



FACE SHEET

Multi-Service Center
 1200 S. 336th Street, Federal Way WA 98003
 PH 253.838.6810
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MULTI-SERVICE CENTER

AGREEMENT

CONTRACT NUMBER	LTCOP 2324-11	START DATE:	07/01/23
CONTRACT AMOUNT	\$ 86,370.37	END DATE:	06/30/24

CONTRACTING PARTIES

SUBGRANTEE	Kitsap County Division of Aging and Long-Term Care	GRANTOR	Multi-Service Center
<i>Street Address</i>	614 Division Street, MS-5	<i>Street Address</i>	1200 S 336th Street
<i>City, State, Zip</i>	Port Orchard, WA 98366-4676	<i>City, State, Zip</i>	Federal Way, WA 98003
<i>Mail Address</i>	614 Division Street, MS-5	<i>Mail Address</i>	1200 S 336th Street
<i>City, State, Zip</i>	Port Orchard, WA 98366-4676	<i>City, State, Zip</i>	Federal Way, WA 98003
<i>Phone</i>	360-337-7068	<i>Phone</i>	253-838-6810
<i>Fax</i>	360-337-5762	<i>Fax</i>	253-835-7511
<i>Contact</i>	Stacey A.S. Smith	<i>Contact</i>	Patricia Hunter
<i>Title</i>	Administrator	<i>Title</i>	WA State Long-Term Care Ombuds
<i>Email</i>	sasmith@co.kitsap.wa.us	<i>Email</i>	stateombuds@multi-servicecenter.com

COMPENSATION

SOURCE OF FUNDING:

State	\$	86,370.37
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BUDGET CATEGORIES:

Long-Term Care	\$	72,583.00
Travel (Regional Meetings)	\$	110.00
Adult Family Home	\$	2,672.00
HB1402	\$	7,609.00
ARP	\$	3,396.37
TOTAL	\$	86,370.37
	\$	-

CONTRACT PACKAGE

Face Sheet	Contract Agreement
Exhibit 1	Special Terms & Conditions
Exhibit 1	General Terms & Conditions
Exhibit A	Statement of Work
Long-Term Care	\$72,583 (of this amount \$9,340.00 is Federal Funding CFDA #93-042)
Exhibit B	Regional Budget
Exhibit C	Multi-Service Center Regional Invoice
Exhibit D	Regional LTCOP Program Advisory Council Membership & Functions
Exhibit E	Job Title: Regional Long-Term Care Ombuds
Exhibit F	Job Title Certified Long-Term Care Ombuds Volunteer
Exhibit G	The State LTCOP Final Rule 45 CFR 1324 (formerly 1327)

PURPOSE

This contract is awarding funds to operate and provide services under the Long-Term Care Ombudsprogram.

Washington State Long-Term Care Ombudsman Program, is program of the Multi-Service Center. Multi-Service Center is the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The Regional LTCOP will be operated in such a manner as to be consistent with the Revised Code of Washington Chapter 43.190 and Washington Administrative Code Chapter 365-18 and this contract General Terms and Conditions. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: The contract agreement includes - Statement of Work, Regional LTC Ombuds Program Advisory Council Membership and Functions, Job Title: Regional LTC Ombuds, Job Title: Certified LTC Ombuds (Volunteer), Certification Regarding Debarment form, Budget Form and Invoice Form.

AUTHORIZED REPRESENTATIVE SIGNATURES

FOR Washington State Long-Term Care Ombudsman

Name: Patricia Hunter

Signature: *Patricia Hunter*

Date: 2/20/2024

FOR SUBGRANTEE:

Name: *Charlotte Gramido, Christine Poffas*
 Title: *Commissioner*
 Signature: *Charlotte Gramido* *Christine Poffas*
 Date: 2-12-24

FOR GRANTOR:

Name: Kirsten York
 Title: CEO

Signature: *Kirsten York*

Date: 2/22/2024



Grant to

Kitsap County Division of Aging and Long-Term Care

For the
Regional Long-Term Care Ombudsman Program

Through

Multi-Service Center
Under the
Washington State Long-Term Care Ombudsman Program

For

Providing effective means to assist residents, patients and clients of long-term care facilities in the assertion of their civil and human rights.

State Fiscal Year 2024

Contract: July 1, 2023 – June 30, 2024

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1. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for Multi-Service Center – Washington State Long-Term Care Ombudsman Program (hereinafter "MSC") and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Subgrantee and their contact information are identified on the Face Sheet of this Grant.

2. COMPENSATION

MSC shall pay an amount not to exceed the amount stated on the Face Sheet of this Grant for the performance of all things necessary for or incidental to the performance of work as set forth in the **Scope of Work, Exhibit A**. Subgrantee's compensation for services rendered shall be based on the on the Face Sheet of this Grant.

3. BILLING PROCEDURES AND PAYMENT

Reimbursement Requests

Subgrantee shall submit a monthly invoice for reimbursement of authorized expenses to MSC by the 7th calendar day of the following month. A list of expenses will need to accompany the invoice to support the amount of reimbursement.

The final invoice must be submitted to MSC by the 7th day following the contract period end date of June 30th.

Late or incomplete reporting may result in delayed payment of reimbursement to the Subgrantee. Any invoice not received by the final due date of July 7th following the contract period end date of June 30th will not be reimbursed.

Payment of Reimbursements

Payment shall be considered timely if made by MSC to the Subgrantee within seven (7) calendar days after the MSC receipt of payment from the state. Payment shall be sent to the address designated by the Subgrantee on the invoice to MSC.

MSC may, in its reasonable discretion, terminate the Grant or withhold payments claimed by the Subgrantee for services rendered if the Subgrantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by MSC.

Carryover funds to the next fiscal year is not allowed.

Duplication of Billed Costs

The Subgrantee shall not bill MSC for services performed under this Agreement, and MSC shall not pay the Subgrantee, if the Subgrantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Subgrantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of their subgrantee.

4. APPROVED BUDGET

Indirect Costs

No more than twelve percent (12%) of the total program budget may be spent on indirect administrative costs. Administrative expenses are also sometimes called indirect or overhead. Such expenses can include, but are not limited to the following: executive director/accounting/ human resource salaries, benefits, supplies, space, equipment, etc.; general agency insurance; audits; board expenses; membership or association fees and dues.

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Direct Costs

The remaining eighty-eight percent (88%) of the budget must support salary and fringe benefits of the Regional Ombudsman, travel expenses for the Regional Ombudsman and Certified Volunteer Ombudsman, and other direct program costs as shown in the attached budget of this contract.

Certified Volunteer and Regional Ombudsman travel for the purpose of approved training or execution of regular duties will be reimbursed at the mileage rate effective according to individual Subgrantee agency financial policies, provided this rate does not exceed the allowable rate set by the state of Washington.

Budget

Subgrantee will provide a line item budget showing the grant award and the local funds on the form Exhibit B as well as narrative describing the expenditure plan.

Budget Revisions

The Subgrantee shall expend funds awarded under this Grant in accordance with the approved compensation budget on the Face Sheet of this Grant. Requests to transfer funds between line item budget categories exceeding ten percent (10%) of the total budget shall be submitted and approved by MSC and the Washington State Long-Term Care Ombudsman before the Subgrantee submits an invoice reflecting the revisions

5. REPORTING REQUIREMENTS

Subgrantee will provide the following documents to provide required for the contract package:

- a. Three signed copies of the Face Sheet
- b. Completed Regional LTCOP Budget, **Exhibit B**
- c. Certificate of Insurance showing adequate coverage levels as noted in Special Terms & Conditions
- d. Inventory list of all equipment valued at more than \$1,000 per unit purchased with program funds
- e. Name of Regional Long-Term Care Ombudsman involved with the local advisory council in the development of the regional action plan to be submitted to MSC by October 30, 2023.

Additional program reporting requirements are described in the **Scope of Work, Exhibit A**.

6. INSURANCE

The Subgrantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, including but not limited to the Department of Commerce agents, officers, and employees as additional insured under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Subgrantee shall instruct the insurers to give MSC thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Subgrantee shall submit to MSC within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the Subgrantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Subgrantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the Sub-Grantee is responsible for ensuring that any sub-contractors provide adequate insurance coverage for the activities arising out of subcontracts.

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Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Subgrantee or its Subgrantee, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Subgrantee shall maintain Professional Liability or Errors and Omissions Insurance. The Subgrantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Subgrantee and licensed staff employed or under Grant to the Subgrantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insured under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Subgrantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Grantor as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantee pursuant to this paragraph shall name the Grantor as beneficiary.
- C. The Subgrantee shall provide, at MSC's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that MSC will be provided thirty (30) days advance written notice of cancellation.

Local Government Subgrantees that Participate in a Self-Insurance Program

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from MSC, the Subgrantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from MSC the Subgrantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Subgrantee's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Subgrantee shall provide annually to MSC a summary of coverage and a letter of self insurance, evidencing continued coverage under Subgrantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

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7. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving, precedence in the following order:

- *Special Terms and Conditions of this Grant*
- *General Terms and Conditions of this Grant*
- *Scope of Work - Exhibit A*
- *Regional Budget - Exhibit B*
- *Face Sheet of this Grant*
- *Applicable federal and state of Washington statutes and regulations*
- *Regional Long-Term Care Ombudsman Program Advisory Council Membership and Functions*
- *Job Title: Regional Long-Term Care Ombudsman*
- *Job Title: Certified Long-Term Care Ombudsman (Volunteer)*
- *Subgrantee Invoice to MSC - Exhibit C*

End of Special Terms & Conditions

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1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Executive Director/CEO and/or the designee authorized in writing to act on the Executive Director's/CEO's behalf.
- B. "MSC" – shall mean Multi-Service Center.
- C. "WALT COP" - shall mean Washington State Long-Term Care Ombudsman Program operated by the Multi-Service Center.
- D. "MSC - WALT COP" shall mean Multi-Service Center – Washington State Long-Term Care Ombudsman Program.
- E. "Subgrantee" shall mean one not an employee of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "Subgrantee" and "Subgrantees" means Subgrantee(s) in any tier.
- F. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

2. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by MSC.

3. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

4. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA' 28 CFR Part 35

The Subgrantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. APPROVAL

This Grant shall be subject to the written approval of MSC's Authorized Representative and shall not be binding until so approved. The Grant may be altered, amended, or waived only by a written amendment executed by both parties.

7. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Subgrantee without prior written consent of MSC.

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8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

9. AUDIT

A. General Requirements

Subgrantees are to procure audit services based on the following guidelines.

The Subgrantee shall maintain its records and accounts so as to facilitate the audits and shall ensure that any subcontractors of Subgrantee also maintain auditable records.

The Subgrantee is responsible for any audit exceptions incurred by its own organization, or that of any subcontractors.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subgrantee must respond to Commerce or MSC requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

Commerce reserves the right to recover from the Subgrantee all disallowed costs resulting from the audit.

B. Funds Requirements – 2 CFR Part 200

Subgrantee's expending \$750,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR Part 200. When state funds are also to be paid under this Agreement. Schedule of State Financial Assistance, as well as required schedule of Federal Expenditure must be included. Both schedules include:

- | | |
|--|---|
| • Grantor agency name | • Grant or contract number |
| • Federal agency | • Total award amount including amendments (total grant award) |
| • Federal Program name | • Beginning balance |
| • Other identifying contract numbers | • Current year revenues |
| • Catalog of Federal Domestic Assistance (CFDA) number (if applicable) | • Current year expenditures |
| • State program name | • Ending balance |
| • BARS account number | • Program total |

If the Subgrantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Subgrantee in accordance with 2 CFR Part 200.

The Subgrantee shall include the above audit requirements in any subcontracts.

In any case, the Subgrantee's financial records must be available for review by COMMERCE, MSC and WALT COP.

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C. Documentation Requirements

The Subgrantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Subgrantee's fiscal year(s) to:

Multi-Service Center
ATTN: Finance Manager
PO Box 23699
Federal Way, WA 98093-0699

In addition to sending a copy of the audit, when applicable, the Subgrantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by MSC.
- Copy of the Management Letter.

D. Other Audit Requirements

New Subgrantees must provide the organization most current audit to MSC at minimum annually.

The Subgrantees will provide a list of applicable expenses with monthly invoice to match in amount by category. The Subgrantees will provide supporting documentation as requested in support of the b-annual desk audit reviews and other reasonable requests deemed necessary by the Grantor.

As applicable, Subgrantee's required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

- A. The lower tier Grantee certified, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transaction by any Federal, department or agency.
- B. Where the lower tier Grantee is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this Contract.
- C. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. Confidential Information as used in this section includes:
 - 1. All material provided to the Subgrantee by MSC and WALT COP that is designated as "confidential" by the MSC and WALT COP;
 - 2. All material produced by the Subgrantee that is designated as "confidential" by MSC and WALT COP
 - 3. All personal information in the possession of the Subgrantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying

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numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- B.** The Subgrantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Subgrantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of WALT COP and MSC or as may be required by law. The Subgrantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Subgrantee shall provide MSC/WALT COP with its policies and procedures on confidentiality. MSC/WALT COP may require changes to such policies and procedures as they apply to this Grant whenever the Grantor reasonably determines that changes are necessary to prevent unauthorized disclosures. The Subgrantee shall make the changes within the time period specified by MSC/WALT COP. Upon request, the Subgrantee shall immediately return to MSC/WALT COP any Confidential Information that MSC and WALT COP reasonably determines has not been adequately protected by the Subgrantee against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Subgrantee shall notify MSC/WALT COP within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.
- D.** Additional confidentiality information is provided in the Scope of Work, Exhibit A.

12. CONFORMANCE

Subgrantee is obligated to comply with all applicable federal laws.

If any provision of this Grant violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Grantor. MSC and WALT COP shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Subgrantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to MSC and WALT COP effective from the moment of creation of such Materials, to the extent the Subgrantee has the existing right to do so.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Subgrantee hereby grants to MSC and WALT COP a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display, to the extent the Subgrantee has the existing right to do so. The Subgrantee warrants and represents that the Subgrantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to MSC and WALT COP.

The Subgrantee shall exert all reasonable effort to advise MSC and WALT COP at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Subgrantee shall provide MSC and WALT COP with prompt written notice of each notice or claim of infringement received by

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the Subgrantee with respect to any Materials delivered under this Grant. MSC and WALT COP shall have the right to modify or remove any restrictive markings placed upon the Materials by the Subgrantee.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with MSC's CEO or Washington State Long-Term Care Ombudsman, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Subgrantee's name, address, and Grant number; and
- be mailed to the Executive Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Executive Director or the Executive Director's designee and the requestor within five (5) working days.

The Executive Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Executive Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

The Subgrantee certifies that work to be performed under this Grant does not duplicate any work to be charged against any other Grant, subgrant, or other source.

16. ETHICS/CONFLICTS OF INTEREST

In performing under this Grant, the Subgrantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.23 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

17. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

18. INDEMNIFICATION

To the fullest extent permitted by law, the Subgrantee shall indemnify, defend, and hold harmless the Department of Commerce, state of Washington, MSC and WALT COP all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Subgrantee's performance or failure to perform the Grant. The Subgrantee's obligation to indemnify, defend, and hold harmless includes any claim by the Subgrantee's agents, employees, representatives, or any Sub-contractors or its agents, employees, or representatives.

The Subgrantee's obligation to indemnify, defend, and hold harmless shall not be eliminated in the event any claims are caused or result from the concurrent negligence of the State and the Subgrantee, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of each entity.

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Subgrantees shall include a comprehensive indemnification clause holding harmless the Subgrantee, MSC and WALT COP, the Department of Commerce, the state of Washington, its officers, employees and authorized agents.

The Subgrantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the Department of Commerce, the state and its agencies, officers, agents or employees.

19. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Subgrantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE and not employees of MSC. The Subgrantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Subgrantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Subgrantee.

20. INDUSTRIAL INSURANCE COVERAGE

The Subgrantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Subgrantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, MSC may collect from the Subgrantee the full amount payable to the Industrial Insurance Accident Fund. MSC may deduct the amount owed by the Subgrantee to the accident fund from the amount payable to the Subgrantee by MSC under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Subgrantee.

21. LAWS

The Subgrantee shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

22. LICENSING, ACCREDITATION AND REGISTRATION

The Subgrantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

23. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

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Multi-Service Center

24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Subgrantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Subgrantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Subgrantee may be declared ineligible for further Grants with the state, MSC and WALT COP. The Subgrantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

25. POLITICAL ACTIVITIES

Political activity of Subgrantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used under this Grant for working for or against ballot measures or for or against the candidacy of any person for public office.

26. PROCUREMENT – SOLE SOURCE CONTRACTS

Subgrantee must receive prior approval from COMMERCE, MSC, and WALT CO for using funds from this Contract to enter into a sole source contract or contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000. Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

27. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

28. PUBLICITY

The Subgrantee agrees not to publish or use any advertising or publicity materials in which the state of Washington, MSC or WALT COP's name is mentioned, or language used from which the connection with the state of Washington's, MSC or WALT COPs name may reasonably be inferred or implied, without the prior written consent of MSC or WALT COP. . *An exception to obtaining prior written consent is in the recruitment of volunteers.*

29. RECAPTURE

In the event that the Subgrantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, MSC reserves the right to recapture funds in an amount to compensate MSC for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Subgrantee of funds under this recapture provision shall occur within the time period specified by MSC. In the alternative, MSC may recapture such funds from payments due under this Grant.

30. RECORDS MAINTENANCE

The Subgrantee shall maintain all books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the

GENERAL TERMS AND CONDITIONS **Multi-Service Center**

performance of this Grant. Subgrantee shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

31. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Subgrantee shall complete registration with the Washington State Department of Revenue.

32. RIGHT OF INSPECTION

MSC has the right to inspect all records relating to the Regional Long-Term Care Ombudsman Program performance. The RLTCOP records under this Grant shall be subject at all reasonable times to inspection, review, and audit. The WALT COP shall monitor and evaluate performance, compliance, and quality assurance with the Regional LTCOP under this Grant. The Subgrantee shall provide access to its facilities for this purpose.

MSC will perform a fiscal monitoring assessment through a Desk Audit Review on a bi-annual basis during the contract period at a time selected by MSC. Subgrantee will respond accordingly and provide any documentation as requested during the review process in a reasonable and timely manner.

33. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, MSC may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

34. SEVERABILITY

If any provision of this Grant or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Grant that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Grant and to this end the provisions of this Grant are declared to be severable.

35. SUBGRANTING

The Subgrantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of MSC.

If MSC approves subgranting, the Subgrantee shall maintain written procedures related to subgranting, as well as copies of all subgrants and records related to subgrants. For cause, MSC in writing may: (a) require the Subgrantee to amend its subgranting procedures as they relate to this Grant; (b) prohibit the Grantee from subgranting with a particular person or entity; or (c) require the Subgrantee to rescind or amend a subgrant.

Every subgrant shall bind the Subgrantee to follow all applicable terms of this Grant. The Subgrantee is responsible to MSC if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Subgrantee shall appropriately monitor the activities of its Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Subgrantee to MSC for any breach in the performance of the Subcontractor's duties.

Every subcontract shall include a term that MSC, WALT COP, COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

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36. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

37. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Subgrantee's income or gross receipts, any other taxes, insurance or expenses for the Subgrantee or its staff shall be the sole responsibility of the Subgrantee.

38. TERMINATION FOR CAUSE / SUSPENSION

In event MSC determines that the Subgrantee failed to comply with any term or condition of this Grant, MSC may terminate the Grant in whole or in part upon written notice to the Subgrantee. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, MSC upon written notice may allow the Subgrantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, MSC may suspend further payment to the Subgrantee in whole or in part or may restrict the Subgrantee's right to perform duties under this Grant. Failure by the Subgrantee to take timely corrective action shall allow MSC to terminate the Grant upon written notice to the Subgrantee. Kitsap County should have the right to terminate the contract for cause in the event of a breach by the Multi-Service Center. Kitsap County has the right to address a performance issue prior MSC tasking action.

"Termination for Cause" shall be deemed a "Termination for Convenience" when MSC or WALT COP determines that the Subgrantee did not fail to comply with the terms of the Grant or when MSC or WALT COP determines the failure was not caused by the Subgrantee's actions or negligence.

If the Grant is terminated for cause, the Subgrantee shall not be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Grant and the replacement Grant, as well as all costs associated with entering into the replacement Grant (i.e., competitive bidding, mailing, advertising, and staff time).

39. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant, MSC may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, MSC shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination. The County has the right to terminate the contract for convenience in the event its policy priorities change during the contact term. Also, revise the sentence "delivered prior to the effective date of termination" to read "delivered through the effective date of termination".

40. TERMINATION FOR REDUCTIONS OF FUNDING

In the event of any reduction in current or anticipated state or federal funds, MSC may terminate the Grant in whole or in part upon written notice to the Subgrantee. If this Grant is terminated, MSC shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered through the effective date of termination.

41. TERMINATION OF PROCUDURES

After receipt of a notice of termination, except as otherwise directed by MSC, the Grantee shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities related to the Grant;

GENERAL TERMS AND CONDITIONS
Multi-Service Center

3. To the extent of the Subgrantee's existing rights to do so, assign to MSC all of the rights, title, and interest of the Subgrantee under the orders and subcontracts so terminated, in which case MSC has the right, at its reasonable discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Subgrantee to settle such claims must have the prior written approval of MSC, which approval shall not be unreasonably withheld; and
4. Preserve and transfer any materials, Grant deliverables and/or MSC/WALTCOP property in the Subgrantee's possession as directed by MSC/WALTCOP.

Upon termination of the Grant, MSC shall pay the Subgrantee for any service provided by the Subgrantee under the Grant through the date of termination. MSC may withhold any amount due as MSC reasonably determines is necessary to protect MSC against potential loss or liability resulting from the termination. MSC shall pay any withheld amount to the Subgrantee if MSC later determines that loss or liability will not occur.

The rights and remedies of MSC/WALTCOP under this section are in addition to any other rights and remedies provided under this Grant or otherwise provided under law.

Should this contract be terminated or not extended all equipment above the value of \$1000, records, property, and other materials purchased with WALTCOP funds become the property of the Washington State Long-Term Care Ombudsman Program as contracted for by the Department of Commerce and must be returned to MSC or Subgrantee may upon 30 days written notice terminate this contract. MSC and Subgrantee will make every effort to give more than 30 days written notice of termination of the contract.

42. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Subgrantee, for the cost of which the Subgrantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Subgrantee. Title to other property, the cost of which is reimbursable to the Subgrantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Subgrantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Subgrantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Subgrantee or which results from the failure on the part of the Subgrantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Subgrantee shall immediately notify MSC/LTCOP and COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Subgrantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

43. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by both parties.

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Multi-Service Center

End of General Terms & Conditions



Kitsap County
Division of Aging & Long-Term Care

AND
Multi-Service Center

SCOPE OF WORK

July 1, 2023 – June 30, 2024

With the concurrence of the Washington State Department of Commerce (Commerce), the above named parties enter into the following agreement; which supersedes and amends any previous contract issued during this contract period. Subgrantee is obligated to comply with applicable federal laws.

- I. Kitsap County Division of Aging & Long-Term Care agrees to support a Regional Long-Term Care Ombudsman (LTCO) Program within the boundaries of Kitsap County.
 - A. Such memoranda of understanding as necessary to effect operation of the program within this area will be executed by the Kitsap County.
 - B. The Regional LTCO Program will be operated in such a manner as to be consistent with the Revised Code of Washington Chapter 43.190 and Washington Administrative Code Chapter 365-18 and this contract General Terms and Conditions found as Exhibit 1 (attached) and this "Certification Regarding Debarment" certification found as Exhibit C (attached).
 - C. Duties of the Regional LTCO Program are those defined in the Regional LTCO Program Advisory Council requirements and Regional Long-Term Care Ombudsman and Certified Volunteer Ombudsman Job Descriptions, attached as Exhibits E, F, and G respectively.

- II. **IN PARTICULAR, THE KITSAP COUNTY DIVISION OF AGING & LONG-TERM CARE TO PROVIDE:**
 - A. 40 average hours per week (1.0 full-time equivalents, consistent with Kitsap County Division of Aging & Long-Term Care personnel policies) of Regional Ombudsman time and services; including designated staff hours to support the Adult Family Home Initiative as indicated in the annual plan and budget and supported by monthly invoices.
 - B. Agency staff support for the Region's Volunteer LTCO and LTCO Program Advisory Council as needed.
 - C. Monthly fiscal and program reports on expenses and activities within its service area, as required by MSC, using forms and systems provided by MSC.
 - D. Kitsap County Division of Aging & Long-Term Care will ensure that all persons associated with the Regional LTCO Program, especially those with fiduciary or other fiscal decision-making authority do not have conflicts of interest with the LTCO Program, as defined by federal and state statutes/regulations.
 - E. Kitsap County Division of Aging & Long-Term Care will ensure that all persons associated with the Regional LTCO Program, especially those with fiduciary or other fiscal decision-making authority are included in their agency fidelity bonding and liability insurance. Proof of liability insurance shall be provided to the MSC.



- F. Kitsap County Division of Aging & Long-Term Care will ensure that all LTCO Program information is held confidential as required by federal and state statutes/regulations.
 - G. Kitsap County Division of Aging & Long-Term Care will ensure that Program Instruction Memoranda as issued by the State LTC Ombudsman are met in full.
- III. Kitsap County Division of Aging & Long-Term Care agrees to employ a Regional Long Term Care Ombudsman (RLTCO) with the approval of the State LTC Ombudsman:
- A. Although the Regional-Long Term Care Ombudsman (RLTCO) is a Kitsap County Division of Aging & Long-Term Care employee, the RLTCO is designated by the State LTCO as their official representative and shall be responsible for following the policy direction of the State Long-Term Care Ombudsman, in regard to the Regional LTCO Program and activities including but not limited to the direct meeting with elected officials to educate and represent the concerns of residents.
 - B. The Division Director of the Kitsap County Division of Aging & Long-Term Care supervises the employment of the RLTCO and is responsible to the Agency Director for the overall success of the Regional LTCO Program, and all other standard employer obligations.
 - C. The scheduling of the Regional LTC Ombudsman's work shall assure that the Regional LTCO Ombudsman is available to take assignments from the State LTC Ombudsman.
 - D. The RLTCO shall ensure that the Regional LTCO Program follows State LTCO Program policies, Program Instructions, and laws and regulations, and terms as set forth as Exhibit 1.
 - E. The RLTCO shall ensure that any correspondence to a state agency regarding the handling of an enforcement action, facility survey or inspection or licensing action or other state agency activity shall have the signature of the State Long-Term Care Ombudsman or designee and be written on State LTCOP letterhead prior to releasing such correspondence.

THE MSC AGREES TO PROVIDE:

- A. Policy directions, program instruction, technical assistance and support for the Kitsap County Division of Aging & Long-Term Care.
- B. Monitoring of, and assistance towards the resolution of complaints referred to state agencies.
- C. Participation in Volunteer Ombudsmen training and materials needed for certification.
- D. Reimbursement within funding limitations for ongoing or conference training/attendance upon the prior approval of the State LTC Ombudsman.
- E. Publications for distribution to LTC residents, family members, providers, Ombudsmen, and the public.
- F. Legal assistance within funding limits for Regional LTC Ombudsman, Certified Ombudsmen Staff and Certified Volunteer Ombudsmen.
- G. Labor and Industries insurance for the volunteers.



SUBGRANTEES RESPONSIBILITIES:

- I. Establish and maintain the Kitsap County Division of Aging & Long-Term Care Ombudsman Office.
 - A. Provide personnel and an administrative structure for the Regional Long-Term Care Ombudsman Office.
 1. Recruit, hire, train, and supervise the individual designated the Regional Long-Term Care Ombudsman, as well as other staff necessary for the effective operation of the Long-Term Care Ombudsman Program, including designated staff hours allocated to the Adult Family Home Initiative.
 2. Ensure the Regional Ombudsman, and all additional staff, have training and experience in gerontology, long-term care, legal systems, and dispute or problem resolution techniques, including investigation, mediation, and negotiation. Ensure that all Ombudsmen staff and certified volunteers receive training on the following topic areas: mental illness, dementia, developmental and physical disabilities and substance abuse problems.
 3. Ensure that no Long-Term Care Ombudsman shall have been employed by or participated in the management of any long-term care facility, or have or have had the right to receive remuneration from a long-term care facility, including work as a paid consultant or independent contractor currently or within the past one year.
 4. Ensure that no certified Long-Term Care Ombudsman or any member of their immediate families shall have, or have had within the past one year, any pecuniary interest in a long-term-care facility or a long-term care service as defined in WAC 365-18-020.
 5. Ensure that no certified Long-Term Care Ombudsman shall have a direct involvement in the licensing, certification, or regulation of a long-term care facility or of a long-term care service during his or her tenure as an ombudsman or have been employed in a governmental position with direct involvement in the licensing, certification or regulation of long-term care facilities within the past year.
 6. Complete a criminal history background check for each prospective regional, salaried, and volunteer ombudsman (attached). No person convicted of a felony in the past ten years, convicted of a "crime against persons" as defined by RCW 43.43.830(5), convicted of "crimes relating to financial exploitation" as defined by RCW 43.43.860(6), subject to a "civil adjudication" as defined by RCW 43.43.830(3), or subject to a "disciplinary board final decision" as defined by RCW 43.830 may serve as salaried, or volunteer ombudsman. All persons subject to a criminal history background check shall be notified and consent to the intent to inquire, as noted in RCW 43.43.834. Assure that all Ombudsmen successfully pass a criminal history background check as provided by chapter 43.43 RCW every three years at a minimum.
 7. Ensure that services provided through Medicaid funds are used to assist individuals to gain access to Medicaid services.



- B. Provide complaint resolution process which assures the acceptance, recording, investigation, and resolution of complaints, in a timely manner, made by, or on behalf of, residents of long-term care facilities. These processes shall be in accordance with the written policies and procedures of the State Ombudsman.
1. Utilize the Harmony's Ombudsmanager that provides the statistical information on the program, in compliance with the National Ombudsman Reporting System and Washington State reporting requirements, to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving problems and providing data generated to the State Ombudsman office on a monthly basis.
 2. Maintain and advertise a phone number for use by complainants.
 3. Maintain procedures for handling urgent request.
 4. Investigate complaints, which will include, but are not limited to, complaints related to action, inaction, or decisions of the individuals or organizations, which may adversely affect the health, safety, welfare, or rights of residents. Those individuals or organizations include, but are not limited to the following:
 - Providers of long-term care services and staff of their facilities;
 - Representatives of the above providers;
 - Public agencies;
 - Social service agencies; and
 - Government agencies.
 5. Maintain policies and procedures for recording client contacts. These procedures will address the protection of client confidentiality as well as ensure access to records by the Long-Term Care Ombudsman and volunteers.
 6. Ensure privacy and confidentiality for the purpose of hearing, investigating and resolving complaints of, and rendering advice to, individuals who are residents of the facilities.
 7. Ensure flexibility in the ability of the regional program to accept complaints from anyone concerned about a resident of a long-term care facility, including, but not limited to:
 - Residents of long-term care facilities;
 - Family members, friends, staff of long-term care facilities, community organizations, resident organizations, or others who are contacting the program on behalf of residents of long-term care facilities; and
 - Individuals seeking admission to a long-term care facility, if the complaints involve procedures or practices related to admission and/or the individual's entitlement to long-term care and services under federal and state laws and regulations.
 8. Follow State Ombudsman policies and procedures to ensure that during complaint investigation and resolution, there will be:



- Direct contact with the complainant, resident, family, legal representative or service provider, if necessary, or all of the above;
 - Completion by the complainant and/or resident of all applicable consent forms regarding representation and release of records;
 - Identification of relevant issue areas raised by the complaint;
 - Documentation of the complaint in Harmony's Ombudsmanager;
 - Collection of all necessary facts in investigating the complaint, where possible;
 - Identification of all applicable state and federal laws potentially violated, where possible;
 - Interviews with appropriate facility or agency personnel;
 - Referral to and/or review of technical (e.g. medical, nursing, law, social services, therapy) information by objective people possessing the relevant skills or expertise;
 - Sequential, detailed, and organized case information;
 - Supervision and back-up of volunteer ombudsmen;
 - Regular, periodic communication with complainant or resident, related to progress of the investigation of the complaint; and
 - Development and implementation of a strategy to resolve the complaint at the lowest level in a timely manner or with the resident's consent refer for resolution to the appropriate agencies or authorities.
9. Provide and document follow-up and ongoing monitoring during the complaint resolution process with complainant or resident.
10. Follow the State Ombudsman grievance procedures for resolving complaints involving the activities or representatives of the Long-Term Care Ombudsman Program.
11. Follow State Ombudsman policies and procedures and assure consistency with state and federal Long-Term Care Ombudsman statutes for protecting the confidentiality of and appropriate release of records, complaint files and the identity of any complainant or resident who does not give written permission for the use of his/her name. These policies will enable the state office to access complaint files and all records for contract monitoring purposes.
- C. Arrange for or refer to legal assistance where necessary to resolve complaints and inform the state office of legal assistance requests.
- D. Organize and/or participate in certification training of volunteers and ombudsmen staff on behalf of the Multi-Service Center.
- Provide for uniformity of training and provision of training materials, protocols, etc. by following the State Ombudsman requirements.
 - Use a "train the trainer" model where feasible and approved by the State Ombudsman. Where this model is used, the State Ombudsman may choose to designate a trainer to recommend certification or re-certification to the State Ombudsman.



- Or when available utilize trainers provided by the State Ombudsman Office. The model may be used to provide more frequent training, refresher courses and in-service workshops.
 - Only the State Ombudsman may certify salaried or volunteer Long-Term Care Ombudsmen.
 - Revise training standards and materials as directed on a regular basis, in response to evaluations, program change, new federal or state legislation, etc.
 - Ensure that a salaried or volunteer ombudsman and members of his or her immediate family shall be free of conflicts of interest as defined in WAC 365-18-040.
 - A long-term care ombudsman shall not be assigned to a long-term care facility in which a member of that ombudsman's immediate family resides.
 - Follow the State Ombudsman criteria and written procedures for re-certification and de-certification. Ensure that salaried and volunteer ombudsmen are aware of the criteria.
 - Include plans and procedures for volunteer training, evaluation, recruitment, supervision procedures and retention.
- E. Provide for computer equipment, modem (or internet connection) and a password protected e-mail address. Use Harmony's Ombudsmanager to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving problems and providing data generated to the State Ombudsman Office.
- F. **Billing Procedures And Payment are described in the Special Terms And Conditions, Exhibit 1 - Section 3, Page 3.**

Submit monthly Long-Term Care Ombudsman Program activity reports to the State Ombudsman Office must be received by fifteenth (15th) of each month.

These reports shall include, but are not limited to:

1. Information on Consultations and Cases/Complaints:
 - Number of consultations to residents, families, friends, long-term care providers/staff, etc;
 - Number of new cases/complaints recorded, investigated and resolved by the regional office;
 - Number of previously reported but unresolved cases/complaints;
 - Nature of cases/complaints origination;
 - Number of closed cases/complaints for the month;
 - Number of opened cases/complaints for the month;
 - Number of clients and type of case assisted by program legal services;
 - Number and nature of hearing attended on behalf of residents;
 - Any other pertinent program information including potential escalation of complaint status
2. Number of testimonies presented to the legislature.



3. Number of program presentations conducted, workshops or training held in community for partners, long-term care providers. Include topic, location, date and number of attendees.
 4. Number of subgrantees or interagency meetings attended (ex. RCS/DSHS).
 5. The number and subject matter of volunteer and staff training workshops held, location of the workshops, the number of individuals participating in training, and the number of volunteers and staff certified and re-certified as ombudsmen.
 6. Any changes in regional volunteer or staff; changes in program emphasis.
 7. The number of training sessions provided to volunteer and staff Ombudsman for purpose of skills, training and education. Include date of training, location and number of attendees.
 8. Any changes in regional staffing or volunteer
 9. Number of Regional Long-Term Care Ombudsman Advisory Council meeting held each month. Keep attendance.
 10. Submit other reports as required including but not limited to the number of facilities with assigned ombudsmen. This can be achieved by complete monthly data entry of non-complaint related visits by all volunteer and staff ombudsmen. This information is required to allow the State Ombudsman Office to provide accurate reports to Department of Commerce, MSC and federal reporting requirements of the National Ombudsman Reporting System (NORS).
- G. Promote and provide marketing, information, and education to residents and community. Ensure that the program is well marketed and visible in long-term care facilities and communities throughout the region, by providing information, education and training programs to citizens' groups, the media, the general public, local volunteer groups, human service workers, families, long-term care facility staff and others involved in the long-term care industry, concerning resident rights and issues and how these need to be addressed.
- Work with the local Advisory Council, regional staff and volunteers, and members of organizations which advocate for senior issues and improvements in long-term care, to improve marketing and visibility of the program.
 - Work with members of organizations that represent senior and long-term care issues to advocate for the program.
 - Provide to the public long-term care ombudsman complaint statistics.
 - Distribute educational materials on such topics as resident rights, protective services, and admissions agreements.
 - Make additional information about long-term care services available.
- H. Promote the development of consumer organizations (e.g., resident councils, family councils, family support groups, and citizen advocacy groups) related to long-term care.



- J. Maintain an up-to-date inventory of all equipment valued at more than \$1,000 per unit purchased with program funds. Submit a copy of the Inventory to the Contractor by October 30, 2023, and additionally as requested.
- II. Establish and maintain a regional ombudsman program within the designated boundaries. Maintain balance of volunteers between urban, rural, and ethnically diverse areas, and between all types of Long-Term care facilities. Kitsap County Division of Aging & Long-Term Care will manage the regional program and will carry out the following responsibilities:
- A. Establish an office.
- Hire staff for the site.
 - Establish and strengthen one local advisory council for serving Kitsap County.
 - Establish systems for access to facilities, residents and resident records.
 - Establish systems for complaint investigation and resolution, making every effort to resolve complaints locally; reporting unresolved complaints to the State Ombudsman for consultation and assistance with resolution.
 - Follow all "Program Instruction Memo's (PIM's) and referral procedures outlined by the State Ombudsman.
 - Record and analyze complaints and other client and volunteer contacts.
 - Ensure confidentiality of client information.
 - Recruit, train, supervise, support, evaluate and recognize volunteers.
 - Ensure that policies and procedures established by the State Ombudsman Office are enforced.
 - Together with the Contractor, establish the lowest possible program administrative costs (indirect, overhead, administration, space, equipment, computers); and ensure that most of the budget is used to pay salaries and ombudsmen expenses.
 - With the Contractor and the local advisory council, establish targets for number of volunteers recruited and retained, with expectations for maintaining or increasing these numbers.
 - Work to secure local sources of funding and include this in the annual budget.
 - Ensure that the RLTCOP highly visible locally.
 - Provide information and education to the public.
- B. Coordinate with State Long-Term Care Ombudsman activities statewide by participating in a system of regular meetings, conference calls, newsletters, etc. Routinely provide input on policy decisions.
- C. Monitor all regional staff, program activity and volunteer work annually.
- D. Provide a fully executed Regional Long-Term Care Ombudsman Program contract and subcontractor budget before receiving any reimbursement of funds from the Contractor.
- III. Develop and maintain ONE (1) Regional Long-Term Care Ombudsman Program Advisory Council.



- A. Efforts should be made to seek representation of a broad spectrum of interests served by the program, including but not limited to, mental illness, dementia, and developmental and physical disabilities. All vacancies to advisory councils should be filled when possible within six months of the vacancy.
- Provide the State Ombudsman Office a list of current names and addresses of the Regional Long-Term Care Ombudsman Program Advisory Council by October 30, 2023.
 - Forward copies of all meeting agendas and minutes from the Regional Long-Term Care Ombudsman Program Advisory Council meetings to the State Ombudsman Office within 30-days after the meeting.
 - Involve the Regional Long-Term Care Ombudsman Program Advisory Council in the development of the Regional Action Plan to be submitted to the State Ombudsman Office by October 30, 2023.
 - Assure Regional Long-Term Care Ombudsman Program Advisory Council participation in screening of volunteer applicants.

IV. **Reports and Documents Required**

(The following reports, action items, or documents are due by the Subgrantee)

The Subgrantee agrees to continue to use Harmony's Ombudsmanager software to collect and manage program data in the Regional Long-Term Care Ombudsman Program office which meets the federal reporting requirements of the National Ombudsman Reporting System (NORS).

ITEM/OUTPUT:	DUE DATE:	SEND TO:
<p>1. RLTCOP Inventory List if any item over \$1,000. Maintain an up-to-date inventory of all equipment valued at more than \$1,000 per unit purchased with program funds.</p>	October 30, 2023, and additionally as requested.	State LTC Ombudsman Office. <i>Copy of list to:</i> MSC/Accounting
<p>2. Regional Action Plan - consistent with the statewide three-year plan, which includes, but is not limited to, the following regional performance measures for the current contract period.</p>	October 30, 2023	State LTC Ombudsman Office <i>Attention: QA Program Administrator</i>
<p>3. RLTCOP updated Certified Volunteer Ombudsman contact list.</p>	October 30, 2023 and any during the current contract period and any changes during the current contract period.	State LTC Ombudsman Office <i>Attention: QA Program Administrator</i>
<p>4. RLTCOP updated Regional Long-Term Care Ombudsman Advisory Council contact list.</p>	October 30, 2023 and any during the current contract period and any changes during the current contract period.	State LTC Ombudsman Office <i>Attention: QA Program Administrator</i>



<p>5. Regional Long-Term Care Ombudsman Program Advisory Council agendas and minutes.</p>	<p>Submit agenda and minutes with 30-days after the meeting.</p>	<p>State LTC Ombudsman Office <i>Attention: QA Program Administrator</i></p>
<p>6. RLTCOP Monthly Report- data and reports related to residents and to complaints and conditions in long-term care facilities for the purpose of assisting LTCO and ADSA in identifying and resolving significant problems.</p>	<p>By the 15th of the following month.</p>	<p>State LTC Ombudsman Office <i>Attention: QA Program Administrator</i></p>
<p>7. MSC - Monthly Volunteer Hours – data and reports entered into Ombudsmanager. Activities tracked include: visitation, meetings, travel and any activities that capture the volunteer hours.</p>	<p>By the 15th of the following month.</p>	<p>Harmony's Ombudsmanager database. <i>Verify with the State LTCOP Office's QA Administrator</i></p>
<p>8. Quarterly Government Management Accountability and Performance Data (GMAP) - All cases and consultation data and reporting entered into Ombudsmanager.</p>	<p>1st Qtr - Oct. 9, 2023 2nd Qtr - Jan 8, 2024 3rd Qtr - April 8, 2024 4th Qtr - July 8, 2024</p>	<p>Harmony's Ombudsmanager database <i>Verify with the State LTCOP Office's QA Administrator</i></p>
<p>9. Annual Ombudsman Reporting Tools Report (ORT) - federal report includes all annual cases, consultations and activities for Federal Fiscal Year October 2023 - September 2024.</p>	<p>By November 30, 2023</p>	<p>All data entered in Harmony's Ombudsmanager database. Email questionnaire form to <i>Attention: QA Program Administrator</i></p>



INVOICE

Multi-Service Center
 1200 S. 336th Street, Federal Way WA 98003
 PH 253.838.6810
 FX 253.835.7511

INVOICE	
INVOICE NUMBER: _____ 2324-R11-YYYY-MM	DATE SUBMITTED: _____

AGENCY	
SUBGRANTEE	Kitsap County Division of Aging and Long-Term Care
<i>Street Address</i>	614 Division Street, MS-5
<i>City, State, Zip</i>	Port Orchard, WA 98366-4676
<i>Mail Address</i>	614 Division Street, MS-5
<i>City, State, Zip</i>	Port Orchard, WA 98366-4676
<i>Phone</i>	360-337-7068
<i>Fax</i>	360-337-5762
	<i>Contact</i>
	<i>Title</i>
	<i>Email</i>

COMPENSATION				
COMPENSATION FOR THE PERIOD OF: _____				
			Month/Year	
BUDGET CATEGORIES:	BUDGET	CURRENT	CUMULATIVE	BALANCE
Long Term Care	\$ 72,583.00	\$ -	\$ -	\$ 72,583.00
Travel (Regional Meetings)	\$ 110.00	\$ -	\$ -	\$ 110.00
ARP	\$ 3,396.37	\$ -	\$ -	\$ 3,396.37
Adult Family Home	\$ 2,672.00	\$ -	\$ -	\$ 2,672.00
HB1402	\$ 7,609.00	\$ -	\$ -	\$ 7,609.00
		\$ -	\$ -	
TOTAL	\$ 86,370.37	\$ -	\$ -	\$ 86,370.37
<i>Progress</i>		0%	0%	100%

CERTIFICATION

The individual signing below certifies under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished according to the subgrantee agreement, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion or Vietnam era or disabled veterans status.

SUPPORTING DOCUMENTATION

The individual signing below certifies that a list of expenses will accompany this invoice to match in amount and by category in compliance with the supporting documentation requirements as stated in the subgrantee agreement. In addition, the information provided is subject to examination under the periodic bi-annual desk audit review.

AUTHORIZATION	
SUBGRANTEE:	
<i>Name:</i>	<u>Stacey A.S. Smith</u>
<i>Title:</i>	<u>Administrator</u>
	<i>Signature:</i> _____
	<i>Date:</i> _____

MSC Use Only	WASLTCOP Review:	Fiscal Review:
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LOCAL LONG-TERM CARE OMBUDSMAN PROGRAM
ADVISORY COUNCIL

Membership

The Advisory Council has between nine and eleven members. The Advisory Council should represent a broad spectrum of persons who are served by the program. Representatives may come from the Area Agency on Aging Advisory Board or Council and/or staff, the Community Action Agency Board. A resident of a long term care facility or a resident's family member, a staff member of a long term care facility are encouraged to participate as members as well as persons or organizations who have knowledge of dementia care, mental illness or persons with developmental disabilities. A legal aid specialist, a Senior Advocate, or a Retired Senior Volunteer Program (RSVP) member are also suitable for participation as an Advisory Council member.

Functions

- Provide guidance on issues that impact the local long-term care community.
- Assist with visits to local legislators to educate about the Long-Term Care Ombudsman Program.
- Assist with the development of an annual regional action plan that includes assistance with the development of program goals and objectives.
- Establish and oversee a Publicity Committee to publicize the program and disseminate information about recruiting opportunities, and publicize training events.
- Establish means of recruiting local volunteers who are interested in becoming Ombuds.
- Establish and oversee a Volunteer Ombuds Screening Committee with responsibility to interview, screen and select applicants for training. This Committee includes the local Regional Long-Term Care Ombuds and an Advisory Council member with a long-term care background.
- Assure and oversee local training efforts and provide coordinating mechanisms with the trainers from the local community.
- Locate potential training and volunteer recognition sites.
- Provide advice on the placement of volunteers when appropriate.
- Assist the Regional LTC Ombuds to recognize volunteers and oversee at least one volunteer recognition event for the Volunteer Ombuds.



**WASHINGTON STATE
LONG-TERM CARE OMBUDSMAN PROGRAM**

JOB TITLE: REGIONAL LONG-TERM CARE OMBUDS

The Regional Long-Term Care Ombuds (RLTCO) serves as an effective and visible advocate for the well being of long-term care residents within a designated region. The Regional Long-Term Care Ombuds shall promote both individual and systematic complaint resolution activities, including community involvement, administrative and legislative monitoring and reporting.

The Regional Long-Term Care Ombuds shall promote the development of citizen organizations, such as resident and family councils, to give residents of long-term care facilities, and other interested parties, a voice in resident health, safety, and policy-making process. Promote the regional program to increase awareness of and involvement with local long-term care facilities. Recruit, train and supervise volunteers to help carry out complaint fact-finding and resolution activities. Work with local organizations to develop additional funding for the regional program. Establish communication channels with government agencies, long-term care providers and organizations, professional groups and advocate groups within the region.

The RLTCO shall receive and carry out fact-finding; and resolve complaints relating to administrative action which adversely affect health, welfare and rights of residents of long term care facilities within the region. Encourage reconciliation by serving as a third party mediating disputes over services or issues when necessary. Assist long-term care providers, agencies, volunteers and others in becoming more responsive to the needs of residents. With the consent of resident refer complaints which come under other agencies jurisdiction for investigation. Maintain a regional reporting system to collect data related to complaints and conditions in long-term care facilities.

The RLTCO shall monitor complaints and the system in order to identify long-term care patterns and issues in the region. Analyze and develop policies and procedures to provide information and understanding to authorities charged with operation and regulation of the long-term care facilities within the region.

SPECIFIC DUTIES ARE:

- I. Long-Term Care Ombuds Tasks:
 - A. Receive the delegation of Long-Term Care Ombuds authority from the State Long-Term Care Ombuds, and, within the region fulfill Long-Term Care Ombudsman responsibilities assigned by the federal Older Americans Act and State Long-Term Care Ombuds statutes on behalf of the State Long-Term Care Ombuds.
 - B. Receive, carry out fact finding about, and resolve complaints and concerns raised by residents, family members, friends, and facility staff within the region.



- C. Act as a mediator in disputes between residents and other parties representing the resident's point of view.
- D. Maintain the confidentiality of complainants and residents per federal and state statutes.
- E. Document complaints and cases per instructions from the State Ombuds; maintain the region's computerized case management system to assure complaints are resolved in a timely manner.
- F. Provide summary statistical and narrative reports per instructions from the State Ombuds; utilize computer system to generate monthly and annual summary reports as required by the State Ombuds.
- G. Follow Program Instructions as issued in the official memo series from the State Ombuds.
- H. Attend regular staff meetings held by the State Ombuds.
- I. Provide staff services to the Regional Long-Term Care Ombuds Advisory Board.

II. Volunteer Ombuds Management Tasks:

- A. Recruit candidates to volunteer as a Long-Term Care Ombuds.
- B. Coordinate (locates training sites, plan for trainee meals and provide local trainers per the state office training agenda) initial 30-hour training for new recruits and participate in these training sessions.
- C. Provide in-service training as necessary to assure volunteer eligibility for annual re-certification and assure volunteer knowledge about appropriate issues is up to date.
- D. Supervise the work of Certified Volunteer Long-Term Care Ombuds in visiting assigned facilities, receiving complaints, carrying out fact-finding, and mediating the resolution of concerns.

KNOWLEDGE AND ABILITIES

Knowledge of: the needs and problems of long-term care residents and their families; the State and local long-term care system; social service and public benefit programs related to the residents; medical and social process of aging.



Ability to: organize and administer social services; coordinate with related services; supervise and train staff and volunteers; organize community groups; write and speak effectively; identify and analyze issues, maintain computerized data base.

MINIMUM QUALIFICATIONS

Bachelors Degree in health, nursing, social sciences, psychology, sociology, counseling, social work, or closely related field and three years of social service experience with at least two years in the field of aging or geriatric long-term care.

BACKGROUND SKILLS

Good at working with people; nursing; social services; personnel management; knowledge of legal systems; case management; mediation; knowledge of long-term care facility issues; knowledge of gerontology; networking between agencies (disabled and mental health); public speaking; understanding of resources that exist in the community; understanding of government systems and how they work; sense of or experience in the political field.

REQUIREMENTS

1. Must be free of conflict of interests as defined in WAC 365-18 which interfere or have the appearance of interfering with the Long-Term Care Ombuds's responsibilities. In particular, must not have been an employee in any capacity with a long-term care facility for one year prior to appointment.
2. Must have no pecuniary interest in the provision of long term care services.
3. Must have a car, car insurance, and valid Washington Driver's License.
4. Must be a resident of the region served by the Regional Long-Term Care Ombuds Program who employs them.

WAC 365-18-040 Conflicts of interest. (1) All Ombuds shall be free from conflicts of interests, including:

(a) No Ombuds shall be or have been employed by or participated in the management of any long-term care facility, or have or have had the right to receive remuneration from a long-term care facility, including work as a paid consultant or independent contractor, currently or within the past year;

(b) No Ombuds or member of his or her immediate family shall have, or have had within the past year, any pecuniary interest in a long-term care facility or a long-term care service;

(c) No Ombuds shall have a direct involvement in the licensing, certification, or regulation of a long-term care facility or of a long-term care service during his or her tenure as an Ombuds or within the past



year;

(d) No Ombuds shall be assigned to or work in a long-term care facility in which the Ombuds or a member of his/her immediate family resides;

(e) No Ombuds shall solicit or be the beneficiary of gifts, money or estate property from residents in any facility in which he or she has served or is serving as Ombuds. This subsection shall not prohibit an Ombuds from receiving gifts, money, or estate property from a resident who is a relative of the Ombuds;

(f) No Ombuds may work for an agency or entity in which the Ombuds has direct personal involvement in the provision or establishment of involuntary services or in the involuntary commitment of a resident.

(2) No individual, or immediate family member of such an individual, who is involved in the designation or removal of the state Ombuds, or the designation or revocation of the contractor or subcontractors, or who administers or oversees the contractor's or subcontractor's contract, may be an official or employee of any agency or organization that conducts the licensing, certification, or regulation of long-term care facilities, or that owns, operates, or manages such facilities.

[Statutory Authority: Chapter 43.190 RCW. 02-17-018, § 365-18-040, filed 8/9/02, effective 9/9/02. Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-040, filed 4/17/00, effective 5/18/00.]



**WASHINGTON STATE
LONG-TERM CARE OMBUDSMAN PROGRAM**

**JOB DESCRIPTION: CERTIFIED LONG-TERM CARE OMBUDS
(VOLUNTEER)**

DESCRIPTION & PURPOSE:

A Certified Volunteer in the Washington State Long-Term Care Ombudsman Program serves persons who reside in long-term care by providing them with information about their rights and available resources. Ombuds also obtain factual information about resident's complaints and assist with protection of their rights, and otherwise assure that they receive fair treatment from service providers.

RESPONSIBILITIES AND DUTIES:

1. At least weekly, visit with residents living in the assigned long-term care facility. More frequent visits are desirable and important.
2. Provide individual information to residents living in the assigned long-term care facility about their rights, community services available to them, laws, regulations and standards that govern long-term care facilities, and good health and safety practice.
3. When a resident living in the assigned long-term care facility complains, or otherwise discusses a violation of their rights, a law, regulation or standard:
 - a. Obtain the resident's consent to discuss the complaint with the service provider, review records, etc. if needed to investigate the complaint.
 - b. Determine the facts of the alleged violation.
 - c. Make a determination that the complaint was/was not verified.
 - d. When the complaint is verified, work with the resident and service provider to resolve the complaint.
 - e. When the complaint is not resolved, refer the complaint, together with all documentation, to the Regional Long-Term Care Ombuds under whose direction you work and, with the resident's consent, refer the complaint to the appropriate regulatory agency if necessary.
4. Assist residents living in the assigned long-term care facility and their families and friends to become more actively involved in their care and treatment by assisting to develop and participating in resident councils and family support groups.
5. Attend monthly in-service training sessions.
6. Submit monthly activity reports.



AUTHORITY:

Upon successful completion of a 36-hour training program, the Washington State Long-Term Care Ombuds certifies volunteer Ombuds.

SUPERVISION:

Routine activities and responsibilities of the volunteer Ombuds are supervised by the Regional Long-Term Care Ombuds who have delegated authority from the State Long-Term Care Ombuds to operate the regional program. Final authority over the program rests with the state long-term care Ombuds.

Evaluation:

Volunteer Ombuds are evaluated on job performance by the regional long-term care Ombuds three months after their first day of work with residents of their assigned long-term care facility and annually thereafter. Annual re-certification will be based on satisfactory performance reports.

REQUIREMENTS:

- A sincere interest in promoting the well-being and protecting the rights of people in long-term care.
- An ability to work cooperatively with the people who live in long-term care facilities, the Regional Long-Term Care Ombuds, and long-term care providers.
- Ability to discover facts that result in complaints and impartially and objectively determine whether complaints are verified or not verified.
- Acceptance of, and adherence to, the Volunteer Ombuds Code of Ethics and Standards.
- Successful completion of the Long-Term Care Volunteer Ombuds Training Program and State Ombuds's Certification as a Volunteer.
- Commitment to provide at least four hours per week of Volunteer Ombuds service per year, and commitment to follow through on specific complaints once begun, even when the time demands are greater.
- Free of conflicts of interest as outlined in WAC 365-18-040



RESTRICTIONS:

All Ombuds must be free from the following conflicts of interest:

- Ombuds cannot be employed by, manage, or work as a paid consultant or independent contractor for a long-term care facility, currently or within the last year.
- Ombuds or a member of his/her immediate family cannot have a significant ownership or investment interest in a long-term care facility or service, currently or within the last year.
- Ombuds cannot have a direct involvement in the licensing or regulation of a long-term care facility or long-term care service, while certified as an Ombuds or within the last year.
- Ombuds cannot solicit or receive gifts, money or estate property from a resident, unless the resident is a relative.
- Ombuds cannot be assigned to a long-term care facility in which the Ombuds or a member of his/her immediate family is a resident.
- A Volunteer Ombuds shall not use this position for any financial benefit, direct, indirect or implied.
- A Volunteer Ombuds shall not conduct or engage in political or religious activities at the long-term care facility to which s/he is assigned.
- Ombuds cannot have direct personal involvement in the provision of involuntary services or involuntary commitment of a resident.

The State Long-Term Care Ombudsman Program Final Rule: 45 CFR 1324 (formerly 1327)

45 CFR 1324 State Long-Term Care Ombudsman Programs

LINK:

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=790b733a50a67396a752f7291d666fea&ty=HTML&h=L&mc=true&r=PART&n=pt45.4.1324>

Subpart A—State Long-Term Care Ombudsman Program

§1324.1 Definitions.

§1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

§1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

§1324.15 State agency responsibilities related to the Ombudsman program.

§1324.17 Responsibilities of agencies hosting local Ombudsman entities.

§1324.19 Duties of the representatives of the Office.

§1324.21 Conflicts of interest.

AUTHORITY: 42 U.S.C. 3001 et seq.

SOURCE: 80 FR 7758, Feb. 11, 2015, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35646, June 3, 2016

§1324.1 Definitions.

The following definitions apply to this part:

Immediate family, pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.

Representatives of the Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.

Resident representative means any of the following:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

(2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

(3) Legal representative, as used in section 712 of the Act; or

(4) The court-appointed guardian or conservator of a resident.

(5) Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

State Long-Term Care Ombudsman, or *Ombudsman*, as used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§1324.13 and 1324.19.

State Long-Term Care Ombudsman program, *Ombudsman program*, or *program*, as used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

Willful interference means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in §1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1324.19.

§1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

(a) The Office of the State Long-Term Care Ombudsman shall be an entity which shall be headed by the State Long-Term Care Ombudsman, who shall carry out all of the functions and responsibilities set forth in §1324.13 and shall carry out, directly and/or through local Ombudsman entities, the duties set forth in §1324.19.

(b) The State agency shall establish the Office and, thereby carry out the Long-Term Care Ombudsman program in any of the following ways:

(1) The Office is a distinct entity, separately identifiable, and located within or connected to the State agency; or

(2) The State agency enters into a contract or other arrangement with any public agency or nonprofit organization which shall establish a separately identifiable, distinct entity as the Office.

(c) The State agency shall require that the Ombudsman serve on a full-time basis. In providing leadership and management of the Office, the functions, responsibilities, and duties, as set forth in §§1324.13 and 1324.19 are to constitute the entirety of the Ombudsman's work. The State agency or other agency carrying out the Office shall not require or request the Ombudsman to be responsible for leading, managing or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.

(1) This provision does not limit the authority of the Ombudsman program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.

(2) [Reserved]

(d) The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:

(1) Long-term services and supports or other direct services for older persons or individuals with disabilities;

(2) Consumer-oriented public policy advocacy;

(3) Leadership and program management skills; and

(4) Negotiation and problem resolution skills.

(e) *Policies and procedures.* Where the Ombudsman has the legal authority to do so, he or she shall establish policies and procedures, in consultation with the State agency, to carry out the Ombudsman program in accordance with the Act. Where State law does not provide the Ombudsman with legal authority to establish policies and procedures, the Ombudsman shall recommend policies and procedures to the State agency or other agency in which the Office is organizationally located, and such agency shall establish Ombudsman program policies and procedures. Where local Ombudsman entities are designated within area agencies on aging or other entities, the Ombudsman and/or appropriate agency shall develop such policies and procedures in consultation with the agencies hosting local Ombudsman entities and with representatives of the Office. The policies and procedures must address the matters within this subsection.

(1) *Program administration.* Policies and procedures regarding program administration must include, but not be limited to:

(i) A requirement that the agency in which the Office is organizationally located must not have personnel policies or practices which prohibit the Ombudsman from performing the functions and responsibilities of the Ombudsman, as set forth in §1324.13, or from adhering to the requirements of section 712 of the Act. Nothing in this provision shall prohibit such agency from requiring that the Ombudsman, or other employees or volunteers of the Office, adhere to the personnel policies and procedures of the entity which are otherwise lawful.

(ii) A requirement that an agency hosting a local Ombudsman entity must not have personnel policies or practices which prohibit a representative of the Office from performing the duties of the Ombudsman program or from adhering to the requirements of section 712 of the Act. Nothing in this provision shall prohibit such agency from requiring that representatives of the Office adhere to the personnel policies and procedures of the host agency which are otherwise lawful.

(iii) A requirement that the Ombudsman shall monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(iv) A description of the process by which the agencies hosting local Ombudsman entities will coordinate with the Ombudsman in the employment or appointment of representatives of the Office.

(v) Standards to assure prompt response to complaints by the Office and/or local Ombudsman entities which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

(vi) Procedures that clarify appropriate fiscal responsibilities of the local Ombudsman entity, including but not limited to clarifications regarding access to programmatic fiscal information by appropriate representatives of the Office.

(2) *Procedures for access.* Policies and procedures regarding timely access to facilities, residents, and appropriate records (regardless of format and including, upon request, copies of such records) by the Ombudsman and representatives of the Office must include, but not be limited to:

(i) Access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

(ii) Access to all residents to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iii) Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iv) Access to review the medical, social and other records relating to a resident, if—

(A) 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;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; and

(C) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;

(v) Access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;

(vi) Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and

(vii) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR part 160 and 45 CFR part 164, subparts A and E, 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.

(3) *Disclosure.* Policies and procedures regarding disclosure of files, records and other information maintained by the Ombudsman program must include, but not be limited to:

(i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by §1327.13(e);

(ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by §1327.19(b)(5) through (8), unless:

(A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:

(A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iv) Exclusion of the Ombudsman and representatives of the Office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in §1327.19(b)(5) through (8); and

(v) Adherence to the provisions of paragraph (e)(3) of this section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(c) of the Act.

(4) *Conflicts of interest.* Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in §1324.21, including:

(i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman is subject to a conflict of interest;

(ii) Requiring that other agencies in which the Office or local Ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an Ombudsman or representatives of the Office with a conflict that cannot be adequately removed or remedied;

(iii) Requiring that the Ombudsman take reasonable steps to refuse, suspend or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, which cannot be adequately removed or remedied;

(iv) Establishing the methods by which the Office and/or State agency will periodically review and identify conflicts of the Ombudsman and representatives of the Office; and

(v) Establishing the actions the Office and/or State agency will require the Ombudsman or representatives of the Office to take in order to remedy or remove such conflicts.

(5) *Systems advocacy.* Policies and procedures related to systems advocacy must assure that the Office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

(i) Such procedures must exclude the Ombudsman and representatives of the Office from any State lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act.

(ii) Nothing in this part shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the determinations of the Office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

(6) *Designation.* Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and refuse, suspend or remove designation of local Ombudsman entities and representatives of the Office.

(i) Such criteria should include, but not be limited to, the authority to refuse, suspend or remove designation a local Ombudsman entity or representative of the Office in situations in which an identified conflict of interest cannot be adequately removed or remedied as set forth in §1327.21.

(ii) [Reserved]

(7) *Grievance process.* Policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

(i) Such process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office.

(ii) [Reserved]

(8) *Determinations of the Office.* Policies and procedures related to the determinations of the Office must ensure that the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the State agency or other agency in which the Office is organizationally located, regarding:

(i) Disclosure of information maintained by the Ombudsman program within the limitations set forth in section 712(d) of the Act;

(ii) Recommendations to changes in Federal, State and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents; and

(iii) Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

§1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.

(a) *Functions.* The Ombudsman shall, personally or through representatives of the Office—

(1) Identify, investigate, and resolve complaints that—

(i) Are made by, or on behalf of, residents; and

(ii) Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of—

(A) Providers, or representatives of providers, of long-term care;

(B) Public agencies; or

(C) Health and social service agencies.

(2) Provide services to protect the health, safety, welfare, and rights of the residents;

(3) Inform residents about means of obtaining services provided by the Ombudsman program;

(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;

(5) Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

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

(iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office; and

(v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

(vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.

(vii) In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies by the Ombudsman or representatives of the Office do not constitute lobbying activities as defined by 45 CFR part 93.

(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and

(9) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents; and

(b) The Ombudsman shall be the head of a unified statewide program and shall:

(1) Establish or recommend policies, procedures and standards for administration of the Ombudsman program pursuant to §1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in §1324.19 in accordance with Ombudsman program policies and procedures.

(c) *Designation.* The Ombudsman shall determine designation, and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act and the policies and procedures set forth in §1324.11(e)(6).

(1) Where an Ombudsman chooses to designate local Ombudsman entities, the Ombudsman shall:

(i) Designate local Ombudsman entities to be organizationally located within public or non-profit private entities;

(ii) Review and approve plans or contracts governing local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and

(iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.

(2) *Training requirements.* The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act, in consultation with residents, resident representatives, citizen organizations, long-term care providers, and the State agency, that—

(i) Specify a minimum number of hours of initial training;

(ii) Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate; and

(iii) Specify an annual number of hours of in-service training for all representatives of the Office;

(3) Prohibit any representative of the Office from carrying out the duties described in §1324.19 unless the representative—

(i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(4) The Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman program duties and, as applicable, coordinate such investigations with the State agency in which the Office is organizationally located, agency hosting the local Ombudsman entity and/or the local Ombudsman entity.

(5) Policies, procedures, or practices which the Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman program shall be sufficient grounds for refusal, suspension, or removal of designation of the representative of the Office and/or the local Ombudsman entity.

(d) *Ombudsman program information.* The Ombudsman shall manage the files, records, and other information of the Ombudsman program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such files, records, and other information are the property of the Office. Nothing in this provision shall prohibit a representative of the Office or a local Ombudsman entity from maintaining such information in accordance with Ombudsman program requirements.

(e) *Disclosure.* In making determinations regarding the disclosure of files, records and other information maintained by the Ombudsman program, the Ombudsman shall:

(1) Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act in responding to requests for disclosure of files, records, and other information, regardless of the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;

(2) Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records or other information of the Office; and

(3) Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including:

(i) Classification of at least the following types of files, records, and information: medical, social and other records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the Ombudsman program reporting system; and

(ii) Identification of the appropriate individual designee or category of designee, if other than the Ombudsman, authorized to determine the disclosure of specific categories of information in accordance with the criteria described in paragraph (e) of this section.

(f) *Fiscal management.* The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies and procedures governing the Ombudsman program.

(g) *Annual report.* The Ombudsman shall independently develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and as otherwise required by the Assistant Secretary.

(1) Such report shall:

(i) Describe the activities carried out by the Office in the year for which the report is prepared;

(ii) Contain analysis of Ombudsman program data;

(iii) Describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;

(iv) Contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;

(v) Contain analysis of the success of the Ombudsman program, including success in providing services to residents of, assisted living, board and care facilities and other similar adult care facilities; and

(vi) Describe barriers that prevent the optimal operation of the Ombudsman program.

(2) The Ombudsman shall make such report available to the public and submit it to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities.

(h) Through adoption of memoranda of understanding and other means, the Ombudsman shall lead state-level coordination, and support appropriate local Ombudsman entity coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being or rights of residents of long-term care facilities including, but not limited to:

(1) Area agency on aging programs;

(2) Aging and disability resource centers;

- (3) Adult protective services programs;
- (4) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
- (5) Facility and long-term care provider licensure and certification programs;
- (6) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
- (7) Victim assistance programs;
- (8) State and local law enforcement agencies;
- (9) Courts of competent jurisdiction; and
- (10) The State legal assistance developer and legal assistance programs, including those provided under section 306(a)(2)(C) of the Act.
- (i) The Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.

§1324.15 State agency responsibilities related to the Ombudsman program.

(a) In addition to the responsibilities set forth in part 1321 of this chapter, the State agency shall ensure that the Ombudsman complies with the relevant provisions of the Act and of this rule.

(b) The State agency shall ensure, through the development of policies, procedures, and other means, consistent with §1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

(c) The State agency shall provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(d) The State agency shall provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

(e) The State agency shall provide monitoring, as required by §1321.11(b) of this chapter, including but not limited to fiscal monitoring, where the Office and/or local Ombudsman entity is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in §§1324.13 and 1324.19. The State agency may make reasonable requests of reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.

(f) The State agency shall ensure that any review of files, records or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in §§1324.11(e)(3) and 1327.13(e).

(g) The State agency shall integrate the goals and objectives of the Office into the State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Act, to promote collaborative efforts and diminish duplicative efforts. Where applicable, the State agency shall require inclusion of goals and objectives of local Ombudsman entities into area plans on aging.

(h) The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with, the activities of other programs authorized by Title VII of the Act as well as other State and local entities with responsibilities relevant to the health, safety, well-being or rights of older adults, including residents of long-term care facilities as set forth in §1324.13(h).

(i) *Interference, retaliation and reprisals.* The State agency shall:

(1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation and reprisals:

(i) by a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) by a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§1324.13 and 1324.19; and

(2) Provide for appropriate sanctions with respect to interference, retaliation and reprisals.

(j) *Legal counsel.* (1) The State agency shall ensure that:

(i) Legal counsel for the Ombudsman program is adequate, available, has competencies relevant to the legal needs of the program and of residents, and is without conflict of interest (as defined by the State ethical standards governing the legal profession), in order to—

(A) Provide consultation and representation as needed in order for the Ombudsman program to protect the health, safety, welfare, and rights of residents; and

(B) Provide consultation and/or representation as needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including, but not limited to, complaint resolution and systems advocacy;

(ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents; and

(iii) Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). However, at a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long-term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and legal counsel are subject to attorney-client privilege.

(k) The State agency shall require the Office to:

(1) Develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and §1327.13(g) and as otherwise required by the Assistant Secretary.

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3) Provide such information as the Office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns; and

(4) Establish procedures for the training of the representatives of the Office, as set forth in §1327.13(c)(2).

(5) Coordinate Ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in §1324.13(h).

§1324.17 Responsibilities of agencies hosting local Ombudsman entities.

(a) The agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.

(b) The agency in which a local Ombudsman entity is organizationally located shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality and disclosure requirements of section 712 of the Act, as implemented through this rule and the policies and procedures of the Office.

(1) Policies, procedures and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.

(2) Nothing in this provision shall prohibit the host agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.

§1324.19 Duties of the representatives of the Office.

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.

(a) *Duties.* An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(2) Provide services to protect the health, safety, welfare, and rights of residents;

(3) Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints;

(4) Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and

(7) Carry out other activities that the Ombudsman determines to be appropriate.

(b) *Complaint processing.* (1) With respect to identifying, investigating and resolving complaints, and regardless of the source of the complaint (*i.e.* complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate and resolve a complaint impacting multiple residents or all residents of a facility.

(2) Regardless of the source of the complaint (*i.e.* the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

(i) The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.

(ii) The 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 Ombudsman or representative of the Office may disclose resident

identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;

(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) Investigate the complaint to determine whether the complaint can be verified; and

(G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:

(A) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

(B) Determine whether the complaint was resolved to the satisfaction of the complainant.

(iv) In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office 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.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act and the procedures set forth in §1324.11(e)(3).

(i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

(ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.

(iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

(4) For purposes of paragraphs (b)(1) through (3) of this section, communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office;

(5) For purposes of paragraphs (b)(1) through (3) of this section, if a resident is unable to communicate his or her informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication of informed consent and/or perspective regarding the resolution of the complaint of a resident representative so long as the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1327.11(e)(3), shall provide that the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;

(ii) The resident has no resident representative;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident;

(iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(v) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(vi) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(7) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1327.11(e)(3), shall provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;

(ii) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(iv) The representative of the Ombudsman obtains the approval of the Ombudsman.

(8) The procedures for disclosure, as required by §1327.11(e)(3), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies;

(i) Where such resident is able to communicate informed consent, or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative as set forth paragraphs (b)(1) through (3) of this section; and

(ii) Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

(A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(iii) In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in paragraph (b)(9) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(9) Prior to disclosing resident-identifying information pursuant to paragraph (b)(6) or (8) of this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.

(i) Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or disapproval in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.

(ii) Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in paragraph (b)(6) or (8) of this section.

(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.

[80 FR 7758, Feb. 11, 2015, as amended at 81 FR 92697, Dec. 20, 2016]

§1324.21 Conflicts of interest.

The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

(a) *Identification of organizational conflicts.* In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency and the Ombudsman shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

- (1) Is responsible for licensing, surveying, or certifying long-term care facilities;
- (2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
- (3) Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;
- (4) Has governing board members with any ownership, investment or employment interest in long-term care facilities;
- (5) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
- (6) Provides long-term care coordination or case management for residents of long-term care facilities;
- (7) Sets reimbursement rates for long-term care facilities;
- (8) Provides adult protective services;
- (9) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
- (10) Conducts preadmission screening for long-term care facility placements;
- (11) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
- (12) Provides guardianship, conservatorship or other fiduciary or surrogatedecision-making services for residents of long-term care facilities.

(b) *Removing or remedying organizational conflicts.* The State agency and the Ombudsman shall identify and take steps to remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

(1) The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(2) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

- (i) Take reasonable steps to avoid internal conflicts of interest;
- (ii) Establish a process for review and identification of internal conflicts;
- (iii) Take steps to remove or remedy conflicts;

(iv) Ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and

(v) Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(3) Where a State agency is unable to adequately remove or remedy a conflict, it shall carry out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act. The State agency may not enter into a contract or other arrangement to carry out the Ombudsman program if the other entity, and may not operate the Office directly if it:

(i) Is responsible for licensing, surveying, or certifying long-term care facilities;

(ii) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or

(iii) Has any ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.

(4) Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act, the State agency shall:

(i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program and to avoid conflicts of interest in the State agency's oversight of the contract or arrangement;

(ii) Establish a process for periodic review and identification of conflicts;

(iii) Establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;

(iv) Require that such agency or organization have a process in place to:

(A) Take reasonable steps to avoid conflicts of interest, and

(B) Disclose identified conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval.

(5) Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization. The State agency shall not enter into such contract or other arrangement with an agency or organization which is responsible for licensing or certifying long-term care facilities in the state or is an association (or affiliate of such an association) of long-term care facilities.

(6) Where local Ombudsman entities provide Ombudsman services, the Ombudsman shall:

(i) Prior to designating or renewing designation, take reasonable steps to avoid conflicts of interest in any agency which may host a local Ombudsman entity.

(ii) Establish a process for periodic review and identification of conflicts of interest with the local Ombudsman entity in any agencies hosting a local Ombudsman entity,

(iii) Require that such agencies disclose identified conflicts of interest with the local Ombudsman entity and steps taken to remove or remedy conflicts within such agency to the Ombudsman,

(iv) Establish criteria for approval of steps taken to remedy or remove conflicts in such agencies, and

(v) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts with the local Ombudsman entity in such agencies.

(7) Failure of an agency hosting a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension or removal of designation of the local Ombudsman entity by the Ombudsman.

(c) *Identifying individual conflicts of interest.* (1) In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:

- (i) Direct involvement in the licensing or certification of a long-term care facility;
- (ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility;
- (iii) Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;
- (iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
- (v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);
- (vi) Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;
- (vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services; and
- (viii) Serving residents of a facility in which an immediate family member resides.

(d) *Removing or remedying individual conflicts.* (1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to §1324.11(e)(4), to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in §1324.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

(2) When considering the employment or appointment of an individual as the Ombudsman or as a representative of the Office, the State agency or other employing or appointing entity shall:

- (i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;
- (ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;
- (iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office, and
- (iv) Take steps to remove or remedy conflicts.

(3) In no circumstance shall the entity, which appoints or employs the Ombudsman, appoint or employ an individual as the Ombudsman who:

- (i) Has direct involvement in the licensing or certification of a long-term care facility;
- (ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
- (iii) Has been employed by or participating in the management of a long-term care facility within the previous twelve months.
- (iv) Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility.

(4) In no circumstance shall the State agency, other agency which carries out the Office, or an agency hosting a local Ombudsman entity appoint or employ an individual, nor shall the Ombudsman designate an individual, as a representative of the Office who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or

(iv) Is employed by, or participating in the management of, a long-term care facility.

(A) An agency which appoints or employs representatives of the Office shall make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or participating in the management of a long-term care facility within the previous twelve months.

(B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.

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