



Long-Term Care Ombudsman Program Final Rule
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45 CFR Parts 1321 and 1327

<u>Final Regulation</u> Federal Register, Vol. 80, No. 28	<u>Proposed Regulatory Language</u> Federal Register, Vol. 78, No. 117
PART 1321 – GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING	PART 1321 – GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING
<p>§1321 1. The authority citation for part 1321 continues to read as follows: Authority: 42 U.S.C. 3001 et seq.; title III of the Older Americans Act, as amended.</p> <p>2. Section 1321.11 is amended by revising paragraph (b) to read as follows:</p>	<p>§1321 1- The authority citation for Part 1321 continues to read as follows: Authority: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act, as amended.</p> <p>2- Section 1321.11 is amended by revising paragraph (b) to read as follows:</p>
<p>§ 1321.11 State agency policies. * * * * *</p> <p>(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records and other information maintained by the Ombudsman program. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in § 1327.11(e)(3) of this chapter. * * * * *</p> <p>3. Part 1327 is added to read as follows:</p>	<p>State Agency Policies. *****</p> <p>(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. The State Long-Term Care Ombudsman or his or her designee shall be responsible for monitoring the files, records and other information maintained by the Office, and shall not disclose the identity of any complainant or long-term care facility resident to individuals outside of the Office, except as otherwise specifically provided in §1327.17(b)(2)(C) of this chapter. *****</p>

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<p>PART 1327—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES Subpart A—State Long-Term Care Ombudsman Program Sec. 1327.1 Definitions.</p> <p>1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.</p> <p>1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman.</p> <p>1327.15 State agency responsibilities related to the Ombudsman program.</p> <p>1327.17 Responsibilities of agencies hosting local Ombudsman entities.</p> <p>1327.19 Duties of the representatives of the Office.</p> <p>1327.21 Conflicts of interest. Subpart B [Reserved] Authority: 42 U.S.C. 3001 et seq</p>	<p>PART 1327—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES Subpart A—State Long-Term Care Ombudsman Program Sec. 1327.1 Definitions.</p> <p>1327.1 Definitions</p> <p>1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.</p> <p>1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman.</p> <p>1327.15 State agency responsibilities related to the Ombudsman program.</p> <p>1327.17 Functions and duties of the Office of the State Long-Term Care Ombudsman</p> <p>1327.19 Conflicts of Interest</p> <p>Subpart B [Reserved] Authority: 42 U.S.C. 3001 et seq</p>
<p>PART 1327 – ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES</p>	<p>PART 1327 – ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES</p>
<p>§1327.1 Definitions. The following definitions apply to this part:</p>	<p>§1327.1 Definitions. The following definitions apply to this part:</p>
<p><i>Immediate family</i>, 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.</p>	<p><i>Immediate family</i>, 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.</p>
<p><i>Office of the State Long-Term Care Ombudsman</i>, 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</p>	<p><i>Office of the State Long-Term Care Ombudsman</i>, as used in section 712 of the Act, means the organizational unit headed by the State Long-Term Care Ombudsman, including the representatives of the office.</p>
<p><i>Representatives of the Office of the State Long-Term Care Ombudsman</i>, 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 § 1327.19(a), whether personnel supervision is provided by the</p>	<p><i>Representatives of the Office of the State Long-Term Care Ombudsman</i>, as used in section 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1327.17(a), whether supervised by the Ombudsman or his or her designees or by a</p>

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<p>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.</p>	<p>local entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.</p>
<p>Resident representative means any of the following:</p> <ul style="list-style-type: none"> (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. 	<p>NOT IN PROPOSED RULE</p>
<p><i>State Long-Term Care Ombudsman, or Ombudsman</i>, 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 §§ 1327.13 and 1327.19.</p>	<p>NOT IN PROPOSED RULE</p>
<p><i>State Long-Term Care Ombudsman program, Ombudsman program, or program</i>, 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.</p>	<p>NOT IN PROPOSED RULE</p>
<p><i>Willful interference</i> 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 § 1327.13, or the Ombudsman or a representative of the Office</p>	<p>NOT IN PROPOSED RULE</p>

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<p>from performing any of the duties set forth in § 1327.19.</p>	
<p>§1327.11 Establishment of the Office of the State Long-Term Care Ombudsman</p>	<p>§1327.11 Establishment of the Office of the State Long-Term Care Ombudsman</p>
<p>(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 § 1327.13 and shall carry out, directly and/or through local Ombudsman entities, the duties set forth in § 1327.19.</p>	<p>(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 and carry out all of the functions and duties set forth in §§1327.13 and 1327.17.</p>
<p>(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.</p>	<p>(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 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.</p>
<p>(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 §§ 1327.13 and 1327.19 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]</p>	<p><i>From § 1327.13(a)</i> (a) The Ombudsman shall serve on a fulltime basis ...</p>
<p>(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</p>	

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<p>expertise in:</p> <ul style="list-style-type: none"> (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. 	
<p>(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.</p>	<p><i>See p.11 of this chart for 1327.11(c)</i> <i>From §1327.15(a)(2) of proposed rule</i> (2) Establish policies and procedures, in consultation with the Office, to carry out the Ombudsman program in accordance with the Act. Where the designated local Ombudsman entities are grantees, and/or the representatives of the Office are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. Such policies and procedures shall include, but not be limited to: ...</p>
<p><i>(1) Program administration.</i> Policies and procedures regarding program administration must include, but not be limited to:</p> <ul style="list-style-type: none"> (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 § 1327.13, 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 	<p><i>From §1327.13(g) of Proposed Rule</i> (g) The Ombudsman shall propose to the State agency policies, procedures and standards for administration of the Ombudsman program.</p>

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<p>lawful.</p> <p>(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.</p>	
<p>(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.</p>	<p><i>Continuing §1327.15(a)(2) of proposed rule</i> (i) Requirements that the Ombudsman shall monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.</p>
<p>(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.</p>	
<p>(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.</p>	<p>(ii) Standards to assure prompt response which prioritize abuse, gross neglect, exploitation and time-sensitive complaints;</p>
<p>(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.</p>	
<p><i>(2) Procedures for access.</i> 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:</p> <p>(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</p>	<p><i>From §1327.17(a)(2) of proposed rule</i> (a) ... in accordance with the policies and procedures established by the Office and the State agency: (2) Ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance</p>

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<p>other time when access may be required by the circumstances to be investigated;</p> <p>(ii) Access to all residents to perform the functions and duties set forth in §§ 1327.13 and 1327.19;</p> <p>(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 §§ 1327.13 and 1327.19;</p> <p>(iv) Access to review the medical, social and other records relating to a resident, if—</p> <ul style="list-style-type: none">(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; <p>(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;</p> <p>(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</p> <p>(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</p>	<p><i>From §1327.15(b) of proposed rule</i></p> <p>b) State policies, procedures or other mechanisms regarding access to records pursuant to section 712(b)(1) of the Act, shall:</p> <ul style="list-style-type: none">(1) Reaffirm that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164, does not preclude release of residents’ medical and social records to the Office, and(2) Provide for representative of the Office to have access to resident records, including when residents have guardians or other legal representatives.
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<p>collected in the course of a State or Federal survey or inspection process.</p>	
<p>(3) <i>Disclosure.</i> Policies and procedures regarding disclosure of files, records and other information maintained by the Ombudsman program must include, but not be limited to:</p>	<p><i>From 1327.15(a)(2)(iii) of proposed rule</i> iii) Confidentiality and protection of identifying information of residents and complainants, including procedures related to the disclosure of files, records, and other information maintained by the Ombudsman program;</p>
<p>(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</p>	<p>(A) Such procedures shall provide that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or the person designated by the Ombudsman to disclose the files, records, and information. (B) Such procedures shall prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains files, records, or information unless: (1) The complainant or resident, or the legal representative of the complainant or resident, communicates informed consent to the disclosure and the consent is given in writing or through the use of assistive technology; (2) The complainant or resident communicates informed consent orally or through the use of assistive technology and such consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such procedures; or (3) The disclosure is required by court order. (C) Such procedures shall provide that if the Ombudsman or his or her representative has reason to believe that the resident is unable to provide informed consent, disclosure of the resident identity shall be prohibited unless another exception applies. (D) Such procedures shall provide for procedures for appropriate disclosure of at least the following types of files, records, and information which may be maintained by the Office: medical and social 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 statewide uniform reporting system of the Ombudsman program.</p>

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<p>(C) The disclosure is required by court order;</p> <p>(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</p> <p>(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.</p>	<p>(E) Such procedures shall exclude the Ombudsman and representatives of the Office from abuse reporting requirements when such reporting discloses the identity of a complainant or resident without appropriate consent or court order, except as otherwise provided in §1327.17(b)(5)-(8).</p> <p>(F) Such procedures shall prohibit disclosure of the identity of a complainant or resident without appropriate consent or court order, except as otherwise provided in §1327.17(b)(5)-(8), regardless of the source of the request for information or the source of funding for the services of the Ombudsman program;</p>
<p>(4) <i>Conflicts of interest.</i> Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in § 1327.21, including:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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</p> <p>(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.</p>	<p>iv) Mechanisms to identify and remove or remedy conflict of interest pursuant to section 712(f) of the Act; and</p>
<p>(5) <i>Systems advocacy.</i> Policies and procedures related to systems advocacy must assure that the</p>	<p>(v) Procedures that require the Office to carry out its requirement to analyze, comment on, and monitor the development and implementation</p>

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<p>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.</p>	<p>of Federal, State, and local laws, regulations, and other governmental 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.</p>
<p>(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.</p>	<p>(A) Such procedures shall 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.</p>
<p>(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.</p>	<p>(B) Nothing in this part shall prohibit the State agency or other agency carrying out the Ombudsman program from establishing policies which promote consultation regarding the determinations of the Office or otherwise require that the Ombudsman and representatives of the Office are held accountable to the policies and procedures of their respective employer, subject to applicable federal and state laws and policies. However, such policies may not limit the ability of the Ombudsman and representatives of the Office to fulfill all of the functions and duties set forth in section 712 of the Act and shall be in accordance with the requirement that the Ombudsman and representatives of the Office must remain free of interference in carrying out such functions and duties.</p>
<p>(6) <i>Designation.</i> 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.</p> <p>(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.</p> <p>(ii) [Reserved]</p>	<p><i>From §1327.13(j) of proposed rule</i> (j) Where applicable, the Ombudsman shall monitor the Ombudsman program performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.</p>
<p>(7) <i>Grievance process.</i> Policies and procedures related to grievances must establish a grievance</p>	<p>NOT IN PROPOSED RULE</p>

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<p>process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.</p> <p>(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.</p> <p>(ii) [Reserved]</p>	
<p><i>(8) Determinations of the Office.</i></p> <p>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:</p> <p>(i) Disclosure of information maintained by the Ombudsman program within the limitations set forth in section 712(d) of the Act;</p> <p>(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</p> <p>(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.</p>	<p><i>From 1327.11(c) in Proposed Rule</i></p> <p>(c) The State agency and, where applicable, any other agency carrying out the Ombudsman program, shall ensure that the State Long-Term Care Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office regarding:</p> <ol style="list-style-type: none"> 1) Determinations regarding disclosure of information maintained by the program within the limitations set forth in section 712(d) of the Act; 2) Recommendations to changes in Federal, State and local laws, regulations, policies and action pertaining to the health, safety, welfare, and rights of residents; 3) Provision of information to public and private agencies, legislators, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns; 4) Such determinations and positions shall be those of the Office and do not necessarily represent the determinations or positions of the State agency, another agency carrying out the Ombudsman program, or any other State agency.
<p>§1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman</p>	<p>§1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman</p>
<p>The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State</p>	<p>The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State,</p>

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<p>agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.</p>	<p>and, where applicable, the other agency or agencies carrying out the Ombudsman program, as follows ...</p>
<p>(a) <i>Functions.</i> The Ombudsman shall, personally or through representatives of the Office—</p> <p>(1) Identify, investigate, and resolve complaints that—</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (A) Providers, or representatives of providers, of long-term care; (B) Public agencies; or (C) Health and social service agencies 	<p>(a)The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office –</p> <p>(1) Identify, investigate, and resolve complaints that –</p> <ul style="list-style-type: none"> (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 the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of – <ul style="list-style-type: none"> (A)Providers, or representatives of providers, of long-term care services; (B)Public agencies; or (C)Health and social service agencies;
<p>(2) Provide services to protect the health, safety, welfare, and rights of the residents;</p>	<p>(2) Provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;</p>
<p>(3) Inform residents about means of obtaining services provided by the Ombudsman program;</p>	<p>(3) Inform the residents about means of obtaining services provided by providers or agencies described in paragraph (a)(1)(ii) of this section or services described in paragraph (a)(2) of this section;</p>
<p>(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;</p>	<p>(4) Ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;</p>
<p>(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;</p>	<p>(5) 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;</p>
<p>(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;</p>	<p>(6) Provide administrative and technical assistance to entities designated under paragraph (a)(5) of this section to assist the entities participating in the program;</p>
<p>(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,</p>	<p>(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</p>

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<p>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;</p>	<p>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;</p>
<p>(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.</p>	<p>From 1327.13(h) of proposed rule (h) The Ombudsman shall provide leadership to statewide advocacy efforts of the Office on behalf of long-term care facility residents.</p>
<p>(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.</p>	<p>From 1327.17(d) of proposed rule (d) <i>Lobbying activities.</i> In carrying out the functions and duties of the Office set forth in §§1327.13(a) and 1327.17(a) and pursuant to the receipt of grant funds under the Act, the Ombudsman’s provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies, do not constitute lobbying activities as defined by 45 CFR Part 93.</p>
<p>(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and</p>	<p>Continued from 1327.13(a) of proposed rule (8)(i) Provide for training representatives of the Office; (ii) Promote the development of citizen organizations to participate in the program; and</p>
<p>(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</p>	<p>(iii) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and carry out such other activities as the Assistant Secretary determines to be appropriate.</p>
<p>(b) The Ombudsman shall be the head of a unified statewide program and shall: (1) Establish or recommend policies, procedures and standards for</p>	<p>(b) The Ombudsman shall oversee a unified statewide program in which representatives of the Office report to the Ombudsman regarding Ombudsman program functions and duties as set forth in §§1327.13</p>

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<p>administration of the Ombudsman program pursuant to § 1327.11(e); (2) Require representatives of the Office to fulfill the duties set forth in § 1327.19 in accordance with Ombudsman program policies and procedures.</p>	<p>(a) and 1327.17(a).</p>
<p>(c) <i>Designation.</i> 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 § 1327.11(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) <i>Training requirements.</i> 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 § 1327.19 unless the representative— (i) Has received the training required under paragraph (c)(2) of</p>	<p>(c) The Ombudsman shall determine designation and de-designation of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act. (d) Where local Ombudsman entities are designated, the Ombudsman shall review and approve plans or contracts related to Ombudsman program operations, including, where applicable, through area agency on aging plans (in coordination with the State agency). From 1327.15(c)(4) proposed rules (4)(i) Establish procedures for the training of the representatives of the Office, including unpaid volunteers, 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 representatives of citizen groups, long-term care providers, and the Office, that – (A) Specify a minimum number of hours of initial training; (B) Specify the content of the training, including training relating to – (1) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; (2) Investigative techniques; and (3) Such other matters as the State determines to be appropriate; and (C) Specify an annual number of hours of in-service training for all designated representatives; From 1327.15(c)(5) proposed rules (5) Prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in §1327.13</p>

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<p>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</p> <p>(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;</p> <p>(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.</p> <p>(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.</p>	<p>(a)(1) through (8) unless the representative –</p> <p>(i) Has received the training required under paragraph (c)(4) of this section; and</p> <p>(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;</p>
<p>(d) <i>Ombudsman program information.</i></p> <p>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.</p>	<p>(e) The Ombudsman shall manage the files, records, and other information of the Office, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and designated local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such records are the property of the Office.</p>
<p>(e) <i>Disclosure.</i> In making determinations regarding the disclosure of files, records and other information maintained by the Ombudsman program, the Ombudsman shall:</p> <p>(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</p>	<p>(f) 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.</p>

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<p>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.</p>	
	<p><i>See p.5 for 1327.13(g)</i></p>
	<p><i>See p.13 for 1327.13(h)</i></p>
<p>(f) <i>Fiscal management.</i> 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.</p>	<p><i>1327.13 (i)</i> (i) The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise designated for the Office, subject to applicable Federal and State laws and policies.</p>
	<p><i>See p.10 for 1327.13(j)</i></p>
<p>(g) <i>Annual report.</i> 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</p>	<p><i>1327.13(k)</i> (k) The Ombudsman shall 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. <i>From 1327.15 (c) below:</i> (c) The State Agency shall require the Office to: (1) Prepare an annual report – (i) Describing the activities carried out by the Office in the year for</p>

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<p>complaints made by or on behalf of, residents;</p> <p>(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;</p> <p>(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</p> <p>(vi) Describe barriers that prevent the optimal operation of the Ombudsman program.</p> <p>(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.</p>	<p>which the report is prepared;</p> <p>(ii) Containing and analyzing the data collected under this paragraph (c);</p> <p>(iii) Evaluating the problems experienced by, and the complaints made by or on behalf of, residents;</p> <p>(iv) Containing recommendations for –</p> <p>(A) Improving quality of the care and life of the residents; and</p> <p>(B) Protecting the health, safety, welfare, and rights of the residents;</p> <p>(v)(A) Analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and</p> <p>(B) Identifying barriers that prevent the optimal operation of the program; and</p> <p>(vi) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;</p>
<p>(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:</p> <p>(1) Area agency on aging programs;</p> <p>(2) Aging and disability resource centers;</p> <p>(3) Adult protective services programs;</p> <p>(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.);</p> <p>(5) Facility and long-term care provider licensure and certification programs;</p> <p>(6) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));</p> <p>(7) Victim assistance programs;</p>	<p>1327.13(l)</p> <p>(l) The Ombudsman shall provide program leadership to statewide coordination efforts between the Office and other entities responsible for the protection of vulnerable adults including, but not limited to:</p> <p>(1) Area agency on aging programs;</p> <p>(2) Adult protective services programs;</p> <p>(3) Protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under subtitle C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and the Protection and Advocacy of Mentally Ill Individuals Act of 1986 (42. U.S.C. 10801 <u>et.seq.</u>)</p> <p>(4) Facility and long-term care provider licensure and certification programs;</p> <p>(5) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));</p> <p>(6) Victim assistance programs;</p> <p>(7) Consumer protection and State and local law enforcement</p>

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<p>(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.</p>	<p>programs; as well as other State and local programs that identify and assist vulnerable adults and services provided by agencies and courts of competent jurisdiction; and (8) The State legal assistance developer and legal assistance programs, including those provided under section 306(a)(2)(C) of the Act, through adoption of memoranda of understanding and other means.</p>
<p>(i) The Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.</p>	
<p>§1327.15 State agency responsibilities related to the Ombudsman program.</p>	<p>§1327.15 State agency responsibilities related to the Ombudsman program.</p>
<p>(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 § 1327.11(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.</p>	<p>(a) The State agency shall: (1) Ensure, through the development of policies and other means, that the Ombudsman and the representatives of the Office are able to fully perform all of the duties specified in section 712 of the Act;</p>
	<p><i>See p.5 for 1327.15(a)(2)</i></p>
<p>(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.</p>	<p>(3)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.</p>
<p>(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.</p>	<p>(4)Provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency, but such supervision shall not include review of files, records or other information maintained by the Office which could reveal the identity of any complainant or long-term care facility resident;</p>

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<p>(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 §§ 1327.13 and 1327.19. The State agency may make reasonable requests of reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.</p>	<p>(5) Provide monitoring and oversight, including but not limited to fiscal monitoring, where the Ombudsman or representatives of the Office are hired by an agency or entity that is under contract or other arrangement with the State agency, but such monitoring shall not include review of files, records, or other information maintained by the Office which could reveal the identity of any complainant or long-term care facility resident; and</p>
<p>(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 §§ 1327.11(e)(3) and 1327.13(e).</p>	
<p>(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.</p>	<p>(6) Integrate the goals and objectives of the Office into the State plan; coordinate the goals and objectives of the Office with those of other programs established under Title VI of the Act and other State elder rights, disability rights, and elder justice programs, including legal assistance programs provided under section 306(a)(2)(C) of the Act, to promote collaborative efforts, diminish duplicative efforts, and where applicable, require inclusion of goals and objectives related to representatives of the Office into area plans;</p>
<p>(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 § 1327.13(h).</p>	<p>(7) 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 responsible for the protection of vulnerable adults set forth in §1327.13(l); and</p>
<p>(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</p>	<p>(8) Ensure that the Office has sufficient authority to perform its functions enumerated at §1327.13 and duties enumerated at §1327.17, and to make the determinations enumerated at §1327.11 (c) . Failure to do so shall constitute interference as prohibited by section 712(j) of the Act.</p>

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<p>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 §§ 1327.13 and 1327.19; and (2) Provide for appropriate sanctions with respect to interference, retaliation and reprisals.</p>	
<p>(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</p>	<p>NOT IN PROPOSED RULE</p>

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<p>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.</p> <p>(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.</p> <p>(4) The communications between the Ombudsman and legal counsel are subject to attorney-client privilege.</p>	
	<p><i>See p.7 for 1327.15(b)</i></p>
<p>(k) The State agency shall require the Office to:</p> <p>(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.</p>	<p>1327.15(c)</p> <p>(c) The State Agency shall require the Office to:</p> <p>(1) Prepare an annual report –</p> <ul style="list-style-type: none"> (i) Describing the activities carried out by the Office in the year for which the report is prepared; (ii) Containing and analyzing the data collected under this paragraph (c); (iii) Evaluating the problems experienced by, and the complaints made by or on behalf of, residents; (iv) Containing recommendations for – <ul style="list-style-type: none"> (A) Improving quality of the care and life of the residents; and (B) Protecting the health, safety, welfare, and rights of the residents; (v)(A) Analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and (B) Identifying barriers that prevent the optimal operation of the program; and (vi) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;
<p>(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</p>	<p>(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</p>

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<p>residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate</p>	<p>residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;</p>
<p>(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</p>	<p>(3)(i) Provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding – (A) The problems and concerns of older individuals residing in long-term care facilities; and (B) Recommendations related to the problems and concerns; and (ii) Make available to the public, and submit 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, each report prepared under paragraph (c)(1) of this section</p>
<p>(4) Establish procedures for the training of the representatives of the Office, as set forth in § 1327.13(c)(2).</p>	<p><i>See p. 14-15 for 1327.15(c)(4) proposed rule</i></p>
	<p><i>See p. 14-15 for 1327.15(c)(5) proposed rule</i></p>
<p>(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 § 1327.13(h).</p>	<p>(6) Coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under – (i) Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and (ii) The Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.); (7) Coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C) of the Act, through adoption of memoranda of understanding and other means; (8) Coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and</p>
	<p>(9) Permit any local Ombudsman entity to carry out the responsibilities described in paragraph (c)(1), (2), (3), (6), or (7) of this section.</p>
<p>§1327.17 Responsibilities of agencies hosting local Ombudsman entities.</p>	
<p>(a) The agency in which a local Ombudsman entity is organizationally</p>	

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<p>located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	
<p>§1327.19 Duties of the representatives of the Office.</p>	<p>§1327.17 Functions and duties of the Office of the State Long-Term Care Ombudsman</p>
<p>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.</p> <p>(a) <i>Duties.</i> 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:</p> <p>(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;</p> <p>(2) Provide services to protect the health, safety, welfare, and rights of residents;</p> <p>(3) Ensure that residents in the service area of the local Ombudsman</p>	<p>(a) An individual designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:</p> <p>(1) Provide services to protect the health, safety, welfare, and rights of residents;</p> <p>(2) Ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;</p> <p>(3) 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;</p> <p>(4) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;</p>

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<p>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;</p> <p>(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;</p> <p>(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</p> <p>(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;</p> <p>(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and</p> <p>(7) Carry out other activities that the Ombudsman determines to be appropriate.</p>	<p>(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</p> <p>(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;</p> <p>(6) Support the development of resident and family councils; and</p> <p>(7) Carry out other activities that the Ombudsman determines to be appropriate.</p>
<p>(b)Complaint processing.</p> <p>(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.</p>	<p>(b) Complaint Processing.</p> <p>(1) With respect to identifying, investigating and resolving complaints, and regardless of the source of the complaint (i.e. complainant), the Ombudsman and/or 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, gross, 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.</p>
<p>(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:</p> <p>(i) The Ombudsman or representative of Office shall offer privacy to</p>	<p>(2) Regardless of the complainant who is the source of a complaint –</p> <p>(i) The Ombudsman or representative of the Office shall personally discuss the complaint with the resident (or, where the resident is unable to communicate informed consent, wishes, or perspective, the resident’s guardian or other legal representative) in order to:</p>

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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

- (A) Determine the perception 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 allegations are to be reported to other appropriate agencies,
 - (D) Advise the resident (or resident's 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)
- (ii) Where the resident is unable to communicate his or her perspective on the extent to which the matter has or has not been satisfactorily resolved, and where there is no legal representative, the Ombudsman or representative of the Office shall determine whether the complaint was resolved to the satisfaction of the complainant.

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<p>(B) Determine whether the complaint was resolved to the satisfaction of the complainant.</p> <p>(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.</p>	
<p>(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 § 1327.11(e)(3).</p> <p>(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.</p> <p>(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</p>	<p>(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 §1327.15(a)(2)(C).</p> <p>(i) Where the goals of a resident are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident has communicated informed consent to the Office, the Office must assist the resident in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.</p> <p>(ii) In order to comply with the wishes of a resident, the Ombudsman and representatives of the Office shall not report suspected abuse, gross neglect or exploitation of a resident when a resident has not communicated informed consent to such report pursuant except as set forth in paragraphs (b)(5)-(7) of this section notwithstanding state laws to the contrary.</p>

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<p>the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.</p> <p>(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</p>	
<p>(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;</p>	<p>(4) For purposes of paragraphs (b)(1)-(3) of this section, communication of informed consent may be made verbally, (and documented contemporaneously in writing by the representative of the Office) or in writing, including through the use of assistive technology.</p>
<p>(5) For purposes of paragraphs (b)(1) paragraph (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.</p>	<p>(5) For purposes of paragraphs (b)(1)-(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 or has not been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the informed consent, or perspective on the extent to which the matter has or has not been satisfactorily resolved, of a guardian or other legal representative of the resident so long as the representative of the Office has no reasonable cause to believe that the guardian or other legal representative of the resident is not acting in the best interests of the resident.</p>
<p>(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:</p> <p>(i) The resident is unable to communicate informed consent to the</p>	<p>(6) For purposes of paragraphs (b)(1)-(3) of this section, the procedures for disclosure may provide that, when the resident is unable to communicate informed consent to the Ombudsman or representative of the Office, has no guardian or legal representative, and the Ombudsman or representative of the Office has reason to suspect that the resident is a victim of abuse, gross neglect, or exploitation; 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 the representative</p>

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<p>Ombudsman or representative of the Office;</p> <p>(ii) The resident has no resident representative;</p> <p>(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;</p> <p>(iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;</p> <p>(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</p> <p>(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.</p>	<p>obtains the approval of the Ombudsman, then the Ombudsman or representative of the Office may refer the matter and disclose the identity of the resident to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.</p>
<p>(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:</p> <p>(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and has no resident representative, or 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;</p> <p>(ii) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;</p> <p>(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</p> <p>(iv) The representative of the Ombudsman obtains the approval of the Ombudsman.</p>	<p>(7) For purposes of paragraphs (b)(1)-(3) of this section, the procedures for disclosure may provide that, when the resident is unable to communicate informed consent to the Ombudsman or representative of the Office; the resident has a guardian or other legal representative who the Ombudsman or representative of the Office has reasonable cause to believe is a perpetrator of abuse, gross neglect, or exploitation of the resident; 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 the representative of the Office may refer the matter and disclose the identity of the resident to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.</p>
<p>(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,</p>	<p>(8) The procedures for disclosure shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman</p>

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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.

or representative shall seek communication of informed consent from such resident to disclose the identity of the resident to appropriate agencies;

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

(ii) Where the resident is unable to communicate informed consent, and has no 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 (so long as the Ombudsman or representative has reasonable cause to believe that disclosure would be in the best interest of the resident and the representative obtains the approval of the Ombudsman) shall refer the matter and disclose the identity 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.

(iii) In addition, the Ombudsman 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

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<p>procedures of the Office which provide for such disclosure.</p> <p>(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.</p> <p>(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.</p> <p>(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.</p>	
	<p>(c) <i>Coordination of Ombudsman activities with other elder rights, disability rights, and elder justice entities</i> – The Ombudsman and representatives of the Office shall coordinate Ombudsman program services with those of other state and local entities responsible for the protection of vulnerable adults for the purpose of promoting collaborative efforts and diminishing duplicative efforts in the development and carrying out of elder rights, disability rights, and elder justice programs. Such entities shall include, but not be limited to:</p> <ul style="list-style-type: none">(1) Area agency on aging programs;(2) Adult protective services programs;(3) Protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under subtitle C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and the Protection and Advocacy of Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 <u>et seq.</u>);(4) Facility and long-term care provider licensure and certification programs;(5) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));(6) Victim assistance programs;(7) Consumer protection and State and local law enforcement programs; as well as other State and local programs that identify and assist vulnerable adults and services provided by agencies and

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	<p>courts of competent jurisdiction; and (8) Legal assistance programs provided under section 306(a)(c) of the Act.</p>
<p>§1327.21 Conflicts of Interest</p>	<p>§1327.19 Conflicts of Interest</p>
<p>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.</p>	<p>The State agency shall consider both the organizational and individual conflicts that may impact the effectiveness and credibility of the work of the Office. In so doing, it shall identify actual and potential conflicts and, where a conflict has been identified, shall remove or remedy such conflict as set forth in paragraph(b) and (d) of this section.</p>
<p>(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:</p> <ol style="list-style-type: none"> (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; 	<p>(a) <i>Identification of organizational conflicts.</i> In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency 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 in an organization that:</p> <ol style="list-style-type: none"> (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 an 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 ownership, investment or employment interest in long-term care facilities; (5) Provides long-term care services, 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; (7) Sets reimbursement rates for long-term care services; (8) Provides adult protective services; (9) Is responsible for Medicaid eligibility determinations; (10) Conducts preadmission screening for long-term care residential placements;

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<p>(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 surrogate decision-making services for residents of long-term care facilities</p>	<p>(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 surrogate decision-making services for residents of long-term care facilities.</p>
<p><i>(b) Removing or remedying organizational conflicts.</i> 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.</p>	<p><i>b) Removing or remedying organizational conflicts.</i> The State agency shall identify and remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.</p>
<p>(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.</p>	
<p>(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.</p>	<p>(1) Where the Office is located within or otherwise organizationally attached to 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.</p>
<p>(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</p>	<p>(2) 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</p>

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<p>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:</p> <ul style="list-style-type: none"> (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. 	<p>Agency may not operate the Office directly if it:</p> <ul style="list-style-type: none"> (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 an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service.
<p>(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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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. 	<p>(3) 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:</p> <ul style="list-style-type: none"> (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; (ii) Establish a process for periodic review and identification of conflicts in the agency or organization; (iii) Require that such agency or organization have a process in place to: <ul style="list-style-type: none"> (A) Take reasonable steps to avoid conflicts of interest, and (B) Disclose such conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval; and (iv) Establish a process for State agency review of and criteria for approval of steps taken to remove or remedy conflicts in such agency or organization; and
<p>(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</p>	<p>(4) 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 organization. The State agency may not enter into such contract or other arrangement with an agency or organization which is responsible for licensing or certifying long-term care services in the state or is an</p>

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<p>association (or affiliate of such an association) of long-term care facilities.</p>	<p>association (or affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.</p>
<p>(6) Where local Ombudsman entities provide Ombudsman services, the Ombudsman shall:</p> <ul style="list-style-type: none"> (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. 	<p>(5) Where local Ombudsman entities provide Ombudsman services, the Ombudsman shall:</p> <ul style="list-style-type: none"> (i) Establish a process for periodic review and identification of conflicts in such entities, (ii) Require disclosure of conflicts to the Ombudsman by such entities; (iii) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts in such entities; and (iv) Prior to designating or renewing designation, take reasonable steps to assure that any conflicts of interest in such entities have been removed or remedied,
<p>(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.</p>	<p>(6) Failure of a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for de-designation of a local Ombudsman entity by the Ombudsman.</p>
<p><i>(c) Identifying individual conflicts of interest.</i> (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.</p>	<p><i>(c) Identifying individual conflicts of interest.</i> (1) In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.</p>
<p>(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:</p> <ul style="list-style-type: none"> (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 	<p>(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:</p> <ul style="list-style-type: none"> (i) Direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service; (ii) Ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service; (iii) Employment of an individual by, or participation in the

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<p>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;</p> <p>(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;</p> <p>(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);</p> <p>(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;</p> <p>(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.</p>	<p>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 within the previous year;</p> <p>(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;</p> <p>(v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative;</p> <p>(vi) Accepting money or any other consideration from anyone other than the Office or an entity designated 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;</p> <p>(vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in the service area;</p> <p>(viii) Serving residents of a facility in which an immediate family member resides; and</p> <p>(ix) Participating in activities which negatively impact on the ability of the Ombudsman or the representatives of the Office to serve residents or are likely to create a perception that the primary interest of the Ombudsman or the representatives of the Office is other than as a resident advocate.</p>
<p>(d) Removing or remedying individual conflicts.</p> <p>(1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to § 1327.11(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 § 1327.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.</p>	<p>(d) Removing or remedying individual conflicts.</p> <p>(1) The State agency shall develop and implement policies and procedures to ensure that no Ombudsman, representatives of the Office, or officer of the Office, are required to perform duties that would constitute a conflict of interest as set forth in §1327.19(c).</p>
<p>(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:</p>	<p>(2) When the State agency is considering the employment of an individual as the Ombudsman or a representative of the Office the State agency shall:</p>

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<p>(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;</p> <p>(ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;</p> <p>(iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office, and</p> <p>(iv) Take steps to remove or remedy conflicts.</p>	<p>(i) Take reasonable steps to avoid hiring an individual who has a conflict of interest or who has a member of the immediate family with a conflict of interest;</p> <p>(ii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office; and</p> <p>(iii) Take steps to remove or remedy conflicts.</p>
	<p>(3) Where the candidate for Ombudsman or representative of the Office has a conflict that cannot be adequately removed or remedied, the State agency may not employ such candidate.</p>
	<p>(4) Where the Office is operated by another public agency or a nonprofit private organization, and/or where local Ombudsman entities employ representatives of the Office, the State agency shall ensure that the agency, organization, or entity has policies in place to prohibit hiring of an Ombudsman or representatives of the Office with a conflict that cannot be adequately removed or remedied.</p>

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<p>(3) In no circumstance shall the entity, which appoints or employs the Ombudsman, appoint or employ an individual as the Ombudsman who:</p> <ul style="list-style-type: none">(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. <p>(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:</p> <ul style="list-style-type: none">(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.	<p>(5) In no circumstance may the State agency; where applicable, the public agency or non-profit private organization which carries out the program; or a local Ombudsman entity employ an individual as the Ombudsman or representative of the Office who:</p> <ul style="list-style-type: none">(i) Has had direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service within the previous year;(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service. 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 year; or(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.
<p>(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</p>	
<p>(B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.</p>	

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	<p>(6) Where the Ombudsman or representative of the Office acquires a conflict that cannot be adequately removed or remedied, the State agency, where applicable, the public agency or non-profit private organization which carries out the program; or a local Ombudsman entity, may not continue to employ the individual as the Ombudsman or representative of the Office.</p>
	<p>(7) The State agency shall ensure that policies and procedures are in place so that, in designating representatives of the Office, the Ombudsman shall:</p> <ul style="list-style-type: none">(i) Take reasonable steps to avoid designation of an individual who has a conflict of interest or who has a member of the immediate family with a conflict of interest;(ii) Establish a process for periodic review and identification of conflicts of the representatives; and(iii) Take steps which remove or remedy individual conflicts.