individuals with disabilities;
  - 2. Consumer-oriented public policy advocacy;
  - 3. Leadership and program management skills; and
  - 4. Negotiation and problem resolution skills;
- B. Ensure that the OSLTCO is a distinct entity separately identifiable, and located within or connected to the Division;
- C. Ensure that the SLTCO, as head of the OSLTCO, is independent in its representation of the interests of long-term care facility residents, without representing the positions or policies of the DAABHS, or any other government entity;
- D. Ensure that the Ombudsman Program has sufficient authority and access to facilities, residents, and information needed to fully perform all the functions, responsibilities, and duties of the office;



## Arkansas Office of the Long Term Care Ombudsman Program

- E. Provide the SLTCO with support for personnel, fiscal, contractual, data, and budgetary management, including administration of contracts with designated provider agencies;
- F. Provide the SLTCO with authority to manage funds designated for the OSLTCO, consistent with DAABHS policies;
- G. Not have policies or practices which prohibit the State Ombudsman from performing the functions and responsibilities of the office and the position;
- H. Provide opportunities for training for the State Ombudsman and representatives of the office to maintain expertise and to serve as effective advocates for residents, including the National Ombudsman Resource Center annual training for SLTCO;
- I. Provide personnel supervision and management for the State Ombudsman and program representatives who are employees of the division without interfering with its work to promote the interests of long-term care facility residents;
- J. Ensure that any review of files, records, or other information maintained by the program is consistent with the disclosure limitations set forth in 45 CFR §1324.11(e)(3) and §1324.13(e);
- K. Work with the State Ombudsman to identify, remedy, and remove conflicts of interest between the office and the division;
- L. Integrate the goals and objectives of the OSLTCO into the State Plan and coordinate the goals and objectives of the office with those of other programs established under Title VII of the OAA and other state elder rights, disability rights, and elder justice programs to promote collaborative efforts and diminish duplicative efforts. The division shall require inclusion of goals and objectives of Regional Long-Term Care Ombudsman Programs into area plans on aging;
- M. Provide for appropriate sanctions with respect to interference, retaliation, and reprisals;
- N. Ensure legal counsel for the LTCOP is adequate, available, has competencies relevant to the legal needs of the program and of residents, and is without conflict of interest;
- O. Provide for legal representation for the OSLTCO and Program Representatives against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the SLTCO or Program Representatives;
- P. Refrain from interference with the LTCOP's mandate to advocate for and represent the interests of long-term care facility residents.

## Arkansas Office of the Long Term Care Ombudsman Program

- Q. Administer the OLTCO in conformity with the Older Americans Act (OAA) and all applicable federal and state laws. The division's oversight extends to hiring the SLTCO, evaluating the SLTCO's performance, and ensuring that the SLTCO manages the program in compliance with state and federal laws as well as State of Arkansas's policies and procedures.

### Section 203 State Long-Term Care Ombudsman (SLTCO) Responsibilities

- A. The SLTCO shall be the head of a unified statewide program;
- B. The SLTCO is responsible for the leadership and management of the OSLTCO;
- C. The SLTCO shall:
1. Determine designation and refusal, suspension, or removal of designation of regional ombudsman programs. Notwithstanding the grievance process, the SLTCO shall make the final determination to designate or to refuse, suspend, or remove designation of a regional ombudsman program pursuant to Chapter 300 of this manual;
  2. Determine certification, and refusal, suspension, or removal of certification, of Ombudsmen Program Representatives. The SLTCO shall make the final determination to certify or to refuse, suspend, or remove certification of a regional ombudsman program pursuant to Chapter 300 of this manual;
  3. Review and approve plans or contracts governing regional ombudsman program operations, including through AAA plans, in coordination with the DAABHS;
  4. Monitor, on a regular basis, performance of regional ombudsman programs;
  5. Establish procedures for training, certification, and continuing education of ombudsman program representatives;
  6. Prohibit any individual from carrying out the duties of the office unless the individual has received the training required, or is performing such duties under supervision of an Ombudsman as part of the certification training requirements;
  7. Investigate allegations of misconduct by ombudsman program representatives in the performance of Ombudsman Program duties in accordance with Section 318 of this manual;
  8. Manage the files, records, and other information of the Ombudsman Program, whether in physical, electronic, or other formats, including information maintained by the regional ombudsman programs pertaining to the cases and

## Arkansas Office of the Long Term Care Ombudsman Program

activities of the Ombudsman Program. Such files, records, and other information are the property of the OSLTCO;

9. Maintain the sole authority in making determinations regarding disclosure of Ombudsman Program records;
10. Determine the use of fiscal resources appropriated or otherwise available for the operation of the OSLTCO. The SLTCO shall approve the allocations of federal and state funds provided to provider agencies; and shall determine that program budgets and expenditures of the office and regional ombudsman programs are consistent with the laws, policies, and procedures governing the LTCOP.

D. The SLTCO shall, personally or through representatives of the office:

1. Identify, investigate, and resolve complaints:
  - a. Made by, or on behalf of, residents that may adversely affect the health, safety, welfare, or rights of residents;
  - b. Related to action, inaction, or decisions of providers or representatives of providers of long-term care services, public agencies, or health and social service agencies; and
  - c. Related to the welfare and rights of residents with respect to the appointment and activities of guardians, conservators, and representative payees;
2. Provide services to protect the health, safety, welfare, and rights of residents;
3. Inform residents about means of obtaining services provided by the Ombudsman Program;
4. Ensure that residents have regular and timely access to the services provided through the Ombudsman Program and that residents and complainants receive timely responses from Ombudsmen to requests for information and complaints;
5. Represent the interests of residents before governmental agencies and assure that individuals have access to and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;
6. Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the residents, including the adequacy of long-term care facilities and services;
7. Coordinate with and promote the development of citizen organizations such as Resident Councils and Family Councils consistent with the interests of residents; and

## Arkansas Office of the Long Term Care Ombudsman Program

8. Provide technical assistance as requested for the development and ongoing support of councils to protect the well-being and rights of residents.

### E. Additional Responsibilities of the SLTCO

1. Plan, develop, and implement certification and training of Ombudsman Representatives in accordance with Appendix B of this manual;
2. Develop and manage program to enable the Local Ombudsman Entity to fulfill the program components at Chapter 400;
3. Provide technical assistance and supervision as needed related to complaint handling, issues advocacy, and other LTCOP services;
4. Coordinate the activities of the LTCOP with other DAABHS programs and other state and federal agencies involved in the care of residents;
5. Maintain program records and reporting system;
6. Provide program data and analysis;
7. Monitor and evaluate the statewide and regional programs;
8. Prepare and distribute an annual report as described in the OAA, and in accordance with Section 408 of this manual.
9. Lead state-level coordination through adoption of memoranda of understanding and other means, and support appropriate coordination between the Ombudsman Program and other local entities with responsibilities relevant to the health, safety, well-being, or rights of residents of long-term care facilities, including, but not limited to:
  - a. Area agency on aging programs;
  - b. Aging and disability resource centers;
  - c. Adult protective services programs;
  - d. Protection and advocacy programs;
  - e. Regulatory agencies governing provider licensure and certification programs;
  - f. The State Medicaid agency;
  - g. State and local law enforcement, victim assistance programs, and courts of competent jurisdiction;
  - h. State legal assistance developer; and
  - i. Legal assistance programs.

## Arkansas Office of the Long Term Care Ombudsman Program

- A. The AAA shall fiscally administer the grants or contracts under which regional programs operate in compliance with federal and state laws and administrative rules.
- B. Any AAA contract or grant provision that requires regional program service delivery components or data collection policies and processes, practices or protocols different from those presented in this manual must be approved in writing by the OLTCO and, when necessary, a waiver request must be submitted.
- C. In administering the regional program services, the AAA shall:
  - 1. Support a full-time Regional Ombudsman for each regional program;
  - 2. Have an active and ongoing responsibility in monitoring; however, AAA's do not have access to LTCOP records which contain identifying information about residents. Ongoing monitoring includes:
    - a. Reviewing budget, expenditure, and audit reports;
    - b. Reviewing regional program coordination with other agencies;
    - c. Reviewing reports provided by the OSLTCO which reflect activities of the regional program;
    - d. Reviewing conflict of interest forms and remedies; and
    - e. Reviewing policies and procedures of the provider agency that relate to the regional program.
  - 3. Monitor the regional program yearly using an OSLTCO-approved monitoring tool in order to assess the adequacy of program services and the internal quality assurance procedures pursuant to the contract or grant with the SLTCO being notified of the monitoring visit. The completed monitoring tool shall be submitted to the OSLTCO within thirty (30) calendar days of the monitoring visit.;
  - 4. Review and comment on the Ombudsman Annual Service Plan on an annual basis;
  - 5. Adhere to the maintenance of effort requirements for each regional program as required by the OAA;
  - 6. Assure that OAA Title VII Ombudsman Program funds are used exclusively for Ombudsman Program services and direct advocacy program activities;
  - 7. Make no requirement for matching funds for OAA Title VII funds received by the AAA for regional ombudsman program services;
  - 8. Include the Regional Ombudsman when appropriate in discussions, meetings, conferences, reports, and other AAA functions and operations such as boards

## Arkansas Office of the Long Term Care Ombudsman Program

and advisory councils related to long-term care, and to serve as the voice for residents;

9. Have no unremedied conflicts of interest; and

10. Provide technical assistance as needed.

D. The AAA shall support the regional program to the extent possible by:

1. Designating AAA staff to attend OSLTCO-sponsored trainings and meetings pertaining to the Program;

2. Assisting in the development of resources for the operation of the regional program, including financial and human resources;

3. Providing opportunities for the regional program and other aging and social services organizations to collaborate to promote the health, safety, welfare, and rights of residents;

4. Making appropriate referrals to the regional program;

5. Promoting awareness of Long-Term Care Ombudsman services to consumers and the general public within the service area; and

6. Recognizing the responsibilities of the Regional Ombudsmen to promote systems and issues advocacy on behalf of residents.

E. The AAA shall submit the required financial and programmatic reports to the DAABHS and to the OSLTCO in accordance with the established departmental instructions.

F. In the selection of a Title III legal assistance provider, the AAA shall award funds to the applicant(s) that most fully meets the policies and processes set forth in 45 C.F.R. §1321.71(c), to include the capacity to provide support to the regional program and the capacity to provide legal services to institutional older persons.

G. The AAA shall cooperate with the OSLTCO to implement a transition plan to minimize disruption in ombudsman services to residents in the event the contract or grant for the regional program services is terminated or not renewed.

H. The AAA shall perform each of its responsibilities in administering the regional program in accordance with all applicable federal and state laws, regulations, policies, and this manual.

## Arkansas Office of the Long Term Care Ombudsman Program

- I. Where an AAA provides Long-Term Care Ombudsman Program services directly, it must also fulfill the responsibilities of a provider agency as outlined in Section 302 of this manual.
- J. The AAA shall notify the OSLTCO of any concerns of non-compliance by the provider agency in carrying out the duties of the Ombudsman Program.

### Section 205 Provider Agency Responsibilities

The Provider Agency shall:

- A. Be the sole provider of designated ombudsman services in the service area identified through contract with, or grant from, the AAA or DAABHS.
- B. Operate the regional program in compliance with federal and state laws and regulations, the provisions of this manual, and the contract or grant for ombudsman services with the AAA or DAABHS.
- C. Not have personnel policies or practices that prohibit Ombudsmen Representatives from performing the duties, or from adhering to the access, confidentiality, and disclosure requirements of the OAA. Nothing in this provision shall prohibit the provider agency from requiring that the Ombudsman Representatives adhere to the personnel policies and procedures of the agency that are otherwise lawful.
- D. Be responsible for the personnel management, but not the programmatic oversight, of Ombudsman Program services.
- E. Provide a Regional Ombudsman who:
  - 1. Meets the applicable minimum qualifications (see Section 311 of this manual);
  - 2. Has no duties in the agency outside the scope of the LTCOP; and
  - 3. Is employed full time.
- F. Provide Ombudsman staff and/or volunteers in addition to the Ombudsman Program Representative as necessary to:
  - 1. Fulfill the program requirements (see Sections 302-304 of this manual);
  - 2. Maintain or exceed the level of services provided in the service area during the previous fiscal year; and
  - 3. Meet the applicable minimum qualifications (see Sections 311- 313).
- G. Assure that the LTCOP data is provided to the OSLTCO in the required format and in a timely manner;
- H. Prohibit inappropriate access to Ombudsman Program files, records, or other information located with the provider agency;

## Arkansas Office of the Long Term Care Ombudsman Program

- I. Assure Ombudsman Representatives attendance at certification training and all statewide LTCOP trainings;
- J. Provide professional development opportunities for Ombudsman Representatives;
- K. Provide equipment and administrative support as needed for the operation of the regional ombudsman program such as custodial, fiscal management, clerical, technology support, and telephone coverage;
- L. Include the Regional Ombudsman in the development of a budget for regional program operations, and provide the Regional Ombudsman with information about and opportunity to make requests regarding the use of funds designated for LTCOP use;
- M. Request a waiver from the OSLTCO if, due to demonstrable and unusual circumstances, it anticipates it will be unable to comply with any of these responsibilities;
- N. Arrange, in consultation with the OSLTCO and the AAA, if applicable, for temporary provision of regional program services when Ombudsman Representative staff are unavailable, or the Regional Ombudsman position is vacant;
- O. Retain personnel records for paid and volunteer ombudsman program representatives for a minimum of five (5) years;
- P. Perform each of its responsibilities in administering the LTCOP in accordance with all applicable federal and state laws, regulations, and policies.

### Section 206 Regional Ombudsman Responsibilities

- A. The Regional Ombudsman is responsible for the day-to-day operation of the regional ombudsman program;
- B. The Regional Ombudsman shall:
  - 1. Identify, investigate, and resolve complaints made by or on behalf of residents;
    - a. Regional ombudsman shall submit written notice to the state ombudsman of every allegation of abuse, neglect, or exploitation.
    - b. If an ombudsman notifies a facility of a complaint or allegation and the facility is required to report that complaint or allegation to OLTC or APS, the ombudsman shall submit written notice of the complaint or allegation to the state ombudsman.
    - c. The state ombudsman shall verify that the complaint or allegation was in fact reported to OLTC/APS.



## Arkansas Office of the Long Term Care Ombudsman Program

2. Advocate for broad policy, regulatory, administrative, and legislative changes to improve the care of residents;
3. Ensure ombudsman program representatives are trained as required by the OSLTCO;
4. Partner with the aging and disability networks and other stakeholders for the benefit of residents;
5. Ensure all regional program records are contemporaneously entered into the state-wide data and tracking system;
6. Regularly report on Ombudsman Representative activities as required by the provider agency and OSLTCO, including assuring that accurate data is provided in a timely manner;
7. Review and close all cases within thirty (30) days of resolution of all complaints;
8. Provide consultations to the general public, residents, legislators, community organizations, and other agencies regarding long-term care issues;
9. Provide technical assistance to ombudsman program representatives;
10. Conduct an annual review of regional ombudsman program activities and case documentation;
11. Complete and submit LTCOP Annual Services Plan as described in Section 408 of this manual, indicating program goals and objectives;
12. Actively participate in the development of a regional program budget;
13. Cooperate with and follow the direction of the State Ombudsman on projects, initiatives, and responses to systemic needs.

### Section 207 Ombudsman Representative General Responsibilities

Ombudsman Representatives are responsible for:

- A. Providing Ombudsman Program Services to protect the health, safety, welfare, and rights of residents in accordance with the provisions of the federal and state laws governing the LTCOP and with the provisions of the provider agency contract for LTCOP services;
- B. Fulfilling the Program Components (see Chapter 400 of this manual);

## **Arkansas Office of the Long Term Care Ombudsman Program**

- C. Documenting Ombudsman Program activities and case work in a designated software portal as required by the OSLTCO;
- D. Adhering to the Ombudsman Code of Ethics (see Appendix A);
- E. Prohibiting inappropriate access to Ombudsman Program files, records, or other information in the possession of the regional ombudsman program;
- F. Carrying out other activities that the State Ombudsman deems appropriate; and
- G. Performing each responsibility in accordance with all applicable federal and state laws, regulations, and policies, and OSLTCO policies and procedures.

### **Chapter 300          Designation and Certification of Ombudsman Programs and Representatives, Grievance Processes**

#### **Section 301    Designation of Ombudsman Programs**

The State Long-Term Care Ombudsman Program shall designate provider agencies, also known as regional ombudsman programs or Local Ombudsman Entities, to provide Ombudsman Representative services throughout Arkansas.

#### **Section 302    Criteria for Designation as a Provider Agency**

In order to be eligible for designation by the OSLTCO as a provider agency, an entity must:

- A. Be public or nonprofit;
- B. Not be responsible for licensing or certifying long-term care services;
- C. Not be an association or an affiliate of an association of providers of long-term care or residential services for older persons;
- D. Have no financial interest in a long-term care facility;
- E. Have demonstrated capability to carry out the responsibilities of the provider agency;
- F. Have no unresolved conflicts of interest (see Chapter 500 of this manual); and
- G. Meet all contractual requirements of DAABHS.

## **Arkansas Office of the Long Term Care Ombudsman Program**

### **Section 303 Process for Designation of a Provider Agency, Where the Area Agency on Aging Serves as a Provider Agency**

- A. The AAA shall request consideration to be designated as a provider agency and submit a proposal to the OSLTCO setting forth, at a minimum:
  1. Assurance that the entity meets all the criteria for designation as a provider agency;
  2. The entity's goals and objectives in providing ombudsman program services;
  3. A description of how each program service component shall be met (see Chapter 400 of this manual);
  4. A description of the entity's resources which will be provided to assist in the operation of the regional program;
  5. A description of proposed remedies to any conflicts identified in the organizational conflicts of interest reported yearly within the regional program area plan.
- B. The State Ombudsman may designate the AAA as the provider agency where:
  1. The AAA meets the criteria for designation;
  2. The AAA submits an acceptable proposal; and
  3. The AAA is not otherwise prohibited from fulfilling the duties of the provider agency.
- C. The State Ombudsman shall notify the AAA of its decision within thirty (30) days of the receipt of the proposal. If the State Ombudsman refuses to designate the AAA as the provider agency, the notification shall include notice of the right to request reconsideration of the Ombudsman's decision.
- D. The execution date of the AAA's contract with the OSLTCO to provide ombudsman services shall be the effective date of the designation.

### **Section 304 Process for Designation of a Provider Agency Where the OSLTCO Contracts Directly with a Provider Agency**

Where the contract for Regional Ombudsman Services is not with the AAA, the designation of a provider agency shall occur as follows:

- A. The OSLTCO shall seek an entity to provide ombudsman services within a particular service area. The process will identify the criteria for designation as a provider agency and shall request submission of documents supporting the entity's claim to meet these criteria.

## Arkansas Office of the Long Term Care Ombudsman Program

- B. The OSLTCO shall require that all of the responding entities which meet the criteria for designation develop a proposal setting forth, at a minimum:
  - 1. Assurance that the entity meets all the criteria for designation as a provider agency;
  - 2. The entity's goals and objectives in providing ombudsman program services;
  - 3. A description of how each program service component shall be met (see Chapter 400 of this manual), including the staffing plan for the regional ombudsman program;
  - 4. A description of the entity's resources which will be provided to assist in the operation of the regional program;
- C. The State Ombudsman shall review each submitted proposal and choose the entity most appropriate to serve as the provider agency based on the submitted proposals and on the criteria for designation. In considering which entity is most appropriate to designate as the provider agency, the State Ombudsman may consult with the AAA serving the relevant service area.
- D. The State Ombudsman shall notify the responding entities of this determination within forty-five (45) days. The notification shall be consistent with OSLTCO policy and procedures.
- E. OSLTCO shall contract with the provider agency to provide ombudsman services. Such contract must:
  - 1. Specify the service area;
  - 2. Require the provider agency to adhere to all applicable federal and state laws, regulations, and policies, and the OSLTCO policies and procedures; and
  - 3. Provide that the designation by the State Ombudsman continues for the duration of the contract and subsequently renewed contracts within the period specified within the competitive bid unless the provider agency is de-designated by the State Ombudsman or the contract is terminated for cause.
- F. The execution date of the provider agency's contract with OSLTCO shall be the effective date of the designation.

### Section 305 Withdrawal of Designation of Ombudsman Programs

The State Ombudsman may refuse to designate or may de-designate an entity as a provider agency for one or more of the following reasons:

- A. Failure to continue to meet the criteria for designation;

## Arkansas Office of the Long Term Care Ombudsman Program

- B. Existence of an unresolved conflict of interest with the Ombudsman Program;
- C. Deliberate failure to disclose any conflict of interest;
- D. Violation of the Ombudsman Program confidentiality requirements by any person employed by, supervised by, or otherwise acting as an agent of, the entity;
- E. Failure of the entity to provide adequate ombudsman services, including but not limited to:
  - 1. Failure to perform enumerated responsibilities;
  - 2. Failure to fill a vacant Ombudsman Representative staff position within a reasonable time;
  - 3. Failure to submit an Ombudsman Program Annual Plan for approval by the State Ombudsman; or
  - 4. Failure to use funds designated for the Ombudsman Program for Ombudsman Program services;
- F. Failure to adhere to the provisions of the contract for Ombudsman Representative services; or
- G. Failure to adhere to applicable federal and state laws, regulations, and policies, and/or OSLTCO policies and procedures.

### Section 306 Process for Withdrawal of Designation of an Ombudsman Program Provider Agency

- A. Where an AAA serves as a provider agency, the process to de-designate the provider agency shall be as follows:
  - 1. The State Ombudsman shall send the AAA notice of the intent to de-designate at a specified date. The notice shall include the reasons for de-designation and notice of reconsideration procedures.
  - 2. De-designation of the AAA as a provider agency shall not become effective until the reconsideration procedures are exhausted.
  - 3. The AAA and the State Ombudsman shall provide for the continuation of Ombudsman Representative services until designation of another entity is effective.
  - 4. The OSLTCO shall terminate the AAA's contract for Ombudsman Representative Services.
  - 5. The AAA shall surrender intact to the State Ombudsman or his or her designee all Ombudsman Program case records, documentation of all Ombudsman

## Arkansas Office of the Long Term Care Ombudsman Program

Program activities and complaint processing as required by the ombudsman reporting system, and identification cards of all Ombudsman Representatives associated with the AAA.

6. The AAA shall, at the discretion of the OSLTCO, surrender any equipment purchased with funds designated for ombudsman services.
  7. The AAA shall surrender the balance of any advanced state or federal monies to the OSLTCO.
- B. Where a provider agency contracts directly with the OSLTCO, the process to de-designate the provider agency shall be as follows:
1. The State Ombudsman shall send the provider agency notice of the intent to de-designate at a specified date and may send notice to the applicable AAA. The notice shall include the reasons for de-designation and notice of reconsideration procedures.
  2. De-designation of a provider agency shall not become effective until the reconsideration procedures are exhausted.
  3. The State Ombudsman shall provide for the continuation of Ombudsman Representative services until designation of another entity is effective. The State Ombudsman, at his or her discretion, may consult with the applicable AAA regarding the provision of Ombudsman services in the service area.
  4. The OSLTCO shall terminate its contract with the provider agency.
  5. The provider agency shall surrender intact to the State Ombudsman or his or her designee all Ombudsman Program case records, documentation of all Ombudsman Program activities and complaint processing as required by the ombudsman reporting system, and identification cards of all Ombudsman Representatives associated with the provider agency.
  6. The provider agency shall, at the discretion of the OSLTCO, surrender any equipment purchased with funds designated for ombudsman services.
  7. The provider agency shall surrender the balance of any advanced state or federal monies to the OSLTCO.

### Section 307 Voluntary Withdrawal of a Provider Agency

- A. An provider agency may voluntarily relinquish its designation by providing notice to the State Ombudsman and the AAA in the relevant service area. Such notice shall be provided sixty (60) days in advance of the date of the relinquishment of designation.

## **Arkansas Office of the Long Term Care Ombudsman Program**

- B. The provider agency shall surrender intact to the State Ombudsman or his or her designee all Ombudsman Program case records, documentation of all Ombudsman Program activities and complaint processing as required by the ombudsman reporting system, and identification cards of all Ombudsman Representatives associated with the provider agency.
- C. The provider agency shall, at the discretion of the OSLTCO, surrender any equipment purchased with funds designated for ombudsman services.
- D. The provider agency shall surrender the balance of any advanced state or federal monies to the OSLTCO.

### **Section 308 Designation of Long-Term Care Ombudsman Representatives**

The State Ombudsman certifies and designates individuals as Ombudsman Representatives to participate in the Long-Term Care Ombudsman Program and to represent the OSLTCO.

### **Section 309 Criteria for Designation as an Ombudsman Representative**

To be designated as an Ombudsman Representative, an individual must:

- A. Have demonstrated capability to carry out the responsibilities of an Ombudsman Representative;
- B. Be free of unresolved conflicts of interest (see Chapter 500 of this manual);
- C. Meet the minimum qualifications for the applicable Ombudsman Representative position as specified in Sections 311, 312, or 313 of this manual;
- D. Satisfactorily complete the applicable certification training requirements as specified in the Certification Requirements for Ombudsman Representatives (see Appendix B); and
- E. Satisfactorily fulfill Ombudsman Representative responsibilities (see Chapter 300 of this manual).

### **Section 310 Minimum Qualifications of the Regional Ombudsman**

- A. In order to qualify as a Regional Ombudsman, an individual must have completed:
  - 1. An undergraduate degree from a four-year college or university with major course work in social work, health, gerontology, general social science, or related field;
  - 2. An equivalent combination of education and experience, substituting one (1) year of full-time paid employment experience in such areas as community organization, public health, social work, or related field for each year of the required education, with a maximum substitution of two (2) years; or

## **Arkansas Office of the Long Term Care Ombudsman Program**

3. The equivalent of five (5) years of full-time work experience with at least three (3) years in aging, long-term care, or related fields (at least one (1) year in a consultative or supervisory capacity is desirable).
- B. A criminal background check in accordance with Ark. Code Ann. §20-38-101 et seq., and with no disqualifying criminal conviction.

### **Section 311 Minimum Qualifications of Staff Ombudsman Representatives**

In order to qualify for an Ombudsman Representative staff position, an individual must have:

- A. Graduated from a four-year high school or passed the General Education Development (GED) test;
- B. Three (3) years of professional experience with at least one (1) year in aging, long-term care, or related fields; and
- C. A criminal background check in accordance with Ark. Code Ann. §20-38-101 et seq. with no disqualifying criminal conviction.

### **Section 312 Minimum Qualifications for Volunteer Ombudsman Representatives**

- A. No minimum education or experience is required for volunteers prior to screening and acceptance into the LTCOP. The OSLTCO shall clarify responsibilities and provide training for volunteers, as set for in Certification Requirements for Ombudsman Representatives (see Appendix B).
- B. A volunteer shall have a criminal background check in accordance with Ark. Code Ann. § 20-38-101 et seq. If convicted of any of the crimes listed under the laws related to nursing homes, personal care homes, or assisted living communities, the individual shall not serve as a volunteer if he or she:
  1. Seeks to become certified;
  2. Has direct contact with residents in his or her role as a volunteer; or
  3. Has access to Ombudsman Program files or other confidential information regarding residents.

### **Section 313 Provider Agency Process for Hiring Ombudsman Program Representatives**

- A. Prior to offering employment to an individual for the purpose of serving as an Ombudsman Representative, the provider agency shall:
  1. Indicate to the State Ombudsman that the individual has a satisfactory criminal background check;
  2. Provide the State Ombudsman with an opportunity to review the resume of the candidate(s) being considered for employment; and



## Arkansas Office of the Long Term Care Ombudsman Program

3. Provide the State Ombudsman the opportunity to participate in the interviewing process.
- B. The State Ombudsman shall promptly notify the provider agency of any concerns related to the candidate's ability to meet minimum qualifications or other certification or designation requirements.
- C. If the State Ombudsman has concerns about the future certification or designation of any candidate, the State Ombudsman may request a separate interview of the candidate and shall inform the provider agency of any concerns that the provider agency should consider prior to hiring the candidate(s).

### Section 314 Certification of Formerly Certified Ombudsman Representatives from Arkansas or from Another State

- A. When an individual has been certified as an Ombudsman Representative previously in Arkansas but is not currently certified and has not been certified within the last two (2) years, or when an individual is certified as an Ombudsman Representative in another state or has been certified by that state within the last two (2) years, the State Ombudsman shall determine what steps are needed to qualify as a certified Ombudsman Representative, by reviewing the circumstances on an individual basis and considering, at a minimum, the following criteria:
  1. Content and extent of Ombudsman Representative training completed, which must meet or exceed current certification training requirements for Arkansas; and
  2. Need for updated and/or Arkansas-specific training;
  3. Need to demonstrate competencies for the position by completing written and oral examinations; and
  4. Quality of performance of the individual as an Ombudsman Representative, including checking references.
- B. If an individual has not been certified within the last two (2) years, the individual shall participate in the full certification process unless the State Ombudsman specifically determines otherwise. Such determination shall be made on a case by case basis and is not a determination eligible for reconsideration.

### Section 315 Notification of Designation

The State Ombudsman shall send written notification of an individual's designation as an Ombudsman Representative to the individual being designated, as well as the Regional Ombudsman, the AAA, and the provider agency in the relevant service area within thirty (30) days of the determination.

## Arkansas Office of the Long Term Care Ombudsman Program

### Section 316 Refusal to Designate, Suspension of Designation, or Withdrawal of Designation of an Individual as an Ombudsman Representative

The State Ombudsman may refuse to designate, suspend designation, or de-designate an individual as an Ombudsman Representative for any of the following reasons:

- A. Failure of the individual to meet or maintain the criteria for designation;
- B. Existence of an unresolved conflict of interest;
- C. Deliberate failure to disclose any conflict of interest;
- D. Violation of confidentiality requirements;
- E. Failure to provide adequate and appropriate services to long-term care residents;
- F. Falsifying records;
- G. Failure to adhere to the Ombudsman Code of Ethics (see Appendix A);
- H. Failure to follow Ombudsman Program policies and procedures or the direction of the State Ombudsman;
- I. A change in employment duties which are incompatible with Ombudsman Representative duties;
- J. Separation from the Ombudsman Program, e.g., removal from employment by the designated provider agency, an extended absence of the Ombudsman Representative preventing fulfillment of job responsibilities, provider agency's contract for the provision of Ombudsman services is not renewed; or
- K. Failure to act in accordance with applicable federal and state laws, regulations, and policies, or the OSLTCO policies and procedures.

### Section 317 Process for Refusal to Designate, Suspension of Designation, or Withdrawal of an Individual as an Ombudsman Representative

- A. Prior to refusing to designate, suspending designation, or de-designating an individual as an Ombudsman Representative, the State Ombudsman shall consult with the relevant provider agency to consider remedial actions which could be taken.
- B. The State Ombudsman shall provide written notice of the decision to refuse to designate, suspend designation, or de-designate an individual as an Ombudsman Representative to the provider agency, the AAA, if applicable, and DAABHS. Such notice shall:
  - 1. Specify the reasons for and effective date of the decision; and

## Arkansas Office of the Long Term Care Ombudsman Program

2. In the case of a suspension, indicate the circumstances under which the suspension will end or be reconsidered.
- C. The Regional Ombudsman shall promptly notify the administration which facilities had been regularly visited by such individual of the de-designation or suspension of designation.
- D. If the decision to refuse to designate, suspend designation, or de-designate an individual as an Ombudsman Representative results in the absence of Ombudsman Representative services in the relevant service area, the provider agency, the AAA, and the State Ombudsman shall arrange for the provision of Ombudsman Representative services until an Ombudsman Representative is designated.
- E. Once de-certified, the former Ombudsman Representative must return his or her photo identification badge and card to the Regional Ombudsman or the State Ombudsman immediately upon notification. The regional ombudsman program or the SLTCO shall ensure the identification badge and card badge are retrieved and destroyed, document the date of receipt of the returned identification, and retain the documentation within the LTCO's file for five (5) years. The Regional Ombudsman or provider agency, as appropriate, in consultation with the State Ombudsman, shall make a reasonable effort to notify, in writing, the facilities known to be frequented by the former Ombudsman. The State Ombudsman shall receive a copy of the notification.

### Section 318 Grievances Against an Ombudsman Representative Related to the Performance of Duties

- A. All grievances shall be documented, and an outcome and any relevant action shall be identified. Grievances shall be promptly resolved at the lowest possible level.
- B. Complaints Against Ombudsman Representatives – Regional Staff or Volunteers
  1. Complaints about a paid or volunteer Ombudsman shall be in writing and directed to the Regional Ombudsman.
  2. The nature of the complaint and the investigation shall be promptly documented.
  3. The Regional Ombudsman shall inform the State Ombudsman of any grievances filed against an Ombudsman Representative.
  4. The Regional Ombudsman shall investigate the complaint and provide a written response to the complainant at the conclusion of the investigation. The investigation shall be initiated within seven (7) calendar days from receipt of the written complaint. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.

## Arkansas Office of the Long Term Care Ombudsman Program

5. The Regional Ombudsman's written response to the complainant shall include the phone number of the State Ombudsman's office, along with instructions on sending the matter to the next level, in the event the complainant is not satisfied with the outcome of the investigation.
6. An individual who filed a grievance and is dissatisfied with the decision of the Regional Ombudsman may file a written request for review with the State Ombudsman within thirty (30) calendar days of the decision. The State Ombudsman shall respond in writing to the written request for review within forty-five (45) calendar days of receipt of the request when practicable.
7. The decision of the State Ombudsman is final and cannot be appealed.

### C. Complaints Against Regional Ombudsmen

1. Complaints about the Regional Ombudsman shall be in writing and directed to the State Ombudsman. Complaints received by the AAA or the provider agency shall be forwarded on to the State Ombudsman.
2. The nature of the complaint and the investigation shall be promptly documented.
3. The State Ombudsman shall inform the AAA or provider agency of any grievances filed against a Regional Ombudsman.
4. The Office shall investigate the complaint and provide a written response to the complainant. The investigation shall be initiated within seven (7) calendar days from receipt of the written complaint. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
5. The decision of the State Ombudsman is final and cannot be appealed.

### D. Complaints Against State Ombudsman Staff

1. A complaint about the State Ombudsman staff shall be in writing and directed to the State Ombudsman.
2. The nature of the complaint and the investigation shall be promptly documented.
3. The State Ombudsman shall begin the investigation within seven (7) calendar days from receipt of the written complaint. The SLTCO shall provide a written response to the complainant within thirty (30) calendar days of receipt of the complaint when practicable.

## Arkansas Office of the Long Term Care Ombudsman Program

4. An individual who filed a grievance and is dissatisfied with the decision of the State Ombudsman may file a written request for review with the DAABHS Director. The Director shall provide a written response to the written request for review within sixty (60) calendar days of receipt of the request when practicable.

### E. Complaints Against the State Ombudsman

1. A complaint about the State Ombudsman shall be in writing and directed to the DAABHS Director.
2. The nature of the complaint and the investigation shall be promptly documented.
3. The Director shall begin the investigation within seven (7) calendar days from receipt of the written complaint when feasible. A written response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
4. The decision of the Director is final and cannot be appealed.

## Chapter 400 Long-Term Care Ombudsman Program Service Components and Delivery

- A. The Long-Term Care Ombudsman Program (LTCOP) shall provide services to protect the health, safety, welfare, and rights of residents. These service components are:
  1. Complaint processing
  2. Information and consultation
  3. Community outreach and education
  4. Routine visits to long-term care facilities
  5. Issue advocacy
  6. Resident and family council activities
  7. Volunteer management, and
  8. Pre-survey information
- B. All regional programs must provide and document the provision of each of these service components.
- C. The Regional Program Annual Services Plan shall set forth the service activities for each fiscal year and shall meet or exceed any benchmark measures set by the OSLTCO.
- D. The activities of the designated regional programs shall be evaluated by the OSLTCO on a regular basis as outlined in Section 409 of this manual.

## **Arkansas Office of the Long Term Care Ombudsman Program**

### **Section 401 Complaint Processing**

- A. The LTCOP shall identify, investigate, and resolve complaints made by or on behalf of residents.
- B. Although the issues and circumstances of complaints will vary, the general guidelines of Chapter 1000 apply to all complaint handling. Whenever questions arise regarding appropriate Ombudsman Representative practice in handling complaints, the OSLTCO should be contacted for guidance.

### **Section 402 Information and Consultation**

The LTCOP shall promptly provide information and consultation regarding long-term care and related issues as requested; however, responses should not take more than five (5) working days.

### **Section 403 Community Outreach and Education**

The LTCOP shall educate the community about long-term care, the Ombudsman Program, and related issues.

The LTCOP shall provide in-service education to LTC facility staff regarding residents' rights, abuse reporting, and related issues.

### **Section 404 Routine Visits to Long-Term Care Facilities**

- A. The LTCOP shall have a regular presence in all long-term care (LTC) facilities in order to monitor the conditions of residents, provide information regarding the LTCOP, and ensure resident access to an Ombudsman Representative.
- B. Routine visits to facilities shall be unannounced and staggered so that facilities have no basis to predict the timing of the visit.
- C. Ombudsman Representatives shall document observations during or immediately after each facility visit and maintain such documentation with Ombudsman Representative records.
- D. Ombudsman Representative observations of conditions in the facility which adversely affect the health, safety, welfare, or rights of residents and which the Ombudsman Representative takes action to resolve shall be documented as ombudsman-generated complaints if no other person has reported the complaint to the ombudsman.
- E. The Ombudsman Representative shall wear a visible identification badge while visiting the facility.

## Arkansas Office of the Long Term Care Ombudsman Program

- F. The Ombudsman Representative shall assure that the facility posts the LTCOP poster in the facility so that it is readily visible to residents, families, and staff. Depending on the floor plan of the facility, several posters may need to be posted to meet this requirement. The poster shall contain current contact information for the LTCOP assigned to serve the residents of the facility.
- G. Ombudsman Representatives shall provide residents, families, and staff with the Ombudsman Program brochure.
- H. The Ombudsman Representative shall introduce him/herself and explain the purpose of the LTCOP to residents in the facility, making special effort to visit residents who have been admitted since the Ombudsman's last visit. A visit for the purpose of taking action on a complaint may be made simultaneously with a routine visit to maximize efficient use of time and resources.
- I. The Ombudsman Representative shall offer any resident who speaks with him/her the opportunity to speak privately and confidentially.
- J. The regional ombudsman program shall ensure that residents have regular and timely access to an Ombudsman Representative, but at a minimum, at least once per quarter. More frequent visits are encouraged as resources permit.
- K. Ombudsman Representative presence should be increased in facilities in which there is a history of serious or frequent complaints; or if there is a change in ownership or administration if this change raises concerns about facility operations, imposition of a serious state or federal sanction or plan of correction, a pending bankruptcy, an imminent closure, or for any reason necessary to protect residents' interests as determined by the Regional Ombudsman.

### Section 405 Issue Advocacy

- A. The LTCOP shall assure that the interests of residents are represented to government agencies and policy-makers. The LTCOP and its representatives shall be excluded from any state lobbying prohibitions.
- B. Issue advocacy activities performed by Ombudsman Representatives shall be consistent with the positions of the OLTCO.
- C. Issue advocacy activities include, but are not limited to:
  - 1. Educating advocacy groups, governmental agencies, and policymakers regarding the impact of laws, policies, or practices on long-term care residents;

## Arkansas Office of the Long Term Care Ombudsman Program

2. Advocating for modification of laws, regulations, and other governmental policies and actions pertaining to the rights and well-being of residents;
3. Facilitating the ability of residents and the public to comment on such laws, regulations, policies, and actions;
4. Developing or participating in committees or workgroups to study long-term care issues;
5. Presenting to and participating in public hearings related to long-term care issues; and
6. Educating other aging service providers, advocacy groups, and the public on specific long-term care issues and policies.

### D. The LTCOP may address resident complaints through issue advocacy when:

1. There are no statutory or regulatory remedies;
2. Many residents share a similar complaint or are affected by a policy or practice; or
3. Other strategies to reach resolution with particular facilities or agencies have been unsuccessful.

### E. Guidelines for issues advocacy:

1. The SLTCO shall provide guidance and direction to LTCOPs related to federal and state issues advocacy.
2. The LTCOP shall:
  - a. Determine other issue advocacy activities to use by considering the impact of the activity on residents, the most appropriate and effective method of addressing the issue, the potential impact on the LTCOP, and the possibility of joint efforts by the AAA, the provider agency, residents, families or other advocacy organizations;
  - b. Inform the provider agency and the SLTCO of plans to engage in issues advocacy through the LTCO Annual Plan;
  - c. Inform the provider agency and the SLTCO of advocacy steps taken on high-profile or politically sensitive issues (e.g., involving media or legislative contacts). The recommended practice is to inform these parties prior to taking action when possible; and
  - d. Attempt to involve residents and families in the activity whenever possible.

### F. The SLTCO role is to:

1. Provide leadership to statewide advocacy efforts on behalf of LTC residents;
2. Recommend public policy changes through:



## Arkansas Office of the Long Term Care Ombudsman Program

- a. Publication of an annual report;
  - b. Legislative and administrative advocacy;
  - c. Work with media;
  - d. Collaboration with other agencies and advocates; and
  - e. Other appropriate means.
3. Link areas or advocacy groups with mutual concerns;
  4. Coordinate issues advocacy activities within the LTCOP;
  5. Develop advocacy strategies;
  6. Identify and provide needed resources and training of Ombudsman Representatives and others in the aging network; and
  7. Provide training and technical assistance to AAAs, provider agencies, and others in the aging network regarding the LTCOP's role in issue advocacy.

### Section 406 Resident and Family Council Activities

- A. The LTCOP shall support the development of resident and family councils in long-term care facilities.
- B. The LTCOP shall provide technical support to resident and family councils; and shall respond to questions and provide literature and assistance relating to resident and family councils.
- C. The LTCOP shall inform the leadership and/or membership of resident and family councils about:
  1. The purpose of the LTCOP;
  2. The availability of the LTCOP to assist resident and family councils; and
  3. The topics the LTCOP is prepared to present if requested.
- D. Ombudsman Representatives shall make every effort to be present at resident and family council meetings, when invited.
- E. The OSLTCO shall provide technical assistance to regional programs to promote the development of resident and family councils.

### Section 407 Volunteer Management

- A. The LTCOP shall utilize volunteers to maximize its resources to benefit residents.
- B. The regional ombudsman programs shall propose its procedures for recruitment, training, and use of volunteers in the LTCOP Annual Plan (see Section 408 of this chapter).
- C. The SLTCO shall provide resources and technical assistance to each regional ombudsman program to develop and maintain its volunteer program.

## Arkansas Office of the Long Term Care Ombudsman Program

- D. The SLTCO shall provide the curriculum and supervision of training provided by the regional ombudsman programs to volunteers.
- E. The LTCOP may utilize volunteers to perform other functions to benefit the LTCOP that are non-resident related. Such volunteers may perform LTCOP activities, as determined by the local LTCOP and upon approval by the SLTCO. Only volunteer ombudsman representatives will have access to residents.
- F. All volunteers with the LTCOP shall:
  - 1. Work under direct supervision of an Ombudsman Representative. Failure to follow the direction of the Ombudsman Representative may be grounds for dismissal from volunteer duties by the Regional Ombudsman Representative;
  - 2. Provide appropriate documentation to the LTCOP of all activities done on behalf of the LTCOP;
  - 3. Adhere to the laws and policies related to confidentiality of information provided to the LTCOP; and
  - 4. Meet the requirements and perform his or her responsibilities in accordance with all applicable federal and state laws, rules and regulations, and this manual.

### Section 408 Regional Program Annual Services Plan

- A. Each regional ombudsman program shall prepare a LTCOP Annual Plan for submission to the SLTCO, setting goals for the regional ombudsman program for the following fiscal year related to each program component. Where the AAA is the provider agency, the LTCOP Annual Plan may be submitted as part of that AAA's area plan for the following fiscal year. Whether through the area plan or directly, the LTCOP Annual Plan shall be submitted to the SLTCO by the due date for the area plan as determined by the SLTCO and communicated to the provider agencies.
- B. Amendments to the Annual Plan during the course of the fiscal year may be submitted to the SLTCO for review and approval.
- C. The LTCOP Annual Plan shall:
  - 1. Include goals for each program component;
  - 2. Provide for complaint processing to be the highest priority program component; and
  - 3. Meet or exceed the applicable standard(s) for each program component or include a request of a modified standard.

## Arkansas Office of the Long Term Care Ombudsman Program

- D. The OSLTCO shall review and issue final approval of the LTCOP Annual Plan within forty-five (45) calendar days of receipt when practicable. If changes must be made to a LTCOP Annual Plan, the OSLTCO shall provide assistance to the Regional Ombudsman to develop an acceptable plan. The SLTCO shall notify the regional program and AAA of the approval of the plan.

### Section 409 Monitoring and Evaluation of the Program

- A. The Regional Ombudsman shall complete and submit a mid-year Annual Services Plan Progress Report to the OSLTCO no later than April 15<sup>th</sup>. The report shall be in a format, or on a form, approved by the OSLTCO.
- B. The OSLTCO shall review, at least quarterly, the activities and complaint data of the statewide program and each regional program, together with the Regional Program Annual Services Plan and Program benchmarks to evaluate Program performance.
- C. The OSLTCO shall make site visits every two (2) years to evaluate the performance of the regional ombudsman program and provide technical assistance and support as deemed necessary.
- D. The OSLTCO shall submit an Annual Report on March 1<sup>st</sup> of each year or as soon thereafter as is practicable to the Governor, the General Assembly, the Secretary of the Department of Human Services, the Director of DAABHS, the Director of the Division of Provider Services Quality Assurance (DPSQA), other appropriate governmental entities, and the general public. The annual report to the Assistant Secretary of the U.S. Department of Health and Human Services is due January 31.
- E. The Annual Report shall include the following:
  - 1. A description of activities carried out by the OSLTCO in the year for which the report is prepared;
  - 2. An analysis of the data collected;
  - 3. An evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
  - 4. Recommendations for policy, regulatory, or legislative changes to improve quality of care and quality of life of residents;
  - 5. An analysis of the success of the LTCOP; and
  - 6. A summary of identified barriers that prevent the optimal operation of the LTCOP.
- F. The OSLTCO shall analyze activity and complaint data to determine LTCOP Program trends and performance for planning purposes.

## Arkansas Office of the Long Term Care Ombudsman Program

### Section 410 Documentation of LTCOP Services

- A. Every activity completed, complaint received, and all activities undertaken to investigate, verify, and resolve complaints by the LTCOP shall be documented by Ombudsman staff as prescribed by the OSLTCO.
  - 1. Activities shall be entered within fifteen (15) calendar days of completion of the activity.
  - 2. Case journal entries shall be entered within thirty (30) calendar days of completion of the casework.
  - 3. Cases shall be reviewed and closed by the Regional Ombudsman or within thirty (30) calendar days of completion when no further action is needed on the complaints within the case.
- B. All Ombudsmen shall use the data collection system designated by the OSLTCO.
- C. No Ombudsman activities, case journals, resident records, or resident identifying information shall be entered into the AAA or provider agency's case management system, unless it is the system designated by the OSLTCO.
- D. Consent forms, notices of involuntary transfer or discharge, and any other written documents obtained by the Ombudsman through the course of an investigation should be scanned and attached electronically to the case file.
- E. Permission or refusal by the resident or resident representative to consent to the Ombudsman providing investigative services shall be documented in every case.
- F. If a resident or complainant provides consent to release his or her identity, that consent shall be documented within a case journal entry and any consent forms shall be attached to the case file.

## Chapter 500 Organizational and Individual Conflicts of Interest

### Section 501 Adherence to Policy

The organizations involved in the establishment of the program and the individuals who carry out the duties of the program, the Department, AAAs, and provider agencies must be free from conflicts of interest, pursuant to Section 712(f) of the Older Americans Act, LTCOP regulations, and processes developed by OSLTCO.

### Section 502 Identifying a Conflict of Interest

- A. Organizational Conflicts: Conflicts which may arise from an organizational location include, but are not limited to, Ombudsman Program placement in an organization or agency that:
1. Is responsible for licensing, surveying, or certifying long-term care facilities, long-term care services or support services, or managed care organizations;
  2. Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
  3. Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility or a provider of long-term care services or support services;
  4. Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act [42 U.S.C. 1315] or under subsection (b) or (c) of section 1915 of the Social Security Act [42 U.S.C. 1396n], or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act [42 U.S.C. 1396n];
  5. Receives or has the right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation arrangement with an owner or operator of a long-term care facility, a provider of long-term care services or support services, a HCBS waiver provider, or a managed care organization;
  6. Has governing board members with any ownership, investment, or employment interest in long-term care facilities, providers of long-term care services or support services, HCBS waiver providers or managed care organizations;
  7. Provides long-term care to residents, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for residents;
  8. Provides long-term care coordination or case management for residents;
  9. Sets reimbursement rates for long-term care facilities or long-term care services;

## Arkansas Office of the Long Term Care Ombudsman Program

10. Provides adult protective services;
11. Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
12. Conducts preadmission screening for long-term care facility placements;
13. Makes decisions regarding admission or discharge of individuals to or from long-term care facilities;
14. Provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities;
15. Provides legal services; or
16. Is an AAA or a provider agency.

### B. Individual Ombudsman Representative Conflicts

Potential conflicts for an individual ombudsman include, but are not limited to, participation in, or an immediate family member's participation in, any of the following:

1. The licensing or certification of a long-term care facility, long-term care services or support services, or managed care organizations;
2. Ownership, operational, or investment interest, represented by equity, debt, or other financial relationship, in an existing or proposed long-term care facility, services or support services, or managed care organizations;
3. Current or former employment of an individual by, or current or former involvement in the management of a long-term care facility or by the owner or operator of any long-term care facility or long-term care services or support services, or managed care organization;
4. The receipt of, or right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility, or long-term care services or support services or managed care organization;
5. Accepting gifts or gratuities of significant value from a long-term care facility, a provider of long-term care services or supports, a managed care organization or its management, a resident or a representative in which the ombudsman or representative of the Office provides services, except where there is a personal relationship with a resident or representative which is separate from the individual's role as ombudsman or representative of the Office;
6. Accepting money or any other consideration from anyone other than the Office, or an entity approved by the ombudsman, for the performance of an act in the regular course of the duties of the ombudsman or the representatives of the Office without SLTCO approval;
7. Serving as guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a resident;
8. Serving residents of a facility in which an immediate family member resides or a managed care organization in which a family member participates or is in receipt of long-term care services or supports; and

## Arkansas Office of the Long Term Care Ombudsman Program

9. Providing services with conflicting responsibilities while serving as an ombudsman to a resident such as:
  - a. Adult protective services;
  - b. Discharge planning;
  - c. Preadmission screening for long-term care or waiver services;
  - d. Case management for long-term care or waiver services; or
  - e. Legal services outside the scope of ombudsman duties.

### Section 503 Disclosure of a Conflict of Interest

#### A. Organizational Conflicts:

The State Agency may not operate the OSLTCO or carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization, in which there is a potential or actual organizational conflict of interest. Where a potential or actual organizational conflict of interest exists, the ombudsman must provide a written disclosure or report in the national ombudsman reporting system.

##### 1. Identification and disclosure of a conflict:

- a. Agencies seeking or holding designation as regional programs shall disclose organizational conflicts prior to designation and at least on a yearly basis thereafter. Each individual involved in and those who have authority within the regional program are responsible to identify organizational conflicts of interest.
- b. Such persons shall disclose to the AAA or provider agency all potential organizational conflicts of interest. The AAA or provider agency shall report the potential conflict of interest to the OSLTCO as soon as possible but no longer than five (5) calendar days of learning of the conflict. The OSLTCO shall then notify DAABHS as soon as possible but no longer than three (3) calendar days of learning of the conflict. DAABHS shall provide a written disclosure or report to the Assistant Secretary of the Administration for Community Living (ACL) within three (3) calendar days of learning of the conflict.

##### 2. Notification to the OSLTCO

Staff of the DAABHS, AAAs, and provider agencies and all ombudsmen have a duty to notify OSLTCO of any conflict of interest of which they have knowledge. Where a conflict of interest within the program has been identified, the Office shall be notified as soon as possible but no longer than five (5) calendar days of the discovery of the potential conflict.

##### 3. Failure to disclose

Once identified, failure to disclose a potential conflict within five (5) calendar days of discovery of the conflict may be grounds for

## Arkansas Office of the Long Term Care Ombudsman Program

decertification as an ombudsman or de-designation as a provider agency of the program.

### B. Individual Conflicts:

#### 1. The State Ombudsman:

- a. The Department shall require the State Ombudsman or State Ombudsman candidate to disclose individual conflicts of interest as part of the candidate's employment application and on an annual basis using the form developed by the OSLTCO.
- b. The State Ombudsman shall immediately inform the Director of any new potential conflicts of interest as soon as possible but no later than five (5) calendar days of learning of the conflict. Failure to report the conflict is grounds for termination.

#### 2. Process for persons seeking or holding certification as Ombudsman:

- a. The regional ombudsman program shall screen all persons seeking certification as ombudsmen and support staff to identify individual conflicts of interest on forms prescribed by the Office.
- b. Disclosure of the conflict
  - i. Persons seeking employment or certification as ombudsmen staff or volunteers shall disclose all potential conflicts of interest to the regional program as part of the candidate's employment or volunteer application. Failure to report the conflict is grounds for non-certification and separation from the LTCOP.
  - ii. After certification, ombudsmen and support staff shall immediately inform the Regional Ombudsman of any new potential conflicts of interest as soon as possible but no later than five (5) calendar days of learning of the conflict. The Regional Ombudsman shall report the potential conflict of interest to the SLTCO as soon as possible but no longer than five (5) calendar days of learning of the conflict. Failure to report the conflict is grounds for decertification and separation from the LTCOP.

### Section 504 Reviewing and Remedying the Conflict of Interest

- A. The State Ombudsman shall determine whether actions may be taken to remedy an identified conflict. A conflict can be satisfactorily remedied only when the continued existence of the conflict does not compromise the ability of the Ombudsman to carry out his or her duties and is not likely to diminish the perception of the LTCOP as an independent advocate for long-term care residents.
- B. When a potential conflict is identified, the State Ombudsman shall review the circumstances of the potential conflict. The State Ombudsman shall:



## Arkansas Office of the Long Term Care Ombudsman Program

1. Determine whether a conflict of interest exists;
2. Determine whether the conflict could be remedied by appropriate action by the individual involved; and
3. Inform the individual involved and the agency involved of the results of the review and may provide assistance.

### C. Remedying conflicts

#### 1. Organizational Conflicts of Interest

If the conflict can be remedied, the regional program shall, or in the case of a conflict within an AAA or provider agency, the AAA or provider agency shall:

- a. Provide a plan of action to remedy the conflict of interest within five (5) calendar days of notification
- b. Provide written notification to the SLTCO when the plan of action to remedy the conflict of interest is completed and of the steps taken to remedy the conflict.

#### 2. Individual Conflicts of Interest

- a. If the individual conflict can be remedied, the individual shall develop and submit a written plan to the SLTCO within five (5) calendar days of identification of the conflict which shall define the conflict and:
  - i. Propose a remedy to eliminate, or
  - ii. Minimize the impact of the conflict to the greatest extent possible.
- b. The OSLTCO shall review the proposed remedy and notify the individual within five (5) days of approval, denial, or additional corrections needed in order for the potential conflict to be remedied.

## Section 505 Failure to Identify or Remedy a Conflict of Interest

- A. Failure on the part of an Ombudsman, provider agency, or AAA to identify and report a potential or known conflict of interest shall be sufficient grounds for the refusal to designate or the subsequent de-designation of the program or the refusal to certify or the subsequent de-certification of an Ombudsman.
- B. Existence of an unremedied conflict of interest shall be sufficient grounds for the de-designation of the program, the provider, or the decertification of an ombudsman.

## Arkansas Office of the Long Term Care Ombudsman Program

### Chapter 600 Legal Counsel

#### Section 601 Adequate Legal Counsel

- A. The State agency must provide, and the OSLTCO and Ombudsman Representatives shall have access to, legal counsel that is adequate and readily available to provide consultation and/or representation as needed to assist the OSLTCO in the performance of their official functions, responsibilities, and duties.
- B. The legal counsel shall be without conflict of interest, as defined by the state ethical standards governing the legal profession.
- C. Legal counsel shall have competencies relevant to the legal needs of the program and of residents, including federal and state laws protecting the rights of residents and governing laws of long-term care facilities.
- D. The communications between the OLTTCO and legal counsel are subject to attorney-client privilege.
- E. The OLTTCO shall assist residents in seeking administrative, legal, and other appropriate remedies in accordance with Section 203 of this manual.
- F. The SLTCO or any representative of the OSLTCO acting in the good faith performance of his or her official duties has immunity from liability in legal proceedings brought as a consequence of the performance of his or her official duties.

#### Section 602 Legal Counsel for the OSLTCO

- A. For the Office to obtain legal advice and consultation, the SLTCO or designee may:
  - 1. Consult with the Department of Human Services, Office of Chief Counsel for programmatic legal issues;
  - 2. Consult with the Office of Chief Counsel for resident-related legal issues; or
  - 3. Contact the Office of Chief Counsel for guidance on DAABHS policy or procedure or other matters for which that office has primary responsibility;or
- B. For the SLTCO to obtain representation:
  - 1. The SLTCO or designee shall advise the Department of Human Services Secretary and the Office of Chief Counsel of the legal action or threatened legal action, including any complaint, summons, subpoena, lawsuit, injunction, court order, or notice of any other legal action;
  - 2. When appropriate, the SLTCO will submit a written request to the Secretary for legal representation as needed in order to protect the health, safety, welfare, and rights of residents

## **Arkansas Office of the Long Term Care Ombudsman Program**

3. Where a conflict of interest exists, the SLTCO or designee shall arrange for the provision of legal representation of the SLTCO by an independent attorney. A conflict of interest may be identified by either the Office of Chief Counsel, the Secretary, or the SLTCO.
4. The SLTCO or designee shall obtain prior approval from the Secretary for the legal representation expenditure.
5. The Department of Human Services will provide funding for such expenditures.

### **Section 603 Legal Counsel for Representatives of the OSLTCO**

- A. For legal advice and consultation, an Ombudsman Representative shall request assistance from:
  1. The SLTCO, which shall assure the provision of advice and consultation for the Ombudsman Representative; or
  2. The Elder Legal Assistance Program in the relevant service area if the issue relates to long-term care facility residents.
- B. For an Ombudsman Representative to obtain legal representation:
  1. The Ombudsman Representative shall advise the SLTCO of the legal action or threatened legal action including any complaint, summons, subpoena, lawsuit, injunction, court order, or notice of any other legal action;
  2. If the SLTCO determines that the Ombudsman Representative performed his or her duties in good faith, the SLTCO shall authorize the Ombudsman Representative to obtain legal representation as follows:
    - a. The SLTCO will submit a written request to the State Aging Director for legal representation for the Ombudsman Representative; or
    - b. The Ombudsman Representative shall identify independent legal counsel; and
    - c. The SLTCO shall obtain prior approval from the Director for legal representation expenditures. The State agency shall provide state funds to cover such legal representation.

### **Section 604 Legal Counsel for Area Agencies on Aging and Provider Agencies**

The AAA and provider agency shall retain their own legal counsel in any matters related to the LTCOP.

## Chapter 700 Willful Interference, Retaliation

### Section 701 Interference and Retaliation Prohibited

- A. No person shall willfully interfere with any ombudsman in the performance of official duties. "Interference" includes any inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease, or negatively impact on:
  - 1. The objectivity of the investigation or outcome of complaints;
  - 2. The Ombudsman Representative's role as advocate for the rights and interests of the resident;
  - 3. The Ombudsman Representative's work to resolve issues related to the rights, quality of care, and quality of life of residents of long-term care facilities; or
  - 4. The Ombudsman Representative's statutory responsibility to provide such information as the OSLTCO determines necessary to public and private agencies, legislators, and other persons regarding the problems and concerns of residents and recommendations related to residents' problems and concerns.
- B. No person shall discriminate or retaliate in any manner against any resident, or relative or guardian/conservator of a resident, any employee of a long-term care facility, or any other person due to filing a complaint with, providing information to, or otherwise cooperating in good faith with an Ombudsman Representative.

### Section 702 Procedures for Reporting Interference or Retaliation

- A. Any person who has knowledge of such interference or retaliation may report such information to the SLTCO.
- B. The OSLTCO shall review the information provided and conduct further investigation if necessary to confirm the occurrence of the interference or retaliation.
- C. If the SLTCO, based on such review, determines that enforcement action is warranted, they shall pursue the following course of action:
  - 1. Where the entity which has interfered or retaliated is a long-term care facility or its staff or agents:
    - a. The SLTCO shall submit a written report of such interference or retaliation to the DAABHS and to the Department of Human Services Office of Long Term Care

## Arkansas Office of the Long Term Care Ombudsman Program

- b. The DAABHS and to the Department of Human Services Office of Long Term Care shall investigate the report of the SLTCO in accordance with procedures for complaint investigation; and
  - c. If the DAABHS and to the Department of Human Services, Office of Long Term Care complaint investigation confirms the occurrence of such interference or retaliation, the Office of Long Term Care has the authority to impose penalties in accordance with its procedures for the imposition of penalties.
- 2. Where the entity which has interfered or retaliated is an entity other than a long-term care facility or its staff or agents:
  - a. The SLTCO shall report such interference or retaliation to the Division of Provider Services Quality Assurance (DPSQA) Director of the Office of Long Term Care;
  - b. Such interference by an individual who is an official or employee of the DAABHS, an AAA, or a provider agency shall be deemed to be a violation of OAA 705(a); and Ark. Code Ann. § 20-10-205 and 206
  - c. The DPSQA Director of Office of Long Term Care shall assist the SLTCO in determining appropriate sanctions and assuring that appropriate sanctions are implemented.
  - d. A violation would constitute a Class C violation ("Class C violations shall relate to administrative and reporting requirements that do not directly threaten the health, safety, or welfare of a resident"). Under the statute, Class C violations "are subject to a civil penalty to be set by the director in an amount not to exceed five hundred dollars (\$500) for each violation" and each "subsequent Class C and Class D violation within a six-month period from the last violation shall subject the facility to a civil penalty double that of the preceding violation until a maximum of one thousand dollars (\$1,000) per violation is reached."

Chapter 800 LTCO Access to Residents, Facilities, and Records

Section 801 LTCO Access to Residents and Facilities

- A. An Ombudsman shall have immediate access to all long-term care facilities to observe all areas, except the living area of any resident that declines, and to visit and speak with all residents, staff, and others. Ombudsmen have access to residents regardless of whether a resident has an authorized legal representative.
- B. An Ombudsman shall have the right to enter long-term care facilities at any time during regular business hours or regular visiting hours, or at any other time when access may be required by the circumstances to be investigated. Prior to entering a facility outside regular business hours or regular visiting hours, an Ombudsman Program representative shall notify the State Ombudsman.  
An Ombudsman shall notify the facility staff of his or her presence upon entering the facility. The Ombudsman shall wear assigned LTCOP identification when entering facilities.
- C. An Ombudsman has authority to communicate privately and without restriction with any resident who consents to the communication. Whenever possible, the Ombudsman will seek to speak with residents at times convenient for the residents.
- D. If an Ombudsman is denied immediate access to a facility, any resident or authorized resident records by a facility employee or agent, the Ombudsman shall request of the facility administrator or highest ranking available employee the reason for the denial.
  - 1. If the explanation appears reasonable, the Ombudsman shall seek the earliest opportunity to visit the resident or facility or to obtain authorized records.
  - 2. If the explanation does not appear reasonable to the Ombudsman, or if access is being denied arbitrarily, the Ombudsman shall inform the highest ranking available employee or administrator of the facility of the legal right of the Ombudsman to visit the facility, to communicate with residents, and to have access to resident records as authorized.
- E. When a denial of access continues after the steps listed in Section 801(D) of this manual are attempted, the Ombudsman shall contact the Regional Ombudsman. The Regional Ombudsman or his or her designee:
  - 1. Shall request from the administrator, or highest-ranking employee available, an explanation as to the reasons for the refusal of access to a facility, a resident or a resident record be given to the regional program and the OSLTCO;
  - 2. Shall immediately notify the State Ombudsman and provide supporting documentation concerning the facility's refusal of access;

## Arkansas Office of the Long Term Care Ombudsman Program

3. May recommend OSLTCO seek remedies in accordance with the interference provisions contained in Chapter 700 of this manual.
- F. The OSLTCO, upon notice by the Regional Ombudsman of an unreasonable refusal by the facility to permit access to a resident, authorized resident records or a facility, may notify the Department of Human Services Office of Chief Counsel. The Regional Ombudsman shall be notified of the OSLTCO's actions relative to the Regional Ombudsman's report of an unreasonable denial of access.

### Section 802 LTCO Access to Resident Records

- A. Ombudsman program representatives have access to review the medical, social, personal, clinical, financial, and other records of a resident as authorized. This includes access to the name and contact information of a resident representative, if any, where needed to perform the duties of the LTCOP.
- B. Resident private health information may be released by the covered entity to the Ombudsman Program for purposes of ombudsman investigation or advocacy under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule [45 CFR 1324.11(e)(2)(vii)].
- C. The Ombudsman shall have access to review and make copies of medical, social, or other records of a resident if:
  1. The Ombudsman program representative obtains consent in writing or through the use of auxiliary aids and services from the resident or the resident's legal representative. The consent will be documented contemporaneously by a representative of the OSLTCO in the Ombudsman program record;
  2. The resident is unable to consent to the review and has no legal representative; or
  3. Access is necessary to investigate a complaint if:
    - i A legal representative refuses to give permission;
    - ii The Ombudsman representative has reasonable cause to believe that the guardian is not acting in the best interest of the resident; and
    - iii The Ombudsman representative obtains approval of the SLTCO.
- D. When an Ombudsman program representative is denied access to a resident's records by the custodian of such records after presenting appropriate consent from a resident, representative, or the SLTCO, the Regional Ombudsman and the OSLTCO shall follow the procedures prescribed in Section 801(D) and (E) of this manual.
- E. The records of a resident shall be treated with the highest degree of confidentiality and obtained only as necessary to seek resolution of a complaint.

## Arkansas Office of the Long Term Care Ombudsman Program

### Section 803 Access to Facility Records and State Regulatory Agency Records and Officials

- A. The LTCOP shall have access to all administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities.
- B. The LTCOP is entitled to copies of all licensing and certification records maintained by state regulatory agencies with respect to all Arkansas long-term care facilities, Medicaid waiver providers, long-term care service providers, and managed care organizations. To obtain a specific record at no cost, the ombudsman shall forward a specific request to the OSLTCO which will make the request to the Department of Human Services Office of Long Term Care, as applicable.
- C. The SLTCO or designee has direct access to directors of governmental entities with responsibilities which impact residents.



## **Chapter 900 Confidentiality, Monitoring, Disclosure and Maintenance**

### **Section 901 Confidentiality of LTCOP Records**

- A. All program records are the property of the OSLTCO, including program and case records located at the regional ombudsman program office. The SLTCO or designee may access LTCOP records at any time regardless of their location, including unimpeded access to LTCOP records stored at the regional ombudsman program.
- B. LTCOP records shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and Section 903 of this manual.
- C. Each ombudsman representative has access to LTCOP records of the regional program for which he or she serves.
- D. When required to provide temporary coverage for another regional program, an ombudsman may have access to the LTCOP records of another regional program to the extent necessary to provide such coverage.
- E. The Regional Ombudsman shall:
  - 1. Limit access of LTCOP records to authorized LTCOP personnel;
  - 2. Maintain LTCOP records in a secure location controlled by the Regional Ombudsman; and
  - 3. Ensure that the Ombudsman representative can safely and securely transmit records by electronic mail or facsimile.

### **Section 902 Monitoring the Records of the Regional Program**

- A. AAAs have an active and ongoing responsibility in monitoring; however, AAAs shall not have access to LTCOP records which contain identifying information about residents or complainants.
- B. The DAABHS, AAAs, and provider agencies shall not have access to resident records. Aggregate data and the ombudsman monitoring tool should be used for purposes of oversight and monitoring of the regional programs.
- C. The Regional Ombudsman shall conduct an annual review of selected LTCOP records in accordance with the standardized tool developed by the OSLTCO. The results of the review shall be submitted to the provider agency, the relevant AAA and the OSLTCO. This report shall not contain any resident, resident representative, or complainant identifying information.
- D. The OSLTCO shall conduct a review of the regional program files at least once every two (2) years and report the results of the review to the provider agency and the

## Arkansas Office of the Long Term Care Ombudsman Program

AAA. This report shall not contain any resident, resident representative, or complainant identifying information.

- E. More frequent reviews may be conducted at the request of the provider agency, the AAA, or the OSLTCO.
- F. The supervisor of the Regional Ombudsman shall not review program records.
- G. No state agency, AAA, provider agency, or legal representative shall require an Ombudsman to disclose the identity of a resident or complainant without consent of the resident or complainant.

### Section 903 Disclosure of Information

- A. The State Ombudsman or designee shall have the sole authority to make or delegate determinations concerning the disclosure of the files, records and other information maintained by the Ombudsman Program. The State Ombudsman shall comply with section 712(d) of the Older Americans Act, and implementing regulations, in responding to requests for disclosure of files, records and other information, regardless of the format of such file, record or other information, the source of the request, and the sources of funding to the Ombudsman Program.
- B. Ombudsmen shall not disclose the identity of, or any information that would lead to the identification of, a resident or complainant involved in a complaint, report or investigation, unless the individual or legal representative has consented to the disclosure, or such disclosure is required by a court order. Consent may be made in writing, orally, visually, or through the use of auxiliary aids and services, and such consent shall be documented contemporaneously in the case notes by the ombudsman.
- C. The consent to disclose information shall be on forms developed by the OSLTCO and shall be properly signed and dated.
- D. The Ombudsman shall make every effort to obtain written consent from the resident or resident representative.
- E. When a request is made by any party for any LTCOP records containing resident information, the OSLTCO shall be contacted immediately by the Regional Ombudsman or his or her designee. LTCOP records containing resident information may not be released or disclosed to anyone who is not a representative of the OSLTCO without the written permission of the OSLTCO.
- F. The OSLTCO shall determine whether to disclose all or part of the records as follows:

## Arkansas Office of the Long Term Care Ombudsman Program

1. The OSLTCO shall require that the request for LTCOP records be made in writing and will require a copy of the request before determining the appropriate response. Where the request is made orally by a resident or resident representative, the request must be documented in the LTCOP case record by the Ombudsman to whom the request was communicated in order to meet this requirement.
2. The OSLTCO shall review the request with the relevant LTCOP staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident.
3. In consultation with the legal counsel, the SLTCO or designee shall determine whether any part of the records should be redacted (i.e., all identifying information removed). The identities of residents or complainants who have not provided express consent for the release of their names shall not be revealed.
4. The OSLTCO, in consultation with legal counsel, shall consider the source of the request (i.e., resident, resident representative, facility, complainant, another agency, or any other party) and the type of request (written request, Freedom of Information Act request, subpoena, court order) in determining whether to disclose all or any part of the records. Requests coming from residents should generally be honored. The OSLTCO may provide the resident copies of directly related records, and such records shall be redacted to protect the identity of other residents and complainants.

### Section 904 Program Record Maintenance

OSLTCO staff and volunteers and Regional Ombudsman staff and volunteers shall adhere to the following program record requirements:

- A. Documents relating to casework should be scanned and attached electronically to the case file. Once saved electronically, the hard copy of these documents shall be securely destroyed no later than when the case is closed. The electronic files shall be saved by the OSLTCO pursuant to the required retention schedule.
- B. Volunteer notes sent via email to the regional program shall be attached to the monthly routine visit report to which it corresponds. Once the information has been attached to the database, the original report shall be securely destroyed.
- C. Hard copies of case documentation shall not be stored outside of the OSLTCO approved case document system.
- D. Case documentation shall not be stored electronically outside of the OSLTCO approved case documentation system.

## **Arkansas Office of the Long Term Care Ombudsman Program**

- E. Documents relating to confidential activities shall be scanned and attached electronically to the activity entry. Once saved electronically, the hard copy of these documents shall be securely destroyed.

PROPOSED

## Chapter 1000 Complaint Processing

### Section 1001 Receipt of Complaints

- A. Complaints may be initiated by:
  - 1. Residents, legal representatives, family and friends of residents, long-term care facility staff, or any other person;
  - 2. Complainants who wish to remain anonymous.
    - a. Ombudsman representatives may proceed without knowing the complainant's or resident's identity.
    - b. If the ombudsman representative receiving the complaint is able to communicate directly with the anonymous complainant, the ombudsman representative shall explain to the complainant that, in some circumstances, anonymity could limit the ability of the program to investigate and resolve the complaint.
  - 3. Ombudsman representatives, when they have personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents.
- B. When information regarding a complaint or problem is received, the ombudsman representative shall:
  - 1. Collect all relevant information from the complainant;
  - 2. Discuss attempts that have been made to resolve the complaint;
  - 3. Determine the resident's desired outcome(s);
  - 4. Discuss alternatives for handling the complaint;
  - 5. Explain the ombudsman representative's role is to act in accordance with resident wishes and maintain confidentiality;
  - 6. Encourage the complainant to personally take appropriate action, with ombudsman representative assistance, if appropriate; and
  - 7. Determine whether the complaint is appropriate for ombudsman services.

The following complaints are not appropriate for ombudsman activity:

  - a. Complaints that do not directly impact residents;
  - b. Complaints that are outside the scope of the mission or authority of the program.

**NOTE:** The program may seek resolution of complaints in which the rights of one resident and the rights of another resident or residents appear to be in conflict or in dispute.

- C. Special consideration shall be given when the program receives a complaint on a deceased resident. The ombudsman representative shall:
  - 1. Determine if the case should be opened as a systemic case on behalf of a group of residents. If the ombudsman representative determines the case should not open as a systemic case, the ombudsman representative will

## Arkansas Office of the Long Term Care Ombudsman Program

inform the complainant that the ombudsman representative will not open a case as there is no resident for which an issue can be resolved;

2. Refer the complainant to the DPSQA Office of Long-Term Care; and/or
3. Suggest to the complainant other referral options including police, private attorneys, coroner, etc.

**NOTE:** If the resident dies during the time that a case is open, refer to Section 1002 of this manual.

PROPOSED

## Arkansas Office of the Long Term Care Ombudsman Program

### D. Ombudsman timeliness of response to complaints

1. Every ombudsman representative shall use his or her best efforts to initiate investigations of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. A response is considered timely as follows:

**TABLE 1000-A COMPLAINT RESPONSE**

IF a complaint involves . . .	THEN the standard of promptness for a LTCO response is . . .
<ul style="list-style-type: none"> <li>➤ abuse or gross neglect, and the ombudsman has reason to believe that a resident may be at risk</li> <li>➤ actual or threatened transfer or discharge from a facility within two (2) calendar days</li> <li>➤ use of restraints</li> </ul>	within the next working day from the receipt of the message or information by the regional program
<ul style="list-style-type: none"> <li>➤ abuse or gross neglect, and the ombudsman has no reason to believe that a resident is at risk (i.e., the resident has left the facility for home or a hospital)</li> <li>➤ actual or threatened transfer or discharge from a facility where a "Notice of Involuntary Transfer or Discharge" is issued</li> </ul>	within three (3) working days from the receipt of the message or information by the regional program
<ul style="list-style-type: none"> <li>➤ other types of complaints</li> </ul>	within 7 - 21 working days or less depending upon severity of complaint

2. When the program will be unable to initiate investigations in a timely manner (i.e., due to a planned vacation, training, or extended illness), the Regional Ombudsman shall develop a plan for temporary coverage by a designated representative in order to meet the standard of promptness.
3. The ombudsman representative may inform the complainant of a time frame for when the complainant may expect investigative efforts to begin. If given, the response time frame should be documented in case records.
4. The Ombudsman Program is not designed to serve as an emergency response system. Emergency or life-threatening situations should be referred to "911" and other emergency response systems for immediate response.

## Arkansas Office of the Long Term Care Ombudsman Program

### Section 1002 Complaint Investigations

- A. Ombudsman program representatives investigate complaints in order to verify the general accuracy of the complaint and to gather information to resolve it. The investigation shall be conducted in a timely and thorough manner in order to:
  1. Identify the relevant issue areas raised by the complaint;
  2. Determine the sequence of investigatory steps;
  3. Assemble all necessary facts;
  4. Attempt to verify the complaint; and
  5. Seek resolution of the complaint to resident satisfaction.
- B. Regardless of the source of the complaint (i.e., the complainant), including when the source is the ombudsman, the ombudsman representative must support and maximize resident participation in the process of resolving the complaint as follows:
  1. The ombudsman representative shall offer privacy to the resident for the purpose of confidentially providing information and investigating and resolving complaints.
  2. The ombudsman representative shall personally discuss the complaint with the resident or resident representative if the resident is unable to communicate informed consent in order to:
    - a. Determine the perspective of the resident or resident representative;
    - b. Request the resident or resident representative to communicate informed consent in order to investigate the complaint;
    - c. Determine the wishes of the resident or resident representative with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether the ombudsman representative may disclose resident-identifying information or other relevant information to the facility and/or appropriate agencies;
    - d. Advise the resident or resident representative, where applicable of resident or participant rights;
    - e. Work with the resident or resident representative to develop a plan of action for resolution of the complaint;
    - f. Investigate the complaint to determine whether the complaint can be verified; and
    - g. Determine whether the complaint is resolved to the satisfaction of the resident or resident representative.
  3. Where the resident is unable to communicate informed consent, and has no resident representative, the ombudsman representative shall:
    - a. Gather information to ascertain the resident's wishes as if the resident was able to provide consent or direction and finding no evidence to the contrary will work to protect the health, safety, welfare, and rights of the resident.



## Arkansas Office of the Long Term Care Ombudsman Program

- b. Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare, and rights of the resident; and
    - c. Determine whether the complaint was resolved to the satisfaction of the complainant.
  4. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the ombudsman representative shall ascertain the extent of the authority that has been granted to the representative under court order (in the case of a guardian or conservator), by a power of attorney or other document by which the resident has granted authority to the representative, or under other applicable state or federal law.
- C. Investigation by the ombudsman representative shall proceed only with the express consent of the resident or resident representative except in systemic cases.
- D. Communication of informed consent may be made in writing, orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the ombudsman representative. Auxiliary aids and services can include but are not limited to:
  1. Sign language interpreting in person or by video remote interpreting),
  2. Computer aids,
  3. Exchange of written notes,
  4. Assistive listening devices,
  5. Yes/no questions with physical responses,
  6. Audio recordings,
  7. Magnification, and
  8. Large print materials.
- E. If a resident is unable to communicate his or her perspective on the extent to which the matter has been satisfactorily resolved, the ombudsman representative may rely on the communication of the resident representative's perspective regarding the resolution of the complaint so long as the ombudsman representative has no reasonable cause to believe that the representative is not acting in the best interests of the resident.
- F. The State Ombudsman or designee shall refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

## Arkansas Office of the Long Term Care Ombudsman Program

1. The resident is unable to communicate informed consent to the ombudsman representative and has no resident representative and the ombudsman representative has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare, or rights of the resident or participant, or the ombudsman representative has reasonable cause to believe that the resident representative has taken an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of the resident;
  2. The ombudsman representative has no evidence indicating that the resident would not wish a referral to be made;
  3. The ombudsman representative has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
  4. The ombudsman representative obtains the approval of the State Ombudsman. The State Ombudsman shall reply within two (2) calendar days as practicable to any request for approval of disclosure under this provision.
- G. For all complaints in which the resident refuses or withdraws consent, the ombudsman representative shall:
1. Determine whether the type of complaint is recurring. The ombudsman representative shall determine whether the circumstances merit other strategies toward resolution which would not disclose the identity of the resident who has withdrawn consent (i.e., with permission presenting the issue at a resident or family council);
  2. Attempt to determine why the resident refused or withdrew consent and consider the following factors:
    - a. Past responses of facility, such as failure to respond to complaints and/or retaliation against complainants;
    - b. The resident's experience with facility staff; and
    - c. The experience of residents related to this type of complaint.
  3. Inform the resident that the LTCOP may be contacted in the future regarding the withdrawn complaint or other complaints;
  4. Provide contact information such as a business card or brochure informing the resident how to contact the LTCOP;
  5. Discontinue work on the individual complaint; and
  6. Document the case according to program policy.
- H. For all abuse and neglect complaints in which the resident is informed of potential risks and consequences for refusing to consent or withdrawing consent, the ombudsman representative shall:
1. Complete the steps outlined in Section 1002(G) of this manual;
  2. Discontinue work on the complaint; and

## Arkansas Office of the Long Term Care Ombudsman Program

3. Report the consent withdrawal or refusal immediately to the OSLTCO and Regional Ombudsman in keeping with Section 1005 (F) of this manual.
- I. When the program has an open case and the resident dies, the ombudsman representative shall:
    1. Close the case;
    2. Determine whether or not the complaint can be opened as a systemic case on behalf of other residents at the facility; and
    3. Suggest to the complainant other referral options including the Office of Long Term Care, police, private attorneys, coroner, etc., as appropriate.

Regardless of the source of the information or complaint, the resident of, or applicant to, a long-term care facility is the LTCOP's client and all complainants shall be so informed.

- J. In order to investigate, verify, and attempt to resolve a complaint, the ombudsman representative shall take one or more of the following steps as appropriate to the nature of the complaint and with the express consent of the resident:
  1. Research relevant laws, rules, regulations, and policies;
  2. Observe the situation and evidence;
  3. Interview the resident and/or complainant;
  4. Interview any staff, administration, physician, residents, friends, and family members;
  5. Identify relevant agencies, interview or obtain information from agency staff;
  6. Examine any relevant records including clinical, medical, social, financial, and other records in keeping with access and confidentiality policies and procedures;
  7. Review any other information available to the ombudsman and pertinent to the investigation;
  8. Consider the most appropriate time to conduct an on-site visit;
  9. Consider combining these issues with other problems in the same facility, corporation, agency, or program; and
  10. Determine the sequence of investigatory steps.
- K. An investigation shall minimally include the following investigative activities:
  1. Face-to-face visit and interview with the resident(s) or resident representative(s); and
  2. Direct contact and interview with the complainant, which may be by a face-to-face visit, a telephone call, an e-mail, or a letter. However, direct contact with the complainant is not required if the complaint was made anonymously or if the complainant requests not to be contacted.

- L. Exceptions to face-to-face (FTF) contact with the resident are as follows:

## Arkansas Office of the Long Term Care Ombudsman Program

1. If the resident requested that he or she not be visited or contacted;
  2. If the resident is the complainant and confirms that an FTF visit is not needed;
  3. If the case involves a notice of involuntary transfer or discharge for non-payment and the ombudsman representative is able to speak to the resident directly over the telephone and resolve the case without an FTF visit; and
  4. If the case involves a Medicaid application and the ombudsman representative is able to speak to the resident directly over the telephone and resolve the case without an FTF visit.
- M. The ombudsman representative shall seek the following information during the investigation of a complaint or problem:
1. What has occurred or is occurring;
  2. When it occurred and whether the occurrence is on-going;
  3. Where it occurred;
  4. Who was involved;
  5. Effect of the occurrence on resident(s) or a participant;
  6. Reason for occurrence;
  7. What, if anything, the facility or other interested parties have done in response to the occurrence; and
  8. Resident's or participant's goals and wishes as a complaint resolution.
- N. The ombudsman representative is not required to independently verify a complaint in order to seek resolution on behalf of a resident or participant. Resident or participant perception is a sufficient basis upon which an ombudsman representative can seek resolution of a problem or complaint.
- O. Generally, facility visits for purposes of complaint investigation shall be unannounced.

### Section 1003 Verification of Complaints

- A. A complaint is "verified" when an ombudsman representative determines after interviews, record inspections, observations, etc., that the circumstances described in the complaint are generally accurate.
- B. Because the program works on behalf of residents and participants, the ombudsman representative gives the benefit of any doubt to the resident's or the participant's perspective.
- C. Ombudsman representatives always attempt to verify complaints, but they work to resolve a complaint to the satisfaction of the resident or participant, whether it is verified or not.

### Section 1004 Resolution of Complaints

## Arkansas Office of the Long Term Care Ombudsman Program

- A. Upon verifying a complaint, the ombudsman representative shall discuss with the resident or resident representative the legal, administrative, and other remedies available to resolve the complaint. The ombudsman representative shall, to the fullest extent possible, involve and empower the resident to participate in the resolution of the complaint.

If a complaint received or an investigation by an Ombudsman discloses information or facts indicating the a criminal offense or a violation of standards of professional conduct, the matter may be referred to the SLTCO, the DPSQA Office of Long Term Care, the Arkansas State Police, State's Attorney General, DAABHS Adult Protective Services, any other law enforcement official having jurisdiction to prosecute the crime, and to the appropriate professional licensing board in keeping with the resolution plan developed with the resident or participant.

- B. If a complaint cannot be resolved through dialogues with the facility or the appropriate governmental or non-governmental agency, or if an act, practice, policy, or procedure of a facility or governmental or non-governmental agency does or may adversely affect the health, safety, welfare, or civil rights of a resident or class of residents, the ombudsman representative:

1. May recommend and assist the resident in securing legal representation to commence legal actions, including complaints for injunctive relief, declaratory relief, or actions for civil damages, provided that exhaustion of any available administrative remedies shall not be required; and
2. Shall consult with OSLTCO regarding the possibility of legal action and in appropriate circumstances, OSLTCO shall involve the Office of Chief Counsel in assisting the ombudsman representative.

- C. The resolution status of each complaint shall be documented according to the classifications listed below:

1. Legislative or Regulatory Action Required – Complaints that require policy, regulatory, or legislative change to resolve to satisfy the resident or complainant. Complaints of this nature may be addressed in the issues section of the NORS report.
2. Not Resolved – The problem identified in the complaint has not been corrected or resolved to the satisfaction of the resident.
3. Withdrawn – The complaint was withdrawn at the request of the resident or complainant, or discontinued by the ombudsman representative. If a significant portion of the complaint/problem was resolved prior to the withdrawal, record as “Partially Resolved.”
4. Referred for Resolution and Final Disposition Not Obtained – The complaint was referred to another agency for investigation, but no report of final outcome was obtained by the ombudsman representative.
5. Referred for Resolution and Other Agency Failed to Act – The complaint was referred to another agency for investigation, but no action was taken by the referral agency.

## Arkansas Office of the Long Term Care Ombudsman Program

6. Referred for Resolution and Agency Did Not Substantiate – The complaint was referred to another agency for investigation, but their findings did not substantiate (or support) the referred complaint.
  7. No Action Needed or Appropriate – The investigation proved no action by the ombudsman representative was needed or appropriate. Examples include: a family member has a complaint which the resident does not consider to be a problem and wants no action; or the findings of the investigation did not indicate a need for change or require further ombudsman representative investigation and complaint resolution. This code may also be used when the resident dies or moves away and the complaint is no longer relevant.
  8. Partially Resolved – The complaint addressed in part to the satisfaction of resident or complainant, but some problem remained.
  9. Resolved – The complaint was addressed to the resident's satisfaction. If the resident cannot communicate his or her satisfaction, the ombudsman representative may look to the resident representative or to the complainant to determine if the resolution is consistent with the rights and interests of the resident. In cases where the resident is not the complainant and the resident is deceased, a complaint may be considered resolved if addressed to the satisfaction of the complainant.
- D. Cases may be closed in the following circumstances:
1. When the complaint or complaints have been resolved to the resident's satisfaction;
  2. When the ombudsman representative has exhausted all possible means of working to resolve the complaint and the resident is not satisfied with the outcome; or
  3. When the resident requests that LTCOP action end on the complaint.

### Section 1005 Abuse and Neglect

- A. In accordance with federal law, ombudsman representatives who directly observe abuse are not mandated reporters with regard to work on behalf of residents; however, they shall do the following in the case of directly observed abuse:
1. Make every effort to ensure that residents are safe and comfortable.
  2. Seek consent from the resident to disclose resident-identifying information to appropriate agencies.
  3. Seek consent from the resident's representative if the resident is unable to communicate informed consent or authorization using the process described in Section 1002.

## Arkansas Office of the Long Term Care Ombudsman Program

- B. An ombudsman representative shall not report suspected abuse, neglect, or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except in situations where the resident is unable to communicate informed consent to the ombudsman representative and all of the following circumstances exist:
  - 1. The resident has no resident representative, or the ombudsman representative has reasonable cause to believe that the representative has taken an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of the resident;
  - 2. The ombudsman representative has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare, or rights of the resident;
  - 3. The ombudsman representative has no evidence indicating that the resident would not wish a referral to be made;
  - 4. The ombudsman representative has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
  - 5. The ombudsman representative receives the approval of the State Ombudsman.
- C. If a complaint or an investigation indicates suspected abuse or neglect of a resident, the ombudsman representative shall:
  - 1. Advise the resident, complainant or witnesses to report the matter to the Arkansas Department of Human Services (DHS) Office of Long-Term Care, Adult Protective Services Program (APS), or law enforcement as appropriate. The ombudsman representative should offer assistance to any individual who wants to report abuse or neglect;
  - 2. Request the permission of the resident or resident representative to report suspected abuse or neglect to DHS, APS, or law enforcement if the resident or representative is unwilling to report themselves;
  - 3. If the complainant is a mandated reporter, remind the complainant of their duty to report and to file a complaint with the appropriate authority; and
  - 4. Advocate for and follow the resident's wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.
- D. When a resident is unable to provide consent for an ombudsman representative to work on a complaint directly involving the resident, the ombudsman representative shall seek evidence to indicate what the resident would have desired and, where such evidence is available, work to bring about the resident's wish.
- E. When the resident is the alleged victim of abuse, neglect, or exploitation and is unable to provide consent, the ombudsman representative shall:
  - 1. Check to see if the resident has a guardian or resident representative;
  - 2. If there is no guardian or representative and the Ombudsman representative has reason to believe that the resident is a victim of abuse, neglect and/or

## Arkansas Office of the Long Term Care Ombudsman Program

exploitation, contact the OSLTCO to discuss the case, seek guidance, and obtain approval to take further action.

- F. When a resident refuses to give consent to report suspected abuse or neglect, the ombudsman representative shall:
  - 1. Attempt to determine why the resident refused or withdrew consent, considering factors such as:
    - a. Past response of facility or agency to complaints;
    - b. The resident's relationship with the staff;
    - c. The experience of this resident or other residents in the facility or in other facilities related to this type of complaint; and
  - 2. Notify the Regional Ombudsman and OSLTCO of the resident's refusal to report.
- G. If the resident is able to consent and refuses to provide consent, the abuse, neglect, or exploitation may not be disclosed. The ombudsman representative shall:
  - 1. Increase the frequency of visitation to the resident; and
  - 2. Without coercion, inquire if circumstances have changed and the resident wishes action taken on their behalf and with their direction.
- H. In the case of suspected abuse or neglect of an older person residing in a suspected unlicensed facility, the ombudsman representative should file a report of an "unlicensed facility" with Adult Protective Services.
- I. If a complaint indicates suspected financial exploitation of a resident with capacity, the ombudsman representative shall:
  - 1. Encourage caller to make a police report, contact legal services, or hire a private attorney; and
  - 2. Open a case if there is a threat of involuntary transfer or discharge or if a resident request ombudsman program assistance.
- J. If a complaint indicates suspected financial exploitation of a resident without capacity, the Ombudsman shall:
  - 1. Encourage the caller to make a police report;
  - 2. Open a case if there is a threat of involuntary transfer or discharge;
  - 3. Contact the resident representative if any; and
  - 4. Contact the SLTCO to consider appropriate options on behalf of the resident and in support of the resident's safety, health, welfare, and rights.

### Section 1006 Complaint Referral

- A. The LTCOP shall refer a complaint or problem to another agency when:



## Arkansas Office of the Long Term Care Ombudsman Program

1. The resident gives consent to the LTCOP to act; and
  2. One or more of the following applies:
    - a. Another agency has resources that may benefit the resident;
    - b. The action to be taken and the complaint is outside of the LTCOP's authority and/or expertise (i.e., Arkansas Department of Health or Office of Long-Term Care)
    - c. The Ombudsman needs additional assistance in order to achieve resolution of the complaint; or
    - d. The resident requests the referral be made.
- B. Referrals to regulatory agencies, law enforcement, or protective services
1. An ombudsman representative shall assist a resident or resident representative in contacting the appropriate agency when the resident or representative has communicated informed consent for such referral.
  2. An ombudsman representative may encourage residents or complainants to directly contact the appropriate regulatory agency to file a complaint and will offer information and assistance to residents or complainants in making such contact and follow-up.
  3. When an ombudsman representative refers a complaint to the Office of Long-Term Care, the ombudsman representative shall:
    - a. submit the complaint in writing via secure e-mail or fax; or
    - b. contact the agency by telephone.
- C. Joint investigatory activities
- When an Ombudsman is invited by a regulatory or law enforcement agency to assist in or provide information regarding an investigation of a facility, ombudsman participation is appropriate only under the following circumstances:
1. The Ombudsman is able to fulfill his or her role as a resident advocate;
  2. The Ombudsman does not attempt to regulate a facility or take actions which would lead one to assume that the LTCOP is the regulator; and
  3. The Ombudsman explains to facility administration and residents that his or her role is to advocate for the health, safety, welfare, and rights of residents, not to enforce regulations.
  - 4.
- D. Referrals to legal services
1. For a resident who is requesting, or in need of, legal advice and representation, the LTCOP shall assist the resident in finding appropriate legal services. With consent from the resident or representative, ombudsmen may make a referral to Older Americans Act-funded legal services agencies.
  2. When the legal services provider is unable to provide the requested legal service, an Ombudsman may refer the resident or participant to private attorneys by providing a list of attorneys.
    - a. This list must contain a minimum of three (3) attorneys.

## Arkansas Office of the Long Term Care Ombudsman Program

- b. Ombudsmen shall not recommend a specific attorney.
- 3. When a provider agency houses both a regional ombudsman program as well as a Legal Services Program, the Ombudsman shall follow the provisions in this section.
- E. Referral to a different regional program may occur when a resident moves to a different regional program service area.
  - 1. When a resident with an open case moves to a different area, the Ombudsman shall notify the OSLTCO of the transfer.
  - 2. The OSLTCO will determine if the case should be transferred to the regional program which covers the facility where the resident now resides.
- F. The LTCOP shall follow up with the resident to determine whether services have been received and if the identified need has been met following the formal referral.

PROPOSED

## **APPENDIX A Code of Ethics for Ombudsmen**

### **BACKGROUND**

Regardless of an ombudsman's level of advocacy effort, or the complexity of the issue or problem which is being addressed, a basic set of principles guides an ombudsman's decisions. The National Association of State Long-Term Care Ombudsman Programs developed the following Code of Ethics for ombudsmen.

### **ETHICAL RESPONSIBILITIES**

- A. The Ombudsman provides services with respect for human dignity and the individuality of the client, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
- B. The Ombudsman respects and promotes the client's right to self-determination.
- C. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
- D. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
- E. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
- F. The Ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
- G. The Ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect for the policies of the sponsoring (contract) organization.
- H. The Ombudsman will provide professional advocacy services unrestricted by his or her personal belief or opinion.
- I. The Ombudsman participates in efforts to promote a quality long-term care system.
- J. The Ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
- K. The Ombudsman supports a strict conflict of interest standard which prohibits any financial interest in the delivery or provision of nursing home services, board and care services, or other long-term care services which are within their scope of involvement.
- L. The Ombudsman shall conduct himself or herself in a manner which will strengthen the statewide and national Ombudsman network.

## **APPENDIX B Arkansas Long-Term Care Ombudsman Representative Certification Training Requirements**

### **CERTIFICATION TRAINING PROCESS**

#### **A. Certification Training Process**

1. The Office of the State Long-Term Care Ombudsman (OSLTCO) provides for training and certification of Ombudsman program staff as required by state and federal law.
2. Classroom, on-site training, and examinations are done under the direction of the State Long-Term Care Ombudsman (SLTCO).
3. For Ombudsman program staff, the certification process consists of forty (40) hours of classroom training and supervised field activities.
4. For Ombudsman program volunteers, the certification process consists of eight (8) hours of classroom training and twelve (12) hours of supervised field activities.
5. All Ombudsmen, whether paid employees or volunteers, will complete the OSLTCO program training curriculum and become certified within six (6) months of their certification training commencement.

#### **B. Required Training Topics**

Required training for candidates for Long-Term Care Ombudsman Representative certification includes, but is not limited to, the following topics and content areas:

1. History and role of the Long-Term Care Ombudsman Program, including LTCOP federal and state laws and regulations
2. Residents' rights, including federal and state laws and regulations
3. Long-term care facility laws and regulations
4. The aging process
5. Facility visits, complaint investigations, problem solving, and case resolution
6. LTCOP policies, processes, and system documentation
7. Any other topic area deemed necessary by the OSLTCO

These topics are presented in a combination of classroom, long-term care facility, or other appropriate settings.

#### **C. Classroom Training**

1. The SLTCO or designee will instruct twenty (20) hours of classroom training for new Ombudsman representative staff and will cover the Required Training Topics listed in section B above.
2. The SLTCO or designee will instruct eight (8) hours of classroom training curriculum to new LTCO volunteers and will cover the Required Training Topics listed in section B above.

#### **D. Training in Long-Term Care Facilities**

## Arkansas Office of the Long Term Care Ombudsman Program

1. The Arkansas LTCOP certification process for regional ombudsman program staff includes on-site training of twenty (20) hours in a long-term care facility. Training shall consist of but is not limited to the following:
  - a. Interviews with nursing home department heads, such as:
    - Administration
    - Social services
    - Nursing
    - Dietary
    - Activities
    - Rehabilitative services
    - Billing and reimbursement including LTC Medicaid
    - Laundry and housekeeping
  - b. Observation of the following:
    - Resident care planning
    - Resident council meeting
    - Staff provision of services to and interaction with residents
  - c. Interviews with residents
2. Written summaries shall be submitted to the OSLTCO for review within fifteen (15) days of the observation and interview.
  - a. The written summary is to include observations, interviews, issue identification, possible follow-ups, and any areas of question.
  - b. The written summaries will be included in the LTCO's certification file.
  - c. Feedback will be provided to the LTCO trainee within fifteen (15) working days after submission to the SLTCO or designee.
  - d. The LTCO trainee may request additional visits be completed before he/she is certified as a LTCO by the SLTCO. Additionally, the SLTCO may require additional supervised field visitations and documentation to be completed as necessary.
3. The Arkansas LTCOP certification process for volunteer Ombudsman program staff includes on-site training of twelve (12) hours in a long-term care facility.
  - a. The first two (2) hours of the on-site practicum training is done with the regional ombudsman representative
  - b. Eight (8) hours of on-site visitation is done by the volunteer ombudsman trainee on their own with observation of the following:
    - Resident Council
    - Family council
    - Interview with residents
  - c. The last two (2) hours of the on-site practicum is completed with the regional ombudsman representative.

## Arkansas Office of the Long Term Care Ombudsman Program

- d. Upon completion, the regional ombudsman representative will send a recommendation of practicum completion to the SLTCO or designee.

### **E. Certification Examination**

1. The SLTCO or designee provides the trainee a written examination. The examination is designed to assess the ability to apply the complaint investigation process to sample cases by:
  - a. Identifying issues involved
  - b. Applying relevant statutes and regulations
  - c. Developing a plan of action that demonstrates:
    - (i) An awareness of the appropriate Ombudsman representative's role; and
    - (ii) Appropriate resolution strategies and rationales.
  - d. History of the Ombudsman program
  - e. Residents' rights
2. The written examination will be evaluated by the SLTCO or designee with an eighty percent (80%) score required for passing.
  - a. If the trainee does not pass the first or second time taking the exam, the SLTCO may identify additional work to be done on the examination needed to pass.
  - b. The trainee must complete a passing examination within two (2) months in order to become certified.
  - c. Trainees may submit the written examination no more than three (3) times during the two-month period.
  - d. If the trainee does not pass by the third attempt, the trainee will not be certified.

### **F. Failure to Complete Training Requirements**

The SLTCO has the authority to refuse to designate an individual as an Ombudsman Representative should he/she fail to satisfactorily complete the training requirements for certification, as set forth above and in the Long Term Care Ombudsman policies.

## **NOTIFICATION OF CERTIFICATION**

When a trainee meets the required training requirements, the SLTCO may certify him/her as a certified Ombudsman Representative. Such certification constitutes a designation by the SLTCO of the individual as an Ombudsman representative.

## **CERTIFICATION – CONTINUATION REQUIREMENTS**

### **A. Compliance with LTCOP Policies and Procedures**

In order to maintain certification, the Ombudsman Representative must comply with the requirements of the LTCOP policy manual.

## **Arkansas Office of the Long Term Care Ombudsman Program**

### **B. Program Affiliation**

In order to maintain certification, the Ombudsman representative must remain affiliated with a designated local Ombudsman Entity

### **C. Continuing Education Requirements**

1. All certified Ombudsman representatives must attend training events as specified by the SLTCO in order to retain their certification.
2. Ombudsman staff must attend all required quarterly trainings as designated by the SLTCO.
3. Ombudsman volunteers must attend at least one (1) quarterly regional training annually.
4. If an Ombudsman representative, paid or volunteer, fails to meet the continuing education training requirements, the individual may be decertified and may not function as an Ombudsman representative unless he or she completes the necessary training in the required time frame as designated by the SLTCO.

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** \_\_\_\_\_

**DIVISION** \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_ **FAX NO.** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes \_\_\_\_\_ No \_\_\_\_\_

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
  - (b) The reason for adoption of the more costly rule;
  - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
    - (a) What is the cost to implement the federal rule or regulation?

### **Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

### **Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_



Other (Identify)\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

Total\_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue\_\_\_\_\_

General Revenue\_\_\_\_\_

Federal Funds\_\_\_\_\_

Federal Funds\_\_\_\_\_

Cash Funds\_\_\_\_\_

Cash Funds\_\_\_\_\_

Special Revenue\_\_\_\_\_

Special Revenue\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

Total\_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$\_\_\_\_\_

\$\_\_\_\_\_

---

---

---

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$\_\_\_\_\_

\$\_\_\_\_\_

---

---

---

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes\_\_\_\_\_ No\_\_\_\_\_

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

## **Statement of Necessity and Rule Summary**

### **Arkansas Long-Term Care Ombudsman Program Policies**

#### **Statement of Necessity**

The federal Department of Health and Human Services, Administration on Aging (AoA), issued a final rule for State Long-Term Care Ombudsman programs, effective July 1, 2016, to implement provisions of the Older American Act of 1965 regarding States' Long-Term Care Ombudsman programs. The final rule filing provides that the federal regulation was necessary because the federal agency had not promulgated regulations regarding state implementation of the Long-Term Care Ombudsman program. This federal regulation was intended to eliminate variation in interpretation of the Act's provisions among the states. Arkansas's ombudsman has complied with the requirements of the Act even though the federal regulation regarding states' implementation was not yet in effect.

In order to comply with this new federal regulation, the Office of the State Ombudsman, Division of Aging, Adult, and Behavioral Health Services (DAABHS), has worked with the AoA to establish ombudsman policies. The AoA has approved these policies, and DAABHS is now bringing this promulgation to be effective July 1, 2020.

#### **Rule Summary**

This rule, titled "Ombudsman Policies", is being promulgated for the first time. These policies address:

- An introduction to the office
- Definitions of important terms
- Program administration, including the State Ombudsman's role within the Department of Human Services
- Responsibilities of the Area Agency on Aging, providers, regional ombudsmen and representatives
- Grievance processes
- Criteria for designations within the ombudsman process as well as removal or suspension of awarded designation
- Service components, delivery, monitoring, and evaluation
- An outline of organizational and individual conflicts of interest
- Information on legal counsel
- Prohibition of willful interference and retaliation along with reporting procedures
- Authority of the Long Term Care Office to access residents, facilities, and records
- Policy on confidentiality, monitoring, disclosure, and maintenance
- Procedure to initiate complaints, how they will be investigated, and resolved