

Document: Final Rule, **Register Page Number:** 23 IR 1640
Source: April 1, 2000, Indiana Register, Volume 23, Number 7
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**TITLE 460 DIVISION OF DISABILITY, AGING, AND
REHABILITATIVE SERVICES**

LSA Document #99-78(F)

DIGEST

Adds 460 IAC 1-7 concerning the Indiana long term care ombudsman program. Effective 30 days after filing with the secretary of state.

460 IAC 1-7

SECTION 1. 460 IAC 1-7 IS ADDED TO READ AS FOLLOWS:

Rule 7. Indiana Long Term Care Ombudsman Program

460 IAC 1-7-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 1. The purpose of this rule is to implement the long term care ombudsman program authorized by IC 12-10-13-17 and 42 U.S.C. 3058g which includes identifying, receiving, investigating, resolving, or attempting to resolve complaints and concerns regarding the health, safety, welfare, or rights of residents. (Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-1; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1640)

460 IAC 1-7-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-9-1-1; IC 12-10-3; IC 12-10-13-3.3; IC 16-18-2-167

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) “Adult protective services program” means the program established under IC 12-10-3.

(c) “Adult protective services unit” means the unit defined in 460 IAC 1-2-2.

(d) “Conflict of interest” means that other interests intrude upon, interfere with, threaten to negate, or give the appearance of interfering with or negating the ability of the state ombudsman, state level staff of the office, local ombudsmen, volunteers, or local ombudsman entities to advocate without compromise on behalf of residents of long term care facilities. It also means any situation that would create a reasonable appearance of a conflict of interest.

(e) “Consult” or “consultations” means to share information with and to keep apprised.

(f) “Dedesignation” means revocation of the designation of a representative of the office or a local ombudsman entity by the state ombudsman.

(g) “Division” means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.

(h) “Financial interest” means the following:

(1) Any ownership or investment interest represented by equity, debt, or other financial relationship in a long term

care facility, long term care service, or home care organization; or

(2) The right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with an owner or operator of a long term care facility or home care organization.

(i) “Health facility” or “nursing facility” means a facility as defined in IC 16-18-2-167.

(j) “Identifying information” means the name, age, address, social security number, telephone number, name of facility, diagnosis, physical disability, or any other information that may be used to identify the individual or individuals to whom the complaint refers, or the individual or individuals making the complaint.

(k) “Immediate family member” means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild.

(l) “Legal representative” has the meaning specified in IC 12-10-13-3.3.

(m) “Local ombudsman” means an individual designated by the state ombudsman under section 8 of this rule.

(n) “Local ombudsman entity” means an entity designated by the state ombudsman under section 5 of this rule as the entity to house the local ombudsman.

(o) “Long term care facility” or “facility” means a health facility or an adult care home.

(p) “Office” means office of the state long term care ombudsman established under IC 12-10-13.

(q) “Officer” means the president, vice-president, chairperson, director, executive director, or chief executive officer of an agency or entity.

(r) “Person” means an association, a corporation, a limited liability company, an individual, a governmental agency, or a partnership.

(s) “Program” means the long term care ombudsman program authorized under IC 12-10-13 and 42 U.S.C. 3058g.

(t) “Program records” means the following:

- (1) The medical, financial, and social records of residents or clients obtained for the purpose of identifying, investigating, or attempting to resolve a complaint or concern by or on behalf of residents or clients.
- (2) Records obtained which are necessary for the investigation of a complaint by or on behalf of residents or clients.
- (3) Administrative records, policies, and documents of long term care facilities and home care service organizations obtained during the process of investigating or attempting to resolve a complaint or concern.
- (4) Any data relating to complaints and conditions in long term care facilities or home care organizations.
- (5) Any other records compiled and maintained by representatives of the office in carrying out their duties pursuant to this rule.

(u) “Representative of the office” means the state ombudsman, other state level ombudsman staff, local ombudsmen, or volunteer ombudsmen.

(v) “Resident” means the resident of a long term care facility.

(w) “State long term care ombudsman” or “state ombudsman” means an individual appointed by the director of the division. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-2; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1640*)

460 IAC 1-7-3 Appointment of the state long term care ombudsman; qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-8; IC 12-10-13-10

Sec. 3. (a) The director of the division shall appoint an individual as state long term care ombudsman to direct the office on a full-time basis.

(b) An individual appointed as state ombudsman shall have the following qualifications:

(1) A bachelor's degree.

(2) Experience in the field of gerontology or long term care. An individual has experience in the field of gerontology if he or she has at least one (1) year working experience in a setting or in an agency, public or private, that provides directly or arranges for the provision of services to older individuals.

(3) Knowledge of laws and regulations pertaining to long term care, including Title XVIII and Title XIX of the Social Security Act and the legal system serving older adults, persons with disabilities, and low-income individuals.

(4) Experience with dispute resolution techniques, including, but not limited to, investigation, mediation, and negotiation. This requirement is satisfied if the individual has had training in dispute resolution techniques.

(5) Expertise and familiarity in the fields of long term care and advocacy. This requirement is satisfied if the individual has at least one (1) year working experience in an agency, public or private, that represents the interests or rights of vulnerable individuals.

(6) No conflict of interest as required by this rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-3; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1641)

460 IAC 1-7-4 Duties of the state ombudsman; independence

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-1-3; IC 12-10-1-4; IC 12-10-13

Sec. 4. (a) The state ombudsman shall, in consultation with the director of the state unit on aging, direct the office of the long term care ombudsman program.

(b) The state ombudsman shall, personally or through representatives of the office, perform the following duties:

(1) Identify, investigate, resolve, or attempt to resolve complaints by or on behalf of residents and clients.

(2) Provide services to protect the health, safety, welfare, and rights of residents, including, but not limited to:

(A) Information and referral services.

(B) Education and training for residents, their family members, staff of long term care facilities, and the public. These services may be provided by dissemination of written information, presentations, workshops, individual meetings with residents or their family members, or any other appropriate means.

(3) Inform residents, family members, long term care facility staff, and the public about ombudsman program services, how residents can access those services, or how services can be accessed on behalf of residents.

(4) Inform residents about the means of obtaining services provided through providers of long term care services or their representatives, public agencies, and health and social service agencies.

(5) Ensure that residents statewide have regular and timely access to representatives of the office through resident visits.

(6) Ensure that complainants, clients, and residents receive timely responses to complaints and requests for assistance.

(7) Advocate on behalf of residents in the following nonexclusive ways:

(A) Identify problems affecting residents at the facility, local, state, or national levels and attempt to resolve those problems.

(B) Identify problems in the long term care system and advocate for changes to that system.

(C) Represent the interests of residents before governmental agencies.

(D) Analyze, comment on, provide public testimony, and monitor the development and implementation of proposed or existing federal, state, and local laws, regulations, government policies, and actions that affect residents.

(E) Facilitate public comment.

(8) Seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.

(9) Designate and redesignate local ombudsman entities and representatives of the office in accordance with this rule.

(10) Consult in the development of the contract between the division and the local ombudsman entity regarding that portion of any contract related to the ombudsman program.

(11) Direct the program related activities of the local ombudsmen in consultation with the local ombudsman entity.

The state ombudsman shall, in consultation with the local ombudsman entity, provide oversight to the work of the local ombudsmen.

(12) Provide administrative and technical assistance to representatives of the office and local ombudsman entities.

(13) Monitor and evaluate the activities and performance of representatives of the office and local ombudsman entities in accordance with this rule.

(14) Consult with the following agencies or programs:

(A) The Indiana state department of health.

(B) The adult protective services program.

(C) The Indiana protection and advocacy services.

(D) Other state agencies and programs whose duties and services affect residents.

(15) Provide technical support for the development and maintenance of resident and family councils.

(16) Promote the development of citizen organizations to participate in the program.

(17) Prepare an annual report in accordance with the Older Americans Act.

(18) Ensure that the confidentiality of program records is maintained in accordance with this rule.

(19) Identify duties to be performed by volunteer ombudsmen in consultation with the local ombudsman, local ombudsman entity, and the division.

(20) Perform other duties the federal commissioner on aging determines to be appropriate.

(c) The state ombudsman shall report directly to the director of the state unit on aging. The state ombudsman shall be independent in all actions, but shall consult with the director of the state unit on aging or his or her designee to ensure identification and resolution of agency-wide issues, programmatic and fiscal integrity, and coordination of efforts. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-4; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1642*)

460 IAC 1-7-5 Local ombudsman entity; designation; term; dedesignation; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5; IC 12-10-13-13

Sec. 5. (a) The state ombudsman may designate local ombudsman entities to carry out the duties specified in section 6 of this rule. The state ombudsman shall consult with the division in the selection of a local ombudsman entity.

(b) An entity applying for designation must:

(1) be a public or private nonprofit entity;

(2) have demonstrated capability to carry out duties of the ombudsman program, such as experience in advocating for the individual and collective rights of vulnerable individuals; and

(3) be free of conflicts of interest as required by this rule.

(c) An entity shall be designated for a period not to exceed two (2) years.

(d) The state ombudsman may dedesignate a local ombudsman entity at any time, for cause, which may include, but is not limited to, the following:

(1) Failure to satisfactorily perform the duties of the entity as specified in section 6 of this rule.

(2) Failure to report or correct a conflict of interest.

(3) Violation of confidentiality provisions required under state or federal statutes or regulations, this rule, or office policy.

(e) The state ombudsman shall give written notice of the dedesignation to the local ombudsman entity. The notice shall include:

(1) reasons for the dedesignation;

(2) effective date of the dedesignation; and

(3) appeal rights.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-5; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643*)

460 IAC 1-7-6 Responsibilities of local ombudsman entity

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 6. The local ombudsman entity shall:

- (1) assure continual ombudsman coverage by a designated and certified ombudsman;**
- (2) remain free of conflicts of interest as defined in this rule;**
- (3) provide nonombudsman program related supervision, i.e., attendance, appropriate office behavior, etc.;**
- (4) provide space, phone, computer access, utilities, supplies, postage, mail service, and other program support;**
- (5) inform the office prior to dismissal of a local ombudsman for reasons unrelated to the duties of the office;**
- (6) adhere to all the state and federal laws, regulations, and rules governing the Indiana long term care ombudsman program;**
- (7) not give the local ombudsman other job assignments that conflict with ombudsman responsibilities; and**
- (8) provide confidentiality to the state ombudsman, to the local ombudsman, to the office, to residents, to families, and to anyone filing a complaint on behalf of a resident.**

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-6; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643)

460 IAC 1-7-7 Responsibilities of state ombudsman as to local ombudsman entity

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 7. The state ombudsman shall:

- (1) provide programmatic direction, instruction, guidance, and assistance to the local ombudsman entity;**
- (2) assess the local ombudsman entity;**
- (3) assess the local ombudsman's performance in consultation with the local ombudsman entity; and**
- (4) involve the local ombudsman entity in program planning and policy development.**

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-7; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643)

460 IAC 1-7-8 Local ombudsman; designation; exemption; certification; dedesignation; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5; IC 12-10-13-13

Sec. 8. (a) The state ombudsman may designate a local ombudsman as representative of the office to carry out the duties specified in section 9 of this rule. If the local ombudsman is housed in a local ombudsman entity, the state ombudsman shall consult with the local ombudsman entity in the designation process.

(b) In order to be designated as a local ombudsman, an individual shall meet the following criteria:

- (1) Have a bachelor's degree in counseling, gerontology, nursing, psychology, sociology, social work, physical, occupational, or recreational therapy, special education, rehabilitation counseling, or other human services field or have at least four (4) years work experience in the field of long term care. Accredited college training in the areas listed above may substitute for the required work experience on a year-for-year basis.**
- (2) Successfully complete the Indiana long term care ombudsman program training and certification program.**
- (3) Be free of conflicts of interest as required by this rule.**

(c) An individual serving as local ombudsman before the effective date of this rule shall be exempt from the requirements in this section except those referring to conflicts of interest.

(d) Each local ombudsmen [*sic.*, *ombudsman*] designated in accordance with subsection (a) shall be certified by the state ombudsman to perform the duties in section 9 of this rule for a period not to exceed two (2) years.

(e) In order to be recertified, a local ombudsman shall:

- (1) satisfactorily perform the duties specified in section 9 of this rule;**
- (2) remain free of conflicts of interest as required by this rule; and**
- (3) satisfactorily meet any additional requirements specified by law or regulation.**

(f) The state ombudsman may, at any time, dedesignate a local ombudsman for cause. If the local ombudsman is housed in a local ombudsman entity, the state ombudsman shall consult with the local ombudsman entity in the dedesignation process. Cause for dedesignation includes, but is not limited to, the following:

- (1) Failure of the local ombudsman to follow state and federal laws, regulations, and this rule.
- (2) Failure to satisfactorily perform the duties specified in section 9 of this rule.
- (3) Failure to follow the direction and supervision of the state ombudsman or appropriate state level office staff.
- (4) Taking any action which endangers the health, safety, welfare, or rights of residents or clients.
- (5) Failure to disclose or correct a conflict of interest.

(g) The state ombudsman shall give written notice of the dedesignation to the local ombudsman. The notice shall include:

- (1) reasons for the dedesignation;
- (2) effective date of the dedesignation; and
- (3) appeal rights.

(h) The state ombudsman must inform the local ombudsman entity of the decision not to recertify or to dedesignate a local ombudsman prior to issuing the written notice to the local ombudsman. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-8; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643*)

460 IAC 1-7-9 Duties of the local ombudsman

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 9. The local ombudsman shall perform the following duties:

- (1) Identify, investigate, resolve, or attempt to resolve complaints made by or on behalf of residents that relate to actions, inactions, or decisions that may adversely affect the health, safety, welfare, or rights of residents. The local ombudsman shall inform the complainant, the resident, or their legal representatives of the findings of an investigation or the reasons why a complaint cannot be investigated.
- (2) Provide services to protect the health, safety, welfare, and rights of long term care facility residents, including, but is not limited to:
 - (A) information and referral services; and
 - (B) education and training for residents, their family members, staff of long term care facilities, and the public.
- (3) Provide residents regular and timely access to the program through frequent resident visits.
- (4) Respond to complaints and requests for assistance.
- (5) Support the development and maintenance of resident and family councils and assist in addressing council concerns.
- (6) Inform residents, their family members, citizens' organizations, the public, and long term care facility staff about the ombudsman program.
- (7) Advocate on behalf of residents in the following nonexclusive ways:
 - (A) Identify problems affecting residents at the facility, local, state, or national levels and attempt to resolve those problems.
 - (B) Identify problems in the long term care system and advocate for changes to that system.
 - (C) Represent the interests of residents before government agencies, legislative committees, individual legislators, and other individuals, groups, or entities where issues that affect residents are addressed.
 - (D) Communicate directly with legislators, policy makers, and the media about issues affecting residents and other consumers of long term care.
 - (E) Analyze, comment on, provide public testimony, and monitor the development and implementation of proposed or existing federal, state, and local laws, regulations, government policies, and actions that affect residents.
 - (F) Facilitate public comment.
 - (G) Provide information regarding the problems and concerns of residents and recommendations for resolving those problems and concerns to:
 - (i) public agencies;
 - (ii) private entities; and
 - (iii) state and federal legislators.
 - (H) Take any other action relating to the ombudsman program determined to be appropriate by the state ombudsman.
- (8) Pursue administrative, legal, and other remedies on behalf of residents.

- (9) In accordance with federal and state laws and regulations, share information related to long term care facilities with the Indiana state department of health.
- (10) Whenever possible, participate in surveys of long term care facilities conducted by the Indiana state department of health.
- (11) Document and report activities as required by the office.
- (12) Accept the direction, instruction, guidance, and assistance of the state ombudsman, in consultation with the local ombudsman entity, in all program activities.
- (13) Follow federal and state laws and these rules.
- (14) Carry out other program-related activities that the state ombudsman determines to be appropriate.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-9; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1644)

460 IAC 1-7-10 Volunteer ombudsman; designation; certification; dedesignation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5

Sec. 10. (a) The state ombudsman may designate a volunteer ombudsman to perform specific office duties.

(b) To be designated as a volunteer ombudsman, an individual shall:

- (1) successfully complete the Indiana long term care volunteer ombudsman program training; and
- (2) be free of conflicts of interest as required by this rule.

(c) Each volunteer ombudsman designated in accordance with subsection (a) must be certified for a period not to exceed two (2) years.

(d) The local ombudsman shall assess each volunteer ombudsman at least every two (2) years and make a recommendation regarding recertification to the state ombudsman. In order to be recertified, the volunteer ombudsman shall:

- (1) satisfactorily perform the duties of the position;
- (2) remain free of conflicts of interest as required by this rule; and
- (3) meet any additional requirements specified by law or regulation.

(e) The state ombudsman, in coordination with the local ombudsman, may dedesignate a volunteer ombudsman for cause, including, but not limited to, the following:

- (1) Failure of the volunteer ombudsman to follow the direction and supervision of the state or local ombudsman.
- (2) Acting outside the area of responsibility.
- (3) Taking any action which endangers the health, safety, welfare, or rights of residents.
- (4) Failure to disclose or correct a conflict of interest.
- (5) Failure to satisfactorily perform the duties of a volunteer ombudsman.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-10; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645)

460 IAC 1-7-11 Conflict of interest; state ombudsman and state level office staff

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 11. Any individual who has the following conflicts of interest, or any individual who has an immediate family member with these conflicts of interest, shall not be appointed as state ombudsman or to the staff of the state office:

- (1) Having a financial interest in a long term care facility or a long term care service within three (3) years before the date of appointment.
- (2) Employment in a long term care facility within one (1) year before the date of appointment.
- (3) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (4) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (5) Current membership in a trade association of long term care facilities.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-11; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645)

460 IAC 1-7-12 Conflict of interest; board members, officers, and employees of local ombudsman entities

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 12. (a) Board members of the local ombudsman entity who are not free from conflicts of interest shall not participate in any discussion or vote on any matters pertaining to the program, and such recusal shall be made a part of the minutes or other official record of the local entity's board of directors or other comparable governing body. Such conflicts of interest include the following:

- (1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (3) A current financial interest in a long term care facility or a long term care service.
- (4) Current membership in a trade association of long term care facilities.

(b) In order to receive and maintain designation or to be redesignated as a local ombudsman entity, officers of those entities seeking to be designated or redesignated as local ombudsman entities shall be free from conflicts of interest, which include the following:

- (1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (3) A current financial interest in a long term care facility or a long term care service.
- (4) Current membership in a trade association of long term care facilities.

(c) In order to receive designation, or redesignation, as a local ombudsman entity, employees of those entities who supervise a local ombudsman shall be free from conflicts of interest, which include the following:

- (1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (3) A current financial interest in a long term care facility or a long term care service.
- (4) Current membership in a trade association of long term care facilities.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-12; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645)

460 IAC 1-7-13 Conflict of interest; local ombudsman and volunteer ombudsman; family members

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 13. (a) In order to receive designation or certification, or to avoid dedesignation, as a local ombudsman or a volunteer ombudsman, an individual shall be free from conflicts of interest, which include the following:

- (1) A financial interest in a long term care facility or a long term care service within three (3) years before the date of designation.
- (2) Acting as local ombudsman or volunteer ombudsman in a long term care facility in which the individual was employed within one (1) year before the date of designation.
- (3) Current direct involvement in the licensing or certification of a long term care facility or a provider of long term care service.
- (4) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (5) Current membership in a trade association of long term care facilities.
- (6) Currently serving as an officer of a local ombudsman entity.
- (7) Currently serving as a supervisor of other programs that may come in conflict with the duties of the ombudsman program.
- (8) Currently performing duties or providing services other than those required in this rule that are in conflict with,

or that may create a conflict with, the duties required in this rule.

(9) Currently serving as:

- (A) a resident's agent;
- (B) a resident's legal representative;
- (C) the sole witness for do not resuscitate orders or other medical directives; or
- (D) a member of a long term care facility's ethics committee which makes medical decisions for residents.

(b) A family member who serves as a resident who is their family member's agent or legal representative shall not be regarded as having a conflict of interest.

(c) In order to receive designation or certification, or to avoid dedesignation, as a local ombudsman or a volunteer ombudsman, an individual's immediate family members shall be free from conflicts of interest, which include the following:

- (1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (2) Current participation through direct employment or contractual arrangement in the management of a long term care facility in the volunteer ombudsman's or local ombudsman's service area.
- (3) A current financial interest in a long term care facility or a long term care service.
- (4) Current membership in a trade association of long term care facilities.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-13; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1646)

460 IAC 1-7-14 Ombudsman program records; confidentiality; access; disclosure of identity of complainant or resident

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-16.4; IC 12-10-13-16.8

Sec. 14. (a) All program records developed or maintained by the local ombudsman or volunteer ombudsman in the course of work for the office become the property of the office.

(b) All program records shall be kept confidential and released only pursuant to state law and this rule.

(c) Ombudsman program records shall be maintained in secure files to ensure confidentiality. Measures shall be implemented by the division and the local ombudsman entity to ensure confidentiality to the local ombudsman, state ombudsman, and the state level staff of the office with respect to the receipt of complaints by mail, fax, telephone, or personal interview, which measures shall include means for the delivery of mail, addressed to representatives of the office by name or title, unopened.

(d) Access to program records shall be limited to the following, and to them only for purposes associated with their official duties:

- (1) The state ombudsman.
- (2) The state level staff of the office.
- (3) The local ombudsman.

(e) The state ombudsman, the state level staff of the office, the local ombudsman, and the volunteer ombudsman shall not disclose the identity of a complainant or resident, except:

- (1) with the written consent of the resident or complainant or his or her legal representative;
- (2) with the oral consent of the resident or complainant or his or her legal representative, and the consent is documented contemporaneously on a form prescribed or approved by the office; or
- (3) the disclosure is required by court order.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-14; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1646)

460 IAC 1-7-15 Access to facilities and facilities' records

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 5-14-3-8; IC 12-10-13-16.2; IC 12-10-13-16.5

Sec. 15. (a) Representatives of the office shall have access to long term care facilities at all times.

(b) Representatives of the office shall have access to those records of a long term care facility that residents or the general public have access to as a matter of law, or to records or documentation when such records or documentation are [sic., is] relevant to a complaint or an investigation and disclosure is not prohibited by state or federal laws or regulations governing the confidentiality of such records or documentation. Records and documentation of a long term care facility are relevant if they relate to or address the subject matter of the complaint or investigation.

(c) Representatives of the office shall be permitted to make or obtain copies of these records. A long term care facility may charge for the copies at a rate not to exceed the rate specified by state law.

(d) Representatives of the office shall have access to a resident's medical, financial, and social records as provided under IC 12-10-13. (Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-15; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647)

460 IAC 1-7-16 Access to agency records

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-16.6

Sec. 16. (a) Representatives of the office shall have access to records of a state or local government agency that are relevant to a complaint or investigation, except as prohibited by state or federal law or regulation. For purposes of this section, the term "relevant records" refers to those records that address the subject matter of a complaint, or investigation, or that pertain to a long term care facility that is involved in a complaint, or that is the subject of an investigation.

(b) If the records pertain to a particular resident, the representative of the office shall obtain consent to access the records in accordance with state law. (Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-16; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647)

460 IAC 1-7-17 Legal counsel

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 17. (a) State and local ombudsmen shall have access to legal counsel that is able, without conflict of interest, to provide advice and consultation necessary to:

- (1) protect the health, safety, welfare, and rights of residents of long term care facilities; and**
- (2) assist the state and local ombudsmen in the performance of their official duties.**

(b) The division shall be responsible for arranging for legal representation of state and local ombudsmen against whom legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsmen. (Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-17; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647)

460 IAC 1-7-18 Monitoring

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 18. (a) The state ombudsman shall monitor and assess the performance of the local ombudsman entity and the local ombudsman to ensure compliance with all applicable laws and regulations governing the program and this rule. Monitoring shall include, but shall not be limited to, a review of local ombudsman case records. The state ombudsman and the state level staff of the office shall have access to all necessary records containing the identity or identifying information of residents or complainants in order to conduct the monitoring and assessment. Monitoring and assessment shall be conducted by the state ombudsman and the state level staff office as follows:

- (1) The local ombudsman entity shall be responsible for monitoring and assessing administrative compliance using a tool developed by the state ombudsman.**
- (2) The state ombudsman and the state level staff of the office shall be responsible for assessment of the performance**

of program duties and for case record monitoring and assessment in order to maintain the confidentiality of program files.

(3) The results of the administrative monitoring and assessment and the case record monitoring and assessment shall be shared among the state ombudsman, the local ombudsman, and the local ombudsman entity.

(b) The results of the monitoring and assessment shall be considered a factor by the state ombudsman in determining whether to redesignate the local ombudsman entity and recertify the local ombudsman. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-18; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647)*

460 IAC 1-7-19 Noninterference

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 19. (a) A person shall not exert inappropriate or improper influence on a representative of the office or take any action which will in any way compromise, delay, or limit:

- (1) the investigation or outcome of complaints;
- (2) the representative's role as advocate for the rights and interests of residents;
- (3) the representative's attempt to resolve issues related to the rights, quality of care, and quality of life of the residents; or
- (4) the representative's responsibility to provide information or recommendations regarding problems and concerns of residents or clients, as necessary, to public and private agencies, legislators, or other persons.

(b) Any interference with the duties of a representative of the office by an officer or employee of the division or an officer or employee of the local ombudsman entity shall be deemed a breach of the duties of the division or local ombudsman entity, as specified in this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-19; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648)*

460 IAC 1-7-20 Violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-20

Sec. 20. A person who takes any of the following actions commits a Class B misdemeanor:

- (1) Intentionally prevents the work of the office.
- (2) Knowingly offers compensation to the office in an effort to affect the outcome of an investigation or a potential investigation.
- (3) Retaliates against a resident, a client, an employee, or another person who files a complaint or provides information to the office.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-20; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648)

460 IAC 1-7-21 Administrative reconsideration; appeals

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 4-21.5

Sec. 21. (a) A local ombudsman entity that is dedesignated or that is not redesignated may request a reconsideration of the decision to the state ombudsman. The state ombudsman shall provide a response to the request for reconsideration within fifteen (15) days from the date the request is received, including a notice of the right to appeal the decision. A local ombudsman entity that is dissatisfied with the decision on reconsideration may appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5.

(b) A local ombudsman who is dedesignated or who is not redesignated may, in coordination with the local ombudsman entity or independently, seek reconsideration from the state ombudsman. The state ombudsman shall provide a response to the request within fifteen (15) days of the date the request is received, including a notice of the right to appeal the decision. A local ombudsman who is dissatisfied with the decision may, in coordination with the local ombudsman entity or independently, appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-21; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648)*

LSA Document #99-78(F)

Notice of Intent Published: 22 IR 2896

Proposed Rule Published: July 1, 1999; 22 IR 3222

Hearing Held: July 22, 1999

Approved by Attorney General: February 15, 2000

Approved by Governor: March 2, 2000

Filed with Secretary of State: March 6, 2000, 7:51 a.m.

Incorporated Documents Filed with Secretary of State: None