CHAPTER 9

OMBUDSMAN

**9.1.** **ESTABLISHMENT AND ADMINISTRATIVE REQUIREMENTS**

**Older American Act (OAA) Section 712(a)** Ombudsman. —The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

1. Designation.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.
2. Eligibility for Designation.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—
3. have demonstrated capability to carry out the responsibilities of the Office;
4. be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
5. in the case of the entities, be public or nonprofit private entities; and
6. meet such additional requirements as the Ombudsman may specify.

**OAA Section 712(e)**

Consultation. In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.

**OAA Section 712(i)**

Liability(i)The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

**OAA Section 712(j)**

1. Noninterference(j) The State shall—
2. Ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;
3. Prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
4. Provide for appropriate sanctions with respect to the interference, retaliation, and reprisals. (42 U.S.C. 3058g)

**Idaho Code (IC67-5009) Office of Ombudsman for the Elderly:**

The office of ombudsman for the elderly is hereby created within the commission. The administrator shall hire the state ombudsman for the elderly who shall be a person with the necessary educational background commensurate with the duties and responsibilities of the office of ombudsman and shall be a classified employee subject to the provisions of [chapter 53, title 67](http://legislature.idaho.gov/idstat/Title67/T67CH53.htm), Idaho Code.

1. The ombudsman may delegate to designated local ombudsmen any duties deemed necessary to carry out the purposes of the provisions of this section.
2. The ombudsman shall establish procedures for
3. Receiving and processing complaints,
4. Conducting investigations and reporting his findings.
5. He shall have jurisdiction to investigate administrative acts or omissions of long-term care facilities or state or county departments or agencies providing services to older people.
6. An administrative act of a long-term care facility or state or county department or agency may become an appropriate subject for the ombudsman to investigate under certain circumstances. For example, the ombudsman may investigate such an act if it might be contrary to law, unreasonable, unfair, oppressive, capricious or discriminatory.
7. The ombudsman may make a finding for an appropriate resolution to the subject matter of the investigation.

**Idaho Administrative Procedures Act (IDAPA 15.01.03)**

The Office shall designate an entity as a substate ombudsman. (7-1-98)

1. Designation of Authority.(031) Each AAA shall directly provide, through a contract agreement with the ICOA, a substate ombudsman program employing at least one (1) full-time substate ombudsman whose function shall be to carry out the duties of the Ombudsman for the Elderly Program.
2. AAAs I, II, IV, V and VI shall employ one (1) full-time substate ombudsman;
3. AAA III shall employ two (2) full-time substate ombudsmen.
4. An AAA may petition the ICOA in writing for a waiver of this requirement. (7-1-98)

2. Staffing**.** (021) Pursuant to the OAA, Section 712, in order to meet minimum requirements established for the position of substate ombudsman, each AAA shall seek applicants having the following qualifications. (7-1-98)

A. Minimum Qualifications. Any person hired to fill the position of substate ombudsman on or after July 1, 1998, shall have: (7-1-99)

1. A Bachelor’s degree or equivalent; (3-30-01)
2. Minimum of one (1) years’ experience working with the elderly; (7-1-98)
3. Ability to effectively communicate verbally and in writing; (7-1-98)
4. Knowledge of long-term care issues and resources; (7-1-98)
5. Demonstrated ability to interpret and apply relevant local, state and federal laws, rules, regulations, and guidelines; (7-1-98)
6. Demonstrated ability to work independently; (7-1-98)
7. Demonstrated skill in interviewing techniques; and (7-1-98)
8. Demonstrated ability to collect data, conduct interviews and to form conclusions. (7-1-98)

3. Hiring. (021)The Office shall be included in the process of interviewing and selecting applicants for the substate ombudsman position. The AAA shall make the final selection from the top three (3) applicants. (7-1-98)

4. Administrative Requirements(020)Each AAA substate ombudsman program shall meet all administrative requirements as cited in OAA, Section 712 (a), and Title 67, Chapter 50, Idaho Code, Section 67-5009, unless granted a waiver by the ICOA. (7-1-98)

1. **Travel Funds**. Each AAA shall provide travel funds for the substate ombudsman program to carry out activities related to complaint investigations. (7-1-98)
2. **Program Reviews**. Each AAA shall submit to a program review of substate ombudsman programs at reasonable intervals deemed necessary by the ICOA.
3. **Space.** Each AAA shall provide space assuring privacy for substate ombudsmen to hold confidential meetings.
4. **Supervision**. Substate ombudsmen shall operate under the direct supervision of the Office for all complaint handling activities and are considered subdivisions of the Office. (7-1-98)
5. **Forms**. All substate ombudsmen shall utilize standardized forms provided by the Office.

**9.2. ALLOTMENTS AND FUNDING**

**OAA Section 712(a)**

1. Area PlansProvide assurances that the area agency on aging, in carrying out the State Long-Term Care Ombudsman program under 307(a)(9) will expend not less than the total amount of funds appropriated under this Act and expended by the Agency in fiscal year 2000 in carrying out such a program under this title.
2. State PlansThe plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 712 and this title, and will expend for such purpose an amount that is not less than an amount expended by the State agency with funds received under this title for fiscal year 2000, and an amount that is not less than the amount expended by the State agency with funds received under title VII for fiscal year 2000.
3. Consumer Contributions, Cost sharing ExceptionThe State is not permitted to implement the cost sharing described in paragraph (1) for the following services:
	* + 1. Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services.
4. Minimum Allotments for Ombudsman and Elder Abuse Programs**.**

The State shall be allotted for a fiscal year, from the funds appropriated under section 702 and made available to carry out chapter 2, less than the amount allotted the State under section 304 in fiscal year 2000 to carry out the State Long-Term Care Ombudsman program under title III.

1. State Long-Term Care Ombudsman Program

In General.—In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this section—

1. Establish and operate an Office of the State Long-Term Care Ombudsman; and
2. Carry out through the Office a State Long-Term Care Ombudsman program.

**9.3. REVOCATION/TERMINATION**

**IDAPA15.01.03**

1. Grounds for Revocation or Termination. (031) In revoking a designated substate ombudsman program, the ICOA shall provide due process in accordance with applicable law and IDAPA 04.11.01, Section 000, et seq., “Idaho Rules of Administrative Procedure of the Attorney General.” (7-1-98)

1. Following termination of a substate ombudsman program, the ICOA shall perform the duties of the substate program. (7-1-98)
2. Following termination of a substate ombudsman program, the ICOA shall withdraw funding for the substate program for the remainder of the funding period. (7-1-98)
3. An AAAs appeal of the ICOA’s termination of its substate ombudsman program shall be governed by the Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded under Title III, OAA. (7-1-98)

**9.4 DUTIES**

**OAA Section 712(a)**

Functions-The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

1. Identify, investigate, and resolve complaints that
2. Are made by, or on behalf of, residents; and
3. Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—
4. Providers, or representatives of providers, of long-term care services;

Public agencies; or

1. Health and social service agencies;
2. Provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;
3. Inform the residents about means of obtaining services provided by providers or agencies described in section 712(a)subparagraph (A)(ii) or services described in subparagraph;
4. Ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;
5. Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
6. Provide administrative and technical assistance to entities designated under section 712(a)(5) to assist the entities in participating in the program;
7. Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;
8. Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and
9. Facilitate public comment on the laws, regulations, policies, and actions;

D. Provide for training representatives of the Office;

E. Promote the development of citizen organizations, to participate in the program

F. Provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

G. Carry out such other activities as the Assistant Secretary determines to be appropriate.

**IC67-5009**

The ombudsman shall be responsible for, receiving, investigating and resolving or closing complaints made by or on behalf of residents of long-term care facilities or persons aged sixty (60) years or older living in the community.

**9.5 Contracts and Arrangements**

**OAA Section 712(a)**

1. In General.—Except as provided in section 712(a)subparagraph (B) the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.
2. Licensing and Certification Organizations; Associations.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—
3. an agency or organization that is responsible for licensing or certifying long-term care services in the State; or
4. an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals

**OAA Section 712**

**Administration** (h) The State agency shall require the Office to—

1. Coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—
2. Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000[[16]](http://www.aoa.gov/AoARoot/AoA_Programs/OAA/oaa_full.asp#_ftn16); and
3. The Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);
4. Coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;
5. Coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and
6. Permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7)

**IDAPA 15.01.03**

1. Adult Protection and Ombudsman Coordination(.020) Each AAA shall ensure that Adult Protection staff and the substate ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. (7-1-98)
2. State Agreements(.020) All substate programs shall honor and carry out state-level agreements between the Office and other agencies of government.

**9.6 POLICIES AND PROCEDURES**

**OAA Section 712(a)**

1. In General.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.
2. Policies.—In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.
3. Confidentiality and Disclosure.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

**OAA Section 712(b)**

Procedures. The State agency shall establish procedures to ensure the access described in section 712(b)(1)

**OAA Section 712(d)**

1. Disclosure - In General.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in section 712(b)(1) or (c).
2. Identity of Complainant or Resident.—The procedures described in section 712(b)(1) shall—
3. Provide that, subject to section 712(b)(B), the files and records described in section 712(b)(1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and
4. Prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—
5. The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;
6. The complainant or resident gives consent orally; and
7. The consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
8. The disclosure is required by court order

**IC 67-5009**

The ombudsman shall establish procedures for receiving and processing complaints, conducting investigations and reporting his findings.

**IDAPA 15.01.03**.

* + 1. Procedures.(020) All substate ombudsmen shall follow procedures outlined in the Ombudsman for the Elderly Procedures Manual

**9.7 COMPLAINT INVESTIGATION PROCESS**

 **IC 67-5009**

1. The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under this section.
2. When the ombudsman investigates a complaint, he shall notify the complainant, if any, of the investigation and shall also notify the long-term care facility or the state or county department or agency affected by the investigation of his intent to investigate.
3. However, if no investigation takes place, he shall inform the complainant of the reasons therefor. Records obtained by the ombudsman shall be subject to disclosure according to [chapter 3, title 9](http://legislature.idaho.gov/idstat/Title9/T9CH3.htm), Idaho Code.
4. In an investigation of any complaint or administrative act of any long-term care facility or state or county department or agency providing services to older people, the ombudsman may undertake, but not be limited to, any of the following actions:
5. Make the necessary inquiries and obtain such information he deems necessary.
6. Hold private hearings.
7. Enter during regular business hours, a long-term care facility or state or county department or agency's premises
8. Following the investigation and upon his determination that particular subject matter should be further considered by the long-term care facility or state or county department or agency, an administrative act should be modified or canceled, a statute or regulation on which an administrative act is based should be altered, reasons should be given for an administrative act, or some other action should be taken by a long-term care facility or state or county department or agency, he shall report his opinions and recommendations to the respective parties.
9. The ombudsman may request the parties affected by such opinions or recommendations to notify him within the specified time of any action taken by such parties on his recommendation.
10. Following an investigation, the ombudsman shall consult with the particular parties before issuing any opinion or recommendation that is critical to such parties.
11. The ombudsman shall notify the complainant in writing within a reasonable time from the date the investigation is terminated of any actions taken by him and the long-term care facility, or state or county department or agency to resolve any issues raised by the complaint.
12. Nothing in this section shall be construed to be a limitation of the powers and responsibilities assigned by law to other state or county departments or agencies.
	* 1. Good Faith Performance. No representative of the office shall be liable for the good faith performance of official duties, and willful interference with representatives of the office is unlawful.
		2. Facility Prohibitions. Long-term care facilities are prohibited from reprisals or retaliation against a resident or employee filing a complaint with, or furnishing information to, the office.
13. No representative of the Office shall be liable for the good faith performance of official duties, and willful interference with representatives of the Office is unlawful. Long-term care facilities are prohibited from reprisals or retaliation against a resident or employee filing a complaint with, or furnishing information to, the Office.

**IDAPA 15.01.03**

1. Handling of Complaints(032)

The Ombudsman for the Elderly Program has jurisdiction to accept, identify, investigate, and resolve complaints made by, or on behalf of, persons aged sixty (60) or older, living in the community or in long-term care facilities. The Office and the substate ombudsmen shall ensure that persons aged sixty (60) or older have regular and timely access to services provided through the Office. The Ombudsman for the Elderly Program shall represent the interests of older persons before governmental agencies and shall seek to protect the health, safety, welfare and rights of older persons. (7-1-98)

1. Non-Jurisdictional Complaints**.** Substate ombudsmen may respond to complaints made by or on behalf of under age sixty (60) long-term care residents where such action will:
2. Benefit other residents; or
3. Provide the only viable avenue of assistance available to the complainant
4. Conflict of Interest**.** Substate ombudsmen shall refer to the Office any complaint involving the AAA staff or contractors. (7-1-98)
5. Complaints**.** Complaints concerning substate ombudsmen, or relative to a substate ombudsman’s official duties, shall be directly referred to the ICOA. The ICOA, upon completing an investigation of such complaint, shall provide findings and recommendations to the AAA. (7-1-98)
6. Guardianship. The substate ombudsmen shall not serve as an ex-officio or appointed member of any Board of Community Guardian, nor file an affidavit to the court for guardianship. (7-1-99)
7. Court Visitor. The substate ombudsmen shall not act as court visitor in any guardianship/ conservatorship proceeding concerning a past or current client. (7-1-98)
8. Legal Documents. Substate ombudsmen shall not, in their capacity as ombudsmen, act as a notary or a witness of signatures for legal documents. (7-1-98)

**9.8 VISITATION AND ACCESS**

**OAA Section 712(b)**

In General**.**—The State shall ensure that representatives of the Office shall have:

1. Access to long-term care facilities and residents;
2. Appropriate access to review the medical and social records of a resident, if—
3. the representative has the permission of the resident, or the legal representative of the resident; or
4. the resident is unable to consent to the review and has no legal representative; or

B. Access to the records as is necessary to investigate a complaint if—

1. a legal guardian of the resident refuses to give the permission;
2. a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
3. the representative obtains the approval of the 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.

**IDAPA 15.01.03**

1. Access(.033) The Office shall ensure that representatives of the Office have access to long-term care facilities and residents as well as appropriate access to medical and social records needed to investigate complaints. (7-1-98)
2. Visitation. For visitation purposes, substate ombudsmen shall have access to long-term care facilities during regular business hours. Visiting substate ombudsmen shall: (7-1-98)
3. Notify the person in charge upon entering the facility; (7-1-98)
4. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; and (7-1-99)
5. Be allowed to communicate privately and without restriction with any resident who consents to the communication. (7-1-98)
6. Investigation. Substate ombudsmen shall have access to facilities for the purpose of conducting investigations. A substate ombudsman conducting an investigation shall: (7-1-98)
7. Notify the person in charge upon entering the facility; (7-1-98)
8. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; (7-1-98)
9. Seek out residents who consent to communicate privately; (7-1-98)
10. Communicate privately and without restriction with any resident who consents to the communication; and (7-1-98)
11. Inspect a resident’s records under conditions set forth in the OAA, Section 712. (7-1-98)
12. Privacy. Substate ombudsmen shall have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. See Section 67-5009, Idaho Code.

**9.9 CONFLICT OF INTEREST**

**OAA Section 712(a)**

Eligibility for Designation.

1. Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall:
	* + 1. Be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves.

**OAA Section 712(f)**

 Conflict of Interest.—The State agency shall—

1. ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;
2. ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;
3. ensure that the Ombudsman—
	1. does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;
	2. does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
	3. is not employed by, or participating in the management of, a long-term care facility; and
	4. does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; and

4. establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in section 712(f)(1) and (2), and to identify and eliminate the relationships described in section 712(f)(A) through (D) of paragraph (3), including such mechanisms as—

1. the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and
2. the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

 **IDAPA 15.01.03.**

1. Conflict of Interest. (.020) The AAAs shall ensure that the substate ombudsmen shall not be part of an organization which: (7-1-98)
2. Is responsible for licensing and certifying skilled nursing or residential care facilities under IDAPA 16.03.22, “Rules for Licensed Residential and Assisted Living Facilities in Idaho”; (7-1-98)
3. Provides skilled nursing or living care or is an association of such a provider; or (7-1-98)
4. May impair the ability of the substate ombudsmen to investigate and resolve complaints objectively and independently. (7-1-98)

**9.10 CONFIDENTIALITY AND DISCLOSURE**

**OAA Section 712(d)**

1. Identity of Complainant or Resident.—The procedures described in section 712(d)(1) shall—

1. provide that, subject to section 712(d)(2)(B), the files and records described in section 712(d)(1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and
2. prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—
3. The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;
4. The complainant or resident gives consent orally; and
5. The consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
6. The disclosure is required by court order.

**IC 67-5009**

Records obtained by the ombudsman shall be subject to disclosure according to [chapter 3, title 9](http://legislature.idaho.gov/idstat/Title9/T9CH3.htm), Idaho Code.

**IDAPA 15.01.03**

1. Written Consent(.041)The Office shall ensure appropriate access to review medical and social records of a resident. (See OAA, Section 712) (7-1-98)
2. **Resident Written Consent**. Access to confidential records requires the written consent of the resident or legal representative. (7-1-98)
3. **Lack of Consent**. If the client is unable to provide written or oral consent, or the legal representative is unavailable to provide consent, the substate ombudsmen, with approval of the Office may inspect available client records, including medical records that are necessary for investigation of a complaint. (7-1-98)
4. **Consent Refused**. If a substate ombudsman has been refused access to records by legal representative but has reasonable cause to believe that the legal representative is not acting in the best interest of the client, the substate ombudsman may, with the approval of the Office, inspect client records, including medical records. (7-1-98)

2. Requirements for Informing Client or Resident. The substate ombudsman shall inform the complainant or resident regarding: (7-1-98)

1. Who will receive the information; (7-1-98)
2. What information will be disclosed; and (7-1-98)
3. The purpose for which the information is being disclosed.

3**.** Confidentiality (.042)

1. The Office shall be the custodian of all substate ombudsman program records including, but not limited to, records and files containing personal information relative to complainants and residents of long-term care facilities. Requests for release of confidential information shall be submitted to the Office for approval or denial. Release of information shall be granted pursuant to OAA, Section 721(e). (7-1-98)

B**. Storage of Records**. Client records shall be maintained in locked storage. Case records inactive for two (2) years or longer may be expunged. As required by law, release of these records shall be limited to persons authorized by the Office. (7-1-98)

C. **Performance Evaluations**. For performance evaluation purposes, direct supervisors shall have access to client files maintained by substate ombudsmen. (7-1-98)

D. **Confidential Records**. Records to be safeguarded include, but are not limited to, long-term care and community-based complaint files including: (7-1-98)

1. Notes of interviews with complainants and clients or collateral contacts; (7-1-98)
2. All copies of residents’ medical records or diagnoses; (7-1-98)
3. All records relevant to complaint investigations; (7-1-98)
4. All memoranda generated by the Office or by another agency office during the evaluation and resolution of a complaint; (7-1-98)
5. All photographs, video tapes, tape recordings, etc. pertaining to complaint investigation; (7-1-98)
6. All memoranda or letters generated during evaluation or resolution of a complaint; (7-1-98)
7. Written documentation that parties affected by ombudsman opinions or recommendations have been notified; and (7-1-98)
8. Information containing unverified complaints about long-term care facility owners, administrators, staff or other persons involved in the long-term care system or in other service programs. (7-1-98)

4. Request for Anonymity (.042) The ombudsman shall honor a resident’s or complainant’s request to remain anonymous. If investigation of a complaint requires that a resident’s or complainant’s name be divulged in order for the investigation to proceed, the ombudsman shall so inform the resident or complainant. If the resident or complainant insists on maintaining anonymity, the ombudsman may terminate the investigation. (7-1-98)

5. Disclosure(.043) The Office shall be the only entity having authority to authorize disclosure of substate ombudsmen files maintained by the program except when the ICOA is subpoenaed by the court to disclose pertinent records. (7-1-98)

**9.11 LEGAL COUNSEL**

**OAA Section 712(g)**

1. The State agency shall ensure that adequate legal counsel is available, and is able, without conflict of interest, to—
	1. Provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and
	2. Assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

2. Legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and

3. The Office pursues administrative, legal, and other appropriate remedies on behalf of residents

**9.12 TRAINING/VOLUNTEERS**

**OAA Section 712(h)**

1. Not later than 1 year after the date of the enactment of this title, establish[[15]](http://www.aoa.gov/AoARoot/AoA_Programs/OAA/oaa_full.asp#_ftn15) procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

1. Specify a minimum number of hours of initial training;
2. Specify the content of the training, including training relating to—
3. Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;
4. investigative techniques; and
5. such other matters as the State determines to be appropriate; and

C. Specify an annual number of hours of in-service training for all designated representatives;

**OAA Section712(h)(5)**

* + - 1. Prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in section 712 subparagraphs (A) through (G) of subsection (a)(3) unless the representative—
	1. has received the training required under section 712(h) paragraph (4); and
	2. has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

**9.13 REPORTING**

**OAA Section 712(c)**

The State agency shall establish a statewide uniform reporting system to—

1. Collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and
2. Submit the data, on a regular basis, to—
3. The agency of the State responsible for licensing or certifying long-term care facilities in the State;
4. Other State and Federal entities that the Ombudsman determines to be appropriate;
5. The Assistant Secretary; and
6. The National Ombudsman Resource Center established in section 202(a)(21).

**OAA Section 712(h)**

Administration.The State agency shall require the Office to—

* 1. Prepare an annual report—
1. Describing the activities carried out by the Office in the year for which the report is prepared;
2. Containing and analyzing the data collected under subsection (c);
3. Evaluating the problems experienced by, and the complaints made by or on behalf of, residents;
4. Containing recommendations for—
5. improving quality of the care and life of the residents; and
6. protecting the health, safety, welfare, and rights of the residents;
7. Analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and
8. identifying barriers that prevent the optimal operation of the program; and
9. Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

2. Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

1. Provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—
	1. the problems and concerns of older individuals residing in long-term care facilities; and
	2. Recommendations related to the problems and concerns; and
2. Make available the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph

**IC67-5009**

The ombudsman, on December 1 of each year, shall submit to the governor, the speaker of the house, president of the senate, the department of health and welfare bureau of licensing and certification, the president of the Idaho hospital association and the president of the Idaho health care association a report of the activities of the ombudsman for the elderly during the prior fiscal year. This report shall include, but not be limited to, the number and general patterns of complaints received by the ombudsman, the action taken on such complaints, the results of such action, and any opinions or recommendations which further the state's capability in providing for statutory resolution of complaints.

**IDAPA 15.01.03**

Program Report (.020) All substate ombudsman programs shall comply with the ICOA’s reporting requirements. (7-1-98)

**9.14 ICOA/COMMISSION RESPONSIBILITIES.**

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| 1. Designate an entity as a substate ombudsman (OAA Sec. 712(a)(5))
2. Provide due process to the designated entity when revoking an ombudsman program (IDAPA 15.01.03.031)
3. Perform the duties of a terminated substate ombudsman program (IDAPA 15.01.03.031)
4. Withdraw funding from a terminated substate program for the remainder of the funding period (IDAPA 15.01.03.031)
5. Provide assurances that Idaho will expend appropriate funding for the Ombudsman program (OAA Sec. 315(a)(2) and OAA Sec. 703(a)(2)(C))
6. Provide a qualified State Ombudsman (OAA Sec. 712(a)(2) and IC 67-5009)
7. In planning and operating the program the state agency shall consider the views of area agencies on aging (OAA Sec.712(e))
8. Ensure that persons aged sixty (60) and older have regular and timely access to services provided through the Office. (OAA Sec. 712(a)(D) and IC 67-5009 and IDAPA 15.01.03.032)
9. Ensure that the Office provides direct supervision to all substate ombudsmen for all complaint handling activities and that they are subdivisions of the Office (OAA Sec. 712(a)(C) IC 67-5009 and IDAPA 15.01.03.020.03)
10. Ensure that the Office develops policies and procedures for designated programs of the Office to carry out the duties of the Ombudsman program (OAA Sec.712(a)(5)(A), IC 67-5009 and IDAPA 15.01.03.020.01)
11. Ensure that the Office develops policies and procedures regarding confidentiality and conflict of interest (OAA Sec. 712(a)(D)(ii) and (d)(1) and (f)(4) and IC 67-5009 and IDAPA 15.01.03.020.01)
12. Ensure that the Office develops policies and procedures for general ombudsman access

(OAA Sec. 712(b(2), IC 67-5009 and IDAPA 15.01.03.020.01) | 1. Ensure that the Office establishes and maintains a statewide reporting system (OAA Sec.712(h) and IC 67-5009)
2. Ensure that the Office establishes procedures for

disclosure of information and files maintained by the program (OAA Sec. 712(d) and IDAPA 15.01.03.043)1. Ensure that adequate legal counsel is provided (OAA Sec. 712(g)(A))
2. Ensure that the Office establishes training for all participants of the program (OAA Sec. 712(a)(3)(H)(i) and (h)(4))
3. Ensures that the Office provides technical assistance. to designated ombudsman entities (OAA Sec. 712(a)(F))
4. Ensure that the Office provides monitoring of designated programs (OAA Sec. 712(a)(D)(i) and IDAPA 15.01.03.020.08)
5. Ensure that the Office provides for coordination of ombudsman services with outside agencies (OAA Sec. 712(h)(6), (7) and (8) and IDAPA 15.01.03.020.10)
6. Ensure that no representative of the Office shall be liable for good faith performance of duties (OAA Sec. 712(i) and IC 67-5009)
7. Ensure that willful interference with representative of the Office in the performance of the official duties shall be unlawful (OAA 712 Sec. (j) and IC 67-5009)
8. Ensure that the Office participates in the process of interviewing and selecting applicants for the substate ombudsman position. (IDAPA 15.01.03.021.02)
9. Ensure that the Office investigates any complaints concerning substate ombudsmen or any complaints relative to a substate ombudsman’s official duties (OAA Sec. 712(a)(D)(i) IDAPA 15.01.03.032.03)
10. Ensure that the Office provides findings of any investigation against substate ombudsman to the

designated entity (IDAPA 15.01.03.032.03)1. Provide the local entity with opportunity to appeal administrative decisions (IDAPA 15.01.03.003)
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**9.15 AAA/CONTRACTOR RESPONSIBILITIES**

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| 1. Provide the Long Term Care Ombudsman Program as a direct service and meet all requirements as cited in (OAA Section 712, IC 67-5009, and IDAPA 15.01.03)
2. Hire substate ombudsman who shall meet specified qualifications (OAA Sec. 712(a)(C) and IDAPA 15.01.03.021)
3. Hire at least one full-time substate ombudsman with the exception that AAA III shall hire two. (OAA Sec. 712(a)(C) and IDAPA 15.01.03.031.01)
4. Shall demonstrate capability to carry out the responsibility of the Office and be a public or nonprofit agency (OAA Sec. 712(a)(C) and IDAPA 15.01.03.031.01)
5. Ensure that local ombudsmen operate under the direct supervision of the Office for all complaint handling activities (OAA Sec.712(a)(3) and IC 67-5009 and IDAPA 15.01.03.020.03)
6. Shall be free of conflicts of interest and not stand to gain financially through an actual or potential action brought on behalf of individuals the Ombudsman serves (OAA Sec.712(f) and IDAPA 15.01.03.020.05)
7. Provide services to identify, investigate, and resolve complaints that are made by, or on behalf of, residents; and relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (OAA Sec. 712(a) and IC 67-5009 and IDAPA 15.01.03.032)
8. Ensure that residents in the designated service area have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance (OAA Sec. 712(a)(B)(ii) and IC 67-5009 and IDAPA 15.01.03.033)
 | 1. Ensure that all ombudsmen honor a resident or complainant’s request to remain anonymous (OAA Sec. 712(d)(2) and IDAPA 15.01.03.042.04)
2. Ensure that local ombudsmen represent the interests of residents before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare, and rights of the resident
3. Ensure that local ombudsman review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents. (OAA Sec. 712(a) and IC 67-5009 and IDAPA 15.01.03.032)
4. Facilitate the ability of the public to comment on the laws, regulations, policies, and actions related to long term care (OAA Sec. 712(a)(G)(iii))
5. Support the development of resident and family councils (OAA Sec. 712(a)(3)(H)(iii))
6. Carry out other activities that the Office determines to be appropriate (OAA Sec. 712(a)(3)(I) and IC 67-5009)
7. Submit to the Office any request for release of confidential information (OAA Sec. 712(d)and IDAPA 15.01.03.043)
8. Maintain records in locked storage (IDAPA 15.01.03.042.01Comply with all reporting requirements of the Office (OAA Sec. 712(h) and IC 67-5009) )
9. Provide travel funds for the substate ombudsman to carry out designated activities (IDAPA 15.01.03.020.09)
10. Honor and carry out state-level agreements between the Office and other agencies of government (OAA Sec. 712(h)(6) and (7) and (8) IDAPA 15.01.03.020.10)
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