

Gateway Area Agency on Aging and Independent Living
Policy Manual and Operating Procedures

Chapter 16
Long Term Care Ombudsman Program
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Introduction

Reference: OAA § 712 (U.S.C. 3058g)

The Long-Term Care Ombudsman Program (LTCOP) is a resident-centered advocacy program. The resident of or applicant to a long-term care facility is the client, regardless of the source of the complaint or request for service. The long-term care ombudsman will make every reasonable effort to assist, represent, and intervene on behalf of the resident.

The LTCOP protects and seeks to improve the quality of care and quality of life for residents of long-term care facilities through advocacy for and on behalf of residents and through the promotion of community awareness and involvement in long-term care facilities.

The Older Americans Act required all state agencies on aging to establish an ombudsman program that would carry out the following activities:

- (1) Investigate and resolve long-term care facility residents' complaints;
- (2) Promote the development of citizens' organizations and train volunteers;
- (3) Identify significant problems by establishing a statewide reporting system for complaints, and work to resolve these problems by bringing them to the attention of appropriate public agencies;
- (4) Monitor the development and implementation of federal, state, and local long-term care laws and policies;
- (5) Gain access to long-term care facilities and to residents' records; and
- (6) Protect the confidentiality of residents' records, complainants' identities, and ombudsman files.

Mission Statement

The Mission of the Kentucky Long-Term Care Ombudsman Program is to work to improve the lives of all residents by enhancing the quality of life, improving the quality of care, protecting the individual rights and promoting the dignity of each resident that resides in a long-term care facility.

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Program Structure

Reference: OAA § 712 (a) (1)

Department for Aging and Independent Living:

The Department for Aging and Independent Living of the Cabinet for Health and Family Services shall establish and operate, directly or by contract/memorandum of understanding, the State Long-Term Care Ombudsman Program (SLTCOP).

State Ombudsman Role:

The State Long-Term Care Ombudsman (SLTCO) shall assure that all residents of long-term care facilities in the State have access to the services of the Kentucky Long-Term Care Ombudsman Program (LTCOP) and that each area development district in the State has a designated LTCOP.

Contracts for Ombudsman Services:

The District LTCOP in each area development district (ADD) shall be operated through a contract with DAIL as follows:

- (1) Contracts shall exist in each ADD between Gateway Area Agency on Aging and Independent Living and the Area Agency on Aging and Independent Living (AAAIL) and/or an entity or entities meeting the criteria for designation.
- (2) The AAAIL may directly provide long-term care ombudsman (LTCO) services, if not otherwise prohibited from directly delivering services, or may subcontract with another entity meeting the criteria for designation.
- (3) Where an AAA provides LTCO services directly, it must also fulfill the responsibilities of a LTCO provider agency.

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Designation of Ombudsman Programs

References: OAA §§ 307(a) (10), 712(a) (4), (5); see OAA § 705(a) (5);
910 KAR 1:210 Section 2 (2) (d) 1

The State Ombudsman shall designate provider agencies to provide ombudsman services throughout Kentucky.

Procedures:

Criteria for Designation as a LTCO Provider Agency:

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

- (1) Be a public or nonprofit entity;
- (2) Not be an agency or organization responsible for licensing or certifying long-term care services;
- (3) Not be an association (or an affiliate of an association) of providers of long-term care or residential services for older persons;
- (4) Have no financial interest in a long-term care facility;
- (5) Have demonstrated capability to carry out the responsibilities of the LTCO provider agency;
- (6) Have no unremedied conflict of interest; and
- (7) Meet all contractual requirements of the Gateway Area Agency on Aging and Independent Living

Process for Designation of a LTCO Provider Agency, Generally:

As of the effective date of these procedures, an entity providing LTCO services under contract with the Cabinet for Health and Family Services, DAIL or the relevant area agency on aging (AAA) shall be designated as a LTCO provider agency.

Process for Designation of a LTCO Provider Agency, where the Area Agency on Aging Contracts with a LTCO Provider Agency:

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Where the AAA contracts with a LTCO provider agency, the designation of a new LTCO provider agency shall occur as follows:

(1) The GAAA shall issue a request for proposal (RFP) seeking an entity to provide LTCO services within its ADD. The RFP shall identify the criteria for designation as a LTCO provider agency and shall request submission of documents supporting the entity's claim to meet these criteria.

(2) The GAAA shall require that all of the responding entities which meet the criteria for designation, develop an Ombudsman Services Plan setting forth:

- (a) the goals and objectives of such entity in providing LTCO services, and
- (b) a description of how each Program Component shall be met by such entity and including its staffing plan for the local long-term care ombudsman program (LTCOP), and
- (c) description of the resources of the entity which will be provided to assist in the operation of the local LTCOP

(3) The GAAA shall forward copies of the Ombudsman Services Plans of all responding entities to the SLTCO.

(4) The GAAA shall recommend an entity for designation as a LTCO provider agency to the SLTCO and shall provide the SLTCO with information supporting its recommendation.

(5) The SLTCO shall review and consider the recommendations of the GAAA, and shall determine if the entity is appropriate to designate as the LTCO provider agency.

(6) The SLTCO shall notify the GAAA of the determination within thirty-(30) days of receiving the GAAA's recommendation.

(7) The GAAA shall notify the responding entities of the SLTCO decision within fifteen (15) days of receiving such notification. An informal dispute can be requested with the Commissioner of Department for Aging and Independent Living.

(8) Upon designation by the SLTCO, the GAAA may enter into a contract with the LTCO provider agency for the provision of LTCO services in the relevant area development district. Such contract must:

- (a) specify the area development district;
- (b) require the LTCO provider agency to adhere to all applicable federal and state laws, regulations, and policies; and
- (c) provide that designation by the SLTCO continues for the duration of the contract and subsequently renewed contracts unless the LTCO provider agency is de-designated by the SLTCO

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(9) The execution date of the LTCO provider agency's contract with the GAAA to provide LTCO services shall constitute the effective date of the designation.

(10) Should the contract between the LTCO provider agency and the GAAA to provide LTCO services not be renewed or be terminated for any reason, the GAAA shall:

(a) immediately notify the SLTCO;

(b) follow the steps to designate a new LTCO provider agency as soon as practicably possible; and follow the steps to provide continuation of ombudsman services in writing to the SLTCO

Process for Designation of a LTCO Provider Agency, where the Area Agency on Aging Serves as LTCO Provider Agency:

Where the AAA seeks to serve as the LTCO provider agency, the designation of a new LTCO provider agency shall occur as follows:

(1) The AAA may be considered as a LTCO provider agency where the SLTCO determines that either

(a) Designation of the AAA as the LTCO provider agency is necessary to assure an adequate supply of ombudsman services; or

(b) Services of comparable quality can be provided more economically by the AAA

(2) The AAA shall request consideration to be designated as a LTCO provider agency and submit an Ombudsman Services Plan, as a section of its area plan, to the SLTCO setting forth:

(a) the goals and objectives of such entity in providing LTCO services,

(b) a description of how each Program Component shall be met by such entity, and including its staffing plan for the local LTCOP, and

(c) description of the resources of the entity which will be provided to assist in the operation of the local LTCOP

(3) The SLTCO may designate the AAA as the LTCO provider agency where:

(a) the AAA meets the criteria for designation;

(b) the AAA submits an acceptable Ombudsman Services Plan; and

(c) the AAA is not otherwise prohibited from fulfilling the duties of the provider agency

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(4) The SLTCO shall notify the AAA within thirty-(30) days of the receipt of the Ombudsman Services Plan of its decision.

(5) The execution date of the AAA's contract with DAAL to provide LTCO services shall be the effective date of the designation.

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De-Designation of Ombudsman Programs

Reference: OAA §307(a) (5)

The State Ombudsman may de-designate an entity as a LTCO provider agency for cause.

Procedures:

Criteria for De-designation:

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

- (1) Failure of the entity to continue to meet the criteria for designation;
- (2) Existence in the entity of an unremedied conflict of interest with the LTCOP;
- (3) Deliberate failure of the entity to disclose any conflict of interest
- (4) Violation of LTCO confidentiality requirements by any person employed by, supervised by, or otherwise acting as an agent of the entity;
- (5) Failure of the entity to provide adequate LTCO services, including but not limited to failure to perform enumerated responsibilities, failure to fill a vacant ombudsman position within a reasonable time, failure to submit a Local LTCOP Annual Plan for approval by the SLTCO, or failure to use funds designated for the LTCOP for LTCO services;
- (6) Failure of the entity to adhere to the provisions of the contract for the provision of ombudsman services; or
- (7) Failure of the entity to adhere to applicable federal and state laws, regulations, and policies

Process for De-Designation of a LTCO Provider Agency:

(1) Where the AAAIL contracts with a LTCO provider agency, the process to de-designate the LTCO provider agency shall be as follows:

- (a) The SLTCO shall send notice of the intent to de-designate at a specified date to the AAA and the LTCO provider agency.
- (b) De-designation of a LTCO provider agency shall not become effective until all appeals are exhausted.
- (c) The LTCO provider agency and AAAIL shall provide for the continuation of ombudsman service.

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(d) The AAA shall terminate its contract for LTCO services with the LTCO provider agency.

(2) Where the AAA serves as a LTCO provider agency, the process to de-designate the LTCO provider agency shall be as follows:

(a) The SLTCO shall send notice of the intent to de-designate at a specified date to the AAA. The notice shall include the reasons for de-designation and notice of the Hearing Procedures of the Department for Aging and Independent Living.

(b) De-designation of the AAA, as a LTCO provider agency shall not become effective until all appeals are exhausted.

(c) The AAA shall provide for the continuation of ombudsman services.

(d) DAAIL shall terminate the portion of the contract between the AAA and DAAIL, which provides for ombudsman services.

Voluntary Withdrawal of a LTCO Provider Agency:

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

Continuation of Ombudsman Services:

When a LTCO provider agency is in the process of appealing its de-designation or has relinquished designation:

(1) The LTCO provider agency, the AAA, and the SLTCO, if applicable, shall arrange for the provision of ombudsman services until a new LTCO provider agency is designated;

(2) The LTCO provider agency shall surrender intact to the SLTCO or the SLTCO designee all LTCO case records, documentation of all LTCO activities and complaint processing as required by the ombudsman reporting system, and issue de-certification letters to all certified volunteers.

(3) The LTCO provider agency shall, at the discretion of Gateway Area Agency on Aging and Independent Living, surrender any equipment purchased with funds designated for LTCO services; and the LTCO provider agency shall surrender the balance of any advanced state or federal monies to the AAA, or to Gateway Area Agency on Aging and Independent Living where the AAA serves as the LTCO provider agency.

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Certification of Long-Term Care Ombudsman

Reference: OAA § 712 (a) (5)

The State Ombudsman certifies individuals as ombudsman to represent and carry out the responsibilities of the Office of the State Long-Term Care Ombudsman.

Procedures:

Criteria for Certification as an Ombudsman:

To be designated as a LTCO, an individual must:

- (1) Have demonstrated capability to carry out the responsibilities and professional expectations of a LTCO;
- (2) Be free of un-remedied conflicts of interest;
- (3) Meet the minimum qualifications for the applicable LTCO position;
- (4) Satisfactorily complete and maintain the applicable certification training requirements as specified in 910 KAR 1:210 Section 8 or District LTCO and staff, the certification training requirements shall be completed after attending the classroom and field training provided by the STLCO, or DLTCO as applicable.
- (5) Be awarded a certificate, signed by the SLTCO;
- (6) Satisfactorily fulfill LTCO responsibilities; and
- (7) Receive notice from the SLTCO of his or her renewed certification every two (2) years
- (8) In order to continue to carry out his/her duties, each certified DLTCO must be re-certified every two years by the SLTCO "as continuing to meet the program standards, and adheres to the Ombudsman Code of Ethics as a certified ombudsman." Certification and re-certification records are maintained by the SLTCO. Upon re-certification, the SLTCO issues a new certification certificate.
- (9) Each candidate seeking certification as an Ombudsman or friendly visitor must provide; birth date, social security number, and current and verified address to the DLTCOP and/or AAAIL.
- (10) DLTCO shall provide SLTCO with a copy of the completed certification packet. The certification packet shall include the birth date, social security number, certification test, verification of on site facility visit(s), and a completed criminal background check.

Minimum Qualifications for District Long-Term Care Ombudsman:

- (1) In order to qualify as a District LTCO, an individual must have:

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- (a) An undergraduate degree from an accredited four-year college or university; or
- (b) Equivalent years of experience in assessing and dealing with long-term care needs of the elderly, substituted at the discretion of the SLTCO

Requests for Substitutions or Variances:

Requests for substitutions or variances related to minimum requirements for DLTCO must be made in writing and approved by the SLTCO prior to the hiring or promotion of the employee in question.

Minimum Qualifications for Volunteer Certified Ombudsman:

(1) In order to qualify for a LTCO volunteer position, an individual must have:

- (a) Completed two years of undergraduate education; or
- (b) Equivalent years of experience in assessing and dealing with long-term care needs of the elderly, substituted at the discretion of the State LTCO

Notification of Certification:

The District Ombudsman shall mail a copy of the individual's certification packet to the SLTCO. The SLTCO shall send written notification of an individual's certification as a LTCO to the DLTCO and RLTCO. The Regional Ombudsman shall input the certified individual into the ombudsman reporting system. The Regional Ombudsman notifies the District Ombudsman and the state office upon completion via email.

Notice of Re-Certification:

Each DLTCO, RLTCO, Certified Ombudsman, Friendly Visitor, and SLTCO shall be recertified for service every two years. Each candidate for re-certification shall have satisfactorily met the requirements as outline in SOP 16.5, and shall have verification of continued training as offered through the LTCOP, or community education events. Volunteer Ombudsman shall be verified as having active status in the LTCOP. Active status is defined as the volunteer conducted facility visits, and /or program activities, each quarter as documented in Ombudsmanager.

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Refusal to Certify an Individual as a Long-Term Care Ombudsman and De-Certification of a Long-Term Care Ombudsman

Reference: OAA § 712(a) (5)

The State Ombudsman may refuse to certify or may de-certify an individual as an ombudsman.

Procedures:

Criteria for Refusal to Certify an Individual as an Ombudsman and De-Certification of an Ombudsman:

The SLTCO may refuse to certify an individual as an LTCO or may de-certify a LTCO for any of the following reasons:

- (1) Failure of the individual to meet and /or maintain the criteria for designation;
- (2) Existence of an unresolved conflict of interest;
- (3) Deliberate failure of the individual to disclose any conflict of interest;
- (4) Violation of confidentiality requirements;
- (5) Failure to provide adequate and appropriate services to long-term care residents;
- (6) Falsifying records;
- (7) Failure to follow direction of the SLTCO regarding LTCO policies, procedures and practices;
- (8) A change in employment duties which is incompatible with LTCO duties;
- (9) Separation from the LTCOP, examples include: removal from employment by the LTCO provider agency, an extended absence of the LTCO preventing fulfillment of job responsibilities- with the exception of documented necessary family or medical leave; or the LTCO provider agency's contract for the provision of LTCO services is not renewed; or
- (10) Failure to act in accordance with applicable federal and state laws, regulations, and policies

Process for Refusal to Certify an Individual as an Ombudsman and De-Certification of an Ombudsman:

- (1) Prior to refusing to certify or de-certify, the SLTCO shall consult with the relevant AAA and the LTCO provider agency to consider remedial actions that could be taken to avoid the refusal to certify or to de-certify.

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(2) The SLTCO shall refuse to designate an individual as a LTCO by providing written notice of such refusal to the LTCO provider agency, the administrating agency and the Commissioner of for Aging and Independent Living. Such notice shall: (a) specify the reasons for the refusal to certify, and (b) set forth the effective date of such refusal

(3) The SLTCO shall provide written notice of the intent to de-certify a LTCO to the LTCO to be de-certified, the LTCO provider agency, the AAA, and the Commissioner of DAIL. Such notice shall: (a) specify the reasons for the intended de-certification, and (b) set forth the effective date of the de-certification

(4) If the refusal to certify an individual as a LTCO or the de-certification of a LTCO results in the absence of ombudsman service in the relevant service area, the AAA shall provide a written plan for the provision of long-term care ombudsman services to Department for Aging and Independent Living /SLTCO until a LTCO is certified.

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Roles and Responsibilities in Administering the Program

References: OAA §§304 (d) (1); 307 (a) (12); 307(a) (21); 703(a) (2) (C) (i); 705(a) (4); 712(a) (1), (4)

Department for Aging and Independent Living shall establish and operate an Office of the State Long-Term Care Ombudsman and carry out through that Office the statewide Long-Term Care Ombudsman Program.

Procedures:

DAIL Responsibilities:

The Cabinet for Health and Family Services, Department for Aging and Independent Living shall:

- (1) Provide for a full-time State Long-Term Care Ombudsman;
- (2) Provide funding for a statewide Long-Term Care Ombudsman Program (LTCOP) in accordance with the Older Americans Act (OAA) allocation formula and maintenance of effort requirements;
- (3) Provide legal representation for the Office of the State Long-Term Care Ombudsman.
- (4) Require under contract with AAA and Area Plan, provisions for legal services to the District Long-Term Care Ombudsman.
- (5) Provide support to the SLTCO to enable it to fulfill its responsibilities consistent with all applicable federal and state laws, regulations, and policies;
- (6) Administer the contracts between DAIL and AAA's and/or provider agencies;
- (7) Provide technical assistance for and monitor performance of AAA's; and
- (8) Administer the statewide LTCOP in accordance with all applicable federal and state laws, regulations, and policies.

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State Long-Term Care Ombudsman Responsibilities

References: OAA §§ 712(a) (2), (3) (H) (iii), (5), 712(c), (d), (h)

Under the direction of the State Unit on Aging, the SLTCO is responsible for providing leadership for the statewide Long-Term Care Ombudsman Program.

Procedures:

General responsibilities of the State Ombudsman:

Under the direction of the State Unit on Aging, the SLTCO is responsible for the following:

(1) Leadership and management of the statewide LTCOP

- (a) Providing leadership, planning, and direction for the statewide LTCOP;
- (b) Providing program management and development;
- (c) Evaluating statewide LTCOP performance;
- (d) Developing policies, procedures and standards, for DAIL approval, for administration of the LTCOP and LTCO practice;
- (e) Promoting the development of citizen organizations to participate in the LTCOP; and
- (f) Adhering to the Ombudsman Code of Ethics (Appendix A)

(2) Designation LTCO and LTCOP

- (a) Prohibiting any representative of the Office from carrying out any LTCO services unless the representative has received certification training and has been approved by the SLTCO as qualified to carry out the activity on behalf of the Office

(3) Long-term care issues advocacy

- (a) Advocating for policy, regulatory and/or legislative changes in long-term care;
- (b) Coordinating with statewide and national advocacy organizations involved in long-term care issues; and
- (c) Maintaining awareness of current issues and trends in long-term care

(4) Inter-agency coordination

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(a) Coordinating LTCO services with protection and advocacy systems, adult protective services, state agencies licensing and certifying long-term care facilities, legal assistance provided under the OAA, and other appropriate agencies

(5) Maintaining LTCO records and the LTCO reporting system

(a) Maintaining, through District LTCOP's, case records, such records are the property of the SLTCO and may not be released, disclosed, duplicated, or removed without the written permission of the SLTCO or designee

(b) Maintaining a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems and submitting such data to appropriate entities as required by the OAA; and

(c) Preparing and distributing the LTCOP annual report as required by the OAA

(6) Information and assistance

(a) Providing information and referrals regarding long-term care issues and the LTCOP to the general public, residents, local organizations, and other agencies

(7) Technical assistance

(a) Providing specialized technical assistance, consultation, training and resources to District LTCOs, provider agencies, AAAs, and DAIL related to the operation of the LTCOP

(8) Agency complaint referral

(a) Concerns from the District Ombudsman regarding the Department for Community Based Services (DCBS) investigation or resolution of a complaint may be referred to the SLTCO. The SLTCO shall address the concern with DCBS

(b) Concerns from the District Ombudsman regarding Office of Inspector General investigation or resolution of a complaint may be referred to the SLTCO. The SLTCO shall address the concern to the Inspector General or designee of the OIG

(c) Concerns of the DLTCO regarding the Office of the Attorney General shall be referred to the SLTCO. The SLTCO shall address the concern to the Attorney General or designee of the OAG

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State Ombudsman Responsibilities to Long-Term Care Residents

Reference: OAA § 712(3) (a), (d)

The SLTCO shall, personally or through representatives of the Office:

Procedures:

(1) Identify, investigate, and resolve complaints that are made by or on behalf of residents, and relating to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of the following:

- (a) Providers, or representatives of providers, of long-term care services;
- (b) Public agencies; or
- (c) Health and social service agencies

(2) Provide services to assist residents in protecting their health, safety, welfare, and rights;

(3) Inform residents about means of obtaining services provided by long-term care service providers, public agencies, or health and social service agencies or other services to assist residents in protecting their health, safety, welfare, and rights;

(4) Ensure residents have regular and timely access to LTCO services for residents and timely responses to complaints;

(5) Represent the interests of residents before governmental agencies 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 pertaining to the health, safety, welfare and rights of residents, with respect to the adequacy of long-term care facilities and services in the state;

(7) Recommend changes in such laws, regulations, policies, and actions as the Office determines appropriate;

(8) Facilitate public comment on laws, regulations, policies, and actions;

(9) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and prohibit inappropriate disclosure of the identity of any complainant or resident with respect to LTCO files or records

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(10) Promote the development of citizen organizations, to participate in the program.

(11) SLTCO, or designee, shall conduct investigations related to concerns/complaints on DLTCO, certified Ombudsman, friendly visitors, program volunteers and/or program staff.

(12) SLTCO or designee shall investigate complaints made against any representative of the LTCOP.

(13) Carry out such other activities as the Administration on Aging and/or Gateway Area Agency on Aging and Independent Living determines to be appropriate.

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State Ombudsman Responsibilities to District Ombudsman

Reference: OAA § 712(a) (3) (F)

The SLTCO shall provide to District LTCOs:

Procedures:

- (1) Certification training and ongoing training in accordance with 910 KAR 1:210 Section 8
- (2) Program management and development to enable the District LTCOP to fulfill the Program Components;
- (3) Technical assistance and supervision as needed related to complaint handling and other LTCO services;
- (4) Timely review, comment and approval of the AAA Area Plan, LTCOP section; and
- (5) Monitoring and evaluation of the statewide LTCOP

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State Ombudsman Responsibilities to the Area Agency on Aging

Reference: OAA § 712(a) (3) (F)

The SLTCO shall provide to GAAA:

Procedures:

(1) Administrative and technical assistance to assist in participating in the LTCOP, including:

- (a) Information and resources to assist the GAAA in promoting the LTCOP within its area development district;
- (b) Statewide LTCOP data and data analysis;
- (c) Assistance with monitoring the District LTCOP; and
- (d) Review of and comment on relevant sections of area plans; and

(2) Assistance with planning for temporary provision of LTCO services during transition to a new LTCO provider agency or in the absence of a certified District Ombudsman.

(3) Where the AAA serves as the LTCO provider agency, the SLTCO responsibilities to the LTCO provider agency shall also apply to the AAA.

(4) Except for client related data, provide all program, policy or regulation related information to the GAAA with instructions to forward such information in cases where the AAA contracts for LTCO services.

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State Ombudsman Responsibilities to the LTCO Provider Agency

Reference: OAA § 712(a) (3) (F)

The SLTCO, or designee of the SLTCO, shall provide to the LTCO provider agency:

Procedures:

(1) Administrative and technical assistance to assist provider agencies in participating in the LTCOP, including

(a) Information and resources to assist the LTCO provider agency in promoting the LTCOP;

(b) Statewide LTCOP data and data analysis; and

(c) Assistance with monitoring the local LTCOP

(2) Assistance with screening LTCO applicants for certification requirements, including:

(a) Providing a conflict of interest screening tool;

(b) Timely response to requests for review of applications and for minimum qualification substitutions

(3) Assistance with request for documentation regarding complaints, required data entry, participation in trainings, completion of reports, facility visits and Ombudsmanager data

(4) Assistance with arrangements for temporary provisions of LTCO services when LTCO staff of the LTCO provider agency are unavailable or the staff position is vacant.

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Area Agency on Aging Responsibilities

References: OAA §§ 306; 712(a) (4); 910 KAR Section 4 (1)

Where the AAA contracts with or serves as the LTCO provider agency, it is responsible for assuring the provision of LTCO services in its area development district.

Procedures:

The GAAA shall:

(1) Administer the contract for the District LTCOP in its area development district, including:

(a) Contracting with a LTCO provider agency which meets the relevant criteria for the local LTCOP contract;

(b) Expending an adequate level of funding as available to support a LTCO employed full-time;

(c) Annual and programmatic monitoring of the District LTCOP in order to assess adequate provision of LTCO services pursuant to the contract;

(d) Adhering to maintenance of effort requirements for the District LTCOP; and

(e) Monitoring District LTCOP attainment of its goals and objectives as stated in the District LTCOP Annual Plan, and state approved SOP

(f) Ensure that all reporting requirements established by the State are met

(2) Support the local LTCOP by:

(a) assisting in the development of resources for the operation of the District LTCOP,

(b) including financial and human resources

(c) providing opportunities for the District LTCOP and other aging and social services

(d) organizations to collaborate to promote the health, safety, welfare and rights of residents;

(c) making appropriate referrals to the local LTCOP;

(d) promoting awareness of LTCO services to consumers and the general public within the area development district;

(e) participating in District LTCOP's advisory council; and

(f) supporting the District LTCOP in system advocacy on behalf of residents

(3) Prohibit inappropriate disclosure of the identity of any complainant or resident with respect to LTCO files or records;

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(4) Provide a transition plan to minimize disruption in LTCO services to residents when the contract for the District LTCOP is terminated or not renewed;

(5) Where an AAA provides LTCO services directly, it must also fulfill the responsibilities of a LTCO provider agency.

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LTCO Provider Agency Responsibilities

Reference: OAA §§ 306: 712(a) (4), (5) (A)

The LTCO provider agency is designated by the State Ombudsman to house the local long-term care ombudsman program and to assure the provision of ombudsman services in the GADD designated by contract with the Gateway Area Agency on Aging and Independent Living or DAIL.

Procedures:

The LTCO provider agency shall:

- (1) Operate the District LTCOP in accordance with State and Federal laws, regulations and policies
- (2) Assure that the District LTCOP performs the Program Components and adheres to the state approved SOP.
- (3) Require the District Ombudsman to submit a District LTCOP Annual Plan to the GAAA, if applicable;
- (4) Provide a full-time District Ombudsman, who:
 - (a) meets the applicable minimum qualifications;
 - (b) must fulfill the duties outlined for the District Ombudsman
- (5) Provide LTCO staff in addition to the District Ombudsman if necessary in order to:
 - (a) fulfill the Program Components; and
 - (b) maintain or exceed the level of services provided in the area development district during the previous fiscal year;
- (6) Assure that District LTCOP data is provided to the Office of the State Long-Term Care Ombudsman in the format required by DAIL in a timely manner;
- (7) Prohibit inappropriate access to LTCO records located with the LTCO provider agency;
- (8) Assure LTCO attendance at certification training and all mandatory statewide LTCO trainings;
- (9) Provide professional development opportunities for LTCO staff;

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- (10) Provide staff support as needed for the operation of the LTCOP such as custodial, fiscal management, clerical, and telephone coverage;
- (11) Arrange, in consultation with the SLTCO and the GAAA, if applicable, for temporary provisions of LTCO services in the area development district when LTCO staff of the LTCO provider agency are unavailable or the staff position is vacant;
- (12) Perform each of its responsibilities in administering the District LTCOP in accordance with all applicable federal and state law, regulations and policies
- (13) Minutes from each Advisory Council meetings shall be sent to the Regional Ombudsman and GAAA.

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Conflicts of Interest

References: OAA § 712 (a) (5) (C) (ii), (f); proposed rule 45 CFR § 1327.27

The organizational placement of the Long-Term Care Ombudsman Program (LTCOP) and the individuals who carry out the duties of the Program must be free from conflicts of interest.

Procedures:

Definition of conflict of interest:

(1) A conflict of interest exists in the LTCOP when other interests intrude upon, interfere with, or threaten to negate the ability of the LTCOP to advocate without compromise on behalf of long-term care facility residents. Types of conflict of interest include:

- (a) Conflicts of loyalty – incentives, often related to financial or employment considerations, that shape ones judgment or behavior in ways that are contrary to the interest of residents;
- (b) Conflicts of commitment – goals or obligations that direct ones time and/or attention away from the interest of residents; and
- (c) Conflicts of control – limitations or restrictions that effectively foreclose ones ability to take actions to advocate for the interest of residents

Organizational Conflicts:

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

- (1) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
- (2) Provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
- (3) Operates programs with responsibilities conflicting with LTCOP responsibilities; examples of such responsibilities include developing and carrying out care plans and serving as guardian over long-term care residents;

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- (4) Has governing board members with ownership, investment or employment interest in long-term care facilities; and
- (5) Has direct involvement in the licensing or certification of a long-term care facility or long-term care services

Individual Ombudsman Conflicts:

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

- (1) Employment of an individual or a member of his/her immediate family within the previous two years by a long-term care facility in the area development district or by the owner or operator of any long-term care facility in the area development district;
- (2) Participation in the management of a long-term care facility by an individual or a member of his/her immediate family;
- (3) Ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by an individual or a member of his/her immediate family;
- (4) Involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by an individual or a member of his/her immediate family;
- (5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by an individual or a member of his/her immediate family;
- (6) Accepting any gifts or gratuities from a long-term care facility or resident or resident representative;
- (7) NOTE: A LTCO should adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.
- (8) Accepting money or any other consideration from anyone other than the LTCO provider agency or other entity designated by the Office of the State Long-Term Care Ombudsman (SLTCO) for the performance of an act in the regular course of a LTCO's duties;
- (9) Provision of services with conflicting responsibilities while serving as a LTCO, such as adult protective services; discharge planning; serving as guardian, agent under power of attorney or other surrogate decision-maker for a long-term care resident in the area development district; pre-admission screening or case management for long-term care residents; LTCO notarizing documents for residents;
- (10) Serving residents of a facility in which an immediate family member resides; or Definition of Immediate Family Member is as follows:

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Spouse, parents and grand parents, children and grand children, brothers and sisters, mother in law and father in law, brothers in law and sisters in law, daughters in law and sons in law.

Adopted and step members are included in immediate family.

(11) Participating in activities, which:

(a) negatively impact on the ability of the LTCO to serve residents, or

(b) are likely to create a perception that the LTCO's primary interest is other than as a resident advocate

Remedying Conflict:

General

(1) Where an actual or potential conflict of interest within the LTCOP has been identified, the SLTCO shall be notified. All agents of the Cabinet for Health and Family Services, GAAA, provider agencies, and LTCO's have a duty to notify the SLTCO of any actual or potential conflict of interest of which they have knowledge.

(2) The SLTCO shall determine whether appropriate actions may be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the LTCOP and where the conflict is not likely to alter the perception of the LTCOP as an independent advocate for residents.

Remedying organizational conflicts

Where organizational conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

(1) A written remedial plan shall be developed within thirty-(30) calendar days of identification of the conflict to the SLTCO.

(2) The remedial plan must identify the conflict and provide assurances, which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. Examples of such assurances could include:

(a) The LTCOP will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution.

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- (b) No agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of a LTCO.
 - (c) Governing board members of the LTCO provider agency or GAAA who have a conflict of interest:
 - (d) Must disclose the conflict to the governing board and to the SLTCO;
 - (e) May have no involvement with LTCO activities concerning the entity which is the source of the conflict; and
 - (f) Must abstain from voting on issues related to the operation of the LTCOP
 - (g) The agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the LTCO's can fulfill their duties without interference.
 - (h) A memorandum of agreement exists between the LTCOP and another program, which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs.
- (3) The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and the SLTCO. If either party cannot agree to the plan, the conflict has not been sufficiently remedied.

Remedying individual ombudsman conflicts

Where individual conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

(1) Development of a written remedial plan

- (a) Where the individual is an applicant for a position as a District LTCO, a plan shall be developed before the individual is hired for the position.
- (b) Where the individual is an applicant for certification as a LTCO volunteer, a plan shall be developed before the individual takes any actions on behalf of the LTCOP.
- (c) Where the individual is a LTCO staff or volunteer, a plan shall be developed within thirty (3) calendar days of identification of the conflict to the SLTCO.

(2) The remedial plan must identify the conflict and provide assurances, which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. An example of such an assurance could include:

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(a) Prohibiting the LTCO with a conflict of interest from serving the residents of the facility with which he/she has a conflict and arranging for another staff LTCO to serve those residents.

Where appropriate, this arrangement could be time-limited.

(b) The remedial plan must be mutually agreed upon and signed by the LTCO provider agency, the LTCO or applicant with the conflict of interest, the LTCO Coordinator, if applicable, and the SLTCO.

(3) Volunteer Ombudsmen are not permitted to serve residents in facilities with which they have a conflict of interest. The SLTCO may delegate to an District Ombudsman the authority to:

(a) consider the conflicts of interest of an individual who wishes to serve as a Certified Ombudsman or Friendly Visitor; and

(b) determine whether conflicts exist which may impede the ability of the Certified Ombudsman or Friendly Visitor to fulfill the duties of that position or may alter the perception of the LTCOP as an independent advocate for residents; if such a conflict exists, the individual cannot serve as a Certified Ombudsman and/or Friendly Visitor

Procedures to Avoid Conflicts of Interest:

Persons seeking certification as ombudsman and friendly visitors

(1) The LTCO provider agency shall screen all persons seeking certification as LTCO staff or volunteers to identify any actual or potential individual conflicts of interest. Upon request by the SLTCO, the LTCO provider agency shall submit evidence of such screen to the SLTCO. The SLTCO may periodically request the LTCO provider agency to perform a conflict of interest screen of currently certified LTCO staff or volunteers.

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

Ombudsman involvement in activities

In determining whether LTCO participation in local groups, professional associations, or other activities constitutes a conflict of interest, the following questions shall be considered:

(1) Will the LTCO benefit from LTCO involvement in this activity?

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- (2) Will the LTCO be able to represent and assert the views of long-term care residents in this activity?
- (3) Will the role of the LTCO in this activity benefit residents?
- (4) How will participating in the activity affect the public perception and the resident's perspective of the LTCOP?
- (5) Will the LTCO be in a position of participating in a decision about a resident without the resident's involvement or permission?

Failure to Identify or Remedy a Conflict of Interest:

- (1) Failure on the part of a LTCO, LTCO provider agency, to identify and report to the SLTCO a known conflict of interest shall be sufficient grounds for refusal to designate or de-designate of a LTCOP and/or certify or de-certify of a LTCO.
- (2) Existence of an unresolved conflict of interest shall be sufficient grounds for the de-designation of the LTCOP.

Failure on the part of a LTCO to identify and report to the SLTCO a known conflict of interest shall be sufficient grounds for the withdrawal of the certification of the LTCO.

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Long Term Care Ombudsman Records

Reference: OAA § 712 (d)

Records of the Long-Term Care Ombudsman Program shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and these procedures.

Procedures:

Access to Long-Term Care Ombudsman Records:

All LTCOP records are the property of the Office of the State Long-Term Care Ombudsman. The SLTCO or designee has access to all LTCOP records at all times for any purpose.

Ombudsman Access:

- (1) Each LTCO has access to records of the District LTCOP for which he or she serves.
- (2) For the purpose of providing temporary coverage for another District LTCOP, a LTCO may have access to the LTCO records of the other District LTCOP to the extent necessary to provide such coverage.

Department for Aging and Independent Living, Gateway Area Agency on Aging, and Provider Agencies:

(1) For the purposes of monitoring and supervising the LTCOP, Department for Aging and Independent Living, GAAA and/or LTCO provider agency may review records, which reflect the activities of the LTCOP, including activity reports and complaint summary reports. Department for Aging and Independent Living, GAAA, or LTCO provider agency may not review records that disclose or imply the identity of any resident or complainant.

(2) No state agency, GAAA or LTCO provider agency may require a LTCO to disclose the identity of a complainant or resident except as specifically provided by these procedures.

Response to Requests for Long-Term Care Ombudsman Records:

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(1) Where a request is made to any party for LTCO records, the SLTCO or designee shall be contacted. Records maintained by the LTCOP may not be released, disclosed, duplicated or removed to anyone who is not a LTCO staff or volunteer without the written permission of the SLTCO.

(2) The SLTCO or designee shall determine whether to disclose all or part of the records as follows:

(a) The SLTCO shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Where a resident makes the request orally, complainant, or legal representative of the resident or complainant, the request must be documented immediately and filed as a LTCO record by the LTCO to who consent was communicated in order to meet this requirement.

(b) The SLTCO shall review the request with the relevant local LTCOP to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).

(c) The SLTCO 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. Such consent must be in writing or made orally documented immediately and filed as a LTCO record by the LTCO to which consent was communicated.

(d) The SLTCO or designee shall consider the source of the request as follows:

If the request for LTCO records is Made by:	Then the SLTCO or designee shall:
--	--

A resident,	Release any records generated by the LTCO, which are directly relevant to that resident provided that the identity of other residents or complainants is redacted.
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A legal representative of a resident	Release any records generated by the LTCO which are directly relevant to that resident or legal representative, provided that: The SLTCO has no reason to believe that the release shall be in conflict with the wishes or interest of the relevant resident, and The identity of other residents or complainants is redacted.
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Another agency or program Release the records only if:
The resident has provided consent (If the resident is unable to provide consent, the resident's legal representative may provide consent.) and
The identities of residents or complainants who have not provided consent for the release of their names are not revealed.

NOTE: where federal requirements conflict with Kentucky law, the federal requirements take precedence.

A judge

Release any records directly responsive to a court order, and
Provide an explanation to the court regarding the importance of not revealing the identity of residents and complainants and/or requesting court to seal the LTCO records where the SLTCO determines that the release of records would be inconsistent with the wishes or interest of the resident.

Any other party Release the records only if:
The resident has provided consent (If the resident is unable to provide consent, the resident's legal representative may provide consent.) and
The identities of residents or complainants who have not provided consent for the release of their names are not revealed.

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Access to the Kentucky Ombudsmanager Documentation & Information System

Reference: 910 KAR 1:210 Gateway Area Agency on Aging and Independent Living, through the Office of the State Long-Term Care

Ombudsman will ensure the integrity and security of all data recorded in the Ombudsmanager Data System in a manner that maintains confidentiality of all individuals. Information in the required data system may only be recorded and accessed by those persons in possession of their own user identification and password. Access shall be limited to information pertinent to the certification level of the user. Use of Kentucky data system is limited to SLTCO, state LTCO staff, District Ombudsman and Certified LTCO.

Procedures:

- (1) Each District Ombudsman, designated Districts data entry persons, shall by the 15th of each month, complete data entry into Ombudsmanager for the previous month's cases and program activities. The Gateway Area Agency on Aging is responsible to ensure all data is entered and approved by the Commissioner of DAAL, accurately, and by the 15th of each month.
- (2) At the discretion of the SLTCO, non-representative state staff may have access to Ombudsmanager to obtain statistical, case study and other data or perform technical changes. The SLTCO shall determine access limitations within Ombudsmanager. Non-representative state staff must adhere to all confidentiality provisions of the Office of the State Long-Term Care Ombudsman Program as provided by 910 KAR 1:210 Section 9
- (3). For audit purposes, the Commissioner of the State Unit on Aging or one designated senior staff member may review but shall not alter ombudsman records or disclose the identity of residents or complainants, as provided by 910 KAR 1:210 Section 9 (3).

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Liability

References: OAA § 712(i); proposed rule 45 C.F.R. §1327.28

An Ombudsman is immune from liability for the good faith performance of his or her official duties.

Procedures:

Immunity from Liability:

A long-term care ombudsman (LTCO) shall not incur any civil or criminal liability for performing his or her official duties in good faith.

(1) Official duties are those duties of a LTCO set forth in applicable federal and state law and these policies and these procedures. They shall include, but not be limited to, making a statement or communication relevant to receiving a complaint or conducting investigative activity.

(2) Evidence of performing duties in good faith includes, but is not limited to the following:

(a) Making every reasonable effort to follow procedures set forth in applicable laws and these procedures;

(b) Seeking, and making reasonable efforts to follow, direction from the Office of the State Long-Term Care Ombudsman (SLTCO) and;

(c) Seeking, and making reasonable efforts to follow, direction from the District Ombudsman

Liability Insurance:

The Cabinet for Health and Family Services, Department for Aging and Independent Living does not provide liability insurance or indemnification for area agencies (AAA) on aging or their provider agencies. GAAA and provider agencies are expected to retain their own liability policies.

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Responsibilities of Regional Ombudsman

Reference: 910 KAR: 210 Sections 3 and 8

The regional ombudsman report directly to the State Long Term Care Ombudsman and have the following specific responsibilities.

Procedure:

- (1) Provide technical assistance within the geographic area assigned related to Ombudsmanager Data System, consultation, training and resources; including the required 24 hours of initial certification training for new DLTCO..
- (2) Receive, investigate and resolve complaints when necessary, including complaints received regarding DLTCO.
- (3) Assist with other trainings when appropriate and approved.
- (4) Attend two (2) advisory council meetings per year for each district, as approved.
- (5) Obtain copies of each district's advisory council meeting minutes.
- (6) Review monthly each district program within assigned geographic area, a sample of Ombudsmanager Data System inputted cases and program activities. Follow up with each district ombudsman for corrections. (Form below)
- (7) Review quarterly with district ombudsman for inactive and additional volunteers. Email state office with changes. (Form below)
- (8) Review quarterly with district ombudsman for changes to facilities: bed counts, closures, additions, name changes, etc. Validate facilities have been visited at least quarterly. Email state office with changes, as appropriate.
- (9) Provide information to the public about the issues of long-term care residents when appropriate.
- (10) Perform other job duties as required by the State Long-Term Care Ombudsman.
- (11) Perform yearly monitoring of District LTCOP.

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Interference and Retaliation

Reference: OAA § 712(j)

Interference and Retaliation Prohibited:

(1) No person shall willfully interfere with a long-term care ombudsman (LTCO) 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:

- (a) the objectivity of the investigation or outcome of complaints;
- (b) the LTCO's role as advocate for the rights and interests of the resident;
- (c) the LTCO's work to resolve issues related to the rights, quality of care and quality of life of residents of long-term care facilities; or
- (d) the LTCO's statutory responsibility to provide such information as DAIL and the Office of the State Long-Term Care Ombudsman 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

(2) No person shall discriminate or retaliate in any manner against any resident, or relative or guardian 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 a LTCO.

Procedures for Reporting Interference or Retaliation:

- (1) Any person who has knowledge of such interference or retaliation shall report such information to the SLTCO.
- (2) The SLTCO shall review the information provided, and conduct further investigation if necessary to confirm the occurrence of the interference or retaliation.
- (3) If the SLTCO, based on such review, determines that enforcement action is warranted, the SLTCO shall pursue the following course of action:

- (a) Where the entity which has interfered or retaliated is a long-term care facility or its staff or agents:

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1. The SLTCO shall submit a written description of such interference or retaliation to the Office of Inspector General (OIG); OIG investigates the report and if confirms the occurrence has the authority to impose penalties. Per 910 KAR 1:210 Section 13 (9)

(a) a fine of \$100 to \$500 will be imposed for each violation;

(b) Where the entity which has interfered or retaliated is an entity other than a long-term care facility or its staff or agents:

1. Such interference by an individual who is an official or employee of the Cabinet for Health and Family Services, Gateway Area Agency on Aging or a LTCO provider agency shall be deemed to be a violation of OAA § 705(a) and the SLTCO shall

2. Report such interference or retaliation to the Commissioner for the State Unit on Aging, known as the Department for Aging and Independent Living

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Responsibilities of the District Ombudsman Program

References: 910 KAR 1:210 Section 5 OAA Chapter 712, section 5 subsection B

The District Ombudsman Program shall be responsible for the following specific responsibilities:

Procedure:

- (1) Represent all long term care residents within the assigned geographical area residing in long-term care facilities;
- (2) Assure resident's rights are upheld and promote quality care in long-term care facilities;
- (3) Promote citizen involvement in order to assure regular visitations especially for those residents without available family or friends;
- (4) Investigate and work to resolve complaints on behalf of long-term care residents;
- (5) Prepare and submit reports for DAIL and the SLTCO in a format and time frame provided by the DAIL and the SLTCO;
- (6) Advise the public about the availability of current State, Local, and Federal inspection reports, statements of deficiency and plans for correction for individual long-term care facilities in the service area;
- (7) Publicize the existence and function of the local and State Long Term Care Ombudsman Program;
- (8) Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare and rights of the residents.
- (9) Organize and implement an active volunteer program;
- (10) Assist in the development of resident or family and friends councils;
- (11) Sponsor community education and training programs to long-term care facilities, human service workers, families and the general public about long-term care and residents' rights issues; and provide education to the above entities on elder abuse awareness and prevention.
- (12) Attend required training and provide on-going in-service training for staff and volunteers of local programs;
- (13) Maintain records in accordance with Federal and State laws and DAIL procedures, including procedures, to protect the identity, confidentiality and privacy of residents;
- (14) Submit all non-resident specific statistical and financial reports to the Gateway Area Agency on Aging as required.

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- (15) District Ombudsman have the right to enter a facility without prior notice, meet with one or more residents and observe the operation of the facility as it affects the resident.
- (16) Submit Advisory Council Meeting minutes to the Regional Ombudsman.
- (17) Review facility bed-count within your geographical area and submit quarterly to the Regional Ombudsman acknowledgment of review and changes to the bed-count if applicable.

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Advisory Councils

References: OAA § 712(e); 910 KAR 1:210 Section 7

The Long-Term Care Ombudsman Program may receive advice in its planning and operation from the community.

Procedure:

- (1) Each District LTCOP shall develop its own advisory council.
- 2) The DLTCOP shall design its advisory council to perform one or more of the following functions:
 - (a) Provide advice regarding the planning and operation of the District LTCOP
 - (b) Enhance community understanding of LTCOP purpose and services;
 - (c) Act as a multidisciplinary team to assist the District LTCO or SLTCO in obtaining resources to benefit long-term care facility residents;
 - (d) Develop an understanding of long-term care issues and assist the LTCOP in issues advocacy efforts; and/or
 - (e) Assist the District LTCOP or SLTCO in special projects
- (3) Composition of the advisory council
 - (a) The council shall be made up of persons with a strong interest in improving the quality of life and protecting the rights of residents in long-term care facilities.
 - (b) Group size and composition shall be individualized to the needs of the District LTCOP but shall not be less than seven.
 - (c) One third of the members shall be consumers or family members of consumers.
 - (d) Members shall not:
 1. Be responsible for certifying or licensing long term care facilities;
 2. Be a provider of long-term care services or part of an association of such providers;
 3. Have any interest or association which may impair the ability of the Ombudsman to objectively and independently investigate and resolve complaints;
 4. Gain economically or receive any compensation for a long-term care facility provider or association.

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Complaint Investigation

References: 910 KAR 1:210 Section 12; Section 13

OAA Chapter 712

The Long-Term Care Ombudsman Program shall investigate and resolve complaints made by or on behalf of residents in long-term care facilities.

Procedure:

(1) Complaint intake

(a) When the DLTCOP receives information regarding a complaint, the Ombudsman shall determine;

1. the type of complaint as presented by the complainant;
2. what attempts, if any, have been made to resolve the complaint; and
3. what outcome the complainant is seeking

(a) When an Ombudsman is the complainant;

1. An Ombudsman shall file a complaint when; the Ombudsman has personal knowledge of an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of residents and no other person has made a complaint on such action, inaction or decision

(b) The Ombudsman shall seek the permission of the SLTCO during an investigation when a resident is unable to give consent; or when a guardian or legal representative of the resident is unable or unwilling to provide consent; or the Ombudsman does not believe the guardian or legal representative is acting in the best interest of the resident.

(2) The LTCO shall seek the following information during the investigation of the complaint and document the findings in the case record:

- (a) What has occurred or is occurring;
- (b) When it occurred and whether the occurrence is on-going;
- (c) Where it occurred;
- (d) Who was involved;
- (e) Effect of the occurrence on resident(s);

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(f) Reason for occurrence; and

(g) What, if anything, the facility or other interested parties have done in response to the occurrence

(3) Timelines of investigation

Complaints with care issues

Respond within two (2) business days not to exceed three (3) calendar days

Other types of complaints

Within seven (7) calendar days

Actual or threatened transfer or discharge from a facility

Whichever occurs first:

(i) five (5) working days,

(ii) the last day of bed-hold period if resident is hospitalized), or

(iii) the last day for filing an appeal for an administrative hearing

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Complaint Resolution

Reference: 910 KAR 1:210 Section 13

The resolution status of a complaint shall be determined when any of the following occurs:

(1) The complaint has been resolved to the resident's satisfaction. If the resident cannot communicate his/her satisfaction, the ombudsman may seek resolution to the satisfaction of the resident's representative or complainant, if consistent with the rights and interests of the resident.

(2) The LTCOP has determined, after investigation, that the complaint:

(a) Can or cannot be verified; or

(b) Was not made in good faith

Note: Verification of a complaint is determined after the Ombudsman conducts interviews, record inspection, observation, etc., and finds that the circumstances described in the complaint are generally accurate.

(3) The resident or legal representative requests that LTCO activity end on the complaint.

Monitoring Complaint Resolutions:

The resolution process shall include follow-up and ongoing monitoring, as appropriate, of the situation after a reasonable period of time through contact with the complainant or resident, or otherwise where appropriate, for the purpose of determining the causes giving rise to the complaint have not been repeated, and/or have not recurred. Such follow up shall be documented.

Closing a Complaint and Case:

LTCO activity on a complaint is complete, and therefore, the complaint may be closed, when follow-up steps have indicated the need for no further action or change in the resolution of the complaint.

A case is closed when all of the complaints related to that case have been closed.

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Confidentiality

References: OAA Section 307(12) (B) (D); 910 KAR 1:210 Section 9

All investigatory files, complaints, responses to complaints and all other information related to any complaint or investigation maintained by the LTCOP shall be considered confidential information.

No person who gains access to residents' records shall discuss or disclose information in the records or disclose a resident's identity outside of the program without written consent of such resident or resident's legal representative, or upon court order.

Information or records maintained by the LTCOP shall be disclosed only at the discretion of the SLTCO. The identity or identifying information of any complainant or resident shall not be disclosed by the SLTCO except:

- (1) The resident, or legal representative consents in writing to the disclosure; or
- (2) A court orders the disclosure.

Maintaining Records:

- (1) All complaint/discharge and transfer files maintained by the program are to be in a locked file cabinet.
- (2) Computer data systems shall have secure access codes.
- (3) Computer data software shall be stored in a secured file cabinet.

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Documentation of Investigation

Regarding each complaint, the LTCO shall document, as able, the following:

(1) Complaint intake information, including

- A) Complainant name,
- B) Telephone number and/or address of complainant,
- C) Complainant role
- D) Problem as presented by complainant
- E) Date/time/shift problem occurred
- F) Prior action (if any) taken by complainant
- G) Consent to investigate
- H) Facility name
- I) Resident
- J) Legal Representative (if applicable), address, telephone number
- K) Complaint code, verification
- L) Notes/Journal entries
- M) Referrals made (if applicable)

(2) Complaint investigation shall include the following components;

- (a) Face to face contact with resident
- (b) Written consent or documented verbal consent
- (c) Collateral interviews, as needed and appropriate
- (d) Staff interviews, as needed and appropriate
- (e) Notes/journal entries
- (f) Referrals made
- (g) Disposition

Case records need to be kept for five years.

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Referrals

References: 910 KAR 1:210 Section 11
OAA § 712 (d)

The LTCOP shall, with consent from resident or legal guardian, refer reports of abuse, neglect, exploitation or spouse abuse to the Department of Community Based Services and if appropriate, Office of Inspector General. Referrals under this subsection shall not affect the continuing duty, full freedom and independence of the ombudsman.

Legal Referrals

District Ombudsman shall make referrals to county attorneys, legal aid agencies and legal assistance offices, with consent of resident or legal representative of the resident. Referrals to the Office of the Attorney General and the Cabinet for Health and Family Services Office of Counsel shall be made through the SLTCO.

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Training

References: OAA § 712 (4) (A); 910 KAR 1:210 Section 8

Ombudsman representatives of the Office including unpaid volunteers shall be provided training as follows:

Initial Certification Training for DLTCO and Certified Ombudsman:

Persons seeking certification in the Long-Term Care Ombudsman Program shall complete a minimum of twenty-four (24) hours of training in the following areas:

- (1) History and Role of the Long-Term Care Ombudsman Program
- (2) The Aging Process
- (3) Residents' Rights
- (4) The Problem-Solving Process Investigation
- (5) The Problem-Solving Process Resolution
- (6) Long-Term Care Setting Characteristics
- (7) Legal Issues
- (8) Facility visitation
- (9) Ombudsmanager Reporting System

DLTCO shall receive their training from the RLTCO. Certified Volunteers shall receive their training through the DLTCOP.

After initial training is completed, the candidate for Ombudsman shall take and pass a competency test covering the training components of the LTCOP with a minimum score of 80%.

Initial Training for Friendly Visitors:

Persons seeking to become friendly visitors shall complete a minimum of two hours classroom training. Additionally, candidates seeking to become friendly visitors shall participate in facility visitation(s) with the DLTCO, which shall include face-to-face resident conversation and interaction.

Continuing Education:

Per 910 KAR 1:210, Section 8 (4) District Ombudsman shall attend, as provided, quarterly trainings.

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Monitoring

The DAAL requires that the Long Term Care Ombudsman Program be monitored annually. Monitoring shall occur at all levels (state, regional and district).

The focus of monitoring shall be on meeting objectives submitted in the area plan and requirements in the General Administrative SOP. The Office of the SLTCO shall develop a monitoring protocol to be utilized by Department for Aging and Independent Living and the GAAA for monitoring.

When LTCO services are provided directly by the GAAA, monitoring shall be conducted by the SLTCOP under the direction of DAAL.

When the LTCO services are sub-contracted by the GAAA, the GAAA under the direction of Department for Aging and Independent Living and the SLTCOP shall conduct monitoring.