

CHAPTER 55. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

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 authorized under title 63, sections 1-820, 1-890.2, and 1-1902 of the Oklahoma Statutes.

(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 under title 63, 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 as described in title 63, section 1-820(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 as described in title 63, 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 as set forth under title 63, 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" or **"Office"** means the office created within the Oklahoma Office of the Attorney General that carries out the Long-Term Care Ombudsman Program per the Older Americans Act of 1965, as 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.

"OSDH" means the Oklahoma State Department of Health.

"Planning and Service Area" or **"PSA"** means a geographic area specified by Section 305(a)(1)(E) of the OAA, as 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, whether personnel supervision is provided by the Ombudsman or designees or by an agency hosting a local ombudsman entity designated by the Ombudsman.

"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.

"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 attempting to intentionally prevent, interfere with, or impede the Ombudsman or an Office representative from performing any program functions or responsibilities federal or state law.

75:55-1-3. Office of the State Long-Term Care Ombudsman responsibilities

(a) The 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. 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. OAG monitors and ensures the State

Long-Term Care Ombudsman is the head of a unified statewide ombudsman program. With 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 OAG 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) OAG ensures:
- (1) the Office is a distinct entity, separately identifiable, and located within or connected to OAG;
 - (2) the Ombudsman serves on a full-time basis. Title 75, chapter 55 of the Oklahoma Administrative Code includes 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. 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

As required by the OAA, the Office of the State Long-Term Care Ombudsman is established within the OAG to carry out a statewide Long-Term Care Ombudsman Program (Program) under 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 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~~ reviewing of qualifications, conducting criminal background checks, and identifying ~~conflict~~ conflicts of interest ~~issues~~, the Office ~~has~~ shall have access to applications, resumes, and other personnel information related to applicants and incumbents in area ombudsman staff positions.
 - (B) ~~At the Ombudsman's discretion,~~ State Ombudsman staff is ~~may be 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) 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 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

~~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;
 - (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.

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 must:

- (1) Complete a record review within 30 calendar days of the formal request;
- (2) Determine if the representative followed complaint processes;
- (3) Place a notation in the case record of his or her findings, initiate any needed action for resolution, and complete any warranted changes to the case documentation; and
- (4) Provide a copy of the findings to the resident or the resident's legal representative.

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

The Office manages 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 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) the complainant or resident, or his or her legal representative consents to the disclosure 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;~~

(B) the complainant or resident, or his or her legal representative consents to the disclosure verbally and the Ombudsman documents the consent at the time consent is given;

(C) the complainant or resident, or his or her legal representative consents to the disclosure, through the use of auxiliary aids and services communication, in writing, verbally, or visually, provided the Ombudsman or Office representative documents such consent contemporaneously; or

~~(i) in writing; or~~

~~(ii) verbally or visually; and~~

~~(iii) such consent must be documented contemporaneously by the Ombudsman or Office representative; or~~

~~(D) 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.

SUBCHAPTER 2. COMPLAINTS

75:55-2-2. Complaint processing

(a) Regardless of the source of the complaint, the Office, State Long-Term Care 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~~ confidentiality purposes, when obtaining and providing information and hearing, and 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 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 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 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.

75:55-2-3. Complaint investigation timeframes

(a) All complaints investigated by a designated ombudsman require a face-to-face visit with the resident the complaint involves. The time frames for the initial attempt at a face-to-face visit must occur within ~~five~~ten business days of the receipt of the complaint unless:

- (1) the complaint includes an allegation of abuse, neglect, or exploitation; then the time frame for initial face-to-face contact with resident occurs within ~~three~~five business days; or
- (2) the complaint involves an actual or threatened discharge from a facility, the time frame for initial face-to-face contact with resident is no later than the last day the resident has a right to appeal the discharge or within five business days, whichever comes first.

(b) There is no time frame for the determination of the final disposition of a complaint but it is determined when the ombudsman has enough evidence to complete the investigation. In the event the final disposition of a complaint exceeds 90 days, the Ombudsman representative assigned to investigate the complaint submits the case to the Ombudsman or Deputy Ombudsman for review and the reason the case will remain open is documented in the case record.

(c) In rare instances weather, illness, or other unforeseen, serious circumstances may delay on-site investigation. When a delay occurs, the ombudsman representative consults with and seeks consent from the State Long-Term Care Ombudsman or deputy ombudsman to:

- (1) initiate a phone ~~call~~ or a response by other form of electronic communication.
 - (A) Contact with the resident and/or the complainant is attempted.
 - (B) Resolution of the complaint may be sought, in accordance with the resident's wishes, through phone calls or other electronic communication to persons that may be able to resolve or mitigate the situation, such as the facility administrator, facility staff, or another agency;
- (2) complete comprehensive documentation regarding the ~~cause(s)~~approval for delay and the response to the complaint in:
 - (A) hard copy case notes, when used;
 - (B) electronic documentation, such as ~~a journal entry~~entries ~~titled, "Delayed Response"~~ documenting the:
 - (i) ~~the~~ follow-up date;
 - (ii) ~~the~~ delaying factor(s); and
 - (iii) ~~any~~ steps taken to resolve the complaint;
- (3) an on-site visit follow-up with the resident is required even when the complaint was resolved by phone. The follow-up visit occurs immediately following the unforeseen circumstance; and

- (4) complete the follow-up visit with comprehensive documentation in:
- (A) hard copy case notes, when used; or
 - (B) electronic documentation, such as a journal ~~entry~~entries titled, "Delayed Response" documenting ~~the~~;
 - (i) the follow-up date;
 - (ii) any remaining issues or additional complaints to be resolved; and
 - (iii) the resident's satisfaction with the resolution.

SUBCHAPTER 3. CONFLICTS OF INTEREST

75:55-3-1. Conflict of interest

- (a) An officer, employee, volunteer, or other representative of the 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 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, 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 a form developed by OAG and the Office that includes a conflict of interest statement and 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 a form developed by OAG and the Office that contains 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 and the sponsoring agencies' respective governing boards; provided, members of boards that are advisory in nature and have no governing authority are not required to sign the conflict of interest assurance form.

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

- (a) OAG and the Office 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.** OAG and the Ombudsman identify and take steps to remove or remedy conflicts of interest between the Office and OAG or another entity carrying out the 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 OAG, 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 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 as required by the OAA.
- (4) ~~DHS~~OAG 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 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; or
- ~~(3) withdrawal of designation of the agency as an Area Agency on Aging; or~~
- ~~(4)~~(3). other reasonable action.

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

(a) The OAA requires assurances that there are no conflicts of interest within the Program. Mechanisms to identify and remedy any conflicts are mandated. Office staff and volunteers must study the rules in this section and sign a form developed by OAG and the Office about containing a conflict of interest statement and ethical guidelines to certify that they can provide assurances and meet ethical guidelines.

(b) The assurances and ethical guidelines include, but are not ~~limited~~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.

(c) OAG or a local ombudsman entity shall not appoint or employ an individual to perform the services provided for by the Program, nor will the 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.

(d) 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 twelve months. Where such an individual is appointed or employed, steps are taken to remedy the conflict.

(e) 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

(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

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

(a) The Office officially designates agencies serving as area or local subdivisions of the Office through an annual designation process 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.

(2) Designation as an Office representative:

(A) 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 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 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 Chapter;
 - (iii) satisfactorily completes training prescribed by the Ombudsman; and
 - (iv) completes and signs:
 - (I) 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 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 entity as a subdivision of the Office for any reasonable cause that prevents satisfactory operation of the 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 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, 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 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.

(f) The ~~following~~ following 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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 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 determines ~~conflictive~~ to be in conflict 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

——(a) 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 in~~ accordance with 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.

(b) No designated Ombudsman shall provide any direct care, transportation, or any services to a long-term care resident that may be construed fiduciary in nature.

SUBCHAPTER 5. PERSONNEL AND VOLUNTEER MANAGEMENT

75:55-5-4. Training

The 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 as qualified to investigate complaints.

(1) Office staff shall:

(A) Orient and train ombudsman staff representatives and determines satisfactory completion of prescribed training;

(B) Develop and periodically update training core curriculum;

(C) Assist area ombudsman staff train ombudsman volunteers;

(D) Provide on a quarterly basis, a minimum of forty hours of continuing education and training to ombudsman supervisors per year;

(E) Provide community education with area staff;

(F) officially certify newly-trained, ombudsman volunteers who met screening criteria; and

(G) Assist in the development of citizen organizations to participate in the Program.

(2) Area ombudsman staff shall:

(A) Hold public workshops for community education and volunteer recruitment;

(B) Train ombudsman volunteer applicants using the Office-prescribed core training format;

(C) Submit the name, facility assignment, and original signed ~~Form 02OM003E~~,

Ombudsman Volunteer Application, of each volunteer recommended for designation;

(D) 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) Hold monthly meetings for continued training and supervision of designated ombudsman volunteers to annually achieve a minimum of eighteen hours per volunteer of continuing education relevant to the care of older persons and persons with disabilities.

75:55-5-5. Office staff and volunteer training

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

(1) the 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~~36 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 Program. The ombudsman volunteer:

- (1) completes and signs the following forms:
 - (A) Ombudsman Volunteer Application;
 - (B) Conflict of Interest Statement and Ethical Guidelines; and
 - (C) Request for Background Check;
- (2) completes the ~~two-day~~36-hour 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 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 or any fiduciary actions.