

Division of Aging and Adult Services

Long-Term Care Ombudsman Program Policies and Procedures Manual

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I. Statement of Philosophy and Legal Base

A. Philosophy

The Amendments to the Older Americans Act of 1965 require each state to establish and operate a Long-Term Care Ombudsman Program to advocate on behalf of residents in long-term care facilities and resolve complaints made by or on behalf of these residents. The person residing in a long-term care facility is the Long-Term Care Ombudsman's client, regardless of the source of the complaint or request for assistance.

The State and Regional Ombudsmen function in an advocacy role utilizing techniques of mediation, conciliation, and persuasion with the facility administration in attempting to resolve complaints locally. They also work with the facility administration and community advisory committees to enhance public awareness of long-term care facilities in each county and the services they provide, as well as the long-term care issues impacting quality of care. In addition, it is important for the State and Regional Ombudsmen and the facility administration to work together on the development of strategies to increase community involvement in long-term care facilities and to address long-term care issues impacting the quality of life in these facilities.

B. Legal Base

N.C.G.S. §143B-181.15

"The General Assembly finds that a significant number of older citizens in this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. §3058g and N.C.G.S. §143B Part 14D, ensure that the quality of care and life for these residents is maintained, that necessary reports are made and that, when necessary, corrective action is taken at the Department level."

N.C.G.S. §143B-181.16 Long-Term Care Ombudsman Program/Office; definition.

C. Applicability

These policies and procedures guide the actions of the Office of the State Long-Term Care Ombudsman and all designated Regional Ombudsmen in the

operation of the N.C. Long-Term Care Ombudsman Program pursuant to mandates of the Older Americans Act of 1965, as amended, 42 U.S.C. §3058g. and N.C.G.S. §§143B-181.15 -.25.

D. Definitions for Long-Term Care Ombudsman Program

1. Adult Protective Services

The adult protective services law was enacted to provide protection for adults with disabilities in the State of North Carolina. County departments of social services are authorized to provide Adult Protective Services which includes receiving, screening and evaluating reports that adults with disabilities are in need of protection as well as mobilizing essential services on their behalf.

2. Area Agency on Aging

An agency located in one of the lead regional councils of government in North Carolina that provides administrative oversight for aging programs and services, including the Office of Regional Long-Term Care Ombudsman. Administrative oversight includes personnel management issues such as attendance and leave schedules, salary schedules, local budget oversight, local evaluation of employee performance and ensuring availability of adequate space and supplies. (Appendix A)

3. Closed Case

Ombudsman activity on a case has concluded and final dispositions have been assigned to the complaint(s) contained in the Case Record in accordance with the LTC Ombudsman Program Policies and Procedures.

4. Case Record

An established document used to record all ombudsman documentation, collected through a complaint investigation. All Case Records, both in hard copy and electronically, are confidential documents protected from disclosure by state and federal laws.

5. Certification

The meeting of minimum training qualifications and criteria established by the State Long-Term Care Ombudsman.

6. Community Advisory Committee

A committee created by NC General Statute to maintain the intent of the State Patients' Bill of Rights and federal Residents' Bill of Rights, to promote community involvement with long-term care facilities, and to ensure quality of care for residents in long-term care facilities.

7. Community Advisory Committee Member

A N.C. citizen appointed by a local board of county commissioners and trained by a Regional Ombudsman to serve as a volunteer on the Adult Care Home, Joint or Nursing Home Community Advisory Committee.

8. Community Education Session

Public speaking engagements, workshop presentations or sponsorship, including development and distribution of educational materials about long-term care issues, elder abuse and other educational activities made available to community groups and agency professionals.

9. Community Involvement

Participation in an activity by an individual or group of people who live in the same geographical area, region, or county. Some examples include volunteerism, serving on a Community Advisory Committee, planning or participating in a workshop on aging issues, etc.

10. Complainant

An individual who files one or more complaints directly or on behalf of a resident or residents in long-term care facilities.

11. Complaint

Any concern or problem filed with, or initiated by, the State or Regional Ombudsmen for investigation and action a) by or on behalf of one or more residents and b) relating to the health, safety, welfare, and/or rights of a resident.

12. Confidentiality

The protection from disclosure of any privately shared information and/or resident or complainant(s) identity communicated to the State level or Regional Ombudsmen in any manner, including, but not limited to, conversations, letters, personal documents and electronic communication.

13. Designation

The State Long-Term Care Ombudsman officially authorizes an employee or volunteer to serve as a representative of the Office who will fulfill the duties set forth in 45 CFR Part 1324. Each designated representative will be issued a Certificate of Designation.

14. De-designation

The withdrawal or cancelation of designation by the State Long-Term Care Ombudsman for cause as outlined in Program Policies. Designation automatically ceases when an individual is no longer employed as a State or Regional Ombudsman and the individual may no longer carry out the duties of the Office.

15. Documentation

All written authentication of actions taken, factual information gathered, any interviews conducted and completed using informed consent and any knowledge obtained through direct observation during a complaint investigation and concluding with final case follow up and Case Record closure. With regard to all other Ombudsman Program activities, the term

means a written record of data collected, actions taken, factual information gathered, synopsis of interviews conducted and direct observations made.

16. Immediate family

Pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

17. Long-term Care Facility

Any skilled nursing facility and intermediate care facility as outlined in N.C.G.S. §131A-3(4) or any adult care home as defined in N.C.G.S. §131D-20(2).

18. Long-term Care Provider

An entity that provides long-term care services, treatment and care in any skilled nursing facility and intermediate care facility as outlined in N.C.G.S. §131A-3(4) or any adult care home as defined in N.C.G.S. §131D-20(2).

19 Office of the State Long-Term Care Ombudsman

As used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.

20. "Programmatic supervision"

The monitoring of the performance of the duties of the Regional Ombudsman and ensuring that the Area Agency on Aging has personnel policies and procedures consistent with the laws and policies governing the Ombudsman Program as performed by the State Ombudsman.

21. Regional Ombudsman

A person or persons employed by an Area Agency on Aging who is certified and designated by the State Long-Term Care Ombudsman to carry out the functions of the Regional Ombudsman Office established by N.C.G.S. §§143B-181.15-.25, 42 U.S.C. §3001, et Seq. and regulations promulgated thereunder.

22. Representative of the Office of the State Long-Term Care Ombudsman

As used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.

23. Resident

"Resident" means any person who is receiving treatment or care in any long-term care facility..

24. Resident Representative

Any of the following:

- (a) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making, access medical, social or other personal information of the resident, manage financial matters or receive notification;
- (b) A person authorized by State or Federal law (including but not limited to agent under power of attorney, representative payee, and other fiduciaries) to act on behalf of the resident to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters or receive notification;
- (c) Resident representative as used in section 712 of the Act; or
- (d) The court-appointed guardian or conservator of a resident.

Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

25. Review Committee

A group consisting of three people brought together to review the designation of a representative of the State Long-Term Care Ombudsman.

26. Section Chief

A person employed by the Division of Aging and Adult Services to supervise the Elder Rights and Special Initiatives Section. The Section Chief is the immediate supervisor of the Office of the State Long-Term Care Ombudsman.

27. State Ombudsman

The State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. §3001 et seq., and regulations promulgated thereunder, and is the person who carries out the duties and functions established by N.C.G.S. §§143B-181.15-.25 and 42 U.S.C. §3001 et seq. and regulations promulgated thereunder.”

28. Systems Advocacy

To recommend changes to a system (e.g. a long-term care facility, a government agency, an organization, a corporation, policies, regulations, and law) to benefit or protect the best interests of long-term care residents.

29. Technical Assistance

Specialized guidance and assistance provided to another entity related to Long-Term Care Ombudsman Program mandates which may include provision of practical knowledge and the interpretation of regulatory information or program administration issues either in person, by telephone, email or facsimile. Examples include programmatic support of volunteers and Regional Ombudsmen as well as information and assistance to consumers.

30. “Willful interference

Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or to impede the Ombudsman or a representative of the Office from performing any of the functions, responsibilities, or duties set forth in 42 U.S.C. §3001 et seq., and regulations promulgated thereunder.”

II. Establishment of the Office of State Long-Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g (a)(1)

“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 chapter—(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.”

45 CFR §1324.11

“The Office of the State Long-Term Care Ombudsman shall be an entity which shall be headed by the State Long-Term care Ombudsman, who shall carry out all of the functions and responsibilities set forth in §1324.13 and shall carry out, directly and/or through local Ombudsman entities, the duties set forth in §1324.19

N.C.G.S. §143B-181.17

“The Secretary of Department of Health and Human Services shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended, and as set forth in 42. U.S.C. §3001 et.seq. and regulations promulgated thereunder. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care. The Attorney General shall provide legal staff and advice to this Office.”

III. Functions and Responsibilities of the State Long-Term Care Ombudsman

Serve as a Liaison and Promote Community Involvement

A. Legal Base

N.C.G.S. §143B-181.18(1)

“Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents’ families, facility personnel, and facility administration.”

B. State Policies and Procedures

1. In General

The State Ombudsman will establish and revise, as deemed necessary, ongoing training for Regional Ombudsmen on techniques for promoting community involvement with long-term care providers and residents of long-term care facilities. Training will also be provided as needed in areas which will enhance the skills of Regional Ombudsmen in serving as a liaison between residents, residents’ families, facility personnel and facility administration.

2. The State Ombudsman will:

Train Regional Ombudsmen on how to promote community involvement by, but not limited to, public speaking on long-term care issues, recruitment of volunteers to visit residents, and assisting with special activities and functions in facilities upon request by facility administration.

- a. Provide informational materials to Regional Ombudsmen for distribution to long-term care providers, the general public, residents, and families.
- b. Work with long-term care providers on the development of strategies to promote community involvement and to facilitate resolution of long-term care issues.

Supervise the Long-Term Care Ombudsman Program

A. Legal Base

42 U.S.C. §3058g (a)(3) Functions—

“The Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office—(A) identify, investigate, and resolve complaints that are made by, or on behalf of, residents . . . (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 [health, safety, welfare, and rights]; (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 . . . (G) (i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies. . . (G) (ii) recommend any changes in such laws, regulations, policies and actions; (H) (i) provide for training representatives of the Office; (H) (ii) promote the development of citizen organizations to participate in the program; (H) (iii) provide technical support for the development of resident and family councils. . . .”

42 U.S.C. §3058g (a)(5)(D)

“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.”

N.C.G.S. §143B-181.18 (2)

“Supervise the Long-Term Care Ombudsman Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to N.C.G.S. §143B-10.”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for administration and supervision of North Carolina’s Long-Term Care Ombudsman Program as well as for the development of the Ombudsman Program Policies and Procedures.

2. The State Ombudsman will:

- a. Provide leadership and management of the statewide Long-Term Care Ombudsman Program by:
 - (1) Providing planning and direction for the Long-Term Care Ombudsman Program.
 - (2) Monitoring and evaluating the statewide Long-Term Care Ombudsman Program performance. The Division of Aging and Adult Services’ Self Assessment Tool is utilized to ensure Program compliance with the Amendments to the Older Americans Act, State Long-Term Care Ombudsman Program Policies and Procedures, and North Carolina General Statutes impacting the Long-Term Care Ombudsman Program.

- (3) Establishing and enforcing Program policies, procedures and standards that guide Regional Ombudsmen in the performance of their duties as part of administration of the Long-Term Care Ombudsman Program. Policy development will include consultation with Regional Ombudsmen, Area Agency on Aging Directors, citizen advocacy groups and long-term care providers.
 - (4) Promoting the development of citizen advocacy organizations to participate in the Long-Term Care Ombudsman Program.
- b. Maintain the Long-Term Care Ombudsman Program records and the Ombudsman Program documentation and information system by:
 - (1) Analyzing and evaluating data collected related to complaints received and processed as well as identified conditions in long term care facilities.
 - (2) Ensuring collected data is submitted to the appropriate entities as required by the Older Americans Act.
 - (3) Upholding and enforcing the confidentiality of client information in both electronic and hard copy Program files, documents and Case Records.
 - (4) Preparing and distributing the Long-Term Care Ombudsman Program Annual Report as required by the Older Americans Act as amended and State statutes.

Designate Regional Ombudsmen

A. Legal Base

42 U.S.C. §3058g(a)(5)

“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. . . .”

N.C.G.S. §143B-181.18(3)(3a)

(3) “Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards”

(3a) “Designate certified Regional Ombudsmen as representatives of the State Ombudsman Office as well as refuse, suspend or remove designation as a

representative of the Office in accordance with the Office of the State Ombudsman Program Policies and Procedures.”

B. State Policies and Procedures

1. In General

The State Long-Term Care Ombudsman is responsible for establishing and revising, as deemed necessary, Program certification, designation and de-designation requirements for all regional long-term care ombudsmen.

2. The State Ombudsman will:

- a. Initiate certification training for new Regional Ombudsmen within forty-five (45) days of written notification of their employment by the Area Agency on Aging Director. The new Regional Ombudsmen will be notified about certification training requirements, which include, but are not limited to:
 - (1) Internships in long-term care facilities.
An eight-hour (8) internship in a skilled nursing facility.
An eight-hour (8) internship in an adult care home.
A six-hour (6) internship in a family care home.
A written summary of each internship.
 - (2) Five (5) days of certification training conducted by the Office of the State Long-Term Care Ombudsman.
 - (3) Completion of a list of required readings.
- b. Review all documentation submitted along with the written confirmation from the Area Agency on Aging Director certifying completion of all requirements as part of the certification process and accept or reject the materials as presented.
- c. Communicate with a new Regional Ombudsman about any areas that require further work.
- d. Issue the certificate designating the Regional Ombudsman as a representative of the State Long-Term Care Ombudsman and authorizing the individual to perform the prescribed duties of a representative.
- e. Prohibit any representative of the Office from conducting any complaint investigations until the representative has completed all

certification requirements and has been designated by the State Long Term Care Ombudsman as qualified to carry out mandated responsibilities.

- f. Notify Regional Ombudsmen and Area Agency on Aging Directors about required attendance for State Long-Term Care Ombudsman quarterly trainings (*not to equal less than 20 hours annually*) as well as any additional training deemed necessary by the State Long-Term Care Ombudsman.
- g. De-designate a representative of the Office to perform as a Regional Long-Term Care Ombudsman for any of the following reasons:
 - (1) Failure to meet or maintain the program criteria for certification.
 - (2) Failure to report an unresolved conflict of interest that may interfere with performance of duties as outlined in state and federal law or Long-Term Care Ombudsman Program Policies and Procedures.
 - (3) Violation of the Long-Term Care Ombudsman Program confidentiality requirements by any person acting as an agent of the Office.
 - (4) Failure to perform mandated responsibilities.
 - (5) Falsification of records, destruction of Program records or gross failure to maintain required documentation and records both in hard copy and in the Ombudsman Program documentation and information system.
 - (6) Failure to adhere to applicable federal and state laws, regulations, and policies.
 - (7) Separation from the N. C. Long-Term Care Ombudsman Program due to termination from employment by the Area Agency on Aging, an extended unexcused absence in excess of six (6) months that prevents fulfillment of job duties or a change in employment duties which is incompatible with Regional Long-Term Care Ombudsman duties.
- h. The State Long-Term Care Ombudsman will provide written notice of the intent to de-designate to the Regional Ombudsman, the Area Agency on Aging Director, the Council of Governments or Planning Commission Director, the Elder Rights and Special Initiatives Section Chief and the Division of Aging and Adult Services Director. The written notice will include the specific reasons for the

de-designation, any documentation and the effective date of de-designation along with information about a review process, if applicable.

Resolve complaints

A. Legal Base

42 U.S.C. §3058g(a)(3)(A)

“(3) Functions. The Ombudsman shall serve on a full-time 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; (III) or health and social service agencies.”

G.S. §143B-181.18(4)

“Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents.”

B. State Policies and Procedures

1. In General

The State Ombudsman establishes and provides training for Regional Ombudsmen in the complaint management process as part of the initial certification training. If deemed necessary, additional complaint management training will be provided by the Office of the State Long-Term Care Ombudsman as part of ongoing technical assistance to Regional Ombudsmen.

2. The State Ombudsman will:

- a. Refer complaints received at the state level to the appropriate Regional Ombudsman if the complaints are deemed appropriate for

informal resolution within the jurisdiction of the Long-Term Care Ombudsman Program.

- b. Forward complaints received at the state level that are determined to be inappropriate for informal resolution by the Long-Term Care Ombudsman Program to the appropriate licensure agency pursuant to N.C.G.S. §§131E-100 through 110-114.4 and N.C.G.S. §131D-2.1-2.7
- c. Notify the appropriate Regional Ombudsman when complaints received by the State Office are referred to licensure agencies or to a county department of social services pursuant to N.C.G.S. §108A, Article 6.
- d. Provide assistance directly to complainants during periods of time when there is:
 - (1) A position vacant at the regional level and no other Regional Ombudsman is available in the Area Agency on Aging to temporarily assume additional responsibilities.
 - (2) An established conflict of interest and no other Regional Ombudsman is available to assist or,
 - (3) A Regional Ombudsman on extended leave and there is no other Regional Ombudsman available in the Area Agency on Aging to temporarily assume additional responsibilities.
- e. Establish, reinforce and revise, as deemed necessary, procedures for investigating complaints received about any representatives of the Office of the State Long-Term Care Ombudsman that are related to the performance of their duties under federal and state law or Program Policies and Procedures.

(See Section XII. Complaint Management)

Provide Training and Technical Assistance to Regional Ombudsmen

A. Legal Base

42 U.S.C. §3058g(3)(H)(i)

“[The Ombudsman shall] provide for training representatives of the Office. . . .”

N.C.G.S. §143B-181.18(5)

“Provide training and technical assistance to regional ombudsmen.”

B. State Policies and Procedures

1. In General

In addition to providing initial certification training, the State Ombudsman is responsible for providing, as deemed necessary, technical assistance to Regional Ombudsmen. Technical assistance will also be provided upon request from a Regional Ombudsman and/or an Area Agency on Aging Director.

2. The State Ombudsman will:

- a. Schedule and conduct training for Regional Ombudsmen as deemed necessary. Training topics may include:
 - (1) Strengthening individual advocacy skills.
 - (2) Increasing knowledge of current and new long-term care issues, laws and policies.
 - (3) Establishing protocols for complaint management including investigation and case documentation.
 - (4) Developing systems advocacy strategies.
 - (5) Complying with Ombudsman Program Policies and Procedures.
 - (6) Reviewing allowable Elder Abuse Prevention Activities.

Establish Procedures for Access and Protection of Confidentiality of Records

A. Legal Base

42 U.S.C. §3058g(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 (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 interest 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.”

42 U.S.C. §3058g(d) Disclosure.

“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).”

N.C.G.S. §143B-181.18(6)

“Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents’ records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended. . . .”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for establishing, reinforcing, and revising, as deemed necessary, policies and procedures concerning access to residents and protection of confidential Long-Term Care Ombudsman Program records. Such records include all hard copy and electronic materials collected as part of a complaint investigation.

All Long-Term Care Ombudsman Program client records are the property of the Office of the State Long-Term Care Ombudsman. The State Long-Term Care Ombudsman or his/her designee shall have access to all Long-Term Care Ombudsman Program records at any time.

2. The State Ombudsman will:

- a. Ensure the right of the State level or Regional Ombudsmen to enter long-term care facilities at any time during a facility’s regular business hours or regular visiting hours, or at any other time when access may be required by the circumstances to be investigated and the right to have direct access to long-term care residents for the purpose of carrying out the duties and responsibilities of the Office of the State Long-Term Care Ombudsman.
- b. Ensure direct access to residents’ medical, financial, and social records when:

- (1) The Program representative has the written informed consent of the resident or resident representative of the resident; or
 - (2) The resident is unable to consent to the records review and has no resident representative; or
- c. Access to review the medical, social and other records relating to a resident, if—
- a) The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;
 - b) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; and
 - c) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;
- d. Determine whether to disclose all or part of the records as follows:
- (1) Review the request with the Regional Ombudsman to determine whether the release of records would be consistent with the interests of the affected resident.
 - (2) Determine whether any part of the records should be redacted (removing identifying information).
 - (3) Withhold identifying information of any resident or complainant who has not provided informed consent for the release of their identifying information.
 - (4) Seek consultation as needed from the attorney in the N.C. Attorney General's Office assigned to the Long-Term Care Ombudsman Program before authorizing the release of any resident record whenever it is determined that legal clarification is required before release.
 - (5) Disclosure. Policies and procedures regarding disclosure of

files,

records and other information maintained by the Ombudsman program must include, but not be limited to:

- (i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by § 1324.13(e);
- (ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by § 1324.19(b)(5) through (8), unless:
 - (A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;
 - (B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or
 - (C) The disclosure is required by court order;
- (iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:
 - (A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;
 - (B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or
 - (C) The disclosure is required by court order;
- (iv) Exclusion of the Ombudsman and representatives of the Office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1324.19(b)(5) through (8); and
- (v) Adherence to the provisions of paragraph (e)(3) of this

section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(c) of the Act.

- e. Ensure records maintained by any certified representative of the State Long-Term Care Ombudsman are not released, disclosed, duplicated or removed without the written permission of the State Long-Term Care Ombudsman, and in some cases only under direct court order.

Analyze Data

A. Legal Base

42 U.S.C. §3058g(c) Reporting System

“The State agency shall establish a statewide uniform reporting system to 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. . . .”

N.C.G.S. §143B-181.18(7)

“Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions. . . .”

B. State Policies and Procedures

1. In General

The State Ombudsman will analyze data contained in the Ombudsman Program documentation and information system, Regional Ombudsmen Annual Reports, survey reports received from the Division of Health Service Regulation, and from information provided by Regional Ombudsmen through discussions, both verbally and electronically, about recurring problems or issues in his/her region. The State Ombudsman is responsible for establishing and revising, as deemed necessary, procedures concerning receiving such data from the Regional Ombudsmen.

2. The State Ombudsman will:

- a. Review data by:
 - (1) Region

- (2) Type(s) of facility (nursing home, adult care home)
 - (3) Number of complaints
 - (4) Complaint category(s)
 - (5) Agencies involved in complaint resolution process
 - (6) Quarterly/Annual total numbers
 - (7) Types of complaints
 - (8) Regional Ombudsman
 - (9) CAC volunteer information.
- b. Identify trends and significant problems by region as well as statewide.
 - c. Coordinate systems advocacy approaches to address identified trends by assisting Regional Ombudsmen in the development of advocacy strategies and recommendations to be implemented in conjunction with providers, citizen advocacy groups and other interested parties. This information will be compiled into an annual report for dissemination to relevant agencies, legislators, as well as the general public.

Prepare an Annual Report

A. Legal Base

42 U.S.C. §3058g(h)(1-3) 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. . . (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. . . .”

N.C.G.S. §143B-181.18(8)

“Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues. . . .”

N.C.G.S. §143B-181.18(9)

“Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities.”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for preparation of a Long-Term Care Ombudsman Program Annual Report at the end of the federal fiscal year. The State Ombudsman is responsible for disseminating the Long-Term Care Ombudsman Program Annual Report to any agency upon request.

2. The State Ombudsman will:

- a. Prepare an Annual Report at the end of the federal fiscal year containing:
 - (1) Data and findings regarding the types of problems experienced and complaints reported by or on behalf of residents.
 - (2) Recommendations for resolution of long-term care issues identified.
 - (3) An overview of activities and services carried out through the Office.
- b. Make the report available to the:
 - (1) Secretary of the Department of Health and Human Services
 - (2) Governor
 - (3) Division of Health Service Regulation
 - (4) Other State and local agencies
 - (5) Area Agencies on Aging
 - (6) Legislators
 - (7) Associations representing the nursing and adult care home industry
 - (8) General public
 - (9) Advocacy groups
 - (10) U.S. Administration on Aging.
- c. The Annual Report will also be posted on the Division of Aging and Adult Services web site under the Ombudsman Program link.

Provide Information to the Public and Leadership for Ombudsman Program Systems Advocacy
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A. Legal Base

42 U.S.C. §§3058g(h)(2)(3)

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

“(2) 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 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) 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;

45 CFR Part §1324.13(a)(7)(iv)-(vi)

“(iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the office: and (v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns. (vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.”

N.C.G.S. §143B-181.18(10),(12)

“(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution.”

“(12) To the extent required to meet the requirement of the Older Americans Act and regulations promulgated thereunder regarding allotments for Vulnerable Elder Rights Protection Activities, the State Ombudsman and representatives of the Office are excluded from any State lobbying prohibitions under requirements to conduct systems advocacy on behalf of long-term care residents.”

B. State Policies and Procedures

1. In General

The State Ombudsman is responsible for representing the interests of residents with legislators, governmental agencies, the media and policymakers in order to ensure that their health, safety, welfare, and rights are protected. The State Ombudsman will also provide information to legislators as well as public agencies on long-term care issues, and make recommendations for changes that will protect the welfare and rights of residents as well as improve their quality of care and quality of life. The State Ombudsman is responsible for providing leadership, coordination

and authorization to statewide advocacy efforts carried out by representatives of the office.

2. The State Ombudsman will:

- a. Advocate for policy, regulatory, and/or legislative changes in long term care as needed for resolution of issues identified by the Ombudsman Program.
- b. Collaborate with statewide and national advocacy and citizen advocacy organizations involved in long-term care issues.
- c. Maintain awareness of current issues and trends in long-term care.
- d. Assure that the interests of long-term care residents are represented to legislators, governmental agencies and policymakers.
- e. Facilitate public comment on the laws, regulations, policies, and actions.
- f.. Educate governmental agencies, policymakers and advocacy groups about the impact of laws, policies or practices on long term care facility residents.
- g. Be a spokesperson on the state level regarding laws, policies, rules and regulations directly affecting long-term care residents and provide Regional Ombudsmen, provider agencies, Area Agency on Aging Directors, and other advocacy groups with technical assistance regarding the role of the Long-Term Care Ombudsman Program on issues advocacy.
- h. Establish and provide leadership to a systems advocacy committee within the Office of the State Long-Term Care Ombudsman. The committee will consist of the State Ombudsman and selected Representatives of the Office. The purpose of the internal advocacy committee is to analyze and monitor the development and implementation of laws, regulations, and other governmental policies and actions that may impact the health, safety, rights and welfare of residents and services in long-term care facilities.
- i. The systems advocacy committee with the leadership of the State Ombudsman will comment and make recommendations for the Office as the State Office deems appropriate. The systems advocacy committee will identify areas of common advocacy needs at the state and local level. The Office will facilitate public comments involving

representatives of the office. Opinions will be debated and consensus reached prior to advocacy statements being developed and disseminated to the Representatives of the office.

Fiscal Management

A. Legal Base

42 U.S.C. §3058(g) (a)(5)(D)

“(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.”

N.C.G.S § 143B-181.18(13)

“(13) Determine the use of the fiscal resources as required by 42 U.S.C. §3001 et. seq, and regulations promulgated thereunder.”

45 CFR Part §1324.13(f)

“The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office[and] approve the allocations of Federal and State funds provided to local Ombudsman entities...”

State Policies and Procedures

1. In General

The State agency shall establish a statewide system (or procedures) to ensure that the State Long-Term Care Ombudsman is notified about all fiscal resources received from the Administration for Community Living (ACL) for operation of the Long-Term Care Ombudsman Program including Elder Abuse Prevention funding.

The State Long-Term Care Ombudsman will meet with the Division of Aging and Adult Services' fiscal Officer or designee on a quarterly basis to review fiscal operational matters and current fiscal status pertaining to the operation of the Regional LTC Ombudsman Programs located in Area Agencies on Aging.

The State Long-Term Care Ombudsman shall approve the allocations of Federal and State funds for Regional LTC Ombudsman Programs and also approve other allocations for the operation of the Office.

The State Long-Term Care Ombudsman shall have access to the fiscal records of those Regional LTC Ombudsman Programs for monitoring on a periodic basis and / or, as needed. Annually and as needed, the Area Agency on Aging Director will discuss program budget with the regional ombudsman. The State Ombudsman will address any fiscal concerns identified during the monitoring visit with the Area Agency on Aging Director and the designated regional ombudsman.

The State Long-Term Care Ombudsman shall notify the State agency budget Officer and Division Director of identified fiscal issues currently deemed non-compliant and recommend corrective action.

The State Long-Term Care Ombudsman may conduct a joint programmatic/fiscal review with the Division of Aging and Adult Services designated fiscal monitor as part of the annual regional program monitoring process. The State Ombudsman may request additional fiscal reviews at any time reports are received that either budget inadequacies or regional operational protocols are preventing the designated regional ombudsman representative from being able to carry out mandated duties.

2. The State Long-Term Care Ombudsman:
 - a. Shall review and affix signature indicating approval of the Annual Program Budget Certification document which is submitted each July to the Administration for Community Living.
 - b. Shall work with the State agency's fiscal office to develop the long-term care ombudsman program budget.

IV. Qualifications of the State Long-Term Care Ombudsman

Office of the State Long-Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(2)

"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."

N.C.G.S. §143B-181.17

"The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended, and as set forth in 42.U.S.C. § 3001 et seq and regulations promulgated thereunder. This Office shall be headed by a State

Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care.”

B. State Policies and Procedures

1. In General

The Office shall be headed by a full-time State Ombudsman who is qualified by training and with experience in geriatrics and long-term care. The office shall assure that all residents of long-term care facilities in North Carolina have access to direct assistance and services of the statewide Long-Term Care Ombudsman Program through the duties established by state and federal law. Qualifications include:

- a. Master’s Degree in a human services field; two years of experience, preferably in the field of aging, two of which must have been in administrative, consultative, or supervisory capacity;
- b. Bachelor’s Degree in human services field; three years of experience, preferably in the field of aging, two of which must have been in an administrative, consultative, or supervisory capacity;
- c. And/or equivalent combination of education and experience.

The Director of the Division of Aging and Adult Services and the Program’s direct supervisor are responsible for ensuring that any individual employed by the Division as the State Long-Term Care Ombudsman or other Division staff who become certified to carry out the responsibilities of an ombudsman are not subject to a conflict of interest.

The Elder Rights and Special Initiatives Section Chief will review and confirm successful completion of all required training.

2. Training

The Candidate for State Long-Term Care Ombudsman must:

- a. Have successfully completed training or be scheduled for training within six (6) months of assuming the position in the following topics:
 - (1) History of the Ombudsman Program
 - (2) Federal and state legislation establishing the Ombudsman Program
 - (3) Federal and state Residents’ Rights laws

- (4) Licensure/regulation of long-term care facilities
- (5) Roles/responsibilities of relevant agencies
- (6) Aging processes
- (7) Mental illness
- (8) Program management and supervision
- (9) Other topics deemed appropriate to promote sound program leadership and oversight.

b. Complete internships:

- (1) Individuals with no previous work experience in a nursing home, adult care home or family care home will complete an eight-hour (8) internship in each of the different types of facilities (nursing home, adult care home), and a six-hour (6) internship in a family care home.
- (2) Individuals who have previous work experience in a long-term care facility will complete internships only in those facilities where there has been no prior work experience or where the work experience occurred over three (3) years from the hiring date as the State Long-Term Care Ombudsman.
- (3) The internships will provide knowledge of the overall operation of long-term care facilities, relevant issues in long-term care facilities, levels of care provided in each setting and the internal grievance process for each setting.
- (4) Read and demonstrate understanding of the following:
 - (a) Nursing Home Community Advisory Committee Handbook
 - (b) Medicare and Medicaid Nursing Home Reform Laws
 - (c) Adult Care Home Community Advisory Committee Handbook

- (d) An Ombudsman's Guide to the Nursing Home Reform Amendments of OBRA 1987
 - (e) Long-Term Care Ombudsman Desk Reference
 - (f) Comprehensive Curriculum for State Long-Term Care Ombudsman Programs
 - (g) Ombudsman Program Policies and Procedures
 - (h) Federal and state legislation and regulations impacting the Long-Term Care Ombudsman Program and long-term care facilities
 - (i) Other reference materials deemed appropriate.
- (5) Be prohibited from the following activities:
- (a) Federal regulations prohibit Long-Term Care Ombudsman services from being provided by an agency or organization that is responsible for licensing or certifying long-term care services or which is an association or affiliate of such an association of long-term care facilities including any other type of residential facility for older individuals.
 - (b) In addition, no individual involved in the Long Term Care Ombudsman Program shall be subject to a conflict of interest. Conflict of interest includes having monetary interest in a long-term care facility or being related by blood or marriage to a board member, owner, administrator, staff member and/or resident of any long-term care facility for which the ombudsman serves.
 - (c) No representative of the Office of the State Long-Term Care Ombudsman shall be assigned to investigate a complaint concerning a long-term care provider with which the ombudsman was formerly employed in the last three (3) years.
 - (d) If the State Ombudsman or other ombudsmen within the Office of the State Long-Term Care Ombudsman receives a complaint from an individual whom s/he knows personally and s/he

believes this personal relationship would interfere with his/her ability to maintain objectivity in investigating the complaint or if a relative (member of immediate family or household) of any ombudsman within the Office of the State Long-Term Care Ombudsman is receiving care in a long-term care facility, any complaints received about that facility must be referred either to another certified ombudsman in the Office of the State Long-Term Care Ombudsman, the appropriate regulatory agency and/or a Regional Ombudsman in the region who can visit that facility.

Conflict of Interest (Individual and Organizational). Identification and Remedy.

A. Legal Base

42 U.S.C. §3058g(f)

— 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.

45 CFR §1324.21

“The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

- (a) “Identification of organizational conflict. In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency and the Ombudsman shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities.....”
- (b) Removing or remedying organizational conflicts. The State agency and the Ombudsman shall identify and take steps to remove or remedy the conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.
 - (1) The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.
 - (2) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall: (i) take reasonable steps to avoid internal conflicts of interest; (ii) establish a process for review and identification of internal conflicts; (iii) take steps to remove or remedy conflict; (iv) ensure that no individual or member of the immediate family of an individual involved in the designating, appointing [or] otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and (v) assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.
- (c) Identifying individual conflicts of interest. (1) In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency

and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

- (d) Removing or remedying individual conflicts. (1) The State agency or Ombudsman shall develop and implement policies and procedures pursuant to § 1324.11(4) to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in § 1324.21(c) This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

B. State Policies and Procedures

1. In General

Conflict of Interest at the organizational, individual, state or regional level occurs when other interests interfere with or may negatively impact the effectiveness and credibility of the Office.

2. Organizational Conflicts of Interest

Organizational conflicts of interest include, but are not limited to, placement of the office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

1. Is responsible for licensing, surveying, or certifying long-term care facilities;
2. Is an association or affiliate of such an association of any long-term care facilities;
3. Has ownership or investment interest in a long-term care facilities, or receives grants or donations from a long-term care facilities;
4. Has governing board members with any ownership, investment or employment interests in long-term care facilities;
5. Provides long-term care services, including the provision of personnel for long-term care facilities, or operates programs which provide access to, or services for long-term care facilities.
6. Is responsible for services such as reimbursement determination, pre-admission screening for long-term care placement, and case management for residents of long-term care facilities, or makes decisions regarding discharge of residents to and from long-term care facilities;
7. Provides adult protective services;
8. Provides guardianship, conservatorship or other fiduciary or

Surrogate decision-making services for residents of long-term care facilities.

Remedying organizational conflicts of interest:

The State agency and the Ombudsman shall take steps to remove or remedy conflicts of interest between the Office and the State agency or regional agency carrying out the Ombudsman program.

1. Upon identification of the conflict of interest, the Ombudsman shall be notified immediately in writing.
2. A written remedial plan shall be developed within 30 days of the identification of the conflict and submitted to the Ombudsman. It must identify the conflict and provide assurances and timeline that conflict will be remedied.
3. Within 30 days of the implementation of the remedial plan, the Ombudsman shall conduct a review to ensure that conflict has been remedied.
4. The remedial plan must be agreed to by all parties involved such as the State agency, the Ombudsman, the Ombudsman representative if applicable, and the hosting agency (if applicable).
5. The Ombudsman shall include in the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System, conflicts of interest identified in the Ombudsman program and describe steps taken to remove or remedy those conflicts.

Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

- (i) Take reasonable steps to avoid the internal conflicts of interest;
- (ii) Establish a process for review and identification of internal conflicts.
- (iii) Take steps to remove or remedy conflict.
- (iv) Ensure that no individual or member of the immediate family of an individual involved in the designating, appointing [or] otherwise selecting or terminating the Ombudsman is subject to a conflict interest.
- (v) assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act, the State agency shall:

- (i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program and to avoid conflicts of interest in the State agency's oversight of the contract or arrangement;
- (ii) Establish a process for periodic review, identification of and disclosure of conflicts;
- (iii) Establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;
- (iv) Require that such agency or organization have a process in place to:
 - (A) Take reasonable steps to avoid conflicts of interest, and
 - (B) Disclose identified conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval.

Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization. 45 CFR §1324.21

6. Individual Conflicts of Interest

Individual conflicts of interest for an Ombudsman, representative of the Office, and members of their immediate family include, but are not limited to:

- (i) Direct involvement in the licensing or certification of a long-term Care facility;
- (ii) Ownership, operational, or investment interest (represented equity, debt, or other financial relationship) in an existing or proposed long-term care facility;
- (iii) Employment of an individual by, or participation in the management of a long-term care facility in the service area;
- (iv) Receipt of, or right to receive, directly or indirectly, remuneration in cash or in kind) under a compensation arrangement with an

- owner or operator of a long-term care facility;
- (v) Accepting gifts or gratuities from a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there's a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);
- (vi) Accepting money or any other consideration from anyone other than the Office, or entity approved by the Ombudsman, for the performance of an act in in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman's approval;
- (vii) Serving as guardian, conservator or in another fiduciary or another surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services; and
- (viii) Serving residents of a facility in which an immediate family member resides.

Remedying individual conflicts of interest:

See Section IV, item #5 (a)(b)(c)(d), page 28, Policy and Procedures: NC Long-Term Care Ombudsman's Program on "Ombudsman is prohibited from"

The State agency and the Ombudsman shall take steps to remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

1. Upon the identification of the conflict of interest, the Ombudsman shall be notified immediately in writing.
2. A written remedial plan shall be developed within 30 days of the identification of the conflict and submitted to the Ombudsman. It must identify the conflict and provide assurances and timeline that conflict will be remedied.
3. Within 30 days of the implementation of the remedial plan, the Ombudsman shall conduct a review to ensure that conflict of interest has been remedied.
4. The remedial plan must be agreed to by all parties involved such as the State agency, the Ombudsman, the Ombudsman representative if applicable, and the hosting agency (if applicable).

Failure to Identify or Remedy a Conflict of Interest

The Ombudsman shall take reasonable steps to refuse, suspend, remove designation of the Ombudsman representative or take other appropriate measures should the Ombudsman representative or hosting agency fail to identify, report a known conflict, or remedy a conflict of interest. 45 CFR §1324.21

V. Establishment of the Office of Regional Long-Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(5)(A))

“(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”

N.C.G.S. §143B-181.19(a)

“An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a designated Regional Ombudsman who shall carry out the functions and duties of the Office.... The Area Agencies on Aging shall provide only personnel management for each Regional Ombudsman in accordance with personnel policies and procedures of the agency that are consistent with federal and State Ombudsman law and policy. . . .”

NOTE: See Appendix A to review legal guidance received related to duties of a Regional Ombudsman as it pertains to regions that have more than one Regional Ombudsman and clarification of administrative supervision.

VI. Duties of a Regional Long-Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(a)(5)(B)(i)

“(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;. . . .”

N.C.G.S. §143B-181.19(b)

“Pursuant to policies and procedures established by the State Office of Long Term Care Ombudsman, the Regional Ombudsman shall:”

Serve as a Liaison and Promote Community Involvement

A. Legal Base:

N.C.G.S. §143B-181.19(b)(1)

“Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration. . . .”

B. State Policies and Procedures

1. In General

Regional Ombudsmen are responsible for enhancing community involvement.

2. Regional Ombudsmen will:

- a. Enhance community involvement with long-term care facilities through public speaking on long-term care issues, distribution of pamphlets, posters and brochures on the Long-Term Care Ombudsman Program and participation in community forums and workshops. Regional Ombudsmen will also work to encourage and promote volunteer involvement in facilities.
- b. Serve as a liaison between residents, residents' families, facility personnel and facility administration in order to facilitate communication about areas of concern or about ways to improve services and quality of care or quality of life. Facilitate resolution of issues and/or complaints utilizing mediation, conciliation, persuasion and negotiation.

Receive and Resolve Complaints

A. Legal Base

42 U.S.C. §§3058g(a)(5)(B)(iii-iv)

“(B) Duties: An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—(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”

N.C.G.S. §143B-181.19(b)(2)

“Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities.”

B. State Policies and Procedures

1. In General

When a Regional Ombudsman receives a complaint from or on behalf of a resident and/or about conditions in a long-term care facility, s/he will provide information to the complainant about available options for filing complaints, including the Long-Term Care Ombudsman Program services that offer an informal grievance resolution process and direct advocacy. If the complainant requests the services of a Regional Ombudsman, then the Regional Ombudsman will visit with the resident in person to validate that the resident has a grievance(s) and that the resident requests the services of a Regional Ombudsman. The Ombudsman or the representative shall investigate a complaint including but not limited to a complaint related to abuse, neglect, or exploitation.

If such services are agreed upon, a Regional Ombudsman will investigate the complaint(s) utilizing techniques of mediation, conciliation, persuasion and negotiation in attempting to resolve the complaint(s) received.

If a Regional Ombudsman determines that the complaint(s) cannot be resolved through an informal grievance resolution process or determines that there are probable licensure violations, s/he will refer the complainant to the appropriate regulatory agency and provide contact information.

Any complainant providing information to a Regional Ombudsman which involves the suspected need for protection as a result of abuse, neglect, and/or exploitation, as defined in N.C.G.S. §108A, Article 6, shall be referred immediately to the county department of social services, adult protective services intake unit.

If a Regional Ombudsman has received allegations of abuse, neglect or exploitation from a resident, and has explained the requirement to refer such complaints to the adult protective services agency, then the Regional Ombudsman will empower and assist the resident in contacting the adult protective services intake unit to file a report. Furthermore, the Regional Ombudsman will explore with the complainant any matters of resident rights the Ombudsman Program could assist with, and further follow up on within their scope of practice (Complaint Resolution Process).

The disclosure policies on pages 18 to 19 (Policy and Procedures) will be followed as well.

If the resident/resident representative declines to report the alleged abuse, neglect or exploitation, but has provided the Regional Ombudsman with informed consent to report, then the Regional Ombudsman will file the allegations with the local county adult protective services intake unit on behalf of the resident and request a written follow up report from the agency.

The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act and the procedures set forth in § 1324.11(e)(3).

- (i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.
- (ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.
- (iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

A Regional Ombudsman may also interview other residents in the facility, their

family members and staff to gather additional information, or decide to file an anonymous complaint providing only a general location and general description of the situation.

If the Regional Ombudsman personally witnesses an incident of abuse, neglect or exploitation while in a long-term care facility, the Regional Ombudsman will notify supervisory staff that abuse is occurring and request immediate intervention to ensure the safety of the resident(s). The Regional Ombudsman will file a report immediately with the local adult protective services intake unit, and simultaneously with local law enforcement. The Regional Ombudsman will request that an investigation be conducted and request to receive a written follow up report once the investigation is completed. The Regional Ombudsman will seek written consent from the affected resident in order to release their name to APS and/or law enforcement.

The Regional Ombudsman cannot disclose a resident's name without their written consent. However, the Regional Ombudsman may provide adult protective services or the Health Care Personnel Registry with the name of the person observed abusing the resident and a general description of the individual if consent is not provided.

When a resident is not able to communicate informed consent and has no resident representative to provide consent, or a representative of the Office has reasonable cause to believe that a resident representative is not acting in the best interest of the resident, and abuse has been alleged, then the Regional Ombudsman should consult with the State Long-Term Care Ombudsman for authorization to file a complaint with the local adult protective services.

The primary duty of the Regional Ombudsman is to represent the interest of the resident and assist them in achieving resolution of their grievances including grievances alleging abuse, neglect, and exploitation.

2. Regional Ombudsmen will:

- a. Respect the resident's right to refuse to communicate with a Regional Ombudsman and the resident's right to participate in planning any course of action to be taken on his/her behalf if assistance is requested.
- b. Regardless of the source of the complaint (*i.e.* the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

- (i) The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.
- (ii) The Ombudsman or representative of the Office shall personally discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:
 - (A) Determine the perspective of the resident (or resident representative, where applicable) of the complaint;
 - (B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;
 - (C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;
 - (D) Advise the resident (and resident representative, where applicable) of the resident's rights;
 - (E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;
 - (F) Investigate the complaint to determine whether the complaint can be verified and
 - (G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).
- (iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:
 - (A) Consult with the State Long-Term Care Ombudsman for authorization to file a complaint with the local adult protective services. State Long-Term care Ombudsman shall approve, and communicate this decision within 1 working day.
 - (B) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and
 - (C) Determine whether the complaint was resolved to the satisfaction of the complainant.
- (iv) In determining whether to rely upon a resident representative

to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

- c. Follow the complaint resolution procedures outlined in **Section XII** of these Policies and Procedures for conducting complaint investigations and seeking resolution.

Collect Data about the Number and Types of Complaints Handled

A. Legal Base

42 U.S.C. §3058g(c)(1)(2)

“(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.”

N.C.G.S. §143B-181.19(b)(3)

“Collect data about the number and types of complaints handled.”

B. State Policies and Procedures

1. In General

Each Regional Ombudsman will utilize the Case Record (DHHS- DAAS- 004) in the Ombudsman Program documentation and information system for documentation of all complaints which includes coding the type of facility, type of complainant, individual complaints, other agencies involved in the investigation and final outcome for each complaint investigated. The appropriate consent form(s) (see Appendix B) shall be signed and attached to each printed Case Record and kept in each Regional Ombudsman’s confidential locked files.

2. Regional Ombudsmen will:

Compile and enter all required information on complaints received in the Ombudsman Program documentation and information system as soon as feasible after each complaint-related task is performed, but no later than the

15th of the month after the end of each quarter (January 15, April 15, July 15, October 15).

Submit an Annual Report in a separate narrative format at the end of the last quarter of the fiscal year by October 15th to the Office of the State Long Term Care Ombudsman. In regions with more than one Regional Ombudsman, only one combined Annual Report will be submitted.

a. The Annual Report: will include:

- (1) A narrative description of general complaint trends and long-term care issues in the region.
- (2) An overview of major Regional Ombudsmen activities/accomplishments.
- (3) Program goals established by the Regional Ombudsmen for the upcoming year.
- (4) Contributions/accomplishments of community advisory committees.
- (5) A description of Elder Abuse Awareness and Prevention accomplishments, projects and a proposed Elder Abuse Prevention budget.

Work with Long-Term Care Providers to Resolve Issues of Common Concern

A. Legal Base

42 U.S.C. §3058g(a)(5)(B)(1)

“(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.”

N.C.G.S. §143B-181.19(b)(4)(6)

“(4) Work with long-term care providers to resolve issues of common concern.
(6) Offer assistance to long-term care providers in staff training regarding residents' rights;”

B. State Policies and Procedures

1. In General

Regional Ombudsmen will communicate with administrators of the long-term care facilities within their region on a regular basis to discuss any issues of

concern to long-term care residents; general conditions in the facility; the facility's need for assistance with recruitment of volunteers to visit residents or any assistance that may be needed for special activities and functions.

2. Each Regional Ombudsman will:

- a. Offer support, collaboration, encouragement and assistance to administrators in addressing issues of common concern and opportunities such as culture change initiatives, person-centered training or empowerment activities for direct care workers that are related to improving residents' quality of life and quality of care.
- b. Offer to conduct in-service training for facility staff on the Residents' Bill of Rights and the Role of the Long-Term Care Ombudsman Program.
- c. Support the development of resident and family councils by:
 - (1) Promoting active and independent resident-centered councils in each nursing home and adult care home in the region.
 - (2) Offering assistance to residents and the facility management staff in developing an active, resident-centered and independent residents' council in any facility that does not currently have a residents' council.
 - (3) Offering encouragement and assistance to family members in developing active family councils.
 - (4) Informing the lead representatives of each active resident or family council about the purpose of the Long-Term Care Ombudsman Program and providing information about locating resources.
 - (5) Attending resident and family councils when requested to be present, and offering to conduct presentations for council members.

Work with Long-Term Care Providers to Promote Increased Community Involvement

A. Legal Base

42 U.S.C. §3058g(a)(5)(B)(1)

“(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;”

N.C.G.S. §143B-181.19(b)(5)

“Work with long-term care providers to promote increased community involvement;....”

B. State Policies and Procedures

1. In General

Regional Ombudsmen will meet with facility administration and staff on a regular basis to discuss ways to enhance community involvement in long-term care facilities.

2. Each Regional Ombudsman will:

Provide assistance with recruiting volunteers to visit residents and assist with special activities and functions, upon request.

Offer Assistance to Long-Term Care Providers in Staff Training Regarding Residents' Rights

A. Legal Base

N.C.G.S. §143B-181.19(b)(6)

"Offer assistance to long-term care providers in staff training regarding residents' rights."

B. State Policies and Procedures

1. In General

Regional Ombudsmen will inform the administrators of all long-term care facilities in the region that s/he is available to provide in-service training on the Residents' Bill of Rights upon request and available to work with the administrators on developing strategies for enhancing communication as well as methods for addressing quality of care issues.

Report Collected Data and Activities to the Office of the State Long-Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(c)(1)(2)

“(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.”

N.C.G.S. §143B-181.19(b)(7)

“Report regularly to the Office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;”

B. State Policies and Procedures

1. In General

All ombudsman activities will be reported in the Ombudsman Program documentation and information system for North Carolina. Entry of each representative’s documentation should be completed as soon as feasible after the completion of a reportable activity, but no later than the 15th of the month after the end of each quarter of the federal fiscal year (January 15, April 15, July 15 and October 15).

Documentation is a required component in completion of Ombudsman mandated responsibilities. The documentation must provide enough information for adequate supervision and quality assurance review of Ombudsman Program services. All written documentation entered should be clear to the reader. The Ombudsman Program documentation and information system instructions are hereby incorporated into the N. C. Long Term Care Ombudsman Program Policies and Procedures and will be followed in order to meet the mandated reporting requirements for the U. S. Administration on Aging. The Office of the State Long-Term Care Ombudsman will provide initial training and written instructions for entering complaint data and information about all required Long-Term Care Ombudsman Program responsibilities.

2. Each Regional Ombudsman will:

- a. Report his/her activities, accomplishments, and technical assistance provided utilizing the Ombudsman Program documentation and information system of the North Carolina Long-Term Care Ombudsman Program.
- b. Follow Ombudsman Program documentation and information system instructions provided for entering all required Ombudsman Program activities and complaint case management.

- c. Track and report the number of hours contributed by community advisory committee volunteers and the number of active volunteers appointed to each committee type in all counties in their region. Reporting volunteer miles is optional, but highly encouraged.
- d. Keep the State Long-Term Care Ombudsman informed about long-term care issues/problems in his/her region. Technical assistance will be provided by the Office of the State Long Term Care Ombudsman in seeking resolution of these issues/problems.
- e. Seek technical assistance from the Office of the State Long Term Care Ombudsman in resolution of any data collection issues as deemed necessary.
- f. Update the data base for community advisory committee members in the Ombudsman Program documentation and information system on a quarterly basis, at a minimum. Quarterly deadlines are January 15, April 15, July 15 and October 15.

Provide Training and Technical Assistance to Community Advisory Committees

A. Legal Base

42 U.S.C. §3058g(h)(4)(A)

“The State agency shall require the Office to—(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 . . .”

45 CFR §1324.13(c)(2)

“The Ombudsman shall establish procedures for training, for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of the Long-Term Care Ombudsman Programs as described in section 201(d) of the Act.....”

N.C.G.S. §143B-181.19(b)(8)

“Provide training and technical assistance to the community advisory committees;”

B. State Policies and Procedures

1. In General

Pursuant to N.C.G.S. §§131D-31(H) and 131E-128(G), The Office of the State Long-Term Care Ombudsman shall develop training requirements for certification and designation in accordance with 45 C.F.R. § 1324.13(c)(2) provide consultation that directs community advisory committee members in the performance of their duties. The Community Advisory Committee Handbook developed and distributed by The Office of the State Long Term Care Ombudsman will be used in training all new community advisory committee members.

Regional Ombudsmen are responsible for providing training and technical assistance to newly certified and designated volunteers for the Nursing Home, Adult Care Home and Joint Nursing Home and Adult Care Home Community Advisory Committees prior to these committee members exercising any authority under N.C.G.S. §131D-32 and/or N.C.G.S. §131E-128.

Regional Long-term Care Ombudsmen will train the Nursing Home, Adult Care Home and Joint (Nursing Home and Adult Care Home) Community Advisory Committees using the protocols outlined in the State Long-Term Care Ombudsman Program Policies and Procedures for complaint management, confidentiality, consent forms, access to residents' records during a complaint investigation, case documentation, and completion of the Case Record along with relevant legislation, rules/regulations for licensing of long-term care facilities and other relevant sources of information.

2. Regional Ombudsmen will:

- a. Provide initial training for potential community advisory committee members in his/her region within three (3) months of receiving their application to become members.

A minimum of eight (8) hours of initial classroom training is to be provided for each newly appointed community advisory committee member.

(1) Initial training topics include, but are not limited to:

- (a) Community advisory committee members' roles and responsibilities as mandated under N.C. General Statutes governing the community advisory committee type
- (b) Residents' and Patients' Bill of Rights
- (c) Roles of licensure agencies for each type of long

- term care facility
 - (d) North Carolina Adult Protective Service laws including reporting requirements
 - (e) Role of Regional Ombudsmen and history of the Long-Term Care Ombudsman Program
 - (f) Policies and procedures for the State Long-Term Care Ombudsman Program, including the complaint management process
 - (g) Confidentiality
 - (h) Use of consent forms
 - (i) Basic documentation principles
 - (j) Case records and completion of required reporting forms to be used by the community advisory committee members
 - (k) The aging process
 - (l) The aging and adult services network
- b. Maintain documentation of all required training, including the names of community advisory committee members, topics that each committee member completed and dates of initial orientation visits which together comprise the required fifteen (15) hours of initial training and ten (10) hours of annual in-service training.
- (1) Facility orientation visits will be scheduled before the end of the third month from date of appointment.
 - (2) Facility administrators must receive notification of the agreed upon date and time for the orientation visit(s) in writing by the Regional Ombudsman.
 - (3) New committee members will be accompanied by either the Regional Ombudsman or the community advisory committee chairperson for the scheduled orientation visits.
- c. Obtain the number of volunteer hours contributed by each community advisory committee member and enter the total number of hours into the Ombudsman Program documentation and information system at least quarterly, by Jan 15, April 15, July 15 and October 15.
- d. Provide consultation and support at any point during a complaint investigation as requested by the chairman of the community advisory committee.

- e. Train the community advisory committees on confidentiality requirements as established in law and State Ombudsman Program Policies and Procedures. Provide each community advisory committee member with copies of all consent forms and ensure that consent forms are signed before any complaint resolution process is initiated.
- f. Assume responsibility for the investigation of a specific complaint at the request of a community advisory committee chairperson.
- g. Enter closed complaint case information submitted by a community advisory committee into the Ombudsman Program documentation and information system.
- h. Meet with each community advisory committee in the region not less than quarterly to:
 - (1) Review the progress of the committee and provide technical assistance and information to committee members.
 - (2) Conduct in-service training at least quarterly.
 - (3) Receive and discuss community advisory committee quarterly/annual reports.
 - (4) Provide assistance to committee members in developing strategies for addressing long-term care issues.
- i. Provide ongoing technical assistance and support as necessary, as mandated in N.C.G.S. §§143B-181.19(b) (8), 131D-31 and 131E-128.
- j. Document all instances of technical assistance provided to community advisory committee members in the Ombudsman Program documentation and information system.

3. Community Advisory Committee Members will:

- a. Complete initial training within three months of submitting application to become members and prior to exercising any authority under N.C.G.S. §§131D-32 and 131E-128.
- b. Complete a minimum of 15 hours of initial training (part of initial training hours may include time required to complete assigned reading materials and time required for orientation visits). After the first year of appointment, community advisory

committee members are to complete 10 hours of in-service training annually which will be recorded on the Committee Member Activities Record and submitted to the Regional Ombudsman assigned to their committee.

- c. Complete an orientation visit in each of the type(s) of long term care facilities they will be visiting prior to assuming any mandated responsibilities. Facility orientation visits will be conducted with the administrator or other designated management staff.
 - (1) Topics to be covered include, but are not limited to:
 - (a) Overall operation of the facility and key management positions;
 - (b) Admissions process for incoming residents;
 - (c) Types of care and services provided to residents in each type of facility;
 - (d) Facility policies for restraints;
 - (e) Transfer/discharge policies and procedures;
 - (f) Internal grievance procedure available to residents and families; and
 - (g) Residents' Rights, Residents' Councils, staffing and activities.
 - (2) During each scheduled visit, time is to be included for observation in the facility which will provide firsthand knowledge of operations, service delivery, public versus private areas, and general layout of the building.
 - (3) For nursing homes, each new community advisory committee member will also meet with the social worker or other professional staff to discuss their roles and other issues deemed appropriate.
 - (4) For adult care homes, each new community advisory committee member will meet with the administrator or the designated supervisor in charge to discuss their management roles and other issues deemed appropriate.
 - (5) With joint community advisory committees, orientation visits will be arranged for a nursing home, adult care home, and family care home.
 - (6) Upon completion of orientation, the new committee

member will review information learned from the visit with the Regional Ombudsman assigned to that county.

- (7) Regional Ombudsmen will keep written documentation on file which will include the facility name, date visited, attending staff names, and a brief summary of topics covered in orientation and reviewed with the community advisory committee member.

d. Complete annual in-service hours

- (1) These may include:

- (a) Quarterly training conducted by a Regional Ombudsman;
- (b) Seminars related to duties of a community advisory committee;
- (c) Workshops related to duties of a community advisory committee; and
- (d) Reading materials related to skills development for the advocacy role.

- (2) Each community advisory committee member will record annual in-service hours on the Committee Member Activities Record or a similarly designed form. The record of the 10 hours of in-service training for each community advisory committee member shall be kept on file by the Regional Ombudsman assigned to work with the community advisory committee.

e. Complete the following forms when appropriate:

- (1) Committee Member Activities Record (DHHS-DAAS-001)
- (2) Quarterly/Annual Visit Worksheet (DHHS-DAAS-002)
- (3) Case Record (DHHS-DAAS-004)
- (4) Resident Consent Form (DHHS-DAAS-9112) Rev.2017
- (5) Complainant Consent Form (DHHS-DAAS-9115) Rev.2017
- (6) Resident Representative Consent Form (DHHS-DAAS-9116) Rev.2017
- (7) Community Advisory Committee Annual Report Form
- (8) Statement of Attestation as appropriate
- (9) Other forms as deemed appropriate by the Office of the State Long-Term Care Ombudsman.

Community Advisory Committee Certification and Designation Procedures
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A. Legal Base

42 U.S.C. §3058g(h)(45)(A)

“The State agency shall require the Office to(4)(A) strengthen and update procedures for the training of the representatives of the Office, including unpaid volunteers, based on the 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.....”

45 CFR §1324.13(c)(2)

“The Ombudsman shall establish procedures for training, for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of the Long-Term Care Ombudsman Programs as described in section 201(d) of the Act.....”

N.C.G.S. §143B-181.19(b)(8)

“Provide training and technical assistance to the Community Advisory Committees.”

B. Designation of Volunteers

The State Ombudsman shall designate or refuse and suspend or remove designation of volunteer representatives of the Office of the State Long-Term Care Ombudsman, including any Community Advisory Committee volunteers, in accordance with the Long-Term Care Ombudsman Program Policies and Procedures.

Any individual who serves as a Community Advisory Committee volunteer must go through the Office of the State Long-Term Care Ombudsman’s certification and designation process and meet the certification and designation requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures prior to appointment by the Board of County Commissioners.

Volunteers appointed to a Community Advisory Committee must:

- Meet the minimum requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures,
- Have received initial training; and
- Meet on-going training requirements in accordance with the State Long-Term Care Ombudsman Policies and Procedures

Each potentially eligible CAC volunteer shall receive mandatory training developed by the Office of the State Long-Term Care Ombudsman regarding their accountability as it relates to the role as a representative of the Office of the State Long-Term Care Ombudsman and must attest to their understanding of the

role and their commitment to the Ombudsman Program. After successfully completing the training and signing an attestation statement, the individual will be certified and designated to function as a representative of the Office of the State Long-Term Care Ombudsman.

C. Appointment of Community Advisory Committee Volunteers

Overview of Process:

- Application is made by potential CAC volunteer to their Board of County Commissioners
- Clerk of the Board of County Commissioners notifies the Regional Ombudsman of the application
- Regional Ombudsman evaluates whether the applicant volunteer meets the minimum requirements and is free of conflict of interest per 45 CFR §1324.21
- Applicant volunteer completes initial training provided by the Regional Ombudsman
- Applicant volunteer attests to completion of training, understanding of role and commitment to the Ombudsman Program
 - Office of the State Long-Term Care Ombudsman certifies and designates the volunteer
 - Regional Ombudsman notifies the Board of County Commissioners that the volunteer may be appointed to the Community Advisory Committee
- Volunteer is appointed and becomes a CAC member
- Office of the State Office Long-Term Care Ombudsman may refuse, suspend, or remove designation of a volunteer; upon de-designation, the Board of County Commissioners shall automatically rescind appointment to the Committee.

As outlined above, County Commissioners will receive applications/nominations of county citizens volunteering to participate on each Community Advisory Committee. The Board of County Commissioners will recommend a potential Community Advisory Committee volunteer, through the Clerk of the Board, to the Regional Ombudsman. The Regional Ombudsman will evaluate whether the volunteer meets the minimum qualifications for appointment, is free of conflict of interest and is willing to meet the requirements of the program. Interested volunteers may also contact the Regional Ombudsman directly.

Regional Ombudsmen will either accept or decline each nomination based on the standard requirements. If a nomination is declined, a written explanation will be sent to the nominee and the Clerk of the Board of County Commissioners.

An accepted volunteer will advance to certification training, which will be provided by the Regional Ombudsmen on a regular basis, within 90 days. Each CAC volunteer is mandated to complete the initial and ongoing training provided by Regional Ombudsmen in accordance with the Ombudsman Policies and Procedures.

After successful completion of the certification training, the volunteer will attest to their understanding of their role and commitment to the Ombudsman Program, signing a statement to that effect. The Regional Ombudsmen will then forward the name of the volunteer, along with the date of expiration for their term, to the Office of the State Long-Term Care Ombudsman.

The State Long-Term Care Ombudsman will designate the volunteer as a representative of the Office by issuing a certificate within 15 days of notification by the Regional Ombudsman. The certificate will be generated by the Office of the State Long-Term Care Ombudsman and mailed to the volunteer. The Regional Ombudsman will be notified of each designation and will, in turn, notify the Clerk of the Board of County Commissioners that the volunteer is eligible for appointment to the Community Advisory Committee. The volunteer may then be appointed by Board of County Commissioners and becomes a CAC member.

D. Suspension of Designation

Designation of a CAC volunteer can be suspended by the State Long-Term Care Ombudsman if the actions of the CAC volunteer are out of compliance with the Ombudsman Program Policies and Procedures, N.C. G.S. §131D-31 or §131E-128. Grounds for recommending immediate suspension of designation, pending a quality assurance review, may include but are not limited to:

- Complaints related to committee service or a CAC volunteer's visit to a facility
- Non-compliance with Ombudsman Program Policies and Procedures
- Non-attendance at meetings
- Intentional failure to reveal a conflict of interest
- Intentional misrepresentation of the volunteer's designated authority or the mandated responsibilities the CAC volunteer has agreed to perform
- The CAC volunteer's actions negatively impacting one or more facility residents or the successful operation of the Community Advisory Committee.

The Regional Long-Term Care Ombudsman assigned to work with the identified Community Advisory Committee will meet with the Community

Advisory Committee volunteer for a discussion regarding the allegations and gather factual information related to the complaint(s). The Regional Ombudsman may also gather information from others knowledgeable of the allegations.

After a quality review, if the alleged action(s) is/are substantiated and are determined to be out of compliance with the Ombudsman Program Policies and Procedures, G.S. §131D-31 or §131E-128, as outlined above, the Regional Ombudsman will send a written recommendation for Suspension of Designation to the Office of the State Long-Term Care Ombudsman. **NOTE:** ***Based on the severity of the complaint, a Regional Ombudsman has the discretion to recommend either suspension or removal of designation.***

E. Reinstatement of Designation

If the Regional Ombudsman decides that the Community Advisory Committee volunteer's actions were in compliance with the Law and Ombudsman Program Policies and Procedures, the complainant will be notified in writing that no further action will be taken. This outcome will be communicated to the Community Advisory Committee volunteer and Designation will be immediately reinstated. The Regional Ombudsman will maintain written documentation of facts established that support this decision.

If it is determined that the Community Advisory Committee volunteer's actions were out of compliance with the Law or Ombudsman Program Policies and Procedures, the Regional Ombudsman will notify the Committee volunteer in writing, explain the findings and outline the proposed remedial action(s).

Remedial strategies may include, but are not limited to the following:

- Require additional training about the duties of a Community Advisory Committee volunteer,
- Offer technical assistance and consultation during facility visits and/or
- Request that the Community Advisory Committee volunteer transfer to a different subcommittee so they no longer visit the facility where the action(s) of noncompliance occurred.

Upon the satisfactory completion of remedial action(s), as determined by the Regional Ombudsman, the Regional Ombudsman will send a written recommendation to the State Long-Term Care Ombudsman for Reinstatement of Designation of the volunteer.

F. Removal of Designation

Criteria for removal of designation of a CAC volunteer may include but are not limited to:

- Failure to follow policy and procedures and training provided
- Intentional failure to reveal a conflict of interest
- Intentional misrepresentation of the volunteer's designated authority or the mandated responsibilities the CAC volunteer has agreed to perform
- Failure to adhere to applicable federal and state laws, regulations and policies (Older Americans Act, 45 CFR Parts 1321 and 1324, N.C.G.S. 143B-181.15-25)
- Falsification of records, destruction of Program records or gross failure to maintain required documentation and records.

If a CAC volunteer has violated their duties or the policies and procedures of the Ombudsman Program, designation can be removed by the State Long-Term Care Ombudsman. After a quality review, as outlined above under "Suspension of Designation", the Regional Ombudsman will send a written recommendation for Removal of Designation to the Office of the State Long-Term Care Ombudsman. Removal of a CAC volunteer's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the volunteer's appointment to the Community Advisory Committee.

The Office of the State Long-Term Care Ombudsman will notify the Regional Ombudsman and the CAC volunteer regarding the final decision to remove designation. The Regional Ombudsman will notify the Clerk of the Board of County Commissioners regarding the removal of designation. The Board of County Commissioners shall immediately remove the volunteer from the Community Advisory Committee.

Provide Information to the General Public on Long-Term Care Issues

A. Legal Base

42 U.S.C. §3058g(a)(5)(B)

"(B) Duties. An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency— (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 carry out other activities that the Ombudsman determines to be appropriate."

N.C.G.S. §143B-181.19(b)(9)

“Provide information to the general public on long-term care issues and with the authorization of the Office of the State Long-Term Care Ombudsman conduct systems advocacy activities on behalf of long-term care residents.”

B. State Policies and Procedures

1. In General

Regional Ombudsmen will work with the State Long-Term Care Ombudsman to represent the interests of long-term care residents in order to ensure their health, safety, welfare and rights are protected. This may include providing information to legislators, governmental agencies and policymakers along with recommendations for changes that will improve residents' quality of care and quality of life.

Regional Ombudsmen shall provide information, referral and technical assistance to the general public contacting the Ombudsman Program.

2. A Regional Ombudsman will:

- a. Maintain awareness of current issues and trends in long-term care.
- b. Work with the State Ombudsman to assure that the interests of long-term care residents are represented to legislators, governmental agencies and policymakers. This may include educating governmental agencies, policymakers, advocacy groups and the general public about the impact of changes on the needs of long-term care residents.
- c. Collaborate with other agencies that provide services to the aging and adult services population to plan and conduct community forums on long-term care issues and elder abuse prevention.
- d. Participate in community education events, facility workshops and health fairs.
- e. Disseminate information on long-term care and elder abuse.
- f. Initiate special projects and/or events to increase public awareness of current long-term care issues and elder abuse prevention.
- g. Document all advocacy efforts to educate consumers about

long-term care issues and technical assistance provided to the public in the Ombudsman Program documentation and information system in a timely manner, but no later than the end of the current quarter (January 15, April 15, July 15 and October 15).

VII. Qualifications and Certification of Regional Ombudsmen

A. Legal Base

42 U.S.C. §3058g(a)(5)(A) and (C)

“(A) 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. . . (C) 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.”

N.C.G.S. §143-181.18(3)

“Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;”

B. State Policies and Procedures

1. In General

Certification requirements established by the Division of Aging and Adult Services, Office of the State Long-Term Care Ombudsman include a minimum of 40 hours of initial training and 20 hours of ongoing certification training annually. Training will be conducted in a group setting and/or arranged individually by the State Ombudsman. The initial training includes an internship in the different types of long-term care facilities, in-service training, completion of required readings and training by the State Ombudsman. Additional training will be provided as deemed necessary by the State Ombudsman, a Regional Ombudsman, and/or the Area Agency on Aging Director. The Area Agency on Aging Director will provide assistance in scheduling the internships and forward a written summary to the State Ombudsman upon successful completion of all certification requirements established by the Office of the State Long-Term Care Ombudsman.

2. A newly hired Regional Long-Term Care Ombudsman must:

a. Complete training in the following topics:

- (1) History of the N.C. Long-Term Care Ombudsman Program
- (2) Federal and state Residents' and Patients' Bill of Rights
- (3) Federal and state licensure and regulation of long-term care facilities
- (4) Roles/responsibilities of key regulatory agencies
- (5) The aging process
- (6) Mental illness
- (7) N.C. Long-Term Care Ombudsman Program Policies and Procedures
- (8) Types of long-term care facilities
- (9) Complaint management
- (10) Documentation requirements
- (11) Case studies and the mediation process
- (12) Confidentiality requirements
- (13) Community advisory committee management, recruitment and training
- (14) Relevant federal and state laws, regulations, policies and standards
- (15) Community Education
- (16) Elder Abuse Prevention, Education and Awareness
- (17) How to develop and maintain resident councils and family councils.

b. Participate in facility internships.

- (1) Individuals with no previous work experience in nursing home(s) and adult care home(s) will complete an internship in each of the different types of facilities: An eight-hour (8) internship in a skilled nursing facility; an eight-hour (8) internship in an adult care home; and a six-hour (6) internship in a family care home. A written summary of each internship is to be submitted to the State Long-Term Care Ombudsman.
- (2) Individuals who have worked in a long-term care facility within three (3) years of employment as a Regional Ombudsman will complete internships only in those facilities where there has been no recent work experience.

- (3) The facility internships will provide knowledge of the overall operation of long-term care facilities, relevant issues in long-term care, levels of care provided, established internal grievance processes and aging processes.

c. Read and demonstrate understanding of the following:

- (1) Nursing Home Community Advisory Committee Handbook
- (2) Nursing Home Reform Amendments
- (3) Adult Care Home Community Advisory Committee Handbook
- (4) An Ombudsman's Guide to the Nursing Home Reform Amendments of OBRA 1987
- (5) State Long-Term Care Ombudsman Resource Guide
- (6) Comprehensive Curriculum for State Long-Term Care Ombudsman Programs
- (7) Ombudsman Program Policies and Procedures
- (8) Federal and state legislation and regulations impacting the Long-Term Care Ombudsman Program and long-term care facilities
- (9) Nursing Home and Adult Care Home Community Advisory Committees: The Essential Guide
- (10) Other references as deemed appropriate.

d. Be prohibited from the following activities:

- (1) Federal regulations prohibit ombudsman services from being provided by an agency or organization which is responsible for licensing or certifying long-term care services or which is an association (or affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals).
- (2) In addition, no individual involved in the Long-Term Care Ombudsman Program shall be subject to a conflict of interest. Conflict of interest includes having any monetary interest in a long-term care facility or being related by blood or marriage to a board member, owner, administrator, other facility staff and/or a resident of any long-term care facility in which the ombudsman serves.
- (3) No representative of the Office of the State Long-Term Care Ombudsman shall be assigned to investigate a complaint concerning a long-term care provider with which the ombudsman was formerly employed in the last three (3) years.

- (4) If a Regional Ombudsman receives a complaint from an individual whom s/he knows personally and as a result, a Regional Ombudsman believes that this personal relationship will interfere with his/her ability to maintain objectivity in investigating the complaint, or if a relative (a member of immediate family or household) of a Regional Ombudsman is receiving care in any long-term care facility for which the Regional Ombudsman provides services, the complaint must either be referred to the appropriate regulatory agency, the appropriate community advisory committee with permission of the resident and/or the resident's legal representative, the State Ombudsman, or assigned to another Regional Ombudsman employed by the Area Agency on Aging if the Area Agency on Aging has more than one certified Regional Ombudsman.

3. The Area Agency on Aging must:

Prior to offering employment, contact the State Ombudsman to review the professional background of any individual(s) under consideration to assume the responsibilities of a Regional Ombudsman to ensure that the individual is not subject to a conflict of interest.

Report any conflict of interest that develops after a Regional Ombudsman is hired to the State Ombudsman to receive guidance and submit a suggested plan of resolution subject to approval of the State Ombudsman to ensure compliance with the Amendments to the Older Americans Act.

4. The Regional Ombudsman must:

Meet qualifications established by the Office of the State Long-Term Care Ombudsman to become certified prior to exercising any power/duties of the position. Qualifications include:

- a. Bachelor's Degree in a human services field;
- b. Two years of professional experience with a minimum of one year in the field of aging, long-term care, or a related field; and/or
- c. An equivalent combination of education and experience.

VIII. Legal Representation for the Offices of State and Regional Long Term Care Ombudsmen

A. Legal Base

42 U.S.C. §3058g(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.”

N.C.G.S. §143B-181.17”

“The Attorney General shall provide legal staff and advice to this office [of State Long-Term Care Ombudsman].”

N.C.G.S. §143B-181.19(a)

“(a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging and shall be headed by a Regional Ombudsman. . . The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.”

B. State Policies and Procedures

1. In General

In carrying out the functions and duties of the Offices of the State Ombudsman and Regional Long-Term Care Ombudsman, federal law requires that legal representation as well as advice and consultation must be provided.

2. Concerning Legal Representation:

- a. Legal representation, advice, and consultation are provided to the Office of the State Long-Term Care Ombudsman by the N.C. Attorney General’s Office.
- b. Regional Long-Term Care Ombudsmen are employees of Area Agencies on Aging, which are part of the lead regional councils (also known as Councils of Governments) established under N.C.G.S. §160A-470. Each Area Agency on Aging shall include written documentation in the Area Plan regarding how legal consultation, advice and representation will be provided for Regional Ombudsmen.

- c. As issues arise of general applicability to the Long-Term Care Ombudsman Program involving complaints, a Regional Ombudsman will submit the issue(s) and any questions on the issue(s) which need to be addressed in writing to the State Long-Term Care Ombudsman. The State Long-Term Care Ombudsman will review the issue(s) and may forward the information to the Attorney General's Office for advice and consultation. The Attorney General's Office will submit a written response on the issue(s) to the State Long-Term Care Ombudsman. The State Ombudsman will then distribute this information to all Regional Ombudsmen.
- d. When a Regional Ombudsman has questions regarding a specific case in which s/he is involved, the Regional Ombudsman will consult with the State Long-Term Care Ombudsman and determine whether to consult the attorney designated by the Area Agency on Aging for legal representation. Also, the State Long Term Care Ombudsman may consult with the Attorney General's Office for input to the specific case with the Area Agency on Aging's attorney.

IX. Access Procedures for the Offices of State and Regional Long-Term Ombudsmen

A. Legal Base

42 U.S.C. §3058g(b)(1)(3)

"(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."

(3)Health oversight agency

For purposes of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (including regulations issued under that section) (42

U.S.C. 1320d–2 note), the Ombudsman and a representative of the Office shall be considered a "health oversight agency," so that release of residents' individually identifiable health information to the Ombudsman or representative is not precluded in cases in which the requirements of clause (i) or (ii) of paragraph (1)(B), or the requirements of paragraph (1)(D), are otherwise met.

N.C.G.S. §143B-181.20(a)

“(a) The State and Regional Ombudsman may enter any long-term care facility at any time during regular visiting hours or at any other time when access may be required by the circumstances to be investigated, and may have access to any resident in the pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the resident’s

files, records and other information as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and regulations promulgated thereunder, and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the resident’s records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §3001 et seq., and regulations promulgated thereunder, is guilty of a Class 1 misdemeanor.”

B. State Policies and Procedures

1. In General

The State and Regional Ombudsmen have access to any long-term care facility in carrying out their responsibilities and duties as advocates for the residents. If a State or Regional Ombudsman is in the facility to gather information on a complaint, confidentiality procedures established by the State Ombudsman must be followed. See section XI. Confidentiality, pages 57-59

A State or Regional Ombudsman will introduce him/herself to the resident, explain the reason for the visit and indicate to the resident that s/he has the right to decide if s/he wishes an ombudsman to advocate on his/her behalf. The State or Regional Ombudsmen will work to empower the resident to advocate on his/her own behalf with the facility administration.

2. The State and Regional Ombudsmen will:

- a. Comply with the facility visitor registration policy, if one exists.
- b. Respect the right of the resident to decline the assistance of an ombudsman in attempting to resolve the complaint filed and to decline to communicate with the ombudsman.
- c. Inform the resident, resident's family, and/or the resident's legal representative about other options for complaint resolution such as referral to a regulatory agency or direct family intervention.
- d. Encourage the resident's active participation in planning the proposed action(s) to be taken on his/her behalf with the assistance of a Regional Ombudsman.
- e. Consult with the attorney designated to provide legal representation regarding procedures for appointing a legal guardian if the resident has no legal guardian and it is determined that a guardian is needed.
- f. Utilize techniques of mediation, conciliation, and persuasion.
- g. Refer to the appropriate licensure agency, pursuant to N.C.G.S. §§131F-100 through 131D-2, complaints or conditions adversely affecting residents in long-term care facilities that cannot be resolved through mediation, conciliation, and persuasion pursuant to N.C.G.S. §143B-181.21(b) by the next business day.

X. Cooperation of Government Agencies

A. Legal Base

42 U.S.C. §3058g(b)(1) Procedure for Access

"(1) In general. The State shall ensure that representatives of the Office shall have... (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."

N.C.G.S. §143B-181.20(e)

"The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law."

B. State Policies and Procedures

1. In General

The State and Regional Ombudsmen shall contact an authorized representative of any government agency to obtain assistance, information, files, and records which are needed to perform his/her duties.

The State Long-Term Care Ombudsman will maintain a current Memorandum of Agreement between the Office of the State Long-Term Care Ombudsman and the Division of Health Service Regulation and review the document at least every five (5) years for any updates needed.

2. The State and Regional Ombudsmen will:

- a. Request written notification of results from any government agency where a referral is made in response to a complaint so that Case Record documentation can be completed.
- b. Request written notification of results determined by a department of social services evaluation in cases where the State or Regional Ombudsmen reported a suspected need for protection to the Adult Protective Services staff. The department of social services will indicate whether or not the complaint was substantiated. A department of social services is prohibited from including specific findings of the evaluation in order to protect the client's confidentiality pursuant to N.C.G.S. §143B-153, 10A NCAC 42V 0907.

XI. Confidentiality

A. Legal Base

42 U.S.C. §3058g(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). The procedures described [above] 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.”

N.C.G.S. §143B-181.20(a)

“(a) Any State or Regional Ombudsman who discloses any information obtained from the resident’s records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. 3001 et seq., and regulations promulgated thereunder is guilty of a Class I misdemeanor.”

N.C.G.S. §143B-181.22

“The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the files, records, and other information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §3001 et seq.”

B. State Policies and Procedures

1. In General

The identity of the resident, the complainant or other individual(s) providing information on a complaint shall not be disclosed unless written consent for disclosure is obtained. The appropriate signed consent form shall be attached to the Case Record and kept in a Regional Ombudsman’s confidential locked files.

If the complaint(s) becomes the subject of a judicial proceeding, the investigative information produced by the process of complaint resolution may be disclosed only when required by a court order.

State and Regional Ombudsmen shall not use any form of electronic communication such as electronic mail to communicate or discuss confidential complaint information with other parties including the names of a resident or complainant. Email communication is considered public domain and not protected from disclosure to third parties.

2. The State and Regional Ombudsmen may:

- a. Disclose information on complaints received about a resident in a long-term care facility in another region of the state to the appropriate Regional Ombudsman in order to facilitate timely resolution of those complaints.

- b. Disclose information on complaints received to the appropriate licensure agency(s) pursuant to N.C.G.S. §§131E-100 through 110 and N.C.G.S. §131D-2.
- c. The State Ombudsman will consult with legal counsel for the Office of the State Long-Term Care Ombudsman to determine if a request for records from the media and other agencies is an allowable release of confidential information under the federal laws governing confidentiality requirements for the Long-Term Care Ombudsman Program.

3. Staff duly authorized to receive confidential information under the jurisdiction of the Offices of State and Regional Ombudsman:

- a. The State Ombudsman and designated ombudsmen in the State Office are authorized to receive confidential information regarding the care of residents in long-term facilities and to access confidential Case Records either hard copy or the Ombudsman Program's documentation and information system.
- b. The Director of the Division of Aging and Adult Services has access to the State Long-Term Care Ombudsman's aggregate data only for the purpose of monitoring the Long-Term Care Ombudsman Program.
- c. Only designated Regional Long-Term Care Ombudsmen are allowed to access their confidential Case Records maintained in either hard copy or in the Ombudsman Program's documentation and information system. The Area Agency on Aging Director and/or the immediate supervisor of a Regional Ombudsman may act as designees to receive complaint information when a Regional Ombudsman has taken an extended leave of absence or a Regional Ombudsman position is vacant. The complainant or the complaints are then referred to the Office of the State Long-Term Care Ombudsman or appropriate regulatory agency. In regions with more than one certified Regional Ombudsman, complainants contacting the Area Agency on Aging will be referred to other Regional Ombudsmen in the office.
- d. Administrative staff directly responsible to the State Ombudsman and Regional Ombudsmen may be requested to prepare confidential written correspondence, to accept incoming telephone calls and take messages for the Long-Term Care Ombudsman Program, but they shall not have access to confidential Case

Records kept in either hard copy or electronic files. Each administrative staff person assigned to provide direct programmatic support to the Long-Term Care Ombudsman Program shall receive instruction about the Program's confidentiality requirements and sign a written statement indicating they understand and will protect any confidential information they may have access to when providing direct program support to the State or Regional Ombudsmen.

- e. The State Ombudsman and Regional Ombudsmen shall maintain signed confidentiality statements in their files for each staff member and ensure that these statements are up to date and reflect any changes in administrative staff working with the Program.
- f. Other employees in the Division of Aging and Adult Services, Area Agencies on Aging or Councils of Governments are not authorized to receive or hear confidential information related to complaints involving a long-term care resident nor authorized to have access to any confidential information including Ombudsman Program Case Records either in hard copy or electronic files.
- g. Designated employees are prohibited from discussing confidential information with undesignated staff within the agency. Both State and Regional Ombudsmen are responsible for ensuring that confidentiality procedures are followed.

XII. Complaint Resolution

A. Legal Base

42 U.S.C. §3058g(a)(3)(A)

“(3) Functions. The Ombudsman shall serve on a full-time 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”

42 U.S.C. §3058g(a)(5)(B)(ii)

“(B) Duties. An individual so designated shall, in accordance with the policies and procedures established by the Office and the State Agency . . . (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;”

42 U.S.C. §3058g(d)(2)(B)

“(B) "prohibit the disclosure of the identity of any complainant or resident with respect to whom the (ombudsman's) Office maintains such files or records unless: (i) the complainant or resident, or 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.”

42 .S.C. §3058(f) Definitions

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

42. U.S.C. §3002

(40) The term “older individual” means an individual who is 60 years of age or older.

State Long-Term Care Ombudsman Provisions In the Older Americans Act, as Amended in 1992 by Topic, With Administration on Aging (AOA) Policy Interpretations:

Policy Interpretation Regarding Clients:

“The primary role of the Ombudsman is to advocate for the rights and interests of residents of long-term care facilities. The definitions section for Title VII, Sec. 711(6) defines “resident” as “an older individual who resides in a long-term care facility.” Long-standing AOA policy is that the Ombudsman and ombudsman representatives may serve disabled individuals with disabilities under the age of 60 who are living in long-term care facilities, if such service does not weaken or decrease service to older individuals covered under the Act.”

N.C.G.S. §143B-181.20(b)

“The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.”

N.C.G.S. §143B-181.20(c)

“The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.”

N.C.G.S. §143B-181.20(d)

“The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.”

N.C.G.S. §143B-181.21(a)(b)

“(a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal techniques of mediation, conciliation, and persuasion. (b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described [above] shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 – through 110 and Part 1 of Article 1 of Chapter 131D of the General Statutes.”

N.C.G.S. §§131D-32(e) and 131E-128(h)(1)

“Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons residing in the home. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.”

B. State Policies and Procedures

1. In General:

The State Ombudsman will establish and provide training for Regional Ombudsmen on the complaint resolution process as part of the initial certification training. Both the State and Regional Ombudsmen will follow the Complaint Management Procedures as outlined in current Long Term Care Ombudsman Program Policies and Procedures. The State Ombudsman also establishes, reinforces, and revises, as deemed necessary, procedures concerning legitimate complaints against any representative of the Long-Term Care Ombudsman Program (see p. 59).

2. The State Long-Term Care Ombudsman will:

- a. Refer complaints received through the Office of the State Long Term Care Ombudsman to the appropriate Regional Ombudsman if the complaint(s) is deemed appropriate for informal grievance resolution by the Ombudsman Program.
- b. Refer complaints that are inappropriate for informal grievance resolution by the Ombudsman Program to the appropriate licensure agency pursuant to N.C.G.S. §131E-100-110 and Part 1 of Article 1 of Chapter 131D of the General Statutes
- c. Notify Regional Ombudsmen of complaints received and referred to licensure agencies or to the county department of social services pursuant to N.C.G.S. §108A, Article 6.

- d. Provide assistance directly to complainants during periods when there is a vacant Regional Ombudsman position and no other Regional Ombudsman is available, when there is an established conflict of interest or when a Regional Ombudsman is unavailable due to extended leave and there is no other Regional Ombudsman available to assume jurisdiction over the complaint.

3. When Complaints are Received Directly by a Regional Ombudsman, a Regional Ombudsman will:

- a. Visit the resident in the facility within 1-4 working days from the date the complaint is received. IF the complaint involves a time sensitive matter, such as: allegations pertaining to abuse, neglect, or exploitation; actual or threatened risk of transfer, discharge the standard of response will be prioritized to 1 working day within the 1 to 4-day standard, as specified above. In extreme situations of allegations of abuse, neglect, or exploitation with the health, safety, and well-being is at significant risk, then the matter will be addressed on the day the complaint is received.

Note: It is recognized that occasionally this timeframe cannot be met by a Regional Ombudsman. When more than four (4) days elapse before a visit with the resident, the Regional Ombudsman will document the reason under the Case Record Closing Details in the field entitled **Deviations in Complaint-Handling Practice/Policy** in the Ombudsman Program documentation and information system.

- b. Obtain information on the facility's visitor registration policy prior to visiting the facility and comply with that policy. A specific resident's name will not be written in the visitors' registry unless prior written informed consent has been obtained.
- c. Proceed to the resident's room. A Regional Ombudsman may visit with several residents in order to protect the identity of the resident identified in the complaint(s) received.
- d. Identify him/herself to the resident, explain the role of an ombudsman and explain the reason for the visit.
- e. Explain written informed consent and how it will be used. If the Regional Ombudsman wants to include a community advisory committee member in the complaint process, inform the resident and request the resident's written consent to include an advisory committee member in the grievance process. Explain the informal grievance resolution process which includes discussing complaints with the administrator as part of the efforts to resolve them.

- f. Obtain signatures from the resident and/or their resident representative on the appropriate consent form(s) that authorize review of the resident's medical/social/financial records and disclosure of the identity of the resident. If the resident uses an "X" for his/her signature, ensure there is a witness present to validate the resident's signature by signing their name under the resident's mark. Ombudsman must document type of auxiliary aids and service on the consent form(s).
- g. Respect the right of the resident and empower the resident to participate in and approve or disapprove any courses of action to be taken by the Regional Ombudsman on the resident's behalf. If the resident is unable to communicate or if s/he has been determined legally or clinically incompetent, consult with the resident's resident representative or guidance and to plan proposed actions to be taken during the complaint resolution process.
- h. Gather and document relevant information through direct observation, interviews, and record(s) review related to the complaints received. Collect specific information that will support efforts to resolve the complaint locally. Observation, interviews, and record(s) review may require multiple visits to the facility.
- i. Meet with the facility administrator or person in charge before any action is taken to allow facility management the opportunity to respond, provide additional information, or initiate internal action to resolve the complaint.
Note: If the complainant has already made attempts to resolve the complaint with management, the complainant may request that a Regional Ombudsman refrain from meeting with the administrator or not offer informal grievance resolution and assist them instead with filing a formal complaint with the appropriate regulatory agency.
- j. Utilize techniques of mediation, negotiation, conciliation, and persuasion in attempting to resolve the complaint(s) with the administrator or designated facility management staff and the complainant.
- k. If these efforts are unsuccessful and a Regional Ombudsman determines that the complaint(s) has/have not been resolved in a reasonable amount of time, then the complaint(s) will be referred by the end of the next working day to the appropriate licensure agency pursuant to N.C.G.S. §§131E-100 - 110 and Part 1 of Article 1 of Chapter 131D of the General Statutes
- l. Complete the following procedures if the results of an investigation

determine that a complaint(s) is unsubstantiated at this time:

- (1) Explain to the resident, the complainant, or resident's representative that the complaint could not be substantiated.
 - (2) Indicate that no further action will be taken by the Regional Ombudsman.
 - (3) Empower the resident or complainant by explaining ways to record information, including actions taken to address the problem, names of staff involved, dates, time of day the problem occurs, how frequently the problem occurs and any staff responses to the resident's complaints.
 - (4) Inform the resident or complainant that they may contact the Regional Ombudsman again for assistance.
- m. Record all documentation obtained as part of the investigation in the Case Record (DHHS-DAAS-004), including a final summary statement indicating the reason the case is closed, the extent to which the resident's desired outcome was achieved, final disposition codes for each complaint and indicate no further action will be taken by the Regional Ombudsman. Each closed case will be printed from the Ombudsman Program documentation and information system and the signature and date requirements completed by the Regional Ombudsman handling the case. Include the appropriate consent form(s), copies of all correspondence and all documents related to the investigation of the complaint(s) in the Case Record file.
- n. Keep each confidential Case Record and all confidential information involving the investigation in the Regional Ombudsman's locked file for a minimum of five (5) years from the date the case was closed. Any confidential complaint information, including Program Case Records retained in electronic files must also be retained for a minimum of five years before files are permanently deleted.
- o. If unable to resolve the complaint(s), the complaint(s) should be referred to the appropriate regulatory agency pursuant to N.C.G.S. §§131E-100-110 and Part 1 of Article 1 of Chapter 131D of the General Statutes
- p. Request a written follow-up report from the regulatory agency about the results of any investigation and/or whether the complaint(s) was/were substantiated or unsubstantiated.
- q. Provide follow-up information on the findings to the appropriate

individual (i.e. resident, resident representative or complainant) upon completion of the complaint resolution process.

4. When Complaints are Received Directly by a Regional Ombudsman, the Following Procedures for Obtaining Informed Consent will be used:

- a. Inform the resident or resident representative that informed consent must be obtained in order to disclose the identity of the resident or complainant during an investigation of the complaints and request the written consent of the resident.
- b. Meet one of the following three conditions to have access to the medical and social records of a resident:
 - (1) Obtain the written consent of the resident and/or the legal representative of the resident; or
 - (2) Obtain approval from the State Ombudsman when the resident is unable to consent to a review of their records and has no known legal representative; and access to the records is necessary to investigate a complaint;
 - (3) Obtain the State Ombudsman's approval to access a resident's records when a legal guardian of a resident refuses to give written consent and there is reasonable cause to believe that the guardian is not acting in the best interests of the resident.
 - (4) Obtain and review medical records only after receiving informed consent. Verbal consent cannot be used to access medical records.
- c. Obtain the following completed forms or any combination that applies to the complaint situation:
 - (1) Resident Consent Form (DHHS-DAAS-9112) Rev. 2017
 - (2) Complainant Consent Form (DHHS-DAAS-9115) Rev. 2017
 - (3) Resident Representative Consent Form (DHHS-DAAS-9116) Rev.2017
- d. Attempt to resolve the complaint and not disclose the identity of the resident if the resident requests the Regional Ombudsman to advocate on his/her behalf, but does not provide consent for his/her identity to be disclosed.
- e. Attempt to resolve the complaint and not disclose the identity of the

resident if the resident gives permission to review his/her medical/social records, but does not give permission for his/her name to be disclosed. Inform the resident that the facility's policy requires disclosure of the name of the resident in order to access residents' medical/social records and discuss alternative methods for facilitating resolution by referral of the complaint to the appropriate regulatory agency for investigation or by the Regional Ombudsman attempting to resolve the complaint without viewing the resident's records.

- f. Maintain jurisdiction and oversight of the complaint throughout the investigation process including complaints that the Regional Ombudsman requested the assistance of one or more community advisory committee members.
- g. Record a summary statement in the Case Record indicating the reason the case is closed, the extent to which the resident's desired outcome was achieved, final disposition codes, follow-up contacts completed and indicate that no further action will be taken by the Regional Ombudsman. Each closed case will be printed out from the Ombudsman Program documentation and information system and the signature and date requirements completed by the Regional Ombudsman. All hard copy Case Records shall be maintained in the Regional Ombudsman's locked files.

5. When Complaints Are Received Directly by a Regional Ombudsman, and the Resident Refuses Services, a Regional Ombudsman will:

- a. Retain jurisdiction and oversight of the complaint throughout the complaint resolution process.
- b. Visit the resident in the facility within 1-4 working days from the date the complaint is received to determine whether the resident would like the Regional Long-Term Care Ombudsman's assistance with resolving their grievance(s).
- c. Obtain information on the facility's visitors' registration policy prior to visiting the facility and comply with that policy. A specific resident's name should not be written in the visitors' registry unless informed consent has been obtained.
- d. Proceed to the resident's room. A Regional Ombudsman may visit with several residents in order to protect the identity of the resident(s) with complaint(s).
- e. Identify him/herself to the resident, explain the role of a long-term care ombudsman and explain the reason for the visit.

- f. If the resident refuses to communicate with the Ombudsman or refuses offered services, the general complaint will be referred without identifying the resident or complainant to a regulatory agency for investigation if appropriate, and no further action will be taken by a Regional Ombudsman on this resident's behalf.
- g. If the complaint(s) was/were filed by the resident's representative, s/he will be informed of the resident's decision and alternative methods of and options for complaint resolution will be discussed.

6. When Anonymous Complaints Are Received Directly by a Regional Ombudsman, a Regional Ombudsman will:

- a. Conduct a visit to the facility to talk with residents and staff about the anonymous concerns as well as conduct general observations related to the complaint(s).
- b. Attempt to resolve the complaint(s) as a general concern or issue with the facility administration utilizing techniques of mediation, conciliation, and persuasion if the complaint is appropriate for the informal grievance resolution process.
- c. Refer the complaint(s) to the appropriate regulatory agency pursuant to N.C.G.S. §§131E-100 -110 and Part 1 of Article 1 of Chapter 131D of the General Statutes if the issue cannot be resolved informally and the complaint(s) pertains to rights or licensure issues.
- d. Complete the Case Record and maintain confidentiality of the resident(s).

7. When Problems Are Observed While in a Facility, a Regional Ombudsman will:

- a. Assume the role of a complainant and address any concerns that he/she directly observes during a facility visit with facility administration even if a complaint has not been filed with the ombudsman prior to or during the visit.
- b. Refer the issue to the appropriate agency pursuant to G.S. §§131E-100 -110 and Part 1 of Article 1 of Chapter 131D of the General Statutes if the Regional Ombudsman is unable to resolve the issue with the facility administrator and it involves possible licensure violations.
- c. Document all actions taken related to addressing the complaint(s) and complete the Case Record in the Ombudsman Program

documentation and information system.

- d. Maintain the confidentiality of any resident(s) or other complainants identified who were involved in the complaint(s) unless informed consent is obtained to reveal their identity.

8. Community Advisory Committee Members will:

- a. Notify the community advisory committee chairperson when complaints are received. The chairperson will:
 - (1) Determine whether the complaints are appropriate for the committee to investigate;
 - (2) Assign subcommittee members to investigate the complaints; and
 - (3) Consult with the Regional Ombudsman for technical assistance regarding the complaints. If consultation does not include disclosure of the resident's identity, then a community advisory committee retains jurisdiction of the complaint investigation.
- b. Accept assignment from the chairperson through the required subcommittee process to complete investigation of the complaints.
- c. Follow the Long-Term Care Ombudsman Program's complaint management protocols in attempting to resolve the complaints.
- d. Adhere to the Long-Term Care Ombudsman Program and statutory confidentiality requirements in working with the resident until appropriate written informed consent is obtained to disclose the resident's identity.
- e. Relinquish jurisdiction and oversight of a complaint received to the Regional Ombudsman, if the community advisory committee chairperson discloses the identity of the resident to the Regional Ombudsman during a consultation.
- f. Document all actions taken in the Ombudsman Program Case Record.
- g. The committee chairman will submit all closed Case Records to the Regional Ombudsman who will enter the documentation into the Ombudsman Program documentation and information system.

- h. Assist a Regional Ombudsman in the grievance resolution process only if a Regional Ombudsman has obtained written consent from either the resident or the resident's representative for community advisory committee member involvement.

XIII. Complaints against Representatives of the Office of the State Long-Term Care Ombudsman

A. Legal Base

42 U.S.C. §3058g(5)(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. State Policies and Procedures

1. In General

The State Ombudsman may remove designation of a representative of the Office when an investigation and documentation review verifies there is just cause for removal of designation {see pages 12-13}. Complaints related to the actions of a designated Regional Ombudsman and all supporting documentation must be submitted in writing to the State Ombudsman. Once reviewed, the State Ombudsman will determine what, if any, remedial action may be taken to avoid initiating the designation removal process.

2. The State Long-Term Care Ombudsman will:

- a. Meet with the Regional Ombudsman to discuss the allegations and establish the facts that determine whether the Regional Ombudsman was performing duties in accordance with the Long Term Care Ombudsman Program Policies and Procedures, N.C. G.S. §§143B-181.15-.25 and Title VII of the Older Americans Act. Based on the nature of the allegations, the meeting may be conducted via a telephone conference.
- b. Provide findings in writing to the complainant that the Regional Ombudsman was acting in good faith in the performance of their duties as prescribed in state and federal law and the Long-Term Care Ombudsman Program Policies and Procedures. No further action will be taken.
- c. Explain findings to the Regional Ombudsman and the complainant

if the State Ombudsman determines that actions were in violation of Long-Term Care Ombudsman Program Policy and Procedures, N.C.G.S. §§143B-181.15-.25 and Title VII of the Older Americans Act.

- d. Propose remedies that may include scheduling a meeting between the complainant, Regional Ombudsman and Area Agency on Aging Director to establish a basis for resolution of the issues. Resolution strategies may include, but are not limited to, providing additional training and technical assistance to the Regional Ombudsman that addresses the specific inappropriate action or prohibiting the Regional Ombudsman from addressing complaints in a specific long-term care facility until the existing breach is resolved.
- e. Make a determination regarding whether the Regional Ombudsman failed to follow the Ombudsman Program Policies and Procedures, state laws, federal laws and/or violated the Long-term Care Ombudsman Program confidentiality requirements which negatively impacted a resident(s) or the Long-Term Care Ombudsman Program.
- f. Recommend de-designation and state the reasons for the action in writing. (See reasons for de-designation on pages 12-13).
- g. Review recommendations for de-designation of a Regional Ombudsman with the State Ombudsman's immediate supervisor and the Division Director.
- h. Notify the Regional Ombudsman, the Area Agency on Aging Director, the State Ombudsman's immediate supervisor and the DAAS Director of the final decision to de-designate the Regional Ombudsman, provide each with a written copy of a Notice of De-designation along with supporting documentation and advise that the individual may request an opportunity for further review within the Division of Aging and Adult Services.
- i. If a review is requested, convene a three-person committee to review the de-designation decision. The Division Director, the Chief of the Elder Rights and Special Initiatives Section and the Ombudsman Program's legal representative in the N.C. Attorney General's Office will serve on this committee. The State Ombudsman makes the final decision to de-designate a Regional Ombudsman. A written decision to uphold or reverse the de-designation will be disseminated to the Regional Ombudsman, Area Agency on Aging Director and the Executive Director of the Council of Governments.

- j. Personnel management issues involving a Regional Ombudsman will be addressed by the Area Agency on Aging Director and Executive Director of the Council of Governments.

2. A Regional Long-Term Care Ombudsman will:

- a. Meet with the State Long-Term Care Ombudsman to discuss the allegations and establish the facts related to whether the Regional Ombudsman was performing duties in accordance with N.C.G.S. §§143B-181.15-.25, Title VII of the Older Americans Act and the Long-Term Care Ombudsman Program Policy and Procedures.
- b. Develop and implement strategies cooperatively with the State Ombudsman designed to achieve resolution of the differences between the complainant and the Regional Ombudsman.
- c. Cease performing the duties of a Regional Long-term Care Ombudsman upon notification to the Area Agency on Aging Director of the State Ombudsman's decision to dedesignate the Regional Ombudsman.

3. Complaints against Community Advisory Committee Members

Community Advisory Committee members are mandated to complete initial and ongoing training as prescribed by the Office of the State Long-Term Care Ombudsman. Regional Ombudsmen are designated to provide this training and ongoing consultation to the community advisory committees in each region. Any complaint related to the actions of a community advisory committee member while visiting in a long-term care facility must be submitted in writing for review to either the Regional Ombudsman assigned to work with the affected committee or the complainant may address their complaints directly to the State Long-Term Care Ombudsman.

A. Suspension of Designation

Designation of a CAC volunteer can be suspended by the State Long-Term Care Ombudsman if the actions of the CAC volunteer are out of compliance with the Ombudsman Program Policies and Procedures, N.C. G.S. §131D-31 or §131E-128. Grounds for recommending immediate suspension of designation, pending a quality assurance review, may include but are not limited to:

- Complaints related to committee service or a CAC volunteer's visit to a facility

- Non-compliance with Ombudsman Program Policies and Procedures
- Non-attendance at meetings
- Intentional failure to reveal a conflict of interest
- Intentional misrepresentation of the volunteer's designated authority or the mandated responsibilities the CAC volunteer has agreed to perform
- The CAC volunteer's actions negatively impacting one or more facility residents or the successful operation of the Community Advisory Committee.

The Regional Long-Term Care Ombudsman assigned to work with the identified Community Advisory Committee will meet with the Community Advisory Committee volunteer for a discussion regarding the allegations and gather factual information related to the complaint(s). The Regional Ombudsman may also gather information from others knowledgeable of the allegations.

After a quality review, if the alleged action(s) is/are substantiated and determined to be out of compliance with the Ombudsman Program Policies and Procedures, G.S. §131D-31 or §131E-128, as outlined above, the Regional Ombudsman will send a written recommendation for Suspension of Designation to the Office of the State Long-Term Care Ombudsman. **NOTE:** ***Based on the severity of the complaint, a Regional Ombudsman has the discretion to recommend either suspension or removal of designation.***

B. Reinstatement of Designation

If the Regional Ombudsman decides that the Community Advisory Committee volunteer's actions were in compliance with the Law and Ombudsman Program Policies and Procedures, the complainant will be notified in writing that no further action will be taken. This outcome will be communicated to the Community Advisory Committee volunteer and Designation will be immediately reinstated. The Regional Ombudsman will maintain written documentation of facts established that support this decision.

If it is determined that the Community Advisory Committee volunteer's actions were out of compliance with the Law or Ombudsman Program Policies and Procedures, the Regional Ombudsman will notify the Committee volunteer in writing, explain the findings and outline the proposed remedial action(s).

Remedial strategies may include, but are not limited to the following:

- Require additional training about the duties of a Community Advisory Committee volunteer,
- Offer technical assistance and consultation during facility visits and/or
- Request that the Community Advisory Committee volunteer transfer to a different subcommittee so they no longer visit the facility where the action(s) of noncompliance occurred.

Upon the satisfactory completion of remedial action(s), as determined by the Regional Ombudsman, the Regional Ombudsman will send a written recommendation to the State Long-Term Care Ombudsman for Reinstatement of Designation of the volunteer.

C. Removal of Designation

Criteria for removal of designation of a CAC volunteer may include but are not limited to:

- Failure to follow policy and procedures and training provided
- Intentional failure to reveal a conflict of interest
- Intentional misrepresentation of the volunteer's designated authority or the mandated responsibilities the CAC volunteer has agreed to perform
- Failure to adhere to applicable federal and state laws, regulations and policies (Older Americans Act, 45 CFR Parts 1321 and 1324, N.C.G.S. 143B-181.15-25)
- Falsification of records, destruction of Program records or gross failure to maintain required documentation and records.

If a CAC volunteer has violated their duties or the policies and procedures of the Ombudsman Program, designation can be removed by the State Long-Term Care Ombudsman. After a quality review, as outlined above under "Suspension of Designation", the Regional Ombudsman will send a written recommendation for Removal of Designation to the Office of the State Long-Term Care Ombudsman. Removal of a CAC volunteer's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the volunteer's appointment to the Community Advisory Committee.

The Office of the State Long-Term Care Ombudsman will notify the Regional Ombudsman and the CAC volunteer regarding the final decision to remove designation. The Regional Ombudsman will notify the Clerk of the Board of County Commissioners regarding the removal of designation. The Board of County Commissioners shall immediately remove the volunteer from the Community Advisory Committee.

XIV. Prohibition of Retaliation against resident, State/Regional Ombudsmen

A. Legal Base

42. U.S.C. §3058(g)(j)(2)(3)

“The State shall (2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or any 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.

45 CFR Part §1324.15(i)

“The State Agency shall:

- (1). Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation and reprisal: (i) by a long-term care facility, other entity, or individual 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; or (ii) by a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for the fulfillment of the Functions, responsibilities, or duties enumerated at §§1324.13 and 1324.19; and
- (2). Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

(N.C.G.S. §143B-181.23)

"No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing information in good faith to the State Ombudsman or Regional Ombudsman. The Department shall determine instances of discrimination or retaliation and assess a monetary penalty in the amount of two thousand five hundred dollars (\$2,500) per incident. The Department shall adopt rules pertaining to this determination of discrimination or retaliation."

B. State Policies and Procedures

The State Ombudsman will consult with the Attorney General's Office on specific cases in which possible retaliation has occurred against any person due to filing a complaint or providing information in good faith to the State Ombudsman.

The Regional Ombudsman will consult with the attorney designated to provide legal representation on specific cases in which possible retaliation has occurred

against any person due to filing a complaint or providing information to the Regional Ombudsman.

Acts of retaliation occur when a long-term care facility, an individual, or an entity, subjects a resident of a long-term care facility, family of resident, any employee of a long-term care facility, or any other person to different types of abuse, neglect, mistreatment; or creates undue hardship for any employee of the entity or employee of a long-term care facility.

In addition to the above, other instances of retaliation and reprisal may include:

1. Discharge or transfer from a long-term care facility,
2. Termination of service,
3. Restriction or prohibition of access to the long-term care facility or its residents,
4. Discharge from or termination of employment,
5. Demotion or reduction in remuneration for services,
6. Any restriction of resident's rights,
7. Any restriction against an ombudsman or representative which impedes the carrying out of duties.

Upon initial notification, the State Ombudsman or representative shall take steps as are feasible to prevent the retaliation and reprisal. The Ombudsman shall document the acts of retaliation, and shall warn the perpetrator of the sanctions provided by the law. Additional steps shall include seeking legal consultation with the attorney designated at the regional level or the Attorney General's Office.

Responding to retaliation

If a resident, family of resident, or employee of entity or long-term care experiences retaliation or reprisal, the ombudsman or representative shall be notified. Ombudsman representative shall do the following:

1. Provide the perpetrator of the with a written summary of the laws and regulations prohibiting retaliation and reprisal.
2. The Ombudsman representative will document the facts in writing that describe the occurrence of retaliation and reprisal and a summary of the response of the perpetrator when notified that his act constituted a violation.
3. Ombudsman representatives should have access to a copy of a summary of the laws and regulations governing the operation of the LTC

Ombudsman Program whenever they conduct visits to long-term care facilities.

4. If the first level of communication with a long-term care facility or entity is not successful, the Ombudsman representative shall contact the facility administrator, other entity or individual either by telephone or in person to provide a summary of the retaliation and reprisal that have occurred along with a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting retaliation and reprisal., and the lawful responses of the ombudsman representative.
5. If retaliation and reprisal continue, the Regional Ombudsman shall submit a written description of the incident to the State Long-Term Care Ombudsman including dates, times, circumstances, instances of retaliation and reprisal by the individual, entity or facility management, and the steps taken by the Ombudsman representative to educate the individual, entity or facility administration that is responsible. If the retaliation and reprisal results in the isolation of residents from the Ombudsman representative, the Ombudsman representative may also file a complaint with the appropriate regulatory agencies.
6. Within two days of receiving the written description of the incident, the State Ombudsman or his or her designee shall send a cease and desist letter to the individual or administrator of the facility, entity or individual that is retaliating. The cease and desist letter shall advise the individual, or the facility administrator, entity or individual that he or she may be subject to a civil penalty of up to \$2,500 per incident. The State Ombudsman shall send a copy of the letter to the Director of the State Agency on Aging and Adult Services. After a due process, the Director may impose a civil penalty of up to \$2,500 per incident.

XV. Immunity from Liability for the Offices of the State and Regional Long-Term Care Ombudsmen

A. Legal Base

42 U.S.C. §3058(g)(l)

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

(N.C.G.S. §143B-181.24)

"No representative of the Office shall be liable for good faith performance of

official duties."

B. State Policies and Procedures

No representative of the Office shall be liable for good faith performance of official duties.

1. Official duties are those duties of the ombudsman set forth in applicable federal law, state statute, and Ombudsman Program Policies and procedures.
2. Evidence of performing duties in good faith includes, but not limited to:
 - (i) Making every reasonable effort to follow procedures set forth in applicable law, statute, policies and procedures.
 - (ii) Seeking and making reasonable efforts to follow direction from the Office of the State Long-Term Care Ombudsman.

XVI. Penalty for Willful Interference with the Long-Term Care Ombudsman Program

A. Legal Base

42 U.S.C. §3058(g)(j)(1)

"The State agency 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."

45 CFR Part §1324.15(i)

"The State Agency shall:

- (1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation and reprisal:
 - a) by a long-term care facility, other entity, or individual 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; or
 - b) by a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for the fulfillment of the Functions, responsibilities, or duties enumerated at §§1324.13 and 1324.19; and
- (2) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

(N.C.G.S. §143B-181.25)

"Willful or unnecessary obstruction with the State or Regional Long-term Care Ombudsman in the performance of his/her official duties is a Class I misdemeanor and subject to a fine of two thousand five hundred dollars (2,500)."

B. State Policies and Procedures

Acts of willful interference occur when a long-term care facility another entity or person prevents or attempts to prevent an Ombudsman representative, from performing his or her lawful duty. This would include attempting to obstruct full access to any resident in a long-term facility, obstructing private and confidential communication with a resident or legal representative and/or lawful access to a resident's records.

Responding to Willful Interference

If an Ombudsman representative experiences willful interference, he or she shall do the following:

1. Provide the individual who is interfering with a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives.
2. The Ombudsman representative will document the facts in writing that describe the occurrence of willful interference in performance of duties along with the initial response provided to the interfering individual by the Ombudsman representative.
3. Ombudsman representatives should have access to a copy of a summary of the laws and regulations governing the operation of the Long-Term Care Ombudsman Program whenever they conduct visits to long-term care facilities.
4. If the first level of communication with a long-term care facility is not successful, the Ombudsman representative shall contact the facility administrator, other entity or individual either by telephone or in person to provide a summary of the interference that has occurred along with a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting interference with the lawful actions of Ombudsman representatives.
5. If the interference continues, the Regional Ombudsman shall submit a written description of the incident to the State Long-Term Care Ombudsman including dates, times, circumstances, history of interference

by the individual, entity or facility management, and the steps taken by the Ombudsman representative to educate the individual, entity or facility administration that is interfering. If the interference results in the isolation of residents from the Ombudsman representative, the Ombudsman representative may also file a complaint with the appropriate regulatory agencies and local law enforcement agency.

6. Within two days of receiving the written description of the incident, the State Ombudsman or his or her designee shall send a cease and desist letter to the individual or administrator of the facility where the interference occurred. The cease and desist letter shall advise the individual or the facility administrator that he or she may be subject to a civil penalty for interference. The State Ombudsman shall send a copy of the letter to the Director of the State Agency on Aging and Adult Services. Director shall forward the letter to local law enforcement.

The State Ombudsman and the director shall consult with local law enforcement on specific instances in which alleged and unnecessary interference has occurred during the performance of official duties.

The Judge may assess criminal penalty of up to \$2,500.00 per incident (N.C.G.S. §143B-181.25). "Willful or unnecessary obstruction with the State or Regional Long-Term Care Ombudsman in the performance of his official duties is a Class 1 misdemeanor and subject to a fine of two thousand five hundred dollars."

XVII. Appendices

Appendix A - DAAS's request for Attorney General's Advisory Opinions on legal representation for Regional Ombudsmen.

Appendix B - Letter to Board of County Commissioners Session Law 2017-103 (House Bill 248).

Appendix C - Complaint Investigation Flowchart and Consent Forms.

Appendix D - Draft Document: Alleged Willful Interference / Retaliation / Reprisal.

Appendix A



RICHARD O. BRAJER
Secretary

SUZANNE P. MERRILL
Director, Division of Aging and Adult Services

May 24, 2016

Mr. Grayson G. Kelley, Chief Deputy Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

Re: Request for Advisory Opinion Concerning Personnel Management and
Legal Representation of Regional Long-Term Care Ombudsmen

Dear Chief Deputy Kelley:

A new federal final rule governing State Long-Term Care Ombudsman Programs was published February 11, 2015 and becomes effective July 1, 2016. The final rule adds Part 1327 to Title 45 of the Code of Federal Regulations. The N.C. Division of Aging and Adult Services is currently in the process of amending the North Carolina Long-Term Care Ombudsman Program Policies and Procedures Manual to comply with the new final rule.

The Division is requesting an advisory opinion on two questions so that both the Office of the State Long-Term Care Ombudsman and the 16 Area Agencies on Aging that house the Regional Long-Term Care Ombudsman Programs can be in compliance with the final rule by July 1, 2016.

Question 1. Personnel Management versus Program Management

Is it possible to have an all-inclusive definition of personnel management as it pertains to the supervision of Regional Long-Term Care Ombudsmen within the Area Agencies on Aging?

Citations: 45 C.F.R. §§ 1327.11, 1327.17; N.C.G.S. §§ 143B-181.15-.25

Previous informal opinions on a similar question were rendered by Special Deputy Attorney General Robert J. Blum in a memorandum dated January 25, 2007 and

 Nothing ComparesSM
Department of Health and Human Services | Division of Aging and Adult Services
693 Palmer Drive, Taylor Hall | 2101 Mail Service Center | Raleigh, NC 27699-2101
919 855 3400 T | 919 733 0443 F

RICHARD O. BRAJER
Secretary

SUZANNE P. MERRILL
Director, Division of Aging and Adult Services

by Special Deputy Attorney General Richard Slipsky, communicated via DOA
Administrative Letter No. 99-5 on June 9, 1999. (attached)

Question 2. Legal Representation for Regional Ombudsmen

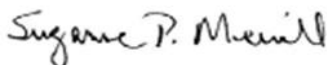
Does the federal Older American's Act and final rule require the N.C. Division of Aging and Adult Services to provide legal representation to the Regional Long-Term Care Ombudsmen employed by the Area Agencies on Aging and, if so, can the Attorney General's Office provide that representation?

Citations: 42 U.S.C. § 3058g(g); 45 C.F.R. § 1327.15(j); N.C.G.S. § 143B-181.17

A similar question was also addressed in the above-referenced memorandum from Special Deputy Attorney General Robert J. Blum dated January 25, 2007, attached.

We appreciate your time and consideration of this matter so that we can be in compliance with the final rule by July 1, 2016. Please let me know if you have any questions about this request.

Sincerely,



Suzanne Merrill, Director
N.C. Division of Aging and Adult Services



ROY COOPER
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P.O. Box 629
RALEIGH
27602

NEAL T. MCHENRY
ASSISTANT ATTORNEY
GENERAL
HEALTH AND PUBLIC ASST.
TEL: (919) 716-6813
FAX: (919) 716-6758

May 24, 2016

Suzanne Merrill, Director
North Carolina Division of Aging and Adult Services
2101 Mail Service Center
Raleigh, NC 27699-2101

Re: Advisory letter on personnel management and legal representation of Regional
Long-Term Care Ombudsmen

Dear Director Merrill:

You have asked two questions regarding the North Carolina Long-Term Care Ombudsman Program and the new federal final rule governing State Long-Term Care Ombudsman Programs which was published February 11, 2015 and becomes effective July 1, 2016. See 80 Fed. Reg. 7704 (Feb. 11, 2015) (amending Section 1321.11 and adding Part 1327 to Title 45 of the Code of Federal Regulations).

The first question is whether it is possible to have an all-inclusive definition of personnel management as it pertains to the supervision of Regional Long-Term Care Ombudsmen ("Regional Ombudsmen") within the Area Agencies on Aging. It is my opinion that it is not feasible or practical to have an all-inclusive definition of personnel management because there can be situations when personnel management policies and practices overlap with programmatic policies and procedures.

The second question is whether the Older Americans Act and final rule require the North Carolina Division of Aging and Adult Services to provide legal representation to the Regional Ombudsmen and, if so, can the Attorney General's Office provide that representation. It is my opinion that the North Carolina Division of Aging and Adult Services is only required to ensure that the employer of the Regional Ombudsman, i.e., the Area Agency on Aging, provides the Regional Ombudsman with access to adequate legal representation.

As an initial matter, this Office has previously opined on similar questions and it does not appear that the final rule impacts or changes the previous opinions given by this Office. (Memorandum from Robert J. Blum, January 25, 2007; DOA Administrative Letter No. 99-5, June 9, 1999)

Question 1: Personnel Management versus Program Management

Is it possible to have an all-inclusive definition of personnel management as it pertains to the supervision of Regional Ombudsmen within the Area Agencies on Aging?

Answer:

It is my opinion that it is not feasible or practical to have an all-inclusive definition of personnel management as it pertains to the supervision of Regional Ombudsmen within the Area Agencies on Aging. Title 45 C.F.R. § 1327.17(a) states that “[t]he agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.” The regulation also provides that the agency “shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties” of the Ombudsman Program. 45 C.F.R. § 1327.17(b); see also 45 C.F.R. § 1327.11(e)(1)(ii). “Policies, procedures and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of [the] local Ombudsman entity by the Ombudsman.” 45 C.F.R. § 1327.17(b)(1).

Personnel management is not defined in the new final rule or in the Older Americans Act and federal regulations governing the State Long-Term Care Ombudsman Programs. Generally, “such issues as staff salaries, transportation, vacation and sick leave, work hours and day-to-day operations,” (Memorandum from Robert J. Blum, January 25, 2007, p. 2), and “attendance and salary schedules, local budget oversight, local evaluation of employee performance and ensuring availability of adequate space and supplies,” (DOA Administrative Letter No. 99-5, June 9, 1999, p. 1), would be personnel management functions. However, situations may arise in which personnel management functions overlap with programmatic functions.

The United States Department of Health and Human Services’ Administration for Community Living, Administration on Aging, addressed a similar question in their Frequently Asked Questions that were published to assist States with implementing the new final rule. See Administration for Community Living, Administration on Aging (“ACL”), Frequently Asked

Questions, at http://www.aoa.gov/aoa_programs/OAA/resources/faqs.aspx. The question was: “What is meant by the requirement that a host agency of a local Ombudsman entity is responsible for personnel management, but not programmatic oversight of representatives of the Office, as required in 45 CFR 1327.17(a)?” See ACL Frequently Asked Questions (internal quotations omitted).

The ACL gave the example that “[t]he host agency may retain the authority over the personnel functions of the agency, such as hiring and firing. However, the Ombudsman must have responsibility for the programmatic functions of the Ombudsman program, including designation and de-designation of representatives of the Office.” ACL Frequently Asked Questions. The ACL further stated that “[r]epresentatives of the Office, including those hired by . . . a local Ombudsman entity, are to be accountable to the head of the Office (i.e. the Ombudsman) for purposes of Ombudsman program operations. For example, they must follow the policies, procedures and guidance of the Ombudsman regarding complaint processing and other Ombudsman program activities.” ACL Frequently Asked Questions. “At the same time, representatives of the Office who work within a local Ombudsman entity also represent (as an employee or volunteer) the host agency. The local Ombudsman entity and/or its host agency is responsible for day-to-day personnel management.” ACL Frequently Asked Questions.

The ACL acknowledges that there may be situations where personnel management and programmatic supervision policies overlap and points out that “[i]n these situations, programmatic policies and procedures take precedence.” ACL Frequently Asked Questions; see also 45 C.F.R. §§ 1327.17(b), 1327.11(e)(1)(ii). For example, if the State Ombudsman advises a Regional Ombudsman to visit a facility during the weekend to investigate a claim that the facility is inadequately staffed on the weekends, the host agency would have to have a personnel policy that permits work outside of the normal weekday hours to accommodate the need to investigate the complaint. See ACL Frequently Asked Questions. If the host agency’s personnel policies and procedures prohibited work during weekend hours, such policies and procedures would have to yield to the program’s policies and procedures to allow the Regional Ombudsman to investigate the complaint. See 45 C.F.R. §§ 1327.17(b), 1327.11(e)(1)(ii).

The ACL further notes that coordination of personnel management and programmatic responsibilities between the host agency and the Ombudsman can benefit both entities. For example, the Ombudsman may share with the host agency “information related to program monitoring/program management to assist in the host agency’s personnel performance reviews . . .” Additionally, “coordinating hiring/firing and designation/de-designation processes” can be beneficial. “While hiring/firing decisions are the responsibility of the host agency and designation/de-designation decisions are the responsibility of the Ombudsman, close coordination through these processes can benefit both the Ombudsman and the host agency.”

ACL Frequently Asked Questions; see also 45 C.F.R. § 1327.11(e)(1)(iv) (requiring policies and procedures regarding program administration to include description of process by which agencies hosting local Ombudsman entities will coordinate with Ombudsman in the employment or appointment of representatives of the Office).

In sum, an all-inclusive definition of personnel management as it pertains to the supervision of Regional Ombudsmen within the Area Agencies on Aging is not feasible or practical because there can be situations when personnel management policies and practices overlap with programmatic policies and procedures. In those situations where the personnel policies or practices prohibit the Regional Ombudsman from performing the duties of the Ombudsman Program, such policies and practices must yield to the programmatic policies and procedures of the Ombudsman Program. Because of the potential for overlap of personnel management functions and programmatic functions, coordination between the Area Agencies on Aging and the State Ombudsman is beneficial to both entities and is consistent with the ACL's guidance.

Question 2: Legal Representation for Regional Ombudsmen

Does the federal Older Americans Act and final rule require the North Carolina Division of Aging and Adult Services to provide legal representation to the Regional Ombudsmen and, if so, can the Attorney General's Office provide that representation?

Answer:

It is my opinion that the North Carolina Division of Aging and Adult Services is only required to ensure that the employer of the Regional Ombudsman, i.e., the Area Agency on Aging, provides the Regional Ombudsman with access to adequate legal representation. Consistent with the Older Americans Act, the new final rule requires the State agency to ensure that adequate, competent and conflict-free legal counsel is available as needed to provide consultation and representation to the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities and duties. See 45 C.F.R. § 1327.15(j)(1)(i)(B); 42 U.S.C. § 3058g(g)(1)(A)(ii). The final rule also requires the State agency to ensure that "[l]egal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or 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." 45 C.F.R. § 1327.15(j)(1)(iii); see also 42 U.S.C. § 3058g(g)(1)(B). Additionally, "[s]uch legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed" 45 C.F.R. § 1327.15(j)(2). Thus, the new final rule, consistent with the Older Americans Act, does not require the State agency to provide legal

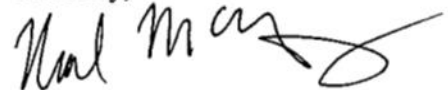
Suzanne Merrill
May 24, 2016
Page 5 of 5

representation to the Regional Ombudsman, but rather to *ensure* that adequate legal representation is available to the Regional Ombudsman, should the need arise.

The Attorney General's Office is authorized by statute to represent State departments and agencies, including the Office of the State Long-Term Care Ombudsman within the Division of Aging and Adult Services. See N.C.G.S. §§ 114-2(2), 143B-181.17.¹ Area Agencies on Aging are public or private nonprofit agencies or organizations designated by the Division of Aging and Adult Services to serve within multi-county planning and service areas. See 10A N.C.A.C. 5C.0203, 5C.0204, 5F.0101, 5F.0201(b), 5F.0202(a); see also 42 U.S.C. § 3025(a)(2)(A); 45 C.F.R. § 1321.29(a). Thus, Area Agencies on Aging are not State departments or agencies. Regional Ombudsmen are employees of the Area Agencies on Aging. See N.C.G.S. § 143B-181.16(4). Because Regional Ombudsmen are not employees of State departments or agencies, the Attorney General's Office is not authorized to represent the Regional Ombudsmen. (see also Memorandum from Robert J. Blum, January 25, 2007, p. 3)

This is an advisory letter. It has not been approved in accordance with procedures for issuing an Advisory Opinion of the Attorney General.

Sincerely,

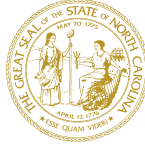


Neal T. McHenry
Assistant Attorney General

cc: Grayson Kelley, Chief Deputy Attorney General
Emery E. Milliken, General Counsel, DHHS
Melissa Lovell, Agency Legal Specialist, NCDOJ

¹ The references to the North Carolina General Statutes are to the statutes currently in effect. The changes to the General Statutes, Sections 143B-181.15-.25, in session law 2015-220, House Bill 308 (approved August 18, 2015 and effective July 1, 2016), do not alter this opinion.

Appendix B



DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF AGING AND ADULT SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

SUZANNE P. MERRILL, MSW
DIRECTOR

December 1, 2017

Dear County Boards of Commissioners:

Session Law 2017-103 (House Bill 248) was ratified by the NC General Assembly and signed into law on July 12, 2017. The NC Department of Health and Human Services, Division of Aging and Adult Services, Office of the State Long-Term Care Ombudsman sought the legislative changes to assure compliance with the US Administration for Community Living regulations governing state's long-term care ombudsman program. The changes amended NCGS 131D-31 (Adult Care Home Community Advisory Committees) and NCGS 131E-128 (Nursing Home Advisory Committees).

With these statutory changes, appointments by boards of county commissioners of community advisory committee volunteers to either the adult care home or nursing home advisory committee shall first be contingent upon designation of appointees by the Office of the State Long-Term Care Ombudsman. Once the designation is complete, boards of county commissioners can appoint volunteers to the advisory committees. Removal of an appointee's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the appointment to either committee.

The Office of the State Long-Term Care Ombudsman has developed three documents described below to highlight the process.

1. The chart entitled "Comparison of Appointment to Community Advisory Committees Pre-and Post-Enactment of Session Law 2017-103" provides a quick comparison of the process prior to and subsequent to the passage of the legislation.
2. The document entitled "Community Advisory Committee Certification and Designation Procedures" describes in more detail the sequence for appointing a volunteer, suspending and reinstating designation of a volunteer, and de-designation of a volunteer.

3. The form entitled “Notification Requesting Removal of Community Advisory Committee Member” is used to notify county boards of commissioners when the Office of the State Long-Term Care Ombudsman de-designates a volunteer. Upon receipt, the board of county commissioners shall immediately remove the volunteer from the committee.

Please communicate this information to your respective county clerks. It is important for them to be aware of the changes in the community advisory committee appointment procedures. The regional ombudsman will also communicate and discuss this information with county clerks. Additionally, the State Long-Term Care Ombudsman and the regional ombudsman for your county will be glad to provide any additional information or training on the new procedures for county boards of commissioners. Please contact Mr. Victor Orija, State Long-Term Care Ombudsman, if you have questions or to request additional assistance to implement these changes. Mr. Orija can be reached at 919-855-3426 or Victor.Orija@dhhs.nc.gov

We appreciate your past and continued support of the NC Long-Term Care Ombudsman Program and the important role of volunteers in long-term care settings.

Sincerely,

Suzanne P. Merrill
Director

SPM/VO/pg

Attachments

Comparison of Appointment to Community Advisory Committees Pre-and Post-Enactment of Session Law 2017-103

Appointment Process (Pre-S.L. 2017-103)	Appointment Process (Post S.L. 2017-103)
<ul style="list-style-type: none"> • Application in county of residence • Appointed to Community Advisory Committee • Regional Ombudsman trains CAC volunteer • Volunteer NOT designated by the Office of State Long-Term Care Ombudsman and NOT accountable to the State Long-Term Care Ombudsman as a representative • Office of State Long-Term Care Ombudsman cannot remove the CAC volunteer from the Community Advisory Committee, even if removed as a representative of the State Long-Term Care Ombudsman 	<ul style="list-style-type: none"> • Application in county of residence • Clerk of Board of County Commissioners notifies Regional Ombudsman of volunteer's application • Regional Ombudsman verifies whether volunteer meets minimal requirements and is free of conflict of interest • Regional Ombudsman trains volunteer and volunteer attests to understanding role and commitment • Office of State Long-Term Care Ombudsman certifies and designates volunteer • Regional Ombudsman notifies Commissioners to appoint volunteer to committee • Office of State Long-Term Care Ombudsman can refuse, suspend or remove designation of a volunteer; de-designation immediately rescinds appointment to the CAC; Clerk of the Board of County Commissioners notifies the Regional Ombudsman that the volunteer has been removed

Community Advisory Committee Certification and Designation Procedures

Legal Base

42 U.S.C. §3058g(h)(45)(A)

“The State agency shall require the Office to(4)(A) strengthen and update procedures for the training of the representatives of the Office, including unpaid volunteers, based on the 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.....”

45 CFR §1324.13(c)(2)

“The Ombudsman shall establish procedures for training, for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of the Long-Term Care Ombudsman Programs as described in section 201(d) of the Act.....”

N.C.G.S. §143B-181.19(b)(8)

“Provide training and technical assistance to the Community Advisory Committees.”

Designation of Volunteers

The State Ombudsman shall designate or refuse and suspend or remove designation of volunteer representatives of the Office of the State Long-Term Care Ombudsman, including any Community Advisory Committee volunteers, in accordance with the Long-Term Care Ombudsman Program Policies and Procedures.

Any individual who serves as a Community Advisory Committee volunteer must go through the Office of the State Long-Term Care Ombudsman's certification and designation process and meet the certification and designation requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures prior to appointment by the Board of County Commissioners.

Volunteers appointed to a Community Advisory Committee must:

- meet the minimum requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures,
- have received initial training; and
- meet on-going training requirements in accordance with the State Long-Term Care Ombudsman Policies and Procedures

Each potentially eligible CAC volunteer shall receive mandatory training developed by the Office of the State Long-Term Care Ombudsman regarding their accountability as it relates to the role as a representative of the Office of the State Long-Term Care Ombudsman and must attest to their understanding of the role and their commitment to

the Ombudsman Program. After successfully completing the training and signing an attestation statement, the individual will be certified and designated to function as a representative of the Office of the State Long-Term Care Ombudsman.

Appointment of Community Advisory Committee Volunteers

Overview of Process:

- Application is made by potential CAC volunteer to their Board of County Commissioners
- Clerk of the Board of County Commissioners notifies the Regional Ombudsman of the application
- Regional Ombudsman evaluates whether the applicant volunteer meets the minimum requirements and is free of conflict of interest per 45 CFR §1324.21
- Applicant volunteer completes initial training provided by the Regional Ombudsman
- Applicant volunteer attests to completion of training, understanding of role and commitment to the Ombudsman Program
 - Office of the State Long-Term Care Ombudsman certifies and designates the volunteer
 - Regional Ombudsman notifies the Board of County Commissioners that the volunteer may be appointed to the Community Advisory Committee
- Volunteer is appointed and becomes a CAC member
- Office of the State Office Long-Term Care Ombudsman may refuse, suspend, or remove designation of a volunteer; upon de-designation, the Board of County Commissioners shall automatically rescind appointment to the Committee.

As outlined above, County Commissioners will receive applications/nominations of county citizens volunteering to participate on each Community Advisory Committee. The Board of County Commissioners will recommend a potential Community Advisory Committee volunteer, through the Clerk of the Board, to the Regional Ombudsman. The Regional Ombudsman will evaluate whether the volunteer meets the minimum qualifications for appointment, is free of conflict of interest and is willing to meet the requirements of the program. Interested volunteers may also contact the Regional Ombudsman directly.

Regional Ombudsmen will either accept or decline each nomination based on the standard requirements. If a nomination is declined, a written explanation will be sent to the nominee and the Clerk of the Board of County Commissioners.

An accepted volunteer will advance to certification training, which will be provided by the Regional Ombudsmen on a regular basis, within 90 days. Each CAC volunteer is mandated to complete the initial and ongoing training provided by Regional Ombudsmen in accordance with the Ombudsman Policies and Procedures.

After successful completion of the certification training, the volunteer will attest to their understanding of their role and commitment to the Ombudsman Program, signing a statement to that effect. The Regional Ombudsmen will then forward the name of the volunteer, along with the date of expiration for their term, to the Office of the State Long-Term Care Ombudsman.

The State Long-Term Care Ombudsman will designate the volunteer as a representative of the Office by issuing a certificate within 15 days of notification by the Regional Ombudsman. The certificate will be generated by the Office of the State Long-Term Care Ombudsman and mailed to the volunteer. The Regional Ombudsman will be notified of each designation and will, in turn, notify the Clerk of the Board of County Commissioners that the volunteer is eligible for appointment to the Community Advisory Committee. The volunteer may then be appointed by Board of County Commissioners and becomes a CAC member.

Suspension of Designation

Designation of a CAC volunteer can be suspended by the State Long-Term Care Ombudsman if the actions of the CAC volunteer are out of compliance with the Ombudsman Program Policies and Procedures, N.C. G.S. §131D-31 or §131E-128. Grounds for recommending immediate suspension of designation, pending a quality assurance review, may include but are not limited to:

- Complaints related to committee service or a CAC volunteer's visit to a facility
- Non-compliance with Ombudsman Program Policies and Procedures
- Non-attendance at meetings
- Intentional failure to reveal a conflict of interest
- Intentional misrepresentation of the volunteer's designated authority or the mandated responsibilities the CAC volunteer has agreed to perform
- The CAC volunteer's actions negatively impacting one or more facility residents or the successful operation of the Community Advisory Committee.

The Regional Long-Term Care Ombudsman assigned to work with the identified Community Advisory Committee will meet with the Community Advisory Committee volunteer for a discussion regarding the allegations and gather factual information related to the complaint(s). The Regional Ombudsman may also gather information from others knowledgeable of the allegations.

After a quality review, if the alleged action(s) is/are substantiated and determined to be out of compliance with the Ombudsman Program Policies and Procedures, G.S. §131D-31 or §131E-128, as outlined above, the Regional Ombudsman will send a written recommendation for Suspension of Designation to the Office of the State Long-Term Care Ombudsman.

NOTE: *Based on the severity of the complaint, a Regional Ombudsman has the discretion to recommend either suspension or removal of designation.*

Reinstatement of Designation

If the Regional Ombudsman decides that the Community Advisory Committee volunteer's actions were in compliance with the Law and Ombudsman Program Policies and Procedures, the complainant will be notified in writing that no further action will be taken. This outcome will be communicated to the Community Advisory Committee volunteer and Designation will be immediately reinstated. The Regional Ombudsman will maintain written documentation of facts established that support this decision.

If it is determined that the Community Advisory Committee volunteer's actions were out of compliance with the Law or Ombudsman Program Policies and Procedures, the Regional Ombudsman will notify the Committee volunteer in writing, explain the findings and outline the proposed remedial action(s).

Remedial strategies may include, but are not limited to the following:

- Require additional training about the duties of a Community Advisory Committee volunteer,
- Offer technical assistance and consultation during facility visits and/or
- Request that the Community Advisory Committee volunteer transfer to a different subcommittee so they no longer visit the facility where the action(s) of noncompliance occurred.

Upon the satisfactory completion of remedial action(s), as determined by the Regional Ombudsman, the Regional Ombudsman will send a written recommendation to the State Long-Term Care Ombudsman for Reinstatement of Designation of the volunteer.

Removal of Designation

Criteria for removal of designation of a CAC volunteer may include but are not limited to:

- Failure to follow policy and procedures and training provided
- Intentional failure to reveal a conflict of interest
- Intentional misrepresentation of the volunteer's designated authority or the mandated responsibilities the CAC volunteer has agreed to perform
- Failure to adhere to applicable federal and state laws, regulations and policies (Older Americans Act, 45 CFR Parts 1321 and 1324, N.C.G.S. 143B-181.15-25)
- Falsification of records, destruction of Program records or gross failure to maintain required documentation and records.

If a CAC volunteer has violated their duties or the policies and procedures of the Ombudsman Program, designation can be removed by the State Long-Term Care Ombudsman. After a quality review, as outlined above under "Suspension of Designation", the Regional Ombudsman will send a written recommendation for Removal of Designation to the Office of the State Long-Term Care Ombudsman. Removal of a CAC volunteer's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the volunteer's appointment to the Community Advisory Committee.

The Office of the State Long-Term Care Ombudsman will notify the Regional Ombudsman and the CAC volunteer regarding the final decision to remove designation. The Regional Ombudsman will notify the Clerk of the Board of County Commissioners regarding the removal of designation. The Board of County Commissioners shall immediately remove the volunteer from the Community Advisory Committee.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF AGING AND ADULT SERVICES
OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

**NOTIFICATION REQUESTING REMOVAL OF
COMMUNITY ADVISORY COMMITTEE VOLUNTEER**

TO: Clerk/County Manager _____
FROM: _____ Regional Ombudsman, Region _____
Volunteer: _____
Date: _____
County Committee Assignment: _____ Adult Care Home _____ Nursing Home _____ Joint
Date of Appointment _____

Reason for Request

Volunteers are a vital part of the services that support older adults in your county. However, the volunteer indicated above is not eligible for continued service for the following reason:

- _____ Conflict of Interest
1. G.S. 131 E-128 (f) Nursing Home
 2. G.S. 131 D-31 (g) Adult Care Home
 3. 45 CFR §1324.21
- _____ Failure to attend required on-going training or complete required orientation and training
1. G.S. 131 E- 128 (g) Nursing Home
 2. G.S. 131 D- 31 (h) Adult Care Home
- Dates offered: _____
- _____ Other (Non-attendance at quarterly meetings and facility visits)
1. As determined by the Long-Term Care Ombudsman Program Policies and Procedures
 2. As determined by the committee by-laws.
 3. As determined by resignation of the volunteer
 4. As determined by removal of designation by the Office of the State Long-Term Care Ombudsman

This is an official notification to the Board of Commissioners to remove named individual from service on the above-mentioned committee (HB 248, July 2017). Should you have any questions, please contact _____, Regional Ombudsman, xxx-xxx-xxxx. Thank you in advance for your prompt attention to this matter.

693 Taylor Drive, Raleigh, NC 27603 / applicable address
Phone: xxx-xxx-xxxx Fax: xxx-xxx-xxxx

www.

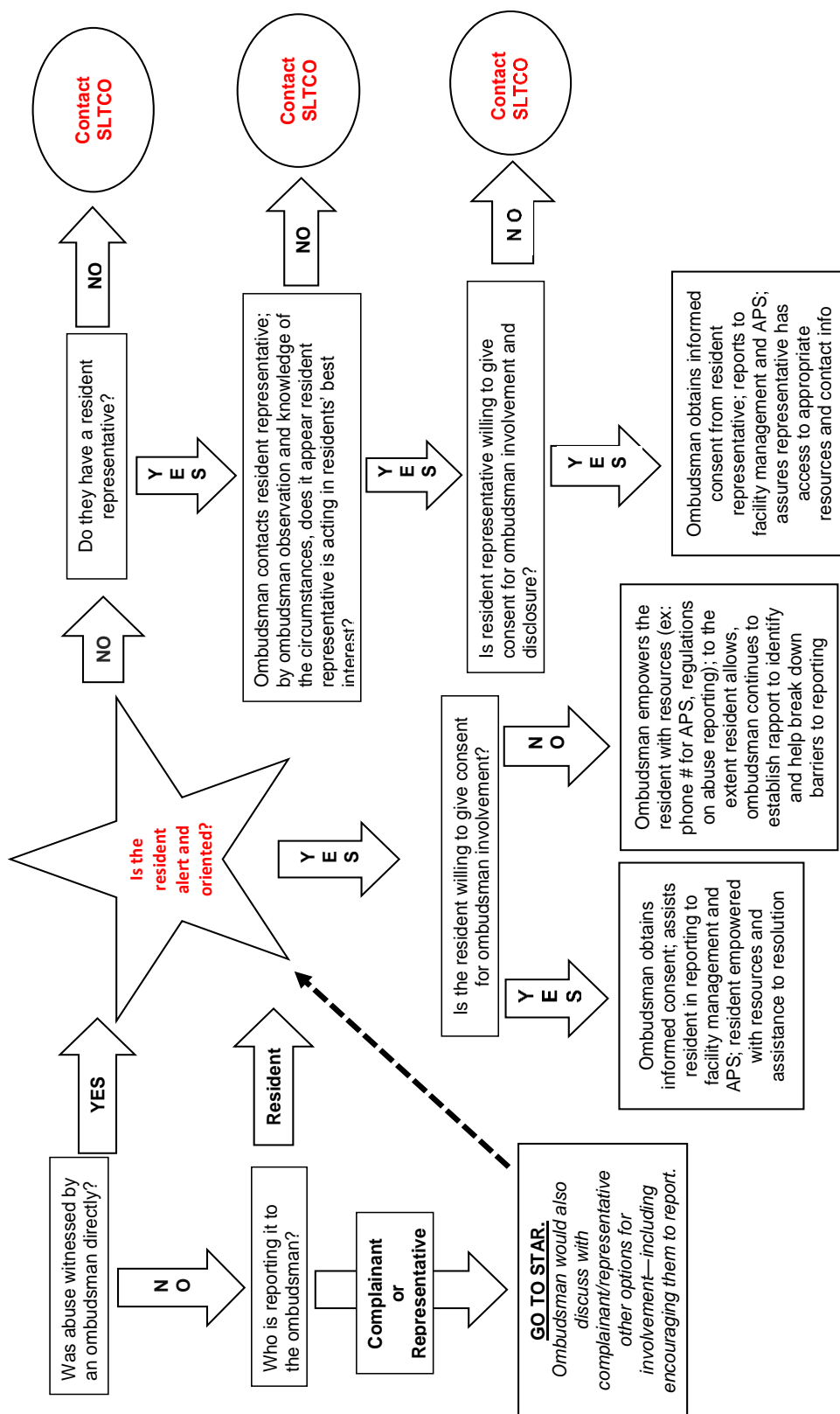
107

7/12/2017

Appendix C

Abuse Reporting Flowchart

Basis: Federal Register Vol 80, No. 28
p. 7764-7765, CFR 1327.19 3-9



“Resident Consent Form”—DAAS 9112

Instruction Page

Instructions for Ombudsman Program Representatives

Resident Consent Form DAAS 9112 shall be used by Ombudsman Program Representatives (“Representatives of the Office” as defined in Policy and Procedure Manual of the NC Long-term Care Ombudsman Program) to document consent from a resident to investigate complaints, disclose their identity, and access information as designated by the resident. Consent must be obtained prior to any investigation. Legal authority for such access and disclosure can be found in 42 CFR 1324. 19 (b) (6) and 42 CFR 1324. 11 (E) (2) and (3); as well as specified in Policy and Procedures Manual of the NC Long-term Care Ombudsman Program.

Please note that “Resident Consent Form” (DAAS 9112) is a two-sided form. For this form to be considered valid, both sides of the form must be completed.

Section I: Consent for Investigation and Disclosure of Identity

SECTION INTENT

- 1) for resident to provide consent for complaint to be pursued and
- 2) for their preference for Ombudsman Program Representative to disclose their identity or not to be indicated

STEPS FOR SECTION COMPLETION

- 1) Resident or Ombudsman Program Representative fill in Name, Facility Name.
- 2) Resident or Ombudsman Program Representative check YES or NO for disclosure of identifying information

REQUIRED FIELDS

Name, Facility Name, Yes or No

REMINDERS

“Identifying information” includes distinguishing characteristics of the resident, including their name.

Examples of identifying information:

“Mrs. Jones in 204”

“The resident on 700 hall that is vegan”

“The male resident that has a double knee amputation and several tattoos

These all distinguish specific characteristics about a resident that would make them identifiable.

Section II: Consent for Additional Involvement

SECTION INTENT

For the resident to provide consent for additional third-party disclosures about the resident's complaint.

STEPS FOR SECTION COMPLETION

Resident or Ombudsman Program Representative check disclosures based upon resident's specified wishes. *There will be cases where this section is blank.*

REQUIRED FIELDS

None in this section—complete based upon resident wishes and complaint management procedures.

REMINDERS

Resident or Ombudsman Program Representative may make specific notations about disclosures.

Section III: Consent to View Medical/Financial/Social Records

SECTION INTENT

For Resident to specify consent to Ombudsman Program Representative about his/her preference for accessing medical/social/financial records.

STEPS FOR SECTION COMPLETION

Resident or Ombudsman Program Representative check YES or NO for permission or not for access to resident's records.

REQUIRED FIELDS

Yes or No, as indicated by resident

Section IV (back of form): Resident Authorization

SECTION INTENT

Resident signs **or** Ombudsman Program Representative verifies with signature to authorize the specified actions to be taken in investigating the complaints.

STEPS FOR SECTION COMPLETION

When Resident is able to sign, resident signs and authorizes the form.

When oral or auxiliary consent is obtained, Ombudsman Program Representative signs verifying authorization as the resident has specified.

REMINDER

It is at the discretion of the Ombudsman Program Representative to get additional witness if resident writing is not legible or "X" is designated.

If in doubt or questioning, please contact The Office of the State Long-term Care Ombudsman.

Please contact the NC Office of the State Long-term Care Ombudsman with further questions or case specific consultation at 919-855-3400.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF AGING AND ADULT SERVICES
OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

RESIDENT CONSENT FORM

CONSENT FOR INVESTIGATION AND DISCLOSURE OF IDENTITY

I _____, resident of _____ give my
(NAME) (FACILITY NAME)
consent for the NC Long-term Care Ombudsman Program Representative to
pursue complaint (s) resolution on my behalf.

☐ YES, I give my permission for my identifying information to be disclosed during the
handling of my complaint (s).

☐ NO, I **DO NOT** give my permission for my identifying information to be disclosed
during the handling of my complaint (s).

CONSENT FOR ADDITIONAL INVOLVEMENT

I give my permission to discuss the complaint (s) with the following
individuals/organizations necessary for resolution:

Check all that apply.

- ☐ Regulatory and licensure agencies
- ☐ Department of social services
- ☐ Law enforcement agencies
- ☐ Others necessary pursuant to 45 CFR 1324. 19 (b) (6)

CONSENT TO VIEW MEDICAL/FINANCIAL/SOCIAL RECORDS

I give my permission for the NC Long-term Care Ombudsman Program
Representative to view my medical/financial/social records necessary to
pursue complaint resolution on my behalf:

☐ YES, I give my permission for my records to be viewed during the handling of my
complaint (s).

☐ NO, I **DO NOT** give my permission for my records to be viewed during the handling
of my complaint (s).

RESIDENT AUTHORIZATION

I _____, understand that my signature on this form

(RESIDENT NAME)

authorizes the actions indicated on Page 1 of this form to be taken on my behalf by the NC Long-term Care Ombudsman Program Representative. This form will be kept in the Ombudsman Program file.

(RESIDENT SIGNATURE)

(DATE)

If resident unable to sign, Ombudsman Program Representative, complete the following verification:

Consent for actions indicated on Page 1 of this form obtained via:

☐ Oral consent

☐ Auxiliary/Visual consent (Specify: _____)

(OMBUDSMAN PROGRAM REPRESENTATIVE SIGNATURE)

I (DATE)

“Complainant Consent Form”—DAAS 9115

Instruction Page

Instructions for Ombudsman Program Representatives

Complainant Consent Form DAAS 9115 shall be used by Ombudsman Program Representatives (“Representatives of the Office” as defined in Policy and Procedure Manual of the NC Long-term Care Ombudsman Program) to document consent from a complainant to designate their consent to initiate an investigation and reveal their identity in such investigation.

Legal authority for such access and disclosure can be found in 42 CFR 1324. 19 (b) (6) and 42 CFR 1324. 11 (E) (2) and (3); as well as specified in Policy and Procedures Manual of the NC Long-term Care Ombudsman Program.

Please note that “Complainant Consent Form” (DAAS 9115) is a one-sided form comprised of two sections.

Section I: Consent for Investigation and Disclosure of Identity

SECTION INTENT

The complainant designates whether or not the Ombudsman Program Representative has permission to disclose their identifying information.

STEPS FOR SECTION COMPLETION

Complainant or Ombudsman Program Representative check Yes or No for disclosure of complainant identity

REQUIRED FIELDS

Yes or No

REMINDERS

“Identifying information” includes distinguishing characteristics of the complainant, including their name.

Examples of identifying information:

“Resident’s sister that visits every Tuesday afternoon.”

“Her son, John.”

“His friend from church that always brings him dinner.”

This section gives consent for the identity of the complainant to be revealed—not the identity of the resident.

Section II: Complainant Authorization

SECTION INTENT

Complainant signs or Ombudsman Program Representative verifies with signature to authorize the specified actions to be taken in investigating the complaints.

STEPS FOR SECTION COMPLETION

When Complainant is able to sign, Complainant signs and authorizes the form.

When oral or auxiliary consent is obtained, Ombudsman Program Representative signs verifying authorization as the Complainant has specified.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF AGING AND ADULT SERVICES
OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

COMPLAINANT CONSENT FORM

CONSENT FOR INVESTIGATION AND DISCLOSURE OF IDENTITY

☐ Yes, I give my permission for my identifying information to be disclosed during the handling of my complaint (s) and for the Ombudsman Program Representative to pursue complaint resolution.

☐ No, I **do not** give my permission for my identifying information to be disclosed during the handling of my complaint (s).

COMPLAINANT AUTHORIZATION

I _____, understand that my signature on this form authorizes
(COMPLAINANT NAME)
the above indicated actions to be taken by the Ombudsman Program Representative. This form will be kept in the Ombudsman Program file.

COMPLAINANT SIGNATURE

DATE

If Complainant is unable to sign, Ombudsman Program Representative complete the following verification:

Consent was obtained via:

☐ Oral Consent

☐ Auxiliary/Visual Consent (Specify: _____)

OMBUDSMAN PROGRAM
REPRESENTATIVE SIGNATURE

DATE

“Resident Representative Consent Form”—DAAS 9116

Instructions Page

Instructions for Ombudsman Program Representatives

Resident Representative Form DAAS 9116 shall be used by Ombudsman Program Representatives (“Representatives of the Office” as defined in Policy and Procedure Manual of the NC Long-term Care Ombudsman Program) to document consent from a resident representative to pursue complaint investigation on behalf of the resident. Legal authority for such access and disclosure can be found in 42 CFR 1324. 19 (b) (6) and 42 CFR 1324. 11 (E) (2) and (3); as well as specified in Policy and Procedures Manual of the NC Long-term Care Ombudsman Program. Resident representative is defined in 42 CFR 1324.1.

Please note that “Resident Representative Consent Form” (DAAS 9116) is a one-sided form comprised of four sections.

Section I: Consent for Investigation and Disclosure of Identity

SECTION INTENT

- 1) for Resident Representative to provide consent for complaint to be pursued
- 2) for permission for Resident’s identifying information to be disclosed or not

STEPS FOR SECTION COMPLETION

- 1) Resident Representative or Ombudsman Program Representative fill in Name of Resident Representative and Resident Name
- 2) Resident Representative of Ombudsman Program Representative check YES or NO for disclosure of Resident’s identifying information

REQUIRED FIELDS

Name of Resident Representative, Resident Name, Yes or No

REMINDERS

“Identifying information” includes distinguishing characteristics of the resident, including their name.

Examples of identifying information:

“Mrs. Jones in 204”

“The resident on 700 hall that is vegan”

“The male resident that has a double knee amputation and several tattoos

These all distinguish specific characteristics about a resident that would make them identifiable.

This section gives consent for the identity of the resident to be revealed.

Section II: Consent for Additional Representative Involvement

SECTION INTENT

- 1) For the Resident Representative to provide consent for additional third-party disclosures about the complaint.
- 2) For the Resident Representative to identify their relationship to the resident

STEPS FOR SECTION COMPLETION

Left section: Resident Representative or Ombudsman Program Representative check disclosures. *There will be cases where this section is blank.*

Right section: Resident Representative or Ombudsman Program Representative checks relationship and specifies in blank. Note that legal representatives are requested to provide copy of their legal authority.

Section III: Consent to View Medical/Financial/Social Records

Only legal representatives can provide this type of consent. If someone is not a legal representative, skip this section and go to next section, Section IV. Request State Long-term Care Ombudsman Consent for record review in this situation.

SECTION INTENT

For the Legal Representative or Ombudsman Program Representative to designate consent or not for Ombudsman Program Representative to view necessary records.

STEPS FOR SECTION COMPLETION

- 1) Legal Representative or Ombudsman Program Representative fill Resident Name and Facility Name
- 2) Legal Representative or Ombudsman Program Representative check YES or NO for permission or not for access to resident records.

REQUIRED FIELDS

Required only if legal representative is involved: Yes or No; if Yes—required to enter Resident Name and Facility Name

Section IV: Representative Authorization

Resident Representative signs or Ombudsman Program Representative verifies with signature to authorize the specified actions to be taken in investigating the complaints.

STEPS FOR SECTION COMPLETION

When Resident Representative is able to sign, Resident Representative signs and authorizes the form.

When oral or auxiliary consent is obtained, Ombudsman Program Representative signs verifying authorization as the Resident Representative has specified.

REMINDERS

Place copies of legal authority in hard case file when obtained.

Note the difference in authority of legal representative and. resident representative with regards to record access.

If in doubt or questioning, please contact The Office of the State Long-term Care Ombudsman.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF AGING AND ADULT SERVICES
OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

RESIDENT REPRESENTATIVE CONSENT FORM

CONSENT FOR INVESTIGATION AND DISCLOSURE OF IDENTITY

I _____, give my consent for the NC Long-term Care
(NAME OF RESIDENT REPRESENTATIVE)
Ombudsman Program Representative to pursue complaint (s) resolution on behalf of _____.
(RESIDENT NAME)
☐ YES, I give my permission for the resident's identifying information to be disclosed during the handling of my complaint (s).
☐ NO, I **DO NOT** give my permission for the resident's identifying information to be disclosed during the handling of my complaint (s).

CONSENT FOR ADDITIONAL REPRESENTATIVE INVOLVEMENT

I give my permission to discuss the complaint (s) with
the following individuals/organizations necessary for
resolution:

(Check all that apply)

- ☐ Regulatory and licensure agencies
☐ Departments of social services
☐ Law enforcement agencies
☐ Others necessary pursuant to 45 CFR 1324. 19 (b) (6)

My relationship to resident is:

- ☐ Legal Representative *Please provide copy of legal authority.*
☐ Family Member
☐ Community Member
☐ Other Resident Representative

Relationship: _____

CONSENT TO VIEW MEDICAL/FINANCIAL/SOCIAL RECORDS

Note: This section to be completed for legal representatives only.

The Ombudsman Program Representative has my permission to view the medical/financial/social records of
_____ in order to pursue complaint (s) resolution at _____.
(RESIDENT NAME) (FACILITY NAME)
☐ YES, I give my permission for medical/financial/social records to be viewed during the handling of my complaint (s).
☐ NO, I **do not** give my permission for medical/financial/social records to be viewed during the handling of my complaint(s).

REPRESENTATIVE AUTHORIZATION

I _____, understand that my signature on this form authorizes the above indicated
(NAME OF RESIDENT REPRESENTATIVE)
actions to be taken by the Ombudsman Program Representative. This form will be kept in the Ombudsman Program file.

RESIDENT REPRESENTATIVE SIGNATURE

DATE

If Resident Representative is unable to sign, Ombudsman Program Representative, complete the following verification:

Consent was obtained for the above actions, via:

- ☐ Oral Consent ☐ Auxiliary/Visual Consent (Specify: _____)

Ombudsman Program Representative Signature: _____ DATE: _____

Appendix D



Office of the State Long-Term Care Ombudsman Documentation of Alleged Willful Interference / Retaliation / Reprisal

If you have any questions, call Office of the State Long-Term Care Ombudsman at:
1 919-855-3400

Date:

Facility/Entity Information

Facility/ Entity Name:

Street Address:

City:

State:

Zip:

Details of Event and Date

Details of Event and Date

<u>Ombudsman Representative Completing Documentation / Date</u>	<u>Contact Information</u>
<p>1. Information on alleged Willful Interference / Retaliation / Reprisal given on: _____</p> <p>2. Efforts made to resolve act of interference: _____</p> <p>3. Follow-up: _____</p> <p>Distribution: Director, DAAS Office of the State Long-Term Care Ombudsman Long-Term Care facility and Corporate Office Regional Long-Term Care Ombudsman</p> <p>DHHS/DAAS-911-Effective July 1, 2016</p>	