

## BIG SANDY AAA POLICIES AND PROCEDURES LONG-TERM CARE OMBUDSMAN PROGRAM

### **I. Introduction**

Ombudsman is a Scandinavian term that roughly correlates with the English concept of advocate. As the name implies, a nursing home ombudsman advocates on behalf of nursing home residents by investigating complaints.

Locally, there is a district ombudsman who operates under state mandate. There is a functioning Ombudsman Advisory Council, made up of local advocates for nursing home residents. These advocates include relatives of residents. The ombudsman represents the residents through a network of volunteers who report to the Ombudsman. Volunteers establish a contact person in each home and set up a reporting mechanism for complaints.

The Ombudsman informs residents of their rights through visits, talks, pamphlets on issues, and instructions for residents on reporting and filing complaints.

### **II. General Responsibilities**

The LTC Ombudsman is responsible for investigating and resolving complaints and advocating on behalf of older individuals who are residents of long term care facilities and shall pursue administrative, legal and other appropriate remedies on behalf of residents of long-term care facilities.

- (1) All services shall be provided in accordance with the approved Area Plan.
- (2) Services shall be provided in a manner consistent with provisions of Title III of the Older Americans Act and regulations promulgated hereunder.
- (3) Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills.
- (4) Services shall be provided under the supervision of qualified personnel.
- (5) Services shall be accessible to older persons by telephone, correspondence, or person-to-person contact.

- (6) The delivery of services shall be performed only by staff and volunteers trained and certified to deliver those services. New staff shall receive an orientation and shall be trained prior to assuming responsibilities.
- (7) No staff person shall accept personal gratuities (gifts or money) from participants or vendors.
- (8) No staff person shall, without prior approval of the supervisor, pay bills, or cash checks for clients or participants.
- (9) There shall be designated staff who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service.
- (10) There shall be a staff person, qualified by training or experience, responsible for administering each service and supervising assigned staff.
- (11) An accurate record shall be maintained on each participant which documents participant identification data, requests for service, eligibility for services provided (age verification form is not required) and follow-up. This data shall be utilized to provide financial and service information as required by the Department for Aging and Independent Living (DAIL).

### **III. Responsibilities of the Area Agency on Aging**

The Area Agency on Aging shall have the following responsibilities:

- (1) Ensure that a district ombudsman program is in operation;
- (2) Meet all the requirements of the DAIL policy and legislation in regard to provision of LTC Ombudsman services.
- (3) Submit Ombudsman plan and meet designation requirements;
- (4) Assure that cooperative agreements exist between the district ombudsman program and the legal assistance provider;
- (5) Develop a monitoring protocol for the district program in cooperation with the DAIL and the State Long Term Care Ombudsman;
- (6) Assure compliance with all confidentiality requirements;
- (7) Assure that no conflicts of interest are present;
- (8) Report monthly in a format provided by the DAIL.

#### **IV. Specific Responsibilities of the District Ombudsman.**

The District Ombudsman Program shall be responsible for the following specific responsibilities:

- (1) Represent all long term care residents within the area development district.
- (2) Assure resident's rights are upheld and promote quality care in long term care facilities.
- (3) Promote citizen involvement in order to assure regular visitations especially for those residents without available family or friends.
- (4) Investigate and work to resolve complaints on behalf of long term care residents.
- (5) Prepare and submit reports for the State Long Term Care Ombudsman in a format and time frame provided by the State. Keep appropriate records and utilize forms as provided by the State. Complete data entry into Ombudsmanager by the 15<sup>th</sup> of each month for the previous months cases and program activities.
- (6) Advise the public about the availability of current State, local and Federal inspection reports, statements of deficiency and plans for correction for individual long term care facilities in the service area.
- (7) Publicize the existence and function of the local, volunteer, and State LTC Ombudsman Program.
- (8) Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare and rights of the residents.
- (9) Organize and implement an active volunteer program.
- (10) Assist in the development of resident or family councils.
- (11) Sponsor community education and training programs to long term care facilities, human service workers, families and the general public about long term care and residents' rights issues.
- (12) Attend required training and provide in-service training for staff and

volunteers of local programs.

- (13) Maintain records in accordance with Federal and State laws and regulations, including procedures to protect the identity, confidentiality and privacy of clients.
- (14) The ombudsman shall not be subject in any conflict of interest issue in the performance of such representative's official duties.
- (15) Submit all non-resident specific statistical and financial reports to the Area Agencies on Aging as required.
- (16) District Ombudsman have the right to enter a facility without prior notice, meet with one or more residents and observe the operation of the facility as it affects the resident.
- (17) Submit Advisory Council Meeting minutes to the Regional Ombudsman.
- (18) Review facility bed-count within your geographical area and submit quarterly to the Regional Ombudsman acknowledgment of review and changes to the bed-count if applicable.

## **V. Responsibilities of Volunteer Ombudsman**

The volunteer ombudsman shall:

- (1) Complete all required training, including for those volunteer ombudsmen involved in complaint investigations, training and certification requirements;
- (2) Provide regular visitation of residents in nursing homes;
- (3) Adhere to guidelines provided by State and District Ombudsman;
- (4) Complete required paperwork.

## **VI. Responsibilities and Procedures for the Friendly Visitor**

The purpose of the Volunteer Program is to work cooperatively with the nursing homes within the ADD toward quality of life for residents by placing volunteers in the facilities for one-on-one visitation to residents. It is our belief that the volunteers who regularly visit the residents as an advocate

will be of great assistance to the facility in ensuring quality care.

- (1) Each volunteer will complete an application and attend an initial training session prior to nursing home placement.
- (2) The volunteer agrees to a commitment of ordinarily spending a minimum of two to four hours weekly in one-on-one visitation with residents and will follow the job description as follows.
- (3) The ombudsman will arrange for the volunteer's placement in the respective facilities.
- (4) Volunteers will attend an orientation conducted by the facility where they are placed.
- (5) Volunteers will "sign in" when entering the facility at a place in the home designated for visitors and/or volunteers.
- (6) The volunteer may be flexible each week in choosing the day and hour when they will visit the facility, but will not visit after 8:00 p.m. Early morning visiting is not usually a convenient time for the resident or for the facility.
- (7) If during visitation the volunteer identifies any concern or problem of the resident she/he will refer these immediately to the designated person.
- (8) The volunteers will not perform services for the resident such as feeding, assisting in and out of bed, etc. and will observe the safety regulations of the facility. If the resident requests any service or voices a need, the volunteer will refer these to the charge nurse or other appropriate staff for action.
- (9) The volunteer will always knock before entering a resident's room.
- (10) The volunteer will carefully follow any posted restrictions for the resident and when in doubt, first confer with the charge nurse.
- (11) Time records of hours spent in the facilities and/or attending training/in-service programs is to be completed each month and sent to the Ombudsman's office.
- (12) It is recommended that no food be taken to residents. However, for special occasions, food may be taken only with prior permission from the staff.

## **VII. Ombudsman Advisory Council**

The designated district ombudsman program shall have an advisory council whose functions are to:

- (1) Review and advise program on policies and procedures;
- (2) Provide on-going support and leadership;
- (3) Identify funding resources for program viability.

The council shall be made up of persons with a strong interest in improving the quality of life for the institutionalized elderly and for protecting their rights. Group size and composition shall be individualized to the needs of the local program but shall not be less than seven. One third of the members shall be consumers or family members of consumers. Members shall not:

- (1) Be responsible for certifying or licensing long term care facilities;
- (2) Be a provider of long term services or part of an association of such providers;
- (3) Have any interest or association which may impair the ability of the Ombudsman to objectively and independently investigate and resolve complaints;
- (4) Gain economically or receive any compensation from a long term care facility provider or association.

## **VIII. Training**

The Office of the State Long Term Care Ombudsman shall provide training for staff, coordinate training for volunteers and promote the development of citizen organizations to participate in the Ombudsman Program.

All staff and volunteers working in the program in any capacity shall participate in a basic training program designed to give trainees a working knowledge of the ombudsman program and the long term care system. Additionally, program sponsors, such as Area Agency on Aging directors and directors of other sponsoring agencies shall be included in basic training whenever possible.

Minimum training for the designated unit shall be provided by the State Long Term Care Ombudsman Program. Twenty-four (24) hours of training which includes at a minimum the following areas related to long term care shall be provided to the District Long Term Care Ombudsman:

- (1) History and Role of the Long-Term Care Ombudsman Program
- (2) The Aging Process
- (3) Residents' Rights
- (4) The Problem-Solving Process Investigation
- (5) The Problem-Solving Process Resolution
- (6) Long-Term Care Setting Characteristics
- (7) Legal Issues
- (8) Long-Term Care Reimbursement System
- (9) Kentucky Data Reporting System

In addition to the minimum training, quarterly training meetings for the District Ombudsmen shall be conducted by the State Ombudsman Office. These meetings shall be mandatory. For those District Ombudsmen who are unable to attend the quarterly meetings, packets of training information shall be forwarded to the local office.

#### **IX. Residents Rights of Access**

Long term care facility residents have inherent statutory rights of access to and information from ombudsmen.

- (1) All residents shall be encouraged and assisted throughout their periods of stay in long term care facilities to exercise their rights as residents and citizens, and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of their choice, free from restraint, interference, coercion, discrimination or reprisal.
- (2) Residents may associate and communicate privately with persons of their choice.
- (3) Residents have the right to have private meetings with the appropriate long term care facility inspectors from the Cabinet for Health and Family Services.

#### **X. Complaint Investigation**

The LTC Ombudsman Program shall investigate and resolve complaints made by or on behalf of older individuals who are residents of LTC facilities relating to administrative action which may adversely affect the health, safety, welfare and rights of such residents which may include contact with the adult/complainant, staff of the long term care facility and other collateral contacts.

The LTC Ombudsman shall respond to complaints by non- elderly long term care facility residents or by those acting directly in their behalf where such action will either:

- (1) Benefit older residents of that long term care facility or older residents of long term care facilities in general, or be the only viable avenue of assistance available to the complainant, and
- (2) will not significantly diminish the LTC Ombudsman Program's efforts on behalf of older persons.

**Timelines of investigation**

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

**XI. Confidentiality**

All investigatory files, complaints, responses to complaints and all other information related to any complaint or investigation maintained by the Ombudsman Program shall be considered confidential information in accordance with Section 307 of the Older Americans Act.

No person who gains access to residents' records shall discuss or disclose information in the records or disclose a resident's identity outside of the Ombudsman Program without written consent of such resident or complainant, or upon a court order.

Information or records maintained by the Ombudsman Program shall be disclosed only at the discretion of the State Ombudsman having authority over the disposition of such files except that the identity or identifying information of any complainant or resident shall not be disclosed by such

ombudsman unless:

- (1) The complainant or resident, or a legal representative of either, consents in writing to the disclosure; or
- (2) A court orders the disclosure.

The following procedures shall be followed to maintain confidentiality:

- (1) All complaint files maintained by the programs are to be secured in locked file cabinet.
- (2) Complaint files maintained on a computerized system are to have secured access codes and computer software containing complaint file information shall be stored in a locked file.
- (3) All client-identifying information retained by or developed by the Ombudsman pertaining to complaints is to be considered confidential and is not to be discussed nor the identity of the resident disclosed.
- (4) The confidentiality and disclosure procedures do not preclude the Ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study, and other data, provided the Ombudsman does not disclose the identity of persons otherwise protected in this section.
- (5) Each resident or his guardian shall approve or refuse the release of medical and/or personal records to any individuals outside the facility, except as otherwise specified by statute or regulation.

## **XII. Conduct of Investigation**

The ombudsman, upon entering the facility, shall promptly advise the Administrator or his designated representative of their presence. The ombudsman shall not enter the living area of any resident without identifying self to the resident.

The following procedures are to be followed when interviewing a complainant:

- (1) Establish personal contact with the resident/complainant. This should include a face- to-face contact with the complainant;
- (2) The interview is to be conducted in private, if possible;

- (3) Identify yourself and state the purpose of the interview;
- (4) Identify relevant issue areas raised by the complaint and explain your responsibility to investigate;
- (5) Allow the resident to give a complete account of the situation;
- (6) Determine relationship to and attitude toward the staff of the long term care facility;
- (7) Determine whether this one time incident is part of a pattern of repeated incidences;
- (8) Determine what the resident wishes to do about the situation and offer alternatives as appropriate.
- (9) Determine if there are other service needs not stated in the report;
- (10) When appropriate, share your findings and observations with the resident, complainant and state your intentions or recommendations.

The following procedures are to be followed when interviewing staff of long term care facilities:

- (1) Conduct the interview in private, if possible;
- (2) Identify yourself and state the purpose of the interview:
- (3) Share the nature of the allegation and explain your responsibility to investigate;
- (4) Allow the staff to respond to the allegation;
- (5) When appropriate, share findings and observations and state your intentions or recommendations;
- (6) If appropriate, the interview should be centered around what can be done to remedy the situation that led to the complaint.

The following procedures are to be followed in interviewing collateral contacts:

- (1) Identify yourself;

- (2) State the purpose of the interview in accordance with confidentiality guidelines;
- (3) Obtain relevant information;
- (4) Determine the relationship to and attitude toward the resident, the long term care facility, and staff of the facility.

The following procedures are to be considered when determining the results of the investigation:

- (1) Review the resident's account of the situation;
- (2) Review the account of the situation provided by the administrator, operator and/or other employees of the long term care facility;
- (3) Review the information supplied by collateral contacts;
- (4) Review records and documents;
- (5) Evaluate the consistency of all accounts and documents;
- (6) Consider the mental status of all persons interviewed;
- (7) Consider the credibility of persons interviewed and the documents examined;
- (8) Consider possible motives for fabrication;
- (9) Review previous reports involving the resident and/or the long term care facility,
- (10) Classify the complaint with the appropriate complaint code in Ombudsmanager.

#### **XIV. Documentation of Investigation**

The District Ombudsman shall document each complaint with the following intake information:

- (1) Complainant name
- (2) Telephone number and/or address of complainant
- (3) Complainant role
- (4) Problem as presented by complainant
- (5) Date/time/shift problem occurred
- (6) Prior action (if any) taken by complainant
- (7) Consent to investigate

- (8) Facility name
- (9) Resident
- (10) Legal representative (if applicable), address, telephone number
- (11) Complaint code, verification
- (12) Notes/journal entries
- (13) Case notes
- (14) Referrals made to (if applicable)

Case records will be kept for five years.

## **XV. Complaint Resolution**

When a complaint is substantiated, or when there is some indication that the complaint is substantiated, resolution shall involve taking beneficial action on behalf of the complainant/resident. The investigating Ombudsman shall take immediate steps to resolve the complaint. The method used in resolving a specific complaint must be determined by the severity, character and extent of the problem.

All reasonable avenues of assistance to the complainant/resident, directly or by referral, shall be addressed, and if such efforts are unsuccessful, the Ombudsman shall so advise the complainant(s) and provide the individual(s) with information explaining how to proceed independently. Procedures to follow in complaint resolution may include, but are not limited to the following:

- (1) Persuading or negotiating at nursing home administrative level to change particular nursing home behavior, pattern or practice affecting a resident(s);
- (2) Consulting with a resident, relative, or nursing home staff person to relieve a problem;
- (3) Effecting positive enforcement action by a regulatory agency;
- (4) Proposing regulatory or statutory changes or additions;
- (5) Communicating with community groups and professional organizations; and
- (6) Encouraging the utilization of legal services assistance by the complainant/resident(s).

## **XVI. Monitoring Complaint Resolutions**

The resolution process shall include follow up and ongoing monitoring, as

appropriate, of the situation after a reasonable period of time through contact with the complainant or resident, or otherwise where appropriate, for the purpose of determining that the causes giving rise to the complaint have not been repeated and have not recurred. Such follow-up shall be documented in the complaint file.

### **XVII. Frequency of Facility Visits**

All long term care facilities except state mental hospitals are visited, at minimum, once each calendar quarter. The state mental hospitals are visited one time each year. At least one hour of visiting time is spent in each facility at the time of the quarterly visit.

### **XVIII. Agency Complaint Referral**

Complaints about the activities or conduct of state regulatory or enforcement agencies shall follow procedures outlined in Memorandums of Understanding, if available.

Procedures:

- (1) Concerns of the District Ombudsman regarding the Division of Family Services' investigation or resolution of a complaint are to be referred to the State Long Term Care Ombudsman. The State Ombudsman shall address the concern to the Division of Family Services or appropriate agency.
- (2) Concerns of the District Ombudsmen regarding the Division of Licensing and Regulation's investigation or resolution of a complaint are to be referred to the State Long Term Care Ombudsman. The State Ombudsman shall address the concern to the Division of Licensing and Regulation or appropriate agency.