

SUBCHAPTER 11. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

PART 37. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

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340:105-11-230. Purpose

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The purpose of this Part is to describe the rules pertaining to the Office of the State Long-Term Care Ombudsman.

340:105-11-231. Definitions

Revised 5-13-02

The following words and terms when used in this Part, shall have the following meaning unless the context clearly indicates otherwise:

"Assistant Secretary" means the Assistant Secretary for Aging; the administrative head of the Administration on Aging of the United States Department of Health and Human Services.

"Certification" means the official designation of a volunteer representative of the Office of the State Long-Term Care Ombudsman.

"Confidential information" means all information which relates to specific individuals who live in long-term care facilities, complainants, and other informants including but not limited to names, other identifying information, and all problem and complaint documentation.

"Designation" means the appointment of an agency, an individual, or both, as the official representative of the Office of the State Long-Term Care Ombudsman (Office), according to the policies of the Office.

"Leave of absence" means an excused absence from official duties of an ombudsman volunteer, not to exceed three months.

"Long-term care facility" means any nursing facility, specialized facility, residential care home, or assisted living center as defined by Oklahoma State Statute in this definition.

(A) **"Nursing facility"** means a home, an establishment, or an institution a distinct part thereof which is primarily engaged in providing:

- (i) skilled nursing care and related services for residents who require medical or nursing care;
- (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
- (iii) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services beyond the level of care provided by a residential care home which can be made available to them only through a nursing facility. [63 O.S. § 1-1902(9)]

(B) **"Residential care home"** means any establishment or institution other than an adult companion home, a group home, hotel, motel, fraternity or sorority house, college or university dormitory which offers, provides or supports residential accommodations, food service, and supportive assistance to any of its residents, or houses any resident requiring supportive assistance who are not related to the owner or administrator of the home by blood or marriage. The residents shall be ambulatory and essentially capable of participating in their own activities of daily living, shall not routinely require nursing services. [63 O.S. § 1-820.12]

(C) **"Specialized facility"** means any home, establishment, or institution which offers or provides inpatient long-term care services on a 24 hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for persons who have mental retardation or developmental disabilities. [63 O.S. § 1-1902(11)]

(D) **"Assisted living center"** means any home or establishment offering, coordinating, or providing services to two or more persons who:

- (i) are domiciled therein;
- (ii) are unrelated to the operator;
- (iii) by choice or functional impairments, need assistance with personal care or nursing supervision;
- (iv) may need intermittent or unscheduled nursing care;
- (v) may need medication assistance; and
- (vi) may need assistance with transfer, ambulation, or both. [63 O.S. § 1-890.1.1]

"Long-term care ombudsman" means a person who receives and resolves complaints made by or on behalf of older residents of long-term care facilities, and who has been trained and designated as an official representative of the Office of the State Long-Term Care Ombudsman.

"Office of the State Long-Term Care Ombudsman (Office)" referred to hereinafter as the "Office" means the office created within the Department of Human Services which, under the auspices and general direction of the state long-term care ombudsman, carries out the Long-Term Care Ombudsman Program in accordance with the Older Americans Act (OAA) of 1965, as amended, and in accordance with federal regulations.

"Planning and Service Area (PSA)" means a geographic area specified by the State Agency under Section 305(a)(1)(E) of the OAA for purposes of planning for and serving the needs of individuals aged 60 and above.

"Representative" means the state long-term care ombudsman and any state, area, or local long-term care ombudsman designated by the state long-term care ombudsman, whether paid or unpaid.

"State long-term care ombudsman" means the individual employed by the Department of Human Services to be the chief administrative officer of the Office of the State Long-Term Care Ombudsman.

340:105-11-232. Duties and responsibilities of the State Agency

Revised 5-13-02

(a) The State Agency establishes and operates a statewide Long-Term Care Ombudsman Program consistent with the requirements of the Older Americans Act and the Oklahoma Long-Term Care Ombudsman Act. The State Agency, through the Office of the State Long-Term Care Ombudsman (Office):

- (1) identifies, investigates, and resolves complaints made by, or on behalf of, residents of long-term care facilities that relate to action, inaction, or decisions of providers, or representatives of providers of long-term care services, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare or rights of the residents, including the welfare and rights of residents with respect to the appointment and activities of guardians and representative payees;
- (2) analyzes and monitors the development and implementation of federal, state, and local laws, regulations, and policies with respect to long-term care facilities and services in the state, and recommends any changes in such laws, regulations, and policies deemed by the Office to be appropriate;
- (3) provides information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;
- (4) provides training for staff and volunteers and promotes the development of citizen organizations to participate in the Ombudsman Program;
- (5) carries out other activities consistent with the requirements of this Part which the Assistant Secretary determines appropriate;
- (6) establishes procedures for appropriate access by the ombudsman to long-term care facilities, appropriate private access to residents, and appropriate access to residents' personal and medical records;
- (7) establishes procedures to protect the confidentiality of records and ensures that the identity of any complainant or resident is not disclosed without consent of such complainant or resident, or upon court order;
- (8) establishes a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities, for the purpose of identifying and resolving significant problems. The state long-term care ombudsman must submit this information to the agency of the state responsible for licensing or certifying long-term care facilities in the

state and to the Assistant Secretary in the manner prescribed by the Assistant Secretary;

(9) prepares an annual report containing data and findings regarding the types of problems experienced and complaints made by or on behalf of individuals residing in long-term care facilities, and provides policy, regulatory and legislative recommendations to solve such problems, resolve such complaints, and improve the quality of care and life in long-term care facilities;

(10) ensures that no officer, employee, or other representative of the Office is subject to a conflict of interest; and

(11) plans and operates the Ombudsman Program, considering the views of Area Agencies on Aging, older individuals and provider agencies.

(b) The State Agency ensures that:

(1) no individual involved in the designation of the long-term care ombudsman, whether by appointment or otherwise, or the designation of the head of any subdivision of the Office is subject to a conflict of interest;

(2) mechanisms are in place to identify and remedy any conflicts of interest or other similar conflicts;

(3) adequate legal counsel is available to the Office for advice and consultation and that legal representation is provided to any representative of the Office against whom suit or other legal action is brought in connection with the performance of such representative's official duties; and

(4) the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities.

340:105-11-233. Policies and procedures specific to the Office of the State Long-Term Care Ombudsman

Revised 7-15-06

In accordance with the Older Americans Act, the Office of the State Long-Term Care Ombudsman (Office) is established within the State Agency to carry out a statewide Long-Term Care Ombudsman Program that is under the direct supervision and administration of the State Agency.

(1) The Office staff consists of the state long-term care ombudsman and adequate program and support staff.

(2) Specific staffing requirements for each area Long-Term Care Ombudsman Program are set in accordance with normal State Agency administrative and funding procedures.

(3) The area entity designated to provide ombudsman services must provide an adequate allocation of funds to operate the local program. Costs incurred include, but are not limited to:

- (A) reimbursement of travel costs of the ombudsman supervisor and ombudsman volunteers, including travel to and from their assigned facilities and required meetings;
 - (B) identification badges; and
 - (C) other incidental costs related to trainings and meetings, including awards and certificates.
- (4) The designated area ombudsman staff representatives are housed within the Area Agency on Aging, whenever possible.
- (5) Selection of area ombudsman staff representatives is made by the director of the designated area ombudsman entity, with input and recommendations from state ombudsman staff during the interview process, and subject to State Agency approval.
- (A) For the purpose of review of qualifications, criminal background checks, and conflict of interest issues, the Office shall have access to applications, resumes, and other personnel information related to applicants for and incumbents in area ombudsman staff positions.
 - (B) State ombudsman staff are involved at their discretion in interviews of applicants for area ombudsman staff positions as members of an interviewing team. Upon conclusion of the interview process, there is opportunity for discussion and recommendations.
 - (C) Merit hiring standards are adhered to throughout the hiring process, pursuant to Part 900 of Title 5 of the United States Code and other valid procedures agreed to by the interview team.
 - (D) Employment of area ombudsman staff is probationary pending the person's satisfactory completion of training prescribed by the state long-term care ombudsman and designation as described in this Part.

340:105-11-234. Designation of area programs and area representatives including staff and volunteers

Revised 6-1-07

(a) The Office of the State Long-Term Care Ombudsman (Office) officially designates agencies serving as area or local subdivisions of the Office through an annual designation process, in accordance with State Agency administrative funding procedures.

- (1) Staff and volunteer representatives of the Office are officially designated in writing by the state long-term care ombudsman.
- (2) Designation as a representative of the Office:
 - (A) for an area staff person is based on the person meeting criteria necessary to satisfactory performance in the position, including, but not limited to, the person:

(i) is free from any conflict of interest as defined by this policy and in compliance with federal and state statute and does not stand to gain financially through an action or potential action brought on behalf of residents the ombudsman serves;

(ii) meets minimum job qualifications and screening standards set by the Office; and

(iii) satisfactorily completes training prescribed by the state long-term care ombudsman; and

(B) for an ombudsman volunteer is accomplished through a certification process, and based on the person meeting criteria necessary to satisfactory performance in the position, including, but not limited to, the person:

(i) is free from any conflict of interest as required by statute and defined by this Part and does not stand to gain financially through an action or potential action brought on behalf of residents the ombudsman serves;

(ii) meets screening criteria set in this Part;

(iii) satisfactorily completes training prescribed by the state long-term care ombudsman; and

(iv) completes and signs Form:

(I) 02OM003E, Ombudsman Volunteer Application, agreeing to accept supervision and follow the rules and guidelines of the program; and

(II) 04AD003E, Request for Background Check, authorizing the Office to conduct a criminal background check.

(b) The state long-term care ombudsman has the authority to refuse to designate:

(1) a person, staff or volunteer, as a representative of the Office for any reasonable cause related to satisfactory performance in the position, including, but not limited to:

(A) an unresolved or unresolvable conflict of interest;

(B) failure to satisfactorily complete training; and

(C) failure to meet screening standards for volunteers and staff, including criminal background check, or minimum job qualifications for area staff representatives; and

(2) an agency as a subdivision of the Office for any reasonable cause that prevents satisfactory operation of the State Long-Term Care Ombudsman Program, including, but not limited to:

(A) an unresolved or unresolvable conflict of interest;

(B) failure to provide adequate assurances that program guidelines can be met; and

(C) failure to provide assurances that the program can be adequately funded.

(c) The state long-term care ombudsman has the authority to withdraw designation as:

(1) subdivision of the Office from an agency when there is:

- (A) an unresolved or unresolvable conflict of interest;
- (B) breach of the confidentiality requirement caused by the action of any staff person of the agency designated as a local subdivision of the Office, or of that agency's sponsoring agency;
- (C) failure to adhere to the policies of the Office, federal Administration on Aging regulations, or state or federal law; or
- (D) any other unreasonable or prejudicial conduct substantially affecting the State Long-Term Care Ombudsman Program; and

(2) a representative of the Office from a staff person or volunteer when there is:

- (A) an unresolved or unresolvable conflict of interest;
- (B) breach of the confidentiality requirement;
- (C) failure to adhere to the policies of the Office or state or federal law;
- (D) failure to accept program supervision from the Office; or
- (E) conviction of a crime listed in Section 1-1950.1 of Title 63 of the Oklahoma Statutes or listing on the Mary Rippey Violent Offender Registry.

(d) The state long-term care ombudsman may also withdraw certification of an ombudsman volunteer when the ombudsman:

- (1) fails to file monthly reports with the ombudsman supervisor for three consecutive months, unless on an approved leave of absence;
- (2) fails to attend three consecutive monthly meetings, unless on an approved leave of absence;
- (3) fails to initiate visitation of residents in assigned facility within two months after certification;
- (4) misuses the "ombudsman volunteer" title or badge; or
- (5) represents himself or herself, either verbally or by wearing a badge, as an ombudsman for a facility for which the volunteer is not certified, without specific authorization by state ombudsman staff.

(e) An agency that is refused designation or from which designation is withdrawn as an Area Long-Term Care Ombudsman Program or a person refused designation or from whom designation is withdrawn as an area ombudsman staff representative may appeal the decision.

(1) Designation is not withdrawn until reasonable notice and opportunity for a hearing is provided.

(2) Notification of the right to appeal and the appeal procedures are included in the letter notifying the agency or staff person of a decision to refuse or withdraw designation.

(3) Hearings are conducted by the Appeals Unit of the Oklahoma Department of Human Services.

340:105-11-235. Conflict of interest

Revised 6-1-07

(a) An officer, employee, volunteer, or other representative of the Office of the State Long-Term Care Ombudsman (Office) may not be subject to a conflict of interest that has the potential to impair the ability of said person to carry out his or her official duties in an impartial manner and may not stand to gain financially through an action or potential action brought on behalf of persons the ombudsman serves.

(b) A conflict of interest exists when any organizational or supervisory relationship, policy, or action, or individual ombudsman relationship or action conflicts with or impairs the ability of an ombudsman to carry out his or her responsibilities to investigate, resolve, or refer complaints or otherwise advocate for long-term care facility residents.

(c) No persons involved in the designation of the state long-term care ombudsman, whether by appointment or otherwise, or the designation of the head of any subdivision of the Office may be subject to a conflict of interest.

(d) Freedom from conflict of interest is established through interview of prospective state long-term care ombudsman staff and volunteers, and through a signed statement in a form prescribed by the Office and other appropriate means.

(e) Persons listed in this paragraph must complete and sign Form 02OM001E, Conflict of Interest Statement and Ethical Guidelines, annually, and when there is any change of facility or area assignment by:

- (1) prospective and current ombudsman staff;
- (2) prospective and current ombudsman volunteers; and
- (3) any other person involved in the direct operation of the State Long-Term Care Ombudsman Program.

(f) Agencies must annually review Form 02OM002E, Freedom from Conflict of Interest Assurances, which must be signed annually by:

- (1) directors of agencies designated, or seeking designation, as a local ombudsman entity; and
- (2) directors of sponsoring agencies.

340:105-11-236. Remedies in conflict of interest situations

Revised 5-13-02

(a) **Volunteers.** If a conflict of interest is identified before certification, the volunteer is not certified in any facility in which the conflict of interest could be expected to affect performance. If a conflict of interest or potential conflict of interest involving a certified volunteer is identified, the ombudsman supervisor promptly notifies the Office of the State Long-Term Care Ombudsman (Office) to recommend decertification or reassignment of the volunteer, or other appropriate action.

(b) **Ombudsman staff.** No applicant for a long-term care ombudsman staff position, at any level of the program, is selected to fill that position if a conflict of interest is identified during any stage of the application or hiring process. If a conflict of interest or potential conflict of interest is identified involving a staff representative of the Office, action must be taken to remedy the conflict within 30 days. Remedies may range from elimination of the conflict to withdrawal of designation of the individual as a representative of the Office.

(c) **Directors of sponsoring agencies and agencies designated as ombudsman entity.** If a conflict of interest or potential conflict of interest is identified involving the director of a sponsoring agency or the director of an agency designated as a subdivision of the Office, action must be taken to remedy the conflict of interest within 30 days. Remedies may include:

- (1) removal or resolution of the conflict of interest;
- (2) withdrawal of the agency's designation as area ombudsman entity;
- (3) withdrawal of designation of the agency as an Area Agency on Aging; or
- (4) other reasonable action.

340:105-11-237. Complaint investigation

Revised 5-13-02

The Ombudsman Program complaint mechanism functions at all levels with procedures for receipt, investigation, and resolution of problems and complaints.

(1) Office of the State Long-Term Care Ombudsman staff:

- (A) receive complaints from all sources, including referrals from enforcement agencies and complaints from area ombudsman programs;
- (B) refer complaints to area ombudsman supervisors when appropriate;
- (C) investigate complaints directly or with ombudsman supervisors;
- (D) refer unresolved formal complaints to a regulatory or law enforcement agency, when appropriate;
- (E) assist other agencies in resolution of complaints; and

- (F) follow up on complaint resolution and closure.
- (2) Area ombudsman supervisors:
 - (A) receive complaints from all sources;
 - (B) investigate complaints through on-site, unannounced visits to the facility or refer to ombudsman volunteers to resolve;
 - (C) resolve complaints or refer in writing to state long-term care ombudsman staff when correction cannot be achieved at the area level, or when a regulatory or law enforcement agency's assistance is needed; and
 - (D) follow up on conditions identified through complaint process.
- (3) Ombudsman volunteers:
 - (A) receive complaints and learn of problems from all sources;
 - (B) investigate complaints through unannounced on-site routine weekly visitation to the assigned facility or refer to ombudsman supervisor to investigate;
 - (C) resolve problems or complaints within the facility or refer to ombudsman supervisor to resolve; and
 - (D) follow up on conditions through routine weekly visitation with residents in assigned facility.

340:105-11-238. Monitoring laws, regulations, and policies

Revised 5-13-02

- (a) Office of the State Long-Term Care Ombudsman staff:
 - (1) acquire and share with area programs, citizen organizations, and individuals copies of proposed and enacted laws, regulations, and policies which may affect older long-term care facility residents;
 - (2) give testimony and written comments as appropriate and assist others to learn of opportunities to comment;
 - (3) attend or conduct public hearings;
 - (4) request comments from area ombudsman staff; and
 - (5) investigate complaints and take other action as necessary to monitor the development and implementation of laws, rules, and policies.
- (b) Area ombudsman staff:
 - (1) review proposed and enacted laws, regulations, and policies which may affect older long-term care facility residents in the planning and service area (PSA), as provided by state long-term care ombudsman staff;
 - (2) give testimony and written comments, and attend or conduct public hearings, as appropriate;

- (3) investigate complaints; and
- (4) communicate concerns identified through the above activities to state long-term care ombudsman staff.

340:105-11-239. Provision of information

Revised 5-13-02

(a) Office of the State Long-Term Care Ombudsman staff:

- (1) develop administrative and legislative proposals as needed, relating to significant problems of residents in long-term care facilities, based on complaint investigation data and other sources;
- (2) develop working relationships with state legislators and policy makers in order to inject concerns of long-term care facility residents directly into the policy making process;
- (3) provide information on conditions affecting and the needs of long-term care facility residents, upon request, to individuals, agencies, organizations, and others; and
- (4) meet at least quarterly with the State Council on Aging's Advisory Committee for the State Long-Term Care Ombudsman Program to discuss program operation, issues affecting the population served by the program, and strategies to address identified concerns.

(b) Area ombudsman staff provide:

- (1) information to individuals, agencies, committees, and organizations concerning the general problems and issues affecting residents in long-term care facilities; and
- (2) community education on needs and issues affecting long-term care facility residents through publicity including monthly press releases, public speaking, and other means.

340:105-11-240. Training

Revised 6-1-07

The Office of the State Long-Term Care Ombudsman (Office) prohibits investigation of any complaint by an ombudsman staff person or ombudsman volunteer, unless the person has satisfactorily completed training required by the Office, and has been approved as qualified to investigate such complaints.

(1) Office staff:

- (A) orients and trains ombudsman staff representatives and determines satisfactory completion of prescribed training;
- (B) develops and periodically updates core curriculum for use in training ombudsman staff and volunteers;

- (C) assists area ombudsman staff in the training of ombudsman volunteers, upon request;
- (D) provides, on a quarterly basis, a minimum of 40 hours of continuing education and training to ombudsman supervisors per year;
- (E) provides community education in coordination with area staff;
- (F) officially certifies newly trained ombudsman volunteers who meet screening criteria; and
- (G) assists in the development of citizen organizations to participate in the State Long-Term Care Ombudsman Program.

(2) Area ombudsman staff representatives:

- (A) holds public workshops for community education and volunteer recruitment;
- (B) trains ombudsman volunteer applicants using the prescribed core training format developed by the Office staff;
- (C) submits to Office staff the name and facility assignment and the original signed Form 02OM003E, Ombudsman Volunteer Application, of each trained volunteer recommended for certification;
- (D) accompanies each newly certified ombudsman volunteer on at least one introductory visit to the assigned facility to reinforce training and ensure the ombudsman volunteer's understanding of the ombudsman role; and
- (E) holds monthly meetings for continued training and supervision of certified ombudsman volunteers to annually achieve a minimum of 18 hours per volunteer of continuing education relevant to the care of older persons and persons with disabilities.

340:105-11-241. Assistant Secretary for Aging's initiatives

Revised 5-13-02

- (a) The State Agency implements any additional program requirements deemed necessary by the Assistant Secretary for Aging and provides guidelines for the Area Agencies on Aging (AAAs) for implementation of such additional requirements.
- (b) The AAAs or other designated local ombudsman entity complies with such additional requirements initiated by the Assistant Secretary for Aging, based on guidelines provided by the State Agency.

340:105-11-242. Access

Revised 5-13-02

(a) **Access to facilities and residents.** Office of the State Long-Term Care Ombudsman (Office) procedures for access to long-term care facilities and facility residents are set in Sections 1-829-F, 1-1902, 1-1919, and 1-2213-D, Title 63 of the Oklahoma State Statutes. A state or local ombudsman, as that term is defined by Aging Services Division of the Department of Human Services, is authorized to enter any home licensed pursuant to the Oklahoma Nursing Home Care Act, the Oklahoma Residential Care Act, and the Continuum of Care and Assisted Living Act to communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate, and to observe all areas of the facility that directly pertain to the care of the resident, without infringing upon the privacy of other residents without their consent.

(1) Area ombudsman staff and trained, certified ombudsman volunteers have the same right of access to licensed long-term care facilities and residents as state ombudsman staff.

(2) Any ombudsman staff or volunteer asked to leave the premises of any licensed facility for any reason does so, and immediately reports the incident to the State Ombudsman Office.

(b) Access to resident's records.

The state long-term care ombudsman and staff representatives of the Office have access to:

(1) review the medical and social records of a resident if:

(A) the representative of the Office has the permission of the resident, or the legal representative of the resident; or

(B) the resident is unable to consent to the review and has no legal representative and the representative of the Office obtains the approval of the state long-term care ombudsman;

(2) the records as is necessary to investigate a complaint if:

(A) a legal guardian of the resident refuses to give the permission;

(B) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(C) the representative obtains the approval of the state long-term care ombudsman;

(3) the administrative records, policies, and documents, of long-term care facilities, to which the residents or the general public have access; and

(4) copies of all licensing and certification records maintained by the Oklahoma State Department of Health or any other agency of Oklahoma with respect to long-term care facilities. Ombudsman volunteers do not have access to the medical record or social record of a resident. The volunteer ombudsman must refer problems requiring review of records to the ombudsman supervisor.

340:105-11-243. Confidentiality and disclosure

Revised 5-13-02

State and area ombudsman staff and ombudsman volunteers and designated agencies uphold policies listed in this subsection.

(1) No complaint or other confidential information or records maintained by the Ombudsman Program may be disclosed unless the state ombudsman authorizes the disclosure.

(2) The ombudsman shall not disclose the identity of any complainant or resident unless:

(A) the complainant or resident, or legal representative of either, consents in writing to the disclosure and specifies to whom the identity may be disclosed;

(B) the complainant or resident, or legal representative consents orally and the ombudsman documents the consent at the time the consent is given; or

(C) a court orders the disclosure.

(3) Inspection dates provided to the Ombudsman Program at any level, including Health Department inspections, are confidential under federal and state statute.

(A) Inspection dates and dates of other unannounced visits to facilities, including visits for the purpose of complaint investigation, shall not be posted or otherwise revealed.

(B) Federal law provides for a \$2,000 penalty for release of inspection dates. State law also provides for fine, imprisonment, or both.

(4) Privacy shall be provided for receipt of complaints by mail, telephone, or personal interview, in order to maintain confidentiality.

(5) All mail addressed to an ombudsman by name or title shall be delivered unopened to the ombudsman.

(6) Locked files shall be used to maintain confidential records. Access to such files is limited to designated area ombudsman representatives and staff of the Office of the State Long-Term Care Ombudsman.

340:105-11-244. Reporting system

Revised 5-13-02

(a) Office of the State Long-Term Care Ombudsman staff:

(1) identify significant problems by establishing a statewide reporting system including the collection and analysis of quarterly reports from area ombudsman staff;

(2) receive and analyze reports from all state agencies receiving complaints on, or conducting surveys or inspections of long-term care facilities, in order to identify significant problems;

(3) develop administrative and legislative proposals to resolve significant problems of residents, as reflected in complaint investigation and other data;

(4) provide information and recommendations to involved agencies on significant issues, after monitoring conditions of long-term care facilities through the area program and collection and analysis of data; and

(5) compile information and annually prepare and disseminate a Long-Term Care Ombudsman Program annual report. The report contains data and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities, and provides policy, regulatory and legislative recommendations to resolve such problems and complaints and improve the quality of care and life in long-term care facilities.

(b) Area ombudsman staff:

(1) collect and compile data from volunteer monthly reports and from other required Ombudsman Program activities into quarterly reports, which are submitted to state ombudsman staff;

(2) monitor conditions in certain facilities for informal reporting on a follow up basis to state ombudsman staff; and

(3) respond to requests from state ombudsman staff for reports or updates on local conditions relating to specific issues being addressed statewide.

340:105-11-245. Facility visitation

Revised 6-1-07

(a) The area ombudsman staff makes periodic visits to all long-term care facilities in the area covered by the designated area ombudsman entity to ensure State Long-Term Care Ombudsman Program services are made available to the residents.

(1) Residents of each facility are visited a minimum of four times each fiscal year.

(A) Visits made by appointment, including in-service training for facility staff, are not counted toward the ombudsman staff's four visits per year.

(B) When the ombudsman visits residents as a citizen observer in inspections by the Oklahoma State Department of Health the visit may be counted.

(C) Visits made to resolve complaints are counted if multiple residents are visited as a part of this function.

(2) Visits are documented on forms approved by the Office of the State Long-Term Care Ombudsman (Office) and protected according to the program's confidentiality requirements. Visits are:

- (A) unannounced and the dates kept confidential; and
- (B) not posted or revealed to any person other than the director of the Area Agency on Aging designated as the area ombudsman entity who must likewise safeguard them.

(3) The area ombudsman staff accompanies each newly certified ombudsman volunteer to the volunteer's assigned facility, by appointment, for an introductory visit to:

- (A) introduce the volunteer to the administrator, residents, and facility; and
- (B) explain or clarify the role of the ombudsman volunteer.

(4) The area ombudsman staff conducts at least one supervisory visit with each certified ombudsman volunteer to his or her assigned facility each year to:

- (A) assess skills, relationships, and understanding of appropriate role;
- (B) assist the volunteer with a complaint or other problem; or
- (C) do both (A) and (B).

(5) The area ombudsman staff offers and conducts in-service training for staff of long-term care facilities on residents' rights, elder abuse prevention, and other topics of importance to residents.

(b) The certified ombudsman volunteer visits residents in his or her assigned facility, at least two hours per week, for the purpose of assisting the residents to resolve or prevent problems or complaints. Each visit is documented.

(1) No volunteer may officially begin his or her visitation and other duties in a facility as a certified ombudsman volunteer until he or she:

- (A) receives written notice of certification from the Office; and
- (B) is accompanied by ombudsman staff on an introductory visit to the assigned facility.

(2) A volunteer who is temporarily unable to fulfill visitation or other program responsibilities, may request or be placed on leave of absence. As defined in this Part, leave of absence may be granted due to:

- (A) ill health of volunteer or volunteer's family;
- (B) vacation or extended travel; or
- (C) other reason approved by the ombudsman supervisor.

(3) Leave of absence must not exceed three months duration. If the volunteer is unable to resume official duties by the end of the three-month period, the area supervisor notifies the Office and the volunteer's certification is withdrawn.

- (4) The volunteer may request voluntary decertification from the State Long-Term Care Ombudsman Program at any time and be re-certified at a later date if all other requirements are met.
- (c) Ombudsman participation as a citizen observer in unannounced inspections by the Oklahoma State Department of Health is allowed by the Oklahoma Nursing Home Care Act, the Oklahoma Residential Care Act, and the Federal Nursing Home Reform Act.
 - (1) Ombudsman staff and certified ombudsman volunteers may participate.
 - (2) Inspection schedule information is kept in a locked file and access is restricted to ombudsman staff.
 - (3) The location of the inspection is shared by state ombudsman staff only with the area ombudsman supervisor.
 - (4) The ombudsman volunteer for that facility may be notified, but notification is made no earlier than the date of the inspection.
 - (5) Early notification to a facility is strictly prohibited. Penalties are set in state and federal statutes for violations that result in early notification to a facility.
- (d) Upon entering a facility for a visit, ombudsman staff and volunteers notify the administrator or other charge person of their presence. If no charge person is located, any staff person may be notified. This requirement is not intended to delay an ombudsman from proceeding promptly with a complaint investigation or resident visitation.

340:105-11-246. Liability and legal counsel

Revised 6-1-07

The Older Americans Act of 1965, as amended, and Section 1-2214 of Title 63 of the Oklahoma Statutes provide protections for designated representatives of the Office of State Long-Term Care Ombudsman Office (Office).

- (1) For purposes of the Governmental Tort Claims Act, any state, area, or local volunteer long-term care ombudsman is deemed to be an employee of this state and not personally liable for any act or omission made within the scope of employment, as such term is defined by the Governmental Tort Claims Act.
- (2) The Oklahoma Department of Human Services ensures that adequate legal counsel is available to the Office for advice and consultation.
- (3) Legal representation is provided to any representative of the Office against whom suit or other legal action is brought in connection with any act or omission of a representative made within the scope of employment.
- (4) Any representative of the Office who wishes to request legal advice, consultation, or representation contacts the Office.

340:105-11-247. Other policies

Revised 5-13-02

(a) The rules in this Part reflect compliance with Older Americans Act requirements under authority of state statute. Section 1-2215 of Title 63 of the Oklahoma Statutes provides that:

(1) no person shall willfully interfere with a representative of the Office of the State Long-Term Care Ombudsman (Office) in the performance of official duties;

(2) no person shall engage in retaliation or reprisal against any resident or employee of a long-term care facility or other entity for having filed a complaint with or provided information to the Office; and

(3) any person convicted of violating any of these prohibitions shall be guilty of a misdemeanor.

(b) Any complaint alleging willful interference or retaliation or reprisal received by the Office shall be referred to the appropriate law enforcement entity, after consultation with legal counsel.

340:105-11-248. Ombudsman volunteer rules and guidelines

Revised 6-1-07

The certified ombudsman volunteer observes the requirements of the State Long-Term Care Ombudsman Program. The ombudsman volunteer:

(1) completes and signs Form:

(A) 02OM003E, Ombudsman Volunteer Application;

(B) 02OM001E, Conflict of Interest Statement and Ethical Guidelines, and

(C) 04AD003E, Request for Background Check;

(2) completes the two-day ombudsman volunteer training program to be certified by the State Long-Term Care Ombudsman Program staff;

(3) accepts supervision by the ombudsman supervisor;

(4) respects privacy and confidentiality.

(A) The volunteer does not disclose information regarding any complainant's or participant's name, condition, or situation, except to the ombudsman supervisor or the state ombudsman staff, without the written permission of the complainant, participant, or legal representative.

(B) Supervisory approval is secured before any information is released;

(5) visits weekly with residents in the assigned facility;

- (6) attends monthly ombudsman volunteer meetings for continuing education, program updates, and group supervision;
- (7) submits monthly reports to the ombudsman supervisor;
- (8) wears the badge issued by the Area Agency on Aging ombudsman supervisor when visiting the facility or attending functions as an ombudsman volunteer;
- (9) is available to the residents of the facility in which volunteering, to hear their concerns, and to assist them with and follow through on problem-solving;
- (10) meets with the facility administrator to establish and maintain a cooperative working relationship;
- (11) is familiar with the policies and procedures the facility established for its operation;
- (12) is certified as an ombudsman volunteer, limited to the facility named in the certification letter, unless authorized in advance by the Office of the State Long-Term Care Ombudsman;
- (13) is clear in understanding the role of advocate on behalf of the residents; and
- (14) does not perform direct care services, such as lifting, feeding, or transporting residents.

340:105-11-249. Area Agency on Aging ombudsman supervisor I

Revised 7-15-06

(a) **Definition.** Under the program supervision of the Office of the State Long-Term Care Ombudsman and the general direction of the director of an Area Agency on Aging, the ombudsman supervisor I provides leadership in development, coordination, and implementation of the Long-Term Care Ombudsman Program and receives, investigates, and resolves complaints made by or on behalf of residents of long-term care facilities.

(b) **Examples of duties.** Examples of duties include:

- (1) recruiting, screening, training, and supervising ombudsman volunteers, using guidelines provided by state ombudsman staff;
- (2) publicizing the services of the State Long-Term Care Ombudsman Program and issues affecting older residents of long-term care facilities through media releases, public speaking, and other means;
- (3) coordinating with state ombudsman staff in complaint investigation and resolution, identification of priority issues, and certification of new ombudsman volunteers;
- (4) maintaining confidentiality of files and other information pertaining to complaints and complainants;

(5) keeping the director of the designated area ombudsman entity informed of the current situation and needs at the local level, recommending plans for meeting needs, and advising the director of resources required for their implementation;

(6) being available to residents of long-term care facilities in the planning and service areas (PSA), visiting each facility regularly, and working cooperatively with administrators and staff; and

(7) serving as a consultant to community organizations and agencies on issues and needs affecting older long-term care facility residents, techniques of working with these older people, and the solution of special problems.

(c) **Education and experience.** The required education and experience is graduation from a standard four year high school and two years of responsible full-time paid employment in social, health, or aging services or related occupation that involves meeting the public.

(1) Any equivalent full-time study in an accredited college or university may be substituted for the required work experience.

(2) Passing the General Educational Development (GED) test is accepted in lieu of graduation from a standard four year high school.

(d) **Salary range.** The comparable job family descriptor (JFD) for this position is Adult Protective Services Specialist, #H26A. A person in this position may not be paid more than the midpoint of the approved salary range for Oklahoma Department of Human Services (OKDHS) Office of Personnel Management (OPM) Pay Band I.

340:105-11-250. Area Agency on Aging ombudsman supervisor II

Revised 7-15-06

(a) **Definition.** Under the program supervision of the Office of the State Long-Term Care Ombudsman and the general direction of the director of an Area Agency on Aging, the ombudsman supervisor II provides leadership in development, coordination, and implementation of the Long-Term Care Ombudsman Program and receives, investigates, and resolves complaints made by or on behalf of residents of long-term care facilities.

(b) **Examples of duties.** Examples of duties include:

(1) recruiting, screening, training, and supervising ombudsman volunteers, using guidelines provided by state ombudsman staff;

(2) publicizing the services of the State Long-Term Care Ombudsman Program and issues affecting older residents of long-term care facilities through media releases, public speaking, and other means;

(3) coordinating with state ombudsman staff in complaint investigation and resolution, identification of priority issues, and certification of new ombudsman volunteers;

(4) maintaining confidentiality of files and other information pertaining to complaints and complainants;

(5) keeping the director of the designated area ombudsman entity informed of the current situation and needs at the local level, recommending plans for meeting needs, and advising the director of resources required for their implementation;

(6) being available to residents of long-term care facilities in the planning and service areas (PSA), visiting each facility regularly, and working cooperatively with administrators and staff; and

(7) serving as a consultant to community organizations and agencies on issues and needs affecting older long-term care facility residents, techniques of working with these older people, and the solution of special problems.

(c) **Education and experience.** The required education and experience is:

(1) graduation from an accredited four year college or university with major course work in social work, health, gerontology, general social sciences, or related field; or

(2) an equivalent combination of education and experience, substituting one year of full-time paid experience in such areas as community organization, public health, social work, or related field for each year of the required education, with a maximum substitution of two years.

(d) **Salary range.** The comparable job family descriptor (JFD) for this position is Adult Protective Services Specialist, #H26B. A person in this position may not be paid more than the midpoint of the approved salary range for Oklahoma Department of Human Services (OKDHS) Office of Personnel Management (OPM) Pay Band J.

340:105-11-251. Screening criteria for ombudsman

Revised 7-15-06

(a) Criteria for subjective screening of potential ombudsman staff and volunteers, are reviewed in addition to standard education and work experience questions.

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INSTRUCTIONS TO STAFF 340:105-11-251

(b) Persons who are not eligible for ombudsman volunteer certification include any person who:

(1) was fired from employment in a facility where he or she wishes to volunteer and any relative of a fired employee;

(2) is a relative of an employee of the facility where he or she wishes to volunteer;

- (3) lacks the ability to be objective or hold confidences;
- (4) is a current employee or has any financial interest in a facility in which he or she wishes to volunteer. The person may volunteer in another facility with the stipulation that, if the chosen facility is a competitive facility, acceptance must be made by the administrator of the facility the volunteer chooses;
- (5) is a paid sitter, private duty nurse, or private duty aide in the facility where the person wishes to volunteer. If a competitive facility is chosen, the placement is accepted by the chosen facility;
- (6) is involved in a pending law suit against a facility, until the legal process is completed and acceptance of the person as a volunteer is made by the administrator of the selected facility;
- (7) stands to gain financially through an action or potential action brought on behalf of persons the ombudsman serves; and
- (8) was convicted of a crime listed in Section 1-1950.1 of Title 63 of the Oklahoma Statutes or whose name appears on the Sex Offender Registry or the Mary Rippy Violent Offender Registry.

INSTRUCTIONS TO STAFF 340:105-11-251

1. Subjective screening criteria include:

- (1) maturity;
- (2) personal stability. A person with no serious personality pathology;
- (3) willingness to learn and accept supervision. A person who doesn't have all the answers;
- (4) assertiveness. A person who does his or her work, yet will not bowl other persons over in the process;
- (5) warmth and empathy for others. A person with a sincere desire to help;
- (6) reasonable self-confidence and ego health. A person who has a constant need for love, recognition, reinforcement, and direction can be a tough supervision problem;
- (7) commitment to amount and length of time. The person makes a serious commitment of time and energy to do the job since the primary responsibility is to the client;
- (8) dependability, such as past employment, other volunteer work, and personal references;
- (9) objectivity. The person has the ability to recognize and balance various sides of each issue, evidenced by minimal rigidity, prejudice, and judgmental attitudes toward others;
- (10) interests and hobbies;

- (11) volunteer experience;
- (12) education;
- (13) reasons for wanting to be an ombudsman. Reasons may include the person's motives, insight into the needs of the long-term care residents, and own needs for a successful placement or reinforcing relationships; and
- (14) transportation. The person has dependable transportation to meet the position's requirement, whether the transportation is provided by the person or an alternative method is available.

340:105-11-252. Conflict of interest statement and ethical guidelines

Revised 6-1-07

The Older Americans Act of 1965, as amended requires assurances that there are no conflicts of interest within the State Long-Term Care Ombudsman Program. Mechanisms to identify and remedy any conflicts are mandated.

Ombudsman staff and volunteers study the rules in this Section and sign Form 02OM001E, Conflict of Interest Statement and Ethical Guidelines, if able to provide the assurances and meet the ethical guidelines. The ombudsman:

- (1) and any member of the ombudsman's immediate family may not own, operate, control, or have interest, voting rights, or outstanding indebtedness to or be employed by any company or facility or person investigated by the ombudsman;
- (2) may not solicit or accept from any person or organization, directly or indirectly, money or anything of value if it could reasonably be expected to influence the ombudsman's official actions or judgment or could reasonably be considered a reward for any official action or omission on the part of the ombudsman;
- (3) who is assigned or acts as an official representative of his or her agency in the presentation of papers, talks, demonstrations, or making appearances does not solicit or accept fees, honoraria, or reimbursement of expenses for personal gain. Any fees or honoraria offered in connection with these activities are paid to the agency;
- (4) is alert to anything that impairs ability to objectively investigate complaints. The ombudsman avoids conflict of interest in the establishment of personal relationships that affect impartiality on the job;
- (5) may be involved in serving as an officer or board member of a social, fraternal, or religious organization for which the ombudsman receives no compensation or anything of value, provided the organization is not affected by exercise of the ombudsman's discretion;

- (6) may not use or disclose information gained in the course of, or by reason of, the ombudsman's official position or activities in any way without the express consent of the resident or complainant;
- (7) discloses all past and current appointments, involvement, membership, or interest that affect or could reasonably be expected to affect the ombudsman's ability to investigate and resolve complaints in an objective and independent manner;
- (8) may not effectively recommend or decide to hire or promote another person who is a member of the ombudsman's immediate family;
- (9) may not give preferential or favorable treatment in provision of service to a resident who is a member of the ombudsman's family; and
- (10) may not conduct business in restaurants or other public places where a public observer might reasonably conclude that confidences could be breached due to lack of privacy.

340:105-11-253. Freedom from conflict of interest assurances

Revised 6-1-07

The Older Americans Act as amended requires assurances of freedom from conflict of interest for the officially designated area program as a subdivision of the Office of the State Long-Term Care Ombudsman (Office). Directors of designated area ombudsman entities and sponsoring agency directors are asked to read, review with staff and sponsors, and sign Form 02OM002E, Area Ombudsman Assurance Form, if assurances can be provided as described in this Section.

- (1) Assurance is provided that the agency:
 - (A) is not a part of an entity responsible for licensing or certifying long-term care facilities, or part of a provider organization;
 - (B) does not hold interest in, manage, own, or contract with a long-term care facility;
 - (C) does not stand to gain financially through an action or potential action brought on behalf of persons the ombudsman serves; and
 - (D) is not located within an organization that may impair or inhibit the ability of the ombudsman to objectively and independently investigate and resolve complaints.
- (2) Assurance is provided that the ombudsman will be free to:
 - (A) take action on behalf of residents;
 - (B) publicly represent the concerns of residents;
 - (C) bring together persons who have the authority to solve problems;

- (D) make recommendations to boards, committees, and task forces in developing long-term care policy, or similar situations;
 - (E) forward unresolved formal complaints to the Office according to program policy; and
 - (F) publicize the State Long-Term Care Ombudsman Program and issues affecting older persons who are institutionalized.
- (3) There are inherent conflicts in the role of the ombudsman. The agency supports the role and goals of the State Long-Term Care Ombudsman Program and the ombudsman staff through any conflict associated with their official duties.

340:105-11-254. Ombudsman complaint handling guidelines

Revised 5-13-02

Upon receipt of a complaint, the ombudsman proceeds as described in this subsection.

- (1) If the complainant has not done so, encourage the complainant to discuss the matter with the appropriate person(s) within the facility or agency. Complainants are encouraged to act for themselves when possible.
- (2) If the complainant has utilized the facility process to no avail, or does not perceive the facility staff to be responsive, or is fearful of taking direct action, the ombudsman proceeds with investigation by:
 - (A) reviewing the complaint with the complainant and identifying and prioritizing issues;
 - (B) evaluating the complaint for urgency;
 - (C) acquiring written consent for release of information, if appropriate;
 - (D) keeping a narrative log of interviews, meetings, contacts, and requests for information;
 - (E) contacting parties involved to get all the facts. Identity of complainant or resident is not revealed without consent;
 - (F) identifying and reviewing all state and federal regulations pertinent to the complaint;
 - (G) developing a strategy for resolution with the complainant or resident. If referral is necessary, the ombudsman contacts his or her supervisor;
 - (H) anticipating barriers, involving appropriate personnel, and seeking technical assistance from the State Ombudsman Office as needed;
 - (I) implementing strategy for resolution; and
 - (J) following up to verify that resolution, or corrections, or both, have occurred and that there is no retaliation against the complainant or resident.

- (3) Activities undertaken in resolution of complaints may include:
- (A) negotiating with a facility to change a particular long-term care facility behavior, pattern, or practice affecting a resident;
 - (B) educating a resident, relative, or long-term care facility staff to resolve a problem;
 - (C) affecting appropriate enforcement action by a regulatory agency;
 - (D) proposing and advocating regulatory or statutory changes or additions; and
 - (E) advising the complainant or resident about the right to pursue legal action.

340:105-11-255. Ombudsman staff and volunteer training

Revised 7-15-06

(a) **Ombudsman staff training curriculum.** Ombudsman staff training includes:

- (1) introduction to the Long-Term Care Ombudsman Program;
- (2) ombudsman policies and procedures;
- (3) complaint response system;
- (4) long-term care regulatory system;
- (5) residents' rights;
- (6) characteristics of long-term care facilities and residents;
- (7) processes of aging;
- (8) communication skills;
- (9) legal and ethical issues;
- (10) visitation practicum;
- (11) mediation or negotiation skills;
- (12) community resources or services;
- (13) volunteer management; and
- (14) reporting and record keeping.

(b) **Ombudsman volunteer training curriculum.** Ombudsman volunteer training includes:

- (1) introduction to the Long-Term Care Ombudsman Program;
- (2) ombudsman volunteer role, including activities and responsibilities;
- (3) problem solving and complaint investigation;
- (4) processes of aging;
- (5) characteristics of the institutionalized older person;
- (6) communication and interviewing skills;

- (7) Oklahoma's Nursing Home Care Act, Residential Care Act, or Assisted Living Act, as appropriate;
- (8) residents' rights in long-term care facilities;
- (9) the regulation of long-term care;
- (10) confidentiality; and
- (11) reporting and record keeping.

