

<b>LONG TERM CARE OMBUDSMAN PROGRAM</b> <b>Complaint Investigation and Resolution</b>	<b>DAIL – LTCOP – 16.23</b>
<b>Effective Date: December 30, 2009</b> <b>Revised Date: September 21, 2016</b>	<b>Page 1 of 5</b>

**Policy Statement:**

The Long-Term Care Ombudsman Program shall investigate and resolve complaints made by or on behalf of 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.

**Legal Authority:**

- 910 KAR 1:210 Section 12; Section13
- OAA Chapter 712
- 45 CFR§ 1327.15
- 45 CFR part 160 and 45 CFR part 164, subparts A and E
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**Procedure:**

- (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:
    1. The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services; or

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2. 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:
1. What has occurred or is occurring;
  2. When it occurred and whether the occurrence is on-going;
  3. Where it occurred;
  4. Who was involved;
  5. Effect of the occurrence on resident(s);
  6. Reason for occurrence; and
  7. What, if anything, the facility or other interested parties have done in response to the occurrence
- (i) Timelines of investigation

Complaints with care issues	Respond within two (2) business days not to exceed three (3) calendar days
Other types of complaints	Within seven (7) calendar days
Actual or threatened transfer or discharge from a facility	Whichever occurs first: (i) five (5) working days, (ii) the last day of bed-hold period if resident is hospitalized), or (iii) the last day for filing an appeal for an administrative hearing

- (j) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable). The resolution status of a complaint shall be determined when any of the following occurs:
1. The complaint has been resolved to the resident’s satisfaction. If the resident cannot communicate his/her satisfaction, the ombudsman may seek resolution to the satisfaction of the resident’s representative or complainant, if consistent with the rights and interests of the resident.

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2. The LTCOP has determined, after investigation, that the complaint can or cannot be verified, or was not made in good faith.

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

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

(3) The complaint may be closed when follow-up steps have indicated no further action is needed.

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

(5) Consent

(a) The ombudsman shall seek consent of the resident to work to resolve complaints and make referrals to agencies. The ombudsman must also seek consent when they personally witness suspected abuse, gross neglect, or exploitation of a resident. Communication of consent to reveal the identity of the resident/complainant may be made in writing, orally or visually.

(b) Where the resident is unable to communicate consent, and has no resident representative, the ombudsman shall:

1. Open a case with the ombudsman as the complainant
2. Take appropriate steps to investigate complaints that adversely affect the health, safety, welfare or rights of the resident
3. As necessary refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or the appropriate agencies in the following circumstances: the ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a

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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

4. 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.

1. 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.
2. 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

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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.