



Long-Term Care Ombudsman Program

POLICIES AND PROCEDURES MANUAL



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101: General Authority and Mission

- A. The Illinois Long-Term Care Ombudsman Program (Program) is authorized by and in accord with the section 712 of the Older Americans Act, and the Illinois Act on the Aging, (20 ILCS 105/4.04).
- B. The Program protects and improves the quality of care and quality of life for residents of long-term care facilities in Illinois through individual and systemic advocacy for and on behalf of residents, including representing the interests of residents before governmental agencies, reviewing and commenting on existing and proposed laws, seeking out and responding to media requests, the promotion and cultivation of best practices within long-term care services, and through the promotion of family and community involvement in long-term care facilities.
- C. The Program was expanded and given authority in 2013 to provide advocacy services to participants of Home and Community-Based Services waiver programs administered by the State, and managed care organizations providing care coordination and other services to seniors and persons with disabilities.
- D. The Program is a resident and participant centered advocacy program. The resident or participant is the program's client, regardless of the source of the complaint or request for service. The Ombudsman will make every reasonable effort to assist, empower, represent, and advocate on behalf of the resident or participant.
- E. The service components of the Program include identifying, investigating, and resolving complaints; regular presence in long-term care facilities; consultation and community education; issue advocacy; and supporting the development of resident and family councils.
- F. Processing complaints made by or on behalf of residents or participants and resolving the problems and questions of residents or participants are the highest priority service of the Program. Principles and techniques of empowerment are to be used whenever possible when addressing resident or participant complaints and problems.
- G. These policies and procedures govern the operations of the Program and establish the relationship and responsibilities of Provider Agencies, Area Agencies on Aging, and the Illinois Department on Aging, in relation to the Program.

102: Structure of the Illinois Long-Term Care Ombudsman Program

- A. The Department shall establish an Office of the State Long-Term Care Ombudsman (“Office”) which will operate a statewide Long-Term Care Ombudsman Program (“Program”) in accordance with the Older Americans Act, the Illinois Act on the Aging, and applicable federal and state regulations.
- B. The Office shall assure that all residents of Illinois long-term care facilities and participants of Home and Community-Based Services waiver programs and managed care organizations have access to the services of the Program and that every area of the State has a designated Regional Program.
- C. Regional Program services shall be delivered through provider agencies and individuals designated by the Office and shall be operated through a grant or contract with the Department or an Area Agency on Aging (AAA).

103: Organization of this Policies and Procedures Manual

The general organization of this Manual is as follows:

Chapter 100: Introduction/Definitions

Describes the mission, responsibilities and authority of the Illinois Long-Term Care Ombudsman Program, the organization of this Manual, the procedures to revise any portion of this manual, and lists and defines the terms used throughout this Manual.

Chapter 200: Organizational Standards and Responsibilities

Describes the organizational standards and responsibilities of the Department, the Office, the State Ombudsman, the Area Agencies on Aging, Provider Agencies, and the Regional Ombudsmen in relation to the Program.

Chapter 300: Designation and Certification

Describes the process for certification, de-certification, designation and de-designation of Ombudsmen and Provider Agencies and grievances.

Chapter 400: Long-Term Care Ombudsman Program Service Delivery

Describes the five service delivery components to be provided by the Program, the Annual Services Plan, and monitoring and evaluation of the Program.

Chapter 500: Investigative Services

Provides the minimum guidelines for investigating, verifying, and resolving complaints received by or on behalf of residents and participants.

Chapter 600: Access

Explains how to gain access to residents and facilities, to resident, participant, state, and facility records and the process to follow when access is denied.

Chapter 700: Legal Issues

Describes the process to follow in seeking legal advice or consultation from the Office by Ombudsmen and Provider Agencies, representation and indemnification from the Attorney General or others, procedures to follow when interference, retaliation, and/or reprisals exists, and procedures to follow when dealing with guardianship.

Chapter 800: Confidentiality, Monitoring, Disclosure, and Maintenance

Outlines the requirements to be followed by the Program and Ombudsmen to assure confidentiality of residents, participants, complainants, witnesses, or others assisting in the report, complaint, or investigation. It also explains how long records should be kept and in what manner.

Chapter 900: Conflict of Interest

Defines conflict of interest for entities and individuals involved in the Program and procedures for the disclosure, review and remedying of a conflict of interest along with the penalties for failure to identify or remedy a conflict of interest.

Chapter 1000: Volunteer Management

Defines the qualifications and role of volunteers in the Program.

104: Definitions

For the purposes of this Policies and Procedures Manual, the following definitions will apply:

Abuse

Willful infliction of injury, unreasonable confinement, intimidation, cruel punishment with resulting physical harm, pain, or mental anguish; or willful deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. Abuse may also include exploitation.

Annual Services Plan

A written plan, prepared by the Regional Ombudsman for submission to the Office and the Area Agency on Aging, setting goals and objectives for the Regional Ombudsman Program for the following federal fiscal year.

Area Agency on Aging or AAA

A public or private nonprofit agency designated by the Department in a planning and service area which is responsible for developing and administering an area plan for a comprehensive and coordinated system of services for caregivers and persons over the age of 60.

Area Plan

A plan developed by an Area Agency on Aging for its relevant planning and service area as set forth in the Older Americans Act.

Authorized Representative

A guardian; an agent under a valid power of attorney, provided that the agent or attorney-in-fact is acting within the scope of his or her agency; a surrogate decision maker; or an executor or administrator of the estate of a deceased resident or participant.

Background Check

A fingerprint-based criminal history records check as defined by Section 15 of the Health Care Worker Background Check Act (225 ILCS 46/15).

Case for Long-Term Care Residents

Each request for assistance or allegation brought to, or initiated by, the Ombudsman Program on behalf of a resident or group of residents of long-term care facilities involving one or more complaints or problems which requires opening a case file and which includes Ombudsman investigation, fact gathering, development and implementation of a resolution strategy in keeping with Chapter 500 of this Manual.

Case for Participants

Each request for assistance brought to the Ombudsman Program by or on behalf of a participant involving one or more complaints or problems which require opening a case file for advocacy and resolution strategies.

Certification

The process by which an individual who meets minimum qualifications, is free of conflicts of interests, has successfully completed training and other criteria stipulated in Section 303 of this Manual becomes registered on the Ombudsman Registry by approval of the State Ombudsman. Certification authorizes such individual to act as a representative of the Office or in keeping with this Manual.

Community Education

Presentations made to the community or other meetings where an Ombudsman represents the Ombudsman Program with community groups, students, churches, etc. This includes attendance at community and health fairs and similar gatherings where an Ombudsman has a display and staff available to provide information to attendees.

Complaint or Complaint for Long-Term Care Residents

A concern or allegation regarding action, inaction, or decisions that may or have adversely affected the health, safety, welfare, or rights of one or more residents that is brought to the attention of, or initiated by, the Ombudsman for action.

Complaint for Participants

A concern or allegation regarding action, inaction, or decisions relating to a Home and Community-Based Services waiver program or services through a Managed Care Organization that may or have adversely affected the health, safety, welfare, or rights of one or more participants that is brought to the attention of, or initiated by, the Ombudsman for action.

Conflict of Interest

A competing interest, obligation, or duty which compromises, influences, interferes with (or gives the appearance of compromising, influencing or interfering with) the integrity, activities, or conduct of all Ombudsmen, the Department, Office, AAAs or Provider Agencies in faithfully and effectively fulfilling official duties.

Consultations

The provision of information and assistance to individuals regarding long-term care facilities and resident services which does not involve investigating and working to resolve complaints (i.e., a consultation is not a case). A consultation may include when the Ombudsman refers someone with a concern to another agency and is not actively involved in investigating and working to resolve the problem.

Date of First Action

The date of contact with the resident or resident’s authorized representative or participant which results in a preliminary plan for either an investigation or steps to be taken toward resolution.

Department or IDoA

The Illinois Department on Aging.

Designation

The authorization by the State Ombudsman of an entity to host a Regional Ombudsman Program in a specified geographic area.

Director

The Director of the Illinois Department on Aging.

Exploitation

The illegal or improper act or process of an individual, including a caregiver, using the resources of an older adult or adult with a disability for monetary or personal benefit, profit, or gain.

Facility In-Services

A presentation by an Ombudsman to long-term care facility staff on long-term care issues.

Family Council Activities

Provision of technical assistance, information, training or support to the family members of residents and/or facility staff about the development, education, work, or maintenance of a family council.

Good Faith

Evidence of performing duties in “good faith” includes, but is not limited to:

- A. making reasonable efforts to follow procedures set forth in applicable laws and this Manual;
- B. seeking and making reasonable efforts to follow direction from the Office of the State Long-Term Care Ombudsman; and
- C. seeking and making reasonable efforts to follow direction from the relevant Regional Ombudsman.

Guardian

Person or entity appointed by a court to exercise the legal rights and powers of another individual as specified in the court order.

Home and Community-Based Services Waiver or HCBS Waiver

A waiver approved by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services, and administered by the state of Illinois.

Home Care Ombudsman

An Ombudsman who serves participants.

Home Care Ombudsman Program

A subdivision of the Office and any Ombudsmen housed within that subdivision that provide advocacy services to participants.

Immediate family

A member of the household or a relative with whom there is a close personal or significant financial relationship.

Intake Date

The date of receipt of the information or message received by the Ombudsman.

Inquiries

The provision of information and assistance to individuals regarding home and community-based services waivers and managed care organization services which does not involve investigating and working to resolve complaints (i.e., an inquiry is not a case). An inquiry may include when the Ombudsman refers someone with a concern to another agency and is not actively involved in investigating and working to resolve the problem.

Interagency Coordination

Activities that involve meeting or coordinating with other agencies to learn about and to improve conditions for one or more residents or participants.

Issue Advocacy

Activities supporting and promoting issues that benefit or advance the health, safety, welfare or rights of residents and participants.

Long-Term Care Facility or Facility

Long-Term Care Facility means any facility as defined in (20 ILCS 105/4.04 (a)(2)) of the Illinois Act on the Aging and by Section 1-113 of the Nursing Home Care Act, as now or hereafter amended; and any skilled nursing facility or a nursing facility which meets the requirements of Section 1819 (a), (b), (c), and (d) or Section 1919 (a), (b), (c), and (d) of the Social Security Act, as now and hereafter amended [42 U.S.C. 1395i-3(a), (b), (c), and (d)] and [42 U.S.C. 1396r(a), (b), (c), and (d)]; any facility as defined by Section 1-113 of the ID/DD Community Care Act, as now or hereafter amended; and any facility as defined by Section 1-102 of the Specialized Mental Health Rehabilitation Act of 2013, as now or hereafter amended; (210 ILCS 46/) MC/DD Act as now or hereafter amended; facilities that meet the requirements of Section 10 of the Assisted Living and Shared Housing Act as well as facilities established under Section 5-5.01a of the Illinois Public Aid Code. Facilities or establishments with the following types of licensed beds or certified units are included in the definition:

- A. skilled nursing;
- B. intermediate care;
- C. specialized mental health rehabilitation facilities;
- D. Illinois Department of Veterans' Affairs facilities;
- E. intermediate care facilities for persons with developmental disabilities;
- F. sheltered care;
- G. assisted living;
- H. shared housing;
- I. supportive living – a facility established under Section 5-5.01a of the Illinois Public Aid Code and;
- J. medically complex for the developmentally disabled.

Long-Term Care Ombudsman

An Ombudsman who serves residents.

Managed Care Organization (MCO)

An organization licensed and approved by the Illinois Department of Healthcare and Family Services to provide care coordination and other services to seniors and people with disabilities in the state of Illinois.

Multidisciplinary Team

A group of individuals selected by the Regional Ombudsman which acts in an advisory role for the purpose of providing professional knowledge and expertise in handling complex abuse, neglect, and advocacy issues.

Neglect

The failure to provide the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caregiver to provide the goods and services.

Office

The Office of the State Long-Term Care Ombudsman Program is a distinct entity, separately identifiable, as established by the Department. The Office is the organizational unit headed by the State Ombudsman and comprised of any other State Ombudsman staff.

Official Duties

Those duties of an Ombudsman as set forth in applicable federal and state law and this Manual.

Ombudsman

An employee or volunteer certified by the State Ombudsman as a representative of the Office to fulfill the duties of the Office, whether the personnel supervision is provided by the State Ombudsman or by an agency hosting a Regional Long-Term Care Ombudsman Program or Home Care Ombudsman Program.

Ombudsman Representative Registry

The official listing of Ombudsmen, maintained by the Office, who have been certified as representatives of the Office of State Ombudsman.

Participant

A person aged 60 or over or an adult with a disability aged 18 through 59 who is eligible for services under a HCBS waiver administered by the state of Illinois or a person receiving care coordination and other services by a managed care organization.

Planning and Service Area or PSA

A geographic area of the State, as defined in the Illinois Act on the Aging, that is designated by the Department for the purposes of planning, development, delivery, and overall administration of services under an area plan.

Policies and Procedures Manual

The written manual governing the operations of the Long-Term Care Ombudsman Program and establishing the relationship and responsibilities of Provider Agencies, AAAs, and the Department in relation to the Long-Term Care Ombudsman Program.

Policy Clarification Request Committee

A committee created by the Office to advise on policies and procedures.

Program

The State Long-Term Care Ombudsman Program through which the functions and duties of the Office are carried out, consisting of the State Ombudsman, the Office headed by the State Ombudsman, and representatives of the Office.

Program Records

All files, records, correspondence, documentation, case notes and communications related to a specific case or client.

Provider Agency

The entity designated by the State Ombudsman to operate a Regional Ombudsman Program in a planning and service area or a specified geographic area.

Record

Any medical, social, personal and financial information maintained by any long-term care facility, any State or local agency, any HCBS waiver program or any managed care organization pertaining to a resident or participant.

Regional Long-Term Care Ombudsman Program

An agency designated by the State Ombudsman as a sub-division of the Office and any Ombudsmen housed within that agency that provide advocacy services to residents of long-term care facilities.

Regional Ombudsman

A certified Ombudsman who works full-time (35-40 hours/week) to perform Ombudsman functions exclusively and who shall have no duties in the Provider Agency outside the scope of the Ombudsman Program as defined in state and federal law and this Manual. The Regional Ombudsman has the overall responsibility for the activities of the Regional Ombudsman Program as defined in this Manual.

Regional Ombudsman Program

A Regional Long-Term Care Ombudsman Program or a Home Care Ombudsman Program.

Representative

1. Resident’s Representative

An authorized representative or any person who is knowledgeable about a resident's circumstances and has been designated by that resident in writing to represent him or her.

2. Participant’s Representative

An authorized representative or any person who is knowledgeable about a participant’s circumstances and has been designated by that participant in writing to represent him or her.

Resident

A person age 60 or over or an adult with a disability aged 18 through 59 who is a current resident of a long-term care facility, a former resident, or a deceased resident.

Resident Council Activities

Provision of technical assistance, information, training or support to the residents, family members and/or facility staff about the development, education, work or maintenance of a resident council.

State Ombudsman or State Long-Term Care Ombudsman

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 federal regulations. [45 CFR §1324.1] The State Ombudsman is employed by the Department to fulfil the requirements of the Office of State Long-Term Care Ombudsman as required under the Older Americans Act of 1965.

Volunteer Ombudsman

An Ombudsman who performs services without pay.

Willful Interference

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, responsibilities, or duties of the Ombudsman.

105: Policy Clarifications, Revisions, and Waivers to this Manual

- A. When necessary, the Office shall issue clarifications of this Manual in response to Policy Clarification Requests (PCRs)
 - 1. PCRs may be submitted to the Office by an AAA, a Provider Agency, or Regional Program using the form developed by the Office. A response to a PCR will be made within thirty (30) working days by either responding directly to the clarification request or requesting further information from the requestor.
 - 2. The Office may create a PCR workgroup.
- B. Revisions to this Manual
 - 1. Revisions to this Manual will be made by the Office, after consultation with the Department.
 - 2. When appropriate, the Office will seek input from the AAAs, Provider Agencies, and Regional Programs.
 - 3. Revisions to this Manual will be distributed electronically to the AAAs, Regional Programs, and Provider Agencies.
 - 4. A Provider Agency on the date of issuance of the Manual, or any revisions thereto, shall continue to be designated for the duration of the previously established designation period unless de-designated by the State Ombudsman.
- C. Waivers
 - 1. The State Ombudsman may grant a waiver to a policy of this Manual when a written request is received from an AAA, Provider Agency or Regional Ombudsman which contains justification to support the approval. The AAA, Provider Agency and Regional Ombudsman will be notified in writing if a waiver has been approved.
 - 2. A request for waiver must be made in writing to the Office and approved by the State Ombudsman prior to:
 - a) hiring or promotion of the employee in question; or
 - b) implementing the reduced minimum standard.

CHAPTER 200: ORGANIZATION STANDARDS AND RESPONSIBILITIES

201: The Illinois Department on Aging Responsibilities

202: State Long-Term Care Ombudsman Responsibilities

203: Responsibilities of the Office

204: Area Agency on Aging Responsibilities

205: Provider Agency Responsibilities

206: Regional Ombudsmen Responsibilities

201: The Illinois Department on Aging Responsibilities

- A. The Department shall:
 - 1. establish an Office of the State Long-Term Care Ombudsman (Office) which shall be headed by the State Long-Term Care Ombudsman.
 - 2. provide for sufficient staff to carry out the state and federal statutory responsibilities of the Program.
 - 3. ensure that the Office of the State Long-Term Care Ombudsman (Office) is a distinct entity separately identifiable, and located within or connected to the Department.
 - 4. ensure that the Ombudsman Program shall have sufficient authority and access to facilities, residents, participants, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.
 - 5. require that the State Ombudsman serve on a full-time basis. The functions, responsibilities, and duties, as set forth in [45 CFR §1324.13 and §1324.19] are to constitute the entirety of the Ombudsman's work. The Department shall not require or request the State Ombudsman to be responsible for leading, managing, or performing the work of non-Ombudsman services or programs except on a time-limited, intermittent basis.
 - 6. ensure that the State Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:
 - a) long-term services and supports or other direct services for older persons or individuals with disabilities;
 - b) consumer-oriented public policy advocacy;
 - c) leadership and program management skills; and
 - d) negotiation and problem resolution skills.
 - 7. not have personnel policies or practices which prohibit the State Ombudsman from performing the functions and responsibilities of the State Ombudsman.
 - 8. provide opportunities for training for the State Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents and participants.

9. provide personnel supervision and management for the State Ombudsman and Ombudsmen who are employees of the Department. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.
10. ensure that any review of files, records or other information maintained by the Program is consistent with the disclosure limitations set forth in [45 CFR §1324.11(e)(3) and §1324.13(e)].
11. work with the State Ombudsman to identify, remedy, and remove conflicts of interest between the Office and the Department.
12. 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 Older Americans 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 Older Americans Act, to promote collaborative efforts and diminish duplicative efforts. The Department shall require inclusion of goals and objectives of Regional Long-Term Care Ombudsman Programs into area plans on aging.
13. provide for appropriate sanctions with respect to interference, retaliation and reprisals.
14. ensure 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).
15. at a minimum, ensure that 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. Legal representation of the Ombudsman Program by the State Ombudsman or another Ombudsman who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.
16. ensure that the communications between Ombudsmen and legal counsel are subject to attorney-client privilege.

202: State Long-Term Care Ombudsman Responsibilities

- A. The State Ombudsman shall be the head of a unified statewide program.
- B. The State Ombudsman shall operate the Office pursuant to Section 203 of this Manual and in accordance with Department guidelines.
- C. The State Ombudsman is responsible for the leadership and management of the Office.
- D. A State Ombudsman shall have:
 - 1. the understanding of aging, disability, and long-term care issues;
 - 2. the ability to analyze and explain human service data;
 - 3. knowledge and experience in legislative and issue advocacy, public relations, and coalition building;
 - 4. experience managing staff and volunteers;
 - 5. basic computer skills;
 - 6. strong written and verbal communication skills and experience in public speaking;
 - 7. demonstrated problem-solving abilities;
 - 8. familiarity with outcome-based evaluation and quality improvement;
 - 9. a demonstrated commitment on issues relevant to residents and participants;
 - 10. familiarity with legal concepts and the legislative process;
 - 11. a Bachelor's degree and three (3) years of experience as an Ombudsman or an advocate.
- E. The State Ombudsman shall:
 - 1. determine designation, and refusal, suspension, or removal of designation, of Regional Ombudsman Programs. Notwithstanding the grievance process, the State Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a Regional Ombudsman Program pursuant to Section 301 of this Manual.

2. determine certification, and refusal, suspension, or removal of certification, of Ombudsmen. The State Ombudsman shall make the final determination to certify or to refuse, suspend, or remove certification of an Ombudsman pursuant to Section 303 of this Manual.
3. establish and maintain an Ombudsman Representative Registry as an official listing of those Ombudsmen who are designated as representatives of the Office.
4. reserve the right to remove from the Ombudsman Representative Registry the name of any Ombudsman representative who fails to meet, maintain, or comply with the standards and requirements of the Ombudsman Program. Any Ombudsman representative so removed shall not serve, nor represent themselves, as a representative of the Office. The State Ombudsman shall provide for notice of such removal to such individual.
5. review and approve plans or contracts governing Regional Ombudsman Program operations, including, where applicable, through Area Agency on Aging plans, in coordination with the Department.
6. monitor, on a regular basis, the Ombudsman Program performance of Regional Ombudsman Programs.
7. establish procedures for training and certification and continuing education of Ombudsmen.
8. prohibit any individual from carrying out the duties of the Office unless the individual has received the training required or is performing such duties under supervision of an Ombudsman as part of the certification training requirements.
9. investigate allegations of misconduct by Ombudsmen in the performance of Ombudsmen Program duties in accordance with Section 305 of this Manual.
10. manage the files, records, and other information of the Ombudsman Program, whether in physical, electronic, or other formats, including information maintained by Regional Ombudsman Programs pertaining to the cases and activities of the Ombudsman Program. Such files, records, and other information are the property of the Office.

11. maintain the sole authority in making determinations regarding disclosure of Ombudsman Program records.
 12. determine the use of fiscal resources appropriated or otherwise available for the operation of the Office. The State Ombudsman shall approve the allocations of federal and state funds provided to Provider Agencies. The State Ombudsman shall determine that program budgets and expenditures of the Office and Regional Ombudsman Programs are consistent with laws, policies and procedures governing the Ombudsman program.
- F. The State Ombudsman shall, personally or through representatives of the Office:
1. identify, investigate, and resolve complaints that:
 - a) are made by, or on behalf of, residents and participants; and
 - b) relate to action, inaction, or decisions of providers, or representatives of providers of long-term care services; public agencies; or health and social service agencies that may adversely affect the health, safety, welfare, or rights of the residents and participants (including the welfare and rights of residents and participants with respect to the appointment and activities of resident and participant representatives).
 2. provide services to protect the health, safety, welfare, and rights of residents and participants;
 3. inform residents and participants about means of obtaining services provided by the Ombudsman Program;
 4. ensure that residents and participants have regular and timely access to the services provided through the Ombudsman Program and that residents, participants and complainants receive timely responses from Ombudsmen to requests for information and complaints;
 5. represent the interests of residents and participants before governmental agencies, assure that individuals have access to, and pursue (as the State Ombudsman determines as necessary and consistent with resident and participant interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents and participants;

6. provide administrative and technical assistance to Ombudsmen and Regional Ombudsman Programs;
 7. provide for training of Ombudsmen;
 8. provide statewide systems advocacy. In carrying out systems advocacy efforts of the Office on behalf of residents and participants, the provision of information, recommendations of changes in laws to legislators, and recommendations of changes in regulations and policies to government agencies by the State Ombudsman or other Ombudsmen do not constitute lobbying activities [45 CFR Part 93]. The State Ombudsman shall:
 - a) analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of residents and participants, with respect to the adequacy of long-term care facilities and services in the State;
 - b) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and
 - c) facilitate public comment on the laws, regulations, policies, and actions;
 - d) provide leadership to statewide systems advocacy efforts of the Office on behalf of residents and participants, including coordination of systems advocacy efforts carried out by representatives of the Office;
 - e) provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and participants and make recommendations related to the problems and concerns. Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the Department;
 - f) coordinate with and promote the development of citizen organizations consistent with the interests of residents and participants; and
 - g) promote, provide technical support for the development of, and provide on-going support as requested by resident and family councils to protect the well-being and rights of residents.
- G. Carry out other activities as the Assistant Secretary determines to be appropriate.

203: Responsibilities of the Office

- A. The Office shall:
 - 1. work to resolve problems faced by residents and participants;
 - 2. advocate for broad policy, regulatory and/or legislative changes to improve care of residents and participants;
 - 3. plan, develop, and implement training of the Ombudsmen and the Regional Ombudsman Programs;
 - 4. maintain a registry of all Provider Agencies and Ombudsmen and the geographic areas for which each has been assigned;
 - 5. coordinate the activities of the Program with other Department on Aging programs and other state and federal agencies involved in the care of residents or participants;
 - 6. maintain Program records and the Program reporting system;
 - 7. provide information and assistance to the general public, residents, legislators, community organizations and other agencies regarding long-term care issues and state and federal licensing, certification and regulation;
 - 8. provide technical assistance to AAAs, Provider Agencies, and Regional Ombudsmen;
 - 9. provide Program data and analysis;
 - 10. monitor and evaluate the statewide and Regional Programs which may include, but is not limited to:
 - a) reviewing a sample of individual case files for complaint processing review;
 - b) reviewing accuracy of Ombudsman Program activities;
 - c) fiscal monitoring, including review of budget, expenditure, and audit reports;
 - d) reviewing conflict of interest forms and remedies;
 - e) observation of Ombudsmen on visits to facility residents;
 - f) interviewing volunteers and Regional program staff;

- g) for programs with Ombudsmen who are volunteers, review of volunteer management policies;
 - h) meetings with Provider Agencies and/or Area Agency on Aging staff;
- 11. establish an advisory group for the Program comprised of representatives from the AAAs, Provider Agencies, and Ombudsmen, with one representative for each planning and service area;
- 12. prepare and distribute an annual report as described in the Older Americans Act; and,
- 13. make revisions to this Manual, after consultation with the Department.

204: Area Agency on Aging (AAA) Responsibilities

- A. AAAs shall fiscally administer the grants or contracts under which Regional Programs operate in compliance with federal and state laws and administrative rules.
- B. Any AAA contract or grant provision that requires Regional Program service delivery components or data collection policies and procedures, practices or protocols different from those presented in this Manual must be approved in writing by the Office and when necessary, a waiver request must be submitted.
- C. In administering Regional Program services, the AAA shall:
 - 1. support a full-time Regional Ombudsman for each Regional Program;
 - 2. have an active and ongoing responsibility in monitoring; however, AAAs do not have access to Program records which contain identifying information about residents. Ongoing monitoring includes:
 - a) reviewing budget, expenditure and audit reports;
 - b) reviewing Regional Program coordination with other agencies;
 - c) reviewing reports provided by the Office which reflect the activities of the Regional Program;
 - d) reviewing conflict of interest forms and remedies; and
 - e) reviewing policies and procedures of the Provider Agency that relate to the Regional Program.
 - 3. monitor the Regional Program at least once every three (3) years using the Office-approved monitoring tool in order to assess the adequacy of Program services and the internal quality assurance procedures pursuant to the contract or grant with the State Ombudsman being notified of the monitoring visit. The completed monitoring tool shall be submitted to the Office within thirty (30) calendar days of the monitoring visit.
 - 4. review and comment on the Ombudsman Annual Service Plan on an annual basis.
 - 5. adhere to the maintenance of effort requirements for each Regional Program as required by the Older Americans Act;

6. assure that OAA Title VII Ombudsman Program funds are used exclusively for Ombudsman Program services and direct advocacy Program activities;
 7. make no requirement for matching funds for OAA Title VII funds received by the AAA for Regional Ombudsman Program services;
 8. when appropriate, include the Regional Ombudsman in discussions, meetings, conferences, reports and other AAA functions and operations such as boards and advisory councils related to long-term care, and to serve as the voice for residents;
 9. have no unremedied conflicts of interest; and
 10. provide technical assistance related to budgetary concerns and service delivery systems.
- D. AAAs shall support the Regional Program, to the extent possible, by:
1. designating an AAA staff liaison to attend Program-sponsored trainings and meetings pertaining to the Program;
 2. assisting in the development of resources for the operation of the Regional Program, including financial and human resources;
 3. providing opportunities for the Regional Program and other aging and social services organizations to collaborate to promote the health, safety, welfare, and rights of residents;
 4. making appropriate referrals to the Regional Program;
 5. promoting awareness of Ombudsman services to consumers and the general public within the service area;
 6. recognizing the responsibilities of the Regional Ombudsmen to promote systems and issues advocacy on behalf of residents;
 7. carrying out the responsibilities of a Provider Agency when requested by the Office to provide Ombudsman services on an emergency basis pursuant to Section 301 of this Manual, unless there is an irremediable conflict of interest with the AAA; and
 8. providing technical assistance related to the contract or grant.
- E. AAAs shall submit the required financial and programmatic reports to the Department and to the Office in accordance with the established departmental instructions.

- F. The AAA shall award and administer funds for legal services in accordance with standards provided by the Department's Legal Services Developer.
- G. The AAA shall cooperate with the Office to implement a transition plan to minimize disruption in Ombudsman services to residents when the contract or grant for the Regional Program services is terminated or not renewed.
- H. Where an AAA provides Ombudsman Program services directly, it must fulfill the responsibilities of a Provider Agency as outlined in Section 205 of this Manual. Under these circumstances, the Office will fulfill the monitoring role explained in Section 204(C)(2) of this Manual.
- I. The AAA shall notify the Office of any concerns of non-compliance by the Provider Agency in carrying out the duties of the Ombudsman Program.
- J. The AAA may request a waiver pursuant to Section 105(C) of this Manual if, due to demonstrable and unusual circumstances, the AAA anticipates it or its Provider Agency will be unable to comply with responsibilities in this Manual.

205: Provider Agency Responsibilities

- A. The Regional Provider Agency is designated by the State Ombudsman to house the Regional Program and to assure the provision of Ombudsman services in the service area designated by a contract with, or grant from, the AAA or the Department.
- B. The Provider Agency shall be responsible for the personnel management, but not the programmatic oversight, of Ombudsmen Program services.
- C. The Provider Agency shall not have personnel policies or practices which prohibit Ombudsmen from performing the duties, or from adhering to the access, confidentiality and disclosure requirements of the Older Americans Act and the Illinois Act on the Aging. Nothing in this provision shall prohibit the host agency from requiring that the Ombudsmen adhere to the personnel policies and procedures of the agency which are otherwise lawful.
- D. The Ombudsman Provider Agency shall be the sole provider of designated Ombudsman services in the service area identified through contract with, or grant from, the AAA or the Department.
- E. The Provider Agency shall assure the Regional Programs are in compliance with federal and state laws and regulations, the provisions of this Manual, and the contract or grant for Ombudsman services with the AAA or the Department.
- F. Any Provider Agency requirements different from those presented in this Manual must be approved in writing by the Office.
- G. The Ombudsman Provider Agency shall ensure the Regional Ombudsman meets the requirements of Section 206 of this Manual.
- H. The Provider Agency shall provide a full-time Regional Ombudsman who shall:
 - 1. meet the applicable minimum qualifications (see Section 303 of this Manual);
 - 2. have no duties in the Provider Agency outside the scope of the Regional Program as defined in state and federal law; and
 - 3. actively participate in the development of a budget including any amendments or modifications.

- I. The Provider Agency shall adequately staff the Regional Program to meet or exceed the required ratio of 1 full-time equivalent paid Ombudsman to 2,000 licensed beds subject to sufficient and ongoing local, state and federal funding.
- J. The Provider Agency shall meet or exceed the Program benchmarks established by the Office.
- K. The Provider Agency shall:
 - 1. assist in the development of resources for the operation of the Regional Program, including financial and human resources;
 - 2. provide opportunities for the Regional Program and other aging and social services organizations to collaborate to promote the health, safety, welfare, and rights of residents and participants;
 - 3. promote awareness of Ombudsman services to consumers and the general public within the service area;
 - 4. support the Regional Program to engage in issues advocacy on behalf of residents and participants;
 - 5. provide the Regional Program with a dedicated computer, Internet access, a dedicated telephone line if the agency does not have sufficient lines to accommodate callers, and a cellular phone for the Regional Ombudsman; and
 - 6. retain personnel records for paid and volunteer ombudsmen for a minimum of five years.
- L. The Provider Agency shall submit financial reports to the AAA and Office as required and shall provide a copy of all Ombudsman Program financial reports to the Regional Ombudsman.
- M. The Provider Agency shall not review or disclose Program Records without consent and approval of the State Ombudsman.
- N. The Provider Agency shall assure that all Ombudsmen are trained in accordance with Section 303 of this Manual.
- O. The Provider Agency shall assure the attendance of the Regional Ombudsman at mandatory statewide Ombudsman trainings and meetings. The Office may approve an exception.
- P. The Provider Agency shall provide professional development opportunities for all Ombudsman staff.

- Q. The Provider Agency shall provide staff support, such as custodial, fiscal management, clerical, and telephone coverage and supervisory support for Program operations.
- R. The Provider Agency shall provide trained back-up support as needed for the operation of the Regional Program.
 - 1. The Provider Agency shall arrange, in consultation with the Office and the AAA, if applicable, for temporary provision of Regional Program services when Ombudsmen staff are unavailable or the Regional Ombudsman position is vacant.
 - 2. The Provider Agency shall arrange and notify the Office and the AAA when the Regional Ombudsman will be unavailable for five (5) or more consecutive working days.
- S. The Provider Agency shall perform each of its responsibilities in administering the Regional Program in accordance with all applicable federal and state laws, regulations, and this Manual.

206: Regional Ombudsman Responsibilities

- A. The Regional Ombudsman is responsible for the day-to-day operation of the Regional Program.
- B. The Regional Ombudsman shall:
 - 1. work to resolve complaints made by or on behalf of residents;
 - 2. advocate for broad policy, regulatory, administrative and legislative changes to improve the care of residents;
 - 3. ensure Ombudsmen are trained as required by the Office;
 - 4. recommend individuals for inclusion on the Ombudsman Representative Registry;
 - 5. partner with the Aging and Disability Networks and other stakeholders for the benefit of residents;
 - 6. ensure all Regional Program records are contemporaneously entered into the statewide data and tracking system;
 - 7. review and close all cases in accordance with Section 507 of this Manual;
 - 8. provide consultations to the general public, residents, legislators, community organizations and other agencies regarding long-term care issues;
 - 9. provide technical assistance to Ombudsmen;
 - 10. conduct an annual review of Program activities and case documentation;
 - 11. complete and submit an Annual Services Plan as described in Section 407 of this Manual;
 - 12. actively participate in the development of a Regional Program budget;
 - 13. cooperate with and follow the direction of the State Ombudsman on projects, initiatives, and responses to systemic needs;

14. develop a plan for temporary personnel coverage in order to meet the standard of promptness in accordance with Provider Agency policies and the requirements Section 501 of this Manual;
 15. not perform any duties different from those presented in this Manual unless such duties are approved in writing pursuant to Section 105(C) of this Manual.
- C. The Regional Ombudsman may establish a multidisciplinary team (see Section 508 of this Manual).

CHAPTER 300: DESIGNATION AND CERTIFICATION

- 301: Designation of Regional Ombudsman Programs**
- 302: Refusal to Designate and De-designation of Regional Programs**
- 303: Certification of an Ombudsman**
- 304: De-certification of an Ombudsman**
- 305: Grievances Against an Ombudsman Related to the Performance of Duties**

301: Designation of Regional Programs

- A. The State Ombudsman shall designate Provider Agencies to provide Ombudsman services throughout Illinois for a period of time not to exceed six (6) years. Provider Agencies are eligible to reapply for designation status.

- B. The Provider Agency must:
 - 1. be a public or not for profit entity;
 - 2. have the capability to carry out the responsibilities of the Regional Ombudsman Program;
 - 3. have a clearly definable unit to function as the Regional Ombudsman Program;
 - 4. have sufficient staff to perform all duties and responsibilities as outlined in Chapter 400 of this Manual which shall include a designated individual known as the Regional Ombudsman. At a minimum, the Regional Program shall have one (1) paid full-time equivalent for every 2,000 beds or units in licensed long-term care facilities in the service area;
 - 5. be open for business at least seven (7) hours each working day and shall not be closed for more than four (4) consecutive days;
 - 6. be open for business not less than 245 working days per calendar year; and
 - 7. meet all grant and contractual requirements and all policies and procedures set forth in this Manual.

- C. In order to be eligible for designation by the Office as a Provider Agency, an entity must not have a conflict of interest per Chapter 900 of this Manual.

- D. The AAA shall conduct the proposal process for recommending the qualified entities for designation as Regional Long-Term Care Ombudsman Programs. The Department is responsible for establishing the proposal process.
 - 1. First, the AAA shall publicly advertise for letters of intent. The advertisement must be included on the AAA's website and should be provided via email to any current providers and any known interested entities.

2. When an entity expresses interest in a contract or grant to be a Provider agency, the AAA shall issue a proposal packet developed by the Office.
 3. If there is no entity that expresses interest by submitting a letter of intent, then the AAA shall directly solicit potential providers to be considered for designation by the State Ombudsman.
 4. After direct solicitation, if there is no entity interested in providing Ombudsman Program services, the State Ombudsman shall designate the AAA to serve as the Regional Long-Term Care Ombudsman Program temporarily, until another entity is approved for designation.
- E. The AAA shall require that applicants complete the proposal packet, including such information as:
1. the goals and objectives of such entity in providing Program services;
 2. a description of how each Program Service Component in Chapter 400 of this Manual shall be met by such applying entity including its staffing plan for the Regional Program;
 3. a description of the number of anticipated volunteers to be recruited and the process in which volunteers will be recruited, trained, supervised and retained;
 4. a description of the resources of the entity which will be provided to assist in the operation of the Regional Program; and
 5. a description of proposed remedies to any conflicts identified in the organizational conflicts of interest form.
- F. The AAA shall recommend a Provider Agency to the Office for designation after at least two (2) AAA staff have reviewed and scored the proposal packets. The AAA shall provide the Office with copies of the completed proposal packets of all responding entities and information supporting its recommendation.
- G. The State Ombudsman shall review and consider all proposal packets submitted to the AAA and the recommendation of the AAA.
1. If the State Ombudsman concurs with the AAA recommendation, the State Ombudsman shall notify the AAA of its designation determination within thirty (30) calendar days of receiving the AAA's recommendation. The State Ombudsman shall notify the Director of all designation decisions.

2. The AAA shall notify the responding entities of the State Ombudsman's designation decision within ten (10) days of receiving such notification. The AAA notification shall include notice of the right of every entity not chosen to appeal the State Ombudsman's determination pursuant to the Department's procedures.
 3. If the State Ombudsman does not concur with the AAA recommendation, the State Ombudsman and representatives of the Department will meet with the AAA to discuss the decision and attempt to reach an agreement.
 4. If an agreement is reached, the State Ombudsman shall notify the AAA of its designation determination and the AAA shall notify the responding entities of the State Ombudsman's decision.
 5. In the event an agreement cannot be reached, the State Ombudsman will render a final designation decision. The AAA shall notify the responding entities of the State Ombudsman's decision. The AAA notification shall include notice of the right to appeal the designation decision pursuant to the Department's procedures.
- H. Upon designation of a Provider Agency by the State Ombudsman, the AAA shall enter into a grant or contract with the Provider Agency for the provision of Ombudsman services in the relevant service area. Such grant or contract must:
1. specify the service area;
 2. require the Provider Agency to adhere to all applicable federal and state laws, regulations, and this Manual;
 3. provide that designation by the State Ombudsman continues for the duration of the grant or contract and the subsequently renewed grants or contracts unless the Provider Agency designation is withdrawn by the State Ombudsman, upon which the AAA will terminate its contract in accordance with Section 302 of this Manual; and
 4. require the Provider Agency to give a sixty (60) day notice of voluntary contract termination.
- I. The AAA shall offer a grant or contract for a one-year period with the option to extend for a maximum of five (5) additional one-year periods for a total of six (6) years.

- J. Should the grant or contract between the Provider Agency and the AAA not be renewed or be terminated for any reason, the AAA shall:
 - 1. immediately notify the Office;
 - 2. follow the steps in Section 301 of this Manual to designate a new Provider Agency as soon as practicably possible; and
 - 3. follow the steps in Section 205 of this Manual to provide continuation of LTCOP services upon temporary designation by the State Ombudsman.

- K. Where the AAA seeks to serve as the Provider Agency, the designation shall occur under a proposal process as follows:
 - 1. The AAA shall publicly advertise for letters of intent and notify the Office of the AAA's intent to seek designation. The advertisement must be included on the AAA's website and should be provided via email to any current providers and any known interested entities.
 - a) The Office shall issue a proposal packet to entities submitting a letter of intent to provide Program services within the applicable service area.
 - b) The proposal packet shall identify the criteria for designation as a Provider Agency in keeping with this Manual, and shall request submission of documents supporting the entity's claim to meet these criteria.
 - 2. The Office shall require that all applying entities complete the proposal packet setting forth the same criteria from Section 301(E) of this Manual.
 - 3. The State Ombudsman shall consider all proposal packets submitted to determine the entity most appropriate after at least two (2) Office staff have reviewed and scored the proposal packets, in keeping with this Manual, to be designated as the Provider Agency for the service area.
 - 4. The State Ombudsman shall notify all the applying entities of the State Ombudsman's decision within thirty (30) calendar days. The notification shall include notice of the right of every entity not chosen to appeal the State Ombudsman's determination pursuant to the Department's procedures.

5. Upon designation by the State Ombudsman, the Department or the AAA may enter into a grant or contract with the selected Provider Agency or AAA for the provision of Program services in the relevant service area.
 6. The effective date of the Provider Agency's grant or contract with the Department shall constitute the effective date of the designation of the entity as a Provider Agency.
 7. Should the grant or contract between the AAA and the Department to provide Program services not be renewed, or be terminated for any reason, the process in Section 302 of this Manual shall be followed.
- L. Where any grant or contract for Program services is not with or through the AAA due to a conflict of interest, the designation of a new Provider Agency may occur through another AAA (requested by the Office) under the same process set forth in Section 301 (B-K) of this Manual.

302: Refusal to Designate and De-designation of Regional Programs

- A. The State Ombudsman has the authority to refuse to designate or de-designate an entity as a Provider Agency for failure to meet the requirements of this Manual, including, but not limited to, the following:
 - 1. failure of the entity to continue to meet the criteria for designation;
 - 2. failure of the entity to disclose, seek to remedy, or actually remedy a conflict of interest;
 - 3. violation of Program confidentiality requirements by a person acting as an agent of the entity;
 - 4. failure of the entity to provide mandated Program services, including, but not limited to, failure to perform enumerated responsibilities, failure to fill a vacant Ombudsman position within a reasonable time, failure to submit a Regional Program Annual Services Plan for approval by the State Ombudsman, or failure to use funds designated for Ombudsman services;
 - 5. failure of the entity to comply with the provisions of the grant or contract; or
 - 6. failure of the entity to comply with applicable federal and state laws, rules and regulations, and this Manual.

- B. Provider Agency policies, procedures, or practices which the State 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 Regional Ombudsman Programs unless approved per Section 205(F) of this Manual.

- C. When the State Ombudsman determines the designated Provider Agency shall no longer be awarded a grant or contract, the Provider Agency shall be de-designated. The process to de-designate the Provider Agency shall be as follows:
 - 1. when the State Ombudsman determines to de-designate, the State Ombudsman shall notify the Area Agency on Aging and the Provider Agency. The notice shall include the grounds for de-designation, the effective date, and the Office's designation appeal process;
 - 2. the State Ombudsman may immediately suspend the designation and request that the Area Agency on Aging to suspend the grant or contract, pending the appeal process;
 - 3. the State Ombudsman, in consultation with the Area Agency on Aging, shall ensure the continuity of ombudsman services during the de-designation process; and

4. the Area Agency on Aging shall terminate its grant or contract for Program services with the Provider Agency upon notice from the State Ombudsman of the final decision to de-designate the Provider Agency.
- D. Where an Area Agency on Aging contracts with a Provider Agency and recommends de-designation, the process to de-designate the Provider Agency shall be as follows:
1. the Area Agency on Aging shall recommend a Provider Agency for de-designation to the State Ombudsman based on one or more of the grounds listed in Section 302(A) of this Manual;
 2. the State Ombudsman shall review recommendations of the Area Agency on Aging;
 3. when the State Ombudsman determines to de-designate, the State Ombudsman shall notify the Area Agency on Aging and the Provider Agency. The notice shall include the grounds for de-designation, the effective date, and the Office's designation appeal process;
 4. the State Ombudsman may immediately suspend the designation and request that the Area Agency on Aging to suspend the grant or contract, pending the appeal process;
 5. the State Ombudsman, in consultation with the Area Agency on Aging, shall ensure the continuity of Ombudsman services during the de-designation process; and
 6. the Area Agency on Aging shall terminate its grant or contract for Program services with the Provider Agency upon notice from the State Ombudsman of the final decision to de-designate the Provider Agency.
- E. Where an AAA serves as a Provider Agency, the process to de-designate the Provider Agency shall be as follows:
1. the State Ombudsman shall send notice of the intent to de-designate at a specified date to the AAA. The notice shall include the reasons for de-designation and notice of the Office's designation appeal procedures;
 2. the State Ombudsman shall ensure the continuation of Ombudsman services during the de-designation process; and
 3. the Department shall terminate the portion of the grant or contract between the AAA and the Department which provides for Ombudsman services upon notice from the State Ombudsman of the final decision to de-designate the Provider Agency.

- F. Where a Provider Agency contracts directly with the Department, the process to de-designate the Provider Agency shall be as follows:
 - 1. the State Ombudsman shall send notice of the intent to de-designate at a specified date to the Provider Agency and the relevant AAA. The notice shall include the reasons for de-designation and notice of the Office's appeal procedures;
 - 2. the State Ombudsman shall ensure the continuation of Ombudsman services during the de-designation process; and
 - 3. the Department shall terminate its contract for Program services with the Provider Agency upon notice from the State Ombudsman of the final decision to de-designate the Provider Agency.

- G. A Provider Agency may voluntarily relinquish its designation by providing notice to the State Ombudsman and to the AAA in the relevant service area. Such notice shall be provided sixty (60) days in advance of the date of the relinquishment of designation.

- H. A Provider Agency shall notify the State Ombudsman and the AAA in the relevant service area if it chooses not to participate in the next proposal process for Ombudsman services at the end of the grant or contract cycle. Such notice shall be provided, at a minimum, sixty (60) days in advance of the end of the grant or contract cycle.

- I. When a Provider Agency has been de-designated, is in the process of appealing its de-designation, or has relinquished designation:
 - 1. the AAA, with approval of the State Ombudsman, shall arrange for the provision of Ombudsman services until a new Provider Agency is designated unless there is an irremediable conflict of interest with the AAA;
 - 2. in accordance with this Manual, Chapter 800, and State Ombudsman instructions, the Provider Agency shall surrender intact to the State Ombudsman or the State Ombudsman designee all Program case records, documentation of all Program activities and complaint processing as required by the Ombudsman reporting system, and identification cards of all Ombudsmen associated with the Provider Agency.

303: Certification of an Ombudsman

- A. The State Ombudsman certifies individuals as Ombudsmen.
- B. In order to be recommended for certification, an Ombudsman must complete Level I Training and Level I Mentoring for initial certification.
- C. The Regional Ombudsman, or when there is a vacancy in the Regional Ombudsman position, the Provider Agency shall submit names of persons to be certified as Ombudsmen using the form prescribed by the Office. To be eligible for consideration as an Ombudsman, an applicant must:
 - 1. be at least 18 years of age;
 - 2. submit to a criminal background check pursuant to the Health Care Worker Background Check Act [225 ILCS 46/] and must not have a disqualifying criminal conviction;
 - 3. be able to carry out the responsibilities of an Ombudsman;
 - 4. have no unremedied conflicts of interest as listed in Section 902(C) of this Manual.
 - 5. In addition, paid Ombudsmen shall:
 - a) at a minimum, have attained a Bachelor's degree; and
 - b) have experience in advocacy, aging, social services, health care or related field.
- D. Training requirements for Ombudsman certification:
 - 1. Level I:
 - a) All Ombudsmen must complete Level I training.
 - b) All Ombudsmen must complete a minimum of four (4) hours of Level I mentoring.
 - c) Upon completion of Level I mentoring, the Ombudsman may be placed on the Representative Registry as a Certified Ombudsman with the approval of the State Ombudsman.

2. Level II:
 - a) All Ombudsmen must be Level II certified.
 - b) Regional Ombudsmen and paid Ombudsmen should complete Level II training within six (6) months of employment or as soon as feasible given the Level II training schedule.
 - c) Volunteer Ombudsmen should complete Level II training within eighteen (18) months of initial Ombudsman certification or as soon as feasible given the Level II training schedule.
3. Minimum in-service training requirements:
 - a) Regional Ombudsmen must complete eighteen (18) hours of documented in-service training on long-term care related subjects or management/supervisory issues within each federal fiscal year.
 - b) Ombudsmen must complete a minimum of ten (10) hours of documented in-service training on long-term care related subjects or management/supervisory issues within each federal fiscal year.
 - c) Volunteer Ombudsmen must complete six (6) hours of documented in-service training on long-term care related subjects each federal fiscal year.
 - d) Required in-service hours shall be reduced proportionately to reflect the portion of a federal fiscal year a new Ombudsman participates in the Program.
4. Failure to meet the training requirements:
 - a) If an Ombudsman, paid or volunteer, fails to complete the training requirements, the individual may be de-certified and may not function as an Ombudsman until they begin the process again, completing the necessary steps in the required time frames.
 - b) If an Ombudsman takes a leave of absence for more than one (1) year, they must repeat both Level I and Level II training before resuming their role as an Ombudsman.

- E. No individual shall independently investigate any complaint filed with the Regional Program unless he or she has been certified as an Ombudsman by the State Ombudsman.
- F. A certified Ombudsman is authorized to provide services anywhere in the State only with the consent of the State Ombudsman or the Regional Ombudsman in the respective area.
- G. The Provider Agency shall retain on file for a period of five (5) years copies of criminal records requests for all Ombudsmen pursuant to Section 50 of Illinois Health Care Worker Background Check Act [225 ILCS 46/50].
- H. Regional Ombudsman designation:
 - 1. In order to qualify as a Regional Ombudsman, an individual must:
 - a) be a certified Ombudsman;
 - b) have attained a Bachelor's degree;
 - c) have a minimum of three (3) years of work experience in advocacy, aging, social services, health care or related fields; and
 - d) work full-time as the Regional Ombudsman.
 - 2. The designated Provider Agency must submit a written request to the State Ombudsman to certify the recommended candidate as a Regional Ombudsman. The résumé of the candidate must be submitted with the request letter.
- I. Requests for substitutions, waivers or variances related to minimum requirements must be made in writing and approved, pursuant to Section 105 of this Manual, prior to the hiring or promotion of the employee in question.
- J. The Office shall:
 - 1. complete the certification of the Ombudsman by recording the certification and the effective date in the Ombudsman Registry.
 - 2. send written notification of an individual's certification as an Ombudsman to the individual being certified and to the Regional Ombudsman within thirty (30) calendar days of the determination; and
 - 3. provide the Ombudsman with an identification card.
- K. Certification continues until the individual is removed from the Ombudsman Registry by the State Ombudsman.

304: De-certification of an Ombudsman

- A. The State Ombudsman has the authority to de-certify an Ombudsman. The State Ombudsman may consider remedial actions which could be taken to avoid the de-certification of an Ombudsman. Such remedial actions, if any, are completely within the discretion of the State Ombudsman. The State Ombudsman shall consider the written recommendation of the Regional Ombudsman, the Deputy State Home Care Ombudsman, the Provider Agency, or the AAA.
- B. The State Ombudsman may de-certify an Ombudsman for one or more of the following reasons:
1. failure of the Ombudsman to meet and/or maintain the criteria for designation;
 2. existence of a conflict of interest that has not been remedied;
 3. deliberate failure of the Ombudsman to disclose all conflicts of interest;
 4. violation of confidentiality requirements of this Manual;
 5. failure to provide adequate and appropriate services to residents or participants;
 6. falsifying Program records or providing false information;
 7. failure, refusal, or inability to follow the direction of the Regional Ombudsman, Deputy State Home Care Ombudsman, or State Ombudsman in carrying out the duties of the Program;
 8. a change in circumstances that creates a conflict in accordance with Section 902 of this Manual;
 9. discontinuation of involvement with the Program, including, but not limited to:
 - a) employment;
 - b) an excused absence of six (6) months that is not otherwise provided for in law;
 - c) cessation of the Provider Agency's contract for the provision of Program services;
 10. divulging Department of Public Health survey dates for long-term care facilities; or
 11. failure to act in accordance with applicable federal and state laws, regulations, and this Manual.

- C. If the refusal to certify an individual as an Ombudsman, or the de-certification of an Ombudsman, results in the absence of Ombudsman services in the relevant service area, the Provider Agency and the AAA, with the approval of the State Ombudsman, shall arrange for the provision of Ombudsman services until an Ombudsman is certified.
- D. The Regional Ombudsman or Provider Agency in the event the individual needing de-certified is the Regional Ombudsman, shall submit the Request for De-Certification Form to the Office to notify the State Ombudsman of the recommendation to de-certify the individual. The State Ombudsman shall notify the requestor of the decision to de-certify.
- E. Once de-certified, the former Ombudsman must return his or her identification badge to the Regional Ombudsman Program or the Deputy State Home Care Ombudsman. The Regional Ombudsman Program or the Deputy State Home Care Ombudsman shall ensure the badge is destroyed. The Office will remove the individual from the registry. The Regional Ombudsman or the Provider Agency, as appropriate, in consultation with the State Ombudsman, shall make a reasonable effort to notify, in writing, the facilities known to be frequented by the former Ombudsman. The State Ombudsman shall receive a copy of the notification.

305: Grievances Against an Ombudsman Related to the Performance of Duties

- A. All grievances shall be documented and an outcome and any relevant action shall be identified. Grievances shall be promptly resolved at the lowest possible level.

- B. Paid or Volunteer Ombudsmen
 - 1. Complaints about a paid or volunteer Ombudsman shall be in writing and directed to the Regional Ombudsman.
 - 2. The nature of the complaint and the investigation shall be promptly documented.
 - 3. The Regional Ombudsman shall inform the State Ombudsman of any grievances filed against an Ombudsman.
 - 4. The Regional Ombudsman shall investigate the complaint and provide a response back to the complainant at the conclusion of the investigation. The investigation shall be initiated within seven (7) business days from receipt of the written complaint. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
 - 5. The response to the complainant shall include the phone number of the State Ombudsman's office, along with instructions on sending the matter to the next level, in the event the complainant is not satisfied with the outcome of the investigation.
 - 6. An individual who filed a grievance and is dissatisfied with the decision of the Regional Ombudsman may file a written request for review with the State Ombudsman within thirty (30) calendar days of the decision. The State Ombudsman shall respond to the written request for review within forty-five (45) calendar days of receipt of the request when practicable.
 - 7. The decision of the State Ombudsman is final and cannot be appealed.

- C. Regional Ombudsman
 - 1. Complaints about the Regional Ombudsman shall be in writing and directed to the State Ombudsman. Complaints received by the AAA or the Provider Agency shall be forwarded on to the State Ombudsman.
 - 2. The nature of the complaint and the investigation shall be promptly documented.

3. The State Ombudsman shall inform the Provider Agency of any grievances filed against a Regional Ombudsman.
4. The Office shall investigate the complaint and respond back to the complainant. The investigation shall be initiated within seven (7) business days from receipt of the written complaint. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
5. The decision of the State Ombudsman is final and cannot be appealed.

D. Home Care Ombudsmen

1. Complaints about a Home Care Ombudsman shall be in writing and directed to the Deputy State Home Care Ombudsman.
2. The nature of the complaint and the investigation shall be promptly documented.
3. The Deputy State Home Care Ombudsman shall inform the State Ombudsman of any grievances filed against an Ombudsman.
4. The Deputy State Home Care Ombudsman shall investigate the complaint and provide a response back to the complainant after the investigation. The investigation shall be initiated within seven (7) business days from receipt of the written complaint. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
5. The response to the complainant shall include the phone number of the State Ombudsman's office, along with instructions on sending the matter to the next level, in the event the complainant is not satisfied with the outcome of the investigation.
6. An individual who filed a grievance and is dissatisfied with the decision of the Deputy State Home Care Ombudsman may file a written request for review with the State Ombudsman within thirty (30) calendar days of the decision. The State Ombudsman shall respond to the written request for review within forty-five (45) calendar days of receipt of the request when practicable.
7. The decision of the State Ombudsman is final and cannot be appealed.

E. State Ombudsman Staff

1. A complaint about the State Ombudsman staff shall be in writing and directed to the State Ombudsman.
2. The nature of the complaint and the investigation shall be promptly documented.
3. The State Ombudsman shall begin the investigation within seven (7) business days from receipt of the written complaint. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
4. An individual who filed a grievance and is dissatisfied with the decision of the State Ombudsman may file a written request for review with the Director. The Director shall respond to the written request for review within sixty (60) calendar days of receipt of the request when practicable.

F. Complaints against the State Ombudsman:

1. A complaint about the State Ombudsman shall be in writing and directed to the Director of the Department.
2. The nature of the complaint and the investigation shall be promptly documented.
3. The Director shall begin the investigation within seven (7) business days from receipt of the written complaint when feasible. The response to the complainant shall be sent within thirty (30) calendar days of receipt of the complaint when practicable.
4. The decision of the Director is final and cannot be appealed.

**CHAPTER 400: LONG-TERM CARE OMBUDSMAN PROGRAM SERVICE
DELIVERY POLICIES & PROCEDURES**

- 401: Program Service Components**
- 402: Investigative Services**
- 403: Regular Presence in Long-Term Care Facilities**
- 404: Consultation, Inquiries and Community Education**
- 405: Issue Advocacy**
- 406: Resident and Family Councils**
- 407: The Regional Program Annual Services Plan**
- 408: Monitoring and Evaluation of the Program**

401: Program Service Components

- A. The Long-Term Care Ombudsman Program service components are:
 - 1. identification, investigation and resolution of complaints on behalf of residents;
 - 2. regular presence in long-term care facilities;
 - 3. consultation and community education;
 - 4. issue advocacy;
 - 5. support the development of resident and family councils.
- B. All Regional Programs must provide and document the provision of each of these service components.
- C. The Regional Program Annual Services Plan shall set forth the service activities for each fiscal year and shall meet or exceed any benchmark measures set by the Office.
- D. The activities of the designated Regional Programs shall be evaluated by the Office on a regular basis as outlined in Section 408 of this Manual.
- E. The Home Care Ombudsman service components are:
 - 1. identify, investigate and resolve complaints on behalf of participants;
 - 2. respond to inquiries;
 - 3. conduct community education sessions;
 - 4. issue advocacy; and
 - 5. attend stakeholder meetings.
- F. All Home Care Ombudsmen must provide and document the provision of each of these service components.
- G. The Deputy State Home Care Ombudsman shall set forth the service activities for each fiscal year and Home Care Ombudsman shall meet or exceed any benchmark measures set by the Office.
- H. The activities of the Home Care Ombudsmen shall be evaluated by the Deputy State Home Care Ombudsman on a monthly basis.

402: Investigative Services

- A. Every Regional Program shall receive, investigate and resolve complaints made by or on behalf of residents relating to actions, inactions, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare or rights of such residents. Whenever questions arise regarding appropriate Program practice that is not addressed in this Manual, the Office should be contacted for guidance.

- B. The Home Care Ombudsman Program shall receive, investigate and resolve complaints made by or on behalf of participants which may adversely affect the health, safety, welfare or rights of such participants.

403: Regular Presence in Long-Term Care Facilities

- A. The Regional Program shall provide a regular presence in long-term care facilities.
 - 1. A visit for the purpose of investigating a complaint, working with the resident or family council, presenting an in-service for facility staff, participating in an annual survey or any other Program related reason may be made simultaneously with a routine visit to maximize efficient use of time, resources and opportunities to address resident problems and concerns.
 - 2. Except for planned in-services for facility staff or meetings, visits to facilities shall be unannounced and staggered so that facilities have no basis to predict the timing of the visit.
 - 3. At a minimum, the Regional Program shall visit each facility at least once per quarter. The covered facility types include:
 - a) skilled nursing
 - b) intermediate care
 - c) sheltered care
 - d) assisted living and shared housing
 - f) supportive living
 - g) intermediate care for the developmentally disabled
 - h) specialized mental health rehabilitation facilities
 - i) medically complex for the developmentally disabled (if they house residents age 18 or over).
- B. Ombudsmen shall document observations after each facility visit in accordance with this Manual.
- C. Ombudsmen shall confirm that facilities post the Program poster as required under Title 89 IL Admin Code 270.115. Posters shall be prominently displayed:
 - a) in each wing on each floor of the facility;
 - b) in each of the facility's activity rooms; and
 - c) at the main entrance/exit of the facility.

2. The poster shall be prominently displayed in the facility in a place accessible to the residents and the public. The poster shall not be obscured in any manner by any other material. Each poster shall be placed with the bottom of the poster approximately 42 inches from the level of the floor.
 3. If a majority of residents speak a language other than English, then a majority of the posters shall be in that language if they are available from the Department.
 4. The poster shall include the address and phone number of the Office and the Regional Program.
 5. Ombudsmen shall provide residents, families and staff with the Ombudsman Program Brochures.
 6. Ombudsmen shall explain the purpose of the Program and introduce themselves to active members of the residents' advisory council and attempt to see residents who have been admitted since the last Ombudsman visit.
- D. The Regional Program shall ensure residents have regular and timely access to Ombudsmen.
1. Ombudsmen presence in facilities should be as frequent as possible but at a minimum, once a quarter.
 2. Ombudsmen presence shall be increased in facilities with:
 - a) a history of serious frequent complaints;
 - b) a change in ownership or administration if this change raises concerns about facility operations;
 - c) imposition of a serious state or federal sanction or plan of correction;
 - d) a pending bankruptcy; or
 - e) an imminent closure.
 3. Ombudsman presence shall be increased at the request of the Office or for any reason necessary to protect residents' interests as determined by the Regional Ombudsman.

404: Consultation, Inquiries and Community Education

A. Consultations

1. The Program shall provide information and consultation regarding long-term care issues and the needs and rights of residents.
2. The Program shall promptly respond to requests for information; however, responses should not take more than five working days when practicable.

B. Inquiries

1. The Home Care Ombudsman Program shall provide information regarding the needs and rights of participants of HCBS waivers and managed care organizations.
2. The Home Care Ombudsman Program shall promptly respond to requests for information; however, responses should not take more than five (5) working days when practicable.

C. Community Education and Facility In-Services

1. The Program shall provide community education programs.
2. The Program shall provide educational in-services to long-term care facility staff.

405: Issue Advocacy

- A. The Program shall assure that the interests of residents and participants are represented to governmental agencies and policymakers.
- B. Issue advocacy activities performed by Ombudsmen shall be consistent with the positions of the Office.
- C. Issue advocacy activities may include:
 - 1. informing advocacy groups, governmental agencies and policymakers regarding the impact of laws, policies, or practices on residents and participants;
 - 2. advocating for modification of laws, regulations, and other governmental policies and actions pertaining to the rights and well-being of residents and participants;
 - 3. facilitating the ability of residents, participants, resident and family councils, and the public to comment on such laws, regulations, policies, and actions;
 - 4. developing or participating in committees or workgroups to study long-term care issues;
 - 5. presenting to and participating in public hearings related to long-term care issues; and
 - 6. educating other aging service providers, advocacy groups, and the public on specific long-term care issues and policies.
- D. The Program may address resident and participant complaints through issue advocacy when:
 - 1. there are no statutory or regulatory remedies;
 - 2. many residents or participants share a similar complaint or are affected by a similar policy or practice; or
 - 3. other strategies to reach resolution with particular facilities or agencies have been unsuccessful.
- E. The Regional Programs may consider joint efforts with AAAs, provider agencies, advisory councils, resident councils, family councils or other advocacy organizations. The Regional Program may attempt to involve residents, participants and families in issue advocacy.

- F. The Office shall:
1. when possible, inform the Director, or his or her designee, of plans to engage in the issue advocacy activity in advance and as reasonable, provide written testimonies.
 2. represent the interests of residents and participants before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents and participants;
 3. 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 participants;
 4. facilitate public comment on laws, policies and actions;
 5. link Regional Programs and advocacy groups with mutual concerns or issues;
 6. coordinate issue advocacy activities within the Program;
 7. develop and implement advocacy priorities and strategies;
 8. identify and meet, to the extent possible, resources and training needs of Ombudsmen and others related to issue advocacy; and
 9. provide training and technical assistance to AAAs, provider agencies and others in the aging and disability network regarding the Office's role in issue advocacy and the issue advocacy priorities as determined by the Office and Regional Programs.

406: Resident and Family Councils

- A. The Program shall provide technical support to resident and family councils. The Program shall respond to questions and provide literature and assistance relating to resident and family councils.
- B. Program involvement and assistance in council activities may include helping with the development of new councils and informing the leadership and/or membership of resident and family councils about:
 - 1. the purpose of the Program;
 - 2. the Program's availability to assist resident and family councils; and
 - 3. the topics the Program is prepared to present if requested.
- C. Ombudsmen shall make every effort to be present at resident and family council meetings, when invited.
- D. The Office shall provide technical assistance to Regional Programs to promote the development of resident and family councils.

407: The Regional Program Annual Services Plan

- A. The Office shall create the Regional Program Annual Services Plan document format.
- B. AAAs are required to provide comments to the Office regarding the Regional Program Annual Services Plan within fifteen (15) days of receipt of the Plan.
- C. The Office shall review and issue final approval of the Regional Program Annual Services Plan within forty-five (45) calendar days of receipt when practicable. If changes must be made to a Regional Program Annual Services Plan, the Office shall provide assistance to the Regional Ombudsman to develop an acceptable plan. The Office shall notify the Regional Program and AAA of the approval of the Plan.

408: Monitoring and Evaluation of the Program

- A. The Regional Ombudsman shall complete and submit a mid-year Annual Services Plan Progress Report to the Office no later than April 15th. The report shall be submitted on a form prepared by the Office.
- B. The Office shall review, at least quarterly, the activities and complaint data of the statewide Program and each Regional Program, together with the Regional Program Annual Services Plan and Program benchmarks to evaluate Program performance.
- C. The Office shall make periodic site visits at least once every three (3) years or more often if needed to monitor the Regional Program's performance and provide technical assistance and support to Regional Programs as deemed necessary by the Office. This evaluation shall include review of the Regional Program's budget.
- D. The Office shall submit an Annual Report on March 1st of each year or as soon thereafter as is practicable to the Assistant Secretary of the U.S. Department of Health and Human Services, the Governor, the General Assembly, the Director of the Illinois Department on Aging, the Director of the Illinois Department of Public Health, the Director of the Illinois Department of Healthcare and Family Services, other appropriate governmental entities, and the general public.
- E. The Annual Report shall include the following:
 - 1. a description of activities carried out by the Office in the year for which the report is prepared;
 - 2. an analysis of the data collected under Section 507;
 - 3. an evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
 - 4. recommendations for policy, regulatory, or legislative changes to improve quality of care and life of residents;
 - 5. an analysis of the success of the Program; and
 - 6. a summary of identified barriers that prevent the optimal operation of the Program.
- F. The Office shall analyze activity and complaint data to determine Program trends and performance for planning purposes.
- G. The Office shall submit a quarterly progress report to the Director.
- H. For purposes of state monitoring of the Ombudsman Program, the Department shall adhere to [45 CFR §1321.11] as now or hereafter amended.

CHAPTER 500: INVESTIGATIVE SERVICES

- 501: Receipt of Complaints**
- 502: Complaint Investigations**
- 503: Verification of Complaints**
- 504: Resolution of Complaints**
- 505: Abuse and Neglect**
- 506: Complaint Referral**
- 507: Documentation of Investigative Services**
- 508: Multidisciplinary Teams**

501: Receipt of Complaints

- A. Complaints may be initiated by:
 - 1. residents, participants, families and friends of residents or participants, long-term care facility staff, or any other person;
 - 2. complainants who wish to remain anonymous.
 - a) Ombudsmen may proceed without knowing the complainant's or resident's identity and should continue to investigate the issue with proper permission.
 - b) If the Ombudsman receiving the complaint is able to communicate directly with the anonymous complainant, the Ombudsman shall explain to the complainant that, in some circumstances, anonymity could limit the ability of the Program to investigate and resolve the complaint.
 - 3. Ombudsmen, when they have personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents or participants including actions, inactions, or decisions of:
 - a) facilities in response to natural disasters, evacuations, relocations, involuntary change of management, closures, or other unusual events; or
 - b) governmental agencies in response to the concerns and conditions of residents and participants.
- B. When information regarding a complaint or problem is received, the Program shall:
 - 1. collect all relevant information from the complainant;
 - 2. discuss attempts that have been made to resolve the complaint;
 - 3. determine the resident's or participant's desired outcome(s);
 - 4. discuss alternatives for handling the complaint;
 - 5. encourage the complainant to personally take appropriate action, with Program assistance, if needed;
 - 6. explain the Program's role is to act in accordance with resident wishes and maintain confidentiality; and

7. determine whether the complaint is appropriate for Ombudsman services. The following complaints are not appropriate for Ombudsman activity:
 - a) complaints that do not directly impact residents or participants;
 - b) complaints that are outside the scope of the mission or authority of the Program;
 - c) complaints which would create an irresolvable conflict of interest.

NOTE: The Program may seek resolution of complaints in which the rights of one resident and the rights of another resident or residents appear to be in conflict or in dispute.

- C. Special consideration shall be given when the Program receives a complaint on a deceased resident.

The Long-Term Care Ombudsman shall:

1. determine if the case should be opened as a systemic case. If the Ombudsman determines the case should not open as a systemic case, the Ombudsman will inform the complainant that the Ombudsman will not open a case as there is no resident for which an issue can be resolved;
2. refer the complainant to Illinois Department of Public Health (IDPH) or Healthcare and Family Services (HFS) as appropriate; and/or
3. suggest to the complainant other referral options including police, private attorneys, coroner, etc.

The Home Care Ombudsmen shall:

1. not open a case on behalf of a deceased participant. Home Care Ombudsmen will inform the complainant that the Ombudsman will not open a case as there is no client for which an issue can be resolved.
2. suggest to the complainant other referral options including, police, private attorneys, coroner, etc.

NOTE: If the resident dies during the time that a case is open, refer to Section 502 of this Manual.

D. Long-Term Care Ombudsman timeliness of response to complaints

1. Every Ombudsman shall use his or her best efforts to initiate investigations (defined as “Date of First Action” in Section 104 of this Manual) of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. A response is considered timely as follows:

**TABLE 5-A
COMPLAINT RESPONSE**

IF a complaint involves . . .	THEN the standard of promptness for a LTCO response is . . .
<ul style="list-style-type: none"> ➤ abuse or gross neglect, and the Ombudsman has reason to believe that a resident may be at risk ➤ actual or threatened transfer or discharge from a facility within two (2) calendar days ➤ use of restraints 	<ul style="list-style-type: none"> ➤ within the next working day from the receipt of the message or information by the Regional Program
<ul style="list-style-type: none"> ➤ abuse or gross neglect, and the Ombudsman has no reason to believe that a resident is at risk (i.e., the resident has left the facility for home or a hospital) ➤ actual or threatened transfer or discharge from a facility where a “Notice of Involuntary Transfer or Discharge” is issued 	<ul style="list-style-type: none"> ➤ within three (3) working days from the receipt of the message or information by the Regional Program
<ul style="list-style-type: none"> ➤ other types of complaints 	within 7 - 21 working days or less depending upon severity of complaint

2. When the Program will be unable to initiate investigations in a timely manner (i.e., due to a planned vacation, training, or extended illness), the Regional Ombudsman shall develop a plan for temporary coverage in order to meet the standard of promptness.
3. The Ombudsman may inform the complainant of a time frame for when the complainant may expect investigative efforts to begin. The time frame should be documented in case records, if given.

4. The Program is not designed to serve as an emergency response system. Emergency or life threatening situations should be referred to "911" and other emergency response systems for immediate response.
- E. Home Care Ombudsman timeliness of response to complaints
1. Home Care Ombudsman inquiries and complaints are received through the Illinois Department on Aging Senior HelpLine. Senior HelpLine staff route calls and e-mails to the Deputy State Home Care Ombudsman. Potential cases and inquiries are assigned to the respective Home Care Ombudsman based on the geographic region of the participant. Home Care Ombudsmen are to confirm receipt of an assigned case or inquiry within 48 hours of receipt from the Office when practicable.
 2. The Home Care Ombudsman shall make an attempt to initiate contact with participant within five (5) working days of receipt of the complaint.
 3. When the Home Care Ombudsman is unable to initiate an investigation in a timely manner (i.e., due to a planned vacation, training, or extended illness), the Deputy State Home Care Ombudsman shall develop a plan for temporary coverage in order to meet the standard of promptness.
 4. The Home Care Ombudsman Program is not designed to serve as an emergency response system. Emergency or life threatening situations should be referred to "911" and other emergency response systems for immediate response.

502: Complaint Investigations

- A. Ombudsmen investigate complaints in order to verify the general accuracy of the complaint and to gather information to resolve it. The investigation shall be conducted in a timely and thorough manner in order to:
 - 1. identify the relevant issue areas raised by the complaint;
 - 2. determine the sequence of investigatory steps;
 - 3. assemble all necessary facts;
 - 4. determine the validity of the complaint; and
 - 5. seek resolution of the complaint.

- B. Regardless of the source of the complaint (i.e., the complainant), including when the source is the Ombudsman, the Ombudsman must support and maximize resident or participant participation in the process of resolving the complaint as follows:
 - 1. The Ombudsman shall offer privacy to the resident or participant for the purpose of confidentially providing information and investigating and resolving complaints.
 - 2. The Ombudsman shall personally discuss the complaint with the resident, participant or representative (if the resident or participant is unable to communicate informed consent) in order to:
 - a) determine the perspective of the resident, participant or representative of the complaint;
 - b) request the resident, participant or representative to communicate informed consent in order to investigate the complaint;
 - c) determine the wishes of the resident, participant or representative with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether the Ombudsman may disclose resident-identifying information or other relevant information to the facility and/or appropriate agencies;
 - d) advise the resident or participant (and representative, where applicable) of resident or participant rights;

- e) work with the resident, participant or representative 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, participant or representative.
3. Where the resident or participant is unable to communicate informed consent, and has no representative, the Ombudsman 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 or participant; and
 - b) determine whether the complaint was resolved to the satisfaction of the complainant.
4. In determining whether to rely upon a representative to communicate or make determinations on behalf of the resident or participant related to complaint processing, the Ombudsman shall ascertain the extent of the authority that has been granted to the representative under court order (in the case of a guardian or conservator), by a power of attorney or other document by which the resident or participant has granted authority to the representative, or under other applicable state or federal law.
- C. Investigation by the Ombudsman shall proceed only with the express consent of the resident, participant or representative except in systemic cases.
- D. Communication of informed consent may be made in writing, orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman.
- E. If a resident or participant is unable to communicate his or her perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman may rely on the communication of the representative's perspective regarding the resolution of the complaint so long as the Ombudsman has no reasonable cause to believe that the representative is not acting in the best interests of the resident or participant.

- F. The State Ombudsman or another Ombudsman may refer the matter and disclose resident-identifying or participant-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:
1. the resident or participant is unable to communicate informed consent to the Ombudsman and has no representative and the Ombudsman has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare or rights of the resident or participant, or the Ombudsman has reasonable cause to believe that the representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident or participant;
 2. the Ombudsman has no evidence indicating that the resident or participant would not wish a referral to be made;
 3. the Ombudsman has reasonable cause to believe that it is in the best interest of the resident or participant to make a referral; and
 4. the Ombudsman obtains the approval of the State Ombudsman.
- G. For all complaints in which the resident refuses or withdraws consent, the Ombudsman shall:
1. determine whether the type of complaint is recurring. The Ombudsman shall determine whether the circumstances merit other strategies toward resolution which would not disclose the identity of the resident who has withdrawn consent (i.e., filing an Ombudsman-generated complaint, presenting the issue to the resident or family council);
 2. attempt to determine why the resident refused or withdrew consent and consider the following factors:
 - a) past responses of facility, such as failure to respond to complaints and/or retaliation against complainants;
 - b) the resident's experience with facility staff; and
 - c) the experience of residents related to this type of complaint.
 3. inform the resident that he or she may contact the Program in the future regarding the withdrawn complaint or other complaints;
 4. provide contact information such as a business card or brochure informing the resident how to contact the Program; and
 5. discontinue work on the individual complaint.

- H. For all abuse and neglect complaints in which the resident, knowing full well the potential consequences of his or her refusal to give or withdraw consent, the Ombudsman shall:
 - 1. complete the steps outlined in Section 502(G) of this Manual;
 - 2. discontinue work on the complaint; and
 - 3. report the withdrawal or refusal immediately to the Office and Regional Ombudsman in keeping with Section 505(F) of this Manual.

- I. When the Program has an open case and the resident dies, the Ombudsman shall:
 - 1. close the case;
 - 2. determine whether or not the complaint can be opened as a systemic case; and
 - 3. suggest to the complainant other referral options including IDPH, police, private attorneys, coroner, etc., as appropriate.

NOTE: If the resident dies prior to receipt of a complaint, refer to Section 501 of this Manual.

- J. When the resident is unable to provide consent, the Ombudsman shall:
 - 1. advocate for a resident's wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity;
 - 2. determine if the resident has a representative and seek informed consent from that representative;
 - 3. seek information from family, friends, and other sources that indicates what the resident would have desired and, where such evidence is available, work to effectuate that desire; and
 - 4. assume that the resident wishes to have his or her health, safety, welfare and rights protected.

- K. When the resident is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the Ombudsman shall:
 - 1. check to see if the resident has a legal guardian or legal representative;
 - 2. if there is no legal guardian or legal representative and the Ombudsman has reason to believe that the resident is a victim of abuse, neglect and exploitation;
 - 3. contact the Office of the State Ombudsman to discuss the case, seek guidance and get approval to take further action.

- L. Regardless of the source of the information or complaint, the resident of, or applicant to, a long-term care facility is the Program's client and all complainants shall be so informed.

- M. In order to investigate, verify, and ultimately resolve a complaint, the Ombudsman shall take one or more of the following steps as appropriate to the nature of the complaint and with the express consent of the resident:
 - 1. research relevant laws, rules, regulations, and policies;
 - 2. observe the situation and evidence;
 - 3. interview the resident and/or complainant;
 - 4. interview any staff, administration, physician, residents and family members;
 - 5. identify relevant agencies and interview and/or obtain information from their staff;
 - 6. examine any relevant records including clinical, medical, social, financial, and other records in keeping with access and confidentiality policies and procedures;
 - 7. review any other information available to the Ombudsman and pertinent to the investigation;
 - 8. consider the most appropriate time to conduct an on-site visit;
 - 9. consider combining these issues with other problems in the same facility, corporation, agency, or Program; and
 - 10. determine the sequence of investigatory steps.

- N. An investigation shall minimally include the following investigative activities:
 - 1. face-to-face visit and interview with the resident(s) and/or his or her representative; and
 - 2. direct contact and interview with the complainant, which may be by a face-to-face visit, a telephone call, an e-mail or a letter. However, direct contact with the complainant is not required if the complaint was made anonymously or if the complainant requests not to be contacted.

- O. Exceptions to face-to-face (FTF) contact with the resident are as follows:
 - 1. if the resident requested that he or she not be visited or contacted;
 - 2. if the resident is the complainant and confirms that an FTF visit is not needed;
 - 3. if the case involves a notice of involuntary transfer or discharge for non-payment and the Ombudsman is able to speak to the resident directly over the telephone and resolve the case without an FTF visit; and
 - 4. if the case involves a Medicaid application and the Ombudsman is able to speak to the resident directly over the telephone and resolve the case without an FTF visit.

- P. The Ombudsman shall seek the following information during the investigation of a complaint or problem:
 - 1. what has occurred or is occurring;
 - 2. when it occurred and whether the occurrence is on-going;
 - 3. where it occurred;
 - 4. who was involved;
 - 5. effect of the occurrence on resident(s) or a participant;
 - 6. reason for occurrence;
 - 7. what, if anything, the facility or other interested parties have done in response to the occurrence; and
 - 8. resident's or participant's goals and wishes as a complaint resolution.

- Q. The Ombudsman is not required to independently verify a complaint in order to seek resolution on behalf of a resident or participant. Resident or participant perception is a sufficient basis upon which an Ombudsman can seek resolution of a problem or complaint.
- R. Generally, facility visits for purposes of complaint investigation shall be unannounced.
- S. For all complaints in which the participant refuses or withdraws consent, the Ombudsman shall:
 - 1. attempt to determine why the participant refused or withdrew consent;
 - 2. consider the following past responses (such as failure to respond to complaints and/or retaliation against complainants) from:
 - a) the Care Coordination Unit;
 - b) the HCBS waiver services program;
 - c) the Provider Agency; or
 - d) the Managed Care Organization;
 - 3. discontinue work on the complaint; and
 - 4. send a letter to the participant informing participant that his or her case is being closed and that he or she may contact the Program in the future regarding the withdrawn complaint or other complaints.
- T. When the Program has an open case and the participant dies, the Ombudsman shall close the case.
- U. When the participant is unable to provide consent, the Ombudsman shall:
 - 1. advocate for a participant's wishes to the extent that the participant can express them, even if the participant has limited decision-making capacity; or
 - 2. determine if the participant has a representative and seek informed consent from that representative.
- V. Regardless of the source of the information or complaint, the participant is the Program's client and all complainants shall be so informed.
- W. In order to investigate, verify, and ultimately resolve a complaint, the Ombudsman shall take one or more of the following steps as appropriate to the nature of the complaint and with the express consent of the participant:
 - 1. research relevant laws, rules, regulations, and policies;

2. observe the situation and evidence;
 3. interview the participant and/or complainant;
 4. interview any in-home care staff, provider agency staff, care coordinators, case managers, physicians or family members;
 5. examine any relevant records including clinical, medical, social, financial, and other records in keeping with access and confidentiality policies and procedures;
 6. review any other information available to the Ombudsman and pertinent to the investigation;
 7. consider the most appropriate time to conduct an on-site visit;
 8. consider combining these issues with other problems in the managed care organization Home and Community-Based Waiver Services Program, Provider Agency, Care Coordination Unit or Program; and
 9. determines the sequence of investigatory steps.
- X. An investigation shall minimally include direct contact and interview with the participant or his or her representative, which may be by:
1. a face-to-face visit;
 2. a telephone call; or
 3. an e-mail exchange with the participant or his or her representative.

503: Verifying Complaints

- A. A complaint is “verified” when an Ombudsman determines after interviews, record inspections, observations, etc., that the circumstances described in the complaint are generally accurate.
- B. Because the Program works on behalf of residents and participants, the Ombudsman gives the benefit of any doubt to the resident’s or the participant’s perspective.
- C. Ombudsmen always attempt to verify complaints, but they work to resolve a complaint to the satisfaction of the resident or participant, whether it is verified or not.

504: Resolution of Complaints

- A. Upon verifying a complaint, the Ombudsman shall discuss with the resident, participant or representative legal, administrative, and other remedies available to resolve the complaint. The Ombudsman shall, to the fullest extent possible, involve and empower the resident or participant to participate in the resolution of the complaint.
- B. The Ombudsman shall work with the resident or participant to develop a plan of action to resolve the complaint.
 - 1. The plan of action shall be mutually agreed upon by the resident or participant and the Ombudsman.
 - 2. The following factors shall be considered in developing the plan of action:
 - a) the scope and nature of the complaint;
 - b) the history of the facility or agency with respect to resolution of other complaints;
 - c) available remedies and resources for referral;
 - d) the individual or agency best able to resolve the complaint; and
 - e) the likelihood of retaliation against the resident, participant or complainant.
 - 3. Ombudsman shall propose a plan to attempt to resolve the dispute directly with the appropriate staff or other party that is the source or cause of the complaint unless the Ombudsman and the resident or participant determine that another strategy would be more advantageous to the resident or participant.
 - 4. One or more of the following may be used to develop an appropriate plan of action in resolving complaints:
 - a) negotiation on behalf of, or with the resident or participant with the appropriate facility staff or other relevant party to develop an agreement or course of action that resolves the complaint;
 - b) mediation between parties of equal status (i.e., between residents or between family members) to assist the parties in developing an agreement that resolves the complaint;

- c) assistance or representation for residents before the Illinois Department of Public Health (IDPH) or the Department of Health Care and Family Services (HFS) in administrative hearings to challenge involuntary transfer or discharge notices or to appeal unsatisfactory complaint investigations completed by the Department of Public Health or the Department of Health Care and Family Services;
 - d) assistance or representation for participants before the Department on Aging, the Department of Human Services (DHS), or the Department of Health Care and Family Services (HFS) in administrative hearings;
 - e) assistance to residents in guardianship hearings or revocations of Power of Attorney documents;
 - f) coordination with and/or referrals to appropriate agencies; or
 - g) issue advocacy, which is discussed in Section 405 of this Manual.
- C. If a complaint received or an investigation by an Ombudsman discloses information or facts indicating the commission of a criminal offense or a violation of standards of professional conduct, the matter may be referred to the Illinois State Police, State's Attorney, or any other law enforcement official having jurisdiction to prosecute the crime, and/or to the appropriate professional licensing board in keeping with the resolution plan developed with the resident or participant.
- D. If a complaint cannot be resolved through negotiations with the facility or the appropriate governmental or non-governmental agency, or if an act, practice, policy or procedure of a facility or governmental or non-governmental agency does or may adversely affect the health, safety, welfare or civil rights of a resident or class of residents or a participant or class of participants, the Ombudsman:
- 1. may recommend and assist the resident or participant in securing legal representation to commence legal actions, including complaints for injunctive relief, declaratory relief, or actions for civil damages, provided that exhaustion of any available administrative remedies shall not be required prior to commencement of suit pursuant to Section 3-604 of the Nursing Home Care Act; and
 - 2. shall consult with the Office regarding the possibility of legal action and in appropriate circumstances, the Office shall involve the Legal Services Developer and the Department's Office of General Counsel in assisting the Ombudsman.

- E. The resolution status of each complaint shall be documented according to the classifications listed below:
1. Legislative or Regulatory Action Required – Complaints that require policy, regulatory or legislative change to resolve to satisfy the resident, participant or complainant. Complaints of this nature may be addressed in the issues section of the NORS report.
 2. Not Resolved – The problem identified in the complaint has not been corrected or the change made was in no way to the satisfaction of the resident or participant.
 3. Withdrawn – The complaint was withdrawn at the request of the resident, participant or complainant, or discontinued by the Ombudsman. If a significant portion of the complaint/problem was resolved prior to the withdrawal, record as “Partially Resolved.”
 4. Referred for Resolution and Final Disposition Not Obtained – The complaint was referred to another agency for investigation but no report of final outcome was obtained by the Ombudsman.
 5. Referred for Resolution and Other Agency Failed to Act – The complaint was referred to another agency for investigation, but no action was taken by the referral agency.
 6. Referred for Resolution and Agency Did Not Substantiate – The complaint was referred to another agency for investigation but their findings did not substantiate (or support) the referred complaint.
 7. No Action Needed or Appropriate – The investigation proved no action by the Ombudsman was needed or appropriate. Examples include: a family member has a complaint which the resident or participant does not consider to be a problem and wants no action; or the findings of the investigation did not indicate a need for change or require further Ombudsman investigation and complaint resolution. This code may also be used when the resident or participant dies or moves away and the complaint is no longer relevant.
 8. Partially Resolved – The complaint addressed in part to the satisfaction of resident, participant or complainant, but some problem remained. (See 9. below for guidance.)

9. Resolved – The complaint was addressed to the resident's or participant's satisfaction. If the resident or participant cannot communicate his or her satisfaction, the Ombudsman may look to the representative or to the complainant to determine the resolution if consistent with the rights and interests of the resident or participant. In Long-Term Care Ombudsman cases where the resident is not the complainant and the resident is deceased, a complaint may be considered resolved if addressed to the satisfaction of the complainant.
- F. Cases may be closed in the following circumstances:
1. when the complaint or complaints have been resolved to the resident's or participant's satisfaction;
 2. when the Ombudsman has exhausted all possible means of working to resolve the complaint and the resident or participant is not satisfied with the outcome; or
 3. when the resident or participant requests that Program action end on the complaint.

505: Abuse/Neglect Issues

- A. In accordance with federal law, Ombudsmen are not mandated reporters with regard to work on behalf of residents.

- B. An Ombudsman shall not report suspected abuse, neglect or exploitation of a resident when a resident or representative has not communicated informed consent to such report except in situations where the resident is unable to communicate informed consent to the Ombudsman and all of the following circumstances exist:
 - 1. the resident has no representative or the Ombudsman has reasonable cause to believe that the representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare or rights of the resident;
 - 2. the Ombudsman has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare or rights of the resident;
 - 3. the Ombudsman has no evidence indicating that the resident would not wish a referral to be made;
 - 4. the Ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
 - 5. the Ombudsman receives the approval of the State Ombudsman.

- C. If a complaint or an investigation indicates suspected abuse or neglect of a resident, the Ombudsman shall:
 - 1. advise the resident, complainant or witnesses to report the matter to the Illinois Department of Public Health (IDPH), Adult Protective Services Program (APS) and/or law enforcement as appropriate. The Ombudsman should offer assistance to any individual who wants to report abuse or neglect;
 - 2. request the permission of the resident or representative to report suspected abuse or neglect to IDPH, APS and/or law enforcement if the resident or representative is unwilling to report themselves;
 - 3. inform the complainant, if the complainant is a mandated reporter, to file a complaint with the appropriate authority under Illinois law (Abused and Neglected Long-Term Care Facility Residents Reporting Act, [210 ILCS 30/4]); and/or
 - 4. advocate for and follow the resident's wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.

- D. When a resident is unable to provide consent for an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall seek evidence to indicate what the resident would have desired and, where such evidence is available, work to bring about that desire.
- E. When the resident is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the Ombudsman shall:
 - 1. check to see if the resident has a guardian or representative;
 - 2. if there is no guardian or representative and the Ombudsman has reason to believe that the resident is a victim of abuse, neglect and/or exploitation, contact the Office to discuss the case, seek guidance and get approval to take further action.
- F. When a resident or participant refuses to give consent to report suspected abuse or neglect, the Ombudsman shall:
 - 1. attempt to determine why the resident or participant refused or withdrew consent, considering factors such as:
 - a) past response of facility or agency to complaints;
 - b) the resident's or participant's relationship with the staff;
 - c) the experience of this resident or other residents in the facility or in other facilities related to this type of complaint; and
 - 2. notify the Regional Ombudsman and Office of the resident's or participant's knowing refusal to report.
- G. The Office shall consider the impact on the resident, other residents, and the integrity of the Program in deciding whether to file a report of suspected abuse or neglect with IDPH, APS or other regulatory agencies. The Office's decision shall be recorded in the Regional Program records.
- H. In the case of suspected abuse or neglect of an older person residing in a suspected unlicensed facility, the Program should file a report of an "unlicensed facility" with IDPH.
- I. If a complaint indicates suspected financial exploitation of a capable resident, the Ombudsman shall:
 - 1. encourage caller to make a police report, contact legal services, or hire a private attorney; and
 - 2. open a case if there is a threat of involuntary transfer or discharge or if a resident requests Ombudsman assistance.

- J. If a complaint indicates suspected financial exploitation of an incapable resident, the Ombudsman shall:
 - 1. encourage the caller to make a police report;
 - 2. open a case if there is a threat of involuntary transfer or discharge; and
 - 3. consider if the Ombudsman should work to find a representative to petition for guardianship.

- K. Policies relating to financial exploitation are the minimum requirements. The Regional Ombudsman may use his or her discretion to do additional investigation as time allows.

- L. Any Home Care Ombudsman who, while carrying out their professional duties, gains personal knowledge of any case of alleged or suspected abuse or neglect of a person who fits the definition of an “eligible adult” pursuant to the Adult Protective Services Act [310 ILCS 20/2] and who, because of a disability or other condition of impairment is unable to seek assistance for himself or herself shall, to the extent permitted by the applicable Program confidentiality provisions of state and federal law, report and provide information on such a case to APS.

- M. If a resident tells an Ombudsman that he or she intends to harm himself or herself, the Ombudsman shall conduct a Preliminary Suicide Risk Assessment approved by the Office. Based on the assessment, determine if the resident is a low, medium, or high risk.
 - 1. If the resident scores in the low risk category, the Ombudsman shall:
 - a) document the assessment and determination of risk;
 - b) seek permission to talk to facility staff and/or a family member;
 - c) advise the resident to tell someone (doctor, nurse, family or friend) if suicidal thoughts become more prevalent;
 - d) ask the resident what additional supports he or she has or could use in his or her life; and
 - e) discuss with the Regional Ombudsman within a week.
 - 2. If the resident scores in the medium risk category, the Ombudsman shall:
 - a) document the assessment and determination of risk;
 - b) seek permission to talk to facility staff and/or a family member;

- c) ask the resident to have the facility staff schedule a doctor's appointment;
 - d) facilitate a referral. Before leaving the facility, the Ombudsman should try to have the resident talk with staff and offer to accompany the resident to this meeting. If the resident is unwilling, ask them for an alternate plan; and
 - e) discuss with the Regional Ombudsman or the Office as soon as possible (within 24 hours but no longer than 48 hours).
3. If resident scores in the high risk category, the Ombudsman shall:
- a) document the assessment and determination of risk;
 - b) tell the resident the concern for being at risk of harm and state additional assistance is needed. Ask if the resident is currently working with a doctor or counselor;
 - c) seek permission to talk to facility staff and/or a family member;
 - d) advise the resident of the need to talk with nursing staff and if the resident refuses, call the local crisis service to discuss the situation and determine next steps; and
 - e) discuss with the Regional Ombudsman or the State Ombudsman before leaving the facility.
- N. If a participant tells an Ombudsman that he or she intends to harm himself or herself, the Ombudsman shall conduct a Preliminary Suicide Risk Assessment approved by the Office. Based on the assessment, determine if the participant is a low, medium, or high risk.
1. If participant scores in the low risk category:
- a) document the assessment and determination of risk;
 - b) seek permission to talk to agency staff, a family member, and/or a caregiver;
 - c) advise the participant to tell someone (doctor, nurse, family or friend) if suicidal thoughts become more prevalent;
 - d) ask the participant what additional supports he or she has or could use in his or her life; and
 - e) discuss with the Deputy State Home Care Ombudsman within a week.

2. If the participant scores in the medium risk category, the Ombudsman shall:
 - a) document the assessment and determination of risk;
 - b) seek permission to talk to agency staff, family members and/or a caregiver;
 - c) ask the participant or participant's caregiver to schedule a doctor's appointment;
 - d) facilitate a referral. Offer to assist the participant with making an appointment. If the participant is unwilling, ask for an alternate plan; and
 - e) discuss with the Deputy State Home Care Ombudsman or the State Ombudsman as soon as possible (within 24 hours but no longer than 48 hours).

3. If the participant scores in the high risk category, the Ombudsman shall:
 - a) document the assessment and determination of risk;
 - b) assess the environment for personal safety;
 - c) tell the participant the concern for being at risk of harm and state additional assistance is needed. Ask if the participant is currently working with a doctor or counselor;
 - d) seek permission to talk to agency staff, family members and/or a caregiver;
 - e) advise the participant to call the local crisis service to discuss the situation and determine next steps; if the participant refuses, call the local crisis hotline; and
 - f) discuss with the Deputy State Home Care Ombudsman or the State Ombudsman as soon as practicable.

506: Complaint Referral

- A. The Program shall refer a complaint or problem to another agency when:
1. the resident or participant gives consent to the Program to act; and
 2. one or more of the following applies:
 - a) another agency has resources that may benefit the resident or participant (i.e., the Care Coordination Unit can physically relocate the resident to a desired location);
 - b) the action to be taken and the complaint is outside of the Program's authority and/or expertise (i.e., Department of Public Health or Department of Healthcare and Family Services takes enforcement actions);
 - c) the Ombudsman needs additional assistance in order to achieve resolution of the complaint; or
 - d) the resident or participant requests the referral be made.
- B. Referrals to regulatory agencies, law enforcement, or protective services
1. An Ombudsman shall assist a resident, participant, or representative in contacting the appropriate agency when the resident, participant, or representative has communicated informed consent for such referral.
 2. An Ombudsman may encourage residents, participants or complainants to directly contact the appropriate regulatory agency to file a complaint and will offer information and assistance to residents, participants or complainants in making such contact and follow-up.
 3. When an Ombudsman refers a complaint to the Department of Public Health or another regulatory agency, the Ombudsman shall:
 - a) submit the complaint in writing via secured e-mail; or
 - b) if for some reason e-mail is not available as a means to make the referral, the Ombudsman may contact the agency by telephone.
- C. Joint investigatory activities
- When the Ombudsman is invited by a regulatory or law enforcement agency to assist in or provide information regarding an investigation of a facility, Ombudsman participation is appropriate only under the following circumstances:
1. the Ombudsman is able to fulfill his or her role as a resident advocate;

2. the Ombudsman does not attempt to regulate a facility or take actions which would lead one to assume that the Program is the regulator; and
 3. the Ombudsman explains to facility administration and residents that his or her role is to advocate for the health, safety, welfare and rights of residents, not to enforce regulations.
- D. Referrals to legal services
1. For a resident or participant who is requesting, or in need of, legal advice and representation, the Program shall assist the resident or participant in finding appropriate legal services. With consent from the resident, participant or representative, Ombudsmen may make a referral to Older Americans Act-funded legal services agencies, Legal Services Corporation-funded legal services agencies, and/or Equip for Equality.
 2. When the legal services provider is unable to provide the requested legal service, an Ombudsman may refer the resident or participant to private attorneys by providing a list of attorneys.
 - a) This list must contain a minimum of three (3) attorneys.
 - b) Ombudsmen shall not recommend a specific attorney.
 3. When a Provider Agency houses both a Regional Ombudsman Program as well as a Legal Services Program, the Ombudsman shall follow the provisions in this Section.
- E. Referral to a different Regional Program may occur when a resident moves to a different Regional Program service area.
1. When a resident with an open case moves to a different area, the Ombudsman shall notify the Office of the transfer.
 2. The Office will determine if the case should be transferred to the Regional Program which covers the facility where the resident now resides.
- F. The Program shall follow up with the resident or participant to determine whether services have been received and if the identified need has been met following the formal referral.

- G. Referrals regarding abuse, neglect and exploitation requiring approval from the State Ombudsman on behalf of a resident who is unable to communicate informed consent to such referral:
 - 1. Ombudsmen shall receive permission from the State Ombudsman prior to making a referral to a regulatory agency, Adult Protective Services, or law enforcement.
 - 2. The State Ombudsman shall reply within two (2) business days as practicable to any request for approval of disclosure under this provision.
 - 3. In the event that the State Ombudsman is not available, approval may be provided by the designated staff member of the Office.

507: Documentation of Ombudsman Services

- A. Every activity completed, complaint received, and all activities undertaken to investigate, verify, and resolve complaints by the Program shall be documented by Ombudsman staff as prescribed by the Office.
 - 1. Activities shall be entered within fifteen (15) calendar days of completion of the activity.
 - 2. Case journal entries shall be entered within thirty (30) calendar days of completion of the casework.
 - 3. Cases shall be reviewed and closed by the Regional Ombudsman or the Deputy State Home Care Ombudsman within thirty (30) calendar days of completion when no further action is needed on the complaints within the case.
- B. All Ombudsmen shall use the data collection system designated by the Office.
- C. No Ombudsman activities, case journals, resident records, or resident identifying information shall be entered into a Provider Agency's case management system, unless it is the system designated by the Office.
- D. Consent forms, notices of involuntary transfer or discharge, and any other written documents obtained by the Ombudsman through the course of an investigation should be scanned and attached electronically to the case file.
- E. Permission or refusal by the resident, participant or representative to consent to the Ombudsman providing investigative services shall be documented in every case.
- F. If a resident, participant, or complainant provides consent to release his or her identity, that consent shall be documented within a case journal entry and any consent forms shall be attached to the case file.

508: Multidisciplinary Teams

- A. The Regional Ombudsman may establish and facilitate a multidisciplinary team (M-Team).
- B. The M-Team shall act in an advisory role for the purpose of providing professional knowledge and expertise in handling complex cases.
- C. M-Team members shall sign a confidentiality form provided by the Office.
- D. Ombudsman shall not disclose resident or participant-identifying information during an M-Team discussion. Ombudsmen shall provide case summaries for discussion purposes rather than actual case files.
- E. The M-Team shall consist of one or more volunteer representatives from any combination of at least seven (7) members of the following professions:
 - 1. banking or finance;
 - 2. disability care;
 - 3. health care;
 - 4. pharmacology;
 - 5. law;
 - 6. law enforcement;
 - 7. emergency responder;
 - 8. mental health care;
 - 9. clergy;
 - 10. coroner or medical examiner;
 - 11. substance abuse;
 - 12. domestic violence;
 - 13. sexual assault; or
 - 14. other related field.
- F. The M-Team may receive records as requested on particular cases from law enforcement agencies and coroners or medical examiners.

CHAPTER 600: ACCESS

601: Access to Residents and Facilities

602: Access to Resident and Participant Records

603: Access to State Regulatory Agency Records and Officials

601: Access to Residents and Facilities

- A. An Ombudsman is empowered under both federal and state law to immediate access to all long-term care facilities to observe all areas, except the living area of any resident who declines, and to visit and talk with all residents, staff, and others. Ombudsmen have access to residents regardless of whether a resident has an authorized legal representative.
- B. An Ombudsman shall notify the facility staff of his or her presence upon entering the facility by signing the visitor log or verbally telling a facility staff member. The Ombudsman shall wear his or her Program identification when entering facilities.
- C. An Ombudsman has authority to communicate privately and without restriction with any resident who consents to the communication. Whenever possible, the Ombudsman will seek to talk with residents at times convenient for the residents.
- D. If an Ombudsman is denied immediate access to a facility, a resident or resident records by a facility employee or agent, the Ombudsman shall request of the facility administrator or highest ranking available employee the reason for the denial of access to the facility or to any resident or resident record.
 - 1. If the explanation appears reasonable, the Ombudsman shall seek the earliest opportunity to visit the resident or facility or to obtain records.
 - 2. If the explanation does not appear reasonable to the Ombudsman, or if access is being denied arbitrarily, the Ombudsman or the Regional Ombudsman shall inform the highest ranking available employee or administrator of the facility of the legal right of the Ombudsman to visit the facility and to communicate with residents.
- E. When a denial of access continues after the steps listed in Section 601(D) of this Manual are attempted, the Ombudsman shall contact the Regional Ombudsman. The Regional Ombudsman or, his or her designee:
 - 1. shall request from the administrator, or highest ranking employee available, an explanation in writing as to the reasons for the refusal of access to a facility, a resident or a resident record be given to the Regional Program and the Office;
 - 2. shall immediately notify the State Ombudsman and provide supporting documentation concerning the facility's refusal of access;

3. may recommend to the Office the need to consider the denial of access as a business offense in violation of Section 4.04(f) of the Illinois Act on the Aging [210 ILCS 105/4.04(f)]
 4. may request a hearing under the Section 2-110(d) of the Nursing Home Care Act [210 ILCS 45/2-110(d)].
- F. The Office, upon notice by the Regional Ombudsman of an unreasonable refusal by the facility to permit access to a resident, resident records or a facility, may notify the State's Attorney of the county in which the long-term care facility is located, or the Attorney General. The Regional Ombudsman shall be notified of the Office's actions relative to the Regional Ombudsman's report of an unreasonable denial of access.

602: Access to Resident and Participant Records

- A. Under both federal and state law, certified Ombudsmen have access to review the medical, social, personal, clinical, financial and other records of a resident or participant. This includes access to the name and contact information of the representative, if any, where needed to perform the duties of the Program.
- B. Resident or participant private health information may be released by the covered entity to the Ombudsman Program for purposes of Ombudsman investigation or advocacy under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule [45 CFR 1324.11(e)(2)(vii)].
- C. In order to empower residents and participants, an Ombudsman should examine a resident's or participant's records with the resident or participant, whenever possible, and should explain to the resident or participant how to read and use the records. Depending on the functional and legal status of the resident or participant, the Ombudsman shall seek to access the records in accordance with the following:
 - 1. When a resident or participant is capable of giving informed consent, even when the resident or participant has designated a representative including having executed a Power of Attorney, the Ombudsman may, with the express permission of the resident or participant, examine the clinical, social, medical, financial and other records. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident or participant or communication of informed consent via the use of auxiliary aids and services must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity to give informed consent to access the resident's records.
 - 2. If a resident or participant with a representative is not able to give informed consent, the Ombudsman may seek informed consent from the representative. The Ombudsman shall, whenever possible, seek to have this consent in writing. When written consent is not possible from the representative, oral authorization must be documented in Program case records.

3. When a guardian of the person has been appointed by a court, the Ombudsman may examine the clinical, social, medical, financial and other records with the informed consent of the resident or participant. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident or participant or communication of informed consent via auxiliary aids and services must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity of a resident or participant to give consent to access records.
4. If the Ombudsman is investigating an allegation of financial exploitation of a resident, the Ombudsman may demand copies of receipts, disbursements and records of significant actions from the agent appointed by the resident under a durable power of attorney for property pursuant to the Illinois Power of Attorney Act [755 ILCS 45/2-7]. The Ombudsman shall notify the State Ombudsman if the agent fails to provide the requested documentation and further action is needed.
5. When a resident or participant is incapable of giving informed consent for access to records, the Ombudsman may access records when the Ombudsman has conducted a face-to-face visit with the resident or participant and concluded the resident or participant is incapable of giving informed consent and determined:
 - a) access to the records is necessary in order to investigate the complaint;
 - b) the resident or participant has no representative to make decisions on behalf of the resident or participant; or
 - c) the representative refuses to consent to the access, and:
 - (1) the Ombudsman has reasonable cause to believe the representative is not acting in the best interest of the resident or participant;
 - (2) the representative cannot be located within 24 hours despite a reasonable effort by the Ombudsman to do so and the Ombudsman has documented the attempts in the Office-approved case documentation system; and
 - (3) the Ombudsman obtains approval from the State Ombudsman.

- D. When an Ombudsman is denied access to a resident's records by the custodian of such records after presenting appropriate consent from a resident, representative or an Ombudsman, the Regional Ombudsman and the Office shall follow the procedures prescribed in Section 601(D) and (E) of this Manual.

- E. When an Ombudsman is denied access to a participant's records by the custodian of such records, after presenting appropriate consent from a participant or representative, the Ombudsman shall notify the State Ombudsman.

- F. The records of a resident or participant shall be treated with the highest degree of confidentiality and obtained only as necessary to seek resolution of a complaint.

603: Access to State Regulatory Agency Records and Officials

- A. The Program is entitled to copies of all licensing and certification records maintained by state regulatory agencies with respect to all Illinois long-term care facilities, Medicaid waiver providers and managed care organizations. To obtain a specific record at no cost, the Ombudsman shall forward a specific request to the Office which will make the request to the Department of Public Health or the Department of Healthcare and Family Services, as applicable.

- B. The Program has direct access to directors of governmental entities with responsibilities which impact residents and participants.

CHAPTER 700: LEGAL ISSUES

701: Legal Advice and Consultation

702: Representation for Civil Legal Action

703: Willful Interference

704: Retaliation and Reprisals

705: Guardianship

701: Legal Advice and Consultation

- A. Ombudsmen shall have access to adequate legal counsel to support Program activities.
- B. Ombudsmen shall assist residents and participants in seeking administrative, legal and other appropriate remedies in accordance with Section 506(D). of this Manual.
- C. An Ombudsman may contact either the Older Americans Act funded legal services provider or the Office when seeking legal advice regarding issues raised by or on behalf of residents and participants. The request for advice may be made to the Office via phone or in writing.
- D. The Office will seek to respond to the request within five (5) working days by:
 - 1. providing the requested legal advice to the Regional Program;
 - 2. requesting additional information from the Regional Program;
 - 3. providing an update to the Regional Program on the progress in obtaining the necessary information and an anticipated time frame for providing the requested legal advice; or
 - 4. indicating to the Regional Program that the request submitted is inappropriate and why the Office will take no further action.
- E. For the Office to obtain legal advice, the State Ombudsman may:
 - 1. confer with the Legal Service Developer; or
 - 2. contact the Department's General Counsel for guidance on Department policy or procedure; or
 - 3. contact the Department's General Counsel's Office for assistance from the State of Illinois Office of the Attorney General by following Department procedures for such requests.
- F. The Regional Ombudsman may consult with an established multidisciplinary team (see Section 508 of this Manual).

702: Representation for Civil Legal Action

- A. An Ombudsman or any representative of the Office acting in the good faith performance of his or her official duties has immunity from liability in legal proceedings brought as a consequence of the performance of his or her official duties. For an Ombudsman to obtain legal representation in accordance with the Illinois Act on the Aging [20 ILCS 105/4.04(h)] and the State Employee Indemnification Act [5 ILCS 350/1 *et seq.*]:
1. an Ombudsman shall immediately notify the Regional Ombudsman or Deputy State Home Care Ombudsman who shall notify the Office upon receipt of any complaint, summons, subpoena, lawsuit, injunction, court order, or notice of any other legal action taken against the Regional Program, Home Care Ombudsman Program, or any Ombudsman in connection with the performance of official duties. The notice shall be provided within 24 hours, in writing, and shall include a copy of the legal documents along with a brief case summary. Copies of the case notes and records shall be forwarded to the Office, upon request;
 2. the Office may consult with the Department's General Counsel about the legal action or threatened legal action against an Ombudsman; and
 3. when appropriate, the State Ombudsman, or Ombudsman, will submit a written request to the Office of the Attorney General for legal representation.
- B. Legal Representation
1. Should the Attorney General's office agree to represent the Ombudsman, by acceptance of this representation, the Ombudsman agrees to fully cooperate with the Attorney General's office.
 2. Should the Attorney General's office decline to represent the Ombudsman subject to the legal action or identifies a conflict, the Ombudsman may choose to obtain private counsel. The services of the private legal counsel may be subject to reimbursement at reasonable rates approved by the Attorney General.
 3. No federal or state funds may be expended by a Regional Program, Provider Agency or Ombudsman for the reimbursement of private legal counsel where it is the final judgment of the court that the actions, decisions, or conduct which are the basis for the legal action for which the private legal counsel was employed were not undertaken in good faith or were outside the scope of official duties.

703: Willful Interference

- A. The Ombudsman statute provides that no person shall willfully interfere with any Ombudsman in the performance of official duties [20 ILCS 105/4.04(f)]. A violation is a business offense subject to a fine.
- B. The Office shall investigate any report of willful interference.
- C. When an Ombudsman believes that willful interference was attempted or has occurred, the Ombudsman will inform the perpetrator of the sanctions provided by law, and, when the perpetrator is an employee of a facility, advise the appropriate supervisor or the administrator of the facility of the situation and the sanctions provided by law. All attempts to prevent or correct willful interference shall be recorded in the case records.
- D. If the interference continues, the Ombudsman shall immediately inform the Office about the interference and provide supporting documentation concerning the interference.
- E. The prosecution of any willful interference may involve a trial, and, accordingly, any corroborating evidence should be carefully collected, preserved, and safeguarded for delivery to the appropriate law enforcement official.
- F. The State Ombudsman shall notify the appropriate State's Attorney or the Office of the Attorney General that an apparent violation of the Illinois Act on the Aging [20 ILCS 105/4.04(f)(1)(i)] has occurred, and request prosecution for a business offense.

704: Retaliation and Reprisals

- A. The Ombudsman statute provides that no person shall intentionally retaliate, discriminate against, or effect reprisals in any manner against any resident, or any employee of a long-term care facility for filing a complaint with, providing information to, or otherwise cooperating in good faith with any Ombudsman [20 ILCS 105/4.04(f)(1)(ii)]. Violation of this provision is a business offense subject to a fine.
- B. The Office shall investigate any report of intentional acts of discrimination, retaliation, or reprisal.
- C. When an Ombudsman believes that intentional acts of retaliation, discrimination or reprisal are occurring, have occurred or have been attempted, the Ombudsman should take such steps as are feasible to prevent the retaliation, discrimination or reprisal from continuing. These steps may include, but are not limited to:
 - 1. warning and educating the perpetrator of the sanctions provided by the law;
 - 2. documenting the intentional acts of retaliation, discrimination or reprisal; and/or
 - 3. educating the alleged victim about their rights in regard to being free from retaliation, discrimination or reprisal.
- D. The Ombudsman shall immediately notify the Office about the intentional acts of retaliation, discrimination, or reprisal and submit supporting documentation of the act or acts. The Office shall review the information provided, and conduct further investigation, if necessary, to confirm the occurrence of the interference or retaliation.
- E. The prosecution of any intentional acts of retaliation, discrimination or reprisal as a business offense may involve an administrative procedure or trial, and accordingly, any corroborating evidence should be carefully collected, preserved, and safeguarded for delivery to the appropriate law enforcement official.
- F. If the Office, based on such review, determines that enforcement action is warranted, the Office shall pursue the following course of action:
 - 1. the State Ombudsman, or Ombudsman, shall inform the Office of Attorney General or the appropriate State's Attorney that an apparent violation has occurred, and request prosecution of the individual or entity for a business offense; and
 - 2. when the perpetrator is a long-term care facility employee or agent, the Office shall file a complaint with the Department of Public Health or the Department of Healthcare and Family Services.

705: Guardianship

- A. The Program should always advocate for the wishes of a resident and participant as determined by the Ombudsman's best investigatory and counseling efforts. It is appropriate, for example, for an Ombudsman to advocate on behalf of a resident or participant who wishes to oppose a guardianship petition, who wishes to have his or her guardianship revoked or is being abused by the guardian.
- B. The Program encourages residents and participants and their families to execute and use a Power of Attorney, a Living Will and obtain a representative payee whenever possible to avoid unnecessary guardianships. Ombudsmen should regard guardianships only as a last resort and when no other alternatives are available.
- C. Ombudsmen may advocate on behalf of a resident or participant for the least restrictive or limited guardianship in proceedings to establish guardianship of the person. The Ombudsman may request that the court place specific limitations or instructions in the final guardianship order when the resident or participant has voiced such a desire; i.e., that the guardian may not remove the resident from the nursing home, limit the resident's ability to visit friends or relatives, or limit the resident's access to funds.
- D. No Regional Program or any Ombudsman shall serve as guardian of either the estate or the person, as a representative payee, or as an agent under a Power of Attorney for any participant or resident, due to the potential conflict of interest or the appearance of a conflict of interest. This restriction does not apply to an Ombudsman acting as a guardian, a representative payee, or as an agent under a Power of Attorney for his or her own family member. However, an Ombudsman serving as a guardian, representative payee or agent of a Power of Attorney for his or her own family member may not act as the Ombudsman in the facility which the family member resides, or advocate or serve as an authorized representative for a family member during an appeal or fair hearing. In such an instance an Ombudsman from another Regional Program should provide Ombudsman services to the Ombudsman's family member. The Deputy Home Care Ombudsman should re-assign the case in the event of a conflict.
- E. Nothing in this Manual is meant to diminish the responsibilities of the Program or individual Ombudsmen to provide information to residents, participants, their families or the community about the appropriate use of guardianship and its alternatives.

**CHAPTER 800: CONFIDENTIALITY, MONITORING, DISCLOSURE, AND
MAINTENANCE**

- 801: Confidentiality of Program Records**
- 802: Monitoring the Records of the Regional Program**
- 803: Disclosure of Information**
- 804: Program Record Maintenance**

801: Confidentiality of Program Records

- A. Program records are the property of the State Ombudsman. The Office shall have access to Program records at all times.
- B. Program records shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and Section 803 of this Manual.
- C. Each Ombudsman and, as necessary, Program support staff trained in Program services and confidentiality, has access to Program records of the Regional Program for which he or she serves.
- D. When required to provide temporary coverage for another Regional Program, an Ombudsman may have access to the Program records of another Regional Program to the extent necessary to provide such coverage.
- E. The Regional Ombudsman shall:
 - 1. limit access of Program records to authorized Program personnel;
 - 2. maintain Program records in a secure location controlled by the Regional Ombudsman; and
 - 3. ensure that the Ombudsman employer provides for safe transmissions of records by electronic mail or facsimile.

802: Monitoring the Records of the Regional Program

- A. AAAs have an active and ongoing responsibility in monitoring; however, AAAs do not have access to Program records which contain identifying information about residents.
- B. The Department, AAAs, and Provider Agencies shall not have access to resident records. Aggregate data and the Ombudsman monitoring tool should be used for purposes of oversight and monitoring of the Regional Programs.
- C. The Regional Ombudsman shall conduct an annual review of selected Program records in accordance with the standardized tool developed by the Office. The results of the review shall be submitted to the Provider Agency, the relevant AAA and the Office.
- D. The Office shall conduct a review of the Regional Program files at least once every three (3) years and report the results of the review to the Provider Agency and the AAA. This report shall not contain any resident, representative or complainant identifying information.
- E. More frequent reviews may be conducted at the request of the Provider Agency, the AAA, or the Office.
- F. The supervisor of the Regional Ombudsman shall not review Program files.
- G. No state agency, AAA, Provider Agency, or legal representative shall require an Ombudsman to disclose the identity of a resident, participant or complainant without consent of the resident, participant or complainant.
- H. The Deputy State Home Care Ombudsman shall conduct an annual review of select Home Care Ombudsman records for quality assurance.

803: Disclosure of Information

- A. The State Ombudsman shall 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 State Ombudsman shall comply with section 712(d) of the Older Americans Act, and implementing regulations, 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.
- B. Ombudsmen shall not disclose the identity of, or any information that would lead to the identification of a resident, participant or complainant involved in a complaint, report or investigation, unless the individual (or his or her representative) has consented to the disclosure, or such disclosure is required by a court order. Consent may be made in writing, orally, visually, or through the use of auxiliary aids and services and such consent shall be documented contemporaneously in the case notes by the Ombudsman.
- C. The consent to disclose information shall be on forms developed by the Office and shall be properly signed and dated.
- D. The Ombudsman shall make every effort to obtain written consent from the resident, participant or representative.
- E. When a request is made by any party for any Program records containing resident or participant information, the Office shall be contacted immediately by the Regional Ombudsman, the Deputy State Home Care Ombudsman, or his or her designee. Program records containing resident or participant information may not be released or disclosed to anyone who is not a representative of the Office without the written permission of the Office.
- F. The Office shall determine whether to disclose all or part of the records as follows:
 - 1. the Office may require that the request for Program records be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, participant or representative, the request must be documented in the Program case record by the Ombudsman to whom the request was communicated in order to meet this requirement;

2. the Office shall review the request with the relevant Program staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident or participant;
3. in consultation with the Department's General Counsel, the Office shall determine whether any part of the records should be redacted (i.e., all identifying information removed). The identities of residents, participants or complainants who have not provided express consent for the release of their names shall not be revealed; and
4. the Office, in consultation with the Department's General Counsel, shall consider the source of the request (i.e., resident, facility, complainant, another agency, or any other party) and the type of request (written request, Freedom of Information Act request, subpoena, court order) in determining whether to disclose all or any part of the records. Requests coming from residents or participants should generally be honored. The Program may provide the resident or participant copies of records that are directly related to him or her and such records shall be redacted to protect the identity of other residents, participants and complainants.

804: Program Record Maintenance

- A. Documents relating to casework should be scanned and attached electronically to the case file. Once saved electronically, the hard copy of these documents shall be destroyed no later than when the case is closed. The electronic files shall be saved by the Office pursuant to the required retention schedule.
- B. Volunteer notes sent via email to the Regional Program shall be attached to the Regular Presence visit entry to which it corresponds. Once the information has been attached to the database, the original report shall be destroyed.
- C. Hard copies of case documentation shall not be stored outside of the Office approved case document system.
- D. Case documentation shall not be stored electronically outside of the Office approved case documentation system.
- E. Documents relating to confidential activities shall be scanned and attached electronically to the activity entry. Once saved electronically, the hard copy of these documents shall be destroyed.

CHAPTER 900: CONFLICT OF INTEREST

901: Adherence to Procedures

902: Identifying a Conflict of Interest

903: Disclosure of a Conflict of Interest

904: Reviewing and Remediating the Conflict of Interest

905: Failure to Identify or Remedy a Conflict of Interest

901: Adherence to Procedures

The organizations involved in the establishment of the Program and the individuals who carry out the duties of the Program, the Department, AAAs, and Provider Agencies must be free from conflicts of interest, pursuant to Section 712(f) of the Older Americans Act and procedures developed by the Office.

902: Identifying a Conflict of Interest

- A. These procedures are designed to permit the Department, the Office, AAAs, Provider Agencies and Regional Ombudsmen to identify and remedy any actual or potential conflict of interest.

- B. Conflicts which may arise from an organizational location include, but are not limited to, Program placement in an organization that:
 - 1. is responsible for licensing, surveying, or certifying long-term care facilities, long-term care services, HCBS waiver services or managed care organizations;
 - 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, a provider of long-term care services, a HCBS waiver service or a managed care organization;
 - 4. provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act [42 U.S.C. 1315] or under subsection (b) or (c) of section 1915 of the Social Security Act [42 U.S.C. 1396n], or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act [42 U.S.C. 1396n];
 - 5. 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, a HCBS waiver provider, or a managed care organization;
 - 6. has governing board members with any ownership, investment or employment interest in long-term care facilities, HCBS waiver providers or managed care organizations;
 - 7. provides long-term care to residents, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for residents;
 - 8. provides long-term care coordination or case management for residents or participants;
 - 9. sets reimbursement rates for long-term care facilities or long-term care services;

10. provides adult protective services;
 11. is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
 12. conducts preadmission screening for long-term care facility placements;
 13. makes decisions regarding admission or discharge of individuals to or from long-term care facilities;
 14. provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities;
 15. provides legal services; or
 16. is an Area Agency on Aging.
- C. Potential conflicts for an individual Ombudsman include, but are not limited to, participation in or an immediate family member's participation in any of the following:
1. the licensing or certification of a long-term care facility, a HCBS waiver service or a managed care organization;
 2. ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility, HCBS waiver provider, or managed care organization;
 3. current or former employment of an individual by, or current or former involvement in the management of a long-term care facility or by the owner or operator of any long-term care facility, a HCBS waiver provider or a managed care organization;
 4. the 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, a HCBS waiver provider, or a managed care organization;

5. accepting gifts or gratuities of significant value from a long-term care facility, a HCBS waiver provider, a managed care organization or its management, a resident, a participant or a representative in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident, participant, or representative which is separate from the individual's role as Ombudsman or representative of the Office);
6. 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;
7. serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident or a participant;
8. serving residents of a facility in which an immediate family member resides or serving participants of a HCBS waiver or a managed care organization in which a family member participates; and
9. providing services with conflicting responsibilities while serving as an Ombudsman to a resident or participant such as:
 - a) adult protective services;
 - b) discharge planning;
 - c) preadmission screening for long-term care or HCBS waiver services;
 - d) case management for long-term care or HCBS waiver services; or
 - e) legal services outside the scope of Ombudsman duties.

903: Disclosure of a Conflict of Interest

- A. Procedure for the State Ombudsman
 - 1. Identification of the conflict

The Department shall require the State Ombudsman or State Ombudsman candidate to identify individual conflicts of interest prior to employment and on an annual basis using the form developed by the Office.
 - 2. Disclosure of the conflict
 - a) Persons seeking employment as the State Ombudsman shall disclose all potential conflicts of interest to the Department.
 - b) The State Ombudsman shall immediately inform the Director of any new potential conflicts of interest. Failure to report the conflict is grounds for termination.
- B. Procedures for persons seeking or holding certification as Ombudsmen
 - 1. Identification of the conflict

The Regional Program shall screen all persons seeking certification as Ombudsmen and support staff to identify individual conflicts of interest on forms prescribed by the Office.
 - 2. Disclosure of the conflict
 - a) Persons seeking employment or certification as Ombudsman staff or volunteers shall disclose all potential conflicts of interest to the Regional Program prior to certification. Failure to report the conflict is grounds for non-certification.
 - b) After certification, Ombudsmen and support staff shall immediately inform the Regional Ombudsman of any new potential conflicts of interest. The Regional Ombudsman shall report the potential conflict of interest to the Office as soon as possible but no longer than five (5) business days of learning of the conflict. Failure to report the conflict is grounds for decertification.
- C. Procedures for entities seeking or holding designation
 - 1. Identification of a conflict

Agencies seeking or holding designation as Regional Programs shall disclose organizational conflicts prior to designation and at least on a yearly basis thereafter on forms prescribed by the Office. Each individual involved in and those who have authority within the Regional Program shall be screened to identify individual conflicts of interest.

2. Disclosure of the conflict

Such persons shall disclose to the Provider Agency all potential conflicts of interest. The Provider Agency shall report the potential conflict of interest to the Office as soon as possible but no longer than five (5) business days of learning of the conflict.

D. Procedures for the Area Agencies on Aging

1. Identification of a conflict

On an annual basis, AAAs shall screen all board members and staff who are involved with the oversight of the Regional Program to identify individual conflicts of interest on forms prescribed by the Office.

2. Disclosure of the conflict

Such persons shall disclose to the AAA all potential conflicts of interest. The AAA shall report the potential conflict of interest to the Office as soon as possible but no longer than five (5) business days of learning of the conflict.

E. Notification to the Office

Staff of the Department, AAAs, and Provider Agencies and all Ombudsmen have a duty to notify the Office of any conflict of interest of which they have knowledge. Where a conflict of interest within the Program has been identified, the Office shall be notified as soon as possible but no longer than five (5) working days of the discovery of the potential conflict.

F. Failure to disclose

Once identified, failure to disclose a potential conflict in a timely manner may be grounds for decertification as an Ombudsman or de-designation as a Provider Agency of the Program.

904: Reviewing and Remediating the Conflict of Interest**A. Responsibilities and principles**

The State Ombudsman shall determine whether actions may be taken to remedy an identified individual or organizational conflict. A conflict can be satisfactorily remedied only when the continued existence of the conflict does not compromise the ability of the Ombudsman to carry out his or her duties and is not likely to diminish the perception of the Program as an independent advocate for residents and participants.

B. Reviewing the conflict of interest

1. When a potential conflict is identified, the State Ombudsman shall review the circumstances of the potential conflict. The State Ombudsman shall determine:
 - a) whether a conflict of interest exists;
 - b) whether the conflict could be remedied by appropriate action by the individual or agency involved.
2. The Office shall inform the individual involved and the agency involved of the results of the review and may provide assistance.

C. Remediating conflicts

1. If the conflict can be remedied, the Regional Program shall, or in the case of a conflict within an AAA, the AAA shall:
 - a) develop a written plan within five (5) business days of identification of the conflict:
 - (1) which shall define the conflict and propose a remedy to eliminate, or
 - (2) to the greatest extent possible, minimize the impact of the conflict.
 - b) submit the proposed remedy to the Office for approval.
2. The Office shall:
 - a) review the proposed remedy and notify the Regional Program and AAA of approval, denial, or additional corrections needed in order for the potential conflict to be remedied.
 - b) respond within five (5) days of notification of potential remedies.

905: Failure to Identify or Remedy a Conflict of Interest

- A. Failure on the part of an Ombudsman, Provider Agency, or AAA to identify and report to the Office a known conflict of interest shall be sufficient grounds for the refusal to designate or the subsequent de-designation of the Program or the refusal to certify or the subsequent de-certification of an Ombudsman.
- B. Existence of an unremedied conflict of interest shall be sufficient grounds for the de-designation of the Program, the provider entity, or the de-certification of an Ombudsman.
- C. Final decisions regarding sanctions to identify or remedy conflict of interest situations are determined by the State Ombudsman.

1000: VOLUNTEER MANAGEMENT

- A. The Program shall use volunteers to maximize its resources to benefit residents.

- B. The Office Role
 - 1. The Office shall provide technical assistance to each Regional Program to develop and maintain its volunteer program.
 - 2. The Office shall develop the training curriculum to be used by the Regional Program.

- C. The Regional Program Role
 - 1. The Regional Program shall submit its plan for recruitment, use, and supervision of volunteer staff in the Regional Program Annual Services Plan.
 - 2. The proposal shall be consistent with policies and procedures set forth by the Office and this Manual.

- D. The Volunteer Ombudsman Role
 - 1. Volunteer Ombudsman shall:
 - a) work under the supervision of the Regional Ombudsman or a Community Ombudsman;
 - b) provide appropriate and timely documentation of all activities done on behalf of the Program; and
 - c) perform his or her responsibilities in accordance with applicable Federal and State laws, rules and regulations and this Manual.
 - 2. The Volunteer Ombudsman shall visit residents in long-term care facilities to:
 - a) build relationships with residents;
 - b) provide an independent presence in the facility;
 - c) provide information and assistance;
 - d) receive, investigate and resolve complaints;
 - e) attend and support resident and family council activities; and
 - f) assist, to the extent determined appropriate by the Regional Ombudsman, with issue advocacy activities and public information and education.

- E. Reporting of Volunteer Activities
 - 1. Volunteer activities shall be recorded in statewide data and tracking system.
 - 2. Volunteer case notes shall be entered into the case recording section of the statewide data and tracking system.
 - 3. When possible, volunteer reports shall be scanned and attached to the appropriate section of the statewide data and tracking system.
- F. Every person seeking certification as a Volunteer Ombudsman must:
 - 1. have an interest in advocating for residents;
 - 2. be at least 18 years of age;
 - 3. be free of unremediable conflicts of interest;
 - 4. possess good verbal, writing, and reading skills; and
 - 5. agree to a criminal background check pursuant to the Health Care Worker Background Check Act [225 ILCS 46/] and must not have a disqualifying criminal conviction.
- G. The Regional Program may establish other minimum qualifications for Volunteer Ombudsmen with the written permission of the Office.
- H. Failure to follow the direction of the Program staff person shall be grounds for de-certification.

APPENDICES**Appendix A: Older Americans Act**

[42 USC §3058]

<https://legcounsel.house.gov/Comps/Older%20Americans%20Act%20Of%201965.pdf>**Appendix B: Ombudsman Program Federal Rule**

[45 CFR §1324]

<https://www.ecfr.gov/cgi-bin/text->[idx?SID=baaacb6452ced039a7861a575eae29dc&mc=true&tpl=/ecfrbrowse/Title45/45cfr1324_main_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?SID=baaacb6452ced039a7861a575eae29dc&mc=true&tpl=/ecfrbrowse/Title45/45cfr1324_main_02.tpl)**Appendix C: Illinois Act on the Aging**

[210 ILCS 105/4.04]

<http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=002001050K4.04>**Appendix D: Long-Term Care Ombudsman Program Rules**[89 Ill. Adm. Code 270.10 *et seq.*]<ftp://www.ilga.gov/jcar/admincode/089/08900270sections.html>**Appendix E: State Employee Indemnification Act**[5 ILCS 350/1 *et seq.*]<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=116&ChapterID=2>**Appendix I: Illinois Abused and Neglected Long-Term Care Facility Resident Reporting Act**

[210 ILCS 30/]

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1222&ChapterID=21>**Appendix J: Illinois Probate Act Sections Regarding POA and Guardianship**

[755 ILCS 5/] and [755 ILCS 45/]

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2104&ChapterID=60><http://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=2113&ChapterID=60&SeqStart=210000&SeqEnd=-1>**Appendix K: Illinois Healthcare Worker Background Check Act**

[225 ILCS 46/]

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1303&ChapterID=24>



Policies and Procedures Manual

**State of Illinois
Department on Aging**

One Natural Resources Way, Suite 100
Springfield, Illinois 62702-1271
Senior HelpLine: 1-800-252-8966
1-888-206-1327 (TTY)

Download this Manual at www.illinois.gov/aging in the “News and Publications” section.

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