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TO: Regional Long-Term Care Ombudsmen  
Regional Long-Term Care Ombudsman Provider Agencies  
Access Living  
Area Agencies on Aging

FROM: Sally Petrone, State LTCO

RE: Long-Term Care Ombudsman Program Policies and Procedures Manual

DATE: April 11, 2014

I am pleased to announce that the Office has finalized the Long-Term Care Ombudsman Program Policies and Procedures (P&P) Manual which is effective April 11, 2014. This manual replaces the Long-Term Care Ombudsman Program Standards, Procedures, and Practices Manual.

We are preparing for an upcoming webinar to discuss significant revisions and additions to the P&P manual and to answer your questions. Your input for our agenda and discussion time is important. Please submit your questions and comments regarding the P&P manual to Jessica Belsly at [jessica.belsly@illinois.gov](mailto:jessica.belsly@illinois.gov) by May 2, 2104.

**Respect for yesterday. Support for today. Hope for tomorrow.**

The Illinois Department on Aging does not discriminate in admission to programs or treatment of employment in programs or activities in compliance with appropriate State and Federal statutes. If you feel you have been discriminated against, call the Senior HelpLine at 1-800-252-8966; 1-888-206-1327 (TTY).

**CHAPTER 100: INTRODUCTION**

- 101: General Authority and Mission**
- 102: Structure of the Illinois Ombudsman Program**
- 103: Organization of this Manual**
- 104: Definitions**
- 105: Clarifications, Revisions, Waivers and Transitional Provisions to this Manual**

**CHAPTER 1000: VOLUNTEER MANAGEMENT**

- A. The Program shall use volunteers to maximize its resources to benefit residents.
- B. The Office Role
  - 1. The Office shall provide technical assistance to each Regional Program to develop and maintain its volunteer program.
  - 2. The Office shall develop the training curriculum to be used by the Regional Program.
- C. The Regional Program Role
  - 1. The Regional Program shall submit its plan for recruitment, use, and supervision of volunteer staff in the Regional Program Annual Services Plan.
  - 2. The proposal shall be consistent with policies and procedures set forth by the Office and this Manual.
- D. The Volunteer Ombudsman Role
  - 1. Volunteer Ombudsman shall:
    - a. work under the supervision of the Regional Ombudsman or a Community Ombudsman;
    - b. provide appropriate and timely documentation of all activities done on behalf of the Program; and
    - c. performs his or her responsibilities in accordance with applicable federal and state laws, rules and regulations and this Manual.
  - 2. The Volunteer Ombudsman shall visit residents in long-term care facilities to:
    - a. build relationships with residents;
    - b. provide an independent presence in the facility;
    - c. provide information and assistance;
    - d. receive, investigate and resolve complaints;

- e. attend and support resident and family council activities; and
- f. assist, to the extent determined appropriate by the Regional Ombudsman, with issue advocacy activities and public information and education.

E. Reporting of Volunteer Activities

- 1. Volunteer activities shall be recorded in state-wide data and tracking system.
- 2. Volunteer case notes shall be entered into the case recording section of the state-wide data and tracking system.
- 3. When possible, volunteer reports shall be scanned and attached to the appropriate section of the state-wide data and tracking system.

F. Every person seeking certification as a Volunteer Ombudsman must:

- 1. have an interest in advocating for long-term care facility residents;
- 2. be at least 18 years of age;
- 3. be free of unremediable conflicts of interest;
- 4. possess good verbal, writing, and reading skills; and
- 5. agree to a criminal background check as required by law.

G. The Regional Program may establish other minimum qualifications for Volunteer Ombudsman with the written permission of the Office.

H. Failure to follow the direction of the Program staff person shall be grounds for de-certification.

**101: General Authority and Mission**

- A. The Illinois Long Term Care Ombudsman Program (Program) is authorized by and in accord with the federal Older Americans Act, 42 U.S.C. Section 3001 *et seq.* and the Illinois Act on Aging, 20 ILCS 105/4.04.
- B. The Program protects and improves the quality of care and quality of life for residents of long term care facilities in Illinois through individual and systemic advocacy for and on behalf of residents, including representing the interests of residents before government agencies, reviewing and commenting on existing and proposed laws, seeking out and responding to media requests, the promotion and cultivation of best practices within long term care services, and through the promotion of family and community involvement in long term care facilities.
- C. The Program was expanded and given authority in 2013, to provide advocacy services to participants of (1) a medical assistance waiver programs administered by the State, and (2) a managed care organization providing care coordination and other services to seniors and persons with disabilities.
- D. The Program is a resident and participant centered advocacy program. The resident or participant is the program's client, regardless of the source of the complaint or request for service. The Ombudsman will make every reasonable effort to assist, empower, represent, and advocate on behalf of the resident and participant.
- E. The service components of the Program include identifying, investigating, and resolving complaints; regular presence in long-term care facilities; consultation and community education; issue advocacy; and support the development of resident and family councils.
- F. Processing complaints made by or on the behalf of residents or participants and resolving the problems and questions of residents of long term care facilities is the highest priority service of the Program. Principles and techniques of empowerment are to be used whenever possible when addressing residents' complaints and problems.
- G. These policies and procedures govern the operations of the Program and establishes the relationship and responsibilities of Provider Agencies, AAA's, and the Illinois Department on Aging, in relation to the Program.

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

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

**103: Organization of this Policies and Procedures Manual**

The general organization of this Manual is as follows:

**Chapter 100: Introduction/Definitions**

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

**Chapter 200: Organizational Responsibilities**

describes the process for certification, decertification, designation and de-designation of Ombudsmen and Provider Agencies.

**Chapter 300: Designation**

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

**Chapter 400: Long-Term Care Ombudsman Program Service Delivery Policies and Procedures**

describes the five service delivery components to be provided by the Program through Regional Programs.

**Chapter 500: Protocols for Problem Resolution and Investigative Services**

provides the Regional Programs with the minimum guidelines for investigating, verifying, and resolving complaints received by or on behalf of long-term care residents.

**Chapter 600: Access to Residents and Facilities, Residents' Records, and State and Facility Records**

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

**Chapter 700: Legal Issues**

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

**Chapter 800: Confidentiality, Disclosure, and Retention**

outlines the requirements to be followed by the Program and Ombudsmen to assure confidentiality of residents, complainants, witnesses, or others assisting in

the report, complaint, or investigation. It also explain how long records should be kept and in what manner.

**Chapter 900: Conflict of Interest**

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

**Chapter 1000: Volunteer Management**

defines the qualifications and role of volunteers in the Program.

**Chapter 1100: Home Care Program**

defines participants and the advocacy responsibilities of Ombudsmen

**Appendix A: Older Americans Act**

copy of 42 USC Sec. 3058

**Appendix B: Illinois Act on Aging**

copy of the Illinois Revised Statutes. 20 ILCS 105/1 et seq.

**Appendix C: Long-Term Care Ombudsman Program Rules**

copy of the Illinois Admin Code 270.10 et seq.

**Appendix D: Conflict of Interest Checklist**

copy of the Conflict of Interest Checklist Form

**Appendix E: State Employee Indemnification Act**

copy of the Illinois Revised Statutes. 5 ILCS 350/1 et seq.

**Appendix F: Appeal Procedures for Ombudsman Designation**

copy of appeal procedures for Ombudsman Provider Agency Designation

**Appendix G: Designation and Training**

copy of the Representative Registry Form

**Appendix H: Ombudsman Code of Ethics**

copy of the Code of Ethics for Ombudsmen

**Appendix I: Illinois Abused and Neglected Long-Term Care Facilities Resident Reporting Act**

copy of the Illinois Revised Statutes. 210 ILCS 30/

**Appendix J: Illinois Probate Act Sections Regarding POA and Guardianship**

copy of the Illinois Revised Statutes. 755 ILCS 5/ and 755 ILCS 45/

**Appendix K: Illinois Healthcare Worker Background Check Act**

copy of the Illinois Revised Statutes. 225 ILCS 46/

**Appendix L: Access to Records of Residents Incapable of Giving Consent**

copy of the Access to Records of Residents Incapable of Giving Consent form.

**104: Definitions**

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

**Abuse**

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

**Area Agency on Aging or AAA**

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

**Area Plan**

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

**Background Check**

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

**Case for Long-Term Care Residents**

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

**Case for Participants**

Each request for assistance brought to the Ombudsman Program by or on behalf of a participant of medical waiver services and/or managed care organizations involving one or more complaints or problems which require opening a case file for advocacy and resolution strategies in keeping with Chapter 1100.

**Certification**

An individual who meets minimum qualifications, is free of conflicts of interest, has successfully completed training and other criteria stipulated in Appendix G and has been registered on the Ombudsman

Registry. Certification authorizes such individual to act as a representative of the Office or in keeping with this Manual;

**Community Education**

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

**Community Ombudsman**

Community Ombudsman

An individual who has completed the basic training modules (Level I) and/or advanced training modules (Level II) and four (4) hours of probationary supervision. Level II trained ombudsmen have full access to resident records, program records, and works directly under the supervision of the RO. Level I Ombudsman have access to records at the discretion of the RO.

**Complaint**

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

**Conflict of Interest**

A competing interest, obligation, or duty which compromises, influences, interferes with (or gives the appearance of compromising, influencing or interfering with) the integrity, activities, or conduct of all designated ombudsmen, the Department, SLTCO, AAA or Provider Agency in faithfully and effectively fulfilling his or her official duties.

**Consultations**

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

**Date of First Action**

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

**Department or IDoA**

The Illinois Department on Aging (IDoA).

**Designation**

The designation of an entity as the Ombudsman Program provided by the Office to: Provider Agency which meets the minimum qualifications stipulated in Section 305 of this Manual. Designation authorizes such agency as a local Ombudsman entity to operate a Regional Ombudsman Program in a planning and service area or a specified geographic area thereof.

**Director**

The Director of the Illinois Department on Aging.

**Exploitation**

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

**Family Council Activities**

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

**Good Faith**

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

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

**Guardian**

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

**Home Care Ombudsman**

A long-term care Ombudsman providing advocacy services to participants of Managed Care Organization and Medical Assistance Waiver programs.

**Immediate family**

Those persons related to an individual such as a spouse, child, sibling, parent or domestic partner.

**Intake Date**

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

**Interference**

Includes, but is not limited to, the following: the infliction of physical harm; threats to inflict physical harm; intimidation; deception; tampering with physical evidence; destroying, hiding, or altering records; making false statements or encouraging others to do so; bribery or attempted bribery; retaliation; and restricting, without legal authority, the personal movements or travel of any individual, when such actions are done for the sole purpose of preventing the Ombudsman from discharging his or her official duties.

**Inquiries**

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

**In-service Education and Training**

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

**Interagency coordination**

Activities that involve meeting or coordinating with other agencies to learn about and to improve conditions for one or more residents of long-term care facilities or participants of medical waiver programs and managed care organizations.

**Issues Advocacy**

Activities supporting and promoting issues that benefit or advance the health, safety, welfare or rights of residents of long-term care facilities and participants of medical waiver programs and managed care organizations.

**Legal Representative**

A guardian; an agent under a valid power of attorney, provided that the agent or attorney-in-fact is acting within the scope of his or her agency;

surrogate decision maker; or an executor or administrator of the estate of a deceased resident or participant.

**Long-Term Care Facility or Facility**

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

- A. skilled nursing;
- B. Intermediate care;
- C. Illinois Department of Veterans' Affairs facilities
- D. intermediate care for individuals with intellectual disabilities (excluding Under 22 facilities);
- E. sheltered care;
- F. assisted living;
- G. shared housing; and,
- H. supportive living - a facility established under Section 5-5.01a of the Illinois Public Aid Code.

**Long-Term Care Ombudsman**

An individual designated by the State Long-Term Care Ombudsman as:

- A. A Regional Ombudsman;
- B. A Community Ombudsman; OR
- C. A Volunteer Ombudsman.

**Long-Term Care Ombudsman Program**

Unless otherwise specified, "LTCOP" means the statewide long-term care resident advocacy Program established and operated by IDoA. Long-Term Care is inclusive of long-term care facilities, medical assistance waiver programs and managed care organizational services.

**Managed Care Organization (MCO)**

A managed care organization (MCO) licensed and approved to provide care coordination and other services to seniors and people with disabilities in the state of Illinois.

**Medical Assistance Waiver**

Medical Assistance Waiver administered by the State of Illinois with approval from the U.S. Health and Human Services Centers for Medicaid and Medicare Services (CMS).

**Multidisciplinary Team**

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

**Neglect**

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

**Office**

The Office of the State Long-Term Care Ombudsman Program is composed of the State Ombudsman and immediate support staff.

**Official Duties**

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

**Ombudsman Annual Services Plan**

A written plan, prepared by the Regional LTCOP, for submission to the Office and/or the area agency on aging, setting goals and objectives for the regional LTCOP for the following federal fiscal year.

**Participant**

A person receiving a medical assistance waiver administered by the State or a person receiving care coordination and other services by a managed care organization.

**Planning and Service Area or PSA**

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

**Policies and Procedures Manual**

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

**Policy Clarification Request Committee**

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

**Program**

The State Long-Term Care Ombudsman Program as established and operated by the Department and carried out through the Office and headed by the State Ombudsman.

**Program Records**

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

**Provider Agency**

The entity designated by the Office to operate a Regional LTCOP in a planning and service area or a specified geographic area.

**Record Check**

Obtain the authorization for a record check from a student, applicant, employee, or volunteer.

**Record****1. Resident of a long-term care facility**

Any medical, social, personal and financial information maintained by any long-term care facility, or by any State or local agency, pertaining to a resident of a long-term care facility or to the facility.

**2. Participant in waiver program or managed care organization**

Any medical, social, personal and financial information maintained by any medical assistance waiver program or managed care organization.

**Regional Long-Term Care Ombudsman Program or Regional Program**

An entity designated by the Office as a local Ombudsman entity.

**Regional Ombudsman**

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

**Registry or Ombudsman Registry**

The official listing of Ombudsmen, maintained by the Office, who have been designated as representatives of the Office of SLTCO.

**Representative****1. Resident's Representative**

Any person who is knowledgeable about a resident's circumstances and has been designated by that resident in writing to represent him or her, including a resident's legal representative or the resident's legal guardian. (210 ILCS 45/1-123)

**2. Participant's Representative**

Any person who is knowledgeable about a participant's circumstances and has been designated by that participant in writing to represent him or her.

**Resident**

Any person who is currently resides in a long-term care facility, an individual seeking admission to a long-term care facility, a former resident, or a deceased resident.

**Resident Council Activities**

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

**State Ombudsman**

The **State Long-Term Care Ombudsman** who is selected and authorized to head the State Long-Term Care Ombudsman Program, who meets the requirements set forth in this Policies and Procedures Manual.

**Unit of Service**

One hour of time expended by an Ombudsman within the LTCOP.

**Volunteer Ombudsman**

A person who has met the designation and training certification requirements of the Program and who performs services without pay.



**105: Policy Clarifications, Revisions, and Waivers to this Manual****A. Policy Clarification Requests (PCR)**

1. When necessary, the Office shall issue clarifications of this Manual according to the following process
2. PCRs may be submitted to the Office by an AAA, a Provider Agency, or Regional Program using the form developed by the Office. A response to a PCR will be made within thirty (30) working days by either responding directly to the clarification request or requesting further information from the requestor.
3. The Office shall create a PCR workgroup.

**B. Revisions to this Manual**

1. Revisions to this Manual will be made by the Office, after consultation with the Department.
2. When appropriate, the Office will seek input from the AAAs, Provider Agencies, and Regional Programs.
3. Revisions to this Manual will be distributed electronically to the AAAs, Regional Programs, and Provider Agencies
4. A Provider Agency on the date of issuance of the Manual, or any revisions thereto, shall continue to be designated for the duration of the previously established designation period unless de-designated by the State Ombudsman.

**C. Waivers**

1. The Department may grant a waiver to a standard of this Manual when a written request is received from an AAA, Provider Agency or Regional Ombudsman which contains justification to support the approval. The AAA, Provider Agency and Regional Ombudsman will be notified in writing if a waiver has been approved.
2. A request for waiver must be made in writing to the Office and approved by the Department prior to:
  - a. hiring or promotion of the employee in question; or
  - b. implementing the reduced minimum standard.

**CHAPTER 1100: Home Care Ombudsman**

In accordance with 20 ILCS 105/4.04

- A. The establishment of the Home Care Ombudsman (HCO) component of the Office of the State Long-Term Care Ombudsman Program defines:
  - 1. A participant is an older person or an adult with disabilities ages 18-59 who is eligible for services under a state medical assistance waiver program for the delivery of long-term care services and supports in the home and community or managed care organizations;
  - 2. Medical assistance waiver programs are administered by the State for the provision of long-term services and supports to individuals in qualified home and community settings in lieu of institutionalization;
  - 3. A managed care organization providing care coordination and other medical and social services and supports to seniors and persons with disabilities; and
  - 4. Access for an Ombudsman to a participant's home is subject to permission of the participant requesting services or his or her representative.
- B. The organization and administration of the Home Care Ombudsman component is consistent with:
  - 1. the Regional Ombudsman structure, contracting, designation and de-designation of Regional Ombudsman entities;
  - 2. training, certification and de-certification of Ombudsmen;
  - 3. conflict of interest policies and procedures for designated agencies and Ombudsmen;
  - 4. acknowledgement of any conflicts of interest within the designated entity and written procedures for reducing and/or eliminating any potential challenges to Ombudsmen advocating for residents of long-term care facilities and participants of state medical assistance

waivers and managed care organizations;

5. written procedures for handling possible conflicts of interest between the designated Regional Ombudsman program and other programs within the same agency/employer must be approved by the Office;
6. reporting requirements of data into the OmbudsManager system;
7. participant confidentiality and confidentiality of participant records;
8. immunity protections for an Ombudsman participating in the good faith performance of his or her official duties; and
- 9 the Attorney General shall provide legal representation to any representative of the Office against whom suit or other legal action is brought in connection with the performance of the representative's official duties.

C. The Ombudsman service components for participants:

1. respond to inquiries on behalf of or for participants of waiver services and managed care organizations; and
2. identify, investigate and resolve complaints of participants of waiver services and managed care organizations.

D. Protocol for Participant Inquiries, Information, and Referrals

1. Calls from participants and/or participants' legal representatives and family caregiver may come through the Department, Office of the State Ombudsman, or Regional Program. It is anticipated that the majority of calls will come through the Department and Office.
2. Persons taking the call should listen to the participants and/or participants' legal representatives and family caregiver's questions, comments, and concerns. A copy of "Rights of Home Care Participants" should be offered to be mailed to the participant.
3. Basic caller information should be captured in OmbudsManager.

4. If the caller reports a life or death emergency, they should be directed to call 911 for emergency services.
  5. If the caller reports suspected abuse, neglect and/or exploitation, they should be referred to Adult Protective Services (APS) program for investigation.
  6. Appropriate referrals for further information or complaint resolution should be provided to the caller. Examples of appropriate referrals may be to disability and aging providers and appropriate state agencies.
  7. The most appropriate referral to program name, program representative (if known), and phone number should be provided to the participant and/or participant's legal representative and/or family caregiver.
  8. If you believe that the caller may have difficulties in placing the referral call, offer to assist further by doing a "warm transfer" or three-way call connecting the participant to the referral source. Document the referral source.
  9. Ombudsmen shall inform the participant and/or participants' legal representatives and family caregiver that if after calling the referral Program they do not feel that their concerns have been properly addressed within a reasonable period of time that they should call the Office and/or Regional Program again.
  10. Representatives of the Office shall call the participant back in approximately one to thirty (30) business days depending upon the severity of their complaint to see if their concerns/ complaints have been resolved. If the concern/complaint has been resolved, document the resolution in OmbudsManager.
- E. If the participant's concerns/complaints have not been resolved after referrals to the appropriate programs and they request or it is determined that it is best to arrange a Face-to-Face (FTF) visit then:
1. the State Office will determine based on the participant's home

address which Regional Program will be assigned the participant case for the FTF visit;

2. upon referral to the Regional Program, the Office shall notify the Regional Program of the participant case number;
3. the Regional Program will have two (2) business days to schedule a FTF visit with the participant. This FTF visit should take place within thirty (30) days of receipt of the referral;
4. Ombudsmen shall make every effort to have planned FTF visits with participants. Ombudsman may only enter a participant's private home with an invitation from the participant. If the Ombudsman does not feel safe visiting the participant's private home alone, they should seek the following options: request another Ombudsman or supervisor from their agency go with them on the visit; request assistance from a nearby regional Ombudsman Program, local law enforcement, or office of the State LTCOP;
5. Ombudsman may have access to a participant's records with permission from the participant and/or their legal representative. Written permission to access participant records must be documented in OmbudsManager. If oral permission is granted by the participant, such approval should be noted in OmbudsManager;
6. After the first FTF visit with the participant the Ombudsmen will have thirty (30) business days to record findings and actions in the participant record;
7. When the participant is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the Ombudsman shall:
  - a. check to see if the participant has a legal guardian or legal representative; and
  - b. if there is no legal guardian or legal representative and the Ombudsman has reason to believe that the participant is a victim of abuse, neglect and exploitation, the Ombudsman should contact the Office of the State Ombudsman to discuss the case, seek guidance and get approval to take

further action.

8. When the participant is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the Ombudsman shall:
  - a. check to see if the participant has a legal guardian or legal representative; and
  - b. if there is a legal guardian or legal representative and the Ombudsman has reason to believe that the legal guardian or legal representative may be the perpetrator of the abuse, neglect and/or exploitation, the Ombudsman should contact the Office of the State Ombudsman to discuss the case, seek guidance, and get approval to take further action.
- F. Ombudsmen should confer with the Regional Ombudsman or representatives of the state Office prior to closure of the participant case.

CHAPTER 200: ORGANIZATION STANDARDS AND RESPONSIBILITIES

201: Illinois Department on Aging Responsibilities

202: SLTCOP Responsibilities

203: Office of the Illinois LTCOP Responsibilities

204: AAA Responsibilities

205: Provider Agency Responsibilities

**201: The Illinois Department on Aging Responsibilities****A. The Department shall:**

1. submit a State Plan on Aging pursuant to the Older Americans Act in order to receive an allotment under Title III and Title VII;
2. establish and operate an Office of the State Long-Term Care Ombudsman and carry out the Program directly, or by grant or other arrangement with any public agency or nonprofit private organization in accordance with the Older Americans Act;
3. provide that the Office be headed by a full-time Ombudsman meeting the qualifications described in Section 202 of this Manual;
4. determine the allocation levels and allocate and distribute the Older Americans Act funding for the Program through the approval of Area Plans of Area Agencies on Aging;
5. determine the unit rate methodology for Ombudsman services;
6. act as an advocate for long-term care residents and participants in medical waiver services and managed care organizations. Will consider the views of Area Agencies on Aging, older individuals, and providers of long-term care in the planning and operation of the Program;
7. develop policies and procedures which direct the operation of the Program;
8. ensure the availability of adequate legal counsel and consultation on matters pertaining to the responsibilities of the Office;
9. publicize the purposes and operation of the Program through public service announcements, posters, and brochures;
10. further interagency coordination through the establishment of working relationships with other state agencies involved in meeting the needs of residents of long-term care facilities and participants in medical waiver services and managed care organizations;
11. monitor and evaluate the compliance of the Regional Programs to ensure that the responsibilities of the Department, the Office, and the Program are being met in accordance with the Older Americans Act and state laws;

- a. use funds made available and not supplant any funds that are expended under any federal or state law in existence to carry out the Program in accordance with federal OAA maintenance of effort requirements;
- b. establish in accordance with the Office, policies and procedures for monitoring Regional Programs; and
- c. develop the policies and procedures regarding confidentiality and conflict of interest.

**202: State Long-Term Care Ombudsman Responsibilities**

- A. A State Ombudsman shall have:
  - 1. the understanding of aging, disability, and long-term care issues;
  - 2. the ability to analyze and explain human service data;
  - 3. knowledge and experience in legislative and issue advocacy, public relations, and coalition building;
  - 4. experience managing staff and volunteers;
  - 5. basic computer skills;
  - 6. strong written and verbal communication skills and experience in public speaking;
  - 7. demonstrated problem-solving abilities;
  - 8. familiarity with outcome-based evaluation and quality improvement;
  - 9. a demonstrated commitment on issues relevant to consumers of long-term care and participants receiving home care services;
  - 10. familiarity with legal concepts and the legislative process;
  - 11. a Bachelors degree and three years experience as an Ombudsman or an advocate; and
- B. The State Ombudsman shall designate entities as Regional Programs pursuant to Section 301 of this Manual.
- C. The State Ombudsman shall certify employees or volunteers of Regional Programs pursuant to Section 303 of this Manual.
- D. The State Ombudsman shall operate the Office pursuant to Section 203 of this Manual and in accordance with Department guidelines.
- E. The State Ombudsman is responsible for the leadership and management of the Office.
- F. The State Ombudsman has the following specific responsibilities, personally or through representatives of the Office, pursuant to 20 ILCS 4.04, is authorized, subject to sufficient appropriations, to advocate on

behalf of older persons and persons with disabilities residing in their own homes or community-based settings, relating to matters which may adversely affect the health, safety, welfare, or rights of such individuals.

G. The State Ombudsman has the following specific responsibilities, personally or through representatives of the Office, pursuant to the Older Americans Act and state laws:

1. identify, investigate, and resolve complaints that
  - a. are made by, or on behalf of, residents; and
  - b. relate to action, inaction, or decisions of providers, or representatives of providers, of long-term care services; public agencies; or health and social service agencies that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees);
2. provide services to assist the residents in protecting the health, safety, welfare, and rights of residents;
3. inform residents about means of obtaining services provided by providers or agencies;
4. ensure that residents have regular and timely access to the services provided through the Office and that 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 advocacy services to participants of medical waiver services and managed care organizations;
7. provide administrative and technical assistance to Regional Programs;
8. regularly monitor the Regional Programs;
9. analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and

other governmental policies and actions, pertaining 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;

10. facilitate public comment on the laws, regulations, policies, and actions;
11. recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate;
12. provide for training representatives of the Office;
13. promote the development of citizen organizations to participate in the Program; and
14. provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

**203: Responsibilities of the Office****A. The Office shall:**

1. help resolve problems faced by those who reside in long-term care facilities and participants of medical assistance waivers and managed care organizations;
2. advocate for broad policy, regulatory and/or legislative changes to improve care of long-term care facility residents and participants of medical assistance waivers and managed care organizations;
3. plan, develop, and implement training of the Ombudsmen and the Programs;
4. maintain a registry of all entities and individual representatives of the Office and the geographic areas for which each has been assigned;
5. coordinate the activities of the Program with other Department on Aging programs and other state and federal agencies involved in the care of long-term care facility residents;
6. maintain Program records and the Program reporting system;
7. provide Information and Assistance to the general public, residents, legislators, community organizations and other agencies regarding long-term care issues and state and federal licensing, certification and regulation;
8. provide technical assistance to AAAs, Provider Agencies, and Regional Ombudsmen;
9. provide Program data and analysis;
10. monitor and evaluate the statewide and Regional Programs;
11. establish an advisory board for the Program comprised of representatives from the AAAs, provider agencies, and Ombudsmen, with one representative for each planning and service area; and,
12. prepare and distribute an annual report as described in the Older Americans Act.

**204: AAA Responsibilities**

- A. AAA's shall fiscally administer the grants or contracts under which Regional Programs operate in compliance federal and state laws and administrative rules.
- B. Any AAA contract or grant provision that requires Regional Program service delivery components or data collection policies and procedures, practices or protocols different from those presented in this Manual must be approved in writing by the Office and when necessary, a waiver request must be submitted.
- C. In administering Regional Program services, the AAA shall:
  - 1. support a full-time Regional Ombudsman for each Regional Program;
  - 2. monitor the fiscal and Ombudsman Annual Service Plan activities of its Regional Programs at least once every three (3) years in order to assess the adequacy of Program services and the internal quality assurance procedures pursuant to the contract or grant with the SLTCO being notified of the monitoring visit. AAAs need to have an active role in monitoring, however AAAs do not have access to Program records which contain identifying information about residents and participants.
  - 3. adhere to the maintenance of effort requirements for each Regional Program as required by the Older Americans Act;
  - 4. assure that OAA Title VII Ombudsman Program funds are used exclusively for Ombudsman Program services and direct advocacy Program activities;
  - 5. make no requirement for matching funds for OAA Title VII funds received by the AAA for Regional Ombudsman Program services;
  - 6. when appropriate, include the Regional Ombudsman in discussions, meetings, conferences, reports and other AAA functions and operations such as boards and advisory councils related to long-term care, and to serve as the voice for the long-term care facility residents and participants of medical waiver services and managed care organizations;
  - 7. have no unremedied conflict of interest; and,
  - 8. provide technical assistance and oversight.

- D. AAA's shall support the Regional Program, to the extent possible, by:
  - 1. designating AAA staff to attend State Long-Term Care Program sponsored trainings and meetings pertaining to the Program;
  - 2. assisting in the development of resources for the operation of the Regional Program, including financial and human resources;
  - 3. providing opportunities for the Regional Program and other aging and social services organizations to collaborate to promote the health, safety, welfare, and rights of residents and participants of medical waiver services and managed care organizations;
  - 4. making appropriate referrals to the Regional Program;
  - 5. promoting awareness of Long-Term Care Ombudsman services to consumers and the general public within the service area; and,
  - 6. recognizing the responsibilities of the Regional Ombudsmen to promote systems and issues advocacy on behalf of residents and participants.
- E. AAA's shall submit the required financial and reports to the Department and to the Office in accordance with the established departmental instructions.
- F. In the selection of a Title III legal assistance provider, the AAA shall award funds to the applicant(s) that most fully meets the policies and procedures set forth in 45 CFR 1321.71 (c), to include the capacity to provide support to the Regional Program and the capacity to provide legal services to institutionalized older persons.
- G. The AAA shall cooperate with the Office to implement a transition plan to minimize disruption in Ombudsman services to residents when the contract or grant for the Regional Program services is terminated or not renewed.
- H. The AAA shall perform each of its responsibilities in administering the Regional Program in accordance with all applicable federal and state laws, regulations, policies, and this Manual.
- I. Where an AAA provides Long-Term Care Ombudsman Program services directly, it must also fulfill the responsibilities of a Provider Agency as outlined in Section 205 of this Manual.

- J. The AAA shall have the lead responsibility to request a waiver pursuant to Section 105(C) of this Manual if, due to demonstrable and unusual circumstances, the AAA anticipates it or its Provider Agency will be unable to comply with responsibilities in this Manual.

**205: Provider Agency Responsibilities**

- A. The Ombudsman Provider Agency is designated by the State Long-Term care Ombudsman Program to house the Regional Program and to assure the provision of Ombudsman services in the service area designated by a contract with, or grant from, the AAA or the Department.
- B. The Ombudsman Provider Agency shall be the sole provider of Ombudsman services in the service area designated through contract with, or grant from, the AAA or the Department.
- C. The Ombudsman Provider Agency shall assure the Regional Programs are in compliance with federal and state laws and regulations, the provisions of this Manual, and the contract or grant for Ombudsman services with the AAA or the Department.
- D. Any Ombudsman Provider Agency requirements different from those presented in this Manual must be approved in writing by the Office.
- E. The Ombudsman Provider Agency shall require the Regional Ombudsman to submit an Annual Services Plan as described in Section 407 of this Manual to the AAA for review and comment and to the Office and/or AAA for approval.
- F. The Ombudsman Provider Agency shall provide a full-time Regional Ombudsman who shall:
  - 1. meet the applicable minimum qualifications (see Section 206 of this Manual);
  - 2. have no duties in the Ombudsman Provider Agency outside the scope of the Regional Program as defined in state and federal law; and
  - 3. consult and participate in the development of a budget and an annual services plan
- G. The Ombudsman Provider Agency shall adequately staff the Regional Program to meet the ratio of 1 FTE paid Ombudsman to 2000 licensed beds subject to sufficient and ongoing local, state and federal funding.
- H. The Ombudsman Provider Agency shall:
  - 1. maintain or exceed the level of services provided during the previous fiscal year; and

2. maintain or exceed the number of paid FTE Ombudsmen funded during the previous fiscal year.
- I. The Ombudsman Provider Agency shall:
    1. assist in the development of resources for the operation of the Regional Program, including financial and human resources;
    2. provide opportunities for the Regional Program and other aging and social services organizations to collaborate to promote the health, safety, welfare, and rights of residents and participants of medical waiver services and managed care organizations;
    3. promote awareness of Ombudsman services to consumers and the general public within the service area;
    4. support the Regional Program to engage in issues advocacy on behalf of residents and participants; and,
    5. provide the Regional Program with a dedicated computer, Internet access, a dedicated telephone line if the agency does not have sufficient lines to accommodate callers, and a cellular phone for the Regional Ombudsman.
  - J. The Ombudsman Provider Agency shall submit financial reports
  - K. The Ombudsman Provider Agency shall not disclose Program records. The provider agency may not review Program records without consent and approval of the Office.
  - L. The Ombudsman Provider Agency shall assure that all Ombudsmen are trained in accordance with Section 303 of this Manual.
  - M. The Ombudsman Provider Agency shall assure the attendance of the Regional Ombudsman at mandatory statewide Ombudsman trainings and meetings. The Office may approve an exception.
  - N. The Ombudsman Provider Agency shall provide professional development opportunities for all Ombudsman staff.
  - O. The Ombudsman Provider Agency shall provide staff support, such as custodial, fiscal management, clerical, and telephone coverage and supervisory support for Program operations.
  - P. The Ombudsman Provider Agency shall provide case consultation and certified back-up support as needed for the operation of the Regional

Program.

- Q. The Ombudsman Provider Agency shall arrange, in consultation with the Office and the AAA, if applicable, for temporary provision of Regional Program services when Ombudsmen staff are unavailable or the staff position is vacant.
- R. The provider agency shall perform each of its responsibilities in administering the Regional Program in accordance with all applicable federal and state laws, regulations, and this Manual.

**206: Regional Ombudsman Responsibilities**

- A. The Regional Ombudsman is responsible for the day to day operation of the Regional Program.
- B. The Regional Ombudsman shall:
  - 1. help resolve problems faced by those who reside in long-term care facilities and participants in medical waiver services and managed care organizations;
  - 2. advocate for broad policy, regulatory, administrative and legislative changes to improve the care of long-term care facility residents;
  - 3. ensure Ombudsmen are trained as required by the Office;
  - 4. recommend individuals for inclusion on the Ombudsman Representative Registry;
  - 5. partner with the Aging and Disability Networks and other stakeholders for the benefit of long-term care residents and participants;
  - 6. ensure all Regional Program records are contemporaneously entered into the state-wide data and tracking system.
  - 7. review and close all cases within thirty (30) days of resolution of all complaints.
  - 8. provide consultations and inquiries to the general public, participants, residents, legislators, community organizations and other agencies regarding long-term care issues and state and federal licensing, certification and regulation;
  - 9. provide technical assistance to Ombudsmen;
  - 10. conduct an annual review of Program activities and case documentation.
  - 11. complete and submit an Annual Services Plan as described in Section 407 of this Manual to the Office and/or AAA for review, comment and approval.
  - 12. consult and participate in the development of a Regional Program budget.

13. develop a plan for temporary personnel coverage in order to meet the standard of promptness in accordance with Provider Agency policies and the requirements Section 501 of this Manual.
  14. not perform any duties different from those presented in this Manual unless such duties are approved in writing pursuant to Section 104(C) of this Manual.
- C. The Regional Ombudsman may establish a multi-disciplinary team.
- D. The Ombudsman Provider Agency shall require the Regional Ombudsman to submit an Annual Services Plan described in Section 407 of this Manual to the AAA for review and comment and to the Office for approval.
- E. The Ombudsman Provider Agency shall provide a full-time Regional Ombudsman who shall:
1. meet the applicable minimum qualifications (see Section 303 of this Manual);
  2. have no duties in the Ombudsman Provider Agency outside the scope of the Regional Program\_as defined in state and federal law; and
  3. consult and participate in the development of a budget and an annual services plan.

**CHAPTER 300: DESIGNATION AND CERTIFICATION**

- 301: Designation of Regional Long-Term Care Ombudsman Programs**
- 302: Refusal to Designate and De-designation of Regional Programs**
- 303: Certification of Ombudsmen**
- 304: Refusal to Certify and De-certification of Ombudsmen**
- 305: Procedure to Address Complaints Against the Regional Ombudsman Program**

**301: Designation of Regional Programs**

- A. The Office shall designate provider agencies to provide Ombudsman services throughout Illinois for a period of time not to exceed six years. Provider agencies are eligible to reapply for designation status. The Provider Agency must:
1. be a public or not for profit entity
  2. have the capability to carry out the responsibilities of the Provider Agency;
  3. have a clearly definable unit to function as the Regional Program;
  4. have sufficient staff to perform all duties and responsibilities as outlined in Chapter 400 of this Manual which shall include a designated individual known as the Regional Ombudsman. At a minimum, the Regional Program shall have one (1) paid full time equivalent for every 2000 beds or units in licensed long-term care facilities in the service area;
  5. be open for business at least seven (7) hours each working day and shall not be closed for more than four (4) consecutive days;
  6. be open for business not less than 248 working days per calendar year;
  7. agree to retain all resident records relevant to the Program for three (3) years; and,
  8. meet all grant and contractual requirements and all policies and procedures set forth in this Manual.
- B. In order to be eligible for designation by the Office as a Provider Agency, an entity must not:
1. be an agency or organization responsible for licensing or certifying long-term care services;
  2. be an association (or an affiliate of an association) of providers of long-term care or residential services for older persons;
  3. have a financial interest in a long-term care facility;

4. be an agency or organization responsible for the administration of a state medical assistance waiver or provider of services for a state medical assistance waiver;
  5. be an agency or organization contracting with a managed care organization for care coordination or services;
- C. The Area Agencies on Aging shall conduct the Request for Proposal (RFP) process for recommending the qualified entities for designation as of Regional Programs. The Department is responsible for establishing the RFP process. Area Agencies on Aging shall advertise for letters of intent in the Official State Newspaper and/or any other newspapers approved by the Office.
1. When an entity expresses interest in bidding on the contract or grant then the AAA shall issue a request for proposal (RFP) developed by the Office.
  2. If there is no entity that expressed interest in bidding on the contract or grant, the AAA shall be asked by the Office to perform the duties associated with the Program.
- D. The AAA shall require that applicants complete the RFP setting forth:
1. the goals and objectives of such entity in providing Program services;
  2. a description of how each Program Service Component in Chapter 400 of this Manual shall be met by such applying entity including its staffing plan for the Regional Program;
  3. a description of the number of anticipated volunteers to be recruited and the process in which volunteers will be recruited, trained, supervised and retained; and
  4. a description of the resources of the entity which will be provided to assist in the operation of the Regional-Program.
- E. The AAA shall forward to the Office copies of the completed RFP of all responding entities
- F. The AAA shall recommend an entity for designation as a Provider Agency to the Office and shall provide the Office with information supporting its recommendation.

- G. The State Ombudsman shall review and consider all RFPs submitted to the AAA and the recommendation of the AAA, and shall determine the entity most appropriate to be designated as the Provider Agency for the service area.
- H. If the State Ombudsman agrees with the AAA recommendation, the State Ombudsman shall notify the AAA of its designation determination within 30 days of receiving the AAA's recommendation. The State Ombudsman shall notify the Director of all designation decisions.
- I. The AAA shall notify the responding entities of the State Ombudsman's designation decision within (15) days of receiving such notification. The AAA notification shall include notice of the right of every entity not chosen to appeal the State Ombudsman's determination pursuant to the Department's procedures.
- J. If the State Ombudsman does not agree with the AAA recommendation, the State Ombudsman and representatives of the Department will meet with the AAA to discuss the decision and attempt to reach an agreement.
- K. If an agreement is reached, the State Ombudsman shall notify the AAA of its designation determination and the AAA shall notify the responding entities of the State Ombudsman's decision, as in (I) above.
- L. In the event an agreement cannot be reached, the State Ombudsman and the AAA will provide the Director with a summary of the recommendation rationale. The Director will, render a final designation decision. The AAA shall notify the responding entities of the Director's decision. The AAA notification shall include notice of the right to appeal the designation decision pursuant to the Department's procedures.
- M. Upon designation by the State Ombudsman, the AAA shall enter into a grant or contract with the Provider Agency for the provision of Ombudsman services in the relevant service area. Such grant or contract must:
  - 1. specify the service area;
  - 2. require the Provider Agency to adhere to all applicable federal and state laws, regulations, and this Manual;
  - 3. provide that designation by the State Ombudsman continues for the duration of the grant or contract and the subsequently renewed grants or contracts unless the Provider Agency is de-designated by

the State Ombudsman, upon which the AAA will terminate its contract in accordance with Section 302 of this Manual; and,

4. require the Provider Agency to give sixty (60) days notice of voluntary contract termination.
- N. The Area Agency on Aging shall offer a contract for a one-year period with the option to extend the contract for a maximum of five additional one-year periods for a total of six years. If the Area Agency on Aging has established a procurement process on a multi-year basis, the time frame must be set in policy prior to the procurement of Ombudsman services.
- O. Should the grant or contract between the Provider Agency and the AAA not be renewed or be terminated for any reason, the AAA shall:
1. immediately notify the Office;
  2. follow the steps in Section 306 of this Manual to designate a new Provider Agency as soon as practicably possible; and
  3. follow the steps in Section 205 of this Manual to provide continuation of LTCOP services.
- P. Where the AAA seeks to serve as the Provider Agency, the designation shall occur as follows:
1. the AAA may be considered as a Provider Agency where the Department determines that either:
    - a. the designation of the AAA as the Provider Agency is necessary to assure an adequate supply of Ombudsman services; or
    - b. the Ombudsman services are directly related to the AAA's administrative functions; or
    - c. the Ombudsman services can be provided more economically, and with comparable quality by the AAA.
  2. the AAA shall advertise for letters of intent in the Official State Newspaper and/or any other newspapers used in the past.
    - a. The Office shall issue an RFP seeking an entity to provide Program services within its service area.

- b. the RFP shall identify the criteria for designation as a Provider Agency in keeping with this Policies and Procedures Manual, and shall request submission of documents supporting the entity's claim to meet these criteria.
- 3. the Office shall require that all applying entities develop an Ombudsman Proposed Services Response setting forth:
  - a. the goals and objectives of such entity in providing Program services;
  - b. a description of how each Program Service Component in Chapter 400 of this Manual shall be met by such applying entity including its staffing plan for the Regional Program;
  - c. a description of the number of anticipated volunteers to be recruited and the process in which volunteers will be recruited, trained, supervised, and retained; and
  - d. a description of the resources of the entity which will be provided to assist in the operation of the Regional Program.
- 4. The State Ombudsman shall first determine if the AAA has met the requirements of OAA to be considered an applicant, and consider all the Ombudsman Proposed Services Responses submitted to then determine the entity most appropriate, in keeping with this Manual, to be designated as the Provider Agency for the service area.
- 5. The State Ombudsman shall notify all the applying entities of the State Ombudsman's decision within forty-five (45) days. The notification shall include notice of the right of every entity not chosen to appeal the State Ombudsman's determination pursuant to the Department's procedures.
- 6. Upon designation by the State Ombudsman, the Department or the AAA may enter into a grant or contract with the selected Provider Agency for the provision of Program services in the relevant service area. Such grant or contract must:
  - a. specify the service area;
  - b. require the Provider Agency to adhere to all applicable federal and state laws, regulations, and policies; and

- c. provide that designation by the State Ombudsman continues for the duration of the grant or contract (including subsequent renewals), unless the Provider Agency is de-designated by the State Ombudsman.
  - 7. The effective date of the Provider Agency's grant or contract with the IDoA shall constitute the effective date of the designation of the entity as a Provider Agency.
  - 8. Should the grant or contract between the AAA and the Department to provide Program services not be renewed, or be terminated for any reason, the process in Section 302 of this Manual shall be followed.
- Q. Where any grant or contract for Program services is not with or through the AAA due to the failure or refusal of an AAA to participate in the designation process, the designation of a new Provider Agency shall occur through another AAA (selected by the Department) as described in Section 301 of this Manual or as follows:
- 1. the Department shall advertise for letters of intent in the Official State Newspaper and any other newspapers used in the past.
  - 2. When one or more eligible entities expresses an interest in bidding on the contract or grant then the Department shall issue an RFP seeking an entity to provide Program services within its service area. The RFP shall comply with the model RFP created by the Department, shall identify the criteria for designation as a Provider Agency in keeping with this Manual, and shall request submission of documents supporting the entity's claim to meet these criteria. The Department shall issue a RFP seeking an entity to provide Program services within a particular service area. The RFP shall identify the criteria for designation as a Provider Agency and shall request submission of documents supporting the entity's claim to meet these criteria.
  - 3. The Department shall require that all applying entities develop an Ombudsman Proposed Services Response setting forth:
    - a. the goals and objectives of such entity in providing Program services;
    - b. a description of how each Program Services Component in Chapter 400 of this Policies and Procedures Manual shall be met by such entity including its staffing plan for the Regional Program;

- c. a description of the number of anticipated volunteers to be recruited, and the process in which volunteers will be recruited, trained, supervised, and retained; and,
  - d. a description of the resources of the entity which will be provided to assist in the operation of the Regional Program.
- 4. The State Ombudsman shall review each submitted Ombudsman Proposed Services Response and shall choose the entity most appropriate to serve as the Provider Agency based on the submitted Ombudsman Proposed Services Responses and on the criteria for designation. In considering which entity is most appropriate to be designated as the Provider Agency, the State Ombudsman may consult with the AAA serving the relevant service area.
- 5. The State Ombudsman shall notify the applying entities of this determination within forty-five (45) days. The notification shall include notice of the right of every entity not chosen to appeal pursuant to the Department's procedures.
- 6. The Department shall grant or contract with the selected Provider Agency to provide Program services. Such grant or contract must:
  - a. specify the service area;
  - b. require the Provider Agency to adhere to all applicable federal and state laws, regulations, and this Manual; and
  - c. provide that designation by the State Ombudsman continues for the duration of the grant or contract and subsequently renewed grant or contracts unless the Provider Agency is de-designated by the State Ombudsman.
- 7. The effective date of the Provider Agency's grant or contract with the IDoA shall constitute the effective date of the designation of the entity as a Provider Agency.

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

- A. The State Ombudsman has the authority to refuse to designate or de-designate an entity as a Provider Agency for failure to meet the requirements of this Manual, including but not limited to the following:
  - 1. failure of the entity to continue to meet the criteria for designation;
  - 2. failure of the entity to disclose, seek to remedy, or actually remedy a conflict of interest;
  - 3. violation of Program confidentiality requirements by person acting as an agent of the entity;
  - 4. failure of the entity to provide mandated Program services, including, but not limited to, failure to perform enumerated responsibilities, failure to fill a vacant ombudsman position within a reasonable time, failure to submit a Regional Program Annual Services Plan for approval by the State Ombudsman, or failure to use funds designated for ombudsman services;
  - 5. failure of the entity to comply with the provisions of the grant or contract; or
  - 6. failure of the entity to comply with applicable federal and state laws, rules, and regulations, and this Manual.
- B. When the State Ombudsman determines the designated agency shall not be awarded the grant, the Provider Agency shall be de-designated.
- C. Where an Area Agency on Aging contracts with a Provider Agency, the process to de-designate the Provider Agency shall be as follows:
  - 1. the Area Agency on Aging shall recommend a Provider Agency for de-designation to the State Ombudsman and based on one or more of the grounds listed in Section 302(A) of this Manual.
  - 2. the State Ombudsman shall review recommendations of the Area Agency on Aging
  - 3. when the State Ombudsman determines to de-designate, the State Ombudsman shall notify the Area Agency on Aging and the Provider Agency. The notice shall include the grounds for de-designation, the effective date, and the Department's appeal process;

4. the State Ombudsman may immediately suspend the designation and require the Area Agency on Aging to suspend the contract, pending the appeal process;
  5. the State Ombudsman, in consultation with the Area Agency on Aging, shall ensure the continuity of ombudsman services during the de-designation process; and
  6. the Area Agency on Aging shall terminate its contract for Program services with the Provider Agency upon notice from the State Ombudsman of the final decision to de-designate the Provider Agency.
- D. Where an AAA serves as a Provider Agency, the process to de-designate the Provider Agency shall be as follows:
1. the State Ombudsman shall send notice of the intent to de-designate at a specified date to the AAA. The notice shall include the reasons for de-designation and notice of the Department's appeal procedures;
  2. the State Ombudsman shall insure the continuation of ombudsman services during the de-designation process; and
  3. the Department shall terminate the portion of the contract between the AAA and the Department which provides for ombudsman services.
- E. Where a Provider Agency contracts directly with the Department, the process to de-designate the Provider Agency shall be as follows:
1. the State Ombudsman shall send notice of the intent to de-designate at a specified date to the Provider Agency and the relevant AAA. The notice shall include the reasons for de-designation and notice of the Department's appeal procedures;
  2. the State Ombudsman shall insure the continuation of ombudsman services during the de-designation process; and
  3. the Department shall terminate its contract for Program services with the Provider Agency.
- F. A Provider Agency may voluntarily relinquish its designation by providing notice to the State Ombudsman and to the AAA in the relevant service area. Such notice shall be provided sixty (60) days in advance of the date of the relinquishment of designation.

- G. When a Provider Agency is in the process of appealing its de-designation or has relinquished designation:
1. the Office, in consultation with the AAA where applicable, shall arrange for the provision of ombudsman services until a new Provider Agency is designated;
  2. in accord with this Manual, Chapter 800, and State Ombudsman instructions, the Provider Agency shall surrender intact to the State Ombudsman or the State Ombudsman designee all Program case records, documentation of all Program activities and complaint processing as required by the ombudsman reporting system, and identification cards of all Ombudsmen associated with the Provider Agency;
  3. the Provider Agency shall, at the discretion of the Department, surrender any equipment purchased with funds designated for Program services; and
  4. the Provider Agency shall surrender the balance of any advanced state or federal Program monies to the AAA, or to the Department, where the AAA serves as the Provider Agency and those surrendered funds shall be used for Program services in the relevant service area in keeping with federal maintenance of funding efforts in the OAA.

**303: Certification of an Ombudsman**

- A. The State Ombudsman certifies individuals as ombudsmen
- B. In order to be recommended for certification an Ombudsman must complete Level I Training and Level I Mentoring for initial certification. In addition, Ombudsman must meet the training requirements in Appendix G1.
- C. The Regional Ombudsman, or when there is a vacancy in the Regional Ombudsman position, the Provider Agency, shall submit names of persons to be certified as ombudsmen. To be eligible for consideration, an applicant must:
  - 1. be at least 18 years of age;
  - 2. agree to a criminal background check and must not have a disqualifying criminal conviction;
  - 3. be able to carry out the responsibilities of an Ombudsman;
  - 4. have no un-remedied conflicts of interest;
  - 5. examples of conflicts of interest include but are not limited to:
    - a. affiliation through full or partial ownership of a long-term care facility, Provider Agency of direct services to participants or managed care organization;
    - b. affiliation by marriage or immediate family of a person with full or partial ownership of a long-term care facility, Provider Agency of direct services to participants or managed care organization;
    - c. criminal record;
- D. No Ombudsman shall independently investigate any complaint filed with the Regional Program unless she or he has been certified by the State Ombudsman
- E. A certified Ombudsman is authorized to provide services anywhere in the State only with the consent of the State Ombudsman or the Regional Ombudsman in the respective area.
- F. The Provider Agency shall retain on file for a period of 5 years records of

criminal records requests for all employees pursuant to Section 50 of the Illinois Health Care Worker Background Check Act. A copy of the Health Care Worker Background Check Law can be found in Appendix K.

- G. In order to qualify as a Regional Ombudsman, an individual must:
  - 1. have attained a Bachelor's degree;
  - 2. have a minimum of three (3) years of work experience in advocacy, aging, social services, health care or related fields; and
  - 3. work full-time as the Regional Ombudsman
- H. The designated Provider Agency must submit a written request to the State Ombudsman to certify the recommended candidate as a Regional Ombudsman. The resume of the candidate must be submitted with the request letter.
- I. In the event of a leave in excess of one week by the Regional Ombudsman, the designated Provider Agency must notify the State Ombudsman. The Provider Agency is responsible for ensuring continued Ombudsman services.
- J. In order to qualify for a paid Community Ombudsman position, an individual must:
  - 1. be at least 18 years of age;
  - 2. agree to a criminal background check;
  - 3. be able to carry out the responsibilities of an Ombudsman
  - 4. have no un-remedied conflicts of interest
  - 5. at a minimum, have attained a Bachelor's degree; and
  - 6. have experience in advocacy, aging, social services, health care or related.
- K. Requests for substitutions, waivers or variances related to minimum requirements must be made in writing and approved, pursuant to Section 105 of this Manual, prior to the hiring or promotion of the employee in question.
- L. The Office shall:

1. complete the certification of the Ombudsman by recording the certification and the effective date in the Ombudsman Registry.
  2. send written notification of an individual's certification as an Ombudsman to the individual being certified, the AAA in the relevant service area, and the Regional Ombudsman within thirty (30) days of the determination; and
  3. provide the Ombudsman with an identification card, signed by the State Ombudsman.
- M. Certification continues until the individual is removed from the Ombudsman Registry by the State Ombudsman.

**304: De-certification of an Ombudsman**

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

regulations, and this Manual.

- C. If the refusal to certify an individual as an ombudsman, or the de-certification of an Ombudsman, results in the absence of ombudsman services in the relevant service area, the Provider Agency, the AAA, and the State Ombudsman shall arrange for the provision of ombudsman services until an Ombudsman is certified.
- D. Once de-certified, the former ombudsman must return her or his identification card to the Regional Ombudsman Program. The State Ombudsman will remove the individual from the registry. The Regional Ombudsman or the Provider Agency, as appropriate, in consultation with the State Ombudsman, shall make a reasonable effort to notify, in writing, the facilities known to be frequented by the ombudsman. The State Ombudsman shall receive a copy of the notification.

**305: Grievance****A. Grievances against Regional Ombudsman Programs**

1. Each Provider Agency is required to establish a procedure to address grievances concerning the type of service provided, delivery of services, and compliance with applicable laws and regulations.
2. Written grievances shall be accepted from any person or entity. The Provider Agency shall abide by relevant federal and state confidentiality requirements when responding to written grievances.
  - a. Grievances regarding complaint investigations:
    - i. If the resident is capable of giving informed consent and agrees by providing written consent, the result of the investigation may be disclosed to the individual filing the grievance. If the resident is unable to provide written consent, the Provider Agency shall contemporaneously document the consent given.
    - ii. If the resident is not capable of giving informed consent, the resident's agency pursuant to a durable power of attorney or the resident's legally appointed guardian may consent to disclosure of the grievance investigation results.
    - iii. If such consent is not provided, the Provider Agency may not report back to the individual filing the grievance except to confirm an investigation was conducted.
  - b. For all other grievances, the Provider Agency will respond in accordance with their established procedures.
3. An individual who filed a grievance and is dissatisfied with the decision of the Provider Agency may file a written request for review with the State Ombudsman within 30 days of the decision. The State Ombudsman shall respond to the written request for review within 60 days of receipt of the request.

**B. Complaints against State Ombudsman Staff**

1. A complaint about the state ombudsman staff shall be forwarded to the State Ombudsman.

2. The State Ombudsman shall promptly investigate the complaint within fourteen working days.
3. The nature of the complaint and the investigation shall be promptly documented.
4. A response back to the complainant shall be given within fourteen working days.
5. An individual who filed a grievance and is dissatisfied with the decision of the State Ombudsman may file a written request for review with the Director. The Director shall respond to the written request for review within 60 days of receipt of the request.

C. Complaints against the State Ombudsman:

1. A complaint about the State Ombudsman shall be forwarded to the Director of the Department.
2. The Director shall promptly investigate the complaint within fourteen working days.
3. The nature of the complaint and the investigation shall be promptly documented.
4. A response back to the complainant shall be given.

**CHAPTER 400: LONG-TERM CARE OMBUDSMAN PROGRAM SERVICE  
DELIVERY STANDARDS**

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

**401: Program Service Components**

- A. The Long-Term Care Ombudsman service components are:
  - a. identify, investigate and resolve complaints on behalf of residents and participants;
  - b. regular presence in long-term care facilities;
  - c. consultation and community education;
  - d. issue advocacy;
  - e. support the development of resident and family councils;
- B. All Regional Programs must provide and document the provision of each of these service components.
- C. The Regional Program Annual Services Plan shall set forth the service activities for each fiscal year.
- D. The activities of the designated regional programs shall be evaluated by the Office on a regular basis as outlined in Section 408 of this Manual.

**402: Investigative Services**

- A. Every Regional Program shall receive, investigate and resolve complaints made by or on behalf of: participants of medical assistance waivers; participants of MCOs serving people with disabilities and older adults; and residents of long-term care facilities relating to actions, inactions, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of such residents. Whenever questions arise regarding appropriate Program practice that is not addressed in this Manual, the Office should be contacted for guidance.
- B. Each Regional Program may respond to complaints initiated by or on behalf of long-term care facility residents who are under the age of 60 where such action:
  - 1. will benefit older individuals who are residents of that long-term care facility generally, or be the only viable avenue of assistance available to the complainant; and
  - 2. will not significantly diminish the Regional Program's efforts on behalf of older individuals.
- C. Regional Programs shall receive, investigate and resolve complaints made by or on behalf of participants of medical assistance waivers and managed care organizations which may adversely affect the health, safety, welfare, or rights of such participants.

**403: Regular Presence in Long-Term Care Facilities**

- A. The Regional Program shall provide a regular presence in long-term care facilities.
  - 1. A visit for the purpose of investigating a complaint, working with the resident or family council, presenting an in-service for facility staff, participating in an annual survey or any other Program related reason may be made simultaneously with a routine visit to maximize efficient use of time, resources, and opportunities to address resident problems and concerns.
  - 2. Except for planned in-services for facility staff or meetings, visits to facilities shall be unannounced and staggered so that facilities have no basis to predict the timing of the visit.
  - 3. At a minimum the Regional Program shall visit each facility as follows:
    - a. skilled nursing – one time per quarter;
    - b. intermediate care – one time per quarter;
    - c. sheltered care – one time per quarter
    - d. assisted living – one time per quarter;
    - e. shared housing – one time per quarter;
    - f. supportive living – one time per quarter; and,
    - g. intermediate care for the developmentally disabled– one time per year.
- B. The Regional Program shall observe the condition of residents
  - 1. Ombudsmen shall document observations after each facility visit in accordance with this Policies and Procedures Manual.
- C. Ombudsmen shall introduce himself and explain the Program and its services to residents, and, when possible, family members and staff during all visits to facilities.
  - 1. Ombudsmen shall confirm that facilities post the Program poster, as required under Title 89 ILL Admin Code 270.115. Posters shall be prominently displayed:
    - a. In each wing on each floor of the facility,
    - b. In each of the facility's activity rooms, and
    - c. At the main entrance/exit of the facility.

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

**404: Consultation, Inquiries and Community Education****A. Consultations**

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

**B. Inquiries**

1. The Program shall provide information regarding the needs and rights of participants of medical assistance waivers and managed care organizations.
2. The Program shall promptly respond to requests for information; however, responses should not take more than five working days.

**C. Community Education and Educational In-Services to Facilities**

1. The Program may provide community education programs and educational in-services.

**405: Issue Advocacy**

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

Program shall attempt to involve, participants, residents and families in issue advocacy.

E. The Office shall:

1. inform the Director, or his designee, of plans to engage in the issue advocacy activity in advance and when possible, provide written testimonies.
2. represent the interests of residents and participants before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents and participants;
3. review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents and participants;
4. facilitate the ability of the public to comment on the laws, policies, and actions;
  - a. link Regional Programs and advocacy groups with mutual concerns or issues;
  - b. coordinate issue advocacy activities within the Program;
  - c. develop and implement advocacy priorities and strategies;
  - d. provide a clearinghouse on state and national long-term care issues;
  - e. identify and meet, to the extent possible, resources and training needs of Ombudsmen and others related to issue advocacy; and
  - f. provide training and technical assistance to AAAs, provider agencies and others in the aging and disability network regarding the Office's role in issue advocacy and the issue advocacy priorities as determined by the Office and Regional Programs.

**406: Resident and Family Councils**

- A. The Program shall provide technical support to resident and family councils in long-term care facilities. The Program shall respond to phone calls, provide literature and assistance relating to resident and family councils in long-term care facilities.
- B. Program involvement and assistance in council activities may include informing the leadership and/or membership of resident and family councils about:
  - 1. the purpose of the Program
  - 2. the Program's availability to assist resident and family councils; and
  - 3. the topics the Program is prepared to present if requested.
- C. The Office shall provide technical assistance to Regional Programs to promote the development of resident and family councils.

**407: The Regional Program Annual Services Plan**

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

**408: Monitoring and Evaluation of the Program**

- A. The Regional Ombudsman shall complete and submit a mid-year Annual Services Plan Progress Report to the Office no later than April 15<sup>th</sup>. The report shall be submitted on a form prepared by the Office.
- B. The Office shall review, at least annually, the activities and complaint data of the statewide Program and each Regional Program, together with the Regional Program Annual Services Plan to evaluate Program performance.
- C. The Office shall make periodic site visits at least once every three years or more often if needed to monitor the Regional Program's performance and provide technical assistance and support to Regional Programs as deemed necessary by the Office.
- D. The Office's shall submit an Annual Report on March 1st of each year or as soon thereafter as is practicable to the Assistant Secretary of the U.S. Department of Health and Human Services, the Governor, the General Assembly, the Director of the Illinois Department on Aging, the Illinois Department of Public Health, other appropriate governmental entities, and the general public.
- E. The Annual Report shall include the following:
  - 1. a description of activities carried out by the Office in the year for which the report is prepared;
  - 2. an analysis of the data collected under Section 507;
  - 3. an evaluation of the problems experienced by, and the complaints made by or on behalf of, residents and participants;
  - 4. recommendations for improving quality of care and life of the residents and participants;
  - 5. protecting the health, safety, welfare, and rights of the residents and participants;

6. an analysis of the success of the Program;
  7. a summary of identified barriers that prevent the optimal operation of the Program; and
  8. Policy, regulatory, and legislative recommendations to solve identified problems.
- F. The Office shall analyze activity and complaint data to determine Program trends and performance for planning purposes.
- G. The Office shall submit a quarterly progress report to the Director.
- H. For purposes of state monitoring of the Ombudsman Program, the state agency shall adhere to 45 CFR 1321.11 as now or hereafter amended.

**CHAPTER 500: PROTOCOLS FOR PROBLEM RESOLUTION AND INVESTIGATIVE SERVICES ON BEHALF OF RESIDENTS OF LONG-TERM CARE FACILITIES**

**501: Receipt of Complaints**

**502: Complaint Investigations**

**503: Verification of Complaints**

**504: Resolution of Complaints**

**505: Abuse and Neglect**

**506: Complaint Referral**

**507: Documentation of Investigative Services**

**501: Receipt of Complaints**

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

services.

- a. The following complaints are not appropriate for Ombudsman activity:
  - i. Complaints that do not directly impact residents
  - ii. Complaints that are outside the scope of the mission or authority of the Program
  - iii. Complaints which would create an irresolvable conflict of interest

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

- b. Complaints involving non-elderly residents are appropriate
    - i. If the services benefit older residents of that facility generally, or are the only viable avenue of assistance available to the complainant; and
    - ii. If it does not significantly diminish the LTCOP efforts on behalf of older persons.
    - iii. Categorize the type of complaint (using the uniform complaint categories provided by the Office);
- C. Special consideration shall be given when the Program receives a complaint on a deceased resident. The Ombudsman shall:
  - 1. determine if the case should be opened as a systemic case. If the Ombudsman determines the case should not open as a systemic case, the Ombudsman will inform the complainant that the Ombudsman will not open a case as there is no client for which an issue can be resolved
  - 2. refer the complainant to Illinois Department of Public Health (IDPH) or Healthcare and Family Services (HFS) as appropriate;
  - 3. suggest to the complainant other referral options including police, private attorneys, coroner, etc. as possible.

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

## D. Timeliness of response to complaints

1. Every Ombudsman shall use his or her best efforts to initiate investigations (defined as "Date of First Action" in Section 215 of this Manual) of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. A response is considered timely as follows:

**TABLE 5-A  
COMPLAINT RESPONSE**

<b>IF a complaint involves . . .</b>	<b>THEN the standard of promptness for a LTCO response is . . .</b>
<ul style="list-style-type: none"> <li>· abuse or gross neglect, and the LTCO has reason to believe that a resident may be at risk</li> <li>· actual or threatened transfer or discharge from a facility</li> <li>· use of restraints</li> </ul>	within the next working day from the receipt of the message or information by the Program Provider Agency
<ul style="list-style-type: none"> <li>· abuse or gross neglect, and the LTCO has no reason to believe that a resident is at risk (i.e. the resident has left the facility for home or a hospital)</li> </ul>	within 3 working days from the receipt of the message or information by the Program Provider Agency
other types of complaints	within 7 - 30 working days or less depending upon severity of complaint

2. When the Program will be unable to initiate investigations in a timely manner (e.g., due to a planned vacation, training, or extended illness), the Regional Ombudsman shall develop a plan for temporary coverage in order to meet the standard of promptness in accordance with Provider Agency policies and the requirements of this section.
3. The Ombudsman shall inform the complainant of a time frame for when the complainant may expect investigative efforts to begin. Time frame should be documented in case records.

4. The Program is not designed to serve as an emergency response system. Emergency or life threatening situations should be referred to "911" and other emergency response systems for immediate response.

E. Resident focus

1. Regardless of the source of the information or complaint, the resident of, or applicant to, a long-term care facility is the Program's client and all complainants shall be so informed.
2. Investigation by the Ombudsman shall proceed only with the express consent of the resident.
3. Regardless of the source of the information or complaint, an Ombudsman shall, in the most efficient and effective way possible:
  - a. determine the resident's perception of the complaint or problem;
  - b. determine the resident's wishes with respect to the resolution of the complaint;
  - c. advise the resident of his or her rights; and
  - d. work with the resident in developing a plan of investigation and action that conforms with the Program's empowerment mission.
4. Where the complaint relates to a regulatory violation within a long-term care facility, the Ombudsman may inform the resident and/or complainant that the Program has the opportunity to provide information to the Department of Public Health surveyors before the surveyors begin the annual survey and seek the resident or complainant's permission to share the complaint information with surveyors. The Ombudsman may provide the name of the complainant or resident to surveyors for IDPH's offsite preparation with complainant or resident consent. Supportive living regulatory violations may be reported to the Healthcare and Family Services.
5. Resident consent refused or withdrawn
  - a. If at any point during the problem resolution and complaint investigations process, the resident expresses that he or she does not want the Program to take further action on a complaint involving the resident, the Ombudsman shall

determine whether further efforts should be made on the complaint. In making this determination, the Ombudsman shall consider the following:

- i. IF the resident refuses consent to Program work on the complaint; or
  - ii. withdraws consent before the Ombudsman has verified the complaint; or
  - iii. withdraws consent after the Ombudsman has verified or partially verified the complaint, the Ombudsman shall:
    - I. Discontinue work on the complaint; and
    - II. discontinue investigation and resolution activities on the complaint; and
    - III. determine whether the type of complaint is recurring. If it is recurring, the Ombudsman shall determine whether the circumstances merit other strategies towards resolution which would not involve or disclose the identity of the resident who has withdrawn consent (e.g. filing an Ombudsman-generated complaint, presenting the issue to the resident or family council); and
    - IV. follow steps listed below.
- b. For all complaints in which the resident refuses or withdraws consent, the Ombudsman shall:
- i. attempt to determine why the resident refused or withdrew consent, considering factors such as:
    - past responses of facility to complaints;
    - the resident's relationship with the staff;
    - the experience of this resident or other residents in the facility or other facilities related to this type of complaint; or fear of retaliation by facility staff.
  - ii. inform the resident that he or she may contact the Program regarding the withdrawn complaint or other complaints in the future; and

- iii. provide a business card or brochure informing the resident how to contact the Program.
  - c. For all abuse and neglect complaints in which the resident, knowing full well the potential consequences of her/his refusal to give, or withdrawal of, consent, the Ombudsman shall:
    - i. complete the steps outlined in Section 501 (D) (4) (b);
    - ii. discontinue work on the complaint; and
    - iii. report the withdrawal or refusal immediately to the Office and Regional Ombudsman in keeping with Section 504 (O) of this Manual.
- 6. Resident unable to provide consent
  - a. The Program shall advocate for a resident's wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.
  - b. When a resident is unable to provide consent to the Program to work on a complaint directly involving the resident, the Ombudsman shall:
    - i. seek direction from the resident's legal representative, as long as the legal representative is not implicated in the complaint
    - ii. seek evidence from family, friends, and other sources that indicates what the resident would have desired and, where such evidence is available, work to effectuate that desire; and
    - iii. assume that the resident wishes to have his or her health, safety, welfare and rights protected.
  - c. When the resident is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the Ombudsman shall:
    - i. check to see if the resident has a legal guardian or legal representative;
    - ii. if there is no legal guardian or legal representative

and the Ombudsman has reason to believe that the resident is a victim of abuse, neglect and exploitation;

- iii. contact the Office of the State Ombudsman to discuss the case, seek guidance and get approval to take further action.

## 7. Deceased Residents

- a. When the Program receives a new report on a resident who has already died, the Ombudsman shall:
  - i. determine if the case should be opened as a systemic case;
  - ii. refer the complainant to the appropriate agency;
  - iii. If the Ombudsman determines the case should not open as a systemic case, the Ombudsman will inform the complainant that the Ombudsman will not open a case as there is no client for which an issue can be resolved;
  - iv. suggest to the complainant other referral options including police, private attorneys, coroner, etc. as appropriate.
- b. When the Program has an open case and the resident dies, the Ombudsman shall:
  - i. close the case
  - ii. determine if a systemic case should be opened
  - iii. suggest to the complainant other referral options including police, private attorneys, coroner, etc. as appropriate.

**502: Complaint Investigations**

- A. Ombudsmen investigate complaints in order to verify the general accuracy of the complaint and to gather information to resolve it. The investigation shall be conducted in a timely and thorough manner in order to:
  - 1. identify the relevant issue areas raised by the complaint;
  - 2. determine the sequence of investigatory steps;
  - 3. assemble all necessary facts;
  - 4. determine the validity of the complaint; and
  - 5. seek resolution of the complaint.
- B. Ombudsmen shall respond to complaints in a timely manner. The standard of promptness shall be based on the “date of first action” which shall be as follows:
  - 1. Emergency or life threatening situations requiring an immediate response should be referred to “911” because the Program is not designed to serve as an emergency response system; and
  - 2. Complaints of abuse or neglect which indicate that a resident’s life or safety is in imminent danger shall be investigated within 24 hours after the receipt of the complaint and/or the complainant shall be directed to contact the IDPH Central Complaint Registry for all licensed facilities except for Supportive Living Facilities which shall be directed to the Department of Healthcare and Family Services.
- C. The Ombudsman shall investigate other complaints alleging abuse or neglect within 7 days after the receipt of the complaint.
- D. All other complaints shall be investigated within 30 days after the receipt of the complaint.
- E. Resident involvement, direction, and consent.
- F. Regardless of the source of information or complaint, the resident of, or applicant to, a long-term care facility is the Program’s client and all complainants shall be so informed.
- G. Investigation by the Ombudsman shall proceed only with the express consent of the resident or authorized legal representative as defined in Section 501 of this Manual.

- H. Regardless of the source of the information or complaint, the Ombudsman shall:
  - 1. If the complainant is not the resident, determine if the resident perceives the issue as a complaint or problem;
  - 2. determine the resident's wishes with respect to resolution of the complaint;
  - 3. advise the resident of his or her rights; and
  - 4. work with the resident in developing a plan of investigation and action that conforms with the Program's mission.
- I. Resident consent refused or withdrawn
  - 1. For all complaints in which the resident refuses or withdraws consent, the Ombudsman shall discontinue work on the complaint and shall:
    - a. Determine whether the type of complaint is recurring. The Ombudsman shall determine whether the circumstances merit other strategies towards resolution which would not disclose the identity of the resident who has withdrawn consent (e.g., filing an Ombudsman-generated complaint, presenting the issue to the resident or family council);
    - b. Attempt to determine why the resident refused or withdrew consent, consider the following factors:
      - i. Past responses of facility, such as failure to respond to complaints and/or retaliation against complainants;
      - ii. The resident's experience with facility staff; and
      - iii. The experience of residents related to this type of complaint.
  - 2. Inform the resident that he or she may contact the Program in the future regarding the withdrawn complaint or other complaints; and
  - 3. Provide a business card or brochure informing the resident how to contact the Program.
- J. For all abuse and neglect complaints in which the resident, knowing full well the potential consequences of his/her refusal to give, or withdrawal of,

consent, the Ombudsman shall:

1. Complete the steps outlined in Section 501(D) (4) (b);
2. Discontinue work on the complaint; and
3. Report the withdrawal or refusal immediately to the Office and Regional Ombudsman in keeping with Section 504(D) (3) of this Manual.

K. When the Program has an open case and the resident dies, the Ombudsman shall:

1. Close the case;
2. Determine whether or not the complaint can be opened as a systemic case; and
3. Suggest to the complainant other referral options including IDPH, police, private attorneys, coroner, etc. as appropriate.

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

L. When the resident is unable to provide consent, the Ombudsman shall:

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

M. When the resident is the alleged victim of abuse, neglect and/or

exploitation and is unable to provide consent, the Ombudsman shall:

1. check to see if the resident has a legal guardian or legal representative;
  2. if there is no legal guardian or legal representative and the Ombudsman has reason to believe that the resident is a victim of abuse, neglect and exploitation;
  3. contact the Office of the State Ombudsman to discuss the case, seek guidance and get approval to take further action.
- N. Regardless of the source of the information or complaint, the resident of, or applicant to, a long-term care facility is the Program's client and all complainants shall be so informed.
- O. In order to investigate, verify, and ultimately resolve a complaint, the Ombudsman shall take one or more of the following steps as appropriate to the nature of the complaint and with the express consent of the resident:
1. research relevant laws, rules, regulations, and policies;
  2. personally observe the situation and evidence;
  3. interview the resident and/or complainant;
  4. interview any staff, administration, physician, other residents and families;
  5. identify relevant agencies and interview and/or obtain information from their staff;
  6. examine any relevant records including clinical, medical, social, financial, and other records in keeping with access and confidentiality policies and procedures;
    - a. review any other information available to the Ombudsman and pertinent to the investigation;
    - b. consider the most appropriate time to conduct an on-site visit;
    - c. consider combining these issues with other problems in the same facility, corporation, agency, or Program; and,

- d. determine the sequence of investigatory steps.
- P. An investigation shall minimally include the following investigative activities:
- 1. face-to-face contact and interview with the resident(s) and/or his representative; and
  - 2. direct contact and interview with the complainant, which may be by a face-to-face contact, telephone call or by letter. However, direct contact with the complainant is not required if the complaint was made anonymously or if the complainant requests not to be contacted.
- Q. The exceptions to face-to-face (FTF) contact with the resident are as follows:
- 1. if the resident has requested that s/he not be visited or contacted;
  - 2. if the resident was the complainant who phoned the complaint to the Ombudsman and confirmed via phone that he agrees a FTF visit is not needed;
  - 3. if the case involves a notice of involuntary discharge for non-payment and the Ombudsman is able to speak to the resident directly over the telephone and resolve the case without a FTF visit; and
  - 4. if the case involves a Medicaid application and the Ombudsman is able to speak to the resident directly over the telephone and resolve the case without a FTF visit.
- R. The Ombudsman shall seek the following information during the investigation of a complaint or problem:
- 1. what has occurred or is occurring;
  - 2. when it occurred and whether the occurrence is on-going;
  - 3. where it occurred;
  - 4. who was involved;
  - 5. effect of the occurrence on resident(s);
  - 6. reason for occurrence;

- 7. what, if anything, the facility or other interested parties have done in response to the occurrence; and
- 8. resident's goals and wishes as a complaint resolution.
- S. The Ombudsman is not required to independently verify a complaint in order to seek resolution on behalf of a resident. Resident perception is a sufficient basis upon which an Ombudsman can seek resolution of a problem or complaint.
- T. Generally, facility visits for purposes of complaint investigation shall be unannounced.

**503: Verifying Complaints**

- A. Because the Program works on behalf of residents, the Ombudsman gives the benefit of any doubt to the resident's perspective.
- B. A complaint is "verified" when an Ombudsman determines, after work (interviews, record inspection, observation, etc.) that the circumstances described in the complaint are generally accurate.

**504: Resolution of Complaints**

- A. Upon verifying a complaint, the Ombudsman shall discuss with the resident or resident's representative legal, administrative, and other remedies available to resolve the complaint. The Ombudsman shall, to the fullest extent possible, involve and empower the resident to participate in the resolution of the complaint.
- B. The Ombudsman shall work with the resident to develop a plan of action to resolve the complaint.
  - 1. The plan of action shall be mutually agreed upon by the resident and the Ombudsman.
  - 2. The following factors shall be considered in developing the plan of action:
    - a. the scope and nature of the complaint;
    - b. the history of the facility with respect to resolution of other complaints;
    - c. available remedies and resources for referral;
    - d. the individual or agency best able to resolve the complaint; and
    - e. the likelihood of retaliation against the resident or complainant.
  - 3. An attempt to resolve the dispute directly with the appropriate staff of the facility or other party that is the source or cause of the complaint unless the Ombudsman and the resident determine that another strategy would be more advantageous to the resident.
  - 4. One or more of the following may be used to develop an appropriate plan of action in resolving complaints:
    - a. An explanation that the findings of the investigation do not indicate a need for a change or require Ombudsman intervention which satisfied/resolved the initial problem;
    - b. negotiation on behalf of, or with the resident with the appropriate facility staff or other relevant party to develop an agreement or course of action that resolves the complaint;

- c. mediation between parties of equal status (i.e., between residents or between family members) to assist the parties in developing an agreement that resolves the complaint;
  - d. Assistance or representation for residents before the Department of Public Health or the Department of Health Care and Family Services (HFS) in administrative hearings to challenge involuntary discharge notices or to appeal unsatisfactory complaint investigations completed by the Department of Public Health or the Department of Health Care and Family Services;
  - e. coordination with and/or referrals to appropriate agencies; or
  - f. issues advocacy, which is discussed in Section 405 of this Manual.
- C. If a complaint received or an investigation by an Ombudsman discloses information or facts indicating the commission of a criminal offense or a violation of standards of professional conduct, the matter may be referred to the Illinois State Police, State's Attorney, or any other law enforcement official having jurisdiction to prosecute the crime, or to the appropriate professional licensing board in keeping with the resolution plan developed with the resident.
- D. If a complaint cannot be resolved through negotiations with the facility or the appropriate government agency, or if an act, practice, policy or procedure of a facility or government agency does or may adversely affect the health, safety, welfare or civil rights of a resident or class of residents of a facility or facilities, the Regional Program:
  - 1. may recommend and assist the resident in securing legal representation to commence legal actions, including complaints for injunctive relief, declaratory relief, or actions for civil damages; provided that exhaustion of any available administrative remedies shall not be required prior to commencement of suit pursuant to Section 3-604 of the Nursing Home Care Act; and
  - 2. shall consult with the Office regarding the possibility of legal action and in appropriate circumstances, the Office shall involve the Legal Services Developer and the Department's General Counsel in assisting the Regional Program.
- E. The resolution status of each complaint shall be documented according to the classifications listed below:

1. LEGISLATIVE OR REGULATORY ACTION REQUIRED - Complaints that require policy, regulatory or legislative change to resolve to satisfy the resident or complainant. Complaints of this nature may be addressed in the issues section of the NORS report.
2. NOT RESOLVED - The problem identified in the complaint has not been corrected or the change made was in no way to the satisfaction of the resident.
3. WITHDRAWN - The complaint was withdrawn at the request of the resident or complainant, or discontinued by the Ombudsman. If a significant portion of the complaint/problem was resolved prior to the withdrawal record as "Partially Resolved."
4. REFERRED FOR RESOLUTION AND FINAL DISPOSITION NOT OBTAINED - The complaint was referred to another agency for investigation but no report of final outcome was obtained by the Ombudsman.
5. REFERRED FOR RESOLUTION AND OTHER AGENCY FAILED TO ACT - The complaint was referred to another agency for investigation, but no action was taken by the referral agency.
6. REFERRED FOR RESOLUTION AND AGENCY DID NOT SUBSTANTIATE - The complaint was referred to another agency for investigation but their findings did not substantiate (or support) the referred complaint.
7. NO ACTION NEEDED OR APPROPRIATE - The investigation proved no action by the Ombudsman was needed or appropriate. Examples include: a family member has a complaint which the resident does not consider to be a problem and wants no action; or the findings of the investigation did not indicate a need for change or require further Ombudsman investigation and complaint resolution. This code may also be used when the resident dies or moves away and the complaint is no longer relevant.
8. PARTIALLY RESOLVED - The complaint addressed in part to the satisfaction of resident or complainant, but some problem remained. (See g. below for guidance.)
9. RESOLVED - The complaint was addressed to the resident's satisfaction. If the resident cannot communicate his/her satisfaction, the Ombudsman may look to the resident's representative or to the complainant to determine the resolution if consistent with the rights and interests of the resident. In cases where the resident is not the

complainant and the resident is deceased, a complaint may be considered resolved if addressed to the satisfaction of the complainant.

F. Cases may be closed in the following circumstances:

1. when the complaint or complaints have been resolved to the resident's satisfaction; or
2. when the Ombudsman has determined, after investigation, that the complaint or complaints:
  - a. cannot be verified;
  - b. were not made in good faith;
  - c. would require further activity by the Program that is unlikely to produce satisfaction for the resident;
  - d. are not appropriate for Program activity; or
  - e. will not receive further attention from the agency to which the referral was made.
3. when the resident requests that Program activity end on the complaint.

**505: Abuse/Neglect Issues**

- A. If a complaint or an investigation indicates suspected abuse or neglect of a facility resident or participant of a medical assistance waiver or managed care organization, the Ombudsman shall:
  - 1. advise the resident, participant, complainant or witnesses to report the matter to the Department of Public Health, Adult Protective Services Program and/or law enforcement as appropriate. The Ombudsman should offer assistance to any individual who wants to report abuse or neglect;
  - 2. request the permission of the resident, participant, or resident or participant representative to report suspected abuse or neglect to the Department of Public Health, Adult Protective Services Program and/or law enforcement if the resident is unwilling to report themselves;
  - 3. inform the complainant, when the complainant is a mandated reporter, of the provisions under Illinois law, 210 ILCS 30/4, which requires certain persons to report suspected abuse or neglect and provides penalties for failing to report; and/or
  - 4. advocate for and follow the resident's or participant's wishes to the extent that the resident or participant can express them, even if the resident or participant has limited decision-making capacity.
- B. When a resident or participant is unable to consent to an Ombudsman to work on a complaint directly involving the resident or participant, the Ombudsman shall seek evidence to indicate what the resident or participant would have desired and, where such evidence is available, work to bring about that desire.
- C. When the resident is the alleged victim of abuse, neglect and/or exploitation and is unable to provide consent, the Ombudsman shall:
  - 1. check to see if the resident has a legal guardian or legal representative;
  - 2. if there is no legal guardian or legal representative and the Ombudsman has reason to believe that the resident is a victim of abuse, neglect and exploitation contact the Office of the State Ombudsman to discuss the case, seek guidance and get approval to take further action.

- E. When a resident or participant refuses to give consent to report suspected abuse or neglect, the Ombudsman shall:
  - 1. attempt to determine why the resident or participant refused or withdrew consent, considering factors such as:
    - a. past response of facility or agency to complaints;
    - b. the resident's or participant's relationship with the staff;
    - c. the experience of this resident or other residents in the facility or in other facilities related to this type of complaint; and
    - d. notify the Regional Ombudsman and Office of the resident's knowing refusal to report.
- F. The Office shall, in consultation with the Department's General Counsel, consider the impact on the resident, other residents, participants and the integrity of the Program in deciding whether to file a report of suspected abuse or neglect with the Department of Public Health, Adult Protective Services Program or other regulatory agencies. The Office's decision shall be recorded in the Regional Program records.
- G. In the case of suspected abuse or neglect of an older person residing in a suspected unlicensed facility, the Program should file a report of an "unlicensed facility" with the Department of Public Health.
- H. Any Ombudsman who has personal knowledge of any case of alleged or suspected abuse or neglect of a person defined as an "eligible adult" pursuant to the Elder Abuse and Neglect Act (310 ILCS 20/2) shall, to the extent permitted by the applicable Program confidentiality provisions of state and federal law, report and provide information on such case to the appropriate designated elder abuse Provider Agency.
- I. POLICY FOR Financial Exploitation of capable Resident or Participant:
  - 1. encourage caller to make a police report; contact legal services; or hire a private attorney; and
  - 2. Ombudsman will open a case if there is a threat of involuntary discharge.
- J. POLICY FOR Financial Exploitation of incapable Resident or Participant:
  - 1. encourage caller to make a police report;

2. Ombudsman will get involved if there is a threat of involuntary discharge; and
  3. If an involuntary discharge is issued:
    - a. Ombudsman opens case; and
    - b. Ombudsman works to find representative to petition for guardianship.
- K. Policies relating to financial exploitation are the minimum requirements, the Regional Ombudsmen may use his/her discretion to do additional investigation as time allows.

**506: Complaint Referral**

- A. The Program shall refer a complaint or problem to another agency when:
1. the resident or participant gives permission or consent to the Program to act; and
  2. one or more of the following applies:
    - a. another agency has resources that may benefit the resident or participant (e.g., the Case Coordination Unit can physically relocate the resident to a desired location);
    - b. the action to be taken and the complaint is outside of the Program's authority and/or expertise (e.g., Department of Public Health or Department of Public Aid takes enforcement actions);
    - c. the Ombudsman needs additional assistance in order to achieve resolution of the complaint; or
    - d. the resident or participant requests the referral be made.
- B. Referrals to regulatory agencies
1. An Ombudsman may encourage residents, participants or complainants to directly contact the appropriate regulatory agency to file a complaint and will offer information and assistance to residents or complainants in making such contact and follow-up.
  2. When an Ombudsman refers a complaint to the Department of Public Health or other regulatory agency, the Ombudsman shall:
    - a. submit the complaint in writing via fax, email or letter; or
    - b. contact the agency by telephone and subsequently confirm the referral in writing to the agency.
- C. Joint investigatory activities

When the Ombudsman is invited by a regulatory or law enforcement agency to assist in or provide information regarding an investigation of a facility, Ombudsman participation is appropriate only under the following circumstances:

1. the Ombudsman is able to fulfill his or her role as a resident advocate;
2. the Ombudsman does not attempt to regulate a facility or take actions which would lead one to assume that the Program is a regulator; and
3. the Ombudsman explains to facility administration and residents that his or her role is to advocate for the health, safety, welfare and rights of residents, not to enforce regulations.

D. Referrals to legal services

1. For a resident who is requesting, or in need of, legal advice and representation, the Program shall assist the resident in finding appropriate legal services. Ombudsmen may contact Administration on Aging-funded legal services agencies, Legal Services Corporation-funded legal services agencies, Equip for Equality, the Office, and/or the IDoA Legal Services Developer, for information regarding such legal services.
2. When the legal services provider is unable to provide the requested legal service, a Regional Program may provide the resident with a list of private attorneys who may provide the service or make a referral to a local bar association. No Regional Program shall make referrals to or recommend a single private attorney without the approval from the State Ombudsman.

E. Referral to a different Regional Program may occur when a resident moves to a different Regional Program service area.

F. The Program shall follow up with the resident to determine whether services have been received and if the identified need has been met following the formal referral.

**507: Documentation of Investigative Services**

- A. Every complaint received and all activities undertaken to investigate, verify, and resolve the complaint by the Regional Program shall be documented by Ombudsman staff as prescribed by the Office.
- B. The data system approved by the Office is OmbudsManager.
- C. Consent forms, notices of involuntary transfer or discharge, and any other written documents obtained by the Ombudsman through the course of an investigation should be scanned and attached electronically to the case file.
- D. Documentation of case activities must be made by Ombudsman staff within 30 calendar days.

**CHAPTER 600: ACCESS TO RESIDENTS AND FACILITIES,  
RESIDENTS' RECORDS, STATE AND FACILITY RECORDS AND  
PARTICIPANTS AND PARTICIPANTS' RECORDS**

**601: Access to Residents and Facilities**

**602: Access to Residents' Records**

**603: Access to State and Facility Records**

**604. Access to Participants and Participants' Records**

**601: Access to Residents and Facilities**

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

3. may request a hearing under the Section 2-110(d) of the Nursing Home Care Act [210 ILCS 45/2-110(d)].
- E. The Office, upon notice by the Regional Ombudsman of an unreasonable refusal by the facility to permit access to a resident or a facility, shall consult with the Department's General Counsel to determine all available options to secure residents' access to Program services. After consultation with the General Counsel and the Regional Program, the Office may determine that a prosecution is necessary to protect resident access to Program services. In such cases, the Office shall notify the Director of the problem and attempted resolution strategies. The Director, in consultation with the Office, shall notify the Office of the Attorney General or the appropriate State's Attorney that an apparent violation of 20 ILCS 105/4.04 has occurred, and request prosecution of the facility for a business offense under that Act. The Regional Ombudsman shall be notified of the Office's actions relative to the Regional Program's report of an unreasonable denial of access to a facility or resident.

**602: Access to Residents' Records**

- A. Under both federal and state law, certified Ombudsmen have access to review the medical, social, personal, clinical, financial, and other records of a resident.
- B. In order to empower residents, an Ombudsman should examine a resident's records with the resident, whenever possible, and should explain to the resident how to read and use the records. Depending on the functional and legal status of the resident, the Ombudsman shall seek to access the records in accordance with the following:
  - 1. When a resident is capable of giving informed consent, even when the resident has executed a durable power of attorney, the Ombudsman may, with the express permission of the resident, examine a resident's clinical, social, medical, financial, and other records. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records;
  - 2. If a resident with a durable power of attorney for health care decisions is not able to give informed consent, the Ombudsman may seek informed consent from the agent or attorney-in-fact, appointed by the resident under the durable power of attorney. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible from the resident's agent or attorney-in-fact, oral authorization by the agent or attorney-in-fact under the durable power of attorney for health care must be documented in Program case records;
  - 3. When a guardian of the person has been appointed by a court for the resident, the Ombudsman may examine a resident's clinical, social, medical, financial and other records with the informed consent of the resident. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records;
  - 4. If a resident with a guardian is not able to give informed consent, the Ombudsman may seek informed consent from the court appointed guardian. The Ombudsman shall, whenever possible,

seek to have this consent in writing. When a written consent is not possible, oral authorization by the guardian must be documented in Program case records;

5. If the Ombudsman is investigating an allegation of financial exploitation, the Ombudsman may demand copies of receipts, disbursements and records of significant actions from the agent appointed by the resident under a durable power of attorney for property. The Ombudsman may seek a court order requiring production of records, and the recovery of court costs and attorney's fees, pursuant to 755 ILCS 45/2-7.5;
6. When a resident is incapable of giving informed consent for access to records, Ombudsman may access that resident's records when:
  - a. The Ombudsman has conducted a face-to-face visit with the resident and concluded the resident is incapable of giving informed consent and determined;
  - b. That the resident has no legally authorized representative empowered to make decisions for the resident; or
  - c. That the resident's legally authorized representative is implicated in the complaint; or
  - d. that the resident's legally authorized representative is not acting in the best interests of the resident; or
  - e. that the resident's legally authorized representative cannot be located within 24 hours despite a reasonable effort by the Ombudsman to do so;
  - f. a review of the incapable resident's records is necessary to resolve a complaint or to protect the resident's rights; and
  - g. The State Ombudsman, Regional Ombudsman, or Community Ombudsman is authorized to make a written request to the facility for the resident's record based on the completion of all the steps.
- C. When an Ombudsman is denied access to a resident's records by the custodian of such records, after presenting appropriate consent from a resident, the resident's guardian or legal representative, or State Ombudsman, Regional Ombudsman or Community Ombudsman, the Regional Ombudsman and State Program should follow the procedures prescribed in Section 601 (D) and (E) of this Manual.

- D. The records of a resident shall be treated with the highest degree of confidentiality, and be disclosed only as necessary to seek resolution of a complaint, and only to persons with an absolute need for the information.
- E. “Access to Records of a Resident Incapable of Giving Consent” form is in Appendix L.

**603: Access to State Regulatory Agency Records and Officials**

- A. The Program is entitled to copies of all licensing and certification records maintained by state regulatory agencies with respect to all Illinois long-term care facilities, medical assistance waiver providers and managed care organization providers. To obtain a specific record at no cost, the Regional Ombudsman shall forward a specific request to the Office who will make the request to the Department of Public Health or the Department of Healthcare and Family Services, as applicable.
- B. The Program has direct access to directors of governmental entities with responsibilities which impact on residents of long-term care facilities.

## **CHAPTER 700: LEGAL ISSUES**

**701: Legal Advice and Consultation**

**702: Representation for Civil Legal Action**

**703: Willful Interference**

**704: Retaliation and Reprisals**

**705: Guardianship**

**701: Legal Advice and Consultation**

- A. Ombudsmen shall have access to adequate legal counsel to support Program activities.
- B. The Department shall assure:
  - 1. The provision of adequate legal counsel without conflict of interest to all designated Ombudsmen to provide needed legal services, including:
    - a. advice and consultation to the State Ombudsman and Ombudsmen in the performance of their official duties; and
    - b. representation in an actual or threatened legal action against any Ombudsman and the State Ombudsman brought in connection with the performance of their official duties.
  - 2. The Office pursues administrative, legal, and other appropriate remedies on behalf of residents.
- C. An Ombudsman may contact either the Older Americans Act funded legal services provider or the Office directly to seek legal advice or consultation regarding issues, problems or complaints raised by or on behalf of residents. The request for advice or consultation may be made to the Office.
- D. The Office will respond to the request within five (5) working days by:
  - 1. providing the requested legal advice or consultation to the Regional Program;
  - 2. requesting additional information from the Regional Program;
  - 3. providing an update to the Regional Program on the progress in obtaining the necessary information and an anticipated time frame for providing the requested legal advice or consultation; or
  - 4. Indicating to the Regional Program that the request submitted is inappropriate and why the Office will take no further action.
- E. For the Office to obtain advice and consultation, the State Ombudsman may:
  - 1. confer with the Legal Service Developer;

2. contact the Department's General Counsel for guidance on Department policy or procedure; and/or
  3. contact the Department's General Counsel for assistance from the State of Illinois Office of the Attorney General by following Department procedures for such requests.
- F. The Regional Ombudsman may consult with an established multi-disciplinary team. The multidisciplinary team shall:
1. act in an advisory role for the purpose of providing professional knowledge and expertise in handling complex cases.
  2. consist of one or more volunteer representatives from any combination of at least 7 members of the following professions:
    - a. banking or finance;
    - b. disability care;
    - c. health care;
    - d. pharmacology;
    - e. law enforcement
    - f. emergency responder
    - g. mental health care;
    - h. clergy
    - i. coroner or medical examiner;
    - j. substance abuse;
    - k. domestic violence;
    - l. sexual assault; or
    - m. other related field.
  3. receive records as requested on particular cases from law enforcement agencies and coroners or medical examiners.

**702: Representation for Civil Legal Action**

- A. For a Regional Program or an Ombudsman to obtain legal representation:
1. an Ombudsman shall immediately notify the Regional Ombudsman who shall notify the Office upon receipt of any complaint, summons, subpoena, lawsuit, injunction, court order, or notice of any other legal action taken against the Regional Program or any Ombudsman in connection with the performance of official duties. The notice shall be provided within 24 hours, in writing, and shall include a copy of the legal documents along with a brief case summary. Copies of the case notes and records shall be forwarded to the Office, upon request;
  2. the Office may consult with the Department General Counsel of about the legal action or threatened legal action against the Program or any of its representatives, and
  3. when appropriate, the State Ombudsman will submit a written request to the Office of the Attorney General for legal representation of the Regional Program or Ombudsman, in accordance with the State Employee Indemnification Act. (5 ILCS 350/1 *et seq.*)
- B. Legal Representation
1. Should the Attorney General's office agree to represent the Program or Ombudsman, the Ombudsman or Regional Program, by acceptance of this representation, agrees to fully cooperate with the Attorney General's office.
  2. Should the Attorney General's office decline to represent the Program or Ombudsman subject to the legal action or identifies a conflict, the Regional Program, Provider Agency, or Ombudsman may choose to obtain private counsel. The services of the private legal counsel:
    - a. will be reimbursed at reasonable rates approved by the Attorney General, as provided by the State Employee Indemnification Act, if the refusal by the Attorney General's office to represent the Regional Program, Provider Agency or Ombudsman is based on a conflict of interest between the Attorney General's office and the Regional Program; and
    - b. may be reimbursed at reasonable rates approved by the Attorney General if the refusal is based on a determination

that the actions, decisions, or conduct which constitute the basis for the legal action were not taken in good faith and within the scope of official duties as defined in Chapter 200 of this Manual and if the actions, decisions, or conduct are determined in a final judgment by the court to have been undertaken in good faith and were within the scope of official duties.

3. No federal or state funds may be expended by a Regional Program, Provider Agency or Ombudsman for the reimbursement of private legal counsel where it is the final judgment of the court that the actions, decisions, or conduct which are the basis for the legal action for which the private legal counsel was employed were not undertaken in good faith or were outside the scope of official duties.

C. Indemnification

1. If the Court determines the Regional Program or Ombudsman subject to the legal action is liable for damages for actions, decisions or conduct undertaken in good faith and within the scope of official duties, then the State of Illinois will indemnify the Regional Program and Ombudsman pursuant to the State Employee Indemnification Act. Further, if the Attorney General's Office did not provide representation of this matter on the grounds that the action, decisions, or conduct at issue were not in good faith or within the scope of official conduct, and the court has determined that such actions, while creating a liability for the Regional Program or Ombudsman, were within the scope of official duties and in good faith, the Regional Program or Ombudsman may apply to the Department for reimbursement of legal expenses, at a reasonable rate approved by the Attorney General.
2. If the Regional Program, Provider Agency or Ombudsman subject to the legal action is determined to have a liability for action, decisions, or conduct not taken in good faith or within the scope of official duties, the Department will not approve the expenditure of public funds, either State or federal, for the indemnification of the Regional Program, Provider Agency, or Ombudsman subject of the legal action.

**703: Willful Interference**

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

**704: Retaliation and Reprisals**

- A. The Ombudsman statute provides that no person shall intentionally discriminate, retaliate, or effect reprisals in any manner against any participant, resident, relative or guardian of a resident, any employee of a long-term care facility, waiver services or managed care organization or provider of services, or any other person due to filing a complaint with, providing information to, or otherwise cooperating in good faith with any Ombudsman [20 ILCS 105/4.04(f)]. Violation of this provision is a business offense subject to a fine.
- B. The Office shall investigate any report of intentional acts of discrimination, retaliation, or reprisal.
- C. When an Ombudsman believes that intentional acts of retaliation, discrimination or reprisal are occurring, have occurred or have been attempted, the Ombudsman should take such steps as are feasible to prevent the retaliation, discrimination or reprisal from continuing. Whenever possible, The Ombudsman shall warn the perpetrator of the sanctions provided by the law. The Ombudsman shall document the intentional acts of retaliation, discrimination or reprisal.
- D. The Ombudsman shall immediately notify the Office about the intentional acts of retaliation, discrimination, or reprisal and submit supporting documentation of the act or acts. The Office shall review the information provided, and conduct further investigation if necessary, to confirm the occurrence of the interference or retaliation.
- E. The prosecution of any intentional acts of retaliation, discrimination or reprisal as a business offense may involve a criminal trial, and accordingly any corroborating evidence should be carefully collected, preserved, and safeguarded for delivery to the appropriate law enforcement official.
- F. If the Office, based on such review, determines that enforcement action is warranted, the Office shall pursue the following course of action:
  - 1. the Office shall inform the Director, and recommend notification to the Office of Attorney General or the appropriate State's Attorney that an apparent violation of 20 ILCS 105/4.04 has occurred, and request prosecution of the individual or entity for a business offense; and
  - 2. when the perpetrator is a long-term care facility or home care services provider employee or agent, the Office shall file a complaint with the Department of Public Health or the Department of Healthcare and Family Services.

**705: Guardianship**

- A. The Program should always advocate for the wishes of a resident and participant as determined by the Ombudsman's best investigatory and counseling efforts. It is appropriate, for example, for an Ombudsman to advocate on behalf of a resident or participant who wishes to oppose a guardianship petition, who wishes to have his/her guardianship revoked or is being abused by the guardian.
- B. The Program encourages participants and residents and their families to execute and use Durable Powers of Attorney, Living Wills and obtain representative payees whenever possible to avoid unnecessary guardianships. Ombudsmen should regard guardianships only as a last resort and when no other alternatives are available.
- C. Ombudsmen may advocate on behalf of a participant or resident for the least restrictive or limited guardianship in proceedings to establish guardianship of the person. The Ombudsman may request that the court place specific limitations or instructions in the final guardianship order when the participant or resident has voiced such a desire; e.g., that the guardian may not remove the resident from the nursing home, limit the resident's ability to visit friends or relatives, or limit the resident's access to funds.
- D. No Regional Program or any Ombudsman shall serve as guardian of either the estate or the person, as a representative payee, or as an agent under a Durable Power of Attorney for any participant or resident of a long-term care facility, due to the potential conflict of interest or the appearance of a conflict of interest. This restriction does not apply to an Ombudsman acting as a guardian, a representative payee, or as an agent under a Durable Power of Attorney for his/her own family member. However, an Ombudsman should not be the Ombudsman, guardian, representative payee or agent of a durable power of attorney for his/her own family member. In such an instance an Ombudsman from another Regional Program should provide Ombudsman services to the Ombudsman's family member.
- E. Nothing in this standard is meant to diminish the responsibilities of the Program or individual Ombudsmen to provide information to participants, residents, their families or the community about the appropriate use of guardianship and its alternatives.
- F. An agency housing a Regional Program may offer guardianship and representative payee services through a Program other than the Regional Program; however, the Provider Agency must have written policies that are shared with all guardianship, representative payee, and Regional

Program staff. Such written policies must:

1. acknowledge the potential inherent conflicts of interest faced in housing Ombudsman and guardianship services in the same agency;
2. acknowledge that guardianship services are based on a “best interests” theory of service and that the Program is grounded in an “empowerment” and advocacy theory of service and that such difference in approach and philosophy are the basis for real, potential and perceived conflicts of interest;
3. assure that the Regional Program and all designated Ombudsman will provide services to participants and residents in accordance with the applicable state and federal law;
4. assure that no Ombudsman will be subjected to intimidation, harassment, force, interference, retaliation, undue influence, or any other negative action if the Ombudsman, on behalf of a client, in good faith and after appropriate investigation, takes and pursues an adverse or differing position to the division of the agency providing guardianship and/or representative payee services;
5. require any Ombudsman to notify the Office if the agency’s procedures are not being followed or if any Ombudsman is being subjected to intimidation, harassment, force, interference, retaliation, undue influence, or any other negative action while acting in good faith as an Ombudsman; and
6. assure that no designated Ombudsman will work for the Program within the Provider Agency which provides guardianship or representative payee services due to a potential conflict of interest or the appearance of a conflict of interest.

## **CHAPTER 800: CONFIDENTIALITY, DISCLOSURE, AND RETENTION**

**801: Confidentiality of Program Records**

**802: Monitoring the Records of the Regional Program**

**803: Disclosure of Information**

**804: Record Retention**

**801: Confidentiality of Program Records**

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

**802: Monitoring the Records of the Regional Program**

- A. For purposes of monitoring and supervising the Regional Program, the AAA and Provider Agency may review reports for specific purposes which reflect the activities of the Regional Program.
- B. The Regional Ombudsman shall conduct an annual review of selected Program records in accordance with the standardized tool developed by the Office. The results of the review shall be submitted to the Provider Agency, the relevant AAA and the Office.
- C. The Office shall conduct a review of the Regional Program files at least once every three years and report the results of the review to the Provider Agency and the AAA. More frequent reviews may be conducted at the request of the Provider Agency, the AAA, or the Department. The Office may perform a series of different types of data and record reviews including electronic data point reviews, electronic case reviews, and on-site reviews of records. The frequency and types of reviews will vary but at a minimum 15% of cases will be reviewed for each Regional Program yearly.
- D. The supervisor of the Regional Ombudsman may not review resident Program records files without consent and approval of the Office.
- E. No state agency, AAA, Provider Agency, or legal representative may require an Ombudsman to disclose the identity of a resident or complainant without consent of the resident or complainant.
- F. AAA's shall not be allowed access to Program records AAAs may report programmatic concerns to the Office.

**803: Disclosure of Information**

- A. Ombudsmen shall not disclose the identity of, or any information that would lead to the identification of a participant, complainant or resident involved in a complaint, report, or investigation, unless the individual (or an authorized guardian or legal representative) has expressly consented to the disclosure, or such disclosure is required by court order. Verbal consent must be documented contemporaneously in the case notes by the Ombudsman.
- B. The consent to disclose information shall be on forms developed by the Office or the Regional Program, provided the Regional Program's form contains the information on the form developed by the Office, and shall be properly signed and dated.
- C. The Ombudsman shall make every effort to obtain written consent from the participant, resident or authorized representative.
- D. When a request is made by any party for any Program records, the Office shall be contacted immediately by the Regional Ombudsman or his/her designee. Program records may not be released or disclosed to anyone who is not a representative of the Office without the written permission of the Office.
- E. The Office shall determine whether to disclose all or part of the records as follows:
  - 1. the Office may require that the request for Program records be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be documented immediately in the Program case record by the Ombudsman to whom the request was communicated in order to meet this requirement;
  - 2. the Office shall review the request with the relevant Regional Program staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s);
  - 3. with advice from General Counsel, the Office shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents and complainants who have not provided express consent for the

release of their names shall not be revealed; and

4. the Office, in consultation with the Department's General Counsel, shall consider the source of the request (i.e. resident, facility, complainant, another agency, or any other party) and the kind of request (written request, Freedom of Information Act request, subpoena, court order) in determining whether to disclose all or any part of the records. For example, requests coming from residents should, generally, be honored by the Program and the resident provided copies of records that are directly related to him and that have redacted the identity of other residents and complainants. Also, in cases of records request by law enforcement officials, formal court discovery requests, subpoena, or court order, the Office, in consultation with the Department's General Counsel, may seek a motion to quash a protective order where the release of records would be inconsistent with the wishes or interests of a resident.

**804: Record Retention**

- A. Documents relating to casework should be scanned and attached electronically to the case file. Once saved electronically, the hard copy of these documents may be destroyed.
- B. All documentation relating to casework or ombudsmen activities that is not scanned and documented electronically shall be retained for a minimum of three years from the date completed.
- C. Volunteer notes sent via email to the Regional Program should be attached to the Regular Presence visit entry to which it corresponds. Once the information has been attached to the database, the original report shall be destroyed.
- D. When a case is closed, a copy of the case shall be saved within the Regional Program. The copy may be:
  - 1. an electronic copy of the case file backed up on a local secure server;  
or
  - 2. a hard copy of the case file kept in a secure location.
- E. Closed cases saved at the local level, whether stored electronically or in the form of a hard copy, must be retained for a minimum of three years.
- F. Personnel records for paid and volunteer ombudsmen shall be retained for a minimum of five years.

## **CHAPTER 900: CONFLICT OF INTEREST**

- 901: Adherence to Procedures**
- 902: Identifying a Conflict of Interest**
- 903: Disclosure of a Conflict of Interest**
- 904: Reviewing and Remediating the Conflict of Interest**
- 905: Failure to Identify or Remedy a Conflict of Interest**

**901: Adherence to Procedures**

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

**902: Identifying a Conflict of Interest**

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

B. Organizational conflicts

Conflicts which may arise from organizational location include, but are not limited to, Program placement in an agency that:

1. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or of a provider of a long-term care services provided to medical assistance waiver and managed care organization participants;
2. is employed by or participates in the management of a long-term care facility;
3. has governing board members with ownership, investment or employment interest in long-term care facilities;
4. has direct involvement in the licensing or certification of a long-term care facility or long-term care services;
5. receives or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
6. administers/staffs the Adult Protective Services Program;
7. administers and/or provides care coordination or direct services for a state medical assistance wavier; or
8. provides direct services via contract with a managed care organization.

C. Individual Ombudsman conflicts

Potential conflicts for an Ombudsman include, but are not limited to, the following:

1. employment of an individual or a member of his/her immediate family by a long-term care facility or by the owner or operator of any long-term care facility, state medical assistance wavier provider, or managed care organization;

2. participation in the management of a long-term care facility, state medical assistance waiver provider, or managed care organization; by an individual or a member of his/her immediate family;
3. 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, state medical assistance waiver provider, or managed care organization by an individual or a member of his/her immediate family;
4. involvement in the licensing or certification of a long-term care facility or provision of a long-term care service, state medical assistance waiver provider, or managed care organization by an individual or a member of his/her immediate family;
5. receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility, state medical assistance waiver provider, or managed care organization;
  - a. accepting money or any other consideration from anyone other than the Provider Agency or other entity designated by the State Ombudsman for the performance of an act in the regular course of a Ombudsman's duties;
  - b. provision of services with conflicting responsibilities while serving as a Ombudsman to a resident such as adult protective services; discharge planning; serving as a guardian, agent under power of attorney or other surrogate decision-maker for a long-term care resident in the service area; pre-admission screening or case management for long-term care residents;
  - c. serving residents of a facility in which a family member resides;
  - d. serving participants of a state medical assistance waiver in which a family member participates; or
  - e. serving participants of a managed care organization in which a family member participates.

**903: Disclosure of a Conflict of Interest**

- A. Procedures for persons seeking or holding certification as Ombudsmen
  - 1. Identification of the conflict  
The Regional Program shall screen all persons seeking certification as Ombudsmen and support staff to identify individual conflicts of interest. Once certified, Ombudsmen and support staff shall immediately inform the Regional Ombudsman of all potential conflicts of interest.
  - 2. Disclosure of the conflict  
Persons seeking employment or certification as Ombudsman staff or volunteers shall disclose all potential conflicts of interest to the Regional Program
- B. Procedures for entities seeking or holding designation
  - 1. Identification of a conflict  
Agencies seeking or holding designation as Regional Programs shall screen upon certification and periodically thereafter each individual involved in or has authority over the Regional Program to identify individual conflicts of interest.
  - 2. Disclosure of the conflict  
Such persons shall disclose to the Provider Agency all potential conflicts of interest.
- C. AAA's contracting with an agency
  - 1. Identification of a conflict  
AAAs contracting with an agency to serve as a Regional Program shall periodically screen within the AAA each individual involved in or has authority over the Regional Program to identify individual conflicts of interest.
  - 2. Disclosure of the conflict  
Such persons shall disclose to the AAA all potential conflicts of interest
- D. Notification to the Office

Agents of the Department, AAAs, and Provider Agencies and all Ombudsmen have a duty to notify the Office of any conflict of interest of which they have knowledge. Where a conflict of interest within the Program has been identified, the Office shall be notified.

E. Failure to disclose

Failure to disclose relevant information prior to accepting employment or certification within 15 business days may be grounds for termination of employment or of authority or certification as an Ombudsman or designation as a Provider Agency of the Program.

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

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

**B. Reviewing the Conflict of Interest**

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

**C. Remediating conflicts**

If the conflict can be remedied, the Office shall:

1. develop a written plan within fourteen (14) calendar days of the completion of the review by the State Ombudsman; which shall identify the conflict and impose a remedy to eliminate, or to the greatest extent possible minimize, the impact of the conflict; and
2. in the case of an individual conflict, require the Regional Program to implement the recommended plan; or
3. in the case of an organizational conflict, require that the Provider Agency develop and implement policies and procedures that assure the Ombudsmen, as resident and participant directed advocates, can perform their duties fully and without interference.

**905: Failure to Identify or Remedy a Conflict of Interest**

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

## **UNOFFICIAL COMPILATION – BY TITLE**

by

THE CENTER FOR SOCIAL GERONTOLOGY (TCSG), FEBRUARY 2007

### **INTRODUCTORY NOTE FROM TCSG:**

The Older Americans Act was amended/reauthorized in the fall of 2006. As of February 2007, an official compilation of the Act as amended had not been printed. To assist the many organizations that would find it useful to have a complete, compiled version of the OAA which incorporates the 2006 Amendments, The Center for Social Gerontology has put together an UNOFFICIAL COMPILATION.

For ease of use and downloading, we are posting each Title of the Act separately on our web site. Also, we have italicized language that was added / changed in the 2006 Amendments. Furthermore, both page numbers and footnote numbers are consecutive throughout all seven Titles of the Act, despite the Act having been broken up into these separate Titles.

Because this is an UNOFFICIAL compilation, it is possible that there are some mistakes. *The Center for Social Gerontology takes no responsibility for any problems these mistakes may cause.* If you should find something which YOU BELIEVE IS AN ERROR, PLEASE BE SURE TO CONTACT US, and we will make any necessary changes. Contact: Brooke McCreary, TCSG Program Assistant at (734) 665-1126 or email [bmccreary@tcs.org](mailto:bmccreary@tcs.org).

## **OLDER AMERICANS ACT OF 1965**

**(Public Law 89–73)**

**[As Amended Through P.L. 109–365, Enacted October 17, 2006]  
(To amend the Older Americans Act of 1965 to authorize appropriations for  
fiscal years 2007 through 2011, and for other purposes.)**

### **TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES**

#### **Subtitle A—State Provisions**

#### **CHAPTER 1—GENERAL STATE PROVISIONS**

##### **ESTABLISHMENT.**

SEC. 701. The Assistant Secretary, acting through the Administration, shall establish and carry out a program for making allotments to States to pay for the cost of carrying out vulnerable elder rights protection activities.

(42 U.S.C. 3058)

**AUTHORIZATION OF APPROPRIATIONS.**

SEC. 702. (a) OMBUDSMAN PROGRAM.—There are authorized to be appropriated to carry out chapter 2, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(b) PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION.— There are authorized to be appropriated to carry out chapter 3, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(c) LEGAL ASSISTANCE DEVELOPMENT PROGRAM.—There are authorized to be appropriated to carry out chapter 4, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(42 U.S.C. 3058a)

**ALLOTMENT.**

SEC. 703. (a) IN GENERAL.—

(1) POPULATION.—In carrying out the program described in section 701, the Assistant Secretary shall initially allot to each State, from the funds appropriated under section 702 for each fiscal year, an amount that bears the same ratio to the funds as the population of older individuals in the State bears to the population of older individuals in all States.

(2) MINIMUM ALLOTMENTS.—

(A) IN GENERAL.—After making the initial allotments described in paragraph (1), the Assistant Secretary shall adjust the allotments on a pro rata basis in accordance with subparagraphs (B) and (C).

(B) GENERAL MINIMUM ALLOTMENTS.—

(i) MINIMUM ALLOTMENT FOR STATES.—No State shall be allotted less than one-half of 1 percent of the funds appropriated under section 702 for the fiscal year for

which the determination is made.

(ii) MINIMUM ALLOTMENT FOR TERRITORIES.— Guam, the United States Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the funds appropriated under section 702 for the fiscal year for which the determination is made. American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated under section 702 for the fiscal year for which the determination is made.

(C) MINIMUM ALLOTMENTS FOR OMBUDSMAN AND ELDER ABUSE PROGRAMS.—

(i) OMBUDSMAN PROGRAM.—No 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 to the State under section 304 in fiscal year 2000 to carry out the State Long-Term Care Ombudsman program under title III.

(ii) ELDER ABUSE PROGRAMS.—No State shall be allotted for a fiscal year, from the funds appropriated under section 702 and made available to carry out chapter 3, less than the amount allotted to the State under section 304 in fiscal year 2000 to carry out programs with respect to the prevention of elder abuse, neglect, and exploitation under title III.

(D) DEFINITION.—For the purposes of this paragraph, the term “State” does not include Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) REALLOTMENT.—

(1) IN GENERAL.—If the Assistant Secretary determines that any amount allotted to a State for a fiscal year under this section will not be used by the State for carrying out the purpose for which the allotment was made, the Assistant Secretary shall make the amount available to a State that the Assistant Secretary determines will be able to use the amount for carrying out the purpose.

(2) AVAILABILITY.—Any amount made available to a State from an appropriation for a fiscal year in accordance with paragraph (1) shall, for purposes of this subtitle, be regarded as part of the allotment of the State (as determined under subsection (a)) for the year, but shall remain available until the end of the succeeding fiscal year.

(c) WITHHOLDING.—If the Assistant Secretary finds that any State has failed to carry out this title in accordance with the assurances made and description provided under section 705, the Assistant Secretary shall withhold the allotment of funds to the State. The Assistant Secretary shall disburse the funds withheld directly to any public or nonprofit private institution or organization, agency, or political subdivision of the State submitting an approved plan containing the assurances and description.

(42 U.S.C. 3058b)

## **ORGANIZATION.**

SEC. 704. In order for a State to be eligible to receive allotments under this subtitle—

(1) the State shall demonstrate eligibility under section 305;

(2) the State agency designated by the State shall demonstrate compliance with the applicable requirements of section 305; and

(3) each area agency on aging designated by the State agency and participating in such a program shall demonstrate compliance with the applicable requirements of section 305.

(42 U.S.C. 3058c)

**ADDITIONAL STATE PLAN REQUIREMENTS.**

SEC. 705. (a) ELIGIBILITY.—In order to be eligible to receive an allotment under this subtitle, a State shall include in the State plan submitted under section 307—

(1) an assurance that the State, in carrying out any chapter of this subtitle for which the State receives funding under this subtitle, will establish programs in accordance with the requirements of the chapter and this chapter;

(2) an assurance that the State will hold public hearings, and use other means, to obtain the views of older individuals, area agencies on aging, recipients of grants under title VI, and other interested persons and entities regarding programs carried out under this subtitle;

(3) an assurance that the State, in consultation with area agencies on aging, will identify and prioritize statewide activities aimed at ensuring that older individuals have access to, and assistance in securing and maintaining, benefits and rights;

(4) an assurance that the State will use funds made available under this subtitle for a chapter in addition to, and will not supplant, any funds that are expended under any Federal or State law in existence on the day before the date of the enactment of this subtitle, to carry out each of the vulnerable elder rights protection activities described in the chapter;

(5) an assurance that the State will place no restrictions, other than the requirements referred to in clauses (i) through (iv) of section 712(a)(5)(C), on the eligibility of entities for designation as local Ombudsman entities under section 712(a)(5);

(6) an assurance that, with respect to programs for the prevention of elder abuse, neglect, and exploitation under chapter 3—

(A) in carrying out such programs the State agency will conduct a program of services consistent with relevant State law and coordinated with existing State adult protective service

activities for—

(i) public education to identify and prevent elder abuse;

(ii) receipt of reports of elder abuse;

(iii) active participation of older individuals participating in programs under this Act through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance if appropriate and if the individuals to be referred consent; and

(iv) referral of complaints to law enforcement or public protective service agencies if appropriate;

(B) the State will not permit involuntary or coerced participation in the program of services described in subparagraph (A) by alleged victims, abusers, or their households; and

(C) all information gathered in the course of receiving reports and making referrals shall remain confidential except—

(i) if all parties to such complaint consent in writing to the release of such information;

(ii) if the release of such information is to a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or

(iii) upon court order; and

(7) a description of the manner in which the State agency will carry out this title in accordance with the assurances described in paragraphs (1) through (6).

(b) PRIVILEGE.—Neither a State, nor a State agency, may require any provider of legal assistance under this subtitle to reveal any information that is protected by the attorney-client privilege.

(42 U.S.C. 3058d)

## **DEMONSTRATION PROJECTS.**

SEC. 706. (a) ESTABLISHMENT.—From amounts made available under section 304(d)(1)(C) after September 30, 1992, each State may provide for the establishment of at least one demonstration project, to be conducted by one or more area agencies on aging within the State, for outreach to older individuals with greatest economic need with respect to—

(1) benefits available under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) (or assistance under a State program established in accordance with such title);

(2) medical assistance available under title XIX of such Act (42 U.S.C. 1396 et seq.); and

(3) benefits available under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(b) BENEFITS.—Each outreach project carried out under subsection (a) shall—

(1) provide to older individuals with greatest economic need information and assistance regarding their eligibility to receive the benefits and assistance described in paragraphs (1) through (3) of subsection (a);

(2) be carried out in a planning and service area that has a high proportion of older individuals with greatest economic need, relative to the aggregate number of older individuals in such area; and

(3) be coordinated with State and local entities that administer benefits under such titles.

(42 U.S.C. 3058e)

## **CHAPTER 2—OMBUDSMAN PROGRAMS**

### **DEFINITIONS.**

SEC. 711. As used in this chapter:

(1) OFFICE.—The term “Office” means the office established in section 712(a)(1)(A).

(2) OMBUDSMAN.—The term “Ombudsman” means the individual described in section 712(a)(2).

(3) LOCAL OMBUDSMAN ENTITY.—The term “local Ombudsman entity” means an entity designated under section 712(a)(5)(A) to carry out the duties described in section 712(a)(5)(B) with respect to a planning and service area or other substate area.

(4) PROGRAM.—The term “program” means the State Long- Term Care Ombudsman program established in section 712(a)(1)(B).

(5) REPRESENTATIVE.—The term “representative” includes an employee or volunteer who represents an entity designated under section 712(a)(5)(A) and who is individually designated by the Ombudsman.

(6) RESIDENT.—The term “resident” means an older individual who resides in a long-term care facility.

(42 U.S.C. 3058f)

#### **STATE LONG-TERM CARE OMBUDSMAN PROGRAM.**

##### **SEC. 712. (a) ESTABLISHMENT.—**

(1) 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—

(A) establish and operate an Office of the State Long- Term Care Ombudsman; and

(B) carry out through the Office a State Long-Term Care Ombudsman program.

(2) 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.

(3) FUNCTIONS.—The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

(i) are made by, or on behalf of, residents; and

(ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

(I) providers, or representatives of providers, of long-term care services;

(II) public agencies; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) 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;

(E) 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;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health,

safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) CONTRACTS AND ARRANGEMENTS.—

(A) IN GENERAL.—Except as provided in 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.

(B) LICENSING AND CERTIFICATION ORGANIZATIONS; ASSOCIATIONS.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—

(i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

(ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) DESIGNATION OF LOCAL OMBUDSMAN ENTITIES AND

REPRESENTATIVES.—

(A) 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.

(B) DUTIES.—An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

(i) provide services to protect the health, safety, welfare, and rights of residents;

(ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;

(iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(iv) 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 residents;

(v)(I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(vi) support the development of resident and family councils; and

(vii) carry out other activities that the Ombudsman determines to be appropriate.

(C) ELIGIBILITY FOR DESIGNATION.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

(i) have demonstrated capability to carry out the responsibilities of the Office;

(ii) 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;

(iii) in the case of the entities, be public or nonprofit private entities; and

(iv) meet such additional requirements as the Ombudsman may specify.

(D) POLICIES AND PROCEDURES.—

(i) 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.

(ii) 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.

(iii) 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.

(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 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 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 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.

(2) PROCEDURES.—The State agency shall establish procedures to ensure the access described in paragraph (1).

(c) REPORTING SYSTEM.—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—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section 202(a)(21).

(d) DISCLOSURE.—

(1) 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 subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (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

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii)(I) the complainant or resident gives consent orally; and

(II) 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

(iii) the disclosure is required by court order.

(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.

(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—

(A) 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;

(B) 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;

(C) is not employed by, or participating in the management of, a long-term care facility; and

(D) 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 paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—

(A) the methods by which the State agency will examine

individuals, and immediate family members, to identify the conflicts; and

(B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

(g) LEGAL COUNSEL.—The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

(B) 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

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

(h) ADMINISTRATION.—The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c);

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) 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

(ii) identifying barriers that prevent the optimal operation of the program; and

(F) 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;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of older individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

(4)(A) strengthen and update 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—

(A) specify a minimum number of hours of initial training;

(B) specify the content of the training, including training relating to—

(i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(ii) investigative techniques; and

(iii) 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;

(5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative—

(A) has received the training required under paragraph (4); and

(B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(6) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—

(A) subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. §§15041 et seq.); and

(B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);

(7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;

(8) coordinate services with State and local law enforcement agencies

and courts of competent jurisdiction; and

(9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).

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

(j) **NONINTERFERENCE.**—The State shall—

(1) 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;

(2) 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

(3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

(42 U.S.C. 3058g)

## **REGULATIONS.**

SEC. 713. The Assistant Secretary shall issue and periodically update regulations respecting—

(1) conflicts of interest by persons described in paragraphs (1) and (2) of section 712(f); and

(2) the relationships described in subparagraphs (A) through (D) of section 712(f)(3).

(42 U.S.C. 3058h)

## **CHAPTER 3—PROGRAMS FOR PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION**

### **PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION.**

SEC. 721. (a) **ESTABLISHMENT.**—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, and in consultation with area agencies on aging, develop and enhance *programs to address* elder abuse, neglect, and exploitation.

(b) USE OF ALLOTMENTS.—The State agency shall use an allotment made under subsection (a) to carry out, through the programs described in subsection (a), activities to develop, strengthen, and carry out *programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation (including financial exploitation), including—*

(1) providing for public education and outreach to identify and prevent elder abuse, neglect, and exploitation;

(2) *providing for public education and outreach to promote financial literacy and prevent identity theft and financial exploitation of older individuals;*

(3) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program, State and local law enforcement systems, and courts of competent jurisdiction;

(4) promoting the development of information and data systems, including elder abuse reporting systems, to quantify the extent of elder abuse, neglect, and exploitation in the State;

(5) conducting analyses of State information concerning elder abuse, neglect, and exploitation and identifying unmet service, enforcement, or intervention needs;

(6) conducting training for individuals, including caregivers described in part E of title III, professionals, and paraprofessionals, in relevant fields on the identification, prevention, and treatment of elder abuse, neglect, and exploitation, with particular focus on prevention and enhancement of self-determination and autonomy;

(7) providing technical assistance to programs that provide or have the

potential to provide services for victims of elder abuse, neglect, and exploitation and for family members of the victims;

(8) conducting special and on-going training, for individuals involved in serving victims of elder abuse, neglect, and exploitation, on the topics of self-determination, individual rights, State and Federal requirements concerning confidentiality, and other topics determined by a State agency to be appropriate;

(9) promoting the development of an elder abuse, neglect, and exploitation system—

(A) that includes a State elder abuse, neglect, and exploitation law that includes provisions for immunity, for persons reporting instances of elder abuse, neglect, and exploitation, from prosecution arising out of such reporting, under any State or local law;

(B) under which a State agency—

(i) on receipt of a report of known or suspected instances of elder abuse, neglect, or exploitation, shall promptly initiate an investigation to substantiate the accuracy of the report; and

(ii) on a finding of elder abuse, neglect, or exploitation, shall take steps, including appropriate referral, to protect the health and welfare of the abused, neglected, or exploited older individual;

(C) that includes, throughout the State, in connection with the enforcement of elder abuse, neglect, and exploitation laws and with the reporting of suspected instances of elder abuse, neglect, and exploitation—

(i) such administrative procedures;

(ii) such personnel trained in the special problems of elder abuse, neglect, and exploitation prevention and treatment;

(iii) such training procedures;

(iv) such institutional and other facilities (public and private); and

(v) such related multidisciplinary programs and services, as may be necessary or appropriate to ensure that the State will deal effectively with elder abuse, neglect, and exploitation cases in the State;

(D) that preserves the confidentiality of records in order to protect the rights of older individuals;

(E) that provides for the cooperation of law enforcement officials, courts of competent jurisdiction, and State agencies providing human services with respect to special problems of elder abuse, neglect, and exploitation;

(F) that enables an older individual to participate in decisions regarding the welfare of the older individual, and makes the least restrictive alternatives available to an older individual who is abused, neglected, or exploited; and

(G) that includes a State clearinghouse for dissemination of information to the general public with respect to—

(i) the problems of elder abuse, neglect, and exploitation;

(ii) the facilities described in subparagraph (C)(iv); and

(iii) prevention and treatment methods available to combat instances of elder abuse, neglect, and exploitation;

*(10) examining various types of shelters serving older individuals (in this paragraph referred to as “safe havens”), and testing various safe haven models for establishing safe havens (at home or elsewhere), that recognize autonomy and self-determination, and fully protect the due process rights of older individuals;*

*(11) supporting multidisciplinary elder justice activities, such as—*

*(A) supporting and studying team approaches for bringing a*

*coordinated multidisciplinary or interdisciplinary response to elder abuse, neglect, and exploitation, including a response from individuals in social service, health care, public safety, and legal disciplines;*

*(B) establishing a State coordinating council, which shall identify the individual State's needs and provide the Assistant Secretary with information and recommendations relating to efforts by the State to combat elder abuse, neglect, and exploitation;*

*(C) providing training, technical assistance, and other methods of support to groups carrying out multidisciplinary efforts at the State (referred to in some States as "State Working Groups");*

*(D) broadening and studying various models for elder fatality and serious injury review teams, to make recommendations about their composition, protocols, functions, timing, roles, and responsibilities, with a goal of producing models and information that will allow for replication based on the needs of States and communities (other than the ones in which the review teams were used); and*

*(E) developing best practices, for use in long-term care facilities, that reduce the risk of elder abuse for residents, including the risk of resident-to-resident abuse; and*

*(12) addressing underserved populations of older individuals, such as—*

*(A) older individuals living in rural locations;*

*(B) older individuals in minority populations; or*

*(C) low-income older individuals.*

(c) APPROACH.—In developing and enhancing programs under subsection (a), the State agency shall use a comprehensive approach, in consultation with area agencies on aging, to identify and assist older individuals who are subject to abuse, neglect, and exploitation, including older individuals who live in State

licensed facilities, unlicensed facilities, or domestic or community-based settings.

(d) COORDINATION.—In developing and enhancing programs under subsection (a), the State agency shall coordinate the programs with other State and local programs and services for the protection of vulnerable adults, particularly vulnerable older individuals, including programs and services such as—

- (1) area agency on aging programs;
- (2) adult protective service programs;
- (3) the State Long-Term Care Ombudsman program established in chapter 2;
- (4) protection and advocacy programs;
- (5) facility and long-term care provider licensure and certification programs;
- (6) Medicaid fraud and abuse services, including services provided by a State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
- (7) victim assistance programs; and
- (8) consumer protection and State and local law enforcement programs, as well as other State and local programs that identify and assist vulnerable older individuals, and services provided by agencies and courts of competent jurisdiction.

(e) REQUIREMENTS.—In developing and enhancing programs under subsection (a), the State agency shall—

- (1) not permit involuntary or coerced participation in such programs by alleged victims, abusers, or members of their households;
- (2) require that all information gathered in the course of receiving a report described in subsection (b)(9)(B)(i), and making a referral described in subsection (b)(9)(B)(ii), shall remain confidential except—
  - (A) if all parties to such complaint or report consent in writing to the release of such information;
  - (B) if the release of such information is to a law enforcement

agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or

(C) upon court order; and

(3) make all reasonable efforts to resolve any conflicts with other public agencies with respect to confidentiality of the information described in paragraph (2) by entering into memoranda of understanding that narrowly limit disclosure of information, consistent with the requirement described in paragraph (2).

(f) DESIGNATION.—The State agency may designate a State entity to carry out the programs and activities described in this chapter.

(g) STUDY AND REPORT.—

(1) STUDY.—The Secretary, in consultation with the Department of the Treasury and the Attorney General of the United States, State attorneys general, and tribal and local prosecutors, shall conduct a study of the nature and extent of financial exploitation of older individuals. The purpose of this study would be to define and describe the scope of the problem of financial exploitation of the elderly and to provide an estimate of the number and type of financial transactions considered to constitute financial exploitation faced by older individuals. The study shall also examine the adequacy of current Federal and State legal protections to prevent such exploitation.

(2) REPORT.—Not later than 18 months after the date of the enactment of the Older Americans Act Amendments of 2000, the Secretary shall submit to Congress a report, which shall include—

(A) the results of the study conducted under this subsection;

and

(B) recommendations for future actions to combat the financial exploitation of older individuals.

(h) ACCOUNTABILITY MEASURES.—*The Assistant Secretary shall develop accountability measures to ensure the effectiveness of the activities carried out under this section.*

(i) *EVALUATING PROGRAMS.*—*The Assistant Secretary shall evaluate the activities carried out under this section, using funds made available under section 206(g).*

(j) *COMPLIANCE WITH APPLICABLE LAWS.*—*In order to receive funds made available to carry out this section, an entity shall comply with all applicable laws, regulations, and guidelines.*

(42 U.S.C. 3058i)

## **CHAPTER 4—STATE LEGAL ASSISTANCE DEVELOPMENT PROGRAM**

### **STATE LEGAL ASSISTANCE DEVELOPMENT.**

SEC. 731. A State agency shall provide the services of an individual who shall be known as a State legal assistance developer, and the services of other personnel, sufficient to ensure—

(1) State leadership in securing and maintaining the legal rights of older individuals;

(2) State capacity for coordinating the provision of legal assistance;

(3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate;

(4) State capacity to promote financial management services to older individuals at risk of conservatorship;

(5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and

(6) State capacity to improve the quality and quantity of legal services provided to older individuals.

(42 U.S.C. 3058j)

## ***Subtitle B—Native American Organization and Elder Justice Provisions***

### **NATIVE AMERICAN PROGRAM.**

SEC. 751. (a) ESTABLISHMENT.—The Assistant Secretary, acting through the Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging, shall establish and carry out a program for—

(1) assisting eligible entities in prioritizing, on a continuing basis, the needs of the service population of the entities relating to elder rights;

(2) making grants to eligible entities to carry out vulnerable elder rights protection activities that the entities determine to be priorities; *and*

(3) *enabling the eligible entities to support multidisciplinary elder justice activities, such as—*

*(A) establishing a coordinating council, which shall identify the needs of an individual Indian tribe or other Native American group and provide the Assistant Secretary with information and recommendations relating to efforts by the Indian tribe or the governing entity of the Native American group to combat elder abuse, neglect, and exploitation;*

*(B) providing training, technical assistance, and other methods of support to groups carrying out multidisciplinary efforts for an Indian tribe or other Native American group; and*

*(C) broadening and studying various models for elder fatality and serious injury review teams, to make recommendations about their composition, protocols, functions, timing, roles, and responsibilities, with a goal of producing models and information that will allow for replication based on the needs of Indian tribes and other Native American groups (other than the ones in which the review teams were used).*

(b) APPLICATION.—In order to be eligible to receive assistance under *this*

*section*, an entity shall submit an application to the Assistant Secretary, at such time, in such manner, and containing such information as the Assistant Secretary may require.

(c) ELIGIBLE ENTITY.—An entity eligible to receive assistance under this section shall be—

(1) an Indian tribe; or

(2) a public agency, or a nonprofit organization, serving older individuals who are Native Americans.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out *this subtitle* such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(42 U.S.C. 3058aa)

### ***GRANTS TO PROMOTE COMPREHENSIVE STATE ELDER JUSTICE SYSTEMS.***

*SEC. 752. (a) PURPOSE AND AUTHORITY.—For each fiscal year, the Assistant Secretary may make grants to States, on a competitive basis, in accordance with this section, to promote the development and implementation, within each such State, of a comprehensive elder justice system, as defined in subsection (b).*

*(b) COMPREHENSIVE ELDER JUSTICE SYSTEM DEFINED.—In this section, the term “comprehensive elder justice system” means an integrated, multidisciplinary, and collaborative system for preventing, detecting, and addressing elder abuse, neglect, and exploitation in a manner that—*

*(1) provides for widespread, convenient public access to the range of available elder justice information, programs, and services;*

*(2) coordinates the efforts of public health, social service, and law enforcement authorities, as well as other appropriate public and private entities, to identify and diminish duplication and gaps in the system;*

*(3) provides a uniform method for the standardization, collection, management, analysis, and reporting of data; and*

*(4) provides such other elements as the Assistant Secretary determines appropriate.*

*(c) APPLICATIONS.—To be eligible to receive a grant under this section for a fiscal year, a State shall submit an application to the Assistant Secretary, at such time, in such manner, and containing such information and assurances as the Assistant Secretary determines appropriate.*

*(d) AMOUNT OF GRANTS.—The amount of a grant to a State with an application approved under this section for a fiscal year shall be such amount as the Assistant Secretary determines appropriate.*

*(e) USE OF FUNDS.—*

*(1) IN GENERAL.—A State that receives a grant under this section shall use funds made available through such grant to promote the development and implementation of a comprehensive elder justice system by—*

*(A) establishing formal working relationships among public and private providers of elder justice programs, service providers, and stakeholders in order to create a unified elder justice network across such State to coordinate programmatic efforts;*

*(B) facilitating and supporting the development of a management information system and standard data elements;*

*(C) providing for appropriate education (including educating the public about the range of available elder justice information, programs, and services), training, and technical assistance; and*

*(D) taking such other steps as the Assistant Secretary determines appropriate.*

*(2) MAINTENANCE OF EFFORT.—Funds made available to States pursuant to this section shall be used to supplement and not supplant other Federal, State, and local funds expended to support activities described in paragraph (1).*

(42 U.S.C. 3058aa-1)

## **Subtitle C—General Provisions**

### **DEFINITIONS.**

SEC. 761. As used in this title:

(1) ELDER RIGHT.—The term “elder right” means a right of an older individual.

(2) VULNERABLE ELDER RIGHTS PROTECTION ACTIVITY.—The term “vulnerable elder rights protection activity” means an activity funded under subtitle A.

(42 U.S.C. 3058bb)

### **ADMINISTRATION.**

SEC. 762. A State agency may carry out vulnerable elder rights protection activities either directly or through contracts or agreements with public or nonprofit private agencies or organizations, such as—

- (1) other State agencies;
- (2) area agencies on aging;
- (3) county governments;
- (4) institutions of higher education;
- (5) Indian tribes; or
- (6) nonprofit service providers or volunteer organizations.

(42 U.S.C. 3058cc)

### **TECHNICAL ASSISTANCE.**

SEC. 763. (a) OTHER AGENCIES.—In carrying out the provisions of this title, the Assistant Secretary may request the technical assistance and cooperation of such Federal entities as may be appropriate.

(b) ASSISTANT SECRETARY.—The Assistant Secretary shall provide technical assistance and training (by contract, grant, or otherwise) to persons and entities that administer programs established under this title.

(42 U.S.C. 3058dd)

### **AUDITS.**

SEC. 764. (a) ACCESS.—The Assistant Secretary, the Comptroller General of the United States, and any duly authorized representative of the Assistant Secretary or the Comptroller shall have access, for the purpose of conducting an audit or examination, to any books, documents, papers, and records that are pertinent to financial assistance received under this title.

(b) LIMITATION.—State agencies and area agencies on aging shall not request information or data from providers that is not pertinent to services furnished under this title or to a payment made for the services.

(42 U.S.C. 3058ee)

### ***RULE OF CONSTRUCTION.***

*SEC. 765. Nothing in this title shall be construed to interfere with or abridge the right of an older individual to practice the individual's religion through reliance on prayer alone for healing, in a case in which a decision to so practice the religion—*

*(1) is contemporaneously expressed by the older individual—*

*(A) either orally or in writing;*

*(B) with respect to a specific illness or injury that the older individual has at the time of the decision; and*

*(C) when the older individual is competent to make the decision;*

*(2) is set forth prior to the occurrence of the illness or injury in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or*

*(3) may be unambiguously deduced from the older individual's life history.*

(42 U.S.C. 3058ff)





## ILLINOIS ACT ON AGING OMBUDSMAN PROVISION

(20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

Sec. 4.04. Long Term Care Ombudsman Program. The purpose of the Long Term Care Ombudsman Program is to ensure that older persons and persons with disabilities receive quality services. This is accomplished by providing advocacy services for residents of long term care facilities and participants receiving home care and community-based care. Managed care is increasingly becoming the vehicle for delivering health and long-term services and supports to seniors and persons with disabilities, including dual eligible participants. The additional ombudsman authority will allow advocacy services to be provided to Illinois participants for the first time and will produce a cost savings for the State of Illinois by supporting the rebalancing efforts of the Patient Protection and Affordable Care Act.

(a) Long Term Care Ombudsman Program. The Department shall establish a Long Term Care Ombudsman Program, through the Office of State Long Term Care Ombudsman ("the Office"), in accordance with the provisions of the Older Americans Act of 1965, as now or hereafter amended. The Long Term Care Ombudsman Program is authorized, subject to sufficient appropriations, to advocate on behalf of older persons and persons with disabilities residing in their own homes or community-based settings, relating to matters which may adversely affect the health, safety, welfare, or rights of such individuals.

(b) Definitions. As used in this Section, unless the context requires otherwise:

(1) "Access" has the same meaning as in Section 1-104 of the Nursing Home Care Act, as now or hereafter amended; that is, it means the right to:

(i) Enter any long term care facility or assisted living or shared housing establishment or supportive living facility;

(ii) Communicate privately and without restriction with any resident, regardless of age, who consents to the communication;

(iii) Seek consent to communicate privately and without restriction with any participant or resident, regardless of age;

(iv) Inspect the clinical and other records of a participant or resident, regardless of age, with the express written consent of the participant or resident;

(v) Observe all areas of the long term care facility or supportive living facilities, assisted living or shared housing establishment except the living area of any resident who protests the observation; and

(vi) Subject to permission of the participant or resident requesting services or his or her representative, enter a home or community-based setting.

(2) "Long Term Care Facility" means (i) any facility as defined by Section 1-113 of the Nursing Home Care Act, as now

or hereafter amended; and (ii) any skilled nursing facility or a nursing facility which meets the requirements of Section 1819(a), (b), (c), and (d) or Section 1919(a), (b), (c), and (d) of the Social Security Act, as now or hereafter amended (42 U.S.C. 1395i-3(a), (b), (c), and (d) and 42 U.S.C. 1396r(a), (b), (c), and (d)); and any facility as defined by Section 1-113 of the MR/DD Community Care Act, as now or hereafter amended.

(2.5) "Assisted living establishment" and "shared housing establishment" have the meanings given those terms in Section 10 of the Assisted Living and Shared Housing Act.

(2.7) "Supportive living facility" means a facility established under Section 5-5.01a of the Illinois Public Aid Code.

(2.8) "Community-based setting" means any place of abode other than an individual's private home.

(3) "State Long Term Care Ombudsman" means any person employed by the Department to fulfill the requirements of the Office of State Long Term Care Ombudsman as required under the Older Americans Act of 1965, as now or hereafter amended, and Departmental policy.

(3.1) "Ombudsman" means any designated representative of the State Long Term Care Ombudsman Program; provided that the representative, whether he is paid for or volunteers his ombudsman services, shall be qualified and designated by the Office to perform the duties of an ombudsman as specified by the Department in rules and in accordance with the provisions of the Older Americans Act of 1965, as now or hereafter amended.

(4) "Participant" means an older person or persons with disabilities who are eligible for services under any of the following:

(i) A medical assistance waiver administered by the State.

(ii) A managed care organization providing care coordination and other services to seniors and persons with disabilities.

(5) "Resident" means an older individual who resides in a long-term care facility.

(c) Ombudsman; rules. The Office of State Long Term Care Ombudsman shall be composed of at least one full-time ombudsman and shall include a system of designated regional long term care ombudsman programs. Each regional program shall be designated by the State Long Term Care Ombudsman as a subdivision of the Office and any representative of a regional program shall be treated as a representative of the Office.

The Department, in consultation with the Office, shall promulgate administrative rules in accordance with the provisions of the Older Americans Act of 1965, as now or hereafter amended, to establish the responsibilities of the Department and the Office of State Long Term Care Ombudsman and the designated regional Ombudsman programs. The administrative rules shall include the responsibility of the Office and designated regional programs to investigate and resolve complaints made by or on behalf of residents of long term care facilities, supportive living facilities, and assisted living and shared housing establishments, and participants residing in their own homes or community-based settings, including the option to serve residents and participants under the age of 60, relating to actions, inaction, or decisions of providers, or their

representatives, of such facilities and establishments, of public agencies, or of social services agencies, which may adversely affect the health, safety, welfare, or rights of such residents and participants. The Office and designated regional programs may represent all residents and participants, but are not required by this Act to represent persons under 60 years of age, except to the extent required by federal law. When necessary and appropriate, representatives of the Office shall refer complaints to the appropriate regulatory State agency. The Department, in consultation with the Office, shall cooperate with the Department of Human Services and other State agencies in providing information and training to designated regional long term care ombudsman programs about the appropriate assessment and treatment (including information about appropriate supportive services, treatment options, and assessment of rehabilitation potential) of the participants they serve.

The State Long Term Care Ombudsman and all other ombudsmen, as defined in paragraph (3.1) of subsection (b) must submit to background checks under the Health Care Worker Background Check Act and receive training, as prescribed by the Illinois Department on Aging, before visiting facilities, private homes, or community-based settings. The training must include information specific to assisted living establishments, supportive living facilities, shared housing establishments, private homes, and community-based settings and to the rights of residents and participants guaranteed under the corresponding Acts and administrative rules.

(c-5) Consumer Choice Information Reports. The Office shall:

(1) In collaboration with the Attorney General, create a Consumer Choice Information Report form to be completed by all licensed long term care facilities to aid Illinoisans and their families in making informed choices about long term care. The Office shall create a Consumer Choice Information Report for each type of licensed long term care facility. The Office shall collaborate with the Attorney General and the Department of Human Services to create a Consumer Choice Information Report form for facilities licensed under the MR/DD Community Care Act.

(2) Develop a database of Consumer Choice Information Reports completed by licensed long term care facilities that includes information in the following consumer categories:

- (A) Medical Care, Services, and Treatment.
- (B) Special Services and Amenities.
- (C) Staffing.
- (D) Facility Statistics and Resident Demographics.
- (E) Ownership and Administration.
- (F) Safety and Security.
- (G) Meals and Nutrition.
- (H) Rooms, Furnishings, and Equipment.
- (I) Family, Volunteer, and Visitation Provisions.

(3) Make this information accessible to the public, including on the Internet by means of a hyperlink labeled "Resident's Right to Know" on the Office's World Wide Web home page. Information about facilities licensed under the MR/DD Community Care Act shall be made accessible to the public by the Department of Human Services, including on the Internet by means of a hyperlink labeled "Resident's and Families' Right to Know" on the Department of Human Services' "For Customers" website.

(4) Have the authority, with the Attorney General, to

verify that information provided by a facility is accurate.

(5) Request a new report from any licensed facility whenever it deems necessary.

(6) Include in the Office's Consumer Choice Information Report for each type of licensed long term care facility additional information on each licensed long term care facility in the State of Illinois, including information regarding each facility's compliance with the relevant State and federal statutes, rules, and standards; customer satisfaction surveys; and information generated from quality measures developed by the Centers for Medicare and Medicaid Services.

(d) Access and visitation rights.

(1) In accordance with subparagraphs (A) and (E) of paragraph (3) of subsection (c) of Section 1819 and subparagraphs (A) and (E) of paragraph (3) of subsection (c) of Section 1919 of the Social Security Act, as now or hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the Older Americans Act of 1965, as now or hereafter amended (42 U.S.C. 3058f), a long term care facility, supportive living facility, assisted living establishment, and shared housing establishment must:

(i) permit immediate access to any resident, regardless of age, by a designated ombudsman; and

(ii) permit representatives of the Office, with the permission of the resident's legal representative or legal guardian, to examine a resident's clinical and other records, regardless of the age of the resident, and if a resident is unable to consent to such review, and has no legal guardian, permit representatives of the Office appropriate access, as defined by the Department, in consultation with the Office, in administrative rules, to the resident's records.

(2) Each long term care facility, supportive living facility, assisted living establishment, and shared housing establishment shall display, in multiple, conspicuous public places within the facility accessible to both visitors and residents and in an easily readable format, the address and phone number of the Office of the Long Term Care Ombudsman, in a manner prescribed by the Office.

(e) Immunity. An ombudsman or any representative of the Office participating in the good faith performance of his or her official duties shall have immunity from any liability (civil, criminal or otherwise) in any proceedings (civil, criminal or otherwise) brought as a consequence of the performance of his official duties.

(f) Business offenses.

(1) No person shall:

(i) Intentionally prevent, interfere with, or attempt to impede in any way any representative of the Office in the performance of his official duties under this Act and the Older Americans Act of 1965; or

(ii) Intentionally retaliate, discriminate against, or effect reprisals against any long term care facility resident or employee for contacting or providing information to any representative of the Office.

(2) A violation of this Section is a business offense, punishable by a fine not to exceed \$501.

(3) The Director of Aging, in consultation with the

Office, shall notify the State's Attorney of the county in which the long term care facility, supportive living facility, or assisted living or shared housing establishment is located, or the Attorney General, of any violations of this Section.

(g) Confidentiality of records and identities. The Department shall establish procedures for the disclosure by the State Ombudsman or the regional ombudsmen entities of files maintained by the program. The procedures shall provide that the files and records may be disclosed only at the discretion of the State Long Term Care Ombudsman or the person designated by the State Ombudsman to disclose the files and records, and the procedures shall prohibit the disclosure of the identity of any complainant, resident, participant, witness, or employee of a long term care provider unless:

(1) the complainant, resident, participant, witness, or employee of a long term care provider or his or her legal representative consents to the disclosure and the consent is in writing;

(2) the complainant, resident, participant, witness, or employee of a long term care provider gives consent orally; and the consent is documented contemporaneously in writing in accordance with such requirements as the Department shall establish; or

(3) the disclosure is required by court order.

(h) Legal representation. The Attorney General shall provide legal representation to any representative of the Office against whom suit or other legal action is brought in connection with the performance of the representative's official duties, in accordance with the State Employee Indemnification Act.

(i) Treatment by prayer and spiritual means. Nothing in this Act shall be construed to authorize or require the medical supervision, regulation or control of remedial care or treatment of any resident in a long term care facility operated exclusively by and for members or adherents of any church or religious denomination the tenets and practices of which include reliance solely upon spiritual means through prayer for healing.

(j) The Long Term Care Ombudsman Fund is created as a special fund in the State treasury to receive moneys for the express purposes of this Section. All interest earned on moneys in the fund shall be credited to the fund. Moneys contained in the fund shall be used to support the purposes of this Section.

(Source: P.A. 97-38, eff. 6-28-11; 98-380, eff. 8-16-13.)

(20 ILCS 105/4.04a)

Sec. 4.04a. Illinois Long-Term Care Council.

(a) Purpose. The purpose of this Section is to ensure that consumers over the age of 60 residing in facilities licensed or regulated under the Nursing Home Care Act, Skilled Nursing and Intermediate Care Facilities Code, Sheltered Care Facilities Code, and the Illinois Veterans' Homes Code receive high quality long-term care through an effective Illinois Long-Term Care Council.

(b) Maintenance and operation of the Illinois Long-Term Care Council.

(1) The Department shall develop a fair and impartial

process for recruiting and receiving nominations for members for the Illinois Long-Term Care Council from the State Long-Term Care Ombudsman, the area agencies on aging, regional ombudsman programs, provider agencies, and other public agencies, using a nomination form provided by the Department.

(2) The Department shall appoint members to the Illinois Long-Term Care Council in a timely manner.

(3) The Department shall consider and act in good faith regarding the Illinois Long-Term Care Council's annual report and its recommendations.

(4) The Director shall appoint to the Illinois Long-Term Care Council at least 18 but not more than 25 members.

(c) Responsibilities of the State Long-Term Care Ombudsman, area agencies on aging, regional long-term care ombudsman programs, and provider agencies. The State Long-Term Care Ombudsman and each area agency on aging, regional long-term care ombudsman program, and provider agency shall solicit names and recommend members to the Department for appointment to the Illinois Long-Term Care Council.

(d) Powers and duties. The Illinois Long-Term Care Council shall do the following:

(1) Make recommendations and comment on issues pertaining to long-term care and the State Long-Term Care Ombudsman Program to the Department.

(2) Advise the Department on matters pertaining to the quality of life and quality of care in the continuum of long-term care.

(3) Evaluate, comment on reports regarding, and make recommendations on, the quality of life and quality of care in long-term care facilities and on the duties and responsibilities of the State Long-Term Care Ombudsman Program.

(4) Prepare and circulate an annual report to the Governor, the General Assembly, and other interested parties concerning the duties and accomplishments of the Illinois Long-Term Care Council and all other related matters pertaining to long-term care and the protection of residents' rights.

(5) Provide an opportunity for public input at each scheduled meeting.

(6) Make recommendations to the Director, upon his or her request, as to individuals who are capable of serving as the State Long-Term Care Ombudsman and who should make appropriate application for that position should it become vacant.

(e) Composition and operation. The Illinois Long-Term Care Council shall be composed of at least 18 but not more than 25 members concerned about the quality of life in long-term care facilities and protecting the rights of residents, including members from long-term care facilities. The State Long-Term Care Ombudsman shall be a permanent member of the Long-Term Care Council. Members shall be appointed for a 4-year term with initial appointments staggered with 2-year, 3-year, and 4-year terms. A lottery will determine the terms of office for the members of the first term. Members may be reappointed to a

term but no member may be reappointed to more than 2 consecutive terms. The Illinois Long-Term Care Council shall meet a minimum of 3 times per calendar year.

(f) Member requirements. All members shall be individuals who have demonstrated concern about the quality of life in long-term care facilities. A minimum of 3 members must be current or former residents of long-term care facilities or the family member of a current or former resident of a long-term care facility. A minimum of 2 members shall represent current or former long-term care facility resident councils or family councils. A minimum of 4 members shall be selected from recommendations by organizations whose members consist of long-term care facilities. A representative of long-term care facility employees must also be included as a member. A minimum of 2 members shall be selected from recommendations of membership-based senior advocacy groups or consumer organizations that engage solely in legal representation on behalf of residents and immediate families. There shall be non-voting State agency members on the Long-Term Care Council from the following agencies: (i) the Department of Veterans' Affairs; (ii) the Department of Human Services; (iii) the Department of Public Health; (iv) the Department on Aging; (v) the Department of Healthcare and Family Services; (vi) the Illinois State Police Medicaid Fraud Control Unit; and (vii) others as appropriate.

(Source: P.A. 95-331, eff. 8-21-07.)

## **Joint Committee on Administrative Rules**

# **ADMINISTRATIVE CODE**

### **TITLE 89: SOCIAL SERVICES CHAPTER II: DEPARTMENT ON AGING PART 270 ELDER RIGHTS SECTION 270.10 SUMMARY AND PURPOSE**

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#### **Section 270.10 Summary and Purpose**

This Part describes the organization, standards and responsibilities of the programs that comprise the Department's Elder Rights Programs. These include the Long Term Care Ombudsman Program, the Elder Abuse and Neglect Program and the Senior Legal Assistance Program. These programs are designed to expand and advance the rights of seniors.

#### **Section 270.100 Long Term Care Ombudsman Program**

This Subpart describes the organization, standards and responsibilities of the State Long Term Care Ombudsman Program.

#### **Section 270.105 Definitions**

"Complaint" means a concern brought to, or initiated by, the ombudsman for investigation and action by, or on behalf of, one or more residents of a long term care facility relating to health, safety, welfare or rights of a resident.

"Legal representative" means a person properly delegated or designated to exercise decision-making authority on behalf of another person, including, but not limited to, guardians of the estate (whether temporary or permanent), guardians of the person (whether temporary or permanent), agents appointed under a power of attorney (whether durable or not), health care surrogate decision-makers designated under the Health Care Surrogate Act [775 ILCS 401], and representative payees, appointed by the Social Security Administration or the Railroad Retirement Board pursuant to federal law.

*"Long term care facility" means any facility as defined by Section 1-113 of the Nursing Home Care Act [210 ILCS 45]; and any skilled nursing facility or a nursing facility which meets the requirements of Section 1819(a), (b), (c) and (d) or Section 1919(a), (b), (c) and (d) of the Social Security Act, as now or hereafter amended (42 USC 1395i-3(a), (b), (c) and (d) and 42 USC 1396r(a), (b), (c) and (d)). (Section 4.04(b)(2) of the Illinois Act on the Aging [20 ILCS 105/4.04(b)(2)])*

"Office" means the Office of the State Long Term Care Ombudsman as established by the Department, which shall be comprised of the State Long Term Care Ombudsman, any other State Ombudsman staff and the Sub-State or Regional Long Term Care Ombudsman Programs.

*"Ombudsman" or "representative of the Office" or "duly designated representative of the Office" means any person employed by the Department to fulfill the requirements of the Office, or any representative of a Sub-State Long Term Care Ombudsman Program; provided that the representative, whether he is paid for or volunteers his ombudsman services, shall be qualified and authorized by the Department to perform the duties of an ombudsman and is registered with the Office's Ombudsman Representative Registry. (Section 4.04(b)(3) of the Illinois Act on the Aging [20 ILCS 105/4.04(b)(3)])*

"Resident" means any person who is a current resident of a long term care facility, an individual seeking admission to a long term care facility, a former resident, or a deceased resident if the complaint or request for information involves procedures or practices related to admission, discharge and/or the individual's entitlement to care and services under federal and State laws and regulations.

"Sub-State Long Term Care Ombudsman Program", "Sub-State Program", "Regional Long Term Care Ombudsman Program" or "Regional Program" means an agency designated by the Department as a sub-division of the Office.

(Source: Amended at 25 Ill. Reg. 5259, effective April 1, 2001)

## **Section 270.110 Responsibilities of the Department and the Office of the State Long Term Care Ombudsman**

- a) The Department shall establish an Office of the State Long Term Care Ombudsman within the Department and provide for sufficient staff to carry out the State and federal statutory responsibilities of the program.
- b) The Office shall establish and maintain an Ombudsman Representative Registry as an official listing of those ombudsmen who are designated as representatives of the Office.
- c) The Department reserves the right to remove from the Ombudsman Representative Registry the name of any ombudsman representative who fails to meet, maintain, or comply with the standards and requirements of the program. Any ombudsman representative so removed shall not serve, nor represent themselves, as a representative of the ombudsman program. The Department shall provide for notice of such removal to such individual, together with an opportunity to appeal the decision of the Department.
- d) The Office shall identify, *investigate and resolve complaints made by or on behalf of residents of long term care facilities relating to actions, inactions 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 providers, or their representatives, of long term care facilities, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare or rights of such residents.* (Section 4.04(c) of the Illinois Act on the Aging)
- e) The Department shall inform the residents about means of obtaining services provided by providers or agencies described in subsection (d) above.
- f) The Department shall provide administrative and technical assistance to entities designated as Sub-State Long Term Care Ombudsman Programs.
- g) The Department shall provide for training representatives of the Office.
- h) The Department shall promote the development of citizen organizations to participate in the program.
- i) The Office shall ensure that residents have access to the services provided through the Office and that the residents and complainants receive

responses to complaints from representatives of the Office.

- j) The Office shall 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.
- k) The Office shall 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.
- l) The Office shall recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate.
- m) The Office shall facilitate public comment on the laws, regulations, policies, and actions.
- n) The Office shall provide technical support for the development of resident and family councils to protect the well-being and rights of residents.
- o) The Office shall carry out other activities consistent with the requirements of this Subpart.

### **Section 270.115 Display of Ombudsman Poster**

Each long term care facility shall display posters supplied by the Office in the following manner:

- a) Each poster shall be prominently displayed in the facility in a place accessible to residents and the public.
- b) The poster shall not be obscured in any manner by any other material. Each poster shall be placed with the bottom of the poster approximately 42 inches from the level of the floor.
- c) If a majority of residents speak a language other than English, then a majority of the posters shall be in that language if they are available from

the Department.

- d) A poster shall be placed:
  - 1) in each wing on each floor of the facility,
  - 2) in each of the facility's activity rooms, and
  - 3) at the main entrance/exit of the facility.

(Source: Amended at 25 Ill. Reg. 5259, effective April 1, 2001)

### **Section 270.120 Access to Resident Records**

- a) When a resident is incapable of giving to the ombudsman informed consent for access to the resident's records (such resident is hereinafter referred to as an "incapable resident"), the State Long Term Care Ombudsman, the Sub-State Ombudsman or other duly designated representative of the State Long Term Care Ombudsman Office shall have access to such incapable resident's clinical and other records under the following circumstances:
  - 1) the State Long Term Care Ombudsman, Sub-State Ombudsman or other duly designated representative has had a face-to-face visit with such resident and has personally determined that the resident was incapable of making and communicating an informed consent or denial for access to the resident's records by the ombudsman; and
  - 2) the State Long Term Care Ombudsman, Sub-State Ombudsman or other duly designated representative has determined the following:
    - A) Either:
      - i) the resident has no agent, court-appointed guardian or legal representative who is empowered to make such a decision regarding the resident's records; or
      - ii) the agent, court-appointed guardian or legal representative is implicated in the complaint; or is not acting in the best interest of the resident; or could not

be located within 24 hours despite a reasonable effort by the ombudsman to do so; and

- B) A review of such records is necessary to investigate or resolve a complaint or protect the rights of the incapable resident.
- b) The State Long Term Care Ombudsman, Sub-State Ombudsman or other duly designated representative shall present a written request to the facility for such resident's records. Upon receipt of the request, the facility must allow immediate access to the resident's records by the State Long Term Care Ombudsman, the Sub-State Ombudsman or other duly designated representative of the State Long Term Care Ombudsman Office.
- c) Should the Sub-State Ombudsman or duly designated representative be denied access to a resident's records, the ombudsman will report this fact to the Office of the State Long Term Care Ombudsman.

### **Section 270.130 Conflict of Interest**

The Department shall ensure that no person directing, employed by, participating in, or with responsibilities for the selection or designation of the Sub-State Programs shall be subject to a conflict of interest, as defined by Section 712(f) of the Older Americans Act (42 U.S.C. 3058g(f)).

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**LONG TERM CARE OMBUDSMAN PROGRAM**  
**CONFLICT OF INTEREST FORM**

State and federal law require that all Ombudsmen be free of unremediated conflicts of interest. Although a conflict of interest may not necessarily make you ineligible to be certified as an Ombudsman. Whenever possible (*provider agency name*) will work with the State Long Term Care Ombudsman to develop a plan to remedy the conflict.

Failure to disclose a possible conflict of interest may be grounds for dismissal from the Ombudsman Program. Please answer all questions as truthfully as possible.

Each situation will be reviewed on an individual basis.

However, there will be some conflicts that may not have a reasonable remedy and therefore will make you ineligible to be certified as an Ombudsman.

Once you have answered all of the questions please sign and date the form.

1. Are you or a member of your family currently employed by a long-term care facility or a company that owns or manages long-term care facilities or home care provider agencies?

**Yes** \_\_\_\_ **No** \_\_\_\_

If yes, what facility/company \_\_\_\_\_

Job Title \_\_\_\_\_

Relationship to you \_\_\_\_\_

2. Have you or a member of your family been employed by a facility or a company that owns or manages long-term care facilities or home care provider services within the past 3 years?

**Yes** \_\_\_\_ **No** \_\_\_\_

Relationship to you \_\_\_\_\_

If yes, what facility/company \_\_\_\_\_

Dates of employment from \_\_\_\_\_ to \_\_\_\_\_

Job Title \_\_\_\_\_

3. Do you or a member of your family participate in the management (for example, serve as a board member) of a long-term care facility or a company that owns or operates long-term care facilities or home care provider agencies?

**Yes** \_\_\_\_ **No** \_\_\_\_

If yes, what facility or company \_\_\_\_\_;

In what position \_\_\_\_\_;  
Relationship to you \_\_\_\_\_.

4. Do you or a member of your family have an ownership or investment interest in an existing or proposed LTC facility or a company that owns LTC facilities or home care provider agencies?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, what facility or company \_\_\_\_\_

What is the interest \_\_\_\_\_

Relationship to you \_\_\_\_\_

5. Are you or a member of your family employed by the IL Department of Public Health, Department of Public Aid or the Centers for Medicare and Medicaid Services or any other agency responsible for licensing or certifying long term care facilities?

**YES** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, name of employer \_\_\_\_\_

Job title \_\_\_\_\_

Relationship to you \_\_\_\_\_

6. Are you or a member of your family involved in the provision of a long-term care services? (i.e. home delivered health care, therapy services, pharmacy services, managed care organizational services, etc.)

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, what service \_\_\_\_\_

What company \_\_\_\_\_

Relationship to you \_\_\_\_\_

7. Do you or a member of your family receive any compensation (cash or in-kind) from a long-term care facility, managed care organization or a company that owns or manages long-term care facilities and/or services?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, company or facility \_\_\_\_\_

Type of compensation \_\_\_\_\_

Relationship to you \_\_\_\_\_

8. Do you or a member of your family work for an agency or company that provides adult protective services, elder abuse investigations/services, guardianship services, discharge planning services, nursing home pre-screening or case management?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, employer \_\_\_\_\_

Job title \_\_\_\_\_

Relationship to you \_\_\_\_\_

9. Does a member of your family currently live in a long-term care facility or receive home care services through a state medical assistance waiver program or managed care organization?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, what facility \_\_\_\_\_

Relationship to you \_\_\_\_\_

10. Have you or a member of your family lived in a long-term care facility or received home care services through a state medical assistance waiver program or managed care organization within the past 3 years?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, what facility \_\_\_\_\_;

Dates in facility from \_\_\_\_\_ to \_\_\_\_\_;

Relationship to you \_\_\_\_\_.

Family members include but are not limited to spouse or partner, children, parents, grandparents, grandchildren, siblings and other adults with whom the potential Ombudsman has a close personal relationship or financial or fiduciary relationship.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**State Employee Indemnification Act. (5 ILCS 350/)**

(5 ILCS 350/0.01) (from Ch. 127, par. 1300)

Sec. 0.01. Short title. This Act may be cited as the State Employee Indemnification Act.  
(Source: P.A. 86-1324.)

(5 ILCS 350/1) (from Ch. 127, par. 1301)

(Text of Section from P.A. 98-49)

Sec. 1. Definitions. For the purpose of this Act:

(a) The term "State" means the State of Illinois, the General Assembly, the court, or any State office, department, division, bureau, board, commission, or committee, the governing boards of the public institutions of higher education created by the State, the Illinois National Guard, the Comprehensive Health Insurance Board, any poison control center designated under the Poison Control System Act that receives State funding, or any other agency or instrumentality of the State. It does not mean any local public entity as that term is defined in Section 1-206 of the Local Governmental and Governmental Employees Tort Immunity Act or a pension fund.

(b) The term "employee" means any present or former elected or appointed officer, trustee or employee of the State, or of a pension fund, any present or former commissioner or employee of the Executive Ethics Commission or of the Legislative Ethics Commission, any present or former Executive, Legislative, or Auditor General's Inspector General, any present or former employee of an Office of an Executive, Legislative, or Auditor General's Inspector General, any present or former member of the Illinois National Guard while on active duty, individuals or organizations who contract with the Department of Corrections, the Comprehensive Health Insurance Board, or the Department of Veterans' Affairs to provide services, individuals or organizations who contract with the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) to provide services including but not limited to treatment and other services for sexually violent persons, individuals or organizations who contract with the Department of Military Affairs for youth programs, individuals or organizations who contract to perform carnival and amusement ride safety inspections for the Department of Labor, individual representatives of or designated organizations authorized to represent the Office of State Long-Term Ombudsman for the Department on Aging, individual representatives of or organizations designated by the Department on Aging in the performance of their duties as adult protective services agencies or regional administrative agencies under the Adult Protective Services Act, individuals or organizations appointed as members of a review team or the Advisory Council under the Adult Protective Services Act, individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, individuals who serve on any public entity (whether created by

law or administrative action) described in paragraph (a) of this Section, individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State, individuals who serve as foster parents for the Department of Children and Family Services when caring for a Department ward, individuals who serve as members of an independent team of experts under Brian's Law, and individuals who serve as arbitrators pursuant to Part 10A of Article II of the Code of Civil Procedure and the rules of the Supreme Court implementing Part 10A, each as now or hereafter amended, but does not mean an independent contractor except as provided in this Section. The term includes an individual appointed as an inspector by the Director of State Police when performing duties within the scope of the activities of a Metropolitan Enforcement Group or a law enforcement organization established under the Intergovernmental Cooperation Act. An individual who renders professional advice and consultation to the State through an organization which qualifies as an "employee" under the Act is also an employee. The term includes the estate or personal representative of an employee.

(c) The term "pension fund" means a retirement system or pension fund created under the Illinois Pension Code.

(Source: P.A. 98-49, eff. 7-1-13.)

(Text of Section from P.A. 98-83)

Sec. 1. Definitions. For the purpose of this Act:

(a) The term "State" means the State of Illinois, the General Assembly, the court, or any State office, department, division, bureau, board, commission, or committee, the governing boards of the public institutions of higher education created by the State, the Illinois National Guard, the Comprehensive Health Insurance Board, any poison control center designated under the Poison Control System Act that receives State funding, or any other agency or instrumentality of the State. It does not mean any local public entity as that term is defined in Section 1-206 of the Local Governmental and Governmental Employees Tort Immunity Act or a pension fund.

(b) The term "employee" means any present or former elected or appointed officer, trustee or employee of the State, or of a pension fund, any present or former commissioner or employee of the Executive Ethics Commission or of the Legislative Ethics Commission, any present or former Executive, Legislative, or Auditor General's Inspector General, any present or former employee of an Office of an Executive, Legislative, or Auditor General's Inspector General, any present or former member of the Illinois National Guard while on active duty, individuals or organizations who contract with the Department of Corrections, the Department of Juvenile Justice, the Comprehensive Health Insurance Board, or the Department of Veterans' Affairs to provide services, individuals or organizations who contract with the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) to provide services

including but not limited to treatment and other services for sexually violent persons, individuals or organizations who contract with the Department of Military Affairs for youth programs, individuals or organizations who contract to perform carnival and amusement ride safety inspections for the Department of Labor, individual representatives of or designated organizations authorized to represent the Office of State Long-Term Ombudsman for the Department on Aging, individual representatives of or organizations designated by the Department on Aging in the performance of their duties as elder abuse provider agencies or regional administrative agencies under the Elder Abuse and Neglect Act, individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, individuals who serve on any public entity (whether created by law or administrative action) described in paragraph (a) of this Section, individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State, individuals who serve as foster parents for the Department of Children and Family Services when caring for a Department ward, individuals who serve as members of an independent team of experts under Brian's Law, and individuals who serve as arbitrators pursuant to Part 10A of Article II of the Code of Civil Procedure and the rules of the Supreme Court implementing Part 10A, each as now or hereafter amended, but does not mean an independent contractor except as provided in this Section. The term includes an individual appointed as an inspector by the Director of State Police when performing duties within the scope of the activities of a Metropolitan Enforcement Group or a law enforcement organization established under the Intergovernmental Cooperation Act. An individual who renders professional advice and consultation to the State through an organization which qualifies as an "employee" under the Act is also an employee. The term includes the estate or personal representative of an employee.

(c) The term "pension fund" means a retirement system or pension fund created under the Illinois Pension Code.  
(Source: P.A. 98-83, eff. 7-15-13.)

(5 ILCS 350/2) (from Ch. 127, par. 1302)

Sec. 2. Representation and indemnification of State employees.

(a) In the event that any civil proceeding is commenced against any State employee arising out of any act or omission occurring within the scope of the employee's State employment, the Attorney General shall, upon timely and appropriate notice to him by such employee, appear on behalf of such employee and defend the action. In the event that any civil proceeding is commenced against any physician who is an employee of the Department of Corrections or the Department of Human Services (in a position relating to the Department's mental health and developmental disabilities functions) alleging death or bodily

injury or other injury to the person of the complainant resulting from and arising out of any act or omission occurring on or after December 3, 1977 within the scope of the employee's State employment, or against any physician who is an employee of the Department of Veterans' Affairs alleging death or bodily injury or other injury to the person of the complainant resulting from and arising out of any act or omission occurring on or after the effective date of this amendatory Act of 1988 within the scope of the employee's State employment, or in the event that any civil proceeding is commenced against any attorney who is an employee of the State Appellate Defender alleging legal malpractice or for other damages resulting from and arising out of any legal act or omission occurring on or after December 3, 1977, within the scope of the employee's State employment, or in the event that any civil proceeding is commenced against any individual or organization who contracts with the Department of Labor to provide services as a carnival and amusement ride safety inspector alleging malpractice, death or bodily injury or other injury to the person arising out of any act or omission occurring on or after May 1, 1985, within the scope of that employee's State employment, the Attorney General shall, upon timely and appropriate notice to him by such employee, appear on behalf of such employee and defend the action. Any such notice shall be in writing, shall be mailed within 15 days after the date of receipt by the employee of service of process, and shall authorize the Attorney General to represent and defend the employee in the proceeding. The giving of this notice to the Attorney General shall constitute an agreement by the State employee to cooperate with the Attorney General in his defense of the action and a consent that the Attorney General shall conduct the defense as he deems advisable and in the best interests of the employee, including settlement in the Attorney General's discretion. In any such proceeding, the State shall pay the court costs and litigation expenses of defending such action, to the extent approved by the Attorney General as reasonable, as they are incurred.

(b) In the event that the Attorney General determines that so appearing and defending an employee either (1) involves an actual or potential conflict of interest, or (2) that the act or omission which gave rise to the claim was not within the scope of the employee's State employment or was intentional, wilful or wanton misconduct, the Attorney General shall decline in writing to appear or defend or shall promptly take appropriate action to withdraw as attorney for such employee. Upon receipt of such declination or upon such withdrawal by the Attorney General on the basis of an actual or potential conflict of interest, the State employee may employ his own attorney to appear and defend, in which event the State shall pay the employee's court costs, litigation expenses and attorneys' fees to the extent approved by the Attorney General as reasonable, as they are incurred. In the event that the Attorney General declines to appear or withdraws on the grounds that the act or omission was not within the scope of employment, or was intentional, wilful or wanton misconduct, and a court or jury finds that the act or omission of the State employee was within the scope of employment and was not

intentional, wilful or wanton misconduct, the State shall indemnify the State employee for any damages awarded and court costs and attorneys' fees assessed as part of any final and unreversed judgment. In such event the State shall also pay the employee's court costs, litigation expenses and attorneys' fees to the extent approved by the Attorney General as reasonable.

In the event that the defendant in the proceeding is an elected State official, including members of the General Assembly, the elected State official may retain his or her attorney, provided that said attorney shall be reasonably acceptable to the Attorney General. In such case the State shall pay the elected State official's court costs, litigation expenses, and attorneys' fees, to the extent approved by the Attorney General as reasonable, as they are incurred.

(b-5) The Attorney General may file a counterclaim on behalf of a State employee, provided:

(1) the Attorney General determines that the State employee is entitled to representation in a civil action under this Section;

(2) the counterclaim arises out of any act or omission occurring within the scope of the employee's State employment that is the subject of the civil action; and

(3) the employee agrees in writing that if judgment is entered in favor of the employee, the amount of the judgment shall be applied to offset any judgment that may be entered in favor of the plaintiff, and then to reimburse the State treasury for court costs and litigation expenses required to pursue the counterclaim. The balance of the collected judgment shall be paid to the State employee.

(c) Notwithstanding any other provision of this Section, representation and indemnification of a judge under this Act shall also be provided in any case where the plaintiff seeks damages or any equitable relief as a result of any decision, ruling or order of a judge made in the course of his or her judicial or administrative duties, without regard to the theory of recovery employed by the plaintiff. Indemnification shall be for all damages awarded and all court costs, attorney fees and litigation expenses assessed against the judge. When a judge has been convicted of a crime as a result of his or her intentional judicial misconduct in a trial, that judge shall not be entitled to indemnification and representation under this subsection in any case maintained by a party who seeks damages or other equitable relief as a direct result of the judge's intentional judicial misconduct.

(d) In any such proceeding where notice in accordance with this Section has been given to the Attorney General, unless the court or jury finds that the conduct or inaction which gave rise to the claim or cause of action was intentional, wilful or wanton misconduct and was not intended to serve or benefit interests of the State, the State shall indemnify the State employee for any damages awarded and court costs and attorneys' fees assessed as part of any final and unreversed judgment, or shall pay such judgment. Unless the Attorney

General determines that the conduct or inaction which gave rise to the claim or cause of action was intentional, wilful or wanton misconduct and was not intended to serve or benefit interests of the State, the case may be settled, in the Attorney General's discretion and with the employee's consent, and the State shall indemnify the employee for any damages, court costs and attorneys' fees agreed to as part of the settlement, or shall pay such settlement. Where the employee is represented by private counsel, any settlement must be so approved by the Attorney General and the court having jurisdiction, which shall obligate the State to indemnify the employee.

(e) (i) Court costs and litigation expenses and other costs of providing a defense or counterclaim, including attorneys' fees obligated under this Section, shall be paid from the State Treasury on the warrant of the Comptroller out of appropriations made to the Department of Central Management Services specifically designed for the payment of costs, fees and expenses covered by this Section.

(ii) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the chief administrative officer of the department, office or agency in which he is employed. If not inconsistent with the provisions of this Section, such judgment or settlement shall be certified for payment by such chief administrative officer and by the Attorney General. The judgment or settlement shall be paid from the State Treasury on the warrant of the Comptroller out of appropriations made to the Department of Central Management Services specifically designed for the payment of claims covered by this Section.

(f) Nothing contained or implied in this Section shall operate, or be construed or applied, to deprive the State, or any employee thereof, of any defense heretofore available.

(g) This Section shall apply regardless of whether the employee is sued in his or her individual or official capacity.

(h) This Section shall not apply to claims for bodily injury or damage to property arising from motor vehicle accidents.

(i) This Section shall apply to all proceedings filed on or after its effective date, and to any proceeding pending on its effective date, if the State employee gives notice to the Attorney General as provided in this Section within 30 days of the Act's effective date.

(j) The amendatory changes made to this Section by this amendatory Act of 1986 shall apply to all proceedings filed on or after the effective date of this amendatory Act of 1986 and to any proceeding pending on its effective date, if the State employee gives notice to the Attorney General as provided in this Section within 30 days of the effective date of this amendatory Act of 1986.

(k) This Act applies to all State officials who are

serving as trustees, or their appointing authorities, of a clean energy community trust or as members of a not-for-profit foundation or corporation established pursuant to Section 16-111.1 of the Public Utilities Act.  
(Source: P.A. 90-655, eff. 7-30-98; 91-781, eff. 6-9-00.)

(5 ILCS 350/4) (from Ch. 127, par. 1304)

Sec. 4. Reimbursement to former State employees. A former State employee who is a defendant or a witness in any civil proceeding covered under this Act shall be entitled to reimbursement for travel expenses, per diem and an attendance fee for each day the Attorney General certifies that the former employee is reasonably required to spend in the defense of such proceeding. Reimbursement for travel expenses and per diem shall be at the rate allowed to State employees while on official business for the State. The attendance fee shall be the amount of wages or other income actually lost by the former employee on account of time spent in the defense of such proceedings.  
(Source: P.A. 84-1431; 84-1438.)

*Downloaded from:*

*<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=116&ChapterID=2>*

**APPEAL PROCEDURES  
FOR  
OMBUDSMAN PROVIDER AGENCY DESIGNATION**

- a) Upon receipt of the written notification of designation decision, the applicant may appeal the decision. The State Long Term Care Ombudsman (STLCO) shall provide information on the appeal process with the written notification.
  - 1) An appeal regarding a designation decision must be in writing and received by the State Ombudsman within ten (10) calendar days from the date of the objecting agency's receipt of the designation decision.
  - 2) Upon receipt of an appeal, the State Ombudsman shall notify the AAA, if applicable, and the Director. The appeal will be processed in accordance with Department procedures.
  - 3) If the appeal is not received in the time specified, the appeal will be denied and the award will be made based upon the State Ombudsman's original designation decision.
  - 4) The State Ombudsman may request additional details from the appealing agency and from the AAA, if applicable, at any time. Failure of the appealing agency to supply information requested by the State Ombudsman will be cause for dismissal of the appeal.
- b) A contract/grant shall not be awarded until after the appeal is resolved, unless the State Ombudsman and the Department determine that:
  - 1) The services to be designated are urgently required and cannot be delayed until the appeal is resolved; or
  - 2) A prompt designation will otherwise be advantageous to the State.
- c) The designation decision shall not be considered final until an appeal decision is issued by the State Ombudsman.
  - 1) The State Ombudsman shall issue a response in writing to the appealing agency which shall be sent by certified mail, return receipt requested.
  - 2) A copy of the State Ombudsman's decision shall be provided to the appropriate AAA and the Director.

**IN-SERVICE TRAINING  
And  
TRAINER REQUIREMENTS**

**A. Training requirements for Ombudsman certification:**

1. Level I:
  - a. All Ombudsmen must complete Level I training.
  - b. All Ombudsmen must complete a minimum of 4 hours Level I mentoring.
  - c. Upon completion of Level I mentoring, the ombudsman may be placed on the Representative Registry as a Certified Ombudsman.
2. Level II:
  - a. All Ombudsmen must be Level II certified.
  - b. In order to be Level II certified, all Ombudsmen must complete training on the Regulations manual in addition to the Level II training modules.
  - c. Regional Ombudsmen and Community Ombudsmen must complete Level II training within 90 days of employment.
  - d. Volunteer Ombudsmen must complete Level II training within 18 months of initial Ombudsman certification.

**B. Minimum in-service training requirements:**

1. Regional Ombudsmen must complete eighteen (18) hours of documented in-service training on long term care related subjects or management/supervisory issues within each federal fiscal year.
2. Community Ombudsmen must complete a minimum of eight (8) hours of documented in-service training on long term care related subjects or management/supervisory issues within each federal fiscal year.
3. Volunteer Ombudsmen must complete six (6) hours of documented in-service training on long-term care related subjects each federal fiscal year.
4. Required in-service hours shall be reduced proportionately to reflect the portion of a federal fiscal year a new Ombudsman participates in the Program.

C. Failure to meet the training requirements:

1. If an ombudsman, paid or volunteer, fails to complete the training requirements, the individual will be de-certified and may not function as an Ombudsman until they begin the process again completing the necessary steps in the required timeframes.
2. If an Ombudsman takes a leave of absence for more than one (1) year, they must repeat both Level I and Level II training before resuming their role as an Ombudsman.

D. Designation of Trainers:

1. Level I:

- a. A certified Level I trainer must complete Level I & II training, 4 hours of mentoring from a certified ombudsman, and Ombudsmanager training. They must be on the Ombudsman Representative Registry and have successfully completed a background check.
- b. A certified Level I trainer must observe a Level I training (this training is in addition to the ombudsman's initial Level I training).
- c. A certified Level I trainer must co-train a Level I training with an Office Representative trainer or be observed training a Level I training by an Office Representative trainer.
- d. The Office Representative trainer must complete a Certified Training Evaluation Form and submit it to the Department within fourteen (14) days of the training. This form will indicate whether or not the person is deemed capable to train Level I.

2. Level II:

- a. A certified Level II trainer must be an ombudsman for one year, and be certified as a Level I trainer before being eligible to become a Level II trainer.
- b. A certified Level II trainer must observe a Level II training (this training is in addition to the ombudsman's initial Level II training).
- c. A certified Level II trainer must co-train Level II training with an Office Representative trainer.
- d. The Office Representative trainer must complete a Certified Training Evaluation Form and submit it to the Department. This form will indicate whether or not the person is deemed capable to train Level II.

3. Timelines

- a. Regional Ombudsmen must be certified as a Level I trainer within 12 months of becoming an RO.
  - b. Regional Ombudsmen must be certified as a Level II trainer within 24 months of becoming an RO.
4. Office Representative Trainers
  - a. The Office may designate individuals (ombudsmen) who are certified trainers to co-train in other areas of the state.
  - b. Office Representative Trainers may receive a stipend for training outside of his/her own program area.
  - c. The State Ombudsman will provide Office Representative co-trainers for all Level II trainings and provide a back-up trainer if the initial assigned co-trainer is not available. Back-up trainers will not be provided for the host trainer.

#### **E. Training Schedules & Materials**

1. Level I Trainings:
  - a. Regional Ombudsmen must inform the Office of Level I training dates at least 21 days in advance of the training.
2. Level II Trainings:
  - a. a minimum of 4 trainings will be held throughout the state annually.
  - b. additional trainings will be scheduled as needed.
  - c. the Office must approve additional Level II trainings.
  - d. Regional Ombudsmen must contact the Office to schedule additional Level II trainings a minimum of 30 days in advance.
  - e. A minimum of 5 individuals needing to be trained will be required at least 7 days before the training is to be held in order to have the training.
3. Modules
  - a. Regional Ombudsmen should request copies of the manuals at least 21 days in advance of the training.
  - b. Regional Ombudsmen are responsible for manually inserting the regional program information into the manuals.
  - c. The Office will email updated versions of the modules to the Regional Ombudsmen and Volunteer Coordinators.

#### **F. Representative Registry & Ombudsmanager**

1. The Representative Registry is maintained within OmbudsManager.
2. Upon completion of the Level I training and mentoring, Regional Ombudsmen shall add the newly trained Ombudsmen into OmbudsManager following the instructions in Appendix G(2).
3. Ombudsmanager must be updated by the Regional Ombudsman to reflect the ongoing training status of ombudsmen.

# Adding New Users to OmbudsManager

January 2013

**Staff/User (SCHMIED, JESSICA)**

Details Notes(0)

User ID\* JSCHMIED Initials JS ID # ☐ Active

Last Name\* SCHMIED First Name JESSICA MI L

Address 406 N. LAKESHORE DRIVE Password ••••

Home # 309-555-1212

City/State/Zip Hanna City IL 61536 Work # 309-555-2222

District E-Mail jress.com

Details Certifications and Background Checks User Permissions

Title Ombudsman Specialist

Type of User\*<sup>N</sup> Paid Program Staff Start Date\*<sup>N</sup> 10/1/2011

Type of Program Staff\*<sup>N</sup> Part Time End Date\*<sup>N</sup> Enter date

If Full Time, % of time spent on Ombudsman  % ☐ Exclude from ORT Part III, B.2. Count

If Part Time, % of Work Week<sup>N</sup> 50 %

Of the % of the Work Week, % spent on Ombudsman program<sup>N</sup> 100 %

Percentage of Ombudsman work time spent on State vs. Local work

State Office<sup>N</sup> 0 %

Local Program<sup>N</sup> 100 %

Full Time Equivalent

Overall FTE 0.5

State Office FTE 0.0

Local Program FTE 0.5

Reset Password OK Cancel

User ID = First initial of first name plus last name

Initials = Use first & last initials. If more than 1 person w/same initials, use middle initial as well.

ID# = This is automatically generated when you save the New User. Do NOT enter anything into this field.

First Name = First Name

Last Name = Last Name

MI = Middle Initial (not necessary)

Address = Home address of employee/volunteer (must be complete)

Home = Home Phone Number

Work = Work Phone Number (may also use cell number in this field)

District = leave blank – we do not use Districts in Illinois

Email = enter employee/volunteer's email address

---

**Staff Details section:**

Title = Enter title used at your agency to describe the employee/volunteer's position

Started = date employed at your agency (for volunteers, use date began Level I training)

Ended = date resigned or terminated (will be blank for active ombudsmen)

Type of User:

Select type of worker

\*if Type of User is Volunteer, remaining fields on this page should remain blank.

Type of Program Staff:

Select full time or part time

If Full Time, % of time spent on Ombudsman

If individual is only doing LTCOP work, enter 100%

If individual does both LTCOP work and shares duties of another program, enter the percentage of the work week spent as an ombudsman.

If Part Time, % of Work Week:

Enter the percentage of a full work week that the individual works (i.e. if the individual works 2.5 days, enter 50%)

Of the % of the Work Week, % spent on Ombudsman program:

Of the time the individual works during the week, enter the % time spent on LTCOP work. (i.e. if the individual works 2.5 days, but only does ombudsman work, enter 100%. Rationale: 100% of that 2.5 days is spent as an ombudsman.

Percentage of Ombudsman work time spent on State vs. Local work:

State Office = 0%

Local Program = 100% (always enter 100% local program)

Full Time Equivalent:

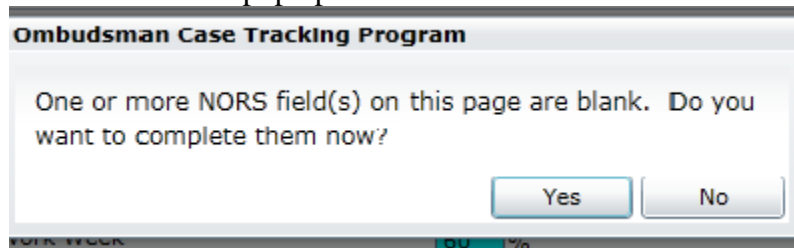
Overall FTE = this should be automatically calculated based on percentages above

State FTE = 0 (this should be automatically calculated)

Local Program = this should be automatically calculated based on percentages above

Click the OK button. Data will not be saved unless the OK button is clicked.

This window will pop up:



Click the NO button.

-----

## Certifications and Background Checks

Staff/User (SCHMIED, JESSICA)
00001USTATE

Details
Notes(0)

User ID\*

JSCHMIED

Initials

JS

ID #

00001USTAT

☒ Active

Last Name\*

SCHMIED

First Name

JESSICA

MI

L

Address

406 N. LAKESHORE DRIVE

Password

••••

City/State/Zip

Hanna City

IL

61536

Home #

309-555-1212

District

Work #

309-555-2222

E-Mail

jessica.schmied@add

Details
Certifications and Background Checks
User Permissions

Education Level

GRAD

Background Check Initiated

10/1/2011

☐ Certified Ombudsman <sup>N</sup>

☒ Completed Tier 1 Ombudsman Training

☒ Completed Tier 2 Ombudsman Training

Background Check Cleared

10/6/2011

Date of Certification <sup>N</sup>

Enter date

Tier 1 Completed

10/2/2011

Tier 1 Recertification

Enter date

Tier 2 Completed

10/6/2011

Tier 2 Recertification

Enter date

Reset Password
OK
Cancel

Education Level = enter the level of education completed. If appropriate, enter more than one code. For example, if the individual completed college and has received a Bachelor of Science and is a registered nurse, RN/BS would be entered. This information is not required for volunteers.

Enter level(s) by using the following codes:

- |        |   |
|--------|---|
| HS/GED | - individual has finished high school/GED       |
| AA     | - individual has an associate's degree          |
| LPN    | - individual is a licensed practical nurse      |
| RN     | - individual is a registered nurse              |
| BS     | - individual holds a Bachelor of Science degree |
| BA     | - individual holds a Bachelor of Arts degree    |
| GRAD   | - individual holds a masters degree or above    |

Background Check Initiated = enter the date the LTCOP obtained authorization from the individual for the background check

Background Check Cleared = enter the date the LTCOP received notice that the background check cleared.

Certified Ombudsman = This field can only be updated by the State Ombudsman. It will be checked upon proper notification for individuals who need to be added to the Representative Registry by the State Ombudsman.

Date of Certification = Entered by the SLTCO. Date will be the date added to the registry.

Completed Tier 1 Ombudsman Training = Check box when individual completes Level I training (including mentoring).

Tier 1 Completed = Enter date individual completed Level I training (including 4 hours of mentoring minimum)

Tier 1 Recertification = If individual was on the registry prior to June 2008, enter the date the individual attended Level I training after June 2008 (this may include only the last 2 modules of Level I).

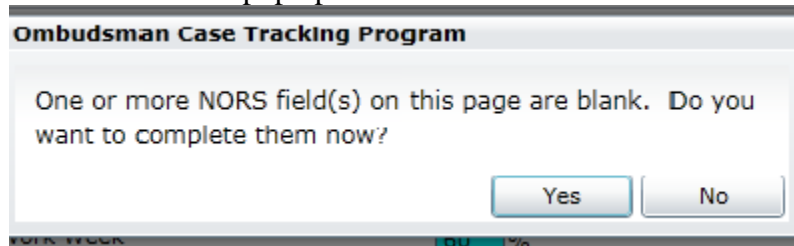
Completed Tier 2 Ombudsman Training = Check box when individual completes Level II training (including Regs manual training).

Tier 2 Completed = Enter date individual completed Level II training (including Regs manual training).

Tier 2 Recertification = If individual was on the registry prior to June 2008, enter the date the individual attended Level II training after June 2008. This field should contain the most recent date of recertification.

Click the OK button. Data will not be saved unless the OK button is clicked.

This window will pop up:



Click the NO button.

---

## User Permissions

**Staff/User (SCHMIED, JESSICA)** **00001USTATE**

Details Notes(0)

**User ID\*** JSCHMIED **Initials** JS **ID #** 00001USTAT ☒ **Active**

**Last Name\*** SCHMIED **First Name** JESSICA **MI** L

**Address** 406 N. LAKESHORE DRIVE **Password** ••••

**City/State/Zip** Hanna City IL 61536 **Home #** 309-555-1212

**District** **Work #** 309-555-2222 **E-Mail** jessica.schmied@add

Details Certifications and Background Checks **User Permissions**

Check off those functions that the user is to have access to in the System :

<input checked="" type="checkbox"/> Can Access Cases	<input checked="" type="checkbox"/> Add Attachment
<input checked="" type="checkbox"/> Can Create Cases	<input type="checkbox"/> Delete Attachment
<input type="checkbox"/> Can Delete Cases	<input checked="" type="checkbox"/> Open Attachment
<input checked="" type="checkbox"/> Can Print Records	<input checked="" type="checkbox"/> Can Run Reports
<input type="checkbox"/> Can Create Facilities	<input checked="" type="checkbox"/> Can Access Perpetrators
<input checked="" type="checkbox"/> Can Modify Facilities	<input type="checkbox"/> Can Access Import/Export & Archive
<input type="checkbox"/> Can Delete Facilities	<input checked="" type="checkbox"/> Prevent Access to Data of Other Program
<input checked="" type="checkbox"/> Can Create Case Journals	<input type="checkbox"/> Can Add/Remove Users
<input checked="" type="checkbox"/> Can Modify Case Journals	<input type="checkbox"/> Supervisor Access (Global Access to All System Data)
<input type="checkbox"/> Can Delete Case Journals	<input type="checkbox"/> Update Administrative Tables

Reset Password OK Cancel

Check off the functions that the user should have access to in the system. In general, most users should have the screen at the top of this page. Staff may also need the ability to Import/Export & Archive if staff are running reports that need to be exported & not simply printed.

---

### **Submission of Changes to the Representative Registry**

In order to add someone to the Representative Registry, the user information must be complete. The Office will not approve additions to the registry if OmbudsManager is missing information.

Required fields include:

User ID	Initials
Last Name	First Name
Address	Home Phone
	Work Phone (if applicable)
City/State/Zip	
Email (if applicable)	

#### *Under Staff Details:*

Title	Type of User	Start Date
Type of Program Staff		% completed re: Full Time or Part Time
Local Program %		Full Time Equivalent

#### *Under Certifications and Background Checks*

Education Level (required for paid staff only)

Background Check Initiated



Completed Tier 1 Ombudsman Training	Tier 1 Completed
-------------------------------------	------------------



Required completed fields on following page.


## Required completed fields:





**Staff/User (SCHMIED, JESSICA)**



Details Notes(0)

**User ID\*** JSCHMIED  Initials JS  ID #  ☒ **Active**


**Last Name\*** SCHMIED  First Name JESSICA  MI L



Address 406 N. LAKESHORE DRIVE  Password



City/State/Zip Hanna City  IL  61536  Home # 309-555-1212 

District  Work # 309-555-2222  E-Mail jress.com 


Details Certifications and Background Checks User Permissions


Title Ombudsman Specialist 

**Type of User\*** Paid Program Staff  **Start Date\*** 10/1/2011 

**Type of Program Staff\*** Part Time  **End Date\*** Enter date 


If Full Time, % of time spent on Ombudsman  % ☐ Exclude from ORT Part III, B.2. Count

If Part Time, % of Work Week 50 % 

Of the % of the Work Week, % spent on Ombudsman program 100 % 

Percentage of Ombudsman work time spent on State vs. Local work

State Office 0 %

Local Program 100 % 

**Full Time Equivalent**

Overall FTE 0.5


State Office FTE 0.0


Local Program FTE 0.5


Reset Password OK Cancel


If they have one


Details Certifications and Background Checks User Permissions


Education Level GRAD 

Background Check Cleared Enter date 


Background Check Initiated 10/1/2011 


Date of Certification Enter date 


☐ Certified Ombudsman 


☒ Completed Tier 1 Ombudsman Training 

☐ Completed Tier 2 Ombudsman Training

Tier 1 Completed 10/2/2011 

Tier 1 Recertification Enter date 

Tier 2 Completed Enter date 

Tier 2 Recertification Enter date 

The Office does not need to be notified via email when an individual completes Level II training. The Office will refer to the Staff/User section to determine who is Level I & Level II certified. Regional Ombudsmen are required to keep the additional training requirements up to date in OmbudsManager.

**Requesting an Addition to the Registry:**

ROs must email the Representative Registry at [aging.ltcop@illinois.gov](mailto:aging.ltcop@illinois.gov) and cc Jessica Belsly [Jessica.belsly@Illinois.gov](mailto:Jessica.belsly@Illinois.gov)

ROs must send an email that includes the following:

Subject of email must say "ADDITION TO REGISTRY: \_\_\_\_\_"(name of individual)

"Please add First Name \_\_\_\_\_ Last name \_\_\_\_\_  
(OmbudsManager User ID \_\_\_\_\_) to the Representative Registry within  
\_\_\_\_\_ (Name of Regional Program).

I have entered all required user information into OmbudsManager & request that you certify \_\_\_\_\_ as an Illinois Long Term Care Ombudsman."

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**To Decertify an individual:**

ROs must email the Representative Registry at [aging.ltcop@illinois.gov](mailto:aging.ltcop@illinois.gov) and cc Jessica Belsly [Jessica.belsly@Illinois.gov](mailto:Jessica.belsly@Illinois.gov).

ROs must send an email that includes the following:

Subject of email must say "DELETION FROM REGISTRY: \_\_\_\_\_"(name of individual)

"Please remove First Name \_\_\_\_\_ Last name \_\_\_\_\_  
(OmbudsManager User ID \_\_\_\_\_) from the Representative Registry within  
\_\_\_\_\_ (Name of Regional Program).

I have entered the "Ended" date into Ombudsmanager and recommend that you decertify \_\_\_\_\_ as an Illinois Long Term Care Ombudsman."

The "Ended" date should be entered by the RO as the date the request was made to decertify the individual.

**CODE OF ETHICS FOR OMBUDSMEN**

1. The Ombudsman provides services with respect for human dignity and the individuality of the client unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The Ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
7. The Ombudsman acts in accordance with the policies, procedures and practices of the Long -Term Care Ombudsman Program, and with respect for the policies of the sponsoring (contract) organization.
8. The Ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
9. The Ombudsman participates in efforts to promote a quality long-term care system.
10. The Ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
11. The Ombudsman supports a strict conflict of interest standard which prohibits any financial interest in the delivery or provision of nursing home, board and care services, home care services, managed care organization provider services or other long-term care services which are within their scope of involvement.
12. The Ombudsman shall conduct him/herself in a manner which will strengthen the statewide and national Ombudsman network.

**(210 ILCS 30/) Abused and Neglected Long Term Care Facility Residents Reporting Act.**

(210 ILCS 30/1) (from Ch. 111 1/2, par. 4161)

Sec. 1. This Act may be cited as the Abused and Neglected Long Term Care Facility Residents Reporting Act.

(Source: P.A. 86-1475.)

(210 ILCS 30/2) (from Ch. 111 1/2, par. 4162)

Sec. 2. The Illinois Department of Public Health shall upon receiving reports made under this Act, seek to protect residents and prevent further harm to the resident who was the subject of the report and other residents in the facility. In performing these duties, the Department may utilize such protective services of other State departments, commissions, boards or other agencies and any voluntary agencies as are available.

(Source: P.A. 82-120.)

(210 ILCS 30/3) (from Ch. 111 1/2, par. 4163)

Sec. 3. As used in this Act unless the context otherwise requires:

a. "Department" means the Department of Public Health of the State of Illinois.

b. "Resident" means a person residing in and receiving personal care from a long term care facility, or residing in a mental health facility or developmental disability facility as defined in the Mental Health and Developmental Disabilities Code.

c. "Long term care facility" has the same meaning ascribed to such term in the Nursing Home Care Act, except that the term as used in this Act shall include any mental health facility or developmental disability facility as defined in the Mental Health and Developmental Disabilities Code.

d. "Abuse" means any physical injury, sexual abuse or mental injury inflicted on a resident other than by accidental means.

e. "Neglect" means a failure in a long term care facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition.

f. "Protective services" means services provided to a resident who has been abused or neglected, which may include, but are not limited to alternative temporary institutional placement, nursing care, counseling, other social services provided at the nursing home where the resident resides or at some other facility, personal care and such protective services of voluntary agencies as are available.

g. Unless the context otherwise requires, direct or indirect references in this Act to the programs, personnel, facilities, services, service providers, or service recipients of the Department of Human Services shall be construed to refer only to those programs, personnel, facilities, services, service providers, or service recipients that pertain to the Department of Human Services' mental health and developmental disabilities functions.

(Source: P.A. 89-507, eff. 7-1-97.)

(210 ILCS 30/4) (from Ch. 111 1/2, par. 4164)

Sec. 4. Any long term care facility administrator, agent or employee or any physician, hospital, surgeon, dentist, osteopath, chiropractor, podiatrist, accredited religious

practitioner who provides treatment by spiritual means alone through prayer in accordance with the tenets and practices of the accrediting church, coroner, social worker, social services administrator, registered nurse, law enforcement officer, field personnel of the Department of Healthcare and Family Services, field personnel of the Illinois Department of Public Health and County or Municipal Health Departments, personnel of the Department of Human Services (acting as the successor to the Department of Mental Health and Developmental Disabilities or the Department of Public Aid), personnel of the Guardianship and Advocacy Commission, personnel of the State Fire Marshal, local fire department inspectors or other personnel, or personnel of the Illinois Department on Aging, or its subsidiary Agencies on Aging, or employee of a facility licensed under the Assisted Living and Shared Housing Act, having reasonable cause to believe any resident with whom they have direct contact has been subjected to abuse or neglect shall immediately report or cause a report to be made to the Department. Persons required to make reports or cause reports to be made under this Section include all employees of the State of Illinois who are involved in providing services to residents, including professionals providing medical or rehabilitation services and all other persons having direct contact with residents; and further include all employees of community service agencies who provide services to a resident of a public or private long term care facility outside of that facility. Any long term care surveyor of the Illinois Department of Public Health who has reasonable cause to believe in the course of a survey that a resident has been abused or neglected and initiates an investigation while on site at the facility shall be exempt from making a report under this Section but the results of any such investigation shall be forwarded to the central register in a manner and form described by the Department.

The requirement of this Act shall not relieve any long term care facility administrator, agent or employee of responsibility to report the abuse or neglect of a resident under Section 3-610 of the Nursing Home Care Act.

In addition to the above persons required to report suspected resident abuse and neglect, any other person may make a report to the Department, or to any law enforcement officer, if such person has reasonable cause to suspect a resident has been abused or neglected.

This Section also applies to residents whose death occurs from suspected abuse or neglect before being found or brought to a hospital.

A person required to make reports or cause reports to be made under this Section who fails to comply with the requirements of this Section is guilty of a Class A misdemeanor.

(Source: P.A. 94-853, eff. 6-13-06.)

(210 ILCS 30/5) (from Ch. 111 1/2, par. 4165)

Sec. 5. Any person required to investigate cases of suspected resident abuse or neglect may take or cause to be taken, at the resident's expense color photographs and x-rays of the area of trauma on the resident who is the subject of a report.

(Source: P.A. 82-120.)

(210 ILCS 30/6) (from Ch. 111 1/2, par. 4166)

Sec. 6. All reports of suspected abuse or neglect made under this Act shall be made immediately by telephone to the Department's central register established under Section 14 on the single, State-wide, toll-free telephone number established under Section 13, or in person or by telephone through the nearest Department office. No long term care facility administrator, agent or employee, or any other person, shall screen reports or otherwise withhold any reports from the Department, and no long term care facility, department of State government, or other agency shall establish any rules, criteria, standards or guidelines to the contrary. Every long term care facility, department of State government and other agency whose employees are required to make or cause to be made reports under Section 4 shall notify its employees of the provisions of that Section and of this Section, and provide to the Department documentation that such notification has been given. The Department of Human Services shall train all of its mental health and developmental disabilities employees in the detection and reporting of suspected abuse and neglect of residents. Reports made to the central register through the State-wide, toll-free telephone number shall be transmitted to appropriate Department offices and municipal health departments that have responsibility for licensing long term care facilities under the Nursing Home Care Act. All reports received through offices of the Department shall be forwarded to the central register, in a manner and form described by the Department. The Department shall be capable of receiving reports of suspected abuse and neglect 24 hours a day, 7 days a week. Reports shall also be made in writing deposited in the U.S. mail, postage prepaid, within 24 hours after having reasonable cause to believe that the condition of the resident resulted from abuse or neglect. Such reports may in addition be made to the local law enforcement agency in the same manner. However, in the event a report is made to the local law enforcement agency, the reporter also shall immediately so inform the Department. The Department shall initiate an investigation of each report of resident abuse and neglect under this Act, whether oral or written, as provided for in Section 3-702 of the Nursing Home Care Act, except that reports of abuse which indicate that a resident's life or safety is in imminent danger shall be investigated within 24 hours of such report. The Department may delegate to law enforcement officials or other public agencies the duty to perform such investigation.

With respect to investigations of reports of suspected abuse or neglect of residents of mental health and developmental disabilities institutions under the jurisdiction of the Department of Human Services, the Department shall transmit copies of such reports to the Department of State Police, the Department of Human Services, and the Inspector General appointed under Section 1-17 of the Department of Human Services Act. If the Department receives a report of suspected abuse or neglect of a recipient of services as defined in Section 1-123 of the Mental Health and Developmental Disabilities Code, the Department shall transmit

copies of such report to the Inspector General and the Directors of the Guardianship and Advocacy Commission and the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act. When requested by the Director of the Guardianship and Advocacy Commission, the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act, or the Department of Financial and Professional Regulation, the Department, the Department of Human Services and the Department of State Police shall make available a copy of the final investigative report regarding investigations conducted by their respective agencies on incidents of suspected abuse or neglect of residents of mental health and developmental disabilities institutions or individuals receiving services at community agencies under the jurisdiction of the Department of Human Services. Such final investigative report shall not contain witness statements, investigation notes, draft summaries, results of lie detector tests, investigative files or other raw data which was used to compile the final investigative report. Specifically, the final investigative report of the Department of State Police shall mean the Director's final transmittal letter. The Department of Human Services shall also make available a copy of the results of disciplinary proceedings of employees involved in incidents of abuse or neglect to the Directors. All identifiable information in reports provided shall not be further disclosed except as provided by the Mental Health and Developmental Disabilities Confidentiality Act. Nothing in this Section is intended to limit or construe the power or authority granted to the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act, pursuant to any other State or federal statute.

With respect to investigations of reported resident abuse or neglect, the Department shall effect with appropriate law enforcement agencies formal agreements concerning methods and procedures for the conduct of investigations into the criminal histories of any administrator, staff assistant or employee of the nursing home or other person responsible for the residents care, as well as for other residents in the nursing home who may be in a position to abuse, neglect or exploit the patient. Pursuant to the formal agreements entered into with appropriate law enforcement agencies, the Department may request information with respect to whether the person or persons set forth in this paragraph have ever been charged with a crime and if so, the disposition of those charges. Unless the criminal histories of the subjects involved crimes of violence or resident abuse or neglect, the Department shall be entitled only to information limited in scope to charges and their dispositions. In cases where prior crimes of violence or resident abuse or neglect are involved, a more detailed report can be made available to authorized representatives of the Department, pursuant to the agreements entered into with appropriate law enforcement agencies. Any criminal charges and their disposition information obtained by the Department shall be confidential and may not be transmitted outside the Department, except as required herein, to authorized representatives or delegates of the Department,

and may not be transmitted to anyone within the Department who is not duly authorized to handle resident abuse or neglect investigations.

The Department shall effect formal agreements with appropriate law enforcement agencies in the various counties and communities to encourage cooperation and coordination in the handling of resident abuse or neglect cases pursuant to this Act. The Department shall adopt and implement methods and procedures to promote statewide uniformity in the handling of reports of abuse and neglect under this Act, and those methods and procedures shall be adhered to by personnel of the Department involved in such investigations and reporting. The Department shall also make information required by this Act available to authorized personnel within the Department, as well as its authorized representatives.

The Department shall keep a continuing record of all reports made pursuant to this Act, including indications of the final determination of any investigation and the final disposition of all reports.

The Department shall report annually to the General Assembly on the incidence of abuse and neglect of long term care facility residents, with special attention to residents who are mentally disabled. The report shall include but not be limited to data on the number and source of reports of suspected abuse or neglect filed under this Act, the nature of any injuries to residents, the final determination of investigations, the type and number of cases where abuse or neglect is determined to exist, and the final disposition of cases.

(Source: P.A. 94-852, eff. 6-13-06; 95-545, eff. 8-28-07.)

(210 ILCS 30/6.2)

Sec. 6.2. (Repealed).

(Source: P.A. 95-331, eff. 8-21-07. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/6.3)

Sec. 6.3. (Repealed).

(Source: P.A. 93-636, eff. 12-31-03. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/6.4)

Sec. 6.4. (Repealed).

(Source: P.A. 93-636, eff. 12-31-03. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/6.5)

Sec. 6.5. (Repealed).

(Source: P.A. 93-636, eff. 12-31-03. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/6.6)

Sec. 6.6. (Repealed).

(Source: P.A. 93-636, eff. 12-31-03. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/6.7)

Sec. 6.7. (Repealed).

(Source: P.A. 93-636, eff. 12-31-03. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/6.8)

Sec. 6.8. (Repealed).

(Source: P.A. 93-636, eff. 12-31-03. Repealed by P.A. 95-545, eff. 8-28-07.)

(210 ILCS 30/7) (from Ch. 111 1/2, par. 4167)

Sec. 7. The report required by this Act shall include the name of the resident, the name and address of the nursing home at which the resident resides; the resident's age; the nature of the resident's condition including any evidence of previous injuries or disabilities, and any other information that the reporter believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused such abuse or neglect.

(Source: P.A. 82-120.)

(210 ILCS 30/8) (from Ch. 111 1/2, par. 4168)

Sec. 8. Any person, institution or agency, participating in good faith in the making of a report, or in the investigation of such a report or in the taking of photographs or x-rays under this Act shall have immunity from liability, civil, criminal, or otherwise, that might result by reason of such actions.

For the purpose of any proceedings, civil or criminal, the good faith of any persons required to report, or permitted to report, cases of resident abuse or neglect under this Act, shall be presumed.

(Source: P.A. 82-120.)

(210 ILCS 30/9) (from Ch. 111 1/2, par. 4169)

Sec. 9. Any person who makes a report or who investigates a report under this Act shall testify fully in any judicial proceeding resulting from such report, as to any evidence of abuse or neglect, or the cause thereof. No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the resident subject of the report under this Act and the person making or investigating the report.

(Source: P.A. 82-120.)

(210 ILCS 30/10) (from Ch. 111 1/2, par. 4170)

Sec. 10. If, during the investigation of a report made pursuant to this Act, the Department obtains information indicating possible criminal acts, the Department shall refer the matter to the appropriate law enforcement agency or agencies for further investigation or prosecution. The Department shall make the entire file of its investigation available to the appropriate law enforcement agencies.

With respect to reports of suspected abuse or neglect of residents of facilities operated by the Department of Human Services (as successor to the Department of Rehabilitation Services) or recipients of services through any home, institution, program or other entity licensed in whole or in part by the Department of Human Services (as successor to the Department of Rehabilitation Services), the Department shall

refer reports to the Department of State Police or the appropriate law enforcement entity upon awareness that a possible criminal act has occurred.

(Source: P.A. 94-428, eff. 8-2-05.)

(210 ILCS 30/11) (from Ch. 111 1/2, par. 4171)

Sec. 11. The Department may arrange for protective services to any nursing home resident who requires them when a report of abuse or neglect has been made. Such services shall be arranged for a limited time, as determined by the Department to be sufficient for the resident to obtain alternative permanent placement with the help of the Department if necessary, or for any situation of the resident related to the report of abuse or neglect which needs to be corrected or ameliorated so that the patient's continued residence in the same nursing home may continue without further abuse or neglect.

(Source: P.A. 82-120.)

(210 ILCS 30/12) (from Ch. 111 1/2, par. 4172)

Sec. 12. Nothing in this Act shall be construed to authorize or require protective services, medical care or treatment for any person in contravention of his stated or implied objection thereto upon grounds that it conflicts with his or her religious belief or practices, nor shall such person be considered abused or neglected for the exercise of such beliefs or practice.

(Source: P.A. 82-120.)

(210 ILCS 30/13) (from Ch. 111 1/2, par. 4173)

Sec. 13. There shall be a single State-wide, toll-free telephone number established and maintained by the Department which all persons, whether or not mandated by law, may use to report suspected long term care facility resident abuse or neglect at any hour of the day or night, on any day of the week. Any other person may use the State-wide number to obtain assistance or information concerning the handling of long term care facility resident abuse and neglect cases. The Department shall establish standards and procedures for using the State wide number, and shall take appropriate steps to ensure that all persons required to make reports under Section 4, as well as members of the general public, are aware of those standards and procedures.

(Source: P.A. 86-1013.)

(210 ILCS 30/14) (from Ch. 111 1/2, par. 4174)

Sec. 14. There shall be a central register of all cases of suspected long term care facility resident abuse or neglect reported and maintained by the Department under this Act. Through the recording of initial, preliminary, progress, and final reports, the central register shall be operated in such a manner as to enable the Department to: (1) immediately identify and locate prior reports or cases of abuse or neglect; (2) continuously monitor the current status of all cases of abuse or neglect being provided services under this Act; and (3) regularly evaluate the effectiveness of existing laws and programs through the development and analysis of statistical and other information. The Department shall by

rule adopt appropriate standards and procedures for the operation of the central register, including criteria to be used by long term care facility employees in determining whether abuse or neglect of a resident is suspected, and standards and procedures for making reports. The Department shall also take appropriate steps to ensure that all persons required to make reports under Section 4 are aware of those criteria, standards and procedures. The Department shall establish, in conjunction with the Department of Human Services, standards for evaluating reports of suspected abuse or neglect of recipients of mental health or developmental disability services to determine if a recipient's life or safety is in imminent danger, and for classifying other reports of suspected abuse and neglect for purposes of determining the necessity and schedule of an investigation. (Source: P.A. 89-507, eff. 7-1-97.)

(210 ILCS 30/15) (from Ch. 111 1/2, par. 4175)

Sec. 15. The Long Term Care Facility Advisory Board established under the Nursing Home Care Act shall conduct hearings and consult with individuals of distinction in the fields of health, human services, law and other appropriate areas in a continuing assessment of the problem of resident abuse and neglect. It shall advise and make recommendations to the Department regarding improvements in the reporting, investigation and follow-up systems and procedures established under this Act and regarding the adequacy and availability of programs and services in the State to prevent and respond to further incidents of resident abuse and neglect. (Source: P.A. 86-820.)

(210 ILCS 30/16) (from Ch. 111 1/2, par. 4176)

Sec. 16. Within the appropriation available, the Department shall conduct a continuing education and training program for State and local staff, persons and officials required to report, the general public, and other persons engaged in or intending to engage in the prevention, identification, and treatment of resident abuse and neglect. The program shall be designed to encourage the fullest degree of reporting of known and suspected resident abuse and neglect, and to improve communication, cooperation, and coordination among all agencies in the identification, prevention, and treatment of resident abuse and neglect. The program shall inform the general public and professionals of the nature and extent of abuse and neglect and their responsibilities, obligations, powers and immunity from liability under this Act. It may include publicity and dissemination of information on the existence and number of the 24 hour, State-wide, toll-free telephone service to assist persons seeking assistance and to receive reports of known and suspected abuse and neglect. (Source: P.A. 83-1530.)

*Downloaded from:*

*<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1222&ChapterID=21>*

**(755 ILCS 45/) Illinois Power of Attorney Act.**

(755 ILCS 45/Art. I heading)

ARTICLE I - SHORT TITLE.

(755 ILCS 45/1-1) (from Ch. 110 1/2, par. 801-1)

Sec. 1-1. This Act shall be known and may be cited as the "Illinois Power of Attorney Act".

(Source: P.A. 85-701.)

(755 ILCS 45/Art. II heading)

ARTICLE II - DURABLE POWERS OF ATTORNEY.

(755 ILCS 45/2-1) (from Ch. 110 1/2, par. 802-1)

Sec. 2-1. Purpose. The General Assembly recognizes that each individual has the right to appoint an agent to make property, financial, personal, and health care decisions for the individual but that this right cannot be fully effective unless the principal may empower the agent to act throughout the principal's lifetime, including during periods of disability, and have confidence that third parties will honor the agent's authority at all times.

The General Assembly finds that in the light of modern financial needs and advances in medical science, the statutory recognition of this right of delegation in Illinois needs to be restated, which will, among other things, expand the application and the permissible scope of the agent's authority, clarify the power of the individual to authorize an agent to make financial and care decisions for the individual and better protect health care personnel and other third parties who rely in good faith on the agent so that reliance will be assured. Nothing in this Act shall be deemed to authorize or encourage euthanasia, suicide or any action or course of action that violates the criminal law of this State or the United States. Similarly, nothing in this Act shall be deemed to authorize or encourage any violation of a civil right expressed in the Constitution, statutes, case law and administrative rulings of this State (including, without limitation, the right of conscience respected and protected by the Health Care Right of Conscience Act, as now or hereafter amended) or the United States or any action or course of action that violates the public policy expressed in the Constitution, statutes, case law and administrative rulings of this State or the United States.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/2-2) (from Ch. 110 1/2, par. 802-2)

Sec. 2-2. Short Title. This Article shall be known and may be cited as the "Durable Power of Attorney Law".

(Source: P.A. 85-701.)

(755 ILCS 45/2-3) (from Ch. 110 1/2, par. 802-3)

Sec. 2-3. Definitions. As used in this Act:

(a) "Agency" means the written power of attorney or other instrument of agency governing the relationship between the principal and agent or the relationship, itself, as appropriate to the context, and includes agencies dealing with personal or health care as well as property. An agency is subject to this Act to the extent it may be controlled by the principal, excluding agencies and powers for the benefit of the agent.

(b) "Agent" means the attorney-in-fact or other person designated to act for the principal in the agency.

(c) "Disabled person" has the same meaning as in the "Probate Act of 1975", as now or hereafter amended. To be under a "disability" or "disabled" means to be a disabled person.

(c-5) "Incapacitated", when used to describe a principal, means that the principal is under a legal disability as defined in Section 11a-2 of the Probate Act of 1975. A principal shall also be considered incapacitated if: (i) a physician licensed to practice medicine in all of its branches has examined the principal and has determined that the principal lacks decision making capacity; (ii) that physician has made a written record of this determination and has signed the written record within 90 days after the examination; and (iii) the written record has been delivered to the agent. The agent may rely conclusively on the written record.

(d) "Person" means an individual, corporation, trust, partnership or other entity, as appropriate to the agency.

(e) "Principal" means an individual (including, without limitation, an individual acting as trustee, representative or other fiduciary) who signs a power of attorney or other instrument of agency granting powers to an agent.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/2-4) (from Ch. 110 1/2, par. 802-4)

Sec. 2-4. Applicability.

(a) The principal may specify in the agency the event or time when the agency will begin and terminate, the mode of revocation or amendment and the rights, powers, duties, limitations, immunities and other terms applicable to the agent and to all persons dealing with the agent, and the provisions of the agency will control notwithstanding this Act, except that every health care agency must comply with Section 4-5 of this Act.

(b) From and after the effective date of this Act: (1) this Act governs every agency, whenever and wherever executed, and all acts of the agent to the extent the provisions of this Act are not inconsistent with the agency; and (2) this Act applies to all agencies exercised in Illinois and to all other agencies if the principal is a resident of Illinois at the time the agency is signed or at the time of exercise or if the agency indicates that Illinois law is to apply. Providing forms of statutory property and health care powers in Articles

III and IV does not limit the applicability of this Act, it being intended that every agency, including, without limitation, the statutory property and health care power agencies, shall have the benefit of and be governed by Article II, by Sections 4-1 through 4-9 and Section 4-11 of Article IV, and by all other general provisions of this Act, except to the extent the terms of the agency are inconsistent with this Act.

(c) Notwithstanding the provisions of subsections (a) and (b), this Act shall not apply to an agreement or contract described in any of items (1) through (8) of this subsection under which a financial institution, defined as a (i) bank, trust company, savings bank, savings and loan, or credit union holding a federal charter or a charter from any of the states that is subject to regulation by the Illinois Secretary of Financial and Professional Regulation or (ii) broker-dealer registered with the United States Securities and Exchange Commission, is named as an agent for any person, provided that the agreement or contract does not include in its terms a durable power of attorney that survives the incapacity of the principal:

(1) a proxy or other delegation to exercise voting rights or management rights with respect to a corporation, partnership (general or limited), limited liability company, condominium, commercial entity, or association;

(2) an agreement or contract given to a financial institution to facilitate a specific transfer or disposition of one or more identified stocks, bonds, or assets, whether real or personal, tangible or intangible;

(3) an agreement or directive authorizing a financial institution to prepare, execute, deliver, submit, or file a document or instrument with a government or governmental subdivision, agency, or instrumentality, or other third party;

(4) an agreement or contract authorizing a financial institution or an officer of a financial institution to take a specific action or actions in relation to an account in which the financial institution (i) holds cash, securities, commodities, or other financial assets on behalf of the principal or (ii) acts as an investment manager with a third party serving as the custodian of such cash, securities, commodities, or other financial assets on behalf of the principal;

(5) an agreement or contract authorizing a financial institution to take specific actions with respect to collateral in connection with a loan or other secured credit transaction other than a mortgage;

(6) an agreement or contract given to a financial institution by an individual who is, or is seeking to become, a director, officer, stockholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager, or agent of a corporation, a partnership (general or limited), a limited liability company, a condominium, a legal or commercial entity, or an association, in that individual's capacity as such, including an agreement or directive contained in a subscription agreement;

(7) an authorization contained in a certificate of incorporation, bylaws, general or limited partnership agreement, limited liability company agreement, declaration of trust, declaration of condominium, condominium offering plan, or other agreement or instrument governing the internal affairs of an entity or association authorizing a director, officer, shareholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager, or other person to take lawful actions relating to such entity or association; or

(8) an agreement authorizing the acceptance of the service of process on behalf of the person executing the agreement.

(d) An agreement or contract described in subsection (c) is not a "nonstatutory property power" subject to subsection (b) of Section 3-3. This subsection (d) is declarative of existing law and is applicable to all agreements or contracts whenever executed.

(Source: P.A. 97-868, eff. 7-30-12.)

(755 ILCS 45/2-5) (from Ch. 110 1/2, par. 802-5)

Sec. 2-5. Duration of agency - amendment and revocation. Unless the agency states an earlier termination date, the agency continues until the death of the principal, notwithstanding any lapse of time, the principal's disability or incapacity or appointment of a guardian for the principal after the agency is signed. Every agency may be amended or revoked by the principal, if the principal has the capacity to do so, at any time and in any manner communicated to the agent or to any other person related to the subject matter of the agency, except that revocation and amendment of health care agencies are governed by Section 4-6 of this Act except to the extent the terms of the agencies are inconsistent with that Section. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/2-6) (from Ch. 110 1/2, par. 802-6)

Sec. 2-6. Effect of disability-divorce. (a) All acts of the agent within the scope of the agency during any period of disability, incapacity or incompetency of the principal have the same effect and inure to the benefit of and bind the principal and his or her successors in interest as if the principal were competent and not disabled.

(b) If a court enters a judgement of dissolution of marriage or legal separation between the principal and his or her spouse after the agency is signed, the spouse shall be deemed to have died at the time of the judgment for all purposes of the agency.

(Source: P.A. 85-701.)

(755 ILCS 45/2-7) (from Ch. 110 1/2, par. 802-7)

(Text of Section from P.A. 98-49)

Sec. 2-7. Duty - standard of care - record-keeping - exoneration.

(a) The agent shall be under no duty to exercise the powers granted by the agency or to assume control of or responsibility for any of the principal's property, care or affairs, regardless of the principal's physical or mental condition. Whenever a power is exercised, the agent shall act in good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the agency and shall be liable for negligent exercise. An agent who acts with due care for the benefit of the principal shall not be liable or limited merely because the agent also benefits from the act, has individual or conflicting interests in relation to the property, care or affairs of the principal or acts in a different manner with respect to the agency and the agent's individual interests. The agent shall not be affected by any amendment or termination of the agency until the agent has actual knowledge thereof. The agent shall not be liable for any loss due to error of judgment nor for the act or default of any other person.

(b) An agent that has accepted appointment must act in accordance with the principal's expectations to the extent actually known to the agent and otherwise in the principal's best interests.

(c) An agent shall keep a record of all receipts, disbursements, and significant actions taken under the authority of the agency and shall provide a copy of this record when requested to do so by:

(1) the principal, a guardian, another fiduciary acting on behalf of the principal, and, after the death of the principal, the personal representative or successors in interest of the principal's estate;

(2) a representative of a provider agency, as defined in Section 2 of the Adult Protective Services Act, acting in the course of an assessment of a complaint of elder abuse or neglect under that Act;

(3) a representative of the Office of the State Long Term Care Ombudsman, acting in the course of an investigation of a complaint of financial exploitation of a nursing home resident under Section 4.04 of the Illinois Act on the Aging;

(4) a representative of the Office of Inspector General for the Department of Human Services, acting in the course of an assessment of a complaint of financial exploitation of an adult with disabilities pursuant to Section 35 of the Abuse of Adults with Disabilities Intervention Act; or

(5) a court under Section 2-10 of this Act.

(d) If the agent fails to provide his or her record of all receipts, disbursements, and significant actions within 21 days after a request under subsection (c), the adult abuse provider agency or the State Long Term Care Ombudsman may petition the court for an order requiring the agent to produce

his or her record of receipts, disbursements, and significant actions. If the court finds that the agent's failure to provide his or her record in a timely manner to the adult abuse provider agency or the State Long Term Care Ombudsman was without good cause, the court may assess reasonable costs and attorney's fees against the agent, and order such other relief as is appropriate.

(e) An agent is not required to disclose receipts, disbursements, or other significant actions conducted on behalf of the principal except as otherwise provided in the power of attorney or as required under subsection (c).

(f) An agent that violates this Act is liable to the principal or the principal's successors in interest for the amount required (i) to restore the value of the principal's property to what it would have been had the violation not occurred, and (ii) to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf. This subsection does not limit any other applicable legal or equitable remedies. (Source: P.A. 98-49, eff. 7-1-13.)

(Text of Section from P.A. 98-562)

Sec. 2-7. Duty - standard of care - record-keeping - exoneration.

(a) The agent shall be under no duty to exercise the powers granted by the agency or to assume control of or responsibility for any of the principal's property, care or affairs, regardless of the principal's physical or mental condition. Whenever a power is exercised, the agent shall act in good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the agency and shall be liable for negligent exercise. An agent who acts with due care for the benefit of the principal shall not be liable or limited merely because the agent also benefits from the act, has individual or conflicting interests in relation to the property, care or affairs of the principal or acts in a different manner with respect to the agency and the agent's individual interests. The agent shall not be affected by any amendment or termination of the agency until the agent has actual knowledge thereof. The agent shall not be liable for any loss due to error of judgment nor for the act or default of any other person.

(b) An agent that has accepted appointment must act in accordance with the principal's expectations to the extent actually known to the agent and otherwise in the principal's best interests.

(c) An agent shall keep a record of all receipts, disbursements, and significant actions taken under the authority of the agency and shall provide a copy of this record when requested to do so by:

(1) the principal, a guardian, another fiduciary acting on behalf of the principal, and, after the death of the principal, the personal representative or successors in interest of the principal's estate;

(2) a representative of a provider agency, as defined in Section 2 of the Elder Abuse and Neglect Act, acting in the course of an assessment of a complaint of elder abuse

or neglect under that Act;

(3) a representative of the Office of the State Long Term Care Ombudsman, acting in the course of an investigation of a complaint of financial exploitation of a nursing home resident under Section 4.04 of the Illinois Act on the Aging;

(4) a representative of the Office of Inspector General for the Department of Human Services, acting in the course of an assessment of a complaint of financial exploitation of an adult with disabilities pursuant to Section 35 of the Abuse of Adults with Disabilities Intervention Act;

(5) a court under Section 2-10 of this Act; or

(6) a representative of the Office of State Guardian or public guardian for the county in which the principal resides acting in the course of investigating whether to file a petition for guardianship of the principal under Section 11a-4 or 11a-8 of the Probate Act of 1975.

(d) If the agent fails to provide his or her record of all receipts, disbursements, and significant actions within 21 days after a request under subsection (c), the elder abuse provider agency, the State Guardian, the public guardian, or the State Long Term Care Ombudsman may petition the court for an order requiring the agent to produce his or her record of receipts, disbursements, and significant actions. If the court finds that the agent's failure to provide his or her record in a timely manner to the elder abuse provider agency, the State Guardian, the public guardian, or the State Long Term Care Ombudsman was without good cause, the court may assess reasonable costs and attorney's fees against the agent, and order such other relief as is appropriate.

(e) An agent is not required to disclose receipts, disbursements, or other significant actions conducted on behalf of the principal except as otherwise provided in the power of attorney or as required under subsection (c).

(f) An agent that violates this Act is liable to the principal or the principal's successors in interest for the amount required (i) to restore the value of the principal's property to what it would have been had the violation not occurred, and (ii) to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf. This subsection does not limit any other applicable legal or equitable remedies.  
(Source: P.A. 98-562, eff. 8-27-13.)

(755 ILCS 45/2-7.5)

Sec. 2-7.5. (Repealed).

(Source: P.A. 94-850, eff. 6-13-06. Repealed by P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/2-8) (from Ch. 110 1/2, par. 802-8)

Sec. 2-8. Reliance on document purporting to establish an agency.

(a) Any person who acts in good faith reliance on a copy of a document purporting to establish an agency will be fully

protected and released to the same extent as though the reliant had dealt directly with the named principal as a fully-competent person. The named agent shall furnish an affidavit or Agent's Certification and Acceptance of Authority to the reliant on demand stating that the instrument relied on is a true copy of the agency and that, to the best of the named agent's knowledge, the named principal is alive and the relevant powers of the named agent have not been altered or terminated; but good faith reliance on a document purporting to establish an agency will protect the reliant without the affidavit or Agent's Certification and Acceptance of Authority.

(b) Upon request, the named agent in a power of attorney shall furnish an Agent's Certification and Acceptance of Authority to the reliant in substantially the following form:

#### AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I, ..... (insert name of agent), certify that the attached is a true copy of a power of attorney naming the undersigned as agent or successor agent for ..... (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.\*

Dated: .....

.....  
(Agent's Signature)  
.....  
(Print Agent's Name)  
.....  
(Agent's Address)

\*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 2012, and is a Class 3 felony.)

(c) Any person dealing with an agent named in a copy of a document purporting to establish an agency may presume, in the absence of actual knowledge to the contrary, that the document purporting to establish the agency was validly executed, that the agency was validly established, that the named principal was competent at the time of execution, and that, at the time of reliance, the named principal is alive, the agency was validly established and has not terminated or been amended, the relevant powers of the named agent were properly and validly granted and have not terminated or been amended, and the acts of the named agent conform to the standards of this Act. No person relying on a copy of a document purporting to establish an agency shall be required to see to the application of any property delivered to or controlled by the named agent or to question the authority of the named agent.

(d) Each person to whom a direction by the named agent in

accordance with the terms of the copy of the document purporting to establish an agency is communicated shall comply with that direction, and any person who fails to comply arbitrarily or without reasonable cause shall be subject to civil liability for any damages resulting from noncompliance. A health care provider who complies with Section 4-7 shall not be deemed to have acted arbitrarily or without reasonable cause.

(Source: P.A. 96-1195, eff. 7-1-11; 97-1150, eff. 1-25-13.)

(755 ILCS 45/2-9) (from Ch. 110 1/2, par. 802-9)

Sec. 2-9. Preservation of estate plan and trusts. In exercising powers granted under the agency, including powers of amendment or revocation and powers to expend or withdraw property passing by trust, contract or beneficiary designation at the principal's death (such as, without limitation, specifically bequeathed property, joint accounts, life insurance, trusts and retirement plans), the agent shall take the principal's estate plan into account insofar as it is known to the agent and shall attempt to preserve the plan, but the agent shall not be liable to any plan beneficiary under this Section unless the agent acts in bad faith. An agent may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the agent without specific authority and specific reference to the trust in the agency. The agent shall have access to and the right to copy (but not to hold) the principal's will, trusts and other personal papers and records to the extent the agent deems relevant for purposes of this Section. This Section shall not apply to any Totten Trust, Payable on Death Account, or comparable trust account arrangement where the terms of such trust are contained entirely on the financial institution's signature card insofar as an agent acting under a power of attorney executed in accordance with this Act shall be permitted to withdraw income or principal from such account if the power of attorney grants the agent authority to conduct financial institution transactions on the principal's behalf and the agent's authority to access such account is not expressly limited or withheld in the agency.

(Source: P.A. 94-938, eff. 1-1-07.)

(755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

(Text of Section from P.A. 98-49)

Sec. 2-10. Agency-court relationship.

(a) Upon petition by any interested person (including the agent), with such notice to interested persons as the court directs and a finding by the court that the principal lacks either the capacity to control or the capacity to revoke the agency, the court may construe a power of attorney, review the agent's conduct, and grant appropriate relief including compensatory damages.

(b) If the court finds that the agent is not acting for the benefit of the principal in accordance with the terms of the agency or that the agent's action or inaction has caused

or threatens substantial harm to the principal's person or property in a manner not authorized or intended by the principal, the court may order a guardian of the principal's person or estate to exercise any powers of the principal under the agency, including the power to revoke the agency, or may enter such other orders without appointment of a guardian as the court deems necessary to provide for the best interests of the principal.

(c) If the court finds that the agency requires interpretation, the court may construe the agency and instruct the agent, but the court may not amend the agency.

(d) If the court finds that the agent has not acted for the benefit of the principal in accordance with the terms of the agency and the Illinois Power of Attorney Act, or that the agent's action caused or threatened substantial harm to the principal's person or property in a manner not authorized or intended by the principal, then the agent shall not be authorized to pay or be reimbursed from the estate of the principal the attorneys' fees and costs of the agent in defending a proceeding brought pursuant to this Section.

(e) Upon a finding that the agent's action has caused substantial harm to the principal's person or property, the court may assess against the agent reasonable costs and attorney's fees to a prevailing party who is a provider agency as defined in Section 2 of the Adult Protective Services Act, a representative of the Office of the State Long Term Care Ombudsman, or a governmental agency having regulatory authority to protect the welfare of the principal.

(f) As used in this Section, the term "interested person" includes (1) the principal or the agent; (2) a guardian of the person, guardian of the estate, or other fiduciary charged with management of the principal's property; (3) the principal's spouse, parent, or descendant; (4) a person who would be a presumptive heir-at-law of the principal; (5) a person named as a beneficiary to receive any property, benefit, or contractual right upon the principal's death, or as a beneficiary of a trust created by or for the principal; (6) a provider agency as defined in Section 2 of the Adult Protective Services Act, a representative of the Office of the State Long Term Care Ombudsman, or a governmental agency having regulatory authority to protect the welfare of the principal; and (7) the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.

(g) Absent court order directing a guardian to exercise powers of the principal under the agency, a guardian will have no power, duty or liability with respect to any property subject to the agency or any personal or health care matters covered by the agency.

(h) Proceedings under this Section shall be commenced in the county where the guardian was appointed or, if no Illinois guardian is acting, then in the county where the agent or principal resides or where the principal owns real property.

(i) This Section shall not be construed to limit any other remedies available.

(Source: P.A. 98-49, eff. 7-1-13.)

(Text of Section from P.A. 98-562)

Sec. 2-10. Agency-court relationship.

(a) Upon petition by any interested person (including the agent), with such notice to interested persons as the court directs and a finding by the court that the principal lacks either the capacity to control or the capacity to revoke the agency, the court may construe a power of attorney, review the agent's conduct, and grant appropriate relief including compensatory damages.

(b) If the court finds that the agent is not acting for the benefit of the principal in accordance with the terms of the agency or that the agent's action or inaction has caused or threatens substantial harm to the principal's person or property in a manner not authorized or intended by the principal, the court may order a guardian of the principal's person or estate to exercise any powers of the principal under the agency, including the power to revoke the agency, or may enter such other orders without appointment of a guardian as the court deems necessary to provide for the best interests of the principal.

(c) If the court finds that the agency requires interpretation, the court may construe the agency and instruct the agent, but the court may not amend the agency.

(d) If the court finds that the agent has not acted for the benefit of the principal in accordance with the terms of the agency and the Illinois Power of Attorney Act, or that the agent's action caused or threatened substantial harm to the principal's person or property in a manner not authorized or intended by the principal, then the agent shall not be authorized to pay or be reimbursed from the estate of the principal the attorneys' fees and costs of the agent in defending a proceeding brought pursuant to this Section.

(e) Upon a finding that the agent's action has caused substantial harm to the principal's person or property, the court may assess against the agent reasonable costs and attorney's fees to a prevailing party who is a provider agency as defined in Section 2 of the Elder Abuse and Neglect Act, a representative of the Office of the State Long Term Care Ombudsman, the State Guardian, a public guardian, or a governmental agency having regulatory authority to protect the welfare of the principal.

(f) As used in this Section, the term "interested person" includes (1) the principal or the agent; (2) a guardian of the person, guardian of the estate, or other fiduciary charged with management of the principal's property; (3) the principal's spouse, parent, or descendant; (4) a person who would be a presumptive heir-at-law of the principal; (5) a person named as a beneficiary to receive any property, benefit, or contractual right upon the principal's death, or as a beneficiary of a trust created by or for the principal; (6) a provider agency as defined in Section 2 of the Elder Abuse and Neglect Act, a representative of the Office of the State Long Term Care Ombudsman, the State Guardian, a public guardian, or a governmental agency having regulatory authority to protect the welfare of the principal; and (7) the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.

(g) Absent court order directing a guardian to exercise powers of the principal under the agency, a guardian will have no power, duty or liability with respect to any property subject to the agency or any personal or health care matters covered by the agency.

(h) Proceedings under this Section shall be commenced in the county where the guardian was appointed or, if no Illinois guardian is acting, then in the county where the agent or principal resides or where the principal owns real property.

(i) This Section shall not be construed to limit any other remedies available.

(Source: P.A. 98-562, eff. 8-27-13.)

(755 ILCS 45/2-10.3)

Sec. 2-10.3. Successor agents.

(a) A principal may designate one or more successor agents to act if an initial or predecessor agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to another person, designated by name, by office, or by function, including an initial or successor agent, to designate one or more successor agents. Unless a power of attorney otherwise provides, a successor agent has the same authority as that granted to an initial agent.

(b) An agent is not liable for the actions of another agent, including a predecessor agent, unless the agent participates in or conceals a breach of fiduciary duty committed by the other agent. An agent who has knowledge of a breach or imminent breach of fiduciary duty by another agent must notify the principal and, if the principal is incapacitated, take whatever actions may be reasonably appropriate in the circumstances to safeguard the principal's best interest.

(c) Any person who acts in good faith reliance on the representation of a successor agent regarding the unavailability of a predecessor agent will be fully protected and released to the same extent as though the reliant had dealt directly with the predecessor agent. Upon request, the successor agent shall furnish an affidavit or Successor Agent's Certification and Acceptance of Authority to the reliant, but good faith reliance on a document purporting to establish an agency will protect the reliant without the affidavit or Successor Agent's Certification and Acceptance of Authority. A Successor Agent's Certification and Acceptance of Authority shall be in substantially the following form:

SUCCESSOR AGENT'S  
CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I certify that the attached is a true copy of a power of attorney naming the undersigned as agent or successor agent for ..... (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power

of attorney remains in full force and effect.

I certify that to the best of my knowledge .....  
(insert name of unavailable agent) is unavailable due to  
..... (specify death, resignation, absence,  
illness, or other temporary incapacity).

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.\*

Dated: .....

.....  
(Agent's Signature)  
.....  
(Print Agent's Name)  
.....  
(Agent's Address)

\*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 2012, and is a Class 3 felony.)  
(Source: P.A. 96-1195, eff. 7-1-11; 97-1150, eff. 1-25-13.)

(755 ILCS 45/2-10.5)

Sec. 2-10.5. Co-agents.

(a) Co-agents may not be named by a principal in a statutory short form power of attorney for property under Article III or a statutory short form power of attorney for health care under Article IV. In the event that co-agents are named in any other form of power of attorney, then the provisions of this Section shall govern the use and acceptance of co-agency designations.

(b) Unless the power of attorney or this Section otherwise provides, authority granted to 2 or more co-agents is exercisable only by their majority consent. However, if prompt action is required to accomplish the purposes of the power of attorney or to avoid irreparable injury to the principal's interests and an agent is unavailable because of absence, illness, or other temporary incapacity, the other agent or agents may act for the principal. If a vacancy occurs in one or more of the designations of agent under a power of attorney, the remaining agent or agents may act for the principal.

(c) An agent is not liable for the actions of another agent, including a co-agent or predecessor agent, unless the agent participates in or conceals a breach of fiduciary duty committed by the other agent. An agent who has knowledge of a breach or imminent breach of fiduciary duty by another agent must notify the principal and, if the principal is incapacitated, take whatever actions may be reasonably appropriate in the circumstances to safeguard the principal's best interest.

(d) Any person who acts in good faith reliance on the representation of a co-agent regarding the unavailability of a predecessor agent or one or more co-agents, or the need for prompt action to accomplish the purposes of the power of attorney or to avoid irreparable injury to the principal's interests, will be fully protected and released to the same extent as though the reliant had dealt directly with all named

agents. Upon request, the co-agent shall furnish an affidavit or Co-Agent's Certification and Acceptance of Authority to the reliant, but good faith reliance on a document purporting to establish an agency will protect the reliant without the affidavit or Co-Agent's Certification and Acceptance of Authority. A Co-Agent's Certification and Acceptance of Authority shall be in substantially the following form:

CO-AGENT'S  
CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I certify that the attached is a true copy of a power of attorney naming the undersigned as agent or co-agent for ..... (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I certify that to the best of my knowledge ..... (insert name of unavailable agent) is unavailable due to ..... (specify death, resignation, absence, illness, or other temporary incapacity).

I certify that prompt action is required to accomplish the purposes of the power of attorney or to avoid irreparable injury to the principal's interests.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.\*

Dated: .....

.....  
(Agent's Signature)  
.....  
(Print Agent's Name)  
.....  
(Agent's Address)

\*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 2012, and is a Class 3 felony.)  
(Source: P.A. 96-1195, eff. 7-1-11; 97-1150, eff. 1-25-13.)

(755 ILCS 45/2-10.6)

Sec. 2-10.6. Power of attorney executed in another state or country; pre-existing powers of attorney.

(a) A power of attorney executed in another state or country is valid and enforceable in this State if its creation complied when executed with:

- (1) the law of the state or country in which the power of attorney was executed;
- (2) the law of this State;
- (3) the law of the state or country where the principal is domiciled, has a place of abode or business, or is a national; or
- (4) the law of the state or country where the agent is domiciled or has a place of business.

(b) A power of attorney executed in this State before the

effective date of this amendatory Act of the 96th General Assembly is valid and enforceable in this State if its creation complied with the law of this State as it existed at the time of execution.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/2-11) (from Ch. 110 1/2, par. 802-11)

Sec. 2-11. Saving clause. This Act does not in any way invalidate any agency executed or any act of any agent done, or affect any claim, right or remedy that accrued, prior to September 22, 1987.

This amendatory Act of the 96th General Assembly does not in any way invalidate any agency executed or any act of any agent done, or affect any claim, right, or remedy that accrued prior to the effective date of this amendatory Act of the 96th General Assembly.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/Art. III heading)

ARTICLE III. STATUTORY  
SHORT FORM POWER OF ATTORNEY  
FOR PROPERTY.

(755 ILCS 45/3-1) (from Ch. 110 1/2, par. 803-1)

Sec. 3-1. Purpose. The General Assembly finds that the public interest requires a standardized form of power of attorney that individuals may use to authorize an agent to act for them in dealing with their property and financial affairs.

A short statutory form offering a set of optional powers is necessary so that the individual may design the power of attorney best suited to his or her needs in a simple fashion and be assured that the agent's authority will be honored by third parties with whom the agent deals, regardless of the physical or mental condition of the principal at the time the power is exercised.

The General Assembly intends that when a power in substantially the form set forth in this Act is used, third parties who rely in good faith on the acts of the agent within the scope of the power may do so without fear of liability to the principal. However, this form is not meant to be exclusive and other forms of power of attorney may be used.

(Source: P.A. 85-701.)

(755 ILCS 45/3-2) (from Ch. 110 1/2, par. 803-2)

Sec. 3-2. Short Title. This Article shall be known and may be cited as the "Statutory Short Form Power of Attorney for Property Law".

(Source: P.A. 85-701.)

(755 ILCS 45/3-3) (from Ch. 110 1/2, par. 803-3)

Sec. 3-3. Statutory short form power of attorney for property.

(a) The form prescribed in this Section may be known as "statutory property power" and may be used to grant an agent powers with respect to property and financial matters. The "statutory property power" consists of the following: (1) Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Property; (2) Illinois Statutory Short Form Power of Attorney for Property; and (3) Notice to Agent. When a power of attorney in substantially the form prescribed in this Section is used, including all 3 items above, with item (1), the Notice to Individual Signing the Illinois Statutory Short Form Power of Attorney for Property, on a separate sheet (coversheet) in 14-point type and the notarized form of acknowledgment at the end, it shall have the meaning and effect prescribed in this Act.

(b) A power of attorney shall also be deemed to be in substantially the same format as the statutory form if the explanatory language throughout the form (the language following the designation "NOTE:") is distinguished in some way from the legal paragraphs in the form, such as the use of boldface or other difference in typeface and font or point size, even if the "Notice" paragraphs at the beginning are not on a separate sheet of paper or are not in 14-point type, or if the principal's initials do not appear in the acknowledgement at the end of the "Notice" paragraphs.

The validity of a power of attorney as meeting the requirements of a statutory property power shall not be affected by the fact that one or more of the categories of optional powers listed in the form are struck out or the form includes specific limitations on or additions to the agent's powers, as permitted by the form. Nothing in this Article shall invalidate or bar use by the principal of any other or different form of power of attorney for property. Nonstatutory property powers (i) must be executed by the principal, (ii) must designate the agent and the agent's powers, (iii) must be signed by at least one witness to the principal's signature, and (iv) must indicate that the principal has acknowledged his or her signature before a notary public. However, nonstatutory property powers need not conform in any other respect to the statutory property power.

(c) The Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Property shall be substantially as follows:

"NOTICE TO THE INDIVIDUAL SIGNING THE ILLINOIS  
STATUTORY SHORT FORM POWER OF ATTORNEY FOR PROPERTY.

PLEASE READ THIS NOTICE CAREFULLY. The form that you will be signing is a legal document. It is governed by the Illinois Power of Attorney Act. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

The purpose of this Power of Attorney is to give your

designated "agent" broad powers to handle your financial affairs, which may include the power to pledge, sell, or dispose of any of your real or personal property, even without your consent or any advance notice to you. When using the Statutory Short Form, you may name successor agents, but you may not name co-agents.

This form does not impose a duty upon your agent to handle your financial affairs, so it is important that you select an agent who will agree to do this for you. It is also important to select an agent whom you trust, since you are giving that agent control over your financial assets and property. Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the directions in this form. Your agent must keep a record of all receipts, disbursements, and significant actions taken as your agent.

Unless you specifically limit the period of time that this Power of Attorney will be in effect, your agent may exercise the powers given to him or her throughout your lifetime, both before and after you become incapacitated. A court, however, can take away the powers of your agent if it finds that the agent is not acting properly. You may also revoke this Power of Attorney if you wish.

This Power of Attorney does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.

The powers you give your agent are explained more fully in Section 3-4 of the Illinois Power of Attorney Act. This form is a part of that law. The "NOTE" paragraphs throughout this form are instructions.

You are not required to sign this Power of Attorney, but it will not take effect without your signature. You should not sign this Power of Attorney if you do not understand everything in it, and what your agent will be able to do if you do sign it.

Please place your initials on the following line indicating that you have read this Notice:

.....  
Principal's initials"

(d) The Illinois Statutory Short Form Power of Attorney for Property shall be substantially as follows:

"ILLINOIS STATUTORY SHORT FORM  
POWER OF ATTORNEY FOR PROPERTY

1. I, ....., (insert name and address of principal) hereby revoke all prior powers of attorney for property executed by me and appoint:

.....  
(insert name and address of agent)

(NOTE: You may not name co-agents using this form.)

as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) with respect to the following powers, as defined in Section 3-4 of the "Statutory Short Form Power of Attorney for Property Law" (including all amendments), but subject to any limitations on or additions to the specified powers inserted in paragraph 2 or 3 below:

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category you must draw a line through the title of that category.)

- (a) Real estate transactions.
- (b) Financial institution transactions.
- (c) Stock and bond transactions.
- (d) Tangible personal property transactions.
- (e) Safe deposit box transactions.
- (f) Insurance and annuity transactions.
- (g) Retirement plan transactions.
- (h) Social Security, employment and military service benefits.
- (i) Tax matters.
- (j) Claims and litigation.
- (k) Commodity and option transactions.
- (l) Business operations.
- (m) Borrowing transactions.
- (n) Estate transactions.
- (o) All other property transactions.

(NOTE: Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent.)

.....  
 .....  
 .....  
 .....  
 .....

3. In addition to the powers granted above, I grant my agent the following powers:

(NOTE: Here you may add any other delegable powers including, without limitation, power to make gifts, exercise powers of appointment, name or change beneficiaries or joint tenants or revoke or amend any trust specifically referred to below.)

.....  
 .....  
 .....  
 .....  
 .....

(NOTE: Your agent will have authority to employ other persons as necessary to enable the agent to properly exercise the

powers granted in this form, but your agent will have to make all discretionary decisions. If you want to give your agent the right to delegate discretionary decision-making powers to others, you should keep paragraph 4, otherwise it should be struck out.)

4. My agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(NOTE: Your agent will be entitled to reimbursement for all reasonable expenses incurred in acting under this power of attorney. Strike out paragraph 5 if you do not want your agent to also be entitled to reasonable compensation for services as agent.)

5. My agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney. (NOTE: This power of attorney may be amended or revoked by you at any time and in any manner. Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time this power is signed and will continue until your death, unless a limitation on the beginning date or duration is made by initialing and completing one or both of paragraphs 6 and 7:)

6. ( ) This power of attorney shall become effective on .....  
(NOTE: Insert a future date or event during your lifetime, such as a court determination of your disability or a written determination by your physician that you are incapacitated, when you want this power to first take effect.)

7. ( ) This power of attorney shall terminate on .....  
(NOTE: Insert a future date or event, such as a court determination that you are not under a legal disability or a written determination by your physician that you are not incapacitated, if you want this power to terminate prior to your death.)

(NOTE: If you wish to name one or more successor agents, insert the name and address of each successor agent in paragraph 8.)

8. If any agent named by me shall die, become incompetent, resign or refuse to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such agent:

.....  
.....  
For purposes of this paragraph 8, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated incompetent or disabled person or the person is unable to give prompt and intelligent consideration to business matters, as certified by a licensed physician.

(NOTE: If you wish to, you may name your agent as guardian of your estate if a court decides that one should be appointed. To do this, retain paragraph 9, and the court will appoint your agent if the court finds that this appointment will serve

your best interests and welfare. Strike out paragraph 9 if you do not want your agent to act as guardian.)

9. If a guardian of my estate (my property) is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

10. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

(NOTE: This form does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.)

11. The Notice to Agent is incorporated by reference and included as part of this form.

Dated: .....

Signed .....  
(principal)

(NOTE: This power of attorney will not be effective unless it is signed by at least one witness and your signature is notarized, using the form below. The notary may not also sign as a witness.)

The undersigned witness certifies that ....., known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not:

(a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant, or any spouse of such parent, sibling, or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage, or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

Dated: .....

.....  
Witness

(NOTE: Illinois requires only one witness, but other jurisdictions may require more than one witness. If you wish to have a second witness, have him or her certify and sign here:)

(Second witness) The undersigned witness certifies that ....., known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged

signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant, or any spouse of such parent, sibling, or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage, or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

Dated: .....

.....  
Witness

State of .....)

) SS.

County of .....)

The undersigned, a notary public in and for the above county and state, certifies that ....., known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the witness(es) ..... (and ..... ) in person and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth (, and certified to the correctness of the signature(s) of the agent(s)).

Dated: .....

.....  
Notary Public

My commission expires .....

(NOTE: You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)

Specimen signatures of  
agent (and successors)

.....  
(agent)

.....  
(successor agent)

.....  
(successor agent)

I certify that the signatures  
of my agent (and successors)  
are genuine.

.....  
(principal)

.....  
(principal)

.....  
(principal)

(NOTE: The name, address, and phone number of the person preparing this form or who assisted the principal in completing this form should be inserted below.)

Name: .....

Address: .....  
.....  
.....  
Phone: ..... "

(e) Notice to Agent. The following form may be known as "Notice to Agent" and shall be supplied to an agent appointed under a power of attorney for property.

#### "NOTICE TO AGENT"

When you accept the authority granted under this power of attorney a special legal relationship, known as agency, is created between you and the principal. Agency imposes upon you duties that continue until you resign or the power of attorney is terminated or revoked.

As agent you must:

- (1) do what you know the principal reasonably expects you to do with the principal's property;
- (2) act in good faith for the best interest of the principal, using due care, competence, and diligence;
- (3) keep a complete and detailed record of all receipts, disbursements, and significant actions conducted for the principal;
- (4) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest; and
- (5) cooperate with a person who has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually in the principal's best interest.

As agent you must not do any of the following:

- (1) act so as to create a conflict of interest that is inconsistent with the other principles in this Notice to Agent;
- (2) do any act beyond the authority granted in this power of attorney;
- (3) commingle the principal's funds with your funds;
- (4) borrow funds or other property from the principal, unless otherwise authorized;
- (5) continue acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney, such as the death of the principal, your legal separation from the principal, or the dissolution of your marriage to the principal.

If you have special skills or expertise, you must use those special skills and expertise when acting for the principal. You must disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name "as Agent" in the following manner:

"(Principal's Name) by (Your Name) as Agent"

The meaning of the powers granted to you is contained in Section 3-4 of the Illinois Power of Attorney Act, which is incorporated by reference into the body of the power of attorney for property document.

If you violate your duties as agent or act outside the authority granted to you, you may be liable for any damages, including attorney's fees and costs, caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice from an attorney."

(f) The requirement of the signature of a witness in addition to the principal and the notary, imposed by Public Act 91-790, applies only to instruments executed on or after June 9, 2000 (the effective date of that Public Act).

(NOTE: This amendatory Act of the 96th General Assembly deletes provisions that referred to the one required witness as an "additional witness", and it also provides for the signature of an optional "second witness".)

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/3-3.6)

Sec. 3-3.6. Limitations on who may witness property powers.

(a) Every property power shall bear the signature of a witness to the signing of the agency and shall be notarized. None of the following may serve as a witness to the signing of a property power or as a notary public notarizing the property power:

(1) the attending physician or mental health service provider of the principal, or a relative of the physician or provider;

(2) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident;

(3) a parent, sibling, or descendant, or the spouse of a parent, sibling, or descendant, of either the principal or any agent or successor agent, regardless of whether the relationship is by blood, marriage, or adoption;

(4) an agent or successor agent for property.

(b) The prohibition on the operator of a health care facility from serving as a witness shall extend to directors and executive officers of an operator that is a corporate entity but not other employees of the operator.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/3-4) (from Ch. 110 1/2, par. 803-4)

Sec. 3-4. Explanation of powers granted in the statutory short form power of attorney for property. This Section defines each category of powers listed in the statutory short form power of attorney for property and the effect of granting powers to an agent, and is incorporated by reference into the statutory short form. Incorporation by reference does not require physical attachment of a copy of this Section 3-4 to the statutory short form power of attorney for property. When the title of any of the following categories is retained (not struck out) in a statutory property power form, the effect

will be to grant the agent all of the principal's rights, powers and discretions with respect to the types of property and transactions covered by the retained category, subject to any limitations on the granted powers that appear on the face of the form. The agent will have authority to exercise each granted power for and in the name of the principal with respect to all of the principal's interests in every type of property or transaction covered by the granted power at the time of exercise, whether the principal's interests are direct or indirect, whole or fractional, legal, equitable or contractual, as a joint tenant or tenant in common or held in any other form; but the agent will not have power under any of the statutory categories (a) through (o) to make gifts of the principal's property, to exercise powers to appoint to others or to change any beneficiary whom the principal has designated to take the principal's interests at death under any will, trust, joint tenancy, beneficiary form or contractual arrangement. The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's property or affairs; but when granted powers are exercised, the agent will be required to act in good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the statutory property power and will be liable for negligent exercise. The agent may act in person or through others reasonably employed by the agent for that purpose and will have authority to sign and deliver all instruments, negotiate and enter into all agreements and do all other acts reasonably necessary to implement the exercise of the powers granted to the agent.

(a) Real estate transactions. The agent is authorized to: buy, sell, exchange, rent and lease real estate (which term includes, without limitation, real estate subject to a land trust and all beneficial interests in and powers of direction under any land trust); collect all rent, sale proceeds and earnings from real estate; convey, assign and accept title to real estate; grant easements, create conditions and release rights of homestead with respect to real estate; create land trusts and exercise all powers under land trusts; hold, possess, maintain, repair, improve, subdivide, manage, operate and insure real estate; pay, contest, protest and compromise real estate taxes and assessments; and, in general, exercise all powers with respect to real estate which the principal could if present and under no disability.

(b) Financial institution transactions. The agent is authorized to: open, close, continue and control all accounts and deposits in any type of financial institution (which term includes, without limitation, banks, trust companies, savings and building and loan associations, credit unions and brokerage firms); deposit in and withdraw from and write checks on any financial institution account or deposit; and, in general, exercise all powers with respect to financial institution transactions which the principal could if present and under no disability. This authorization shall also apply to any Totten Trust, Payable on Death Account, or comparable trust account arrangement where the terms of such trust are contained entirely on the financial institution's signature card, insofar as an agent shall be permitted to withdraw

income or principal from such account, unless this authorization is expressly limited or withheld under paragraph 2 of the form prescribed under Section 3-3. This authorization shall not apply to accounts titled in the name of any trust subject to the provisions of the Trusts and Trustees Act, for which specific reference to the trust and a specific grant of authority to the agent to withdraw income or principal from such trust is required pursuant to Section 2-9 of the Illinois Power of Attorney Act and subsection (n) of this Section.

(c) Stock and bond transactions. The agent is authorized to: buy and sell all types of securities (which term includes, without limitation, stocks, bonds, mutual funds and all other types of investment securities and financial instruments); collect, hold and safekeep all dividends, interest, earnings, proceeds of sale, distributions, shares, certificates and other evidences of ownership paid or distributed with respect to securities; exercise all voting rights with respect to securities in person or by proxy, enter into voting trusts and consent to limitations on the right to vote; and, in general, exercise all powers with respect to securities which the principal could if present and under no disability.

(d) Tangible personal property transactions. The agent is authorized to: buy and sell, lease, exchange, collect, possess and take title to all tangible personal property; move, store, ship, restore, maintain, repair, improve, manage, preserve, insure and safekeep tangible personal property; and, in general, exercise all powers with respect to tangible personal property which the principal could if present and under no disability.

(e) Safe deposit box transactions. The agent is authorized to: open, continue and have access to all safe deposit boxes; sign, renew, release or terminate any safe deposit contract; drill or surrender any safe deposit box; and, in general, exercise all powers with respect to safe deposit matters which the principal could if present and under no disability.

(f) Insurance and annuity transactions. The agent is authorized to: procure, acquire, continue, renew, terminate or otherwise deal with any type of insurance or annuity contract (which terms include, without limitation, life, accident, health, disability, automobile casualty, property or liability insurance); pay premiums or assessments on or surrender and collect all distributions, proceeds or benefits payable under any insurance or annuity contract; and, in general, exercise all powers with respect to insurance and annuity contracts which the principal could if present and under no disability.

(g) Retirement plan transactions. The agent is authorized to: contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers

with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

(h) Social Security, unemployment and military service benefits. The agent is authorized to: prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service and governmental benefits which the principal could if present and under no disability.

(i) Tax matters. The agent is authorized to: sign, verify and file all the principal's federal, state and local income, gift, estate, property and other tax returns, including joint returns and declarations of estimated tax; pay all taxes; claim, sue for and receive all tax refunds; examine and copy all the principal's tax returns and records; represent the principal before any federal, state or local revenue agency or taxing body and sign and deliver all tax powers of attorney on behalf of the principal that may be necessary for such purposes; waive rights and sign all documents on behalf of the principal as required to settle, pay and determine all tax liabilities; and, in general, exercise all powers with respect to tax matters which the principal could if present and under no disability.

(j) Claims and litigation. The agent is authorized to: institute, prosecute, defend, abandon, compromise, arbitrate, settle and dispose of any claim in favor of or against the principal or any property interests of the principal; collect and receipt for any claim or settlement proceeds and waive or release all rights of the principal; employ attorneys and others and enter into contingency agreements and other contracts as necessary in connection with litigation; and, in general, exercise all powers with respect to claims and litigation which the principal could if present and under no disability. The statutory short form power of attorney for property does not authorize the agent to appear in court or any tribunal as an attorney-at-law for the principal or otherwise to engage in the practice of law without being a licensed attorney who is authorized to practice law in Illinois under applicable Illinois Supreme Court Rules.

(k) Commodity and option transactions. The agent is authorized to: buy, sell, exchange, assign, convey, settle and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the principal could if present and under no disability.

(l) Business operations. The agent is authorized to:

organize or continue and conduct any business (which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation) in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability.

(m) Borrowing transactions. The agent is authorized to: borrow money; mortgage or pledge any real estate or tangible or intangible personal property as security for such purposes; sign, renew, extend, pay and satisfy any notes or other forms of obligation; and, in general, exercise all powers with respect to secured and unsecured borrowing which the principal could if present and under no disability.

(n) Estate transactions. The agent is authorized to: accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could if present and under no disability; provided, however, that the agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the agent unless specific authority to that end is given, and specific reference to the trust is made, in the statutory property power form.

(o) All other property transactions. The agent is authorized to: exercise all possible authority of the principal with respect to all possible types of property and interests in property, except to the extent limited in subsections (a) through (n) of this Section 3-4 and to the extent that the principal otherwise limits the generality of this category (o) by striking out one or more of categories (a) through (n) or by specifying other limitations in the statutory property power form.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/3-5)

Sec. 3-5. Savings clause. This amendatory Act of the 96th General Assembly does not in any way invalidate any property power executed or any act of any agent done, or affect any claim, right, or remedy that accrued, prior to the effective date of this amendatory Act of the 96th General Assembly.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/Art. IV heading)

ARTICLE IV - POWERS OF ATTORNEY FOR HEALTH CARE.

(755 ILCS 45/4-1) (from Ch. 110 1/2, par. 804-1)

Sec. 4-1. Purpose. The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to decline medical treatment or to direct that it be withdrawn, even if death ensues. The right of the individual to decide about personal care overrides the obligation of the physician and other health care providers to render care or to preserve life and health.

However, if the individual becomes disabled, her or his right to control treatment may be denied unless the individual, as principal, can delegate the decision making power to a trusted agent and be sure that the agent's power to make personal and health care decisions for the principal will be effective to the same extent as though made by the principal.

The Illinois statutory recognition of the right of delegation for health care purposes needs to be restated to make it clear that its scope is intended to be as broad as the comparable right of delegation for property and financial matters. However, the General Assembly recognizes that powers concerning life and death and the other issues involved in health care agencies are more sensitive than property matters and that particular rules and forms are necessary for health care agencies to insure their validity and efficacy and to protect health care providers so that they will honor the authority of the agent at all times. For purposes of emphasis and their particular application to health care, the General Assembly restates the purposes and public policy announced in Article II, Section 2-1 of this Act as if those purposes and public policies were set forth verbatim in this Section.

In furtherance of these purposes, the General Assembly adopts this Article, setting forth general principles governing health care agencies and a statutory short form power of attorney for health care, intending that when a power in substantially the form set forth in this Article is used, health care providers and other third parties who rely in good faith on the acts and decisions of the agent within the scope of the power may do so without fear of civil or criminal liability to the principal, the State or any other person. However, the form of health care agency in this Article is not intended to be exclusive and other forms of powers of attorney chosen by the principal that comply with Section 4-5 of this Article may offer powers and protection similar to the statutory short form power of attorney for health care.

(Source: P.A. 85-1395.)

(755 ILCS 45/4-2) (from Ch. 110 1/2, par. 804-2)

Sec. 4-2. Short Title. This Article shall be known and may be cited as the "Powers of Attorney for Health Care Law".  
(Source: P.A. 85-701.)

(755 ILCS 45/4-3) (from Ch. 110 1/2, par. 804-3)

Sec. 4-3. General principles. The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of health care for the individual and all powers a parent may have to control or consent to health care for a minor child. A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy, disposition of remains, or access to medical records. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining or death-delaying procedures in any lawful manner, and the provisions of this Article are cumulative in such respect.  
(Source: P.A. 97-623, eff. 11-23-11.)

(755 ILCS 45/4-4) (from Ch. 110 1/2, par. 804-4)

Sec. 4-4. Definitions. As used in this Article:

(a) "Attending physician" means the physician who has primary responsibility at the time of reference for the treatment and care of the patient.

(b) "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat or provide for the patient's physical or mental health or personal care.

(c) "Health care agency" means an agency governing any type of health care, anatomical gift, autopsy or disposition of remains for and on behalf of a patient and refers to the power of attorney or other written instrument defining the agency or the agency, itself, as appropriate to the context.

(d) "Health care provider" or "provider" means the attending physician and any other person administering health care to the patient at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person.

(e) "Patient" means the principal or, if the agency governs health care for a minor child of the principal, then the child.

(f) "Incurable or irreversible condition" means an illness or injury (i) for which there is no reasonable prospect of cure or recovery, (ii) that ultimately will cause the patient's death even if life-sustaining treatment is initiated or continued, (iii) that imposes severe pain or otherwise imposes an inhumane burden on the patient, or (iv) for which initiating or continuing life-sustaining treatment, in light

of the patient's medical condition, provides only minimal medical benefit.

(g) "Permanent unconsciousness" means a condition that, to a high degree of medical certainty, (i) will last permanently, without improvement, (ii) in which thought, sensation, purposeful action, social interaction, and awareness of self and environment are absent, and (iii) for which initiating or continuing life-sustaining treatment, in light of the patient's medical condition, provides only minimal medical benefit. For the purposes of this definition, "medical benefit" means a chance to cure or reverse a condition.

(h) "Terminal condition" means an illness or injury for which there is no reasonable prospect of cure or recovery, death is imminent, and the application of life-sustaining treatment would only prolong the dying process.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/4-5) (from Ch. 110 1/2, par. 804-5)

Sec. 4-5. Limitations on health care agencies. Neither the attending physician nor any other health care provider may act as agent under a health care agency; however, a person who is not administering health care to the patient may act as health care agent for the patient even though the person is a physician or otherwise licensed, certified, authorized, or permitted by law to administer health care in the ordinary course of business or the practice of a profession.

(Source: P.A. 86-736.)

(755 ILCS 45/4-5.1)

Sec. 4-5.1. Limitations on who may witness health care agencies.

(a) Every health care agency shall bear the signature of a witness to the signing of the agency. None of the following may serve as a witness to the signing of a health care agency:

(1) the attending physician or mental health service provider of the principal, or a relative of the physician or provider;

(2) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident;

(3) a parent, sibling, or descendant, or the spouse of a parent, sibling, or descendant, of either the principal or any agent or successor agent, regardless of whether the relationship is by blood, marriage, or adoption;

(4) an agent or successor agent for health care.

(b) The prohibition on the operator of a health care facility from serving as a witness shall extend to directors and executive officers of an operator that is a corporate entity but not other employees of the operator.

(Source: P.A. 96-1195, eff. 7-1-11.)

(755 ILCS 45/4-6) (from Ch. 110 1/2, par. 804-6)

Sec. 4-6. Revocation and amendment of health care agencies.

(a) Every health care agency may be revoked by the principal at any time, without regard to the principal's mental or physical condition, by any of the following methods:

1. By being obliterated, burnt, torn or otherwise destroyed or defaced in a manner indicating intention to revoke;

2. By a written revocation of the agency signed and dated by the principal or person acting at the direction of the principal; or

3. By an oral or any other expression of the intent to revoke the agency in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression of intent was made.

(b) Every health care agency may be amended at any time by a written amendment signed and dated by the principal or person acting at the direction of the principal.

(c) Any person, other than the agent, to whom a revocation or amendment is communicated or delivered shall make all reasonable efforts to inform the agent of that fact as promptly as possible.

(Source: P.A. 85-701.)

(755 ILCS 45/4-7) (from Ch. 110 1/2, par. 804-7)

Sec. 4-7. Duties of health care providers and others in relation to health care agencies. Each health care provider and each other person with whom an agent deals under a health care agency shall be subject to the following duties and responsibilities:

(a) It is the responsibility of the agent or patient to notify the health care provider of the existence of the health care agency and any amendment or revocation thereof. A health care provider furnished with a copy of a health care agency shall make it a part of the patient's medical records and shall enter in the records any change in or termination of the health care agency by the principal that becomes known to the provider. Whenever a provider believes a patient may lack capacity to give informed consent to health care which the provider deems necessary, the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency.

(b) A health care decision made by an agent in accordance with the terms of a health care agency shall be complied with by every health care provider to whom the decision is communicated, subject to the provider's right to administer treatment for the patient's comfort care or alleviation of pain; but if the provider is unwilling to comply with the agent's decision, the provider shall promptly inform the agent who shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. It is understood that a provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the transfer.

(c) At the patient's expense and subject to reasonable

rules of the health care provider to prevent disruption of the patient's health care, each health care provider shall give an agent authorized to receive such information under a health care agency the same right the principal has to examine and copy any part or all of the patient's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home or other health care provider.

(d) If and to the extent a health care agency empowers the agent to (1) make an anatomical gift on behalf of the principal under the Illinois Anatomical Gift Act, as now or hereafter amended, or (2) authorize an autopsy of the principal's body pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965, as now or hereafter amended, or (3) direct the disposition of the principal's remains, the decision by an authorized agent as to anatomical gift, autopsy approval or remains disposition shall be deemed the act of the principal and shall control over the decision of other persons who might otherwise have priority; and each person to whom a direction by the agent in accordance with the terms of the agency is communicated shall comply with such direction.

(Source: P.A. 93-794, eff. 7-22-04.)

(755 ILCS 45/4-8) (from Ch. 110 1/2, par. 804-8)

Sec. 4-8. Immunities of health care providers, agents and others in relation to health care agencies. Each health care provider and each other person who acts in good faith reliance on any direction or decision by the agent that is not clearly contrary to the terms of a health care agency (a "reliant") will be protected and released to the same extent as though the reliant had dealt directly with the principal as a fully-competent person. Without limiting the generality of the foregoing, the following specific principles shall also govern, protect and validate the acts of the agent and each reliant:

(a) No reliant shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct for complying with any direction or decision by the agent, even if death or injury to the patient ensues.

(b) No reliant shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to comply with any direction or decision by the agent that violates the reliant's conscience rights, as long as the reliant promptly informs the agent of reliant's refusal or failure to comply with such direction or decision by the agent. The agent shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. It is understood that a provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the transfer.

(c) If the actions of a health care provider who fails to

comply with any direction or decision by the agent are substantially in accord with reasonable medical standards at the time of reference and the provider cooperates in the transfer of the patient pursuant to subsection (b) of Section 4-7 of this Act, the provider shall not be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to comply with the agent.

(d) No agent who in good faith acts with due care for the benefit of the patient and in accordance with the terms of a health care agency, or who fails to act, shall be subject to any type of civil or criminal liability for such action or inaction.

(e) If the patient's death results from withholding or withdrawing life-sustaining treatment in accordance with the terms of a health care agency, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law and shall not impair or invalidate any insurance, annuity or other type of contract that is conditioned on the life or death of the patient, any term of the contract to the contrary notwithstanding.

(Source: P.A. 85-1395.)

(755 ILCS 45/4-9) (from Ch. 110 1/2, par. 804-9)

Sec. 4-9. Penalties. All persons shall be subject to the following sanctions in relation to health care agencies, in addition to all other sanctions applicable under any other law or rule of professional conduct:

(a) Any person shall be civilly liable who, without the principal's consent, wilfully conceals, cancels or alters a health care agency or any amendment or revocation of the agency or who falsifies or forges a health care agency, amendment or revocation.

(b) A person who falsifies or forges a health care agency or wilfully conceals or withholds personal knowledge of an amendment or revocation of a health care agency with the intent to cause a withholding or withdrawal of life-sustaining or death-delaying procedures contrary to the intent of the principal and thereby, because of such act, directly causes life-sustaining or death-delaying procedures to be withheld or withdrawn and death to the patient to be hastened shall be subject to prosecution for involuntary manslaughter.

(c) Any person who requires or prevents execution of a health care agency as a condition of insuring or providing any type of health care services to the patient shall be civilly liable and guilty of a Class A misdemeanor.

(Source: P.A. 85-701.)

(755 ILCS 45/4-10) (from Ch. 110 1/2, par. 804-10)

Sec. 4-10. Statutory short form power of attorney for health care.

(a) The form prescribed in this Section (sometimes also referred to in this Act as the "statutory health care power") may be used to grant an agent powers with respect to the principal's own health care; but the statutory health care power is not intended to be exclusive nor to cover delegation

of a parent's power to control the health care of a minor child, and no provision of this Article shall be construed to invalidate or bar use by the principal of any other or different form of power of attorney for health care. Nonstatutory health care powers must be executed by the principal, designate the agent and the agent's powers, and comply with Section 4-5 of this Article, but they need not be witnessed or conform in any other respect to the statutory health care power. When a power of attorney in substantially the form prescribed in this Section is used, including the "Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Health Care" (or "Notice" paragraphs) at the beginning of the form on a separate sheet in 14-point type, it shall have the meaning and effect prescribed in this Act. A power of attorney for health care shall be deemed to be in substantially the same format as the statutory form if the explanatory language throughout the form (the language following the designation "NOTE:") is distinguished in some way from the legal paragraphs in the form, such as the use of boldface or other difference in typeface and font or point size, even if the "Notice" paragraphs at the beginning are not on a separate sheet of paper or are not in 14-point type, or if the principal's initials do not appear in the acknowledgement at the end of the "Notice" paragraphs. The statutory health care power may be included in or combined with any other form of power of attorney governing property or other matters.

(b) The Illinois Statutory Short Form Power of Attorney for Health Care shall be substantially as follows:

"NOTICE TO THE INDIVIDUAL SIGNING THE ILLINOIS  
STATUTORY SHORT FORM POWER OF ATTORNEY FOR HEALTH CARE

PLEASE READ THIS NOTICE CAREFULLY. The form that you will be signing is a legal document. It is governed by the Illinois Power of Attorney Act. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

The purpose of this Power of Attorney is to give your designated "agent" broad powers to make health care decisions for you, including the power to require, consent to, or withdraw treatment for any physical or mental condition, and to admit you or discharge you from any hospital, home, or other institution. You may name successor agents under this form, but you may not name co-agents.

This form does not impose a duty upon your agent to make such health care decisions, so it is important that you select an agent who will agree to do this for you and who will make those decisions as you would wish. It is also important to select an agent whom you trust, since you are giving that agent control over your medical decision-making, including end-of-life decisions. Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the statements in this form. Your agent must keep a record of all significant actions taken as your agent.

Unless you specifically limit the period of time that this Power of Attorney will be in effect, your agent may exercise the powers given to him or her throughout your lifetime, even after you become disabled. A court, however, can take away the powers of your agent if it finds that the agent is not acting properly. You may also revoke this Power of Attorney if you wish.

The Powers you give your agent, your right to revoke those powers, and the penalties for violating the law are explained more fully in Sections 4-5, 4-6, and 4-10(c) of the Illinois Power of Attorney Act. This form is a part of that law. The "NOTE" paragraphs throughout this form are instructions.

You are not required to sign this Power of Attorney, but it will not take effect without your signature. You should not sign it if you do not understand everything in it, and what your agent will be able to do if you do sign it.

Please put your initials on the following line indicating that you have read this Notice:

.....  
(Principal's initials)"

"ILLINOIS STATUTORY SHORT FORM  
POWER OF ATTORNEY FOR HEALTH CARE

1. I, .....,  
(insert name and address of principal) hereby revoke all prior powers of attorney for health care executed by me and appoint:

.....  
(insert name and address of agent)

(NOTE: You may not name co-agents using this form.)

as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any and all decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue.

A. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others.

B. Effective upon my death, my agent has the full power to make an anatomical gift of the following:

(NOTE: Initial one. In the event none of the options are initialed, then it shall be concluded that you do not wish to grant your agent any such authority.)

.... Any organs, tissues, or eyes suitable for transplantation or used for research or education.

.... Specific organs:.....

.... I do not grant my agent authority to make any anatomical gifts.

C. My agent shall also have full power to authorize an autopsy and direct the disposition of my remains. I intend for this power of attorney to be in substantial compliance with Section 10 of the Disposition of Remains Act. All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding. I hereby

direct any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document to act under it.

D. I intend for the person named as my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records, including records or communications governed by the Mental Health and Developmental Disabilities Confidentiality Act. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations thereunder. I intend for the person named as my agent to serve as my "personal representative" as that term is defined under HIPAA and regulations thereunder.

(i) The person named as my agent shall have the power to authorize the release of information governed by HIPAA to third parties.

(ii) I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Informational Bureau, Inc., or any other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment for me for such services to give, disclose, and release to the person named as my agent, without restriction, all of my individually identifiable health information and medical records, regarding any past, present, or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, drug or alcohol abuse, and mental illness (including records or communications governed by the Mental Health and Developmental Disabilities Confidentiality Act).

(iii) The authority given to the person named as my agent shall supersede any prior agreement that I may have with my health care providers to restrict access to, or disclosure of, my individually identifiable health information. The authority given to the person named as my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

(NOTE: The above grant of power is intended to be as broad as possible so that your agent will have the authority to make any decision you could make to obtain or terminate any type of health care, including withdrawal of food and water and other life-sustaining measures, if your agent believes such action would be consistent with your intent and desires. If you wish to limit the scope of your agent's powers or prescribe special rules or limit the power to make an anatomical gift, authorize autopsy or dispose of remains, you may do so in the following paragraphs.)

2. The powers granted above shall not include the following powers or shall be subject to the following rules or limitations:

(NOTE: Here you may include any specific limitations you deem appropriate, such as: your own definition of when life-sustaining measures should be withheld; a direction to continue food and fluids or life-sustaining treatment in all

events; or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as blood transfusion, electro-convulsive therapy, amputation, psychosurgery, voluntary admission to a mental institution, etc.)

.....  
 .....  
 .....  
 .....  
 .....

(NOTE: The subject of life-sustaining treatment is of particular importance. For your convenience in dealing with that subject, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. If you agree with one of these statements, you may initial that statement; but do not initial more than one. These statements serve as guidance for your agent, who shall give careful consideration to the statement you initial when engaging in health care decision-making on your behalf.)

I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

Initialed .....

I want my life to be prolonged and I want life-sustaining treatment to be provided or continued, unless I am, in the opinion of my attending physician, in accordance with reasonable medical standards at the time of reference, in a state of "permanent unconsciousness" or suffer from an "incurable or irreversible condition" or "terminal condition", as those terms are defined in Section 4-4 of the Illinois Power of Attorney Act. If and when I am in any one of these states or conditions, I want life-sustaining treatment to be withheld or discontinued.

Initialed .....

I want my life to be prolonged to the greatest extent possible in accordance with reasonable medical standards without regard to my condition, the chances I have for recovery or the cost of the procedures.

Initialed .....

(NOTE: This power of attorney may be amended or revoked by you in the manner provided in Section 4-6 of the Illinois Power of Attorney Act.)

3. This power of attorney shall become effective on

.....  
 .....

(NOTE: Insert a future date or event during your lifetime, such as a court determination of your disability or a written determination by your physician that you are incapacitated, when you want this power to first take effect.)

(NOTE: If you do not amend or revoke this power, or if you do not specify a specific ending date in paragraph 4, it will remain in effect until your death; except that your agent will

still have the authority to donate your organs, authorize an autopsy, and dispose of your remains after your death, if you grant that authority to your agent.)

4. This power of attorney shall terminate on .....

.....  
(NOTE: Insert a future date or event, such as a court determination that you are not under a legal disability or a written determination by your physician that you are not incapacitated, if you want this power to terminate prior to your death.)

(NOTE: You cannot use this form to name co-agents. If you wish to name successor agents, insert the names and addresses of the successors in paragraph 5.)

5. If any agent named by me shall die, become incompetent, resign, refuse to accept the office of agent or be unavailable, I name the following (each to act alone and successively, in the order named) as successors to such agent:

.....  
.....  
For purposes of this paragraph 5, a person shall be considered to be incompetent if and while the person is a minor, or an adjudicated incompetent or disabled person, or the person is unable to give prompt and intelligent consideration to health care matters, as certified by a licensed physician.

(NOTE: If you wish to, you may name your agent as guardian of your person if a court decides that one should be appointed. To do this, retain paragraph 6, and the court will appoint your agent if the court finds that this appointment will serve your best interests and welfare. Strike out paragraph 6 if you do not want your agent to act as guardian.)

6. If a guardian of my person is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

7. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

Dated: .....

Signed .....  
(principal's signature or mark)

The principal has had an opportunity to review the above form and has signed the form or acknowledged his or her signature or mark on the form in my presence. The undersigned witness certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant, or any spouse of such parent, sibling, or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage, or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

.....  
(Witness Signature)

.....  
 (Print Witness Name)  
 .....  
 (Street Address)  
 .....  
 (City, State, ZIP)

(NOTE: You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)

Specimen signatures of	I certify that the signatures of my
agent (and successors).	agent (and successors) are correct.
.....	.....
(agent)	(principal)
.....	.....
(successor agent)	(principal)
.....	.....
(successor agent)	(principal)"

(NOTE: The name, address, and phone number of the person preparing this form or who assisted the principal in completing this form is optional.)

.....  
 (name of preparer)  
 .....  
 .....  
 (address)  
 .....  
 (phone)

(c) The statutory short form power of attorney for health care (the "statutory health care power") authorizes the agent to make any and all health care decisions on behalf of the principal which the principal could make if present and under no disability, subject to any limitations on the granted powers that appear on the face of the form, to be exercised in such manner as the agent deems consistent with the intent and desires of the principal. The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's health care; but when granted powers are exercised, the agent will be required to use due care to act for the benefit of the principal in accordance with the terms of the statutory health care power and will be liable for negligent exercise. The agent may act in person or through others reasonably employed by the agent for that purpose but may not delegate authority to make health care decisions. The agent may sign and deliver all instruments, negotiate and enter into all agreements and do all other acts reasonably necessary to implement the exercise of the powers granted to the agent. Without limiting the generality of the foregoing, the statutory health care power shall include the following powers, subject to any limitations appearing on the face of the form:

(1) The agent is authorized to give consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment or procedures relating to the physical or mental health of

the principal, including any medication program, surgical procedures, life-sustaining treatment or provision of food and fluids for the principal.

(2) The agent is authorized to admit the principal to or discharge the principal from any and all types of hospitals, institutions, homes, residential or nursing facilities, treatment centers and other health care institutions providing personal care or treatment for any type of physical or mental condition. The agent shall have the same right to visit the principal in the hospital or other institution as is granted to a spouse or adult child of the principal, any rule of the institution to the contrary notwithstanding.

(3) The agent is authorized to contract for any and all types of health care services and facilities in the name of and on behalf of the principal and to bind the principal to pay for all such services and facilities, and to have and exercise those powers over the principal's property as are authorized under the statutory property power, to the extent the agent deems necessary to pay health care costs; and the agent shall not be personally liable for any services or care contracted for on behalf of the principal.

(4) At the principal's expense and subject to reasonable rules of the health care provider to prevent disruption of the principal's health care, the agent shall have the same right the principal has to examine and copy and consent to disclosure of all the principal's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home or other health care provider.

(5) The agent is authorized: to direct that an autopsy be made pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965, including all amendments; to make a disposition of any part or all of the principal's body pursuant to the Illinois Anatomical Gift Act, as now or hereafter amended; and to direct the disposition of the principal's remains.  
(Source: P.A. 96-1195, eff. 7-1-11; 97-148, eff. 7-14-11.)

(755 ILCS 45/4-11) (from Ch. 110 1/2, par. 804-11)

Sec. 4-11. Applicability - inconsistent Acts. This Article applies to all health care providers and other persons in relation to all health care agencies on and after the effective date of this Article. This Article supersedes all other Illinois Acts or parts thereof existing on the effective date of this Article to the extent such other Acts are inconsistent with the terms and operation of this Article; provided, that this Article does not affect the law governing emergency health care. If the principal has a living will under the "Illinois Living Will Act", as now or hereafter amended, the living will shall not be operative so long as an agent is available who is authorized by a health care agency

to deal with the subject of life-sustaining or death-delaying procedures for and on behalf of the principal.  
(Source: P.A. 85-701.)

(755 ILCS 45/4-12) (from Ch. 110 1/2, par. 804-12)

Sec. 4-12. Saving clause. This Act does not in any way invalidate any health care agency executed or any act of any agent done, or affect any claim, right or remedy that accrued, prior to September 22, 1987.

This amendatory Act of the 96th General Assembly does not in any way invalidate any health care agency executed or any act of any agent done, or affect any claim, right, or remedy that accrued, prior to the effective date of this amendatory Act of the 96th General Assembly.

(Source: P.A. 96-1195, eff. 7-1-11.)

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**(755 ILCS 5/) Illinois Probate Act of 1975.**

(755 ILCS 5/Art. XIa heading)

**ARTICLE XIa  
GUARDIANS FOR DISABLED ADULTS**

(755 ILCS 5/11a-1) (from Ch. 110 1/2, par. 11a-1)

Sec. 11a-1. Developmental disability defined.) "Developmental disability" means a disability which is attributable to: (a) an intellectual disability, cerebral palsy, epilepsy or autism; or to (b) any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by intellectually disabled persons. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap.

(Source: P.A. 97-227, eff. 1-1-12.)

(755 ILCS 5/11a-2) (from Ch. 110 1/2, par. 11a-2)

Sec. 11a-2. "Disabled person" defined.) "Disabled person" means a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects.

(Source: P.A. 95-561, eff. 1-1-08.)

(755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

Sec. 11a-3. Adjudication of disability; Power to appoint guardian.

(a) Upon the filing of a petition by a reputable person or by the alleged disabled person himself or on its own motion, the court may adjudge a person to be a disabled person, but only if it has been demonstrated by clear and convincing evidence that the person is a disabled person as defined in Section 11a-2. If the court adjudges a person to be a disabled person, the court may appoint (1) a guardian of his person, if it has been demonstrated by clear and convincing evidence that because of his disability he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person, or (2) a guardian of his estate, if it has been demonstrated by clear and convincing evidence that because of his disability he is unable to manage his estate or financial affairs, or (3) a guardian of his person and of his estate.

(b) Guardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations.

(Source: P.A. 93-435, eff. 1-1-04.)

(755 ILCS 5/11a-3.1)

Sec. 11a-3.1. Appointment of standby guardian.

(a) The guardian of a disabled person may designate in any writing, including a will, a person qualified to act under Section 11a-5 to be appointed as standby guardian of the person or estate, or both, of the disabled person. The guardian may designate in any writing, including a will, a person qualified to act under Section 11a-5 to be appointed as successor standby guardian of the disabled person's person or estate, or both. The designation must be witnessed by 2 or more credible witnesses at least 18 years of age, neither of whom is the person designated as the standby guardian. The designation may be proved by any competent evidence. If the designation is executed and attested in the same manner as a will, it shall have prima facie validity. Prior to designating a proposed standby guardian, the guardian shall consult with the disabled person to determine the disabled person's preference as to the person who will serve as standby guardian. The guardian shall give due consideration to the preference of the disabled person in selecting a standby guardian.

(b) Upon the filing of a petition for the appointment of a standby guardian, the court may appoint a standby guardian of the person or estate, or both, of the disabled person as the court finds to be in the best interest of the disabled person. The court shall apply the same standards used in determining the suitability of a plenary or limited guardian in determining the suitability of a standby guardian, giving due consideration to the preference of the disabled person as to a standby guardian. The court may not appoint the Office of State Guardian, pursuant to Section 30 of the Guardianship and Advocacy Act, or a public guardian, pursuant to Section 13-5 of this Act, as a standby guardian, without the written consent of the State Guardian or public guardian or an authorized representative of the State Guardian or public guardian.

(c) The standby guardian shall take and file an oath or affirmation that the standby guardian will faithfully discharge the duties of the office of standby guardian according to law, and shall file in and have approved by the court a bond binding the standby guardian so to do, but shall not be required to file a bond until the standby guardian assumes all duties as guardian of the disabled person under Section 11a-18.2.

(d) The designation of a standby guardian may, but need not, be in the following form:

## DESIGNATION OF STANDBY GUARDIAN

[IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS:

A standby guardian is someone who has been appointed by the court as the person who will act as guardian of the disabled person when the disabled person's guardian dies or is no longer willing or able to make and carry out day-to-day care decisions concerning the disabled person. By properly completing this form, a guardian is naming the person that the guardian wants to be appointed as the standby guardian of the disabled person. Signing the form does not appoint the standby guardian; to be appointed, a petition must be filed in and approved by the court.]

1. Guardian and Ward. I, (insert name of designating guardian), currently residing at (insert address of designating guardian), am the guardian of the following disabled person: (insert name of ward).

2. Standby Guardian. I hereby designate the following person to be appointed as standby guardian for my ward listed above: (insert name and address of person designated).

3. Successor Standby Guardian. If the person named in item 2 above cannot or will not act as standby guardian, I designate the following person to be appointed as successor standby guardian for my ward: (insert name and address of person designated).

4. Date and Signature. This designation is made this (insert day) day of (insert month and year).

Signed: (designating guardian)

5. Witnesses. I saw the guardian sign this designation or the guardian told me that the guardian signed this designation. Then I signed the designation as a witness in the presence of the guardian. I am not designated in this instrument to act as a standby guardian for the guardian's ward. (insert space for names, addresses, and signatures of 2 witnesses)

(Source: P.A. 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-3.2)

Sec. 11a-3.2. Short-term guardian.

(a) The guardian of a disabled person may appoint in writing, without court approval, a short-term guardian of the disabled person to take over the guardian's duties, to the extent provided in Section 11a-18.3, each time the guardian is unavailable or unable to carry out those duties. The guardian shall consult with the disabled person to determine the disabled person's preference concerning the person to be appointed as short-term guardian and the guardian shall give due consideration to the disabled person's preference in choosing a short-term guardian. The written instrument appointing a short-term guardian shall be dated and shall identify the appointing guardian, the disabled person, the person appointed to be the short-term guardian, and the termination date of the appointment. The written instrument shall be signed by, or at the direction of, the appointing guardian in the presence of at least 2 credible witnesses at

least 18 years of age, neither of whom is the person appointed as the short-term guardian. The person appointed as the short-term guardian shall also sign the written instrument, but need not sign at the same time as the appointing guardian. A guardian may not appoint the Office of State Guardian or a public guardian as a short-term guardian, without the written consent of the State Guardian or public guardian or an authorized representative of the State Guardian or public guardian.

(b) The appointment of the short-term guardian is effective immediately upon the date the written instrument is executed, unless the written instrument provides for the appointment to become effective upon a later specified date or event. A short-term guardian appointed by the guardian shall have authority to act as guardian of the disabled person for a cumulative total of 60 days during any 12 month period. Only one written instrument appointing a short-term guardian may be in force at any given time.

(c) Every appointment of a short-term guardian may be amended or revoked by the appointing guardian at any time and in any manner communicated to the short-term guardian or to any other person. Any person other than the short-term guardian to whom a revocation or amendment is communicated or delivered shall make all reasonable efforts to inform the short-term guardian of that fact as promptly as possible.

(d) The appointment of a short-term guardian or successor short-term guardian does not affect the rights in the disabled person of any guardian other than the appointing guardian.

(e) The written instrument appointing a short-term guardian may, but need not, be in the following form:

#### APPOINTMENT OF SHORT-TERM GUARDIAN

[IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS:

By properly completing this form, a guardian is appointing a short-term guardian of the disabled person for a cumulative total of up to 60 days during any 12 month period. A separate form shall be completed each time a short-term guardian takes over guardianship duties. The person or persons appointed as the short-term guardian shall sign the form, but need not do so at the same time as the guardian.]

1. Guardian and Ward. I, (insert name of appointing guardian), currently residing at (insert address of appointing guardian), am the guardian of the following disabled person: (insert name of ward).

2. Short-term Guardian. I hereby appoint the following person as the short-term guardian for my ward: (insert name and address of appointed person).

3. Effective date. This appointment becomes effective: (check one if you wish it to be applicable)

( ) On the date that I state in writing that I am no longer either willing or able to make and carry out day-to-day care decisions concerning my ward.

( ) On the date that a physician familiar with my condition certifies in writing that I am no longer willing or able to make and carry out day-to-day care decisions

concerning my ward.

( ) On the date that I am admitted as an in-patient to a hospital or other health care institution.

( ) On the following date: (insert date).

( ) Other: (insert other).

[NOTE: If this item is not completed, the appointment is effective immediately upon the date the form is signed and dated below.]

4. Termination. This appointment shall terminate on: (enter a date corresponding to 60 days from the current date, less the number of days within the past 12 months that any short-term guardian has taken over guardianship duties), unless it terminates sooner as determined by the event or date I have indicated below: (check one if you wish it to be applicable)

( ) On the date that I state in writing that I am willing and able to make and carry out day-to-day care decisions concerning my ward.

( ) On the date that a physician familiar with my condition certifies in writing that I am willing and able to make and carry out day-to-day care decisions concerning my ward.

( ) On the date that I am discharged from the hospital or other health care institution where I was admitted as an in-patient, which established the effective date.

( ) On the date which is (state a number of days) days after the effective date.

( ) Other: (insert other).

[NOTE: If this item is not completed, the appointment will be effective until the 60th day within the past year during which time any short-term guardian of this ward had taken over guardianship duties from the guardian, beginning on the effective date.]

5. Date and signature of appointing guardian. This appointment is made this (insert day) day of (insert month and year).

Signed: (appointing guardian)

6. Witnesses. I saw the guardian sign this instrument or I saw the guardian direct someone to sign this instrument for the guardian. Then I signed this instrument as a witness in the presence of the guardian. I am not appointed in this instrument to act as the short-term guardian for the guardian's ward. (insert space for names, addresses, and signatures of 2 witnesses)

7. Acceptance of short-term guardian. I accept this appointment as short-term guardian on this (insert day) day of (insert month and year).

Signed: (short-term guardian)

(f) Each time the guardian appoints a short-term guardian, the guardian shall: (i) provide the disabled person with the name, address, and telephone number of the short-term guardian; (ii) advise the disabled person that he has the right to object to the appointment of the short-term guardian by filing a petition in court; and (iii) notify the disabled person when the short-term guardian will be taking over guardianship duties and the length of time that the short-term

guardian will be acting as guardian.  
(Source: P.A. 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-4) (from Ch. 110 1/2, par. 11a-4)  
Sec. 11a-4. Temporary guardian.

(a) Prior to the appointment of a guardian under this Article, pending an appeal in relation to the appointment, or pending the completion of a citation proceeding brought pursuant to Section 23-3 of this Act, or upon a guardian's death, incapacity, or resignation, the court may appoint a temporary guardian upon a showing of the necessity therefor for the immediate welfare and protection of the alleged disabled person or his or her estate on such notice and subject to such conditions as the court may prescribe. In determining the necessity for temporary guardianship, the immediate welfare and protection of the alleged disabled person and his or her estate shall be of paramount concern, and the interests of the petitioner, any care provider, or any other party shall not outweigh the interests of the alleged disabled person. The temporary guardian shall have all of the powers and duties of a guardian of the person or of the estate which are specifically enumerated by court order. The court order shall state the actual harm identified by the court that necessitates temporary guardianship or any extension thereof.

(b) The temporary guardianship shall expire within 60 days after the appointment or whenever a guardian is regularly appointed, whichever occurs first. No extension shall be granted except:

(1) In a case where there has been an adjudication of disability, an extension shall be granted:

(i) pending the disposition on appeal of an adjudication of disability;

(ii) pending the completion of a citation proceeding brought pursuant to Section 23-3;

(iii) pending the appointment of a successor guardian in a case where the former guardian has resigned, has become incapacitated, or is deceased; or

(iv) where the guardian's powers have been suspended pursuant to a court order.

(2) In a case where there has not been an adjudication of disability, an extension shall be granted pending the disposition of a petition brought pursuant to Section 11a-8 so long as the court finds it is in the best interest of the alleged disabled person to extend the temporary guardianship so as to protect the alleged disabled person from any potential abuse, neglect, self-neglect, exploitation, or other harm and such extension lasts no more than 120 days from the date the temporary guardian was originally appointed.

The ward shall have the right any time after the appointment of a temporary guardian is made to petition the court to revoke the appointment of the temporary guardian.  
(Source: P.A. 97-614, eff. 1-1-12.)

(755 ILCS 5/11a-5) (from Ch. 110 1/2, par. 11a-5)  
Sec. 11a-5. Who may act as guardian.

(a) A person is qualified to act as guardian of the person and as guardian of the estate of a disabled person if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the disabled person and that the proposed guardian:

- (1) has attained the age of 18 years;
- (2) is a resident of the United States;
- (3) is not of unsound mind;
- (4) is not an adjudged disabled person as defined in this Act; and

(5) has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the disabled person's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a minor or an elderly or disabled person, including a felony sexual offense.

(b) Any public agency, or not-for-profit corporation found capable by the court of providing an active and suitable program of guardianship for the disabled person, taking into consideration the nature of such person's disability and the nature of such organization's services, may be appointed guardian of the person or of the estate, or both, of the disabled person. The court shall not appoint as guardian an agency which is directly providing residential services to the ward. One person or agency may be appointed guardian of the person and another person or agency appointed guardian of the estate.

(c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian of the estate of a disabled person.

(Source: P.A. 98-120, eff. 1-1-14.)

(755 ILCS 5/11a-6) (from Ch. 110 1/2, par. 11a-6)

Sec. 11a-6. Designation of Guardian.) A person, while of sound mind and memory, may designate in writing a person, corporation or public agency qualified to act under Section 11a-5, to be appointed as guardian or as successor guardian of his person or of his estate or both, in the event he is adjudged to be a disabled person. The designation may be proved by any competent evidence, but if it is executed and attested in the same manner as a will, it shall have prima facie validity. If the court finds that the appointment of the one designated will serve the best interests and welfare of the ward, it shall make the appointment in accordance with the designation. The selection of the guardian shall be in the discretion of the court whether or not a designation is made.

(Source: P.A. 81-795.)

(755 ILCS 5/11a-7) (from Ch. 110 1/2, par. 11a-7)

Sec. 11a-7. Venue.) If the alleged ward is a resident of this State, the proceeding shall be instituted in the court of the county in which he resides. If the alleged ward is not a resident of this State, the proceeding shall be instituted in the court of a county in which his real or personal estate is located.

(Source: P.A. 80-1415.)

(755 ILCS 5/11a-8) (from Ch. 110 1/2, par. 11a-8)

Sec. 11a-8. Petition. The petition for adjudication of disability and for the appointment of a guardian of the estate or the person or both of an alleged disabled person must state, if known or reasonably ascertainable: (a) the relationship and interest of the petitioner to the respondent; (b) the name, date of birth, and place of residence of the respondent; (c) the reasons for the guardianship; (d) the name and post office address of the respondent's guardian, if any, or of the respondent's agent or agents appointed under the Illinois Power of Attorney Act, if any; (e) the name and post office addresses of the nearest relatives of the respondent in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest adult kindred known to the petitioner; (f) the name and address of the person with whom or the facility in which the respondent is residing; (g) the approximate value of the personal and real estate; (h) the amount of the anticipated annual gross income and other receipts; (i) the name, post office address and in case of an individual, the age, relationship to the respondent and occupation of the proposed guardian. In addition, if the petition seeks the appointment of a previously appointed standby guardian as guardian of the disabled person, the petition must also state: (j) the facts concerning the standby guardian's previous appointment and (k) the date of death of the disabled person's guardian or the facts concerning the consent of the disabled person's guardian to the appointment of the standby guardian as guardian, or the willingness and ability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person. A petition for adjudication of disability and the appointment of a guardian of the estate or the person or both of an alleged disabled person may not be dismissed or withdrawn without leave of the court.

(Source: P.A. 89-396, eff. 8-20-95; 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-8.1)

Sec. 11a-8.1. Petition for standby guardian of disabled person. The petition for appointment of a standby guardian of the person or the estate, or both, of a disabled person must state, if known: (a) the name, date of birth, and residence of the disabled person; (b) the names and post office addresses of the nearest relatives of the disabled person in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest

adult kindred known to the petitioner; (c) the name and post office address of the person having guardianship of the disabled person, and of any person or persons acting as agents of the disabled person under the Illinois Power of Attorney Act; (d) the name, post office address, and, in case of any individual, the age and occupation of the proposed standby guardian; (e) the preference of the disabled person as to the choice of standby guardian; (f) the facts concerning the consent of the disabled person's guardian to the appointment of the standby guardian, or the willingness and ability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person; (g) the facts concerning the execution or admission to probate of the written designation of the standby guardian, if any, a copy of which shall be attached to or filed with the petition; (h) the facts concerning any guardianship court actions pending concerning the disabled person; and (i) the facts concerning the willingness of the proposed standby guardian to serve, and in the case of the Office of State Guardian and any public guardian, evidence of a written acceptance to serve signed by the State Guardian or public guardian or an authorized representative of the State Guardian or public guardian, consistent with subsection (b) of Section 11a-3.1.  
(Source: P.A. 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-9) (from Ch. 110 1/2, par. 11a-9)  
Sec. 11a-9. Report.)

(a) The petition for adjudication of disability and for appointment of a guardian should be accompanied by a report which contains (1) a description of the nature and type of the respondent's disability and an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently; (2) an analysis and results of evaluations of the respondent's mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed within 3 months of the date of the filing of the petition; (3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor; (4) a recommendation as to the most suitable living arrangement and, where appropriate, treatment or habilitation plan for the respondent and the reasons therefor; (5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician and a statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.

(b) If for any reason no report accompanies the petition, the court shall order appropriate evaluations to be performed by a qualified person or persons and a report prepared and filed with the court at least 10 days prior to the hearing.

(c) Unless the court otherwise directs, any report prepared pursuant to this Section shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court in which the proceedings are

subject to review, to the respondent, the petitioner, the guardian, and their attorneys, to the respondent's guardian ad litem, and to such other persons as the court may direct.  
(Source: P.A. 89-396, eff. 8-20-95.)

(755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)  
(Text of Section from P.A. 98-49)

Sec. 11a-10. Procedures preliminary to hearing.

(a) Upon the filing of a petition pursuant to Section 11a-8, the court shall set a date and place for hearing to take place within 30 days. The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for the developmentally disabled, mentally ill, physically disabled, the elderly, or persons disabled because of mental deterioration, depending on the type of disability that is alleged in the petition. The court may allow the guardian ad litem reasonable compensation. The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, persons with mental illness, or physically disabled persons, or persons disabled because of mental deterioration, depending on the type of disability that is alleged. The guardian ad litem shall personally observe the respondent prior to the hearing and shall inform him orally and in writing of the contents of the petition and of his rights under Section 11a-11. The guardian ad litem shall also attempt to elicit the respondent's position concerning the adjudication of disability, the proposed guardian, a proposed change in residential placement, changes in care that might result from the guardianship, and other areas of inquiry deemed appropriate by the court. Notwithstanding any provision in the Mental Health and Developmental Disabilities Confidentiality Act or any other law, a guardian ad litem shall have the right to inspect and copy any medical or mental health record of the respondent which the guardian ad litem deems necessary, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the respondent, the responses of the respondent to any of the inquiries detailed in this Section, the opinion of the guardian ad litem or other professionals with whom the guardian ad litem consulted concerning the appropriateness of guardianship, and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify as to any issues presented in his or her report.

(b) The court (1) may appoint counsel for the respondent,

if the court finds that the interests of the respondent will be best served by the appointment, and (2) shall appoint counsel upon respondent's request or if the respondent takes a position adverse to that of the guardian ad litem. The respondent shall be permitted to obtain the appointment of counsel either at the hearing or by any written or oral request communicated to the court prior to the hearing. The summons shall inform the respondent of this right to obtain appointed counsel. The court may allow counsel for the respondent reasonable compensation.

(c) If the respondent is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court may enter an order for the petitioner to pay all such fees or such amounts as the respondent or the respondent's estate may be unable to pay. However, in cases where the Office of State Guardian is the petitioner, consistent with Section 30 of the Guardianship and Advocacy Act, where the public guardian is the petitioner, consistent with Section 13-5 of the Probate Act of 1975, where an adult protective services agency is the petitioner, pursuant to Section 9 of the Adult Protective Services Act, no guardian ad litem or legal fees shall be assessed against the Office of State Guardian, the public guardian, or the adult protective services agency.

(d) The hearing may be held at such convenient place as the court directs, including at a facility in which the respondent resides.

(e) Unless he is the petitioner, the respondent shall be personally served with a copy of the petition and a summons not less than 14 days before the hearing. The summons shall be printed in large, bold type and shall include the following notice:

#### NOTICE OF RIGHTS OF RESPONDENT

You have been named as a respondent in a guardianship petition asking that you be declared a disabled person. If the court grants the petition, a guardian will be appointed for you. A copy of the guardianship petition is attached for your convenience.

The date and time of the hearing are:

The place where the hearing will occur is:

The Judge's name and phone number is:

If a guardian is appointed for you, the guardian may be given the right to make all important personal decisions for you, such as where you may live, what medical treatment you may receive, what places you may visit, and who may visit you. A guardian may also be given the right to control and manage your money and other property, including your home, if you own one. You may lose the right to make these decisions for yourself.

You have the following legal rights:

(1) You have the right to be present at the court hearing.

(2) You have the right to be represented by a lawyer, either one that you retain, or one appointed by the Judge.

(3) You have the right to ask for a jury of six persons to hear your case.

(4) You have the right to present evidence to the court and to confront and cross-examine witnesses.

(5) You have the right to ask the Judge to appoint an independent expert to examine you and give an opinion about your need for a guardian.

(6) You have the right to ask that the court hearing be closed to the public.

(7) You have the right to tell the court whom you prefer to have for your guardian.

You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the Judge finds that a guardian would be of benefit to you. The hearing will not be postponed or canceled if you do not attend.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN. IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND TELL THE JUDGE.

Service of summons and the petition may be made by a private person 18 years of age or over who is not a party to the action.

(f) Notice of the time and place of the hearing shall be given by the petitioner by mail or in person to those persons, including the proposed guardian, whose names and addresses appear in the petition and who do not waive notice, not less than 14 days before the hearing.

(Source: P.A. 97-375, eff. 8-15-11; 97-1095, eff. 8-24-12; 98-49, eff. 7-1-13.)

(Text of Section from P.A. 98-89)

Sec. 11a-10. Procedures preliminary to hearing.

(a) Upon the filing of a petition pursuant to Section 11a-8, the court shall set a date and place for hearing to take place within 30 days. The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for the developmentally disabled, mentally ill, physically disabled, the elderly, or persons disabled because of mental deterioration, depending on the type of disability that is alleged in the petition. The court may allow the guardian ad litem reasonable compensation. The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, persons with mental illness, or physically disabled persons, or persons disabled because of mental deterioration, depending on the type of disability that is alleged. The guardian ad litem shall personally observe the respondent prior to the hearing and shall inform him orally and in writing of the contents of the petition and of his rights under Section 11a-11. The guardian ad litem shall also

attempt to elicit the respondent's position concerning the adjudication of disability, the proposed guardian, a proposed change in residential placement, changes in care that might result from the guardianship, and other areas of inquiry deemed appropriate by the court. Notwithstanding any provision in the Mental Health and Developmental Disabilities Confidentiality Act or any other law, a guardian ad litem shall have the right to inspect and copy any medical or mental health record of the respondent which the guardian ad litem deems necessary, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the respondent, the responses of the respondent to any of the inquiries detailed in this Section, the opinion of the guardian ad litem or other professionals with whom the guardian ad litem consulted concerning the appropriateness of guardianship, and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify as to any issues presented in his or her report.

(b) The court (1) may appoint counsel for the respondent, if the court finds that the interests of the respondent will be best served by the appointment, and (2) shall appoint counsel upon respondent's request or if the respondent takes a position adverse to that of the guardian ad litem. The respondent shall be permitted to obtain the appointment of counsel either at the hearing or by any written or oral request communicated to the court prior to the hearing. The summons shall inform the respondent of this right to obtain appointed counsel. The court may allow counsel for the respondent reasonable compensation.

(c) If the respondent is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court may enter an order for the petitioner to pay all such fees or such amounts as the respondent or the respondent's estate may be unable to pay. However, in cases where the Office of State Guardian is the petitioner, consistent with Section 30 of the Guardianship and Advocacy Act, where the public guardian is the petitioner, consistent with Section 13-5 of the Probate Act of 1975, where an elder abuse provider agency is the petitioner, pursuant to Section 9 of the Elder Abuse and Neglect Act, where the Department of Human Services Office of Inspector General is the petitioner, consistent with Section 45 of the Abuse of Adults with Disabilities Intervention Act, or where the Department of Children and Family Services is the petitioner under subparagraph (d) of subsection (1) of Section 2-27 of the Juvenile Court Act of 1987, no guardian ad litem or legal fees shall be assessed against the Office of State Guardian, the public guardian, the elder abuse provider agency, the Department of Human Services Office of Inspector General, or the Department of Children and Family Services.

(d) The hearing may be held at such convenient place as the court directs, including at a facility in which the respondent resides.

(e) Unless he is the petitioner, the respondent shall be personally served with a copy of the petition and a summons

not less than 14 days before the hearing. The summons shall be printed in large, bold type and shall include the following notice:

NOTICE OF RIGHTS OF RESPONDENT

You have been named as a respondent in a guardianship petition asking that you be declared a disabled person. If the court grants the petition, a guardian will be appointed for you. A copy of the guardianship petition is attached for your convenience.

The date and time of the hearing are:

The place where the hearing will occur is:

The Judge's name and phone number is:

If a guardian is appointed for you, the guardian may be given the right to make all important personal decisions for you, such as where you may live, what medical treatment you may receive, what places you may visit, and who may visit you. A guardian may also be given the right to control and manage your money and other property, including your home, if you own one. You may lose the right to make these decisions for yourself.

You have the following legal rights:

(1) You have the right to be present at the court hearing.

(2) You have the right to be represented by a lawyer, either one that you retain, or one appointed by the Judge.

(3) You have the right to ask for a jury of six persons to hear your case.

(4) You have the right to present evidence to the court and to confront and cross-examine witnesses.

(5) You have the right to ask the Judge to appoint an independent expert to examine you and give an opinion about your need for a guardian.

(6) You have the right to ask that the court hearing be closed to the public.

(7) You have the right to tell the court whom you prefer to have for your guardian.

You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the Judge finds that a guardian would be of benefit to you. The hearing will not be postponed or canceled if you do not attend.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN. IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND TELL THE JUDGE.

Service of summons and the petition may be made by a private person 18 years of age or over who is not a party to the action.

(f) Notice of the time and place of the hearing shall be given by the petitioner by mail or in person to those persons, including the proposed guardian, whose names and addresses appear in the petition and who do not waive notice, not less than 14 days before the hearing.

(Source: P.A. 97-375, eff. 8-15-11; 97-1095, eff. 8-24-12; 98-89, eff. 7-15-13.)

(755 ILCS 5/11a-10.1) (from Ch. 110 1/2, par. 11a-10.1)

Sec. 11a-10.1. Domestic Violence: Order of Protection. An order of protection, as defined in the Illinois Domestic Violence Act of 1986, as amended, may be issued in conjunction with a proceeding for adjudication of disability and appointment of guardian if the petition for an order of protection alleges that a person who is party to or the subject of the proceeding has been abused by or has abused a family or household member or has been neglected or exploited as defined in the Illinois Domestic Violence Act of 1986, as amended.

If the subject of the order of protection is a high-risk adult with disabilities for whom a guardian has been appointed, the court may appoint a temporary substitute guardian under the provisions of this Act. The court shall appoint a temporary substitute guardian if the appointed guardian is named as a respondent in a petition for an order of protection under the Illinois Domestic Violence Act of 1986, as amended. The Illinois Domestic Violence Act of 1986 shall govern the issuance, enforcement and recording of orders of protection issued under this Section.

(Source: P.A. 86-542.)

(755 ILCS 5/11a-10.2)

Sec. 11a-10.2. Procedure for appointment of a standby guardian or a guardian of a disabled person. In any proceeding for the appointment of a standby guardian or a guardian the court may appoint a guardian ad litem to represent the disabled person in the proceeding.

(Source: P.A. 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-11) (from Ch. 110 1/2, par. 11a-11)

Sec. 11a-11. Hearing.

(a) The respondent is entitled to be represented by counsel, to demand a jury of 6 persons, to present evidence, and to confront and cross-examine all witnesses. The hearing may be closed to the public on request of the respondent, the guardian ad litem, or appointed or other counsel for the respondent. Unless excused by the court upon a showing that the respondent refuses to be present or will suffer harm if required to attend, the respondent shall be present at the hearing.

(b) (Blank)

(c) Upon oral or written motion by the respondent or the guardian ad litem or on the court's own motion, the court shall appoint one or more independent experts to examine the respondent. Upon the filing with the court of a verified statement of services rendered by the expert or experts, the court shall determine a reasonable fee for the services performed. If the respondent is unable to pay the fee, the court may enter an order upon the petitioner to pay the entire

fee or such amount as the respondent is unable to pay. However, in cases where the Office of State Guardian is the petitioner, consistent with Section 30 of the Guardianship and Advocacy Act, no expert services fees shall be assessed against the Office of the State Guardian.

(d) In an uncontested proceeding for the appointment of a guardian the person who prepared the report required by Section 11a-9 will only be required to testify at trial upon order of court for cause shown.

(e) At the hearing the court shall inquire regarding: (1) the nature and extent of respondent's general intellectual and physical functioning; (2) the extent of the impairment of his adaptive behavior if he is a person with a developmental disability, or the nature and severity of his mental illness if he is a person with mental illness; (3) the understanding and capacity of the respondent to make and communicate responsible decisions concerning his person; (4) the capacity of the respondent to manage his estate and his financial affairs; (5) the appropriateness of proposed and alternate living arrangements; (6) the impact of the disability upon the respondent's functioning in the basic activities of daily living and the important decisions faced by the respondent or normally faced by adult members of the respondent's community; and (7) any other area of inquiry deemed appropriate by the court.

(f) An authenticated transcript of the evidence taken in a judicial proceeding concerning the respondent under the Mental Health and Developmental Disabilities Code is admissible in evidence at the hearing.

(g) If the petition is for the appointment of a guardian for a disabled beneficiary of the Veterans Administration, a certificate of the Administrator of Veterans Affairs or his representative stating that the beneficiary has been determined to be incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration in effect upon the date of the issuance of the certificate and that the appointment of a guardian is a condition precedent to the payment of any money due the beneficiary by the Veterans Administration, is admissible in evidence at the hearing.

(Source: P.A. 88-32; 88-380; 88-670, eff. 12-2-94; 89-396, eff. 8-20-95.)

(755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)  
Sec. 11a-12. Order of appointment.)

(a) If basis for the appointment of a guardian as specified in Section 11a-3 is not found, the court shall dismiss the petition.

(b) If the respondent is adjudged to be disabled and to lack some but not all of the capacity as specified in Section 11a-3, and if the court finds that guardianship is necessary for the protection of the disabled person, his or her estate, or both, the court shall appoint a limited guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings and

specifying the duties and powers of the guardian and the legal disabilities to which the respondent is subject.

(c) If the respondent is adjudged to be disabled and to be totally without capacity as specified in Section 11a-3, and if the court finds that limited guardianship will not provide sufficient protection for the disabled person, his or her estate, or both, the court shall appoint a plenary guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings.

(d) The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the disabled person as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment.

(Source: P.A. 97-1093, eff. 1-1-13.)

(755 ILCS 5/11a-13) (from Ch. 110 1/2, par. 11a-13)

Sec. 11a-13. Costs in certain cases.) (a) No costs may be taxed or charged by any public officer in any proceeding for the appointment of a guardian or for any subsequent proceeding or report made in pursuance of the appointment when the primary purpose of the appointment is as set forth in Section 11-11 or is the management of the estate of a mentally disabled person who resides in a state mental health or developmental disabilities facility when the value of the personal estate does not exceed \$1,000.

(b) No costs shall be taxed or charged against the Office of the State Guardian by any public officer in any proceeding for the appointment of a guardian or for any subsequent proceeding or report made in pursuance of the appointment.

(Source: P.A. 80-1415.)

(755 ILCS 5/11a-14) (from Ch. 110 1/2, par. 11a-14)

Sec. 11a-14. Legal disabilities of ward.) (a) An order appointing a limited guardian of the person under this Article removes from the ward only that authority provided under Section 11a-17 which is specifically conferred on the limited guardian by the order.

(b) An order appointing a limited guardian of the estate under this Article confers on the limited guardian the authority provided under Section 11a-18 not specifically reserved to the ward.

(c) The appointment of a limited guardian under this Article shall not constitute a finding of legal incompetence.

(d) An order appointing a plenary guardian under this Article confers on the plenary guardian of the person the authority provided under Section 11a-17 and on the plenary guardian of the estate the authority provided under Section 11a-18.

(Source: P.A. 81-795.)

(755 ILCS 5/11a-14.1) (from Ch. 110 1/2, par. 11a-14.1)

Sec. 11a-14.1. Residential placement.) No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian, shall have the power, unless specified by court order, to place his ward in a residential facility. The guardianship order may specify the conditions on which the guardian may admit the ward to a residential facility without further court order. In making residential placement decisions, the guardian shall make decisions in conformity with the preferences of the ward unless the guardian is reasonably certain that the decisions will result in substantial harm to the ward or to the ward's estate. When the preferences of the ward cannot be ascertained or where they will result in substantial harm to the ward or to the ward's estate, the guardian shall make decisions with respect to the ward's placement which are in the best interests of the ward. The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm to the ward or to the ward's estate. The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall pursue appropriate alternatives as needed.

(Source: P.A. 90-250, eff. 7-29-97.)

(755 ILCS 5/11a-15) (from Ch. 110 1/2, par. 11a-15)

Sec. 11a-15. Successor guardian.) Upon the death, incapacity, resignation or removal of a guardian of the estate or person of a living ward, the court shall appoint a successor guardian or terminate the adjudication of disability. The powers and duties of the successor guardian shall be the same as those of the predecessor guardian unless otherwise modified.

(Source: P.A. 81-795.)

(755 ILCS 5/11a-16) (from Ch. 110 1/2, par. 11a-16)

Sec. 11a-16. Testamentary guardian.) A parent of a disabled person may designate by will a person, corporation or public agency qualified to act under Section 11a-5, to be appointed as guardian or as successor guardian of the person or of the estate or both of that person. If a conservator appointed under a prior law or a guardian appointed under this Article is acting at the time of the death of the parent, the designation shall become effective only upon the death, incapacity, resignation or removal of the conservator or guardian. If no conservator or guardian is acting at the time of the death of the parent, the person, corporation or public agency so designated or any other person may petition the court having jurisdiction over the person or estate or both of the child for the appointment of the one so designated. The designation shall be proved in the manner provided for proof

of will. Admission of the will to probate in any other jurisdiction shall be conclusive proof of the validity of the designation. If the court finds that the appointment of the one so designated will serve the best interests and welfare of the ward, it shall appoint the one so designated. The selection of a guardian shall be in the discretion of the court, whether or not a designation is made.  
(Source: P.A. 81-795.)

(755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)  
Sec. 11a-17. Duties of personal guardian.

(a) To the extent ordered by the court and under the direction of the court, the guardian of the person shall have custody of the ward and the ward's minor and adult dependent children and shall procure for them and shall make provision for their support, care, comfort, health, education and maintenance, and professional services as are appropriate, but the ward's spouse may not be deprived of the custody and education of the ward's minor and adult dependent children, without the consent of the spouse, unless the court finds that the spouse is not a fit and competent person to have that custody and education. The guardian shall assist the ward in the development of maximum self-reliance and independence. The guardian of the person may petition the court for an order directing the guardian of the estate to pay an amount periodically for the provision of the services specified by the court order. If the ward's estate is insufficient to provide for education and the guardian of the ward's person fails to provide education, the court may award the custody of the ward to some other person for the purpose of providing education. If a person makes a settlement upon or provision for the support or education of a ward, the court may make an order for the visitation of the ward by the person making the settlement or provision as the court deems proper. A guardian of the person may not admit a ward to a mental health facility except at the ward's request as provided in Article IV of the Mental Health and Developmental Disabilities Code and unless the ward has the capacity to consent to such admission as provided in Article IV of the Mental Health and Developmental Disabilities Code.

(a-5) If the ward filed a petition for dissolution of marriage under the Illinois Marriage and Dissolution of Marriage Act before the ward was adjudicated a disabled person under this Article, the guardian of the ward's person and estate may maintain that action for dissolution of marriage on behalf of the ward.

(b) If the court directs, the guardian of the person shall file with the court at intervals indicated by the court, a report that shall state briefly: (1) the current mental, physical, and social condition of the ward and the ward's minor and adult dependent children; (2) their present living arrangement, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place; (3) a summary of the medical, educational, vocational, and other professional services given

to them; (4) a resume of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children; (5) a recommendation as to the need for continued guardianship; (6) any other information requested by the court or useful in the opinion of the guardian. The Office of the State Guardian shall assist the guardian in filing the report when requested by the guardian. The court may take such action as it deems appropriate pursuant to the report.

(c) Absent court order pursuant to the Illinois Power of Attorney Act directing a guardian to exercise powers of the principal under an agency that survives disability, the guardian has no power, duty, or liability with respect to any personal or health care matters covered by the agency. This subsection (c) applies to all agencies, whenever and wherever executed.

(d) A guardian acting as a surrogate decision maker under the Health Care Surrogate Act shall have all the rights of a surrogate under that Act without court order including the right to make medical treatment decisions such as decisions to forgo or withdraw life-sustaining treatment. Any decisions by the guardian to forgo or withdraw life-sustaining treatment that are not authorized under the Health Care Surrogate Act shall require a court order. Nothing in this Section shall prevent an agent acting under a power of attorney for health care from exercising his or her authority under the Illinois Power of Attorney Act without further court order, unless a court has acted under Section 2-10 of the Illinois Power of Attorney Act. If a guardian is also a health care agent for the ward under a valid power of attorney for health care, the guardian acting as agent may execute his or her authority under that act without further court order.

(e) Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with the preferences of the ward. If the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the ward's best interests as determined by the guardian. In determining the ward's best interests, the guardian shall weigh the reason for and nature of the proposed action, the benefit or necessity of the action, the possible risks and other consequences of the proposed action, and any available alternatives and their risks, consequences and benefits, and shall take into account any other information, including the views of family and friends, that the guardian believes the ward would have considered if able to act for herself or himself.

(f) Upon petition by any interested person (including the

standby or short-term guardian), with such notice to interested persons as the court directs and a finding by the court that it is in the best interest of the disabled person, the court may terminate or limit the authority of a standby or short-term guardian or may enter such other orders as the court deems necessary to provide for the best interest of the disabled person. The petition for termination or limitation of the authority of a standby or short-term guardian may, but need not, be combined with a petition to have another guardian appointed for the disabled person.

(Source: P.A. 96-612, eff. 1-1-10.)

(755 ILCS 5/11a-17.1)

Sec. 11a-17.1. Sterilization of ward.

(a) A guardian of the person shall not consent to the sterilization of the ward without first obtaining an order from the court granting the guardian the authority to provide consent. For purposes of this Article XIa, "sterilization" means any procedure that has as its purpose rendering the ward permanently incapable of reproduction; provided, however, that an order from the court is not required for a procedure that is medically necessary to preserve the life of the ward or to prevent serious impairment to the health of the ward and which may result in sterilization.

(b) A guardian seeking authority to consent to the sterilization of the ward shall seek such authority by filing a verified motion. The verified motion shall allege facts which demonstrate that the proposed sterilization is warranted under subsection (f), (g) or (h) of this Section. The guardian ad litem will notify the ward of the motion in the manner set forth in subsection (c) of this Section.

(c) Upon the filing of a verified motion for authority to consent to sterilization, the court shall appoint a guardian ad litem to report to the court consistent with the provisions of this Section. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for persons with a developmental disability, mental illness, physical disability, or disability because of mental deterioration, depending on the type of disability of the ward that is alleged in the motion. The court may allow the guardian ad litem reasonable compensation. The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, mental illness, physical disability, or disability because of mental deterioration, depending on the type of disability of the ward that is alleged. The guardian ad litem may also consult with health care providers knowledgeable about reproductive health matters including sterilization, other forms of contraception, and childbirth. Outside the presence of the guardian, the guardian ad litem shall personally observe the ward prior to the hearing and shall inform the ward orally and in writing of the contents of the verified motion for authority to consent to sterilization. Outside the presence of the guardian, the guardian ad litem shall also attempt to elicit the ward's

position concerning the motion, and any other areas of inquiry deemed appropriate by the court. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the ward; the responses of the ward to any of the inquiries detailed in this Section; the opinion of the guardian ad litem and any other professionals with whom the guardian ad litem consulted concerning the ward's understanding of and desire for or objection to, as well as what is in the ward's best interest relative to, sterilization, other forms of contraception, and childbirth; and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify, and may present witnesses, as to any issues presented in his or her report.

(d) The court (1) may appoint counsel for the ward if the court finds that the interests of the ward will be best served by the appointment, and (2) shall appoint counsel upon the ward's request, if the ward is objecting to the proposed sterilization, or if the ward takes a position adverse to that of the guardian ad litem. The ward shall be permitted to obtain the appointment of counsel either at the hearing or by any written or oral request communicated to the court prior to the hearing. The court shall inform the ward of this right to obtain appointed counsel. The court may allow counsel for the ward reasonable compensation.

(e) The court shall order a medical and psychological evaluation of the ward. The evaluation shall address the ward's decision making capacity with respect to the proposed sterilization, the existence of any less permanent alternatives, and any other material issue.

(f) The court shall determine, as a threshold inquiry, whether the ward has capacity to consent or withhold consent to the proposed sterilization and, if the ward lacks such capacity, whether the ward is likely to regain such capacity. The ward shall not be deemed to lack such capacity solely on the basis of the adjudication of disability and appointment of a guardian. In determining capacity, the court shall consider whether the ward is able, after being provided appropriate information, to understand the relationship between sexual activity and reproduction; the consequences of reproduction; and the nature and consequences of the proposed sterilization procedure. If the court finds that (1) the ward has capacity to consent or withhold consent to the proposed sterilization, and (2) the ward objects or consents to the procedure, the court shall enter an order consistent with the ward's objection or consent and the proceedings on the verified motion shall be terminated.

(g) If the court finds that the ward does not have capacity to consent or withhold consent to the proposed sterilization and is unlikely to regain such capacity, the court shall determine whether the ward is expressing a clear desire for the proposed sterilization. If the ward is expressing a clear desire for the proposed sterilization, the court's decision regarding the proposed sterilization shall be made in accordance with the standards set forth in subsection (e) of Section 11a-17 of this Act.

(h) If the court finds that the ward does not have

capacity to consent or withhold consent to the proposed sterilization and is unlikely to regain such capacity, and that the ward is not expressing a clear desire for the proposed sterilization, the court shall consider the standards set forth in subsection (e) of Section 11a-17 of this Act and enter written findings of fact and conclusions of law addressing those standards. In addition, the court shall not authorize the guardian to consent to the proposed sterilization unless the court finds, by clear and convincing evidence and based on written findings of fact and conclusions of law, that all of the following factors are present:

(1) The ward lacks decisional capacity regarding the proposed sterilization.

(2) The ward is fertile and capable of procreation.

(3) The benefits to the ward of the proposed sterilization outweigh the harm.

(4) The court has considered less intrusive alternatives and found them to be inadequate in this case.

(5) The proposed sterilization is in the best interest of the ward. In considering the ward's best interest, the court shall consider the following factors:

(A) The possibility that the ward will experience trauma or psychological damage if he or she has a child and, conversely, the possibility of trauma or psychological damage from the proposed sterilization.

(B) The ward is or is likely to become sexually active.

(C) The inability of the ward to understand reproduction or contraception and the likely permanence of that inability.

(D) Any other factors that assist the court in determining the best interest of the ward relative to the proposed sterilization.

(Source: P.A. 96-272, eff. 1-1-10.)

(755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)  
Sec. 11a-18. Duties of the estate guardian.

(a) To the extent specified in the order establishing the guardianship, the guardian of the estate shall have the care, management and investment of the estate, shall manage the estate frugally and shall apply the income and principal of the estate so far as necessary for the comfort and suitable support and education of the ward, his minor and adult dependent children, and persons related by blood or marriage who are dependent upon or entitled to support from him, or for any other purpose which the court deems to be for the best interests of the ward, and the court may approve the making on behalf of the ward of such agreements as the court determines to be for the ward's best interests. The guardian may make disbursement of his ward's funds and estate directly to the ward or other distributee or in such other manner and in such amounts as the court directs. If the estate of a ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance or other similar

benefits made directly to the estate by the Veterans Administration, notice of the application for leave to invest or expend the ward's funds or estate, together with a copy of the petition and proposed order, shall be given to the Veterans' Administration Regional Office in this State at least 7 days before the hearing on the application.

(a-5) The probate court, upon petition of a guardian, other than the guardian of a minor, and after notice to all other persons interested as the court directs, may authorize the guardian to exercise any or all powers over the estate and business affairs of the ward that the ward could exercise if present and not under disability. The court may authorize the taking of an action or the application of funds not required for the ward's current and future maintenance and support in any manner approved by the court as being in keeping with the ward's wishes so far as they can be ascertained. The court must consider the permanence of the ward's disabling condition and the natural objects of the ward's bounty. In ascertaining and carrying out the ward's wishes the court may consider, but shall not be limited to, minimization of State or federal income, estate, or inheritance taxes; and providing gifts to charities, relatives, and friends that would be likely recipients of donations from the ward. The ward's wishes as best they can be ascertained shall be carried out, whether or not tax savings are involved. Actions or applications of funds may include, but shall not be limited to, the following:

(1) making gifts of income or principal, or both, of the estate, either outright or in trust;

(2) conveying, releasing, or disclaiming his or her contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(3) releasing or disclaiming his or her powers as trustee, personal representative, custodian for minors, or guardian;

(4) exercising, releasing, or disclaiming his or her powers as donee of a power of appointment;

(5) entering into contracts;

(6) creating for the benefit of the ward or others, revocable or irrevocable trusts of his or her property that may extend beyond his or her disability or life;

(7) exercising options of the ward to purchase or exchange securities or other property;

(8) exercising the rights of the ward to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any one or more of the following:

(i) life insurance policies, plans, or benefits,

(ii) annuity policies, plans, or benefits,

(iii) mutual fund and other dividend investment plans,

(iv) retirement, profit sharing, and employee welfare plans and benefits;

(9) exercising his or her right to claim or disclaim an elective share in the estate of his or her deceased spouse and to renounce any interest by testate or

intestate succession or by inter vivos transfer;

(10) changing the ward's residence or domicile; or

(11) modifying by means of codicil or trust amendment the terms of the ward's will or any revocable trust created by the ward, as the court may consider advisable in light of changes in applicable tax laws.

The guardian in his or her petition shall briefly outline the action or application of funds for which he or she seeks approval, the results expected to be accomplished thereby, and the tax savings, if any, expected to accrue. The proposed action or application of funds may include gifts of the ward's personal property or real estate, but transfers of real estate shall be subject to the requirements of Section 20 of this Act. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the ward or may be made to individuals or charities in which the ward is believed to have an interest. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the ward insofar as they can be ascertained, and if the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidents of various forms of taxation and the partial distribution of his or her estate as provided in this subsection. The guardian shall not, however, be required to include as a beneficiary or fiduciary any person who he has reason to believe would be excluded by the ward. A guardian shall be required to investigate and pursue a ward's eligibility for governmental benefits.

(b) Upon the direction of the court which issued his letters, a guardian may perform the contracts of his ward which were legally subsisting at the time of the commencement of the ward's disability. The court may authorize the guardian to execute and deliver any bill of sale, deed or other instrument.

(c) The guardian of the estate of a ward shall appear for and represent the ward in all legal proceedings unless another person is appointed for that purpose as guardian or next friend. This does not impair the power of any court to appoint a guardian ad litem or next friend to defend the interests of the ward in that court, or to appoint or allow any person as the next friend of a ward to commence, prosecute or defend any proceeding in his behalf. Without impairing the power of the court in any respect, if the guardian of the estate of a ward and another person as next friend shall appear for and represent the ward in a legal proceeding in which the compensation of the attorney or attorneys representing the guardian and next friend is solely determined under a contingent fee arrangement, the guardian of the estate of the ward shall not participate in or have any duty to review the prosecution of the action, to participate in or review the appropriateness of any settlement of the action, or to participate in or review any determination of the appropriateness of any fees awarded to the attorney or attorneys employed in the prosecution of the action.

(d) Adjudication of disability shall not revoke or otherwise terminate a trust which is revocable by the ward. A guardian of the estate shall have no authority to revoke a trust that is revocable by the ward, except that the court may

authorize a guardian to revoke a Totten trust or similar deposit or withdrawable capital account in trust to the extent necessary to provide funds for the purposes specified in paragraph (a) of this Section. If the trustee of any trust for the benefit of the ward has discretionary power to apply income or principal for the ward's benefit, the trustee shall not be required to distribute any of the income or principal to the guardian of the ward's estate, but the guardian may bring an action on behalf of the ward to compel the trustee to exercise the trustee's discretion or to seek relief from an abuse of discretion. This paragraph shall not limit the right of a guardian of the estate to receive accountings from the trustee on behalf of the ward.

(e) Absent court order pursuant to the Illinois Power of Attorney Act directing a guardian to exercise powers of the principal under an agency that survives disability, the guardian will have no power, duty or liability with respect to any property subject to the agency. This subsection (e) applies to all agencies, whenever and wherever executed.

(f) Upon petition by any interested person (including the standby or short-term guardian), with such notice to interested persons as the court directs and a finding by the court that it is in the best interest of the disabled person, the court may terminate or limit the authority of a standby or short-term guardian or may enter such other orders as the court deems necessary to provide for the best interest of the disabled person. The petition for termination or limitation of the authority of a standby or short-term guardian may, but need not, be combined with a petition to have another guardian appointed for the disabled person.

(Source: P.A. 95-331, eff. 8-21-07.)

(755 ILCS 5/11a-18.1) (from Ch. 110 1/2, par. 11a-18.1)

Sec. 11a-18.1. Conditional gifts. (a) The court may authorize and direct the guardian of the estate to make conditional gifts from the estate of a disabled person to any spouse, parent, brother or sister of the disabled person who dedicates himself or herself to the care of the disabled person by living with and personally caring for the disabled person for at least 3 years. It shall be presumed that the disabled person intends to make such conditional gifts.

(b) A conditional gift shall not be distributed to the donee until the death of the disabled person. The court may impose such other conditions on the gift as the court deems just and reasonable. The court may provide for an alternate disposition of the gift should the donee die before the disabled person; provided that if no such alternate disposition is made, the conditional gift shall lapse upon the death of the donee prior to the death of the disabled person. A conditional gift may be modified or revoked by the court at any time.

(c) The guardian of the estate, the spouse, parent, brother or sister of a disabled person, or any other interested person may petition the court to authorize and direct the guardian of the estate to make a conditional gift

or to modify, revoke or distribute a conditional gift. All persons who would be heirs of the disabled person if the disabled person died on the date the petition is filed (or the heirs if the disabled person is deceased) and all legatees under any known last will of the disabled person shall be given reasonable notice of the hearing on the petition by certified U. S. mail, return receipt requested. If a trustee is a legatee, notice shall be given to the trustee and need not be given to the trust beneficiaries. Any person entitled to notice of the hearing may appear and object to the petition. The giving of the notice of the hearing to those persons entitled to notice shall cause the decision and order of the court to be binding upon all other persons who otherwise may be interested or may become interested in the estate of the disabled person.

(d) The guardian of the estate shall set aside conditional gifts in a separate fund for each donee and shall hold and invest each fund as part of the estate of the disabled person. Upon order of the court, any conditional gift may be revoked or modified in whole or part so that the assets may be used for the care and comfort of the disabled person should funds otherwise available for such purposes be inadequate.

(e) Upon the death of the disabled person, the guardian of the estate shall hold each special fund as trustee and shall petition the court for authorization to distribute the special fund and for any other appropriate relief. The court shall order distribution upon such terms and conditions as the court deems just and reasonable.

(Source: P.A. 85-1417.)

(755 ILCS 5/11a-18.2)

Sec. 11a-18.2. Duties of standby guardian of a disabled person.

(a) Before a standby guardian of a disabled person may act, the standby guardian must be appointed by the court of the proper county and, in the case of a standby guardian of the disabled person's estate, the standby guardian must give the bond prescribed in subsection (c) of Section 11a-3.1 and Section 12-2.

(b) The standby guardian shall not have any duties or authority to act until the standby guardian receives knowledge of the death or consent of the disabled person's guardian, or the inability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person for whom the standby guardian has been appointed. This inability of the disabled person's guardian to make and carry out day-to-day care decisions may be communicated either by the guardian's own admission or by the written certification of the guardian's attending physician. Immediately upon receipt of that knowledge, the standby guardian shall assume all duties as guardian of the disabled person as previously determined by the order appointing the standby guardian, and as set forth in Sections 11a-17 and 11a-18, and the standby guardian of the person shall have the authority to act as guardian of the person without direction of court for a period

of up to 60 days, provided that the authority of the standby guardian may be limited or terminated by a court of competent jurisdiction.

(c) Within 60 days of the standby guardian's receipt of knowledge of the death or consent of the disabled person's guardian, or the inability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person, the standby guardian shall file or cause to be filed a petition for the appointment of a guardian of the person or estate, or both, of the disabled person under Section 11a-3.

(Source: P.A. 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-18.3)

Sec. 11a-18.3. Duties of short-term guardian of a disabled person.

(a) Immediately upon the effective date of the appointment of a short-term guardian, the short-term guardian shall assume all duties as short-term guardian of the disabled person as provided in this Section. The short-term guardian of the person shall have authority to act as short-term guardian, without direction of the court, for the duration of the appointment, which in no case shall exceed a cumulative total of 60 days in any 12 month period for all short-term guardians appointed by the guardian. The authority of the short-term guardian may be limited or terminated by a court of competent jurisdiction.

(b) Unless further specifically limited by the instrument appointing the short-term guardian, a short-term guardian shall have the authority to act as a guardian of the person of a disabled person as prescribed in Section 11a-17, but shall not have any authority to act as guardian of the estate of a disabled person, except that a short-term guardian shall have the authority to apply for and receive on behalf of the disabled person benefits to which the disabled person may be entitled from or under federal, State, or local organizations or programs.

(Source: P.A. 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-19) (from Ch. 110 1/2, par. 11a-19)

Sec. 11a-19. Notice of right to seek modification. At the time of the appointment of a guardian the court shall inform the ward of his right under Section 11a-20 to petition for termination of adjudication of disability, revocation of the letters of guardianship of the estate or person, or both, or modification of the duties of the guardian and shall give the ward a written statement explaining this right and the procedures for petitioning the court. The notice shall be in large, bold type and shall be in a format similar to the notice of rights required under subsection (e) of Section 11a-10 of this Act.

(Source: P.A. 89-396, eff. 8-20-95.)

(755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

Sec. 11a-20. Termination of adjudication of disability -  
Revocation of letters - modification.)

(a) Except as provided in subsection (b-5), upon the filing of a petition by or on behalf of a disabled person or on its own motion, the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian if the ward's capacity to perform the tasks necessary for the care of his person or the management of his estate has been demonstrated by clear and convincing evidence. A report or testimony by a licensed physician is not a prerequisite for termination, revocation or modification of a guardianship order under this subsection (a).

(b) Except as provided in subsection (b-5), a request by the ward or any other person on the ward's behalf, under this Section may be communicated to the court or judge by any means, including but not limited to informal letter, telephone call or visit. Upon receipt of a request from the ward or another person, the court may appoint a guardian ad litem to investigate and report to the court concerning the allegations made in conjunction with said request, and if the ward wishes to terminate, revoke, or modify the guardianship order, to prepare the ward's petition and to render such other services as the court directs.

(b-5) Upon the filing of a verified petition by the guardian of the disabled person or the disabled person, the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian if: (i) a report completed in accordance with subsection (a) of Section 11a-9 states that the disabled person is no longer in need of guardianship or that the type and scope of guardianship should be modified; (ii) the disabled person no longer wishes to be under guardianship or desires that the type and scope of guardianship be modified; and (iii) the guardian of the disabled person states that it is in the best interest of the disabled person to terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian, and provides the basis thereof. In a proceeding brought pursuant to this subsection (b-5), the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian, unless it has been demonstrated by clear and convincing evidence that the ward is incapable of performing the tasks necessary for the care of his or her person or the management of his or her estate.

(c) Notice of the hearing on a petition under this Section, together with a copy of the petition, shall be given to the ward, unless he is the petitioner, and to each and every guardian to whom letters of guardianship have been issued and not revoked, not less than 14 days before the hearing.

(Source: P.A. 97-1093, eff. 1-1-13.)

(755 ILCS 5/11a-21) (from Ch. 110 1/2, par. 11a-21)

Sec. 11a-21. Hearing. (a) The court shall conduct a hearing on a petition filed under Section 11a-20. The ward is entitled to be represented by counsel, to demand a jury of 6 persons, to present evidence and to confront and cross-examine all witnesses. The court (1) may appoint counsel for the ward, if the court finds that the interests of the ward will be best served by the appointment and (2) shall appoint counsel upon the ward's request or if the respondent takes a position adverse to that of the guardian ad litem. The court may allow the guardian ad litem and counsel for the ward reasonable compensation.

(b) If the ward is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court shall enter an order upon the State to pay, from funds appropriated by the General Assembly for that purpose, all such fees or such amounts as the ward is unable to pay.

(c) Upon conclusion of the hearing, the court shall enter an order setting forth the factual basis for its findings and may: (1) dismiss the petition; (2) terminate the adjudication of disability; (3) revoke the letters of guardianship of the estate or person, or both; (4) modify the duties of the guardian; and (5) make any other order which the court deems appropriate and in the interests of the ward.

(Source: P.A. 81-1509.)

(755 ILCS 5/11a-22) (from Ch. 110 1/2, par. 11a-22)

Sec. 11a-22. Trade and contracts with a disabled person.

(a) Anyone who by trading with, bartering, gaming or any other device, wrongfully possesses himself of any property of a person known to be a disabled person commits a Class A misdemeanor.

(b) Every note, bill, bond or other contract by any person for whom a plenary guardian has been appointed or who is adjudged to be unable to so contract is void as against that person and his estate, but a person making a contract with the person so adjudged is bound thereby.

(Source: P.A. 91-357, eff. 7-29-99.)

(755 ILCS 5/11a-23)

Sec. 11a-23. Reliance on authority of guardian, standby guardian, short-term guardian.

(a) For the purpose of this Section, "guardian", "standby guardian", and "short-term guardian" includes temporary, plenary, or limited guardians of all wards.

(b) Every health care provider and other person (reliant) has the right to rely on any decision or direction made by the guardian, standby guardian, or short-term guardian that is not clearly contrary to the law, to the same extent and with the same effect as though the decision or direction had been made or given by the ward. Any person dealing with the guardian,

standby guardian, or short-term guardian may presume in the absence of actual knowledge to the contrary that the acts of the guardian, standby guardian, or short-term guardian conform to the provisions of the law. A reliant shall not be protected if the reliant has actual knowledge that the guardian, standby guardian, or short-term guardian is not entitled to act or that any particular action or inaction is contrary to the provisions of the law.

(c) A health care provider (provider) who relies on and carries out a guardian's, standby guardian's, or short-term guardian's directions and who acts with due care and in accordance with the law shall not be subject to any claim based on lack of consent, or to criminal prosecution, or to discipline for unprofessional conduct. Nothing in this Section shall be deemed to protect a provider from liability for the provider's own negligence in the performance of the provider's duties or in carrying out any instructions of the guardian, standby guardian, or short-term guardian, and nothing in this Section shall be deemed to alter the law of negligence as it applies to the acts of any guardian or provider.

(d) A guardian, standby guardian, or short term guardian, who acts or refrains from acting is not subject to criminal prosecution or any claim based upon lack of his or her authority or failure to act, if the act or failure to act was with due care and in accordance with law. The guardian, standby guardian, or short term guardian, shall not be liable merely because he or she may benefit from the act, has individual or conflicting interests in relation to the care and affairs of the ward, or acts in a different manner with respect to the guardian's, standby guardian's, or short-term guardian's own care or interests.

(Source: P.A. 89-438, eff. 12-15-95; 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-24)

Sec. 11a-24. Notification; Department of State Police. When a court adjudges a respondent to be a disabled person under this Article, the court shall direct the circuit court clerk to notify the Department of State Police, Firearm Owner's Identification (FOID) Office, in a form and manner prescribed by the Department of State Police, and shall forward a copy of the court order to the Department no later than 7 days after the entry of the order. Upon receipt of the order, the Department of State Police shall provide notification to the National Instant Criminal Background Check System.

(Source: P.A. 98-63, eff. 7-9-13.)

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**PROFESSIONS AND OCCUPATIONS  
(225 ILCS 46/) Health Care Worker Background Check Act.**

(225 ILCS 46/1)

Sec. 1. Short title. This Act may be cited as the Health Care Worker Background Check Act.  
(Source: P.A. 89-197, eff. 7-21-95.)

(225 ILCS 46/5)

Sec. 5. Purpose. The General Assembly finds that it is in the public interest to protect the most frail and disabled citizens of the State of Illinois from possible harm through a criminal background check of certain health care workers and all employees of licensed and certified long-term care facilities who have or may have contact with residents or have access to the living quarters or the financial, medical, or personal records of residents.  
(Source: P.A. 94-665, eff. 1-1-06.)

(225 ILCS 46/10)

Sec. 10. Applicability. This Act applies to all individuals employed or retained by a health care employer as home health care aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel, or an individual working in any similar health-related occupation where he or she provides direct care or has access to long-term care residents or the living quarters or financial, medical, or personal records of long-term care residents. This Act also applies to all employees of licensed or certified long-term care facilities who have or may have contact with residents or access to the living quarters or the financial, medical, or personal records of residents.  
(Source: P.A. 94-665, eff. 1-1-06.)

(225 ILCS 46/15)

Sec. 15. Definitions. In this Act:  
"Applicant" means an individual seeking employment with a health care employer who has received a bona fide conditional offer of employment.  
"Conditional offer of employment" means a bona fide offer of employment by a health care employer to an applicant, which is contingent upon the receipt of a report from the Department of Public Health indicating that the applicant does not have a record of conviction of any of the criminal offenses enumerated in Section 25.  
"Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, toileting, or other personal needs, including home services as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act. The entity responsible for inspecting

and licensing, certifying, or registering the health care employer may, by administrative rule, prescribe guidelines for interpreting this definition with regard to the health care employers that it licenses.

"Disqualifying offenses" means those offenses set forth in Section 25 of this Act.

"Employee" means any individual hired, employed, or retained to which this Act applies.

"Fingerprint-based criminal history records check" means a livescan fingerprint-based criminal history records check submitted as a fee applicant inquiry in the form and manner prescribed by the Department of State Police.

"Health care employer" means:

- (1) the owner or licensee of any of the following:
  - (i) a community living facility, as defined in the Community Living Facilities Act;
  - (ii) a life care facility, as defined in the Life Care Facilities Act;
  - (iii) a long-term care facility;
  - (iv) a home health agency, home services agency, or home nursing agency as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act;
  - (v) a hospice care program or volunteer hospice program, as defined in the Hospice Program Licensing Act;
  - (vi) a hospital, as defined in the Hospital Licensing Act;
  - (vii) (blank);
  - (viii) a nurse agency, as defined in the Nurse Agency Licensing Act;
  - (ix) a respite care provider, as defined in the Respite Program Act;
  - (ix-a) an establishment licensed under the Assisted Living and Shared Housing Act;
  - (x) a supportive living program, as defined in the Illinois Public Aid Code;
  - (xi) early childhood intervention programs as described in 59 Ill. Adm. Code 121;
  - (xii) the University of Illinois Hospital, Chicago;
  - (xiii) programs funded by the Department on Aging through the Community Care Program;
  - (xiv) programs certified to participate in the Supportive Living Program authorized pursuant to Section 5-5.01a of the Illinois Public Aid Code;
  - (xv) programs listed by the Emergency Medical Services (EMS) Systems Act as Freestanding Emergency Centers;
  - (xvi) locations licensed under the Alternative Health Care Delivery Act;
- (2) a day training program certified by the Department of Human Services;
- (3) a community integrated living arrangement operated by a community mental health and developmental service agency, as defined in the Community-Integrated Living Arrangements Licensing and Certification Act; or

(4) the State Long Term Care Ombudsman Program, including any regional long term care ombudsman programs under Section 4.04 of the Illinois Act on the Aging, only for the purpose of securing background checks.

"Initiate" means obtaining from a student, applicant, or employee his or her social security number, demographics, a disclosure statement, and an authorization for the Department of Public Health or its designee to request a fingerprint-based criminal history records check; transmitting this information electronically to the Department of Public Health; conducting Internet searches on certain web sites, including without limitation the Illinois Sex Offender Registry, the Department of Corrections' Sex Offender Search Engine, the Department of Corrections' Inmate Search Engine, the Department of Corrections Wanted Fugitives Search Engine, the National Sex Offender Public Registry, and the website of the Health and Human Services Office of Inspector General to determine if the applicant has been adjudicated a sex offender, has been a prison inmate, or has committed Medicare or Medicaid fraud, or conducting similar searches as defined by rule; and having the student, applicant, or employee's fingerprints collected and transmitted electronically to the Department of State Police.

"Livescan vendor" means an entity whose equipment has been certified by the Department of State Police to collect an individual's demographics and inkless fingerprints and, in a manner prescribed by the Department of State Police and the Department of Public Health, electronically transmit the fingerprints and required data to the Department of State Police and a daily file of required data to the Department of Public Health. The Department of Public Health shall negotiate a contract with one or more vendors that effectively demonstrate that the vendor has 2 or more years of experience transmitting fingerprints electronically to the Department of State Police and that the vendor can successfully transmit the required data in a manner prescribed by the Department of Public Health. Vendor authorization may be further defined by administrative rule.

"Long-term care facility" means a facility licensed by the State or certified under federal law as a long-term care facility, including without limitation facilities licensed under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, or the ID/DD Community Care Act, a supportive living facility, an assisted living establishment, or a shared housing establishment or registered as a board and care home.

(Source: P.A. 97-38, eff. 6-28-11; 97-227, eff. 1-1-12; 97-813, eff. 7-13-12; 98-104, eff. 7-22-13.)

(225 ILCS 46/20)

Sec. 20. Exceptions. This Act shall not apply to:

(1) an individual who is licensed by the Department of Financial and Professional Regulation or the Department of Public Health under another law of this State;

(2) an individual employed or retained by a health

care employer for whom a criminal background check is required by another law of this State; or

(3) a student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is (i) employed by a health care employer in a position with duties involving direct care for clients, patients, or residents or (ii) employed by a long-term care facility in a position that involves or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. (Source: P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/25)

Sec. 25. Persons ineligible to be hired by health care employers and long-term care facilities.

(a) In the discretion of the Director of Public Health, as soon after January 1, 1996, January 1, 1997, January 1, 2006, or October 1, 2007, as applicable, and as is reasonably practical, no health care employer shall knowingly hire, employ, or retain any individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit one or more of the following offenses: those defined in Sections 8-1(b), 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3, 9-3.4, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-9.1, 11-9.5, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-1, 12-2, 12-3.05, 12-3.1, 12-3.2, 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-21, 12-21.6, 12-32, 12-33, 12C-5, 16-1, 16-1.3, 16-25, 16A-3, 17-3, 17-56, 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 19-6, 20-1, 20-1.1, 24-1, 24-1.2, 24-1.5, or 33A-2, or subdivision (a)(4) of Section 11-14.4, or in subsection (a) of Section 12-3 or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012; those provided in Section 4 of the Wrongs to Children Act; those provided in Section 53 of the Criminal Jurisprudence Act; those defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; those defined in the Methamphetamine Control and Community Protection Act; or those defined in Sections 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act, unless the applicant or employee obtains a waiver pursuant to Section 40.

(a-1) In the discretion of the Director of Public Health, as soon after January 1, 2004 or October 1, 2007, as applicable, and as is reasonably practical, no health care employer shall knowingly hire any individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility shall knowingly hire any individual in a position with duties that involve or may involve contact with residents or access to the living

quarters or the financial, medical, or personal records of residents, who has (i) been convicted of committing or attempting to commit one or more of the offenses defined in Section 12-3.3, 12-4.2-5, 16-2, 16-30, 16G-15, 16G-20, 17-33, 17-34, 17-36, 17-44, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3, or subsection (b) of Section 17-32, subsection (b) of Section 18-1, or subsection (b) of Section 20-1, of the Criminal Code of 1961 or the Criminal Code of 2012; Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; or Section 11-9.1A of the Criminal Code of 1961 or the Criminal Code of 2012 or Section 5.1 of the Wrongs to Children Act; or (ii) violated Section 50-50 of the Nurse Practice Act, unless the applicant or employee obtains a waiver pursuant to Section 40 of this Act.

A health care employer is not required to retain an individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility is required to retain an individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit one or more of the offenses enumerated in this subsection.

(b) A health care employer shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsection (a) or (a-1), as verified by court records, records from a state agency, or an FBI criminal history record check, unless the applicant or employee obtains a waiver pursuant to Section 40 of this Act. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided.

(Source: P.A. 96-710, eff. 1-1-10; 96-1551, Article 1, Section 930, eff. 7-1-11; 96-1551, Article 2, Section 995, eff. 7-1-11; 96-1551, Article 10, Section 10-40, eff. 7-1-11; 97-597, eff. 1-1-12; 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

(225 ILCS 46/25.1)

Sec. 25.1. (Repealed).

(Source: P.A. 90-441, eff. 1-1-98. Repealed by P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/30)

Sec. 30. (Repealed).

(Source: P.A. 95-545, eff. 8-28-07. Repealed by P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/33)

Sec. 33. Fingerprint-based criminal history records check.

(a) A fingerprint-based criminal history records check is not required for health care employees who have been continuously employed by a health care employer since October 1, 2007, have met the requirements for criminal history background checks prior to October 1, 2007, and have no disqualifying convictions or requested and received a waiver of those disqualifying convictions. These employees shall be retained on the Health Care Worker Registry as long as they remain active. Nothing in this subsection (a) shall be construed to prohibit a health care employer from initiating a criminal history records check for these employees. Should these employees seek a new position with a different health care employer, then a fingerprint-based criminal history records check shall be required.

(b) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, any student, applicant, or employee who desires to be included on the Department of Public Health's Health Care Worker Registry must authorize the Department of Public Health or its designee to request a fingerprint-based criminal history records check to determine if the individual has a conviction for a disqualifying offense. This authorization shall allow the Department of Public Health to request and receive information and assistance from any State or local governmental agency. Each individual shall submit his or her fingerprints to the Department of State Police in an electronic format that complies with the form and manner for requesting and furnishing criminal history record information prescribed by the Department of State Police. The fingerprints submitted under this Section shall be checked against the fingerprint records now and hereafter filed in the Department of State Police criminal history record databases. The Department of State Police shall charge a fee for conducting the criminal history records check, which shall not exceed the actual cost of the records check. The livescan vendor may act as the designee for individuals, educational entities, or health care employers in the collection of Department of State Police fees and deposit those fees into the State Police Services Fund. The Department of State Police shall provide information concerning any criminal convictions, now or hereafter filed, against the individual.

(c) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, an educational entity, other than a secondary school, conducting a nurse aide training program must initiate a fingerprint-based criminal history records check requested by the Department of Public Health prior to entry of an individual into the training program.

(d) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, a health care employer who makes a conditional offer of employment to an applicant for a position as an employee must initiate a fingerprint-based criminal history record check, requested by the Department of Public Health, on the applicant, if such a background check has not been previously conducted.

(e) When initiating a background check requested by the Department of Public Health, an educational entity or health care employer shall electronically submit to the Department of Public Health the student's, applicant's, or employee's social security number, demographics, disclosure, and authorization information in a format prescribed by the Department of Public Health within 2 working days after the authorization is secured. The student, applicant, or employee must have his or her fingerprints collected electronically and transmitted to the Department of State Police within 10 working days. The educational entity or health care employer must transmit all necessary information and fees to the livescan vendor and Department of State Police within 10 working days after receipt of the authorization. This information and the results of the criminal history record checks shall be maintained by the Department of Public Health's Health Care Worker Registry.

(f) A direct care employer may initiate a fingerprint-based background check requested by the Department of Public Health for any of its employees, but may not use this process to initiate background checks for residents. The results of any fingerprint-based background check that is initiated with the Department as the requestor shall be entered in the Health Care Worker Registry.

(g) As long as the employee has had a fingerprint-based criminal history record check requested by the Department of Public Health and stays active on the Health Care Worker Registry, no further criminal history record checks shall be deemed necessary, as the Department of State Police shall notify the Department of Public Health of any additional convictions associated with the fingerprints previously submitted. Health care employers are required to check the Health Care Worker Registry before hiring an employee to determine that the individual has had a fingerprint-based record check requested by the Department of Public Health and has no disqualifying convictions or has been granted a waiver pursuant to Section 40 of this Act. If the individual has not had such a background check or is not active on the Health Care Worker Registry, then the health care employer must initiate a fingerprint-based record check requested by the Department of Public Health. If an individual is inactive on the Health Care Worker Registry, that individual is prohibited from being hired to work as a certified nurse aide if, since the individual's most recent completion of a competency test, there has been a period of 24 consecutive months during which the individual has not provided nursing or nursing-related services for pay. If the individual can provide proof of having retained his or her certification by not having a 24 consecutive month break in service for pay, he or she may be hired as a certified nurse aide and that employment

information shall be entered into the Health Care Worker Registry.

(h) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, if the Department of State Police notifies the Department of Public Health that an employee has a new conviction of a disqualifying offense, based upon the fingerprints that were previously submitted, then (i) the Health Care Worker Registry shall notify the employee's last known employer of the offense, (ii) a record of the employee's disqualifying offense shall be entered on the Health Care Worker Registry, and (iii) the individual shall no longer be eligible to work as an employee unless he or she obtains a waiver pursuant to Section 40 of this Act.

(i) On October 1, 2007, or as soon thereafter, in the discretion of the Director of Public Health, as is reasonably practical, and thereafter, each direct care employer or its designee must provide an employment verification for each employee no less than annually. The direct care employer or its designee must log into the Health Care Worker Registry through a secure login. The health care employer or its designee must indicate employment and termination dates within 30 days after hiring or terminating an employee, as well as the employment category and type. Failure to comply with this subsection (i) constitutes a licensing violation. For health care employers that are not licensed or certified, a fine of up to \$500 may be imposed for failure to maintain these records. This information shall be used by the Department of Public Health to notify the last known employer of any disqualifying offenses that are reported by the Department of State Police.

(j) The Department of Public Health shall notify each health care employer or long-term care facility inquiring as to the information on the Health Care Worker Registry if the applicant or employee listed on the registry has a disqualifying offense and is therefore ineligible to work or has a waiver pursuant to Section 40 of this Act.

(k) The student, applicant, or employee must be notified of each of the following whenever a fingerprint-based criminal history records check is required:

(1) That the educational entity, health care employer, or long-term care facility shall initiate a fingerprint-based criminal history record check requested by the Department of Public Health of the student, applicant, or employee pursuant to this Act.

(2) That the student, applicant, or employee has a right to obtain a copy of the criminal records report that indicates a conviction for a disqualifying offense and challenge the accuracy and completeness of the report through an established Department of State Police procedure of Access and Review.

(3) That the applicant, if hired conditionally, may be terminated if the criminal records report indicates that the applicant has a record of a conviction of any of the criminal offenses enumerated in Section 25, unless the applicant obtains a waiver pursuant to Section 40 of this Act.

(4) That the applicant, if not hired conditionally, shall not be hired if the criminal records report indicates that the applicant has a record of a conviction of any of the criminal offenses enumerated in Section 25, unless the applicant obtains a waiver pursuant to Section 40 of this Act.

(5) That the employee shall be terminated if the criminal records report indicates that the employee has a record of a conviction of any of the criminal offenses enumerated in Section 25.

(6) If, after the employee has originally been determined not to have disqualifying offenses, the employer is notified that the employee has a new conviction(s) of any of the criminal offenses enumerated in Section 25, then the employee shall be terminated.

(l) A health care employer or long-term care facility may conditionally employ an applicant for up to 3 months pending the results of a fingerprint-based criminal history record check requested by the Department of Public Health.

(m) The Department of Public Health or an entity responsible for inspecting, licensing, certifying, or registering the health care employer or long-term care facility shall be immune from liability for notices given based on the results of a fingerprint-based criminal history record check.

(Source: P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/35)

Sec. 35. (Repealed).

(Source: P.A. 91-598, eff. 1-1-00. Repealed by P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/40)

Sec. 40. Waiver.

(a) Any student, applicant, or employee listed on the Health Care Worker Registry may request a waiver of the prohibition against employment by:

(1) completing a waiver application on a form prescribed by the Department of Public Health;

(2) providing a written explanation of each conviction to include (i) what happened, (ii) how many years have passed since the offense, (iii) the individuals involved, (iv) the age of the applicant at the time of the offense, and (v) any other circumstances surrounding the offense; and

(3) providing official documentation showing that all fines have been paid, if applicable and except for in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, and the date probation or parole was satisfactorily completed, if applicable.

(b) The applicant may, but is not required to, submit employment and character references and any other evidence demonstrating the ability of the applicant or employee to

perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, patients, or clients.

(c) The Department of Public Health must inform health care employers if a waiver is being sought by entering a record on the Health Care Worker Registry that a waiver is pending and must act upon the waiver request within 30 days of receipt of all necessary information, as defined by rule. Except in cases where a rehabilitation waiver is granted, a letter shall be sent to the applicant notifying the applicant that he or she has received an automatic waiver.

(d) An individual shall not be employed from the time that the employer receives a notification from the Department of Public Health based upon the results of a fingerprint-based criminal history records check containing disqualifying conditions until the time that the individual receives a waiver.

(e) The entity responsible for inspecting, licensing, certifying, or registering the health care employer and the Department of Public Health shall be immune from liability for any waivers granted under this Section.

(f) A health care employer is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver under this Section.

(Source: P.A. 95-120, eff. 8-13-07; 95-545, eff. 8-28-07; 95-876, eff. 8-21-08; 96-565, eff. 8-18-09.)

(225 ILCS 46/45)

Sec. 45. Application fees. Except as otherwise provided in this Act, the student, applicant, or employee, other than a nurse aide, may be required to pay all related application and fingerprinting fees including, but not limited to, the amounts established by the Department of State Police to process fingerprint-based criminal history records checks. If a health care employer certified to participate in the Medicaid program pays the fees, the fees shall be a direct pass-through on the cost report submitted by the employer to the Medicaid agency. (Source: P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/50)

Sec. 50. Health care employer files. The health care employer shall retain on file for a period of 5 years records of criminal records requests for all employees. The health care employer shall retain a copy of the disclosure and authorization forms, a copy of the livescan request form, all notifications resulting from the fingerprint-based criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the agency responsible for inspecting, licensing, or certifying the health care employer. A fine of up to \$500 may be imposed by the appropriate agency for failure to maintain these records. The Department of

Public Health must keep an electronic record of criminal history background checks for an individual for as long as the individual remains active on the Health Care Worker Registry. (Source: P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/55)

Sec. 55. Immunity from liability. A health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been convicted of committing or attempting to commit one or more of the offenses enumerated in subsection (a) of Section 25 of this Act. However, if an employee is suspended from employment based on the results of a criminal background check conducted under this Act and the results prompting the suspension are subsequently found to be inaccurate, the employee is entitled to recover backpay from his or her health care employer for the suspension period provided that the employer is the cause of the inaccuracy. The Department of Public Health is not liable for any hiring decisions, suspensions, or terminations.

No health care employer shall be chargeable for any benefit charges that result from the payment of unemployment benefits to any claimant when the claimant's separation from that employer occurred because the claimant's criminal background included an offense enumerated in subsection (a) of Section 25, or the claimant's separation from that health care employer occurred as a result of the claimant violating a policy that the employer was required to maintain pursuant to the Drug Free Workplace Act.

(Source: P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/60)

Sec. 60. Offense.

(a) Any person whose profession is job counseling who knowingly counsels any person who has been convicted of committing or attempting to commit any of the offenses enumerated in subsection (a) of Section 25 to apply for a position with duties involving direct contact with a client, patient, or resident of a health care employer or a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents of a long-term care facility shall be guilty of a Class A misdemeanor unless a waiver is granted pursuant to Section 40 of this Act.

(b) Subsection (a) does not apply to an individual performing official duties in connection with the administration of the State employment service described in Section 1705 of the Unemployment Insurance Act.

(Source: P.A. 95-120, eff. 8-13-07.)

(225 ILCS 46/65)

Sec. 65. Health Care Worker Task Force. A Health Care

Worker Task Force shall be appointed to study and make recommendations on statutory changes to this Act.

(a) The Task Force shall monitor the status of the implementation of this Act and monitor complaint investigations relating to this Act by the Department on Aging, Department of Public Health, Department of Professional Regulation, and the Department of Human Services to determine the criminal background, if any, of health care workers who have had findings of abuse, theft, or exploitation.

(b) The Task Force shall make recommendations concerning modifications to the list of offenses enumerated in Section 25, including time limits on all or some of the disqualifying offenses, and any other necessary or desirable changes to the Act.

(c) In the event that proposed rules or changes are properly submitted to the Task Force and the Task Force fails to advise the Department within 90 days after receipt of the proposed rules or changes, final action shall be deemed to have been taken by the Task Force concerning the proposed rules or changes.

(d) The Task Force shall be composed of the following members, who shall serve without pay:

(1) a chairman knowledgeable about health care issues, who shall be appointed by the Governor;

(2) the Director of Public Health or his or her designee;

(3) the Director of State Police or his or her designee;

(3.5) the Director of Healthcare and Family Services or his or her designee;

(3.6) the Secretary of Human Services or his or her designee;

(3.7) the Director of Aging or his or her designee;

(4) 2 representatives of health care providers, who shall be appointed by the Governor;

(5) 2 representatives of health care employees, who shall be appointed by the Governor;

(5.5) a representative of a Community Care homemaker program, who shall be appointed by the Governor;

(6) a representative of the general public who has an interest in health care, who shall be appointed by the Governor; and

(7) 4 members of the General Assembly, one appointed by the Speaker of the House, one appointed by the House Minority Leader, one appointed by the President of the Senate, and one appointed by the Senate Minority Leader.

(e) The Task Force shall meet at least quarterly, and more frequently at the discretion of the chairperson. Task Force members shall serve until a replacement is sworn and qualified. Nine members appointed to the Task Force constitutes a quorum.

(Source: P.A. 95-331, eff. 8-21-07; 95-987, eff. 10-3-08.)

Sec. 70. Centers for Medicare and Medicaid Services (CMMS) grant.

(a) In this Section:

"Centers for Medicare and Medicaid Services (CMMS) grant" means the grant awarded to and distributed by the Department of Public Health to enhance the conduct of criminal history records checks of certain health care employees. The CMMS grant is authorized by Section 307 of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which establishes the framework for a program to evaluate national and state background checks on prospective employees with direct access to patients of long-term care facilities or providers.

"Selected health care employer" means any of the following selected to participate in the CMMS grant:

- (1) a community living facility as defined in the Community Living Facility Act;
- (2) a long-term care facility as defined in the Nursing Home Care Act;
- (3) a home health agency as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act;
- (4) a full hospice as defined in the Hospice Licensing Act;
- (5) an establishment licensed under the Assisted Living and Shared Housing Act;
- (6) a supportive living facility as defined in the Illinois Public Aid Code;
- (7) a day training program certified by the Department of Human Services;
- (8) a community integrated living arrangement operated by a community mental health and developmental service agency as defined in the Community Integrated Living Arrangements Licensing and Certification Act; or
- (9) a long-term care hospital or hospital with swing beds.

(b) Selected health care employers shall be phased in to participate in the CMMS grant between January 1, 2006 and January 1, 2007, as prescribed by the Department of Public Health by rule.

(c) With regards to individuals hired on or after January 1, 2006 who have direct access to residents, patients, or clients of the selected health care employer, selected health care employers must comply with Section 25 of this Act.

"Individuals who have direct access" includes, but is not limited to, (i) direct care workers as described in subsection (a) of Section 25; (ii) individuals licensed by the Department of Financial and Professional Regulation, such as nurses, social workers, physical therapists, occupational therapists, and pharmacists; (iii) individuals who provide services on site, through contract; and (iv) non-direct care workers, such as those who work in environmental services, food service, and administration.

"Individuals who have direct access" does not include physicians or volunteers.

The Department of Public Health may further define "individuals who have direct access" by rule.

(d) Each applicant seeking employment in a position described in subsection (c) of this Section with a selected health care employer shall, as a condition of employment, have his or her fingerprints submitted to the Department of State Police in an electronic format that complies with the form and manner for requesting and furnishing criminal history record information by the Department of State Police and the Federal Bureau of Investigation criminal history record databases now and hereafter filed. The Department of State Police shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The Department of State Police shall charge a fee for conducting the criminal history records check, which shall not exceed the actual cost of the records check and shall be deposited into the State Police Services Fund. The Department of State Police shall furnish, pursuant to positive identification, records of Illinois convictions to the Department of Public Health.

(e) A selected health care employer who makes a conditional offer of employment to an applicant shall:

(1) ensure that the applicant has complied with the fingerprinting requirements of this Section;

(2) complete documentation relating to any criminal history record, as revealed by the applicant, as prescribed by rule by the Department of Public Health;

(3) complete documentation of the applicant's personal identifiers as prescribed by rule by the Department of Public Health; and

(4) provide supervision, as prescribed by rule by the licensing agency, if the applicant is hired and allowed to work prior to the results of the criminal history records check being obtained.

(f) A selected health care employer having actual knowledge from a source that an individual with direct access to a resident, patient, or client has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of this Act shall contact the licensing agency or follow other instructions as prescribed by administrative rule.

(g) A fingerprint-based criminal history records check submitted in accordance with subsection (d) of this Section must be submitted as a fee applicant inquiry in the form and manner prescribed by the Department of State Police.

(h) This Section shall be inapplicable upon the conclusion of the CMMS grant.

(Source: P.A. 94-665, eff. 1-1-06; 94-931, eff. 6-26-06; 95-331, eff. 8-21-07.)

(225 ILCS 46/90)

Sec. 90. (Amendatory provisions; text omitted).

(Source: P.A. 89-197, eff. 7-21-95; text omitted.)

(225 ILCS 46/95)

Sec. 95. (Amendatory provisions; text omitted).

(Source: P.A. 89-197, eff. 7-21-95; text omitted.)

(225 ILCS 46/99)

Sec. 99. Effective date. This Act takes effect upon  
becoming law.

(Source: P.A. 89-197, eff. 7-21-95.)

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## **Access to Records of a Resident Incapable of Giving Consent**

The undersigned, as the Illinois Long-Term Care Ombudsman serving (resident's name) \_\_\_\_\_,  
who resides in (name of long-term care facility) \_\_\_\_\_,  
\_\_\_\_\_, states as follows:

To the best of my knowledge and belief, the above named resident is incapable of making and communicating an informed consent, or denial of consent, for access to his or her records. I have determined, or have reasonable cause to believe, that: (1) the resident either does not have a legal representative who is empowered to make such a decision regarding the resident's records; or (2) the resident's legal representative is implicated in the complaint; (3) the legal representative is not acting in the best interests of the resident; or (4) the legal representative could not be located within 24 hours, despite a reasonable effort. I further believe that a review of the resident's records is necessary to investigate or resolve a complaint, or protect the rights of the above named resident.

ACCORDINGLY, as a representative of the Illinois Long-Term Care Ombudsman Program, acting in an official capacity, I request immediate access to the records of the resident named above.

\_\_\_\_\_  
Ombudsman Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Illinois Department on Aging**  
**Long-Term Care Ombudsman Program**  
IL-402-0999 (Rev. 1/04)