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TITLE 218 – DEPARTMENT OF HUMAN SERVICES

CHAPTER 40 – DIVISION OF ELDERLY AFFAIRS

SUBCHAPTER 00 – N/A

PART 1 – Rules and Regulations Governing the Long Term Care Ombudsperson Program

1.1 Introduction

- A. These Rules and Regulations Governing the Long Term Care Ombudsperson Program are promulgated pursuant to the authority conferred under R.I. Gen. Laws § 42-66.7-12, as amended, for the purpose of adopting prevailing standards for the implementation and enforcement of the long term ombudsperson program including, but not limited to, the procedures for the receipt, investigation and resolution, through administrative action, of complaints filed by residents of long term care facilities, individuals acting on their behalf or any individual organization or government agency that has reason to believe that a long term care facility, organization or government agency (which government agency is responsible for the regulation, inspection, visitation, or supervision of facilities or which provides services to residents of facilities) has engaged in activities, practices or omissions that constitute a violation of applicable statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights or the quality of life of residents of long term care facilities.
- B. Pursuant to the provisions of the Administrative Procedures Act, the following were given consideration in promulgating these regulations:
1. alternative approaches to the regulations; and
 2. duplication or overlap with other state regulations.
 3. Based upon available information, no alternative approach, duplication, or overlap was identified.
 4. These regulations are adopted in the best interest of the health, welfare, and safety of Rhode Island's seniors.

1.2 Definitions

1.2.1 Definitions

A. For the purpose of these rules and regulations, the following words and phrases shall be construed as follows:

1. An “act” of any facility or government agency includes any failure or refusal to act by any facility or government agency.
2. “Client” and “Resident”, as used herein, shall have the same meaning.
3. “Department” means the Rhode Island Department of Human Services, Division of Elderly Affairs.
4. “Director” means the Director of the Division of Elderly Affairs or his/her designated agent.
5. “Division” means the Division of Elderly Affairs.
6. “Elderly” means any individual sixty (60) years of age or older who is a resident of any facility.
7. “Facility” means any facility or institution, home care provider, home hospice care provider or home nursing care provider, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. “Facilities” include, but are not limited to, nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, home care agencies, homes for the aged, veterans' homes, boarding homes, and adult supportive care, residential care and assisted living residences.
8. “Financial interest” means an ownership interest or investment in a facility by a representative of the Office or a relative of the representative of the Office.
9. “Governing body” means
 - a. a public agency within which the Office is located; or
 - b. the board of directors of any non-profit organization within which the Office is located, however named, charged with overall responsibility for the activities of the organization, as delineated in its articles of incorporation, by-laws and/or other legally adopted document(s) related to the organization’s governance.
10. “Government agency” means any federal or state agency responsible for the administration of benefits to the elderly. This shall include, but not be

limited to, any such agency responsible for the administration of programs affecting residents of long term care facilities.

11. "Immediate family" pertaining to conflicts of interest as described in § 712(a)(5) of the Older American Act, 42 U.S.C. § 3058g, as amended, means a member of the household or a relative with who there is a close personal or significant financial relationship.
12. "Interfere" means willing and continuous conduct which prevents the ombudsperson from performing her or his official duties.
13. "Legal Representative" means a guardian appointed by a court of competent jurisdiction or the holder of a valid power of attorney with the authority to act on the matter at issue as specifically set forth in that power of attorney.
14. "Office of the State Long Term Care Ombudsperson" or "Office" means the organizational unit headed by the State Long Term Care Ombudsman, including the representatives of the Office.
15. "Official duties" means responsibilities pursuant to the long term care ombudsperson program authorized by the federal Older Americans Act or the long term care ombudsperson program authorized by state law and carried out under the auspices and general direction of the state long term care ombudsperson.
16. "Ombudsperson" shall have the meaning set forth in § 1.3.1 of this Part below.
17. "Person" means any individual, trust, or estate, partnership, limited liability corporation, corporation (including associations, joint stock companies, and insurance companies), state, or political subdivision or instrumentality of a state.
18. "Public agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by any municipality or by the state, or to which the state is a party.
19. "Relative" means a member of the immediate family.
20. "Remedy" means an action, restriction of action, restriction of contact, or other means proposed to the Division that would neutralize a conflict of interest and ensure that the conflict will not adversely influence the activities of the representative on behalf of the Office.

21. “Representatives of the Office of the Long Term Ombudsman or “Representative” means the employees or volunteers designated by the Ombudsperson to fulfill the duties set forth in R.I. Gen. Laws Chapter 42-66.7, as amended, as well as in § 712 of the Older Americans Act, as amended, 42 U.S.C. § 3058g.
22. “Resident” means any individual age sixty (60) years of age or older who is receiving treatment, care, or housing in any facility in all of its aspects including, but not limited to, admission, retention, confinement, period of residence, transfer, discharge, and in any instances directly related to that status. Residents include patients and clients. Residents shall also include disabled individuals under sixty (60) years of age residing in nursing homes, or clients of residential and assisted living facilities and home care providers/home hospice care providers/home nursing care providers and long term care units at the Eleanor Slater Hospital, including the Zambarano facility.
23. “Waiver” means the Division has determined that sufficient circumstances exist to eliminate a conflict of interest and the need to remedy a conflict of interest.

1.3 General Requirements

1.3.1 Establishment of the Program

- A. Pursuant to R.I. Gen. Laws Chapter 42-66.7, the Rhode Island General Assembly established a program of the long term care ombudsperson to be administratively attached to the Division in accordance with its mandate under R.I. Gen. Laws § 42-66-4, as amended, and the Older Americans Act, 42 U.S.C. § 3001 et seq.
- B. The purpose of the program is:
 1. advocating on behalf of residents and identifying, investigating and resolving through mediation, negotiation, and administrative action complaints filed by residents or individuals acting on their behalf; and
 2. identifying, investigating and resolving through mediation, negotiation, and administrative action complaints filed by any individual organization or government agency that has reason to believe that a long term care facility, organization or government agency (which government agency is responsible for the regulation, inspection, visitation, or supervision of facilities or which provides services to residents of facilities) has engaged in activities, practices or omissions that constitute a violation of applicable

statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights or the quality of life of residents of long term care facilities.

- C. The Division shall carry out the program through the establishment and operation of an office of long term care ombudsperson (the “Office”).
 - 1. The Division may operate the Office and carry out the program, directly and/or by contract or other arrangement with any public agency or non-profit organization.
 - 2. The Division may not enter into such contract or other arrangement with:
 - a. an agency or organization that is responsible for licensing or certifying long term care services in the State; or
 - b. an association (or an affiliate of such an association) of long term care facilities or of any other residential facilities for older individuals.
- D. The Office shall be headed by an individual, to be known as the ombudsperson (the “ombudsperson”), who shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy.
 - 1. The ombudsperson shall serve on a full-time basis, and shall, personally or through representatives of the Office, perform the functions and duties set forth in R.I. Gen. Laws Chapter 42-66.7, as amended, as well as in § 712 of the Older Americans Act, 42 U.S.C. § 3058g, as amended.
 - 2. “Full-time basis” means that the ombudsperson position is full-time and the individual who serves as the ombudsperson has no duties other than those set forth in the immediately preceding sentence.
 - 3. The ombudsperson shall not be the chief executive officer or executive director (or any individual holding an equivalent office) of any public agency or non-profit organization.

1.3.2 Nondiscrimination and Civil Rights Policy

The ombudsperson shall be responsible for maintaining a policy of nondiscrimination in the provision of services to participants and in the employment of staff without regard to race, color, creed, national origin, gender, sexual orientation, age, or disability, in accordance with all applicable state and federal statutes, regulations, and local ordinances.

1.3.3 Compliance with All Laws, Codes, Rules and Regulations

The ombudsperson shall be responsible for complying with all local, state, and federal laws, codes, rules and regulations that apply to the Office. The governing body of an organization outside of the Division within which the Office is situated shall be responsible for ensuring that the ombudsperson performs his or her duties in compliance with all local state, and federal laws, codes, rules and regulations that apply to the Office.

1.3.4 Annual Reporting

- A. The ombudsperson shall submit an annual report of the activities of the Office and the ombudsperson's activities concerning facilities and the protection of the rights of residents of the facilities with the federal Assistant Secretary for Aging, Director, Governor, General Assembly, Director of the Rhode Island Department of Health, Chair of the Long Term Care Coordinating Council and all other appropriate governmental entities.
- B. The annual report shall:
1. Describe the activities carried out by the Office in the year for which the report is prepared;
 2. Contain and analyze the data collected in accordance with The Older Americans Act, § 712(c)(1);
 3. Evaluate the problems experienced by, and the complaints made by or on behalf of residents;
 4. Contain recommendations for:
 - a. improving the quality of the care and life of the residents; and
 - b. protecting the health, safety, welfare, and rights of the residents;
 5. Analyze the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and
 6. Identify barriers that prevent the optimal operation of the program;
 7. Provide policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

8. Contain a list of all members of the governing body and their professional affiliations, employees, and contractors of the Office, including a listing of all legal counsel who assist the ombudsperson in the performance of the official duties of the Office and provide advice and consultation needed to protect the health, safety, welfare, and rights of residents;
 9. Contain any other requirements of § 712(h)(1) of The Older Americans Act, 42 USC § 3058g(h), as the same may be amended from time to time.
- C. The annual report referred to in the Section shall be submitted no later than thirty (30) days after the year that the report covers.
- D. The report shall be made available to the public by the Office of the Long Term Care Ombudsperson. In addition, the report shall be made available on the website of the Division of Elderly Affairs and the website of the long term care ombudsperson or the organization within which the ombudsman is located, within ten (10) days of the report's submission to the Office.

1.3.5 Interagency Cooperation

Nothing in R.I. Gen. Laws Chapter 42-66.7, as amended, shall be construed to be a limitation of the powers and responsibilities assigned by law to other state agencies or departments.

1.3.6 Cooperation Required

- A. The ombudsperson may request from any government agency, and the agency is authorized and directed to provide, any cooperation and assistance, services, and data as will enable the ombudsperson to properly perform or exercise any of his or her functions, duties and powers under R.I. Gen. Laws Chapter 42-66.7, as amended, and the rules and regulations herein.
- B. The ombudsperson shall, to the extent permissible under the provisions of § 712 of the Older Americans Act, 42 U.S.C. § 3058g, as amended, cooperate and assist other government agencies in their investigations, such as the Department of Health, the Department of Attorney General, the Department of Human Services and any other pertinent department or agency.

1.4 Powers and Duties of the Long Term Care Ombudsperson

1.4.1 Powers

- A. The ombudsperson shall, personally or through employees of the Office:
1. Identify, investigate, and resolve complaints that

- a. are made by, or on behalf of, residents; and
 - b. relate to action, inaction, or decisions by
 - (1) providers, or representatives of providers, of long term care services,
 - (2) public agencies, or
 - (3) health and social service agencies that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees and health care and financial powers of attorney);
2. Provide referral services to assist residents in protecting their health, safety, welfare and rights;
 3. Inform residents of their rights and advocate on their behalf to improve their quality of life and live with dignity and respect;
 4. Advocate on behalf of long term care facility residents, home care and hospice care recipients;
 5. Formulate written policies and procedures to identify, investigate, and resolve complaints;
 6. Make appropriate referrals of investigations to other state agencies, including, but not limited to, the Rhode Island Department of Health, Department of Human Services, Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals, and Department of Attorney General, provided that the resident(s) or the legal representative(s) of the resident(s), as appropriate, who initiated the complaint consent(s) to such referral (unless such referral is required by order of a court of competent jurisdiction or by statute without such consent) and in accordance with § 16 herein and Sub-Section 712(d) of The Older Americans Act, 42 U.S.C. § 3058g;
 7. Offer assistance and training to public and private organizations on long term care of elders and individuals with disabilities;
 8. Represent the interests of residents of facilities before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents including, but not limited

to, rights with respect to the appointment or removal of guardians and representative payees powers of attorney;

9. Review and, if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of residents of facilities.
10. Have such other powers as are provided to the Office in § 712 of The Older Americans Act, 42 U.S.C. § 3058g, as the same may be amended from time to time.

1.4.2 Duties

- A. The ombudsperson shall cause the Office to comply with all of the requirements cited herein. The ombudsperson also shall perform all ombudsman duties set forth in § 712 of The Older Americans Act, 42 U.S.C. § 3058g, as the same may be amended from time to time.
- B. The Office shall develop, in writing, implement, and provide to the Division (upon request) the following:
 1. A statement of philosophy and goals and objectives of the Office;
 2. A statement of the procedures to be used to recruit and support any volunteer representative of the Office;
 3. A statement of methods to evaluate the attainment of the Office's goals and objectives;
 4. Assurance that the Office will comply with all requirements of the Division, including training of all representatives of the Office, confidentiality of records, and reporting;
 5. Assurance that no person shall investigate any complaint filed with the Office, unless such person is acting as an employee or agent of the Office;
 6. Assurance that the Office has the ability to pursue appropriate remedies to resolve complaints, including but not limited to:
 - a. Ensuring adequate legal counsel is available, and is able, without conflict of interest, to provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and to assist the ombudsperson and representatives of the Office in the performance of the official duties of the ombudsperson and representatives; and that legal representation is provided to any

representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsperson or such a representative; and the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

- b. Making referrals and recommendations about specific courses of action, referring situations to public and private agencies such as the Department of Human Services, the Attorney General's office, state and federal courts, and other agencies, as necessary;
 - c. Serving as an advocate for residents in negotiations with long term care facilities, public and private agencies, family members, and other individuals and agencies to the extent permitted by state and federal law.
 7. The Office shall develop a written statement which shall provide a short summary of the Long Term Care Ombudsperson program, residents' rights thereunder, and the Office's role as advocate for residents. This statement shall be subject to the prior written approval of the Division and shall be provided to every resident, as well as the resident's guardian or family member, as applicable, with whom representatives of the Office interact.
- C. If the ombudsperson has knowledge of or has reasonable cause to believe that a resident has been abused, mistreated or neglected as defined by R.I. Gen. Laws Chapter 23-17.8, the ombudsperson shall immediately report such determination to the Rhode Island Department of Health, in accordance with R.I. Gen. Laws Chapter 23-17.8. The Ombudsman must disclose the identity of a resident where the Ombudsman or representative of the Office personally witnesses abuse, neglect or exploitation of a resident, as long as
 1. the resident at issue does not request the Ombudsman or representative not to make a report of the activity witnessed by the Ombudsman or representative and
 2. the Ombudsman determines it to be in the best interest of the resident. Such reports shall be confidential in accordance with § 1.5.2 of this Part herein and § 712(d) of The Older Americans Act, 42 U.S.C. § 3058g, and all applicable federal and state laws.
- D. If the ombudsperson has knowledge of or has reasonable cause to believe that a resident has been abused, exploited or neglected, as defined by R.I. Gen. Laws Chapter 42-66, and such abuse, exploitation or neglect is not required to be

reported to the Rhode Island Department of Health in accordance with R.I. Gen. Laws Chapter 23-17.8, then the ombudsperson shall immediately report such determination to the Division, in accordance with R.I. Gen. Laws Chapter 42-66.

1. Such reports shall be confidential in accordance with § 1.5.2 of this Part herein and § 712(d) of The Older Americans Act, 42 U.S.C. § 3058g, and all applicable federal and state laws.

E. All policies and procedures of the Office shall be subject to the review and approval of the director or his/her designee.

1.4.3 Governing body

A. The Office shall have an organized governing body ultimately responsible for:

1. the management, fiscal affairs and operation of the Office and of the organization within which the Office is located;
2. the assurance of quality services; and
3. compliance with all federal, state and local laws and regulations pertaining to long term care ombudsperson agencies and the rules and regulations herein.

B. The governing body shall provide appropriate personnel, physical resources and equipment to facilitate the delivery of prescribed services and shall furthermore:

1. Appoint a chief operating officer, executive director (or equivalent position), however named, and the individual who shall serve as the ombudsperson;
2. Identify the range of services to be provided which must include no less than those services required herein;
3. Define the geographic areas to be served; and
4. Carry out such other functions as may be relevant to the organization and operation of the agency.

C. The governing body shall adopt and maintain by-laws or acceptable equivalent which defines responsibilities for the operation and performance of the organization, and shall identify purposes and means of fulfilling same. The governing body shall establish administrative policies pertaining to no less than the following (and copies of the same shall be provided to the Division upon request):

1. Responsibilities of the ombudsperson;
2. The mechanism for disclosure that ensures that no individual, or member of the Immediate family of an individual, involved in the designation of the ombudsperson (whether by appointment or otherwise) is subject to a conflict of interest; and that no member of the governing body, officer or employee of the ombudsperson or member of the immediate family of the governing body member, officer, employee, or representative, is subject to a conflict of interest;
3. The methods for identifying, and specifying in writing, mechanisms to remove conflicts of interest referred to herein;
4. The manner in which services are to be provided;
5. Circumstances under which ombudsperson services cannot be provided and procedures for referral;
6. Policies and procedures to identify, receive, investigate, and resolve complaints;
7. Policies and procedures regarding persons employed by the Office. Said policies shall include, but not be limited to, the following:
 - a. timely completion of the bureau of criminal identification (BCI) check;
 - b. mechanism for credentialing and/or verifying any professional licensure requirements in accordance with state statutes and regulations.
8. Such other matters as may be relevant to the organization and operation of the Office.

1.4.4 Personnel

- A. The Office shall employ a sufficient number of qualified personnel to provide effective services.
- B. A job description for each classification of position shall be established, clearly delineating qualifications, duties, authority and responsibilities required for each position.
- C. The Office shall have written personnel policies and procedures for hiring and selection, compensation, evaluation, disciplinary action and grievance, and supervision and training of employees, contractors, volunteers, students and/or

interns. The personnel policies and procedures shall include, at a minimum, the following provisions:

1. No known conflict of interest which would interfere with objective performance as an ombudsperson representative.
 2. Understanding of an agreement to follow the ombudsperson rules of confidentiality in accordance with all applicable state and federal statutes and regulations;
 3. Agreement to follow any policies and procedures of the Division and the Office and accept the direction of the ombudsperson;
 4. Compliance with the Office's reporting needs to collect and analyze data relating to complaints and conditions in facilities;
 5. At a minimum, training shall meet the requirements set forth in § 712 of The Older Americans Act, 42 U.S.C. § 3058g, as the same may be amended from time to time.
- D. Written personnel policies supporting sound personnel practices shall be made available to all personnel, including volunteers, and to the Division.
- E. Personnel files shall be maintained for each employee, including volunteers. Such files shall include no less than the following documentation:
1. Information pertaining to qualifications for employment which shall include but not be limited to experience with long term care issues and/or experience in the fields of aging, long term care and health care; and good verbal, listening, and writing skills, as appropriate;
 2. Records of completion of required training and educational programs;
 3. Evidence of current licensure or certification as may be required by law;
 4. Employment application or resume of previous employment;
 5. Evidence of no conflicts of interest.

1.4.5 Conflict of Interest

- A. No employee or representative of the Office, no individual involved in designating, hiring, evaluating, or terminating the ombudsperson or any other employee or representative of the Office, no organization within which the office is located and no governing body members may have an unremedied conflict of interest.

1. Conflicts of interest shall include, but shall not be limited to, being employed by a facility at any time within the two (2) years prior to being employed by or affiliated with the Office; or being affiliated with, or having a financial interest in, a facility or a membership organization of long term care providers or other facilities; or
 2. standing to gain financially through an action brought on behalf of individuals whom the Office serves; or,
 3. in the case of a non-profit organization where the Office is situated, receipt of donations or other funds from a facility.
 4. Absent a waiver granted by the Division, no representative of the Office shall be assigned to investigate a complaint concerning a facility with which the representative was formerly employed, with which the representative was formerly or is currently affiliated or associated, from which a relative receives long term care services, or that poses any other conflict of interest.
- B. The agency within which the Office is located shall develop procedures to screen potential and existing employees of the program, potential candidates and existing representatives of the Office, individuals involved in designating, hiring, evaluating, or terminating the ombudsperson, and potential and existing governing body members for conflicts of interest.
1. The procedures shall be applied upon initial screening and annually thereafter.
 2. When completed, the individual who conducted the screen and the individual screened shall acknowledge the completion of the screen in writing. The completed screening instrument shall be made a record of the program and shall be subject to review by the Division.
- C. Prior to offering a position within the Office to an applicant or training a volunteer, the agency within which the Office is situated shall report any identified conflict of interest to, and may propose a remedy to, the Director.
1. Within forty-five (45) days of receiving a proposed remedy, the Director shall review the nature, scope, and extent of the conflict and shall determine whether or not to allow the proposed remedy.
 - a. While the decision is pending, the agency shall assign any individual with a conflict of interest to duties that do not pose a conflict.

2. The proposed remedy shall be submitted in writing and shall reveal the nature, extent, and potential impact of the conflict of interest, and shall be a remedy which will neutralize the conflict of interest.
 - a. Current employment with any type of facility is a conflict of interest that cannot be remedied.
3. Any remedy granted shall remain in effect for as long as the conflict continues to exist to the same extent as reported and for as long as the remedy continues to work.

1.4.6 Complaints Resolution

- A. Upon receipt of a complaint, a representative of the Office shall:
 1. inform the resident and/or complainant (if not the affected resident) that his/her identity shall not be disclosed unless such complainant or resident, or a legal representative of either, consents in writing to such disclosure and specifies to whom their identity may be disclosed. Such disclosure shall be made without the complainant or resident's consent if ordered by a court of competent jurisdiction or when disclosure is mandated by statute;
 2. Review the complaint and consult with the complainant regarding possible methods of resolution:
 - a. If consent to proceed is not obtained, the resident, or complainant, if not the affected resident, shall be provided with information and/or referral sources appropriate to enable them to advocate on their own behalf.
- B. After an investigation, if the ombudsperson determines in the ombudsman's judgment that the complaint does not warrant further action, the situation shall be explained fully to the complainant, and the Office shall educate the complainant as to his rights and responsibilities.
 1. After an investigation, if the complaint is fully or partially verified, the ombudsperson shall seek to resolve the problem.
- C. Complaint resolution responsibilities shall include but not be limited to:
 1. Development of a plan for corrective action through discussions with the complainant, resident, and appropriate officials and staff of the related institution;

2. Establishment, on a case-by-case basis, of appropriate timetable(s) for resolution;
 3. Follow-up within thirty (30) days to determine if the problem giving rise to the complaint has been resolved.
- D. Complaints of conditions, which in the judgment of the ombudsperson, could adversely affect residents that cannot be resolved shall be referred within seven (7) days by the ombudsperson to the appropriate governmental agency, provided that the resident(s) or the legal representative(s) of the resident(s), as appropriate, who initiated the complaint consent(s) to such referral.
- E. The Office may initiate its own investigation of any facility independent of the receipt of a specific complaint or problem.
1. A representative of the Office may observe acts, practices or omissions regarding a facility which generally may affect the health, safety, welfare, rights or quality of life of all or a substantial number of the residents in the facility.
 2. If in the discretion of the ombudsperson, such observations constitute a complaint situation (s)he may cause the Office to investigate and attempt to resolve these complaints without the consent of an individual resident.

1.4.7 Resident Records

- A. Accurate and complete files, records and other information shall be maintained in accordance with accepted professional standards and in accordance with all applicable state and federal legal requirements.
1. Files, records and other information shall be maintained for each resident, and shall be filed in an accessible location within the Office.
 2. The ombudsperson shall cause the Office to store complaint files, records and other information in a secure manner.
 - a. Access to these files, records and other information shall be limited to agency staff authorized by the ombudsperson.
 - b. In monitoring of the program, access to these files, records and other information minus the identity of any complainant or resident of a facility, shall be available to the Director and to one other senior manager of the Division as shall be designated by the Director from time to time.

- B. The Office shall maintain files, records and other information related to complaints received by or on behalf of residents which shall include:
1. Name, address, and phone number of the complainant;
 2. Name of the resident;
 3. Relationship of the complainant to the resident;
 4. Name of the facility;
 5. Nature of the complaint;
 6. Steps taken to investigate the complaint;
 7. All notes, correspondence, complaint forms, background materials, assessments, and medical and incident reports related to the complaint;
 8. Outcome of the Investigation;
 9. Resolution and follow-up.
- C. If the complainant refuses to identify himself or the resident, it should be so indicated in the record.
- D. The Office shall comply with R.I. Gen. Laws Chapter 38-3, also known as the Public Records Administration Act.
1. This Act requires any executive, legislative, judicial, regulatory, administrative body of the State, or any political subdivision thereof (including but not limited to any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of state or local government which exercises governmental functions, or any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency) to comply with records management practices and procedures for the maintenance, retention, and destruction of files, records and other information.
 2. The Office shall follow the Division's records retention schedule.
 3. All costs associated with complying with R.I. Gen. Laws Chapter 38-3 shall be the sole responsibility of the agency or organization within which the Office is located.

4. The Office shall provide to the Division a copy of all correspondence, certifications and other documents provided to or from the Secretary of State relating to compliance with § 1.4.7(D) of this Part and the retention and destruction of records.
 - a. Where destruction of records is authorized by the secretary of state, the Office shall furnish to the Division a copy of said authorization certification from the secretary of state prior to destruction of the records.
 - b. The Office shall shred all documents being destroyed and properly and fully destroy all materials to protect the privacy of all individuals.
- E. The Office shall have written policies and procedures to govern the use and removal of files, records and other information and determine the conditions for release of information in accordance with statutory provisions pertaining to confidentiality (see also § 1.5.1 and § 1.5.2 of this Part).

1.5 Confidentiality, Retaliation, Immunity, Inspections, and Penalties

1.5.1 Access

- A. In the course of an investigation, the ombudsperson shall, personally or through designated employees of the Office:
 1. Make the necessary inquiries and obtain information as is deemed necessary;
 2. Have access to facilities and residents; and
 3. Enter facilities and, after notifying the individual in charge, inspect any books, files, medical records, or other records that pertain to the resident, subject to the following requirements.
 - a. access to review the medical and social records of a resident shall be provided, if-
 - (1) the representative has the permission of the resident, or the legal representative of the resident; or
 - (2) the resident is unable to consent to the review and has no legal representative;

- b. access to the records as is necessary to investigate a complaint shall be provided if-
 - (1) a legal guardian of the resident refuses to give the permission;
 - (2) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
 - (3) the representative obtains the approval of the Ombudsperson;
- c. access shall be provided to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long term care facilities; and
- d. access to and, on request, copies of all licensing and certification records maintained by the State with respect to long term care facilities.

- B. In the ordinary course of the ombudsperson's duties, the ombudsperson and designated employees of the Office shall have access to residents of a facility to:
 - 1. Visit, talk with, make personal, social, and other appropriate services available;
 - 2. Inform them of their rights and entitlements and corresponding obligations under federal and state law by distribution of educational materials, discussion in groups, or discussion with individual residents and their families; and
 - 3. Engage in other methods of assisting, advising, and representing residents to extend to them the full enjoyment of their rights.

1.5.2 Confidentially-Disclosure

- A. In general, the files maintained by the Office are confidential and shall be disclosed only with the written consent or the use of assistive technology of the resident affected or his or her legal representative, or if any disclosure is required by court order.
- B. Identity of Complainant or Resident records described in §§ 1.4.7 and 1.5.1(A)(3)(b) of this Part may be disclosed only at the discretion of the Ombudsman (or the

person designated by the Ombudsman to disclose the files, records and other information); and

1. The Ombudsperson is prohibited from the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files, records and other information unless—
 - a. The complainant or resident, or the legal representative of the complainant or resident, communicates informed consent to the disclosure and the consent is given in writing or through the use of assistive technology;
 - b. the complainant or resident gives informed consent orally or through the use of assistive technology; and
 - c. the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
 2. the disclosure is required by court order.
- C. Should the Ombudsperson or any representative of the Office have reason to believe that the complainant or resident is unable to provide informed consent, disclosure of the complainant or resident identity shall be prohibited unless otherwise provided by law.

1.5.3 Retaliation Prohibited

No discriminatory, disciplinary, or retaliatory action shall be taken by a facility or other entity with respect to any resident, employee, or other person for filing a complaint with providing information to, or otherwise cooperating with any representative of the Office.

1.5.4 Immunity from Liability

- A. Any person, institution, or official who in good faith participates in the registering of a complaint, or who in good faith investigates that complaint or provides access to those persons carrying out the investigation, or who participates in a judicial proceeding resulting from that complaint, is immune from any civil or criminal liability that might otherwise be a result of these actions.
1. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to R.I. Gen. Laws Chapter 42-66.7, as amended, did so in good faith.

1.5.5 Noninterference

No person shall willfully interfere with the ombudsperson in the performance of the ombudsperson's official duties.

1.5.6 Penalty for Violations

Every person who willfully violates the provisions of R.I. Gen. Laws § 42-66.7-8 (retaliation prohibited) or R.I. Gen. Laws § 42-66.7-14 (non-interference), as amended, will be subject to a fine up to one thousand dollars (\$1,000) for each violation of these sections and any other remedy provided for in Rhode Island law.

1.6 Termination, Appeal Procedures and Severability

1.6.1 Procedures for Appeal

Any complainant who is aggrieved by the decision of the Division after a hearing may appeal the decision to the Executive Office of Health and Human Services, as outlined under "Medicaid Code of Administrative Rules, Section #0110, 'Complaints and Appeals'".

1.6.2 Complaints Regarding the Ombudsperson Program; Termination of Ombudsman Program

- A. All complaints concerning the Office shall be sent in writing to the Director of the Division. The director may request additional information relating to the specifics of the complaint. The Director shall exercise reasonable discretion in addressing each complaint.
- B. Termination:
 - 1. In the event that the ombudsperson or the Office fails to comply with the provisions of these Regulations in whole or in part, the Division may, after specifying any alleged breach, default, or non-compliance in writing to the Ombudsperson and after allowing a reasonable time, but not less than fifteen (15) calendar days for correction thereof, withdraw the ombudsperson program from the agency where the Office is situated by sending written notice of termination which specifies the reasons for termination to the agency, at least fifteen (15) calendar days prior to the effective date of termination.
 - 2. Notwithstanding the provisions governing appeals set forth in § 1.6.1 of this Part and elsewhere in § 1.6.2 of this Part, if the Division determines that any action or omission on the part of the Office endangers life, health,

and safety of residents or staff of any facility, it shall withdraw the ombudsperson program from the agency where the Office is situated by orally notifying the agency of termination followed by the mailing of written notification, return receipt requested, within seven (7) calendar days following the oral notification, setting forth the reasons for termination.

- a. Termination pursuant to this subsection shall take effect upon the oral notification.
 - b. The Division shall forward with such written notification a notice that the terminated program shall have the right to request an appeal of such action to the Division's hearing office pursuant to § 1.6.1 of this Part.
3. Upon withdrawal of the ombudsperson program from an agency by the Division, the Division likewise shall terminate the funding status of such ombudsperson program for the balance of the funding period.
 4. Except as otherwise set forth herein, the ombudsperson program shall continue at the agency during the pendency of the appeal, subject to an adverse decision pursuant to the appeal.

1.6.3 Severability

If any provision of R.I. Gen. Laws Chapter 42-66.7, as amended, or any rule or regulation made under said Chapter, or the application of any provision of this Chapter to any person or circumstance shall be held invalid by any court of competent jurisdiction, the remainder of the Chapter, rule or regulation and the application of such provision to other persons or circumstances shall not be affected thereby. The invalidity of any section or sections or parts of any section of this Chapter shall not affect the validity of the remainder of this Chapter and to this end the provisions of the Chapter are declared to be severable.

218-RICR-40-00-1

TITLE 218 - DEPARTMENT OF HUMAN SERVICES

CHAPTER 40 - DIVISION OF ELDERLY AFFAIRS

SUBCHAPTER 00 - N/A

PART 1 - Rules and Regulations Governing the Long Term Care Ombudsperson Program (218-RICR-40-00-1)

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.