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Chapter 3 LONG-TERM CARE OMBUDSMAN PROGRAM

3-001 SCOPE AND AUTHORITY: These rules and regulations implement Nebraska Revised Statutes Section 81-2237 to 81-2264, which directs the establishment of a statewide long-term care ombudsman program. Other authorities for the program are: (1) Older Americans Act of 1965, as amended, 42 U.S.C. 3001 et seq., specifically, 42 U.S.C. Sections 3058f-3058h; (2) 42 CFR Sections 483.10 through 483.13; and (3) The Nebraska Nursing Home Act, Rev. Statutes of Nebraska, Article 60, Section 71-6019.

3-002 DEFINITIONS:

Adult Protective Services means the Adult Protective Services program of the Division of Aging and Disability Services of the Nebraska Department of Health and Human Services.

Agency means any entity seeking designation or redesignation by the Department to operate and administer a local long-term care ombudsman program in accordance with Neb. Rev. Stat. 81-2237 to 81-2264 and with these rules and regulations.

Conflict of interest means the existence of any interest which impairs an individual's ability to carry out his or her official duties in an impartial manner.

Continuing care community means any facility which provides care to an older individual pursuant to an agreement effective for life, at the same or another location, housing, and at a minimum, access to health-related services, i.e., priority for nursing home admission or assistance in the activities of daily living, except convenience services such as meals and housekeeping, or a system of managed health care.

Department means the Nebraska Department of Health and Human Services.

Director means the Director of the Nebraska Department of Health and Human Services.

Local long-term care ombudsman program means the public or private and non-profit entity designated by the Department to provide long-term care ombudsman services as defined in the Act and in accordance with these rules and regulations.

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Long-term care facility means those facilities defined in Nebraska Revised Statutes, Section 71-2017.01, which are licensed or otherwise regulated to provide continuous care to persons age 60 or older. These facilities include:

1. A nursing facility licensed by the Nebraska Department of Health and Human Services Regulation and Licensure as a nursing facility or a skilled nursing facility to provide nursing care and related services for patients who require medical or nursing care or rehabilitation services;
2. A licensed or unlicensed boarding home in which is provided for a period exceeding 24 consecutive hours to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are capable of managing their own affairs, at least two of the following for compensation:
  - a. Sleeping and other living accommodations;
  - b. A dining room, cafe, or common kitchen for the use of the individuals in connection therewith; and
  - c. Domestic services requested by the guest.

Boarding home shall not include hotels, motels, homes operated by religious or fraternal organizations, dormitories at educational institutions, whether public or private, or any of the excluded categories listed in Neb. Rev. Stat., Section 76-1408;

3. Any other adult care home licensed by the Nebraska Department of Health and Human Services Regulation and Licensure as a center for the developmentally disabled, or any other licensed or unlicensed facility which provides nursing care, personal assistance, rehabilitative services or supervision for a period exceeding 24 consecutive hours to two or more individuals not related to the owner, occupant, manager, or administrator thereof.
  - a. Assisted Living Facility in which are provided for a period exceeding twenty-four consecutive hours, through ownership, contract, or preferred provider arrangements, accommodation, board and an array of services for assistance with or provision of personal care activities of daily living, health maintenance activities, or other supporting services, for four or more nonrelated individuals who have been determined to need or want these services.
  - b. Center for the developmentally disabled means any residential facility, place, or building, not licensed as a hospital, which is used to provide accommodation, board, and training, advice, counseling, diagnosis,

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treatment, care, including medical care when appropriate, or services primarily or exclusively to four or more persons residing in the facility who are developmentally disabled, which term shall include those persons suffering from mental retardation, cerebral palsy, epilepsy, or other neurological handicapping conditions which require care similar to the care required for persons suffering from such aforementioned conditions, if such conditions meet the definition of developmental disability provided in Neb. Rev. Stat. Section 71-2017.01(20). The term "Center for the Developmentally Disabled" shall include a group residence.

- c. Group residence means any group of rooms located within a building or structure forming a habitable unit with living, sleeping, cooking, and eating facilities for four or more developmentally disabled persons, operated by the same or identical lessee, owner, or management.
4. Swing bed in an acute care facility or extended care facility means any bed licensed for treatment of individuals requiring short-term acute care treatment or extended care.
5. An adult day care facility means any institution, facility, place, or building which provides nursing care, personal assistance, rehabilitative services, or supervision on a regular, continuing basis for less than a 24-hour period.

Office means the Office of the State Long-Term Care Ombudsman as established by the Department.

Older Americans Act means the Older Americans Act of 1965, as amended 42 U.S.C. 3001 et seq., and its rules and regulations.

Older individual means an individual who is sixty years of age or older.

Ombudsman advocate means an employee or a volunteer of the Office, other than the State Long-Term Care Ombudsman, or of a local program, who is trained and certified by the Office of the State Long-Term Care Ombudsman to carry out duties in accordance with these rules and regulations.

State long-term care ombudsman means the employee or employees appointed by the Director to be responsible for the implementation of the Long-Term Care Ombudsman Program in accordance with Neb. Rev. Stat. Sections 81-2237 to 81-2264 and these rules and regulations.

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3-003 DESIGNATION PROCEDURES: Within 60 days of the issuance of a Request for Proposal, agencies, including any interested Area Agency on Aging, shall submit to the Department a proposed Plan of Operation to provide the services of a local long-term care ombudsman program within a planning and service area as described in Neb. Rev. Stat. Section 81-2213(6).

3-003.01 The Plan of Operation shall comply with the Act and these rules and regulations.

3-003.02 The Plan of Operation shall be submitted to the Nebraska Department of Health and Human Services, Division of Aging and Disability Services, P.O. Box 95044, Lincoln, Nebraska.

3-003.03 Within 30 days of receipt of the Plan of Operation, the Department shall complete its review and notify the agency of the Department's approval or denial of designation. If designation is denied, the Department shall provide the reasons for denial.

3-003.03A The Department may deny designation for any or all of the following reasons:

1. Failure to submit a complete Plan of Operation as outlined in these rules and regulations;
2. Failure to provide a Plan of Operation which is in conformance with the intent of the Act; or
3. Failure to provide in the initial Plan of Operation a reasonable time frame for providing local long-term care ombudsman services.

3-003.03B The Department may provisionally designate a local long-term care ombudsman program for no more than 90 days provided -

1. The local long-term care ombudsman program has complied substantially with the requirements of Neb. Rev.Stat. Sections 81-2237 to 81-3364 and these rules and regulations;
2. There is a strong likelihood that the sponsoring agency will be able to correct any areas of non-compliance within 60 days; and
3. No person has been or is likely to be placed in a position where his or her life, livelihood, health, or property is placed in jeopardy by the continued operation of the local long-term care ombudsman

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program during the period the local long-term care ombudsman program is provisionally certified.

3-003.04 The agency shall have 30 days from the date it receives notice of the initial denial by the Department to submit a revised Plan of Operation.

3-003.05 Within 30 days of the receipt of a revised Plan of Operation, the Department shall notify the agency of its acceptance or denial of the revised Plan of Operation and reasons for denial.

3-003.05A During the initial designation process, an agency may not file a request for an appeal hearing until it has submitted a revised Plan of Operation and has received notice of denial of the revised Plan of Operation from the Department. The appeal hearing procedure is described in 15 NAC 3-004.01.

3-003.06 Standards: In order to be designated as a long-term care ombudsman program, the agency shall meet the following standards:

3-003.06A Demonstrate the capacity to carry out the duties and responsibilities of the local long-term care ombudsman program in accordance with these rules and regulations;

3-003.06B Possess the capacity to develop policies and procedures that conform to all applicable federal and state statutes, regulations, and policies.

3-004 NOTICE OF APPROVAL AND DESIGNATION; APPEAL RIGHTS: The Department shall forward a notice of approval of a Plan of Operation and designation of a local long-term care ombudsman program to the administrator of the agency. Public notice of the designation decision by the Department shall be made after the agency has been informed of the decision.

3-004.01 An agency for a local long-term care ombudsman program which has been aggrieved by a decision of the Department to deny approval of a Plan of Operation or designation of a long-term care ombudsman program shall have the right to appeal, and may exercise the right of appeal by filing notice of appeal within ten working days of receiving notice of denial.

3-004.01A The Department shall set the date, time and place of the hearing within five working days of receiving a request from an aggrieved agency. The hearing shall take place within 30 calendar days of the request.

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3-004.01B The Department shall appoint an impartial hearing officer to conduct the hearing.

3-004.01C The hearing officer shall rule on motions and objections and may cross-examine any witnesses. The hearing officer shall prepare proposed written findings of fact and conclusions of law and submit the same to the Director and the State Long-Term Care Ombudsman within 20 working days of the conclusion of the hearing. The Director and the State Long-Term Care Ombudsman shall be in attendance or shall review the record of the hearing.

3-004.01D A representative may appear on behalf of the agency or the agency may be represented by counsel. There shall be opportunity to present witnesses and documentary evidence under the provision of Neb. Rev. Stat. Section 84-914.

3-004.01E The Director shall make a decision which shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall be based on the evidence submitted at the hearing pursuant to Neb. Rev. Stat. Section 84-914.

3-004.01F The Department shall transmit the written decision to interested parties by certified or registered mail within 30 working days of the hearing.

3-004.01G Appeals to the District Court of any order or decision of the Department shall follow the statutory requisites set forth in Neb. Rev. Stat. Section 84-917 unless specifically provided for otherwise in statute.

3-004.01H The Department may terminate formal hearing procedures at any point if the Department and the agency that requested the hearing negotiate a written agreement that resolves the issue(s) which led to the hearing.

3-004.02 Approval of a Plan of Operation and designation of a local long-term care ombudsman program is valid for two years from October 1 and ending on September 30 unless revoked by the Department at an earlier date or the Department specifies a beginning date for the designation period after October 1 in the Request for Proposals.

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3-004.02A The Department may specify in its Request for Proposals that the period of designation of any local long-term care ombudsman program shall begin and end in either an odd-numbered year or an even-numbered year.

3-005 REVOCATION OF DESIGNATION: The Department may revoke designation at any time for one or more of the following reasons:

1. There is a change in status or ownership of the agency operating a local long-term care ombudsman program without prior approval of the Department.
2. The resources allocated to the local long-term care ombudsman program by the Department or any other state or federal source are being used in violation of the Act, the Older Americans Act of 1965, as amended, and its rules and regulations, attached and incorporated herein by reference as Attachment B of Title 15, or of these rules and regulations.
3. The local long-term care ombudsman program fails to perform according to the approved Plan of Operation.
4. The local long-term care ombudsman program fails to obtain approval from the Department for a change in its Plan of Operation in accordance with 15 NAC 3-007.
5. Disclosure of any conflict of interest.
6. The local long-term care ombudsman program is in violation of any of the Older Americans Act of 1965, as amended, and its rules and regulations, attached and incorporated herein by reference as Attachment B of Title 15, the Act, or these rules and regulations.

3-005.01 The Department shall notify the administrator of the local long-term care ombudsman program of its intent to revoke designation. A local long-term care ombudsman program aggrieved by a decision of the Department to revoke designation shall be entitled to an appeal as described in 15 NAC 3-004.01.

3-005.02 A local long-term care ombudsman program whose designation is revoked, and which has appealed such revocation, may have its designation reinstated when, in the judgment of the Department, the conditions leading to revocation have been corrected.

3-005.03 A local long-term care ombudsman program whose designation has been revoked may reapply for designation as a local long-term care ombudsman program 90 working days after the date upon which revocation becomes final, if the Department has not approved the Plan of Operation of another agency.

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3-005.04 When revocation of designation of a local long-term care ombudsman program becomes final, the program shall maintain any and all records and files relating to any complaint received by or investigation conducted by the local long-term care ombudsman program pursuant to the Act for two years, during which time the Office shall have access to those records and files. After two years, the Office shall determine how the records and files are to be maintained.

3-005.05 During the process of appeal of a revocation of designation, a local long-term care ombudsman program may continue to serve those clients already being served, unless confidentiality has been violated or the health and safety of clients is compromised. The local long-term care ombudsman program may not take in new clients without prior approval.

3-005.06 When designation of a local long-term care ombudsman program has been revoked, the Office of the State Long-Term Care Ombudsman will provide ombudsman services in the affected planning and service area until another agency has been designated to provide such services.

3-006 REDESIGNATION: An application for redesignation must be submitted by the agency to the Department 60 calendar days prior to the expiration of each two-year designation period. Failure to file for redesignation will cause designation to expire at the end of the two-year designation period.

3-006.01 The application for redesignation shall be submitted according to the designation process as outlined in 15 NAC 3-003.

3-006.02 The Department will consider the following in determining redesignation:

1. Annual review and an on-site inspection including, but not limited, to a review of files and records and visits with clients and cooperating agencies to determine compliance with these rules and regulations and the Plan of Operation.
2. Documentation of the following regarding each ombudsman advocate in their program:
  - a. Compliance with their ombudsman advocate contract during the past year;
  - b. Evidence of 12 hours of training received during the period of designation; and



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- c. Satisfactory performance as an ombudsman advocate, including attending training and submitting monthly reports.
3. Evaluation of the performance of the local long-term care ombudsman program in meeting its goals and objectives as outlined in its approved Plan of Operation.

3-006.03 Notice of approval or denial of redesignation will be issued by the Department prior to the expiration of the current designation period.

3-006.04 In case of a denial, appeal procedures will be the same as those specified in 15 NAC 3-004.

3-006.05 Within 15 days of completing any program review, the Department shall provide the local long-term care ombudsman program and the agency with written notification of the results. The new designation period shall begin on October 1.

3-007 PLAN OF OPERATION: Each Plan of Operation for a local long-term care ombudsman program shall provide the following information:

3-007.01 A description of the area to be served within a planning and service area. No local program shall include within its service area any facility being served by another designated program.

3-007.02 A statement of philosophy and goals and objectives of the program.

3-007.03 A statement of the procedures to be used to recruit and support volunteer ombudsman advocates.

3-007.04 A statement of methods to evaluate the attainment of program goals and objectives for the program.

3-007.05 If more than one local long-term care ombudsman program is to be established in the planning and service area, a statement detailing how the programs will coordinate services and avoid duplication of effort.

3-007.06 An annual budget of income and expenses for the program coincident with the state fiscal year.

3-007.07 Assurance that the program will comply with all requirements of the Department, including training of all representatives of the Office, confidentiality of records, and reporting.

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3-007.08 Assurance that no person shall investigate any complaint filed with the Office unless such person is certified by the Office.

3-007.09 Assurance that the program has the ability to pursue appropriate remedies to resolve complaints, including but not limited to:

3-007.09A Representing residents in administrative hearings and appeals before state and federal agencies, including the Nebraska Department of Health and Human Services, the Nebraska Department of Health and Human Services Regulation and Licensure, the Nebraska Department of Health and Human Services Finance and Support, and the United States Department of Health and Human Services;

3-007.09B Making referrals and recommending specific courses of action, referring situations to public and private agencies such as the Nebraska Department of Health and Human Services Adult Protective Services Program, the Nebraska Department of Health and Human Services Regulation and Licensure, Legal Services Corporations, county attorneys' offices, the Nebraska Attorney General's office, state and federal courts, and other agencies;

3-007.09C Serving as an agent 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.

3-007.10 Written policies and procedures for the administrative and programmatic operation of the program based upon the following minimum standards.

3-007.10A Personnel Policies and Procedures: The program shall have a job description for each position, as well as 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:

1. The following minimum requirements qualifications for individuals serving in the capacity of long-term care ombudsman advocates for the State or local long-term care ombudsman programs:

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- a. An understanding of long-term care issues;
  - b. Experience in the fields of aging and health care;
  - c. Worked with and been involved in volunteer programs;
  - d. Good verbal, listening, and writing skills;
  - e. Commitment to serve a minimum of three hours per week in the performance of their duties, including at least two hours per week in a long-term care facility;
  - f. No known conflict of interest which would interfere with their objective performance as an ombudsman advocate;
  - g. g Understanding of and agreement to follow the ombudsman rules of confidentiality;
  - h. Agreement to follow the policies and procedures of the State and local long-term care ombudsman program and accept the direction of the Ombudsman Advocate Coordinator.
  - i. Compliance with the Office's reporting needs to collect and analyze data relating to complaints and conditions in long-term care facilities.
  - j. Certification by the Department's Office of the Long-Term Care Ombudsman.
2. An Equal Opportunity Policy that includes nondiscrimination on the basis of race, disability, color, sex, affiliation, or age, and an Affirmative Action statement.
  3. An organizational chart which identifies the responsibility of each position in the program.
  4. Means to ensure that no officer, employee, volunteer, or other representative of the Office, including staff of local long-term care ombudsman programs and ombudsman advocates, shall be subject to a conflict of interest which would impair the ability of said person to carry out his or her official duties in an impartial manner. A conflict of interest shall exist when:
    - a. An ombudsman advocate investigates any complaint in a facility in which he or she was previously employed or affiliated;
    - b. An ombudsman advocate investigates any complaint in a facility owned or operated by the same person, corporation, partnership, or other entity which owned or operated any facility in

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- which he or she was previously employed or affiliated within the previous two years prior to being employed by or affiliated with the Office of the Long-Term Care Ombudsman or local long-term care ombudsman program;
- c. An officer, employee, volunteer, or ombudsman advocate is affiliated with or has a financial interest in a provider of long-term care services or a membership organization of long-term care providers; or
  - d. An ombudsman advocate investigates any complaint in a facility in which an immediate member of the family of the long-term care ombudsman advocate resides or is employed.

3-007.10B Program Staffing Requirements: At a minimum, the local long-term care ombudsman program staff shall consist of one individual available to conduct ombudsman advocate activities, manage the program on a day-to-day basis, and coordinate and supervise ombudsman advocates, and adequate support staff.

3-007.10C Policies and procedures addressing:

1. Complaint handling, including complaint priority system and types of complaints to be handled by the local office, ombudsman advocates and those to be referred to the Office of the State Long-Term Care Ombudsman;
2. Case assignment;
3. Access to and treatment of confidential information, including the confidentiality of case records;
4. Recruiting, screening, training and supervising ombudsman advocates;
5. Types of information that can be provided by the local office and ombudsman advocates, e.g., survey information, program options, service alternatives;
6. Participation in the Nebraska Department of Health and Human Services Regulation and Licensure survey and certification process as defined in 42 CFR Part 483, Subpart B, attached and incorporated herein by reference as Attachment D of Title 15; specifying when to attend an exit conference, a statement of the information the ombudsman will give to the survey team; and notification to the Nebraska Department of Health and

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Human Services Regulation and Licensure of the program's policy in this regard.

3-007.11 Fiscal Accountability: Each Program shall maintain accounting records as necessary for preparation of financial statements in accordance with generally accepted accounting principles.

3-007.11A Each Program shall obtain and file with the Department an audit report by September 30th of each year. The audit shall be conducted in accordance with generally accepted accounting standards.

3-007.12 Complaint Investigation and Resolution: Local programs shall investigate and resolve to the best of their ability all complaints received by or on behalf of older individuals who reside in long-term care facilities which are not reportable under the Adult Protective Services Act.

3-007.12A The Office and designated local programs shall represent the interests and wishes of older individuals who are residents of long-term care facilities, even if they are contrary to the interests and wishes of any person who files a complaint with the Office of local program on behalf of such older individuals.

3-007.12B Local policies and procedures shall include, but not be limited to, the following:

1. Intake: During the initial contact with the complainant, the long-term care ombudsman advocate shall advise the complainant of the Program's policies with respect to confidentiality and shall attempt to obtain the following information:
  - a. Complainant's name, location, and relationship to the resident (if applicable);
  - b. Affected resident's name, age, and location (if applicable);
  - c. A clear, specific statement of the problem; and
  - d. An understanding of the complainant's desired outcome.
2. Investigation: Upon receipt of a complaint, the long-term care ombudsman advocate shall initiate an investigation, either personally or by referral to another investigative/regulatory agency, to determine the validity of the complaint, the expressed wishes of the

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resident/client in questions, and the intervention needed to resolve the complaint.

- a. Required information shall be entered in the computerized master file as developed by the Office of the State Long-Term Care Ombudsman (if the local long-term care ombudsman program has access to a computer system) and a permanent written complaint file shall be created for each resident/client using the forms and procedures established by the Office.
- b. The investigation shall begin within 20 working days after a complaint is received. Exceptions may be granted if the best interests of the resident would be served or if other constraints would make a timely response difficult, but shall require the approval of the State Long-Term Care Ombudsman.
- c. An investigation involving a specific resident shall be concluded at any time if the resident so requests.
- d. An anonymous complaint will be investigated by a long-term care ombudsman advocate to the extent possible from the information provided by the complainant.
- e. If the State Long-Term Care Ombudsman, the local long-term care ombudsman or ombudsman advocate does not investigate a complaint, the complainant shall be notified of the decision not to investigate and the reasons for the decision.
- f. A resident shall be presumed competent to make decisions affecting his/her welfare unless he/she has been determined otherwise by a court of law.
- g. The State Long-Term Care Ombudsman, local long-term care ombudsman or ombudsman advocate may refer the complaint to another agency for investigation or may contact another agency for assistance in the investigation if the long-term care ombudsman or ombudsman advocate believes such action will result in successful resolution of the complaint. If such action is considered, the resident/client will be informed of the intended action. The resident/client retains the right to accept or reject such action.

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3. Complaint Resolution: Once the investigation is completed, the long-term care ombudsman or ombudsman advocate shall develop and implement a plan of intervention designed to resolve the complaint. The plan shall be documented in the resident/client's permanent written complaint file.
  - a. If the complaint alleges noncompliance with facility standards or regulations, the long-term care ombudsman or ombudsman advocate may report or facilitate reporting to the Division of Investigations in the Nebraska Department of Health and Human Services Regulation and Licensure, Nebraska Fire Marshall, or other regulatory agency with appropriate jurisdiction. Such referral will be documented in the resident/client's permanent written complaint file.
  - b. Any state agency responding to a complaint against a long-term care facility or an individual employed by a long-term care facility that was referred to them by the Office or the local long-term care ombudsman program shall forward to the Office or local program copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the long-term care facility or the individual.
4. Follow-up: Follow-up contacts to evaluate the resolution of the complaint may be made if requested by the complainant or the resident.
  - a. The long-term care ombudsman or ombudsman advocate is not obligated to provide any information that might jeopardize the confidentiality of any person involved in the investigation.
  - b. If a complaint was referred to another agency for investigation, a follow-up contact may be made to determine what action was taken.
  - c. Provisions for follow-up contacts shall be documented in the resident/client's permanent written complaint file.
5. Closure: Closure of the case shall be documented in the computerized master file as developed by the Office, if the local long-term care ombudsman program has access to a computer system, and the resident/client's

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permanent written complaint file. A case may be closed under any of the following circumstances:

- a. The complaint has been resolved to the satisfaction of the resident/client, the complainant, the long-term care ombudsman or ombudsman advocate.
- b. The resident/client refuses further intervention or withdraws the complaint
- c. The ombudsman advocate involved in the investigation and the State Long-Term Care Ombudsman agree that continued involvement has no reasonable potential for benefiting the resident/client or would not be consistent with the purpose of the Long-Term Care Ombudsman Program. In this event, the justification shall be clearly explained to the resident/client and the complainant, if appropriate.

3-007.13 Access to Facility Records: The Office and local programs must obtain the consent of the resident/client in order to have access to the medical and personal records retained by the facility of any older individual who is a patient, resident, or client of a long-term care facility.

3-007.13A If consent is given by residents of long-term facilities to allow a representative of the Office access to medical and personal records retained by a long-term care facility, such consent shall be in writing on forms provided by or approved by the Office, unless:

1. The resident is unable or unwilling to consent in writing, but is willing and able to give oral consent, in which case consent may be granted orally by the resident in the presence of a third party; or
2. The resident is under legal guardianship or conservatorship that provides the guardian or conservator with the authority to approve review of records. In such case the representative of the Office shall obtain the permission of the guardian or conservator for review of the records in the same manner as required if the resident was not under conservatorship or guardianship.
3. The consent of the legal guardian or conservator shall not be required if:



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- a. The existence of the legal guardianship or conservatorship is unknown to the Office or the facility;
- b. The legal guardian or conservator cannot be reached within five working days;
- c. The subject of the complaint is the guardian or the conservator; or
- d. In case of an emergency.

3-007.13B If the resident is unable to express written or oral consent and there is no legal guardian or conservator or the notification of the legal guardian or conservator is not applicable for reasons set forth in 15 NAC 3-007.13A, item 3, or the resident is deceased, the Office shall have access to the medical and personal records of the resident without prior consent.

3-007.13C If authorized in writing by the resident, legal guardian or conservator of the resident, or any other person having legal authority to inspect records, such authorization shall be made a part of the permanent written file of the resident.

3-008 CERTIFICATION OF OMBUDSMAN ADVOCATES: Ombudsman advocates of local long-term care ombudsman programs shall meet the following requirements in order to be certified.

3-008.01 Successful completion of 20 hours of classroom training covering the following subjects:

1. Federal, state, and local laws, regulations, and policies governing long-term care facilities in the state;
2. Investigative techniques;
3. Understanding the management of long-term care facilities; and
4. Other subject areas determined to be important by the Office.

3-008.02 Successful completion of a three-month probationary period determined through an evaluation of the ombudsman advocate's performance of duties and responsibilities in accordance with these rules and regulations and an on-site evaluation at the ombudsman advocate's assigned facility.

3-008.03 Demonstration of the ability to perform duties and display competence in advocating for residents of long-term care facilities as determined by the State Long-Term Care Ombudsman.

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3-009 RECERTIFICATION OF OMBUDSMAN ADVOCATES: Ombudsman advocates shall be recertified biennially, after having met the following requirements.

1. Completion of 12 hours of additional classroom training provided by the Office; and
2. Evaluation of performance of duties and responsibilities in accordance with these rules and regulations and the policies and procedures of the local program.

3-010 DECERTIFICATION OF OMBUDSMAN ADVOCATES

3-010.01 Cause for decertification of an ombudsman advocate may include the following:

1. Any conduct which adversely affects the performance of his or her duties as ombudsman advocate, or which adversely affects the sponsoring agency's ability to provide services under the Act or these regulations.
2. Disclosure of information relating to any complaints or investigations made pursuant to the Act that identifies complainants, patients, residents, or clients to any individual or agency unless such disclosure is:
  - a. Authorized in writing by the complainant, patient, resident or client or the legal guardian or legal representative of such individual; or
  - b. Necessary for the provision of services to the patient, resident or client and the patient, resident or client is unable to express written or oral consent; or
  - c. Made pursuant to court order.
3. Failure to comply with the policies and procedures of the local long-term care program or these rules and regulations;
4. Having a conflict of interest as described in 15 NAC 3-007.10A, item 4, that has not been resolved or has not been disclosed by the ombudsman advocate to the state long-term care ombudsman.

3-010.02 The process of decertification shall be:

1. The local Ombudsman Advocate Coordinator will investigate and document the reasons for pursuing the decertification process.
2. Upon determination that valid reason exists to decertify an ombudsman advocate, the local long-term care ombudsman

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program will recommend to the Office that the ombudsman advocate be decertified.

3. The Office will review the recommendations and take decertification action, as appropriate.
4. The Office will send a letter to the ombudsman advocate stating that decertification has been requested by the local long-term care ombudsman program, has been approved by the Office, and the reasons for such action.
5. Within 30 days of the receipt of the letter stating that decertification has been requested, the ombudsman advocate may appeal the decision to the Department as described in 15 NAC 3-004.01.
6. The Office, in consultation with the local long-term care ombudsman program, may temporarily suspend an ombudsman advocate pending completion of the investigation and appeal of the decision.