

NASOP STANDARDS OF PRACTICE



December 2010

ACKNOWLEDGMENTS

The leadership of the National Association of State Long-Term Care Ombudsman Programs (NASOP) thanks the 2009 – 2010 membership and committee chairpersons for their thoughtful deliberation in development of these standards. NASOP's commitment to quality Long-Term Care Ombudsman services is evident in these aspirational standards.

PREAMBLE

The Standards of Practice for NASOP are aspirational standards based upon the requirements of the Older Americans Act and multiple resource documents that interpret, clarify, and set forth the positions of NASOP. They are organized here around the functions of the Office of the State Long-Term Care Ombudsman as presented in the Older Americans Act.

Throughout the standards, State Ombudsman is used to specify the head of the Office of the State Long-Term Care Ombudsman and Ombudsman refers to the State Ombudsman and representatives of the Office. Inclusion of community-based services and consumers are applicable only to those state programs that have authority to provide Ombudsman services in non-residential settings. Where the standards refer to residents, the term may be interpreted to include consumers of home and community-based services in applicable states.

NASOP's goal in developing standards of practice is to raise the quality of the Long-Term Care Ombudsman Program nationwide. The standards will also serve as a resource for State Ombudsmen as they advance their own programs.

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1.0 ESTABLISHMENT AND AUTHORITY

- 1.1 The State Ombudsman serves on a full-time basis as the head of the Office of the State Long-Term Care Ombudsman.
- 1.2 The State Ombudsman certifies and/or designates representatives and local entities as appropriate to fulfill the obligations of the Office.
- 1.3 Representatives and entities are monitored to assure requirements are met.
- 1.4 Policies and procedures are written and implemented to support the obligations of the Office.
- 1.5 The State Ombudsman seeks continuous quality improvement in addition to compliance monitoring.
- 1.6 The State Ombudsman advocates for adequate funding and resources and is responsible for management of the budget for the Office.

2.0 PROCEDURES FOR ACCESS

- 2.1 Access to facilities and services: At anytime, without notice, the Ombudsman can enter and have immediate access to residents in a long-term care facility including, but not limited to, nursing facilities, board and care homes, and assisted living facilities.
 - 2.1.1 In states where the Ombudsman has authority in home and community-based settings, this standard applies to locations where community-based services are provided but does not presume unfettered access to a consumer's personal residence.
- 2.2 Confidential access to residents: The Ombudsman is ensured private and unimpeded communication with residents and may communicate in private with a resident with the resident's consent, without restriction or threat of intimidation or reprisal.
- 2.3 Access to records in hard-copy and/or electronic format: With the consent of the resident or his/her surrogate or legal representative, the Ombudsman has access to all records that pertain to the complaint being investigated. The State Ombudsman has a protocol in place for access to records when a consumer is unable to provide consent and has no legal representative and when a legal guardian refuses permission.

- 2.4 The Ombudsman has access to administrative records, policies and documents of a long-term care facility or community-based service provider to which the resident, consumer, or public has access. The Ombudsman advocates for access to any record needed to investigate a complaint and to represent the interests of the resident.
- 2.5 The Ombudsman ensures policies and agreements are in place with appropriate agencies to gain access to any necessary records including, but not limited to:
- a. Survey reports (including access to investigator's notes),
 - b. Investigations,
 - c. Licensing or certification activities, or
 - d. Any other actions of the state regulatory agency involving the facility.

The State Ombudsman provides representatives with access to information described above.

- 2.6 Access to Ombudsman services: The Ombudsman makes available a toll-free number and publicizes it.
- 2.7 The Ombudsman ensures responsiveness when contact is initiated by a resident or complainant. Outreach is provided to residents through face-to-face contact and other means.
- 2.8 The Ombudsman assures that the appropriate Ombudsman name, address and toll-free number is displayed in at least one prominent place in each long-term care facility.
- 2.9 The Ombudsman endeavors to accommodate language diversity by making the above information available in non-English language and formats as needed.

3.0 DISCLOSURE AND CONFIDENTIALITY

- 3.1 The Ombudsman maintains all complaint-related information provided to or developed by the Ombudsman as confidential. Confidential information includes electronic and hard copy records, identities of residents and complainants, and whether an individual communicated with or contacted an Ombudsman. An Ombudsman does not disclose any information about a resident or complainant without the individual's consent or a court order.

- 3.2 The Ombudsman protects the identity of the resident or complainant unless consent is provided, even if it compromises the Ombudsman's ability to effectively advocate. If consent is not provided, investigations are conducted only if they can be carried out without identifying the resident or complainant. When the resident is unable to consent to disclosure, disclosure is permitted only with the approval of the State Ombudsman. If the identity is assumed by another party, the Ombudsman does not acknowledge the assumption.
- 3.3 The Ombudsman adheres to consent requirements in the Older Americans Act. Documentation of consent is required by the individual consenting in writing or by the Ombudsman immediately documenting verbal consent. A person with legal authority to make decisions for a resident may consent to disclosure if the resident is unable. If a legal representative is determined by the Ombudsman not to be acting in the resident's best interest, the Ombudsman obtains approval from the State Ombudsman to take action.
- 3.4 In the case of a resident who cannot consent and who does not have a legal representative, the Ombudsman uses an established protocol to take action on behalf of a resident's substituted judgment, known wishes, or assumed best interests.
- 3.5 The State Ombudsman is custodian of all Ombudsman records and is responsible for making decisions about disclosure and, if necessary, ensuring legal representation for that purpose. In exercising discretion, the State Ombudsman establishes a consistent protocol for disclosing records and ensures resident rights are protected.
- 3.6 Paper records are stored in a locked environment and electronic records are password-protected with access available only to Ombudsmen.
- 3.7 The Ombudsman only responds to written requests for confidential Ombudsman records. The Ombudsman notifies an oral requestor that all requests for records must be made in writing. If a subpoena is received, the State Ombudsman takes appropriate action to protect the record. If a court order is received that requests records with identifying information about clients other than those named in a lawsuit or other legal action, the Ombudsman attempts to protect the identify of all other residents.
- 3.8 Representatives protect identifying information about residents or complainants from release to auditors and monitors. The Office of the State Ombudsman has sole authority to review program files maintained by any representative.
- 3.9 Ombudsmen are not mandatory reporters of abuse, neglect, or exploitation of people served within the Ombudsman scope of authority.

4.0 TRAINING

- 4.1 Every state shall have a standardized certification process. Individuals representing the program must be certified by the State Ombudsman, in accordance with regulations or agreement before representing the program.
- 4.2 The certification process will be developed and implemented by the State Ombudsman and shall include at least the following components: orientation; a minimum number of hours of classroom instruction; a practicum or internship of a minimum length; and a skill-based examination/evaluation.
- 4.3 The core curriculum for the classroom instruction shall be one endorsed by NASOP.
- 4.4 The instructors who train Ombudsman shall be knowledgeable in the practice of Ombudsman work.
- 4.5 Certification for each individual is renewed annually or on a schedule determined by the State Ombudsman. Renewal is contingent upon compliance with the policies and procedures established by the State Ombudsman, remaining free of conflict of interest, and completing a minimum number of hours of continuing education.
- 4.6 To the extent that volunteer Ombudsmen perform the same duties as paid Ombudsmen, the certification training shall be the same.

5.0 CONFLICT OF INTEREST

- 5.1 The State Ombudsman and designated local entities and representatives of the program abide by conflict of interest laws and policies. Conflicts of interest apply to the operation of the program and individual representatives.
- 5.2 The State Ombudsman develops clearly defined conflict of interest policies and procedures, based on the Older Americans Act. Policies address how to avoid, identify, disclose and remove or remedy conflicts of interest. Policies also include a provision to inform the State Ombudsman of any identified conflict and principles for the State Ombudsman to evaluate whether a conflict can be sufficiently resolved.
- 5.3 It is the responsibility of the State Ombudsman to educate all representatives of the Office on how to avoid conflicts of interest by clearly defining conflict of interest, describing how conflicts may arise, defining the types of conflicts an Ombudsman may encounter, and providing examples of situations to avoid.

- 5.4 The State Ombudsman identifies conflicts of interest by using screening tools prior to designating local Ombudsman entities and individual representatives of the Office. Conflict of interest screening for local entities includes individuals with a governing or advisory role, such as a board or advisory council member. The conflict of interest screen is annually updated and renewed.
- 5.5 The conflict of interest standards apply to the State Ombudsman and all procedures related to conflict of interest of the State Ombudsman shall be carried out by the appointing authority. Remedial plans require approval by the Administration on Aging.
- 5.6 The State Ombudsman reviews all requests to remedy conflicts of interest and uses a uniform process to evaluate whether the remedial plan sufficiently addresses and resolves the conflict. Remedial plans require approval by the State Ombudsman who retains a copy of the plan.
- 5.7 The State Ombudsman ensures legal counsel is free of conflict of interest. See Legal Counsel Standard 6.1 for more information.
- 5.8 The State Ombudsman submits documentation of all remedied conflicts of interest to the State Unit on Aging and the Administration on Aging (AoA) when requested and consults with AoA on conflicts of interest as needed.

6.0 LEGAL COUNSEL

- 6.1 The State agency ensures that legal counsel, free of conflict of interest, is available to Ombudsmen for advice, consultation, and representation as needed in the performance of their official duties. Legal counsel may be provided by one entity or several, depending on the nature of the services needed.
- 6.2 The State Ombudsman educates legal counsel about the Office mission, purpose, and services to improve legal counsel's ability to advise and represent Office interests.
- 6.3 The State Ombudsman determines under what circumstances to access legal counsel and arranges legal consultation and representation for representatives related to their official duties.
- 6.4 The State Ombudsman arranges for legal representation for representatives who have acted in good faith in the fulfillment of their duties.

- 6.5 The communications between the State Ombudsman and legal counsel are subject to attorney-client privilege. Therefore, communications should not be shared outside of that relationship without client permission.
- 6.6 The State Ombudsman coordinates with the legal services developer and other legal services providers to promote the availability of legal counsel to and referrals of residents of long-term care facilities and home care consumers where applicable.

7.0 ADMINISTRATION

- 7.1 The State Ombudsman has access to elected and appointed officials, policy makers, cabinet officials, and the media, without prior approval or restriction.
- 7.2 The State Ombudsman reviews, comments, and facilitates public comment on laws, regulations, and policies and provides testimony without prior approval or restriction.
- 7.3 The State Ombudsman establishes policy for representatives to have access to elected and appointed officials, policy makers, cabinet officials, and the media.
- 7.4 The State Ombudsman establishes a relationship with representatives to ensure a coherent, unified program under the Office of the State Long-Term Care Ombudsman. The State Ombudsman shall be responsible for the management of the Office, including its fiscal management. Representatives and designated entities shall report to the State Ombudsman on all Ombudsman functions, duties, and programmatic issues.
- 7.5 The State Ombudsman prepares an annual report describing activities, analyzing data, evaluating problems experienced by consumers, making recommendations, and identifying successes and barriers.

8.0 COORDINATION OF SERVICES

- 8.1 Ombudsman services are coordinated with the protection and advocacy systems for individuals with developmental disabilities and mental illness through the adoption of memoranda of understanding or other means.
- 8.2 Ombudsman services are coordinated with legal assistance services through the adoption of memoranda of understanding or other means.

9.0 NON-INTERFERENCE

- 9.1 The State Ombudsman educates the State Unit on Aging, providers, legal counsel, and others as appropriate about non-interference and penalties for violations.
- 9.2 The State Ombudsman ensures state statute and policies comply with Older Americans Act provisions for non-interference.
- 9.3 The State Ombudsman identifies interference and, at a minimum, reports it to the Administration on Aging, recommends, and pursues remedies to remove the interference.

10.0 DATA

- 10.1 The State Ombudsman establishes a statewide data collection system that meets AoA requirements for annual reporting, ensuring Ombudsmen access to hardware and software for reporting data.
- 10.2 The State Ombudsman provides regular training to representatives to ensure consistency and correct application of reporting requirements.
- 10.3 Ombudsmen use data to help consumers make informed choices about where they will receive long-term care services.
- 10.4 Ombudsmen share aggregated complaint summary data with consumers, media, and policy makers and respond to individual requests from consumers for specific provider data.
- 10.5 Ombudsmen share information with surveyors/complaint investigators, guided by a memorandum of understanding.
- 10.6 The Ombudsman data system is protected against access to individuals outside the Office to assure confidentiality.