

Iowa Office of the State Long-Term Care Ombudsman

Policy Manual

2014

The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.

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Policy No.: Omb-1
Effective Date: Immediately

TITLE: Responsibilities of the Local Long-Term Care Ombudsman

Statutory References: Iowa Code § 231.42
42 U.S.C. 3058g(a)(3)
17 Iowa Administrative Code 8
Iowa Code Chapter 135C

STATEMENT of POLICY: A Local Ombudsman shall advocate on behalf of residents or tenants of long-term care facilities, including nursing facilities, assisted living programs, residential care facilities, and elder group homes, to protect their rights, safety and welfare; to aid in satisfactory resolution of problems; and to improve the quality of life experienced by and the quality of care provided to these individuals. Although Ombudsmen are to advocate on behalf of the resident's wishes, an Ombudsman does not advocate when it involves any illegal activity.

Definitions:

Long-term care facilities are defined as those below:

Assisted Living Program: ALP-provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure, which provides a homelike environment. Includes encouragement of family involvement, tenant self-direction and tenant participation in decisions.

Assisted Living Programs for People with Dementia: Dementia-specific assisted living program - a program that serves fewer than 55 tenants and has 5 or more tenants with dementia between Stages 4 and 7 on the Global Deterioration Scale or serves 55 or more tenants and 10 percent or more of the tenants have dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with dementia in a dedicated setting.

Chronic Confusion or Dementing Illness Unit: "Chronic Confusion or Dementing Illness" is a special license classification for nursing facilities or a special unit within such a facility providing care to persons who suffer from chronic confusion or dementing illness. Reference to Chronic Confusion or Dementing Illness Units is made in the acts and joint resolutions of the 1990 regular session of the Seventy-Third General Assembly of the State of Iowa.

Elder Group Home: EGH-a single family residence that is operated by a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

Hospital-Based Nursing Facility/Skilled Nursing Facility: The term (distinct-part) denotes the unit is organized and operated to give a distinct type of care within a larger organization which renders other types of levels of care. Distinct denotes both organizational and physical separateness. A distinct-part skilled nursing facility unit, skilled nursing facility/nursing facility unit, or nursing facility unit must be physically identifiable and be operated distinguishably from the rest of the skilled nursing facility unit, skilled nursing facility/nursing facility unit, or nursing facility unit beds of the institution. It must consist of all the beds within the unit, such as a separate building, floor, wing or ward. Several rooms at one end of a hall or one side of a corridor may be acceptable as a distinct part of a skilled nursing facility unit, skilled nursing facility/nursing facility unit, or nursing facility unit. (Title 42 CFR]

Nursing Facility/Skilled Nursing Facility: Nursing Facilities are institutions or distinct parts of institutions housing three or more individuals for a period exceeding 24 consecutive hours, whose primary purpose is to provide health-related care and services, including rehabilitation, for individuals who because of mental or physical condition, require nursing care and other services in addition to room and board. Nursing facilities do not engage primarily in providing treatment or care for mental illness or mental retardation. (Iowa Code chapter 135C)

Residential Care Facility: Residential Care Facilities are institutions, places, buildings, or agencies providing accommodation, board, personal assistance and other essential daily living activities for a period exceeding 24 consecutive hours. Individuals living in a residential care facility are unable to sufficiently or properly care for themselves because of illness, disease, or physical or mental infirmity, but do not require the services of a registered or licensed practical nurse, except for emergencies. (Iowa Code chapter 135C)

PROCEDURE: Each Local Ombudsman shall be accountable for organizing their geographic area of responsibility to permit timely and effective completion of the following tasks (Iowa Code § 231.42(3); 42 U.S.C. 3058g(a)(3)):

1. Conduct intakes, visits, interviews, and document outcomes
2. Use of appropriate investigatory techniques
3. Develop resolution strategies and a plan of action to resolve concerns
4. Make routine and complaint-based facility and program visits
5. Review and analyze Department of Inspections and Appeals survey results (Iowa Code 231.42(4)(b))
6. Maintain an effective record keeping system to assure timely and accurate reporting of relevant data (42 U.S.C. 3058g(c))
7. Review state and federal rules/regulations and maintain a working knowledge

8. Review and attend Informal Dispute Resolutions and hearings as needed or requested
9. Maintain a working knowledge of resident and tenant rights and ensure those rights
10. Collaborate and consult with other Older Americans Act Title VII partners
11. Monitor operations of long-term care facilities
12. Provide information, consultation and education to residents, tenants, and/or their representative, families and referral/service related providers, facility staff, resident and family councils, and community groups
13. Provide support and consultation to certified volunteers
14. Promote the Long-Term Care Ombudsman program through networking with internal and external customers
15. Participate in on-going Ombudsman training, Volunteer Ombudsman training and in-service education
16. Contribute to activities of assigned task forces and workgroups
17. Assist the State Long-Term Care Ombudsman with issues and advocacy

TITLE: Intake and Triage of Complaints

Statutory References: Iowa Code § 231.42
42 U.S.C 3058g(a)(3)
17 Iowa Administrative Code 8

STATEMENT of POLICY: Any long-term care facility resident/tenant is eligible to receive assistance from the Long-Term Care Ombudsman Program. Local Ombudsmen will respond to complaints related to conditions or treatment of persons receiving long-term care services as mandated generally by federal and state law, regulations and rules, while maintaining a resident/tenant-directed focus. Within the capabilities of the office's available resources, intake and disposition of complaints shall be accomplished in a way designed to facilitate the consistent, timely and orderly response, investigation, resolution and documentation of complaints.

Ombudsmen will approach these functions with an emphasis on residents'/tenants' rights and with a continuing concern for resident/tenant empowerment. Assistance to the complainant may be delivered through direct advocacy by the Ombudsmen, through resident/tenant self-advocacy with assistance and direction of the Ombudsmen, or through a blend of methods.

The Long-Term Care Ombudsman Program is not an emergency response organization. Calls placed to the Long-Term Care Ombudsman Program's toll-free line or complaints received on the Iowa Department on Aging website are received and triaged Monday – Friday during normal business hours.

Policy Elements

- I. Intake and response to complainant and/or resident/tenant**
 - A. Define issue and determine type of response that is warranted
 1. Collect sufficient information
 2. Analyze issue(s) and develop options (which may include):
 - a. address complaint by direct communication with facility, provider, other agencies (Iowa Code § 231.42(3)(a))
 - b. provide information and/or assistance allowing the complainant to resolve complaint (Iowa Code § 231.42(3)(b))
 - c. open a case file (Iowa Code § 231.42(3)(a))
 - d. refer to another agency or service provider (Iowa Code § 231.42(3)(c) and 231.42(4))

- e. take no further action after conferring with complainant
- 3. Formulate recommendations for next steps

B. Document the nature of the call and the action taken

II. Timeliness of Response to Intake

Each incoming complaint is assessed or individually triaged by the Local Ombudsman. Dominant factors considered are: severity and scope of a complaint, time sensitivity, complaints outside the mandates of the office. The Local Ombudsman will determine whether the concern may be dealt with 1.) through consultation 2.) by opening a case 3.) referring the complaint to another agency/party or 4.) assisting the complainant in resolving her/his own problem. The Local Ombudsman is advised to contact the State Ombudsman if the application of this policy to a specific situation is unclear. If the Ombudsman determines the necessity of opening a case, the immediacy of investigation and resolution activities is guided according to the following:

A. Primary Priorities

Complaints or concerns in this category relate primarily to potential or actual harm to a resident/tenant. It should be noted that Ombudsmen do not provide “emergency” services.

1. Physical abuse/neglect allegations (Iowa Code § 231.42(4)(a)), Iowa Code 235B; 235E:

While the Long-Term Care Ombudsman Program provides no investigative function for these referrals, the Ombudsman may be the first person contacted when concerns of abuse/neglect arise. Long-term care facilities are required to self-investigate and report abuse allegations to DIA, law enforcement, and/or the Department of Human Services, depending on the nature of the allegation. Once the Ombudsman identifies potential abuse/neglect and has received consent from the resident/tenant, his/her role is to advocate on behalf of the resident/tenant to ensure that all necessary parties are actively involved and that the resident/tenant receives proper treatment, is protected from further harm, and that remedies are in place to prevent abuse/neglect from occurring. Where consent is initially refused, it is the role of the Ombudsman to educate the resident/tenant regarding the benefits and protections of reporting the allegation in full.

2. Deterioration of Condition:

Reported changes such as recent rapid weight loss, malnutrition, reported new or increased decubiti, and other changes in condition which signal a lack of or inadequate nursing attention or care.

3. Potential Physical Harm to Resident:

Examples of these types of complaints are: resident is being restrained, either physically or chemically; facility is not administering prescribed medication or other involved persons are refusing to allow the administration of prescribed medication; failure to adequately assess and address acute or chronic pain; residents/tenants or

the residential environment not kept safe; other situations in which no actual, or minimum harm has occurred but could if circumstances are not corrected.

4. Involuntary Discharge: Iowa Code 135C.14(8); Iowa Code 231B.6; Iowa Code 231C.6 and 481 Iowa Administrative Code 57.13(2); 57.36(1); 58.12(2); 58.40; 67.15; 68.15; 69.24

Under state and federal law and regulation, a long-term care facility may discharge a resident/tenant involuntarily with proper notice to the resident/tenant. A nursing facility shall not involuntarily discharge or transfer except for:

- a. Medical Reasons
- b. Residents welfare or that of other residents
- c. Non-payment for the residents stay
- d. Reason of action under Iowa Code 229 (mental health commitment)
- e. Negative action by Department of Human Services (DHS)
- f. Negative action by professional standards review organization
- g. Note: For an RCF—only look at categories a-d.

An assisted living program shall not involuntarily discharge or transfer except for a tenant who:

- a. Is bed-bound; or
- b. Requires routine, two-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or
- d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e. Is under the age of 18; or
- f. Requires more than part-time or intermittent health-related care; or
- g. Has unmanageable incontinence on a routine basis despite an individualized toileting program;
- or
- h. Is medically unstable; or
- i. Requires maximal assistance with activities of daily living.

See [Attachment A](#): Involuntary Discharge Guidelines

B. Secondary Priorities

Concerns in this category specifically may not have the potential to cause harm to a resident/tenant. However, the concerns may affect the resident's/tenant's quality of life or well-being.

1. Guardianship/Power of Attorney issues
2. Appropriate facility placement for care needed
3. Unexplained or unreported accidents
4. Insufficient staff or staff not properly trained to meet needs
5. Resident/Tenant wants to go back home or to another setting

6. Admission/Occupancy agreements, facility policies, negotiated risk agreements or other facility-specific documentation concerns which require resident/tenant compliance

C. Other Priorities

There may be situations where the Ombudsman is able to resolve complaints without having to visit the facility. That decision is always based on the Ombudsman's impression after speaking with the complainant. The Ombudsman will provide guidance and suggestions for resolution to the complainant. Examples of other priorities are:

1. Lost laundry
2. Dining room and dietary issues
3. Broken furniture, fixtures, etc.
4. Lack of activity
5. Billing or payment issues
6. Medicare/Medicaid eligibility

- D. Very often, cases have multiple complaints/issues. In these instances, the Ombudsman will address all issues that need to be resolved for that resident/tenant, even though some of them are not primary priority concerns.
- E. Where timely investigation of a complaint is not possible, the local Ombudsman shall communicate with the State Ombudsman for guidance.

III. Referrals

- A. A resident/tenant or complainant is encouraged to make a referral directly to the proper agency or entity.
- B. Ombudsmen may refer a complaint to another agency with the consent of the resident/tenant or resident's/tenant's legal representative. There may be some situations where no legal representative is available or the resident/tenant is not able to voice their wishes. In these situations, the Ombudsman may refer it to an agency on behalf of the resident/tenant.
- C. Referrals may be made to
 1. Regulatory or enforcement agencies
 2. Providers of legal services
 3. Other human service and/or advocacy agencies after consideration of the needs of the resident/tenant
 4. Social Security Administration, Department of Veterans Affairs or Centers for Medicare and Medicaid Services
 5. Elder Abuse Program Director or Legal Assistance Developer
 6. Abuse Protective Services entities

Policy No.: Omb-3
Effective Date: Immediately

TITLE: Cases, and Complaints and Consultations

Statutory References: Iowa Code § 231
42 USC § 3058g

STATEMENT of POLICY: The Ombudsman will make every attempt to complete her or his work on each case within 90 days from the date on which the complaint(s) was received. This activity includes, but is not limited to, complaint investigation, obtaining consent, access to necessary documentation, communications with all involved parties and referrals. Case resolution may be extended beyond 90 days due to circumstances outside the Ombudsman's control and/or to achieve the most satisfactory results for the resident/tenant. If it is determined a situation does not meet the criteria to be a case, it will be considered a consultation.

ELEMENTS:

Definitions:

Case: Each inquiry brought to, or initiated by, the ombudsman on behalf of a resident/tenant or group of residents/tenants involving one or more complaints which requires opening a case and includes ombudsman investigation, and/or strategy to resolve, and follow-up. A case includes one or more complaints brought to, or initiated by, the ombudsman in which the ombudsman is actively involved and/or which the ombudsman investigates and works to resolve. There may be complaints in which the ombudsman is actively involved which another agency investigates and also helps resolve. The number of cases is equivalent to the number of complainants. One or more people jointly filing a complaint count as one complainant.

Complaint: A concern brought to, or initiated by, the ombudsman for investigation and action on a) on behalf of one or more residents/tenants and b) relating to the health, safety, welfare or rights of a resident/tenant. One or more complaints constitute a case. You cannot have a case without a complaint. *Verifying Complaints* – Ombudsmen always attempt to verify complaints, but they work to resolve a complaint, whether it is verified or not. Definition of verified: It is determined after work (interviews, record inspection, observation, etc.) that the circumstances described in the complaint are generally accurate.

Disposition: Outcome of the complaint

- A. You need a disposition code for each complaint, whether or not the complaint is verified.
- B. Each complaint has only one disposition code. You must choose the best one.
- C. When choosing a disposition code, always follow the direction of the resident. If you cannot get direction from the resident, and there is no legal representative, or the

representative's direction is inconsistent with the previously expressed wishes of the resident, then take direction from the complainant.

- D. Remember, disposition codes record outcomes, not activities. You may perform many activities when resolving and investigating a complaint, but there is only one outcome.

Closed Case: A case is closed when none of the complaints within the case require any further action on the part of the ombudsman and every complaint has been assigned the appropriate disposition code.

Disposition Codes:

- A. Legislative or Regulatory Action Required – Policy, regulatory or legislative change needed to resolve.
- B. Not Resolved – Problem not corrected or change that was made was not to satisfaction of resident in any way.
- C. Withdrawn – Complaint withdrawn at the request of the resident, complainant, or discontinued by the ombudsman or if a significant portion was resolved prior to withdrawal, record as partially resolved.
- D. Referred for resolution and:
 - 1. Final disposition not obtained
 - 2. Other agency failed to act
 - 3. Agency did not substantiate
- E. No action needed or appropriate – Determined after ombudsman investigation.
- F. Partially resolved – Complaint addressed in part to the satisfaction of the resident or complainant, some problem remained.
- G. Resolved – Resident is satisfied with the outcome.

Consultation: A consultation is providing information and assistance to an individual or a facility.

- A. It does not involve investigating and working to resolve complaints (i.e., a consultation is not a case).
- B. If the ombudsman refers someone with a concern to another agency and is not actively involved in investigating and working to resolve the problem, it is not an ombudsman case or complaint. However, it can be counted as a consultation.

PROCEDURE FOR DETERMINING WHETHER A REFERRAL IS A CASE OR A CONSULTATION:

- I. Create case file or program activity from intake information to complete documentation entry.
- II. Investigation
 - A. Performing intake
 - Interview resident/tenant or complainant via telephone or in-person
 - a. Assess resident/tenant situation, complaint, and desired outcome
 - b. Gather information

- c. Obtain consent to pursue complaint
- B. Goals:
 - 1. Define problem(s) and/or issues
 - 2. Determine if immediate intervention is needed
 - a. assure safety of resident/tenant
 - b. prevent further progression of dangerous situation
 - 3. Identify facts necessary to evaluate the validity of the complaint
 - 4. Assess the appropriateness and effectiveness of potential outcomes or solutions in meeting the complainant's desired end result
- C. Resident/Tenant-focused investigation: This should take into account issues of resident/tenant, familial, social and personal history as well as relevant medical information and may include interviews.
 - 1. Identify all parties to the issues
 - a. Is there a person with legal or fiduciary responsibility for resident/tenant?
 - b. Is there any family/significant other involvement?
 - c. Is there facility staff or other provider involvement?
 - d. Is the regulatory or any other government agency implicated?
 - e. Are other health care providers involved?
 - f. Are any other parties/agencies involved?
 - g. Is the resident/tenant their own decision maker?
 - 2. Ascertain the specific nature of incident/issue
 - a. Impact on resident/tenant
 - b. Response from facility or provider to incident
 - i. nature of response
 - ii. timeliness
 - iii. outcomes
 - 3. Note specific dates / times
 - 4. Note specific location of incident(s)
 - a. Is the incident one-time only or reoccurring?
 - b. Is the incident part of a continuing pattern?
 - 5. Validation of facts
 - a. Assess facts; not motives
 - b. Maintain objectivity in evaluating information
 - 6. How can the Ombudsman help resolve the situation?
 - 7. Determine need for on-site investigation
- D. Conducting an on-site visit
 - 1. Set up a visit at the request of resident/tenant, family, and/or facility/program. Visits are generally unannounced but may be announced. (Iowa Code § 231.42(5)); 42 USC § 3058(g)(b))
 - 2. Purpose of visit (Iowa Code § 231.42(5)(a)-(d))
 - a. meet with resident/tenant

- b. fact finding
 - c. education
 - d. intervention / resolution of problem
- 3. Interview family or other involved agencies/parties as needed or requested
- 4. Interview long-term care facility staff
 - a. Administrator, Appropriate Department Head
 - b. Other staff who may have relevant information
- 5. Resident/Tenant records may include medical, personal/social, financial/payment information (Iowa Code § 231.42(6); 42 USC § 3058(g)(b)). Ombudsman shall have access to review the records of a resident/tenant, if—
 - a. the representative (Local Ombudsman) has the permission of the resident/tenant, or the legal representative of the resident/tenant (42 USC § 3058(g)(b)(1)(B)(i)(I)); or the resident/tenant is unable to consent to the review and has no legal representative (42 USC § 3058(g)(b)(1)(B)(i)(II)); or
 - b. access to the records as is necessary to investigate a complaint if—
 - i. a legal guardian of the resident refuses to give the permission (42 USC § 3058(g)(b)(1)(B)(ii)(I));
 - ii. a representative (Local Ombudsman) of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident (42 USC § 3058(g)(b)(1)(B)(ii)(II)); and
 - iii. the representative (Local Ombudsman) obtains the approval of the (State) Ombudsman (42 USC § 3058(g)(b)(1)(B)(ii)(III));
- E. Conclude investigation (not necessarily conclude the case)
 - 1. Review case file information to date
 - 2. Make follow up communications to clarify / verify information
 - a. phone calls and/or visit
 - b. documentation
 - 3. Assess potential for solution
 - a. develop alternatives / recommendations which are most favorable to resident/tenant
 - b. discuss options/alternatives/recommendations with the resident/tenant and/or complainant as appropriate
 - c. communicate to other parties as appropriate
 - d. seek consensus for resolution
 - e. develop plan for follow up
- F. Further actions
 - 1. Complete documentation in documentation database
 - 2. Communicate resolution to resident/tenant and/or complainant
 - 3. Communicate resolution to appropriate parties

Policy No.: Omb-4
Effective Date: Immediately

TITLE: Complaint Referrals

STATEMENT of POLICY:

Local Ombudsmen will make necessary referrals to other entities according to specified protocol.

PROCEDURE:

Ombudsmen should acquire knowledge of the available resources to provide aid and assistance in resolution of long-term care problems and inquiries.

- I. Based on an initial intake or after investigation of a complaint, the Ombudsman will assess the potential need for a referral to a different agency.
 - A. The Ombudsman may refer a complaint to another agency with the consent of the resident/tenant or resident's/tenant's legal representative.
 - B. The Ombudsman shall encourage a resident/tenant or complainant to make a referral directly to the proper agency or entity.
- II. Referral by an Ombudsman to other agencies may be made in writing or by telephone, depending on the receiving agency's protocol.

Utilize the Office of the State Long-Term Care Ombudsman form when referring a complaint to the Department of Inspections and Appeals. See [Attachment C](#).
- III. The Ombudsman shall determine the need for follow up.
- IV. If making a referral in writing, a carbon copy shall be sent to the State Long-Term Care Ombudsman. If the referral is made verbally, the Ombudsman shall make a notation in his/her monthly report to the State Long-Term Care Ombudsman.

Policy No.: Omb-5
Effective Date: Immediately

TITLE: Conflicts of Interest

Statutory References: OAA 712(f)

STATEMENT of POLICY:

All individuals who serve as a representative of the Office of the State Long-Term Care Ombudsman will be free of conflict of interest. The State Long-Term Care Ombudsman shall ensure that no individual, or member of the immediate family of an individual, involved in the designation of a Local Ombudsman or the Local Long-Term Care Ombudsman entity (including board members and employees) is subject to a conflict of interest.

Definitions:

Immediate Family: father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half-sister, half-brother, grandparent or grandchild.

Conflict of interest:

- A. Employment of the Local Ombudsman or a member of the Local Ombudsman's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility
- B. Current participation in the management of a long-term care facility by the Local Ombudsman or a member of the Local Ombudsman's immediate family
- C. Ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the Local Ombudsman or member of the Local Ombudsman's immediate family within the past two years
- D. Involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the Local Ombudsman or a member of the Local Ombudsman's immediate family within the past two years
- E. Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the Local Ombudsman or a member of the Local Ombudsman's immediate family within the past two years
- F. Acceptance of any gifts or gratuities from a long-term care facility or a resident/tenant or a resident's/tenant's representative within the past two years
- G. Acceptance of money or any other consideration from anyone other than the Office of the State Long-Term Care Ombudsman for the performance of an act in the regular course of long-term care within the past two years

- H. Provision of services with an outside employer that conflict with the duties of a Local Ombudsman
- I. Provision of services to residents/tenants of a facility in which a Local Ombudsman or a member of the Local Ombudsman's immediate family currently resides or has resided within the past two years
- J. Participation in activities which negatively affect the Local Ombudsman's ability to serve residents/tenants or which are likely to create a perception that the Local Ombudsman's primary interest is other than as an advocate for the residents/tenants
- K. Local Ombudsman residency or residency of a Local Ombudsman's family member in a facility within the past two years

PROCEDURE:

- I. The Office of the State Long-Term Care Ombudsman will establish, and specify in writing, mechanisms to identify and remove conflicts of interest and to identify and eliminate relationships that may cause a conflict of interest.
 - A. All individuals who serve as a representative of the Office or seek to serve as a representative of the Office will be screened to determine if a conflict of interest occurs.
 - 1. During the interview process, the State Long-Term Care Ombudsman will ask an interviewee if he/she has any conflicts of interests.
 - 2. Use [Attachment E](#): Local Long-Term Care Ombudsman Conflict of Interest Form
 - 3. On an annual basis, during each Local Long-Term Care Ombudsman's performance review, the Conflict of Interest form will be reviewed by the State and Local Long-Term Care Ombudsman to determine if a conflict of interest exists.
 - 4. A Local Long-Term Care Ombudsman shall report any new conflicts of interest to the State Long-Term Care Ombudsman for review as soon as the Local Ombudsman is aware of the conflict of interest.
 - a. If a Local Ombudsman fails to report a conflict of interest, the State Long-Term Care Ombudsman may take action according to the State of Iowa's personnel policies.
- II. If a conflict of interest exists, the State Long-Term Care Ombudsman will review the conflict of interest to determine if a waiver can be given.
 - A. Every situation will be handled on an individual, case-by-case basis.
 - 1. The State Long-Term Care Ombudsman will review the nature, scope, and extent of the conflict of interest and shall propose a remedy, if any is needed.
 - a. Any proposed remedy shall be in writing and reveal the nature, extent, and potential impact of the conflict of interest.
 - i. Any remedy shall neutralize the conflict of interest.

- ii. Any remedy granted shall remain in effect for as long as the conflict continues to exist to the same extent as reported and for as long as the remedy continues to work or is necessary.
 - B. When a decision for a remedy is pending from the State Long-Term Care Ombudsman, the Local Ombudsman shall be assigned duties that do not pose a conflict, as outlined by the State Ombudsman.
 - 1. Examples of potential remedies may include but are not limited to:
 - a. Providing another role for an Ombudsman until more time has elapsed between prior employment and carrying out all Local Ombudsman duties according to the Position Description Questionnaire (PDQ) .
 - b. Ensuring Local Ombudsman responsibilities are in facilities not owned or operated by the same corporation where the individual was previously employed for a certain timeframe.
 - c. Ensuring Local Ombudsman responsibilities are not in facilities where an immediate family member is employed or resides.
- III. In determining whether a Local Long-Term Care Ombudsman participation in community groups, professional associations, or other activities, constitutes a conflict of interest, the following questions shall be considered:
 - A. Will the Office of the State Long-Term Care Ombudsman benefit from a representative of the Office being involved in this activity?
 - B. Will the Local Ombudsman be able to represent and assert the views of long-term care residents/tenants in this activity?
 - C. Will the role of the Local Ombudsman benefit residents/tenants?
 - D. How will participating in the activity affect the public perception and the residents'/tenants' perspective of the Office of the State Long-Term Care Ombudsman?
 - E. Will the Local Ombudsman be put in a position of participating in a decision about a resident/tenant without the resident's/tenant's involvement or permission?

Policy No.: Omb-6
Effective Date: Immediately

TITLE: Information and Assistance

STATEMENT of POLICY: The Long-Term Care Ombudsman shall provide timely and accurate information and assistance to members of the public on issues related to long-term care as requested and as permitted by the time constraints of direct resident/tenant advocacy and other program activities.

PROCEDURE:

- I. Information provided to persons receiving long term care services or considering entry into the long term care system via telephone, e-mail, mail, or in person.
 - A. Requests for information will be prioritized so as not to interfere with the primary responsibilities of staff of the Long-Term Care Ombudsman Program.
 - B. Requests for information shall receive a timely response. The Local Ombudsman shall attempt to respond to requests within 2 business days.
 - C. Response may consist of a referral to other sources of information such as:
 1. Senior Health Insurance Information Program (SHIIP)
 2. Mental Health Advocates
 3. Department of Human Services (DHS)– Medicaid or Adult Protective Services (APS)
 4. Area Agencies on Aging (AAA)
 5. Department of Inspections and Appeals (DIA)
 6. Disability Rights Iowa (DRI)
 7. Iowa Legal Aid/Legal Hotline for Older Iowans
 8. Home, Inc.
 9. Iowa Insurance Division
 - D. Response to requests for information on long-term care facilities is appropriate if available data is accurate and the Local Ombudsman does not offer a preference or endorsement of one long-term care facility over another.
- II. Information provided to organized groups
 - A. Before the presentation
 1. determine the intended audience and number anticipated
 2. ensure the topic is relevant to the scope of services provided by the Long-Term Care Ombudsman's Office
 - B. After the presentation
 1. follow up with the participants who have questions and/or comments
 2. distribute business cards and other relevant written resources

- III. Consultation to facility is providing information and assistance to a long-term care facility employee via telephone, e-mail, mail, or in person.
 - A. Requests for information will be prioritized so as not to interfere with the primary responsibilities of staff of the Long-Term Care Ombudsman Program.
 - B. Requests for information shall receive a timely response. The Local Ombudsman shall attempt to respond to requests within 2 business days.
- IV. Media requests shall be referred to the State Ombudsman.

Policy No.: Omb- 8
Effective Date: Immediately

TITLE: Non-complaint related visits

Statutory References: Iowa Code 231.42(3) (c)
Iowa Code 231.42(5)
42 U.S.C 3058g (a) (3) (D)
42 U.S.C 3058g (a) (5) (B) (ii)

STATEMENT of POLICY: In order to establish and maintain a visible presence in long-term care facilities, Local Ombudsmen will make periodic visits to long-term care facilities. Visits are typically unannounced. Visits may be made for the purpose of providing Ombudsman outreach services, a request for consultation, or education to residents/tenants to observe daily routines, meals and activities, and work to resolve complaints if any are identified during the visit.

ELEMENTS:

On-site visits to long-term care facilities provide the Ombudsman with the opportunity to complete required functions; monitoring facility compliance with federal and state laws; observing facility practices, procedures, and quality of care provided; providing information to facility staff, residents, tenants, and family, and facilitating resident access to the Ombudsman Program.

- I. The Local Ombudsman shall identify him or herself.
 - A. The Ombudsman shall wear the proper state-issued ID badge.
 - B. The Ombudsman must identify themselves to the staff, but is not required to disclose the purpose for the visit.
 - C. The Ombudsman shall attempt to follow up with a long-term care facility employee upon exiting the facility.
- II. Ombudsmen shall have immediate, unrestricted access to residents as required by Iowa Code 231.42(5) and 42 USC 3058g (b) & (j)
 - A. The Ombudsman may converse with residents/tenants, staff, and visitors to inquire as to the care and treatment of residents/tenants in the long-term care facility. The Ombudsman may speak with as many residents/tenants as is practicable to identify individuals who may have complaints or problems which should be addressed.
 - B. Ombudsmen must be free to move about the long-term care facility independently and without an escort in order to alleviate confidentiality concerns of residents/tenants. If an officer, owner, director, or employee of a long-term care facility intentionally prevents, interferes with, or attempts to impede the duties of the state or a local long-term care ombudsman, the Local Ombudsman impacted shall

report the interference to the State Ombudsman who will determine what action is appropriate.

- Monetary civil penalties- The director, in consultation with the state long-term care ombudsman, may impose a monetary civil penalty of not more than \$1,500 for each violation on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state, local or volunteer long-term care ombudsman. If the director imposes a penalty for a violation under this rule, no other state agency shall impose a penalty for the same interference violation. As required by Iowa Code 231.42(7); Iowa Administrative Code 8.3 through 8.6 and 42 U.S.C 3058g (j)
- C. The Ombudsman may observe the condition of the facility and make recommendations as appropriate. [Attachment B-1](#) – Facility Checklist and [Attachment B-2](#) – Observation List may be utilized.
- D. Facility Coverage is an unduplicated count of facilities visited no less frequently than quarterly based on the federal fiscal year. The number reported indicates the facility was covered on a regular basis, not in response to a complaint, by paid or volunteer ombudsmen.

Policy No.: Omb-10
Effective Date: Immediately

TITLE: Ombudsman Advocacy for Complaint Resolution

Statutory References: Iowa Code 231.42(3) (a)
42 U.S.C 3058g (a)
17 Iowa Administrative Code 8.7 (11)

STATEMENT of POLICY: Representatives of the Office of State Long-Term Care Ombudsman may utilize accepted advocacy techniques as presented in office training sessions, learned in other forums, or as developed in the field to assist in complaint resolution. Techniques may include but are not limited to the following: problem solving, advocacy, negotiation, referral to other agencies, and media involvement (only with the State Ombudsman approval).

PROCEDURE:

- I. Complete initial intake and investigation of complaint as per Office of the State Long-Term Care Ombudsman Policies [OMB –2](#) & [OMB –3](#).
- II. Advocacy techniques may include the following as determined to be potentially effective by analysis of an individual situation. It may be the case that an issue, once defined and addressed, may indicate a need for a different approach.
 - A. Problem solving
 1. Simple problem solving-Involves speaking with the resident/tenant and discussing possible resolutions to the problem.
 2. Collective problem solving-Involves asking staff or other parties, with the resident's/tenant's permission to participate in the discussion in order to resolve the problem.
 3. Education and empowerment-Involves providing education and skills to the resident/tenant so that he/she can solve the problem without direct intervention of the Local Long-Term Care Ombudsman.
 - B. Direct Advocacy
 1. Represent the interest of resident/tenant in direct communication with long-term care facility staff, resident/tenant's representative or other involved agencies/parties.
 2. Communicate the Office of the State Long-Term Care Ombudsman position.
 - C. Organizational advocacy is oriented to a specific issue and may include:
 1. Participate in resident, tenant and family councils

2. Involve citizen organizations
3. Refer to Disability Rights Iowa

D. Mediation and Negotiation

1. Determine whether or not mediation or negotiation will be effective as a means of resolving the dispute. If mediation is a viable option, refer to the AAA mediation program.
2. Determine if there is a regulatory or statutory solution which takes precedence.
3. Determine if the issue affects others in addition to the complainant
4. Determine if there are parties other than the resident/tenant who need to be involved.

E. If Negotiation is appropriate for the particular situation:

1. Meet individually with parties to discuss issues.
2. Arrange for initial meeting.
 - a. define issue(s)
 - b. allow parties to give their perspectives on the issue(s)
 - c. develop action plan to the satisfaction of the resident/tenant
 - d. discuss timeframe for action plan to be implemented
 - e. set follow-up meeting if necessary
3. Conduct follow-up meeting (or second part of initial meeting)
 - a. further discuss perspectives on issues
 - b. seek resolution of the resident's/ tenant's concerns

F. Use of media resources

1. Direct contact with media only upon direction or approval of the State Long-Term Care Ombudsman
2. Discuss access to media with residents, tenants and family / others
 - a. consider value / drawbacks to media attention
 - b. inform of the important issues to be addressed

G. Discussions with management, ownership, or corporation staff. Work with the State Long-Term Care Ombudsman as needed.

III. Advocacy techniques used and outcomes should be made a part of the Ombudsman record using the documentation database.

- A. briefly discuss advocacy techniques used
- B. associate any outcome with the facts

Policy No.: Omb-11
Effective Date: Immediately

TITLE: Long-Term Care Ombudsman Participation in Administrative Proceedings and Internal Appeals Process

Statutory References: 481 Iowa Administrative Code 58.40(1) (f) (discharge)
481 Iowa Administrative Code 57.36 (1) (f) (discharge)
481 Iowa Administrative Code 69.24(1) (c) (transfer)
481 Iowa Administrative Code 68.15 (transfer)
481 Iowa Administrative Code 10 (contested case hearings)
42 USC 3058g (a) (3) (E) (OAA)
42 USC 3058g (a) (5) (B) (IV) (OAA)
42 USC 1396r(C) (2) (transfer and discharge rights)
42 USC 1395i-3(C) (2) (transfer and discharge rights)
42 CFR 483.12 (admission, transfer, discharge rights)

STATEMENT of POLICY:

The connection between the Long-Term Care Ombudsman and the resident/tenant is not a lawyer / client relationship, but rather it is that of an advocate assisting the resident/tenant or his/her legal representative to adequately and effectively prepare for and present her or his position on the issues under consideration before an adjudicator. Long-Term Care Ombudsman staff may appear with residents, tenants, or their legal representative at administrative proceedings or in the internal assisted living programs or elder group home appeals process. Further, it is the responsibility of the Long-Term Care Ombudsman, with the consent of the resident, tenant or legal representative, to assert the resident's/tenant's rights if the resident/tenant is unable to do so, within the scope of Long-Term Care Ombudsman authority as specified in law.

Definitions:

Administrative or evidentiary hearing: refers to any contested proceeding before an Administrative Law Judge (ALJ) serving as the adjudicator, which affects the legal rights, duties, or privileges of a party and includes all affected parties. A hearing is conducted by the ALJ who is in a position to make a ruling. A hearing may take place in person, by phone or by other electronic media.

Administrative Law Judge (ALJ): means the person who presides over contested cases and other proceedings.

PROCEDURE:

- I. Administrative Hearings
 - A. Examples may include
 1. Involuntary Discharges or Transfers
 2. Medicaid Appeals
 3. PASRR Appeals
 4. SSA Appeals
 - B. When notified of an impending hearing or proposed appeal of a decision, the Long-Term Care Ombudsman should:
 1. Determine if the resident or tenant would like assistance from the Long-Term Care Ombudsman.
 2. Determine if the resident or tenant is represented by private legal counsel
 - a. If resident/tenant is represented, seek consent of the resident/tenant or his/her legal representative to contact and work with private attorney, if requested, to the resident's/tenant's benefit.
 - b. If resident/tenant is not represented, determine if the resident/tenant/legal representative wishes to have private representation and, if necessary, direct resident/tenant/legal representative to resources where legal counsel may be found. The Legal Hotline for Older Iowans may be used a resource for resident/tenants age 60 and older seeking legal counsel. Persons under the age of 60 may utilize Iowa Legal Aid or Disability Rights Iowa.
 - C. If the Ombudsman is to attend the hearing as an advocate, the Ombudsman may:
 1. Define the issue to be decided according to the resident/legal representative preferred outcome
 2. Determine the Internal Appeals process for the Assisted Living Program or Elder Group Home, if applicable.
 3. Consult with the resident/tenant/legal representative to ascertain the position to be taken and
 - a. define the nature and limits of resident/legal representative's stated wishes
 - b. acknowledge respect for resident's/tenant's best interest
 - c. inform resident/tenant/legal representative of the administrative hearing process or of the internal assisted living program or elder group home appeal process
 4. Consult with State Long-Term Care Ombudsman as needed.
 5. If participating, the Ombudsman may notify the ALJ of involvement prior to the hearing to:
 - a. define the role of the Ombudsman
 - b. request copies of all hearing documents, if needed

6. Obtain or ask the resident/tenant/legal representative to obtain all relevant documentation needed to support position from:
 - a. the resident/legal representative
 - b. the long-term care facility
 - i. Medical/social records: nurse's notes, social work notes, care plan, MDS records, medication records, financial information, physician order/progress notes, etc.
 - ii. Administrative records: financial, policies and procedures
 - c. others as necessary
7. Review the documentation and offer assistance to the resident/tenant/legal representative to develop his/her position statement.
8. Encourage and prepare the resident/tenant/legal representative to present own position, according to resident/tenant/legal representative desire and ability.
9. Arrange a meeting place with speaker telephone access for the hearing, if necessary.

D. At the Hearing

1. Identify self to Administrative Law Judge (ALJ)
 - a. Ombudsman as a non-attorney advocate referring to 42 USC 3058g (a) (3) (E) and Iowa Administrative Code listed above.
 - b. The role of the Ombudsman as an advocate for the residents/tenant's wishes.
2. When speaking on behalf of resident/tenant/legal representative, the Ombudsman may introduce the argument according to procedure outlined by ALJ.
 - a. The Ombudsman may answer questions when asked by the ALJ or other parties.
 - b. Introduce ideas or suggestions to support the resident's/tenant's position.

II. Internal Appeals Process for Assisted Living Programs/Elder Group Homes

- A. Introduce role of the Ombudsman as an advocate for the tenant's wishes.
- B. With the tenant's input and permission, introduce ideas or suggestions to allow for the tenant to remain at the program or home.
- C. Determine when the tenant will be notified of the outcome of the appeal and if there will be further appeal rights.

III. Review outcome with resident/tenant/legal representative

- A. Decision for an ALJ hearing is typically delivered via mail or electronically to secure e-mail. Decision for an Internal Appeal Process is according to the Assisted Living Program or Elder Group Home's policy or procedure.
- B. Explain reasoning of the decision to the resident/tenant/legal representative, if necessary

- C. If decision is not in resident/tenant/legal representative's favor, determine if appeal of decision to next level is desired by resident/tenant/legal representative or necessary to protect health, safety, welfare or rights, of resident/tenant/legal representative:
 - 1. explain assessment to resident/tenant/legal representative, if necessary
 - 2. encourage the resident/tenant/legal representative to contact private legal counsel for advice on how to proceed, if needed
- D. Assist with appeal where appropriate after consultation with State Long-Term Care Ombudsman.

Policy No.: Omb-12
Effective Date: Immediately

TITLE: Long-Term Care Ombudsman activities related to issues of Substitute Decision Making

STATEMENT of POLICY: When necessary, the Long-Term Care Ombudsman's Office shall provide information, to residents, tenants, their family members, long-term care facilities, as well as others on issues related to substitute decision making. In all cases, the local Ombudsman remains an advocate only for the resident or tenant.

Statutory References:

Guardianships/Conservatorships	Iowa Code 633, Iowa Code 135C.24 (1)
Living Will / Out of Hospital DNR orders	Iowa Code 144A
Durable Power of Attorney for Health Care	Iowa Code 144B
Financial Power of Attorney	Iowa Code 633B, Iowa Code 597.5
Final Disposition Act	Iowa Code 144C
Physician Orders for Scope of Treatment	Iowa Code 144D
Substitute Decision Maker Act	Iowa Code 231E

Definitions:

Attorney-in-fact: An individual who is designated by a power of attorney as an agent to make decisions on behalf of a principal and has consented to act in that capacity. Iowa Code 144B

Capacity: The ability to understand the nature and effects of one's acts. (medical determination)

Competency: A legal finding determined by a review of medical capacity, functional limitations, cognitive and functional abilities. Iowa Code 633

Conservator: A person appointed by the court to have the custody and control of the property of a ward. Iowa Code 633.3(7) and 633A.1102 (5)

Durable Power of Attorney for Health Care: A document authorizing the attorney-in-fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician. Iowa Code 144B

Financial Power of Attorney: A written document in which one person (the principal) gives another person (the attorney-in-fact) the authority to act on the first person's behalf in financial matters. Also known as a General Power of Attorney. Iowa Code 633B; 558.36 and 597.5

Guardian: The person appointed by the court to have custody of the person of the ward. Iowa Code 633; 600A; 225C.35 (4); 232.2(21) and 633A.1102 (8)

Principal: An individual who authorizes a person to act on his or her behalf through a power of attorney document. Iowa Code 144B

Representative Payee: An individual appointed by a federal government entity to receive funds on behalf of a beneficiary and to meet the beneficiary's basic needs.

Substitute Decision Maker: Is defined as a guardian, conservator, representative payee, attorney-in-fact under a power of attorney, or a personal representative. Iowa Code 231E

PROCEDURE:

- I. When capacity appears to be a significant issue for a resident/tenant the Local Ombudsman shall make herself or himself aware of the resident's or tenant's status with respect to decision-making.
 - A. Determine if the resident/tenant has a substitute decision maker, and if so, of what type. The Local Ombudsman may consider any or all of the following:
 1. Power of Attorney
 - a. Power of Attorney for Finances
 - b. Durable Power of Attorney for Health Care
 - c. A combined document granting both financial and health care powers
 - d. Are the powers full, limited, temporary or standby?
 - e. If it is a Power of Attorney document, does it contain the necessary language?
 - f. Is there language that makes the power "durable"? And if so, is the document in effect?
 - g. See [Attachment D](#) – Physician POA Statement
 - h. Is it signed by the resident or tenant, dated and either notarized or witnessed?
 - i. Are specific roles and responsibilities set out?
 - j. Is there specific authorization to admit the principal into long-term care? (Ensure that the document has taken effect before the attorney-in-fact signs the admission papers.)
 - k. Is there specific authorization to withhold or withdraw life sustaining procedures (through the power of attorney or a living will)?
 2. Guardianship/Conservatorship
 - a. Guardianship for the person
 - b. Conservatorship of the property or finances
 - c. A combined document granting both powers
 - d. Are powers full, limited, temporary or standby?
 - e. Are the rights of the resident or tenant restricted in anyway?

- f. Did the guardianship or conservatorship order revoke the power of attorney document?
 - g. Did the court order set out specific duties for the Guardian or Conservator that are not ordinarily allowed under law?
- 3. Representative Payee
 - a. Is there a representative payee appointed to handle the federal benefit check, such as social security or supplemental security income?
 - b. Is the payee an individual or the facility?
 - c. Is the payee someone different than the attorney-in-fact for finances or the conservator?
- 4. Is it currently in effect?
 - a. Have the documents taken effect or been triggered?
 - b. For the durable power of attorney for health care, is there a physician's statement indicating that the document has taken effect?
 - c. For guardianship/conservatorship, are there letters of appointment or a court order?
 - d. For the representative payee, is there a letter of appointment?
- 5. Are there other existing health care or financial management documents or arrangements which express the intent of the resident or tenant?
 - a. Do-not-resuscitate order signed by the doctor but consented to by the resident/tenant/ attorney-in-fact or guardian. (In order for the guardian to approve, he/she must receive court approval.)
 - b. Physician's Order for Scope of Treatment
 - c. Living Will—takes effect when in a terminal state and includes persistent vegetative state.
 - d. Out of Hospital Do-Not-Resuscitate Order
 - e. Joint ownership of bank accounts or other assets
 - f. Joint tenancy of property
 - g. Trusts

When a resident or tenant has a valid substitute legal decision maker, the Local Ombudsman should communicate, as appropriate, with the decision maker to make her or him aware of the issues leading to Local Ombudsman involvement. To the extent permitted by law, the Local Ombudsman may limit the extent of communication with the substitute decision maker if:

- in the Local Ombudsman's determination, the decision maker's actions are causing or exacerbating the problem which precipitated the complaint, or
- as directed by the resident or tenant.

The Local Ombudsman may recommend modifications, corrections, or actions to make proposed or existing substitute decision-making documents effective in achieving the intent of the principal (in power of attorney matters) or the intent of the court and the best

interests of the ward (in guardianship or conservatorship matters) or to meet the basic needs of the beneficiary under a representative payee. Among other duties, the Ombudsman may assist a resident/tenant in writing a letter to the court to express the resident's/tenant's desires and/or provide information about how to revoke Power of Attorney documents.

- II. If there is no substitute decision maker, the Local Ombudsman should determine if one may be needed. The Local Ombudsman may make this determination by means of direct observation or by evaluation of information provided by other sources. The Local Ombudsman should consider any or all of the following:
 - A. Resident's or Tenant's apparent capacity to make informed decisions?
 - a. Need for activation of valid power of attorney for health care, if any?
 - b. Need for activation of valid power of attorney for finances, if any?
 - c. Need for guardian of the person?
 - d. Need for Conservator of the property/finances? Both?
 - e. Need for general vs. limited guardianship?
 - f. Need for general vs. limited conservatorship?
 - B. Resident's or tenant's desire to have legal counsel retained/appointed to represent him/her in legal proceedings?
 - C. Need for a breach of fiduciary duty to be brought to the courts attention? If so, facility or individuals with knowledge and examples of this breach can write a letter to the court.
- III. The Local Ombudsman may assist a resident/tenant in legal proceedings, when necessary and appropriate, as follows:
 - A. As an advocate for the resident/tenant;
 - B. As a resource for the resident's or tenant's attorney, the resident's or tenant's guardian ad litem, or the court; and/or;
 - C. Testify as an expert on the facts surrounding the complaint or concerns as well as the wishes of the resident/tenant at the request of the court;
 - D. The Local Ombudsman may not complete powers of attorney documents on behalf of any resident or tenant, nor may a Local Ombudsman serve as witness to any such document. If the resident or tenant is interested in signing these forms, the Local Ombudsman can assist by obtaining these generic documents for the resident/tenant to sign.
- IV. The Office and its representatives will not, as a matter of policy, act as a Petitioner in the following proceedings:
 - A. Any petition for guardianship and/or conservatorship;

- B. Any petition to have the guardian and/or the conservator discharged and a new guardian and/or conservator appointed or to have the authority of a guardian and/or conservator limited by the court;
 - C. Any petition to have the ward's incompetency reviewed.
- V. This does not preclude Office representatives, after consultation with the State Long-Term Care Ombudsman, from communicating directly with other agencies or courts to report circumstances in which the terms of court orders or power of attorney documents are being violated or abused or situations which suggest a need for official review or oversight.

TITLE: Coverage for and reporting to LTCO on leave

Statutory References: None.

STATEMENT of POLICY: When a local long-term care ombudsman is scheduled to be off work for 3 or more business days, another local long-term care ombudsman will be assigned to take over the ombudsman's workload while that person is absent from work. The local ombudsman taking leave will communicate in writing to the receiving ombudsman work that needs to be completed. When an employee returns from leave, the local ombudsman who had assumed duties will contact the returning ombudsman in writing to inform him/her of situations that require action and/or follow-up.

ELEMENTS:

When a local long-term care ombudsman has to be absent from work for 3 or more business days, another local ombudsman will handle and/or arrange for calls and visits to facilities in that person's counties.

- I. For scheduled leave, the local ombudsman who will be absent will:
 - A. Communicate with the State office to determine who will be assuming his/her workload while absent.
 - B. Communicate via Word document any necessary tasks to be completed or required follow-up to the local ombudsman who will be providing coverage. The local ombudsman may also wish to communicate verbally.
 - C. Assign access rights in the approved documentation system to the local ombudsman who will be providing coverage.
 - D. Ensure documentation is current in any case or program activity where follow-up or further action may be needed.
 - E. Change office voicemail and e-mail to indicate the absence.
 1. Need to include:
 - a. Your name
 - b. Job Title
 - c. What information you want from caller
 - d. Response time (can be as soon as possible)
 - e. Add an addendum if you are going to be out for an extended time. Addendum should include the phone number of the local ombudsman who will be providing coverage.
 2. Suggested voicemail messages:

- a. You have reached the confidential voicemail for _____, Local Long-Term Care Ombudsman with the Iowa Department on Aging. I am frequently out in facilities and am unable to take your call right now. Please leave your name, telephone number and a message and I will respond back to you as soon as possible. Thank you for your call.
- b. You have reached the confidential voicemail for _____, Local Long-Term Care Ombudsman with the Iowa Department on Aging. I am currently out of the office until _____. Please leave your name, telephone number and a message and I will follow-up with you as soon as possible upon my return. Or if you prefer to speak with someone sooner, please call _____, (name of LLTCO handling) at _____ (phone number) who may be able to assist you. Thank you for your call.

3. Suggested Out of Office e-mail messages

- a. Thank you for your e-mail. I am currently out of the office (attending meetings or trainings) until _____ (date). During this time, I will have limited availability in responding to e-mails and returning phone calls. I will respond to you as soon as possible.
- b. Thank you for your e-mail. I am currently out of the office until _____ and will follow-up with you as soon as possible upon my return. If you prefer to speak with someone handling my area in my absence, please contact _____ (name of LLTCO handling) at _____ (e-mail address) or _____ (phone).

- II. For unscheduled leave, the State Office will determine who will be assuming duties while a local ombudsman is absent from work.
 - The local ombudsman providing coverage will contact the State Office to inquire about and obtain access to a case or program activity as needed.
- III. When a local ombudsman returns from leave, the local ombudsman who had been covering will communicate via Word document any necessary tasks to be completed or necessary follow-up to the returning local ombudsman. The local ombudsman may also wish to communicate verbally.
 - The local ombudsman providing coverage will maintain a written log in a Word document of all correspondence, program activities, and cases that took place in the absent local ombudsman's counties and will forward that information to the local ombudsman upon his/her return.
 - a. The local ombudsman providing coverage will be responsible for documenting all work performed in the approved documentation system and ensure documentation is current in any case or program activity where follow-up or further action may be needed.

- b. Any new cases entered into the documentation system while the local ombudsman is absent will be assigned to him/her as well by the local ombudsman providing coverage.
- c. The returning local ombudsman will review the log and corresponding information in the approved documentation system and communicate any questions verbally or in writing with the local ombudsman who was providing coverage.
- d. The local ombudsmen will communicate to determine who will resume work or provide follow-up, if needed, on specific program activities and cases.

TITLE: Interference Prohibited by a Long-Term Care Facility

STATUTE REFERENCES: Iowa Code 231.42(8)
17 Iowa Administrative Code 8

STATEMENT of POLICY: An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the work of the State or a Local Long-Term Care Ombudsman or a certified volunteer is subject to a penalty imposed by the director of the Iowa Department on Aging of not more than one thousand five hundred dollars for each violation. If the director imposes a penalty for a violation, no other state agency shall impose a penalty for the same interference violation.

Examples of interference that could exist are: denial of access to the long-term care facility or residents/tenants; interference with private communication with residents/tenants; refusal to produce requested information such as the personal, medical or financial record; and attempts by representatives of a long-term care facility to influence decisions or actions of the representatives of the Office of the State Long-Term Care Ombudsman.

PROCEDURE:

- I. The Local Long-Term Care Ombudsman will inform the parties of Ombudsman duties as set forth by the Older Americans Act and the state penalty for interference. See [Attachment F](#): Ombudsman Duties and Interference Penalties.
- II. The Local Long-Term Care Ombudsman will contact the State Long-Term Care Ombudsman to report information about the interference.
- III. The Local Long-Term Care Ombudsman will gather the necessary facts regarding the interference.
 - a. Name of the long-term care facility and staff names
 - b. Resident(s)/Tenant(s) names
 - c. Date and time
 - d. Type of interference
- IV. If a long-term care facility staff member is the source of the interference, the long-term care facility administrator/director will be notified about the interference by the Local or State Long-Term Care Ombudsman.

- V. If the long-term care facility administrator/director is the source of the interference, the person responsible for supervising the administrator/director and/or the owner of the facility/program will be notified about the interference by the Local or State Long-Term Care Ombudsman.
- VI. The Local Long-Term Care Ombudsman will forward relevant information to the State Long-Term Care Ombudsman regarding the interference.
- VII. The State Long-Term Care Ombudsman conducts a review of the facts and makes a recommendation to the Director of the Iowa Department on Aging.
- VIII. The Director of the Iowa Department on Aging will issue a notice of interference to the long-term care facility and assess a fine. The notice will include the procedure to appeal the penalties imposed.
- IX. The Director, in consultation with the State Long-Term Care Ombudsman, shall notify the county attorney of the county in which the long-term care facility is located, or the attorney general, of any violation within Iowa Code 231.42(8).

TITLE: Reporting Abuse, Neglect and Exploitation

Statute References: 42 U.S.C. 3058i
Iowa Code 235B
Iowa Code 235E
Iowa Code 235F

STATEMENT of POLICY: The Office of the State Long-Term Care Ombudsman does not investigate allegations of dependent adult or elder abuse and are not mandatory reporters. The Department of Inspections and Appeals and the Department of Human Services are the official agencies charged with the responsibility to investigate dependent adult abuse allegations. For elder abuse concerns, the victim or interested person should contact a private attorney to pursue civil legal action and/or obtain protective orders. In abuse, neglect or exploitation cases, the focus of the Long-Term Care Ombudsman is to offer support and to provide information and assistance for appropriate referrals regarding the alleged abuse. The primary role of the Long-Term Care Ombudsman is to seek resolution to the resident's/tenant's satisfaction, not to verify the suspected abuse.

DEFINITIONS:

Iowa Code 235B: Dependent Adult Abuse Services—Information Registry

Caretaker: “Caretaker” means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

Dependent Adult: “Dependent adult” means a person eighteen years of age or older who is unable to protect the person’s own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

Dependent Adult Abuse: “Dependent adult abuse” means:

- (1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:
 - (a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
 - (b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.
 - (c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

(3) (a) Sexual exploitation of a dependent adult by a caretaker.

(b) **"Sexual exploitation"** means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. **"Sexual exploitation"** includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

Iowa Code 235E: Dependent Adult Abuse in Facilities and Programs

Caretaker: *"Caretaker"* means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court.

"Dependent adult" means a person eighteen years of age or older whose ability to perform the normal activities of daily living or to provide for the person's own care or protection is impaired, either temporarily or permanently.

a. **"Dependent adult abuse"** means:

(1) Any of the following as a result of the willful misconduct or gross negligence or reckless acts or omissions of a caretaker, taking into account the totality of the circumstances:

(a) A physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult which involves a breach of skill, care, and learning ordinarily exercised by a caretaker in similar circumstances. **"Assault of a dependent adult"** means the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) Exploitation of a dependent adult. **"Exploitation"** means a caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult's funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent

adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.

(d) Neglect of a dependent adult. ***“Neglect of a dependent adult”*** means the deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult’s life or physical or mental health.

(2) Sexual exploitation of a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. ***“Sexual exploitation”*** means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. ***“Sexual exploitation”*** includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing investigation. ***“Sexual exploitation”*** does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

Mandatory Reporter: A staff member or employee of a facility or program who, in the course of employment, examines, attends, counsels, or treats a dependent adult in a facility or program and reasonably believes the dependent adult has suffered dependent adult abuse, shall report the suspected dependent adult abuse to the department.

PROCEDURE:

When a Long-Term Care Ombudsman receives or identifies a concern involving abuse, neglect, or exploitation, the Long-Term Care Ombudsman shall:

If...	Then the LTCO shall...
The resident/tenant gives permission for the Ombudsman to seek resolution to the resident's/tenant's satisfaction	<ol style="list-style-type: none">1. Follow complaint investigation steps (Policy #3: Cases, and Complaints and Consultations) as in other types of complaints, and/or2. Provide information to the resident/tenant regarding referral resources and encourage him/her to make the report himself/herself, and/or3. Make a report to the Department of Inspections and Appeals (DIA) or the Department of Human Services (DHS) as appropriate, or law enforcement.
The Ombudsman witnessed suspected abuse or a resident/tenant has acknowledged suspected abuse has occurred, but the resident/tenant does not give permission to seek resolution	<ol style="list-style-type: none">1. Provide information to the resident/tenant regarding referral resources and encourage him/her to make the report himself/herself, and/or2. Visit with other residents/tenants to see if he/she has had similar experiences,3. Determine if any other residents/tenants wish the Ombudsman to take action on his/her behalf, and/or4. Encourage the resident/tenant to permit the Ombudsman to take action.
The resident/tenant gives permission to the Ombudsman to make a report	<ol style="list-style-type: none">1. Refer the suspected abuse by facility or program staff or resident-to-resident abuse to DIA.2. Refer the suspected abuse by a person in the community against a resident/tenant to DHS.
The resident/tenant is unable to communicate his/her wishes	<ol style="list-style-type: none">1. Encourage and provide assistance to any other person who is aware of the suspected abuse and/or2. Communicate the suspected abuse to the facility staff and encourage them to report, and3. Make a report to DIA or DHS as appropriate.
The complainant is a mandatory reporter	Inform the complainant of his/her duty of reporting suspected abuse.
The complainant is not a mandatory reporter.	Provide referral information for DIA or DHS as appropriate.

Attachments

Attachment A: Involuntary Discharges

(Go back to policy [Omb-2](#))

(See policy [Omb-11](#) for Long-Term Care Ombudsman Participation in Administrative Proceedings and Internal Appeals Process)

Statute References: Iowa Code 135C.14 (8)
Iowa Code 231B.6
Iowa Code 231C.6
Iowa Administrative Code Chapter 58.12(2) & 58.40
Iowa Administrative Code Chapter 57.13(2) and 57.36(1)
Iowa Administrative Code Chapter 67.15
Iowa Administrative Code Chapter 68.15
Iowa Administrative Code Chapter 69.24
42 CFR 483.12
42 CFR 483.12(a) 6 Contents of the Notice
42 U.S.C 1395i-3(c) (2) (B) (iii) (II)
42 U.S.C. 1396r(c) (2) (B) (iii) (II)
State Operations Manual Appendix PP, pg. 47-48

An involuntary discharge/transfer will be counted as a case when the Ombudsman takes action on behalf of the resident/tenant or family. The mere receipt of an involuntary discharge/transfer notice does not count as a case, but could be counted as a program activity.

- A. The State Long-Term Care Ombudsman's Office will scan and email a copy of the involuntary discharge/transfer letter to the local Ombudsman upon receipt into the central office.
- B. Determine if assistance of the Ombudsman is appropriate within the scope of Ombudsman authority. Ombudsmen are not required to investigate a discharge/transfer if it involves criminal activity, court committals, or is a result of a monitoring evaluation or complaint investigation by the Department of Inspections and Appeals in an assisted living program. The Ombudsman is not required to be notified about an involuntary transfer in an assisted living program unless the tenant/tenant's legal representative contests the transfer.
- C. The Ombudsman will review the notice to determine if the federal and/or state notice requirements are met. If requirements are not met, the Ombudsman shall contact the long-term care facility to provide consultation and request that a revised letter be issued that initiates a new discharge/tenant timeframe and process.
- D. If the involuntary discharge/transfer notice is properly written, the Ombudsman shall initiate contact with the long-term care facility to learn the circumstances of the

discharge. If the requirements to open a case are met, the Ombudsman will initiate a new case. If not, the Ombudsman will complete a program activity.

- E. If an appeal is filed and the Ombudsman's assistance has been requested, he/she may be present at the hearing. Refer to Ombudsman Policy 11 regarding Participation in Administrative Proceedings.

I. State Law

A. Nursing Facilities: Involuntary Discharge or Transfer

Iowa Administrative Code Chapter 58.40(1)

A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay except for Title 19, by reason of negative action by the Iowa department of social services; and by reason of negative action by the professional standards review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A (Medicaid), or because the resident's source of payment is changing from private support to payment under chapter 249A.

Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 day in advance of the proposed transfer or discharge. The 30-day requirement shall not apply if...1. An emergency; 2. Subsequently agreed to by the resident or the resident's responsible party; or 3. a result of a final, nonappealable decision by the department of social services or the professional standards review organization.

Pursuant to Iowa Administrative Code 58.40 (1) (d) (3), the NF notice shall contain all of the following information:

- (1) The stated reason for the proposed transfer or discharge.
- (2) The effective date of the proposed transfer or discharge.
- (3) A statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. To request a hearing or receive further information, call the department at (515) 281-4115 or you may write to the department to the attention of: Administrator, Division of

Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.”

A request for a hearing under 58.40(1) (d) (3) shall stay a transfer or discharge pending hearing or appeal decision.

(See policy [Omb-11](#) for Long-Term Care Ombudsman Participation in Administrative Proceedings and Internal Appeals Process)

B. Residential Care Facilities: Involuntary Discharge or Transfer

Iowa Administrative Code 57.36

A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident’s welfare or that of other residents; for nonpayment for the resident’s stay except for Title 19.

Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 day in advance of the proposed transfer or discharge. The 30-day requirement shall not apply if...1. An emergency or 2. Subsequently agreed to by the resident or the resident’s responsible party.

Pursuant to Iowa Administrative Code 57.36(1) (d), the RCF notice shall contain all of the following information:

- (1) The stated reason for the proposed transfer or discharge.
- (2) The effective date of the proposed transfer or discharge.
- (3) A statement in not less than 12-point type (elite), which reads: “You have a right to appeal the facility’s decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals (hereinafter referred to as “department”) within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. To request a hearing or receive further information, call the department at (515) 281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.”

A request for a hearing under 57.36(1) (d) (3) shall stay a transfer or discharge pending hearing or appeal decision

(See policy [Omb-11](#) for Long-Term Care Ombudsman Participation in Administrative Proceedings and Internal Appeals Process)

C. Assisted Living Program: Involuntary Discharge or Transfer

481—69.24(231C) Involuntary transfer from the program.

69.24(1) *Program initiation of transfer.* If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

- a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.
- b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.
- c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.
- d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

II. Federal law—Admission, Transfer and Discharge Rights

- A. 42 CFR 483.12 (a) (1) Transfer and Discharge Definition
- B. 42 CFR 483.12 (a) (2) Transfer and Discharge Requirements. F-Tag 201
- C. 42 CFR 483.12 (a) (3) Documentation, F-Tag 202
- D. 42 CFR 483.12 (a) (4) Notice Before Transfer, F-Tag 203
- E. 42 CFR 483.12 (a) (5) Timing of the Notice
- F. 42 CFR 483.12 (a) (6) Contents of the Notice
- G. 42 CFR 483.12 (a) (7) Orientation for Transfer or Discharge, F-Tag 204.

§483.12(a) (6) Contents of the notice:

The written notice specified in paragraph (a) (4) of this section must include the following:

- (i) The reason for transfer or discharge;
- (ii) The effective date of transfer or discharge;
- (iii) The location to which the resident is transferred or discharged;
- (iv) A statement that the resident has the right to appeal the action to the State;
- (v) The name, address and telephone number of the State long term care ombudsman;
- (vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

Attachment B-1: Facility Checklist

(Go back to policy [Omb-8](#))

Facility Name: _____ Date: _____ Time spent in facility: _____
 Volunteer Name: _____ Facility contact: _____ Present? Y/N

Facility		
1.	Is the current Ombudsman poster visibly posted? Is the information correct?	
2.	Are hallways free of obstacles (e.g., chairs, laundry carts, equipment)? Are exits blocked?	
3.	Are floors clean? If wet, are floors clearly marked?	
4.	Are there noticeable odors (e.g., cleaning supplies, cover-ups, body odors)?	
5.	Is the temperature comfortable throughout the facility?	
6.	Is there a telephone accessible to residents (for private use)?	
7.	Are personal charts/information left out in public areas?	
8.	Is the facility decorated? Seasonally appropriate? Are decorations secured to walls? Is "TODAY" clearly identified?	
9.	Are activities: posted and legibly written? Appropriate? Actually happening? Scheduled daytime/evenings?	
10.	Is there a Resident Council? Are notifications visibly posted for: Resident Council meetings? Family Council meetings?	
Residents		
11.	Residents' attire appropriate for time of day/year, temperature? Are clothes clean and in good repair fit properly?	
12.	Is residents' hair clean, combed and age/culturally appropriate? Are residents' fingernails clean and groomed?	
13.	Are residents' eyeglasses clean, intact, and available?	
14.	Are dentures clean and available? Is mouth odor evident?	
15.	Is body odor noticeable?	
16.	Are residents positioned properly in chairs, beds, etc.? Are they slouched or slumped?	
17.	Are there any visible marks (e.g., bruises, scratches, bandages)?	
18.	Are residents restrained from making voluntary movements? Are restraints used? How many?	
Residents' Rooms		
19.	Is the room clean? Well lit? Odor free? Safe? Is room personalized, decorated?	
20.	Is the call button accessible?	
21.	Is the room temperature comfortable for the resident?	

22.	Are liquid refreshments easily accessible (esp. water)?	
23.	Does the resident have an activity schedule, know activities are available and participate in activities?	
24.	Is the bathroom clean, odor free, and safe?	
25.	Is personal information lying out in the open (e.g., charts, weight)?	
26.	If eating in the room, is it by residents' choice? Is the food easy to reach?	
Food		
27.	Do residents: appear to enjoy meals? Leave portions untouched? Have a choice of where to eat? Complain about the food? (e.g., amount, taste, temperature)?	
28.	Is the current menu posted? Is there an alternate menu? Is alternate choice made available to residents? Is food served as menu states? Are hot foods hot, cold foods cold?	
29.	Does the facility allow choice of where to eat? Follow through with the request?	
30.	Is the dining area a comfortable and relaxing place?	
31.	Are meals and snacks served at appropriate times?	
Privacy and Respect		
32.	Does staff knock prior to entering residents' rooms? Identify themselves? Wait for response? Wear nametags?	
33.	Does staff respond to calls for assistance in a timely manner (under 15 minutes)?	
34.	Does staff communicate with residents who are hearing impaired, visually impaired or non-English speaking?	
35.	Are cubicle curtains/doors closed during "cares"?	
36.	Is staff courteous and respectful to residents? Do they use condescending speech or baby talk?	
37.	Does staff display anger/frustration? Appear demanding? Talk about residents directly in front of them?	
38.	Does staff interact in general or just go about their job?	
39.	Does administrator appear to know/interact with residents? Do residents appear to know the administrator?	

Resident Visits and Comments
Resident #1
Resident #2
Resident #3
Resident #4
Resident #5
Resident #6
Resident #7
Resident #8
Additional Comments

Attachment B-2: Observation Tool

(Go back to policy [Omb-8](#))

This tool is meant to help you make monitoring visits productive. It is not reasonable to observe each item on each visit. You may choose one or more sections to focus on during a visit. This page may be copied and carried with you to help with observations and your note taking.

Entering the facility

- Facility grounds are free of litter and weeds
- Lawn and landscaping are neatly trimmed
- Sidewalks and driveway are free of big cracks
- Ashtrays in smoking area are kept empty
- Facility appears clean
- Facility is odor free
- Windows are clean
- Hallways are clear of obstructions (one side of the hall should be free from obstructions or barriers)
- Floors are clean and not sticky, dirty, or slippery

Entry way (prominent place)

- Facility license is posted in a public area
- Telephone number for the Ombudsman, DIA, police, Medicare fraud posted in conspicuous places in the facility
- Resident's Rights clearly posted
- Text of 135C is posted
- Last survey prominently posted
- Current list of the Resident Advocate volunteers is clearly posted

Living Environment

- There is an area where residents can visit with friends or family
- Furniture in public areas free of food spills and odors
- There are signs to clearly direct residents or visitors to their destination

Residents' rooms

- Call lights are within reach
- Call lights are answered within 15 minutes
- Resident rooms are clean, attractive, personalized and pleasant
- Bedside tables are clean
- Each resident's room has adequate light
- Lighting can adjusted by each individual resident
- Adequate closet and storage space is available for personal items
- Seating is available for visitors
- Fresh water available and within reach

Bathrooms

- Bathrooms are clean and well maintained
- Bathrooms have adequate lighting
- Grab bars are installed in each bathroom
- Soap dispenser is full
- Paper towels and toilet paper are stocked
- Gloves are available for staff

Activities

- Activity program meets the needs of the residents
- Activity calendar is clearly posted in the facility and is kept up to date
- Staff reminds residents of activities and participation is encouraged
- Staff prepares each resident for activities by helping with proper clothing, grooming and personal needs
- Activities include individual one-on-one activities, small and large group activities, community outings, promote conversation and social interaction
- Activities are individualized to promote a sense of normalcy and well-being
- Families are invited and encouraged to participate in activities
- Activities are adapted for different levels of ability and mental status
- Snacks and beverages are offered at each activity

Dining

- Dining room is clean and attractive
- Dining room furnishings are clean and odor free
- Dining room chairs are clean (including under the arms)
- Residents report adequate staff is available to assist during meal times
- Arrangements are made when a resident has special visitors for a meal
- Are residents already seated in the dining room?
- Is the dining area clean? Are table tops cleaned off? Floors clean?
- All staff in the kitchen should wear clean aprons and a hairnet
- Staff should assist the resident with personal needs prior to taking him/her to the dining room? (Change incontinent brief, assist to the bathroom)
- A resident should be asked if they would like to be taken to the dining room
- Residents should have time to wash their face and hands prior to each meal
- Is the dining room open for an extended period so each resident can eat at a preferred time?
- Once seated in the dining room the staff should take a minute to make the resident comfortable
- The arms of wheelchairs should fit **under** the table so the resident can get close enough to the table to eat, or each resident should be transferred to a dining room chair
- Residents should be served very soon after arriving in the dining room
- Beverages should be served immediately prior to the meal time and replenished as needed
- When residents are taken to the dining room more than 15 minutes prior to the meal service, an activity or entertainment should be offered
- Draw a diagram of the dining room
- Mark the exact time in your notes
- Select a number of people to observe
- Mark their seats on your chart
- Next to the seat, indicate the exact time they entered the dining room, and the manner in which they arrived. (Escorted in a wheelchair by staff, walked in independently, and walked in with assistance of staff)
- Indicate the exact time he/she is served the meal
- Indicate the exact time he/she is able to start eating. (did staff open cartons, etc. upon delivery, or are trays delivered and assistance provided later)
- Staff should not touch the food of a resident with bare hands
- If staff are wearing gloves and have touched other items, they should not touch the food without clean gloves
- Residents may eat in their room if they desire. Some staff members should remain on the floor to answer call lights and assist those eating in their rooms. All other staff members should be in the dining room
- Substitute foods should be offered to anyone requesting an alternate choice, and to anyone not eating the foods served

Dining

- Staff should immediately assist a resident when the meal is served so that the foods stay at the correct temperature
- Staff should prompt residents who do not appear to be eating
- Walk through the dining room and make some comments to residents like “It sure smells good in here. Does the food taste as good as it smells?” Document your responses
- When finished eating, residents should be given time to wash their face and hands.
- Look at the plate when a resident finishes the meal. How much did this person eat? Does the staff seem concerned? If you know this resident, does he/she appear to have lost weight?
- Does the nurse pass supplemental liquids prior to a meal? If so, is the resident too full to eat?
- Staff should always double check to make certain every resident is in the dining room and no one is forgotten
- Clothing with food spills should be replaced (exception: a person with dementia or a person in severe pain may be better left alone)
- Residents should receive assistance with personal needs following the meal
- Residents should be allowed enough time to eat, and should not be rushed from the dining room, nor should a resident be left for long periods of time following the meal
- Residents should not be lined up in a hallway waiting for assistance
- Staff members who feed a resident should identify foods and beverages before placing it in the residents’ mouth

Dietary

- Each meal is pleasing to the eye
- Hot food is hot and cold food is cold
- Residents report being satisfied following the meal
- Selections of beverages made available
- Assistance is provided immediately as needed
- Alternate choices and substitute menu items are always available upon request and are offered to those not eating the meal items served
- Menus are clearly posted and are up to date
- Meals and snacks are served at the times posted
- Snacks are available upon resident request

Quality of life

- Residents are not left sitting unattended in common areas for a long periods of time
- Residents in wheelchairs located so they can request assistance
- There is a system in place for residents sitting in common areas to call staff
- Cushions are used to help residents sit/lay comfortably
- Residents report being active and involved in the daily life of the facility
- Adaptive equipment is conveniently located, clean and appears to be in good condition
- Temperature is comfortable for each individual resident
- Residents are well groomed, shaved, hair is combed, eyeglasses are clean and appear to fit comfortably
- Teeth and dentures appear clean and comfortable
- Residents clothing is clean, dry and appropriate
- Residents appear calm, content and comfortable in their surroundings
- Residents receive personal mail unopened
- Residents have access to a telephone where they can have private conversations
- Residents report that individual spiritual, emotional, social needs are met
- Individual TVs and radios are tuned to the residents' choice of stations
- TVs and radios in common areas are tuned to stations suitable for residents
- Visiting hours are not restricted on a routine basis
- Visitors are welcomed

Staff

- Staff appears clean, neat and odor free
- Residents report that staff is kind and gentle
- Staff appears comfortable with residents, and converses easily with them
- Staff members can identify individual residents
- Staff is visible and available
- Staff can be easily identified by their uniforms
- Staff wears name tags or identifying information
- Staff appears happy and friendly
- Staff is respectful to residents, visitors and co-workers

CCDI/special care units

- A variety of activities are offered frequently throughout the day and evening
- Residents with dementia receive individual assistance when participating in activities
- There is a system in place to assess residents with dementia (since they may not remember to use a call light or get a drink of water)
- Beverages and snacks are offered frequently throughout the day and evening
- Residents rooms are individualized and personal
- A variety of signage is used to help residents find their way around the unit
- Residents are encouraged to participate in facility activities
- Staff have a variety of techniques to assist residents with dementia
- The unit is quiet without unnecessary traffic or noise
- Staff is easily identified
- Residents are treated with dignity, courtesy and respect
- Prompting and cueing is done quietly and discreetly
- Residents are encouraged to participate in frequent social activities
- Meals are served according to each individual needs (each food in a separate bowl, plates are a contrasting color, choices are offered, finger food provided to those who cannot sit long enough to eat)
- Staff is available to assist individual residents with meal time challenges
- Residents are encouraged to eat

Attachment C: DIA complaint form

(Go to policy [Omb-4](#) or see next page for usable form)



TO: Health Facilities Division
Iowa Department of Inspections and Appeals

FROM: _____, Local Long-Term Care Ombudsman

Cc: Deanna Clingan-Fischer, JD
State Long-Term Care Ombudsman

DATE: _____

Facility name and location:

Resident(s) name: _____

Complaint(s):

Attachment D: Physician POA statement

(Go back to policy [Omb- 12](#) or see next page for usable form)



**Physician's Recommendation for Implementation of
Durable Power of Attorney for Health Care**

Patient Name: _____

DOB: _____

Dr. Name: _____

Address: _____

Telephone Number: _____

Is patient able to make health care decisions for him/herself?

Yes ☐ Yes, with limitations ☐ No ☐

If YES, with limitations, what health care decisions can the patient make for him/herself?

Would you recommend that the existing durable power of attorney for health care take effect?

Yes ☐ No ☐

Physician Signature

Date

Attachment E: Conflict of Interest Form

(Go back to policy [Omb-5](#) or see next page for usable form)

**Local Long-Term Care Ombudsman
Conflict of Interest Form**

1. Do you currently work, or have you previously worked for a long-term care facility, assisted living program, or elder group home or participated in the management, ownership, or operation of that entity within the previous year? ☐ Yes ☐ No

If yes, please provide the name of the entity, the position held, and the duties associated with this role:

2. Do any of your immediate* family members currently work, or have previously worked for a long-term care facility, assisted living program or elder group home or participated in the management, ownership, or operation of that entity within the previous year? ☐ Yes ☐ No

If yes, please provide the name of the entity, the position held, and the duties associated with this role:

3. Have you owned or had a financial interest in any existing or proposed long-term care facility, assisted living program or elder group home in the past two years? ☐ Yes ☐ No

If yes, please explain:

4. Have any of your immediate family members owned or had a financial interest in any existing or proposed long-term care facility, assisted living program, or elder group home in the past two years? ☐ Yes ☐ No If yes, please explain:

5. Have you been involved in the licensing or certification of a long-term care facility, assisted living program or elder group home in the past two years? ☐ Yes ☐ No

If yes, please explain:

6. Have any of your immediate family members been involved in the licensing or certification of a long-term care facility, assisted living program or elder group home in the past two years?

☐ Yes ☐ No If yes, please explain:

7. Have you received any form of payment, gift, or gratuity from a long-term care facility, assisted living program or elder group home owner, operator, resident, tenant, or resident/tenant representative in the past two years? ☐ Yes ☐ No If yes, please explain:

8. Have any of your immediate family members received any form of payment, gift, or gratuity from a long-term care facility, assisted living program or elder group home owner, operator, resident, tenant, or resident/tenant representative in the past two years? ☐ Yes ☐ No If yes, please explain:

9. In the past two years, have you provided services to residents of a facility or tenants of an assisted living or elder group home in which a member of your immediate family resides? ☐ Yes ☐ No If yes, please explain:

10. In the past two years, have any of your immediate family members provided services to residents of a facility or tenants of an assisted living or elder group home in which a member of your immediate family resides? ☐ Yes ☐ No If yes, please explain:

11. In the past two years, have you participated in activities which could negatively affect your ability to serve residents/tenants or which are likely to create a perception that your primary interest is other than as an advocate of the resident/tenant? ☐ Yes ☐ No

If yes, please explain:

12. In the past two years, have any of your immediate family members participated in activities which could negatively affect your ability to serve residents/tenants or which are likely to create a perception that your primary interest is other than as an advocate of the resident/tenant?

☐ Yes ☐ No If yes, please explain:

13. In the past two years, have you resided in a facility, assisted living or elder group home?

☐ Yes ☐ No If yes, please provide the name and location of the entity:

14. In the past two years, have any of your immediate family members or friends resided in a facility, assisted living or elder group home? ☐ Yes ☐ No If yes, please provide the name and location of the entity:

15. Do you have part-time employment that would create the perception that you could not advocate for residents or tenants? ☐ Yes ☐ No

If yes, please provide the name and location of your employer and include your job title and responsibilities.

16. Have you had a founded child or dependent adult abuse report against you since your initial employment with the state? ☐ Yes ☐ No If yes, please provide additional information:

17. Have you had a criminal conviction against you since your initial employment with the state?

☐ Yes ☐ No If yes, please provide additional information:

Name (printed): _____

Signature: _____

Date: _____

Reviewed on: _____

Reviewed on: _____

Reviewed on: _____

**Please note when answering the questions: Immediate family includes father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepsister, stepchild, half-sister, half-brother, grandparent, or grandchild.*

Attachment F: Ombudsman Access and Interference Penalties

(Go back to policy [Omb-14](#))

Statute References: 42 U.S.C. 3058g
Iowa Code 231.42

42 U.S.C. 3058g (OAA 712(b))

(b) PROCEDURES FOR ACCESS.—

- (1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—
- (A) access to long-term care facilities and residents;
 - (B)(i) appropriate access to review the medical and social records of a resident, if—
 - (I) the representative (Local Ombudsman) has the permission of the resident, or the legal representative of the resident; or
 - (II) the resident is unable to consent to the review and has no legal representative; or
 - (ii) access to the records as is necessary to investigate a complaint if—
 - (I) a legal guardian of the resident refuses to give the permission;
 - (II) a representative (Local Ombudsman) of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
 - (III) the representative (Local Ombudsman) obtains the approval of the (State) Ombudsman;
 - (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and
 - (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.
- (2) PROCEDURES.—The State agency shall establish procedures to ensure the access described in paragraph (1).

Iowa Code 231.42

5. *Access to long-term care facility, assisted living program, or elder group home and residents and tenants.* The state or a local long-term care ombudsman or a certified volunteer may enter any long-term care facility, assisted living program, or elder group home at any time with or without prior notice or complaint and shall be granted access to residents and tenants at all times for the purpose of carrying out the duties specified in this section. As used in this section, “access” means the right to do all of the following:

- a. Enter any long-term care facility, assisted living program, or elder group home and provide identification.
- b. Seek consent from the resident, tenant, or legal representative to communicate privately and without restriction with any resident, tenant, or legal representative.
- c. Communicate privately and without restriction with any resident, tenant, or legal representative.
- d. Review the medical, social, or other records of a resident or tenant.

- e. Observe all resident or tenant areas of a long-term care facility, assisted living program, or elder group home except the living area of any resident or tenant who protests the observation.
6. *Access to medical and social records.*
- a. The state or a local long-term care ombudsman shall have access to the medical and social records of a resident or tenant if any of the following applies:
 - (1) The state or local long-term care ombudsman or certified volunteer long-term care ombudsman has permission of the resident or tenant, or the legal representative of the resident or tenant,
 - (2) The resident or tenant is unable to consent to the access and has no legal representative,
 - (3) Access to the records is necessary to investigate a complaint if all of the following apply:
 - (a) A legal representative of the resident or tenant refuses to give the permission.
 - (b) The state or local long-term care ombudsman or a certified volunteer long-term care ombudsman has reasonable cause to believe that the legal representative is not acting in the best interest of the resident or tenant.
 - (c) The local long-term care ombudsman or a certified volunteer long-term care ombudsman obtains the approval of the state long-term care ombudsman.
 - b. Records may be reproduced by the state or a local long-term care ombudsman.
 - c. Upon request of the state or a local long-term care ombudsman, a long-term care facility, assisted living program, or elder group home shall provide the name, address, and telephone number of the legal representative or next of kin of any resident or tenant.
 - d. A long-term care facility, assisted living program, or elder group home or personnel of such a facility, program, or home who discloses records in compliance with this section and the procedures adopted pursuant to this section shall not be liable for such disclosure.
7. *Access to administrative record.*
- a. Pursuant to the federal Act, the state or a local long-term care ombudsman or a certified volunteer shall have access to the administrative records, policies, and documents of the long-term care facility, assisted living program, or elder group home, which are accessible to residents, tenants, or the general public.
 - b. Pursuant to the federal Act, the state or a local long-term care ombudsman or a certified volunteer shall have access to, and upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility, assisted living program, or elder group home.
8. *Interference prohibited – penalties.*
- a. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the work of the state or a local long-term care ombudsman or a certified volunteer

is subject to a penalty imposed by the director of not more than one thousand five hundred dollars for each violation. If the director imposes a penalty for a violation under this paragraph, no other state agency shall impose a penalty for the same interference violation. Any moneys collected pursuant to this subsection shall be deposited in the general fund of the state.

- b. The office of long-term care ombudsman shall adopt rules specifying procedures for notice and appeal of penalties imposed pursuant to this subsection.
 - c. The director, in consultation with the office of long-term care ombudsman, shall notify the county attorney of the county in which the long-term care facility, assisted living program, or elder group home is located, or the attorney general, of any violation of this subsection.
9. *Retaliation prohibited – penalties.* An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home shall not retaliate against any person for having filed a complaint with, or provided information to, the state or a local long-term care ombudsman or a certified volunteer. A person who retaliates or discriminates in violation of this subsection is guilty of a simple misdemeanor.