

CHAPTER 55. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

75:55-1-1. Purpose

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

75:55-1-2. Definitions

The following words and terms when used in this Subchapter 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.

"Business day" means a consecutive eight-hour period of time when the Office of the State Long-Term Care Ombudsman (Office) is open for business.

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

"Deputy state long-term care ombudsman" or "deputy ombudsman" an individual employed by the Office to assist with management and operations and supervised by the State Long-Term Care Ombudsman (Ombudsman).

"Designated entity" means an agency, not-for profit business, or organization that the Ombudsman has designated in writing to host Office representatives.

"Designation" means the appointment of an agency, individual, or both, as the official Office representative.

"Immediate family" means a member of the household or a relative with whom there is a close personal or significant financial relationship.

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

"Long-term care facility" means any nursing facility, specialized facility, residential care home, or assisted living center ~~per Sections 1-820, 1-890.2, and 1-1902 of Title~~authorized under title 63, sections 1-820, 1-890.2, and 1-1902 of the Oklahoma Statutes (O.S. 63 §§ 1-820, 1-890.2, and 1-1902).

(A) **"Nursing facility"** means a home, establishment, or institution primarily engaged in providing:

- (i) skilled nursing care and related services for residents;
- (ii) rehabilitation services; or
- (iii) on a regular basis, health-related care and services to individuals who because of mental or physical conditions require care and services beyond the level of care provided by a residential care home ~~per under title 63, O.S. §section 1-1902(9).~~

(B) **"Residential care home"** means any establishment or institution other than an adult companion home, group home, hotel, motel, fraternity or sorority house, or college or university dormitory that offers, provides, or supports residential accommodations, food service, and supportive assistance to any of its residents; or houses any resident requiring supportive assistance who is not related to the owner or administrator of the home by blood or marriage. The resident must be ambulatory and essentially capable of participating in his or her own activities of daily living, and not routinely requiring nursing services ~~per as described in title 63, O.S. §section 1-820.121-820(12)(a).~~

(C) **"Specialized facility"** means any home, establishment, or institution that 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 are living with intellectual or developmental disabilities ~~per as described in title 63, O.S. §section 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 because of functional impairments, need assistance with personal care or nursing supervision;
- (iv) may need intermittent or unscheduled nursing care;
- (v) may need medication assistance; and/or
- (vi) may need assistance with transfer, ambulation, or both ~~per as set forth under title 63, O.S. §section 1-890.2(1).~~

"Long-term care ombudsman" means a person who receives and resolves complaints made by or on behalf of residents of long-term care facilities and is trained and designated as an official representative by the Office.

"OAG" means the Oklahoma Office of the Attorney General.

"Office of the State Long-Term Care Ombudsman (Office)" or "Office" means the office created within the Oklahoma Department of Human Services (DHS) ~~Office of the Attorney General~~ that carries out the Long-Term Care Ombudsman Program per the Older Americans Act (OAA) of 1965, as ~~Amended~~amended, and per federal regulations under the auspices and general direction of the state long-term care ombudsman.

"OAA" means the Older Americans Act of 1965, including the original enactment (Pub. L. No. 89-73) and any subsequent amendments.

"Planning and Service Area (PSA)" or "PSA" means a geographic area specified by DHS ~~per~~ Section 305(a)(1)(E) of the Older Americans Act OAA (OAA) of 1965, as ~~Amended~~amended for purposes of planning for and serving the needs of individuals 60 years of age and above.

"Representative" means the employee or volunteer designated by the Ombudsman to fulfill duties ~~per Oklahoma Administrative Code (OAC) 340:105-11-234~~, whether personnel supervision is provided by the Ombudsman or designees or by an agency hosting a local ombudsman entity designated by the Ombudsman ~~per OAC 340:105-11-234~~.

"Resident representative" means:

- (A) an individual chosen by the resident to act on his or her behalf in order to support the resident in decision-making; accessing the resident's:
 - (i) medical, social, or other personal information;
 - (ii) managing financial matters; or
 - (iii) receiving notifications;
- (B) a person authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries to act on the resident's behalf in order to support him or her in:
 - (i) decision-making;
 - (ii) accessing the resident's medical, social, or other personal information; and/or
 - (iii) managing financial matters; or receiving notifications;
- (C) a legal representative as used in Section 712 of the OAA; or
- (D) the resident's court-appointed guardian or conservator. This definition is not intended to expand the authority of any resident representative beyond that specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

"State long-term care ombudsman" or "Ombudsman" means the individual who heads the Office and is personally responsible or responsible through Office representatives to fulfill the functions, responsibilities, and duties ~~per OAC 340:105-11-232 and 340:105-11-233~~.

"State Long-Term Care Ombudsman Program" or "Program" means the program carried out and consisting of the Ombudsman, Office, and Office representatives.

"Willful interference" means actions or inactions taken by an individual or entity, in an attempt attempting to intentionally prevent, interfere with, or ~~attempt to~~ impede the Ombudsman or an Office representative from performing any program functions or responsibilities ~~per O.S. 63 § 1-2215 or duties per OAC 340:105-11 federal or state law~~.

75:55-1-3. Oklahoma Department of Human Services (DHS) Office of the State Long-Term Care Ombudsman responsibilities

(a) The ~~DHS~~ ~~Office of the State Long-Term Care Ombudsman (Office)~~ establishes and operates a statewide Long-Term Care Ombudsman Program consistent with the Older Americans Act and Oklahoma Long-Term Care Ombudsman Act requirements. ~~DHS~~OAG provides monitoring including, but not limited to, fiscal monitoring where the Office and/or local ombudsman entity is organizationally located within, under contract, or by other arrangement. ~~DHS~~OAG monitors and ensures the State Long-Term Care Ombudsman (~~Ombudsman~~) is the head of a unified statewide State Long-Term Care Ombudsman Program (~~Program~~) ombudsman program. With ~~DHS~~OAG assistance, the 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 long-term care services provider representatives, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare, or residents' rights including the welfare and rights of residents with respect to the appointment and activities of guardians and representative payees;
- (2) informs residents about obtaining services provided by the Program;
- (3) ensures residents have regular and timely access to the services provided through the Program;
- (4) ensures residents and complainants receive timely responses from Office representatives on information and complaint requests;
- (5) represents residents' interests before governmental agencies;
- (6) ensures individual residents have access to and can pursue, as the Ombudsman determines necessary and consistent with resident interests, administrative, legal, and other remedies to protect the resident's health, safety, and welfare;
- (7) provides administrative and technical assistance to Office representatives and agencies hosting local ombudsman entities;

(8) analyzes, comments on, and monitors the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and resident's rights with respect to long-term care facilities and services in the state. The Office:

- (A) recommends changes in such laws, regulations, policies, and actions as appropriate;
- (B) facilitates public comment on the laws, regulations, policies, and actions; and
- (C) provides leadership to statewide systems advocacy efforts on behalf of long-term care facility residents including coordination of systems advocacy efforts carried out by Office representatives;

(9) provides information to public and private agencies, legislators, the media, and others, as deemed necessary by the Office, regarding the problems and concerns of individuals residing in long-term care facilities including recommendations related to such. Such determinations and positions are those of the Office and do not necessarily represent ~~DHSOAG~~ determinations or positions;

(10) when carrying out systems advocacy efforts on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Older Americans Act, the provision of information, recommendations of changes in law to legislators, and recommendations of changes in regulations and policies to government agencies by the Ombudsman or Office representatives does not constitute lobbying activities per Part 93 of Title 45 of the Code of Federal Regulations;

(11) coordinates with and promotes the development of citizen organizations consistent with the residents' interests;

(12) promotes and provides technical support for the development of ongoing support requested by residents and family councils to protect the residents' well-being and rights;

(13) provides training for staff and volunteers and promotes the development of citizen organizations to participate in the Program;

(14) carries out other activities consistent with the requirements of this Part the Assistant Secretary for Aging determines appropriate;

(15) establishes procedures for appropriate access by the Ombudsman and designated representatives to long-term care facilities, appropriate private access to residents, and appropriate access to residents' personal and medical records;

(16) establishes procedures to protect the confidentiality of records and ensures that the identity of any resident or complainant is not disclosed without the resident's or complainant's consent, or upon court order;

(17) 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 Ombudsman must submit this information to the state agency responsible for licensing or certifying long-term care facilities and to the Assistant Secretary for Aging in the manner prescribed;

(18) independently develops and provides final approval of an annual report describing the activities carried out by the Office in the year for which the report is prepared. The annual report:

- (A) contains data and findings regarding the types of problems experienced and complaints made by or on behalf of individuals residing in long-term care facilities;
- (B) provides policy, regulatory, and legislative recommendations to solve problems and complaints, to improve the quality of care and life in long-term care facilities;
- (C) includes analysis of the Program's success and success in providing services to residents of long-term care facilities;
- (D) describes barriers that prevent optimal Program operation;
- (E) is available to the public and is submitted to:
 - (i) the Assistant Secretary for Aging;
 - (ii) the state chief executive officer;
 - (iii) the state legislature;
 - (iv) the state agency responsible for licensing or certifying long-term care facilities; and
 - (v) other appropriate governmental entities;

(19) ensures that no officer, employee, or designated representative is subject to a conflict of interest; and

(20) plans and operates the Program, considering the stakeholders' views.

(b) ~~DHSOAG~~ ensures:

- (1) the Office is a distinct entity, separately identifiable, and located within or connected to ~~DHSOAG~~;
- (2) the Ombudsman serves on a full-time basis. ~~Oklahoma Administrative Code 340:105-11~~ Title 75, chapter 55 of the Oklahoma Administrative Code includes constitutes the entirety of the ombudsman's work that provides Office leadership and management, functions, responsibilities, and duties;
- (3) the Office and its representatives are not required or requested to be responsible for leading, managing, or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis;
- (4) individuals involved in the designation of the Ombudsman, by appointment or otherwise, or the designation of the head of any subdivision of the Office are not subject to conflicts of interest;
- (5) mechanisms are in place to identify and remedy any conflicts, such as conflicts of interest;
- (6) adequate legal counsel, free from conflict of interest is available to the Office for advice and consultation. legal representation is provided to Office representatives against whom suit or other legal action is brought in connection

- with the performance of such representative's official duties;
- (7) the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of long-term care facility residents;
- (8) the Ombudsman meets minimum qualifications that include, but are not limited to, demonstrated expertise in:
- (A) long-term services and supports or other direct services for older persons or individuals with disabilities;
 - (B) consumer-oriented public policy advocacy;
 - (C) leadership and program management skills; and
 - (D) negotiation and problem resolution skills;
- (9) the Ombudsman has authority to recommend policies and procedures. ~~DHS~~OAG policies and practices do not prohibit the Ombudsman from performing functions and responsibilities per federal law and rules;
- (10) entities hosting a local ombudsman must not have personnel policies or practices that prohibit Office representatives from performing Program duties or from adhering to federal or state laws and rules;
- (11) the Ombudsman monitors the performance of local entities designated to carry out Program duties;
- (12) processes are in place by which the agencies hosting local ombudsman entities coordinate with the Ombudsman in the employment or appointment of Office representatives;
- (13) standards are in place to prioritize abuse, neglect, exploitation, and time-sensitive complaints and consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through Program services; and
- (14) procedures are in place clarifying appropriate fiscal responsibilities of the local ombudsman entity including, but not limited to, clarifications regarding access to programmatic fiscal information by appropriate Office representatives.

75:55-1-4. Office of the State Long-Term Care Ombudsman policies and procedures

~~Per the Older Americans Act of 1965, as Amended~~As required by the OAA, the Office of the State Long-Term Care Ombudsman (~~Office~~) is established within the ~~Oklahoma Department of Human Services (DHS)~~OAG to carry out a statewide Long-Term Care Ombudsman Program (Program) under ~~DHS~~OAG direct supervision and administration.

- (1) Office consists of the State Long-Term Care Ombudsman (Ombudsman) and program and support staff.
- (2) Specific staffing requirements for each area Program are in accordance with ~~DHS~~OAG 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 ombudsman supervisors' and ombudsman volunteers' travel costs, including travel to and from assigned facilities and required meetings;
 - (B) identification badges; and
 - (C) incidental costs related to trainings and meetings including awards and certificates.
- (4) Designated area ombudsman staff representatives are organizationally-located within public or non-profit private entities.
- (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 Ombudsman approval.
 - (A) For the purpose of review of qualifications, criminal background checks, and conflict of interest issues, the Office has access to applications, resumes, and other personnel information related to applicants and incumbents in area ombudsman staff positions.
 - (B) State Ombudsman staff is involved at the Ombudsman's discretion in applicant interviews 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 per Part 900 of Title 5 of the United States Code.~~
 - ~~(D)~~(C) Employment of area ombudsman staff is probationary pending the individual's satisfactory training completion.
- (6) The Ombudsman investigates allegations of misconduct by Office representatives in the performance of Program duties and, as applicable, coordinates investigations with ~~DHS~~OAG, the agency hosting the local ombudsman entity, and/or the local ombudsman entity.
- (7) The Ombudsman determines the use of the fiscal resources appropriated or otherwise available to operate the Office. The Ombudsman approves the allocations of federal and state funds provided to such entities, subject to applicable federal and state laws and policies. The Ombudsman determines Program budgets and expenditures and those local ombudsman entities are compliant with laws, policies, and procedures governing the Program.

75:55-1-5. Grievance process

The Office of the State Long-Term Care Ombudsman (Office) per Part 1327.11 of Title 42, section 1324.11 of the Code of Federal Regulations establishes a grievance process for the receipt and review of grievances regarding the determinations or actions of the State Long-Term Care Ombudsman (Ombudsman) and Office representatives.

- (1) Long-term care residents or legal representatives of residents who lack capacity to provide informed consent may ask the Ombudsman to review and reconsider complaint findings of designated representatives by submitting a request in writing or verbally to the Ombudsman or deputy ombudsman within 30-calendar days of the completion of an investigation. The Ombudsman or deputy ombudsman:
 - (A) completes a record review within 30-calendar days of the formal request;
 - (B) determines if the representative followed complaint processes per Oklahoma Administrative Code (OAC) 340:105-11-237 and 340:105-11-237.1;
 - (C) places notation in the case record of his or her findings, initiates any needed action for resolution, and completes any warranted changes to the case documentation; and
 - (D) provides a copy of the findings to the resident or the resident's legal representative.
- (2) When any grievance is related to the refusal or withdraw of designation by the ombudsman entity or staff representative, the resident or the resident's legal representative has a right to request a hearing within 10-calendar days of the written notice per OAC 340:105-11-234(c).

75:55-1-6. Records, confidentiality, and disclosure

The Office of the Long-Term Care Ombudsman (Office) manages the Office State Long-Term Care Ombudsman Program (Program) files, records, and information, in physical, electronic, or other formats including information maintained by Office representatives and local ombudsman entities pertaining to Program cases and activities. Such files, records, and information are the property of the Office. Office and area ombudsman staff, ombudsman volunteers, and designated agencies uphold policies listed in this Section.

- (1) No complaint, other confidential information, or records maintained by the Program may be disclosed unless the State Long-Term Care Ombudsman (Ombudsman) authorizes the disclosure.
- (2) The Ombudsman or ombudsman representative does not disclose the identity of any complainant or resident unless the complainant or resident, or his or her legal representative consents:
 - (A) in writing to the disclosure and specifies to whom the identity may be disclosed;
 - (B) verbally and the Ombudsman documents the consent at the time consent is given; or through the use of auxiliary aids and services communication of informed consent may be made:
 - (i) in writing; or
 - (ii) verbally or visually; and
 - (iii) such consent must be documented contemporaneously by the Ombudsman or Office representative; or
 - (C) a court orders the disclosure.
- (3) In accordance with federal law and regulation, the Ombudsman and Office representatives do not report suspected abuse, neglect, or exploitation of a resident when a resident has not communicated informed consent to such report. Except the Ombudsman or Office representative may refer confidential information and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action when the circumstances in (4) of this Section are met.
- (4) When a resident is unable to communicate his or her informed consent to the Ombudsman or Office representative, the Office may rely on the resident's designated representative's consent, so long as the Ombudsman or Office representative does not have reasonable cause to believe the resident representative is not acting in the resident's best interests or is the alleged perpetrator of the abuse, neglect, or exploitation.
- (5) Inspection dates provided to the Program at any level, including Oklahoma State Department of Health inspections, are confidential per Section 1395i-3(g)(5)(B) of Title 42 of the United States Code (U.S.C.).
 - (A) Inspection dates and dates of other unannounced visits to facilities, including visits for the purpose of complaint investigation, are not posted or otherwise revealed.
 - (B) Federal law provides for a \$2,000 penalty for release of inspection dates per 42 U. S. C. § 1395i-3(g)(2)(A) (1) and Section 488.307 of Title 42 of the Code of Federal Regulations.
- (6) Privacy is provided for complaint receipts by mail, phone, or personal interview to maintain confidentiality.
- (7) All mail addressed to an ombudsman by name or title is delivered to the ombudsman unopened.
- (8) Locked files are used to maintain confidential records. Access to such files is limited to designated area ombudsman representatives and Office staff.

75:55-1-7. Liability and legal counsel

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

75:55-1-8. Other policies

(a) The rules in this ~~Part~~Chapter reflect compliance with ~~Older Americans Act~~OAA 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.

SUBCHAPTER 2. COMPLAINTS

75:55-2-1. Complaint investigation

The ~~State Long-Term Care Ombudsman Program (Program)~~ complaint mechanism functions at all levels with procedures for receipt, investigation, and resolution of problems and complaints.

- (1) The ~~Office of the State Long-Term Care Ombudsman (Office)~~ 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 complaint resolution;
 - (F) follow-up on complaint resolution and closure; and
 - (G) may decline to investigate any complaint when:
 - (i) the complaint is frivolous or not made in good faith;
 - (ii) the complaint was made so long after the incident that it is no longer reasonable to conduct an investigation;
 - (iii) an adequate investigation cannot be conducted because of insufficient funds, insufficient staff, lack of staff expertise, or any other reasonable factor that would result in an inadequate investigation despite a good faith effort; or
 - (iv) an investigation by the Office would create a real or apparent conflict of interest.
- (2) Area ombudsman supervisors:
 - (A) receive complaints from all sources;
 - (B) investigate complaints through on-site, unannounced visits to the facility or refer the complaints to ombudsman volunteers;
 - (C) resolve complaints or refer the complaint in writing to ~~State Long-Term Care Ombudsman (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 the complaint process.
- (3) Ombudsman volunteers:
 - (A) receive complaints and learn of problems from all sources;
 - (B) investigate complaints through on-site, unannounced, routine weekly visitation to the assigned facility or refer complaints to an ombudsman supervisor for investigation;
 - (C) resolve problems or complaints within the facility or refer to an ombudsman supervisor for resolution; and
 - (D) follow-up on conditions through routine, weekly visitation with residents in the assigned facility.

75:55-2-2. Complaint processing

(a) Regardless of the source of the complaint the Office of the State Long-Term Care Ombudsman (Office), State Long-Term Care Ombudsman (~~Ombudsman~~), and Office representatives serve long-term care facility residents to identify, investigate, and resolve complaints. The Ombudsman or Office representative investigates complaints including, but not limited to, abuse, neglect, or exploitation for the purposes of resolving the complaint to the resident's satisfaction and to protect the resident's health, safety, welfare, and rights. The Ombudsman or Office representative may identify, investigate, and resolve a complaint impacting multiple or all facility residents.

(b) Regardless of the source of the complaint, including when the source is the Ombudsman or Office representative, the Ombudsman or Office representative must support and maximize resident participation in the complaint resolution process.

(1) The Ombudsman or Office representative must offer the resident privacy for confidentially purposes, when providing information and hearing, investigating, and resolving complaints.

(2) The Ombudsman or Office representative must discuss the complaint with the resident and resident representative when the resident is unable to communicate informed consent, to:

(A) determine his or her perspective;

(B) request informed consent to investigate the complaint;

(C) determine the resident's or his or her representative's perspective on complaint resolution including if the allegations are reported and, when so, if the Ombudsman or Office representative releases resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure is consistent with (b)(3) of this Section;

(D) advise the resident and resident representative of the resident's rights, when applicable;

(E) work with the resident or resident representative to develop a plan of action to resolve the complaint, when applicable;

(F) investigate the complaint to determine if the complaint can be verified; and

(G) determine if the complaint is resolved to the resident's or resident representative's satisfaction.

(3) When the resident is unable to communicate and does not have a representative to provide informed consent the Ombudsman or Office representative:

(A) takes appropriate steps to investigate and works to resolve the complaint in order to protect the resident's health, safety, welfare, and rights; and

(B) determines if the complaint was resolved to the complainant's satisfaction.

(4) To determine whether to rely on a resident representative to communicate or make determinations on the resident's behalf for complaint processing, the Ombudsman or Office representative ascertains the extent of the authority granted to the resident's representative under court order, by power of attorney, or other document the resident used to grant authority to the representative.

(c) The Ombudsman or Office representative may provide information regarding the complaint to another agency in order to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or Office representative adheres to the disclosure requirements ~~per Oklahoma Administrative Code 340:105-11-243~~ provided by law.

When the resident or resident representative:

(1) seeks regulatory, protective services, or law enforcement action and the Ombudsman or Office representative determines the resident or resident representative communicated informed consent to the Office, the Office assists the resident or resident's representative contact the appropriate agency and/or discloses the resident or resident's representative consent for such purposes; and

(2) is served by disclosing information to a facility representative ~~and/or~~ referrals to an entity other than those referenced in (c)(1) of this Section and the Ombudsman or Office representative determines the resident or resident representative communicated informed consent to the ~~State Long-Term Care Ombudsman Program (Program)~~, the Ombudsman or Office representative may:

(A) assist the resident or resident representative contact the appropriate facility representative or the entity;

(B) provide information on how a resident or representative may obtain a facility or entity contact information; and/or

(C) disclose the information the resident or resident's representative provided consent for to an appropriate facility representative or entity, consistent with Ombudsman Program procedures.

SUBCHAPTER 3. CONFLICTS OF INTEREST**75:55-3-1. Conflict of interest**

(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 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 ~~State Long-Term Care Ombudsman Program (Program)~~ serves.

- (b) A conflict of interest exists when any organizational or supervisory relationship, policy, action, or individual ombudsman's personal relationship, immediate familial relationship, or action conflicts with or impairs 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 (~~Ombudsman~~), by appointment or otherwise, or the designation of the head of any designated entity may be subject to a conflict of interest.
- (d) Freedom from conflict of interest is established through interview of prospective 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~~, a form developed by OAG and the Office that includes a Conflict of Interest Statement ~~conflict of interest statement~~ and ~~Ethical Guidelines~~ ethical guidelines, annually and when there is any change of facility or area assignment by:
- (1) prospective and current Office staff;
 - (2) prospective and current ombudsman volunteers; and
 - (3) any other person involved in the direct operation of the Program.
- (f) Agencies must annually review ~~Form 02OM002E~~, a form developed by OAG and the Office that contains Freedom from Conflict of Interest Assurances ~~freedom from conflict of interest assurances~~, which must be signed annually by:
- (1) directors of designated entities or those seeking designation as local ombudsman entities; and
 - (2) directors of sponsoring agencies.

75:55-3-2. Organizational conflict of interest

(a) ~~The Oklahoma Department of Human Services (DHS)~~ OAG and the Office of the State Long-Term Care Ombudsman (~~Office~~) State Long-Term Care Ombudsman (Ombudsman) 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 Office representative perform conflicting activities in an organization that:

- (1) is responsible for licensing, surveying, or certifying long-term care facilities;
- (2) is an association or an affiliate of such an association, of long-term care facilities or of any other residential facilities for older individuals or individuals with disabilities;
- (3) has ownership or investment interest, represented by equity, debt, or other financial relationship in, or receives grants or donations from, a long-term care facility;
- (4) has governing board members with any ownership, investment, or employment interest in long-term care facilities;
- (5) provides long-term care to residents of long-term care facilities including the provision of personnel for long-term care facilities or the operation of programs that control access to or services for long-term care facilities;
- (6) provides long-term care coordination or case management for residents of long-term care facilities;
- (7) sets reimbursement rates for long-term care facilities;
- (8) provides adult protective services;
- (9) is responsible for eligibility determinations for residents of long-term care facilities regarding Medicaid or other public benefits;
- (10) conducts preadmission screening for long-term care facility placements;
- (11) makes admission or discharge decisions for individuals to or from long-term care facilities; or
- (12) provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

(b) **Removing or remedying organizational conflicts.** ~~DHS~~ OAG and the Ombudsman identify and take steps to remove or remedy conflicts of interest between the Office and ~~DHS~~ OAG or another entity carrying out the ~~Ombudsman Program~~ (~~Program~~).

- (1) The Ombudsman identifies organizational conflicts of interest in the Program and describes steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.
- (2) When the Office is located within or otherwise organizationally-connected to ~~DHS~~ OAG, ~~DHS~~ OAG:
 - (A) takes reasonable steps to avoid internal conflicts of interest;
 - (B) reviews and identify internal conflicts;
 - (C) takes steps to remove or remedy conflicts;
 - (D) ensures that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and
 - (E) ensures the Ombudsman disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.
- (3) When ~~DHS~~ OAG is unable to adequately remove or remedy a conflict, the Program is carried out by contract or other arrangement with a public agency or nonprofit private organization, ~~per Section 712(4)(a) of~~ as required by the

Older Americans Act, as Amended OAA.

(4) DHS may not enter into a contract or other arrangement to carry out the Program or operate the Office when the other entity:

- (A) is responsible for licensing, surveying, or certifying long-term care facilities;
- (B) is an association or an affiliate of such an association of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or
- (C) has any ownership, operational, or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility.

75:55-3-3. Conflict of interest remedies

(a) **Volunteers.** When a conflict of interest is identified before designation, the volunteer is not certified in any facility in which the conflict of interest could be expected to affect performance. When 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 withdrawal of designation, reassignment of the volunteer, or other appropriate action.

(b) **Paid ombudsman representatives.** No applicant for a paid ombudsman position, at any level of the program, is selected to fill that position when a conflict of interest is identified during any stage of the application or hiring process. When a conflict of interest or potential conflict of interest is identified involving a designated representative, action must be taken to remedy the conflict within 30-calendar days. Remedies may range from elimination of the conflict to withdrawal of the individual's designation.

(c) **Directors of sponsoring agencies and designated entities.** When a conflict of interest or potential conflict of interest is identified action must be taken to remedy the conflict of interest within 30-calendar days. Remedies may include:

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

75:55-3-4. Conflict of interest statement and ethical guidelines

(a) The Older Americans Act of 1965, as Amended, OAA 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. State Long-Term Care (Office) Office staff and volunteers must study the rules in this Section section and sign Form 02OM001E, a form developed by OAG and the Office about Conflict of Interest Statement and Ethical Guidelines containing a conflict of interest statement and ethical guidelines when able to to certify that they can provide assurances and meet ethical guidelines. The designated ombudsman:

(b) The assurances and ethical guidelines include, but are not limited to, the following:

- (1) the designated ombudsman 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) the designated ombudsman 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) the designated ombudsman who is assigned or acts as an official representative of a designated entity 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 designated entity;
- (4) the designated ombudsman 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) the designated ombudsman 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) the designated ombudsman 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) the designated ombudsman 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) the designated ombudsman may not effectively recommend or decide to hire or promote another person who is a member of the ombudsman's immediate family;
- (9) the designated ombudsman may not give preferential or favorable treatment in provision of service to a resident who is a member of the ombudsman's family;

- (10) the designated ombudsman may not serve as guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility where he or she is assigned or investigates complaints;
- (11) the designated ombudsman may not be assigned, investigate complaints, or serve residents of a facility in where his or her immediate family member resides; and
- (12) the designated ombudsman 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.
- (b) ~~In no circumstance will the Oklahoma Department of Human Services~~OAG or a local ombudsman entity shall not appoint or employ an individual, nor will the ~~State Long-Term Care Ombudsman~~ designate an individual as an Office representative who:
- (1) has direct involvement in the licensing or certification of a long-term care facility;
 - (2) has an ownership or investment interest represented by equity, debt, or other financial relationship in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
 - (3) receives, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility; or
 - (4) is employed by or participating in the management of a long-term care facility.
- (c) Any entity that appoints or employs Office representatives make efforts to avoid appointing or employing an individual as an Office representative who was employed by or participating in the management of a long-term care facility within the previous ~~12~~twelve months. Where such an individual is appointed or employed, steps are taken to remedy the conflict.
- (d) OAG and the Office shall develop and maintain a form containing a conflict of interest statement and ethical guidelines.

75:55-3-5. Freedom from conflict of interest assurances

~~—The Older Americans Act as amended~~OAA 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.~~
- (a) The OAA requires assurances of freedom from conflict of interest for the officially designated area program as a subdivision of the Office. Directors of designated area ombudsman entities and sponsoring agency directors are asked to read, review with staff and sponsors, and sign a form developed by OAG and the Office certifying the assurances described in subsections b and c.
- (b) Directors of designated area ombudsman entities and sponsoring agency directors shall assure that the agency is—
- (1) is not a part of an entity responsible for licensing or certifying long-term care facilities, or part of a provider organization;
 - (2) does not hold interest in, manage, own, or contract with a long-term care facility;
 - (3) does not stand to gain financially through an action or potential action brought on behalf of persons the ombudsman serves; and
 - (4) is not located within an organization that may impair or inhibit the ability of the ombudsman to objectively and independently investigate and resolve complaints.
- (c) Directors of designated area ombudsman entities and sponsoring agency directors shall assure that the ombudsman will be free to:
- (1) take action on behalf of residents;
 - (2) publicly represent the concerns of residents;

- (3) bring together persons who have the authority to solve problems;
- (4) make recommendations to boards, committees, and task forces in developing long-term care policy, or similar situations;
- (5) forward unresolved formal complaints to the Office according to program policy; and
- (6) publicize the State Long-Term Care Ombudsman Program and issues affecting older persons who are institutionalized.

(d) There are inherent conflicts in the role of the ombudsman. The agency supports the role and goals of the Program and the ombudsman staff through any conflict associated with their official duties.

(e) OAG and the Office shall develop and maintain a form for designated area ombudsman entities and sponsoring agency directors to make any assurances required by law.

SUBCHAPTER 4. OPERATIONAL DUTIES AND RESPONSIBILITIES OF THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN AND AREA AGENCIES ON AGING

75:55-4-1. Access

(a) **Access to facilities and residents.** ~~The Office of the State Long-Term Care Ombudsman (Office)~~ procedures for access to long-term care facilities and facility residents are in ~~Sections 1-829-F, 1-1902, 1-1919, and 1-2213-D of Title 63~~ title 63, sections 1-829(F), 1-1902(2), 1-1919, and 1-2213(D) of the Oklahoma Statutes. An Office or local ombudsman, ~~as that term is defined by Oklahoma Department of Human Services Aging Services,~~ is authorized to enter any facility licensed perunder 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, designated ombudsman volunteers have the same right of access to licensed long-term care facilities and residents as Office 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 Office.

(b) **Access to resident's records.** ~~The State Long-Term Care Ombudsman (Ombudsman)~~ and Office staff have access to:

- (1) review the resident's medical and social records when the:
 - (A) Office representative has the resident's or the resident's legal representative's permission; or
 - (B) resident is unable to consent to the review, has no legal representative, and the Office representative obtains Ombudsman approval;
- (2) the records as necessary to investigate a complaint when:
 - (A) a resident's legal guardian refuses to give permission;
 - (B) an Office representative has reasonable cause to believe the guardian is not acting in the resident's best interests; and
 - (C) the representative obtains Ombudsman approval;
- (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 state agency with respect to long-term care facilities. Ombudsman volunteers must obtain a resident's legal representative's, ombudsman supervisor's, Ombudsman's, or deputy ombudsman's consent before accessing medical or social records of a resident who does not have the capacity to grant informed consent.
- (5) The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, ~~Part 160 of Title 45 of the Code of Federal Regulations (C.F.R.) and 45 C.F.R. Part 164 Subparts A and E~~ does not preclude release by covered entities of resident private health information or other resident identifying information to the State Long-Term Care Ombudsman Program including, but not limited to, residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a federal or state survey or inspection process.

75:55-4-2. Facility visitation

(a) Designated area entity 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 (Program)~~ services are 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 during ~~Oklahoma State Department of Health (OSDH)~~ inspections, the visit may be counted.
 - (C) Visits made to resolve complaints are counted when multiple residents are visited.

- (2) Visits are documented on Office of the State Long-Term Care Ombudsman (Office)-approved forms and are protected according to Program confidentiality requirements. Visits are:
- (A) unannounced and dates are kept confidential; and
 - (B) not posted or revealed to any person other than the Area Agency on Aging director, designated as the area ombudsman entity who safeguards them.
- (3) ~~State Long-Term Care Ombudsman (Ombudsman)~~ staff:
- (A) accompanies each newly-designated ombudsman volunteer to the volunteer's assigned facility, by appointment, for an introductory visit to:
 - (i) introduce the volunteer to the facility administrator, residents, and facility; and
 - (ii) explain or clarify the ombudsman volunteer role;
 - (B) conducts at least one supervisory visit with each designated ombudsman volunteer at his or her assigned facility annually to:
 - (i) assess skills, relationships, and understanding of appropriate role; and/or
 - (ii) assist the volunteer with a complaint or other problem; and
 - (C) 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 designated ombudsman volunteer visits residents in his or her assigned facility, at least two hours per week to assist residents resolve or prevent problems or complaints. Each visit is documented.
- (1) Volunteers may not officially begin visitation and other duties in a facility as a designated ombudsman volunteer until he or she:
 - (A) receives written notice of designation from the Office; and
 - (B) is accompanied by Office 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) illness or family illness;
 - (B) vacation or extended travel; or
 - (C) a reason approved by the ombudsman supervisor.
 - (3) Leave of absence must not exceed three months duration. When 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 designation is withdrawn.
 - (4) The volunteer may request voluntary designation withdrawal from the Program at any time and be designated again when requirements are met.
 - (5) A volunteer that returns to service within one year of withdrawal of designation is not required to complete the initial two-day volunteer training but must be screened for potential conflicts of interests and complete the OSDH National Fingerprint Background Check.
- (c) Ombudsman participation as a citizen observer in unannounced inspections by ~~OSDH~~ the 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) Office staff and designated ombudsman volunteers may participate.
 - (2) Inspection schedule information is kept in a locked file and access is restricted to Office staff.
 - (3) The location of the inspection is shared by Office staff only with the area ombudsman supervisor.
 - (4) The ombudsman facility volunteer may be notified, but notification is made no earlier than the inspection date.
 - (5) Early notification to a facility is strictly prohibited and potentially subject to civil penalty authorized under federal law. Penalties are set in federal statutes for early facility notifications per Section 1395i-3(g)(2)(A)(1) of the United States Code and Section 488.307 of Title 42 of the Code of Federal Regulations.
- (d) When entering a facility for a visit, Office staff and volunteers notify the administrator or other charge person of their presence. If a charge person is not 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.

75:55-4-3. Reporting system

- (a) Reporting by Office staff. ~~Office of the State Long-Term Care Ombudsman staff shall:~~
- (1) ~~identify~~ Identify significant problems by establishing a statewide reporting system including the collection and analysis of quarterly reports from area ombudsman staff;
 - (2) ~~receive~~ 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~~ Develop administrative and legislative proposals to resolve significant problems of residents, as reflected in complaint investigation and other data;
 - (4) ~~provide~~ 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~~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) **Reporting by Area ombudsman staff.** Area ombudsman staff ~~shall~~:-

- (1) ~~collect~~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~~Monitor conditions in certain facilities for informal reporting on a follow up basis to state ombudsman staff; and
- (3) ~~respond~~Respond to requests from state ombudsman staff for reports or updates on local conditions relating to specific issues being addressed statewide.

75:55-4-4. Provision of information

The Office of the State Long-Term Care Ombudsman (Office), State Long-Term Care Ombudsman (Ombudsman), and designated staff 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. The provision of information includes, but is not limited to:

(1) Office staff ~~provides~~:-

- (A) developing 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;
- (B) developing 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;
- (C) providing information on conditions affecting and the needs of long-term care facility residents, upon request, to individuals, agencies, organizations, and others; and
- (D) meeting at least quarterly with the State Council on Aging's Advisory Committee for the State Long-Term Care Ombudsman Program (Program) to discuss Program operation, issues affecting the population served by the Program, and strategies to address identified concerns;

(2) Area ombudsman staff ~~provides~~:-

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

(a) The Office, Ombudsman, designated Office staff, and Area ombudsman staff 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. The provision of information includes, but is not limited to:

- (1) 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) Communicating concerns of long-term care facility residents directly into the policy making process;
- (3) Providing information on conditions affecting and the needs of long-term care facility residents, upon request, to individuals, agencies, organizations, and others;
- (4) Meeting with the State Council on Aging's Advisory Committee for the Program to discuss Program operation, issues affecting the population served by the Program, and strategies to address identified concerns at least quarterly;

(b) Area ombudsman staff may undertake the following endeavors aimed to support the Ombudsman and Office staff:

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

75:55-4-5. Systems Advocacy, monitoring laws, regulations, and policies

(a) The Office of the State Long-Term Care Ombudsman (Office) is required and authorized to:

- (1) ~~analyze~~Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services;
- (2) ~~monitor~~Monitor the health, safety, welfare, and rights of residents; and
- (3) ~~recommend~~Recommend changes in such laws, regulations, and policies as the Office determines appropriate.

(b) Office staff ~~may~~:

- (1) ~~acquire~~Require and share with area programs, citizen organizations, and individuals copies of proposed and enacted laws, regulations, and policies that may affect long-term care facility residents;
- (2) ~~give~~Give testimony and written comments as appropriate and assist others learn of comment opportunities;

- (3) ~~attend~~Attend or conduct public hearings;
 - (4) ~~request~~Request comments from area ombudsman staff; and
 - (5) ~~investigate~~Investigate complaints and take action as necessary to monitor the development and implementation of laws, rules, and policies.
- (c) Area ombudsman staff may:
- (1) ~~review~~Review proposed and enacted laws, regulations, and policies that may affect long-term care facility residents in the planning and service area (PSA), as provided by Office staff;
 - (2) ~~give~~Give testimony and written comments, and attend or conduct public hearings, as appropriate;
 - (3) ~~investigate~~Investigate complaints; and
 - (4) ~~communicate~~Communicate concerns identified through the above activities to Office staff.
- (d) The Office makes determinations and establishes positions of the Office independently. Those determinations or positions may or may not represent the determinations or positions of ~~the Oklahoma Department of Human Services (DHS)~~OAG and are not subject to approval by ~~DHS~~OAG.

75:55-4-6. Procedures related to the disclosure of witnessed abuse, neglect, or exploitation

(a) When the Office, ~~of the State Long-Term Care Ombudsman (Office)~~ ~~State Long-Term Care Ombudsman, (Ombudsman)~~ or Office representative (~~representative~~) personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies.

- (1) When the resident is able to communicate informed consent or has a resident representative available to provide informed consent, the Ombudsman or representative follows the resident's or resident representative's direction.
- (2) When the resident is unable to communicate informed consent and has no resident representative available to provide informed consent, the Ombudsman or representative opens a case with the Ombudsman or representative as the complainant, follows the Office's program complaint resolution procedures, refers the matter, and discloses the resident's identifying information to facility management where the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect, or exploitation in the following circumstances the:
 - (A) Ombudsman or representative has no evidence indicating the resident would not want a referral to be made;
 - (B) Ombudsman or representative has reasonable cause to believe disclosure is in the resident's best interest; and
 - (C) representative obtains Ombudsman or deputy ombudsman approval.
- (3) In addition, the Ombudsman or representative, following Office policies and procedures ~~per Oklahoma Administrative Code 340:105-11-243 (3) (i) - (vi)~~, may report suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.
- (4) The decision to grant or deny Ombudsman or deputy ombudsman approval for confidential information disclosure related to abuse, neglect, or exploitation is made and conveyed to the requesting ombudsman in one business day.

75:55-4-7. Designation of area programs and area representatives including staff and volunteers

(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, ~~per Oklahoma Department of Human Services (DHS)~~ pursuant to OAG administrative funding procedures.

- (1) Area program staff and volunteer representatives are officially designated in writing by the State Long-Term Care Ombudsman (~~Ombudsman~~).
- (2) Designation as an Office representative:
 - (A) ~~for~~For area staff is based on criteria necessary for satisfactory performance including, but not limited to:
 - (i) being free from any conflict of interest as defined by this rule and in compliance with federal and state statutes; and does not stand to gain financially through an action or potential action brought on behalf of the residents he or she serves;
 - (ii) meeting minimum Office job qualifications and screening standards; and
 - (iii) satisfactorily completing training prescribed by the Ombudsman; and
 - (B) ~~as~~As an ombudsman volunteer is accomplished through a designation process, and is based on the individual meeting criteria necessary to satisfactory performance in the position including, but not limited to, the person:
 - (i) being free from any conflict of interest as required by statute and defined by this ~~Part~~Chapter and he or she 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~~Chapter;
 - (iii) satisfactorily completes training prescribed by the Ombudsman; and

(iv) completes and signs:

- (I) ~~Form 02OM003E~~, The Ombudsman Volunteer Application, agreeing to accept supervision and follow Program rules and guidelines; and
- (II) the Registry and criminal history record check consent and release form for the Oklahoma National Fingerprint Background Check Program, authorizing the Office to conduct a national fingerprint background and registry checks.

(b) The Ombudsman has authority to refuse to designate:

- (1) ~~an~~An individual, staff or volunteer, as an Office representative for any reasonable cause related to unsatisfactory 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 a national fingerprint background and registry check or minimum job qualifications; and
- (2) ~~an~~An entity as a subdivision of the Office for any reasonable cause that prevents satisfactory operation of the ~~State Long-Term Care Ombudsman Program (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 Ombudsman has the authority to withdraw designation as:

- (1) ~~a~~An subdivision of the Office from a designated entity when there is:
 - (A) an unresolved or unresolvable conflict of interest;
 - (B) a breach of the confidentiality requirement caused by the action of any staff of the designated entity as a local subdivision of the Office or of that designated entity's sponsoring agency;
 - (C) failure to adhere to Office policies, ~~Federal~~the federal Administration on Aging regulations, federal or state law; or
 - (D) any other unreasonable or prejudicial conduct substantially affecting the Program; and
- (2) ~~an~~An Office representative 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 Office policies or federal or state law;
 - (D) failure to accept program supervision from the Office; or
 - (E) when the prospective representative is determined to be ineligible by the Oklahoma State Department of Health National Fingerprint Background Check Program.

(d) The Ombudsman may also withdraw designation of an ombudsman volunteer when he or she:

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

(e) An agency that is refused designation or from which designation is withdrawn as an designated entity or an individual refused designation or from whom designation is withdrawn as an area ombudsman staff representative may appeal the decision.

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

- (1) ~~Designation is not withdrawn until reasonable notice and opportunity for a hearing is provided.~~
- (2) ~~Notification of the right to appeal and appeal procedures are included in the letter notifying the agency or staff person of a decision to refuse or withdraw designation.~~
- (3) ~~A request for hearing must be submitted within 10-ten calendar days of the receipt of the letter of notification of the decision to refuse or withdraw designation.~~
- (4) ~~Hearings are conducted by the DHS Appeals Unit OAG or its designated hearing officer.~~
- (5) ~~The Ombudsman has authority to suspend a designated ombudsman entity or staff representative from engaging in any and all Program duties pending the conclusion of a hearing.~~
- (6) ~~In a case where findings of the hearing officer are contrary to federal law or rules, as determined by the Ombudsman, the Ombudsman retains the authority to refuse or withdraw designation regardless of the findings of the hearing officer.~~

(f) Rules of procedure for appeals of refused or withdrawn designations. The follow rules of procedure apply in appeals of refused or withdrawn designations:

- (1) The Ombudsman shall send a notification of such refusal or withdrawal advising the agency or individual (appealing party) of their the right to appeal.

- (2) A request for hearing must be submitted within ten calendar days of the receipt of the letter of notification of the decision to refuse or withdraw designation.
- (3) The agency or individual appealing the refusal or withdrawal may submit a response to accompany its request for hearing. If a response is submitted, the Ombudsman may submit a reply to the response no later than five days after the request for hearing and response are received.
- (3) Hearings are conducted by OAG or its designated hearing officer. The hearings must be electronically recorded. All testimony shall be taken under oath. The hearing officer may admit relevant, material, substantial, competent and reliable evidence but may also exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.
- (4) The hearing officer may set a time limit for each side to present its case. The appealing party may reserve a portion of its time for rebuttal.
- (5) The Ombudsman may suspend a designated ombudsman entity or staff representative from engaging in any and all Program duties pending the conclusion of a hearing.
- (6) Notwithstanding the findings of hearing officer, the Ombudsman retains authority to refuse or withdraw the designation regardless of the hearing officer's findings if the Ombudsman determines that such findings contradict or violate federal law or regulations.

75:55-4-8. Responsibilities of agencies hosting local ombudsman representatives

- (a) The designated entity in which a local Office ~~of the State Long-Term Care Ombudsman (Office)~~ Program (Program) is organizationally located is responsible for the personnel management, but not programmatic oversight of Office representatives, including employees and volunteer representatives.
- (b) The designated entity in which a local program is organizationally located does not have personnel policies or practices that prohibit Office representatives from performing the duties or from adhering to the access, confidentiality, and disclosure requirements of federal and state laws and regulations.
 - (1) Host agencies may not have policies, procedures, or practices including personnel management practices that the State Long-Term Care Ombudsman ~~(Ombudsman)~~ determines conflictive with the laws or policies governing the Program.
 - (2) Any policy, procedure, or practice the Ombudsman determines to be in violation of federal or state laws and regulations is sufficient grounds for the refusal, suspension, or removal of the designation of local ombudsman entity by the Ombudsman.
 - (3) Nothing in this provision prohibits the host agency from requiring that Office representatives adhere to the personnel policies and procedures of the agency that are otherwise lawful.

75:55-4-9. Duties of representatives of the Office of the State Long-Term Care Ombudsman ~~(Office)~~

The State Long-Term Care Ombudsman (Ombudsman) may designate an entity as a local ombudsman entity and may designate an employee or volunteer of the local ombudsman entity as an Office representative. Office representatives may also be designated employees or volunteers within the Office. An individual designated as an Office representative per Oklahoma Department of Human Services (DHS) and Office policies and procedures:

- (1) identifies, investigates, and resolves 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;
- (2) provides assistance to protect the health, safety, welfare, and rights of residents;
- (3) ensures residents in the local ombudsman entity service area have regular and timely access to the services provided through the State Long-Term Care Ombudsman Program and that residents and complainants receive timely responses to requests for information and complaints;
- (4) represents the interests of residents before government agencies and ensures individual residents have access to and pursue, as the representative determines necessary and consistent with resident interest, administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- (5) reviews, and when necessary, comments on any existing and proposed laws, regulations, and other government policies and actions pertaining to residents' rights and well-being;
- (6) facilitates public comment on the laws, regulations, policies, and actions;
- (7) promotes and provides technical support for development and ongoing support when requested by resident and family councils; and
- (8) carries out other activities the Ombudsman determines to be appropriate.

SUBCHAPTER 5. PERSONNEL AND VOLUNTEER MANAGEMENT

75:55-5-1. Area Agency on Aging ombudsman supervisor ~~II~~

- (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)~~(PSAs), 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 an accredited four-year college or university with major course work in social work, gerontology, sociology, general social sciences, or a related field including, but not limited to, health care. Any ombudsman employed as an ombudsman supervisor I prior to this effective date is deemed as eligible for the position.~~

(d) **Salary range.** ~~The comparable job family descriptor for this position is Adult Protective Services Specialist, #H26A. A person in this position may not be hired at a salary more than the midpoint, nor paid more than the maximum of the approved salary range. For the purpose of determining annual salary longevity pay is not considered.~~

75:55-5-2. Area Agency on Aging ombudsman supervisor II

(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)~~(PSAs), 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 and one year of fulltime ombudsman or other applicable advocacy experience; or~~
- ~~(2) after one year of employment, an ombudsman supervisor I may promote to a level II position.~~

(d) **Salary range.** ~~The comparable job family descriptor for this position is an Adult Protective Services Specialist, #H26B. A person in this position may not be hired at a salary more than the midpoint nor paid more than the maximum of the approved salary range. For the purpose of determining annual salary longevity pay is not considered.~~

75:55-5-3. Screening criteria for ombudsman

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

(b) Persons who are not eligible for ombudsman volunteer designation include any individual who:

- (1) was terminated from employment in a facility where he or she wants to volunteer;

- (2) is a relative of a current employee of the facility where he or she wants 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 where he or she wants to volunteer. The person may volunteer in another facility located in a separate planning and services area;
- (5) is a paid sitter, private duty nurse or aide in the facility where the person wants 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 selected facility administrator;
- (7) stands to gain financially through an action or potential action brought on behalf of persons the ~~State Long-Term Care Ombudsman~~ Program serves; or
- (8) was determined to be ineligible by the Oklahoma State Department of Health National Fingerprint Background Check Program.

75:55-5-4. Training

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

- (1) Office staff shall:
 - (A) orients and trains ombudsman staff representatives and determines satisfactory completion of prescribed training;
 - (B) develops and periodically updates training core curriculum;
 - (C) assists area ombudsman staff train ombudsman volunteers;
 - (D) provides on a quarterly basis, a minimum of ~~40~~forty hours of continuing education and training to ombudsman supervisors per year;
 - (E) provides community education with area staff;
 - (F) officially ~~certifies~~certify newly-trained, ombudsman volunteers who met 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 shall:
 - (A) holds public workshops for community education and volunteer recruitment;
 - (B) trains ombudsman volunteer applicants using the Office-prescribed core training format;
 - (C) submits the name, facility assignment, and original signed Form 02OM003E, Ombudsman Volunteer Application, of each volunteer recommended for designation;
 - (D) ~~accompanies~~accompany 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 designated ombudsman volunteers to annually achieve a minimum of ~~18~~eighteen hours per volunteer of continuing education relevant to the care of older persons and persons with disabilities.

75:55-5-5. Office of the State Long-Term Care (Office) ombudsman staff and volunteer training

(a) **Paid ombudsman staff training curriculum.** New ombudsman staff training includes 90 hours of introductory education in:

- (1) the ~~Long-Term Care Ombudsman Program (Program)~~;
- (2) Program policies and procedures;
- (3) the complaint investigation and response system;
- (4) the long-term care regulatory system;
- (5) residents' rights;
- (6) characteristics of long-term care facilities and residents;
- (7) aging processes;
- (8) communication skills;
- (9) legal and ethical issues;
- (10) a visitation practicum;
- (11) mediation or negotiation skills;
- (12) community resources or services;
- (13) volunteer management;
- (14) reporting and record keeping;
- (15) adult abuse, neglect, and exploitation investigations; and
- (16) testing to determine an understanding of the curriculum.

(b) **Volunteer ombudsman training curriculum.** Ombudsman volunteer training includes 12 hours of introductory education in:

- (1) the Program;
- (2) the ombudsman volunteer role, including activities and responsibilities;
- (3) problem-solving and complaint investigation;
- (4) aging processes;
- (5) characteristics of long-term care facilities and residents;
- (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) long-term care regulation;
- (10) confidentiality;
- (11) reporting and record keeping; and
- (12) a visitation practicum.

75:55-5-6. Ombudsman volunteer rules and guidelines

The designated ombudsman volunteer observes the requirements of the ~~State Long-Term Care Ombudsman (Ombudsman) State Long-Term Care Ombudsman Program (Program)~~. The ombudsman volunteer:

- (1) completes and signs ~~Forms~~the following forms:
 - (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 designated by Program staff;
- (3) accepts supervision by the ombudsman supervisor;
- (4) respects privacy and confidentiality.
 - (A) The volunteer does not disclose information regarding any complainants or participant's name, condition, or situation, except to the ombudsman supervisor or ~~State Long-Term Care Ombudsman (Office)~~Office 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 designated entity ombudsman supervisor when visiting the facility or attending functions as an ombudsman volunteer;
- (9) is available to the facility residents, hears their concerns, and assists them with, and follows-up on problem-solving;
- (10) meets with the facility administrator to establish and maintain a cooperative working relationship;
- (11) is familiar with facility policies and procedures established for its operation;
- (12) is designated as an ombudsman volunteer, limited to the facility named in the designation letter, unless authorized in advance by the Ombudsman;
- (13) is clear in understanding the ombudsman volunteer role on behalf of the residents; and
- (14) does not perform direct care services, such as lifting, feeding, or transporting residents.