

## **CHAPTER 9**

### **LONG-TERM CARE OMBUDSMAN PROGRAM**

#### **9-1 LEGAL AUTHORITY.**

In accordance with requirements set forth in 42 U.S.C. 3058g(a)(1) A)(B), Tennessee Code Annotated 71-2-109, and Rules of Tennessee Commission on Aging and Disability Chapter 0030-1-9, the State Agency on Aging (Tennessee Commission on Aging and Disability) shall operate a statewide long-term care ombudsman program in cooperation with Area Agencies on Aging and Disability.

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

The state agency shall employ a full-time state long-term care ombudsman who will insure that activities are carried out through the Office to meet the requirements of the Older Americans Act. The Ombudsman Program includes all District Long-Term Care Ombudsman programs as designated representatives of the State Long-Term Care Ombudsman through contracts with each of the nine (9) Planning and Service Areas or districts.

#### **9-3 DEFINITIONS.**

- (1) Access: The right to enter any long-term care facility; to communicate privately and without restriction with any resident who consents to the communication; to seek consent to communicate privately and without restriction with any resident; and to inspect a resident's records under conditions set out in 42 U.S.C. 3058g(b)(1)(A-D) and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (AoA-IM-03-01, February 4, 2003).
- (2) District Long-Term Care Ombudsman: An individual recognized by the State Long-Term Care Ombudsman to represent the Tennessee Long-Term Care Ombudsman

Program and to carry out all duties of the long-term care ombudsman as specified in the Older Americans Act of 1965 Section 711, (3)(5)-712(a)(5)(A)(h)(5) and 42 USC 3058f and 42 USC 3058g(a)(5)(A)(h)(5) (A) (B).

- (3) Long-Term Care Facility: Any residential nursing facility, Assisted-Care Living Facility, Home For The Aged or Supportive Living Facility and any similar type of homes operating within the state as defined by USC 42 1396r (a) and 42 USC 1395i-3(a).
- (4) Long-Term Care Ombudsman: A person serving as a representative of the Office, either paid or volunteer, who performs official responsibilities as mandated in 42 U.S.C. 3058g (a)(5)(A)and(B).
- (5) Long-Term Care Ombudsman Staff: Person or persons, either paid or volunteer, working under the direct supervision of the State or District Long-Term Care Ombudsman, and responsible for assisting with the performance of long-term care ombudsman duties.
- (6) The Office: The Office of the State Long-Term Care Ombudsman.
- (7) PSA: Planning and Service Area.
- (8) Service Description (Ombudsman Program): The statement of required service activities for the District Long-Term Care Ombudsman program, for which each provider agency is responsible, as established by the *Tennessee Commission on Aging Guide to Contract Preparation and Reporting*, TCA-PI-95-08 As amended
- (9) State Agency: The Tennessee Commission on Aging and Disability.
- (10) Provider Agency: An agency funded through a contract with the Area Agency on Aging and Disability which provides local ombudsman services in accord with federal and state law and policies.

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

#### **9-4 ADMINISTRATIVE REQUIREMENTS.**

(1) State Agency

- (a) The State Agency shall provide for statewide delivery of quality long-term care ombudsman services through support to the State Long-Term Care Ombudsman and the district long-term care ombudsmen and shall consider the views of Area Agencies on Aging and Disability, older individuals, and long-term care ombudsman provider agencies in planning and operating the program.
- (b) The State Agency will establish appropriate access procedures for representatives of the Office. [Rules of Tennessee Commission on Aging and Disability, Chapter 0030-1-9-.02].
- (c) The State Agency will establish procedures to assure confidentiality of files maintained by the program (Section 9-8 of this Manual).
- (d) The State Agency will insure that no representative of the program or person involved in the designation of program activities is subject to a conflict of interest and that mechanisms are in place to identify and remedy any conflicts (Section 9-6 of this manual).
- (e) The State Agency will insure that adequate legal counsel and/or representation is available, without conflict of interest, to authorized representatives of the Ombudsman Program when engaged in performance of official duties of the

Office of the State Long-Term Care Ombudsman or its representatives. (See paragraph (4)(j) below.)

- (f) The State Agency, in accord with 42 U.S.C. 3058g (a) (2) and (3), shall delegate responsibilities listed in (2) below to the State Long-Term Care Ombudsman.

(2) State Long-Term Care Ombudsman

- (a) The State Long-Term Care Ombudsman shall insure that the District Long-Term Care Ombudsmen carry out responsibilities of the Long-Term Care Ombudsman Program as specified in this policy manual.
- (b) The State Long-Term Care Ombudsman shall support and maintain a designated uniform complaint documentation system for all complaints received by the State Agency and the designated district representatives of the Ombudsman Program.
- (c) The State Long-Term Care Ombudsman will provide training and technical assistance in the delivery of district ombudsman program services in cooperation with Area Agencies on Aging and Disability.
- (d) At the request of the provider agency, the State Long-Term Care Ombudsman may be involved in the selection of the district long-term care ombudsman. [OAA section 712 (a) (5) (A) and (h) and 42 USC 3058g (a) (5) (A) and (h) (5) (A) (B)].
- (e) The State Long-Term Care Ombudsman shall prepare and disseminate an annual report in accord with Administration on Aging instructions.
- (f) The state long-term care ombudsman will assume the primary responsibility in formulating and revising policies and procedures for the Ombudsman Program as needed.

- (g) The State Long-Term Care Ombudsman will arrange for required training events each year for long-term care ombudsmen employed in district ombudsman programs and insure that volunteer ombudsman representatives (VORs) are trained in their respective PSAs.
- (h) The State Long-Term Care Ombudsman will insure that district ombudsman programs are provided with relevant program instructions and information by the State Agency.
- (i) The State Long-Term Care Ombudsman will work with Area Agencies on Aging and Disability to insure that their monitoring activities are consistent with federal and state laws and regulations and meet needs apparent to the Ombudsman Program and in regard to the respective district ombudsman program.
- (j) The State Long-Term Care Ombudsman shall insure that all district ombudsman programs coordinate with agencies centrally involved in services to long-term care residents including but not limited to the Departments of Health/Health Care Facilities; Human Services/Adult Protective Services; Mental Health and Developmental Disabilities; Tennessee Bureau of Investigation; and Tennessee Protection and Advocacy, Inc. Case referrals to these agencies by the district LTCO shall be confirmed in writing to the referral agency with a copy to the State LTCO. A follow-up report from the referral agency should be requested.
- (k) The State Long-Term Care Ombudsman shall establish with the director of the state Adult Protective Services program written protocols for reporting and making referrals of complaints involving alleged abuse, neglect and/or exploitation involving vulnerable adults which ensures prompt response to those

in need while protecting confidentiality in accordance with statutory and regulatory requirements.

- (l) The State Long-Term Care Ombudsman shall establish with the director of the state Division of Health Care Facilities a mutually acceptable written procedure for district ombudsmen to provide to the Department of Health survey teams and complaint investigators a written summary of complaints received by the district ombudsman for each facility.

(3) Area Agency on Aging and Disability.

All administrative requirements must be met by each Area Agency on Aging and Disability:

- (a) The area agency shall support the long-term care ombudsman program through funding and contracting with a provider agency. [OAA sec. 712(a) (5) (B) and (C) 42 USC section 3058g (a)(5)(B)(C)].
- (b) The area agency shall enter into a contract with a provider that is capable of meeting the district long-term care ombudsman duties as specified in the OAA sec. 712 (a)(5)(B) and (C) and 42 USC section 3058g (a)(5)(B) and (C)
- (c) The area agency shall contract with a provider agency that meets the following criteria:
  - 1. Demonstrates a history of effective advocacy on behalf of older individuals receiving long-term care services;
  - 2. Demonstrates the capacity to be visible and accessible in delivering ombudsman services throughout the service area with comparable services to residents of various long-term care facility types;

3. Is committed to developing and maintaining an active cadre of volunteer ombudsman representatives (VORs) as prescribed in section 9-7(3) of this manual;
  4. Has staff with knowledge of long-term care facilities, regulations, reimbursement, and public benefits programs providing coverage of long-term care services; and
  5. Provides the most compelling assurances that this service will be delivered in accord with the standards of the State Agency.
- (d) The provider agency will agree to assume all responsibilities as cited in the contract agreement between the AAAD and the provider will allow the district long-term care ombudsman to fulfill the duties of the Ombudsman Program. Implementation of the program will be through the full-time designated district long-term care ombudsman and all long-term care ombudsman staff.
- (e) The area agency shall provide to the provider agency or applicant a copy of this chapter and require that a "Statement of Assurances for Long-Term Care Ombudsman Service Providers," be signed annually by an individual authorized to commit the provider agency, includes at a minimum the elements in the model statement of assurances provided in Attachment A of this chapter.
- (f) Each Area Agency on Aging and Disability shall share quality assurance responsibility with the State Agency to assure that the district long-term care ombudsman meets minimum standards for program quality and consistency. The area agency shall fulfill this responsibility by carrying out the following activities:

1. The area agency shall determine prior to an award of an ombudsman service contract that the provider is capable of satisfying all of the "service provider requirements" stipulated in Section 9-4-(4) and the "Statement of Assurance for Long-Term Care Ombudsman Service Providers."
2. The area agency will select a provider agency through its usual procedure and send documentation to the state agency to insure that the selected agency meets program standards.
3. The area agency shall monitor contract compliance of the provider agency including continuing compliance with the "Statement of Assurances for Long-Term Care Ombudsman Service Providers" throughout the contract period and shall conduct in accord with State Agency guidelines, an annual assessment of the provider, and more frequently if corrective actions are being followed.
4. The area agency ombudsman program monitor shall integrate recommendations of the State Agency in the annual report with its requirements of the provider in order to coordinate State and Area Agency quality assurance efforts, to eliminate area and state agency duplication of effort as possible, and to reach agreement concerning technical assistance needed by the district long-term-care ombudsman.
5. The area agency shall send written reports of all monitoring and assessment activities and findings to the State Agency within one month of the monitoring or assessment activities.

6. The area agency shall insure that the provider submits to the State Long-Term Care Ombudsman and the Area Agency on Aging and Disability a quarterly provider service report in the format and within the timeframe established by the State Agency.

(4) General Standards for Providers.

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

- (a) Agree to comply with all long-term care ombudsman mandates and policies as specified in the OAA of 1965, 712 (a)(5)(B)(C) and 42 USC 3058g(a)(5)(B)(C); Tennessee Code Annotated [T.C.A. 71-2-109] and the Tennessee Commission on Aging, *Policies and Procedures for Programs on Aging*.
- (b) Assure that the long-term care ombudsman is not required to reveal any identifying information that is protected by the Older Americans Act section 712 (d) (2); 45 CFR 1321.11 (b); and *Policies and Procedures for Programs on Aging* Section 9-8 (5)
- (c) Employ at least one full-time district long-term care ombudsman whose full-time function will be to develop and implement the long-term care ombudsman program.
- (d) The provider agency may in accordance with 42 USC 3058g (a)(5)(A) involve the State Long-Term Care Ombudsman in the selection process of filling any vacant district long-term care ombudsman position.

1. The provider agency may request input from the State Long-Term Care Ombudsman particularly to the screening of applicants for the position of district long-term care ombudsman.
  2. The provider shall submit to the State Long-Term Care Ombudsman the resume of the final candidate chosen for the vacant district long-term care ombudsman position and assure the State LTCO in a written statement that the candidate to serve as the district LTCO is free from any conflict of interest.
- (e) Assure that the district long-term care ombudsman is not restricted from performing the assigned duties as outlined in the OAA sec. 712(a)(5)(A) and (B), 42 USC 3058g(a)(5)(A) and(B)
  - (f) Assure that the State Long-Term Care Ombudsman will have access to all district long-term care ombudsman case files which include all identifying information.
  - (g) Provide adequate supervisory assistance, office space, supplies, and secretarial/clerical assistance to support the district long-term care ombudsman program.
  - (h) Develop and maintain a policies and procedures manual for program activities, describing each program component. The manual and subsequent revisions must be approved by the area agency and in concert with the State LTCO Program.
  - (i) Develop and implement a plan approved by the State Agency which provides for appropriate case-handling options in situations wherein the complainant proclaims a possible conflict of interest on the part of the ombudsman, volunteer

ombudsman representative, ombudsman staff or provider agency. (See Section 9-6.)

- (j) Develop, implement and document an active visitation schedule which shows either a bi-annual visit or incremental progress toward the goal of a quarterly visit by a representative of the district program in each long-term care facility. The district long-term care ombudsman and/or ombudsman paid staff will visit each facility at least annually.
- (k) Develop and implement a case-handling protocol which includes written confirmation to regulatory agencies of referrals made to them.
- (l) Provide each complainant with information regarding the grievance procedure of the provider agency, as well as an opportunity to evaluate and comment on services received.
- (m) Submit reports on program information and operations as required by the State Agency. (See Section 9-9 of this chapter.)
- (n) Develop a contingency plan of coverage for the district long-term care ombudsman in the event of extended personal or sick leave. Substitute ombudsman coverage may be provided by a district ombudsman assistant, if available, or by rerouting resident complaints to the State Long-Term Care Ombudsman, the TN Department of Health/Health Care Facilities or in reference to abuse complaints the referent should be directed to contact the TN Department of Human Services/Adult Protective Service.
- (o) Notify the State Agency, verbally **and** in writing, of any situation wherein there is indication of the possibility of legal action being brought against the ombudsman,

a volunteer ombudsman representative or ombudsman's staff of the provider agency in connection with the performance of their official duties.

- (p) Provide adequate travel funds to:
  - 1. Carry out an active visitation plan;
  - 2. Accomplish other needed local travel in support of program operations;
  - 3. Have representation at all training sessions sponsored by or approved by the State Agency.
- (q) Establish cooperative agreements with the (Older Americans Act) Legal Assistance Program for the Elderly for consultation and/or referral of problems with legal ramifications.
- (r) Establish and maintain contact with regional offices of the Department of Health/Health Care Facilities; Department of Mental Health and Developmental Disabilities; Department of Human Services/Adult Protective Services; district offices of the Social Security Administration and Veterans Administration; Tennessee Bureau of Investigation; Tennessee Protection and Advocacy; and/or other agencies, as indicated, so that needed coordination with those offices is accomplished and duplication of service is avoided.
- (s) Provide summary of complaints received by the ombudsman to the Department of Health survey team and complaint investigators upon notification by the team that they are in a facility for the annual survey.
- (t) Develop and implement a plan for publicizing the program periodically which assures, at a minimum, publication and widespread dissemination of posters and brochures.

- (u) Cooperate with the State Agency in maintaining current ownership information regarding long-term care facilities in the PSA.
- (v) Develop and implement a participant contribution plan approved by the State Agency which will provide each complainant with a statement regarding voluntary contributions to the district long-term care ombudsman program.

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

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

(1) District Ombudsman.

- (a) Education and Experience. A combination of educational and work experience which totals six years in the fields of social service and/or advocacy service. Demonstrated experience in services to older persons, legal services or health care is preferred. The extent to which the candidate has strengths in the following areas shall guide the selection process:

1. Ability to engage effectively in problem-solving and empower others to do so;
2. Skills in arbitration, conciliation or negotiation;
3. Experience and/or education in gerontology or aging programs;
4. Knowledge of federal and state regulations related to long-term care;
5. Written and verbal communication skills;

Ability to establish working relationships with nursing home residents and their families;

6. Experience in managing multiple activities while meeting deadlines.
7. Possession of professional skills and demeanor appropriate to the responsibilities and high standards of the program.

(b) Orientation and training:

1. New district ombudsmen. The State Long-Term Care Ombudsman will provide an orientation/training program tailored to the individual's needs that will be designed to certify that the individual has been properly trained and will include:
  - a. Agency orientation, policy and structure;
  - b. The ombudsman program;
  - c. Background of nursing homes, homes for the aged and assisted care living facilities and their residents;
  - d. Regulation of long-term care facilities;
  - e. Medicare, TennCare and Medicaid;
  - f. Policies and procedures for handling complaints;
  - g. Complaint documentation and reporting requirements;
  - h. Long-term care issues including long-term care insurance;
  - i. Other program activities and resources available to the ombudsman program.
2. The provider agency must:

- (a) Provide orientation relative to the functions of that agency as well as the function of the Area Agency on Aging and Disability.
- (b) Provide for on-going training needs in cooperation with the Area Agency and State Agency on Aging and Disability.

(2) Long-Term Care Ombudsman Staff.

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

(a) Orientation and Training.

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

(b) Supervision Responsibilities of the Provider Agency.

Staff members shall receive:

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

(3) Volunteer Ombudsmen Representatives (VORs).

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

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

needs shall be attended quarterly with make-up assignments allowable.

Monthly meetings should be offered.

- (d) Certification. Volunteer Ombudsman Representatives shall be certified in accord with minimum standards designated by the State Agency and specified in the state agency policies and procedures manual, including, but not limited to classroom training, written examination, and documentation that requirements have been met.
- (e) Supervision. Volunteer Ombudsman Representatives shall receive:
  - 1. Guidance on day-to-day job performance problems and concerns;
  - 2. Answers to questions;
  - 3. Backup and support on complaint investigation and resolution activities;
  - 4. Assistance with development of job skills; and,
  - 5. Ongoing assessment of gratification from and appropriateness for assigned duties.
- (f) Statement of Agreement. A copy of the signed agreement, in accord with current training manuals as approved by the State Agency must be on file at the State Agency prior to any complaint investigation activity by the VOR. (See Attachment C to this chapter.) Documentation must be available to substantiate that certification requirements attested to therein are met.

## **9-6 GUIDELINES FOR IDENTIFICATION AND REMOVAL OF POTENTIAL CONFLICTS OF INTEREST.**

- (1) All components and activities of the Ombudsman Program will observe the following guidelines relative to conflicts of interest by individuals designated as representatives of the ombudsman program.
  - (a) Develop and implement a plan approved by the State Agency that provides for appropriate case-handling options in situations wherein a possible conflict of interest is perceived to exist on the part of the ombudsman, ~~or~~ volunteer ombudsman representative, ombudsman staff or provider agency.
  - (b) While it is not possible to prohibit conflicts, it is possible to identify conflicts, potential conflicts, and appearance of conflicts through requirement of their disclosure at all program levels. Any disclosure or discovery by other means will be examined by the district and state ombudsman with consideration to eliminating, remedying, or ameliorating the conflict in a manner which would qualify individuals to serve in the program.
  - (c) Each district ombudsman program shall develop a screening instrument, approved by the State Long-Term Care Ombudsman, for completion by all representatives, applicants for the program, or staff member paid or volunteer. See Attachment G to this chapter of the manual for a sample of the screening instrument.
  - (d) All staff and volunteer representatives, including applicants, for service in the ombudsman program may qualify for certification if a conflict of interest is removed or remedied. Once the screen is applied, the disclosure itself serves as a consciousness-raising experience as well as a springboard for exploring remedies.
  - (e) The nature of the remedy will depend on the nature of the conflict and the level of responsibilities of the individual or entity with the conflict. The district

ombudsman may consult with the State Long-Term Care Ombudsman regarding possible remedies and final determination of the remedy to be employed.

- (f) After consultation with the State Long-Term Care Ombudsman when a remedy appears to be needed, a copy of the screen along with written assurances that the representative has no unresolved conflicts of interest and how any conflict is being remedied will be sent to the State Long-Term Care Ombudsman. Disclosures made thereafter will be reviewed for remedies in the same manner.
  - (g) Volunteer Ombudsmen Representatives (VORs) and staff will continue to execute their signed Code of Ethics and the Statement of Confidentiality. Copies of these forms are included as Attachment (B), Attachment (C), Attachment (D), and Attachment (E) to this Chapter.
- (2) Application of this policy is guided by USC Title 42, Chapter 35, Section 3058g, Paragraph (f), "Programs for Older Americans."

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

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

Required program components include:

- (1) Complaint Resolution.
  - (a) Procedures, including reasonable time-lines, for complaint receipt, investigation, documentation, resolution and follow-up, incorporating guidelines from the State

Agency, must be clearly outlined and followed. Response time-lines shall include an explanation of how complaints are prioritized.

- (b) Complaints received will include any action, inaction, or decision of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare or rights of older individuals who are residents of long-term care facilities.
- (c) Complaints may be initiated by anyone, provided assistance or intervention requested falls within the ombudsman role and respects the resident's right to self-determination.
- (d) Services shall be extended to older individuals seeking admission to long-term care facilities if their problems involve procedures or practices related to barriers to access care and/or related entitlements under federal and state laws and regulations. Services of a general nature to the non-institutionalized are precluded unless the services provided are instrumental toward preventing institutionalization. The long-term care ombudsman shall not become involved in direct provision of social services to residents.
- (e) The long-term care ombudsman may respond to complaints by long-term care facility residents under the age of sixty (60), or by those acting directly in their behalf, where such action will (a) either benefit older residents of that long-term care facility or older residents of long-term care facilities generally, or be the only viable avenue of assistance available to the complainant; and, (b) will not significantly diminish the long-term care ombudsman program's effort on behalf of older persons.

(2) Issues Identification and Activity.

- (a) The ombudsman program is responsible for identifying and influencing needed changes in policies, regulations and legislation affecting long-term care residents' quality of life and care. District Long-Term Care Ombudsmen can fulfill this responsibility by responding to and participating in Ombudsman Program issue initiatives and directives, and through identifying and addressing specific issues within their area or in a particular long-term care facility.
- (b) Where applicable, the District Long-Term Care Ombudsman may choose to receive input from a local advisory committee. The advisory committee shall include appropriate social, economic, professional, and non-professional representation. The advisory council of the Area Agency on Aging and Disability or the advisory committee of the grantee agency may serve this function.
- (c) Ombudsmen may be called on to provide expert opinion, written and/or verbal, concerning existing conditions in the long-term care system, and will prepare policy, regulatory and legislative comments and recommendations regarding needed policy, regulatory or legislative actions regarding problems. Systemic issues identified and/or worked on by the program should be reported on each quarter. For each issue, the following shall be reported: (a) the problem, (b) barriers to resolution, and (c) how the issue was resolved, or recommendations and strategies for system-wide changes needed to resolve the issue.

(3) Recruiting, Training and Supervising Volunteers.

The District Long-Term Care Ombudsman must recruit and train volunteers according to a plan approved and with training material provided by the State Long-Term Care

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

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

The district long-term care ombudsman shall work with and promote citizens' organizations and existing citizens' advocacy groups for their participation to promote the development of interest in long-term care issues. The state and district ombudsmen will serve as resource persons to these groups, educating them about issues needing their attention, and assisting them in examining strategies for impacting issues in behalf of consumers of long-term care.

(5) Public Education.

The district long-term care ombudsman will collect and maintain, and serve as a repository for, material and information relating to long-term care, including information transmitted by the State Long-Term Care Ombudsman. Information and material to be maintained for public dissemination includes but is not limited to:

- (a) Home and community based care services including assessment of need for such services;
- (b) Financing of health care, including information on Medicare, TennCare, Medicaid, and Social Security;
- (c) Facility selection, including information on how to visit a facility and what to look for;
- (d) Regulations for nursing homes, homes for the aged, and assisted care living facilities and mental health group homes, including respective residents' rights;
- (e) Problem-solving and complaint resolution options which may be pursued;
- (f) Reference to TN Department of Health website which includes facility survey reports and facility plans of correction;
- (g) Resident, family, and community councils;
- (h) Long-term care issues;
- (i) Current and pending policies, regulations, or legislation relative to long-term care;
- (j) Other relevant websites which may include, but not be limited to, [Medicare.gov/nursing home compare](http://Medicare.gov/nursing-home-compare);
- (k) State Health Insurance Program (SHIP), Senior Medicare Patrol Program (SMPP) and Health Insurance Portability and Accountability Act (HIPAA).

- (6) The District Long-Term Care Ombudsman or designated representatives will, as time permits:
- (a) Attend facility survey exit interviews in accord with federal and state laws and State Agency directives.
  - (b) Develop/distribute topical consumer information guides.
  - (c) Assist facilities with resident, family and staff training on resident rights.
  - (d) Provide assistance to resident and family councils.
  - (e) Assist community groups in locating appropriate persons to make public presentations regarding topics above and participate in presentations when the ombudsman or advocacy perspective is important.

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

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

- (2) Records shall be maintained in the Offices of the State Long-Term Care Ombudsman and of the district long-term care ombudsman as appropriate to the responsibilities of each entity.
- (3) The State Long-Term Care Ombudsman and/or the district long-term care ombudsman, respectively, shall be the designated custodian of the ombudsman program records therein. Requests for the disclosure of information, other than those ordered by a court, shall be approved or disapproved by the responsible ombudsman, consistent with paragraph (5) below. OAA sec. 712 (d)(1)(2)(A)(B)} 42 USC 3058g(d)(1)(2)(A)(B).
- (4) Except as otherwise noted, only the director or senior manager of the service provider agency in which the ombudsman program is administratively located shall have access to case files, minus the identity of the complainant and/or resident, of the ombudsman program for program oversight, monitoring or quality assurance purposes only. [45 CFR Part VI Section 1321.11 (b)]. The individual who performs the program oversight, monitoring or quality assurance must be screened for conflict of interest as specified in Section 9-6 of this chapter.
- (5) Consistent with the requirements of Title 45 Code of Federal Regulations Section 1321.51(a) and 42 USC 3058g(d)(2)(B), no record or information maintained by the State Long-Term Care Ombudsman or the District Long-Term Care Ombudsman Office which identifies a resident/complainant may be disclosed unless:
  - (a) The complainant or resident, or the resident's legal representative, has consented in writing to the disclosure of his/her identity for a time-certain, specific or general purpose and has indicated, in writing, to whom such disclosure may be made; or,

- (b) The complainant or resident or resident's representative gives oral consent. If oral consent is given, the oral consent is documented contemporaneously in writing by a representative of the District or State Long-Term Care Ombudsman Program. The written statement is placed in the resident's file. The documentation must include the date, and time of the oral consent and it must specify what information may be shared and with whom the information may be shared and the reason for the requested consent. [OAA sec. 712 (d)(2)(B)(ii)(I)(II) and 42 USC 3058g(d)(2)(B)(ii)(I)(II)]
  - (c) A court order requires the disclosure. [OAA sec. 712 (d)(2)(B)(iii) 42USC 3058g(d)(2)(B)(iii)]
- (6) Generally, only resident complaints and/or facility monitoring files will contain confidential or sensitive information. Such records must be stored in files or cabinets that are locked when not in use or in computer systems that have restricted access. Access to these files shall be restricted to the State Long-Term Care Ombudsman, District Long-Term Care Ombudsman or others that the District Ombudsman may designate. [OAA section 712(d)(1)(2)(A) and 42 USC 3058g(d)(1)(2)(A)] Designation of the individual(s) on the provider agency staff who are granted access to ombudsman program files shall be in writing and maintained on file. The records to be safeguarded include, but are not limited to:
- (a) Identity of individual residents or complainants;
  - (b) Notes of interviews with or affidavits by complainants;
  - (c) All copies of resident records;

- (d) All memoranda which are developed in the process of evaluating and resolving residents' complaints;
  - (e) All photographs, video tapes, tape recordings, or other similar materials of complainants/individuals;
  - (f) Information regarding unverified complaints about long-term care facilities; the owners, administrators, or staff of these facilities; and other professionals involved in the care-providing system;
  - (g) Investigative materials and other information, containing resident or complainant identifying data, used in drafting and organizing written or oral testimony related to development and implementation of laws, regulations, and policies affecting long-term care; and/or,
  - (h) Computer diskettes, data tapes or similar electronic media which may contain any of the above information.
- (7) The district ombudsman shall provide the State Long-Term Care Ombudsman with a written list of individuals in the provider agency designated to have access to the case files with identifying information and a list of individuals who have access to the case files without identifying information. [OAA sec. 712(d)(2)]
- (8) The district ombudsman will provide the state ombudsman with an update of this list at least annually or whenever there are staff changes. [OAA sec. 712(d)(2)]
- (9) Inactive case records shall be maintained by each ombudsman office for no less than three (3) years plus the current year of operation.
- (10) Mailing Case Records and other Confidential Information.

Copies of case records and all confidential information mailed to the Office of the State Long-Term Care Ombudsman must be double sealed. All confidential material must be placed in an envelope and sealed. This envelope should be marked, “Confidential, To be opened by State Long-Term Care Ombudsman only” or “Confidential, To be opened only by person whose name appears on front of envelope.” The sealed envelope must be enclosed within another envelope and appropriately sealed before mailing to the Office of the State Long-Term Care Ombudsman.

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

- (1) The federally-mandated National Ombudsman Reporting System (NORS) and/or the Tennessee statewide uniform reporting system which documents the receipt of, collects, and analyzes information on complaints and conditions in long-term care facilities in the state and reports on other activities of the statewide ombudsman program shall be implemented by the Office of the State Long-Term Care Ombudsman and the District Long-Term Care Ombudsman programs.
- (2) The same documentation and reporting system shall be utilized by all District Long-Term Care Ombudsmen. The District Long-Term Care Ombudsman shall:
  - (a) Input local program information using computer software approved by the State Agency;
  - (b) Collect and report aggregate information about program activities to the State Agency as required, but no less than quarterly. Reports must be received in the State Office by the twentieth (20th) day following the end of the quarter; and,
  - (c) Gather and report other information as requested by the State Office.

- (3) The documentation system required of the District Long-Term Care Ombudsman shall include information detailing the problem investigation and resolution process, whether and which problems are referred, whether a satisfactory resolution was accomplished, and the findings upon follow-up of complaints or referrals to other agencies/organizations.
- (2) The documentation and reporting system shall provide for the collection, aggregation, and analysis of long-term care ombudsman program data and shall include all reporting requirements as specified in current ombudsman program directives from the Administration on Aging.







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

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

1. Participate in efforts to maintain and promote the integrity and credibility of the long-term care ombudsman program.
2. Recognize the boundaries of my own level of training and skills and consult with the district ombudsman when needed.
3. Maintain competence in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
4. Provide services with respect for human dignity and the individuality of the resident unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choices.

5. Respect and promote the resident's right to self-determination, making every reasonable effort to ascertain and act in accordance with the resident's wishes.
6. Assure that the residents' rights as reflected in federal and state laws and regulations are known by and applied to the residents for whose protection they were written.
7. Continually safeguard the confidentiality of residents and not divulge any information obtained in the course of ombudsman activity without proper consent from the resident, unless an immediate life-threatening situation overrides this discretion.
8. Act in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect to the policies of the sponsoring organization.
9. Participate in efforts to promote a quality long-term care system.

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

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

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

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

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

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

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

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

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

\_\_\_\_\_

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

**This VOR was \_\_\_\_ certified/ \_\_\_\_ re-certified on \_\_\_\_\_.**

(check one)

(date)

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

Volunteer Ombudsman Representative (VOR)

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

District Long-Term Care Ombudsman











