

VIRGINIA LONG-TERM CARE OMBUDSMAN PROGRAM

POLICIES AND PROCEDURES MANUAL

October 1, 2002 – September 30, 2003

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POLICIES AND PROCEDURES

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INTRODUCTION

The mission of the Virginia Long-Term Care Ombudsman Program is to serve as an advocate for older persons who are receiving long-term care services, whether it be in a long-term care facility, the community, or their own homes.

The Ombudsman Program serves as a point of entry whereby complaints made by or on behalf of older persons in long-term care facilities, or those receiving long-term care services in the community, can be received, investigated and resolved. In addition, the Ombudsman Program identifies problems and concerns of older persons receiving long-term care services and recommends changes in the long-term care system which benefit these individuals as a group.

The Virginia Association of Area Agencies on Aging (V4A), through a contract with the Virginia Department for the Aging, operates the Office of the State Long-Term Care Ombudsman. The V4A is a non-profit organization dedicated to advocating for the needs of older Virginians through its 25 member area agencies on aging.

The Ombudsman Program was established in 1979 as a requirement of the Older Americans Act of 1965, as amended, to improve the quality of care in America's long-term care facilities. The Program's responsibilities were expanded in 1983 by the Virginia General Assembly to include responding to complaints involving community based long-term care services provided by the Department of Health, Social Services, and Mental Health, Mental Retardation and Substance Abuse Services, the area agencies on aging or any non-profit or propriety agency.

A major component of the Ombudsman Program involves educating consumers of long-term care services about their rights and how to advocate on their own behalf when they have a problem or concern. The Program operates a statewide toll-free telephone number (1-800-552-3402) to assist individuals requesting information or filing a complaint.

The Long-Term Care Ombudsman Program is a resource for information and counseling for Virginia's citizens regarding institutional and community based long-term care options, and general issues and concerns affecting the elderly. The Program works to develop and disseminate information about long-term care services and issues through presentations, written materials, and by contributing to public forums, conferences, and committees dealing with issues impacting the older long-term care consumer.

The Long-Term Care Ombudsman Program works closely with other consumer advocacy programs, regulatory agencies and providers to promote the empowerment and autonomy of older persons and the resolution of complaints. The goal of this coordination is to help people understand their rights, exercise choices, and ensure quality long-term care services.

MAJOR OMBUDSMAN RESPONSIBILITIES

The Ombudsman Program's major responsibilities, based on the requirements of the Older Americans Act, as amended, and the *Code of Virginia* include:

1. To identify, investigate and resolve complaints made by or on the behalf of residents of long-term care facilities and recipients of community based long-term care services;
2. To analyze, monitor, and provide comment on the development and implementation of federal, state and local laws, regulations, and policies with respect to long-term care in the Commonwealth;
3. To provide information to public agencies regarding the problems of older people residing in long-term care facilities or receiving long-term care services;
4. To train volunteers and others to participate in the Ombudsman Program;
5. To promote the development of citizens' organizations to advocate for quality long-term care services in their communities and in the Commonwealth;
6. To compile and analyze data relating to complaints and conditions in long-term care facilities and concerning long-term care services.
7. To identify and work to resolve significant problems affecting large numbers of older people in long-term care facilities or receiving long-term care services in the Commonwealth; and
8. To carry out other activities which the Federal and State Commissioners on Aging deem appropriate. These activities include, but are not limited to: (a) providing long-term care information to the public; and (b) the critical task of building and strengthening the Statewide Ombudsman Program.

TRAINING

Continuing education and skill development is important to the ongoing effectiveness of any profession. This is especially true for Long-Term Care Ombudsmen who are responsible for maintaining a knowledge base in a wide variety of areas, including advocacy techniques and long-term care issues. The Office of the State Long-Term Care Ombudsman recognized this need for education and professional development, and is committed to assisting local Ombudsmen fulfill this obligation.

The Office of the State Long-Term Care Ombudsman recognizes the individual training needs of staff at various levels of professional development and supports a policy of continuing education for local Ombudsmen. The Office of the State Long-Term Care

Ombudsman will provide training to the local Ombudsman on an as needed basis and at least once each year. Training will be for the provision of information to provide an opportunity to discuss common concerns and systems issues, to interact directly with representatives from other agencies, and to provide a working forum to garner input on issues and policies which need clarification or further development. Subject to the availability of funds, the Office of the State Long-Term Care Ombudsman will sponsor these training sessions.

All local Ombudsman staff are required to attend at least eight (8) hours of training during the year, outside of any State Ombudsman sponsored training. This allows the local Ombudsman to develop professionally in a way that meets his or her individual learning needs. In order to count toward the eight-hour requirement, the State Ombudsman must approve the training. Appropriate continuing education may include, but is not limited to, such topics as mediation or conflict resolution training, public benefits training, and seminars on relevant long-term care topics and issues. Local Ombudsmen should check with the State Ombudsman if there is a question whether a training or seminar may be counted toward the eight-hour requirement.

Initial training of the designated Ombudsman shall include at least the following:

Orientation (4-6 hours), which must at a minimum, include:

- overview of mission, philosophy, rules and activities of the local Ombudsman;
- review of policies and procedures;
- complaint investigation process and protocol (including documentation and confidentiality requirements); and
- review of quarterly and annual reports to the State Ombudsman;
- Internship (24 hours, as outlined in the **Professional Certification Curriculum**);
- Mediation Training (6-8 hours).

All certified local Ombudsmen must attend the Ombudsman Program Annual Training and Meeting.

VOLUNTEERS

Requirements

A local Ombudsman Program may exercise the option to use volunteers to visit long-term care facilities and assist with the program's responsibility to provide information and complaint counseling to residents. The local Ombudsman Program is responsible for recruitment, training, assignment, and supervision of volunteers acting as representatives of the program. If volunteers are utilized, the following requirements must be met:

1. The local Ombudsman Program must assure that each volunteer receives an initial orientation to the Long-Term Care Ombudsman Program and training which is approved by the Long-Term Care Ombudsman Program. The local Ombudsman

shall forward a proposed volunteer training curriculum to the Office of the State Long-Term Care Ombudsman for review and approval.

2. Each volunteer must be screened and trained prior to assuming any duties as a volunteer Ombudsman.
3. Each volunteer must sign a written agreement with the local Ombudsman Program that specifies the required qualifications, time commitment, responsibilities, training and supervision, and a pledge of confidentiality.
 - The time commitment should specify the number of hours and frequency of visits required (e.g., 3 hours per week, 14 hours per month).
 - The responsibilities should include guidelines regarding confidentiality and reporting known or suspected abuse, neglect and exploitation.
 - The number of hours of training and periodic in-service required.

Conflict of Interest

The local Ombudsman Program shall ensure that each volunteer is free from a direct conflict of interest in performing his duties. A conflict may include current or past employment by a long-term care facility or its affiliates, or a family member who is employed by a long-term care facility or an ownership or investment interest in a long-term care facility or its affiliates shall also be considered in the volunteer screening process. The local Ombudsman Program shall establish a process for identifying conflict of interest with potential volunteers. Local Ombudsmen shall evaluate volunteer conflict of interest on a case by case basis and should consult with the State Ombudsman, as needed, to resolve such issues.

Restrictions

Investigations. Volunteer Ombudsmen shall not be allowed to conduct formal complaint investigations. A volunteer Ombudsman may not conduct investigations, or have access to residents' files at a facility, or to the local Ombudsman's complaint files. This does not prohibit the local Ombudsman from interviewing the volunteer as part of the investigation in order to gather facts. At the local Ombudsman's discretion, the volunteer Ombudsman may be asked to assist in making observations in order to gather evidence during the course of an investigation. In addition, volunteers may be used to do routine follow-up after a complaint investigation (e.g., to monitor the resident's continued satisfaction with any resolution, or to monitor the resident's condition or welfare). Volunteer Ombudsmen may visit facilities on evenings or on weekends. However, it is the local Ombudsman's discretion as to when volunteers should visit their assigned facilities.

A volunteer Ombudsman shall not be assigned to a facility at which he has a relative currently in residence, or in residence during the previous two years.

Confidentiality

Confidentiality is a fundamental value of the program. To maintain confidentiality, local Ombudsmen should not routinely disclose to any volunteer that an active investigation is in progress. If the volunteer Ombudsman has knowledge of the complaint (e.g., the volunteer referred the complaint issue for investigation, or a resident, family member or facility staff person mention that a complaint has been made to the Ombudsman Program, etc.), the local Ombudsman may verify that an investigation is being, or will be conducted. The volunteer Ombudsman should be cautioned not to discuss the details of the complaint. The local Ombudsman Program shall have each volunteer sign a pledge of confidentiality. The local Ombudsman may disclose the results of closed investigations to volunteers.

COMPLAINT HANDLING

MEANS BY WHICH COMPLAINTS MAY BE RECEIVED

Complaints may be received by telephone, mail, electronically, or in person. If the complainant is a long-term care facility resident or service recipient, they may request a representative of the Ombudsman Program visit them in their home.

COMPLAINT ASSESSMENT

When initially receiving a complaint, with the exception of alleged abuse, neglect and/or exploitation, Ombudsman Program Staff shall attempt to provide the complainant with the necessary information, guidance and support to enable them to resolve their concerns with the service provider. This may include:

1. assisting the complainant to define the problem. Ask when the problem has occurred? Who else is aware of the problem?
2. determining if they have attempted to resolve the problem, and how. Help them identify the right person to approach with their concerns. In a nursing facility, they may need to speak with the Administrator, the Director of Nursing, the resident's physician, the social worker, or the charge nurse on the shift when the problem occurred. In an adult care residence, they may need to speak with the home's operator or management, if other staff is not appropriate. Advise the complainant that when taking their concern to the appropriate staff person, state the problem and obtain a commitment with a time limit for a response. Discuss solutions and state the response which they consider satisfactory. Set a time when they can expect or check on progress.
3. advising them of other complaint resolution options if the problem remains unresolved, cannot be resolved using the provider's grievance procedure, or if they are unable or unwilling to attempt self-advocacy.

A complaint originally reported to the Ombudsman by a complainant who attempts to resolve the problem without the Ombudsman's intervention should be recorded as Complaint Counseling.

If intervention by the Ombudsman is requested or appropriate, the Ombudsman must obtain enough information to reasonably describe the specific problem(s). If sufficient information cannot be obtained, the Ombudsman must explain to the complainant the improbability of adequately investigating and resolving issues that are lacking in detail. Likewise, the complainant should be advised that complaint incidents which are older than six months may be difficult to investigate and resolve, unless there is sufficient information to indicate the problem is still occurring.

The Ombudsman must explain to the complainant that his/her identity and the identity of the resident/service recipient is protected by the *Code of Virginia* (Chapter 24 of Title 2.1-373.2), and by the Virginia Privacy Protection Act (Chapter 26, 2.1-377 et seq.). The complainant must be informed of the scope of confidentiality laws and must also be advised of the possibility that the facility or service provider may deduce the identity of the complainant or resident/service recipient, and of the problems inherent in investigating complaints that do not provide some identifying information.

PRIORITIZING COMPLAINTS

State and local Ombudsman staff will employ the following criteria when determining the appropriateness and/or priority of conducting an investigation. Criteria for assessing and prioritizing complaints will include:

- ability of the care recipient or their representatives to self advocate;
- availability of other agencies or resources to appropriately handle the complaint;
- immediacy of need;
- critical nature of the complaint;
- scope of the complaint (multiple issues, or an issue impacting a large number of residents or care recipients); and
- potential for a resolution.

Once it has been determined that a complaint will be investigated, the Ombudsman often times must determine when to investigate it relative to other complaints. While complaints may be prioritized relative to each other, those of the highest priority may not necessarily warrant an investigation by Ombudsman staff. Local Ombudsmen should consult with State Ombudsman staff as necessary regarding questions when or if to investigate a complaint. The final decision as to whether or not to conduct an investigation may be reviewed by, and is subject to, the approval of the State Ombudsman.

Complaints will be prioritized in the following manner:

1. First Priority shall be given to complaint issues involving:
 - A. Discharge or potentially life threatening situations. These include complaints which allege abuse, neglect, or exploitation which Adult Protective Services will not investigate, but which still present a clear risk to other residents and allegations of serious resident care problems.
 - B. Residents' rights violations. These include complaints that allege violations of residents' rights that may be impacting a significant percentage of residents (e.g., not being allowed to choose their own pharmacy or physician, make decisions about their care, or other infringements on their rights to be informed, to act autonomously, or to be treated with respect and dignity).

2. Second Priority shall be given to complaint issues involving:
 - A. Situations in which the scope or severity involves a significant number of residents.
 - B. Situations which are non-regulatory in nature and there is no other agency to appropriately make a referral to (e.g., billing issues, roommate conflicts, care plan issues).
3. Third Priority shall be given to complaint issues involving:
 - A. Situations which involve anonymous complaints which are not specific in nature and do not appear to be impacting large number of residents.
 - B. Situations which have already been identified and addressed by the licensing or regulatory agency, or other advocacy group, but the complainant or Ombudsman is not satisfied that the allegation has been adequately addressed.
 - C. Situations for which there is another agency or organization which can respond in a timely manner and intervene to achieve a full and fair resolution to the complaint allegations. Under such situations, a joint or separate investigation by the Ombudsman is not required.

JOINT INVESTIGATIONS

Cooperation with other agencies is strongly encouraged. Complaints, which are investigated by the Ombudsman and any other agency, should be coordinated to the greatest extent practicable. However, joint investigations are not required. Joint investigations should be considered appropriate, when to do so, would help improve the potential for reaching a solution to the complaint. The decision to jointly investigate a complaint shall take into consideration the availability of Ombudsman resources, such as staff time, and the priority of the complaint relative to other active complaints. In most circumstances, investigations should not be delayed solely for the purpose of conducting a joint investigation. Local Ombudsmen should consult State Ombudsman staff as necessary with any questions about whether or not to jointly, or separately investigate a complaint.

GENERAL INVESTIGATION PROCEDURES

When the complainant and/or service recipient has requested anonymity, the Ombudsman may not know the identity of the complainant and/or service recipient. However, during the investigation, the Ombudsman may be able to determine the identity of the complainant and/or service recipient. In such situations, every effort must be made to protect their anonymity. When there is a signed Waiver of Confidentiality waiving the complainant's and/or service recipient's confidentiality, the Ombudsman shall interview the complainant and/or service recipient as part of the complaint investigation.

Investigation of complaints shall, if appropriate, include interviews, observations, and record review. Specifically, these may include:

- interviews of the complainant and/or service recipient (following the precautions outlined above);
- interviews of a sample of service recipients;
- interviews with the facility administrator and other staff including direct care providers;
- interviews with any other individuals (e.g., family members, residents, physicians, etc.) who may be able to provide information relative to the complaint issues being investigated;
- contacts with any agency or service provider that may be able to provide information relative to the complaint issues being investigated;
- review of records and other pertinent documents which relate to the service(s) being investigated; and
- observation of the care or service provided to the care recipient(s) and/or the environment in which it is provided.

The investigation shall include an exit interview, preferably in person, with the administrator or program director of the service being investigated to discuss the investigation findings, receive feedback, make recommendations regarding any needed changes in order to achieve a resolution to the complaint issues, and any follow up that will be conducted.

A report of the investigation findings, by telephone or in person, shall be given to the complainant and/or service recipient.

PROTOCOL FOR COMPLAINT INVESTIGATIONS

1. Upon arrival at a long-term care facility, the Ombudsman must:
 - A. Make presence known to the receptionist (if one is on duty) and ask to meet with the administrator or person in charge: *
 - B. Meet briefly with the administrator, providing the following information:
 1. If there has been no previous contact with the Long-Term Care Ombudsman Program, explain the scope of the program;
 2. State there has been a complaint and briefly describe the issues which will be investigated;
 3. Discuss confidentiality and access to records;
 4. If the complainant and/or resident signed a Waiver of Confidentiality form, the person's identity may be given;
 5. If it is an anonymous complaint, say so, and explain how that impacts the investigation;
 6. Briefly describe the process you will use to investigate the complaint;
 7. Say that you will meet with the administrator, or person in charge, when the investigation is complete.
2. Tour the areas of the facility appropriate to the complaint issues. Tours may be conducted by the staff; however, if you will be approaching residents to request their permission for an interview, you should do so when you are alone.
3. Complaint investigations should include interviews, record review (as appropriate), and observations. Interviews must be private unless the interviewees requests otherwise. The wishes of the resident should always take precedence when conducting an interview.
4. An exit interview must be conducted at the conclusion of the investigation. The exit interview with the administrator, or person in charge, and appropriate staff may include the complainant and/or resident, if they wish to be present. Information to be shared includes the following:
 - A. Review the complaint issues;
 - B. Describe your findings and how the investigation was conducted;
 - C. Describe your suggestions for resolution; comments and suggestions for resolution should be requested from all interested parties; request a response

from the facility on what they will do to address the identified problems, and set a time frame in which the facility's response will be implemented;

- D. Offer to provide a written response if the facility so requests (this is particularly helpful in complex complaints or when you are uncertain if any party to the complaint may be reluctant to follow through on the resolution);
- E. Explain any specific follow-up you will be doing; and
- F. Let the facility know that the complaint findings and resolution will be shared with the regulatory agency, and specify other agencies and parties which will be notified, including the complainant.

NOTE: All of the above steps may not take place during the exit conference, but must be completed prior to closing the complaint.

* When you have had contact with a complainant, but are not certain if the resident about whom the complaint is made wants you to take action on a complaint, your first step is to contact that resident, by telephone or in person. If you must visit a resident under these circumstances, you should announce your presence when you enter the facility. You may, however, wish to visit a number of residents in order to protect the identity of the resident you need to visit.

COMPLAINTS REGARDING AAA SERVICES

All complaints regarding long-term care services provided through the area agency on aging (AAAs), including services provided directly by the AAA and services provided under contract with the AAA, must be handled by the Long-Term Care Ombudsman Program as follows:

- All complaints concerning long-term care services provided by AAAs received by the local Ombudsman Program must be referred, within 1 (one) working day to the State Ombudsman, via telephone or fax. It should also be immediately reported to the Executive Director, or acting head of the AAA. This includes complaints against the local Ombudsman Program. The local Ombudsman shall provide the complainant with the name and telephone number of the Office of the State Long-Term Care Ombudsman.
- Upon receiving the report, the State Long-Term Care Ombudsman will contact the complainant, if known, to discuss the complaint.
- The complainant will be provided complaint counseling by the State Ombudsman and encouraged to employ the AAA's grievance process as a first step. If that is not possible, or has been attempted and a satisfactory resolution has not been reached, the State Ombudsman may decide to formally investigate the allegations. Complaints

will be assigned local Long-Term Care Ombudsman Program complaint numbers and shall be counted in the local Ombudsman Program's complaint statistics.

- In the event the complaint remains unresolved, the complainant will be advised by the State Ombudsman of other possible options to pursue resolution.

COMPLAINTS INVESTIGATED DIRECTLY BY OMBUDSMAN STAFF

If the complaint alleges administrative action or inaction by facility owners, administrators, or staff members, or providers of community based long-term care services which adversely affects a resident's or service recipient's rights, health, safety or welfare, then the Ombudsman must attempt to directly resolve the problem. In these cases, Ombudsman staff may meet with the complainant, facility administrator or other staff, resident, care provider, and any other individual who may have information regarding the complaint. These activities will fall within the access rights stipulated for the Program in the *Code of Virginia*, Sec. 2.1-373.1. Ombudsman Program staff will attempt to assist all parties to the complaint in reaching a mutually acceptable solution.

TIME FRAMES FOR INVESTIGATING COMPLAINTS

All complaints directly investigated by staff of the Long-Term Care Ombudsman Program must be completed within 45 working days. If for any reason, the investigation goes beyond 45 working days, the local Ombudsman must notify the State Ombudsman. As practical, such notification should be made prior to the end of the 45th working day. The local Ombudsman shall provide appropriate reason why the complaint cannot be closed within 45 working days, and provide a reasonable completion date.

RECORDING AND REPORTING PROCEDURES

A complaint is considered received on the date (a) when a signed Waiver of Confidentiality form is received by the Ombudsman, or (b) on the date which the Ombudsman is informed of the complaint, when no Waiver of Confidentiality form is required.

Newly designated Ombudsmen are required to copy the State Ombudsman on complaints prior to forwarding them to any state regulatory agency or other entity. The State Ombudsman shall set this time period. This requirement may be waived when there is another experience Ombudsman at the local agency that can review the new Ombudsman's documentation.

Complaints handled by the local Ombudsman Program shall be closed within 45 working days of receipt of the complaint. Complaints are closed following an investigation only

after the complainant and/or recipient/service recipient (if known), and the facility/agency/service provider have been advised of the findings.

Following an investigation, the local Ombudsman must inform the complainant and the service provider of the results of the investigation findings and solicit possible resolutions. Then within three working days after the investigation is completed and the complainant and provider are notified of the findings, the Ombudsman must notify the appropriate regulatory agency of the complaint and its findings. Copies of the completed Complaint Reporting Forms should be forwarded to the State Department of Health, Center for Quality Health Care Services and Consumer Protection. For all other agencies, complaint information may be shared verbally, unless otherwise requested by the agency.

When an Ombudsman refers a complaint to another agency for investigation, the Complaint Reporting Form, Waiver of Confidentiality, and any supporting documentation should be forwarded to that agency. When the investigation report is returned to the Ombudsman, the Ombudsman is responsible for informing the complainant of the findings of the investigating agency. The results must then be recorded on the appropriate Complaint Forms and the complaint closed. It is understood that when complaints are investigated by state or federal agencies, the facility or service provider will be apprised of the investigation results by the agency conducting the investigation.

NOTIFICATION TO STATE REGULATORY AND ADVOCACY AGENCIES REGARDING COMPLAINTS (OTHER THAN COMPLAINTS ALLEGING ABUSE, NEGLIGENCE OR EXPLOITATION)

Staff of the Long-Term Care Ombudsman Program shall notify appropriate agencies of complaint allegations and any investigation findings and results. In some instances, this notification may be made prior to an investigation, particularly, when the Ombudsman is requesting a joint investigation with another agency. The Ombudsman shall notify appropriate agencies as follows:

1. When a complaint alleges a violation of the rules and regulations governing nursing homes, long-term care units in hospitals, intermediate care mental health facilities, or licensed home health agencies, a copy of the complaint shall be sent to the State Department of Health, Center for Quality Health Care Services and Consumer Protection (CQHCSCP), after the complaint is completed and closed by the Ombudsman. This does not preclude the Ombudsman from sending an active complaint to the CQHCSCP in the event that the Ombudsman determines it beneficial to do so (e.g., the Ombudsman determines that the CQHCSCP may conduct a survey or inspection of the provider before the Ombudsman will complete the investigation).
2. When a complaint alleges a violation of the rules and regulations governing adult care residences or licensed adult day care centers, the Ombudsman shall contact the

appropriate Department of Social Services, Regional Licensing Office within three (3) working days to report the specifics of the complaint and to discuss whether the complaint will be investigated separately or jointly. When the complaint is completed, the results shall be shared with the Regional Licensing Office, and a hard copy of the complaint provided, if requested. Likewise, the Ombudsman may request a report from the Regional Licensing Office.

3. When a complaint alleges a violation of the rules and regulations governing state mental health facilities or services provided to older persons by Community Services Boards (CSBs), the Ombudsman shall notify the Patient Advocate at the facility prior to initiating any investigation. The Ombudsman shall notify the Director of Geriatric Services, at the Department of Mental Health, Mental Retardation and Substance Abuse Services, after the complaint investigation is completed and closed. A copy of the complaint may be provided, if requested.
4. When a complaint concerns services provided to a Medicaid recipient applying for or receiving long-term care services, the Ombudsman may notify and provide a copy of the complaint report to the Director of the Division of Long-Term Care at the Department of Medical Assistance Services. Notification may be made at the time of the receipt of the complaint, or after the complaint is completed and closed.
5. When a complaint alleges fraudulent activities by providers of Medicaid Services, the Ombudsman shall forward a copy of the complaint to the Director of the Medicaid Fraud Control Unit, Office of the Attorney General within three (3) working days after receiving the complaint. The Medicaid Fraud Control Unit shall be requested to investigate all such complaints.
6. When a complaint alleges unprofessional conduct or a violation of professional standards or conduct by a physician, nurse, certified nursing assistant, pharmacist, social worker, nursing home administrator, or other licensed health professional, the Ombudsman shall notify the appropriate regulatory board at the Department of Health Professions when the complaint investigation is completed and closed. This does not preclude the Ombudsman from notifying the Department of Health Professions when the complaint is first received.
7. When a complaint concerns services provided by a state or local public agency, the Ombudsman shall notify the state or local agency, if any, under whose directions such services are provided, within three (3) working days of receiving the complaint. For instance: when the complaint concerns services or benefits provided by the Department of Social Services, the Director of Service Programs or the Director of Benefit Programs (whichever is appropriate), shall be notified.

MANDATORY REPORTING

Ombudsmen are mandated reporters of abuse and neglect, according to the *Code of Virginia*. When an Ombudsman receives a complaint alleging abuse, neglect or financial exploitation, an immediate referral must be made to the Department of Social Services' Adult Protective Services in the locality where the adult resides or where the abuse, neglect or exploitation is believed to have occurred. If neither locality is known, the Ombudsman should contact the city or county Department of Social Services where the abuse, neglect or exploitation was discovered. If sexual abuse is alleged or suspected, the Ombudsman must also notify the local law enforcement agency.

DOCUMENTATION

Documentation is a critical responsibility of Ombudsman work. It provides a method of recording what the program has accomplished and can be used to identify trends and patterns of problems and information requests. This information is also useful for justifying necessary funding. It also provides a way of detecting patterns of information requests or complaints that can then be analyzed and used to develop educational materials or conduct systems advocacy.

The Ombudsman is required to document information requests, complaint counseling contacts, and complaint investigations, using the forms approved by the Office of the State Long-Term Care Ombudsman. The Ombudsman must also document other types of activities required for periodic reports to the Office.

Complaint Documentation

Thorough documentation of complaint investigations is critical to helping achieve a positive resolution to the complaint issue, and for accurate information sharing with regulatory agencies who may also have an interest in taking action or following up on a complaint issue which falls under their regulatory purview.

Complaint files must include Complaint Form I, II, and a "Waiver of Confidentiality" form, if appropriate. Other information may be included as necessary or appropriate to adequately demonstrate the complaint allegation, finding and any resolution. The amount of documentation necessary will depend on the nature and complexity of the complaint issue investigated. Complaint documentation may include observations, interviews and record reviews as appropriate to adequately document the investigation. Any additional sheets of paper may be used as necessary, but each should be clearly marked with the complaint file number. The complaint forms (and any attachments) should include sufficient documentation to explain the complaint allegation, demonstrate how the finding was reached, and specify any resolution reached, without further comment. It is advisable that personal investigative notes not be included as apart of the official complaint record once the complaint is closed.

It may be advisable to include the names and positions of staff who are interviewed, along with any brief quotes or remarks when pertinent. There is no obligation to protect

the identity of staff members. However, for any residents who may be interviewed, their names should not appear in the record.

It is not advisable to include copies of residents' medical records in the official complaint file. Pertinent information from the residents' medical record may be summarized on Complaint Form II. For complex situations (e.g., those involving medication problems or lengthy patterns of problems which are documented) and in those cases where it would not be practical to summarize the information, a certified copy is recommended.

OMBUDSMAN FILES

CONFIDENTIALITY AND DISCLOSURE

A. Confidentiality

The *Code of Virginia*, Chapter 24, Title 2.1-373.1 and Chapter 26, Title 2.1-377 et seq., and the OAA, Title VII, Sec. 712(d) protect the confidentiality of the Long-Term Care Ombudsman Program's complaint files. These files are exempt from the Freedom of Information Act. This information can be released only by written consent of the complainant and resident/service recipient, or by court order.

The identities of the complainant and/or resident/service recipient cannot be released without their written consent to agencies requested to investigate or review the complaint, or to the provider of services. The Confidential Information Form is to be used to obtain such consent. The complainant or resident may give the Ombudsman oral consent, if such consent is documented contemporaneously in writing.

Exceptions:

1. Staff of the LTCOP may exchange client identifying information with staff of the Department of Social Services, Adult Protective Services Program without prior consent of the complainant or person in need of service. (Interpretation provided by Office of the Attorney General, April 1985.)
2. Staff of the LTCOP may exchange client identifying information with staff of the Medicaid Fraud Control Unit within the Office of the Attorney General without prior consent of the complainant or person in need of service. (Interpretation provided by the Office of the Attorney General, June 1985.)

B. Release Form (Waiver of Confidentiality)

A release is necessary for two reasons. First, it allows the Ombudsman to share information, including resident/recipient and complainant identities with other agencies and advocates, as appropriate, and the provider. Second, it gives the Ombudsman permission to access the resident's records at the facility, if necessary, as part of the investigation process.

A release form may not be necessary when the Ombudsman is being contacted by another agency, such as Adult Protective Services or the Department of Social Services, Licensing, to jointly investigate a complaint. The Ombudsman should consider obtaining a release form if the Ombudsman will investigate issues separate from the other agencies, or if for any reason, the other agency terminates its investigation before all the issues have been adequately investigated or resolved.

C. Disclosure

Generally, complaint investigation records may not be disclosed to the public or any other entity without the permission of the resident/care recipient and/or complainant, or by court order, as described above.

Complaint records, including the identity of any care recipient or complainant may not be disclosed unless: (1) the complainant or resident/recipient, or the resident's legal representative consents to the release and such consent is given in writing; or (2) disclosure of such records is required by court order.

The Ombudsman may disclose to any inquiring party, aggregate information about the number and type of complaints received about a facility or service provider, during a specified period of time. Information may be provided about the category (e.g., resident care; hygiene care, dietary; not assisted with eating; etc.), the finding (e.g., verified, not justified, etc.) and final status (e.g., resolved, not resolved, etc.). Information must not be given out with regards to complaints that are still active.

Generally, it may not be helpful to disclose complaint information that is more than one year old. It is recommended that consumers who wish to use this information as part of their decision making process for placing a relative be counseled as to the fact that complaints represent only one criteria which they should examine prior to making a decision. While number and type of complaints may be informative, emphasis should also be placed on whether or not the complaint was resolved. Persons requesting such information should be counseled as to the importance of using additional criteria in making a decision, such as inspection reports, and visiting the facility or asking for references.

The Ombudsman Program does not rate or recommend nursing facilities or adult care residences. They recommend that persons visit facilities being considered and ask questions of the staff, residents and families. The resident should be included if possible. Once a consumer has narrowed the choices, the Ombudsman can provide information regarding complaints which the Ombudsman Program has investigated at a specific facility during the previous year.

FILE MAINTENANCE

The Ombudsman Program shall maintain records of complaints in a locked file, accessible only to the designated Ombudsman. Complaint reporting forms and documentation relating to each complaint shall be filed by facility/provider in chronological order.

FILE RETENTION

Information Counseling and Complaint Counseling Forms shall be retained for at least two (2) years from the date of receipt. Complaint investigation records shall be retained for at least three (3) years. Complaint records and client identifying information must be retained in locked files.

APPENDIX A

DEFINITIONS

The following words and terms, when used in these policies and procedures, shall have the following meaning, unless the context clearly indicates otherwise:

AREA AGENCY ON AGING: means the public or private nonprofit agency created pursuant to the Federal Older Americans Act of 1965, as amended (42 U.S.C. 3001 et seq.), and incorporated by reference in this regulation, which has submitted an approved area plan for aging services and is designated by contract with the Virginia Department for the Aging to develop and administer its area plan as approved, for a comprehensive and coordinated system of services for older persons.

AREA PLAN FOR AGING SERVICES: means the document submitted by an area agency to and approved by the Virginia Department for the Aging, as the scope of services in the executed contract, in order to receive funding under the Older Americans Act, as amended.

COMPLAINT: means any written or oral allegation regarding (i) an action, inaction, or decision of a provider which adversely affects the rights, health, welfare, or safety of the person complaining or the recipient of services, or (ii) a violation of the regulations, policies or procedures which govern long-term care services, brought by or on behalf of a resident of a long-term care facility, regardless of age, or a recipient of long-term care services provided in the community who is at least 60 years of age.

COMPLAINT COUNSELING: means information, guidance, and support to enable the person complaining or the recipient of services to attempt to resolve the complaint or concern himself, if he so chooses, by utilizing the complaint handling procedures of the long-term care facility or long-term care service provider.

COMPLAINT INVESTIGATION: means action taken by a designated local ombudsman to determine the validity of a reasonably specified complaint made by or on behalf of a long-term care facility resident or consumer of community based long-term care services for the purpose of achieving a resolution. Such action may include: reviewing appropriate state or federal regulations; observing service provision and the environment in which the service is being provided; interviewing the care recipient, care provider and any person who may be knowledgeable or have information relevant to the complaint; reviewing resident files for supporting documentation and reviewing any relevant facility or provider policies. Specific investigation procedures are found under "Complaint Handling."

COMPLAINT STATUS: The following terms are used by the Office of the State Long-Term Care Ombudsman to describe the status of investigations of complaints reported to the Office.

Active: The case is pending, and has not been closed.

Resolved or Partially Resolved: The problem reported was found to be verified or partially verified, and a correction has been made which is acceptable to the complainant and/or the LTCOP; or the problem was found to be verified or partially verified and the facility or service provider did not violate the regulations, policies, or procedures which govern long-term care facilities and service or deny or ignore a reasonable request for services, and the complainant and/or the LTCOP understands and accepts this; or the problem was found to be not justified or undetermined, but the complainant and/or the LTCOP is satisfied that the allegation has been adequately investigated.

Not Resolved: The complaint was found by the investigation to be not justified or undetermined, but the complainant reports to the LTCOP specific examples that indicate that the problem continues to exist; or the complaint was found to be verified or partially verified, but the LTCOP determines that problem has not been corrected.

Withdrawn: The complainant withdrew the complaint.

INFORMATION/COUNSELING CONTACTS: In response to requests from long-term care recipients, their families or friends, or the interested public, the Office of the State Long-Term Care Ombudsman provides general information on a broad range of topics. Such information may include referrals to other service providers, counseling on service options, assistance with accessing services, and follow-up to assure the caller has received the information and/or assistance she/he needs.

INVESTIGATION FINDINGS: The following terms are used by the Office of the State Long-Term Care Ombudsman to describe the results of the investigation of complaints reported to the Office.

Not Justified: The complaint was shown through interviews, record inspection, observation, etc., to be invalid or inaccurate.

Partially Verified: The complaint was partially substantiated through interviews, record inspection, observation, etc.

Undetermined: The investigation did not provide sufficient evidence to reliably determine the validity or invalidity of the complaint; or the complaint issue was resolved without an investigation of the validity or invalidity of the allegation.

Verified: The complaint was substantiated through interviews, record inspection, observation, etc.

MEDIATION: A method of dispute resolution whereby the Ombudsman assists two or more parties (usually a long-term care recipient and/or his/her representative and a

service provider) to reach a mutually acceptable resolution to their problem. In mediation, the Ombudsman is to be as neutral as possible, under the circumstances.

LOCAL OMBUDSMAN PROGRAM: means an organizational unit within an area agency on aging which the Office of the State Long-Term Care Ombudsman designates to fulfill the duties of the Office of the State Long-Term Care Ombudsman in a specific geographic area.

LONG-TERM CARE FACILITY: means any facility outside of the service recipient's home in which two or more unrelated persons receive long-term care services, including, but not limited to, nursing homes licensed by the Department of Health, adult care residences licensed by the Department of Social Services, and geriatric treatment centers licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

LONG-TERM CARE SERVICES: means diagnostic, preventive, therapeutic, rehabilitative, supportive, and maintenance services provided on a recurring or continuous basis for the purpose of (i) minimizing the effects of illness and/or disability, (ii) assisting a person to maintain his highest level of functioning, or (iii) maintaining or restoring independence. Such services may be provided in the recipient's home or in a community setting such as a long-term care facility.

OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN: means the program administered and managed by the Virginia Association of Area Agencies on Aging which serves as a point of entry, whereby a complaint is received, investigated or referred for investigation and resolved.

APPENDIX B

CODE OF ETHICS

1. The Ombudsman provides services with respect for human dignity and the individuality of the client unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The Ombudsman maintains competence in areas relevant to the long-term care system especially regulatory and legislative information, and long-term care service options.
7. The Ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect for the policies of the sponsoring (contract) organization.
8. The Ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
9. The Ombudsman participates in efforts to promote a quality long-term care system.
10. The Ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
11. The Ombudsman supports a strict conflict of interest standard and prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long-term care services which are within their scope of involvement.
12. The Ombudsman shall conduct him/herself in a manner which will strengthen the statewide and national Ombudsman network.

* From "Standards of Professional Conduct & Code of Ethics" of the National Association of State Long-Term Care Ombudsman Programs.