

**IDAHO LONG-TERM CARE OMBUDSMAN**  
**PROGRAM MANUAL**

**CHAPTER 9**

**TABLE OF CONTENTS**

**9.1.GENERAL**

|   |   |
|---|---|
| 1. Purpose                              | 7 |
| 2. Authorization                        | 7 |
| 3. Philosophy                           | 7 |
| 4. Application                          | 7 |
| 5. Federal and State Regulatory Sources | 7 |
| 6. Common Terms                         | 8 |

**9.2. DEFINITIONS** 9-13

**9.3. ESTABLISHMENT OF THE OFFICE**

|   |       |
|---|-------|
| 1. Office Of The State Long-Term Care Ombudsman                 | 14    |
| 2. Policies And Procedures                                      | 15    |
| 3. Local Ombudsman/ Ombudsman Entity Oversight                  | 15    |
| 4. Prioritization Of Resident Complaints                        | 16    |
| 5. Fiscal Resource Management                                   | 16    |
| 6. Access To Facilities, Residents, And Information             | 16-17 |
| Guide For Release of Ombudsman Records                          | 18    |
| 7. Health, Insurance Portability And Accountability Act (HIPAA) | 18    |
| 8. Disclosure Of Ombudsman Files                                | 18-19 |
| Guide for Release of Ombudsman Records                          | 20-21 |
| 9. Disclosure Of Resident or Complainant Information            | 22    |
| Exemption from Abuse Reporting                                  | 22    |
| 10. Conflict Of Interest  | 23    |
| 11. Systems Advocacy  | 23    |

|  |              |
|--|--------------|
| <b>12. Designation Criteria For Local Ombudsman Program Entities (AAA)</b>   | <b>23-24</b> |
| <b>13. Designation Criteria For Local Ombudsman (LTCO)</b>                   | <b>24-25</b> |
| <b>14. De-Designation Of Ombudsman Program Entity (AAA)</b>                  | <b>25-26</b> |
| <b>15. De-Designation Of Local Ombudsman (LTCO)</b>                          | <b>26-27</b> |
| <b>16. Grievance Procedure For Appeal Of De-Designation/De-Certification</b> | <b>27-28</b> |
| <b>17. Grievance Procedure For Complaints Against An Ombudsman</b>           | <b>28-29</b> |
| Local Ombudsman (LTCO)   | <b>28-29</b> |
| State Long-Term Care Ombudsman (SLTCO)                                       | <b>29</b>    |
| <b>18. Independence Of Long-Term Care Ombudsman Program</b>                  | <b>29</b>    |
| Independent Determinations   | <b>29</b>    |

#### **9.4. FUNCTIONS AND RESPONSIBILITIES OF THE STATE LONG-TERM CARE OMBUDSMAN**

|   |              |
|---|--------------|
| <b>1. Functions of the State Long-Term Care Ombudsman (SLTCO)</b> | <b>30-31</b> |
| Serving All Residents   | <b>30</b>    |
| Complaint and Non Complaint Visits                                | <b>31</b>    |
| General Complaint Response Time                                   | <b>31</b>    |
| Residents Transitioning from Long Term Care                       | <b>31</b>    |
| Technical Assistance, Consultation, Training                      | <b>31</b>    |
| Represent Resident Interests                                      | <b>31</b>    |
| Analyze Laws and Regulations                                      | <b>31</b>    |
| Leadership  | <b>32</b>    |
| Recommendations   | <b>32</b>    |
| Lobbying  | <b>32</b>    |
| <b>2. Responsibilities For Local Ombudsman</b>                    | <b>32</b>    |
| Qualifications  | <b>32-33</b> |
| Conflict of Interest  | <b>33</b>    |
| Training/Testing of Local Ombudsman/Waiver                        | <b>33</b>    |
| <b>3. Designation of Local Ombudsman</b>                          | <b>33-34</b> |
| <b>4. Training</b>  | <b>33-34</b> |
| Curriculum and Resources  | <b>34</b>    |
| Training Requirements   | <b>34</b>    |
| Responsibility  | <b>35</b>    |
| <b>5. Ombudsman Program Information Management</b>                | <b>35</b>    |
| <b>6. Fiscal Management</b>                                       | <b>35</b>    |
| <b>7. Reporting</b>   | <b>35-56</b> |
| State   | <b>35-36</b> |

|                                    |              |
|------------------------------------|--------------|
| Federal                            | 36           |
| <b>8. State Level Coordination</b> | <b>36-37</b> |

## **9.5. STATE AGENCY RESPONSIBILITIES FOR THE OMBUDSMAN PROGRAM**

|  |              |
|--|--------------|
| <b>1. Office Of The State Long-Term Care Ombudsman (SLTCO)</b> | <b>38</b>    |
| <b>2. Responsibility and Oversight of the SLTCO</b>            | <b>38-39</b> |
| <b>3. State And Area Plans</b>                                 | <b>40</b>    |
| <b>4. Elder Rights Leadership</b>                              | <b>40</b>    |
| <b>5. Interference, Retaliation and Reprisals</b>              | <b>40-41</b> |
| <b>6. Legal Counsel/Liability</b>                              | <b>42</b>    |
| Good Faith Performance   | <b>42-43</b> |
| <b>7. Annual Report</b>  | <b>44</b>    |
| <b>8. Training For Local Ombudsmen and Representatives</b>     | <b>44</b>    |

## **9.6. RESPONSIBILITIES OF AGENCIES HOSTING LOCAL OMBUDSMAN ENTITIES (AAA)**

|   |              |
|---|--------------|
| Personnel Management of Local Ombudsmen | <b>45-46</b> |
| Job Descriptions for Local Ombudsmen    | <b>45</b>    |
| Travel Funds                            | <b>45</b>    |
| Space for Confidential Meetings         | <b>45</b>    |
| Working Outside Normal Business Hours   | <b>45</b>    |
| Monitoring                              | <b>45</b>    |
| Provisions for Direct Referral          | <b>45</b>    |

## **9.7. DUTIES OF REPRESENTATIVES OF THE OFFICE**

|   |              |
|---|--------------|
| <b>1. Functions of Local Ombudsman</b>  | <b>47-48</b> |
| <b>2. Visits</b>                        | <b>48</b>    |
| Non Complaint Related Visits            | <b>48</b>    |
| Complaint Related Visits                | <b>48</b>    |
| <b>3. Investigation</b>                 | <b>48-49</b> |
| Focus of Investigation                  | <b>49</b>    |
| Complaint Response/Priorities           | <b>49-50</b> |
| Case                                    | <b>50-51</b> |
| <b>4. Complaint Intake and Response</b> | <b>51</b>    |
| Resident Participation                  | <b>51</b>    |

|   |              |
|---|--------------|
| Information Gathering                               | 51           |
| <b>5. Complaint Verification and Plan of Action</b> | <b>52</b>    |
| Verification vs. Validation                         | 52           |
| Immediate Action                                    | 52           |
| Resident Notification                               | 52           |
| <b>6. Source of Complaint</b>                       | <b>52-53</b> |
| <b>7. Consent/Confidentiality</b>                   | <b>53-54</b> |
| Resident Consent                                    | 53           |
| Resident Inability to Consent                       | 54           |
| <b>8. Referrals</b>                                 | <b>54</b>    |
| General   | 54           |
| Regulatory Agencies                                 | 54-55        |
| <b>9. Abuse Allegations Witnessed by Ombudsman</b>  | <b>55-56</b> |
| Resident Consent                                    | 55           |
| Resident Inability to Consent                       | 55           |
| <b>10. Community Education/Facility Training</b>    | <b>56</b>    |
| <b>11. Media</b>                                    | <b>56</b>    |
| <b>12. Volunteer Ombudsmen</b>                      | <b>56-57</b> |
| Training Required                                   | 56           |
| Certification                                       | 56           |
| Supervision/Monitoring by Local Ombudsman           | 57           |
| Continuing Education                                | 57           |
| Conflict of Interest                                | 57           |
| Waiver to Volunteer Requirements                    | 57           |
| Evaluations   | 57           |
| Certification Renewal                               | 57           |

## **9.8. CONFLICT OF INTEREST**

|  |              |
|--|--------------|
| <b>1. Identifying Conflict</b>           | <b>58</b>    |
| <b>2. Organizational Conflicts</b>       | <b>58-59</b> |
| <b>3. Individual Ombudsman Conflicts</b> | <b>59-60</b> |
| <b>4. Conflict of Interest Standards</b> | <b>60-61</b> |
| Responsibility                           | 61           |
| <b>5. Conflict of Interest Remedies</b>  | <b>61</b>    |
| Organizational Conflict Remedy           | 61           |
| Individual Conflict Remedy               | 62-63        |
| <b>6. Ombudsman/AP Conflict Remedy</b>   | <b>63-64</b> |

|    |   |    |
|----|---|----|
|    | Written Agreement between Ombudsman/AP                  | 64 |
| 7. | <b>Commissioner or Advisory Council Conflict Remedy</b> | 64 |
| 8. | <b>ICOA Responsibility</b>                              | 65 |
|    | AAA Entity Contract Assurances                          | 65 |

## **Attachments:**

- 1. HIPAA Memo**
- 2. National Ombudsman Code of Ethics**
- 3. Sample Local Ombudsman Job Description**

## 9.1 **GENERAL**

1. **Purpose** The Long-Term Care Ombudsman Program (LTCOP) is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by residents of long-term care facilities within Idaho.

Operation of the LTCOP is a joint responsibility of the Idaho Commission on Aging (ICOA), Office of the State Long-Term Care Ombudsman (SLTCO), the Area Agencies on Aging (AAA), and Local Ombudsmen (LTCO). This manual outlines policies and procedures for governing the administration, management, funding and implementation of the Idaho Long Term Care Ombudsman Program and is a reference document for AAAs and LTCO representatives. It is the key tool to ensure consistency, quality standards, and implementation of laws, regulations, and policies and is a “working” document that will be revised, updated, and distributed to LTCO representatives by the Office of the State Long Term Care Ombudsman.

In 2015, the Administration for Community Living released final regulations (45 CFR Parts 1321, 1324) for the LTCO program, the first time comprehensive regulations for the LTCO program have been issued. They provide clarity and interpretation for States around the provisions of the Older American Act and implementation of the Long-Term Care Ombudsman program. These new regulations:

- Contain expanded definitions;
- Provide clarity around who/what constitutes the Office of the SLTCO;
- List the elements that must be included in SLTCO policies and procedures;
- Describe the functions and responsibilities of the SLTCO/State Ombudsman, the ICOA (as related to the SLTCO program), the AAAs, and Local Ombudsmen as well as;
- Identify potentially challenging issues like conflicts of interest, designation of program representatives, legal counsel for Ombudsman programs, disclosure of information, access (to consumers, records, and facilities), willful interference with Ombudsman responsibilities, and more.

2. **Authorization** The Idaho Long-Term Care Ombudsman Program (LTCOP) is authorized under the federal Older Americans Act, Titles III and VII and under Idaho Code 67-5009 and Idaho Administrative Procedures Act (IDAPA) 15.01.03.

On July 1, 2016, 45 Code of Federal Regulations Parts 1321 and 1324 became effective to provide further guidance for the operation of the program. The Idaho Office of the Long-Term Care Ombudsman policies and procedures manual will reflect these changes and clarify policy to promote greater uniformity and understanding of the program.

3. **Philosophy** The LTCOP is a resident-driven advocacy program. The resident or applicant to a long-term care facility, regardless of the source of the complaint, is the main focus. Ombudsman services are targeted to those over 60 but can also be provided to any long-term care consumer. The Long-Term Care Ombudsman will make every reasonable effort to investigate and resolve complaints to the satisfaction of the resident.
4. **Application** The following policies and procedures govern the actions of the Office of the State Long-Term Care Ombudsman (SLTCO), Local Ombudsmen designated by the Office (LTCO), Area Agencies on Aging (Local Ombudsman entity/AAA), and the Idaho Commission on Aging (State Unit on Aging/ICOA). These policies and procedures incorporate updated guidelines published in the Federal Register Vol. 80, No. 28, 7704-7767, February 11, 2015 titled "Long-Term Care Ombudsman Final Rule." This final rule has an effective date of July 1, 2016.

Local program entities and Local Ombudsmen are required to inform staff and volunteers of the purpose and general content of this manual.

5. **Federal and State Regulatory Sources**  
Older American Act (OAA) of 1965, as amended  
2016 Code of Federal Regulations 45 Parts 1321 and  
1324  
Idaho Code, Title 67, Chapter 50  
Idaho Administrative Procedures Act (IDAPA) 15.01.03

**6. Common Terms**

State Long Term Care Ombudsman =SLTCO/State Ombudsman/ Office

Local Entity = Area Agency on Aging/AAA

Local Representative = LTCO/Local

Ombudsman National Ombudsman Reporting

System = NORS

**9.2. DEFINITIONS** (OAA section 102, 45 CFR 1321 and 1324, IC 39-5302 Adult Protection, IC 67-5009 Ombudsman For The Elderly, IDAPA 15.01.03, IDAPA 15.01.20, IDAPA 16.03.02)

1. **Abuse.** (OAA Section 102(a))
  - A. Infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish;
  - B. Deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.
  - C. (IC 39-5302(1)) Abuse means the intentional or negligent infliction of physical pain, injury or mental injury.
2. **Access.** (IDAPA 15.01.03) Right to enter a long-term care facility.
3. **Area Agency on Aging. (AAA).** (IDAPA 15.01.03 & 15.01.20) A separate organizational unit within a multipurpose agency which functions only for purposes of serving as the Area Agency on Aging that plans, develops, and implements services for older persons within a planning and service area.
4. **Assistant Secretary.** (OAA 102(a)) The Assistant Secretary for Aging.
5. **Case.** (National Ombudsman Reporting System (NORS)). Each inquiry brought to, or initiated by, the Ombudsman on behalf of a resident or group of residents involving one or more complaints which requires opening a case and includes Ombudsman investigation, strategy to resolve, and follow-up. You cannot have a case without a complaint.
6. **Certification.** (NORS) A status bestowed on an individual upon meeting minimum qualifications, including proof that he/she is free of conflicts of interest and has successfully completed the State Ombudsman approved training. This status authorizes an individual to act as a representative of the Idaho Long-Term Care Ombudsman program.
7. **Commission.** (IC 39-5302) means the Idaho Commission on Aging (ICOA), established pursuant to chapter 50, title 67, Idaho Code.
8. **Community Education.** (NORS) Presentations made by an Ombudsman to community groups, students, churches, etc. This includes attendance at community events where the Ombudsman has a display and is available to provide information about the program.
9. **Complainant.** (NORS) An individual or a party (i.e., resident, resident's spouse, siblings) who files one or more complaints made by, or on behalf of, residents with the Ombudsman program.

10. **Complaint.** (NORS) A concern brought to, or initiated by, the Ombudsman for investigation and action by or on behalf of one or more residents of a long-term care facility relating to health, safety, welfare or rights of a resident. One or more complaints constitute a case.
11. **Consultation.** (NORS) Providing information and assistance to facility managers and staff that does not rise to the level of a complaint. It may involve referring someone to another agency.
12. **Designation.** (IDAPA 15.01.03) Process by which the State Ombudsman approves the location of Local Ombudsman programs within Area Agencies on Aging (AAA) and delegates to such programs the authority to carry out the purposes of the program.
13. **Exploitation.** (OAA 102 section (a)) The fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.  
(IC 39-5302) Exploitation means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property, or resources by another person for profit or advantage.
14. **Family Council.** (Nursing Home Reform Act of 1987 (OBRA)) A self-led, self-determining group of families and friends of nursing home or assisted living facility residents that work to improve quality of care and quality of life and provides families a voice in decision-making that affects them and their loved ones.
15. **Guardian.** (IC 15-13-102) A person appointed by the court to make decisions regarding the person of an adult, including a person appointed pursuant to chapter 5, title 15, Idaho Code.
16. **Immediate family.** (45 CFR 1324.1) Pertaining to OAA Section 712, means a member of the household or a relative with whom there is a close personal or significant financial relationship.
17. **Informed Consent.** Permission to disclose pertinent facts that may affect an individual, received prior to disclosure. The communication of informed consent may be made in writing, and through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, such unwritten consent should be documented in the record by the Ombudsman or a

representative of the Office, in accordance with the procedures established by the Office.

- 18. Legal Representative.** A person who carries a Power of Attorney or who is appointed Guardian or Conservator with legal authority to speak for a client.
- 19. Local Long-Term Care Ombudsman.** (LTCO/Local Ombudsman). An employee or volunteer designated by the State Ombudsman to represent the State Long-Term Care Ombudsman Program at the local level. The LTCO will be an employee of the Area Agency on Aging with programmatic authority designated by the SLTCO.
- 20. Local Ombudsman Entity.** Agency designated by the State Ombudsman to carry out employment and supportive responsibilities of the Local Ombudsmen program. (IDAPA 15.01.03) The AAA shall directly provide, through a contract agreement with ICOA, a Local Ombudsman program.
- 21. Long Term Care Facility/Skilled Nursing Facility/Nursing Home.** (IDAPA 16.03.02) Skilled nursing facilities designed to meet the health needs of two or more individuals who require inpatient care and services for twenty-four or more consecutive hours. (IDAPA 16.03.22) A Residential Care or Assisted Living Facility or residence operated for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three or more individuals not related to the owner. At this time, the term does not include Certified Family Homes.
- 22. Neglect.** (OAA 102(a)) The failure of a caregiver or fiduciary to provide the goods or services necessary to maintain the health or safety of an older individual.  
(IC 39-5302) Failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself.
- 23. Non-Jurisdictional Complaints.** (IDAPA 15.01.03) Complaints made by or concerning persons outside the statutory jurisdiction of an Ombudsman program.
- 24. Office of the State Long-Term Care Ombudsman or Office.** (45 CFR 1324.1) As stated in OAA section 711 and 712. The organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.
- 25. Representatives of the Office of the State Long-Term Care Ombudsman/ Long-Term Care Ombudsman Representative/Local Ombudsman (LTCO).**

(45 CFR 1324.1) The employees or volunteers designated by the State Ombudsman to fulfill the duties set forth in 45 CFR 1324.19, whether personnel supervision is provided by the State Ombudsman or his or her designees or by an agency hosting a Local Ombudsman entity designated by the State Ombudsman pursuant to OAA section 712(a).

26. **Resident Council.** (Nursing Home Reform Act of 1987 (OBRA)) An independent, organized group of people living in a long-term care facility that meets on a regular basis to discuss concerns and develop suggestions on improving services or resolve differences in their home. The council has the right to meet privately.
27. **Resident Representative.** (45 CFR 1324.1) Resident representative means any of the following:
  - A. An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access to medical, social or other personal information of the resident; manage financial matters; or receive 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 behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
  - C. Legal representative, as used in OAA section 712; or
  - D. The court-appointed guardian or conservator of a resident.

Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

28. **Self-Neglect.** (OAA section 102) An adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks.
29. **State Long-Term Care Ombudsman/ Ombudsman/State Ombudsman.** (45 CFR 1324.1) The individual who heads the State Long-Term Care Ombudsman Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19.
30. **State Long-Term Care Ombudsman Program/ Ombudsman Program/ Program.** (OAA sections 711,712, 45 CFR 1324.1) The program through

which the functions and duties of the Office are carried out, consisting of the State Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

- 31. Systems Advocacy.** To analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate. Activities supporting and promoting issues which benefit resident of long-term care facilities.
- 32. Verified.** (NORS) It is determined after work (interviews, record inspection, observation, etc.) that the circumstances described in the complaint are generally accurate.
- 33. Willful Interference.** (45 CFR 1324.1) Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede representatives of the Long-Term Care Ombudsman Office from performing any of the functions or responsibilities set forth in 45 CFR 1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in 45 CFR 1324.19.

**9.3 ESTABLISHMENT OF THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN** (OAA section 712(a), 45 CFR 1324.11, IC 67-5009, IDAPA 15.01.03)

**1. Office of the State Long-Term Care Ombudsman**, (IC 67-5009)

The Idaho Commission on Aging (ICOA) shall establish the Office of the State Long-Term Care Ombudsman (SLTCO) and require that the State Ombudsman:

- A. Be a distinct and separately identifiable entity headed by a full-time State Long-Term Care Ombudsman (45CFR 1324.11(c)), IC 67-5009);
- B. Be hired by the Administrator of the Idaho Commission on Aging (ICOA) (IC 67-5009). The SLTCO will possess a minimum of a bachelor's degree, be a State of Idaho employee and will demonstrate experience including but not limited to:
  - 1. Long-term services and supports or other direct services for older persons or individuals with disabilities;
  - 2. Consumer-oriented public policy advocacy;
  - 3. Leadership and program management skills;
  - 4. Negotiation and problem resolution skills. (CFR 1324.11(d), IC 67-5009)
- C. Provide leadership and management of the Office regarding functions, responsibilities, and duties as set forth in 45 CFR 1324.13 and 45 CFR 1324.19 including:
  - 1. Technical assistance and guidance to Ombudsman representatives (Local Ombudsmen) on programmatic issues (IDAPA 15.01.03);
- D. Shall not provide supervision for personnel issues of Local Ombudsmen (provided by AAA) but shall participate in the interview and selection of Local Ombudsmen;
- E. Shall not perform non-Ombudsman duties unless on a time-limited or intermittent basis;
- F. Will not be prohibited from performing the functions and responsibilities of the program by ICOA personnel policies or practices;
- G. Must be excluded from State lobbying prohibitions that conflict with OAA provisions (45 CFR 1324.11(a));
- H. Neither the State Ombudsman nor a designee shall disclose

identifying information of any complainant or long-term care facility resident to individuals outside of the Ombudsman program except as specified in “Disclosure” policy. (45 CFR 1324.11(e))

**NOTE: Where state and federal laws conflict, federal law overrides state law.**

**2. Policies and Procedures** (CFR 1324.11(e), OAA section 712(a))

The State Ombudsman shall establish program procedures, in consultation with ICOA and the Area Agencies on Aging (AAA), to carry out the program. The State Ombudsman will adhere to State personnel policies and procedures providing that they do not conflict with Ombudsman functions and responsibilities outlined in the OAA section 712 or 45 CFR 1324.13 and remedy or resolve those that do conflict.

**3. Local Ombudsman and Ombudsman Entity Oversight**

(IDAPA 15.01.03)

The State Ombudsman will provide regular monitoring and oversight of the program.

- A. Local Ombudsman oversight will include but not be limited to:
  - 1. (IDAPA 15.01.03) Conducting desk monitoring and onsite visits of Local Ombudsman on an annual basis. (Increased monitoring visits may be provided in cases of misconduct, conflict of interest or at the discretion of the Office);
  - 2. Review of resident case files and complaint work to ensure adherence to state policies and procedures;
  - 3. Verification of volunteer activities;
  - 4. Meetings with long-term care providers to verify presence and involvement of representatives in resident/family councils;
  - 5. Periodic certification that no conflict of interest exists;
  - 6. Review and verification of presentations and trainings given;
  - 7. Verification of use of statewide forms;
  - 8. Verification that resources are appropriately utilized.
- B. Ombudsman entity oversight will include but not be limited to:
  - 1. Periodic onsite review to ensure adherence to requirements as outlined in section **9.6 Responsibilities of Agencies Hosting Local Ombudsman Entities.**

**4. Prioritization Of Resident Complaints** (45 CFR 1324.11(a)), IDAPA 15.01.03)

In order to assure prompt response to complaints by the Office and Ombudsman representatives, the program will:

- Consider the severity of the risk to the resident;
- Consider the imminence of the threat of harm to the residents; and
- Consider the opportunity of mitigating harm to the resident through provision of Ombudsman program services.

The following complaints will be considered a priority and an investigation initiated by letter, electronic mail, or telephone immediately, within 1 business day of receipt:

- A. Abuse, neglect, exploitation, abandonment or imminence of threat or harm to a resident;
- B. Time sensitive complaints;
- C. Actual or threatened emergency involuntary discharge or transfer;
- D. Use of restraints.

All other complaints will be initiated within 5 business days.

**5. Fiscal Resource Management** (OOA section 712(a), 45 CFR 1324.11(e))

The State Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office and shall approve allocations of Federal and State funds provided to AAA entities, subject to applicable Federal and State laws and policies. The State Ombudsman shall have access to Local Ombudsman program budgets for purposes of monitoring and review.

- A. The AAA shall submit an annual fiscal report to the State Ombudsman as outlined in contract.
- B. Local Ombudsmen shall participate with the respective AAA to allocate, have access to, and carry out program expenditures.

**6. Access To Facilities, Residents, And Information** (OOA section 712(b), 45 CFR 1324.11(e), IC 67-5009, IDAPA 15.01.03)

- A. Ombudsman program representatives shall have access to long-term care facilities and residents during regular business hours for visits and at any time access may be required by the circumstances to be investigated. They will:
  1. Notify the person in charge upon entering the facility;

2. Seek out residents who consent to communicate privately;

(NOTE: Resident identifying information will not be divulged unless proper steps taken. See section **9.7 Duties Of Representatives of the Office**).

- B. During a visit or investigation of any complaint or administrative act of any long-term care facility or state or county department or agency providing services to long-term care residents, Ombudsmen shall without restriction undertake, but not be limited to any of the following actions:
  1. Make inquiries and obtain information;
  2. Hold private hearings;
  3. Communicate privately and without restriction with any resident who consents;
  4. Visit common areas and private rooms if permission is granted by the resident;
  5. Inspect resident records under conditions set forth in OAA section 712(b);
  6. Have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. (IDAPA 15.01.03)
- C. In order to investigate a complaint, Ombudsmen shall have access to all residents and/or resident representatives and their medical, social and other records, regardless of format, at all times, and will seek resident or resident representative permission in writing, verbally or through any other means of communication. The permission and method of that permission will be clearly documented in the case file.
- D. Ombudsmen shall have access to long-term care facilities, administrative records, policies, and documents, to which residents or the public has access.
- E. Ombudsmen may request and shall have access to copies of resident records above. If the facility refuses to provide copies, the Local Ombudsman will leave the facility and notify the State Ombudsman. The State Ombudsman will:
  1. Make a second attempt to contact the facility administrator;
  2. Contact the facility corporation (if applicable);
  3. If necessary, pursue legal action.
- F. If the Local Ombudsman is denied access to resident records by his/her personal representative but has reason to believe that the representative is not acting in the best interest of the resident, the

Local Ombudsman will seek evidence to indicate such and contact the State Ombudsman for assistance.

- G. For coverage of another Local Ombudsman program, a Local Ombudsman may have access to the Local Ombudsman records of the other program to the extent necessary to provide temporary coverage.
- H. ICOA and AAA directors may have access to Ombudsman records which reflect activities of the program but may not view the identity of any resident or complainant. Requests shall be made to the State Ombudsman.

**7. Health Insurance Portability And Accountability**

**Act (HIPAA)** (45 CFR1321.11(e))

The LTCO program is identified as a health oversight agency for purposes of the rules of the Health Insurance Portability and Accountability Act (HIPAA) so will not be precluded from release of facility information to the program.

- A. If the facility denies access based on HIPAA regulation, the Local Ombudsman will:
  - 1. Refer to regulation 45 CFR 1324(e);
  - 2. Share memo AoA IM HIPAA – Info Memo 0203; (Att. 1)
  - 3. If the facility still refuses to release information, the Local Ombudsman will vacate the premises and contact the State Ombudsman for assistance. The State Ombudsman may:
    - a. Contact the facility’s corporate administration;
    - b. Notify the licensing agency when appropriate;
    - c. Consult with ICOA administration and pursue legal action.

**8. Disclosure Of Ombudsman Files** (OAA section 712(d), 45 CFR 1321.11(e), IDAPA 15.01.03)

- A. The State Ombudsman or designee:
  - 1. Will adhere to the National “Ombudsman Code of Ethics” (Att. 2);
  - 2. Will be the custodian of, and have access to, all Ombudsman files, records, and other information of the program regardless of format, including information maintained by representatives of the Office and AAA entities;
  - 3. Will review the request for disclosure with the Local Ombudsman to determine whether release of all or part of the

records would be consistent with the wishes or interest of the relevant resident;

4. Shall determine whether any part of the records should be redacted. (The identities of residents or complainants who have not provided express consent for the release of their names shall not be revealed);
5. Upon receipt of a request or inquiry for information, the Local Ombudsman will immediately contact the State Ombudsman and will not provide any information of any kind without further instruction from the Office;
6. Will require individuals requesting release of Ombudsman information (other than the resident or resident representative) to submit a written request outlining:
  - a. The need for information;
  - b. Relationship to the resident;
  - c. How information will be used;
  - d. With whom information will be shared;
  - e. Any additional information the State Ombudsman deems necessary.

GUIDE FOR RELEASE OF OMBUDSMAN RECORDS

Source of Request

| The request for LTCO records is made by.... | THEN the LTCO or designee shall....   |
|---|---|
| A resident or resident representative       | <ul style="list-style-type: none"> <li>• Contact the SLTCO for approval</li> <li>• With approval, release records generated by the LTCO which are directly relevant to that resident provided that the identity of other residents or complainants is redacted;</li> </ul>  |
| A complainant if not the resident           | <ul style="list-style-type: none"> <li>• The request will be submitted in writing in accordance with section <b>9.3 <u>Establishment of the Office</u></b></li> <li>• The Local Ombudsman will notify the SLTCO;</li> <li>• The SLTCO and Local Ombudsman will determine that the release is not in conflict with the wishes or interests of the relevant resident; and</li> <li>• The identity of other residents or complainants will be redacted.</li> <li>• The request will be made in writing in accordance with section 9.3;</li> <li>• The Local Ombudsman will notify the SLTCO;</li> </ul>  |
| Another agency or program                   | <p>Records will be released only if:</p> <ul style="list-style-type: none"> <li>• The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;</li> <li>• The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures;</li> <li>• The identities of residents or complainants who have not provided consent (outlined above) for the release of their names are not revealed or;</li> <li>• The disclosure is required by court order.</li> </ul> |

|   |  |
|---|--|
| GUIDE FOR RELEASE OF OMBUDSMAN RECORDS (cont.)    |  |
| <b>The request for LTCO records is made by...</b> | <b>THEN the LTCO or designee shall....</b>   |
|   | <b>NOTE: Where federal requirements conflict with Idaho State law, the federal requirement takes precedence.</b>   |
| A judge   | <ul style="list-style-type: none"> <li>• Contact the SLTCO for approval;</li> <li>• Release any records directly; responsive to a court order; and</li> <li>• Provide an explanation to the court regarding the importance of not revealing the identity of residents and complainants and/or requesting the court to seal the LTCO records where the SLTCO determines that the release of records would be inconsistent with the wishes or interests of the resident.</li> </ul>  |
| Any other party                                   | <p>Contact the SLTCO for approval and release the records only if:</p> <ul style="list-style-type: none"> <li>• The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;</li> <li>• The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; (IF the resident is unable to provide consent, the resident’s legal representative may provide consent),and</li> <li>• The identities of residents or complainants who have not provided consent outlined above (for the release of their names) are not revealed.</li> <li>• The disclosure is required by court order.</li> </ul> |

9. **Disclosure Of Resident Or Complainant Information** (OAA Section 712(d), 45 CFR 1324.11(e), IDAPA 15.01.03)
- A. All representatives of the Ombudsman program are excluded from Idaho abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order except as allowed in CFR 1324.19(b) concerning residents that lack capacity to consent. (See section **9.7 Duties of Representative of the Office**)
- B. The State Ombudsman shall have sole authority to make or delegate determinations for disclosure of resident or complainant information and shall follow guidance below:
1. Disclosure of resident or complainant identifying information will only be released when:
    - a. The resident or resident representative consents through verbal, written or alternative means which is clearly documented in the case file;
    - b. Required by court order;
    - c. If a resident is unable to communicate informed consent, the Ombudsman may accept communication of informed consent from the resident representative unless there is reasonable cause to believe the resident representative is not acting in the best interest of the resident;
    - d. If a resident is unable to communicate informed consent and has no resident representative, resident identifying information may be disclosed/referrals made, in the following situations:
      - i. The Ombudsman has reasonable cause to believe there may be an adverse effect to the health, safety, welfare, or rights of the resident;
      - ii. The Ombudsman has no evidence to indicate the resident would not agree;
      - iii. The Ombudsman has reasonable cause to believe that it is in the best interest of the resident to release information or make a referral;
      - iv. The Local Ombudsman obtains the approval of the State Ombudsman;
      - v. The action is documented in the case file.

Policies regarding disclosure apply regardless of the source of the request for information or the source of funding for the services of the Ombudsman program.

**10. Conflict of Interest** (45 CFR 1324.11(e), 1324.21)

The Office will develop policies and procedures regarding conflicts of interest that will establish mechanisms to identify and remove or remedy conflicts of interest. (See section **9.8. Conflict of Interest For the Ombudsman Program**)

**11. Systems Advocacy** (45 CFR 1324.11(e))

- A. The State Ombudsman and representatives will analyze, comment on, and monitor the development and implementation of Federal, State, and local laws. In carrying out the specified duties of the program, no representative of the Ombudsman program shall be prohibited by Idaho lobbying laws.
- B. The State Ombudsman shall consult with ICOA on any determination of the Office related to recommended changes in laws, regulations, policies, or systems advocacy work. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office and may not necessarily represent determinations or positions of ICOA.
- C. All Local Ombudsmen must first discuss and receive written notice of approval from the State Ombudsman before conducting systems advocacy efforts.

**12. Designation Criteria For Ombudsman Program Entities (AAA)**

(45 CFR 1324.11(e), IDAPA 15.01.03)

- A. Idaho Administrative Rule 15.01.03.031 designates each of Idaho's six Area Agencies on Aging as the Local Ombudsman entity and they will:
  - 1. Not be responsible for licensing or certifying long-term care facility services;
  - 2. Not be an association, or an affiliate of an association, of providers of long-term care facilities for residents;
  - 3. Not have a financial interest in a long-term care facility;
  - 4. Demonstrate to the satisfaction and with the permission of the State Ombudsmen or his/her representative, the

- capability to carry out the responsibilities of the Office;
- 5. Ensure that AAA procedures for Local Ombudsmen shall be consistent with the program;
- 6. Meet all requirements of 45 CFR 1324;
- 7. Provide Ombudsman services directly;
- 8. Not otherwise be prohibited from meeting the duties of the AAA.
- B. The execution date of the AAA contract with ICOA to provide LTCO program services shall constitute the effective date of the designation.
- C. The State Ombudsmen will review and approve plans or contracts governing the entity LTCO operations, including AAA area plans, in coordination with ICOA and periodically monitor program performance through onsite visits.

**13. Designation Criteria For Local Ombudsman Representatives**

**(LTCO)** (OAA section 712(a), 45CFR 1324.11(c), 45 CFR 1324.19, IC 67-5009, IDAPA 15.01.03)

- A. The Office may designate Local Ombudsmen who will be located in each Idaho AAA and shall fulfill duties as outlined in section.
 

**9.4 Functions and Responsibilities for the State Long-Term Care Ombudsmen.** The AAA shall notify the State Ombudsman of the need and intent to interview and hire any Local Ombudsman. The State Ombudsmen will participate and provide recommendations during the hiring process of a fulltime Ombudsman, but the AAA shall make the final decision. Involvement of the State Ombudsman in the hiring of part-time Ombudsman staff will be at his/her discretion.
- B. To be designated as a Local Ombudsman, an individual must:
  - 1. Be free of conflict of interest as identified in section **9.8 Conflict of Interest;**
  - 2. Be employed by or volunteer for a designated AAA Local Ombudsman entity;
  - 3. Meet the minimum qualifications for the applicable Local Ombudsman position as identified in section **9.4 Functions and Responsibilities For the State Long –Term Care Ombudsman;**
  - 4. Satisfactorily complete certification training requirements as specified in section **9.4 Functions and Responsibilities For the State Long-Term Care Ombudsmen;**
  - 5. Be awarded his or her designation certificate signed by the State

Ombudsman as described in section **9.4 Functions and Responsibilities for the State Long-Term Care Ombudsman**;

6. Satisfactorily fulfill Local Ombudsman responsibilities as defined in section **9.7 Duties of the Representatives of the Office**.

**14. De-Designation Of Ombudsman Program Entity (AAA) (45CFR 1324.11(e), IDAPA 15.01.03)**

- A. The State Ombudsmen may de-designate a AAA entity as a provider agency for one or more of the following reasons:
  1. Failure to continue to meet the criteria for designation as listed in the section above;
  2. Existence of a conflict of interest with the LTCO program that is not remedied, as outlined in this manual;
  3. Failure to disclose any conflict of interest;
  4. Violation of LTCO program confidentiality requirements as outlined;
  5. Failure to provide adequate LTCO services including travel funds to carry out activities related to Ombudsman activities (IDAPA 15.01.03);
  6. Failure to fill a vacant Ombudsman position;
  7. Failure to use funds designated for the LTCO program for LTCO services or as directed by the State Ombudsmen as outlined;
  8. Failure to adhere to the terms of the contract for the provision of Ombudsman services;
  9. Failure to adhere to applicable federal and state laws and regulations.
- B. The process for de-designation of a AAA Ombudsman entity is as follows:
  1. The State Ombudsmen will immediately consult with ICOA regarding the need to de-designate the AAA Ombudsman program;
  2. The State Ombudsmen, in coordination with ICOA, shall send notice of the intent to de-designate to the AAA director and shall include the reason for de-designation;
  3. The AAA director shall respond in writing to the notice within 10 business days, outlining a plan to reach compliance;

4. After receipt of the notice, the State Ombudsmen will review and at his/her sole discretion, may amend or terminate the contract between the AAA Ombudsman program and the Office within 10 business days (45 CFR 1324.11(e));
  5. Provide notice of due process;
  6. If de-designation proceeds, the State Ombudsmen shall arrange for the provision of Ombudsman services until a new provider is designated (IDAPA 15.01.03);
  7. The AAA shall, at the total discretion of the State Ombudsman, surrender any equipment and supplies purchased with state or federal funds designated for LTCO services;
- C. The AAA shall surrender the balance of any advanced state or federal monies to ICOA or the State Ombudsman.

**15. De-Designation Of Local Ombudsmen (LTCO) (45 CFR 1324.11(e), IDAPA 15.01.03)**

- A. The State Ombudsman designates individuals to be given the title and responsibilities of a Local Ombudsman representative of the Office and may refuse to designate, suspend or de-designate for the following reasons:
1. Failure of the individual to meet /or maintain the criteria for designation (See section **9.4 Functions and Responsibilities of the State Long-Term Care Ombudsman**)
  2. Existence of a conflict of interest that cannot be resolved (See section **9.8 Conflict of Interest**);
  3. Intentional failure of the individual to disclose any conflict of interest;
  4. Performing a function not recognized or sanctioned by the LTCO Program;
  5. Violation of the confidentiality requirements;
  6. Failure to serve as a fulltime Ombudsman representative and failure to fulfill LTCO responsibilities as outlined in section **9.7 Duties of the Representatives of the Office**;
  7. Falsifying records;
  8. Failure to follow the direction of the State Ombudsman, designee, or the supervising Local Ombudsman, regarding LTCO procedures and practices;
  9. A change in employment duties which is incompatible with LTCO duties and;

10. Separation from the LTCO Program including, but not limited to:
    - a. Termination of employment by the AAA;
    - b. Non-fulfillment of job responsibilities;
    - c. Termination or non-renewal of provider agency's contract for provision of LTCO services;
  11. Failure to act in accordance with applicable federal and state laws and regulations.
- B. The process to de-certify a Local Ombudsman is:
1. Prior to de-designation, the State Ombudsmen shall consult with ICOA and the relevant AAA to consider remedial actions that could be taken to avoid de-designation;
  2. Discuss with ICOA and the AAA the impact of the action which led to consideration of de-designation;
  3. If no remedy can be found, the State Ombudsman shall make the final decision and provide written notice of the intent to de-designate to the Local Ombudsman to be de-designated, ICOA and the AAA. Such notice shall:
    - a. Specify the reasons for the intended de-designation;
    - b. Include the date the de-designation becomes effective;
    - c. Provide notice of due process.
  4. The State Ombudsman may suspend the Local Ombudsman, pending the outcome of the investigation;
  5. If the refusal to designate, suspension of designation, or de-designation, results in the absence of Ombudsman services in the relevant service area, the AAA and the State Ombudsman shall arrange for the provision of Ombudsman services until an appropriate replacement is designated.

**16. Grievance Procedure For Appeal Of De-Designation/De-Certification**  
(45CFR 1324.11(e))

- A. An appeal of de-designation of a AAA local entity or Local Ombudsman may be filed with the Administrator of ICOA by:
1. Submitting the reason for the appeal in writing within 10 business days of the State Ombudsman final decision for de-designation. The following must be addressed in the letter:
    - a. The stated reason for filing the grievance;
    - b. How corrections have been made to come into compliance;

- c. How said corrections qualify the AAA or Local Ombudsman for re-designation or remedy of conflict;
- d. The ICOA Administrator will review and make recommendation to the State Ombudsman;
- e. The State Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designations of a Local Ombudsman entity or representative of the Office.
- f. The State Ombudsman shall make the final determination to accept the remedy for a conflict of interest.

**17. Grievance Procedure For Complaints Against An Ombudsman (45CFR 1324.11(e))**

An Individual or group having concerns or complaints against the Idaho State Long Term Care Ombudsman program may lodge a grievance to request a review.

**A. *Local Ombudsmen (LTCO)***

Complaints about local volunteer or staff Ombudsmen shall be handled in the following manner:

- 1. All complaints will be submitted in writing;
- 2. If a complaint is received by the local entity supervisor or AAA Director, they will immediately notify the State Ombudsman;
- 3. If the issue is determined by the State Ombudsman to be a personnel issue, the AAA will assume responsibility for the investigation and keep the State Ombudsman apprised;
- 4. If a situation involves a resident, their right to confidentiality will always be maintained throughout the investigation unless resident/representative permission is given;
- 5. The State Ombudsman or Local Ombudsman supervisor will, at the discretion of the State Ombudsman, investigate the programmatic complaint; (1/31/19)
- 6. The nature of complaint, specifics of the investigation, and the outcome shall be documented;
- 7. A written response will be sent to the complainant upon completion of the investigation; (1/31/19)
- 8. The response shall include name and contact information of the ICOA Administrator should the complainant choose to make a final appeal.

9. Final appeal will follow steps 1, 2, 4, 7
- B. *State Long-Term Care Ombudsman (SLTCO)*
- Complaints against the State Long-Term Care Ombudsman may include acts or omissions of the Office or challenges to de-designation, suspension or refusal of designations as a representative of the Office or host agency. Complaints shall be handled in the following manner:
1. If the complainant is challenging de-designation, suspension or refusal of designation, a request for stay of the decision may be requested at the time of submission of the grievance;
  2. All complaints will be submitted in writing to the ICOA Administrator;
  3. If the complaint contains confidential resident information, the disclosure process shall be followed. (See section **9.3.9 Establishment of the Office**)
  4. A written response will be sent to the complainant upon the completion of the investigation. (1/31/19)

**18. Independence Of Long-Term Care Ombudsman Program (45**

CFR 1324.11(e))

- A. The State Ombudsman shall have the ability, without representing the positions of the ICOA or any other entity, to make independent determinations and establish positions of the Office regarding:
1. Disclosure of information maintained by the Ombudsman program (See section **9.3.9 Establishment of the Office**)
  2. Recommendations to changes in Federal, State, and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents;
  3. Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

## **9.4 FUNCTIONS AND RESPONSIBILITIES OF THE STATE LONG**

### **TERM CARE OMBUDSMAN** (OAA section 712(a), 45 CFR 1324.13, IC 67-5009, IDAPA 15.01.03)

#### **1. Functions of the State Long Term Care Ombudsman (SLTCO)**

The State Ombudsman shall personally or through representatives of the Office:

- A. Identify, investigate, and resolve complaints that:
  1. Are made by, or on behalf of residents;
  2. Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of guardians, representative payees and other resident representatives) of:
    - a. Providers, or representatives of providers, of long-term care;
    - b. Public agencies;
    - c. Health and social service agencies.
- B. (OAA section 712(a), 45 CFR 1324.11(c), 45 CFR 1324.13(a), IC 67-5009) Provide services to populations other than residents of long-term care facilities so long as appropriations under the Act are utilized to serve long-term care facility residents.
  1. (OAA section 712(a), 45 CFR 1324.11(a), IC 67-5009) The LTCO program may serve residents under the age of 60 if to do so will:
    - a. Benefit other residents;
    - b. Provide the only viable avenue of assistance available to the complainant.
- C. Inform residents about means of obtaining services provided by the Ombudsman program:
  - Maintain a current Ombudsman web page on the ICOA website;
  - Distribute LTCO program brochures and business cards;
  - Ensure that LTCO posters are displayed in each facility.
- D. (OAA section 712(a), 45 CFR 1324.13(a), IC 67-5009, IDAPA 15.01.03) Ensure that residents have regular and timely access to the services provided through the program, and receive a timely response from all representatives of the Office to requests

for information and complaints by:

1. Regular complaint visits and quarterly non-complaint visits to residents;
  2. Responding to complaints within 5 business days or sooner if determined to be priority circumstances as outlined. (See section **9.3 Establishment of the Office**)
  3. A visit for the purpose of investigating a complaint may be made simultaneously with a routine visit to maximize efficient use of time and resources.
- E. (OAA 712(a), IDAPA 15.01.03) May, if feasible, provide Ombudsman services to those residents transitioning from a long-term care facility.
1. Local Ombudsmen will notify the State Ombudsman of the request and intent for assistance with transition;
  2. With permission from the resident, the Local Ombudsman will coordinate efforts with the Idaho Home Choice program and will:
    - a. Ensure that the resident is given appropriate choice for options;
    - b. Investigate resident complaints in relation to the transition process.
- F. (OAA section 712(a), 45 CFR 1324.13(a), IC 67-5009, IDAPA 15.01.03) Represent the interests of residents before government agencies, assure that individual residents have access to, and (as the State Ombudsmen determines as necessary and consistent with resident interests) pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;
- G. (OAA section 712(a), 45CFR 1324.13(a), IDAPA 15.01.03) Provide administrative and technical assistance, consultation, training and resources to Local Ombudsmen and AAA agencies hosting Local Ombudsman programs;
- H. (OAA section 712(a), 45 CFR 1324.13(a), IC 67-5009) Analyze, comment on, and monitor 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 rights of residents with respect to the adequacy of long-term care facilities and services in the State;

1. Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and
2. Facilitate public comment on the laws, regulations, policies, and actions;
3. Provide leadership to statewide systems advocacy efforts on behalf of long-term care residents;
4. Provide leadership to statewide systems advocacy efforts of the Office, including coordination of systems advocacy efforts carried out by representatives of the Office;
5. Provide information and recommendations to public and private agencies, legislators, the media, and other persons, regarding the problems of residents;
6. (IC 67-5009) Such determinations shall be those of the Office and not necessarily represent the determinations of ICOA;
7. (45 CFR 1324.11(e), 45 CFR 1324.13(a))  
In carrying out these efforts, the provision of information, recommendation for changes to legislators and government agencies do not constitute lobbying activities.
- I. (OAA section 712(a), (CFR 1324.13(a)) Coordinate with and promote the development of citizen organizations consistent with the interests of residents;
- J. (OAA section 712(a)), CFR 1324.13(a)) Promote and provide technical support to resident and family councils in long-term care facilities.

**NOTE:** All Ombudsman representatives shall adhere to the “Ombudsman Code of Ethics” (Att. 2)

2. **Responsibilities For Local Ombudsmen** (OAA section 712(a)), 45 CFR 1324.13(b), IC 67-5009, IDAPA 15.01.03)
  - A. The State Ombudsman shall be the head of a unified statewide program and shall designate and ensure Local Ombudsmen:
    1. Demonstrate the ability to carry out the responsibilities of a LTCO;
    2. Have a bachelor’s degree or equivalent;
    3. Have a minimum of one year’s experience working with the elderly;
    4. Have the ability to effectively communicate verbally and

in writing;

5. Have knowledge of long-term care issues and resources;
6. Demonstrate the ability to interpret and apply relevant local, state and federal laws, rules, regulations, and guidelines;
7. Demonstrate ability to work independently;
8. Demonstrate skill in interviewing techniques;
9. Demonstrate ability to collect data, conduct interviews and to form conclusions; and
10. Pass an FBI criminal background check paid if has lived in Idaho for less than 3 years, or state background check if lived in Idaho more than 3 years;
11. (45 CFR 1324.21, IDAPA 15.01.03) Shall be free of conflicts of interest (See section **9.8 Conflict of Interest**);
12. (45 CFR 1324.13(c)) Complete the training requirements outlined in the "Idaho Ombudsman Training and Resource Manual" provided by the State Ombudsman or his designee;
  - Successfully complete the SLTCO approved testing requirement as soon as possible, but no later than six months after completing the training that is approved by the State Ombudsman;
  - Complete a minimum of twenty hours of continuing education annually after the first year. (7/2019)
13. (45 CFR 1324.13(c)) May not serve as an Ombudsman outside his/her assigned area unless permission is granted by the State Ombudsman;
14. After successful completion of all aspects of training, may be certified by the State Ombudsman.

### **Waiver to Requirements**

**Requests for substitutions or variances related to the minimum requirements must be made in writing to the State Ombudsman and approved prior to performing Ombudsman duties.**

**3. Designation of Local Representatives** (OAA section 712(a), 45 CFR 1324.11(e), IC 67-5009, IDAPA 15.01.03)

The State Ombudsman shall determine designation, and refusal, suspension, or removal of designation, of Local Ombudsman entities and Local Ombudsmen pursuant to OAA section 712(a). (See section **9.3 Establishment of the Office**)

**4. Training** (OAA section 712(h), 45 CFR 1324.13(c))

A. Curriculum and Resources

1. The State Ombudsman will provide an “Ombudsman Program Training Guide and Resource Manual” that shall be used for training each new volunteer or Local Ombudsman. The manual will contain information regarding:
  - a. The History and Role of the LTCO Program;
  - b. The Aging Process;
  - c. Resident’s Rights;
  - d. The Problem Solving Process – Investigations;
  - e. The Problem Solving Process – Resolution;
  - f. Long-Term Care: Facilities, Regulations, and Finances;
  - g. Long-Term Care Residents;
  - h. Communication;
  - i. National Ombudsman Reporting System.
2. The State Ombudsman or his designee will provide, for all paid and volunteer staff, a minimum of 30 hours of orientation and training provided from material in the Idaho Long-Term Care Ombudsman Training Guide and Resource Manual developed by the State Ombudsman. (The orientation and training curriculum can be provided in a variety of methods based on the needs of the participants and includes job shadowing).
3. After successful completion of the training and at the discretion of the Office, the State Ombudsman may certify the trainee as a Local Ombudsman representative;
4. Volunteer Ombudsmen will be supervised by the Local Ombudsman or his designee;
5. All Ombudsman representatives will adhere to state and federal Ombudsman regulations, statutes, rules and policies and will:
  - a. Accept assignment by the State Ombudsman or

- his designee;
    - b. Pass an FBI criminal background check if resident of Idaho less than 3 years and Idaho State Police background check if resident of Idaho for over 3 years.
  - 6. If a certified Ombudsman moves out of the Ombudsman region in which they were certified, or leaves the program, the certification will be void.
  - 7. New application may be made to the State Ombudsman and at his/her discretion, consideration given for volunteer reinstatement;
  - 8. No one will perform duties of the Office unless they have:
    - a. Successfully completed the training program;
    - b. Been certified by the State Ombudsman or received a waiver of certification for instances when assignment to specific duties do not require an overall knowledge of the Ombudsman program;
    - c. Been directed by the Local Ombudsman supervisor in their planning and service area.
- 5. **Ombudsman Program Information Management** (OAA section 712(d), 45 CFR 1324.13(d), IDAPA 15.01.03), see section **9.3 Establishment of the Office**)
- 6. **Fiscal Management** (45 CFR 1324.11(e), 45 CFR 1324.13(f)), see section **9.3 Establishment of the Office**
- 7. **Reporting** (45 CFR 1324.13(g), IC 67-5009, IDAPA 15.01.03)
  - A. The State Ombudsman, on December 1 of each year, shall independently develop and provide final approval of a report to the State, of activities of the Ombudsman program during the prior state fiscal year (IC 67-5009). It shall also include but not be limited to:
    - 1. Analysis of Ombudsman program data;
    - 2. Evaluation of the problems experienced by and the complaints made by or on behalf of, residents;
    - 3. Policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents;
    - 4. Barriers or problems to resolving resident complaints:
      - a. Analysis of the success of the program;

- b. Barriers that prevent the optimal operation of the program.
  - B. The report shall be distributed on or before December 31<sup>st</sup> of each year to the Idaho:
    - 1. Governor;
    - 2. State Legislature;
    - 3. Speaker of the House;
    - 4. President of the Senate;
    - 5. Department of Health and Welfare Bureau of Licensing and Certification;
    - 6. President of the Idaho Hospital Association;
    - 7. President of the Idaho Health Care Association;
    - 8. General public via the ICOA website.
  - C. On or before January 31 of each year, the SLTCO will independently develop and provide a final report of activities for the previous federal fiscal year to include criteria outlined in 7.A
  - D. The report shall be distributed to the:
    - 1. Assistant Secretary of Aging via the National Ombudsman Reporting System (NORS) on or before January 31<sup>st</sup> of each year.
- 8. **State Level Coordination** (OAA section 712(h), 45 CFR 1324.13(h))
  - A. The State Ombudsman shall provide leadership and statewide coordination between the Ombudsman program and other entities with responsibility relevant to the health, safety, well-being and rights of residents of long-term care facilities including but not limited to:
    - 1. Area Agency on Aging programs;
    - 2. Aging and Disability Resource Centers;
    - 3. Adult Protective Services programs;
    - 4. Protection and Advocacy systems as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
    - 5. Facility and long-term care provider licensure and certification programs;
    - 6. The State Medicaid Fraud Control Unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396 b(q));

7. Victims assistance programs;
  8. State and local law enforcement agencies;
  9. The State Legal Assistance Developer and legal assistance programs, including those provided under OAA section 306(a).
- B. The Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.

## **9.5 STATE AGENCY RESPONSIBILITIES RELATED TO THE**

### **OMBUDSMAN PROGRAM** (OAA section 712(a), 45 CFR 1324.15, IC 67-5009)

1. **State Ombudsman** (45 CFR 1324.15, IC 67-5009, OAA Section 307(a)(9))  
ICOA shall provide State Plan assurances that it will carry out a SLTCO program through the establishment of the Office of the State Long-Term Care Ombudsman in accordance with OAA Section 712. It will ensure that the SLTCO Office is located within, or connected to ICOA and shall:
  - A. Expend no less than the amount expended with funds received under OAA Section 307 and Section 712 in fiscal year 2000. (3/18/19)
  - B. Hire a full-time State Ombudsman with the necessary background as outlined in 45 CFR 1324.11(b) to head the Office (see section **9.3 Establishment of the Office**);
  - C. Ensure that the State Ombudsman shall be a classified State employee subject to Chapter 53, Title 67, Idaho Code.
  
2. **Oversight Of Local Ombudsmen (SLTCO)** (45 CFR 1324.15(e))  
ICOA shall provide oversight of the SLTCO Office and:
  - A. Ensure that Local Ombudsmen shall not be required to be responsible for leading, managing or performing the work of non-Ombudsman services or programs except on a time-limited, intermittent basis;
  - B. Provide personnel supervision and ensure compliance with provisions of the Act and Rule by conducting an annual review of performance;
  - C. Determine that no conflict of interest exists and if conflict is identified (See section **9.8 Conflict of Interest**);
    1. Follow conflict of interest remedy per policy for Local Ombudsmen (See section **9.8 Conflict of Interest**);
  - D. Provide and assure adequate legal representation for the State Ombudsman through the Idaho Attorney General;
  - E. Require the State Ombudsman to develop and provide final approval of an annual report as required in OAA section 712(h) and 45 CFR 1324.13(g) and as otherwise required by the Assistant Secretary;

- F. May make reasonable requests of reports, including aggregated data regarding Ombudsman program activities;
- G. Require the State Ombudsman to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents in the State, and recommend any changes in such laws, regulations, and policies as the State Ombudsman determines to be appropriate;
- H. Require the State Ombudsman to provide such information as the he/she determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns;
- I. Require the State Ombudsman to establish procedures for the training of the representatives of the Office. (May utilize OAA Title III and Title VII funds appropriated for direct services for that training (45 CFR 1324.13(c), 1324.15(c));
- J. Provide support, including training opportunities, to enable the State Ombudsman and other representatives of the Office to fulfill responsibilities consistent with all applicable federal and state laws, regulations and policies, and may utilize OAA Title III and Title VII funds appropriated for direct services (45 CFR 1324.13(c), 1324.15(c));
- K. Ensure that the State Ombudsman or designee participates in training provided by the National Ombudsman Resource Center established in OAA section 202(a). (OAA section 712(h))
- L. Administer the contracts and conduct fiscal monitoring of the Local Ombudsman entities (AAA) (45 CFR 1324.15(e);
- M. Require the State Ombudsman to coordinate Ombudsman program services with agencies carrying out similar responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities (OAA section 712(h), 45 CFR 1324.13(h), and 1324.15(k));
- N. Ensure that the State Ombudsman and representatives have access to facilities, long term care residents, and medical and social records as per 45 CFR 1324.11(e). (See section **9.3 Establishment of the Office**);

- O. Ensure that any review of files, records or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in 45CFR 1324.11(e) and 1324.13(e).  
(See section **9.3 Establishment of the Office**)

**3. State and Area Plans** (45 CFR 1324.15(g))

- A. ICOA will coordinate goals and objectives of the SLTCO program into the State Plan and will coordinate with other OAA Title VII programs and state elder rights programs including but not limited to: Adult Protection, Disability Rights Idaho, and Idaho Legal Aid Services in order to promote collaboration and reduce duplication of efforts. Where applicable, ICOA will require inclusion of goals and objectives of Local Ombudsman entities into area plans.

**4. Elder Rights Leadership** (OAA section 712(g), 45 CFR 1324.15(h), IDAPA 15.01.03)

- A. ICOA shall provide elder rights leadership and shall require coordination of Ombudsman program services with activities of other programs authorized by Title VII of the Act as well as other programs with responsibilities relevant to the health, safety and well-being or rights of older adults, including residents of long-term care facilities.
  - 1. Each AAA shall ensure that Adult Protections staff and the Local Ombudsmen maintain a written agreement establishing cooperative protocols.
  - 2. Local Ombudsmen shall honor and carry out state-level agreements between the Office and other agencies of government (IDAPA 15.01.03).

**5. Interference, Retaliation and Reprisals** (OAA section 712(j), 45 CFR 1324.15(i), IC 67- 5009)

- A. ICOA shall ensure that long-term care facilities are prohibited from interference, reprisals or retaliation against a resident, employee, or other person filing a complaint with, or furnishing information to, the Office, and willful interference with representatives of the Office is unlawful. (IC 67-5009)

“Interference” includes any inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease or negatively impact:

- 1. The objectivity of the investigation or outcome of complaints;

2. The role of the representative of the Office as advocate for the rights and interests of the resident;
  3. The ability of the representatives of the Office to resolve issues related to the rights, quality of care and quality of life of residents of long-term care facilities; or
  4. The statutory responsibility of the representatives of the Office to provide information (as the Office of the SLTCO determines necessary) to public and private agencies, legislators and other persons regarding problems and concerns of residents and recommendations related to residents' problems and concerns.
- B. No person shall discriminate or retaliate in any manner against any resident, or relative or guardian/legal representative of a resident, any employee of a long-term care facility, or any other person due to filing a complaint with, providing information to, or otherwise cooperating in good faith with a LTCO.
- C. Any person who has knowledge of such interference or retaliation may report such information to the State Ombudsman.
1. The State Ombudsman shall review the information provided, and conduct further investigation, if necessary, to confirm the occurrence of the interference or retaliation.
  2. If the State Ombudsman, based on the review, determines that enforcement action is warranted, he/she shall pursue the following course of action:
    - a. Facility Staff or Agents
      - i. The State Ombudsman will submit a written report of such interference or retaliation to the Idaho Health & Welfare, Bureau of Long-Term Care;
      - ii. The Bureau may investigate the report from the State Ombudsman in accordance with its procedures for complaint investigation;
      - iii. If the Bureau complaint investigation confirms the occurrence of such interference or retaliation, the Bureau has the authority to impose sanctions in accordance with its procedures for the imposition of penalties.
    - b. Other Than a Long Term Care Facility
      - i. The State Ombudsman shall report such

interference or retaliation to the Idaho Commission on Aging Administrator;

- ii. Such interference by an individual who is an official or employee of the ICOA, AAA Local Ombudsman entity, or any representative of the AAA, shall be deemed to be in violation of the Older American Act section 705(a) and 712(j); and
- iii. The ICOA Administrator will assist the State Ombudsman in determining and implementing appropriate sanctions.

**6. Legal Counsel/ Liability** (OOA section 712(i), 45 CFR 1324.15(j), IC 67-5009)

- A. An Ombudsman is immune from liability in the good faith performance of his or her official duties and shall not incur any civil or criminal liability (IC 67-5009).
  - 1. “Official duties” are those duties of the State Ombudsman or representative of the Office as set forth in applicable federal and state law and these policies and procedures. They shall include, but not be limited to, making a statement or communication relevant to receiving a complaint or conducting investigative activity.
  - 2. Evidence of performing duties in “good faith” includes, but is not limited to:
    - a. Making every reasonable effort to follow procedures set forth in applicable laws and these policies and procedures;
    - b. Seeking, and making reasonable efforts to follow direction from the State Ombudsman or supervising Ombudsman;
    - c. Performing duties within the scope of authority related to training and designation in the role.
- B. ICOA shall ensure that legal counsel is adequate, relevant and available without conflict of interest, to the LTCO program for consultation and representation in the performance of:
  - 1. Complaint resolution and systems advocacy to protect the welfare, and rights of residents;

2. Assisting residents in seeking administrative, legal, and other appropriate remedies.

Legal representation, arranged by or with the approval of the State Ombudsman, shall be provided for any representative of the Office against whom suit, or other legal action is brought in connection with the performance of the official duties.

- C. Legal counsel will be provided as follows:
  1. The SLTCO will seek legal representation from the Idaho Attorney General's Office (45 CFR 1324.15(j)):
    - a. The SLTCO will notify and obtain approval of the ICOA Administrator to request legal services from the Idaho Attorney General's Office;
    - b. The Attorney General's Office does not represent or provide legal advice to the AAA entity or Local Ombudsman representative (non-state entities);
    - c. The ICOA appointed Legal Services Developer may consult with, but shall not represent the State Ombudsman, AAA, or Local Ombudsman program;
    - d. Legal representation of the Ombudsman program by an Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute adequate legal counsel;
    - e. Communications between the Ombudsman and legal counsel are subject to attorney-client privilege.
  2. Local Ombudsman will seek legal representation by:
    - a. Notifying the State Ombudsman of any legal action or potential legal action;
    - b. Obtaining independent legal counsel provided by the AAA as outlined in contract. (Local Ombudsman may request the assistance of the State Ombudsman).
  3. Local Ombudsmen requiring legal advice/consultation will contact:
    - a. The State Ombudsman, who shall assure the provision of advice and consultation; or
    - b. Idaho Legal Aid Services in their relevant service area.

The State Ombudsman shall obtain prior approval from ICOA for Office expenditures for legal representation.

7. **Annual Report** (OAA section 712(h), 45 CFR 1324.13(k), IC 67-5009 (See section **9.4 Functions and Responsibilities of the State Long-Term Care Ombudsman**)
  
8. **Training For Ombudsman And Representatives** (OAA 712(h), 45 CFR 1324.13(c) and 1324.15(k))  
ICOA shall provide opportunities for training for the State Ombudsman and Local Ombudsman representatives in order to maintain expertise to serve as effective advocates for residents and may utilize OAA Title III and Title VII funds appropriated for direct services. (See section **9.4 Functions and Responsibilities Of the State Long-Term Care Ombudsman**)

## **9.6 RESPONSIBILITIES OF AGENCIES HOSTING LOCAL**

### **OMBUDSMAN ENTITIES** (OAA section 712(a), 45 CFR 1324.11(e) and 1324.17, IDAPA 15.01.03)

**1. Area Agency on Aging Responsibility** (45CFR 1324.17(a) and (b), IDAPA 15.01.03, OAA Section 306(a)(9))

Each Idaho AAA shall execute Area Plan assurances that it will contract to directly provide a Local Ombudsman program to carry out the duties of the Idaho LTCO program. It will expend not less than the total funds appropriated by the OAA and expended by the AAA in fiscal year 2000.

(3/18/19) It will:

- A. Employ at least one full time paid Local Ombudsman representative except for AAA III who will hire a minimum of two.
  1. The AAA may apply to the State Ombudsman for a waiver of this requirement. The final decision will be at the discretion of the State Ombudsman.
- B. Notify the State Ombudsman immediately of any vacancy or intent to hire paid staff in a Local Ombudsman program;
- C. Involve the State Ombudsman in each interview to select a full-time paid Local Ombudsman;
- D. Screen the potential hire for conflict of interest by ensuring that they successfully complete a "Conflict of Interest" screening provided by the State Ombudsman. Upon request by the State Ombudsman, such document shall be provided as verification. The State Ombudsman may at any time, request the Local Ombudsman entity to perform a conflict of interest screen;
- E. Assure that organizational Conflicts of Interest are removed or remedied; and
- F. Notify the State Ombudsman of any complaints received regarding a local paid or volunteer Ombudsman as well as any disciplinary action, termination or intent to leave the program.
- G. The AAA shall be responsible for the personnel management, but not the programmatic oversight, of Local Ombudsmen, including employee and volunteer representatives of the Office. In situations where personnel and programmatic policies overlap, programmatic policies and procedures take precedence.
- H. Each AAA shall require the qualifications listed in the Ombudsman

job descriptions for fulltime Local Ombudsmen as outlined in section **9.4 Functions and Responsibilities of the State Long-Term Care Ombudsman**. (Part time Local Ombudsman Assistants may be exempt from this requirement, at the discretion of the State Ombudsman).

- I. (IDAPA 15.01.03) The AAA must provide travel funds for Local Ombudsmen to carry out activities related to their duties.
- J. (IDAPA 15.01.03) The AAA must provide space assuring privacy for Local Ombudsmen to hold confidential meetings.
- K. (45 CFR 1324.11(e)) The AAA must allow the Local Ombudsman, with permission from the State Ombudsman, to work outside normal business hours to carry out duties of the Ombudsman program.
- L. The AAA shall not have personnel policies or practices which prohibit Local Ombudsmen from performing the duties, or from adhering to the access, confidentiality and disclosure requirement of section 712 of the OAA and policies and procedures of the Office.
- M. The AAA shall monitor Local Ombudsman representative attainment of goals and objectives as stated in the ICOA contract and Area Plan.
- N. Policies, procedures and practices, including personnel management practices of the AAA entity, which the SLTCO determines to be in conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of the Local Ombudsman entity.
- O. The AAA shall ensure that I & A intake staff:
  - 1. Refer long-term care related calls directly to the Local Ombudsman (including inquiries regarding choosing a facility);
  - 2. Give the caller an option to leave a confidential voice mail message if the Local Ombudsman is not available;
  - 3. Provide the Local Ombudsman's direct phone number to the caller if appropriate;
  - 4. In order to provide confidentiality, will not require the caller to disclose resident or complainant-identifying information.Nothing in this provision shall prohibit the AAA from requiring that the Local Ombudsmen adhere to the personnel policies and procedures of the agency which are otherwise lawful.  
**NOTE:** Adult protection calls will be referred to the appropriate entity unless caller specifically asks for an ombudsman.

## **9.7 DUTIES OF THE REPRESENTATIVES OF THE OFFICE**

(OAA 712(a), 45 CFR 1324.19, IC 67-5009, IDAPA 15.01.03)

### **1. Local Ombudsman Function** (OOA 712(a)(B), 45CFR 1324.19(a))

Local Ombudsman representatives are designated by the State Ombudsman and located in each of Idaho's six Area Agencies on Aging (AAAs). Designated representatives shall follow all program policies and procedures as outlined:

- A. Identify, investigate, and resolve 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 (including the welfare and rights of residents with respect to the appointment and activities of guardians, representative payees and other resident representatives);
- B. Provide services to protect the health, safety, welfare, and rights of residents;
- C. Ensure that residents in the service area of the Local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints by:
  1. Maintaining current Ombudsman information on the AAA website;
  2. Distributing LTCO brochures and business cards;
  3. Ensuring that LTCO posters are displayed in each facility.
- D. Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the State or Local Ombudsman determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- E. 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; and
  1. Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;
  2. Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils;

- F. Carry out other activities that the State Ombudsman determines to be appropriate;
- G. All Ombudsmen shall adhere to the National “Code of Ethics for Long Term-Care Ombudsman”. (Att. 2)

2. **Visits** (OAA 712(a), 45CFR 1324.19(a), IDAPA 15.01.03)

- A. Local Ombudsmen will provide a minimum of quarterly unannounced visits to each assigned nursing home and assisted living facility and will:
  - 1. Monitor the condition of residents during routine visits;
  - 2. Provide information regarding services offered by the LTCO program during routine visits by offering brochures or other information describing the program and how to contact an Ombudsman;
  - 3. Assure that the facility posts the LTCO program information in the facility so that is readily visible to all residents, family, and staff;
  - 4. Explain the purpose of the LTCO program and visit the residents of the facility, particularly any residents who have been admitted since the LTCO’s last routine visit;
  - 5. Ensure resident access to an Ombudsman;
  - 6. Complete the State Ombudsman approved “Facility Visit Checklist” form for quarterly visits.

**NOTE:** A visit for the purpose of investigating a complaint may be made simultaneously with a routine visit to maximize efficient use of time and resources.

- B. Facility complaint visits can be unannounced and occur at any hour. The Ombudsman will identify him/herself upon entering the premises as a person authorized to investigate complaints but will follow Ombudsman consent and confidentiality requirements. Ombudsman presence should be increased in facilities with a history of serious and/or frequent complaints. (See section **9.3 Establishment of the Office**)

3. **Investigation** (OAA 712 (a), 45 CFR 1324.19(B), IC 67-5009, IDAPA 15.01.03)

- A. **Processing complaints made by or on behalf of residents of long-term care facilities is the Long-Term Care Ombudsman program's highest priority service.**
1. The Ombudsman shall identify, investigate and resolve complaints made by or on behalf of long-term care residents, and regardless of the source of the complaint, shall serve the resident.
  2. The Ombudsman shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction. (**NOTE:** An Ombudsman does not typically investigate allegations of abuse, neglect, or exploitation except as identified in these policies and procedures, section **9.7 Duties of Representatives of the Office**. The complaint will be resolved to the satisfaction of the resident. (45 CFR 1324.19)
  3. (45 CFR 1324.19(b) An Ombudsman will identify, investigate and resolve a complaint impacting one, several, or all residents of a facility.
  4. Whenever questions arise regarding appropriate LTCO practice in handling complaints, or when technical assistance is needed, Local Ombudsmen will contact the State Ombudsman for assistance.
  5. An Ombudsman generated complaint shall be made when he/she has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare or rights of long-term care residents.
  6. The Ombudsman investigates a complaint in order to verify the accuracy and truth of the complaint. When an Ombudsman receives information regarding a complaint, he/she shall determine:
    - a. The type of complaint using the National Ombudsman Reporting System (NORS) complaint categories as provided in the Ombudsman reporting system;
    - b. What outcome the complainant or resident of the long-term care facility is seeking;
    - c. What attempts have already been made to resolve the complaint;

- d. Whether the complaint is appropriate for LTCO activity;
  - e. Source of complaint made directly to the Ombudsman program.
- B. Complaint response priorities of the LTCO program are as follows:
- 1. (45 CFR 1324.11) Investigations shall be initiated within five working days unless identified as a priority which requires immediate response (no more than 1 business day of receipt). The following constitutes priority complaints:
    - a. Abuse, neglect, exploitation, abandonment or imminence of threat or harm to a resident;
    - b. Time sensitive complaints;
    - c. Actual or threatened emergency involuntary discharge or transfer;
    - d. Use of restraints.

(See section **9.3 Establishment of the Office**)
  - 2. The Ombudsman may indicate to the complainant when he/she may expect investigative efforts to begin;
  - 3. The LTCOP is not required to verify a complaint in order to seek a resolution on behalf of the resident of a long-term care facility. Resident perception is a sufficient basis upon which a LTCO can seek resolution.
  - 4. The Ombudsman shall be provided privacy by the facility or agency during all aspects of the investigative process. (IDAPA15.01.03)
  - 5. The LTCO program is not an emergency response system. Emergency situations should be referred to local law enforcement by calling 911.
- C. By definition, a complaint will usually require the Ombudsman to generate a case. If a resident's concern necessitates any interactions with another entity (e.g. administrator, director of nursing, social services, social services designee), by the Ombudsman or accompanied by the Ombudsman, a case should be opened. Complaint processing procedures should follow the general process below:
- 1. Intake and Investigation
    - a. Receive complaint
    - b. Obtain consent from resident(s) to begin investigation, to discuss details with individuals involved in the complaint,

- and/or to access resident records as necessary
- c. Gather information
- d. Verify problem;
- 2. Analysis and Planning
  - a. Analyze the situation
  - b. Consider solutions
  - c. Identify obstacles;
- 3. Resolution and Follow-up
  - d. Choose approach
  - e. Support and maximize resident participation in the process as per CFR 1324.19(b)
  - f. Act
  - g. Evaluate outcomes
  - h. Notify the resident or resident's representative verbally or in writing, of the outcome of the investigation. (3/18/19)

Document the case in the Idaho reporting system for later data collection and reporting to the State and to the Administration on Aging.

**4. Complaint Intake And Response (45 CFR 1324.19(b))**

- A. The Ombudsman shall maximize the participation of the resident in all complaint work and shall discuss the complaint with the resident in order to:
  - 1. Determine the resident's perception of the complaint;
  - 2. Determine the resident's wishes with respect to resolution of the complaint;
  - 3. Advise the resident if his/her rights.
- B. The Ombudsman shall seek the following information during the investigation:
  - 1. What has occurred or is occurring;
  - 2. What, where and when the problems occurred;
  - 3. Who was involved or present;
  - 4. What else happened;
  - 5. Effect of the occurrence;
  - 6. If the complaint is a reoccurring issue or one which has been identified by other residents; and
  - 7. What has the facility done to address the problem.

5. **Complaint Verification and Plan of Action** (45 CFR 1324.19(b)), IDAPA

15.01.03)

- A. To verify a complaint the Ombudsman will:
  - 1. Research relevant laws, rules, regulations, policies;
  - 2. Personally observe and analyze evidence;
  - 3. Interview complainant, residents, staff, administration, family members and other pertinent individuals as appropriate;
  - 4. Identify relevant agencies and interview;
  - 5. Examine relevant records.
- B. The Ombudsman will not examine a resident's body for evidence.
- C. After verifying the complaint, the Ombudsman shall determine a plan of action that must be agreed upon by the resident or resident representative if possible. Verified defined by NORS: It is determined after work (interviews, record inspection, observation, etc.) that the circumstances described in the complaint are generally accurate.

(NOTE: The terms validation and verification should not be used interchangeably. VALIDATION confirms that an issue exists for the complainant/resident. The Ombudsman must recognize that the issue is valid for the resident but may not be valid for investigation. VERIFICATION involves assessing information gathered to determine if the issue is pertinent to the complaint.)

- D. **Where immediate action must be taken to protect resident rights, with the consent of the State Ombudsman, the Local Ombudsman may take necessary immediate action if it is not possible to first consult with the resident. If the State Ombudsman is unavailable to give consent the Local Ombudsman may proceed and notify the State Ombudsman as soon as possible.**
- E. **The Ombudsman shall inform the resident of the action taken as soon as practicable and seek to follow up with the resident's wishes during the remainder of the complaint process.**

6. **Source Of Complaint** (45 CFR 1324.19(b))

- A. Complaints may be filed with the LTCO program by residents, families and friends of residents, long-term care facility staff, and any other person.
- B. Complaints may be made anonymously to the program.

Anonymous complaints must remain anonymous. The LTCO may explain to the complainant, that in some circumstances, anonymity could limit the ability of the LTCO to investigate and resolve the complaint.

C. Complaints can be filed by the LTCO with appropriate consent.

**7. Consent/Confidentiality (OAA section 712(d)), 45 CFR 1324.19(b)), IDAPA 15.01.03)**

A. The LTCO shall personally discuss the complaint and plan of action with the resident, including who may need information, for what purpose and what will be disclosed. The LTCO will obtain verbal or written consent to proceed. (3/18/19)

1. Such consent must be documented by the Ombudsman. The Idaho "Ombudsman Consent Form" must be completed and attached to the resident case file.

2. If the consent for release is in verbal form:

a. The date and method of obtaining the verbal approval shall be documented in the case file.

b. If the request for verbal consent cannot be given by the resident and it is determined that the resident's legal representative is not acting in the resident's best interest, the Local Ombudsman shall contact the State Ombudsman for approval to access the records. Such attempts will be documented in the resident's file.

3. When resident consent is refused or withdrawn, the Ombudsman shall cease action and record the refusal or withdrawal of consent.

B. If the resident is unable to provide consent:

1. The Ombudsman shall advocate for the wishes of a resident of a long-term care facility to the extent that the resident can express them, even if the resident has limited decision-making capacity;

2. Where a resident lacks capacity to provide consent to an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall:

a. Seek advice from the resident's representative, guardian, spouse or family member;

b. If the Ombudsman determines that the resident's representative is not acting in the best interest, he/she

shall seek evidence to indicate what the resident would have desired and work toward that end.

- c. (45CFR 1324.19(b)) The Ombudsman shall use substituted judgement to determine if the resident wishes to have all his/her health, safety, welfare, and rights protected.
- d. It is highly recommended that the Ombudsman discuss the complaint with the resident or observe the resident where discussion is not possible, even if there is a legal representative or guardian in place.

**8. Referrals (45 CFR 1324.19(b))**

- A. The Ombudsman shall make a referral to another agency when the resident gives permission or if unable to give permission:
  - 1. The responsible party may give permission;
  - 2. The Ombudsman may use substituted judgement where the responsible party is not acting in the best interest of the residents; and one or more of the following applies:
    - a. Another agency has statutory responsibility to support or assist the resident;
    - b. The action to be taken in the complaint is outside of the LTCO's scope of authority;
    - c. The Ombudsman needs additional assistance in order to achieve resolution of the complaint;
    - d. If it is determined that additional expertise may benefit the resident.
  - 3. The Local Ombudsman will contact the State Ombudsman for approval to proceed with substituted judgement and will document such in the resident case file.
- B. An Ombudsman may encourage residents or complainants to directly contact the appropriate *regulatory agency* to file a complaint and may also offer information and assistance to residents or complainants in making such contact. If they are unable to do so, the Local Ombudsmen or representatives may refer the matter and disclose resident-identifying information to the appropriate agency for regulatory oversight; protective services; access to administrative, legal or other remedies; and/or law enforcement action in the following circumstances:
  - 1. The resident is unable to communicate informed consent; AND
  - 2. The resident has no resident representative; AND
  - 3. The Ombudsman has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident.
- C. The Ombudsman has no evidence indicating that the resident

- would not wish a referral to be made;
- D. The Ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
- E. The Local Ombudsman obtains the approval of the State Ombudsman or otherwise follows the policies and procedures of the Office.

9. **Abuse Allegations Witnessed By Ombudsman** (45 CFR 1324.19(b))

- A. If the Ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a resident:
  - 1. Informed consent will be sought from the resident to disclose resident-identifying information to appropriate agencies and the resident's directions followed;
  - 2. Where the resident is unable to communicate informed consent, and has no representative available to provide informed consent, the Local Ombudsman shall open a case with the Local Ombudsman representative as the complainant, follow the program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:
    - a. The Ombudsman has no evidence indicating that the resident would not wish a referral to be made;
    - b. The Ombudsman has reasonable cause to believe that disclosure would be in the best interest of the resident;
    - c. The Ombudsman obtains the approval of the State Ombudsman;
    - d. The State Ombudsman shall communicate approval or disapproval as soon as possible but within 24 hours and;
    - e. The approval shall be documented in the case file.
  - 3. In addition, Local Ombudsmen, with approval of the State Ombudsman, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies and/or law enforcement action.
    - a. If State Ombudsman approval cannot be obtained, the representative may proceed but promptly notify the State Ombudsman of any disclosure activities.

**NOTE:** The primary role of the Ombudsman is to seek resolution to the

resident's satisfaction, not to verify the suspected abuse or neglect. Due to the serious nature of these complaints and in order to comply with laws which govern the LTCO program, specific guidelines are provided with respect to handling and reporting suspected abuse, neglect and exploitation. These guidelines include exemption of the representatives of the Office from mandatory reporting requirements.

**10. Community Education/Facility Training** (OAA Section 712(a))

- A. Each full-time, Local Ombudsman will provide a minimum of 6 presentations per year in the following areas:
1. In-service education to long term care facility staff regarding resident rights;
  2. Education to the public on aging issues.

**11. Media**

Any media work conducted by local ombudsmen must first be approved by the State Office. (3/14/19)

**12. Volunteer Ombudsman** (45 CFR 1324.13(c)), (See section **9.4 Functions and Responsibilities of the State Long-Term Care Ombudsman**)

- A. Each local LTCO program may choose to develop a volunteer program. They shall be responsible to recruit, train and oversee volunteers to be designated as representatives of the Office and will be responsible to:
1. Provide 30 hours of training for volunteers using the State "Ombudsman Training and Resource Manual" and this Idaho Ombudsman Policies and Procedures manual:
    - a. Training can be conducted in a variety of methods to meet the needs of volunteers;
    - b. State approved tests will be given and successful completion required;
    - c. If the Local Ombudsman determines that a change in the above requirement is necessary, a waiver may be submitted to the State Ombudsman for consideration.
  2. Provide shadowing and on the job training for volunteers;
  3. Submit a request for certification to the State Ombudsman;
  4. Supervise and monitor all certified Ombudsman volunteers who will:
    - a. Work under the direct supervision of the Local Ombudsman;
    - b. Be qualified to perform Ombudsman responsibilities including provision of program components;
    - c. Provide appropriate documentation and reporting as directed by the Local Ombudsman;
    - d. Perform responsibilities in accordance with all

applicable federal and state laws, rules, regulations, policies and procedures.

5. Maintain personnel records of all volunteers;
6. Assess and provide needed on-going training in coordination with the Local Ombudsmen;
7. Ensure that a minimum of 20 hours of continuing education (CEU) pertinent to long-term care is made available and:
  - Each volunteer completes the required 20 hours of long-term care related continuing education per year;
  - Training for each volunteer is documented in the Ombudsman reporting system. (Each volunteer is exempt from the CEU requirement in the first year that includes initial training).
8. Ensure that no volunteer has a conflict of interest as defined in 45 CFR 1324.21 by completing the annual "Conflict of Interest Screening Form" and entering the information in the Ombudsman reporting system.
9. Ensure that volunteers will notify the State or Local Ombudsman supervisor before any action is taken on behalf of the Ombudsman program. Volunteers will reapply to the SLTCO if inactive for more than six months.
10. Submit a written waiver of initial training and continuing education requirements for a volunteer Ombudsman if the volunteer has education and experience equivalent to the requirements outlined or will be serving in an office capacity only. The decision to grant a waiver will be at the discretion of the State Ombudsman (OAA Section 712(h));
11. Evaluate volunteers annually;
12. Submit to the State Ombudsman, a request for renewal of certification every 2 years for each volunteer.

## 9.8 CONFLICT OF INTEREST FOR THE OMBUDSMAN PROGRAM

(OAA Section 712(f), 45 CFR 1324.19, IDAPA 5.01.03)

### 1. Identifying Conflict

- A. (OAA Section 712(f)) ICOA and the State Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both ICOA and the State Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict.
- B. (IDAPA 15.01.03) A conflict of interest exists in the LTCO program when interests intrude upon, interfere with, or threaten to negate the ability of the Ombudsman to advocate without compromise on behalf of long-term care facility residents. The Ombudsman shall have no conflict of interest which would interfere with performing the function of the position.
- C. (IDAPA 15.01.03) Policies, procedures, or practices which the SLTCO determines to be in conflict with the laws, policies, or procedures governing the LTCO program shall be sufficient grounds for refusal, suspension or removal of designation of the representative of the Office and /or the Local Ombudsman entity.

### 2. Organizational Conflicts

- A. Organizational conflicts include, but are not limited to, placement of the Office, or requiring that the State or Local Ombudsman 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 any 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 which 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 regarding Medicaid or other public benefits for residents of long-term care facilities;
10. Conducts preadmission screening for long-term care facility placements;
11. Makes decisions regarding admission or discharge of 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.
13. Any other activity the State Ombudsman deems a conflict.

**3. Individual Ombudsman Conflicts** (OAA Section 712, 45 CFR 1324.11, IDAPA 15.01.03)

- A. Individual conflicts of interest for a State or Local Ombudsman, and members of their immediate family include, but are not limited to:
1. Direct involvement in the licensing or certification of a long-term care facility;
  2. Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility;
  3. Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;
  4. Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
  5. Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);

**NOTE:** An Ombudsman should adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.

6. Accepting money or any other consideration from anyone other than the Local Ombudsmen Office, or an entity approved by the State Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman without State Ombudsman approval;
7. Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman provides services;
8. Serving residents of a facility in which an immediate family member resides;
9. Provision of services with conflicting responsibilities while serving as a LTCO, such as Adult Protective Services; discharge planning; pre-admission screening or case management for long-term care residents;
10. Participating in activities which:
  - a. Negatively impact on the ability of the LTCO to serve residents, or
  - b. Are likely to create a perception that the LTCO's primary interest is other than as a resident advocate.

**4. Conflict of Interest Standards (OAA 712(f), 45CFR 1324.21, IDAPA 15.01.03)**

- A. Each AAA shall implement policies and procedures to prohibit the employment or appointment of a Local Ombudsman representative with a conflict that cannot be adequately removed or remedied.
  1. To ensure compliance with conflict of interest standards:
    - a. All LTCO representatives or entities (AAAs) will immediately notify the State Ombudsman of any potential or actual conflict of interest;
    - b. All potential Ombudsman job applicants will be screened for potential conflict of interest by completing the SLTCO approved "Conflict of Interest Screening Form" and efforts made to avoid hiring or appointing an individual if they have been employed by or participated in the management of a long-term care facility within the previous twelve months.
      - Where such an individual is appointed or employed, the AAA will contact the State Ombudsman immediately and steps taken to

remedy the conflict.

- c. Local Ombudsman and Ombudsman volunteers requesting certification will complete the “Conflict of Interest” Screening Form” upon hiring and then annually. The Local Ombudsmen will verify on an annual basis or as needed, that all Ombudsman are conflict free.
- d. The State Ombudsman shall identify and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System (NORS).

**5. Conflict of Interest Remedies** (OAA 712(f), 45CFR 1324.21(b) and (d), IDAPA 15.03.01)

- A. When a potential or actual organizational conflict of interest is identified within the LTCO program, all agents of the AAA have a duty to notify the State Ombudsman.
  1. The State Ombudsmen shall immediately notify the ICOA Administrator of an identified or potential conflict and they will together determine whether appropriate actions may be taken to sufficiently remedy the conflict.
    - a. A conflict can be sufficiently remedied only:
      - Where the existence of the conflict does not and cannot interfere with any duties of the LTCO program; and
      - Where the conflict is not likely to alter the perception of the LTCO program as an independent advocate for residents of long-term care facilities.
  2. A written remedial plan shall be developed within ten (10) business days of identification of the conflict and submitted to the ICOA Administrator and the State Ombudsman;
  3. The remedial plan must identify the actual conflict and provide assurances, which shall mitigate the negative impact of the conflict on the LTCO program. Examples of such assurances could include:
    - a. The program will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution.
    - b. No agency employee or governing board member with

a conflict of interest will be involved with or influence any decision to hire or terminate the employment of a representative of the Office.

- c. The agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that Ombudsman representatives can fulfill their duties without interference.
  - d. A written agreement exists between the Program and another program which provides services with conflicting responsibilities. Such an agreement must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs and will be reviewed by the Office at the annual onsite review of the AAA entity. (IDAPA 15.01.03).
4. The State Ombudsman, in consultation with the ICOA administrator, will notify the party of the decision within 30 days.
  5. The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists, and the State Ombudsman.
  6. If either party cannot agree on the plan, the conflict has not been sufficiently remedied.
  7. If the conflict cannot be removed or effectively remedied, the State Ombudsman may be required to use the authority of the Office to de-designate or suspend designation of the entity as a participant in the Program. (45CFR 1324.19(b))
- B. Where *individual conflicts of interest* have been identified, the following steps shall be taken to ensure the conflict can be sufficiently remedied:
1. Where the individual is an applicant for a position as a Local Ombudsman, a plan shall be developed before the individual is hired for the position;
  2. Where the individual is an applicant for certification as a volunteer Ombudsman, a plan shall be developed before the individual is certified;
  3. Where the individual is a LTCO staff or volunteer, the State Ombudsman shall be notified and will inform the ICOA

Administrator. The staff or volunteer will submit a written remediation plan to the State Ombudsmen within ten (10) business days of identification of the conflict. No action shall be taken by the individual on behalf of the LTCO program until the plan is reviewed by the State Ombudsman and the respective AAA.

- a. The remedial plan must:
  - Identify the actual conflict;
  - Provide assurances which shall mitigate the negative impact of the conflict on the LTCO program such as:
    - Prohibiting the representative with the conflict of interest from serving residents in the facility where the conflict exists, making arrangements for another representative to serve those residents.
  - Be mutually agreed upon and signed by the AAA Local Ombudsman entity, the Local Ombudsman or applicant with the conflict of interest, and the State Ombudsman;
4. If either party cannot agree on the plan, the conflict has not been sufficiently remedied;
5. If the conflict cannot be removed or effectively remedied, the State Ombudsman may use the authority of the Office to de-designate or suspend designation of the Ombudsman representative as a participant in the Program.
6. The State Ombudsman will notify the party of the determination within 30 days.

**6. Ombudsman/AP Conflict Remedy (OAA 712(f), 45CFR 1324.21(d), IC 47-5003, IC 67-5009, IDAPA 15.01.02 and IDAPA 15.01.03)**

- A. ICOA coordinates both the Long-Term Care Ombudsman program and the Adult Protection program for Idaho.
- B. No Ombudsman representative will also provide adult protection services.
- C. Idaho's Ombudsman entities (AAAs) are statutorily required to directly provide both adult protection and Ombudsman services. In order to remedy a conflict of interest between the two programs:

1. Ombudsman entities (AAAs) that have organizational structure to accommodate the separation of supervision of the two programs shall do so;
  2. (IDAPA 15.01.03) Each AAA shall maintain a written agreement establishing protocols to provide appropriate firewalls between the programs including but not limited to the following:
    - a. All disclosure of Ombudsman information to Adult Protection shall follow State procedures for disclosure (see section **9.3 Establishment of Office**);
    - b. All Ombudsman referrals to the adult protection program will follow the outlined policies and procedures. (See section **9.7 Duties of Representatives of the Office**).
    - c. (45CFR 1324.19(b) Any Ombudsman involvement in adult protection situations will be investigated for the purposes of resolving the complaint to the resident's satisfaction and protecting the health, welfare, and rights of the resident.
  3. AAA written agreements between the Ombudsman and adult protection program will be reviewed on an annual basis by the State Ombudsman.
- 7. Commissioner or Advisory Council Conflict Remedy (45CFR 1324.21)**
- A. ICOA and the AAAs will ensure that any Commissioner or Advisory Council member with a conflict of interest is identified. Those who have a conflict of interest:
    1. Must disclose the conflict to the advisory board/Commission and to the State Ombudsman;
    2. May have no involvement with the Ombudsman program activities concerning the source of the conflict;
    3. Must abstain from voting on issues related to the operation of the Program.

**Failure to Identify or Remedy a Conflict of Interest** shall be sufficient grounds for the de-designation or suspension of the entity as a participant of the program or de-designation of a representative of the program. (See section **9.3 Establishment of the Office**)

- 8. Idaho Commission on Aging (ICOA) Responsibility (45CFR 1324.21)**
- A. ICOA will take reasonable steps to avoid internal conflicts of interest and:
1. Ensure that the State Ombudsman completes the Conflict of Interest Declaration form on an annual basis;
  2. Ensure that the State Ombudsman and Adult Protection Coordinator will not be supervised by the same supervisor;
  3. Ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the State Ombudsman is subject to a conflict of interest.
  4. Ensure that ICOA Commissioners are screened for presence of a conflict of interest and if identified will not participate in any actions involving the LTCO program.
  5. Verify that each AAA contract contains assurances that conflict of interest policies and procedures will be followed.
  6. Verify that no AAA has a conflict of interest through the onsite review process.
  7. Ensure that any disclosed conflict of interest is remedied following the policies and procedures set forth and that such will be reported annually to the Assistant Secretary through the National Ombudsman Reporting System.
  8. (45CFR 1324.21) Shall not enter into a contract or other arrangement with an agency or organization which is responsible for licensing or certifying long-term care facilities in the state or is an association (or affiliate of such an association) of long-term care facilities.
  9. Shall not operate the Local Ombudsmen Office directly if it:
    - a. Is responsible for licensing, surveying, or certifying long-term care facilities;
    - b. Is an association (or 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 ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.

**ATTACHMENT 1**  
**AOA-IM-03-01**  
**HIPAA/LONG-TERM CARE OMBUDSMAN**

INFORMATION MEMORANDUM

AOA-IM-03-01

February 4, 2003

TO : STATE AND AREA AGENCIES ON AGING  
ADMINISTERING PLANS UNDER TITLES III AND VII  
OF THE OLDER AMERICANS ACT OF 1965, AS  
AMENDED; OFFICES OF STATE LONG-TERM CARE  
OMBUDSMEN

SUBJECT : Ombudsman Access to Residents' Records and Other  
Information; the Health Insurance Portability and  
Accountability Act of 1996 (HIPAA) Privacy Rule  
and its Effect on Access to Residents' Records by the  
Long-Term Care Ombudsman Program, Residents  
and Residents' Representatives

LEGAL AND RELATED  
REFERENCES

: Older Americans Act, as amended, 42 U.S.C 305 8a  
Title VII of the Act *et seq.*; Health Insurance  
Portability and Accountability Act (HIPAA) of 1996,  
Pub. L. No. 104-191 (codified in scattered sections of  
42 U.S.C.); "Standards for Privacy of Individually  
Identifiable Health Information," (The Privacy Rule)  
(45 CFR Parts 160 and 164)

In recent months, questions have been raised about the effect of the recently issued "Standards for Privacy of Individually Identifiable Health Information" (Privacy Rule), implementing provisions of the Health Insurance Portability and Accountability Act (HIPAA) on access to residents' records and other information by representatives of the Long-Term Care Ombudsman Program (LTCOP), residents of long-term care facilities and residents' representatives.

This memorandum:

1. Reviews the Older Americans Act (OAA) requirements regarding ombudsman access to residents' records and other information, and the Nursing Home Reform Act (the Omnibus Budget and Reconciliation Act of 1987 – OBRA '87) ombudsman access requirements;

2. Explains that the Privacy Rule does not negate those requirements; and
3. Provides additional information for state and area agencies on aging and ombudsmen about the Privacy Rule.

The memorandum addresses the following specific topics:

- Summary of Privacy Rule implications for ombudsman work and state agency on aging responsibilities;
- OAA requirements regarding ombudsman access to residents' records and other information;
- The ombudsman access to records requirement in the Nursing Home Reform Act of 1987, which governs nursing homes participating in Medicare and Medicaid;
- Background on HIPAA and the Privacy Rule;
- The Privacy Rule requirements; the LTCOP is a "Health Oversight Agency"
- How these statutory and regulatory requirements affect the work of long-term care ombudsmen; and
- How the Privacy Rule affects residents' and their representatives' access to residents' individual clinical files.

### **Summary of Implications of the Privacy Rule for Ombudsman Work State Agency on Aging Responsibility**

Under the Privacy Rule, the LTCOP is a "health oversight agency." Therefore, the Privacy Rule does not preclude release of residents' clinical records to the LTCOP, with or without authorization of the resident or resident's legal representative. Also, since the LTCOP is a "health oversight agency," nursing homes and other "covered entities" may, in response to appropriate ombudsman inquiries, share other information without fear of violating the Privacy Rule.

State agencies on aging are required under the OAA to ensure appropriate ombudsman access to residents' records.

Nursing homes which participate in Medicare and Medicaid are required to provide ombudsmen access to residents' records with the permission of the resident or the resident's legal representative, consistent with state law.

To ensure that all facilities covered by the program, including nursing homes which do not participate in Medicare and Medicaid and board and care, assisted living and similar facilities, provide access to records under all the circumstances outlined in Section 712 (b) of the OAA (see below), state agencies on aging must ensure that the state has in place a statutory, regulatory or policy requirement sufficient to ensure that the facilities provide such access.

The following sections review and explain the Federal access and privacy requirements and how they affect each other.

## **OAA Requirements of State Agencies on Aging Regarding Ombudsman Access to Residents' Records and Other Information**

The OAA specifies requirements for ombudsman access to facilities, residents, residents' records and other information as follows:

### **Sec. 712 STATE LONG-TERM CARE OMBUDSMAN PROGRAM**

#### **(b) Procedures for Access.--**

- (1) In general.--** The State shall ensure that representatives of the Office shall have--
  - (A)** access to long-term care facilities and residents;
  - (B)** (i) appropriate access to review the medical and social records of a resident, if--
    - (I)** the representative has the permission of the resident, or the legal representative of the resident; or
    - (II)** the resident is unable to consent to the review and has no legal representative; or
  - (ii)** access to the records as is necessary to investigate a complaint if--
    - (I)** a legal guardian of the resident refuses to give the permission;
    - (II)** a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
    - (III)** the representative obtains the approval of the Ombudsman;
  - (C)** access 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.
- (2) Procedures.--** **The State agency shall establish procedures to ensure the access described in paragraph (1).** (emphasis added)

## **OBRA '87 Requirement Regarding Ombudsman Access to Residents' Records**

The Nursing Home Reform Act of 1987 amended Sections 1819 (Medicare) and 1919 (Medicaid) of the Social Security Act by adding the following provision:

**(c)(3)(E) ACCESS AND VISITATION RIGHTS.-** A nursing facility must - (E) permit representatives of the State ombudsman...with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

Thus, nursing homes which participate in Medicare and Medicaid are required by Federal law to permit ombudsman representatives to examine a resident's clinical records with permission of the resident or the resident's legal representative, consistent with state law.

**(Note** that neither the Older Americans Act nor the Social Security Act, as amended by OBRA,

requires that permission must be in writing; however, it is strongly recommended that when ombudsmen examine a resident's records, they document in the case file that they have obtained permission to do so, in accordance with these statutory requirements.)

## **Background on HIPAA and the Privacy Rule**

Title I of HIPAA, which became effective on July 1, 1997, protects health insurance coverage for workers and their families when they change or lose their jobs. The Administrative Simplification provisions in Title II authorized the Secretary of the U.S. Department of Health and Human Services (DHHS) to promulgate standards for electronic health data transactions. The Secretary is also authorized to promulgate standards for the privacy of individually identifiable health information if Congress does not enact health care privacy legislation by August 21, 1999. HIPAA also requires the Secretary to provide Congress with recommendations for legislation to protect the confidentiality of health care information.

The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress did not pass such legislation within its self-imposed deadline. DHHS published a proposed rule setting forth privacy standards for individually identifiable health information on November 3, 1999 (64 # FR 59918). After reviewing and considering the public comments, DHHS issued a final rule (65 FR 82462) on December 28, 2000, establishing "Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule")," which became effective on April 14, 2001. DHHS issued final modifications to the Privacy Rule on August 14, 2002 (67 FR 53182), which became effective October 14, 2002.

The Privacy Rule applies only to "covered entities," which are defined as 'health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically.' (Covered entities have until April 2003 to comply, although they may comply prior to that date.) In contrast, the Ombudsman Program applies to long-term care facilities but not to health plans, health care clearinghouses or health providers other than long-term care facilities.

The Privacy Rule standards apply to nursing homes but not to board and care, assisted living and similar facilities unless they are health care providers who transmit information electronically in connection with certain financial and administrative transactions. Regulations at 45 CFR 160.103 define "health care provider" as a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. "Health care" is defined in the Rule to include "1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and 2) the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription."

## **Privacy Rule Requirements LTCOPs Are “Health Oversight Agencies”**

The regulations permit covered entities to release individually identifiable health information only with the authorization of the individual to whom the information pertains, or to the individual’s personal representative, with certain exceptions. Among the exceptions is release of information to “health oversight agencies.” Covered entities may release individuals’ records to such agencies without the authorization of the resident or his/her legal representative, to the extent permitted by law or regulation, subject to the Privacy Rule’s minimum necessary requirements.

The Rule defines a “health oversight agency” as follows:

an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.  
(Section 164.501)

Section 164.512 (d) of the Rule specifies:

A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

- The health care system;
- Government benefit programs for which health information is relevant to beneficiary eligibility;
- Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- Entities subject to civil rights laws for which health information is necessary for determining compliance.

*Exception to health oversight activities* For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly

related to:

- The receipt of health care;
- A claim for public benefits related to health; or
- Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

**The DHHS Office for Civil Rights (OCR), the federal agency which administers the Privacy Rule, concurs with the Administration on Aging's (AoA) determination that since LTCOPs have oversight responsibilities authorized by law for a component of the health care system, they are health oversight agencies, as defined in the Privacy Rule (see Section 164.501, cited above).**

This determination hinges on LTCOPs being governmental agencies (e.g., state, territory or tribal entities) or entities "acting under a grant of authority from or contract with such public agency." This means that under HIPAA, the designated State Long-Term Care Ombudsman and ombudsman entities and representatives who are designated as part of the Office of the State Long-Term Care Ombudsman, in accordance with Section 712 (a) (1),( 2) and (5) of the OAA, have the same right to access to residents' health records and other appropriate information as any other health oversight agency, including agencies that provide oversight of government programs in which health information is necessary to determine eligibility or compliance.

The following Privacy Rule provisions are also relevant to the LTCOP:

- § "When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request." (Section 164.502(b)(1))
- § A covered entity may make disclosures required by other laws. (Section 164.512 (a))
- § A covered entity may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when: [m]aking disclosures to public officials that are permitted under [the health oversight provisions in] § 164.512, if the public official represents that the information requested is the minimum necessary for the stated purpose(s)." (Section 164.514(d)(3)(iii))
- § A covered entity may disclose protected health information about victims of adult abuse or neglect or domestic violence. The preamble to the Privacy Rule, at 65 Fed. Reg. 82527, discusses disclosures under this provision to authorized government agencies and gives the example of "ombudsmen for the aging or those in long-term care facilities." The circumstances specified in the regulations are:

- If disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law,
- If the victim of abuse agrees to disclosure, or
- Without the individual's agreement if the disclosure is expressly authorized by statute or regulation and either: (1) The covered entity, in the exercise of its professional judgment, believes that the disclosure is necessary to prevent serious harm to the individual or to other potential victims; or (2) if the individual is unable to agree due to incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual, and that an immediate enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. (Section 164.512(c))

See the attachment for the full text of these sections of the Privacy Rule.

## **Implications of the OAA, OBRA and HIPAA Privacy Rule Requirements for LTCOP Work**

1. If an ombudsman program representative has the permission of the resident or the resident's legal representative, the facility is required, under the Federal conditions of participation for Medicare and Medicaid, to provide the ombudsman with access to the resident's clinical records, consistent with state law.
2. The LTCOP is a "health oversight agency" under the Privacy Rule. Nursing homes and other facilities which are "covered entities" under the Privacy Rule are permitted to release residents' records to health oversight agencies without the authorization of the resident or his or her representative, subject to the Privacy Rule's minimum necessary requirements.
3. Since the LTCOP is a "health oversight agency," nursing homes and other "covered entities" may, in response to appropriate ombudsman inquiries, share other information without fear of violating the Privacy Rule.
4. The OAA requires state agencies on aging to ensure that ombudsman program representatives have appropriate access to review residents' medical and social records, if:
  - the representative has the permission of the resident or the resident's legal representative, or
  - the resident is unable to give consent and has no legal representative, or
  - access is necessary to investigate a complaint, the resident's legal guardian refuses permission and the ombudsman representative has reasonable cause to believe that the guardian is not acting in the best interests of the resident and the representative obtains the approval of the State Ombudsman.

5. If, as required by the OAA, a state has ensured ombudsman access to residents' clinical records and other information through a state law, regulation or policy binding on long-term care facilities, the facility must permit ombudsman access to residents' records and other information, in accordance with the state requirements. The Privacy Rule does not affect that requirement.

## **HIPAA Impact on Residents' and Their Representatives' Access to Residents' Individual Clinical Files**

The Privacy Rule offers the following rights to residents and their personal representatives regarding their protected health information:

### ***The right to***

- Inspect and obtain a copy of their health information; provider may charge reasonable fees for copying, postage, and preparation of a summary or explanation.
- Ask that corrections be made to their protected health information – if their request is denied, the entity must notify the resident with an explanation and must include the request, denial and additional information in the record.
- Receive written notice of privacy practices.
- Request restrictions on disclosure to particular entities and use of information.
- Accommodation of a reasonable request for alternative communication – e.g., request to use alternate mailing address.
- Receive an accounting of certain disclosures.
- File a written complaint to the Secretary of HHS or the entity without retaliation.

### **Resident's Representative's Access to Resident's Records**

The Privacy Rule does not use the term “legal representative” (as in the OAA), but rather refers to “personal representative.” Section 164.502(g) provides that a covered entity must treat a person as a personal representative if “under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care.” The information that may be disclosed is “with respect to protected health information relevant to such personal representation.” See the attachment for this provision of the Privacy Rule.

If a family member lacks the authority quoted above, the covered entity may provide access pursuant to an authorization that meets the requirements of Section 164.508 or the transition provisions at Section 164.532(b). An authorization under 164.508 may permit access to a resident's file and may be worded to terminate upon the discharge of the patient from the facility. In addition, family members who are involved in a resident's care or payment may have access to information necessary for these purposes under 164.510(b), subject to the minimum necessary provisions in the Rule. See the attachment for these provisions of the

Privacy Rule.

For additional information, please contact AoA Ombudsman Program Specialist Sue Wheaton at 202-357-3587; e-mail [sue.wheaton@aoa.gov](mailto:sue.wheaton@aoa.gov)

EFFECTIVE DATE: Immediately

INQUIRIES TO: State agencies should address inquiries to Regional Administrators on Aging, DHHS regional offices.

ATTACHMENT: Selected provisions of the Privacy Rule

(Signed)

\_\_\_\_\_  
Edwin L. Walker  
Deputy Assistant Secretary for Policy and Programs

**ATTACHMENT 2**  
**OMBUDSMAN CODE OF ETHICS**

**Code of Ethics for Long-Term Care Ombudsmen**  
**The National Association of State Long-Term Care Ombudsman Programs**

1. The Ombudsman provides services with respect for human dignity and the individuality of the client, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The Ombudsman remains knowledgeable in areas relevant to the long-term care system, especially regulatory and legislative information, and long-term care service options.
7. The Ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman Program, and with respect for the policies of the sponsoring organization.
8. The Ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
9. The Ombudsman participates in efforts to promote a quality, long-term care system.
10. The Ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
11. The Ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long-term care services that are within their scope of involvement.
12. The Ombudsman shall conduct himself/herself in a manner that will strengthen the statewide and national Ombudsman network.

**ATTACHMENT 3  
LOCAL OMBUDSMAN  
SAMPLE JOB DESCRIPTION**

## **JOB DESCRIPTION**

**Position Title: Long Term Care Ombudsman**

### **POSITION SUMMARY**

The Long-Term Care Ombudsman will receive, investigate and resolve complaints made by or on behalf of residents in long-term care facilities (residential and assisted living centers and skilled nursing facilities) that relate to action, inaction, or decisions, that may adversely affect the health safety, welfare, or rights of residents. The Ombudsman will also routinely visit every facility in the designated planning and service area to provide timely access to information and services for residents. The Long-Term Care Ombudsman will represent the interests of residents before government agencies and review and comment on any existing or proposed laws and regulations that pertain to the rights and well-being of residents. The Ombudsman may also supervise the Volunteer Ombudsman program.

### **ESSENTIAL DUTIES AND RESPONSIBILITIES**

1. Receive, investigate, mediate and resolve complaints regarding long-term care on behalf of persons residing in long-term care facilities or for persons that receive long-term care services in the community.
2. Visit routinely all long-term care facilities in the service area.
3. Advocate for good quality of care through public presentations and facility staff training, consultations, attending and supporting resident/family councils.
4. Document complaints, consultations, training and presentations using the approved Ombudsman data entry system.
5. If applicable, recruit, train, and supervise a local Volunteer Ombudsman program.
6. Under direction of the State Long-Term Care Ombudsman, identify and recommend changes in public policy, regulations and/or laws to improve the quality of life for long-term care residents.
7. Manage the program in accordance with the Idaho Commission on Aging Ombudsman Program Manual.
8. Complete Idaho's Ombudsman Certification Course.
9. Conduct oneself in a professional and cooperative manner with clients, co-workers, and other agencies/organizations, but work independently where required.
10. As a contractor you will assume the responsibility of understanding your role in accomplishing the strategic goals and performance measures of the Agency.

## QUALIFICATION REQUIREMENTS

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skills, and/or abilities required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

### **EDUCATION and/or EXPERIENCE:**

A Bachelor's degree or equivalent and a minimum of one year's employment experience in social work, nursing, public health, geriatrics, administration, community organization or other related field.

Demonstrated experience in:

1. Long-term services and supports or other direct services for older persons or individuals with disabilities; preferably at least one year's experience working with elders;
2. Consumer-oriented public policy advocacy;
3. Leadership and program management skills;
4. Negotiation and problem solving skills;
5. Knowledge of long-term care issues and resources.

### **CONDITION OF EMPLOYMENT:**

Employee must successfully complete a criminal background check and be free of conflict of interest as defined in the Older Americans Act. Employee must have reliable transportation to be used during working hours and ability to travel throughout the Area Agency on Aging service area.

### **LANGUAGE SKILLS:**

Read, analyze, and interpret documents and information such as general business periodicals, professional journals, technical procedures, operations manuals, governmental regulations, and policy and procedure manuals. Write original reports, business correspondence, and procedure manuals, conduct interviews. Effectively present information and respond to questions in one-on-one situations and from groups of managers, clients, and the general public. Communicate effectively in English; ability to speak Spanish is an asset.

### **MATHEMATICAL SKILLS:**

Apply basic concepts of algebra and geometry. Calculate and apply figures and amounts such as fractions, percentages, and proportions to practical situations.

### **REASONING ABILITY:**

Apply reasonable understanding to carry out instructions furnished in written, oral, or diagram form. Deal with problems and situations involving several concrete variables in standardized situations and develop and implement solutions. Prioritize work time, sequence and research information to complete work assignments. Interpret different kinds of work situations and make decisions as to next step or draw conclusions.

**COMPUTER AND EQUIPMENT SKILLS**

Ability to work in Microsoft Windows, Office, and any databases required by the Ombudsman program.

**OTHER SKILLS and ABILITIES:**

Knowledge of long-term care issues and resources.

**CERTIFICATES, LICENSES, and REGISTRATIONS:**

Must have a valid Idaho driver’s license, a good driving record, and proof of current automobile insurance. Employee will successfully complete the Idaho Ombudsman Certification training.

**PHYSICAL DEMANDS and WORK ENVIRONMENT**

Required physical and environmental demands are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- While performing the duties of this job, the employee is regularly required to sit and talk or hear.
- The employee frequently is required to use hands to handle objects, tools, or controls.
- The employee is occasionally required to stand, walk, and reach with hands and arms; and to stoop, kneel, or climb.
- The employee must occasionally lift and/or move up to 20 pounds.
- Specific vision abilities required by this job include close vision and the ability to adjust focus.
- The employee is regularly required to travel during winter driving conditions.

*My signature below indicates that I have read this job description and understand the requirements of the position and am able to perform the essential functions of the job as outlined.*

\_\_\_\_\_  
**Employee’s Signature**

\_\_\_\_\_  
**Date**