



Ombudsman Program

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KENTUCKY LONG-TERM CARE OMBUDSMAN PROGRAM

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KENTUCKY LONG-TERM CARE OMBUDSMAN PROGRAM

RELATES TO: KRS 216.535, 216.540-543, 209.030(5), 205.201, 42 USC 3001 et seq., 910 KAR 1:210.

STATUTORY AUTHORITY: KRS 194A.050, 205.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of older individuals. KRS 194A.050 authorizes the Cabinet for Health and Family Services to adopt regulations as necessary to implement programs mandated by federal law. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky. The function of this administrative regulation is to implement a statewide Long-term Care Ombudsman Program as required by federal law, and in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation contains the substance of 905 KAR 8:070 which is repealed.

INTRODUCTION

The Long-term Care Ombudsman is the voice for residents of long-term care, in personal care, in family care homes, in assisted living facilities and their families. When “long-term care” or a “facility” is referenced in these policies and procedures, it generally refers to all the listed entities.

The work of the Long-term Care Ombudsman can bring about a better quality of life for the residents through knowledge of residents’ rights and raising awareness in the community. Long-term Care Ombudsman staff and volunteers are trained and certified as advocates and friendly visitors for all residents of long-term care facilities in the KIPDA region. The Ombudsmen identify, investigate and work to resolve complaints and problems of these residents through advocacy, information and assistance, and education. Elder abuse trainings are provided to educate and inform on the signs and symptoms of elder abuse and its prevention.

POLICY: At the time of this writing, KIPDA (AAAIL) contracts with Catholic Charities to provide Ombudsman services in its region.

PROCEDURES:

- KIPDA, Catholic Charities, and any other involved entities and individuals should reference contracts, DAIL’s SOPs, regulations, and any other relevant guiding documents in addition to these policies and procedures when making determinations on how to complete the requirements of this program.

DEFINITIONS

- 1) **Access** - the right to enter a long-term care facility, meet with the residents and review the records of a resident.
- 2) **Administrator** - any person charged with the general administration or supervision of a long-term care facility without regard to whether the person has an ownership interest in the facility or to whether the person's functions and duties are shared with one (1) or more other persons.
- 3) **Certification** - the official notification by the Kentucky long-term care ombudsman that local long-term care ombudsman individual staff are qualified and acceptable to function in that capacity.
- 4) **Certified Ombudsman** - a person who has received formal training from state approved curriculum regarding the Ombudsman program and has received certification by the Kentucky Long-Term Care Ombudsman.
- 5) **Complaint** - an allegation filed by residents or on behalf of residents relating to the health, safety, welfare and rights of a resident.
- 6) **Complaint resolution** - either corrective action taken in regard to an allegation or a determination as to the validity of the allegation.
- 7) **Complaint verification** - a determination through investigative means that allegations relating to the health, safety, welfare and rights of a patient are valid.
- 8) **Designation** - formal notification by the long-term care ombudsman that a district program meets requirements and shall be considered a subdivision of the state office.
- 9) **Disaster** - is but not limited to, floods, tornadoes, earthquakes, droughts, extreme heat/cold, fires, chemical spill, power outages in excess of 10 hours, ice storm, severe thunderstorms, wind, or hail storms, contaminated water, pandemic flu, nuclear war, radioactive waste leaks, snow storm, public health emergency, terrorist attacks, accidents, or explosions which result in a halt or temporary discontinuation of services.
- 10) **District Long-Term Care Ombudsman** - District Long-Term Care Ombudsman or "DLTCO" means the individual certified by the Kentucky Long-Term Care Ombudsman to implement the Ombudsman provisions of the approved contract agency as defined in 910 KAR 1:210 Section 1 (10).
- 11) **Evaluation** - periodic analysis and review conducted by the long-term care ombudsman of district, regional and state ombudsman programs, including quality assurance and outcome measures pertaining to individual and programmatic performance.
- 12) **Facility** – is a Personal Care Home, Family Care Home, Nursing Home, Skilled Nursing Home, Intermediate Care Facility (ICFMR) and assisted living facilities were added in 2023.
- 13) **Friendly Visitor** - is a volunteer of the LTCOP that completes training from a state approved curriculum of a minimum of 2 hours of classroom training and participates in facility visitation(s) with the DLTCO, which shall include face-to-face resident conversation and interaction. Friendly visitors only provide visitation to residents in long-term care facilities.

- 14) **Investigation** - the formal response by a long-term care ombudsman to complaints of issues involving the health, safety, welfare and rights of a resident.
- 15) **Kentucky long-term care ombudsman** - the individual charged with the administration of the Kentucky Long-term Care Ombudsman Program under the provisions of the Older Americans Act of 1965, as amended.
- 16) **Local Coordinating Council on Elder Abuse (LCCEA)** - These meetings are formed under the joint leadership of the Area Agencies on Aging and the local Adult Protective Services staff to develop and to build a community wide system of elder abuse prevention and intervention, identify, coordinate roles, and services of local agencies, monitor, evaluate and promote services, and serve as a clearinghouse for information on elder issues.
- 17) **Monitoring** - periodic review conducted by the Department of Aging and Independent Living (DAIL) and the Area Agency on Aging and Independent Living (AAAIL) measuring ombudsman program's adherence to approved plans, including analysis of non-client specific data relating to program performance.
- 18) **Primary client group** - residents of long-term care facilities and those persons making application for admission to long-term care facilities and their families.
- 19) **Referral** - the appropriate channeling of information to affect a desired outcome of a complaint.
- 20) **Regional long-term care ombudsman** - Ombudsman who operate directly from the Kentucky Long-term Care Ombudsman Program and whose responsibilities include coordination of a multi-area development district area.
- 21) **Unduplicated client** - counting each individual served by the ombudsman program one (1) time within each fiscal year.
- 22) **Title VII Elder Abuse** - means a program to provide public education and awareness for the prevention of elder abuse, pursuant to the OAA.
- 23) **Title VII Ombudsman** - means a program which provides services to assist residents in protecting the health, safety, welfare, and rights of Kentuckians residing in long-term care facilities pursuant to the OAA
- 24) **Unit of service** – A unit of service is one-half (1/2) hour of staff time, paid or volunteer, provided to or on behalf of a client or a group of clients.
- 25) **Volunteer ombudsman** - a non-salaried individual serving within a district program to assist a district ombudsman.

RESPONSIBILITIES OF KENTUCKY LONG-TERM CARE OMBUDSMAN PROGRAM

- A. Policy:** The Kentucky Long-term Care Ombudsman Program shall be administered by a full time Ombudsman who shall be assigned to the Cabinet for Health and Family Services, Department for Aging and Independent Living (DAIL). Responsibilities of the Kentucky Long-term Care Ombudsman Program are outlined as follows:

Procedures:

1. Design, implementation and management of a statewide uniform system for receiving, investigating, resolving and reporting complaints on behalf of residents in long-term care facilities and provide ongoing support to assist in the resolution of those complaints;
2. Investigation of complaints made by or on behalf of residents in long-term care facilities from areas of the state temporarily without local ombudsman programs;
3. Development and implementation of policies and procedures for operation of the program, including those related to:
 4. Receipt, investigation and resolution of complaints;
 5. Protecting confidentiality of records and identity of complainants;
 6. Establishing the right of public access to information regarding conditions in long-term care facilities; and
 7. Securing ombudsman access to long-term care facilities, assisted living facilities, residents and residents' personal and medical records;
8. Development and management of a system for the operation of a statewide network of district programs, including:
 - a. Designation of district programs;
 - b. Development of district program operating procedures and reporting requirements; and
 - c. Establishment of a communications link between the state and district programs;
9. Establishment and maintenance of program official files and adoption of procedures to protect the confidentiality of those files;
10. Provision of information and education regarding program activities, the long-term care system and the rights and concerns of residents and potential residents of long-term care facilities;
11. Provision of assistance to citizen organizations, consumer groups and other interested community organizations to enhance the rights of residents in long-term care facilities;
12. Promotion of the development of citizen organizations at the state and local level to participate in the program;
13. Use of publicity and outreach efforts directed at long-term care residents and families, network staff and the general public about the availability of the program to receive and investigate complaints;
14. Review of complaint, case and issue data submitted by the district programs and analysis for trends, pattern and issue identification;
15. Annual report to the state licensing and certifying agency, the Governor, the federal Administration on Aging and the public, including:
 - a. Operation of the Kentucky Long-term Care Ombudsman Program;
 - b. Status of complaints and resolutions;
 - c. Conditions in long-term care facilities;
 - d. Serious issues of widespread concern; and
 - e. Proposals for corrective action at relevant levels of government.
16. Preparation of progress reports and other required program reports;

17. Assistance to the area agencies on aging and independent Living and district programs to establish, develop and coordinate ombudsman activities;
18. Development of agreements and working relationships with relevant agencies to encourage their cooperation and assistance with the program at the state and local levels;
19. Development, in cooperation with the legal services developer, of agreements and working relationships with legal services programs, particularly those funded by the Older Americans Act of 1965, as amended;
20. Development and provision of training on an ongoing basis for state and local program staff and volunteers;
21. Identification and development of additional funding and staffing resources for the program;
22. Support and promotion of the formation of resident councils in long-term care facilities;
23. Development and provision of testimony and comment on proposed legislation, regulations, policies and rule changes affecting the institutionalized elderly;
24. Conduction of other activities related to the protection and dignity of residents of long-term care facilities; and
25. Performance of other activities required by the Commissioner on Aging, federal Administration on Aging.

RESPONSIBILITIES OF THE REGIONAL OMBUDSMAN

- A. Policy:** The regional ombudsman shall be a full-time staff member of and report directly to the Kentucky long-term care ombudsman and shall have the following responsibilities:

Procedures:

1. Receive, investigate and resolve complaints;
2. Provide technical assistance and coordination of district programs within the geographic area assigned related to Ombudsmanager Data System, consultation, training, and resources; including the required twenty-four (24) hours of initial training for new DLTCO.
3. Assist in training of volunteers and local program personnel;
4. Perform yearly monitoring for District LTCOP.
5. Validate facilities have been visited at least quarterly.
6. Review quarterly each district program with assigned geographic area.
7. Provide information to public agencies regarding problems of long-term care residents;
8. Abide by established procedures related to reporting and confidentiality;
9. Perform other job duties as required by the Kentucky long-term care ombudsman.

RESPONSIBILITIES OF THE DISTRICT OMBUDSMAN PROGRAM

A. Policy: Responsibilities of the district ombudsman program are outlined as follows:

Procedures:

1. Staff and volunteers will provide services under the supervision of qualified personnel.
 - a. There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff;
 - b. There shall be designated staff who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service;
 - c. There shall be designated staff who are trained in issues that are time specific (i.e. economic stimulus package, DTV, etc.);
 - d. Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills;
 - e. New staff shall receive an orientation and shall be trained prior to assuming responsibilities;
 - f. The KIPDA District LTCO shall document accurately the number of training sessions completed for new Certified Ombudsman/Volunteers. The documentation shall show that 100% of certification training provided meets the minimum requirement of twenty-four (24) hours of certified training. The documentation shall be completed in Ombudsmanager.
 - g. The KIPDA District program will provide continuing education training to Certified Ombudsman and Volunteers to ensure staff and volunteers are aware of ongoing developments and skills needed to maintain health, safety, welfare, and rights of residents. This excludes certification training.
 - i. The continuing education will consist of a minimum of four (4) hours and may coincide with advisory council meetings. All continuing education provisions shall be documented in Ombudsmanager.
 - h. Staff shall attend required training and provide in-service training for staff and volunteers of local programs;
 - i. Staff shall not accept personal gifts or money from participants or vendors; and
 - j. Staff shall not, without prior approval of the supervisor, pay bills or cash checks for clients or participants.
2. Assure services are accessible to older persons by telephone, correspondence or person-to-person contact;
3. Represent residents residing in long-term care facilities within the assigned geographical areas and provide assistance to residents on issues that may be time specific;
4. Assure residents' rights are upheld and promote quality care in long-term care facilities;
5. Investigate and work to resolve complaints on behalf of long-term care residents;

6. Assure that the resolution rate for the KIPDA District program is at 70% or higher. If the program is not at 70% the District Long-term Care Ombudsman shall submit a plan to increase the resolution rate.
7. Assure that a Certified Ombudsman attend at least one nursing facility resident council meeting per month. This may coincide with a routine visit.
8. Assure that Certified Ombudsman shall provide attendance at least one resident council meeting annually for each nursing home in the KIPDA District.
9. The KIPDA District program will complete annual system advocacy by:
 - a. Raising public awareness, and
 - b. Providing education regarding issues affecting long-term care residents.
 - c. This advocacy and education will include work on policy and legislative issues.
10. Promote community involvement in the program by:
 - a. Publicizing the existence and function of the local and state programs;
 - b. Advising 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;
 - c. Organizing and implementing an active volunteer program;
 - d. Assisting in the development of resident or family and friends' councils;
 - e. Sponsoring community education and training programs for long-term care facilities, human service workers, families and the general public about long-term care and residents' rights; and
 - f. Promoting citizen involvement in order to ensure regular visitations especially for those residents without available family or friends.
11. Implement accurate record keeping procedures to assure:
 - a. An accurate record shall be maintained on each participant which documents:
 - i. Participant identification data,
 - ii. Requests for service,
 - iii. Eligibility for services provided, and
 - iv. Follow-up;
 - b. Reports for the Kentucky long-term care ombudsman are prepared and submitted in a format and time frame as directed;
 - c. Follow specific procedures to protect the identity, confidentiality and privacy of clients;
 - d. The KIPDA District program shall only disclose allegations of abuse, neglect or exploitation with the consent of the person, or of her/his legal representative, the State Long-term Care Ombudsman or designee, per § 1321.51 Confidentiality and disclosure of information.
 - e. Non-client-specific statistical and financial data is submitted to the KIPDA AAAIL as required.
12. Provide/share copies of all communications with the Kentucky long-term care ombudsman to KIPDA AAAIL.
13. Maintain the Institute of Medicine (IOM) recommended staffing ratio of one (1) ombudsman for every 2000 care beds.

RESPONSIBILITIES OF THE VOLUNTEER OMBUDSMAN

A. Policy: Responsibilities of the volunteer ombudsman are outlined as follows:

Procedures:

1. Complete required training, including training and certification requirements for those involved in complaint investigation;
2. Provide regular visitation of residents in nursing homes;
3. Adhere to guidelines provided by state and district Ombudsman; and
4. Complete required paperwork.

DESIGNATION OF DISTRICT PROGRAMS

A. Policy: The KIPDA AAAIL area plan shall contain an ombudsman portion which shall serve as the application for designation of a district ombudsman. Information contained shall include:

Procedures:

1. Personnel for the program are defined as follows:
 - a. Program supervisor;
 - b. Area Development District monitor;
 - c. Ombudsman advisory council;
 - d. District ombudsman; and
 - e. Volunteer ombudsman.
2. Name of agency to conduct the program;
3. Ability to receive, investigate and resolve complaints on behalf of long-term care residents;
4. Maintenance of a complaint documentation system;
5. Ability to monitor the development and implementation of laws, policies and regulations which apply to residential long-term care;
6. Ability to recruit and provide standardized training for volunteers;
7. Ability to respond in a timely fashion to requests from the Kentucky Long-term Care Ombudsman Program for statistical data and other information;
8. Ability to receive training and continuing education from the Kentucky Long-term Care Ombudsman Program;
9. Ability to assure confidentiality of files;
10. Ability to inform and educate residents, sponsors, organizations, the long-term care industry and the general public relative to issues affecting the long-term care system, the ombudsman program, and resident rights and concerns;
11. Provision that no individual involved in the appointment of a subdivision of the office and that no officer, employee or other representative of the office is subject to a conflict of interest;

12. Provision that representatives of the Kentucky Long-term Care Ombudsman Program shall not be liable under state law for the good faith performance of official duties; and
13. Those providers covering multi-counties need to have a toll-free telephone number.

B. Policy: Responsibilities of the Kentucky Long-term Care Ombudsman Program for the designation of district programs may include the following:

Procedures:

1. Review applications for designation by area agencies on aging and independent living contained in their area plans for operating programs either directly or under subcontract;
2. Review applications for designation received independently of the area agency if independently operated ombudsman services are indicated in the area plan; and
3. Provide written confirmation of the designation.

C. Policy: Designated Ombudsman shall be representatives of the Kentucky Long-term Care Ombudsman Program.

Procedures: Rights and privileges of the office shall be accorded to the designated Ombudsman.

OMBUDSMAN ADVISORY COUNCIL

A. Policy: District Long-Term Care Ombudsman (DLTCO) programs shall establish and maintain a local advisory council to advise in the planning and operation of the program to meet the needs of the service area.

Procedures:

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 DLTCO Program
 - b. Enhance community understanding of Long-Term Care Ombudsman Program (LTCOP) purpose and services;
 - c. Act as a multidisciplinary team to assist the DLTCO or Kentucky Long-term Care Ombudsman (KLTCO) 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 DLTCOP or KLTCO 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. The DLTCO and the Director of the Area Agency on Aging and Independent Living (AAAIL) shall ensure that all volunteers and Advisory Council members receive a criminal background check and receive a background check utilizing the Nurse Aide Registry, if appropriate.
 - b. Group size and composition shall be individualized to the needs of the DLTCOP but shall not be less than seven.
 - c. One third of the members shall be consumers or family members of consumers.
4. Members shall not:
- a. Be responsible for certifying or licensing long term care facilities;
 - b. Be a provider of long-term care services or part of an association of such providers;
 - c. Be an immediate family member of the DLTCO (see SOP 16.15 for definition of immediate family member);
 - d. Gain economically or receive any compensation for a long-term care facility provider or association.

TRAINING

- A. Policy:** All Ombudsman representatives paid, and volunteer shall be provided training to ensure knowledge of program requirements and how to address situations.

Procedures:

1. DLTCO shall receive their training from the Regional LTCO. Certified Volunteers shall receive their training through the DLTCO.
2. 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%.
3. Initial Training for Friendly Visitors shall consist of:
 - a. Minimum of two (2) hours classroom training
 - b. Participation in facility visitation with the DLTCO which shall include a face to face conversation and interaction.
4. The District Long-term Care Ombudsman shall receive a minimum of twenty-four (24) hours of training, including at least the following areas:
 - a. History and Role of the LTCOP
 - b. The Aging Process
 - c. Residents Rights
 - d. The Problem-Solving Process Investigation
 - e. The Problem-Solving Process Resolution
 - f. Long-term Care Setting Characteristics
 - g. Legal Issues
 - h. Facility Visitation
 - i. Ombudsmanager Reporting System

- j. Volunteers & Friendly Visitors
- 5. Continuing Education: Per 910 KAR 1:210, Section 8 (4) Ombudsman shall attend quarterly trainings, as provided.

CONFIDENTIALITY

- A. Policy:** Confidentiality, Investigator files, complaints, responses to complaints and other information related to complaints or investigations maintained by the ombudsman program shall be considered confidential information in accordance with the Older Americans Act, Section 307(12)(B) and (D). Confidentiality shall be maintained as follows:

Procedures:

1. No persons who gain access to residents' records shall not discuss or disclose information in the records or disclose a resident's identity outside of the program without:
 - a. Written consent of the resident or complainant; or
 - b. A court order to disclose.
2. The KIPDA District program shall only disclose allegations of abuse, neglect or exploitation with the consent of the person, or of her/his legal representative, the State Long-term Care Ombudsman or designee, per § 1321.51 Confidentiality and disclosure of information.
3. Information shall be secured as follows:
 - a. Complaint files shall be contained in a locked file cabinet;
 - b. Computerized systems shall have secured access codes; and
 - c. Computer software containing confidential information shall be stored in a locked file.
4. The confidentiality and disclosure criteria shall not preclude the ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study and other data, if the ombudsman does not disclose the identity of persons otherwise protected in this section.

RIGHTS OF ACCESS

- A. Policy:** Kentucky, regional and district Ombudsman shall have unrestricted access to long-term care facilities without prior notice.

Procedures:

1. To meet with one (1) or more residents; and
2. To observe the operation of the facility as it affects the patient.

- B. Policy:** Volunteer Ombudsman shall have access during normal visiting hours to long-term care facilities.

Procedures: Access shall be available in the following areas:

1. Residents' dining area;
2. Residents' living area;
3. Residents' recreational area;
4. Lounges; and
5. Areas open to the general public.

C. Policy: Representatives of the Kentucky Long-term Care Ombudsman Program shall have access to a resident's medical and social records.

Procedures:

1. Access shall be permitted:
 - a. With permission of the resident or his legal guardian, except as provided for under KRS 209.030(5); or
 - b. By court order.
2. Access shall not include the right to examine the financial records of the facility without the consent of the administrator.

D. Policy: If the ombudsman is denied entry to a long-term care facility, the administrator or operator shall be informed of the statutory authority for access.

Procedures:

1. If entry is still denied, the ombudsman shall inform the Kentucky long-term care ombudsman, the Division of Licensing and Regulation, and secure assistance from local law enforcement officials.

E. Policy: Willful interference, as governed by KRS 216.535(7), with representatives of the Kentucky Long-term Care Ombudsman Program in the performance of official duties shall be unlawful.

Procedures:

1. Result in a fine of \$100 to \$500 for each violation;
2. Each day the violation continues shall constitute a separate offense.

REFERRALS

A. Policy: The Kentucky long-term care ombudsman shall refer reports of abuse, neglect, exploitation or spouse abuse to the Department for Community Based Services and, if appropriate, Licensing and Regulation for investigation.

Procedures:

1. Referrals under this subsection shall not affect the continuing duty, full freedom and independence of the ombudsman to:

- a. Ensure the continued adequacy and responsiveness of complaint investigation and resolution, monitoring and data collection systems consistent with the Older Americans Act;
 - b. Maintain an independent capacity to investigate and resolve complaints, as governed by Section 13 of the administrative regulation;
 - c. Receive and process, on a regular basis, information related to the number, type and source of complaints, facilities involved, and the manner of complaint resolution; and
 - d. Maintain by specific agreement the power, ability and right to monitor the agency's complaint processing performance and take action necessary to correct and improve deficiencies.
2. District Ombudsman shall address concerns regarding the investigation or resolution of complaints referred under subsection (A.1) of this section to the Kentucky long-term care ombudsman.
 3. District Ombudsman shall make referrals to county attorneys, legal aid agencies and legal assistance offices. Referrals to the Office of the Attorney General and the Cabinet for Health and Family Services' Office of Counsel shall be made through the Kentucky long-term care ombudsman.

RECEIVING REPORTS

- A. Policy:** The Kentucky long-term care ombudsman, regional Ombudsman, district Ombudsman and persons identified and approved by these Ombudsman shall have the authority to provide intake of a complaint.

Procedures:

1. The person receiving a report shall obtain as much information as possible, making a reasonable effort to obtain the:
 - a. Name and location of the long-term care facility involved;
 - b. Name and location of the resident;
 - c. Name, address and telephone number of the person responsible for the resident;
 - d. Nature of the complaint as specifically as possible;
 - e. Name and location of alleged perpetrator; and
 - f. Identity of the reporting source. Reports may be made anonymously.
2. The person receiving the report may contact other agencies or individuals to secure additional information relevant to the investigation.

COMPLAINT INVESTIGATION

- A. Policy:** The Long-Term Care Ombudsman Program shall investigate and resolve complaints made by or on behalf of the residents in long-term care facilities regardless of the source of the complaint. The Certified Ombudsman shall support resident participation in the process of resolving complaints.

Procedures:

1. The Certified Ombudsman shall seek privacy for the purpose of confidentiality for the resident when providing information, investigating, and resolving complaints.
2. The Certified Ombudsman or representative of the Office shall personally discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:
 - a. Determine the perspective of the resident (or resident representative, where applicable) of the complaint.
 - b. Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint.
 - c. Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether the ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies.
 - d. Advise the resident (and resident representative, where applicable) of the resident's rights.
 - e. Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint.
 - f. Request the resident (or resident representative, where applicable) to communicate consent in order to access the medical, social and other records relating to a resident, if:
 - i. The resident or resident representative communicates informed consent to the access and the consent is given in writing or using auxiliary aids and services; or
 - ii. The resident or resident representative communicates informed consent orally, visually, or with auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures.
 - g. Investigate the complaint to determine whether the complaint can be verified.
 - h. The LTCO shall seek the following information during the investigation of the complaint and document the findings in the case record:
 - i. What has occurred or is occurring;
 - ii. When it occurred and whether the occurrence is on-going;
 - iii. Where it occurred;
 - iv. Who was involved;
 - v. Effect of the occurrence on resident(s);
 - vi. Reason for occurrence; and
 - vii. What, if anything, the facility or other interested parties have done in response to the occurrence
 - i. Timelines of investigation
 - i. Complaints with care issues will be responded to within two (2) business days not to exceed three (3) calendar days.

- ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a resident has no evidence indicating that the resident would not wish a referral to be made, and the ombudsman has reasonable cause to believe that disclosure would be in the best interest of the resident
- iv. Promptly notify the KLTCO of any disclosure of resident identifying information.
 - c. Where the resident is unable to communicate consent and has a resident representative, the ombudsman shall contact the resident representative for consent. If the ombudsman personally witnesses suspected abuse, gross neglect or exploitation of the resident, they shall follow the direction of the resident representative to obtain consent unless the representative is not acting in the best interest of the resident.
 - i. In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the KLTCO or representative shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.
 - ii. The ombudsman shall seek the permission of the KLTCO during an investigation when a resident is unable to give consent and the resident representative is not acting in the best interest of the resident. The KLTCO or designee shall respond to the ombudsman within two (2) business days not to exceed three (3) calendar days.
 - 6. 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 KLTCO.
 - 7. Health Insurance Portability and Accountability Act Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

B. Policy: Long-term Care Ombudsman shall investigate and resolve complaints.

Procedures:

- 1. Made by or on behalf of elderly individuals who are residents of long-term care facilities relating to action which may adversely affect the health, safety, welfare and rights of the resident;

2. Made by or on behalf of non-elderly long-term care facility residents if actions will:
 - a. Benefit elderly residents of that long-term care facility or elderly residents of long-term care facilities generally; or
 - b. Be the only viable avenue of assistance available to the resident; and
 - c. Not significantly diminish the Long-term Care Ombudsman Program's efforts on behalf of elderly persons.

C. Policy: District and volunteer Ombudsman shall not investigate complaints unless the Ombudsman are certified by the Kentucky Long-term Care Ombudsman Program.

Procedures:

1. Certification shall be extended after completion of minimum training requirements and attendance at an ombudsman competency conference conducted by the Kentucky Long-term Care Ombudsman Program or, in the case of volunteer Ombudsman, by the district Long-term Care Ombudsman Program.

D. Policy: The Kentucky and Regional Ombudsman shall inform the District Ombudsman of on-site investigations conducted in their districts.

Procedures:

The investigation shall be conducted according to the following criteria:

1. Investigation may include contact with the resident, staff of the long-term care facility and collateral contacts.
2. Representatives of the program shall, upon entering the facility, promptly notify the administrator or his designated representative of their presence.
3. Representatives of the program shall not enter the living area of residents without identifying themselves to the resident.

E. Policy: The investigating ombudsman shall take immediate steps to resolve a substantiated complaint. The ombudsman shall consider the resident's choice of remedy. Reasonable avenues of assistance to the complainant, directly or by referral, shall be addressed, and if efforts are unsuccessful, the ombudsman shall so advise the complainant and provide information explaining how to proceed independently.

Procedures:

Resolution may include:

1. Persuading or negotiating at nursing home administrative level to change particular nursing home behavior, pattern or practice affecting the resident;
2. Consulting with a resident, relative or nursing home staff member to resolve a problem;
3. Effecting positive enforcement action by a regulatory agency;
4. Proposing regulatory or statutory changes or additions;

5. Communicating with community groups and professional organizations; and
6. Encouraging the utilization of legal services assistance by the complainant.

F. Policy: Written documentation shall be completed on complaint investigations and incorporated into the ombudsman files.

Procedures:

1. The DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be completed at the conclusion of the investigation; and
2. A narrative documentation of the investigation shall include:
 - i. Identity of the resident on whom the report is made;
 - ii. Identity of the long-term care facility;
 - iii. Complaint;
 - iv. Identity of persons interviewed, and records or documents reviewed during the course of the investigation;
 - v. Factual information used to support findings and conclusions; and
 - vi. Actions taken and services provided.

G. Policy: Resolution shall include documented follow-up and ongoing monitoring of the situation for a reasonable period of time.

Procedures:

Resolution shall occur:

1. Through contact with the complainant or resident, or otherwise if appropriate;
2. For the purpose of determining the causes giving rise to the complaint have not been repeated and have not recurred.

H. Policy: Retaliation and reprisals by a long-term care facility or other entity against an employee or resident for having filed a complaint or having provided information to the Kentucky Long-term Care Ombudsman Program shall be unlawful.

Procedures:

1. Shall result in a fine of \$100 to \$500 for each violation; and
2. Each day a violation continues shall constitute a separate offense.

DOCUMENTATION OF INVESTIGATION

A. Policy: The documentation of investigation conducted at long-term care facilities is vital to track trends, identify problems at specific facilities and to provide knowledge of facilities that are in need of additional Long-term Care Ombudsman visits to work toward resolution of issues.

Procedures:

1. Each complaint, have the following information documented:
 - 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
 3. Case records shall be kept for five (5) years.

REPORTING REQUIREMENTS

A. Policy: The Kentucky Long-Term Care Ombudsman Program and the district long-term care ombudsman program shall maintain and utilize a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.

Procedures:

1. The district long-term care ombudsman shall submit quarterly reports to the Kentucky long-term care ombudsman and KIPDA AAAIL according to the following schedule:

1st quarter	Oct 1 - Dec 31	Due January 15
2nd quarter	Jan 1 - Mar 31	Due April 15
3rd quarter	Apr 1 - June 30	Due July 15
4th quarter	July 1 - Sept 30	Due October 15

2. The District Ombudsman shall submit an annual report to the Kentucky Long-term Care Ombudsman no later than October 15 for inclusion in the annual state ombudsman report.
3. Copies of the DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be submitted by the district or regional ombudsman to the

- Kentucky long-term care ombudsman to be reviewed and retained in a confidential file. Supporting documentation shall be submitted upon request of the Kentucky long-term care ombudsman.
4. The following activities facilitate the delivery of services but shall not be reported as units of service:
 - a. Review, update or maintenance of resource or agency files;
 - b. Travel time incurred in the delivery of the service;
 - c. Training or staff meetings; and
 - d. Project management.
 5. The following shall be utilized to determine unduplicated client count:
 - a. Persons who directly receive a service from the program, including friendly visiting;
 - b. Persons who reside in a long-term care facility and benefit from services directed at improving quality of life for residents in that facility, even if the resident did not directly receive the service; and
 - c. Persons who participate in training conducted by the ombudsman program and are not a part of the program.

MONITORING AND EVALUATION

- A. Policy:** The KIPDA Long-term Care Ombudsman program shall be monitored annually by KIPDA AAAIL and also by the KLTCO.

Procedures:

1. Formal evaluations of the District Ombudsman program shall be conducted at regular intervals, at least annually, by the Kentucky long-term care ombudsman.
2. The results of the evaluation, omitting client identifying information, shall be made available to the Area Agency on Aging and Independent Living to be used to plan and implement program changes to meet participant needs.

MATERIAL INCORPORATED BY REFERENCE

Material incorporated by reference may be inspected and copied at the Department of Aging and Independent Living, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. (18 KY.R. 2077; Am. 2577; eff. 3-7-92; Re-codified from 905 KAR 8:210, 10-30-98; Re-codified from 923 KAR 1:210, 7-8-99.)

Appendix

TITLE VII ELDER ABUSE AND OMBUDSMAN PROGRAMS

The Department of Aging and Independent Living (DAIL) provided new taxonomy for fiscal year 2023. This taxonomy should be used by providers when billing for services.

Elder Abuse Prevention (1 unit= 1 activity)

Prevention of Elder Abuse, Neglect, and Exploitation. Activities include: (1) Development and strengthen community activities to prevent and treat elder abuse, neglect, and exploitations;

Use a comprehensive approach to identify and assist older individuals subject to abuse, neglect and exploitation; (3) Coordinate with other state and local programs and services to protect vulnerable adults, particularly older individuals.

Authority: Older Americans Act, Title VII, Chapter 2, Sections 711 and 712

Requirements: NORS Report

Ombudsman (1 unit= 1 activity)

Activities includes the following categories that are listed on the monthly backups and each activity performed in these categories is a unit.

- Complaints Closed
- Consultations to Facilities
- Consultations/Information to Individuals
- Participation in Facility Surveys
- Work with Resident Councils
- Work with Family Councils
- Facility Visits
- Work with Media

Authority: Older Americans Act, Title VII, Chapter 2, Sections 711 and 712

Requirements: NORS Report

Presentations (1 unit= 1 activity)

Unduplicated would be the number of presentations held.

- Community Education
- Training for Volunteer Ombudsmen
- Training for Friendly Visitors
- Training for Ombudsman Staff
- Training for Facility Staff

Authority: Older Americans Act, Title VII, Chapter 2, Sections 711 and 712

Requirements: NORS Report

STATE LTC OMBUDSMAN

Ombudsman (1 Unit =1 Activity) - Activities include: 1. Identifying, investigating, and resolving complaints that are made by, or on behalf of, residents; 2. Relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of the residents; 3. Monitoring the development and implementation of federal and state policies and regulations related to long-term care facilities; and 4. Providing information.

Presentations (1 Unit =1 Activity) - Unduplicated would be the number of presentations held.

Authority: Kentucky Administrative Regulation 910 KAR 1:210 Older Americans Act Administration on Community Living

Requirements: NORS Report

NOTE:

The following activities facilitate the delivery of services, but shall not be reported as units of service except where required for a specific service:

Review, update, or maintenance of resource or agency files.

Travel time incurred in the delivery of services.

Training, staff meeting.

Project management.

Partial units This does not affect the required service taxonomy which sets the 1 hour federal unit or 30-minute state units, contacts or activity requirements.

When entering units of services into the state system, the AAAIL may report services provided in 15-minutes increments. Therefore, the reporting will reflect actual time of service provision by .25 (15 to 29 minutes), .50 (30 to 44 minutes), .75 (49 to 59 minutes) or 1 (60 minutes). Each partial unit reported must be based on a full 15 minutes of services. Also, as a reminder, monthly and/or quarterly reports must reflect units as entered and reported by the approved data system.

The AAAIL is responsible for the monitoring of service time to ensure proper accounting of units reported. DAIL will also perform random monitoring of service units during our monitoring visits.

DRAFT